

## Conditions for Minor Works

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### 1. Definitions

In this agreement:

**Asbestos Liability Insurance** means a policy of asbestos liability insurance which covers liability on an occurrence basis in respect of or in connection with the presence of asbestos and any work involving asbestos or asbestos decontamination that is caused by or arises out of or in connection with the Supplier's Activities.

**Claim** includes any claim for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, this agreement;
- (b) arising out of, or in any way in connection with, the Supplier's Activities or either party's conduct prior to the Order Date; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution.

**Completion** means the stage when:

- (a) the Works are complete except for minor Defects which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
- (b) the Supplier has done everything which the agreement requires it to do prior to Completion.

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

**Contract Particulars** means schedule of contract particulars attached to or incorporated by reference into the Purchase Order or otherwise notified to the Supplier at the time of issuing the Purchase Order.

**Contract Price** means the price identified as such in the Purchase Order, as adjusted in accordance with the agreement.

**Date for Completion** means:

- (a) the due date identified in the Purchase Order; or
- (b) where the Purchase Order identifies the due date as a period of time, the date upon which the identified period ends (with the identified period calculated as commencing on the Order Date),

as adjusted in accordance with the agreement.

**Date of Completion** means the date of Completion set out in a notice of Completion under clause 10.1(a).

**Defect** means any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of the agreement.

**Defects Liability Period** means the period identified as such in the Contract Particulars.

**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 is a network operator.

**Endeavour** means Endeavour Energy Network Operator Partnership (comprising Edwards O Pty Limited (ACN 618 643 486) as trustee for Edwards O Trust, ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1, ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2, ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3 and ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4)) trading as Endeavour Energy ABN 11 247 365 823 of 51 Huntingwood Drive, Huntingwood, NSW 2148.

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

**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).

**Endeavour's Representative** means the person so nominated in the Contract Particulars or any other person nominated by Endeavour from time to time to replace that person.

**Financing Change Statement** has the meaning given to it in the PPSA.

**Financing Statement** has the meaning given to it in the PPSA.

**Force Majeure Event** means any of the following events provided that they are outside the reasonable control of the affected party and could not have been prevented, avoided or overcome by that party taking all reasonable steps and could not reasonably have been provided against before the Order Date:

- (a) an act of public enemy, war (declared or undeclared), an invasion, an act of a foreign enemy, terrorism, a civil commotion or riot, which prevents the Works from being performed;
- (b) a flood, earthquake, bush fire or other catastrophic event by natural causes;
- (c) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (d) any accidental chemical or biological pollution not caused by the Supplier or its agents, employees or Subcontractors; or
- (e) confiscation, nationalisation, requisition, expropriation or embargo of a component of the Works by or under the order of any government or government authority.

**Insolvency Event** means:

- (a) the Supplier informing Endeavour in writing, or its creditors generally, that the Supplier is insolvent or is unable to proceed with the agreement for financial reasons;
- (b) execution being levied against the Supplier by a creditor; or
- (c) if the Supplier is:
  - (i) an individual person or a partnership including an individual person, he or she: committing an act of bankruptcy; having a bankruptcy petition presented against him or her or presenting his or her own petition; being made bankrupt; making a proposal for a scheme of arrangement or a composition or having a deed of assignment or deed of arrangement made, accepting a composition, being required to present a debtor's petition or having a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
  - (ii) a corporation: notice being given of a meeting of creditors with a view to the Supplier entering into a deed of company arrangement; the Supplier entering a deed of company arrangement with creditors; a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator being appointed to the Supplier; an application being made to a court for the winding up of the Supplier and not stayed within 14 days; a winding up order being made in respect of the Supplier; the Supplier resolving by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or a mortgagee of any property of the Supplier taking possession of that property.

**Intellectual Property Rights** means all statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

**Latent Conditions** means any Site Conditions which differ materially from the Site Conditions that should have been reasonably anticipated or foreseen by a prudent, competent and experienced supplier having regard to the detailed design (if any) for the Works identified in the Specifications.

**Liability Cap** means the amount identified as such in the Contract Particulars.

**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 this 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.

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

**PPS Register** means the Personal Property Securities Register established under the PPSA.

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

**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 purposes 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.

**Public Liability Insurance** means a policy of public liability insurance in the joint names of Endeavour, the Supplier and all Subcontractors to cover their respective:

- (a) rights and interests and liabilities to third parties; and
- (b) liability to each other for loss or damage to property (other than property required to be insured by Works Insurance) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy),

arising out of, or in any way in connection with, the Supplier's Activities.

**Purchase Order** means an order for minor works, issued by Endeavour to the Supplier, to which these Conditions for Minor Works are attached or incorporated by reference.

**Quality Assurance System** means the quality assurance system identified in the Contract Particulars.

**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.

**Security Agreement** has the meaning given to it in the PPSA.

**Security Interest** has the meaning given to it in the PPSA.

**Site** means the area identified as such in the Contract Particulars.

**Site Conditions** means all conditions and characteristics of the Site and its surrounds (including below ground conditions, all natural and artificial things, asbestos, contamination, and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on and within the surface and, if the Site includes a building, on and within the building (including those things obscured behind walls, ceilings and beneath the floor)), or on or about the Site including:

- (a) the location and adequacy of existing services, including all pipes, valves, ducts, cables, switchboards and other plant and equipment;
- (b) the adequacy and position of all load bearing and support structures; and
- (c) any existing services, plant, equipment or structures which require temporary or permanent removal or relocation in order to carry out the Supplier's Activities.

**Specifications** means the documents identified as such in the Contract Particulars.

**Statutory Requirements** includes:

- (a) any law applicable to the Works or the carrying out of the Supplier's Activities including Acts, ordinances, regulations, by-laws, orders, awards and proclamations; and
- (b) certificates, licences, consents, permits, approvals and requirements of any authority, body or organisation having jurisdiction in connection with the Works or the carrying out of Supplier's Activities.

