



ESSENTIAL ENERGY

Professional Services Contract General Conditions – Panel Agreement Website Edition

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GENERAL CONDITIONS

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GENERAL CONDITIONS

1. INTERPRETATION AND DEFINITIONS

1.1 INTERPRETATION

In the General Conditions, unless and to the extent that the context requires or indicates:

- (a) Reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and vice versa;
 - (iii) a person includes a body corporate and vice versa;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
 - (vi) a document includes all amendments or supplements to, or replacements or novations of, that document; and
 - (vii) money is to Australian dollars, unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Headings and the table of contents are for convenience only and do not form part of these General Conditions or a Purchase Order Contract or affect their interpretation.
- (d) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (e) A provision of these General Conditions or a Purchase Order Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of these General Conditions or a Purchase Order Contract or the inclusion of the provision in these General Conditions or a Purchase Order Contract.
- (f) Unless these General Conditions or a Purchase Order Contract expressly provides otherwise, any and all of the Service Provider's obligations under these General Conditions or a Purchase Order Contract are to be discharged by the Service Provider at its own cost and expense.
- (g) Where these General Conditions or a Purchase Order Contract refers to all or part of another document not physically included with these General Conditions or a Purchase Order Contract then the Service Provider shall be deemed to have obtained a copy of that other document or relevant part thereof:
 - (i) from Essential Energy; or
 - (ii) if the document is not a Project specific document, from the relevant source.

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- (h) A promise on the part of two or more persons binds them jointly and severally.

1.2 DEFINITIONS

Unless and to the extent that the context requires or indicates:

“Australian Standards” means the standards published by Standards Australia as amended from time to time.

“Authority” means any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) other body or instrumentality,

which has a right to impose a requirement or whose approval is required with respect to or in connection with the Services.

“Business Day” means any day other than:

- (a) a Saturday, Sunday or public holiday in the State of New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

“Claim” means any request, demand or entitlement in relation to, arising out of or in connection with these General Conditions or a Purchase Order Contract or the Services for payment, for an extension of time, for damages (whether under these General Conditions or a Purchase Order Contract or otherwise, including in tort, for breach of contract or quasi contract, misrepresentation and under any statute except any part of a statute the provisions of which cannot be excluded by agreement), for unjust enrichment or restitution, or under any other principle of law or equity.

“Contract Documents” means the following documents:

- (a) Panel Agreement;
- (b) the General Conditions;
- (c) each individual RFQ; and
- (d) each individual Purchase Order.

“Date of the Panel Agreement” means the date that the Panel Agreement is effective from, being the ‘Panel Date’ as defined in the Panel Agreement.

“day” means a calendar day.

“Essential Energy’s Representative” means in respect of each Purchase Order Contract, the person identified as such in the relevant Purchase Order Contract or a nominated replacement. A reference in any of the Contract Documents to “Contract Supervisor” is a reference to Essential Energy’s Representative.

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“General Conditions” means these general conditions of contract as may be amended or updated by Essential Energy from time to time in accordance with its terms.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Intellectual Property Rights” means any and all intellectual and industrial property rights, whether subsisting now or in the future, including rights of any kind in:

- (a) copyright;
- (b) design, patent, trademark or circuit layout (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, processes; and
- (e) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields,

in Australia and the world.

“Intended Purpose” means the purpose:

- (a) stated in these General Conditions or a Purchase Order Contract; or
- (b) as could be reasonably inferred from what is stated in these General Conditions or from a Purchase Order Contract.

“Law” means:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, a State, a Territory or any other Authority in which the Services or any part thereof are being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services; and
- (c) fees and charges payable in connection with the foregoing.

“Moral Rights” means the moral rights granted to an author under Part IX of the *Copyright Act 1968* (Cth).

“Panel Agreement” means the panel agreement entered into between Essential Energy and the Supplier, which incorporates these General Conditions.

“PPS Law” means:

- (a) the PPSA and any regulations made under the PPSA, as amended from time to time; and
- (b) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth).

“PPSA” means the *Personal Property Securities Act 2009* (Cth).

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“Party” means a party to the Panel Agreement.

“Project” means in respect of each Purchase Order Contract, the project in the relevant RFQ.

“Purchase Order” means a purchase order issued under clause 2.3 substantially in the form of Schedule 3.

“Purchase Order Acknowledgment” means an unconditional and unqualified written communication by the Service Provider to Essential Energy acknowledging the receipt of, and agreeing to the terms of, a Purchase Order.

“Purchase Order Contract” means the agreement between Essential Energy and the Service Provider created under clause 2.5.

“Purchase Order Fee” means in respect of each Purchase Order Contract, the sum stated in a Purchase Order.

“Quotation” has the meaning given in clause 2.3.

“Relevant Period” means a 12 month period during the Term, the first period commencing on the Date of the Panel Agreement and each subsequent period commencing on the anniversary of the Date of the Panel Agreement.

“RFQ” has the meaning given in clause 2.2.

“Schedule” means a schedule to these General Conditions or the Panel Agreement.

“Security of Payment Act” means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

“Services” means, in respect of each Purchase Order Contract, the work and services which the Service Provider is or may be required to carry out and complete under a Purchase Order Contract.

“Service Provider’s Representative” means the person identified as such in Schedule 1 of the Panel Agreement or a nominated replacement whose appointment has been approved in writing by Essential Energy.

“Site” means the land (if any) so described in a RFQ.

“Special Conditions” means the special conditions (if any) set out in an RFQ.

“Tax Invoice” has the meaning given to that expression under the GST Act.

“Term” means the period commencing on the Date of the Panel Agreement and ending on the earlier of 20 years after the Date of the Panel Agreement or the date this Panel Agreement is terminated in accordance with its terms.

“Variation” means any change in the Services, including an addition or omission in the scope, quality or character of the Services.

“WHS Act” means the *Work Health and Safety Act 2017* (NSW).

“WHS Regulations” means the *Work Health and Safety Regulations 2011* (NSW).

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2. PROCUREMENT OF SERVICES

2.1 GENERAL

Essential Energy has entered into the Panel Agreement with the Service Provider for the Service Provider to supply the services and associated work the nature of which are described in the Panel Agreement and the Service Provider has represented to Essential Energy that it has the skill and expertise required to perform those various services and work.

Essential Energy may at any time and from time to time during the Term submit RFQ's and issue a Purchase Order for the Services in accordance with clause 2 of these General Conditions.

2.2 RFQ

The range of services and work which the Service Provider has agreed to provide to Essential Energy is set out in Schedule 2 of the Panel Agreement.

If Essential Energy requires any of the services and work set out in Schedule 2 of the Panel Agreement, Essential Energy may at any time and from time to time during the Term issue to the Service Provider a request for quotation ("**RFQ**") substantially in the form set out in Schedule 2 setting out details of the Project, the scope of the services required and work and other details relevant to a Purchase Order Contract in respect of which Essential Energy requires the Service Provider to submit a Quotation.

Other than as expressly permitted under this clause 2, the Service Provider must not undertake any work or services and is not entitled to any payment from Essential Energy under or in connection with these General Conditions or any relevant Purchase Order Contract.

2.3 QUOTATION

If the services and work the subject of the RFQ are services and work which the Service Provider has represented that it can provide (including in respect of the geographic location of the services and work), then within the time specified in the RFQ, or if no time is specified within 5 Business Days of receipt of the RFQ, the Service Provider must submit a written quotation setting out:

(a) the fee (lump sum or schedule of rates or both as required by the RFQ) for the performance of the services and work set out in the RFQ; and

(b) any further details or information requested in the RFQ,

("Quotation").

The Quotation remains valid and binding on the Service Provider until the expiry of the period referred to in clause 2.4.

2.4 PURCHASE ORDER

Essential Energy may at any time within 120 days after receipt of the Quotation, issue to the Service Provider a Purchase Order in respect of the services and work the subject of the RFQ.

The Purchase Order Fee will be determined in accordance with relevant RFQ and the Quotation.

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2.5 PURCHASE ORDER CONTRACT

Each Purchase Order will at the date of issue of that Purchase Order by Essential Energy's Representative to the Service Provider, be deemed to create a separate contract between Essential Energy and the Service Provider (referred to in these General Conditions as a Purchase Order Contract) for the provision of the Services, comprising:

- (a) any Special Conditions;
- (b) these General Conditions (including Schedules) which are in effect as at the date of issue of the Purchase Order;
- (c) the relevant RFQ; and
- (d) the relevant Purchase Order.

Without limiting the above, on the issue of a Purchase Order to the Service Provider:

- (e) the Service Provider must carry out the Services in accordance with the Purchase Order Contract;
- (f) Essential Energy must pay to the Service Provider the Purchase Order Fee, subject to and in accordance with the Purchase Order Contract; and
- (g) each of Essential Energy and the Service Provider will be bound by the obligations and liabilities imposed on it by the Purchase Order Contract.

2.6 PURCHASE ORDER ACKNOWLEDGEMENT

As soon as possible upon receipt of a Purchase Order (and in any event within 2 Business Days of receipt of a Purchase Order), the Service Provider must issue to Essential Energy a Purchase Order Acknowledgement in respect of such Purchase Order.

The Parties acknowledge and agree that a failure by the Service Provider to issue a Purchase Order Acknowledgment under this clause 2.6 will not affect the formation of a Purchase Order Contract.

2.6A AMENDMENTS TO THESE GENERAL CONDITIONS

The Service Provider acknowledges that amendments or updates may be made to these General Conditions from time to time and posted on Essential Energy's website (or otherwise notified by Essential Energy to the Service Provider).

2.7 ACKNOWLEDGMENTS

The Service Provider acknowledges that:

- (a) Essential Energy's Representative will be under no obligation to issue an RFQ to the Service Provider;
- (b) Essential Energy's Representative may issue to any number of third parties requests for quotation in respect of the services or work the subject of an RFQ issued under clause 2.2.
- (c) the issue of a Purchase Order pursuant to clause 2.4 in respect of services or work for a Project is not exclusive and Essential Energy may, at its option, appoint other service providers to provide services or work for that Project;

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- (d) Essential Energy does not, by inviting a Quotation from the Service Provider bind itself to issuing a Purchase Order or accepting the Service Provider's Quotation;
- (e) services and work undertaken other than pursuant to a Purchase Order shall not form a part of any services or work to be undertaken pursuant to a Purchase Order Contract and the Service Provider shall not be entitled to any payment for or in connection with the same under these General Conditions;
- (f) if Essential Energy's Representative does not issue a Purchase Order in respect of the services and work the subject of a RFQ pursuant to this clause 2, the Service Provider releases and discharges Essential Energy from any Claim it has or may have against Essential Energy arising out of or in connection with the RFQ, the Quotation and Essential Energy's assessment and determination of the same; and
- (g) Essential Energy does not guarantee and makes no representation that the Service Provider will have an opportunity to perform any services or work under or in connection with the Panel Agreement and nor does Essential Energy make any specific quantity or monetary commitment to the Service Provider other than as expressly set out in a Purchase Order Contract.

