

**HORIZON POWER'S CONDITIONS OF CONTRACT FOR
THE SUPPLY OF GOODS AND SERVICES UNDER A PURCHASE ORDER**

1 DEFINITIONS

Business Day means a day on which banks are open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday in that city.

Conditions of Contract means these purchase order conditions of contract.

Confidential Information means the terms of the Contract and in respect of a party, all information in connection with the party's business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of the Contract) and which:

- (a) is, by its nature, confidential; or
- (b) is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential,

but does not include information which:

- (c) is or becomes public knowledge other than by a breach of the Contract; or
- (d) has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.

Consequential Loss means loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature and loss of opportunities, but does not include loss arising from:

- (a) claims by third parties; or
- (b) Horizon Power's personnel or the Supplier's Personnel in respect of property damage, personal injury, sickness or death.

Contract means, with respect to the Goods or Services (or both), the Conditions of Contract and the relevant Purchase Order.

Date for Completion means the "Due Date" set out against the description of the Services in the Purchase Order.

Date for Delivery means the "Due Date" set out against the description of Goods in the Purchase Order.

Date of Completion means the date on which the Services Requirements have been met.

Date of Delivery means the date on which the Goods are delivered to the Delivery Location.

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or the Services.

Defects Liability Period means a period of 12 months commencing:

- (a) in respect of the Goods, on the Date of Delivery; and
- (b) in respect of the Services, on the Date of Completion,

and, where relevant, any additional period of time specified in accordance with clause 12.4.

Delivery Location means the location set out in the Purchase Order.

Delivery Requirements means that:

- (a) the Goods meet the requirements of the Contract (including those set out in the Scope); and
- (b) those tests which are required by the Contract to be carried out and passed in respect of the Goods have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for goods of the same nature as the Goods have been carried out and passed).

ENSMS Guide means Horizon Power's electricity network safety management system established pursuant to regulation 13 of the *Electricity (Network Safety) Regulations 2015* (WA), as amended from time to time.

Goods means any goods, materials, supplies, equipment or other items set out in the Purchase Order and the Scope.

Government Agency means any government or governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency or authority in Western Australia or the Commonwealth of Australia.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Horizon Power means **Regional Power Corporation** (ABN 97 955 011 697), a statutory body corporate established by section 4(1) of the *Electricity Corporations Act 2005* (WA) of 18 Brodie Hall Drive, Bentley, Western Australia 6102, trading as Horizon Power.

Horizon Power IP means any Intellectual Property of Horizon Power (or licensed to Horizon Power by a third party) which Horizon Power makes available, contributes, brings to or uses in connection with the Contract.

Horizon Power Site means any premises which Horizon Power owns or which is in the care, control and management of Horizon Power including any land on which Horizon Power's property is situated on and which the Supplier needs to access in connection with the Contract.

Insolvency Event means in respect of the Supplier, the following events; appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Intellectual Property means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

Laws means any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of Horizon Power or the State or Territory in which the Supplier's Obligations are being carried out or any Commonwealth laws.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

Policies and Guidelines means all of the policies and guidelines of Horizon Power available at www.horizonpower.com.au, as amended and varied from time to time.

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

PPS Law means:

- (a) the PPSA; and
- (b) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

Price means the "Total PO Value" for the Goods and the Services (exclusive of GST) set out in the Purchase Order.

Purchase Order means the individual purchase orders and any associated Scopes that may be issued by Horizon Power to the Supplier from time to time with respect to the supply of Goods or the performance of Services (or both).

Purchase Order Number means the purchase order number set out in the Purchase Order.

Scope means the scope describing the Goods to be supplied and the Services to be performed under the Contract, as set out in the Purchase Order.

Services means any services set out in the Purchase Order and the Scope, including the delivery of any goods and performance of services ancillary to the Services.

Services Requirements means that:

- (a) the Services meet the requirements of the Contract (including those set out in the Scope); and
- (b) those tests which are required by the Contract to be carried out and passed in respect of the Services have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for services of the same nature of the Services have been carried out and passed).

