

Conditions of Purchase

1. Definitions

In this agreement:

Acceptance means Endeavour notifying the Supplier under clause 6.2(a), and **Accepted** has a like meaning.

Consequential Loss means loss of use, opportunity, profit, anticipated profit, revenue, business or business opportunities and damage to goodwill, reputation or share price.

Defect means an aspect of the Goods or Services that is Defective.

Defective, in relation to the Goods and Services, means that they:

- (a) does not conform to the Specifications;
- (b) are incomplete or have an error, defect or malfunction;
- (c) are not fit for purpose or of merchantable quality;
- (d) do not conform with a sample or test goods provided by the Supplier; or
- (e) otherwise do not comply with the requirements of this agreement.

Defects Liability Period means, for each item of Goods or Services, the period commencing on Acceptance of the Goods or Services and continuing for 12 months (or such longer period specified in this agreement) and any further period under clause 8.2.

Distributor Licence means the distributor's licence granted by the Minister for Resources, Energy and Utilities to Endeavour under section 14 of the *Electricity Supply Act 1995* (NSW) on or about 7 June 2017, and as amended by the Minister's Variation of Licence Conditions issued on or about 5 February 2019.

Distribution System means the distribution system of which Endeavour Energy is a network operator.

Documentation means comprehensive operating manuals, installation instructions (where applicable), reference material and other relevant publications and aids required to enable the Goods to be used by Endeavour Personnel, including any documentation specified in the Specifications.

Due Date means the date on which the Goods are due for delivery, and the Services are due for completion, determined under clause 4.1(a).

Endeavour means Endeavour Energy Network Operator Partnership ABN 11 247 365 823.

Endeavour Codes and Standards means each of the following codes and standards of Endeavour:

- (a) Endeavour Energy Code of Conduct;
- (b) Endeavour Energy Statement of Business Ethics;
- (c) Fatal Risk Control Standard;
- (d) GSY 0088 Alcohol and Other Drugs;

- (e) Company Policy 2.6 Endeavour Energy Protective Clothing;
- (f) Company Policy 4.0 Environment;
- (g) GSY 0077 Preventing and Managing Fatigue in the Workplace;
- (h) GSY1031 Electrical Safety Rules; and
- (i) EMS 0008 Environmental Incident Response and Management,

as provided by the Endeavour to the Supplier, and as may be amended in writing by the **Endeavour**

Property means any property or information of Endeavour (including information created or obtained by the Supplier in the course of this agreement that relates to Endeavour or its customers, businesses or other interests) in the custody or control of the Supplier or its Personnel.

Endeavour Senior Officer means a senior officer of Endeavour responsible for (notwithstanding their title);

- (a) operational technology;
- (b) network operations; or
- (c) security operations,

in relation to the Distribution System, who resides in Australia and holds an appropriate national security clearance, being a clearance of not less than Negative Vetting Level 1 (or equivalent) issued by the NSW Government on advance from the Australian Government Security Vetting Agency (AGSVA).

Force Majeure means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party but, in the case of the Supplier, does not include acts or omissions of the Supplier's Personnel or other customers.

Goods means the goods the Supplier is required to supply under this agreement.

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

Intellectual Property Rights includes all present and future rights in relation to copyright, trade marks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this agreement, and whether existing in Australia or otherwise.

Modern Slavery Laws means any law, statute and regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which Endeavour or the Supplier is registered or conducts business or in which activities relevant to the agreement are to be performed.

Moral Rights means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Order Date means the date of the Purchase Order.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Personnel of a person means that person's directors, officers, employees, agents, contractors and their respective Personnel.

Price means the price for Goods and Services determined under clause 7.1.

Protocol means a document permitted under condition 9.1 and 9.2 of the Distributor Licence, that may set out (among other things) the:

- (a) specified purposed for which maintenance of the Distribution System equipment may be conducted offshore and the circumstances in which it may be conducted offshore;
- (b) methodology and activities to be undertaken to allow for maintenance and repairs of the Distribution System equipment to be carried out involving remote access from offshore;
- (c) the exceptional circumstances in which the Protocol applies; and
- (d) activities and processes which achieve requisite level of cyber-security.

Purchase Order means an order for Goods and/or Services, issued by Endeavour to the Supplier, to which these Conditions of Purchase are attached.

Relevant Person means Endeavour, any other network operator of the Distribution System, and any person who is contracted or sub-contracted by Endeavour to work on the Distribution System.

Ring-Fencing Guideline means the "Ring-Fencing Guideline - Electricity Distribution", dated 17 October 2017 and made by the Australian Energy Regulator, under clause 6.17.2 of the National Electricity Rules.

Services means the services the Supplier is required to supply under this agreement, including all other things, tasks and activities which the Supplier is, or may be required to do, to comply with its obligations under this agreement.

Site means the place identified in the Purchase Order, or such other place notified by Endeavour to the Supplier from time to time.

Specifications means specifications:

- (a) identified in the Purchase Order;
- (b) notified by Endeavour to the Supplier at any time prior to or at the time of issuing the Purchase Order;
- (c) in the Documentation; and
- (d) in the current applicable specifications published generally by the manufacturer of the Goods,

and to the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later.