3. SERVICES TO BE PERFORMED IN STAGES

The Service Provider may be required under the relevant Purchase Order Contract to perform the Services in stages as set out in the relevant RFQ, in which case this clause 3 shall apply. The Service Provider shall not commence any stage of the Services until Essential Energy has provided written approval or direction to the Service Provider to commence that stage of the Services.

The Service Provider may apply to Essential Energy in writing for approval to commence a stage of the Services. Such application must be made at least 5 days before the stage must commence to enable the Service Provider to avoid causing any delay to the Services or the Project.

4. SERVICE PROVIDER'S OBLIGATIONS AND WARRANTIES

4.1 OBLIGATIONS AND WARRANTIES

The Service Provider must:

- (a) supply the Services in accordance with the specifications and requirements set out in these General Conditions, the Panel Agreement and any relevant Purchase Order Contract;
- (b) supply the Services in accordance with any reasonable directions from Essential Energy from time to time;
- (c) where required to use materials, use good and proper and not defective materials;
- (d) carry out the Services independently, professionally and in a timely manner;
- (e) in undertaking the Services exercise all proper professional skill, care, attention and judgment which may be expected of a Service Provider experienced in providing services similar to the Services on projects of a similar value, importance and complexity as this Project;

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- (f) ensure that any of the Service Provider's employees carrying out the Services have appropriate qualifications and experience;
- (g) warrant that as a result of its skill, expertise and experience it is aware of the scope of services ordinarily involved in works the nature of the Project;
- (h) ensure that the Services will be in every respect fit for their Intended Purpose and for all purposes the Services might reasonably be expected to achieve in accordance with the requirements of these General Conditions and a Purchase Order Contract;
- (i) re-perform all or any part of the Services at its own cost in order to rectify any errors or omissions in the Services it has supplied or undertaken;
- (j) ensure that all documents prepared by the Service Provider for the Project are accurate, comply with all Laws and meet the requirements of these General Conditions and a Purchase Order Contract;
- (k) acknowledge that Essential Energy may engage other service providers or separate contractors to provide services in connection with the Project;
- (l) fully co-operate, liaise and co-ordinate with all other consultants or separate contractors and carefully co-ordinate the performance of the Services (including the production of any documents) to ensure that such performance is consistent with the services to be performed by other service providers or separate contractors;
- (m) prepare and present to Essential Energy for its approval regular progress reports at such intervals (not less than monthly) and containing such information as reasonably required by Essential Energy;
- (n) not purport to be a partner or joint venturer of Essential Energy and is in all respects an independent contractor or consultant;
- (o) acknowledge that it has no legal authority and must not enter into commitments or other legal documents in the name of Essential Energy or take any step to bind or commit Essential Energy in any manner whether as a disclosed agent of Essential Energy or otherwise, without the prior written approval of Essential Energy;
- (p) remain fully responsible for the Services carried out by the Service Provider notwithstanding any review, comment on or acceptance in relation to those Services by Essential Energy or any other entity;
- (q) when on the Site and Essential Energy's premises and when using Essential Energy's facilities, comply with all directions, procedures and policies relating to occupational health and safety and security requirements relating to the Site, Essential Energy's premises and Essential Energy's facilities and any other reasonable requirements of Essential Energy; and
- (r) warrant that it is a GST registered entity.

The responsibilities and obligations in this clause 4.1 are not affected by any correspondence, comment, approval or direction on documents or information supplied by one Party to the other or any variation.

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4.2 OTHER WARRANTIES

The Service Provider represents and warrants in addition to and without limiting any other warranty given by the Service Provider pursuant to these General Conditions or a Purchase Order Contract that:

- (a) it has thoroughly examined all information or documentation made available to it by Essential Energy prior to entering into the Panel Agreement or prior to issuing a Quotation and the issue of a relevant Purchase Order and has obtained all other information necessary to complete the Services;
- (b) the Services will be completed within the time stipulated (if any) in a relevant Purchase Order Contract; and
- (c) the Services will comply with all the requirements of or to be inferred from these General Conditions and any Purchase Order Contract including, the requirements of Laws and all relevant codes of practice and Australian Standards.

4.3 STATEMENT OF BUSINESS ETHICS AND CODE OF CONDUCT

The Essential Energy Statement of Business Ethics (copies of which can be downloaded from the website www.essentialenergy.com.au) (**Code**) sets the framework for all business relationships between Essential Energy and any third parties by:

- (a) establishing the standards of behaviour expected from government agencies (as clients), employer and industry associations and unions; and
- (b) requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.

The Service Provider must at all times comply with the Code. In addition to the rights and remedies under these General Conditions and any Purchase Order Contract, failure by the Service Provider to comply with the Code may be taken into account when considering the Service Provider for future business opportunities with the Essential Energy.

The Service Provider must have a satisfactory record of compliance with the Code. This also includes ensuring that contractors and their subcontractors, consultants, and suppliers comply with their legal obligations regarding their employees.

5. DOCUMENTS

5.1 DISCREPANCIES

Should the Service Provider encounter any discrepancies, contradictions, omissions, ambiguity, errors, faults or inconsistencies in or between any documents comprising a Purchase Order Contract ("**Discrepancy**"), the Service Provider must promptly notify Essential Energy's Representative in writing.

Essential Energy will (acting reasonably), by direction to the Service Provider, resolve any Discrepancy as follows:

- (a) where the Discrepancy is in relation to the standard or quality required in the Services, Essential Energy shall adopt the higher quality or standard;

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- (b) where clause 5.1(a) does not apply, Essential Energy shall apply the following order of precedence (in descending order):
 - (i) Panel Agreement (excluding Schedules);
 - (ii) the relevant Purchase Order;
 - (iii) the relevant RFQ (including Details, but excluding Special Conditions;
 - (iv) the Special Conditions to the relevant RFQ;
 - (v) General Conditions; and
 - (vi) Quotation; and
- (c) where clauses 5.1(a) and 5.1(b) do not apply, Essential Energy shall make a determination based on the Parties' intentions which can be ascertained from these General Conditions or a Purchase Order Contract.

The Service Provider must comply with a direction of Essential Energy under this clause 5.1 as to the interpretation to be adopted in resolving the Discrepancy.

Notwithstanding clauses 5.1(a) to 5.1(c), where:

- (d) a Purchase Order Contract; or
- (e) any document attached to a Purchase Order Contract which has been prepared by the Service Provider,

contains a right or entitlement in the Service Provider, then the Service Provider will only be entitled to the benefit of that right or entitlement if:

- (f) the relevant right or entitlement is also contained in these General Conditions or the relevant RFQ; and
- (g) the Service Provider has satisfied any pre-conditions to that right or entitlement set out in these General Conditions of the relevant RFQ.

5.2 SUPPLY OF DOCUMENTS BY THE SERVICE PROVIDER

The Service Provider must give Essential Energy the documents required by a Purchase Order Contract to be supplied by the Service Provider to Essential Energy in the number of copies set out in the relevant Purchase Order Contract.

If the Service Provider submits a document to Essential Energy then, except where a Purchase Order Contract otherwise provides:

- (a) Essential Energy is not required to check such documents for errors, discrepancies, contradictions, omissions, ambiguities, faults, inconsistencies or compliance with the relevant Purchase Order Contract; and
- (b) notwithstanding clause 5.2(a), any acknowledgement or approval by Essential Energy shall not prejudice the Service Provider's obligations.

5.3 SUPPLY OF DOCUMENTS BY ESSENTIAL ENERGY

Except in respect of those documents identified in the relevant item in the relevant RFQ (if any), information or documents of any nature provided by or on behalf of Essential Energy to the Service

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Provider at any time, whether before or after the Date of the Panel Agreement (other than the Contract Documents and notices issued by Essential Energy or Essential Energy's Representative under a Purchase Order Contract) were furnished and are furnished to the Service Provider for its convenience only and, to the extent permitted by law, were not and are not guaranteed whether in terms of their accuracy or otherwise. Essential Energy has no liability whatsoever to the Service Provider in tort (including negligence), contract, statute or otherwise (except to the extent that such liability cannot be excluded) concerning or in any way connected with any interpretations, deductions, inferences drawn or conclusions made by the Service Provider in relation to such information or documents or any errors, omissions, representations or misrepresentations contained in the same.

Any document supplied by Essential Energy to the Service Provider remains (as between Essential Energy and the Service Provider) the property of Essential Energy and must be returned to Essential Energy upon request. The Service Provider may keep one copy of any such document for its own records.

6. ADMINISTRATION AND PERSONNEL

6.1 ESSENTIAL ENERGY'S REPRESENTATIVE

Essential Energy's Representative:

- (a) will give directions and at all times carry out its functions under the General Conditions and any Purchase Order Contract on behalf of and as the agent of Essential Energy and not as an independent certifier or assessor; and
- (b) may, by written notice to the Service Provider be replaced from time to time by Essential Energy, at its sole discretion.

6.2 COMPLIANCE WITH DIRECTIONS

The Service Provider must promptly comply with any direction given by Essential Energy's Representative in connection with the General Conditions, a Purchase Order Contract or the Services.

6.3 SERVICE PROVIDER'S REPRESENTATIVE

The Service Provider's Representative shall act on behalf of and as agent of the Service Provider for the purposes of exercising the functions of the Service Provider under the Panel Agreement, these General Conditions and any Purchase Order Contract and any direction given by Essential Energy or Essential Energy's Representative to the Service Provider's Representative shall be binding. The Service Provider shall not substitute the Service Provider's Representative without the prior written consent of Essential Energy, which consent shall not be unreasonably withheld.

6.4 SERVICE PROVIDER'S RESOURCES

The Service Provider must ensure that:

- (a) it employs sufficient suitable resources to carry out and complete the Services in a proper and workmanlike manner with due diligence and expedition in accordance with the Purchase Order Contract; and
- (b) the personnel the Service Provider utilises to carry out the Services are persons with appropriate qualifications, experience and other relevant attributes necessary to carry out

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the Services to a professional standard and in accordance with the obligations and warranties set out in these General Conditions and in any relevant Purchase Order Contract.

