



ESSENTIAL ENERGY

Supply 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 Supplier's obligations under these General Conditions or a Purchase Order Contract are to be discharged by the Supplier 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 Supplier 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.
- (h) A promise on the part of two or more persons binds them jointly and severally.

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1.2 DEFINITIONS

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

“Approval” means any licence, permit, consent, approval, certification, authorisation or other requirement of any person, authority, body or other organisation having jurisdiction in connection with the work under a Purchase Order Contract and/or the Goods (including their use).

“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 work under a Purchase Order Contract or the Goods (including their use).

“Bank Guarantee” means an unconditional undertaking in a form and from a major Australian bank approved by Essential Energy.

“Best Industry Practice” means industry practices which optimise efficiency, durability and performance, and minimise Environmental impacts, and are consistent with internationally recognised standards, methods, acts and the most up-to-date local and overseas practices as would be used by leading, skilled and experienced suppliers and designers of work similar to the work under a Purchase Order Contract so as to satisfy the requirements of these General Conditions or a Purchase Order Contract.

“Business Day” means:

- (a) in the State of New South Wales, any day other than:
 - (i) a Saturday, Sunday or public holiday in the State of New South Wales; or
 - (ii) 27, 28, 29, 30 or 31 December; and
- (b) in the State of Queensland, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) the 22nd, 23rd, 24th, 27th, 28th, 29th, 30th, 31st day of December or the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th or 10th day of January; or
 - (iii) a public holiday, special holiday or bank holiday in Queensland under the Holidays Act 1983 (QLD).

“Change in Law” has the meaning given to that expression under clause 17.2.

“Claim” means any request, demand or entitlement in relation to, arising out of or in connection with these General Conditions, a Purchase Order Contract, the work under a Purchase Order Contract for payment,

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for an Extension of Time, for damages (whether under these General Conditions, 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(s) for Delivery” or “Date for Delivery” means, for each Purchase Order Contract, the date stated in the relevant RFQ or last day of the period stated in the relevant RFQ (as relevant) by which the Supplier shall Deliver the relevant Goods, as adjusted in accordance with the Purchase Order Contract.

“Date of Delivery” means, for each Purchase Order Contract, the date which Essential Energy’s Representative certifies as the date upon which all of the Goods are Delivered or where another date is determined under the process referred to in clause 27 or in any litigation proceedings as the date upon which Delivery was achieved, that date.

“day” means a calendar day.

“Defect” means any work that is not in accordance with a Purchase Order Contract (including omissions) for which the Supplier, its employees, sub-suppliers, subcontractors or agents are responsible.

“Defects Liability Period” means, in respect of each Purchase Order Contract:

- (a) the period commencing on the Date of Delivery and ending on the expiration of the period specified in the RFQ after the Date of Delivery (or if there are several such periods, the last to expire); and
- (b) in respect of Defect rectification work, any further period set under clause 19.2.

“Delivery” means the delivery of the Goods by the Supplier to the Place for Delivery (and the completion of other work under a Purchase Order Contract relevant to the Goods, except as applicable during the Defects Liability Period) and the acceptance of the same by Essential Energy, and **“Deliver”** and **“Delivered”** have a similar meaning.

“Environment” means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c), and **“Environmental”** has a similar meaning.

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“Essential Energy’s Project Requirements” means Essential Energy’s requirements for the work under a Purchase Order Contract and as more generally described in the documents attached at Schedule 2 of the Panel Agreement.

“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.

“Extension of Time” means an extension to the relevant Date(s) for Delivery.

“Force Majeure Event” means:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Supplier or its subcontractors, sub-suppliers or their employees or agents;
- (c) an Australia-wide or New South Wales-wide strike involving industry generally not caused or contributed to by the Supplier or its subcontractors, sub-suppliers, or their employees or agents; or
- (d) act of God or natural catastrophe, such as earthquake, hurricane, tsunami, typhoon or volcanic activity.

“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.

“Goods” means, in respect of each Purchase Order Contract, the item(s) and any associated goods, parts, services or equipment (including software) to be supplied by the Supplier to Essential Energy or to a person designated by Essential Energy, the general scope of which is described in Schedule 2 of the Panel Agreement and further defined in Essential Energy’s Project Requirements and the relevant RFQ.

“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:

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- (a) stated in these General Conditions (including in Essential Energy's Project Requirements) (if any); or
- (b) as could be reasonably inferred from what is stated in these General Conditions (including Essential Energy's Project Requirements).

"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 work under a Purchase Order Contract or any part thereof is being carried out;
- (b) Approvals; 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).

"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).

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

"Party" means a party to the Panel Agreement.

"Place for Delivery" means the place so described in an RFQ or as otherwise directed by Essential Energy.

"Program" means a program supplied by the Supplier under clause 20.2 and in respect of which Essential Energy's Representative notifies the Supplier it has no objection.

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

"Purchase Order" means a purchase order issued under clause 2.4 substantially in the form of Schedule 4.

"Purchase Order Acknowledgment" means an unconditional and unqualified written communication by the Supplier to Essential Energy acknowledging the receipt of, and agreeing to the terms of, a Purchase Order.

"Purchase Order Contract" means an agreement between Essential Energy and the Supplier created under clause 2.4.

"Purchase Order Price" means, in respect of each Purchase Order Contract:

- (a) where the Purchase Order provides that a lump sum amount is payable, the lump sum stated in the Purchase Order;

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- (b) where the Purchase Order provides that the Purchase Order Price is ascertained by application of the Schedule of Rates, the sum ascertained by calculating the products of the rates set out in the Schedule of Rates with the corresponding quantities ordered and Delivered in accordance with the Purchase Order Contract; or
- (c) where the Purchase Order provides that both a lump sum amount is payable and the Purchase Order Price is ascertained by application of the Schedule of Rates, the aggregate of the amounts referred to in paragraphs (a) and (b) above,

including provisional sums but excluding any additions or deductions which may be required to be made under the relevant Purchase Order Contract.

“**Quotation**” has the meaning given in clause 2.3.

“**RFQ**” has the meaning given in clause 2.2.

“**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.

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

“**Schedule of Rates**” means the schedule of rates (if any) which forms part of the relevant Purchase Order Contract in respect of the work under a Purchase Order Contract.

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

“**Site**” means, in respect of each Purchase Order Contract, the land so described in the relevant Purchase Order Contract, and any other place where the work under a Purchase Order Contract is to be performed.

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

“**Supplier**” means the Party so described in a Panel Agreement with Essential Energy.

“**Supplier’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.

“**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 work under a Purchase Order Contract, including an addition or omission in the scope, quality or character of the work under a Purchase Order Contract.

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

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

“**work under a Purchase Order Contract**” means, in respect of each Purchase Order Contract, the work and services which the Supplier is or may be required to execute under a Purchase Order Contract, including the Delivery of the Goods, Variations and temporary works.

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2. PROCUREMENT OF SUPPLY

2.1 GENERAL

Essential Energy has entered into the Panel Agreement with the Supplier for the Supplier to supply Goods and associated work or services the nature of which are described in the Panel Agreement.

The Supplier has represented to Essential Energy that it has the skill and expertise required to supply the Goods and perform various services and work in conjunction with the supply of the Goods.

The Parties have negotiated, and the Panel Agreement includes, terms and rates pursuant to which the Supplier is prepared to provide services and work to Essential Energy.

Essential Energy may at any time and from time to time during the Term request an RFQ and issue a Purchase Order for works and services in accordance with clause 2 of these General Conditions.

2.2 RFQ

The Goods to be supplied and the associated work or services which the Supplier has agreed to provide to Essential Energy are set out in Schedule 2 of the Panel Agreement.

If Essential Energy requires any of the Goods or associated work or services 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 Supplier a request for quotation (“**RFQ**”) substantially in the form set out in Schedule 3 setting out details of the Goods and/or the Project, the scope of services and work and other details relevant to a Purchase Order Contract in respect of which Essential Energy requires the Supplier to submit a Quotation.

Other than as expressly permitted under this clause 2, the Supplier must not undertake any work 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 Goods or associated work or services the subject of the RFQ are Goods, work or services which the Supplier has represented that it can provide (including in respect of the geographic location of the Goods, work or services), then within the time specified in the RFQ, or if no time is specified, within 5 Business Days of receipt of the RFQ, the Supplier 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 supply of the Goods and/or the Project, or works or services 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 Supplier 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 Supplier a Purchase Order in respect of the supply of the Goods or associated work or services the subject of the RFQ.

The Purchase Order Price 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 to the Supplier, be deemed to create a separate contract between Essential Energy and the Supplier (referred to in these General Conditions as a Purchase Order Contract) comprising:

- (a) any Special Conditions;
- (b) these General Conditions (including Schedules but not including clause 2) 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 Supplier:

- (e) the Supplier must carry out the work under the relevant Purchase Order Contract in accordance with the Purchase Order Contract;
- (f) Essential Energy must pay to the Supplier the Purchase Order Price, subject to and in accordance with the Purchase Order Contract; and
- (g) each of Essential Energy and the Supplier 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 Supplier must issue to Essential Energy (marked to the attention of the contact person named in the relevant RFQ) a Purchase Order Acknowledgement in respect of such Purchase Order.

The Parties acknowledge and agree that a failure by the Supplier 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 Supplier 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 Supplier).

2.7 ACKNOWLEDGMENTS

The Supplier acknowledges that:

- (a) Essential Energy will be under no obligation to issue an RFQ to the Supplier;
- (b) Essential Energy may issue to any number of third parties requests for quotation in respect of the supply of the Goods or associated work or services 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 suppliers to provide services or work for that Project.

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- (d) Essential Energy does not, by inviting a Quotation from the Supplier bind itself to issuing a Purchase Order to the Supplier or accepting the Supplier'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 these General Conditions and the Supplier shall not be entitled to any payment for or in connection with the same under these General Conditions;
- (f) if Essential Energy does not issue a Purchase Order in respect of the supply of the Goods or associated work or services the subject of an RFQ pursuant to this clause 2, the Supplier 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 Supplier 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 Supplier other than as expressly set out in a Purchase Order Contract.

3. THE SUPPLY

3.1 PERFORMANCE OF THE SUPPLY

The Supplier must supply the Goods and carry out the work under a Purchase Order Contract in a proper and workmanlike manner to the satisfaction of Essential Energy and in accordance with Best Industry Practice, in accordance with all Laws (including so as to ensure that the Goods on Delivery comply with all Laws) and otherwise in accordance with the requirements of the Panel Agreement, these General Conditions and each Purchase Order Contract.

Without limiting the above, the Supplier shall:

- (a) except where the Panel Agreement, these General Conditions or a Purchase Order Contract states the required times, give reasonable advance notice in writing to Essential Energy of when the Supplier reasonably requires from Essential Energy any information, materials, plant, equipment or other things Essential Energy is expressly required under these General Conditions or a Purchase Order Contract to provide to the Supplier;
 - (b) inspect and check any materials, plant, equipment and other things supplied by Essential Energy with respect to the work under a Purchase Order Contract and advise Essential Energy promptly after receipt of any such materials, plant, equipment or other things which do not comply with the requirements of these General Conditions or a Purchase Order Contract;
 - (c) promptly provide all information Essential Energy may request regarding the performance of the work under a Purchase Order Contract, including the preferred sequence and interface of activities, details of proposed labour, resources, materials, plant and equipment and all other matters relevant to the work under a Purchase Order Contract;
 - (d) attend meetings as required by Essential Energy; and
 - (e) ensure that Essential Energy, Essential Energy's Representative and other persons authorised by Essential Energy have access at all reasonable times to the Goods and the work under a Purchase Order Contract at any place where the Goods or work under a Purchase Order Contract is performed or stored.
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3.2 SCHEDULE OF RATES

This clause shall only apply where a Schedule of Rates forms part of a Purchase Order Contract.

Essential Energy's Representative is entitled to use the Schedule of Rates for the purposes of assisting Essential Energy's Representative in the valuation of any payment claim.

To the extent that the Purchase Order Price is ascertained by utilising the Schedule of Rates:

- (a) the Supplier shall have no Claim against Essential Energy, including any consultant of Essential Energy or Essential Energy's Representative, with respect to any incorrect quantity included in the Schedule of Rates or any item which should not have been included or the omission of an item which should have been included.
- (b) where any item in the Schedule of Rates is not priced by the Supplier or where an item has been omitted from the Schedule of Rates, the Supplier shall be deemed nevertheless to have allowed for whatever remuneration it required or may require for such items within the rates or prices for other items which it priced in the Schedule of Rates.