Supplier means the party set out in the "To" section in the Purchase Order.

Supplier IP means any Intellectual Property of the Supplier (or Intellectual Property licensed to the Supplier by a third party) which:

- (a) is in existence before the date of the Purchase Order or comes into existence after the date of the Purchase Order other than in connection with the Contract, the Goods or the Services; and
- (b) which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

Supplier's Obligations means all of the Supplier's obligations under the Contract.

Supplier's Personnel means the Supplier's officers, employees, agents and subcontractors and their respective employees and agents.

Tax means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

Tax Invoice means any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Variation means an increase, decrease, omission or any other change to any part of the Goods or Services (or both) to be supplied or performed under the Contract.

Variation Notice means a notice issued by Horizon Power under clause 8.2 directing the Supplier to carry out a Variation requested under clause 8.1.

Variation Quotation means a quotation from the Supplier which sets out the Supplier's additional costs or savings and the effect on the Date for Delivery or the Date for Completion for performing a Variation requested under clause 8.1.

2 SUPPLY OF GOODS AND SERVICES

- 2.1 In consideration of the payment of the Price by Horizon Power, the Supplier must supply and deliver the Goods or perform the Services (or both), in accordance with the Contract.
- 2.2 Unless expressly agreed to in writing by Horizon Power and referenced in the Purchase Order, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions even where they have been provided to Horizon Power, will apply or have any legal effect in connection with the supply of the Goods, the performance of the Services or the Contract.

3 TERM

The Contract:

- (a) commences on the earlier of the date on which the Supplier confirms its acceptance of a Purchase

Order or commences performance of the Supplier's Obligations under a Purchase Order; and

- (b) will continue until the date the Supplier completes all of the Supplier's Obligations.

4 SUPPLIER'S OBLIGATIONS

- 4.1 Where a Purchase Order refers to Goods, the Supplier must supply and deliver the Goods in accordance with clause 5 and otherwise in accordance with the Contract.
- 4.2 Where a Purchase Order refers to Services, the Supplier must perform the Services in accordance with clause 7 and otherwise in accordance with the Contract.
- 4.3 The Supplier must ensure that it and the Supplier's Personnel, in performing the Supplier's Obligations under the Contract:
 - (a) have all necessary qualifications, licences, skill and experience;
 - (b) comply with all applicable Laws, the Policies and Guidelines and any reasonable instructions given by Horizon Power;
 - (c) without limiting clause 4.3(b), comply with:
 - 1) the ENSMS Guide; or
 - 2) if authorised by Horizon Power in its absolute discretion and subject to the extent and terms of any such authorisation, the Supplier's safety management systems;
 - (d) do not interfere with Horizon Power's activities or the activities of any other person at the Delivery Location or a Horizon Power Site;
 - (e) carry out and perform the Supplier's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work; and
 - (f) provide all such information and assistance as Horizon Power reasonably requires.
- 4.4 The Supplier must (within a reasonable time after being requested), provide Horizon Power with sufficient details of any payments, hospitality, gifts, benefits, favours or entertainment provided by the Supplier to Horizon Power or its employees, agents and contractors during the term of the Contract.
- 4.5 If at any time during the term of the Contract any of the Supplier's Personnel become preselected as a candidate for any local, state or federal election (**Preselected Individual**), the Supplier must:
 - (a) immediately inform Horizon Power of the Preselected Individual's preselection; and
 - (b) within 5 Business Days of Horizon Power's request, remove the Preselected Individual from undertaking or performing the whole or any part of the Supplier's Obligations.

5 DELIVERY AND ACCEPTANCE OF GOODS

- 5.1 The Supplier must deliver the Goods to the Delivery Location on the Date for Delivery.
- 5.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 5.3 If Horizon Power determines, acting reasonably, that the Goods do not meet the Delivery Requirements, Horizon Power may issue a notice to the Supplier within 20 Business Days of delivery stating the reasons why the Goods do not meet the Delivery Requirements (**Goods Non-Acceptance Notice**).
- 5.4 If the Supplier receives a Goods Non-Acceptance Notice, the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods so that the Delivery Requirements are met.

