

PLUS ES Purchase Order Terms and Conditions

1 APPLICATION

- (a) These Terms and Conditions apply to the supply of Goods, Works and Services (as applicable) as described in the Purchase Order and, subject to paragraph (c), supersede any and all other terms and conditions submitted by the Supplier or discussed or negotiated by the parties prior to the acceptance of the Purchase Order.
- (b) The Supplier is deemed to have accepted these Terms and Conditions and the Purchase Order, and the Contract comes into existence to bind the parties, on the earlier of the Supplier:
 - (i) the Supplier agreeing to be bound by these Terms and Conditions or the Purchase Order;
 - (ii) the Supplier providing Goods, Works and Services (as applicable) in connection with the Purchase Order to the Purchaser;
 - (iii) the Supplier giving to the Purchaser a written claim for payment or tax invoice in respect of a Purchase Order; and
 - (iv) 10 days after the Supplier receives the Purchase Order, if the Supplier has not provided a written notice to the Purchaser rejecting the Purchase Order.
- (c) If a prior written agreement between the Purchaser and the Supplier has been entered into in relation to the Purchase Order, then the prior written agreement overrides these Terms and Conditions to the extent of any inconsistency.
- (d) Any specifications or special conditions set out in the Purchase Order override these Terms and Conditions and (if applicable) any prior agreement referred to in paragraph (c) to the extent of any inconsistency.
- (e) By issuing a Purchase Order to the Supplier, the Purchaser orders the Goods, the Works and the Services, as applicable, from the Supplier, and, upon acceptance of the Purchase Order, the Supplier agrees to supply and deliver the Goods, undertake and complete the Works and perform the Services, as applicable, in accordance with the terms of the Contract. In consideration of the Supplier fulfilling all of its obligations under the Contract, the Purchaser will pay the Supplier the Contract Sum.
- (f) To the extent permitted by Relevant Laws and to the extent the Supplier's terms and conditions are supplied to the Purchaser in respect of the Goods, the Works and the Services, those Supplier terms and conditions will be of no legal effect and will not constitute part of the Agreement (even if a representative of the Purchaser signs those terms and conditions or annexes them to a Purchase Order).

2 SUPPLIER WARRANTIES

The Supplier warrants, represents and undertakes to the Purchaser that:

- (a) without limiting paragraph (h), the Goods, the Works and the Services will, as applicable, be new and unused, fit for their intended purpose, of a merchantable quality, in accordance with all applicable laws, other legal requirements and recognised industry standards (including Australian Standards) and will comply with all the requirements of the Contract, including any tests required by the Purchaser and any description of the Goods;

- (b) the Supplier is suitably qualified and experienced and will at all times exercise the degree of skill, care, diligence and expertise expected of a competent supplier of, as applicable: (i) goods such as the Goods; (ii) works such as the Works; and (iii) services such as the Services;
- (c) the Supplier will comply with all directions of the Purchaser and the Purchaser's timetable for the supply of the Goods, Works and Services, as applicable;
- (d) the Supplier has full unencumbered title in any Goods and in any materials incorporated into the Works or the Services (as applicable), and all such Goods and materials are supplied free of all liens, charges and other encumbrances;
- (e) all Goods and any materials incorporated into the Works or the Services (as applicable) will not contain any Harmful Code;
- (f) the Supplier will supply and do all things which are reasonably necessary or appropriate for the supply of the Goods, the completion of the Works and the provision of the Services (as applicable), whether or not such things are expressly specified in the Contract;
- (g) the performance of the Supplier's obligations and the use and enjoyment by the Purchaser of the Goods, Works and Services will not give rise to the infringement of any intellectual property rights, including patents and copyright, and moral rights; and
- (h) where, and to the extent that, the supply constitutes the performance of Works, the Supplier is responsible for and assumes the risk of any cost, expense, loss, liability, damage or delay it suffers or incurs arising out of or connected with the physical conditions of the property (and its surroundings) where the Works are to be performed;
- (i) in performing its obligations under the Contract, and in providing the Goods, the Works and the Services (as applicable), it will comply with all applicable laws, including, without limitation, the NER, all laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements (generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws), privacy and the protection of personal information (including without limitation the *Privacy Act 1988* (Cth)), the environment and Modern Slavery Laws; and
- (j) in performing its obligations under the Contract, and in providing the Goods, the Works and the Services (as applicable), it will not do anything that does or could cause the Purchaser to breach any law (including, without limitation, the NER) or the Purchaser's contractual obligations to third parties.

