

# STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these terms and conditions (**Terms**):

- (a) **Agreement** means the agreement between Essential Energy and the Supplier comprising of these Terms, the relevant Purchase Order and any applicable Specifications, as may be varied in accordance with these Terms;
- (b) **Business Day** has the meaning given to that term in the SOPA;
- (c) **Claim** includes any request, demand, action or entitlement in relation to, arising out of or in connection with the Agreement or the Supply;
- (d) **Completion** means the stage in the performance of the Supply when:
  - (i) in respect of Goods, all Goods have been delivered and accepted by Essential Energy in accordance with clause 3.1;
  - (ii) in respect of Services, the Supplier has completed the performance of the Services in accordance with the Agreement, except for minor Defects which do not prevent any output of, or any thing associated with, the Services from being reasonably capable of being used for their intended purpose;
  - (iii) all necessary documentation and certification required by the Agreement (or for Essential Energy to obtain the benefit of the Supply) have been provided to Essential Energy; and
  - (iv) the Supplier has done everything else which the Agreement requires it to do prior to achieving Completion, including providing the warranties required by clause 6(b)(iv);
- (e) **Confidential Information** means information which is by its nature confidential, that Essential Energy has designated as confidential, or is capable of protection at common law or equity as confidential information, but does not include information that is or becomes public knowledge other than through a breach of the Agreement by the Supplier;
- (f) **Defect** means any:
  - (i) defect, failure, shrinkage, omission or other fault; or
  - (ii) non-conformance with the requirements of the Agreement,
 and **Defective** has a similar meaning;
- (g) **Delivery Date** means the date stated in the relevant Purchase Order for the Completion of a Good or Service, as may be extended in accordance with these Terms;
- (h) **Distributor Licence** means the distributor's licence granted by the relevant Minister to Essential Energy under section 14 of the *Electricity Supply Act 1995* (NSW) (**ESA**) on or about 7 June 2017, and as varied from time to time under clause 7 of Schedule 2 of the ESA (including the signed Minister's variations dated 5 February 2019, 23 September 2022 and 22 September 2023);
- (i) **Distribution System** means the distribution system of which Essential Energy is a network operator;
- (j) **Employee Record** has the meaning given in the *Privacy Act 1988* (Cth);
- (k) **Essential Energy** means Essential Energy (ABN 37 428 185 226);
- (l) **Essential Energy Data** means all data, documents, records and information of any kind (including Personal Information, Employee Records and Confidential Information) and in any medium supplied or made available to the Supplier, or otherwise obtained by the Supplier, in connection with the Agreement or the Supply (and includes the EE Works and any information and data of the kind described in clause 24);
- (m) **EE Works or EE Work** has the meaning given to it in clause 13(a).
- (n) **Good** means an item described in the relevant Purchase Order (if any) to be supplied by the Supplier and **Goods** means all of them;
- (o) **GST** means the tax payable on taxable supplies under the GST Law;
- (p) **GST Law** means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth);
- (q) **Heavy Vehicle National Laws** means where the Supply is performed in:
  - (i) New South Wales, the *Heavy Vehicle National Law (NSW)* (**HVNL NSW**), the *Heavy Vehicle (Adoption of National Law) Regulation 2013* (NSW), the local regulations (as defined in the HVNL NSW) and the national regulations (as defined in the HVNL NSW);
  - (ii) Queensland, the *Heavy Vehicle National Law (Queensland)* (**HVNL QLD**), the *Heavy Vehicle National*

*Law Regulation 2014* (Qld) and the national regulations (as defined in the HVNL QLD);

- (r) **Insolvency Event** means:
  - (i) an application or order is made to or by a court or a resolution is passed for the winding up of the a party or notice of intention to propose such a resolution is given; or
  - (ii) a party has entered into liquidation.
- (s) **Intellectual Property Rights** means any and all intellectual or industrial property rights throughout the world in relation to (without limitation) inventions, ideas, patents, applications for patents, copyright (including an author's 'moral rights' as that term is defined in the *Copyright Act 1968* (Cth)), registered and unregistered designs, registered and unregistered trademarks, rights in relation to circuit layouts and circuit layout designs, rights in relation to technologies in development, trade secrets, know-how and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organization of July 1967, whether registered or unregistered and whether or not now existing and in all cases for the duration of those rights; and any licence, consent, application or right to use or grant the use of any of the foregoing rights, including all renewals and extensions;
- (t) **Law or Laws** includes all acts of parliament of the Commonwealth of Australia and the States of Australia, and all regulations, by-laws, awards and orders made there-under, and lawful requirements of public, municipal and other competent Australian State or Commonwealth authorities in any way affecting or applicable to any part of the Supply;
- (u) **Loss** includes any losses, damages, liabilities, charges and costs (including legal expenses);
- (v) **Mandatory Requirements** means:
  - (i) Laws;
  - (ii) relevant industry, quality, environmental and work health and safety standards and requirements;
  - (iii) relevant industry or codes of practice or guidelines recognised in Australia;
  - (iv) relevant Australian Standards published by Standards Australia;
  - (v) relevant documentation issued by any safety regulator in Australia (including Safe Work Australia); and
  - (vi) relevant policies, procedures and standards of Essential Energy provided, or accessible, to the Supplier;
- (w) **Modern Slavery** has the meaning given to that term in the Modern Slavery Laws, and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;
- (x) **Modern Slavery Law or Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW), and any and all rules or regulations enacted in connection with any of those Acts;
- (y) **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth), but excludes an Employee Record of a current or former employee of Essential Energy if the Employee Record is used for a purpose directly related to a current or former employment relationship between Essential Energy and that employee;
- (z) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (aa) **Price** means the amount payable for the Supply (and the Contractor's compliance with its other obligations under the Agreement) as set out in, or calculated in accordance with, the relevant Purchase Order, as may be adjusted under these Terms;
- (bb) **Purchase Order** means the purchase order issued in writing by Essential Energy to the Supplier for the procurement of the Supply;
- (cc) **Relevant Person** means Essential Energy, any other network operator of the Distribution System, and any person who is contracted or sub-contracted by Essential Energy to work on the Distribution System;
- (dd) **Security Interest** has the meaning given to that term in the PSSA;
- (ee) **Services** means the services or work described in the relevant Purchase Order (if any) to be performed by the Supplier and any related services, activities, functions or responsibilities not specifically described in the Purchase Order but which are reasonably required for the proper performance and provision of such services or work;
- (ff) **SOPA** means the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (gg) **Specifications** means, in relation to any Good or Service:
  - (i) Essential Energy's required functionality and performance criteria for the Good or Service (as communicated by Essential Energy to the Supplier, including any functional and performance requirements referred to in or attached to the relevant Purchase Order); and
  - (ii) the functional and performance specifications set out or referred to in the Supplier's standard documentation for the

Good or Service (as provided by the Supplier to Essential Energy),

and in the event of any ambiguity in or inconsistency between the functionality and performance criteria referred to in paragraphs (i) and (ii) immediately above, the functionality and performance criteria referred to in paragraph (i) prevails to the extent of such ambiguity or inconsistency;

- (hh) **Statement of Business Ethics** means the statement of business ethics published on Essential Energy's website [www.essentialenergy.com.au](http://www.essentialenergy.com.au), as may be updated from time to time by Essential Energy;
- (ii) **Supplier** means the party identified as the 'Vendor' or the 'Supplier' in the relevant Purchase Order;
- (jj) **Supply** means the Goods to be supplied or the Services to be performed and the whole of the work to be executed in accordance with the Agreement (including the provision of any documentation and certification associated with any Good or Service) by the Supplier, as may be varied in accordance with these Terms;
- (kk) **WHS Act** means the *Work Health and Safety Act 2011* (NSW);
- (ll) **WHS Law** means the *WHS Act*, the *WHS Regulation*, all codes of practice relating to work health and safety, and any corresponding WHS law as defined in section 4 of the WHS Act;
- (mm) **WHS Regulation** means the *Work Health and Safety Regulation 2017* (NSW); and
- (nn) **Work or Works** means any design, drawing, specification, report, written processes, written analysis or workings or any other document.