**Subcontractor** means an entity with whom the Supplier has entered, or proposes to enter, into a sub-subcontract to undertake any of the Works.

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

**Supplier's Activities** means all activities that the Supplier performs, or is required to perform, to exercise its rights or comply with its obligations under the agreement.

**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.

**Variation** means any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

**Verification Statement** has the meaning given to it in the PPSA.

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

**WHS Management Plan** means the work health and safety plan prepared by the Supplier under clause 5.4(i), which must:

- (a) set out in adequate detail the procedures the Supplier will implement to manage the Supplier's Activities from a work health and safety perspective;
- (b) describe how the Supplier proposes to ensure the Supplier's Activities are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the *Work Health and Safety Regulations 2017* (NSW) in relation to the matters that a WHS management plan must include.

**Works** means the physical works which the Supplier must complete under the agreement, as more particularly described in the Specifications.

**Works Insurance** means a policy of insurance in the joint names of Endeavour, the Supplier and all Subcontractors for their respective rights, interests and liabilities, insuring all the things referred to in clause 3.1 for which the Supplier bears the risk against loss or damage resulting from any insurable event.

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## 2. Primary obligations

### 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 for Minor Works; 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 Supplier's Activities the subject of the Purchase Order, the separate agreement will govern the Supplier's Activities and these Conditions for Minor Works 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 13.

### 2.2 Supplier's obligations

The Supplier must:

- (a) immediately commence carrying out the Supplier's Activities;
- (b) subject to the provision of insurance policies and any other documentation required by the Specifications as a precondition to the Supplier accessing the Site (as required under clause 2.3(a)), commence work on the Site;
- (c) regularly and diligently progress the execution of the Works; and
- (d) achieve Completion of the Works by the Date for Completion.

### 2.3 Endeavour's obligations

Endeavour must:

- (a) provided that the Supplier has provided Endeavour's Representative with a copy of each insurance policy as required under clause 3.4(b) and any other documentation required by the Specifications as a precondition to the Supplier accessing the Site, give the Supplier sufficient access to the Site to allow it to commence work on the Site; and
- (b) pay the Supplier the Contract Price and any other amounts which are payable by Endeavour to the Supplier under the agreement.

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### **3. Risks and insurance**

#### **3.1 Risk of Works**

The Supplier will bear the risk of and indemnify Endeavour against:

- (a) any loss of or damage to:
  - (i) the Works;
  - (ii) plant, equipment and work used; and
  - (iii) unfixed goods and materials (whether on or off Site), including anything provided by Endeavour to the Supplier or brought onto the Site by a Subcontractor, used or to be used in carrying out the Supplier's Activities, until a notice of Completion is issued under clause 10.1(a); and
- (b) after the issue of a notice of Completion under clause 10.1(a), any loss of or damage to the Works arising from any act or omission of the Supplier during the Defects Liability Period or from an event which occurred prior to the issue of the notice of Completion.

#### **3.2 Other risks**

The Supplier will indemnify Endeavour against:

- (a) any loss of or damage to the property of Endeavour (other than property referred to in clause 3.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the carrying out of the Supplier's Activities or anything that the Supplier, its Subcontractors or employees do or omit to do otherwise in any way in connection with the agreement or on or near any place where the Supplier's Activities are being or may be carried out.

#### **3.3 Reinstatement**

During the period during which the Supplier bears the risk of loss or damage under clause 3.1, the Supplier must, unless otherwise directed by Endeavour's Representative, promptly replace or otherwise make good any loss of, or repair the damage to, the Works, any plant, equipment and work or any unfixed goods and materials used or to be used in carrying out the Supplier's Activities.

#### **3.4 Supplier's insurance obligations**

The Supplier must:

- (a) from the Order Date effect and have in place the following insurance with insurers and on terms satisfactory to Endeavour's Representative:
  - (i) if an amount is included in the Contract Particulars for such insurance, Works Insurance and Public Liability Insurance for the amounts set out in the Contract Particulars;
  - (ii) if the Supplier's Activities include any work involving asbestos, Asbestos Liability Insurance for the amount set out in the Contract Particulars; and



- (iii) workers compensation insurance for the maximum amount permitted by law and ensure that each of its Subcontractors has similar insurance to the workers compensation insurance covering the Subcontractors' employees; and
- (b) provide Endeavour's Representative with a copy of any required insurance policy and evidence satisfactory to Endeavour's Representative that each policy is current as required by Endeavour's Representative from time to time:
  - (i) before it is given access to the Site; and
  - (ii) thereafter as required by Endeavour's Representative from time to time.

### **3.5 Endeavour's insurance obligations**

Endeavour must from the Order Date effect the insurance (if any) specified in the Contract Particulars and must provide the Supplier with a copy of the relevant insurance policies.

### **3.6 Period of insurance**

The insurance which the parties are required to have in place under this clause 3 must be maintained:

- (a) in the case of Works Insurance, until the Supplier ceases to bear the risk of loss of or damage to anything under clause 3.1; and
- (b) in the case of Public Liability Insurance, Asbestos Liability Insurance and workers compensation insurance, until the later of:
  - (i) the end of the Defects Liability Period; or
  - (ii) the date upon which all Defects have been rectified in accordance with the agreement.

### **3.7 Security**

The Supplier must provide retention moneys in the amount set out in the Contract Particulars.

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## **4. The Site**

### **4.1 Supplier to inform itself**

The Supplier warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced supplier in:

- (a) assessing the risks which it is assuming under the agreement; and
- (b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating.

### **4.2 Site Conditions**

- (a) 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 the agreement.