Each item in the Schedule of Rates shall, without limiting the above, be deemed to include:

- (c) labour and all costs and on-costs in connection therewith;
- (d) materials and goods, and all costs in connection with handling, conveyance, delivery, unloading, storing, returning, packaging, hoisting and the like;
- (e) waste of material; and
- (f) establishment costs, overhead costs and profit.

4. ACCESS TO THE PLACE FOR DELIVERY AND SITE

4.1 ACCESS

Unless Essential Energy's Representative directs otherwise, the Supplier must only access the Place for Delivery and the Site (where it is necessary for the purpose of rectifying Defects) after having given prior notice to Essential Energy, and then during the hours and on the days provided for in the relevant RFQ.

Notwithstanding the above, if the Supplier has not complied with its obligations under clause 10.2 (if any), Essential Energy may refuse to give the Supplier access to the Place for Delivery and the Site until the Supplier complies with the requirements of that clause.

The Supplier shall at all times be responsible for:

- (a) the means and methods of access to and from the Place for Delivery and the Site; and
- (b) to the extent required to carry out the work under a Purchase Order Contract, obtaining all consents, permits and agreements from all adjoining land owners relating to access and use.

The Supplier must comply, and must ensure that its employees, subcontractors, sub-suppliers and agents comply, with all conditions and restrictions applying to the use or occupation of the Place for Delivery and the Site and any adjoining land and the performance of any work on the Place for Delivery and the Site.

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4.2 CO-ORDINATION

The Supplier acknowledges that Essential Energy and others may be carrying out work or performing activities on or about the Place for Delivery and the Site at the same time as the Supplier is accessing the Place for Delivery or the Site (if at all) and that the Supplier will co-ordinate the work under a Purchase Order Contract with the work and activities being carried out by any other entity on the Place for Delivery or the Site.

5. WARRANTIES**5.1 SUPPLIER WARRANTIES**

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

- (a) it has thoroughly examined all the Contract Documents and all other information or documentation made available to it by Essential Energy prior to entering into these General Conditions and prior to the issue of the relevant Purchase Order and has obtained all other information necessary to complete the work under a Purchase Order Contract;
- (b) it at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under a Purchase Order Contract;
- (c) on delivery, the Goods shall be new and 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;
- (d) all materials, machinery, apparatus, goods, equipment and other items supplied or used by it in the execution of the work under a Purchase Order Contract (other than the Goods) will be suitable for the purpose for which they are used;
- (e) the work under a Purchase Order Contract 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;
- (f) all registrations, permits, licences, qualifications and other requirements of its trade are in full force and effect at all relevant times;
- (g) upon Delivery to Essential Energy the Goods shall be free of all liens, charges and other encumbrances; and
- (h) it is a GST registered entity.

5.2 DIRECT WARRANTIES

Without limiting the Supplier's other obligations under this clause 5, if and to the extent specified in the relevant Purchase Order Contract, the Supplier must use its best endeavours to obtain warranties on the best commercial terms available for all materials, equipment and work from or performed by its sub-suppliers who manufacture or supply the materials or equipment, such warranties to be in favour of Essential Energy and any other beneficiary identified by Essential Energy.

6. DESIGN

The Supplier:

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- (a) must, without limiting any other provision of these General Conditions, prepare all detailed design which Essential Energy reasonably considers is necessary for the completion of the work under a Purchase Order Contract;
- (b) warrants, in addition to and without limiting any other warranty given by the Supplier pursuant to these General Conditions or a Purchase Order Contract, that the design of the Goods and the Goods themselves when Delivered will be:
 - (i) fit for their Intended Purpose;
 - (ii) free from design errors or Defects; and
 - (iii) compliant with the requirements of these General Conditions and each Purchase Order Contract.

Any review, comment or approval (or failure to do so) by Essential Energy's Representative of any design documentation supplied by the Supplier will not relieve the Supplier from or alter any of its obligations and liabilities under these General Conditions or a Purchase Order Contract (including the responsibility for those documents).

7. DOCUMENTS

7.1 DISCREPANCIES

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

Essential Energy's Representative will (acting reasonably), by direction to the Supplier, resolve any Discrepancy as follows:

- (a) where the Discrepancy is in relation to the standard or quality required in the work under a Purchase Order Contract, Essential Energy's Representative shall adopt the higher quality or standard;
- (b) where clause 7.1(a) does not apply, Essential Energy's Representative shall apply the order of precedence set out in the relevant Purchase Order Contract; and
- (c) where clauses 7.1(a) and 7.1(b) do not apply, Essential Energy's Representative shall make a determination based on the Parties' intentions which can be ascertained from these General Conditions or the relevant Purchase Order Contract.

The Supplier must comply with a direction of Essential Energy's Representative under this clause 7.1 as to the interpretation to be adopted in resolving the Discrepancy. If the direction causes the Supplier to incur more or less cost than the Supplier could have anticipated at the date of any Purchase Order Contract, the difference shall be valued under clause 14.3.

Notwithstanding clauses 7.1(a) to 7.1(c):

- (d) where the Discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail; and
- (e) where:
 - (i) Essential Energy's Project Requirements; or

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- (ii) any document attached to these General Conditions or any Purchase Order Contract which has been prepared by the Supplier,

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

- (iii) the relevant right or entitlement is also contained in these General Conditions; and
- (iv) the Supplier has satisfied any pre-conditions to that right or entitlement set out in these General Conditions.

7.2 SUPPLY OF DOCUMENTS BY THE SUPPLIER

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

If the Supplier 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 7.2(a), any acknowledgement or approval by Essential Energy shall not prejudice the Supplier's obligations.

Without limiting the above, the Supplier must give Essential Energy all warranties, guarantees, operating manuals, maintenance manuals, drawings and other documents or information applicable to the work under a Purchase Order Contract which are required by these General Conditions within 14 days prior to and as a precondition to Delivery.

7.3 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 Supplier at any time, whether before or after the Panel Agreement (other than the Contract Documents, a Purchase Order and notices issued by Essential Energy or Essential Energy's Representative under these General Conditions or a Purchase Order Contract) were furnished and are furnished to the Supplier 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 Supplier 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 Supplier 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 Supplier remains (as between Essential Energy and the Supplier) the property of Essential Energy and must be returned to Essential Energy upon request. The Supplier may keep one copy of any such document for its own records.

8. ADMINISTRATION AND PERSONNEL

8.1 ESSENTIAL ENERGY'S REPRESENTATIVE

Essential Energy's Representative:

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- (a) will give directions and at all times carry out its functions under the Panel Agreement, these 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 Supplier, be replaced from time to time by Essential Energy, at its sole discretion.

8.2 COMPLIANCE WITH DIRECTIONS

The Supplier must promptly comply with any direction given by Essential Energy's or Essential Energy's Representative in connection with these General Conditions, a Purchase Order Contract or the work under a Purchase Order Contract.

8.3 SUPPLIER'S REPRESENTATIVE

The Supplier's Representative:

- (a) is acknowledged by the Supplier to have and has the full authority of the Supplier to receive instructions from and notices given by Essential Energy and Essential Energy's Representative in respect of all matters pertaining to the Panel Agreement, these General Conditions and any Purchase Order Contract;
- (b) must attend any meetings as reasonably requested by Essential Energy's Representative;
- (c) may be replaced from time to time by the Supplier subject to Essential Energy's prior written consent, which consent will not be unreasonably withheld; and
- (d) must be replaced by an alternative Supplier's Representative upon receipt by the Supplier of a written notice by Essential Energy's Representative requesting the replacement pursuant to clause 15.2.

8.4 SUPPLIER'S RESOURCES

The Supplier must ensure that:

- (a) it employs sufficient suitable resources to supply the Goods and carry out and complete the work under a Purchase Order Contract in a proper and workmanlike manner with due diligence and expedition in accordance with the Purchase Order Contract; and
- (b) only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed on the work under a Purchase Order Contract and that where relevant, such persons hold relevant licences to legally perform that work.

9. BANK GUARANTEES, RETENTION AND PARENT COMPANY GUARANTEE

9.1 BANK GUARANTEES

Within 7 days after the issue of a Purchase Order by Essential Energy, the Supplier must give Essential Energy two Bank Guarantees each for the amount stated in the relevant RFQ and, subject to the Security of Payment Act, the Supplier will have no entitlement to payment under or in connection with the relevant Purchase Order Contract and Essential Energy is not obliged to make any payment to the Supplier, under or in connection with the relevant Purchase Order Contract until Essential Energy receives the Bank Guarantees.

If a Bank Guarantee contains an expiry date, then not less than 30 days before the expiry of that Bank Guarantee the Supplier must provide to Essential Energy a replacement Bank Guarantee in the same

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amount as the Bank Guarantee being replaced and which complies with the requirements of this clause 9.1. If the Supplier does not provide the replacement Bank Guarantee within the time required by this paragraph, then irrespective of anything contained in, and without limiting Essential Energy's rights under, these General Conditions or a Purchase Order Contract, Essential Energy may have recourse to the relevant Bank Guarantee and may hold the proceeds as security until a replacement Bank Guarantee which complies with the requirements of this clause 9.1 has been provided.

9.2 RECURSE TO SECURITY

If Essential Energy (acting reasonably) considers that it has incurred, or has a bona fide belief that it might in the future incur, any liability, costs, expenses, losses or damages of any kind as a consequence of any act, default, breach or omission of the Supplier, Essential Energy may have recourse to the Bank Guarantees.

Essential Energy shall give the Supplier not less than 5 days notice before having recourse to the Bank Guarantees.

The Supplier is not entitled to and must not seek an injunction against or otherwise restrain either Essential Energy or the issuer(s) of the Bank Guarantees preventing a demand or payment under the Bank Guarantees (whether the demand extends to the whole of the Bank Guarantees or part thereof).

9.3 REDUCTION OF SECURITY

Subject to the exercise of any right of recourse that Essential Energy may have to the Bank Guarantees under clause 9.2, Essential Energy will reduce by the percentage stated in the RFQ the amount then held by Essential Energy as security within 60 days after the Date of Delivery.

9.4 RELEASE OF SECURITY

Provided that the Supplier has given Essential Energy an executed Deed of Final Release in the form reasonably required by Essential Energy in respect of the relevant Purchase Order Contract, and subject to the exercise of any right of recourse that Essential Energy may have to a Bank Guarantee under clause 9.2, Essential Energy will release the balance of the amount then held as security within the later of 45 days after the issue of the final payment schedule under clause 22.6 and the date on which all Defects identified during the last Defects Liability Period have been rectified.

9.5 PARENT COMPANY GUARANTEE

Where the Supplier is a corporation that is related to or is a subsidiary of another corporation as defined in the *Corporations Act 2001 (Cth)*, the Supplier shall, if requested by Essential Energy, provide Essential Energy within 14 days of that request having been made, a deed of guarantee, undertaking and indemnity in a form acceptable to Essential Energy (acting reasonably) and duly executed by the Supplier and the other corporation for the performance of the obligations and the discharge of the liabilities of the Supplier under these General Conditions.

For the purpose of this clause 9.5, the terms "corporation" and "subsidiary" have the meanings defined in the *Corporations Act 2001 (Cth)*. Where the provision of the deed of guarantee, undertaking and indemnity referred to in this clause is requested by Essential Energy prior to any Date(s) for Delivery, then its provision will be a precondition to the achievement of acceptance of the relevant Goods by Essential Energy.

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10. INDEMNITY AND INSURANCE**10.1 INDEMNITY**

The Supplier 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 or wrongdoing of the Supplier, its employees, sub-suppliers, subcontractors or agents.

Without limiting the above, the Supplier 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 property of Essential Energy, including existing property in or upon which the work under a Purchase Order Contract is 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, incidental to, or as a consequence of the carrying out by the Supplier of the work under a Purchase Order Contract including where there has been any failure by any sub-supplier or subcontractor of the Supplier to take reasonable care.

The Supplier's liability to indemnify Essential Energy under this clause 10.1 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.