## 1.2 Interpretation

In the Agreement, unless the context indicates otherwise:

- (a) a reference to:
  - (i) a clause is a reference to a clause of the Terms;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) the parties mean Essential Energy and the Supplier, and a party includes the party's executors, administrators, successors and permitted assigns, including any person taking part by way of novation and in the case of a trustee, includes a substituted or additional trustee;
  - (iv) a thing includes the whole and each part of it separately;
  - (v) legislation or a legislative provision includes any statutory modification, amendment or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
  - (vi) a document is to that document as varied, novated, ratified or replaced from time to time; and
  - (vii) '\$' or dollars is to Australian currency (AUD);
- (b) headings are for convenience only and do not affect the interpretation of the Agreement and
- (c) 'Including' and similar expressions are not words of limitation.

## 2 PURCHASE ORDERS

### 2.1 Terms

Subject to clause 2.2(a), these Terms apply separately to each Purchase Order issued by Essential Energy and must be read by the Supplier in conjunction with all other documents comprising the Agreement in respect of that Purchase Order.

### 2.2 Application of Terms and formation of Agreement

- (a) Without limiting clause 2.2(b), these Terms apply to a Purchase Order issued by Essential Energy for its purchase of Goods or Services from the Supplier where there is no separately executed contract which applies between Essential Energy and the Supplier in respect of those Goods or Services (**Separate Contract**). Where a Separate Contract applies, that Separate Contract prevails over these Terms and no Agreement (as defined in these Terms) will be created by these Terms.
- (b) These Terms will apply to the exclusion of any terms or conditions which the Supplier may purport to apply to (including any terms or conditions which are contained in, attached to or endorsed upon any quotation, correspondence, invoices or documents issued by the Supplier to Essential Energy in connection with) a Purchase Order or the Goods or Services the subject thereof, irrespective of their date of communication to Essential Energy (**Supplier Terms**). Supplier Terms are not binding upon Essential Energy or deemed to form any part of the Agreement.
- (c) The Supplier's provision of any part of the Supply the subject of a Purchase Order constitutes the Supplier's acceptance, and its agreement to be bound by, the Agreement in respect of the whole of the Supply the subject of that Purchase Order.
- (d) A Purchase Order may be issued by Essential Energy to the Supplier

electronically, including by email.

### 2.3 Amendment

Any variation or other amendment to the documents comprising the Agreement, including these Terms, the relevant Purchase Order or any Specifications, must, to have effect, be in writing and signed by the parties.

### 2.4 Order of precedence

Unless the parties expressly agree otherwise (including by explicitly amending these Terms in a Purchase Order), these Terms will take precedence over any other document comprising the Agreement to the extent of any ambiguity in or inconsistency between these Terms and any other document comprising the Agreement.

## 3 FOR THE PROVISION OF GOODS

### 3.1 Delivery

- (a) The Supplier must suitably pack, unload and deliver the Goods:
  - (i) in the relevant quantity and in any sequence specified in the relevant Purchase Order; and
  - (ii) Free Into Store (FIS) to the shipping address (or addresses), and between the hours, stated in the relevant Purchase Order on the Delivery Date, unless the Supplier is notified otherwise in writing by Essential Energy. If no hours are stated in a Purchase Order and Essential Energy does not otherwise notify the Supplier of the hours, then the hours for delivery are between 8am and 4pm.
- (b) The Supplier must obtain written confirmation from Essential Energy that Essential Energy has accepted the delivery of the Goods.

### 3.2 Inspection prior to delivery

At any time prior to delivery and acceptance of the Goods by Essential Energy in accordance with clause 3.1, Essential Energy may enter the Supplier's premises to conduct such inspections and tests as may be deemed necessary by Essential Energy (acting reasonably) to ensure that the Goods comply with the Agreement, and the Supplier must give Essential Energy all necessary assistance with such inspections and tests. Such inspections may include safety and environmental reviews, inspections, investigations and audits of the Supplier's work practices and systems.

### 3.3 Risk

- (a) Until the time of acceptance of delivery of a Good by Essential Energy in accordance with clause 3.1(b), a Good is entirely at the Supplier's risk.
- (b) If Essential Energy returns a Good to the Supplier pursuant to the Agreement, risk in that Good re-vests in the Supplier from the time of return to the Supplier until, and if, Essential Energy provides its written acceptance of any re-delivery of that Good.

### 3.4 Passing of ownership

- (a) Ownership of each Good passes to Essential Energy upon the earlier of the delivery of the Good to Essential Energy or payment for the Good by Essential Energy, without affecting any rights of rejection or other rights under the Agreement that Essential Energy may have.
- (b) If a Good is returned by Essential Energy to the Supplier under the Agreement which will not be re-delivered to Essential Energy, and Essential Energy has either not yet paid for the Good or the Supplier has reimbursed Essential Energy all amounts Essential Energy has paid under the Agreement in respect of the Good, then title in that Good will re-vest in the Supplier.

### 3.5 Warranties

Without limiting any warranty implied by law that Essential Energy has the benefit of, including statutory warranties under the Australian Consumer Law (at Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), the Supplier represents, warrants and undertakes in relation to each Good that:

- (a) the Good will be free from Defects;
- (b) it has the right to sell the Good and upon ownership of the Good passing to Essential Energy under clause 3.4(a), it will not sell or otherwise part with possession, custody or control of the Good and the Good is free from any Security Interest (other than any Security Interest in favour of Essential Energy), charge, mortgage, lien or other encumbrance;
- (c) where the Good is supplied by reference to a sample or description, the Good corresponds with the sample and description, in terms of quality and all other respects;
- (d) the Good will be of merchantable quality, comply with the Specifications and, as a minimum (and without limiting the Specifications), meet current industry standards;
- (e) it has informed itself of the purposes for which the Good is to be acquired by Essential Energy and that the Good is fit for those purposes; and
- (f) it is reasonable for Essential Energy to rely on the skill and judgment of the Supplier in its supply of the Good.

## 4 FOR THE PROVISION OF SERVICES

### 4.1 Time for performance

- (a) The Supplier must commence and perform the Services:

- (i) at the site(s) specified in the relevant Purchase Order (if any); and
  - (ii) promptly and, in any event, in accordance with any timetable which has been agreed in writing by Essential Energy for the performance of the Services.
- (b) The Supplier must achieve Completion of the performance of the Services by the Delivery Date(s).

#### 4.2 Warranties

The Supplier represents, warrants and undertakes in relation to the performance of the Services that it:

- (a) when performing the Services, will (to the extent applicable to the Services being performed) use parts, materials, items and other goods which are new, of good and merchantable quality and fit for their intended purpose, and which, as a minimum, meet current industry standards;
- (b) if delivering physical Services, will use proper and tradesman-like workmanship;
- (c) in respect of any EE Works, will ensure the EE Works are fit for their intended purpose (as stated in or reasonably ascertainable from the Agreement);
- (d) has informed itself of the nature of the Services and the parts, materials, items and other goods necessary for the performance of the Services (and the Supplier agrees that it will be solely responsible for those parts, materials, items and other goods);
- (e) has thoroughly inspected the site(s) at which the Services are to be performed; and
- (f) it is reasonable for Essential Energy to rely on the skill and judgment of the Supplier in its performance of the Services.

#### 5 DEFECTS

- (a) At any time prior to Completion, and for a period of at least twelve (12) months thereafter (or such longer period as may be agreed between the parties), the Supplier must, at its cost, (upon a written direction by Essential Energy and within the reasonable time period stated in that direction or, if no time period is stated, promptly) correct:
- (i) any Defect in, or which has arisen from, the Supply (including any Defect in any Good or Service, but excluding if the Defect is caused by Essential Energy's improper use of the Good or improper conduct in respect of the Service); and
  - (ii) any consequential effects of such Defect,
- including by replacing the relevant Good or re-performing the relevant Services if required by Essential Energy (**Defect Correction Period**).
- (b) Where the Supplier fails to correct a Defect in accordance with clause 5(a) (or its consequential effects), Essential Energy may elect to:
- (i) in respect of a Defective Good, return the Good to the Supplier; or
  - (ii) in respect of Defective Services, have those Services carried out by itself or a third party (without in any way affecting or relieving any liability or obligation of, or any warranty given by, the Supplier under the Agreement),
- and the actual costs incurred by Essential Energy in doing so (plus the cost of any returned Good) will be a debt due from and payable by the Supplier to Essential Energy.
- (c) Where any Defect in the Supply is corrected in accordance with clause 5(a) after Completion (irrespective of whether that correction was carried out by the Supplier, Essential Energy or a third party), a separate Defect Correction Period of twelve (12) months will apply to the Good, Services or other work so corrected commencing from the completion of the correction of the Defect.
- (d) Instead of requiring the Supplier to correct a Defect in the Supply under clause 5(a), Essential Energy may, in writing, notify the Supplier that Essential Energy elects to accept the relevant Defective Supply, and the Supplier will be required to pay Essential Energy, as a debt due from and payable by the Supplier to Essential Energy, the amount assessed by Essential Energy (acting reasonably) as the resulting decrease in value to Essential Energy of the Supply and any other Loss suffered by Essential Energy, and which Essential Energy could not reasonably prevent, due to the Defect.