- (b) Subject to paragraphs (c) and (d), the Supplier is not entitled to make, and Endeavour will not be liable upon, any Claim arising out of or in connection with the existence of any Site Conditions.
- (c) If during the performance of the Supplier's Activities the Supplier becomes aware of a Site Condition it considers to be a Latent Condition, the Supplier must promptly, and where possible before the Site Conditions are disturbed, give written notice to Endeavour's Representative specifying:
  - (i) the conditions encountered and in what respects the Supplier considers they constitute a Latent Condition;
  - (ii) the additional work and additional resources which the Supplier estimates to be necessary to deal with the conditions;
  - (iii) the time the Supplier anticipates will be required to deal with the conditions and the expected delay in achieving Completion (if any) as a result of dealing with the conditions;
  - (iv) the Supplier's estimate of the cost of the measures necessary to deal with the conditions; and
  - (v) other details reasonably required by Endeavour's Representative.
- (d) If a Latent Condition directly results in an increase in the Supplier's costs of carrying out the Supplier's Activities which a prudent, competent and experienced contractor could not have avoided or mitigated:
  - (i) the Contract Price will be increased by an amount assessed by Endeavour's Representative in accordance with clauses 8.2(a)(i) and (ii) (not including any additional costs for delay suffered or incurred by the Supplier arising out of or in connection with the Latent Condition or any loss of profit or offsite overheads); and
  - (ii) the Supplier will be entitled to claim an extension of time where it is otherwise so entitled under clause 7.2(b).

### **4.3 Site access**

Endeavour:

- (a) is not obliged to provide the Supplier with sole access to the Site;
- (b) is not obliged to carry out any work or provide any facilities to the Supplier (other than as stated in the agreement) which may be necessary to enable the Supplier to obtain adequate access to carry out the Supplier's Activities; and
- (c) may engage others to work upon or in the vicinity of the Site at the same time as the Supplier.

### **4.4 Supplier's obligations**

In performing the Supplier's Activities, the Supplier must:

- (a) minimise disruption or inconvenience to Endeavour and any occupiers of the Site in their occupation or use of, or attendance upon, any part of the Site;
- (b) at all reasonable times give Endeavour's Representative, Endeavour and any authorised person access to the Works, the Site or any areas off-Site where the Supplier is performing the Supplier's Activities;

- (c) co-operate with any other subcontractors engaged by Endeavour to perform other works on or in the vicinity of the Site or the Works;
- (d) co-ordinate the Supplier's Activities with the work of those other subcontractors;
- (e) use its best endeavours to facilitate the execution of work of those other subcontractors; and
- (f) keep the Site and the Works safe, clean and tidy and free of refuse.

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## **5. Construction**

### **5.1 Description of Works**

The Supplier must execute the Works in accordance with:

- (a) the Specifications;
- (b) any direction of Endeavour's Representative given or purported to be given under a provision of the agreement, including Variations directed by Endeavour's Representative; and
- (c) the other requirements of the agreement.

### **5.2 All Work included**

The Supplier has allowed in the Contract Price for the provision of all plant, equipment, materials and other work necessary for the performance of the Supplier's Activities, whether or not expressly mentioned in the Specifications.

Any such plant, equipment, materials and other work must be undertaken and provided by the Supplier and form part of the Supplier's Activities and will not entitle the Supplier to make any Claim except on account of the Contract Price or as provided for in the agreement.

### **5.3 Safety**

The Supplier must:

- (a) carry out the Supplier's Activities safely and so as to protect persons and property; and
- (b) without limiting clause 5.3(a), comply with Endeavour's Fatal Risk Control Standard where the Supplier's Activities involve fatal risks.

### **5.4 Principal Contractor**

- (a) The Supplier acknowledges that:
  - (i) Endeavour has (depending on the circumstances) a range of different potential obligations to ensure the safety of persons at the Site;
  - (ii) Endeavour may be subject to civil claims or criminal prosecution if the Supplier does not adequately ensure the health and safety of persons during the execution of the Supplier's Activities; and
  - (iii) Endeavour has provided the Supplier with sufficient information on risks associated with the Site and the execution of the Supplier's Activities to enable the Supplier to properly assess and control those and other risks.

- (b) The Supplier must comply with and ensure that its Subcontractors comply with the WHS Legislation and shall do all things necessary and in a manner which ensures that Endeavour satisfies its obligations under the WHS Legislation.
- (c) In this clause 5.4, the terms 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (d) Paragraphs (e) - (l) below apply if the Supplier is nominated as principal contractor in the Contract Particulars.
- (e) Without limiting the Supplier's obligations under any other provision of the agreement, to the extent the Supplier's Activities include construction work, Endeavour:
  - (i) engages the Supplier as principal contractor in respect of the construction work; and
  - (ii) authorises the Supplier to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation.
- (f) The Supplier acknowledges that it has control over all aspects of the execution of the Supplier's Activities and safety issues at the Site.
- (g) The Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (h) The Supplier's engagement and authorisation as principal contractor will continue:
  - (i) until the Date of Completion of the Works; and
  - (ii) while ever any rectification work that is "construction work" (as that term is defined under the WHS Legislation) is carried out during the Defects Liability Period,

unless sooner revoked by Endeavour terminating the agreement pursuant to any provision of the agreement or according to law.
- (i) As a condition precedent to Endeavour's obligation under the agreement to provide the Supplier with access to the Site, the Supplier must prepare and submit a WHS Management Plan to Endeavour's Representative for approval (such approval not to be unreasonably withheld).
- (j) No comment upon or any review, acceptance or approval of the WHS Management Plan by Endeavour's Representative will affect any warranty or guarantee given by the Supplier or relieve the Supplier of any of its liabilities or obligations under the agreement.
- (k) Without limiting its obligations, the Supplier must:
  - (i) comply, and must ensure that its Subcontractors and any other person engaged by the Supplier for the purposes of the 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);
  - (ii) if requested by Endeavour's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, 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's Representative 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 the agreement;
  - (iv) insofar as the Supplier, in carrying out the Supplier's Activities 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.
- (l) If the engagement of the Supplier as principal contractor under clause 5.4(e) is not effective for any reason, the Supplier agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged as principal contractor under clause 5.4(e).
  - (m) Paragraphs (n) - (p) below apply if an entity other than the Supplier is nominated as principal contractor in the Contract Particulars.
  - (n) The Supplier acknowledges that, to the extent that the Supplier's Activities involve any construction work, the entity nominated as principal contractor in the Contract Particulars (or another entity as advised by Endeavour) will undertake the duties and functions of the 'principal contractor' under the WHS Legislation for the Site.
  - (o) The Supplier shall comply with and ensure that its Subcontractors comply with any direction of the principal contractor in connection with work health and safety.
  - (p) The Supplier shall, before commencing any of the Supplier's Activities on the Site, prepare and submit details of its work, health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements.
  - (q) To the extent not prohibited by law, the Supplier indemnifies Endeavour against any damage, expense, loss or liability suffered or incurred by Endeavour arising out of or in connection with the failure of the Supplier to discharge the duties imposed on it under the WHS Legislation or otherwise comply with this clause 5.4.