7. INDEMNITY AND INSURANCE

7.1 INDEMNITY

The Service Provider is liable for and indemnifies and shall keep indemnified Essential Energy (to the maximum extent permitted by law) against:

- (a) all cost, loss, damage and expense (including legal fees on an indemnity basis) suffered by Essential Energy and any of its employees and agents; and
- (b) all liabilities Essential Energy has or may have to any third party in relation to, arising out of or in connection with the work under a separate contract or consultancy agreement,

arising as a result of or in connection with any negligence of the Service Provider, its employees, subcontractors, sub-consultants or agents.

Without limiting the above, the Service Provider is liable for and indemnifies and shall keep indemnified Essential Energy (to the maximum extent permitted by law) against:

- (c) loss of or damage to any property, including existing property in or upon which the Services are being carried out; and
- (d) claims by any person against Essential Energy in respect of illness, personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Service Provider of the Services including where there has been any failure by any subcontractor or sub-consultant of the Service Provider to take reasonable care.

The Service Provider's liability to indemnify Essential Energy under this clause 7.1 shall be reduced proportionally to the extent that a wrongful act or wrongful omission of Essential Energy, its employees or agents caused or contributed to the loss, damage, death or injury.

7.2 INSURANCE REQUIRED BY SERVICE PROVIDER

Where the Service Provider, pursuant to the RFQ the subject of the relevant Purchase Order Contract, is required to have in place policies of insurance, then the Service Provider must, as a precondition to any entitlement to payment under or in connection with a Purchase Order Contract, have in place those insurance policies stated in the RFQ the subject of the relevant Purchase Order Contract in the amounts and for the periods stated in that RFQ and with an insurer having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better.

The Service Provider must ensure that its subcontractors and sub-consultants are similarly insured or covered by the insurance required under this clause 7.2 for the relevant work to be performed by those subcontractors and sub-consultants.

Before commencing any work under a Purchase Order Contract and when requested by Essential Energy's Representative from time to time, the Service Provider must promptly provide to Essential Energy's Representative copies of the certificates of currency for any insurance policies required by this clause 7.2.

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7.3 FAILURE TO PROVIDE EVIDENCE OF INSURANCES

If the Service Provider is required under clause 7.2 to have in place policies of insurance and fails to provide to Essential Energy copies of the certificates of currency for those policies in accordance with the requirements of these General Conditions or a relevant Purchase Order Contract, Essential Energy may (without being obliged to do so) effect and maintain such insurance and the cost incurred will be a debt due by the Service Provider to Essential Energy.

7.4 NOTICE OF CLAIMS/LIKELY CLAIMS

The Service Provider must as soon as practicable inform Essential Energy's Representative in writing of any occurrence which it ought reasonably expect may give rise to a claim under an insurance policy required by these General Conditions or a Purchase Order Contract. The Service Provider must give all information and assistance requested by Essential Energy's Representative in respect of any such claim or possible claim.

7.5 EFFECT OF INSURANCES

The effecting or failure to effect insurance by the Service Provider will not in any way limit or reduce any of the Service Provider's obligations or liabilities under these General Conditions or a Purchase Order Contract or at law.

8. ASSIGNMENT, SUBCONTRACTING AND NOVATION

8.1 ASSIGNMENT AND NOVATION

The Service Provider must not novate or assign the Panel Agreement or a Purchase Order Contract or any right, benefit or interest under the Panel Agreement or a Purchase Order Contract without the prior written consent of Essential Energy. This consent must not be unreasonably withheld, but may be subject to reasonable conditions.

Essential Energy may at any time assign or novate the Panel Agreement or a Purchase Order Contract or any right, benefit or interest under the Panel Agreement or a Purchase Order Contract, provided that the party to whom Essential Energy is assigning or novating has the financial capacity to perform Essential Energy's obligations under the Panel Agreement or the relevant Purchase Order Contract, is not a direct competitor of the Service Provider and Essential Energy provides notice of the assignment or novation as soon as reasonably practicable. The Service Provider must promptly, upon request by Essential Energy, execute all documents required by Essential Energy to give effect to any such assignment or novation.

If requested by the Essential Energy, the Service Provider will, and without being entitled to any compensation, promptly execute a deed of novation in the form required by Essential Energy to give effect to such assignment or novation.

8.2 SUBCONTRACTING

- (a) The Service Provider must not engage any subcontractors or sub-consultants in connection with the Services for an amount exceeding the amount specified in the relevant Purchase Order Contract or in respect of the work described therein without obtaining the prior written consent of Essential Energy's Representative.
- (b) Approval to subcontract shall be at the discretion of Essential Energy and may be conditional upon the subcontract including:

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- (i) provision that the sub-consultants or subcontractors shall not assign, novate or subcontract without the consent in writing of the Service Provider; and
 - (ii) any provision which may reasonably be necessary to enable the sub-consultant or subcontractor to fulfil the Service Provider's obligations to Essential Energy.
- (c) Approval to subcontract will not relieve the Service Provider from any liability or obligation under these General Conditions or a Purchase Order Contract. Except to the extent expressly stated otherwise in the Panel Agreement, these General Conditions or a Purchase Order Contract, the Service Provider agrees that it is, to the maximum extent permitted by law, fully liable for all acts and omissions (including the negligence) of its employees, subcontractors, sub-consultants and agents and each other person within its contractual chain under or in any way in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract.
- (d) If any sub-consultant or subcontractor of the Service Provider obtains a court order in respect of any moneys due to that sub-consultant or subcontractor from the Service Provider and produces to Essential Energy that court order and a statutory declaration that it remains unpaid, then Essential Energy may pay the amount of the order, and costs included in the order, to the sub-consultant or subcontractor and the amount paid shall be a debt due from the Service Provider to Essential Energy.

9. VARIATIONS

9.1 VARIATIONS

Essential Energy's Representative may at any time direct the performance of a Variation by notice in writing to the Service Provider identified as a variation order ("**Variation Order**"). The Service Provider must execute any Variation directed by Essential Energy's Representative in a Variation Order, provided that the Variation is within the general scope of these General Conditions or a Purchase Order Contract.

The Service Provider shall not vary the Services except as directed or approved in writing by issue of a Variation Order. Essential Energy will not be obliged to direct or approve a Variation for the convenience of the Service Provider.

If the Service Provider considers that any direction that is not stated in writing by Essential Energy's Representative to be a Variation is nevertheless a Variation the Service Provider must notify Essential Energy's Representative in writing within 5 Business Days and in any event before commencing the work the subject of the direction. If the Service Provider fails to so notify Essential Energy's Representative or if Essential Energy does not respond with a Variation Order then the Service Provider will have no Claim in connection with the direction or any extra work performed as a consequence.

9.2 VALUATION OF VARIATIONS

The value of any Variation will be added to or deducted from the Purchase Order Fee. If the Parties do not agree on the value of a Variation, Essential Energy's Representative must determine the value of the Variation as follows:

- (a) if a Purchase Order Contract prescribes specific rates or prices to be applied in determining the value of a Variation, those rates or prices shall be used;
- (b) if paragraph (a) above does not apply, and if the relevant Purchase Order Contract includes rates or prices for similar work, such rates and prices shall be used to the extent that it is reasonable to use them; and

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- (c) to the extent that neither paragraphs (a) or (b) above apply, Essential Energy's Representative shall (acting reasonably) determine reasonable rates or prices.

10. INTELLECTUAL PROPERTY

10.1 INTELLECTUAL PROPERTY RIGHTS

As between Essential Energy and the Service Provider, Intellectual Property Rights in the drawings, reports, specifications, calculations, documents and other goods or materials provided, developed, created or acquired by or on behalf of the Service Provider in the performance of the Service Provider's obligations under the Panel Agreement, these General Conditions and each Purchase Order Contract shall continue to vest in the Service Provider.

The Service Provider grants to Essential Energy, for the purposes of the Services, a perpetual, irrevocable and royalty free licence to use, adapt and modify (and sub-licence others to use, adapt and modify) all Intellectual Property Rights of the Service Provider in the Services and all drawings, reports, specifications, calculations, documents and other goods or materials provided or prepared by the Service Provider, its employees, subcontractors, sub-consultants or agents in connection with the Services. Such licence shall also allow for facilitating or completing construction, operation of, any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to the Services or any works comprising the Project.

10.2 MORAL RIGHTS

If, during the provision of the Services, the Service Provider includes or makes use of any work or other subject matter or documentation in which another party (including the Service Provider's employees, sub-consultants, subcontractors, and agents) may have Moral Rights the Service Provider must use its best endeavours to:

- (a) give a written consent signed by an authorised person; and
- (b) procure from every officer and employee of the Service Provider, any subcontractor or subconsultant of the Service Provider or any other persons involved in the provision of the Services, a written consent signed by that person,

consenting to Essential Energy and any related entity or nominee of Essential Energy, dealing with the material or works (including by way of destruction or alteration) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, or publishing that work or subject matter whether or not making any identification of that person in connection with the completion, operation, development, marketing, use, extension, redevelopments, demolition or improvement of the Project or property or any merchandising, marketing or promotions associated with the Project in such manner as Essential Energy (or any other person) may decide (without being held to have infringed any Moral Right of the individual).

In procuring the consent required by this clause 10.2, the Service Provider must not (and must not encourage or permit anyone to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular.

10.3 WARRANTY AND INDEMNITY

The Service Provider warrants that it has the necessary rights to grant to Essential Energy the licence referred to in clause 10.1 and that the performance of the Services does not infringe any

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Intellectual Property Right belonging to any third party, and indemnifies Essential Energy and its employees, directors and agents against all losses, liabilities and legal costs arising directly or indirectly from any allegation or finding of infringement.

11. LAWS AND REPORTS

11.1 COMPLIANCE WITH LAWS

The Service Provider must comply, and must ensure that its employees, sub-consultants, subcontractors and agents comply, with all Laws and the requirements of Authorities in performing the Services.

The Service Provider must also comply, and must ensure that its employees, sub-consultants, subcontractors and agents comply, with all relevant Australian Standards, to the extent that they are not inconsistent with the requirements of a Purchase Order Contract and any Laws.

If the Service Provider discovers that a Law is at variance with these General Conditions or a Purchase Order Contract, it shall promptly give Essential Energy written notice.

11.2 REPORTS AND RECORDS

Without limiting clause 4.1(j), upon a direction from Essential Energy's Representative, the Service Provider must, within the time stated in the direction (which must be reasonable), submit a report or provide records in relation to the Services to Essential Energy's Representative.

12. TIME AND DELAY

12.1 EXTENSION OF TIME

The Service Provider shall proceed with the Services with due expedition and without delay and within any times set out in these General Conditions or in a Purchase Order Contract.

If the Service Provider becomes aware of any event or circumstance which is causing or is likely to cause delay or disruption to the Services, the Service Provider shall provide Essential Energy with written notice of the cause and estimated length of the delay within 7 days of becoming aware of the cause.