- (c) Where any Defect in the Supply is corrected in accordance with clause 5(a) after Completion (irrespective of whether that correction was carried out by the Supplier, Essential Energy or a third party), a separate Defect Correction Period of twelve (12) months will apply to the Good, Services or other work so corrected commencing from the completion of the correction of the Defect.
- (d) Instead of requiring the Supplier to correct a Defect in the Supply under clause 5(a), Essential Energy may, in writing, notify the Supplier that Essential Energy elects to accept the relevant Defective Supply, and the Supplier will be required to pay Essential Energy, as a debt due from and payable by the Supplier to Essential Energy, the amount assessed by Essential Energy (acting reasonably) as the resulting decrease in value to Essential Energy of the Supply and any other Loss suffered by Essential Energy, and which Essential Energy could not reasonably prevent, due to the Defect.

#### 6 GENERAL OBLIGATIONS

- (a) Without limiting any other obligation of the Supplier under the Agreement, the Supplier must carry out the Supply to the reasonable satisfaction of Essential Energy and in:
- (i) a proper and workmanlike manner and using best practices and professional skill;
  - (ii) compliance with the Mandatory Requirements;
  - (iii) accordance with the Agreement.
- (b) The Supplier must:
- (i) carry out all tests necessary to ensure the Goods or Services (as applicable) comply with the requirements of

the Agreement (and where requested by Essential Energy, promptly provide the results of those tests to Essential Energy);

- (ii) ensure that the Goods or Services supplied, if involving software or data, do not contain any harmful code (such as viruses or other malicious code);
  - (iii) if required by Essential Energy, demonstrate its capability to comply with AS/NZS ISO 9001:2015 or AS/NZS ISO 9001:2016 Quality management systems, or obtain third party certification for its quality management system and provide evidence of that certification in writing to Essential Energy;
  - (iv) as a condition precedent to Completion, provide to Essential Energy (by assignment or otherwise) any and all unexpired third-party warranties (including any manufacturer warranties) associated with the Goods or the Services; and
  - (v) not take any action that will void or impair any third-party warranty associated with any of the Goods or Services unless authorised by Essential Energy in writing.
- (c) If it becomes apparent to the Supplier that Completion by the Delivery Date will not be achieved, without prejudice to Essential Energy's other rights or remedies, the Supplier must:
- (i) as soon as possible, notify Essential Energy in writing (including providing reasons for the delay); and
  - (ii) take all necessary and reasonable corrective action that Essential Energy may direct at the Supplier's cost (unless an act or omission of Essential Energy not permitted by the Agreement is the cause of the Delivery Date not being met, in which case the cost of such action will be met by Essential Energy).
- (d) Notwithstanding clause 6(c), Essential Energy may at any time, in its sole discretion, for the benefit of either party, and without being under any obligation to do so, by written notice to the Supplier, extend the Delivery Date..
- (e) In accessing any Essential Energy site required for the delivery or performance of the Supply, the Supplier must:
- (i) co-ordinate its delivery or performance of the Supply with the work of Essential Energy or any other person having a right of access to the site (including other contractors); and
  - (ii) where the delivery or performance of the Supply may affect the environment (whether built or natural), not pollute, contaminate or otherwise damage the environment.
- (f) If the Supplier is not engaged as the principal contractor under clause 17.1(c), in accessing any Essential Energy site required for the delivery or performance of the Supply, the Supplier must:
- (i) act in accordance with the reasonable and lawful directions and instructions of Essential Energy;
  - (ii) attend any site inductions relating to work health and safety; and
  - (iii) at all times, minimise nuisance, inconvenience and interference with the conduct of Essential Energy's business and any of its other contractors.
- (g) The Supplier accepts each site where the Supply is carried out in its current state and condition and, subject to Law, is responsible for and assumes the risk of any Loss it suffers or incurs arising out of or connected with the physical conditions of any site (and its surroundings).

#### 7 LIQUIDATED DAMAGES

If liquidated damages are specified in a Purchase Order in respect of a Delivery Date and the Supplier fails to achieve Completion by the Delivery Date (except if the Supplier's failure to achieve Completion is due to a wrongful or negligent act or omission of Essential Energy, in which case the entirety of this clause 7 will not apply), then, without prejudice to Essential Energy's other rights and remedies, for each day between the Delivery Date and:

- (a) the date the Supplier achieves Completion; or
  - (b) the date on which Essential Energy terminates the Agreement,
- whichever is the earlier, the Supplier must pay liquidated damages to Essential Energy at the rate set out in the Purchase Order to a maximum of thirty percent (30%) of the Price. The parties acknowledge and agree that such liquidated damages are a genuine pre-estimate of the minimum Loss that would be incurred by Essential Energy by reason of the Supplier's failure to achieve Completion by the Delivery Date and that such damages are not intended to quantify the full extent of Essential Energy's Losses.

In addition to any liquidated damages specified in a Purchase Order or if 'no', 'NIL', '\$0' or 'N/A' in respect of liquidated damages is specified in a Purchase Order, or if the liquidated damages provided for in a Purchase Order are found to be void or unenforceable for any reason, the parties agree that Essential Energy may claim unliquidated damages at law from the Supplier in relation to the Supplier's failure to achieve Completion by the Delivery Date.

#### 8 PRICE



## 8.1 Price

- (a) Subject to the proper performance by the Supplier of its obligations under the Agreement, Essential Energy will pay the Supplier the Price in accordance with clause 9.
- (b) Unless otherwise stated, the Price:
- is exclusive of GST, but includes all other taxes, duties, levies, fees, charges or imposts; and
  - includes all of the Supplier's costs in carrying out and complying with its obligations under this Agreement, including all packaging, marking, handling, freight, delivery, testing, certification and insurance costs and travel and subsistence expenses, associated with the Supply.

## 8.2 Partial Supply

If the Supplier is unable to deliver or perform a part of the Supply in accordance with a Purchase Order, Essential Energy may accept the partial performance or delivery of the Supply, and the Price will be adjusted to reflect the reduction in the delivery or performance of the Supply (as assessed by Essential Energy, acting reasonably). Notwithstanding the foregoing, these Terms will continue to apply to the Supply delivered or performed.