10.2 INSURANCE REQUIRED BY SUPPLIER

Where the Supplier, pursuant to the RFQ the subject of the relevant Purchase Order Contract, is required to have in place policies of insurance, then the Supplier must, as a precondition to any entitlement to receive 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 Supplier must ensure that its sub-suppliers and subcontractors are similarly insured or covered by the insurance required under this clause 10.2 for the relevant work to be performed by those sub-suppliers and subcontractors.

Without limiting the previous paragraph, all policies to be obtained by the Supplier pursuant to this clause 10.2 must require the insurer to notify Essential Energy in writing at the same time it gives a notice of cancellation or any other notice concerning the policy to the Supplier.

Where the Supplier is required to have in place public liability insurance, the policy must:

- (a) in the case of:
 - (i) contract works insurance (property section), note the interests of Essential Energy for its rights and liabilities under or in connection with the relevant Purchase Order Contract; and

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- (ii) public liability insurance, note the interests of Essential Energy for its rights and liabilities under or in connection with the relevant Purchase Order Contract and cover the Parties for their liabilities to third parties and cover the Supplier's liability to Essential Energy for death, personal injury or loss or damage to property arising out of the work under the relevant Purchase Order Contract;
- (b) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any party comprising the insured and for the purposes of which the insurer accepts the term "insured" as applying to each party comprising the insured as if a separate insurance policy were issued to each of them; and
- (c) provide that a notice of claim given to the insurer by Essential Energy or the Supplier will be accepted by the insurer as a notice of claim given by the Supplier.

Before commencing any work and when requested by Essential Energy's Representative from time to time, the Supplier must promptly provide to Essential Energy's Representative a copy of the certificates of currency for the insurance policies required by this clause 10.2.

10.3 FAILURE TO PROVIDE EVIDENCE OF INSURANCES

If the Supplier is required under clause 10.2 to have in place policies of insurance and fails to provide to Essential Energy a copy of the certificates of currency for those policies in accordance with the requirements of these General Conditions or a 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 Supplier to Essential Energy.

10.4 NOTICE OF CLAIMS/LIKELY CLAIMS

The Supplier 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 Supplier must give all information and assistance requested by Essential Energy's Representative in respect of any such claim or possible claim.

10.5 EFFECT OF INSURANCES

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

11. ASSIGNMENT, SUBCONTRACTING AND NOVATION**11.1 ASSIGNMENT AND NOVATION**

The Supplier must not novate or assign the Panel Agreement or any 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 Supplier, and Essential Energy provides notice of the assignment or novation as soon as reasonably practicable. The Supplier must promptly, upon request by Essential Energy, execute all documents required by Essential Energy to give effect to any such assignment or novation.

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11.2 SUBCONTRACTING

- (a) The Supplier must not engage any sub-suppliers or subcontractors in connection with the work under a Purchase Order Contract for an amount exceeding the amount specified in the relevant Purchase Order Contract or in respect of the work described the relevant Purchase Order Contract 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:
 - (i) provision that the sub-supplier or subcontractor shall not assign, novate or subcontract without the consent in writing of the Supplier; and
 - (ii) any provision which may reasonably be necessary to enable the sub-supplier or subcontractor to fulfil the Supplier's obligations to Essential Energy.
- (c) Any sub-supplier or subcontractor required to be approved but which is not approved in writing by Essential Energy shall not be permitted to enter upon the Place for Delivery or the Site or perform any work under a Purchase Order Contract and the Supplier shall not be entitled to payment for any work under a Purchase Order Contract which has been performed by any such sub-supplier or subcontractor.
- (d) The Supplier must not terminate the engagement of a sub-supplier or subcontractor approved by Essential Energy under this clause 11.2 without the prior written consent of Essential Energy (such consent not to be unreasonably withheld).
- (e) If so required by Essential Energy, the Supplier shall promptly provide Essential Energy with a copy of any proposed or executed sub-supply contract or subcontract in respect of the work under a Purchase Order Contract (including all specifications, drawings and other documents and information relating to that sub-supply contract, other than prices).
- (f) If a manufacturer or supplier of plant, equipment and/or materials ("**the Product**") to be incorporated in the Goods stipulates that the warranties and guarantees of its product are dependent upon the Product being installed or applied by an installer or applicator approved by the manufacturer or supplier, the Supplier shall provide written confirmation from the manufacturer or supplier that the Supplier or the Supplier's proposed sub-supplier is an approved installer or applicator of the product. Such written confirmation shall be provided to Essential Energy not less than 14 days prior to the proposed commencement of the installation or application of the product in the Goods.
- (g) Approval to subcontract will not relieve the Supplier 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 Supplier 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-suppliers 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.
- (h) If any sub-supplier or subcontractor of the Supplier obtains a court order in respect of any moneys due to that sub-supplier or subcontractor from the Supplier 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-supplier or subcontractor and the amount paid shall be a debt due from the Supplier to Essential Energy.

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12. DELIVERY

The Supplier must deliver the Goods to the Place for Delivery at the time arranged with Essential Energy. Essential Energy may, by reasonable notice to the Supplier, change the Place for Delivery.

The Supplier must give Essential Energy at least 5 days written notice of the expected Date of Delivery and advise, to the reasonable satisfaction of Essential Energy, of the arrangements for the Delivery of the Goods.

The Supplier must label the Goods with the relevant Purchase Order number and Place for Delivery, with labels that are clear, colourfast and not removable, and as otherwise directed by Essential Energy.

The Supplier will use every reasonable means to prevent, and will be responsible for the cost of remedying, damage to any of the roads, bridges, locks, docks or seawalls communicating with or on the routes to the Place for Delivery and the Site caused by any vehicle or craft of the Supplier or any of its employees, sub-suppliers, subcontractors or agents.

The Supplier will take all such measures as may be reasonably necessary to ensure that its and its subcontractors and sub-suppliers' arrangements with respect to transport of plant and labour to the Place for Delivery and the Site do not interfere with local traffic in the vicinity of the Place for Delivery and the Site and where such interference is unavoidable, make such arrangements as may be reasonably required to provide alternative routes for local traffic and otherwise minimise the effect of such interference.

At the time of delivery of the Goods the Supplier shall provide Essential Energy with a delivery docket in duplicate setting out the:

- (a) details of the Goods;
- (b) Purchase Order number;
- (c) dispatch and delivery dates;
- (d) quantity and description of the Goods;
- (e) number of packages delivered; and
- (f) name of the person who delivered the Goods,

in a form acceptable to Essential Energy, for signature by Essential Energy and the Supplier shall retain one copy so signed.

The Party named in the relevant Purchaser Order Contract shall be responsible for unloading the Goods at the Place for Delivery as directed by Essential Energy.

Ownership of the Goods and other work under a Purchase Order Contract relevant to the Goods shall pass to Essential Energy (or Essential Energy's nominee) upon the earlier of payment being made by Essential Energy or delivery of the Goods by the Supplier to Essential Energy at the Place for Delivery.

Acceptance of the Goods and other work under a Purchase Order Contract relevant to the Goods by Essential Energy does not constitute their approval by Essential Energy.

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13. SUPPLY**13.1 SUPPLIER'S OBLIGATIONS**

The Supplier must proceed with the work under a Purchase Order Contract with due expedition and without delay and within the times set out in the relevant Purchase Order Contract.

If the Supplier fails to perform any of its obligations under these General Conditions or a Purchase Order Contract, Essential Energy may issue a notice to the Supplier requiring such performance and specifying a reasonable time for performance. If the Supplier does not comply with the notice, then, in addition to any other rights of Essential Energy under these General Conditions or a Purchase Order Contract or at law, Essential Energy may, by further notice to the Supplier, perform or have others perform that obligation. Essential Energy may recover the costs and expenses incurred by it or others performing the obligation as a debt due to Essential Energy by the Supplier. The Supplier acknowledges that any warranties under the relevant Purchase Order Contract remain unaffected notwithstanding that Essential Energy has performed or has had others perform the obligation under this clause 13.1.

13.2 QUALITY

The Supplier must implement its own quality assurance system approved by Essential Energy's Representative and must do all things necessary to comply with that quality assurance system.

The Supplier acknowledges that any quality assurance system implemented by it may require performance of the following:

- (a) inspection and checklisting of work on completion;
- (b) identification and rectification of Defects;
- (c) provision of records on request;
- (d) reporting of non-conformance;
- (e) provision of samples and prototypes; and
- (f) provision of access to the Supplier's systems and records in relation to the work under these General Conditions or a Purchase Order Contract by Essential Energy's Representative and any persons authorised by Essential Energy's Representative for the purpose of inspection and audit.

Neither the quality assurance system nor the access granted to it under this clause 13.2 limits the Supplier's responsibility to comply with the Supplier's obligations under these General Conditions.

13.3 CORRECTION OF DEFECTIVE GOODS, MATERIAL OR WORK

Without prejudice to Essential Energy's rights and entitlements under any other provision of these General Conditions or a Purchase Order Contract, Essential Energy may, at any time prior to Delivery direct the Supplier to take any of the following actions with respect to any part of the Goods or materials or work which are not in accordance with these General Conditions or a Purchase Order Contract:

- (a) not deliver the relevant Goods, material or work;
 - (b) remove the relevant Goods from the Place for Delivery or remove the material from the Site;
 - (c) demolish the work; or
 - (d) redesign, refabricate, reconstruct, replace or rectify the relevant Goods, material or work.
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Essential Energy may, at any time prior to the Delivery of the Goods (or part thereof), by written notice to the Supplier accept any of the Goods, material or work which are not in accordance with a Purchase Order Contract.

If Essential Energy gives a notice pursuant to the preceding paragraph of this clause 13.3, the Purchase Order Price will be reduced as reasonably determined by Essential Energy's Representative to reflect the reduction in value of the relevant Goods, material or work as a result of them not being in accordance with the relevant Purchase Order Contract.

13.4 PROTECTION

The Supplier will, until the Date of Delivery, be responsible for and protect from damage or loss Goods and the other work under a Purchase Order Contract.

If such damage or loss occurs the Supplier must at its own cost promptly make good the damage or loss.

13.5 URGENT PROTECTION

If urgent action is necessary to protect the Goods and other work under a Purchase Order Contract or other property or people and the Supplier fails to take the action, Essential Energy may, without notice to the Supplier, take necessary action to protect the Goods and other work under a Purchase Order Contract, property or people. If the action taken by Essential Energy was, in the reasonable opinion of Essential Energy's Representative, action which the Supplier should have taken at the Supplier's cost, the costs incurred by Essential Energy will be a debt due from the Supplier to Essential Energy.

13.6 TESTING

At any time prior to the expiry of the Defects Liability Period, Essential Energy's Representative may direct that any part of the work under a Purchase Order Contract or the Goods be tested. If such direction requires the Supplier to perform the testing, Essential Energy's Representative may observe and must be promptly provided with the results of any test performed.

With respect to any such tests:

- (a) the Supplier shall provide such assistance and samples and make accessible such parts of the work under a Purchase Order Contract as may be required by Essential Energy;
- (b) Essential Energy may direct that any part of the work under a Purchase Order Contract shall not be covered up or made inaccessible without Essential Energy's prior approval;
- (c) the test shall be conducted as provided in these General Conditions or by Essential Energy or a person (which may include the Supplier) nominated by Essential Energy;
- (d) reasonable notice of the time, date and place of the test shall be given by the Party conducting (or responsible for conducting) the test to the other Party; and
- (e) on completion of the test, the Supplier shall make good the work under a Purchase Order Contract so that it fully complies with the relevant Purchase Order Contract.

The reasonable and actual costs of and incidental to testing will be added to the Purchase Order Price unless such testing:

- (f) reveals Goods, work or materials not in accordance with the relevant Purchase Order Contract;
- (g) is consequent upon a failure of the Supplier to comply with the relevant Purchase Order Contract;

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- (h) was pursuant to any other provision of the relevant Purchase Order Contract required to be performed by the Supplier or has otherwise been included in the Purchase Order Price as part of the work to be undertaken by the Supplier; or
- (i) is in respect of work under a Purchase Order Contract covered up or made inaccessible without Essential Energy's prior approval where that was required.

14. VARIATIONS

14.1 VARIATIONS

Essential Energy's Representative may at any time direct the performance of a Variation by issuing a notice in writing to the Supplier identified as a variation order (either in the form of Schedule 1 or such other written form) ("**Variation Order**"). A reference to "Contractor" in the form of Variation Order set out in Schedule 1 is a reference to the Supplier. The Supplier 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.