Subject to having given notice under the preceding paragraph of this clause 12.1, if the Service Provider is or will be delayed in carrying out the Services by a cause beyond the reasonable control of the Service Provider, the time for carrying out the Services shall be extended by the extent of the delay as reasonably assessed by the Essential Energy's Representative.

The Service Provider's entitlement to an extension of time under clause 12.1 is its sole remedy for any delay and subject to that entitlement it will have no other Claim against Essential Energy arising out of or in relation to that delay.

12.2 ESSENTIAL ENERGY'S REPRESENTATIVE MAY EXTEND

At any time, Essential Energy's Representative may, pursuant to this clause, and without being obligated to do so, grant an extension of time to the Service Provider for the benefit of either Party regardless of whether or not the Service Provider has made a claim for extension of time.

12.3 SUSPENSION

Essential Energy's Representative may at any time and for any reason suspend the whole or any part of the Services by written notice to the Service Provider. In such event, the Service Provider

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must not recommence work on the whole or on the relevant part of the Services until Essential Energy's Representative by written notice, directs the Service Provider to do so.

If costs and expenses arising from a suspension under this clause 12.3 have not been agreed in advance and if the event giving rise to the direction to suspend is a result of a breach or negligence by Essential Energy, then Essential Energy shall pay the Service Provider the additional costs and expenses reasonably and necessarily incurred by the Service Provider as a result of the suspension (as determined by Essential Energy's Representative, acting reasonably).

13. PAYMENT

13.1 THE PURCHASE ORDER FEE

Subject to the performance by the Service Provider of its obligations under a relevant Purchase Order Contract, Essential Energy will pay to the Service Provider the Purchase Order Fee, as adjusted in accordance with the Purchase Order Contract.

The Service Provider acknowledges and agrees that the Purchase Order Fee:

- (a) subject to the following paragraph of this clause 13.1, includes all costs, expenses, fees and charges incurred by the Service Provider in performing all its obligations under these General Conditions and in connection with a Purchase Order Contract; and
- (b) will not be subject to any rise and fall, changes in taxation (other than GST), excise duty, fees, charges, foreign exchange adjustment or any other adjustment whatsoever except to the extent expressly provided by the relevant Purchase Order Contract.

Essential Energy shall bear the expenses and disbursements specified in the Purchase Order Contract provided that the Service Provider:

- (c) obtains the written approval of Essential Energy's Representative prior to incurring the expense or disbursement; and
- (d) without limiting clause 13.2, provides Essential Energy with evidence of the amount of the expense or disbursement incurred.

Except as provided in the preceding paragraph of this clause 13.1, the Service Provider shall bear all other expenses and disbursements incurred by the Service Provider in performing the Services.

13.2 PAYMENT CLAIMS

The Service Provider may, in respect of each Purchase Order Contract, submit a payment claim to Essential Energy's Representative in respect of the Services performed under the relevant Purchase Order Contract at the times stated in the relevant Purchase Order Contract, or if no time is stated on the last Business Day of each month.

In each payment claim the Service Provider must include:

- (a) sufficiently detailed evidence to enable Essential Energy to assess the claim, including the following:
 - (i) identification of the Services supplied in the relevant period, in accordance with the stage breakdown (if any) stated in the relevant RFQ;

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- (ii) the amount of payment that the Service Provider claims to be due in relation to the Services to which the payment claim relates and identifies whether that amount relates to:
 - (A) the lump sum fee (if any) stated in the relevant Purchase Order; or
 - (B) time based charges (if any) stated in the relevant Purchase Order;
 - (iii) the amount of all previous payment claims by the Service Provider;
 - (iv) the amount of all previous payments to the Service Provider by Essential Energy; and
- (b) a statutory declaration, in a form acceptable to Essential Energy, from a representative of the Service Provider who is in a position to know the facts attested to, stating that:
- (i) all subcontractors and sub-consultants of the Service Provider engaged in the Services have been paid all moneys that are due and payable to those subcontractors and sub-consultants up to the date of submission by the Service Provider of its payment claim; and
 - (ii) all employees of the Service Provider who have been engaged in the Services have been paid all moneys that are due and payable to them up to the date of submission by the Service Provider of its payment claim; and
- (c) a Statement in the form set out in Schedule 1, duly completed and signed and attaching a relevant Certificate of Currency (as referred to in that Statement).

Essential Energy may request additional information in respect of any payment claim (valid or otherwise) and if so requested the Service Provider must promptly provide any additional information so requested.

13.3 PAYMENT SCHEDULE

Within 10 Business Days after receipt of a payment claim validly submitted under clause 13.2, Essential Energy may, unless Essential Energy agrees to pay the whole of the amount claimed, assess the payment claim and provide to the Service Provider a payment schedule. The payment schedule must identify the payment claim to which the payment schedule relates and certify the amount Essential Energy reasonably considers is due to the Service Provider or Essential Energy, as the case may be, setting out the reasons for the difference.

Essential Energy may allow in any payment schedule adjustment for amounts paid under a Purchase Order Contract and amounts that otherwise may be retained, deducted or claimed by Essential Energy from the Service Provider (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under or in connection with these General Conditions or a Purchase Order Contract or any other contract or arrangement between the Parties.

13.4 PAYMENTS

Essential Energy must (subject to its right to set-off under clause 13.7) pay the Service Provider the amount certified in a payment schedule as being payable by Essential Energy to the Service Provider (or if no payment schedule is provided to the Service Provider, the whole of the amount claimed), no later than the later of:

- (a) to the extent permitted by law, the date of satisfaction of the pre-conditions in clauses 7.2, 13.2, and 18; and:

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(b) 15 Business Days after the payment claim is validly made.

The Service Provider must pay to Essential Energy any amount certified in a payment schedule as being payable by the Service Provider to Essential Energy no later than 10 Business Days after the provision of the relevant payment schedule to the Service Provider under clause 13.3.

13.5 EFFECT OF PAYMENT AND CERTIFICATES

Any payment made by Essential Energy to the Service Provider is deemed to be a payment on account only and is not evidence of the value of the Services or that the Services have been satisfactorily completed. Nor does the issue of a payment schedule constitute approval of any work or other matter and does not prejudice any Claim by Essential Energy.

13.6 SATISFACTORY EVIDENCE

Without limiting any other provision of these General Conditions, if the Service Provider fails to provide to Essential Energy's Representative satisfactory evidence in accordance with clause 13.2(a), 13.2(b) or 13.2(c), the Service Provider is not entitled to payment under or in connection with a Purchase Order Contract and Essential Energy is not obliged to make any payment to the Service Provider until evidence to the satisfaction of Essential Energy's Representative is provided.

13.7 SET OFF

Despite any other provision of these General Conditions or a Purchase Order Contract and without limiting Essential Energy's other rights and remedies, Essential Energy may, at any time, and from time to time, deduct or set-off from any money payable by Essential Energy to the Service Provider under or in connection with a Purchase Order Contract any money due or reasonably claimed to be due from the Service Provider to Essential Energy under or in connection with any Purchase Order Contract or any other contract agreement or arrangement between the Parties.

13.8 INTEREST

If any moneys due and payable to either Party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon at the rate prescribed under section 101 of the *Civil Procedure Act 2005* (NSW) from the date upon which or the expiration of the period within which they should have been paid up until and including the date upon which the moneys are paid.

14. WORK HEALTH AND SAFETY

The Service Provider shall be responsible for providing and maintaining a safe working environment and safe workplace for all its workers, including its employees, subcontractors, sub-consultants or agents involved in the provision of the Services or the Project or attending the Site pursuant to all Laws. This includes, without limitation, ensuring that safe work practices are adopted and executed by all persons pursuant to all Laws whilst performing the Services and ensuring all such persons are properly inducted, trained and supervised.

The Service Provider must take all possible and reasonably practicable steps and measures to eliminate risk to health and safety and to avoid and minimise the consequences of work health and safety issues and, if requested by Essential Energy, must promptly provide copies of its work health and safety policies and other evidence to demonstrate that it has met and is meeting at all times its obligations under this clause 14 and all Laws in relation to work health and safety.

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The Service Provider must immediately notify Essential Energy of every work related accident, incident, injury or illness that occurs in relation to the performance of the Services or on the Site.

Essential Energy shall be entitled, but shall be under no obligation, to issue directions in relation to occupational health and safety issues and the Service Provider shall, at its own cost, comply with those directions to ensure the highest level of health and safety.

15. DEFAULT AND TERMINATION

15.1 NOTICE OF SERVICE PROVIDER DEFAULT

If the Service Provider commits a substantial breach of the Panel Agreement, these General Conditions or of a Purchase Order Contract then, without limiting any other right it may have, Essential Energy may by notice in writing serve upon the Service Provider a notice entitled "Notice of Service Provider Default".

A substantial breach of the Panel Agreement, these General Conditions or a Purchase Order Contract includes:

- (a) a failure to comply with a lawful and reasonable direction of Essential Energy's Representative given under clause 6.2;
- (b) a failure to insure in accordance with clause 7.2;
- (c) a failure to comply with the standard of workmanship, service or any specification required by the relevant Purchase Order Contract;
- (d) a failure to perform the Services with due expedition and without delay as required under clause 12.1; and
- (e) where the Service Provider's liability to Essential Energy is equal to or exceeds the liability cap referred to in clause 22.1.

A substantial breach of a Purchase Order Contract is deemed to be a substantial breach of the Panel Agreement.

15.2 CONTENTS OF NOTICE OF SERVICE PROVIDER DEFAULT

A Notice of Service Provider Default given under clause 15 must:

- (a) state that it is given under clause 15;
- (b) identify and particularise the substantial breach complained of; and
- (c) specify a time not less than 14 days from the date the Notice of Service Provider Default is given within which the Service Provider is either to remedy the breach or to show cause to Essential Energy's satisfaction why Essential Energy ought not exercise its rights under clause 15.3.

15.3 FAILURE BY SERVICE PROVIDER TO REMEDY/SHOW CAUSE

If the Service Provider fails within the time specified in a Notice of Service Provider Default either to remedy the substantial breach or to show cause to Essential Energy's satisfaction why Essential Energy ought not exercise its rights under this clause 15.3, Essential Energy may by notice in writing to the Service Provider engage others to, or itself, carry out any part or the whole of the remaining Services or terminate the Panel Agreement or a Purchase Order Contract or both

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(including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Services).

If Essential Energy engages others to carry out or itself carries out any part or the whole of the remaining Services, Essential Energy's Representative must determine the reasonable cost so incurred by Essential Energy and any other loss or damage sustained by Essential Energy as a consequence and the same will constitute a debt due and owing by the Service Provider to Essential Energy.