Horizon Power has no liability to pay for Goods that are subject to a Goods Non-Acceptance Notice.

- 5.5 Acceptance of the Goods by Horizon Power does not constitute approval of the Goods or prejudice any claim Horizon Power may have in connection with the Goods.

6 TITLE AND RISK

- 6.1 Title in the Goods will pass from the Supplier to Horizon Power upon payment of the Price. The Supplier warrants that title in the Goods will be transferred to Horizon Power without any encumbrances or liens.
- 6.2 Subject to clause 6.3, risk in the Goods will pass to Horizon Power on Horizon Power taking delivery of the Goods at the Delivery Location.
- 6.3 If Horizon Power issues a Goods Non-Acceptance Notice under clause 5.3, then risk does not pass to Horizon Power until the Supplier rectifies or replaces the Goods in accordance with clause 5.4.

7 PERFORMANCE AND ACCEPTANCE OF SERVICES

- 7.1 The Supplier must perform and complete the Services in accordance with any timing requirements in the Scope and otherwise complete the Services by the Date for Completion.
- 7.2 The Supplier must supply all plant, resources and equipment necessary to perform the Services unless otherwise set out in the Scope.
- 7.3 The Supplier must allow Horizon Power or a representative of Horizon Power, at all reasonable times, to inspect, examine, review and witness tests of the Services, or the performance of the Services and to carry out site inspections at the Supplier's premises.
- 7.4 The Supplier must, where it is required to perform (or re-perform) any Services under the Contract, give notice to Horizon Power when, in its opinion, the Services are complete and meet the Services Requirements.
- 7.5 If Horizon Power determines, acting reasonably, that the Services do not meet the Services Requirements, Horizon Power may issue a notice to the Supplier within 20 Business Days of receiving a notice from the Supplier under clause 7.4 stating the reasons why the Services do not meet the Services Requirements (**Services Non-Acceptance Notice**).
- 7.6 If the Supplier receives a Services Non-Acceptance Notice, the Supplier must, at its cost, re-perform the Services, or that part of the Services that do not meet the Services Requirements, until the Services Requirements are met. Horizon Power has no liability to pay for Services that are subject to a Services Non-Acceptance Notice.
- 7.7 Acceptance of the Services by Horizon Power does not constitute approval of the Services or prejudice any claim Horizon Power may have in connection with the Services.

8 VARIATIONS

- 8.1 If at any time Horizon Power notifies the Supplier that it requires a Variation, the Supplier must promptly provide a Variation Quotation.
- 8.2 If Horizon Power accepts a Variation Quotation, Horizon Power will issue a Variation Notice to the Supplier and:
- (a) the Supplier must then carry out the Variation;
 - (b) the Price will be adjusted by the amount set out in the relevant Variation Quotation;
 - (c) if the Variation is in respect of the Services, the Date for Completion will be adjusted as set out in the Variation Quotation; and
 - (d) if the Variation is in respect of the Goods, the Date for Delivery will be adjusted as set out in the Variation Quotation.
- 8.3 The Supplier will not be entitled, in any circumstances, to an adjustment to the Price or any extension of time

except as set out in a Variation Notice issued by Horizon Power in accordance with this clause 8.