3 WARRANTIES UNAFFECTED

The Supplier's warranties remain unaffected notwithstanding any information provided to the Supplier by or on behalf of the Purchaser and any review or comment (or failure to review or comment) by the Purchaser in connection with the supply of the Goods, the Works or the Services. Signed delivery dockets are not evidence that the quality or quantity of any Goods has been accepted by the Purchaser.

4 SUPPLIER'S OBLIGATIONS

- (a) The Supplier must, as applicable:

- (i) supply the Goods to the Delivery Place by the Delivery Date; and
- (ii) bring the Works and Services to Practical Completion by the Completion Date.
- (b) The Purchaser will not be obliged to accept and pay for any Goods delivered later than the Delivery Date.
- (c) The Supplier must give the Purchaser reasonable advance written notice of the delivery of the Goods and of the Works or Services achieving Practical Completion, as applicable.
- (d) The Purchaser may direct the Supplier to deliver the Goods on a different Delivery Date or to a different Delivery Place and, if the Supplier can reasonably comply, it will do so at its expense. If the Supplier cannot reasonably comply, it will immediately notify the Purchaser in writing with reasons.
- (e) The Supplier must arrange all approvals to supply the Goods, complete the Works and provide the Services required by any Authority at its expense.
- (f) In providing Goods, Works or Services (as applicable) under the Contract, the Supplier must not, and must ensure that its personnel do not, introduce Harmful Code into any of the Purchaser's systems.
- (g) Without limiting any other rights or remedies of the Purchaser under the Contract or otherwise at law or in equity, if the Supplier breaches paragraph (f) or clause 2(e) the Supplier must rectify all damage caused, and must compensate the Purchaser for all costs and expenses incurred by the Purchaser, arising out of or in connection with the Harmful Code.
- (h) The Supplier:
 - (i) acknowledges that the Purchaser has an obligation under the Ring-fencing Guideline not to discriminate either directly or indirectly between its related electricity service provider (as that term is defined in the Ring-fencing Guideline) and a competitor or potential competitor of that related electricity service provider; and
 - (ii) where applicable, must in providing the Services comply with clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of the Ring-fencing Guideline and clause 4.2.3 of the Ring-fencing Guideline in relation to the brands of the Purchaser, as if the Supplier was the Purchaser.

Without limiting any other right of the Purchaser under the Contract, on the Purchaser's request and within the time stated in the Purchaser's request the Supplier must demonstrate its compliance with this clause 4(h) to the Purchaser's satisfaction (including by providing such information or documents as the Purchaser may require).

- (i) Where the Supplier is providing services to the Purchaser as the appointed *Metering Provider* and/or *Metering Data Provider* in the National Electricity Market, the Supplier must do all things required to enable the Purchaser to comply and demonstrate compliance with its obligations under the NER, including (but not limited to):
 - (i) complying with the *Metering Provider* and *Metering Data Provider* requirements of the NER and providing evidence of such

compliance to the Purchaser upon the Purchaser's request;

- (ii) providing the Purchaser, in a timely fashion and by a method approved by the Purchaser, the evidence required for the Purchaser to successfully apply for metering malfunction and no signal exemptions as per the *service level procedures* established by AEMO;
- (iii) providing the Purchaser with an applicable extract of the Supplier's test plan intended for registration or registered with AEMO and pertaining to the Purchaser's metering sites only, together with supporting metering asset details, to allow alignment with the Purchaser's Asset Management Strategy, as required by the NER;
- (iv) maintaining the *metering register* and retaining test records and documents for the period required under the NER in respect of each relevant *metering installation*;
- (v) making changes to parameters and settings within a *metering installation*, as directed and detailed by the Purchaser; and
- (vi) providing the Purchaser (and its personnel and advisers) and AEMO (and its personnel and advisers) with all necessary assistance in relation to any AEMO audits in connection with the Purchaser in its capacity as *Metering Coordinator*, including providing access at all necessary times to the Supplier's personnel, data, records and information (including the information and documents referred to in clause 4(i)(iv), 4(i)(iii) and 4(i)(iv) for the purposes of the audit.

5 RISK

The Supplier bears the risk of and indemnifies (and will keep indemnified) the Purchaser Group from and against:

- (a) loss of or damage to any property (including the Purchaser Group's property), claims in respect of any personal injury, death, disease or illness and claims made by a third party in relation to any breach of intellectual property rights and moral rights arising out of or in connection with the Supplier's performance or non-performance of the Supplier's obligations under the Contract; and
- (b) any cost, expense, loss, damage or other liability suffered or incurred by the Purchaser Group (whether direct or indirect) arising out of or in connection with a breach by the Supplier of the Contract.