## 9 PAYMENT

### 9.1 Supplier to provide tax invoice and verifying documentation

The Supplier must provide a tax invoice compliant with the GST Law on account of the Price (or the relevant part thereof), identifying the Supply delivered or performed and attaching all necessary substantiating documentation, including (if a requirement of Law) a written subcontractor's statement evidencing payment of any subcontractors and workers, and payment of workers compensation insurance premiums and payroll tax relating to such persons, in a form which complies with the requirements of Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW), section 175B(7) of the *Workers Compensation Act 1987* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

### 9.2 Payment to Supplier

- (a) If SOPA does not apply to the Supply, Essential Energy will pay an invoice correctly rendered by the Supplier in accordance with the Agreement as per the payment terms set out in the relevant Purchase Order or, if no such terms are stated, within thirty (30) days from the date of the Supplier's invoice. The Supplier must provide such an invoice to Essential Energy promptly following the provision of the Supply.
- (b) If SOPA applies to the Supply (that is, the Supply delivered or performed (or any part thereof) is 'construction work' or 'related goods or services', as those terms are defined in SOPA), then:
- within ten (10) Business Days after a claim for payment under the Agreement is made by the Supplier, Essential Energy will assess the invoice and, if it disagrees with the amount stated, issue a written payment schedule to the Supplier certifying the amount it deems payable to the Supplier and specifying the reasons for the difference; and
  - within fifteen (15) Business Days after a claim for payment under the Agreement is made by the Supplier, Essential Energy will:
    - if a payment schedule has been issued by Essential Energy in accordance with clause 9.2(b)(i) in respect of the Supplier's claim for payment, pay the Supplier the amount certified as payable in the payment schedule (if any); or
    - if no payment schedule has been issued by Essential Energy to the Supplier in accordance with clause 9.2(b)(i) in respect of the Supplier's claim for payment, pay the amount stated in the Supplier's claim for payment.
- (c) Without limiting clause 9.2(d), Essential Energy may withhold any payment due to the Supplier under the Agreement if a third party providing work or services in connection with the Agreement serves Essential Energy with a payment withholding request pursuant to Division 2A of SOPA (**Request**), but only to the extent of the amount stated in the Request.
- (d) Notwithstanding any other provision in the Agreement, Essential Energy may reduce or set-off against the Price or any other amount payable by Essential Energy to the Supplier from time to time under the Agreement, any charge, credit, rebate or other amount which should be reimbursed, or is otherwise payable, to Essential Energy by the Supplier under the Agreement (including an amount under clause 5).
- (e) Unless otherwise stated by Essential Energy, all invoices must be issued and all payments will be made under or in connection with the Agreement in Australian Dollars.
- (f) Any payment made by Essential Energy under or in connection with the Agreement is not an approval by Essential Energy of the Supplier's performance of, or compliance with, the Agreement (or

any Law) or an admission of liability.

- (g) The Supplier must ensure Essential Energy is informed in writing of any changes to its details for payment under the Agreement. Any costs or charges incurred by Essential Energy arising out of or in connection with the Supplier's failure to comply with this clause 9.2(g) will be a debt due from and payable by the Supplier to Essential Energy.

- (h) If an amount is payable by the Supplier to Essential Energy under the Agreement, the Supplier must pay Essential Energy that amount within forty-five (45) days of such amount being payable under the Agreement.

## 10 GENERAL WARRANTIES, NON-RELIANCE AND INFORMATION

### 10.1 Further warranties

The Supplier represents, warrants and undertakes to Essential Energy that:

- (a) in carrying out the Supply and performing its other obligations under the Agreement:
- it, and all Supplier personnel, subcontractors and suppliers, and each of their personnel, who provide the Services (either in part or in full), will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence;
  - it has obtained and will maintain all necessary consents, licences, permits, approvals and authorisations (other than those which Essential Energy is expressly required to obtain under the Agreement);
  - it will at all times comply with the Statement of Business Ethics and will ensure all Supplier personnel, subcontractors and suppliers, and each of their personnel, who provide the Services (either in part or in full) are of sound character and comply with the Statement of Business Ethics; and
  - it will at all times comply with all applicable Laws; and
- (b) at the time of entering into the Agreement:
- it is a GST registered entity, and will remain a GST registered entity for the duration of the Agreement;
  - no litigation, arbitration, criminal or administrative proceedings are current, pending or (to its knowledge) threatened which if adversely determined would have a material adverse effect on its ability to perform its obligations under the Agreement; and
  - to the best of its knowledge, it does not have a conflict of interest, and no conflict of interest is likely to arise in the performance of the Agreement. The Supplier must promptly notify Essential Energy if it becomes aware, at any time, of the existence or possibility of a conflict of interest.

### 10.2 Non-reliance

The Supplier warrants that it has entered into the Agreement without relying on any representation by Essential Energy, provided that such representation was not fraudulent, misleading or deceptive, and the Supplier agrees to make its own enquiries and investigations to confirm the accuracy of any Essential Energy Data, and, without limiting any law, may not rely on any Essential Energy Data provided by or on behalf of Essential Energy unless it expressly forms part of the Agreement.

### 10.3 Confidentiality, documents and publicity

- (a) The Supplier must treat all information received or obtained by the Supplier in connection with the Agreement relating to the business and affairs of Essential Energy as Confidential Information, and must keep the same strictly confidential and not disclose it to any person without the prior written consent of Essential Energy, other than to the Supplier's officers, directors and employees and professional advisers on a strict "need-to-know" basis or as may be required by applicable Law.
- (b) Notwithstanding any other provision in the Agreement, any Essential Energy Data, or other property (tangible or intangible) provided by Essential Energy to the Supplier, remains (as between Essential Energy and the Supplier) the property of Essential Energy and must be provided or returned (as the case may be) to Essential Energy (or in the case of Essential Energy Data and at Essential Energy's election, destroyed or erased) promptly upon Essential Energy's request and the Supplier's cost.
- (c) A party must not disclose, including in its advertising, referral or publicity material, the existence of the Agreement or the terms of its relationship with the other party or use the other party's name, brand or trade-marks for publicity or reference purposes without the prior written consent of the other party (which must not be unreasonably withheld). This clause 10.3(c) does not apply to the extent a disclosure is required by Law, the rules of an applicable stock exchange or, in Essential Energy's case, to respond to a request of Parliament, a Parliamentary Committee or a Minister or for the purposes of government accountability.
- (d) Essential Energy agrees to treat as confidential any information of the Supplier provided to Essential Energy marked as "commercial in confidence" (except that Essential Energy may disclose such information as required by any Law (including the *Government*

*Information (Public Access) Act 2009 (NSW)*), at the request of Parliament, a Parliamentary Committee or a Minister, or for the purposes of government accountability).

## 11 INDEMNITY

### 11.1 Supplier indemnities

To the maximum extent permitted by law, the Supplier is liable for and indemnifies (and will keep indemnified) Essential Energy and its officers, directors, agents and employees in respect of any Claims made against or Losses sustained, incurred or suffered by any of them as a result of any:

- (a) Defect, inherent or otherwise, in the Supply or any part of the Supply, including but not limited to the re-performance or replacement of any Defective Supply (except to the extent the Defect is the fault of Essential Energy);
- (b) Claim that the receipt, possession or use of any part of the Supply by Essential Energy in accordance with the Agreement, or its rights granted herein, infringes the Intellectual Property Rights, or other rights, of any person;
- (c) breach of the Agreement or any Mandatory Requirement or Law by the Supplier or any of its personnel, subcontractors or suppliers; and
- (d) personal injury, death, disease or illness (including mental illness) of any person or loss of, or damage to, or loss of use of, any property of any person to the extent caused by the Supplier or any of its personnel, subcontractors or suppliers.

### 11.2 Exclusion of consequential loss

Essential Energy will not under any circumstances be liable to the Supplier, regardless of the cause of action, for any loss of profit or expected profit, loss of revenue, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated savings, or for any loss of an indirect or special nature whatsoever claimed by the Supplier, and whether or not such loss was foreseeable, ascertainable or otherwise.

## 12 INSURANCE REQUIRED BY SUPPLIER

Unless otherwise specified in the relevant Purchase Order, the Supplier must hold the insurances that a prudent supplier of the Supply would hold, including:

- (a) insurance to cover physical loss or damage to the Goods (including during transit) for full replacement value;
- (b) public and product liability insurance to cover the parties for their liability to third parties, and the Supplier's liability to Essential Energy, for loss or damage to property or injury or death to any person arising out of or in connection with the Supply for the insured amount of not less than \$20,000,000 per occurrence;
- (c) as applicable:
  - (i) workers compensation insurance covering the death of or injury to any persons employed by Supplier as required by the *Workers Compensation Act 1987* (NSW); or
  - (ii) personal accident and illness insurance providing weekly benefits of at least 75% of weekly income, death and capital benefits of at least \$250,000 and for a minimum benefit period of 104 weeks;
- (d) if motor vehicles are used in providing the Supply, compulsory third party (CTP) and comprehensive motor vehicle insurance (which includes cover for damage and theft);
- (e) if any part of the Supply involves the provision of specialist or professional advice or services, professional indemnity insurance for the insured amount of not less than \$5 million for any one claim and in the aggregate, and which is maintained for a period of at least seven (7) years following Completion or the earlier termination of the Agreement; and
- (f) any other insurance specified in the relevant Purchase Order and agreed by the parties.