If Essential Energy terminates the Panel Agreement or a Purchase Order Contract or both it under this clause 15.3 or clauses 15.4 or 15.9 will have the same entitlements and the Service Provider will have the same liabilities as each would at law, had the Service Provider repudiated the Panel Agreement or the relevant Purchase Order Contract or both and Essential Energy terminated the Panel Agreement or the relevant Purchase Order Contract or both by acceptance of the Service Provider's repudiation.

15.4 SERVICE PROVIDER UNABLE OR UNWILLING TO COMPLETE

If the Service Provider advises Essential Energy that the Service Provider is unable or unwilling to complete performance of the Panel Agreement or a Purchase Order Contract, Essential Energy may immediately (and without serving upon the Service Provider a Notice of Service Provider Default) exercise its rights under clause 15.3 to engage others, or itself, carry out any part or the whole of the remaining Services or terminate the Panel Agreement or the relevant Purchase Order Contract or both (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Services).

15.5 PROCEDURE UPON TERMINATION OR TAKING SERVICES OUT OF HANDS

Notwithstanding any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, if Essential Energy terminates the Panel Agreement or a Purchase Order Contract or both for whatever reason (including for its convenience) or engages others to carry out or itself carries out any part or the whole of the remaining Services, Essential Energy may without payment of compensation to the Service Provider (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or the relevant Purchase Order Contract):

- (a) take possession of all documents (including design documentation), information and the like in the Service Provider's possession which is connected with the Services and reasonably required by Essential Energy to facilitate completion of the Services; and
- (b) take an assignment of the Service Provider's rights and benefits under any contracts with subcontractors or sub-consultants, including any warranties and guarantees, that are related to the Services. The Service Provider must do all things necessary to effect such an assignment.

15.6 ESSENTIAL ENERGY'S DEFAULT

If Essential Energy is in breach of its obligation to pay an amount under clause 13.4, then without limiting any other right it may have, the Service Provider may by notice in writing serve upon Essential Energy a notice entitled "Notice of Essential Energy Default".

15.7 CONTENTS OF NOTICE OF ESSENTIAL ENERGY DEFAULT

A Notice of Essential Energy Default given under clause 15 must:

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- (a) state that it is given under clause 15;
- (b) identify and adequately particularise the amount not paid under clause 13.4; and
- (c) specify a time not less than 14 days from the date the Notice of Essential Energy Default is given within which Essential Energy must either make payment of the amount or compromise the claim of the Service Provider to the Service Provider's satisfaction or identify the basis on which it is entitled to refrain from paying the amount required under clause 13.4.

15.8 FAILURE BY ESSENTIAL ENERGY TO MAKE PAYMENT/COMPROMISE CLAIM

If the Service Provider is entitled to serve a Notice of Essential Energy Default and having been served with a valid Notice of Essential Energy Default, Essential Energy fails within the time specified, either to make payment of the amount required under clause 13.4 or fails to compromise the claim to the satisfaction of the Service Provider (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 13.4, the Service Provider may by notice in writing to Essential Energy expressly referring to this clause 15.8, suspend the whole or any part of the relevant Services. If Essential Energy remedies the breach, the Service Provider shall promptly lift the suspension.

If within 7 days of the date of suspension under this clause 15.8 Essential Energy fails to compromise the claim to the satisfaction of the Service Provider (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 13.4, the Service Provider may by notice in writing to Essential Energy terminate the Purchase Order Contract under which the relevant Services are performed. In such event or in respect of a notice from the Service Provider under clause 15.9, the Service Provider will be entitled to be paid in respect of the relevant Purchase Order Contract:

- (a) any outstanding amounts due to the Service Provider under a payment schedule issued under the relevant Purchase Order Contract;
- (b) an amount for the value of work done in the period between when the last payment claim was submitted and the date that the relevant Purchase Order Contract was terminated, as determined by Essential Energy's Representative (acting reasonably) in accordance with that Purchase Order Contract.

The Service Provider agrees that the entitlements under this clause 15.8 will be the Service Provider's full compensation for all work performed in respect of the relevant Purchase Order Contract and for any Claims of the Service Provider arising out of or in connection with that Purchase Order Contract or its termination under this clause 15.8.

15.9 INSOLVENCY

Without prejudice to any other right either Party may have, a Party may, to the extent permitted by law, terminate the Panel Agreement and any and all Purchase Order Contracts by notice in writing to the other Party upon the date stated in the notice if the other Party is insolvent or:

- (a) being a person:
 - (i) has judgment entered against him or her in any court in any jurisdiction;
 - (ii) commits an act of bankruptcy;
 - (iii) has a sequestration order made against his or her estate;
 - (iv) lodges a debtor's petition; or

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- (v) calls a meeting of his or her creditors with a view to entering into, or enters into, any form of compromise or arrangement with his or her creditors; or
- (b) being a company:
 - (i) calls a meeting of its creditors with a view to entering into, or enters into, any form of compromise or arrangement with its creditors;
 - (ii) an order is made or resolution passed for its winding up (except for the purpose of reconstruction or amalgamation with the consent of the other which consent may not be unreasonably withheld);
 - (iii) an order is made for the appointment of a liquidator or provisional liquidator;
 - (iv) makes an assignment for the benefit of or enters into any arrangement or composition with its creditors or an administrator is appointed to it or it is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); or
 - (v) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), it is taken to have failed to comply with a statutory demand.

15.10 TERMINATION FOR CONVENIENCE

The Service Provider and Essential Energy agree that a Purchase Order Contract may be terminated by Essential Energy, for its sole convenience and without cause, by Essential Energy providing written notice to the Service Provider at any time of an amount equal to 14 days, or such longer period as may be agreed by the Parties. Where Essential Energy terminates a Purchase Order Contract under this clause 15.10, the Service Provider's entitlements will be limited to those set out in clause 15.8.

16. DISPUTE RESOLUTION

16.1 NOTICE

If a dispute or difference arises between Essential Energy and the Service Provider out of or in connection with the Services, a Purchase Order Contract or these General Conditions, either Party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and if the Party serving the notice makes any Claim the notice must specify in reasonable detail the legal basis of the Claim.

Neither Party will commence proceedings (other than for injunctive or other urgent relief) in respect of any such dispute or difference before a notice under this clause 16.1 has been served and the procedure in clauses 16.2 and 16.3 have been complied with.

16.2 MEETING

If a dispute or difference notified under clause 16.1 has not been settled within 7 days of the date of the 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 Essential Energy and the Service Provider meet and undertake negotiations in good faith and on a without prejudice basis with a view to resolving the dispute or difference.

If such a meeting is required by either Party, within 7 days of the receipt of the further notice, each Party must ensure attendance on its behalf by a person holding a position of senior management.

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16.3 MEDIATION

If the dispute or difference is not resolved within 21 days of the giving of notice under clause 16.1, the dispute or difference is referred to mediation. If the Parties cannot promptly agree on a mediator then a mediator will be selected by the Resolution Institute.

The Parties must pay the mediator's remuneration in equal shares. Each Party must pay its own costs of the mediation.

The Resolution Institute "Mediation Rules" will apply to the mediation.

16.4 CONTINUED PERFORMANCE

Notwithstanding the existence of a dispute or difference, the Parties must continue to perform their respective obligations under the Panel Agreement and any Purchase Order Contract.

17. BAR ON CLAIMS

To the extent permitted by law, the Service Provider will not have any right to make any Claim against Essential Energy and will be absolutely barred from making such a Claim, unless the Service Provider gives to Essential Energy:

- (a) a written notice not later than 28 days after the Service Provider first knew, or ought to have known, about the circumstances on which the Claim is based, that it intends to make a Claim; and
- (b) a further written notice within 28 days of the notice under clause 17(a) providing detailed particulars of the basis for and the quantification of the Claim sufficient to enable Essential Energy to make an informed assessment of the merits of the Claim,

unless, in circumstances where another provision of these General Conditions or a Purchase Order Contract provides a procedure for the making of the Claim, the Service Provider complies in all respects with the requirements in those other provisions (including as to time).

Updates of the information required in the notice under clause 17(b) for a Claim based on ongoing events or circumstances shall be submitted by the Service Provider to Essential Energy at weekly intervals until the events or circumstances have ceased.

18. GST

Save for defined terms in a Purchase Order Contract, words or expressions used in this clause 18 which have a particular meaning in the GST law (as defined in the GST Act) and including any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.

Except where express provision is made to the contrary, and subject to this clause 18, the consideration to be paid or provided under or in connection with a Purchase Order Contract is exclusive of any GST.

To the extent that any supply made under or in connection with a Purchase Order Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

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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.

To the extent that any consideration to be paid or provided under a Purchase Order Contract represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:

- (a) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice) within 5 Business Days of becoming aware of the adjustment event; and
- (b) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST within 10 Business Days of receipt of the adjustment note or tax invoice.

To the extent that any consideration payable to a Party under or in connection with a Purchase Order Contract is determined by reference to a cost incurred by a Party, or is determined by reference to a cost, price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

A Party's right to payment under a Purchase Order Contract is subject to a valid Tax Invoice being delivered to the recipient of the taxable supply.

19. SECURITY OF PAYMENT

The Service Provider acknowledges, for the avoidance of doubt, that to the extent Essential Energy has an entitlement to issue a payment schedule(s) (or its equivalent) or any other document or notice under the Security of Payment Act, it may do so by Essential Energy's Representative who acts as Essential Energy's agent in that regard.

The Service Provider must provide to Essential Energy's Representative as soon as possible in the circumstances, a copy of any notice or document:

- (a) served by the Service Provider on Essential Energy under or in connection with the Security of Payment Act; and
- (b) received by the Service Provider from any third party in connection with the Project where that notice or document is provided under the Security of Payment Act. In such event, Essential Energy may, in its absolute discretion, pay such third party the money that it is owed by the Service Provider and the amount of such payment will be a debt due from the Service Provider to Essential Energy. Payment by Essential Energy of any amount under this clause 19 will not relieve the Service Provider of any of its obligations and liabilities under or in connection with these General Conditions or a Purchase Order Contract.

Without limiting Essential Energy's rights pursuant to any other clause of these General Conditions or a Purchase Order Contract, the Service Provider is liable for and indemnifies Essential Energy against all loss, costs, damages and expense (including legal fees on an indemnity basis) or liability arising out of or in connection with:

- (c) a suspension pursuant to the Security of Payment Act by a subcontractor or a sub-consultant to the Service Provider of;

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- (d) the Service Provider's failure to pay an amount claimed pursuant to the Security of Payment Act by a sub-consultant or subcontractor to the Service Provider for; or
- (e) an adjudication application issued by a sub-consultant or subcontractor to the Service Provider under the Security of Payment Act in connection with,

work which forms part of or is incidental to the Services.