## 5.5 Personnel

- (a) The Supplier must in carrying out the Supplier's Activities:
  - (i) only employ persons who are careful, skilled and experienced in their respective trades and callings;
  - (i) assume sole responsibility for and manage all aspects of industrial relations;
  - (ii) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant laws, for all employees engaged by any person, are always observed in full; and
  - (iii) keep Endeavour's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Supplier's Activities.

- (b) Endeavour's Representative may, in his or her absolute discretion, direct the Supplier to remove from any place where the Supplier's Activities are being carried out or otherwise from involvement in the Supplier's Activities, any person employed by the Supplier, and the Supplier must immediately comply with such direction.

## 5.6 Limitation of Liability

- (a) Subject to paragraph (b) below, and except to the extent that liability cannot be limited or excluded, the total aggregate liability of the Supplier to Endeavour under the agreement is limited to the amount equal to the Liability Cap.
- (b) Paragraph (a) does not apply to:
- (i) the Supplier's obligation and liability to carry out and complete the Works in accordance with the agreement;
  - (ii) the Supplier's liability as a consequence of, or to rectify, a Defect;
  - (iii) the Supplier's liability to indemnify Endeavour pursuant to any provision in the agreement;
  - (iv) the Supplier's liability in relation to 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 the agreement; or
  - (vi) any liability in respect of which the Supplier is indemnified under a policy of insurance required to be effected pursuant to the requirements of the agreement or in respect of which the Supplier would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of the 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; or
    - C. complied with its insurance obligations under the agreement.

## 5.7 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 the agreement.
- (b) Paragraph (a) does not apply to the Supplier's liability in respect of:
- (i) the Supplier's liability as a consequence of, or to rectify, a Defect;
  - (ii) the Supplier's liability to indemnify Endeavour pursuant to any provision in the agreement;
  - (iii) any Claim made by a third party against Endeavour or the Supplier;
  - (iv) any event or Claim for which the Supplier is required to have insurance in accordance with the agreement; or
  - (v) any liability in respect of which the Supplier is indemnified under a policy of insurance required to be effected pursuant to the requirements of the agreement or in respect of which the Supplier would have been

indemnified by a policy of insurance required to be effected pursuant to the requirements of the 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; or
- C. complied with its insurance obligations under the agreement.

## 5.8 Subcontracting

The Supplier:

- (a) must not subcontract the whole of the Supplier's Activities;
- (b) will, notwithstanding the subcontracting of any part of the Supplier's Activities, remain fully responsible for the carrying out of the Supplier's Activities; and
- (c) will be liable to Endeavour for the acts, defaults and omissions of Subcontractors and employees and agents of Subcontractors as if they were those of the Supplier.

## 5.9 Working hours

Unless otherwise agreed between the Supplier and Endeavour's Representative, the hours of work applicable to the Supplier's Activities to be carried out on Site are those set out in the Contract Particulars.

## 5.10 Cleaning up

In carrying out the Supplier's Activities, the Supplier must:

- (a) keep the Site and the Works safe, clean and tidy and free of refuse; and
- (b) as a condition precedent to Completion of the Works, remove all rubbish, materials and plant, equipment and Work from the Site.

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# 6. Quality

## 6.1 Construction

The Supplier must in performing the Supplier's Activities:

- (a) use workmanship of the standard prescribed in the agreement or, to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Works and which is fit for its purpose; and
- (b) use materials which comply with the requirements of the agreement or, if not fully described in the agreement, are new and consistent with the best industry standards for work of a nature similar to the Works and of merchantable quality, which are fit for their purpose.

## 6.2 Testing

The Supplier must carry out all tests required by the agreement or directed by Endeavour's Representative.

### 6.3 Defects

- (a) The Supplier must correct all Defects at its cost (subject only to any entitlement it may have under clause 6.4).
- (b) If, prior to the expiration of the Defects Liability Period, Endeavour's Representative discovers or believes there is a Defect, Endeavour's Representative may give the Supplier an instruction requiring the Supplier to correct the Defect and specifying the time within which this must occur.

### 6.4 Correction of Defect

- (a) If an instruction is given under clause 6.3, the Supplier must correct the Defect within the time specified in Endeavour's Representative's instruction.
- (b) The Supplier will only be entitled to make a Claim for correcting the Defect if the Defect is something for which the Supplier is not responsible, in which case the work involved in the correction of the Defect will be treated as if it were a Variation and clause 8.2 applied.

### 6.5 Extension of Defects Liability Period

If:

- (a) Endeavour's Representative gives the Supplier an instruction under clause 6.3 during the Defects Liability Period; and
- (b) the Supplier is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work for the period set out in the Contract Particulars commencing upon completion of the correction of the Defect (or the relevant part).

### 6.6 Quality assurance

The Supplier:

- (a) must implement the Quality Assurance System specified in the Contract Particulars;
- (b) must allow Endeavour's Representative access to the Quality Assurance System of the Supplier and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its agreement obligations or from any of its liabilities whether under the agreement or otherwise according to law as a result of:
  - (i) the implementation of, and compliance with, the quality assurance requirements of the agreement; or
  - (ii) any direction by Endeavour's Representative concerning the Supplier's Quality Assurance System or its compliance or non-compliance with that system.