The indemnity is reduced proportionally to the extent that any negligent act or negligent omission of the Purchaser Group or its consultants, agents or other contractors (excluding the Supplier) has contributed to the injury, death, loss, damage or liability.

The indemnity in this clause 5 will survive the expiration or termination of the Contract.

6 INSURANCES

- (a) The Supplier must, prior to providing the Goods, the Works and the Services (as applicable), take

out and maintain, at its own expense, the following insurances:

- (i) where the Supplier is supplying Goods, insurance covering the Goods for their full replacement value against loss or damage including loss or damage in transit to the Delivery Place, and unloading the Goods, to be maintained until the Goods are accepted by the Purchaser;
 - (ii) where the Supplier is performing Works, contract works insurance for any loss or damage to the Works, for their full replacement value, to be maintained until the Works are completed and have been accepted by the Purchaser;
 - (iii) public liability insurance (which includes coverage for liability to third parties for death, injury or damage caused by unregistered plant or equipment) for an amount of not less than \$20,000,000 in the annual aggregate;
 - (iv) if the Works, the Goods or the Services (as applicable) involve the Supplier undertaking design work or other professional services, professional indemnity insurance for an amount not less than \$5,000,000 in the annual aggregate, which is to be maintained for so long as the Supplier retains liability under the Contract and a further period of 5 years upon expiry or termination of the Contract; and
 - (v) all insurances required by legislation, including workers compensation insurance and, if motor vehicles are used in providing the Goods, the Works or the Services (as applicable), compulsory third party (CTP) insurance.
- (b) Subject to paragraph (c), the insurances listed in paragraphs (a)(i) to (a)(iii) must note the Purchaser for its rights and interests.
 - (c) If the Contract Sum is less than \$2,000, the Supplier is not required to comply with paragraph (b).
 - (d) If requested by the Purchaser, the Supplier must provide the Purchaser with evidence of its compliance with this clause 6. Such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by legislation) or written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with this clause 6, including paragraph (b).

7 VARIATIONS

The Purchaser may by written notice to the Supplier increase, decrease or omit any of the Goods, the Works or the Services or change the character or quality of the Goods, the Works or the Services and the Supplier must comply with that direction. If such direction causes the Supplier to incur more or less cost than it would have otherwise incurred, the Purchaser will assess the difference and the Contract Sum will be adjusted by a reasonable amount. If the direction results in a reduction or omission of any of the Goods, the Works or the Services, the Purchaser may have the reduced or omitted part of the Goods, the Works or the Services (as applicable) performed by itself or a third party in its absolute discretion.

8 EXTENSIONS OF TIME

- (a) If the Supplier is or will be delayed in supplying the Goods by the Delivery Date or completing the Works or providing the Services by the Completion Date (as applicable), the Supplier must immediately notify the Purchaser in writing, giving details.
- (b) If the Supplier's delay is caused by an event outside its reasonable control the Purchaser shall provide a reasonable extension of time to the relevant Delivery Date or Completion Date (as applicable).
- (c) The Supplier shall be liable to the Purchaser for any loss, damage, cost, expense or other liability suffered or incurred by the Purchaser resulting from the Supplier's failure to supply the Goods, complete the Works or provide the Services within the timeframe required by the Contract (as adjusted in accordance with paragraph (b)).

9 ACCEPTANCE OF GOODS, WORKS AND SERVICES

- (a) Unless stated otherwise, the Purchaser will be available to accept delivery of Goods on business days between 8.30am and 4.30pm.
- (b) Risk in the Goods will only pass from the Supplier to the Purchaser on the later of when the Goods have been delivered to the Purchaser and unloaded, properly secured, signed for and inspected at the Delivery Place by an authorised representative of the Purchaser and the Supplier becoming entitled to payment for the Goods.
- (c) The Supplier will be responsible for any Works until the Works have achieved Practical Completion.
- (d) The Supplier agrees that title in all materials and goods supplied by the Supplier passes to the Purchaser on the earlier of delivery by the Supplier and the Supplier becoming entitled to payment for such materials and goods.
- (e) The Purchaser is entitled to reject any Goods, Works or Services which contain defects or omissions or which do not comply with the requirements of the Contract.
- (f) Neither the acceptance of the Goods, the Works or the Services, their incorporation or use by the Purchaser, nor payment by the Purchaser under clause 10 will amount to an acknowledgement by the Purchaser that the Supplier has complied with its warranties or other obligations under the Contract, nor relieve the Supplier from any other obligation or liability.
- (g) During the Defects Period, and without affecting any other obligations and/or liability of the Supplier, the Supplier must make good all defects or omissions in the Goods, the Works or the Services promptly, in accordance with any direction of the Purchaser including, without limitation, any direction to repair or replace the Goods or the Works or to repeat or rectify the Services, and to the satisfaction of the Purchaser.
- (h) If the Supplier is required to make good any defect or omission in the Goods, the Works or the Services then the Defects Period will extend for a further 6 months in relation to the affected Goods, Works or Services.
- (i) If the Supplier fails to make good any defect or omission in the Goods, the Works or the Services as required by paragraph (g), the Purchaser may, or may engage others to, rectify the defect or omission and the cost of doing so

will be a debt due and payable from the Supplier to the Purchaser.