Supplier means the supplier whose details are set out in the Purchase Order.

Term means the period of the agreement defined in clause 2.1(d).

Type 1 Critical Information means all of Endeavour's information (being design specifications, operating manuals and the like) as to the operational technology (such as the SCADA system) and associated ICT infrastructure of Endeavour's operational network.

Type 2 Critical Information means all:

- (a) "Load Data", being data as to the quantum of electricity delivered (both historical and current load demand) from or to any one or more sites (or their connection points) which satisfies each of the following criteria:
 - (i) it is not historical load data older than 30 days;
 - (ii) it is not fault data;
 - (iii) it describes a location that allows a customer(s) or connection points(s) to be identified;
 - (iv) it describes a date and time of the data record; and
 - (v) it describes a duration - a length of time that allows for a quantum to exist; and
- (b) "Bulk Personal Data Records", being any holdings or files of personal information (within the meaning of the *Privacy Act 1988* (Cth)) about multiple individuals which contain fields or categories.

Type 3 Critical Information means any third party data or information (including without limitation communications within the meaning of the *Telecommunications (Interception and Access) Act 1979* (Cth), Personal Information and closed-circuit television footage) which is indirectly accessed or obtained by Endeavour because that third party data or information is transferred by a carrier or other party using Endeavour's infrastructure.

WHS Legislation means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW).

2. Agreement

2.1 Scope of agreement

- (a) Subject to clause 2.1(b), this agreement comprises the following documents:
 - (i) the Purchase Order;
 - (ii) these Conditions of Purchase; and
 - (iii) the Specifications,

which documents constitute the entire agreement between Endeavour and the Supplier in relation to its subject matter. The terms of this agreement apply to the exclusion of all terms or conditions in any offer for or acceptance of the Purchase Order by the Supplier, which terms and conditions the Supplier is deemed to waive by accepting the Purchase Order.
- (b) Where, on or before the Order Date, Endeavour and the Supplier have entered into a separate agreement in respect of the Goods or Services the subject of the Purchase Order, the separate agreement will govern the supply of those Goods or Services and these Conditions of Purchase will not apply.
- (c) To the extent that any part of this agreement imposes on the Supplier a higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope than any other part of this agreement, unless the context otherwise expressly requires, the higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope, as determined by Endeavour, in its absolute discretion, prevails.

- (d) This agreement commences on the Order Date and continues until it is terminated in accordance with clause 12.

2.2 Parties' obligations

- (a) The Supplier will supply the Goods and Services to fulfil the Purchase Order on the terms of this agreement.
- (b) Subject to this agreement, Endeavour will pay the Supplier for the Goods and Services in accordance with clause 7.

3. Variation to Purchase Order

- (a) Unless otherwise specified in the agreement, not less than 14 days before the Due Date for the relevant Goods, or prior to completion of the relevant Services, Endeavour may notify the Supplier that it wishes to vary the Purchase Order.
- (b) Within 3 days after receiving a notice under clause 3(a), the Supplier will submit to Endeavour a quotation for the Goods and Services as proposed to be varied by Endeavour.
- (c) Upon receiving the Supplier's quotation under clause 3(b), Endeavour may confirm that the Purchase Order is to be varied by notifying the Supplier, in which case the parties must comply with the Purchase Order as varied in accordance with this clause. A Purchase Order will not be varied unless Endeavour gives notice confirming the variation under this clause 3(c).
- (d) Except as expressly provided for in clause 3(c), the Supplier must not vary the Goods or Services.

4. Supply of Goods and Services

4.1 Due Date

- (a) The Due Date will be specified in the Purchase Order. If the Due Date is not specified in the Purchase Order, then the Due Date will be a reasonable time after the Order Date.
- (b) The Supplier's compliance with any obligation to deliver or render the Goods or Services by the Due Date (or any extension to that date) will be of the essence.
- (c) Endeavour may, in its absolute discretion, at any time unilaterally extend the Due Date by notice to the Supplier. This right is solely for the benefit of Endeavour and Endeavour is not required to exercise its discretion under this clause the benefit of the Supplier.
- (d) The Supplier indemnifies Endeavour against all loss and damage to Endeavour arising from or in connection with the Supplier's failure to deliver the Goods or Services by the Due Date.

4.2 Supply of Goods

- (a) The Supplier will deliver the Goods to Endeavour:
 - (i) by the Due Date and (unless otherwise agreed) during Endeavour's normal business hours.
 - (ii) in accordance with this agreement; and

- (iii) at the Site.
- (b) The Supplier must design the parts of the Goods which this agreement requires it to design, provide the design it prepares to Endeavour and warrants that:
 - (i) any design it prepares will comply with the requirements of this agreement and will be fit for its intended purpose; and
 - (ii) to the extent the Goods are manufactured by or on behalf of the Supplier, the Goods will be in accordance with the design approved by Endeavour.