### 6.7 Long service levy

Before commencing construction work, the Supplier must:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building



and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and

- (b) produce to Endeavour the documentary evidence of payment of the levy.

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## **7. Time**

### **7.1 Programming**

The Supplier must:

- (a) prepare a program of the Supplier's Activities, which must contain the details required by the agreement or which Endeavour's Representative otherwise reasonably directs; and
- (b) update the program if instructed to do so by Endeavour's Representative.

### **7.2 Delay**

- (a) If the Supplier is delayed, or will be delayed in achieving Completion for any reason whatsoever, it must promptly (and in any event within 3 Business Days of the relevant event occurring) notify Endeavour's Representative in writing of the delay or anticipated delay and include the manner in which it intends to minimise such delay or anticipated delay.
- (b) If the delay is caused by:
  - (i) a Force Majeure Event;
  - (ii) a Latent Condition; or
  - (iii) an act or omission of Endeavour or Endeavour's Representative (not being an act or omission expressly permitted or allowed by the agreement),

the Supplier must provide (in addition to the notice under clause 7.2(a), within 5 Business Days of the event of delay first occurring, a written claim to Endeavour's Representative including:

- (iv) all the details of the delay including the effect on the Supplier's ability to achieve Completion by the Date for Completion;
- (v) any mitigation measures adopted to reduce the delay; and
- (vi) any extension of time claimed.
- (c) If the delay exceeds 5 Business Days in duration the Supplier must update Endeavour's Representative on a weekly basis.
- (d) If Endeavour's Representative determines that:
  - (i) the Supplier is delayed in achieving Completion by the Date for Completion by:
    - A. a Force Majeure Event;
    - B. a Latent Condition; or

- C. an act or omission of Endeavour or Endeavour's Representative (not being an act or omission expressly permitted or allowed by the agreement); and
- (ii) the cause of the delay otherwise justifies an extension of time to the Date for Completion,

Endeavour's Representative will grant an extension of time and notify the Supplier with 10 Business Days of the claim under clause 7.2(b), and the Supplier agrees that this will be its sole entitlement in respect of any delay.

- (e) If the Supplier fails to comply with the requirements of clauses 7.2(a) and 7.2(b), the Supplier's right to claim an extension of time will be barred and the Supplier will not be entitled to make any Claim arising out of or in connection with the delay.
- (f) Endeavour's Representative may for any reason and at any time extend the Date for Completion.

### **7.3 Suspension**

Endeavour's Representative may instruct the Supplier to suspend and, after a suspension has been instructed, to re-commence the carrying out of all or a part of the Supplier's obligations under the agreement.

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## **8. Variations**

### **8.1 Variations**

Endeavour's Representative may instruct the Supplier to carry out a Variation by:

- (a) a written direction entitled "Variation Order"; or
- (b) an oral instruction confirmed by a written direction entitled "Variation Order".

### **8.2 Cost of Variation**

- (a) The Contract Price will be adjusted for all Variations which have been the subject of a Variation Order issued by Endeavour's Representative under clause 8.1 by:
  - (i) an amount determined by Endeavour's Representative using any rates or prices which appear in the agreement to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation; or
  - (ii) to the extent clause 8.2(a)(i) does not apply, a reasonable amount (including profit and overheads and any delay or disruption costs) to be agreed between the parties or, failing agreement, determined by Endeavour's Representative.

### **8.3 Omissions and deletions**

If a Variation the subject of a direction by Endeavour's Representative omits or deletes any part of the Works, Endeavour may thereafter carry out this omitted or deleted work either itself or by engaging others.

### **8.4 Notices of Variation**

- (a) If a direction by Endeavour's Representative, other than a Variation Order under clause 8.1, constitutes or involves a Variation, the Supplier must, if it wishes to make a Claim against Endeavour arising out of, or in connection with, the direction:

- (i) within 3 Business Days of receiving the direction and before commencing work on the subject matter of the direction, give notice to Endeavour's Representative:
    - A. that it considers the direction constitutes or involves a Variation; and
    - B. including a written claim in respect of the Variation (including the facts relied upon in support of the Claim and details of the amount claimed and how it has been calculated); and
  - (ii) continue to carry out the Supplier's Activities in accordance with the agreement and all directions of Endeavour's Representative, including any direction in respect of which notice has been given under clause 8.4(a)(i).
- (b) If the Supplier fails to comply with clause 8.4(a), Endeavour will not be liable (to the extent it is possible to exclude such liability) upon any Claim by the Supplier arising out of or in any way in connection with the relevant direction to which clause 8.4(a) applies.

## **9. Payment**

### **9.1 Payment claims**

The Supplier must give Endeavour's Representative claims for milestone payments on account of the Contract Price and any other amounts payable by Endeavour to the Supplier under the agreement upon the occurrence of each payment milestone specified in the Contract Particulars.

### **9.2 Payment**

- (a) Within 10 Business Days of receiving a payment claim under clause 9.1, Endeavour's Representative must give to Endeavour and the Supplier a payment statement which states:
  - (i) the value of work completed in accordance with the agreement for which payment has not previously been made;
  - (ii) any amounts (whether under clause 15.24 or any other right to set off Endeavour may have) Endeavour is entitled to retain, deduct, withhold or set off against moneys otherwise due to the Supplier;
  - (iii) the amount (if any) which Endeavour's Representative believes to be then payable by Endeavour to the Supplier in respect of the Contract Price and otherwise under the agreement and which Endeavour proposes to pay to the Supplier; and
  - (iv) if the amount in paragraph (iii) is less than the amount claimed in the payment claim:
    - A. the reason why the amount in paragraph (iii) is less than the amount claimed in the payment claim; and
    - B. if the reason for the difference is that Endeavour has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.