- (j) The Supplier must ensure that all manufacturers' and suppliers' warranties and installation certificates relating to the Goods, the Works or the Services which are available on reasonable commercial terms are given either in favour of the Purchaser or severally in favour of the Supplier and the Purchaser. The warranties and certificates must be provided to the Purchaser at the time of delivery or prior to Practical Completion, as applicable.

10 PAYMENT

- (a) The Contract Sum includes all delivery charges and payment for all things necessary and incidental to the supply of the Goods, the completion of the Works and the provision of the Services and shall not be subject to any variation by the Supplier including, but not limited to, variations in the cost of labour and materials or exchange rates unless a variation is instructed in writing under clause 7.
- (b) The Supplier must, with each delivery of Goods, and the completion of the Works or the Services (or as otherwise agreed by the parties), give to the Purchaser a written claim for payment setting out the Purchase Order number, the amount claimed by the Supplier on account of the Contract Sum and such other details as may be reasonably be requested or advised by the Purchaser, from time to time, including (where applicable) evidence of payment of any subcontractors and workers, workers compensation insurance premiums and payroll tax relating to such persons in a form which complies with the requirements of the Relevant Laws.
- (c) The Purchaser will assess the claim and give the Supplier the Purchaser's assessment within the later of 14 days of the Purchaser's receipt of the claim and the receipt by the Purchaser from the Supplier of any further information reasonably requested by the Purchaser. Subject to paragraph (d), the Purchaser will pay the Supplier the amount assessed within 30 days from the end of the month in which the Purchaser receives a valid tax invoice from the Supplier for the amount assessed.
- (d) Where the Services are in the nature of "construction work" or "related goods and services" as those terms are defined in the SOPA, the Purchaser will:
- (i) assess the claim within 10 Business Days; and
 - (ii) pay the Supplier the amount assessed within 15 Business Days,
- of receipt of the Supplier's valid payment claim.
- (e) The Purchaser may withhold from payment to the Supplier any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Purchaser pursuant to Division 2A of the SOPA.
- (f) Despite any other provision of the Contract, the Purchaser may deduct from any monies due to the Supplier, any money due and payable (or which may become due and payable) from the Supplier to the Purchaser whether under the Contract or otherwise.
- (g) If the Contract Sum is greater than \$25,000 and the Works and/or Services are in the nature of building and/or construction work to which the *Building and Construction Industry Long Service*

Payments Act 1986 (NSW) applies, the Supplier must provide the Purchaser with written certification that it has paid the amount of the long service levy payable in respect of the Works and/or Services to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent.

- (h) The Supplier must submit its written claim for payment under paragraph (b) and tax invoice under paragraph (c) to the Purchaser via the method of submission stated in the Purchase Order.

11 GST

- (a) Words used in the Contract that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that legislation. Unless otherwise specified, all amounts payable under the Contract are exclusive of GST and must be calculated without regard to GST.
- (b) If a supply made under the Contract is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Taxable Supplier**) the amount of GST in respect of the supply. The Recipient will only be required to pay an amount of GST to the Taxable Supplier if and when the Taxable Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply. If there is an adjustment to a taxable supply made under the Contract then the Taxable Supplier must provide an adjustment note to the Recipient.

12 TERMINATION

- (a) The Purchaser may terminate the Contract (or any part thereof):
- (i) immediately, by giving the Supplier written notice if, in the Purchaser's reasonable opinion, the Supplier has breached the Contract or has become the subject of an application for bankruptcy or an application for liquidation on the subject of bankruptcy or liquidation; or
 - (ii) for any reason, and in its absolute discretion, by giving the Supplier 5 days' written notice.
- (b) Upon termination:
- (i) the Purchaser will pay the Supplier that part of the Contract Sum, as applicable, for any Goods delivered, Works completed or Services provided up to the date of termination that have not been rejected by the Purchaser under clause 9(e); and
 - (ii) where termination occurs pursuant to clause 12(a)(ii), the Purchaser will pay the Supplier the cost of any materials or items reasonably ordered by the Supplier prior to the date of termination and which are to be incorporated into the Works, used in performing the Services or are Goods which were reasonably expected by the Supplier to be required to be delivered and supplied, as applicable, and which on payment by the Purchaser will become the property of the Purchaser. For the avoidance of doubt, this clause 12(b)(ii) does not apply if termination occurs pursuant to clause 12(a)(i).