If requested by Essential Energy, the Supplier must provide certificates of currency to Essential Energy which confirm the Supplier holds the insurances required by this clause 12

The insurances required by this clause 12 must be effected and maintained at all relevant times with an insurer that is at least the holder of a current licence issued by the Australian Prudential Regulation Authority.

## 13 INTELLECTUAL PROPERTY

- (a) The Supplier acknowledges that Essential Energy owns the Intellectual Property Rights in any Works produced in connection with the Agreement, including in the provision of the Supply (**EE Works**).
- (b) The Supplier hereby absolutely assigns and transfers (and will procure that its personnel, affiliates, sub-contractors and suppliers assign and transfer) to Essential Energy with full title guarantee all existing and future Intellectual Property Rights throughout the entire world in the EE Works, including all statutory and common law rights attaching thereto, and which includes the Supplier obtaining moral rights waivers in respect of the EE Works in favour of Essential Energy (unless Essential Energy notifies the Supplier in writing that it does not require such waivers).
- (c) If a Work is provided by the Supplier to Essential Energy that is not

an EE Work, but the Work is required for Essential Energy to obtain any benefit of the Supply, the Supplier must ensure that Essential Energy is granted an irrevocable, transferable and royalty-free licence to use that Work for that purpose.

## 14 GOODS AND SERVICES TAX

- (a) Save for defined terms in the Agreement or unless the context otherwise requires, words or expressions used in this clause 14 which have a particular meaning in the GST Law have the same meaning as is attributed to them in the GST Law.
- (b) Except where express provision is made to the contrary and subject to this clause 14, any amount that may be payable under the Agreement is exclusive of any GST.
- (c) Any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (d) If a party makes a taxable supply under or in connection with the Agreement for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (e) If the GST payable in relation to a supply made under or in connection with the Agreement varies from the amount paid by the recipient under clause 14(d), then the supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that difference from, the recipient. Where there is an adjustment event, the relevant party must issue an adjustment note to the other party as soon as it becomes aware of the adjustment event.
- (f) To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (g) A party's right to payment under the Agreement is subject to a valid tax invoice compliant with the GST Law being delivered to the recipient of the taxable supply.

## 15 DEFAULT AND TERMINATION

### 15.1 Termination for Supplier default

Essential Energy may terminate the Agreement with immediate effect by providing written notice to the Supplier if the Supplier:

- (a) advises Essential Energy, or indicates through conduct, that it is unable or unwilling to complete any part of performance of the Agreement;
- (b) is in breach of the Agreement and such breach is incapable of being remedied;
- (c) is in breach of the Agreement and such breach is capable of being remedied, but the Supplier fails to remedy the breach within the time stated in a prior written notice from Essential Energy to the Supplier requiring the Supplier to so remedy the breach (which must be reasonable) (**Breach Notice**) or, if no time is stated in the Breach Notice, within fourteen (14) days of the Supplier's receipt of the Breach Notice;
- (d) breaches any Modern Slavery Law or commits an offence involving Modern Slavery;
- (e) or any of the Supplier's personnel, affiliates, subcontractors or suppliers, act or omit to act in a manner calculated or likely to bring Essential Energy into disrepute;
- (f) subject to Law, has experienced a material adverse change in its circumstances, its legal structure or its identity which in the reasonable opinion of Essential Energy will adversely impact the Supplier's ability to perform its obligations under the Agreement; or
- (g) is subject to an Insolvency Event.

### 15.2 Termination for impossible performance

If the Supplier's obligations under the Agreement become impossible to perform as a result of any government imposed restriction, government declaration of war, act of god or pandemic declared by the World Health Organisation, then the parties may mutually agree to terminate the Agreement and:

- (a) subject to clauses 15.2(b), 15.2(c) and 15.2(d), neither party may seek damages of any kind from one another in connection with the mutual termination of the Agreement under clause 15.2;
- (b) any portion of the Price paid by Essential Energy for Goods not supplied or Services not performed by the Supplier will be a debt due from and payable by the Supplier to Essential Energy;
- (c) Essential Energy will make any outstanding payment to the Supplier for any part of the Supply delivered or performed by the Supplier up to the date of termination; and
- (d) clauses 15.4(b)(ii) and 15.4(b)(iii) will apply.

### 15.3 Termination for convenience

- (a) Essential Energy may for its sole convenience and without cause terminate the Agreement at any time by written notice to the Supplier, and such termination will take effect from the time stated in the notice or, if no time is stated, within two (2) weeks from the Supplier's receipt

of the notice (unless another time is agreed between the parties).  
(b) Where Essential Energy terminates the Agreement under clause 15.3(a):

- (i) Essential Energy will make any outstanding payments to the Supplier for any part of the Supply delivered or performed by the Supplier up to and including the date of termination; and
- (ii) the Supplier will not be entitled to payment of any other costs, expenses or damages whatsoever in connection with the termination of the Agreement.

#### 15.4 Procedure upon termination

(a) If the Agreement is terminated, for whatever reason:

- (i) the Supplier must, from the date the termination takes effect, cease the delivery or performance of the Supply;
- (ii) the Supplier must, at its cost, within fourteen (14) days of the termination, at Essential Energy's election, provide or return (as the case may be) to Essential Energy or destroy (or in the case of machine readable records, erase) all Essential Energy Data and other property (tangible or intangible); and
- (iii) Essential Energy may (in its absolute discretion) engage others to, or itself, carry out any part or the whole of the remaining Supply (without compensation to the Supplier).

(b) If the Agreement is terminated by Essential Energy in accordance with clause 15.1, without limiting any other rights or remedies Essential Energy may have (including at law):

- (i) Essential Energy may determine the reasonable cost incurred by Essential Energy in itself completing, or having others complete, any part or the whole of the remaining Supply and any other Losses sustained by Essential Energy as a consequence of the termination, and the same will constitute a debt due from and payable by the Supplier to Essential Energy;
- (ii) upon Essential Energy's request, the Supplier must provide Essential Energy with all documents (including design documentation) and the like in the Supplier's possession which is connected with the Supply and reasonably required by Essential Energy to facilitate the completion of the Supply, and the Supplier must ensure that Essential Energy is given or assigned all rights (including Intellectual Property Rights) to use that documentation for that purpose; and
- (iii) upon Essential Energy's request, the Supplier must do all such things reasonably necessary to enable Essential Energy to take an assignment of the Supplier's rights and benefits under any contracts with sub-suppliers, including any warranties and guarantees, that are related to the Supply.

(c) Without limiting clauses 15.2, 15.3, 15.4(a) and 15.4(b), termination of the Agreement for whatever reason will not affect any rights or remedies accrued by either party, whether under the Agreement or at law, prior to the date of termination.

#### 16 DISPUTE RESOLUTION

##### 16.1 Dispute Notice

(a) If a dispute between Essential Energy and the Supplier arises out of or in connection with the Agreement (**Dispute**), either party may give the other written notice of the dispute (**Dispute Notice**). The Dispute Notice must specify in reasonable detail the basis of the dispute.

(b) Neither party may commence proceedings (other than for injunctive or other urgent relief) in respect of any Dispute before this clause 16 has been complied with.

##### 16.2 Meeting

If a Dispute notified under clause 16.1(a) has not been settled within seven (7) days of the Dispute Notice, either party may require, by further notice in writing to the other, that a person holding a position of senior management of each of the parties meet in good faith, and on a without prejudice basis, with a view to resolving, or agreeing a method for resolving, the Dispute (**Further Dispute Notice**). The meeting of the parties' senior management must be held within two (2) weeks of the date of the Further Dispute Notice. All aspects of the negotiations in respect of the Dispute must be kept confidential, except the fact of their occurrence.

##### 16.3 Continued performance

Despite the existence of a dispute, the Supplier must continue to perform its obligations under the Agreement.

#### 17 WORK HEALTH AND SAFETY & CHAIN OF RESPONSIBILITY

##### 17.1 Work health and safety

(a) The Supplier must comply, and ensure that the Supply conducted by or on its behalf complies, with the WHS Laws, including to the extent that the Supplier is a person conducting a business or undertaking

(including to whom any of sections 20 to 26 of the WHS Act applies).