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

The Supplier may request that Essential Energy direct or approve a Variation for the convenience of the Supplier. Any such approval will be given in writing by the issue of a Variation Order and may be conditional. Essential Energy will not be obliged to direct or approve a Variation for the convenience of the Supplier.

The Supplier shall not vary the work under a Purchase Order Contract except as directed or approved in writing by the issue of a Variation Order.

Essential Energy shall be entitled to execute and complete, or engage any other person to execute and complete, any part of the work under a Purchase Order Contract which Essential Energy's Representative directs the Supplier to omit from the work under a Purchase Order Contract.

If Essential Energy's Representative directs a Variation, and compliance with that Variation would cause the Supplier to be unable to comply with the warranties given by it under these General Conditions, then, subject to clause 14.4, the Supplier's warranties shall be adjusted as follows:

- (a) as agreed by the Parties; or
- (b) failing agreement between the Parties, as reasonably determined by Essential Energy's Representative to take into account the effect of the Variation on those warranties.

14.2 QUOTATIONS FOR VARIATIONS

If Essential Energy's Representative requests the Supplier to provide a quotation for a proposed Variation, the Supplier must provide a detailed quotation for complying with the Variation. The quotation must be supported by measurements or other evidence of cost, accompanied by details of any Extension of Time the Supplier seeks and any effect of the Variation on the Supplier's warranties under these General Conditions and must be provided within the period specified by Essential Energy or, if not specified, within 5 Business Days of the request for quotation. In response to the quotation, Essential Energy's Representative may:

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- (a) require the Supplier to execute the Variation on the terms of the quotation by issuing a Variation Order;
- (b) decline to proceed with the Variation; or
- (c) reject the quotation and require the Supplier to carry out the Variation by issuing a Variation Order, in which case the Variation will be valued by Essential Energy's Representative in accordance with clause 14.3, any Extension of Time will be assessed by Essential Energy's Representative in accordance with clause 21 and any adjustment to the Supplier's warranties under these General Conditions will be assessed by Essential Energy's Representative in accordance with clause 14.1.

14.3 VALUATION OF VARIATIONS

The value of any Variation will be added to or deducted from the Purchase Order Price. 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 Schedule of Rates forms part of the relevant Purchase Order Contract or the relevant Purchase Order Contract prescribes specific rates or prices to be applied in determining the value of a Variation, those rates and 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
- (c) to the extent that neither paragraphs (a) or (b) above apply, Essential Energy's Representative shall (acting reasonably) determine reasonable rates or prices.

In determining the deduction from the Purchase Order Price in respect of work which has been omitted from the work under a Purchase Order Contract, the deduction shall include a reasonable amount for profit and overheads.

If the valuation relates to extra costs incurred by the Supplier for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit.

14.4 EFFECT ON WARRANTIES

If the Supplier is of the opinion that its compliance with any Variation directed under clause 14.1 would affect the Supplier's ability to comply with the warranties given by the Supplier under these General Conditions or a Purchase Order Contract, the Supplier must as soon as possible, and in any event no later than 5 days after receiving the direction to carry out a Variation and before it commences to comply with the direction, notify Essential Energy's Representative in writing that the Supplier will not be able to comply with the warranty and the reason(s) for its inability to comply having regard to the Variation directed.

If the Supplier fails to so notify Essential Energy's Representative then the Supplier will not be relieved of its obligations to comply with the warranties under these General Conditions and will have no Claim that the Variation causes the Supplier to not comply with the warranties given by it under these General Conditions or a Purchase Order Contract, regardless of whether the Variation has that effect.

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15. CONDUCT GENERALLY

15.1 PROTECTION OF PEOPLE AND PROPERTY

In the performance of the work under a Purchase Order Contract the Supplier must take all measures and provide all things necessary to protect people and property.

If the Supplier or its sub-suppliers, subcontractors, employees or agents damage any property, including property on or adjacent to the Place for Delivery or the Site, the Supplier shall promptly make good the damage and pay any compensation which the Supplier is required by law to pay.

15.2 REMOVAL OF PERSONS

Essential Energy's Representative may direct the Supplier to remove from the involvement in the work under a Purchase Order Contract any person whom Essential Energy's Representative considers to be disruptive, incompetent, negligent, guilty of misconduct or considered to be carrying out any work in an unsafe or unsatisfactory manner. The written approval of Essential Energy's Representative must be obtained by the Supplier before the Supplier subsequently re-employs the person in connection with the work under a Purchase Order Contract or has the person involved in activities in any way connected with the work under a Purchase Order Contract.

15.3 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 by:

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

The Supplier must at all times comply with the Code. Failure by the Supplier to comply with the Code may be taken into account when considering the Supplier for future business opportunities with the Essential Energy.

The Supplier 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.

16. INTELLECTUAL PROPERTY

16.1 INTELLECTUAL PROPERTY RIGHTS

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

The Supplier grants to Essential Energy, for the purposes of the work under a Purchase Order Contract, 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 Supplier in the Goods and all drawings, reports, specifications, calculations, documents and other goods or materials provided or prepared by the Supplier, its employees, sub-suppliers, subcontractors or agents in connection with the work under a Purchase

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Order Contract. 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 Goods and the work under a Purchase Order Contract.

16.2 MORAL RIGHTS

If, during the performance of the work under a Purchase Order Contract, the Supplier includes or makes use of any work or other subject matter or documentation in which another party (including the Supplier's employees, sub-suppliers, subcontractors, and agents) may have Moral Rights the Supplier 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 Supplier, any sub-supplier or subcontractor of the Supplier or any other persons involved in the provision of the work under a Purchase Order Contract, 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 16.2, the Supplier 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.

16.3 WARRANTY AND INDEMNITY

The Supplier warrants that it has the necessary rights to grant to Essential Energy the licence referred to in clause 16.1 and that the Goods and the performance of the work under a Purchase Order Contract, and the use of the Goods and the work under a Purchase Order in accordance with the rights granted to Essential Energy hereunder, do not infringe any 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. The Supplier's liability to indemnify Essential Energy under this clause 16.3 shall be reduced proportionally to the extent the losses, liabilities and legal costs are caused or contributed to by a wrongful act or omission of Essential Energy, its employees, directors or agents.

16.4 ESSENTIAL ENERGY'S WARRANTY

This clause shall apply only where clause 6 of these General Conditions does not apply.

Essential Energy warrants that the Contract Documents (but not including any document provided by or on behalf of the Supplier) do not infringe any Intellectual Property Right belonging to any third party.

17. LAWS, REPORTS AND APPROVALS**17.1 COMPLIANCE WITH LAWS**

The Supplier must comply, and must ensure that its employees, subcontractors, sub-suppliers and agents comply, with all Laws and the requirements of Authorities in performing the work under a Purchase Order Contract.

The Supplier must also comply, and must ensure that its employees, subcontractors, sub-suppliers 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.

17.2 CHANGES IN LAW

If a change to any Law or a new Law comes into effect after the date of issue of a Purchase Order and could not reasonably have been anticipated prior to the date of issue of a Purchase Order by a competent and experienced supplier performing work in the nature of the work under a Purchase Order Contract ("**Change in Law**"), then, to the extent that the Change in Law requires a change to the Goods, Essential Energy shall direct a Variation under clause 14.

A Change in Law may be a ground for an Extension of Time under and subject to clause 21.1.

The Supplier must use its best endeavours to minimise or mitigate the effects of a Change in Law.

17.3 REPORTS AND RECORDS

Upon a direction from Essential Energy or Essential Energy's Representative, the Supplier must, within the time stated in the direction (which must be reasonable), submit a report or provide records to Essential Energy or Essential Energy's Representative containing such information as is reasonably requested by Essential Energy or Essential Energy's Representative.

17.4 APPROVALS

The Supplier must obtain all Approvals applicable from time to time in connection with the work under a Purchase Order Contract (except those Approvals listed in the relevant Purchase Order Contract) and ensure that all such Approvals are in full force and effect at all times. The Supplier must comply, and must ensure that its employees, subcontractors, sub-suppliers and agents comply, with all Approvals, including those Approvals listed in the relevant Purchase Order Contract.

The Supplier must promptly provide to Essential Energy's Representative copies of all Approvals obtained by the Supplier and copies of any other documents issued to the Supplier by any Authority in respect of the work under a Purchase Order Contract.

17.5 INCONSISTENCIES

If the conditions of an Approval or a Law or an Australian Standard are inconsistent with a provision of these General Conditions or a Purchase Order Contract, as soon as the Supplier discovers the inconsistency, the Supplier must notify Essential Energy in writing specifying that inconsistency.

Where the conditions of an Approval are inconsistent with the performance of the work under a Purchase Order Contract, the Supplier shall, at no cost to Essential Energy, use its best endeavours to take all steps necessary to amend, supplement or replace the inconsistent Approval to comply with its obligations under the relevant Purchase Order Contract.

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18. CLEANING UP

The Supplier must leave the Place for Delivery in a clean and tidy condition after delivery of the Goods.

If the Supplier is required to access the Site for the purposes of rectifying a Defect, the Supplier must leave the Site in a clean and tidy condition after rectification of the Defect.

19. DEFECTS LIABILITY PERIOD**19.1 RECTIFICATION**

The Supplier must promptly rectify any Defect that is found to exist in the Goods at the Date of Delivery or at any time during the Defects Liability Period.

The Supplier shall, as and when directed by Essential Energy's Representative during the Defects Liability Period, rectify any Defect and the rectification is at the Supplier's risk and cost. The direction may, without limitation, require the Supplier to remove the Goods or any part thereof or material from the Place for Delivery or the Site, demolish work, reconstruct, replace (with new Goods or material) or correct the same. Essential Energy's Representative may (acting reasonably) direct the times within which the Supplier must commence and complete rectification of a Defect. The Supplier must notify Essential Energy's Representative when rectification of a Defect has been completed.

If a direction under this clause 19.1 does not require the Supplier to remove the Goods or to collect the Goods from a place specified by Essential Energy, then all costs incurred by Essential Energy in removing the Goods which contain a Defect or returning the Goods to the Supplier for the purpose of rectification by the Supplier or both, shall be a debt due from the Supplier to Essential Energy.

19.2 ESSENTIAL ENERGY'S REPRESENTATIVE MAY SET FURTHER DEFECTS LIABILITY PERIOD

Essential Energy's Representative may set a further Defects Liability Period in respect of work to be rectified under clause 19.1 which will be effective from the date of rectification for a period specified by Essential Energy's Representative not exceeding the period stated in the RFQ.

19.3 DEFECTS RECTIFIED BY OTHERS

Without limiting clause 13.1, if the Supplier fails to rectify any Defect in accordance with clause 19.1, Essential Energy's Representative may have the Defect rectified by others (including Essential Energy) and Essential Energy may recover all costs of so doing (including of Essential Energy so doing) as a debt due from the Supplier to Essential Energy or accept the Defect and recover its assessment of any consequential reduction in the value of the Goods as a debt due from the Supplier to Essential Energy.

20. TIME**20.1 DELIVERY**

The Supplier must achieve Delivery by the relevant Date(s) for Delivery.

20.2 PROGRAM

The Supplier must supply to Essential Energy's Representative no later than 7 days prior to commencement of any work under a Purchase Order Contract or within such other period as directed by Essential Energy's Representative, a proposed program for the work under a Purchase Order Contract.

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Upon review and notification in writing from Essential Energy's Representative to the Supplier that Essential Energy's Representative has no objection to the proposed program, the proposed program shall become the Program for the purposes of the relevant Purchase Order Contract. If Essential Energy's Representative does not accept the proposed program, the Supplier must promptly amend or revise the proposed program until Essential Energy's Representative accepts it.

The Supplier must not depart from the Program without reasonable cause. Essential Energy may direct the Supplier to re-sequence, reschedule or adjust activities. If such direction causes the Supplier to incur more or less cost than would have been incurred but for the direction, the difference shall be valued under clause 14.3, unless the event giving rise to the direction is due to an act or omission of the Supplier, its employees, sub-suppliers, subcontractors or agents, in which case any cost incurred by the Supplier in complying with the direction shall be borne by the Supplier.

Essential Energy's Representative may from time to time direct the Supplier to supply an updated Program and this clause 20.2 shall reapply as if each updated Program were the proposed program. The Supplier must within the time stated in such direction supply such further updated Program which must identify the changes made to the previous Program.