- (c) If the Purchaser terminates the Contract (or a part thereof) then the Purchaser may employ and pay others to supply the terminated Goods, the Works or the Services (as applicable) and the Purchaser or those persons may purchase all materials and goods and do anything else necessary to supply the terminated Goods, the Works or the Services (as applicable).
- (d) The Purchaser will not be liable to the Supplier for and the Supplier will not be entitled to claim from the Purchaser any losses, expenses, costs, damages or liabilities suffered or incurred by the Supplier arising out of or in connection with the termination of the Contract, other than the amounts to be paid by the Purchaser under paragraph (b).

13 WORK HEALTH AND SAFETY

- (a) At all times during the supply of the Goods, the performance of the Works or the provision of the Services, the Supplier must identify and exercise all necessary precautions and take all reasonably practicable steps to ensure the health and safety of all persons who may be affected by the Goods, the Works or the Services.
- (b) The Supplier must comply with all work health and safety legislation, regulations, codes of practice and procedures applicable or relevant to the nature of the Supplier's work, including any advised to it by the Purchaser.
- (c) The Supplier must ensure that its personnel have all necessary and relevant qualifications, experience, licences and training required to competently carry out the Services without risk to health and safety and provide the Purchaser with evidence of such qualifications, licences and training upon request.
- (d) The Supplier must ensure that any plant, structures or substances used by the Supplier are safe, maintained and without risk to health and safety.
- (e) The Purchaser and the Supplier acknowledge and agree that the Supplier has complete control of and responsibility for:
 - (i) the manner in which the Goods are supplied, the Works are performed, or the Services are provided; and
 - (ii) all matters arising out of or as a consequence of the supply of the Goods, the performance of the Works or the provision of the Services that give rise or may give rise to risks to the health or safety of any person.
- (f) Without limiting the Supplier's obligations under any other provision of the Contract, where the Purchaser is or has engaged another entity as "principal contractor" under the *Work Health and Safety Regulation 2017* (NSW), the Supplier must comply with any directions given by the principal contractor exercising its lawful authority as principal contractor.
- (g) Prior to the Supplier commencing the Works or Services the Supplier must complete the Purchaser's general induction and site-specific induction requirements.
- (h) The Supplier must comply with all site security procedures advised to it by the Purchaser and will promptly notify the Purchaser of any accident, injury, near miss or property damage which occurs on the Purchaser's site whilst undertaking its obligations under the Contract.

- (i) If at any time the Supplier becomes aware of any hazard, incident, lost time incident, injury or damage to property in relation to the Works or the Services (as applicable), the Supplier must:
 - (i) immediately advise the Purchaser in writing of the nature of the hazard, incident, lost time incident, injury or damage to property and, where the incident is a "notifiable incident" as defined in the *Work Health and Safety Act 2011* (NSW), immediately notify the relevant Authority in the manner and form prescribed by the *Work Health and Safety Act 2011* (NSW);
 - (ii) promptly review the Works or the Services (as applicable) and immediately suspend provision of any Works or Services (as applicable) where a risk to health and safety is identified; and
 - (iii) within 5 days of the occurrence of the hazard, incident, lost time incident, injury or damage to property, devise and submit a report to the Purchaser giving complete details of the hazard, incident, lost time incident, injury or damage to property, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence and, so far as reasonably practicable, the elimination or minimisation of risks to health and safety.
- (j) Any review or inspection by the Purchaser of any information provided by the Supplier under this clause 13 will not constitute the verification or acceptance by the Purchaser of the adequacy of the information, which remains the sole responsibility of the Supplier.

14 CONFIDENTIAL INFORMATION

The Supplier acknowledges that all information and material provided to it by the Purchaser or a party on behalf of the Purchaser or to which it is exposed during performance of its obligations under the Contract or at any other time is confidential and must not be disclosed to a third party except when such disclosure is required by law or where the Purchaser has given prior agreement in writing to such disclosure.

15 PROPORTIONATE LIABILITY

The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which Part 4 of that Act would apply but for this clause 15.