(b) The Supplier must:

- (i) conduct its own risk assessments in respect of, and put in place measures to eliminate or reduce risks to, health and safety arising from the delivery or performance of the Supply;
- (ii) produce and supply to Essential Energy, if requested, all documentation required by, or arising out of, the WHS Act and WHS Regulation;
- (iii) in respect of any risks arising from the delivery or performance of the Supply, provide information to Essential Energy about any joint duties owed under the WHS Act and must consult and cooperate with Essential Energy in respect of these risks;
- (iv) cooperate and do all things necessary to assist, and refrain from doing anything that may impede Essential Energy (including any of its officers, directors, agents and employees) discharging its obligations under the WHS Law; and
- (v) co-operate fully with, and promptly notify Essential Energy of any investigation by, any government agency, Parliamentary inquiry, board of inquiry or coronial inquiry with respect to a 'notifiable incident' under section 35 of the WHS Act.

(c) To the extent the Supply is a project that involves 'construction work' (as that term is defined in clause 289 of the WHS Regulation) where the cost of the construction work totals \$250,000 or more, Essential Energy, as the party commissioning the Supply:

- (i) engages the Supplier as principal contractor for the Supply;
- (ii) authorises the Supplier to have management and control of any workplace relating to the Supply; and
- (iii) authorises the Supplier to discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with the Supply,

and the Supplier accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the WHS Act and the WHS Regulation.

(d) If the engagement of the Supplier as principal contractor under clause 17.1(c) is, for any reason, not effective, the Supplier agrees that it must discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under the WHS Law as if the Supplier had been validly engaged as the principal contractor in respect of the Supply.

(e) Save for defined terms in the Agreement or unless the context otherwise requires, words or expressions used in this clause 17.1 which have a particular meaning in the WHS Act or the WHS Regulation have the same meaning as is attributed to them in the WHS Act or the WHS Regulation.

#### 17.2 Heavy Vehicle National Laws

(a) The Supplier warrants that it is familiar, and has the capacity and resources to comply, with the Heavy Vehicle National Laws.

(b) The Supplier will, and must ensure that all subcontractors will, for the duration of the Supply, comply with its obligations under the Heavy Vehicle National Laws and, upon request, provide Essential Energy with evidence of such compliance.

(c) The Supplier agrees to cooperate with and do all things necessary to assist Essential Energy in discharging Essential Energy's obligations under the Heavy Vehicle National Laws to the extent that those laws apply to the Supply.

(d) The Supplier must inform Essential Energy, as soon as possible upon becoming aware, of any non-compliance or suspected non-compliance with the Heavy Vehicle National Laws by the Supplier or any subcontractor. The Supplier must ensure the non-compliance is investigated and cooperate with Essential Energy in relation to investigation of the non-compliance. Where appropriate, the Supplier must take steps to ensure the timely rectification of the non-compliance is achieved.

#### 18 COMPLIANCE WITH MODERN SLAVERY LAWS

(a) The Supplier warrants at all times that it:

- (i) will not supply any Goods or Services it knows (or ought to know through the making of reasonable inquiries) are the product of Modern Slavery; and
- (ii) does not use any labour practices involving Modern Slavery.

(b) The Supplier must:

- (i) not engage in Modern Slavery;
- (ii) comply with all Mandatory Requirements relating to Modern Slavery, including requirements relating to its business and operations and its affiliates and, to the extent applicable, its supply chains;



- (iii) as appropriate, develop and maintain policies and procedures to avoid engaging in Modern Slavery;
- (i) notify Essential Energy upon becoming aware of any complaint or allegation that the Supplier, or any entity in its supply chain, has engaged in Modern Slavery;
- (ii) promptly upon Essential Energy's request, provide Essential Energy with a copy of any statement or report the Supplier is required to prepare under any Modern Slavery Law; and
- (iii) otherwise provide Essential Energy, within a reasonable period of time following a request by Essential Energy, with all information required for Essential Energy to comply with Essential Energy's reporting obligations under the Modern Slavery Laws.

## 19 NSW GOVERNMENT REQUIREMENTS

### 19.1 Supplier Code of Conduct

The Supplier must at all times comply with the NSW Government Supplier Code of Conduct (available at [www.buy.nsw.gov.au](http://www.buy.nsw.gov.au)), as in force and updated from time to time.

### 19.2 New South Wales Industrial Relations Guidelines: Building and Construction Procurement

- (a) The New South Wales Industrial Relations Guidelines: Building and Construction Procurement, July 2013 (updated September 2017), as in force and updated from time to time, (**NSW Guidelines**) will apply to the Supply if the Supply constitutes 'building and construction work' (as defined in the NSW Guidelines) and the Supply was the subject of an expression of interest or request for tender issued (or equivalent procurement process) by or on behalf of Essential Energy.
- (b) Where the NSW Guidelines apply to the Supply, the Supplier:
  - (i) warrants that neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that preclude it from entering into the Agreement;
  - (ii) agrees that, by performing the Supply, it will be taken to have read and understood, and that it will comply with, the NSW Guidelines;
  - (iii) agrees not to appoint or engage another party in relation to the Agreement where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines;
  - (iv) will notify the Construction Compliance Unit (CCU) and Essential Energy of any possible non-compliance with the NSW Guidelines, and of remedial action taken, within twenty four (24) hours of becoming aware of the possible non-compliance;
  - (v) will maintain adequate records of compliance with the NSW Guidelines; and
  - (vi) acknowledges that compliance with the NSW Guidelines will not relieve the Supplier from its responsibility to perform the Supply and any other obligation under the Agreement, or from liability for any Defect in the Supply or from any other legal liability.

## 20 AER ELECTRICITY DISTRIBUTION RING-FENCING GUIDELINE

- (a) The Supplier acknowledges that the Australian Energy Regulator (**AER**) Ring-fencing Guideline (Electricity Distribution), as amended or updated from time to time, (**Ring-fencing Guideline**) may apply to the Supply.
- (b) If the Supplier's provision of any part of the Supply enables or assists Essential Energy to supply any 'direct control network service' (within the meaning of the *National Electricity (NSW) Law* or the *National Electricity (Queensland) Law* (as applicable)), the Supplier warrants that it will comply with:
  - (i) clauses 4.1, 4.2.1, 4.2.2 and 4.3.1; and
  - (ii) clause 4.2.3, in relation to the brands of Essential Energy,
 of the Ring-fencing Guideline as if the Supplier was Essential Energy.
- (c) The Supplier must not act in a manner or do any thing that would cause Essential Energy to breach its obligations under the Ring-fencing Guideline.
- (d) Notwithstanding, and in precedence of, any other provision in the Agreement, the Supplier hereby gives its consent to Essential Energy to disclose any 'ring-fenced information' (within the meaning of the Ring-Fencing Guideline) that Essential Energy acquires from the Supplier under the Agreement to comply with, or discharge its obligations under, the Ring-fencing Guideline. Essential Energy will promptly notify the Supplier of any such information it shares with a third party pursuant to this clause.

## 21 PROPORTIONATE LIABILITY EXCLUDED

The parties agree that, to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with the Agreement, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

## 22 VIENNA CONVENTION

The parties agree that the Agreement expressly excludes the application of the *Sale of Goods (Vienna Convention) Act 1986* (NSW).

## 23 PERSONAL PROPERTY SECURITIES ACT

- (a) The Supplier acknowledges and agrees that the Agreement:
  - (i) constitutes a 'Security Agreement' for the purposes of the PPSA; and
  - (ii) creates a Security Interest of Essential Energy in the Goods and all things produced for or in connection with the performance of the Services.
- (b) Essential Energy may, by notice to the Supplier, require it to take all steps or do any other thing that Essential Energy considers necessary or desirable to ensure that the Agreement or any Security Interest arising hereunder, is enforceable against the Supplier or any third party or to protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of Essential Energy under the Agreement. The Supplier must comply with the requirements of such a notice within the time stated in the notice at the Supplier's cost.
- (c) The Supplier waives any rights to receive a verification statement. To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by Essential Energy of any Security Interest in collateral, the parties agree that, to the extent the PPSA allows, sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply.