The supply of a program under this clause 20.2 (or of an updated Program) or any review, comment or approval of it (or failure to do so) by Essential Energy's Representative will not:

- (a) relieve the Supplier from or alter any of its obligations and liabilities under these General Conditions or a Purchase Order Contract including the obligation not to depart, without reasonable cause, from an earlier Program; or
- (b) entitle the Supplier to make any Claim.

The Supplier's Program (or any updated Program) and Essential Energy's program (if any) do not form part of these General Conditions or a Purchase Order Contract.

20.3 CONTENTS OF THE PROGRAM

Each program provided by the Supplier under clause 20.2 must include:

- (a) the date of commencement of the work under the relevant Purchase Order Contract, the Date(s) for Delivery;
- (b) the sequence and timing of each component of the work under the relevant Purchase Order Contract, including a critical path network analysis in the form of a time scaled bar chart;
- (c) the dates when the Supplier is required to provide any information or materials in connection with the work under the relevant Purchase Order Contract; and
- (d) all other information reasonably required by Essential Energy's Representative.

20.4 SUSPENSION

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

If the suspension causes the Supplier to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under clause 14.3 unless the event giving rise to the direction to suspend is due to an act or omission of the Supplier or an employee, sub-supplier, subcontractor or agent of the Supplier, in which case any cost incurred by the Supplier by reason of the

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suspension shall be borne by the Supplier (as determined by Essential Energy's Representative, acting reasonably).

The cause of the suspension may be a ground for an Extension of Time under and subject to clause 21.1.

20.5 ACCELERATION

Without prejudice to Essential Energy's other rights and remedies, Essential Energy's Representative may, at any time prior to the Date of Delivery direct the Supplier to accelerate the work under a Purchase Order Contract or part of that work to reduce the time required to achieve Delivery ("**Acceleration Direction**") for any reason, including as an alternative to granting an Extension of Time for Delivery. In an Acceleration Direction Essential Energy may direct that the performance of the work under a Purchase Order Contract be accelerated by means of overtime, additional crews, additional shifts, resequencing of the work under a Purchase Order Contract, or otherwise.

If Essential Energy provides an Acceleration Direction, the Supplier:

- (a) must comply with that direction if it is reasonably practicable for it to do so;
- (b) must promptly provide a plan for such acceleration, including its recommendations for the most effective and economical acceleration; and
- (c) (subject to the final paragraph of this clause 20.5 or except if the Supplier and Essential Energy otherwise mutually agree in writing), is entitled to claim such additional expenditure properly, reasonably and necessarily incurred by the Supplier (and supported by documentary evidence) arising directly out of the acceleration, and the Purchase Order Price shall be adjusted accordingly.

If it is not reasonably practicable for the Supplier to comply with an Acceleration Direction it shall provide written notice to that effect with detailed reasons to Essential Energy within 7 days of receiving the written direction.

If Essential Energy provides an Acceleration Direction to the Supplier under this clause 20.5 as an alternative to granting an Extension of Time (and it is reasonably practicable for the Supplier to comply) to accelerate the performance of the work under a Purchase Order Contract so as to overcome:

- (d) the whole of the delay in question, the Supplier shall no longer be entitled to any Extension of Time for that delay; or
- (e) part only of the delay in question, the Supplier shall no longer be entitled to any Extension of Time for that part of the delay, but Essential Energy must grant an Extension of Time under clause 21.1 for the balance of the delay.

Prior to providing an Acceleration Direction Essential Energy may provide to the Supplier notice of its intention to do so and request the Supplier to provide in writing within 5 days the Supplier's reasonable estimate of the extra costs it will incur in complying with the Acceleration Direction ("**Supplier's Estimate**") if issued. Within 5 days of receipt of the Supplier's Estimate, Essential Energy may proceed to issue the Acceleration Direction and accept the Supplier's Estimate in which case clause 20.5(a) to 20.5(c) apply except the Supplier's entitlement by reason of the Acceleration Direction shall not exceed the Supplier's Estimate. If Essential Energy does not accept the Supplier's Estimate, Essential Energy can still proceed in accordance with this clause 20.5 to provide an Acceleration Direction.

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21. DELAY

21.1 EXTENSION OF TIME

- (a) The Supplier shall as soon as possible in the circumstances give written notice to Essential Energy upon the Supplier becoming aware of any event or circumstance which is causing or is likely to cause delay or disruption to the work under a Purchase Order Contract.
- (b) The only events or circumstances in respect of which the Supplier may claim an Extension of Time to any Date for Delivery are:
- (i) an act, wrongful omission, breach or default of these General Conditions by Essential Energy or Essential Energy's Representative or an employee, consultant, other contractor or agent of Essential Energy (except for acts by Essential Energy or Essential Energy's Representative acting in accordance with these General Conditions);
 - (ii) a Variation;
 - (iii) suspension of the work under a Purchase Order Contract by Essential Energy unless the event giving rise to the direction to suspend is due to an act or omission of the Supplier or an employee, sub-supplier, subcontractor or agent of the Supplier;
 - (iv) a Change in Law;
 - (v) a Force Majeure Event; or
 - (vi) any other Event set out in the RFQ,
- ("Delay Event")**.
- (c) If the Supplier wishes to claim an Extension of Time to any Date for Delivery, it must:
- (i) no later than 7 days after the Delay Event causing the delay occurs give written notice to Essential Energy that the Supplier considers that a delay has occurred, stating:
 - (A) the material circumstance of the Delay Event including the cause or causes of the Delay Event;
 - (B) the critical activities on the critical path of the current Program (if any) delayed by the Delay Event;
 - (C) the nature and extent of the delay;
 - (D) the corrective action already taken, or to be taken, to mitigate the extent of the delay;
 - (E) the period, if any, by which, in its opinion, the relevant Date(s) for Delivery should be extended; and
 - (F) words identifying it as a notice under this clause 21.1(c); and
 - (ii) take all steps at its own cost to minimise the effect of the delay, including without limitation, reallocation of resources or rescheduling works, and demonstrate, to the satisfaction of Essential Energy, that it has complied with this requirement.

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- (d) The Supplier is not entitled to any Extension of Time to any Date for Delivery unless:
- (i) an Event:
 - (A) occurs before the relevant Date(s) for Delivery and delays the Supplier in achieving Delivery by the relevant Date(s) for Delivery; or
 - (B) occurs on or after the relevant Date(s) for Delivery and delays the Supplier in achieving Delivery;
 - (ii) if there is a current Program, the Supplier can demonstrate to Essential Energy's reasonable satisfaction that the relevant Delay Event delays a critical activity on the critical path of the current Program; and
 - (iii) the Supplier has notified Essential Energy and submitted its claim strictly in accordance with and within the time required by clause 21.1(c).
- (e) If the Supplier fails to comply with this clause 21.1 then the Supplier acknowledges and agrees that:
- (i) it has no entitlement to an Extension of Time;
 - (ii) it shall Deliver the Goods by the relevant Date(s) for Delivery; and
 - (iii) any principle of law or equity, including those which might otherwise entitle the Supplier to relief or which might otherwise render the Date(s) for Delivery immeasurable or liquidated damages unenforceable or invalid, does not apply.
- (f) If Essential Energy's Representative considers a delay has occurred which meets all of the conditions precedent of clause 21.1(d), then Essential Energy's Representative shall extend the relevant Date(s) for Delivery by the number of days which, in the reasonable opinion of Essential Energy's Representative, the Delay Event has delayed the critical path of the current Program (if any) for the work under the relevant Purchase Order Contract, or where there is no current Program, by the number of days Essential Energy's Representative considers reasonable, and shall notify the Supplier of the number of days extension and the adjusted Date(s) for Delivery.
- (g) Where more than one event (or the impact of more than one event) causes concurrent delays and the cause of at least one of those events, but not all of them, is not Delay Event, then to the extent that the impact of the delays is concurrent, the Supplier will not be entitled to an Extension of Time for that period of time when the impact of such delays is concurrent.
- (h) If at the time the Supplier is required to give a notice under clause 21.1(c), the duration or impact of the delay is not ascertainable then the Supplier must in the notice state what details are not yet known and must serve a further notice or notices advising those details promptly once they are known.

21.2 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 Supplier for the benefit of either Party regardless of whether or not the Supplier has made a claim for Extension of Time.

21.3 DELAY COSTS

Where the Supplier has been granted an Extension of Time under clause 21.1 for any delay caused by:

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- (a) a Delay Event referred to in clause 21.1(b)(i); or
- (b) any other event for which payment of extra costs for delay or disruption is provided in the RFQ,

Essential Energy shall pay to the Supplier such extra direct costs (excluding corporate overheads and similar charges and profit) as are necessarily and reasonably incurred by the Supplier by reason of the delay.

Nothing in this clause 21.3 shall oblige Essential Energy to pay extra costs for delay which have already been included in another payment under the relevant Purchase Order Contract.

21.4 LIQUIDATED DAMAGES

If Delivery is not achieved by the relevant Date(s) for Delivery, the Supplier must pay or allow to Essential Energy the amount for liquidated damages at the rate set out in the relevant Purchase Order Contract for every day after the relevant Date(s) for Delivery until and including the Date of Delivery or the date that the relevant Purchase Order Contract is terminated, whichever occurs first.

If, after the Supplier has paid or allowed liquidated damages, the relevant Date for Delivery is extended, Essential Energy shall repay to the Supplier any liquidated damages paid or allowed in respect of the period to and including the new Date for Delivery.

The Supplier's liability under this clause 21.4 for liquidated damages in respect of a Purchase Order Contract (and not in aggregate with any other Purchase Order Contract) is limited to the amount stated in the relevant RFQ.

If the relevant RFQ provides that liquidated damages do not apply or prescribe "Nil" or "N/A" or the relevant item is left blank or any equivalent to the above, then, without limiting any other right it may have, Essential Energy is entitled to general law damages for any delay by the Supplier in achieving Delivery by the relevant Date(s) for Delivery.

22. PAYMENT

22.1 THE PURCHASE ORDER PRICE

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

The Supplier acknowledges and agrees that the Purchase Order Price:

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

22.2 PAYMENT CLAIMS

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

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In each payment claim the Supplier must include:

- (a) the Supplier's opinion as to the value of the work performed by the Supplier to the date of the payment claim and notification of all other Claims which the Supplier then has against Essential Energy under these General Conditions or a Purchase Order Contract;
- (b) sufficiently detailed evidence to enable Essential Energy's Representative to assess the claim;
- (c) a statutory declaration, in a form acceptable to Essential Energy, from a representative of the Supplier who is in a position to know the facts attested to, stating that:
 - (i) all subcontractors of the Supplier engaged in the work under a Purchase Order Contract have been paid all moneys that are due and payable to those subcontractors up to the date of submission by the Supplier of its payment claim; and
 - (ii) all employees of the Supplier who have been engaged in the work under a Purchase Order Contract have been paid all moneys that are due and payable to them up to the date of submission by the Supplier of its payment claim; and
- (d) a Statement in the form set out in Schedule 2, duly completed and signed and attaching a relevant Certificate of Currency (as referred to in that Statement).

Essential Energy's Representative may request additional information in respect of any payment claim (valid or otherwise) and, if so requested, the Supplier must promptly provide any additional information so requested.

22.3 PAYMENT SCHEDULE

Within 10 Business Days after receipt of a payment claim validly submitted under clause 22.2, Essential Energy's Representative must assess the payment claim and, unless Essential Energy agrees to pay the whole of the amount claimed, provide to the Supplier and Essential Energy a payment schedule. The payment schedule must identify the payment claim to which the payment schedule relates and certify the amount Essential Energy's Representative reasonably considers is due to the Supplier or Essential Energy, as the case may be, setting out the reasons for the difference.

Essential Energy's Representative 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 Supplier (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 and the relevant Purchase Order Contract.

22.4 PAYMENTS

Essential Energy must (subject to its right to set-off under clause 22.10) pay the Supplier the amount certified in a payment schedule as being payable by Essential Energy to the Supplier (or if no payment schedule is provided to the Supplier, 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 10.2, 22.2 and 29; and
- (b) if the payment claim relates to work under a Purchase Order Contract carried out or performed in:
 - (i) the State of Queensland, 10 Business Days; or

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- (ii) otherwise, 15 Business Days, after a payment claim is validly made

under clause 22.2.