4.3 Documentation

- (a) Upon delivery of the Goods, the Supplier will supply Endeavour with the Documentation. Endeavour may make as many copies of the Documentation as it requires.
- (b) The Supplier will supply updated Documentation to Endeavour if:
 - (i) the correction of a Defect requires a change to the Documentation;
 - (ii) the existing Documentation is inaccurate; or
 - (iii) for any other reason, changes to the Documentation are made by the Supplier.

4.4 Supply of Services

- (a) The Supplier will provide the Services:
 - (i) by the Due Date and (unless otherwise agreed) during Endeavour's normal business hours;
 - (ii) in accordance with this agreement; and
 - (iii) at the Site.
- (b) Endeavour may, in its reasonable discretion, require the Supplier to remove Personnel from providing the Services. The Supplier will promptly at no additional cost to Endeavour arrange for the removal of those personnel and their replacement with personnel reasonably acceptable to Endeavour.

4.5 Title and risk

- (a) Risk of loss or damage to the Goods and Documentation passes to Endeavour upon Acceptance of the Goods and Documentation.
- (b) Title in the Goods and Documentation passes to Endeavour upon the delivery of, or payment for, the Goods, whichever occurs first.

4.6 No duty to review

Endeavour and its Personnel owe no duty to the Supplier to review any design, Documentation or other document submitted by the Supplier (whether under this clause 4 or otherwise) for errors, omissions or compliance with this agreement. No comments on, reviews or rejection of or approval of any design, Documentation or other document by Endeavour will relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities under this agreement or otherwise.

5. Site and information

5.1 Site information

Endeavour does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information or data made available to the Supplier as to the existing conditions at the Site and the Supplier acknowledges that such information or data does not form part of this agreement.

5.2 Site access

- (a) Subject to clause 5.2(b) and any other provision of this agreement affecting access, Endeavour must ensure that the Supplier has sufficient access to the Site to allow the Supplier to supply the Goods and Services.
- (b) Endeavour is not obliged to give the Supplier access to any part of the Site until the Supplier has:
 - (i) effected the insurances required by clause 11.3 and complied with clause 11.4 in respect of those insurances; and
 - (ii) satisfied any other obligation or requirement which is stated to be a condition precedent or pre-requisite (howsoever described) to the Supplier accessing the Site.

5.3 Supplier's obligations upon access

In supplying the Goods and Services at the Site, the Supplier must:

- (a) comply, and ensure its Personnel comply, with all directions of Endeavour and its authorised officers;
- (b) minimise disruption or inconvenience to:
 - (i) Endeavour, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
 - (ii) others having a right of access to the Site;
- (c) at all reasonable times give Endeavour and any person authorised by Endeavour access to the Goods and Services, the Site or any areas off Site where the Goods and Services are being prepared or carried out;
- (d) coordinate and co-operate with any other suppliers engaged by Endeavour to perform work or supply goods or services on or in the vicinity of the Site;
- (e) keep the Site secure, clean and tidy and free of refuse; and
- (f) prior to leaving the Site, remove all its rubbish, materials, plant and equipment.

5.4 Work health and safety

- (a) Without limiting its obligations under this agreement, the Supplier must:
 - (i) comply, and must ensure that its subcontractors and any other person engaged by the Supplier for the purposes of this agreement comply, with the WHS Legislation (including its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who

have a work health and safety duty in relation to the same matter) and the Health and Safety Performance Standard and Fatal Risk Control;

- (ii) if requested by Endeavour or required by WHS Legislation or Health and Safety Performance Standard, demonstrate compliance with the WHS Legislation and Health and Safety Performance Standard Fatal Risk Control, including providing evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (iii) notify Endeavour immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the work under this agreement;
 - (iv) insofar as the Supplier, in supplying the Goods and Services is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (v) ensure that it does not do anything or fail to do anything that would cause Endeavour to be in breach of the WHS Legislation or the Health and Safety Performance Standard.
- (b) To the extent not prohibited by law, the Supplier indemnifies Endeavour against any claims against, or loss suffered or incurred by, Endeavour arising out of or in connection with the failure of the Supplier to discharge the duties imposed under the WHS Legislation or otherwise comply with this clause 5.4.

5.5 Environment

- (a) Without limiting its obligations under this agreement, the Supplier must:
- (i) comply with all applicable environmental laws and codes of practice in supplying the Goods and Services;
 - (ii) at all times, exercise any necessary and reasonable precautions appropriate to the nature of the Goods and Services to be provided to protect the environment at the Site, or in the vicinity of the Site;
 - (iii) comply (at its cost) with any direction given by Endeavour to stop work or to take urgent remedial measures where actual or potential risk of harm to the environment has been identified as a result of the Supplier's actions; and
 - (iv) provide equipment, materials, training, personnel and other resources (including supervision) necessary to meet the environmental management requirements of this agreement and to ensure environmental compliance.
- (b) To the extent not prohibited by law, the Supplier indemnifies Endeavour against any claims against, or loss suffered or incurred by, Endeavour arising out of or in connection with the failure of the Supplier to discharge the duties imposed under applicable environmental laws and codes of practice or otherwise comply with this clause 5.5.