## 24 DISTRIBUTOR LICENCE

This clause 24 relates to Essential Energy's Distributor Licence. To the extent it is necessary for Essential Energy to impose additional requirements upon the Supplier arising from the Distributor Licence, the parties must, within a reasonable timeframe and in good faith, discuss and agree amendments to the Agreement to reflect such requirements. Save for defined terms in the Agreement or unless the context otherwise requires, words or expressions used in this clause 24 which have a particular meaning in the Distributor Licence have the same meaning as is attributed to them in the Distributor Licence.

The Supplier must ensure that all:

- (a) Essential Energy information as to design specifications, operating manuals and the like, operational technology (such as supervisory control and data acquisition) and associated information and communications technology (ICT) infrastructure of Essential Energy's operational network;
- (b) Load Data, being data as to the quantum of electricity delivered from or to any one or more sites (which is not historical load data older than thirty (30) days; is not fault data; describes a location that allows a customer(s) or connection point(s) to be identified; describes a date and time of the data record; and describes a duration – a length of time that allows for a quantum to exist); and
- (c) Bulk Personal Data Records, being holdings or files of Personal Information about multiple individuals which contain fields or categories,

in the possession of, or otherwise obtained by, the Supplier is held solely within Australia, and is accessible only by (and is only accessed by) the Supplier or other Relevant Persons who have been so authorised by Essential Energy in writing and in each case only from within Australia.

## 25 DATA

### 25.1 Data protection

- (a) The Supplier:
  - (i) acknowledges and agrees that its only rights in relation to any Essential Energy Data provided to it by or on behalf of Essential Energy is the ability to access and use it strictly in accordance with the Agreement, except to the extent agreed by Essential Energy in writing;
  - (ii) undertakes and warrants that it will only access, hold, use and disclose Essential Energy Data for the purpose of the delivery or performance of the Supply and it will not make Essential Energy Data available to external parties without the prior written approval of Essential Energy, or take, transfer, transmit or disclose Essential Energy Data outside of Australia, or allow Essential Energy Data to be taken, transferred, transmitted, accessed or disclosed outside of Australia, unless agreed by Essential Energy in writing; and
  - (iii) must have policies and procedures in place to ensure compliance with any applicable Laws relating to data.
- (b) Essential Energy may conduct, and the Supplier must reasonably submit to, and comply with the results of, any audit of the Supplier's compliance with this clause 25, including compliance with any applicable Laws and industry standards, and any necessary audit of the Supplier's information technology systems and related materials.

## 25.2 Data Breaches

If the Supplier becomes aware or suspects that:

- (a) there has been unauthorised access to or disclosure of Essential Energy Data or Personal Information (**Data Breach**); or
- (b) Essential Energy Data or Personal Information has been lost in circumstances where unauthorised access or disclosure of the Personal Information may occur (**Loss of Data**),

then the Supplier must:

- (c) immediately notify Essential Energy of that Data Breach or Loss of Data, and in any event, no later than twenty-four (24) hours after the Data Breach or Loss of Data; and
- (d) promptly disclose all relevant information and cooperate with Essential Energy in investigating the actual or suspected Data Breach or Loss of Data.

## 25.3 Awareness programme

If the Supplier is in possession of Essential Energy Data of a kind described in clause 24, the Supplier must have a 'Privacy and Data Security' awareness programme in place that is to be delivered to all personnel, subcontractors and suppliers annually and to new personnel, subcontractors and suppliers upon their engagement by the Supplier. The programme must as a minimum cover the requirements of clauses 24 and 25.

## 26 PERSONAL INFORMATION

Any Personal Information collected by Essential Energy from or through the Supplier in connection with the Agreement will be used in relation to the Agreement and managed and stored in accordance with Essential Energy's Privacy Policy (which is available on Essential Energy's website /www.essentialenergy.com.au/).

## 27 NO EXCLUSIVITY

Entering into the Agreement with Essential Energy does not:

- (a) give the Supplier the right to be the sole deliverer or supplier of any Goods or Services to Essential Energy; or
- (b) prevent Essential Energy from obtaining goods, services or other work that are the same as, or similar to, the Goods or Services from third parties.

## 28 RECORDS AND INFORMATION ACCESS

- (a) The Supplier must keep and maintain financial, operational and other relevant records to enable its compliance with the Agreement to be verified (including information relating to the Supply and any other records required by Law) in an accessible and secure form for a period of at least seven (7) years from the date of their creation, or longer if required by Law.
- (b) The Supplier must, at its expense and within the time requested by Essential Energy (acting reasonably), provide Essential Energy with access to and copies of (if required by Essential Energy) such information requested by Essential Energy in the Supplier's possession relating to the Agreement (including information supplied by or on behalf of Essential Energy to Supplier):
  - (i) for the purposes of Essential Energy's compliance with any Law, including the *Government Information (Public Access) Act 2009* (NSW) and the *Security of Critical Infrastructure Act 2018* (Cth);
  - (ii) in connection with a request of Parliament or any Minister; or
  - (iii) for the purposes of government accountability.

## 29 ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier must not:
  - (i) assign or transfer the benefit of, dispose of any obligation under or novate the Agreement; nor
  - (ii) subcontract any part of the Supply,
 without the prior written approval of Essential Energy. This consent will not be unreasonably withheld, but may be subject to Essential Energy's reasonable conditions, which may include obtaining a financial capacity assessment of any entity to whom the Agreement is to be novated or a collateral warranty deed (including a deed proposed by Essential Energy) from any subcontractors.
- (b) If any approval to subcontract is given by Essential Energy under clause 29(a), the Supplier must ensure that its subcontractors effect and maintain equivalent insurances to those required under the Agreement (as applicable).
- (c) Any approval given by Essential Energy to the subcontracting of any part of the Supply under clause 29(a) does not relieve the Supplier from its obligations and liabilities pursuant to the Agreement. The Supplier agrees that it is, to the maximum extent permitted by law, fully liable for all acts and omissions (including the negligence) of its personnel, subcontractors (including subconsultants), suppliers, officers and agents and each other person within its contractual chain under or in any way in connection with the Agreement, as if such acts and omissions were those of the Supplier itself.
- (d) Essential Energy may assign its rights or novate its rights and

obligations under the Agreement to any person without the prior consent of the Supplier.

## 30 GENERAL

- (a) Without limiting clause 2.2(a), the Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement and supersedes any prior agreement or understanding connected with that subject matter, except for any separate confidentiality deed the Supplier has entered into with, or in favour of, Essential Energy connected with that subject matter. Despite the Agreement, such confidentiality deed remains in full force and effect and its terms will prevail to the extent of any inconsistency with clause 1.1 or 10.3 of the Agreement (unless the Agreement expressly states otherwise).
- (b) Subject to clause 22, the law governing the Agreement is the law of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.
- (c) The Supplier must ensure its personnel and its affiliates, subcontractors and suppliers, and each of their personnel, comply with the Supplier's obligations under the Agreement as if they are party to it.
- (d) If the Supplier comprises two (2) or more persons, the obligations and liabilities of the Supplier under the Agreement binds those persons jointly and severally.
- (e) The rights, powers, privileges and remedies provided under any provision of the Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of the Agreement or by applicable law or otherwise.
- (f) No waiver of any right under the provisions of the Agreement will be of any force or effect unless such waiver is in writing, signed by the party making the waiver and is expressly stated to be a waiver. Either party's waiver or failure to enforce any rights under the provisions of the Agreement will not in any way affect or limit that party's right thereafter to enforce strict compliance with the provisions of the Agreement.
- (g) Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy.
- (h) If any part of the Agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Agreement will not be affected and will be read as if that part had been severed.
- (i) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of that provision in the Agreement.
- (j) The parties agree that the Agreement constitutes a valid and legally binding obligation and is enforceable in accordance with its terms, except to the extent of discretions of courts regarding the availability of equitable remedies and laws affecting creditor's rights generally.
- (k) Unless the Supplier has an express entitlement to payment for a particular direction, request or action under the Agreement, such direction, request or action will be deemed included in the Price and must be complied with by the Supplier at the Supplier's cost.
- (l) Nothing in the Agreement will be construed or interpreted as creating or constituting a relationship of employer and employee or principal and agent, or that of partners, joint venturers or any other fiduciary relationship, between the parties. The relationship between the parties is one of principal and independent contractor.
- (m) Unless expressly stated otherwise, no party has the authority to bind any other party by any representation, declaration or admission, or to make any agreement or commitment on behalf of any other party or to pledge any other party's credit.
- (n) The Agreement will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of Essential Energy to exercise any of its rights, functions or powers pursuant to any law.
- (o) Without limiting any other provision of the Agreement relating to survival, any provision of the Agreement which implies or contemplates performance or observance subsequent to any termination, expiration or completion of the Agreement, and the representations, warranties, covenants, licences and indemnities of or by the parties contained in the Agreement, will survive the termination (howsoever arising), expiry or completion of the Agreement and continue in full force and effect.
- (p) Time is of the essence of the Agreement.