- (b) Endeavour must within 15 Business Days of receiving a payment claim in accordance with clause 9.1 pay the Supplier the amount set out as payable to the Supplier in the payment statement.
- (c) Failure by Endeavour's Representative to set out in a payment statement an amount which Endeavour is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Supplier by Endeavour will not prejudice Endeavour's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the agreement.

### 9.3 Payment on account

Payment of moneys under clause 9.2 is:

- (a) not evidence of the value of work or that work has been satisfactorily carried out in accordance with the agreement or an admission of liability; and
- (b) to be taken as payment on account only.

### 9.4 GST

- (a) Unless otherwise stated, all amounts set out in the agreement are GST exclusive.
- (b) Notwithstanding any other provision in the agreement, if any party to the agreement ("**Supplier**") is or becomes liable to pay GST in connection with any supplies made pursuant to the agreement, (the "**affected supplies**") for which GST is not otherwise included in the consideration:
  - (i) the Supplier may add to the price of all affected supplies the amount of GST for which the Supplier is or becomes liable in respect of those affected supplies, as calculated by Supplier in accordance with the GST law;
  - (ii) the party providing consideration for the affected supplies ("**Recipient**") will pay the amounts or provide any other consideration required to be provided under other provisions of the agreement for the affected supplies (in this clause the "**price**") plus the calculated amount in respect of GST;
  - (iii) the additional amount or amounts will be payable at the same time or times as the price is required to be provided to the Supplier under the other provisions of the agreement; and
  - (iv) the Supplier will issue a tax invoice which enables the Recipient, if permitted by the GST law, to claim a credit or refund of GST on the same date as the Recipient is required to pay the additional amounts.
- (c) If the additional amount on account of GST recovered by the Supplier from the Recipient on any supply made under the agreement differs for any reason from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation, including by reason of:
  - (i) an amendment to the GST law;
  - (ii) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
  - (iii) a decision of any tribunal or court; and
  - (iv) any adjustment to the consideration under the agreement,

then the difference between the two said amounts will be payable by the Supplier or the Recipient as appropriate. Where an adjustment event (as defined in the GST law) has occurred in relation to any supply under the agreement, the Supplier will provide an adjustment note to the Recipient within 14 days of the date of the adjustment event.

- (d) If, as a result of the abolition of or reduction in the rate of any tax, duty, excise or other Government impost where such abolition or reduction is associated with the introduction of the GST (other than income tax and excluding the imposition of the GST), the Supplier realises a reduction in the cost of the Supplier performing its obligations under the agreement, the Supplier will reduce the amounts payable by the Recipient under the agreement in order to pass on the benefits of those cost reductions to the Recipient.
- (e) "GST", "GST law" and other terms used in this clause 9 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except that "GST law" includes any applicable rulings issued by the Commissioner of Taxation.

## 9.5 Payment of workers and Subcontractors

It is a condition precedent to the Supplier's entitlement to make a payment claim under clause 9.1 or Endeavour's obligation to make a payment under clause 9.2, that the Supplier provide Endeavour's Representative with:

- (a) a:
  - (i) written statement for the purposes of, and which complies with section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW); and
  - (ii) supporting statement regarding payment to Subcontractors, in the form prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW),

each of which cover the period covered by the relevant payment claim; and
- (b) copies of all relevant certificates of currency in respect of workers compensation insurance which the Supplier has in place in connection with the Supplier's Activities.

## 9.6 Security of payment

To the extent the *Building and Construction Industry Security of Payment Act 1999* (NSW) (in this clause 9.6, the "**Act**") applies to the agreement, and to the extent permitted by the Act, the Supplier agrees with Endeavour that:

- (a) a payment claim submitted to Endeavour's Representative under clause 9.1 is received by Endeavour's Representative as agent for Endeavour;
- (b) a payment statement issued by Endeavour's Representative under clause 9.2 is issued by Endeavour's Representative on behalf of Endeavour; and
- (c) for the purposes of section 17(3) of the Act, the Supplier irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the Act) for any adjudication application it may make under the Act in respect of the subject matter of the agreement.

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## 10. Completion

### 10.1 Notice of Completion

Within 20 Business Days of a request by the Supplier for the issue of a notice of Completion, Endeavour's Representative must issue a notice to the Supplier and Endeavour either:

- (a) stating the date Completion occurred and listing any minor Defects; or
- (b) stating that Completion has not occurred and giving reasons, in which case this clause 10.1 will reapply.

### 10.2 Upon Completion

Upon the issue of a notice of Completion the Supplier must hand over the Works to Endeavour and correct all Defects listed in the notice.

Endeavour must:

- (a) then release one half of any security it holds under clause 3.7; and
- (b) when the Defects Liability Period has expired and the Supplier has complied with all of its obligations under the agreement, release any security it still holds under clause 3.7.

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## 11. Compliance

### 11.1 Statutory Requirements

In carrying out the Supplier's Activities, the Supplier must:

- (a) comply with all Statutory Requirements and any requirements of Endeavour (whether relating to any place where the Supplier's Activities are to be carried out or otherwise) applicable to the Works or the Supplier's performance of the agreement;
- (b) apply for and obtain any certificates, licenses, consents, permits and approvals required by any authority, body or organisation with jurisdiction in connection with the Works or the Supplier's Activities; and
- (c) give all notices and pay all fees and charges in connection with clauses 11.1(a) and 11.1(b).

### 11.2 Endeavour Codes and Standards

- (a) In carrying out the Supplier's Activities, 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; and
  - (iii) any 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 11.2(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 11.2(a).

### 11.3 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) 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 (v) 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 11.3; and
  - (ii) ensure that policies and procedures required under this clause 11.3 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.

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## **12. Endeavour Energy's Distribution System**

### **12.1 Type 1 and Type 2 Critical Infrastructure Information**

- (a) Subject to clauses 12.1(b) and 12.2, 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 12.1(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).