9 PRICE AND INVOICING

- 9.1 Horizon Power must pay the Price to the Supplier for the Goods and the Services.
- 9.2 The Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and, subject to clause 8, no additional amounts will be payable by Horizon Power.
- 9.3 Subject to clause 9.4, on or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services, the Supplier must submit a Tax Invoice to Horizon Power for the amount due to the Supplier.
- 9.4 If agreed in writing by Horizon Power, the Supplier may submit a Tax Invoice to Horizon Power at the end of each month for any Services performed during that or previous months provided those Services have not already been included in a previous Tax Invoice issued to Horizon Power.
- 9.5 A Tax Invoice must include:
- (a) the Purchase Order Number;
 - (b) a description of the Goods delivered, including the quantity of Goods and the Date of Delivery;
 - (c) a description of the Services performed;
 - (d) the amount being claimed for the Goods and the Services;
 - (e) the amount of any applicable GST; and
 - (f) any further information reasonably requested by Horizon Power.
- 9.6 Tax Invoices must be submitted to:
- Horizon Power Accounts Payable
PO Box 1066
Bentley DC WA 6983.
- 9.7 If a Tax Invoice does not contain the information required in clause 9.5, Horizon Power may, at its option, complete the missing details or return the incomplete Tax Invoice to the Supplier, in which case the Supplier must submit a replacement Tax Invoice compliant with clause 9.5.
- 9.8 Subject to the Supplier submitting a Tax Invoice in accordance with clause 9.5 or a compliant Tax Invoice in accordance with clause 9.7, Horizon Power must pay the amount payable within 20 days.
- 9.9 Payment under this clause 9 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of Horizon Power, but will be taken to be payment on account only.
- 9.10 The Supplier warrants that it is registered for GST purposes in Australia and, if requested by Horizon Power, must provide to Horizon Power sufficient evidence to substantiate that the Supplier is registered for GST purposes.
- 9.11 The Supplier agrees that Horizon Power may:
- (a) deduct from moneys due to the Supplier any money due or which may become due from the Supplier to Horizon Power under, or in connection with, the Contract; and
 - (b) withhold payment of any amounts payable under the Contract pending resolution of any dispute.

10 GOODS AND SERVICES TAX (GST)

- 10.1 If GST is imposed on any supply made by the Supplier in connection with the Contract, the Supplier may recover from Horizon Power, in addition to the Price, an amount equal to the GST payable in respect of that supply.

10.2 The Supplier must first provide Horizon Power with a Tax Invoice before Horizon Power will pay the GST amount to the Supplier.

11 QUALITY OF GOODS AND SERVICES

11.1 The Supplier must ensure that:

- (a) the Goods or Services (or both) match the description of the Goods or Services (or both) set out in the Purchase Order and comply with the requirements in the Scope;
- (b) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional supplier;
- (c) the Goods and any items the Supplier uses or supplies as part of the Services are new and of merchantable quality and are free from Defects in design, materials and workmanship;
- (d) the Goods or Services (or both) are fit for the purpose stated in the Purchase Order and the Scope, or the purpose which could reasonably be inferred by a professional supplier supplying the Goods or performing the Services;
- (e) from transfer of the title in the Goods to Horizon Power, Horizon Power has the benefit of all usual manufacturers' warranties applicable to the Goods or Services (or both) and any warranties specifically and reasonably requested by Horizon Power and will, where requested by Horizon Power, pursue any manufacturer warranties on Horizon Power's behalf; and
- (f) it provides Horizon Power with copies of all manufacturers' warranties applicable to the Goods and the Services and any other usual documentation including instruction manuals, technical specifications or drawings when the Goods are delivered or the Services are performed (as applicable) or when Horizon Power otherwise reasonably requests.

12 DEFECTS

12.1 At any time prior to the expiry of the Defects Liability Period, the Supplier must, at its cost and at Horizon Power's direction, promptly rectify all Defects other than a Defect caused by the negligent acts or omissions of Horizon Power.

12.2 Nothing in this clause 12 prejudices any other right that Horizon Power may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.

12.3 If Horizon Power directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by Horizon Power:

- (a) Horizon Power may, without prejudice to any other rights Horizon Power may have against the Supplier, rectify the Defect itself; and
- (b) the rectification costs incurred by Horizon Power will be a debt due and payable on demand from the Supplier to Horizon Power.

12.4 Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

13 WORKING ON A HORIZON POWER SITE

13.1 This clause 13 applies to the extent the Supplier or any of the Supplier's Personnel are required to be on, or near the vicinity of, a Horizon Power Site for the purpose of the Contract.

13.2 Without limiting the Supplier's obligations under clause 4, the Supplier agrees to comply, and to ensure that the Supplier's Personnel comply, with:

- (a) Horizon Power's health, safety and environmental Policies and Guidelines applicable from time to time;
- (b) all relevant health, safety and environmental Laws;
- (c) all reasonable instructions from a representative of Horizon Power; and
- (d) the health, safety and environmental conditions in this clause 13.