6. Testing and Acceptance

6.1 Inspection and testing upon delivery

- (a) Endeavour may inspect and test the Goods and Services to confirm that they are not Defective within a reasonable time of them being delivered to Endeavour or completed.
- (b) If Goods are Defective, the Supplier will, within the time required by Endeavour and at the Supplier's own expense, perform any necessary work to remedy Defects.
- (c) If a Service is Defective, the Supplier will, within the time required by Endeavour and at the Supplier's own expense, provide the Service again.
- (d) The Supplier will pay Endeavour's reasonable costs of repeating any inspection and tests under this clause 6.1.

6.2 Acceptance

- (a) Where Endeavour is satisfied that the Goods and Services are not Defective, Endeavour will notify the Supplier that the Goods and Services are accepted.
- (b) Acceptance does not limit or otherwise affect:
 - (i) the Supplier's obligation to correct Defects; or
 - (ii) Endeavour's rights under this agreement or at law.

6.3 Defective Goods or Services

If the Goods or Services are Defective on the Due Date (including where they are not provided by the Due Date), Endeavour may, within 14 days of the date on which the Goods were delivered or Services completed, without prejudice to Endeavour's other rights and remedies, at its option:

- (a) accept the Goods or Services subject to a reasonable reduction in the Price;
- (b) reject the Goods or Services; or
- (c) accept the Goods or Services on terms acceptable to Endeavour.

6.4 Rejected Goods or Services

- (a) Where Goods or Services are rejected by Endeavour under clause 6.3(b), then no amount is payable for the rejected Goods or Services and the Supplier will, within 7 days after receiving notification of such rejection, without prejudice to Endeavour's other rights and remedies:
 - (i) collect the rejected Goods from Endeavour; and
 - (ii) refund to Endeavour all amounts paid by Endeavour in respect of the rejected Goods or Services.

7. Price and payment

7.1 Pricing

- (a) The Price for the Goods and Services is:

- (i) the price or total of the prices stated in the Purchase Order; or
 - (ii) if no price is specified in the Order, a price that is not greater than the price for the Goods or Services last quoted or charged to Endeavour.
- (b) The Price for the Goods include the Services, unless separate Prices for the Services are set out in the Purchase Order.

7.2 No other amounts payable

Except as expressly provided in this agreement, the Price is the only amount payable by Endeavour for the Goods and the Services. The Price is not subject to variation and includes all costs of manufacture, distribution, transportation, warehousing, delivery, service, work, insurance, government taxes, duties and charges, any variation in the exchange rate, and all costs of the Supplier's compliance with all applicable laws and regulations.

7.3 Invoicing

Unless otherwise agreed in writing by the parties, on or before the last day of the month, the Supplier may submit to Endeavour a tax invoice for the Goods and Services which have been Accepted in that month.

7.4 Payment

- (a) Endeavour will pay the Supplier the amount due under an undisputed tax invoice within 30 days of receipt of a correctly rendered tax invoice. An invoice is correctly rendered if:
 - (i) the amount claimed in the tax invoice is due for payment in accordance with this agreement;
 - (ii) the Supplier has complied with its obligations as at the date of the tax invoice; and
 - (iii) the tax invoice is in the proper form for the purposes of the GST Act.
- (b) Endeavour is not liable to pay amounts in respect of any Goods or Services which Endeavour reasonably determines as not being provided in accordance with this agreement.
- (c) Undisputed invoices must be submitted within 3 months of the service/goods delivery in order to be paid. Invoice greater than 3 months will not be paid unless the Contractor and the Purchaser have agreed in writing prior to the 90-day cut-off.
- (d) Where a tax invoice is found to have been incorrectly rendered after payment by Endeavour, the underpayment or overpayment will be recovered by or from the Supplier.
- (e) If Endeavour disputes the validity of, or amount specified in, any invoice. Endeavour will notify the Supplier of the details and the nature of the dispute.
- (f) Endeavour is not required to pay the disputed invoice until the dispute is resolved, but if the Supplier reissues the invoice for the amount that is not disputed by Endeavour, it must also issue Endeavour with a credit for the amount of the disputed invoice and Endeavour will pay that undisputed amount when that re-issued invoice is due for payment.
- (g) the parties must continue to perform their other obligations under the Agreement.

7.5 GST

- (a) Terms used in this clause 7.5 have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise stated, all amounts set out in this agreement are GST exclusive.
- (c) To the extent that any supply made by one party (**Supplier**) to another party (**Recipient**) in relation to this agreement is a taxable supply, the amount to be paid or other consideration to be provided to the Supplier by the Recipient must be increased by an amount equal to any GST which the Supplier is or becomes liable to pay in respect of the supply so that the Supplier retains after payment of GST the amount which it would have retained but for its obligation to pay GST.