16 PERSONAL PROPERTY & SECURITIES ACT

- (a) The Supplier acknowledges that the Purchaser may register a financing statement in relation to any security interest which arises under the Contract.
- (b) The Supplier waives its right under section 157 of the *Personal Property and Securities Act 2009* (Cth) (**PPS Act**) to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- (c) Without limiting any other confidentiality obligations the parties may have pursuant to the Contract, the Supplier and the Purchaser agree not to disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7)(b) to (e) of the PPS Act. The Supplier agrees that it

will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Purchaser approves in writing. Nothing in this clause 16 will prevent any disclosure by the Purchaser that it believes is necessary to comply with its other obligations under the PPS Act.

- (d) To the extent that it is not inconsistent with paragraph (c) of this clause 16 constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, the Supplier agrees that the Purchaser may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that the Purchaser is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.
- (e) To the extent the PPS Act allows them to be excluded, the enforcement provisions in Chapter 4 of the PPS Act do not apply to the Contract.
- (f) The Supplier will promptly do anything the Purchaser requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.
- (g) The Supplier must not grant any security interest in any goods or materials supplied or to be supplied under the Contract, nor purport to register any such interest on the Personal Property Securities Register, as established under the PPS Act.
- (h) If a term used in this clause 16 has a particular meaning in the PPS Act, it has the same meaning in this clause.

17 INTELLECTUAL PROPERTY

- (a) All intellectual property rights in any Contract Materials will vest in the Purchaser upon their creation and will remain the Purchaser's sole and exclusive property.
- (b) The Supplier presently assigns to the Purchaser all present and future intellectual property rights in all Contract Materials.

18 NOTICES

The Purchaser may serve notices and commercial documents issued by the Purchaser to the Supplier either by delivery by hand, or by posting to the Supplier's last known address. Notices will take effect either from the personal delivery date or the date of posting. All communications, notices and commercial documents required by the Contract must be issued by a party in English.

19 AUDIT

- (a) The Purchaser may conduct an audit of the Supplier's compliance with its obligations under the Contract with reasonable notice.
- (b) The Supplier must give the Purchaser and its personnel, internal and external auditors and advisers, access at all reasonable times to its personnel and data, records and information in the possession or control of the Supplier or its personnel, for the purposes of conducting the audit.
- (c) Without limiting any other right or remedy available to the Purchaser, if an audit identifies any breach of the Contract, the Supplier must do all things necessary to remedy that breach and will be liable to the Purchaser for the costs of the audit.

20 PROVISION OF INFORMATION

The Supplier must provide information and report to the Purchaser, in relation to any aspect of the Goods, Works and Services (as applicable) including energy use and greenhouse emissions, as required for the Purchaser to comply with the *National Greenhouse and Energy Reporting Act 2007* (Cth).

21 DISPUTES

Any dispute which arises between the Supplier and the Purchaser about the Contract must be the subject of at least 6 weeks negotiation at the appropriate authority level before either party commences legal proceedings. Nothing in this clause 21 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court in respect of a dispute.

22 PURCHASER POLICIES AND DIRECTIONS

The Supplier must, and must ensure that its personnel, comply with all applicable Purchaser Policies, as updated, amended, or replaced from time to time, and the Purchaser's directions relating to the performance of the Contract.

23 NO WAIVER

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Agreement by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Agreement.
- (b) A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

24 DEFINITIONS

Unless the context otherwise requires, italicised terms used in these Terms and Conditions have the meaning given to them in the NER and capitalised terms used in these Terms and Conditions have the meaning given to them in this clause 23.

- (a) "**AEMO**" means the Australian Energy Market Operator;
- (b) "**Affiliate**" means, as to a Party, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organisation or body, or other entity that directly or indirectly controls, is under common control with, or is controlled by, such Party. For the avoidance of doubt, in the case of the Purchaser, its Affiliates include the Purchaser Group Entities. As used in this definition, "control" and its derivatives mean possession, directly or indirectly, of power to direct or cause the direction of the board or management or policies of such entity, organisation or body, whether through ownership of voting securities or otherwise.
- (c) "**Authority**" includes any governmental, semi-governmental or local government authority, administrative or judicial body, tribunal or court, department, commission, public authority, Minister, statutory corporation, authority or instrumentality, the Australian Energy

Regulator, the Independent Pricing and Regulatory Tribunal and includes any self-regulatory organisation established under statute or any stock exchange.