## 12.2 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.

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

- (a) Subject to clause 12.3(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 12.3(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.

## 12.4 Critical Infrastructure Licence Conditions Compliance

On or before 31 July of each year (or such other date as requested by Endeavour), the Supplier must provide to Endeavour a report detailing its compliance with this clauses 12.1 to 12.3 over the 12-month period to the previous 30 June.

## 12.5 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.

## 12.6 Supplier to comply with the Ring-Fencing Guideline

The Supplier, in connection with the carrying out of the Supplier's Activities, 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.

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## 13. Termination

### 13.1 Notice of default

If the Supplier breaches the agreement, Endeavour may give a written notice to the Supplier, requiring it to remedy the breach, stating:

- (a) that it is a notice under this clause 13.1;
- (b) the breach relied upon; and
- (c) that the breach must be remedied within the time stated in the notice.

### 13.2 Termination for a subsisting Force Majeure Event

- (a) If a Force Majeure Event subsists for more than 60 days, Endeavour may, without prejudice to any other right it may have, immediately terminate the agreement by written notice to the Supplier.
- (b) Upon termination in accordance with clause (a) above, the agreement will be treated as though it were frustrated at common law.

### 13.3 Termination or take out for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Supplier;
- (b) the Supplier:
  - (i) does not remedy a breach of the agreement the subject of a notice under clause 13.1 within the time stated in the notice; or
  - (ii) is in breach of the agreement and Endeavour has previously issued at least two notices under clause 13.1 to remedy any breach of the agreement (regardless of whether or not in respect of the same breach and regardless of whether or not those breaches have been remedied); or
- (c) the Supplier breaches clause 11.3,

Endeavour may, without prejudice to any other right it may have:

- (d) immediately terminate the agreement by written notice to the Supplier; or
- (e) take out of the hands of the Supplier the whole or any part of the Supplier's Activities remaining to be completed.

#### **13.4 Take out**

- (a) Upon taking work out of the Supplier's hands, Endeavour may use such documents, materials, equipment and other things as were used by the Supplier as are reasonably required to facilitate completion of the work taken out.
- (b) When work taken out of the Supplier's hands has been completed, Endeavour's Representative shall assess the cost incurred in completing the work and certify as moneys due and payable the difference between that cost and the amount which would otherwise have been paid to the Supplier if the work had been completed by the Supplier.

#### **13.5 Endeavour's entitlements after termination**

If Endeavour terminates the agreement under clause 13.2, or if the Supplier repudiates the agreement and Endeavour otherwise terminates the agreement:

- (a) Endeavour will:
  - (i) be entitled to take over and use, or require the Supplier to remove from the Site, the plant and equipment and all materials and other things intended for the Works;
  - (ii) not be obliged to make any further payments to the Supplier; and
  - (iii) be entitled to recover from the Supplier any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

#### **13.6 Termination for convenience**

- (a) Without prejudice to any of Endeavour's other rights under the agreement, Endeavour may:
  - (i) at any time for its sole convenience, and for any reason, by written notice to the Supplier terminate the agreement effective from the time stated in Endeavour's notice or if no such time is stated, at the time the notice is given to the Supplier; and
  - (ii) thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging other subcontractors.
- (b) If Endeavour terminates the agreement under clause 13.6(a), the Supplier:
  - (i) will be entitled to payment of the following amounts as determined by Endeavour's Representative:
    - A. for work carried out prior to the date of termination the amount which would have been payable if the agreement had not been terminated and the Supplier submitted a payment claim for work carried out to the date of termination;

- B. the cost of goods or materials reasonably ordered by the Supplier for the Works for which the Supplier is legally bound to pay provided that:
- 1) the value of the goods or materials is not included in the amount payable under clause 13.6(b)(i)A; and
  - 2) title in the goods and materials will vest in Endeavour upon payment; and
- C. the reasonable cost of removing from the Site all labour, plant, equipment and work and other things used in the Supplier's Activities; and
- (ii) must take all steps possible to mitigate the costs referred to in clauses 13.6(b)(i)B and 13.6(b)(i)C.
- (c) The amount to which the Supplier is entitled under clause 13.6(b) will be a limitation upon Endeavour's liability to the Supplier arising out of, or in any way in connection with, the termination of the agreement and the Supplier may not make any Claim against Endeavour arising out of, or in any way in connection with, the termination of the agreement other than for the amount payable under this clause 13.6.
- (d) Clauses 13.6(b) and 13.6(c) will survive the termination of the agreement by Endeavour under clause 13.6(a).

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## 14. Disputes

- (a) If a difference or dispute (**Dispute**) arises out of or in connection with the agreement or the Works, a party must, before instituting any proceedings against the other party, give notice of the dispute to the other party specifying the nature of the dispute (**Notice of Dispute**).
- (b) Within 10 Business Days of issue of the Notice of Dispute, senior representatives of each party must meet and negotiate in good faith to settle the Dispute.
- (c) If the Dispute is not resolved by written agreement within 10 Business Days of issue of the Notice of Dispute (or within such further time as the parties may agree), then either party may commence litigation.
- (d) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the agreement.

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## 15. General

### 15.1 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 Supplier's Activities or this agreement to any person other than:
- (i) as necessary to carry out the Supplier's Activities;
  - (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.

## 15.2 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 15.2(b);
- (e) subject to clause 15.2(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 15.2(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).

## 15.3 Endeavour Representative

Endeavour may by written notice:

- (a) replace Endeavour's Representative, in which event Endeavour will appoint another person as Endeavour's Representative and notify the Supplier of that appointment; and
- (b) appoint persons to exercise any of Endeavour's Representative's functions under this agreement, and revoke any such appointment.

## 15.4 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 Contract Material 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 Contract Material, or arising from an act of Endeavour, or a person authorised by Endeavour, in relation to the Contract Material.

## 15.5 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.

## 15.6 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 15.6(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.

### **15.7 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.

### **15.8 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.

### **15.9 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.

### **15.10 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.

### **15.11 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) words importing the singular include the plural and vice versa;
- (d) words importing a gender include other genders;

- (e) 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;
- (f) "includes" in any form is not a word of limitation; and
- (g) a reference to "\$" or "dollar" is to Australian currency and an obligation to pay money is an obligation to pay in Australian dollars.

Where the Contract Particulars have not been attached to or incorporated by reference into the Purchase Order or have not otherwise been notified to the Supplier at the time of issuing the Purchase Order, then unless otherwise agreed by the parties:

- (h) "Endeavour's Representative" will be the person identified as such by Endeavour to the Supplier;
- (i) the "Specifications" will comprise the information, data, representations, statements or documents made by or provided to the Supplier by Endeavour or anyone on behalf of Endeavour in respect of the Works at any time prior to the issuing of the Purchase Order;
- (j) the "Site" will be the land upon which the Works are to be constructed, as identified in the information, data, representations, statements or documents referred to in paragraph (i) above;
- (k) for the purposes of clause 5.4(d), the Supplier will be taken to have been nominated as principal contractor in the Contract Particulars;
- (l) the working hours for Supplier's Activities on Site for the purposes of clause 5.9 will be usual business hours during Business Days at the Site;
- (m) the Supplier must provide:
  - (i) Works Insurance in the amount of 100% of the Contract Price;
  - (ii) Public Liability Insurance in the amount of \$20 million in respect of any one occurrence; and
  - (iii) Asbestos Liability Insurance in the amount of \$20 million in respect of any one occurrence,
 and Endeavour will not be required to effect or maintain any insurances;
- (n) for the purposes of clause 3.7, the Supplier must provide retention in the amount of 10% of each payment claim, to a maximum of 5% of the Contract Price;
- (o) the "Defects Liability Period" will be 52 weeks from the Date of Completion;
- (p) for the purposes of clause 6.5, the extension of the Defects Liability Period will be a period of 52 weeks;
- (q) the "Quality Assurance System" will be ISO 9001;
- (r) for the purposes of clause 9.1, there will be a single payment milestone, being the Date of Completion; and
- (s) the "Liability Cap" will be an amount equal to 500% of the Contract Price.



### **15.12 No exclusivity**

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

### **15.13 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.

### **15.14 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.

### **15.15 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.

### **15.16 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.

### **15.17 Severability**

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

### **15.18 Consents**

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

### **15.19 Discretion**

Subject to any express provision in this agreement to the contrary:

- (a) a provision of this agreement which says that Endeavour or Endeavour's Representative "may" do or not do something is not to be construed as imposing an obligation on Endeavour or Endeavour's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which Endeavour or Endeavour's Representative may exercise any discretion, power or entitlement conferred by this agreement.

Without limiting the previous paragraph, neither Endeavour nor Endeavour's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Supplier or as required by any other legal doctrine which in any way limits the express words used in the provision of this agreement conferring the discretion, power or entitlement.

## 15.20 Expense

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

## 15.21 Proportionate liability

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 15.21(a), the rights, obligations and liabilities of Endeavour and the Supplier under this agreement with respect to proportionate liability are as specified in this agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by law:
  - (i) the Supplier must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any Claim by Endeavour against the Supplier (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any Claim by Endeavour against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify Endeavour against any loss, damage, cost or expense that forms part of a Claim by Endeavour against the Supplier which Endeavour is not able to recover from the Supplier because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

## 15.22 Endeavour may act

Endeavour may, either itself or by a third party, perform an obligation which the Supplier was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by Endeavour in performing such an obligation will be a debt due from the Supplier to Endeavour.

## 15.23 Personal Property Securities Act

The Supplier:

- (a) acknowledges and agrees that:
  - (i) the agreement constitutes a Security Agreement; and
  - (ii) the agreement creates a Security Interest of Endeavour in:
    - A. all materials, equipment and other things intended for the Works which are located onsite or offsite;

- B. all construction plant, temporary works and other things on-site or off-site as are used by the Supplier or any Subcontractors; and
  - C. all Works documents,  
**("Collateral")**;
- (b) consents to Endeavour registering Endeavour's Security Interest in the Collateral;
  - (c) must not purport to dispose of, or grant any interest in, or give any form of security over the Collateral;
  - (d) undertakes to:
    - (i) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which Endeavour may reasonably require to:
      - A. register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest in the Collateral;
      - B. register any other document on the PPS Register which is necessary to perfect Endeavour's Security Interest in the Collateral; or
      - C. correct any error in any such document;
    - (ii) not register, or permit to be registered by any third party, a Financing Statement or a Financing Change Statement in respect of the Collateral without the prior consent of Endeavour;
    - (iii) keep full and complete records of the Collateral; and
    - (iv) do anything which Endeavour reasonably requires for the purpose of ensuring that the Security Interest is enforceable and perfected and to enable Endeavour to exercise its rights in connection with the Security Interest;
  - (e) agrees that, to the extent permitted by law, the following provisions of the PPSA do not apply to the agreement: (i) section 95; (ii) section 121(4); (iii) section 125; (iv) section 129; (v) section 130; (vi) section 132(3)(d); (vii) section 132(4); (viii) section 135; (ix) section 142; and (x) section 143;
  - (f) unless otherwise agreed to by Endeavour in writing, the Supplier waives its right to receive a Verification Statement in accordance with section 157 of the PPSA; and
  - (g) must give Endeavour written notice of any change to the Supplier's name, address or other details set out in the agreement within 5 Business Days after the date of such change.

## 15.24 Set-off

Endeavour may at any time retain, deduct, withhold or set-off from any moneys otherwise due to the Supplier from Endeavour or any retention provided by the Supplier (including any retention as stated in the Contract Particulars), any debt or other moneys due, including damages, from the Supplier to Endeavour or any other claim which Endeavour may have against the Supplier.