20. CIVIL LIABILITY

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 Panel Agreement, a Purchase Order Contract or the Services whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity.

The Service Provider further agrees that each subcontract into which it enters includes the following terms:

- (a) to the extent permitted by law, the operation of Part 4 of *Civil Liability Act 2002* (NSW) shall be excluded in relation to all rights, obligations and liabilities arising out of or in connection with the subcontract or the work of the sub-consultant or subcontractor whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity; and
- (b) the sub-consultant or subcontractor warrants in favour of Essential Energy that the subconsultant or subcontractor will not seek to rely upon any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in any proceedings taken by Essential Energy against the subconsultant or the subcontractor arising out of or in connection with the work of the subconsultant or subcontractor required to be executed by it under the subcontract.

21. CONFIDENTIALITY AND CONFLICTS OF INTEREST

21.1 CONFIDENTIALITY

Each Party must keep confidential:

- (a) information so designated in writing by the other Party as confidential or which the Party receiving the information ought to reasonably know is confidential; and
- (b) all aspects of the Panel Agreement, these General Conditions, any RFQ and a Purchase Order Contract and all matters arising from the Services,

and must not disclose these details to any third party without the written approval of the other Party except:

- (c) to the extent required by Law (including the *Government Information (Public Access) Act 2009* (NSW));
- (d) to enable performance of the Panel Agreement or a Purchase Order Contract;
- (e) where the disclosing Party is Essential Energy:
 - (i) to obtain the benefit of the Panel Agreement or a Purchase Order Contract;

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- (ii) at the request of Parliament, a Parliamentary Committee or a Minister; or
- (iii) for the purposes of government accountability;
- (f) disclosure to a professional adviser for the purposes of the Panel Agreement or a Purchase Order Contract; or
- (g) if such information is in the public domain other than by reason of a breach of this clause by the other Party.

To the extent that a Party may disclose such information to a third party under this clause, that Party must, before disclosing that information, ensure that the third party is bound by similar confidentiality obligations as contained in this clause 21.1.

Neither Party shall use or allow for publication or broadcasting any information concerning the Project or the Services in any media without the written approval of the other Party. Each Party shall refer to the other Party any enquiries concerning the Project from any media.

This clause 21.1 survives the expiry or termination of the Panel Agreement and any Purchase Order Contract, regardless of the cause of that expiry or termination.

21.2 CONFLICT OF INTEREST

The Service Provider warrants that as at:

- (a) the Date of the Panel Agreement; and
- (b) the date that a Purchase Order is issued,

the Service Provider does not have an interest or duty which conflicts or may conflict with any interest of Essential Energy ("**Conflict of Interest**") and is not aware of any Conflict of Interest which may arise.

If the Service Provider becomes aware of a Conflict of Interest or a potential Conflict of Interest, the Service Provider must notify Essential Energy in writing as soon as possible in the circumstances.

22. LIMITATION OF LIABILITY

22.1 LIMITATION OF LIABILITY

Subject to clause 22.2 below, the Service Provider's maximum aggregate liability to Essential Energy under all Purchase Order Contracts created in a Relevant Period is limited to ten million dollars, unless otherwise set out in the RFQ the subject of the relevant Purchase Order Contract.

22.2 EXCEPTIONS

Clause 22.1 does not apply to the Service Provider's liability:

- (a) in respect of any liability under clause 7.1(c) or 7.1(d);
- (b) in respect of the Service Provider's failure to effect and maintain insurance in accordance with clause 7.2;

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- (c) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Service Provider, under insurances required by these General Conditions or a Purchase Order Contract in respect of that liability;
- (d) in respect of a breach by the Service Provider of clause 10;
- (e) in respect of any liability under clause 10.3; or
- (f) arising out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence.

23. EXCLUSION OF CONSEQUENTIAL LOSS

23.1 EXCLUSION OF CONSEQUENTIAL LOSS

Despite any other provision of these General Conditions or a Purchase Order Contract to the contrary, but subject to 23.2, to the extent permitted by law, neither Party is liable to the other Party whether under, arising out of or in any way connected with these General Conditions or a Purchase Order Contract, without limitation, by way of indemnity, for breach of contract, in tort (including negligence), in equity, under statute or otherwise for any:

- (a) loss of profit;
- (b) anticipated loss of profit;
- (c) loss of production;
- (d) loss of opportunity;
- (e) loss of use; or
- (f) indirect, special loss or damage.

23.2 EXCEPTIONS

Clause 23.1 does not apply to:

- (a) the Service Provider's liability:
 - (i) in respect of any liability under clause 7.1(c) or 7.1(d);
 - (ii) in respect of the Service Provider's failure to effect and maintain insurance in accordance with clause 7.2;
 - (iii) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Service Provider, under insurances required by these General Conditions or a Purchase Order Contract in respect of that liability;
 - (iv) in respect of a breach by the Service Provider of clause 10;
 - (v) in respect of any liability under clause 10.3; or
 - (vi) to the extent that such liability arises out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence; or

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- (b) Essential Energy's liability to the extent that such liability arises out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence of Essential Energy or its employees or agents.

24. GENERAL

24.1 NOTICES

Any notice to be given or served under or in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract must be in writing and delivered by hand, in the ordinary mail or email at the address stated in Schedule 1 of the Panel Agreement (in the case of the Service Provider) or in the relevant RFQ (in the case of Essential Energy) except in the case of notices to be given or served under or in connection with clause 15 or 16 in which case such notices must be delivered by registered mail to the address stated in Schedule 1 of the Panel Agreement (in the case of the Service Provider) or in the relevant RFQ (in the case of Essential Energy).

A notice sent by ordinary or registered mail to:

- (a) an address in Australia within the same city or town is taken to have been received 4 Business Days after the date on which the notice was posted;
- (b) an address in Australia outside of the same city or town is taken to have been received 6 Business Days after the date on which the notice was posted; and
- (c) an address outside Australia is taken to have been received 7 Business Days after the date on which the notice was posted.

The Service Provider, Essential Energy and Essential Energy's Representative must each notify the others in writing of any change of contact details.

A notice sent by email is taken to have been received on the day it is sent if sent before 4pm on a Business Day and on the next Business Day if sent after 4pm. An email is not taken to have been received if the sender's computer reports that the message has not been delivered or if it is not received in full and legible form and the addressee notifies the sender of that fact within 6 hours after the transmission ends or by 12 noon on the Business Day on which it would be otherwise treated as given or received, whichever is later.

24.2 GOVERNING LAW

The law governing the Panel Agreement and any Purchase Order Contract is the law of New South Wales.

24.3 ENTIRE AGREEMENT

The Panel Agreement, these General Conditions and any Purchase Order Contract contains the entire agreement and understanding between the Parties on everything connected with the subject matter of the Panel Agreement and the relevant Purchase Order Contract.

24.4 WAIVER

The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

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Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given and only if given in writing.

24.5 SEVERABILITY

The Parties agree that a construction of the Panel Agreement, these General Conditions and any Purchase Order Contract that results in all provisions being enforceable is to be preferred. If a part of these General Conditions or a Purchase Order Contract is illegal or unenforceable or otherwise invalid, then such invalidity will not affect the validity of any other part of these General Conditions and a Purchase Order Contract except to the extent made necessary by such invalidity.

24.6 INDEMNITIES

The indemnities in these General Conditions and any Purchase Order Contract are continuing, separate and independent obligations and survive termination.

24.7 PERSONAL PROPERTY SECURITIES ACT

A term defined in the PPS Law has the same meaning when used in this clause.

Essential Energy may, by notice to the Service Provider at any time, require the Service Provider to take all steps, provide information (including serial numbers) or do any other thing that Essential Energy considers necessary or desirable to:

- (1) ensure that these General Conditions and any Purchase Order Contract (or any related document) or any security interest arising under either of them, is enforceable against the Service Provider or any third party;
- (2) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of Essential Energy under these General Conditions and any Purchase Order Contract (or any related document); or

overcome any defect or adverse effect arising from the PPS Law on Essential Energy's security position or the rights or obligations of Essential Energy under or in connection with these General Conditions and any Purchase Order Contract or any encumbrance or document contemplated by these General Conditions and any Purchase Order Contract.

24.8 REPRESENTATIONS

Each Party has entered into the Panel Agreement and any Purchase Order Contract without relying on the representation by any other Party or any person purporting to represent that Party, provided that such representation was not fraudulent, misleading or deceptive. If any representation was made by a Party to another Party, the other Party must ensure that representation is reflective of or included in (as applicable) the terms of the Panel Agreement or any Purchase Order Contract, and seek independent legal advice as required to confirm the foregoing.

25 SMALL BUSINESS CONTRACTS

If a Purchase Order Contract constitutes a "small business contract" within the meaning of the Australian Consumer Law (at Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) these General Conditions are amended as follows:

- (a) clause 2.6A is amended to read as follows:
 - (a) The Service Provider acknowledges that:
 - (i) amendments or updates may be made by Essential Energy to these General Conditions from time to time and posted on Essential Energy's website (or otherwise notified by Essential Energy to the Service Provider); and

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- (ii) any amendment or update to these General Conditions will only apply to a Purchase Order Contract that is created after the amendment or update has been posted on Essential Energy's website (or otherwise notified by Essential Energy to the Service Provider) (**Date of Amendment**).
- (b) If the Service Provider, acting reasonably, disagrees with any amendment or update made to these General Conditions under clause 2.6A(a):
 - (i) the Service Provider must notify Essential Energy in writing of the amendment or update to which it objects, and the parties will endeavour to negotiate, in good faith, the relevant amendment or update (**Amendment Dispute**); and
 - (ii) notwithstanding clauses 2.5 and 2.6, whilst an Amendment Dispute is on foot, unless the parties agree otherwise in writing:
 - (A) no Purchase Order Contract between Essential Energy and the Service Provider will be deemed to have been created under clause 2.5 in respect of any Purchase Order issued by Essential Energy to the Service Provider between the Date of Amendment and the date the Amendment Dispute is resolved; and
 - (B) Essential Energy may, in its sole discretion, withdraw any Purchase Order it issues to the Service Provider between the Date of Amendment and the date the Amendment Dispute is resolved, in which case no Purchase Order Contract will be deemed to have been created under clause 2.5 in respect of that Purchase Order even following the resolution of the Amendment Dispute.
- (b) the first paragraph of clause 5.1 is amended to read as follows:
Should either Party encounter any discrepancies, contradictions, omissions, ambiguity, errors, faults or inconsistencies in or between any documents comprising a Purchase Order Contract ("**Discrepancy**"), it must promptly notify the other Party in writing.
- (c) clause 5.3 is amended to read as follows:

Except in respect of those documents identified in the relevant item in the relevant RFQ (if any), information or documents of any nature provided by or on behalf of Essential Energy to the Service Provider at any time, whether before or after the Date of the Panel Agreement (other than the Contract Documents and notices issued by Essential Energy or Essential Energy's Representative under a Purchase Order Contract) were furnished and are furnished to the Service Provider for its convenience only and to the extent permitted by law, were not and are not guaranteed whether in terms of their accuracy or otherwise.