- (d) **"Business Days"** has the meaning given to that term in the SOPA.
- (e) **"Code of Conduct"** means the Code of Conduct, as updated, amended or replaced from time to time, which can be obtained from the Purchaser's website at www.Ausgrid.com.au.
- (f) **"Completion Date"** means the date and/or time by which the Supplier must bring the Works and/or Services to Practical Completion, as adjusted under the Contract.
- (g) **"Contract"** means a contract between the Supplier and Purchaser which comprises these Terms and Conditions and the Purchase Order (including any specifications set out therein or attached thereto).
- (h) **"Contract Materials"** means all things, materials and information specifically developed, created or generated by the Supplier (whether alone or with any other person, the Purchaser, its employees or other suppliers), including any design, arising out of or in connection with the performance of its obligations under the Contract.
- (i) **"Contract Sum"** means the total amount stated in the Purchase Order but excluding GST, as adjusted under the Contract.
- (j) **"Defects Period"** means a period of 12 months after the date on which Practical Completion of the Works and/or Services and/or delivery of the Goods occurs (as applicable), unless stated otherwise in the Purchase Order.
- (k) **"Delivery Date"** means the date and/or time stated in the Purchase Order that the Goods are required by, as adjusted under the Contract.
- (l) **"Delivery Place"** means the address stated in the Purchase Order to which the Supplier must deliver the Goods, or perform the Works or Services, as applicable, or as directed by the Purchaser under clause 4(d).
- (m) **"External Partner Code of Conduct"** means the "External Partner Code of Conduct", as updated, amended or replaced from time to time, which is available at the Purchaser's website at www.pluses.com.au.
- (n) **"Goods"** means the goods stated in the Purchase Order.
- (o) **"Harmful Code"** means any computer code that is intended or known to be harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data including viruses, worms, malware, spyware, adware, keyloggers, trojans, or any other malicious code and any new types of programmed threats that may be classified, but excludes passwords, trial period software and like features which are security features or intended elements of the software solely used to prevent unauthorised use of the software in contravention of a licence.
- (p) **"Information Security Policy"** means the "Information Security Policy", as updated, amended or replaced from time to time, which is available at the Purchaser's website at www.ausgrid.com.au.
- (q) **"Modern Slavery"** includes, but is not limited to, conduct which is defined as 'modern slavery'

under section 4 of the *Modern Slavery Act 2018* (Cth).

- (r) **"Modern Slavery Laws"** means:
 - (i) any statutes, regulations, rules, or other instruments of the Commonwealth of Australia, or any state or territory of the Commonwealth of Australia, which relate to Modern Slavery and includes the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth); and
 - (ii) any statutes, regulations, rules, or other instruments of any foreign jurisdiction which relate to Modern Slavery.
- (s) **"NER"** means the National Electricity Rules made under the *National Electricity Law*.
- (t) **"Party"** means a party to this Agreement, and includes that party's permitted novatees, permitted assignees, personal representatives and successors.
- (u) **"Practical Completion"** means the Works and/or Services (as applicable) are complete to the satisfaction of the Purchaser and the Purchaser has received from the Supplier all documentation relating to the Works and/or Services, including documentation necessary for the use, operation, maintenance and occupation of the Works.
- (v) **"Purchase Order"** means the document issued by the Purchaser to the Supplier (including any specifications attached thereto or stated therein) which describes the Goods, Works and Services, as applicable.
- (w) **"Purchaser"** means Ausgrid Operator Partnership (ABN 78 508 211 731) trading as "Ausgrid", a partnership carried on under that name by Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust; ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1; ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2; ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3 and ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.
- (x) **"Purchaser Group"** means Purchaser, Purchaser's Affiliates (including the Purchaser Group Entities), and Purchaser's and Purchaser's Affiliates' respective Personnel.
- (y) **"Purchaser Group Entities"** means Ausgrid Management Pty Ltd (ACN 615 449 548), Ausgrid Asset Partnership (ABN 48 622 605 040), Ausgrid Finance Pty Ltd (ACN 615 343 005), PLUS ES (ABN 30 179 420 673), PLUS ES Management 1 Pty Ltd (ABN 33 622 269 907), PLUS ES Management 2 Pty Ltd (ABN 39 622 269 934) and Active Stream Pty Ltd (ABN 32 603 459 267).
- (z) **"Purchaser Policies"** means the policies, processes, procedures and standards of the Purchaser (including, but not limited to, the Purchaser's Information Security Policy, Application Management Policy, Information Security Management and Governance Procedure, Information Classification, Labelling and Handling Procedure, Acceptable Use of Technology Policy and External Partner Code of Conduct, each of which is available on Ausgrid's website at www.ausgrid.com.au) and any updated version of these documents made

available to the Supplier from time to time (including by way of URL).