The Supplier must pay to Essential Energy any amount certified in a payment schedule as being payable by the Supplier to Essential Energy no later than 10 Business Days after the provision of the relevant payment schedule to Essential Energy and the Supplier under clause 22.3.

22.5 FINAL PAYMENT CLAIM

Within 30 days after the later of the completion by the Supplier of all Defect rectification work and the expiry of the Defects Liability Period, the Supplier must submit to Essential Energy's Representative a final payment claim endorsed "Final Payment Claim". The final payment claim must state all monies which the Supplier considers to be due to it from Essential Energy in connection with the relevant Purchase Order Contract and the work under that Purchase Order Contract.

Notwithstanding any other provision of these General Conditions or a Purchase Order Contract, upon the expiration of the period for lodging the final payment claim, to the extent permitted by law, any Claim which the Supplier could have made against Essential Energy and has not made is barred.

22.6 FINAL PAYMENT SCHEDULE

Within 10 Business Days after the receipt of the Supplier's final payment claim, Essential Energy's Representative must assess the final payment claim and, unless Essential Energy agrees to pay the whole of the amount claimed, issue a final payment schedule to Essential Energy and the Supplier. The final payment schedule must identify the payment claim to which the payment schedule relates and certify the final payment amount due and payable by Essential Energy to the Supplier or by the Supplier to Essential Energy, as the case may be, setting out the reasons for the difference.

Essential Energy's Representative may allow in the final payment schedule adjustment for amounts paid under the relevant Purchase Order Contract and amounts that otherwise may be retained, deducted or claimed by Essential Energy from the Supplier (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under these General Conditions and the relevant Purchase Order Contract.

22.7 FINAL PAYMENT

Subject to the satisfaction of any pre-conditions to payment set out in a Purchase Order Contract (including the receipt of the Tax Invoice referred to in the next paragraph), then:

- (a) if a final payment schedule has been issued under clause 22.6, unless the Supplier not later than 7 days after the issue of the final payment schedule gives a notice to Essential Energy that a dispute or difference has arisen under clause 27.1, Essential Energy must (subject to its right to set-off under clause 22.10) pay to the Supplier or the Supplier must pay to Essential Energy, as the case may be, the amount certified in the final payment schedule, where the payment claim relates to work under a Purchase Order Contract carried out or performed in:
 - (i) the State of Queensland, within 10 Business Days; or
 - (ii) otherwise, within 15 Business Days, after a payment claim is validly made under clause 2.2; and
- (b) if a final payment schedule has not been provided under clause 22.6, unless the Supplier not later than 17 days after the issue of the final payment claim gives a notice to Essential Energy that a dispute or difference has arisen under clause 27.1, Essential Energy must pay to the Supplier the

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amount of the final payment claim, where the payment claim relates to work under a Purchase Order Contract carried out or performed in:

- (i) the State of Queensland, within 10 Business Days; or
- (ii) otherwise, within 15 Business Days, after a payment claim is validly made under clause 22.2.

The Party entitled to receive payment must issue the other Party with a valid Tax Invoice before the due date for payment.

22.8 EFFECT OF PAYMENT AND PAYMENT SCHEDULES

Any payment made by Essential Energy to the Supplier is deemed to be a payment on account only and is not evidence of the value of the work (except as provided under clause 22.6) or that the work has been satisfactorily completed. Nor does the issue of a payment schedule or a final payment schedule constitute approval of any work or other matter and does not prejudice any Claim by Essential Energy.

22.9 SATISFACTORY EVIDENCE

Without limiting any other provision of these General Conditions, if the Supplier fails to provide to Essential Energy's Representative satisfactory evidence in accordance with clause 22.2(b), 22.2(c) or 22.2(d), the Supplier is not entitled to payment under or in connection with these General Conditions or a Purchase Order Contract and Essential Energy is not obliged to make any payment to the Supplier until evidence to the satisfaction of Essential Energy's Representative is provided.

22.10 SET OFF

Despite any other provision of the Panel Agreement, 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 either or both of:

- (a) any money payable by Essential Energy to the Supplier under a Purchase Order Contract; and
- (b) the security provided by the Supplier under a Purchase Order Contract,

any money due or reasonably claimed to be due from the Supplier to Essential Energy under or in connection with a Purchase Order Contract or any other agreement between the Parties.

22.11 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.

23. INDUSTRIAL RELATIONS

23.1 COMPLIANCE

Without limiting clause 17.1, the Supplier must comply, and must ensure that all of its employees, sub-suppliers, subcontractors and agents comply, with all Laws in respect of industrial and workplace matters, including:

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- (a) all state and federal legislation and legally enforceable codes of practice which apply or may apply to the work under a Purchase Order Contract, the Place for Delivery or the Site; and
 - (b) all applicable binding and legally enforceable agreements, awards and workplace agreements.

The Supplier must make available upon reasonable notice whatever documents and records Essential Energy's Representative requests concerning compliance with this clause.

23.2 INDUSTRIAL DISPUTES

The Supplier:

- (a) must take all possible steps and measures to avoid and minimise the consequences of industrial disputes of any kind; and
- (b) is responsible for and assumes all risks of and incidental to all actions, matters, bans, limitations and disputes (whether lawful or unlawful) in relation to industrial relations or employment issues both on and off the Place for Delivery and the Site with its employees and those of its suppliers, subcontractors and agents.

24. WORK HEALTH AND SAFETY**24.1 COMPLIANCE**

Without limiting clause 17.1, the Supplier must comply, and must ensure that its workers, including its employees, sub-suppliers, subcontractors and agents comply, with all Laws, standards and codes of practice in respect of work health and safety matters which apply or may apply to the work under a Purchase Order Contract or the Place for Delivery or the Site (including the WHS Act and the WHS Regulations) and any health and safety policies, procedures and requirements issued by Essential Energy or any relevant Authority to the Supplier from time to time.

The Supplier will upon request by Essential Energy demonstrate compliance with the requirements of this clause 24.1, including by providing evidence of measures taken to achieve such compliance.

24.2 PROVISION OF POLICIES AND OTHER DOCUMENTS

At the request of Essential Energy's Representative the Supplier must promptly provide copies of:

- (a) its work health and safety policies applicable to the work under a Purchase Order Contract; and
- (b) any documents, reports, registers or records which the Supplier is required to prepare, maintain or provide in connection with its obligations under the WHS Regulations.

24.3 PREVENTATIVE MEASURES

The Supplier 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.

24.4 HEAVY VEHICLE NATIONAL LAW

The Supplier shall be responsible for providing and maintaining the safety of all of its heavy vehicle transport activities. This responsibility includes but is not limited to ensuring that the Supplier's business practices, decisions, policies, directions, management, contracts and employee training associated with the use of a heavy vehicle on a road complies with the requirements of the Heavy Vehicle National Law,

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any related regulations and standards and/or direction by any relevant Authority to the Supplier, its employees or third parties effecting the Supplier's transport activities.

The Supplier must ensure, so far as reasonably practicable, the safety of its transport activities relating to heavy vehicles and so far as reasonably practicable eliminate (or where not reasonably practicable to eliminate, minimise) public risks and ensure that its conduct does not directly or indirectly cause or encourage contraventions of any Laws applicable to heavy vehicle transport activities or contraventions by other parties in the Chain of Responsibility.

If requested by Essential Energy, the Supplier must provide copies of its policies and any other evidence to demonstrate that it has met and is meeting at all times its obligations under this clause 24.40 and the Heavy Vehicle National Law.

If, during the course of its performance of the work under a Purchase Order Contract, the Supplier becomes aware of its, its employees or its sub-contractor's contravention or reasonably suspected contravention of the requirements of the Heavy Vehicle National Law, it must notify Essential Energy of this incident as soon as possible and within 24 hours provide Essential Energy with a written report detailing the particulars of incident.

Essential Energy shall be entitled, but shall be under no obligation, to issue directions in relation to heavy vehicle safety issues and the Supplier shall, at its own cost, comply with those directions to ensure the highest level of safety in its transport activities.

24.5 NOTICE

The Supplier will immediately notify Essential Energy in writing of any act, fact or circumstances associated with the activities of the Supplier or any other person relevant to the ability of the Supplier to perform the work under a Purchase Order Contract in a manner that is safe and without risks to health.

The Supplier must:

- (a) immediately notify Essential Energy of any accident, notifiable incident (being an incident which is notifiable under any work health and safety legislation (including the WHS Act or the WHS Regulations)), injury or property damage which:
 - (i) occurs during the performance of the work under a Purchase Order Contract; or
 - (ii) is associated with the work under a Purchase Order Contract; and
- (b) within 24 hours of any such accident, incident or damage, provide a written report to Essential Energy giving complete details of the accident, incident or damage, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

24.6 RELEASE AND INDEMNITY

To the maximum extent permitted by law, the Supplier releases and indemnifies Essential Energy from and against any damage, expense, loss, cost, liability or claim by or against Essential Energy arising out of or in connection with a breach by the Supplier of its obligations under this clause 24.

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25. ENVIRONMENTAL PROTECTION**25.1 COMPLIANCE**

Without limiting clause 17.1, the Supplier must comply, and must ensure that its employees, subcontractors, sub-suppliers and agents comply, with all Laws concerning Environmental matters, including Laws concerning land use, development, pollution, contamination, waste, disposal, toxic and hazardous substances, climate change, greenhouse gases, energy use or efficiency, water use or access and conservation of natural or cultural resources, which apply or may apply to the work under a Purchase Order Contract and other Environmental requirements issued by Essential Energy or any relevant Authority to the Supplier from time to time.

The Supplier will upon request by Essential Energy demonstrate compliance with the requirements of this clause 25.1, including by providing evidence of measures taken to achieve such compliance.

25.2 PREVENTATIVE MEASURES

The Supplier must, in carrying out the work under a Purchase Order Contract, take all necessary steps and measures to prevent harm or damage to the Environment.

25.3 HAZARDOUS SUBSTANCES AND MATERIALS

Where the Supplier intends to bring onto the Place for Delivery or the Site any material or substance which may be hazardous to the Environment, the Supplier must, prior to doing so, give information to Essential Energy's Representative in respect of such material or substance. The information must include plans for the safe handling, storage and use of the material or substance and precautions to be taken.

25.4 CONTAMINATION AND POLLUTION

The Supplier agrees to take such steps as are required:

- (a) to minimise any contamination or pollution of the Place for Delivery or the Site or of land or premises within the vicinity of the Place for Delivery or the Site; and
- (b) to prevent, in connection with the work under a Purchase Order Contract, the release by its employees, sub-suppliers, subcontractors and agents of any pollutant to the Environment.

The Supplier undertakes to remove, and to bear and indemnify Essential Energy against all costs and expenses of any kind in respect of the presence or removal of pollutants, contaminants or any other waste on any premises caused or contributed to by the Supplier or any employee, sub-supplier, subcontractor or agent of the Supplier arising out of the performance of these General Conditions or a Purchase Order Contract. Such removal shall be in accordance with the requirements of codes of practice for the safe removal of such materials and any other Laws that relate to the removal of such materials.

25.5 NOTICE OF ENVIRONMENTAL INCIDENT

The Supplier must promptly notify (or immediately notify if immediate notice is required for Essential Energy to comply with Law) Essential Energy in writing of any accident, incident or damage which occurs during the performance of the work under a Purchase Order Contract or is associated with the work under a Purchase Order Contract which may trigger a requirement under any applicable Law concerning the Environment for any Party to notify an Authority of that accident, incident or damage.

Within 24 hours of any such accident, incident or damage, the Supplier must provide a written report to Essential Energy giving complete details of the accident, incident or damage, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

26. DEFAULT AND TERMINATION**26.1 NOTICE OF SUPPLIER DEFAULT**

If the Supplier 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 Supplier a notice entitled "Notice of Supplier 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 8.2;
- (b) a failure to provide Bank Guarantees in accordance with clause 9.1;
- (c) a failure to insure in accordance with clause 10.2;
- (d) a failure to comply with the standard of materials and workmanship required by the relevant Purchase Order Contract;
- (e) a failure to proceed with the work under a Purchase Order Contract with due expedition and without delay or within the time set out in the relevant Purchase Order Contract as required under clause 13.1;
- (f) where the Supplier's liability to Essential Energy under clause 21.4 in respect of any Purchase Order Contract is equal to or exceeds the liability cap referred to in clause 21.4; and
- (g) where the Supplier's liability to Essential Energy is equal to or exceeds the liability cap referred to in clause 33.1.