Any document supplied by Essential Energy to the Service Provider remains (as between Essential Energy and the Service Provider) the property of Essential Energy and must be returned to Essential Energy upon request. The Service Provider may keep one copy of any such document for its own records.
- (d) clause 8.2(b) is amended to read as follows:

Approval to subcontract must not be unreasonably withheld but may be conditional upon the subcontract including:
 - (i) provision that the sub-consultants or subcontractors shall not assign, novate or subcontract without the consent in writing of the Service Provider;

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- (ii) any provision which may reasonably be necessary to enable the sub-consultant or subcontractor to fulfil the Service Provider's obligations to Essential Energy; and
- (iii) requirements for collateral warranty deeds (including a deed proposed by Essential Energy).

- (e) clause 12.1 is amended to read as follows:

The Service Provider shall proceed with the Services with due expedition and without delay and within any times set out in these General Conditions or in a Purchase Order Contract.

If the Service Provider becomes aware of any event or circumstance which is causing or is likely to cause delay or disruption to the Services, the Service Provider shall provide Essential Energy with written notice of the cause and estimated length of the delay within 7 days of becoming aware of the cause.

Subject to having given notice under the preceding paragraph of this clause 12.1, if the Service Provider is or will be delayed in carrying out the Services by a cause beyond the reasonable control of the Service Provider, the time for carrying out the Services shall be extended by the extent of the delay as reasonably assessed by the Essential Energy's Representative.

- (f) clause 12.3 is amended to read as follows:

Essential Energy's Representative may at any time and for any reason suspend the whole or any part of the Services by written notice to the Service Provider. In such event, the Service Provider must not recommence work on the whole or on the relevant part of the Services until Essential Energy's Representative by written notice, directs the Service Provider to do so.

If costs and expenses arising from a suspension under this clause 12.3 have not been agreed in advance and if the event giving rise to the direction to suspend was not caused or contributed to by the Service Provider, then Essential Energy shall pay the Service Provider the additional costs and expenses reasonably and necessarily incurred by the Service Provider as a result of the suspension (as determined by Essential Energy's Representative, acting reasonably).

- (g) clause 15.5 is amended to read as follows:

Notwithstanding any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, if Essential Energy:

- (a) terminates the Panel Agreement or a Purchase Order Contract or both for whatever reason (including for its convenience) or engages others to carry out or itself carries out any part or the whole of the remaining Services, Essential Energy may without payment of compensation to the Service Provider (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or the relevant Purchase Order Contract) take possession of all documents (including design documentation), information and the like in the Service Provider's possession which is connected with the Services and reasonably required by Essential Energy to facilitate completion of the Services; and
- (b) exercises any of its rights under clause 15.3, 15.4 or 15.9, Essential Energy may without payment of compensation to the Service Provider (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or the relevant Purchase Order Contract) take an assignment of the Service

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Provider's rights and benefits under any contracts with subcontractors or sub-consultants, including any warranties and guarantees, that are related to the Services. The Service Provider must do all things necessary to effect such an assignment.

- (h) clause 15.10 is amended to read as follows:

A Party may at any time, for its sole convenience and without cause, terminate a Purchase Order Contract by providing written notice to the other Party of an amount equal to 14 days. Where Essential Energy terminates a Purchase Order Contract under this clause 15.10, Essential Energy will pay the Service Provider the amounts specified in clause 15.8, and where the Service Provider terminates a Purchase Order Contract under this clause 15.10, the Service Provider must reimburse Essential Energy for any part of the Purchase Order Fee(s) paid by Essential Energy to the Service Provider relating to any part of the Services not performed.

- (i) clause 17 is amended to read as follows:

Where the Service Provider proposes to make a Claim against Essential Energy, the Service Provider must give to Essential Energy:

- (a) a written notice not later than 28 days after the Service Provider first knew, or ought to have known, about the circumstances on which the Claim is based, that it intends to make a Claim; and
- (b) a further written notice within 28 days of the notice under clause 17(a) providing detailed particulars of the basis for and the quantification of the Claim sufficient to enable Essential Energy to make an informed assessment of the merits of the Claim,

Updates of the information required in the notice under clause 17(b) for a Claim based on ongoing events or circumstances shall be submitted by the Service Provider to Essential Energy at weekly intervals until the events or circumstances have ceased.

- (j) clause 20 is amended to read as follows:

The Parties agree that 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 Service Provider under or in any way in connection with the Panel Agreement or a Purchase Order Contract with respect to the apportionment of any liability (whether arising in contract, tort, or otherwise) as between the Service Provider and any of its employees, subcontractors, sub-consultants and agents.

26. SUSTAINABILITY

26.1 CONDUCT AND DIVERSITY

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

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- (B) have regard to Essential Energy's Sustainability Strategy (available on Essential Energy's website).
- (b) The Service Provider must:
 - (i) treat its Personnel with respect and dignity; and
 - (ii) use best endeavours to:
 - (A) 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;
 - (B) promote pay equality, diversity and inclusion (including through training and awareness initiatives or programs to recruit and develop diverse talent);
 - (C) provide a work environment free of discrimination, harassment, intimidation and bullying; and
 - (D) protect Personnel in raising concerns about business conduct.

26.2 ENVIRONMENT

- (a) In performing its obligations under the Panel Agreement and a Purchase Order Contract, the Service Provider must:
 - (i) to the extent reasonably possible, minimise the use of hazardous substances and materials;
 - (ii) make reasonable efforts to:
 - (A) reduce waste generated, energy consumption and any other potentially adverse impacts of its activities on biodiversity and natural capital;
 - (B) use environmentally friendly materials, packaging and transportation; and
 - (C) meet industry best practices and standards in relation to the monitoring and reporting of energy use and greenhouse gas emissions; and
 - (iii) 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 Panel Agreement and a Purchase Order Contract, 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.
- (b) The Service Provider must review and report to Essential Energy on opportunities to improve environmental sustainability outcomes over the Term, if and as such opportunities arise. The Service Provider must utilise such opportunities when directed by Essential Energy to do so, subject to the Parties agreeing any reasonable amendments to the fees and payment arrangements directly associated with the relevant opportunities.
- (c) The Service Provider must provide to Essential Energy such information and written documentation, as may be required by Essential Energy from time to time, to verify and evaluate the Service Provider's compliance with this clause 26.2, including in respect of the Service Provider's sustainability efforts related to the reuse and recycling of items or materials (or any components of any of them).

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26.3 MODERN SLAVERY

- (a) The Service Provider must not (and must take reasonable steps to ensure that any entity it owns or controls or which is in the Service Provider's supply chain do not) engage in any Modern Slavery Practice or undertake any other act which could constitute an offence involving Modern Slavery.
- (b) The Service Provider warrants, at all times, that:
 - (i) it is not aware (including through the making of reasonable inquiries) of any circumstance within its operations or supply chains (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of an offence involving Modern Slavery; and
 - (ii) to the best of its knowledge and belief, having made reasonable enquiries, neither it nor any related entity or any entity in the Service Provider's supply chain has been convicted of any offence involving Modern Slavery.
- (c) The Service Provider must:
 - (i) conduct, and ensure each entity it owns or controls or which is in the Service Provider's supply chain conducts, business in a manner so as to reduce the risk of Modern Slavery in their respective operations and supply chains;
 - (ii) as appropriate, develop and maintain policies and procedures, and implement due diligence processes and training for Personnel, to avoid engaging (whether directly or indirectly) in Modern Slavery;
 - (iii) comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws;
 - (iv) promptly upon Essential Energy's request, provide Essential Energy with a copy of any statement or report the Service Provider is required to prepare under any Modern Slavery Law;
 - (v) comply with any reasonable policies, procedures, investigations or additional conditions relating to Modern Slavery notified by Essential Energy to the Service Provider from time to time during the Term;
 - (vi) promptly provide Essential Energy with all Information required for Essential Energy to comply with Essential Energy's reporting obligations under the Modern Slavery Laws; and
 - (vii) notify Essential Energy promptly upon becoming aware of any complaint or allegation that the Service Provider, or any related entity or entity in the Service Provider's supply chain, has engaged in Modern Slavery and take reasonable steps to respond to the complaint or allegation, including in accordance with any internal Modern Slavery strategy and procedures of the Service Provider and any relevant code of practice or conduct or other guidance issued by the Anti-slavery Commissioner. The Service Provider must notify Essential Energy in writing of the action it is taking to address the complaint or allegation, which must be satisfactory to Essential Energy (acting reasonably).
- (d) If the Service Provider subcontracts any of its obligations (including any part of the Services) in accordance with these General Conditions and Essential Energy notifies the Service Provider that it requires the following to be complied with in respect of a particular subcontractor, the Service Provider must:

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- (i) implement an appropriate system of due diligence which ensures the subcontractor takes reasonable steps to reduce the risk of Modern Slavery in the subcontractor's supply chains and in any part of the subcontractor's business or operations; and
 - (ii) include in the relevant subcontract provisions that are reasonably consistent with the provisions of this clause 26.3, having regard to the nature and origin of the procurement.
- (e) In addition to any other right or remedy of Essential Energy, Essential Energy may, in its sole discretion, terminate the Panel Agreement or a Purchase Order Contract or both, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Service Provider under the relevant Purchase Order Contract and unpaid up until the date of termination), if the Service Provider breaches any Modern Slavery Law or if the Service Provider, or any entity that it owns or controls, commits an offence involving Modern Slavery.

26.4 SUSTAINABILITY PERFORMANCE REGIME

- (a) This clause 26.4 applies to a Purchase Order Contract if the parties agree:
- (i) any 'Key Performance Indicators' relating to Essential Energy's Sustainability Strategy (available on Essential Energy's website) that the Service Provider is required to achieve; and
 - (ii) the methodology and frequency for the assessment of those Key Performance Indicators,
- under a Purchase Order Contract (**Sustainability Performance Regime**).
- (b) The parties agree that:
- (i) the Sustainability Performance Regime will facilitate compliance with Essential Energy's Sustainability Strategy (available on Essential Energy's website); and
 - (ii) Essential Energy will assess the Service Provider's compliance with each Key Performance Indicator in accordance with the methodology, and at the frequency, agreed by the parties under clause 26.4(a)(ii).
- (c) The Service Provider's failure to achieve:
- (i) a Key Performance Indicator on two (2) or more occasions; or
 - (ii) two (2) or more different Key Performance Indicators,
- in accordance with the Sustainability Performance Regime will constitute a substantial breach of the relevant Purchase Order Contract.
- (d) The Service Provider must keep sufficient records of its performance as against each Key Performance Indicator to enable Essential Energy to assess the Service Provider's compliance with each Key Performance Indicator, and the Service Provider must provide such records to Essential Energy within 5 Business Days of a written request from Essential Energy.