8. Warranties and Defects Liability Period

8.1 Warranties

The Supplier warrants that:

- (a) in supplying the Goods and Services, it will strictly comply with all applicable laws and standards, including the Endeavour Codes and Standards;
- (b) the Goods will:
 - (i) correspond strictly with the description of the same as detailed in the Purchase Order;
 - (ii) conform to the Specifications;
 - (iii) comply with all applicable laws and standards, including the Endeavour Codes and Standards;
 - (iv) not be Defective;
 - (v) incorporate recyclable packaging for transportation and storage (to the extent reasonably practicable having regard to the nature of the Goods);
 - (vi) be of good and merchantable quality;
 - (vii) be new and not previously used; and
 - (viii) be fit for their intended purpose;
- (c) the Services will:
 - (i) correspond strictly with the description of the same as detailed on in the Purchase Order;
 - (ii) conform with the Specifications;
 - (iii) comply with all applicable laws and standards, including the Endeavour Codes and Standards;
 - (iv) not be Defective;
 - (v) be performed with due skill and care and in a professional, punctual and diligent manner; and

- (vi) be fit for their intended purpose;
- (d) it has carefully considered the Specifications and satisfied itself that the Specifications are proper, adequate and fit for their intended purpose, including for the purpose of enabling the Supplier to supply the Goods and Services in accordance with this agreement;
- (e) Documentation will be of a reasonable standard, up to date and in English;
- (f) Supplier Personnel providing the Services possess and will use the specific skills, qualifications and experience required for the Services;
- (g) it is entitled to supply the Goods and Documentation and that at the time title in the Goods and Documentation passes to Endeavour, the Goods and Documentation are free from all liens, charges and encumbrances of any kind; and
- (h) the Goods and Documentation, and the acts of Endeavour or a person authorised by Endeavour in relation to the Goods and Documentation, will not infringe the Intellectual Property Rights or Moral Rights of any person.

8.2 Defects Liability Period

- (a) Without limiting clauses 6 or 8.1, during the Defects Liability Period, the Supplier must correct any Defects notified to it by Endeavour within such time or at the times reasonably required by Endeavour.
- (b) Unless this agreement expressly provides otherwise, the Defects Liability Period for that part of the Goods or Services that is Defective will be extended by a period equal to the original Defects Liability Period for the relevant Goods or Services, commencing on the date the relevant Defect is corrected.
- (c) The Supplier must comply with its obligations under this clause 8.2 at its own cost.

9. Compliance

9.1 Laws and standards

In supplying the Goods and Services, the Supplier must:

- (a) comply with all laws and standards applicable to the Goods and Services and the Supplier's performance of this agreement;
- (b) apply for and obtain any approvals in connection with the Goods and Services and the Supplier's performance of this agreement; and
- (c) comply with, carry out and fulfil the conditions and requirements of any such approvals, including by giving all notices and paying all fees and charges in respect of those approvals.

9.2 Endeavour Codes and Standards

- (a) In supplying the Goods and Services, the Supplier must ensure that it and its Personnel comply with:
 - (i) the Endeavour Codes and Standards;
 - (ii) (without limiting paragraph (i)) the Statement of Business Ethics and declare any conflicts of interest (actual, potential or reasonably

perceived) to Endeavour at the earliest reasonable opportunity after becoming aware of such conflicts;

- (iii) and such other of Endeavour's policies or procedures notified to the Supplier from time to time, including harassment, discrimination, use of IT resources, and security policies and any codes of conduct.

(b) If required by Endeavour, the Supplier must:

- (i) demonstrate compliance with clause 9.2(a), including providing such evidence and documentation reasonably required by Endeavour; and
- (ii) attend training provided by Endeavour on any of the policies, procedures or statements with which the Supplier must comply under clause 9.2(a).

9.3 Modern Slavery

(a) The Supplier must:

- (i) ensure that, in performing its obligations in connection with the agreement, it, and each of its Personnel:
 - A. do not engage in any conduct or omission which may contravene any Modern Slavery Laws; and
 - B. comply with any Endeavour's policy relating to modern slavery or the Modern Slavery Laws;
- (ii) and must ensure that its Personnel do all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains and remain compliant with all applicable Modern Slavery Laws;
- (iii) ensure that the terms of any agreement, engagement or arrangement entered into by Endeavour with any person engaged by the Supplier to provide goods or services in connection with the agreement (Third Party Contract):
 - A. permit termination of such Third Party Contract if the Supplier has reasonable grounds to believe there has been, or is likely to be, a breach of any applicable Modern Slavery Laws; and
 - B. require the relevant counterparty to implement its own binding guidelines for ethical behaviour and compliance with the Modern Slavery Laws;
- (iv) implement due diligence procedures for its own suppliers to ensure that there is no, or there is no risk of, slavery or human trafficking or similar types of conduct in its supply chains;
- (v) promptly notify Endeavour as soon as it becomes aware of a potential, suspected or actual breach by it or its Personnel of any Modern Slavery Laws in connection with the agreement; and
- (vi) cooperate in good faith with Endeavour in investigating circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws, whether or not notification has been given under paragraph (e) above.