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

26.2 CONTENTS OF NOTICE OF SUPPLIER DEFAULT

A Notice of Supplier Default given under clause 26 must:

- (a) state that it is given under clause 26;
- (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 Supplier Default is given within which the Supplier 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 26.3.

26.3 FAILURE BY SUPPLIER TO REMEDY/SHOW CAUSE

If the Supplier fails within the time specified in a Notice of Supplier 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 26.3, Essential Energy may by notice in writing to the Supplier engage others to, or itself, carry out any part or the whole of the remaining work under the relevant Purchase Order Contract 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 work under the relevant Purchase Order Contract).

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If Essential Energy engages others to carry out or itself carries out any part or the whole of the remaining work under a Purchase Order Contract, 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 Supplier to Essential Energy.

If Essential Energy terminates the Panel Agreement or a Purchase Order Contract or both under this clause 26.3 or clauses 26.4 or 26.9 it will have the same entitlements and the Supplier will have the same liabilities as each would at law, had the Supplier repudiated these General Conditions or the relevant Purchase Order Contract or both and Essential Energy terminated these General Conditions or the relevant Purchase Order Contract or both by acceptance of the Supplier's repudiation.

26.4 SUPPLIER UNABLE OR UNWILLING TO COMPLETE

If the Supplier advises Essential Energy that the Supplier is unable or unwilling to complete performance of the Panel Agreement or a Purchase Order Contract or both, Essential Energy may immediately (and without serving upon the Supplier a Notice of Supplier Default but must otherwise provide written notice to the Supplier) exercise its rights under clause 26.3 to engage others, or itself, carry out any part or the whole of the remaining work under a Purchase Order Contract 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 work under the relevant Purchase Order Contract).

26.5 PROCEDURE UPON TERMINATION OR TAKING WORK 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 work under the relevant Purchase Order Contract, Essential Energy may without payment of compensation to the Supplier (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract):

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

26.6 ESSENTIAL ENERGY'S DEFAULT

If Essential Energy is in breach of its obligation to pay an amount under clause 22.4, then without limiting any other right it may have, the Supplier may by notice in writing serve upon Essential Energy a notice entitled "Notice of Essential Energy Default".

26.7 CONTENTS OF NOTICE OF ESSENTIAL ENERGY DEFAULT

A Notice of Essential Energy Default given under clause 26 must:

- (a) state that it is given under clause 26;
- (b) identify and adequately particularise the amount not paid under clause 22.4; 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

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of the Supplier to the Supplier's satisfaction or identify the basis on which it is entitled to refrain from paying the amount required under clause 22.4.

26.8 FAILURE BY ESSENTIAL ENERGY TO MAKE PAYMENT/COMPROMISE CLAIM

If the Supplier 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 22.4 or fails to compromise the claim to the satisfaction of the Supplier (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Supplier may by notice in writing to Essential Energy, expressly referring to this clause 26.8, suspend the whole or any part of the work under the relevant Purchase Order Contract. If Essential Energy remedies the breach, the Supplier shall promptly lift the suspension.

If within 7 days of the date of suspension under this clause 26.8 Essential Energy fails to compromise the claim to the satisfaction of the Supplier (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Supplier may by notice in writing to Essential Energy terminate the relevant Purchase Order Contract. In such event or in respect of a notice from the Supplier under clause 26.9, the Supplier will be entitled to be paid in respect of the relevant Purchase Order Contract:

- (a) any outstanding amounts due to the Supplier 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;
- (c) the cost of materials reasonably ordered by the Supplier for the work under the relevant Purchase Order Contract, which the Supplier is liable to accept (and which cannot be cancelled without unavoidable loss being incurred), but only if the materials become the property of Essential Energy upon payment, as determined by Essential Energy's Representative;
- (d) all security to which Essential Energy is not otherwise entitled; and
- (e) an amount representing the reasonable cost of performing the Supplier's obligations under clause 26.5.

The Supplier agrees that the entitlements under this clause 26.8 will be the Supplier's full compensation for all work performed in respect of the relevant Purchase Order Contract and for any Claims of the Supplier arising out of or in connection with that Purchase Order Contract or its termination under this clause 26.8.

26.9 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;

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- (iv) lodges a debtor's petition; or
- (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.

Notwithstanding any other clause of these General Conditions or a Purchase Order Contract, where and from the date Essential Energy is entitled to terminate the Panel Agreement and any Purchase Order Contract under this clause 26.9, Essential Energy will be taken to have become entitled to recourse to all security still held by Essential Energy and the Supplier will have no entitlement to (or to make any Claim in respect of) and Essential Energy will have no obligation to return to the Supplier, any security still held by Essential Energy.

26.10 TERMINATION FOR CONVENIENCE

Without limiting any other right available to Essential Energy under the Panel Agreement, these General Conditions or a Purchase Order Contract or at law, Essential Energy may at any time and for whatever reason (including its convenience) terminate any Purchase Order Contract or upon providing 14 days prior written notice to the Supplier (or such longer period as may be agreed by the Parties). In such circumstance the Supplier's entitlements will be limited to those set out in clause 26.8.

27. DISPUTE RESOLUTION

27.1 NOTICE

If a dispute or difference arises between Essential Energy and the Supplier out of or in connection with the work under a Purchase Order Contract, the Panel Agreement or a Purchase Order Contract, 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 27.1 has been served and the procedure in clauses 27.2 and 27.3 have been complied with.

27.2 MEETING

If a dispute or difference notified under clause 27.1 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

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senior management of each of Essential Energy and the Supplier 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.

27.3 MEDIATION

If the dispute or difference is not resolved within 21 days of the giving of notice under clause 27.1, 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.

27.4 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.

28. BAR ON CLAIMS

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

- (a) a written notice not later than 28 days after the Supplier 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 28(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 Supplier 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 28(b) for a Claim based on ongoing events or circumstances shall be submitted by the Supplier to Essential Energy at weekly intervals until the events or circumstances have ceased.

29. GST

Save for defined terms in a Purchase Order Contract, words or expressions used in this clause 29 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 29, 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

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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.

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 this Agreement represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:

- (1) 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
- (2) 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.

30. SECURITY OF PAYMENT

The Supplier 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 Supplier 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 Supplier on Essential Energy under or in connection with the Security of Payment Act; and
- (b) received by the Supplier 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 Supplier and the amount of such payment will be a debt due from the Supplier to Essential Energy. Payment by Essential Energy of any amount under this clause 30(b) will not relieve the Supplier 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 the Panel Agreement, these General Conditions or a Purchase Order Contract, the Supplier 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 sub-supplier or subcontractor to the Supplier of;

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

work which forms part of or is incidental to the work under a Purchase Order Contract.

31. 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 work under a Purchase Order Contract 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 Supplier 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-supplier 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-supplier or subcontractor warrants in favour of Essential Energy that the sub-supplier 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 Supplier or the sub-supplier or subcontractor arising out of or in connection with the work of the sub-supplier or subcontractor required to be executed by it under the subcontract.

32. CONFIDENTIALITY AND CONFLICT OF INTEREST

32.1 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, any RFQ and a Purchase Order Contract and all matters arising from the work under a Purchase Order Contract,

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;
 - (ii) at the request of Parliament, a Parliamentary Committee or a Minister; or

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- (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 32.1.

Neither Party shall use or allow for publication or broadcasting any information concerning the Project or the work under the Panel Agreement 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 32.1 survives the expiry or termination of the Panel Agreement and any Purchase Order Contract, regardless of the cause of that expiry or termination.

32.2 CONFLICT OF INTEREST

The Supplier warrants that as at:

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

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

33. LIMITATION OF LIABILITY

33.1 LIMITATION OF LIABILITY

Subject to clause 33.2 below, the Supplier'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 is set out in the relevant Purchase Order Contract.

33.2 EXCEPTIONS

Clause 33.1 does not apply to the Supplier's liability:

- (a) in respect of any liability under clause 10.1(c) or 10.1(d);
 - (b) in respect of the Supplier's failure to effect and maintain insurance in accordance with clause 10;
 - (c) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Supplier, 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 Supplier of clause 16;
-

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- (e) in respect of any liability under clause 16.3;
- (f) under clause 19 in respect of rectifying Defects and the costs incurred by Essential Energy in respect of Defects; or
- (g) arising out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence.

34. EXCLUSION OF CONSEQUENTIAL LOSS**34.1 EXCLUSION OF CONSEQUENTIAL LOSS**

Despite any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract to the contrary, but subject to 34.2, 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 the Panel Agreement, 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 or special loss or damage.

34.2 EXCEPTIONS

Clause 34.1 does not apply to:

- (a) the Supplier's liability:
 - (i) in respect of any liability under clause 10.1(c) or 10.1(d);
 - (ii) in respect of the Supplier's failure to effect and maintain insurance in accordance with clause 10;
 - (iii) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Supplier, under insurances required by the Panel Agreement, these General Conditions or a Purchase Order Contract in respect of that liability;
 - (iv) in respect of a breach by the Supplier of clause 16;
 - (v) in respect of any liability under clause 16.3;
 - (vi) if and to the extent liquidated damages are payable under clause 21.4 or if liquidated damages are void or unenforceable whether by termination of the Panel Agreement, these General Conditions or a Purchase Order Contract or otherwise or if liquidated damages do not apply, general damages liability for delay; or

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- (vii) to the extent that such liability arises out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence; or
- (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.

35. GENERAL**35.1 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 at the address stated in Schedule 1 of the Panel Agreement (in the case of the Supplier) 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 26 or 27 in which case such notices must be delivered by registered mail to the postal address stated in Schedule 1 of the Panel Agreement (in the case of the Supplier) 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 Supplier, 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.

35.2 GOVERNING LAW

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

35.3 ENTIRE AGREEMENT

The Panel Agreement, these General Conditions and the relevant 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.

35.4 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.

35.5 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 the Panel Agreement, these General Conditions and a Purchase Order Contract (except to the extent made necessary by such invalidity).

35.6 INDEMNITIES

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

35.7 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 and any Purchase Order Contract, and seek independent legal advice as required to confirm the foregoing.

35.9 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 Supplier at any time, require the Supplier 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 Supplier 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
- (3) 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.

36. SMALL BUSINESS CONTRACTS

If a Purchase Order Contract constitute a "small business contract" within the meaning of the Australian Consumer Law (at Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), the last paragraph of clauses 14.1 and 14.4 will not apply to the Supplier and are excluded from the operation of these General Conditions and these General Conditions are further amended as follows:

- (a) clause 2.6A is amended to read as follows:

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- (a) The Supplier 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 Supplier); and
 - (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 Supplier) (**Date of Amendment**).
- (b) If the Supplier, acting reasonably, disagrees with any amendment or update made to these General Conditions under clause 2.6A(a):
- (i) the Supplier 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 Supplier will be deemed to have been created under clause 2.5 in respect of any Purchase Order issued by Essential Energy to the Supplier 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 Supplier 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 7.1 is amended to read as follows:
- Should either Party encounter any discrepancies, contradictions, omissions, ambiguities, errors, faults or inconsistencies in or between the documents comprising a Purchase Order Contract ("**Discrepancy**"), it must promptly notify the other Party in writing.
- (c) clause 7.3 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 Supplier at any time, whether before or after 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 Supplier 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 Supplier remains (as between Essential Energy and the Supplier) the property of Essential Energy and must be returned to Essential Energy upon request. The Supplier may keep one copy of any such document for its own records.
- (d) the last paragraph of clause 9.2 is amended to read as follows:
- The Supplier is not entitled to and must not seek an injunction against or otherwise restrain either Essential Energy or the issuer(s) of the Bank Guarantees preventing a demand or payment under the Bank Guarantees (and whether the demand extends to the whole of the Bank Guarantees or part thereof) provided that Essential Energy has sought recourse to the Bank Guarantees in the circumstances permitted under this clause 9.2.
- (e) clause 9.4 is amended to read as follows:

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Subject to the exercise of any right of recourse that Essential Energy may have to a Bank Guarantee under clause 9.2, Essential Energy will release the balance of the amount then held as security within the later of 45 days after the issue of the final payment schedule under clause 22.6 and the date on which all Defects identified during the last Defects Liability Period have been rectified.