26.5 NO DEROGATION

For the avoidance of doubt, nothing in this clause 26 derogates from the Service Provider's other obligations or liabilities arising under the Panel Agreement or a Purchase Order Contract, and the obligations or liabilities in this clause 26 are in addition to the Service Provider's obligations and liabilities set out in any other document comprising the Panel Agreement or a Purchase Order Contract.

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26.6 DEFINITIONS

In this clause 26:

- (a) any word, expression, reference or term used in this clause 26 which is defined in clause 1.2 and is not specifically defined in this clause 26 shall, unless the context otherwise indicates, have in this clause 26 the same meaning as in clause 1.2; and
- (b) each term set out below has the meaning given to it in this clause 26.6(b):
 - (i) **Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).
 - (ii) **Information** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the Privacy Act or information which tends to identify individuals.
 - (iii) **Key Performance Indicator** means a Key Performance Indicator agreed by the parties in respect of a Purchase Order Contract under clause 26.4(a)(i).
 - (iv) **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.
 - (v) **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, as in force and updated from time to time.
 - (vi) **Modern Slavery Practice** includes any one or more of the following:
 - (A) using any form of forced, imprisoned, indentured, bonded, or involuntary labour, child labour or deceptive recruitment practices;
 - (B) requiring Personnel to work more than the local legal limits on regular and overtime hour;
 - (C) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of Personnel or any potential Personnel;
 - (D) denying Personnel the right to freely associate and collectively bargain within the boundaries of applicable laws;
 - (E) save where required by law, paying wages to any individual other than Personnel;
 - (F) providing wages and benefits which contravene applicable laws; and
 - (G) if any Personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.
 - (iii) **Personnel** means the Service Provider's officers, employees, subcontractors, consultants and all personnel of subcontractors and consultants within the contractual chain.

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(vii) **Sustainability Performance Regime** has the meaning given to it in clause 26.4(a).

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SCHEDULE 1

Combined Subcontractor's Statement and Supporting Statement

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor" and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

The Contractor is both a "head contractor" in terms of the *Building and Construction Industry Security of Payment Act 1999*, and a "subcontractor" in terms of the *Workers Compensation Act 1987*, *Payroll Tax Act 2007* and *Industrial Relations Act 1996*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Relevant legislation includes *Workers Compensation Act 1987*, s175B; *Payroll Tax Act 2007*, Schedule 2 Part 5; *Industrial Relations Act 1996*, s127; and *Building and Construction Industry Security of Payment Regulation 2008*, cl 4A.

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

Main Contract

Contractor: _____ ABN: _____

 _____ (Business name of the Contractor)
 of _____
 _____ (Address of the Contractor)
 has contract with _____ entered into _____ a _____ (Business
 name of the Principal) ABN: _____ **(Note 2)**
 Contract number/identifier _____ **(Note 3)**

Subcontracts

The Contractor has entered into contracts with the subcontractors listed in the attachment to this Statement.

Period

This Statement applies for work between: _____ and _____ inclusive, subject of the payment claim
 dated: _____ **(Note 5(Note) 4)**

I, _____ a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

(a) period of this contract. Tick ☐ The abovementioned Contractor has either employed or engaged workers or subcontractors during the above if true and comply with (b) to (h) below, as applicable. If it is not the case

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(Note 6) that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete (e) to (h) below. You must mark one box.

- (b) the contract have been paid. The Certificate of Currency for that insurance is attached and is dated . All workers compensation insurance premiums payable by the Contractor in respect of the work done under **(Note 7)**
- (c) paid. All remuneration payable to relevant employees for work under the contract for the above period has been **(Note 8)**
- (d) Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as

Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the

(Note 9) required at the date of this statement.

- (e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the **(Note 10)** Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.
- (f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).
- (g) The Contractor is complying with the requirements of clauses 33.8 to 33.11 (as applicable) and has deposited all cash security and retention moneys held under Subcontracts into a trust account.
- (h) Signature _____ Full name _____
- (i) Position/Title _____ Date _____

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

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Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the subcontractor) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration as 'remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.' Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

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Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if: (a) the person is the subcontractor;

- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

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SCHEDULE 2

REQUEST FOR QUOTATION (RFQ)

RFQ NO. [INSERT – INCLUDING REFERENCE TO PANEL NUMBER]

Date:

Essential Energy (ABN 37 428 185 226) a statutory state owned corporation established by the *State Owned Corporations Act 1989* (NSW) and constituted by the *Energy Services Corporations Act 1995* (NSW) of PO Box 5730, Port Macquarie, NSW, 2444 ("**Essential Energy**") requires each entity that receives this RFQ to provide a Quotation in response to this RFQ within **[insert]** Business Days, in accordance with the Panel Agreement and associated General Conditions. In preparing the Quotation, the Service Provider must have regard to the information and details contained in this RFQ.

Capitalised terms used in this RFQ, which are not otherwise defined in this RFQ, have the meaning given to them in the Panel Agreement for the **[insert panel name and number]** and associated General Conditions.

The Service Provider acknowledges that:

- (1) Essential Energy may issue to any number of third parties requests for quotations in respect of the services the subject of this RFQ;
- (2) Essential Energy does not, by inviting a Quotation from the Service Provider bind itself to issuing a Purchase Order or accepting the Service Provider's Quotation;
- (3) if Essential Energy does not issue a Purchase Order in respect of the services the subject of this RFQ, such services shall not form a part of any services to be undertaken pursuant to any agreement between Essential Energy and the Service Provider and the Service Provider shall not be entitled to any payment for or in connection with the same, and releases and discharges Essential Energy from any Claim it has or may have against Essential Energy arising out of or in connection with this RFQ, the Service Provider's Quotation and Essential Energy's assessment and determination of the same (this provision is without limitation to any Claim the Service Provider is expressly entitled to make against Essential Energy under any Purchase Order Contract created with respect to this RFQ); and
- (4) Essential Energy does not guarantee and makes no representation that the Service Provider will have an opportunity to perform any services under or in connection with this RFQ.

The Service Provider's Quotation should be required to Essential Energy marked to the attention of **[insert EE contact person]**

Details

1.	Contract Documents	Clause 1.2	1.	Panel Agreement;
			2.	Special Conditions to this RFQ;
			3.	General Conditions (including Schedules);
			4.	[insert other]
2.	Essential Energy's	Clause 1.2	[insert]	

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	Representative		
3.	Project	Clause 1.2	<i>[insert description]</i>
4.	Site	Clause 1.2	<i>[insert]</i>
5.	Services	Clause 1.2	<i>[insert description, including attachment if necessary]</i>
6.	Services to be performed in stages?	Clause 3	<i>[insert Yes or No. If Yes, then insert stages.]</i>
7.	Documents to be supplied by the Service Provider – number of copies	Clause 5.2	<i>[insert]</i>
8.	Documents furnished to the Service Provider by Essential Energy which are excepted from clause 5.3	Clause 5.3	<i>[insert]</i>
9.	Public Liability Insurance to be taken out by Service Provider	Clause 7.2	Clause 7.2 Amount: \$20,000,000 prior to commencing Services in respect of the first Purchase Order Contract until the completion of the Services in respect of the last Purchase Order Contract.
10.	Workers Compensation Insurance to be taken out by Service Provider	Clause 7.2	Clause 7.2 Amount: As per statutory requirements from the Date of the Panel Agreement to the completion of the Services under the last Purchase Order Contract.
11.	Professional Indemnity Insurance to be taken out by Service Provider covering the liability which the Service Provider might incur as a breach of its obligations under clause 4 or any other breach of a duty owed by the Service Provider in a professional capacity	Clause 7.2	Clause 7.2 Amount \$5,000,000 from Date of the Panel Agreement to six (6) years after the completion of the Services in respect of the last Purchase Order Contract.
12.	Other insurances to be taken out by Service Provider	Clause 7.2	<i>[insert]</i>
13.	Work which cannot be subcontracted without approval (maximum amount and or description)	Clause 8.2	<i>[insert]</i> (if nothing stated, all Services/work cannot be subcontracted without the approval of Essential Energy)
14.	The expenses and disbursements to be reimbursed to the Service Provider	Clause 13.1	<i>[insert]</i> [Nil of none stated]
15.	Service Provider to submit	Clause 13.2	[For example: The 25th day of each month, except in respect of

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- | | | | |
|-----|--|-------------|--|
| | payment claims | | December, which shall be the 15th day of the month] |
| 16. | Limitation of liability | Clause 22 | <i>[\$insert].</i>
[Clause 22 applies unless stated otherwise] |
| 17. | Essential Energy address and email for notices | Clause 24.1 | Address: <i>[insert]</i>
Email: <i>[insert]</i> |
| 18. | Other [if there are any details or variances from the Contract to be included, insert those here] | Clause 24.1 | <i>[insert]</i> |

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SPECIAL CONDITIONS

(Applying to any Purchase Order Contract under this RFQ)

1. ***[NOTE: ANY ADDITIONAL SPECIAL CONDITIONS THAT ARE NOT PURELY SCOPE RELATED WILL NEED TO BE CHECKED/SIGNED OFF BY LEGAL BRANCH BEFORE INCLUDING IN THE CONTRACT]***

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SCHEDULE 3

PURCHASE ORDER



ASME: AU 37425105225
 Vendor: 0000000000

Purchase Order No. 0000000000

Date	Revision	Page
06/30/2018		1
Freight Terms	Ship Via:	
Buyer	Phone	Currency
Ship To:	132255	ADD

Bill To: ACCOUNTS PAYABLE
 LOCKED BAG 25
 GRAPTON NSW 2460
 AUSTRALIA

Line Item	Item Description	Quantity	UOM	Unit Price	Extended Amt	Due Date
					Exclusive GST	

Sub Total:

Total GST:

Total PO Amount

Terms and Conditions:

Unless otherwise notified by Essential Energy in writing, Essential Energy's Standard Terms and Conditions for Supply of Goods and Services apply to this Purchase Order, a copy of which can be obtained from www.essentialenergy.com.au/procurement or by asking the Essential Energy contact specified in this Purchase Order, if any.