- (aa) **“Relevant Laws”** means where the Goods, Works and Services (as applicable) are provided in.
- (i) New South Wales, the *Payroll Tax Act 2007* (NSW), the *Workers Compensation Act 1987* (NSW) and the *Industrial Relations Act 1996* (NSW);
 - (ii) Victoria, the *Payroll Tax Act 2007* (Vic), *Workers Compensation Act 1958* (Vic), *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and the *Accident Compensation Act 1985* (Vic);
 - (iii) Queensland, the *Payroll Tax Act 1971* (Qld), *Workers’ Compensation and Rehabilitation Act 2003* (Qld) and the *Industrial Relations Act 2016* (Qld);
 - (iv) South Australia, the *Payroll Tax Act 2009* (SA) and the *Return to Work Act 2014* (SA);
 - (v) Australia Capital Territory, the *Payroll Tax Act 2011* (ACT) and the *Workers Compensation Act 1951* (ACT); or
 - (vi) Tasmania, the *Payroll Tax Act 2008* (Tas), *Workers Rehabilitation and Compensation Act 1988* (Tas) and the *Industrial Relations Act 1984* (Tas).
- (bb) **“Ring-fencing Guideline”** means the Electricity Distribution Ring-fencing Guideline made under clause 6.17.2 of the NER.
- (cc) **“Services”** means the services stated in the Purchase Order.
- (dd) **“SOPA”** means where the Goods, Works and Services (as applicable) are provided in:
- (i) Victoria, the *Building and Construction Industry Security of Payment Act 2002* (Vic);
 - (ii) New South Wales, the *Building and Construction Industry Security of Payment Act 1999* (NSW);
 - (iii) Queensland, the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
 - (iv) South Australia, the *Building and Construction Industry Security of Payment Act 2009* (SA);
 - (v) Australia Capital Territory, the *Building and Construction Industry Security of Payment Act 2009* (ACT); or
 - (vi) Tasmania, the *Building and Construction Industry Security of Payment Act 2009* (Tas).
- (ee) **“Supplier”** means the entity providing the supply of the Goods, Works and/or Services which may be identified as Supplier, Contractor, Consultant or Service Provider in the Purchase Order.
- (ff) **“Whistleblower Policy”** means the “Policy – Whistleblower”, as updated, amended or replaced from time to time, which is available at the Purchaser’s website at www.ausgrid.com.au.
- (gg) **“Works”** means the works stated in the Purchase Order.

25 GENERAL

- (a) A reference to “law” in these Terms and Conditions includes the requirements of any

Authority having jurisdiction over the parties or the Goods, the Works or the Services.

- (b) A reference to 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.
- (c) Except as otherwise expressly provided in the Contract, all of the Supplier’s obligations under the Contract, including its compliance with any direction given by or on behalf of the Purchaser, are to be discharged by the Supplier at its own cost and expense, and the Supplier warrants that it has made sufficient allowance in the Contract Sum for all such costs and expenses that may be incurred in complying with its obligations and any such direction.
- (d) The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (e) The Supplier must not assign, subcontract or otherwise deal with the whole or any part of the Contract without the prior written consent of the Purchaser (such consent may be withheld in its absolute discretion). Subcontracting will not relieve the Supplier from liability or any obligation under the Contract and the Supplier will be liable for all acts performed by and omissions of a subcontractor in connection with the Contract.
- (f) The Purchaser may at any time transfer, assign, novate or otherwise deal with the whole or any part of the Contract. If requested by the Purchaser, the Supplier must execute a deed on terms reasonably required by the Purchaser giving effect to any transfer, assignment, novation or other dealing.
- (g) The parties agree that:
- (i) any work performed by the Supplier prior to the date of the Purchase Order is deemed to have been performed by the Supplier under the Contract; and
 - (ii) any payment made by the Purchaser to the Supplier in relation to such work prior to the date of the Purchase Order is deemed to have been made on account of the Contract Sum.
- (h) The Purchaser is not liable for, and is released from, any claims of any nature by the Supplier (or those claiming through it) which have not been notified to the Purchaser in writing within 21 days of the occurrence of the event or circumstance giving rise to the claim, together with full particulars of the claim.
- (i) If any term of the Contract is held to be unenforceable, or invalid, for any reason, then that term is deemed to be modified to the extent required to remedy the unenforceability or invalidity or, if that is not possible, the term is to be severed from the Contract and the remaining terms will remain in full force.
- (j) The Contract may only be varied by the agreement of the parties in writing.
- (k) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.

- (l) Without limiting any other provision of the Contract relating to survival, any provision of the Contract which contemplates performance or observance subsequent to any termination or expiration of the Contract, and the representations, warranties, covenants and indemnities of or by the Supplier contained in the Contract, shall survive any termination or expiration of the Contract and continue in full force and effect.