- (f) clause 11.2(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-supplier or subcontractor shall not assign, novate or subcontract without the consent in writing of the Supplier;
- (ii) any provision which may reasonably be necessary to enable the sub-supplier or subcontractor to fulfil the Supplier's obligations to Essential Energy; and
- (iii) requirements for collateral warranty deeds (including a deed proposed by Essential Energy).

- (g) the second last paragraph of clause 12 is amended to read as follows:

Ownership of the Goods and other work under a Purchase Order Contract relevant to the Goods shall pass to Essential Energy (or Essential Energy's nominee) upon payment by Essential Energy in respect of the Goods and other work.

- (h) clause 14.2(c) is amended to read as follows:

- (c) reject the quotation and require the Supplier to carry out the Variation by issuing a Variation Order, in which case the Variation will be valued by Essential Energy's Representative in accordance with clause 14.3, and any Extension of Time will be assessed by Essential Energy's Representative in accordance with clause 21.

- (i) clause 26.5 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 work under the relevant Purchase Order Contract, Essential Energy may without payment of compensation to the Supplier (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract) take possession of all documents (including design documentation), information and the like in the Supplier's possession which is connected with the work under a Purchase Order Contract and reasonably required by Essential Energy to facilitate completion of the work under a Purchase Order Contract; and
- (b) exercises any of its rights under clause 26.3, 26.4 or 26.9, Essential Energy may without payment of compensation to the Supplier (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract) take an assignment of the Supplier's rights and benefits under any contracts with sub-suppliers or subcontractors, including any warranties and guarantees, that are related to the work under a Purchase Order Contract. The Supplier must do all things necessary to effect such an assignment.

- (j) clause 26.8(c) is amended to read as follows:
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- (c) the cost of materials or Goods reasonably ordered or manufactured by the Supplier for the work under the relevant Purchase Order Contract, which the Supplier is liable to accept (and which cannot be cancelled without unavoidable loss being incurred), but only if the materials or Goods become the property of Essential Energy upon payment, as determined by Essential Energy's Representative (acting reasonably);
- (k) clause 26.10 is amended to read as follows:
 - (a) Essential Energy may at any time, for its sole convenience and without cause, terminate any Purchase Order Contract by providing 14 days' prior written notice to the Supplier (or such longer period as may be agreed by the Parties).
 - (b) If the Supplier has fulfilled its obligations under all Purchase Orders that have been issued by Essential Energy the Supplier may, for its sole convenience and without cause, terminate any Purchase Order Contract by providing 14 days' prior written notice to Essential Energy (or such longer period as may be agreed by the Parties).
 - (c) Where Essential Energy terminates Purchase Order Contract or both under this clause 26.10, the Supplier's entitlements will be limited to those set out in clause 26.8.
 - (d) Where the Supplier terminates any Purchase Order Contract under this clause 26.10, the Supplier must reimburse Essential Energy for any part of any Purchase Order Price paid by Essential Energy to the Supplier relating to any part of the work under a Purchase Order Contract not performed or Goods not delivered.
- (l) clause 31 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 Supplier 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 Supplier and any of its employees, subcontractors, sub-suppliers and agents.

37. SUSTAINABILITY

37.1 CONDUCT AND DIVERSITY

- (a) The Supplier:
 - (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
 - (B) have regard to Essential Energy's Sustainability Strategy (available on Essential Energy's website).
- (b) The Supplier must:
 - (i) treat its Personnel with respect and dignity; and
 - (ii) use best endeavours to:

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- (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.

37.2 ENVIRONMENT

- (a) In performing its obligations under the Panel Agreement and a Purchase Order Contract, the Supplier 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 Supplier must review and report to Essential Energy on opportunities to improve environmental sustainability outcomes over the Term, if and as such opportunities arise. The Supplier 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 Supplier 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 Supplier's compliance with this clause 37.2, including in respect of the Supplier's sustainability efforts related to the reuse and recycling of items or materials (or any components of any of them).

37.3 MODERN SLAVERY

- (a) The Supplier must not (and must take reasonable steps to ensure that any entity it owns or controls or which is in the Supplier'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 Supplier 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
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- 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 Supplier's supply chain has been convicted of any offence involving Modern Slavery.
- (c) The Supplier must:
- (i) conduct, and ensure each entity it owns or controls or which is in the Supplier'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 Supplier 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 Supplier 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 Supplier, or any related entity or entity in the Supplier'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 Supplier and any relevant code of practice or conduct or other guidance issued by the Anti-slavery Commissioner. The Supplier 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 Supplier subcontracts any of its obligations (including any part of the Services) in accordance with these General Conditions and Essential Energy notifies the Supplier that it requires the following to be complied with in respect of a particular subcontractor, the Supplier must:
- (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 37.3, 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 Supplier under the relevant Purchase Order Contract and unpaid up until the date of termination), if the Supplier breaches any Modern

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Slavery Law or if the Supplier, or any entity that it owns or controls, commits an offence involving Modern Slavery.

37.4 SUSTAINABILITY PERFORMANCE REGIME

- (a) This clause 37.4 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 Supplier 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 Supplier's compliance with each Key Performance Indicator in accordance with the methodology, and at the frequency, agreed by the parties under clause 37.4(a)(ii).
- (c) The Supplier'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 Supplier must keep sufficient records of its performance as against each Key Performance Indicator to enable Essential Energy to assess the Supplier's compliance with each Key Performance Indicator, and the Supplier must provide such records to Essential Energy within 5 Business Days of a written request from Essential Energy.

37.5 NO DEROGATION

For the avoidance of doubt, nothing in this clause 37 derogates from the Supplier's other obligations or liabilities arising under the Panel Agreement or a Purchase Order Contract, and the obligations or liabilities in this clause 37 are in addition to the Supplier's obligations and liabilities set out in any other document comprising the Panel Agreement or a Purchase Order Contract.

37.6 DEFINITIONS

In this clause 37:

- (a) any word, expression, reference or term used in this clause 37 which is defined in clause 1.2 and is not specifically defined in this clause 37 shall, unless the context otherwise indicates, have in this clause 37 the same meaning as in clause 1.2; and
- (b) each term set out below has the meaning given to it in this clause 37.6(b):

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- (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 37.4(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 Supplier’s officers, employees, subcontractors, consultants and all personnel of subcontractors and consultants within the contractual chain.
- (vii) **Sustainability Performance Regime** has the meaning given to it in clause 37.4(a).

SCHEDULE 1
VARIATION ORDER

Date issued:

Project:

Project Number:

Contract:

Variation Number:

To: _____ (“Contractor”)

From: ESSENTIAL ENERGY (ABN 37 428 185 226) (“Essential Energy”)

Pursuant to clause 14 of the Contract, Essential Energy directs the following Variation:

The amount the Contractor is entitled to be paid for the Variation is:

\$

The Contractor’s entitlement to an Extension of Time is:

(1) where Essential Energy’s Representative has accepted a variation quotation under clause 14.2(a) of the Contract, then as set out in the variation quotation, being _____ days; or

(2) in all other cases, subject to and in accordance with clause 21.

..... (signature)

(Essential Energy’s Representative)

SCHEDULE 2

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.)

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier
(Note 3)

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

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated / / (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor 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. (Note 10)
- (f) Signature Full name (g)

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*.

ESSENTIAL ENERGY SUPPLY CONTRACT

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. 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 *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.

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* 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.

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.

SCHEDULE 3

REQUEST FOR QUOTATION (RFQ)

RFQ NO. [INSERT]

Date: [insert 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 ("**Contract**"). Any entity that provides a Quotation in response to this RFQ ("**Supplier**") 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 Contract.

The Supplier 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 Supplier bind itself to issuing a Purchase Order or accepting the Supplier's Quotation;
- (3) if Essential Energy does not issue a Purchase Order in respect of the work the subject of this RFQ, such work shall not form a part of any work to be undertaken pursuant to any agreement between Essential Energy and the Supplier and the Supplier shall not be entitled to any payment for or in connection with the same, and the Supplier 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 Supplier's Quotation and Essential Energy's assessment and determination of the same (this provision is without limitation to any Claim the Supplier 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 Supplier will have an opportunity to perform any services under or in connection with this RFQ.

The Supplier's Quotation shall be returned to Essential Energy via email to the email address from which this Request for Quotation was received.

Essential Energy contact person for this RFQ [insert EE contact person].

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Details

1.	Contract Documents	Clause 1.2	1. Panel Agreement 2. Special Conditions to this RFQ, if any; 3. General Conditions (including Schedules); 4. <i>[insert other]</i>
2.	Essential Energy’s Representative	Clause 1.2	<i>[insert]</i>
3.	Date(s) for Delivery	Clause 1.2	<i>[insert]</i>
4.	Place for Delivery	Clause 1.2	<i>[insert]</i>
5.	Project	Clause 1.2	<i>[insert]</i>
6.	Site	Clause 1.2	<i>[insert]</i>
7.	Defects Liability Period	Clause 1.2	<i>[insert description, including attachments if necessary]</i>
8.	Hours and days for access to Place for Delivery	Clause 4.1	<i>[insert]</i>
9.	Hours and days for access to Site	Clause 4.1	<i>[insert if known, otherwise insert “As notified to the Supplier by Essential Energy’s Representative”]</i>
10.	Documents to be supplied by the Supplier – number of copies	Clause 7.2	<i>[insert]</i>
11.	Documents furnished to the Supplier by Essential Energy which are excepted from clause 7.3	Clause 7.3	<i>[insert]</i>
12.	Amount of each Bank Guarantee	Clause 9.1	<i>[insert]</i>
13.	Reduction of Bank Guarantees	Clause 9.3	<i>[insert %]</i>
14.	Parent Company Guarantee – clause applies?	Clause 9.5	<i>[insert Yes or No]</i>
15.	Public Liability Insurance to be taken out by Supplier	Clause 10.2	Amount: \$[insert] (minimum) from the Date out by Supplier of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
16.	Workers Compensation Insurance to be out by Supplier	Clause 10.2	Amount: As per statutory requirements from the Date of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
17.	Motor Vehicle Third Party Insurance to be taken out by Supplier	Clause 10.2	Amount \$20 million from the Date of this Panel Agreement and any Purchase

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			Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
18.	Other Insurances to be taken out by Supplier	Clause 10.2	[insert]
19.	Work which cannot be subcontracted without approval	Clause 11.2	[insert maximum amount and/or description of works] (if nothing stated, all work cannot be subcontracted without the approval of Essential Energy)
20.	Responsibility for unloading Goods	Clause 12	[insert] (if nothing is stated Supplier to be responsible)
21.	Variation response	Clause 14.1	[insert time period] (if nothing stated, within 5 days of the direction)
22.	Approvals not being obtained by the Supplier	Clause 17.4	[insert]
23.	Other Delay events	Clause 21.1	[insert]
24.	Other events for which extra delay costs are payable	Clause 21.3	[insert] costs are payable
25.	Liquidated Damages Rate	Clause 21.4	[\$insert dollar amount] per calendar day
26.	Maximum amount of Liquidated Damages	Clause 21.4	[insert]
27.	Supplier to submit payment claims	Clause 22.2	[if progress payment regime - The 25th day of each month, except in respect of December, which shall be the 15th day of the month]
28.	Limitation of liability	Clause 33.1	As per Clause 33.1 unless otherwise stated
29.	Essential Energy's Representative address and email for service of notices	Clause 35.1	Address: address and email for service of notices Email:
30.	Other [if there are any details or variances from the Contract to be included, insert those here].		

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SPECIAL CONDITIONS

(APPLYING TO ANY PURCHASE ORDER CONTRACT UNDER THIS RFQ)

1 [Insert any special condition(s) required for the works proposed to be carried out by the Supplier under this RFQ. If none, insert "None stated."]

[NOTE: ANY ADDITIONAL SPECIAL CONDITIONS WILL NEED TO BE CHECKED/SIGNED OFF BY LEGAL BRANCH BEFORE INCLUDING IN THE CONTRACT]

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SCHEDULE 4

PURCHASE ORDER



ABN: AU 37 428 185 226
Vendor: 0000000000

Purchase Order No. 0000000000

Date	Revision	Page
08/08/2018		1
Freight Terms	Ship Via	
Buyer	Product	Currency
Ship To:	12255	AUD

Bill To: ACCOUNTS PAYABLE
LOCKED BAG 29
GRAPTON NSW 2460
AUSTRALIA

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