13.3 Where required, each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by Horizon Power to enter a Horizon Power Site.

13.4 The Supplier must ensure that the Supplier's Personnel entering a Horizon Power Site maintain the Horizon Power Site in a safe, secure, clean and orderly manner having regard to the condition of the Horizon Power Site immediately before such entry.

13.5 If the Supplier or any of the Supplier's Personnel fail to comply with any obligation under this clause 13, then Horizon Power may in its discretion deny that person access to the Horizon Power Site or require the relevant Supplier's Personnel to leave the Horizon Power Site immediately.

13.6 Nothing in this clause 13 affects any obligation or duty imposed on the Supplier or the Supplier's Personnel to secure and have proper regard to the health and safety of any of the Supplier's Personnel.

14 CONFIDENTIAL INFORMATION

14.1 Each party must:

- (a) keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
 - (1) to the extent necessary for the performance of their obligations under the Contract;
 - (2) that a party may disclose to its legal advisers or auditors who are under a duty of confidence;
 - (3) that a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
 - (4) that Horizon Power may disclose to any Government Agency information relating to Aboriginal procurement, including with respect to the Government of Western Australia's Aboriginal Procurement Policy;
 - (5) that Horizon Power may use and disclose any information provided to it by the Supplier pursuant to clause 16 for the purposes of preparing any modern slavery statement under, or otherwise complying with, the *Modern Slavery Act 2018* (Cth); and
- (b) immediately provide notice to the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other party's Confidential Information.

14.2 The Supplier acknowledges that Horizon Power is subject to the *Freedom of Information Act 1992* (WA) and that the Contract or documents relating to the Contract may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. Horizon Power has no liability to the Supplier whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

15 INTELLECTUAL PROPERTY

15.1 Subject to clause 15.3, the Supplier IP remains vested in the Supplier and the Horizon Power IP remains vested in Horizon Power.

- 15.2 Horizon Power will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
- 15.3 The Supplier grants to Horizon Power a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Supplier IP to the extent necessary to use the Goods and the Services.

16 MODERN SLAVERY

The Supplier must:

- (a) comply with applicable anti-slavery and human trafficking Laws, including, without limitation, the *Modern Slavery Act 2018* (Cth, Division 270 and 271 of the *Criminal Code* (Cth)), and any applicable equivalent Laws in Australian states and territories;
- (b) not engage in, and must use reasonable endeavours to ensure that Supplier's Personnel and Supplier's own suppliers do not engage in, Modern Slavery;
- (c) implement appropriate policies, measures and processes to ensure compliance with its obligations under this clause, and to identify and address the risks of Modern Slavery in its operations and supply chains;
- (d) upon request, provide to Horizon Power evidence confirming to Horizon Power's satisfaction that the Supplier has complied with this clause; and
- (e) notify Horizon Power as soon as reasonably practicable of any instance of Modern Slavery identified in the Supplier's operations or supply chains, and any steps the Supplier has taken, or proposes to take, in response to the instance of Modern Slavery.

17 INSURANCE

- 17.1 The Supplier must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:
- (a) Public and Products Liability insurance covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) for an amount of not less than \$10,000,000 in respect of each and every claim, unlimited as to the number of occurrences for public liability;
 - (b) Workers Compensation Insurance as required by Law and for sole traders and partners not covered by workers compensation insurance, Personal Accident, Illness and Life Insurance for an amount agreed by the parties;
 - (c) Motor Vehicle Insurance covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third party liability of not less than \$20,000,000 in respect of each and every claim; and
 - (d) any additional insurance required by an applicable Law or reasonably requested by Horizon Power.
- 17.2 In addition to the insurances required under clause 17.1, where the Supplier is providing professional services, the Supplier must effect and maintain with a reputable insurer Professional Indemnity Insurance of not less than \$5,000,000 for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 3 years after the end of the Contract.
- 17.3 The Supplier must provide to Horizon Power, within 3 Business Days of a written request, certificates of

currency for each of the insurance policies required under clause 17.1.