## 31 SUSTAINABILITY

- (a) The Supplier:
  - (i) acknowledges Essential Energy's continued commitment to environmentally, economically and socially sustainable business practices; and
  - (ii) in carrying out the Supply and its other obligations under the Agreement:
    - a. warrants that it will uphold high standards of ethics and honour global and local labour laws, human rights and environmental responsibilities; and



- b. have regard to Essential Energy's Sustainability Strategy (available on Essential Energy's website [www.essentialenergy.com.au](http://www.essentialenergy.com.au)).
- (b) The Supplier must:
- treat its personnel with respect and dignity; and
  - use best endeavours to:
    - provide equal opportunity and, to the extent reasonably possible, advancement opportunities for all employees regardless of age, colour (dis)ability, ethnicity, race, gender, gender identity, gender expression, marital status, pregnancy/maternity, national origin, sexual orientation or religion;
    - promote pay equality, diversity and inclusion (including through training and awareness initiatives or programs to recruit and develop diverse talent);
    - provide a work environment free of discrimination, harassment, intimidation and bullying; and
    - protect personnel in raising concerns about business conduct.
- (c) In performing its obligations under the Agreement, the Supplier must:
- to the extent reasonably possible, minimise the use of hazardous substances and materials;
  - make reasonable efforts to:
    - reduce waste generated, energy consumption and any other potentially adverse impacts of its activities on biodiversity and natural capital;
    - use environmentally friendly materials, packaging and transportation; and
    - meet industry best practices and standards in relation to the monitoring and reporting of energy use and greenhouse gas emissions; and
  - where possible, and to the extent feasible and economically viable, actively support and promote the reuse and recycling of any redundant or discarded items or other materials, or any components of any of them, in connection with the Agreement or the Supply, including working towards implementing processes and practices that facilitate the reuse of such items, materials or components and ensuring that the recycling of any such items, materials or components is in accordance with applicable Laws.

## 32 AUSTRALIAN CONSUMER LAW

- (a) If the Agreement constitutes a 'small business contract' within the meaning of the Australian Consumer Law (at Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), clauses 11.1(c) and 11.2 will not apply to the Supplier and are excluded from the operation of the Agreement, and clauses 3.4(a), 15, 16.3, 21, 29(d) and 30(a) are amended to read as follows:

*3.4(a) Ownership of a Good passes to Essential Energy upon payment for the Good by Essential Energy, without affecting any rights of rejection or other rights under the Agreement that Essential Energy may have.*

### 15.3 Termination for convenience

*Either party may for its sole convenience and without cause terminate the Agreement at any time upon fourteen (14) days' (or such longer period agreed between the parties) written notice to the other party. Where Essential Energy terminates the Agreement under this clause 15.3, Essential Energy must pay the Supplier for any part of the Supply delivered or performed up to and including the date of termination (to the extent such payment has not already been made), and where the Supplier terminates the Agreement under this clause 15.3, the Supplier must reimburse Essential Energy for any part of the Price paid by Essential Energy to the Supplier relating to any part of the Supply not delivered or not performed.*

*15.4(c) Without limiting clauses 15.2, 15.3, 15.4(a), 15.4(b) and 15.5, termination of the Agreement for whatever reason will not affect any rights or remedies accrued by either party, whether under the Agreement or at law, prior to the date of termination.*

### 15.5 Termination for Essential Energy breach

*The Supplier may terminate the Agreement with immediate effect by providing written notice to Essential Energy if:*

- Essential Energy fails to make a payment due and payable under the Agreement to the Supplier and has not rectified such non-payment within ten (10) Business Days of receipt of a written notice from the Supplier requiring rectification of such non-payment;*
- in the reasonable opinion of the Supplier, Essential Energy is guilty of fraud, dishonesty or any other serious misconduct;*
- Essential Energy's conduct may, in the reasonable opinion of the Supplier, bring the Supplier into disrepute; or*

*(d) Essential Energy is subject to an Insolvency Event.*

### 16.3 Continued performance

*Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Agreement.*

### 21 PROPORTIONATE LIABILITY EXCLUDED

*The operation of Part 4 of the Civil Liability Act 2002 (NSW) is, to the maximum extent permitted by law, excluded in relation to the obligations and liabilities of the Supplier under or in any way in connection with the Agreement with respect to the apportionment of any liability (whether arising in contract, tort, or otherwise) as between the Supplier and any of its personnel, subcontractors (including subconsultants), suppliers, officers or agents.*

*29(d) Essential Energy may assign its rights or novate its rights and obligations under the Agreement to any person without the prior consent of the Supplier, but where it does so it must provide notice of the assignment or novation to the Supplier as soon as practicable.*

*30(a) Without limiting clause 2.2(a), the Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement.*

## 33 TRUSTEE WARRANTIES

If the Supplier enters into the Agreement as trustee of a trust (**Trust**), the Supplier:

- enters into the Agreement personally and in its capacity as trustee;
- represents and warrants at all times that:
  - the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettle the Trust, and no date or event has occurred for the vesting of the assets of the Trust;
  - it has been properly appointed as trustee of the Trust, it is the only trustee of the Trust and it is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee of the Trust before the completion of all obligations of the Supplier under the Agreement;
  - it is not in material default under the trust deed which establishes the Trust;
  - it has in full force and effect the authorisations necessary to enter into the Agreement, perform obligations under the Agreement and allow the Agreement to be enforced; and
  - it has a right to be indemnified fully out of the assets of the Trust concerning all of the obligations and liabilities incurred by it under or in connection with the Agreement, the assets of the Trust are sufficient to satisfy that right in full, and it has not released or disposed of its equitable lien over the assets of the Trust; and
- must enforce its right of indemnity under the trust deed which establishes the Trust to the assets of the Trust in respect of any obligation or liability of it under or in connection with the Agreement.

**Document Revision Register**

Previous version date	New version date	Amendments made to new version
23.01.2024	27.05.2024	The words "To the maximum extent permitted by law" are inserted at the beginning of clause 11.1.
27.05.2024	28.08.2024	<ul style="list-style-type: none"> <li>The following sentence is added to the end of clause 9.2(a): "The Supplier must provide such an invoice to Essential Energy promptly following the provision of the Supply."</li> <li>A new clause 9.2(g) is inserted. Former clause 9.2(g) is now clause 9.2(h).</li> </ul>
28.08.2024	21.10.2024	Amendments to clause 33 (Trustee warranties).
21.10.2024	30.04.2025	<ul style="list-style-type: none"> <li>Definitions of "Distribution System", "Employee Record" and "Relevant Person" added to clause 1.1.</li> <li>Amendments to the definitions of "Essential Energy Data" and "Personal Information" in clause 1.1.</li> <li>Amendments to clauses 2.3, 8.1(b)(ii), 10.2, 10.3(b), 15.4(a)(ii), 20 (AER Electricity Distribution Ring-Fencing Guideline), 24 (Distributor Licence), 25.1(a)(i) and 25.1(b).</li> <li>The words ", except for any separate confidentiality deed the Supplier has entered into with, or in favour of, Essential Energy connected with that subject matter. Despite the Agreement, such confidentiality deed remains in full force and effect and its terms will prevail to the extent of any inconsistency with clause 1.1 or 10.3 of the Agreement (unless the Agreement expressly states otherwise)" are added to clause 30(a).</li> </ul>