(b) If Endeavour knows of, or has reasonable grounds to suspect a past, present or potential breach by the Supplier or its Personnel of any applicable Modern Slavery

Laws or any of their own policies relating to modern slavery, in connection with the agreement, then:

- (i) Endeavour may (with notice to the Supplier) require access to the Supplier's documents and Personnel for the purposes of investigating such past, present or potential breach; and
 - (ii) the Supplier must give such access and provide all reasonable assistance in facilitating Endeavour's investigation.
- (c) The Supplier represents and warrants to Endeavour that:
- (i) neither the Supplier or its Personnel:
 - A. have been convicted of any offence under the Modern Slavery Laws or involving or connected with modern slavery and human trafficking; or
 - B. to the best of its knowledge, have been or are (as at the Order Date) the subject of any investigation, inquiry or enforcement proceedings by any authority or other governmental, administrative or regulatory body in connection with any offence or alleged offence under the Modern Slavery Laws; and
 - (ii) it conducts its business in a manner that is consistent with Modern Slavery Laws.
- (d) The Supplier must:
- (i) establish and maintain policies and procedures to ensure that the Supplier and its Personnel comply with the obligations set out in this clause 9.3; and
 - (ii) ensure that policies and procedures required under this clause 9.3 contain requirements that training will be provided to the Supplier's Personnel, as the case may be, in relation to the matters addressed by those policies and procedures.

10. Endeavour Energy's Distribution System

10.1 Type 1 and Type 2 Critical Infrastructure Information

- (a) Subject to clauses 10.1(b) and 10.2, but notwithstanding any other provision of this agreement, the Supplier must ensure that all Type 1 Critical Information and Type 2 Critical Information in the possession of, or otherwise obtained by, the Supplier of any of its Personnel:
 - (i) is held solely within Australia; and
 - (ii) is accessible only by (and is only accessed by), in the case of:
 - A. Type 1 Critical Information, Endeavour, or other Relevant Persons who have been so authorised by Endeavour in writing; or
 - B. Type 2 Critical Information, Endeavour or other Relevant Persons, or persons who have been so authorised by Endeavour in writing, and in each case only from Australia.

- (b) The Supplier is not in breach of its obligations under clause 10.1(a) if it discloses, holds, uses or accesses:
 - (i) Type 1 Critical Information or Type 2 Critical Information (other than Personal Information) for a purpose permitted by condition 10.2 of the Distributor Licence, and the Supplier is a Relevant Person approved in writing by the Endeavour Senior Officer responsible for operational technology; or
 - (ii) Personal Information as permitted by the *Privacy Act 1988* (Cth).

10.2 Type 3 Critical Infrastructure Information

Notwithstanding any other provision of this agreement, the Supplier must ensure that any Type 3 Critical Information:

- (a) is not held by the Supplier or any of its Personnel; and
- (b) is only accessed by Endeavour and other Relevant Persons, or persons who have been so authorised by Endeavour in writing, and in each case only from within Australia.

10.3 Substantial presence in Australia - maintenance and operation of the Distribution System

- (a) Subject to clause 10.3(b), but notwithstanding any other provision of this agreement, the Supplier must ensure that:
 - (i) the maintenance of the Distribution System is undertaken solely from within Australia, except where maintenance requires either physical servicing of components offshore or the acquisition of replacement components from outside Australia. In such instances, the Supplier must obtain Endeavour's written approval prior to components being sent offshore for physical servicing;
 - (ii) it and any third party or non-Endeavour employees, including individuals or entities from outside Australia, undertaking maintenance of the Distribution System is approved in writing by the Endeavour Senior Officer responsible for network operations; and
 - (iii) the operation and control of the Distribution System, including all associated ICT infrastructure, can be accessed, operated and controlled only from within Australia, and the Distribution System is not connected to any other infrastructure or network which could enable it to be controlled or operated by persons outside Australia.
- (b) The Supplier is not in breach of its obligations under clause 10.3(a) if it maintains, accesses, operates or controls the Distribution System in a manner permitted by a Protocol under condition 9.1 of the Distributor Licence.

10.4 Critical Infrastructure Licence Conditions Compliance

On or before 1st of March of each year (or such other date as requested by Endeavour), The Supplier may be requested to provide an attestation declaration, detailing your compliance with this clauses 10.1 to 10.3 over the previous Calendar year.

10.5 Ring-Fencing Guideline

The Supplier acknowledges and agrees that:

- (a) Endeavour has an obligation under the Ring-Fencing Guideline not to discriminate either directly or indirectly between a 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
- (b) nothing in this agreement shall require Endeavour to do anything, cause anything to be done, or omit to do anything which would cause any member of the Endeavour Group to breach the Ring-Fencing Guideline.

10.6 Supplier to comply with the Ring-Fencing Guideline

The Supplier, in connection with the supply of the Goods and Services under this agreement, must comply with:

- (a) clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of the Ring-Fencing Guideline; and
- (b) clause 4.2.3 of the Ring-Fencing Guideline as that clause relates to the brands of Endeavour,

as if the Supplier was Endeavour and must not, directly or indirectly, engage in any conduct, or encourage or incentivise its Personnel or any other person to engage in conduct which, if Endeavour engaged in that conduct itself, would breach clause 4 of the Ring-Fencing Guideline.

11. Risk and indemnity

11.1 Indemnity by the Supplier

The Supplier will indemnify Endeavour against:

- (a) any loss of or damage to property of Endeavour; and
- (b) any liability to or claims by a third party in respect of:
 - (i) loss of or damage to property; or
 - (ii) injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the supply of the Goods and Services or anything that the Supplier or its Personnel do or omit to do otherwise in any way in connection with this agreement or on or near any place where the Goods and Services are being or may be supplied.

11.2 Consequential Loss

- (a) Subject to paragraph (b), neither party will be liable to the other party for any Consequential Loss arising out of or in connection with this agreement.
- (b) Clause (a) does not apply to the Supplier's liability in respect of:
 - (i) any damages for delay;
 - (ii) the Supplier's liability as a consequence of, or to correct, a Defect;
 - (iii) the Supplier's liability to indemnify Endeavour pursuant to any provision of this agreement;
 - (iv) any claim made by a third party against Endeavour or the Supplier;

- (v) any event or claim for which the Supplier is required to have insurance in accordance with this agreement; or
- (vi) any liability in respect of which the Supplier is indemnified under a policy of insurance required to be effected pursuant to this agreement or in respect of which the Supplier would have been indemnified by a policy of insurance required to be effected pursuant to this agreement if the Supplier had:
 - A. diligently pursued a claim under that policy of insurance;
 - B. complied with the terms and conditions of that policy of insurance; and
 - C. complied with its insurance obligations under this agreement.

11.3 Supplier's insurance

The Supplier will maintain during the Term:

- (a) public and products, liability insurance in line with the contracted Items services and activities provided by the supplier, of at least \$20 million, or such other amount as specified in the Purchase Order or Specifications;
- (b) Professional Liability insurance as specified in the Purchase order or Specification when required
- (c) workers' compensation insurance as required by law; and
- (d) any additional or increased insurance specified in the Purchase Order or Specifications,

with a reputable insurer which is reasonably satisfactory to Endeavour.

11.4 Evidence of insurance

The Supplier will provide Endeavour with certificates of currency for the insurance policies in clause 11.3 within 7 days after a request by Endeavour.

11.5 Notification

Endeavour may request the Supplier to notify an insurer of an event arising in connection with this agreement. If the Supplier fails to provide Endeavour with evidence of that notification within 14 days after Endeavour's request, Endeavour may notify the insurer on the Supplier's behalf.

12. Termination

12.1 Termination for convenience

- (a) Without prejudice to any of Endeavour's other rights under this agreement, Endeavour may at any time for its sole convenience by written notice to the Supplier terminate this agreement effective from the time stated in the notice (or if no such time is stated, at the time the notice is given to the Supplier).
- (b) If Endeavour gives a notice under clause 12.1(a) within 14 days of the Due Date for the relevant Goods and Services, the Supplier may within 7 days of receiving such notice submit to Endeavour a tax invoice for the reasonable costs (if any) that have been or will be incurred by the Supplier as a direct result of the termination and

which the Supplier cannot recoup from a third party or avoid. The tax invoice must be accompanied by satisfactory documentary evidence of such costs being incurred.

- (c) Following receipt of a tax invoice and satisfactory documentary evidence under clause 12.1(b), Endeavour will pay the tax invoice subject to and in accordance with clause 7.4.

12.2 Termination for breach of insolvency

Endeavour may terminate this agreement immediately by notifying the Supplier if the Supplier:

- (a) breaches this agreement and, where the breach is capable of being remedied, has failed to remedy the breach within 7 days after being give notice of the breach;
- (b) breaches clause 9.3; or
- (c) becomes insolvent.

12.3 Effect of termination

Termination of this agreement will not affect:

- (a) the operation of clauses 6, 7.4(e), 11 and 13; or
- (b) any rights or remedies already accrued to the Supplier under, or in respect of any breach of, this agreement.

13. General

13.1 Confidentiality

- (a) The Supplier must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Goods and Services or this agreement to any person other than:
 - (i) as necessary to supply the Goods and Services;
 - (ii) with respect to any matter already within the public domain; or
 - (iii) to comply with any applicable law or any requirement of any regulatory body (including any relevant stock exchange).
- (b) The Supplier must not disclose any information concerning the agreement for distribution through any communications media without Endeavour's prior written approval. The Supplier must refer to Endeavour any enquiries from any media concerning this agreement.

13.2 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as set out in the Purchase Order (or as otherwise notified by a party to the other party from time to time);

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with clause 13.2(b);
- (e) subject to clause 13.2(f), is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email; and
- (f) if taken to be received under clause 13.2(e) on a day that is not a business day or after 5.00 pm, it is taken to be received at 9.00 am on the next business day ("business day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

13.3 Intellectual Property

- (a) Title and ownership of Intellectual Property Rights in all material developed or created or required to be developed or created by either party under this agreement (other than any Intellectual Property Rights of the Supplier pre-existing as at the Order Date) (**Contract Material**) will vest immediately upon its creation in Endeavour, and Endeavour grants to the Supplier a licence to use the Contract Material for the purposes of the Supplier's performance of this agreement.
- (b) The Supplier grants to Endeavour a non-exclusive, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all Intellectual Property Rights of the Supplier in material (other than Contract Material) developed or created or required to be developed or created by the Supplier under this agreement.
- (c) The Supplier must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Goods or Documentation to the extent necessary to ensure that Endeavour may do or authorise any acts or omissions consistent with the ownership and licences granted by this agreement without infringing any Moral Rights.
- (d) The Supplier indemnifies Endeavour against any claims against, or loss suffered or incurred by, Endeavour arising out of or in connection with an infringement or alleged infringement of a person's Intellectual Property Rights or Moral Rights by the Goods or Documentation, or arising from an act of Endeavour, or a person authorised by Endeavour, in relation to the Goods or Documentation.

13.4 Audit

- (a) The Supplier will, upon 7 day's notice during normal business hours or as otherwise agreed, permit and provide persons (Auditors) nominated by Endeavour supervised access to the Supplier's premises, books, records, documents, computer systems, equipment and other property to verify compliance by the Supplier with its obligations under this agreement and its likely capacity to continue to comply with its obligations in the future. Endeavour is not entitled to use this right of access for purposes that are not related to this agreement.
- (b) The Auditors may make copies of books, records, documents and other materials, and the Supplier will provide the Auditors with the necessary facilities to enable them to do so.

13.5 Endeavour Property

- (a) Endeavour Property remains the property of Endeavour and the Supplier will treat Endeavour Property accordingly, including ensuring that Endeavour Property, to the extent practicable, is marked, or otherwise signified as the property of Endeavour.
- (b) The Supplier will not use or modify Endeavour Property except in the proper performance of this agreement or unless agreed in writing by both parties. Endeavour may use or disclose Endeavour Property for any purpose.
- (c) The Supplier will take reasonable care (including adhering to security procedures) of Endeavour Property and with the preservation, installation or handling of it.
- (d) The Supplier will hand over to Endeavour any Endeavour Property, within 7 days after a request by Endeavour. For electronic materials, the Supplier will provide them to Endeavour in an editable form and on media, both as reasonably required by Endeavour.
- (e) If the Supplier fails to deliver up all things in accordance with clause 13.5(d), Endeavour may enter the Supplier's premises during normal business hours on not less than 12 hours' prior notice in order to collect such things and the Supplier will at all reasonable times permit or assist a person authorised by Endeavour to do so.

13.6 Assignment

- (a) The Supplier will not transfer or assign its rights under this agreement without the prior consent of Endeavour.
- (b) Endeavour may assign the benefit or obligations of this agreement to any person without the consent of the Supplier, and in that event Endeavour will notify the Supplier.

13.7 Force majeure

If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.

13.8 Further assurance

Each party will promptly do further acts and execute and deliver further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

13.9 Indemnities

- (a) The Supplier will indemnify Endeavour against any liability to or claim by any other person and all losses and damages suffered or incurred by Endeavour arising out of, or in any way in connection with the Supplier's breach of this agreement, or any negligent act or omission of the Supplier or its Personnel.
- (b) Where the Supplier indemnifies Endeavour under this agreement, its liability to indemnify will be reduced to the extent that the loss or damage is caused or contributed to by Endeavour or its Personnel.

13.10 Governing law and jurisdiction

- (a) This agreement is governed by and construed in accordance with the laws applying in New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.
- (b) The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to this agreement, and none of the terms and conditions express or implied by the Vienna Sales Convention form part of this agreement.

13.11 Interpretation

In this agreement, the headings are for convenience only and do not affect interpretation. Unless the context otherwise requires:

- (a) a reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (c) a reference to the "Goods and Services" or "Goods or Services" is a reference to the Goods, the Services or the Goods and Services (as the case may be) which the agreement requires the Supplier to supply under the agreement;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a gender include other genders;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) "includes" in any form is not a word of limitation; and
- (h) a reference to "\$" or "dollar" is to Australian currency and an obligation to pay money is an obligation to pay in Australian dollars.

13.12 No exclusivity

The Supplier's appointment is non-exclusive, so Endeavour may acquire the Goods or Services, or similar goods or services, from other persons or perform the Services or similar Services itself, including services which have been removed from or terminated under this agreement.

13.13 Subcontracting

The Supplier will not subcontract the supply of the Goods or Services without obtaining the prior approval of Endeavour. The Supplier is responsible for the acts or omissions of its subcontractor as if they were the acts or omissions of the Supplier.

13.14 Waiver

Failure or omission by a party to require strict or timely compliance with any provision of this agreement will not affect any right of that party to remedies it may have in respect of any breach of a provision.

13.15 No representation or reliance

- (a) The Supplier acknowledges that Endeavour and any person acting on its behalf made no representation or other inducement to the Supplier to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) The Supplier acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of Endeavour, except for representations or inducements expressly set out in this agreement.

13.16 Variations

Except as set out in this agreement, this agreement may only be varied by a document signed by or on behalf of each party.

13.17 Parties' relationship

The relationship between Endeavour and the Supplier is that of principal and independent contractor. Nothing in this agreement will be taken as establishing the Supplier or any Supplier Personnel as an employee or agent of Endeavour without the express written authority of Endeavour.

13.18 Severability

If any part of this agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of this agreement.