- 17.4 Subject to clause 23.3, if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every subcontractor effects and maintains all of the insurances required under clause 17.1, as appropriate for the work being performed by that subcontractor, before the subcontractor commences any of the Supplier's Obligations.

- 17.5 Notwithstanding any other clause in this Contract, the parties may agree, in writing, to amend any of the insurance requirements the Supplier is required to maintain under this clause 17.

18 INDEMNITY AND LIMITS OF LIABILITY

- 18.1 The Supplier indemnifies Horizon Power and Horizon Power's personnel for any losses suffered or incurred by Horizon Power arising out of, or in connection with, any wrongful act or omission of the Supplier and claims made by third parties in connection with the Supplier's performance or non-performance of the Supplier's Obligations. This indemnity will be reduced to the extent that the loss is caused, or contributed to, by Horizon Power's negligence.
- 18.2 Neither party is liable to the other for Consequential Loss.
- 18.3 The exclusion of liability in clause 18.2 does not apply in respect of fraud, deliberate default, wilful misconduct or any act or omission done or not done with a reckless disregard for the consequences by Horizon Power or the Supplier, as applicable, or any other party for whom Horizon Power or the Supplier is responsible, as applicable.

19 TERMINATION

- 19.1 Horizon Power may terminate the Contract by notice to the Supplier:
- (a) at any time and in its discretion;
 - (b) if the Supplier commits a breach (other than an inconsequential breach) of the Contract and fails to remedy that breach within 10 Business Days of Horizon Power giving notice of the breach; or
 - (c) immediately if an Insolvency Event occurs.
- 19.2 The Supplier may terminate the Contract by notice to Horizon Power if Horizon Power does not comply with its obligations under clause 9.8 and fails to remedy that default within 10 Business Days of notice of that default from the Supplier.
- 19.3 On termination of the Contract, the Supplier must:
- (a) immediately cease performance of the Supplier's Obligations; and
 - (b) promptly deliver to Horizon Power all Confidential Information, employee lists, working papers, correspondence, documents and other property belonging to Horizon Power that may be in the Supplier's possession or under its control.
- 19.4 If the Contract is terminated under clause 19.1(a) or 19.2:
- (a) Horizon Power must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by Horizon Power; and
 - (b) the Supplier is not entitled to, and Horizon Power is not liable for, any additional amounts whatsoever.
- 19.5 Subject to clause 19.4, termination of the Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

20 NOTICES

- 20.1 Subject to clause 20.3, a notice must be in writing and:
- (a) delivered by hand or sent by post, to the address of the party set out in the Purchase Order or otherwise notified; or
 - (b) sent by email, as an attachment to an email, to the email address of the party as notified to the other party.
- 20.2 A notice is deemed to be given and received:
- (a) if delivered by hand, on the day of delivery;
 - (b) if sent by post, on the third Business Day after posting; or
 - (c) if sent by email, four hours after it is sent, unless the sender receives notification from its or the recipient's email server that the email is undeliverable, was not delivered or the recipient is out of the office.
- 20.3 A notice under clause 19 may only be delivered by hand or sent by post.

21 DISPUTES

- 21.1 Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 21.
- 21.2 If any dispute arises between the parties in relation to the Contract, either party must give notice of the dispute to the other party.
- 21.3 A senior representative of each of the parties must promptly meet and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 15 Business Days of the notice referred to in clause 21.2, then either party may issue court proceedings.

22 PPSA

- 22.1 Words and phrases used in the Contract that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- 22.2 If Horizon Power determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Horizon Power asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
 - (b) enabling Horizon Power to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that Horizon Power has the priority required by it; or
 - (c) enabling Horizon Power to exercise rights in connection with the security interest.
- 22.3 If the Supplier holds any security interests for the purposes of the PPS Law and if failure by the Supplier to perfect such security interests would materially adversely affect the security interests Horizon Power holds or affect its business, the Supplier agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Supplier must take all steps under the PPS Law to continuously perfect any such security interests including (without limitation) all steps necessary:

- (a) for it to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
- (b) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

22.4 Notwithstanding clause 14, neither Horizon Power nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information.

22.5 Clause 22.4 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

23 GENERAL

- 23.1 The Supplier must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of Horizon Power.
- 23.2 If Horizon Power is restructured by Law or by other means, including the use of subsidiary or associated companies or transfer of assets, rights and liabilities, then the rights and obligations of Horizon Power under the Contract are assigned to, and assumed by, the appropriate legal entity as determined by Horizon Power or the successors of Horizon Power under the restructure.
- 23.3 The Supplier must not, without the prior written consent of Horizon Power, which consent must not be unreasonably withheld, subcontract any of the Supplier's Obligations.
- 23.4 If Horizon Power consents to the subcontracting of any part of the Supplier's Obligations under clause 23.3, the Supplier must:
- (a) provide any information requested by Horizon Power, from time to time and in the timeframe requested by Horizon Power, concerning Aboriginal procurement in the subcontractor's supply chain; and
 - (b) ensure that any subcontract entered into:
 - (1) obliges the subcontractor to provide the Supplier with the information contemplated in clause 23.4(a); and
 - (2) provides the Supplier with the right to provide the information contemplated in clause 23.4(a) to Horizon Power in accordance with clause 23.4(a), including for the purposes of Horizon Power providing the information to any Government Agency.
- 23.5 The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- 23.6 Nothing in the Contract has the effect of constraining Horizon Power or placing any fetter on its statutory rights, duties, powers and functions including those contained or referred to in any Law.
- 23.7 The Contract is a non-exclusive contract for the supply of Goods or Services (or both) and it does not prevent or restrict Horizon Power from entering into other contracts for the supply of, or performance of, the same or similar Goods or Services with other suppliers.
- 23.8 To the extent of any inconsistency between the provisions of the documents forming the Contract, the Supplier must give Horizon Power notice of that inconsistency, and the terms of these Contract Conditions take precedence.
- 23.9 The Contract states all the express terms of the agreement between the parties in respect of its subject

matter. It supersedes all prior representations, discussions, negotiations, understandings and agreements in respect of its subject matter.

23.10 Nothing in the Contract gives a party authority to bind the other party in any way. Nothing in the Contract imposes any fiduciary duties on a party in relation to the other party. Notwithstanding this clause 23.10, the Supplier is, for the purposes of section 4(2)(b) of the *Energy Operators (Powers) Act 1979 (WA)*, only to be considered as a person acting at the request and on behalf of Horizon Power in the provision of the Services.

23.11 No waiver of a breach of any term of the Contract or of a default under the Contract will be effective unless in writing, signed by, or on behalf of, the parties and expressed to be such a waiver.

23.12 The rights and remedies contained in the Contract are cumulative and not exclusive of any rights or remedies provided by Law.

23.13 Clauses 1, 12, 14, 15, 18, 19.5 and 23 will survive the termination or expiry of the Contract.

23.14 From time to time, Horizon Power may request that the Supplier provide a report setting out in detail such information about any matter concerning:

- (a) Aboriginal employment in the Supplier's supply chain;
- (b) the number of Aboriginal people making up the Supplier's Personnel;
- (c) the Government of Western Australia's Aboriginal Procurement Policy, with respect to the Supplier,

and the Supplier must provide the report to Horizon Power within 10 Business Days of that request, unless another timeframe is stipulated in Horizon Power's request.

23.15 In the Contract:

- (a) The singular includes the plural and the plural includes the singular.
- (b) Other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning.
- (c) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (d) A reference to a clause, party or schedule is a reference to a clause of, and a party or schedule to, the Contract.
- (e) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (f) A reference to a party to a document includes that party's successors and permitted assignees.
- (g) A promise on the part of 2 or more persons binds them jointly and severally.
- (h) No provision of the Contract will be construed adversely to a party because that party was responsible for the preparation of the Contract or that provision.
- (i) Specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (j) Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract.