



Terms and Conditions for PQS004 Professional Services

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TERMS AND CONDITIONS FOR PQS004

1. DEFINED TERMS AND INTERPRETATION

1.1 Defined Terms

In relation to any Professional Services Agreement, unless the contrary intention appears:

'Accounting Records' includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes vouchers and other documents supporting and substantiating transactions or tasks undertaken by the Professional Service Provider in provision of Services.

'Background IPR' means any Intellectual Property Rights that a party owns or has the right to use as at the date of this Contract and includes Intellectual Property Rights created independently of this Contract which a party makes available for the purposes of the Professional Services Agreement.

'Books and Records' includes Accounting Records, timesheets, documents, registers and other records, however compiled, recorded or stored and whether or not they are in electronic form.

'Business Day' means a day other than a Saturday, Sunday or statutory holiday or public holiday in Queensland.

'Business Hours' means the hours between 9.00am and 5.00pm on a Business Day.

'Confidential Information' means, subject to clause 17.3, the following, whether or not in material form:

- (a) this Contract, any Professional Services Agreement, any Works Order and the terms of such documents;
- (b) all information (including commercially sensitive information and technical know-how) directly or indirectly disclosed or made available by or on behalf of one party to the other party;
- (c) Customer Information, consumer energy usage, load profiles and/or billing information;
- (d) all notes and other records prepared by the Professional Service Provider based on or incorporating the information referred to in paragraphs (b) or (c); and
- (e) all copies of the information and those parts of the notes and other records referred to in any of paragraphs (b), (c) and (d).

'Consents' mean all consents, licences, approvals, permits or other authorisations which are required to be granted by any government department, regulatory body, instrumentality, minister, agency or other authority for the purposes of the Services or the performance by the Professional Service Provider of its obligations under the Professional Services Agreement.

'Contract Manager' means the person appointed by Energex to oversee the Professional Service Provider's provision of Services under the Professional Services Agreement (or such other person nominated by the Professional Service Provider and agreed to by Energex from time to time).

'Customer Information' means the names, addresses and personal information of Energex's customers disclosed or made available to the Professional Service Provider during the performance of its obligations under the Professional Services Agreement.

'Energex Background IP' means any Intellectual Property Rights created by Energex prior to entry into this Contract.

'Energex Services Equipment' means any equipment supplied by Energex to the Professional Service Provider for the provision of the Services.

'GST' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

'Head Agreement' means the agreement between Energex and the Professional Service Provider whereby the Professional Service Provider agrees accept prequalification under the Prequalification Scheme.

'Intellectual Property Rights' means all intellectual property rights, including without limitation:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

'Law' means the principles of law or equity established by decisions of Australian Courts, and other law, statute, by-law, regulation, rule, order, ordinance, proclamation or delegated legislation of the Commonwealth or of any State or Territory of Australia or of any local government.

'Prequalification Scheme' means the prequalification scheme PQS004, the terms of which are on Energex's website, which the Professional Service Provider has been prequalified under.

'Professional Services Agreement' means each contract that comes into existence upon the issue of a Works Order in accordance with clause 2.2.

'Professional Service Provider Representative' means the person specified as the Professional Service Provider's Representative (or such other person nominated by the Professional Service Provider and agreed to by Energex from time to time).

'Professional Service Provider Background IP' means any Intellectual Property Rights created by the Professional Service Provider prior to entry into the Professional Services Agreement.

'Professional Service Provider's Services Equipment' means any equipment used by the Professional Service Provider to provide the Services.

'Related Body Corporate' has the meaning given to that term in the *Corporations Act 2001* (Cth).

'Services' means the services to be provided by the Professional Service Provider to Energex, as set out in the Works Order.

'Service Fee' means the fee or fees payable by Energex to the Professional Service Provider in accordance with clause 9.1.

'Supervising Officer' means the individual appointed by Energex in accordance with clause 6.

'Tax Invoice' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

'Works Order' means an order in the form in Appendix 1 for the performance by the Professional Service Provider of the Services described in the order or such other equivalent document whether or not called a works order, or purchase order, notified by Energex to the Professional Services Provider from time to time.

'Works Order Special Conditions' means any additional conditions set out in a Works Order which will form part of a Professional Services Agreement.

'Work Health and Safety Law' means any Laws relating to health and safety including the *Work Health and Safety Act 2011 (Qld)* and the *Work Health and Safety Regulation 2011 (Qld)*.

'Work Health and Safety Requirements' means:

- (a) any Work Health and Safety Law;
- (b) any relevant health and safety policies of Energex as notified to the Professional Service Provider; and
- (c) the requirements of:
 - (i) industry standards, codes, practices and guidelines; or
 - (ii) any other provisions of the Professional Services Agreement, relating to health and safety.

1.2 Interpretation

In any Professional Services Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of any Professional Services Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to the Professional Services Agreement and a reference to the Professional Services Agreement includes any schedules and annexures;
- (e) a reference to a document or agreement, including the Professional Services Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;

- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed and if no place is specified, in Brisbane, Queensland;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable.

1.3 Joint and several

When two or more people comprise the Professional Services Provider:

- (a) the expression shall be a reference to each of them severally as well as to any two or more of them jointly; and
- (b) the obligations, agreements, representation, warranty and or indemnity on their part in each Professional Services Agreement to which they are a party shall bind each of them severally and any two or more of them jointly.

2. AGREEMENT

2.1 Work Orders

- (a) Energex may place a Works Order at any time while the Professional Service Provider remains part of the Prequalification Scheme.
- (b) Where a Works Order placed while the Professional Service Provider remains part of the prequalification scheme requires the Professional Service Provider to provide Services after the Professional Service Provider has ceased to be part of the Prequalification Scheme, the Professional Service Provider must perform such Services notwithstanding the Professional Service Provider has ceased to be part of the Prequalification Scheme and this Professional Service Agreement shall continue in force until such time as those Services are completed.

2.2 Formation and content of Professional Services Agreement

- (a) Upon the issue of a Works Order by Energex, a Professional Services Agreement will come into existence.
- (b) Each Professional Services Agreement will comprise:
 - (i) the Head Agreement;
 - (ii) these terms and conditions;
 - (iii) the Works Order;
 - (iv) any Works Order Special Conditions;
 - (v) any Appendices to these terms and conditions; and

- (vi) any schedules to the Works Order.
- (c) In the event of any ambiguity or discrepancy between the documents comprising a Professional Services Agreement, the documents shall rank in the order of precedence listed above.
- (d) Energex may include Works Order Special Conditions in a Works Order. Upon receipt of a Works Order which contains Works Order Special Conditions not set out in these terms, the Professional Service Provider must:
 - (i) acting reasonably, promptly and before it gives effect to the Works Order notify Energex of any of those Works Order Special Conditions (if any) which are unacceptable to it (**'Unacceptable Conditions'**);
 - (ii) negotiate in good faith with Energex to formulate amendments to the Unacceptable Conditions which are agreeable to both parties (**'Negotiated Works Order Special Conditions'**),
 in which case:
 - (iii) if the parties are unable to reach agreement under clause 2.2(d)(ii) within five (5) Business Days of the notification provided under clause 2.2(d)(i) Energex may in its absolute discretion at any time revoke the Works Order; and
 - (iv) the Professional Service Provider will be taken to have accepted the Works Order Special Conditions by commencing the performance of those Services to which the Works Order relates (whether or not it provides any notification under clause 2.2(d)(i).

2.3 Acknowledgement by Professional Service Provider

The Professional Service Provider acknowledges and agrees:

- (a) Energex does not guarantee any volume of work to the Professional Service Provider under the prequalification scheme; and
- (b) Energex may in its absolute discretion engage other professional services providers to perform services of a kind similar to or the same as the Services.

2.4 Benefit of Contract

- (a) The parties agree that the Professional Service Provider shall perform Professional Services Agreement for the benefit of Energex and its Related Bodies Corporate and any Professional Services Agreement is a contract for the benefit of third parties within the meaning of that term in section 55 of the *Property Law Act 1974 (Qld)*. However, Energex and its Related Bodies Corporate acknowledge and agree that only those Energex entities specifically named in the Works Order are entitled to enjoy the benefits from, have rights against and enforce any liabilities owed by the Professional Service Provider for the particular Services the subject of a Works Order.
- (b) A Related Body Corporate of Energex is entitled to retain the Professional Service Provider to perform Services by issuing a Works Order in accordance with the provisions of these terms. The Related Body Corporate is then entitled to the benefit of the Professional Services Agreement that arises in respect of such Works Order and agrees to be bound by the obligations of this Contract as if each reference in these terms to Energex includes reference to the Related Body Corporate.

- (c) Any Works Order issued by a Related Body Corporate of Energex shall create a Professional Services Agreement contract for provision of the Services by the Professional Service Provider to the Related Body Corporate, on the same terms and conditions as set out in this Contract (as varied in the applicable Works Order).

3. OBLIGATIONS

3.1 Obligations of Professional Service Provider

The Professional Service Provider must:

- (a) provide and deliver the Services to Energex in accordance with the terms of the Professional Services Agreement as and when required by Energex;
- (b) comply with any directions given by Energex in relation to safety, health and environmental issues;
- (c) unless otherwise stated in the Professional Services Agreement, provide at its sole cost and expense all goods, equipment, spare parts, labour and services necessary to perform the Services; and
- (d) be responsible for investigating and resolving to the reasonable satisfaction of Energex, any complaint made by a member of the public about the way in which the Professional Service Provider performs any element of the Services.

3.2 Energex's Obligations

Energex must:

- (a) use best endeavours to provide to the Professional Service Provider with such information, instructions and assistance as the Professional Service Provider reasonably requires to perform the Services and do so in a timely manner;
- (b) notify the Professional Service Provider of any events, situations or circumstances within Energex's control and of which Energex is aware which impact, or will impact upon the Professional Service Provider's ability to provide the Services;
- (c) on reasonable notice by the Professional Service Provider (which must not be less than 24 hours prior notice), provide the Professional Service Provider with access to Energex's sites during Business Hours if and to the extent reasonably required by the Professional Service Provider for the performance of the Services; and
- (d) otherwise comply with its obligations under this Contract.

3.3 Compliance with Site Policies

The Professional Service Provider and its permitted subcontractors must, while on Energex's sites comply with:

- (a) all security requirements and policies; and
- (b) all safety, health and environment policies,

implemented by Energex in respect of the particular site, and notified by Energex to the Professional Service Provider.

4. SERVICES PARTICULARS

4.1 Applicable Standards and Policies

The Professional Service Provider and its permitted subcontractors must perform the Services in a conscientious, expeditious and professional manner in accordance with the terms of the Professional Services Agreement and in compliance with:

- (a) all applicable Laws and other legal requirements, including the terms of all Consents;
- (b) Energex's applicable policies and procedures; and
- (c) all applicable industry standards and codes.

In the event of any inconsistency between any of the requirements listed in clause 4.1(a) to 4.1(c) the Professional Service Provider must comply with the requirement or requirements that impose the higher standards. If any of the requirements in 4.1(a) to 4.1(c) substantially change after the commencement of the relevant Services, and such change impacts directly on the Professional Service Provider's provision of the Services, the variation provisions in clause 5 shall apply.

4.2 Personnel

Energex may, on reasonable grounds, give notice to the Professional Service Provider requiring the Professional Service Provider to remove any personnel from working on the Services. Upon receipt of such notice, the Professional Service Provider will immediately give effect to the notice. The Professional Service Provider will, at no cost to Energex, replace the personnel referred to in the notice with personnel reasonably satisfactory to Energex.

4.3 Technology

The Professional Service Provider must ensure that all software and other technology used by the Professional Service Provider to provide the Services, is compatible with all software and technology used by Energex to enjoy or benefit from the provision of the Services. Any relevant material change to Energex's software and other technology after the Professional Service Provider has commenced the relevant Services will be addressed by the parties pursuant to the variation provisions in clause 5.

4.4 Training by Energex

Energex will at no charge provide training to the Professional Service Provider in respect of Energex's policies and procedures, if, in Energex's opinion, such training is required to enable the Professional Service Provider to provide the Services to Energex.

4.5 Training by Professional Service Provider

The Professional Service Provider will at no charge provide to Energex the training agreed between the parties.

4.6 Services Equipment

- (a) The Professional Service Provider must:

- (i) supply the Professional Service Provider's Services Equipment (if any) to enable it to perform the Services;
 - (ii) maintain all Professional Service Provider's Services Equipment in accordance with all manuals and specifications relating to the Professional Service Provider's Services Equipment, and in accordance with good operating practice and all manufacturer's recommendations;
 - (iii) maintain all applicable insurances in relation to the Professional Service Provider's Services Equipment; and
 - (iv) notify Energex prior to changing or modifying any Professional Service Provider's Services Equipment to a material extent.
- (b) Energex must:
- (i) supply the Energex Services Equipment (if any), to the Professional Service Provider;
 - (ii) maintain all Energex Services Equipment in accordance with all manuals and specifications relating to the Energex Services Equipment, and in accordance with good operating practice and all manufacturer's recommendations; and
 - (iii) notify the Professional Service Provider prior to changing or modifying any Energex Services Equipment to a material extent.

5. VARIATIONS

5.1 Notice by Energex

Energex may by notice to the Professional Service Provider, request the Professional Service Provider vary the Services under a Professional Services Agreement in nature, scope or timing. Without limitation, Energex may request the Professional Service Provider to:

- (a) increase, decrease or omit any Services;
- (b) change the character or content of any Services;
- (c) change the direction or dimensions of the Services; and/or
- (d) perform additional work.

5.2 Negotiations for Change in Scope

- (a) Within five (5) Business Days of the issue of a notice under clause 5.1, the parties will appoint a person to represent them. The parties must negotiate in good faith (but having regard to their commercial interests) as to:
 - (i) whether the variation is agreed;
 - (ii) whether a variation of the Service Fee is necessary and if so to what extent; and
 - (iii) if relevant, whether an extension of any deadlines or other time frames for performance of the Services are necessary and if so to what extent.

- (b) If the parties agree on a variation to the Services, such agreement will be recorded in writing.
- (c) If the parties cannot agree on a variation within twenty-one (21) days of the commencement of negotiations, either party may refer the matter for resolution in accordance with clause 21.
- (d) The Professional Service Provider must not commence work on the variation to the Services until the parties have agreed in writing in relation to the variation.
- (e) Unless otherwise agreed by the parties in writing, the commencement of negotiations under this clause does not release the parties from their respective obligations under the Professional Services Agreement.

5.3 Professional Service Provider Initiated Variations

- (a) If the Professional Service Provider submits a written request to the Supervising Officer to approve a variation that is initiated, requested or proposed by the Professional Service Provider, the Supervising Officer (or its Delegate) may do so in writing. The approval may be conditional.
- (b) Unless the Supervising Officer (or its Delegate) otherwise directs in a notice approving the variation, the Professional Service Provider shall not be entitled to:
 - (i) an extension of time to the Works Order completion date, as the case may be; or
 - (ii) additional payment, in connection with a variation initiated, requested or proposed by the Professional Service Provider.
- (c) The Supervising Officer (or its Delegate) shall not be obliged to approve a variation that is initiated, requested or proposed by the Professional Service Provider. Where a variation is initiated, requested or proposed by the Professional Service Provider, the Professional Service Provider shall pay Energex's reasonable costs (including consultant's fees) in assessing the acceptability to Energex of that variation.
- (d) In each variation request or proposal submitted or initiated, the Professional Service Provider must include all information reasonably requested by the Supervising Officer (or its Delegate), as well as:
 - (i) A detailed description of, and detailed reasons for, the variation;
 - (ii) a detailed statement as to the cost of the variation;
 - (iii) a complete statement of all adjustments being sought to the Service Fee and the Works Order completion date, as the case may be; and
 - (iv) any other recompense being claimed by the Professional Service Provider.
- (e) Notwithstanding the provision by the Professional Service Provider of the information required by this paragraph (d), the Professional Service Provider shall not be entitled to any extension of time to the Works Order completion date unless agreed to by the Supervising Officer.

6. PARTIES' REPRESENTATIVES

6.1 Energex's Representative

Energex:

- (a) appoints the Contract Manager to oversee the performance of Services under the Professional Services Agreement by the Professional Service Provider; and
- (b) may appoint a Supervising Officer or project manager to manage a project for which the Professional Service Provider will provide Services to Energex. Energex will advise the Professional Service Provider of the identity of the relevant project manager (if any) in writing from time to time.

6.2 Professional Service Provider's Representative

The Professional Service Provider must nominate a Professional Service Provider's Representative to be the contact point for Energex in relation to the Professional Service Provider's performance of the Services under each Professional Services Agreement within 48 hours of receiving a Works Order.

6.3 Appointment of Supervising Officer

Energex may:

- (a) appoint a representative who will act as Energex's agent in relation to the administration of a Professional Service Agreement and serve as the interface between Energex and the Professional Service Provider with respect to all aspects of performance of the Services; and
- (b) notify the Professional Service Provider in writing of the name of the Supervising Officer.

6.4 Replacement of Supervising Officer

Energex may replace the Supervising Officer at any time (and from time to time) with prior written notice to the Professional Service Provider provided that there will be not more than one Supervising Officer at any one time.

6.5 Duties of Supervising Officer

Unless otherwise specified in the Professional Service Agreement, or as otherwise notified by Energex from time to time, the Supervising Officer shall have full authority to act on behalf of ENERGEX for all purposes in connection with the Service Agreement including:

- (a) review and approval of invoices;
- (b) resolving complaints made by members of the public; and
- (c) giving decisions, instructions, orders, notices and directions (including variations), modify any of the provisions of the Professional Service Agreement unless Energex has given written notice to the Professional Service Provider of the Supervising Officer's express authority in that regard.

The Supervising Officer shall be the Professional Service Provider's primary point of contact with Energex in relation to performance of the Services.

6.6 Decisions, instructions and orders

The Professional Service Provider must comply with the directions given by the Supervising Officer in accordance with the terms of the Professional Service Agreement. Unless otherwise specified in the Works Order, a direction may be given

orally by the Supervising Officer, however, the Supervising Officer must as soon as practicable confirm it in writing. If the Professional Service Provider requests in writing that the Supervising Officer confirm an oral direction, the Professional Service Provider is not be bound to comply with the direction (unless it relates to safety) until the Supervising Officer confirms it in writing.

6.7 Delegates

The Supervising Officer may from time to time appoint individuals ('**Delegate**') to exercise any functions of the Supervising Officer under a Professional Service Agreement but not more than one Delegate can be delegated the same function at the same time.

7. EXTENSION OF TIME FOR DISCHARGING AN OBLIGATION

7.1 Timely Provision of Services

Subject to clause 16, the Professional Service Provider must provide the Services within the time frame specified in the Professional Services Agreement or otherwise agreed in writing between the parties.

7.2 Extension of time to deliver Services

The Professional Service Provider may request and Energex may in its absolute discretion grant an extension of time for the Professional Service Provider to provide the Services (or any part thereof). Any such extension of time will be evidenced in writing and signed by Energex.

7.3 Notification of Delay

The Professional Service Provider must notify Energex immediately after becoming aware of anything ('**Problem**') that may or will delay the performance of the Services or result in the Professional Service Provider being unable to meet a deadline or other time frame for the performance of the Services ('**Delay**') specifying at least:

- (a) the nature of the Problem;
- (b) the cause of the Problem;
- (c) the steps being taken to minimise the impact of the Problem; and
- (d) the proposed extension of time due to the Problem.

7.4 Information and Requests

The Professional Service Provider must:

- (a) keep Energex fully informed of its plans to prevent, overcome or minimise any delay caused by the Problem; and
- (b) comply with all reasonable requests made by Energex to prevent, overcome or minimise the impact of, the Delay.

7.5 Meeting

If the Professional Service Provider considers that the Problem will result in a Delay:

- (a) a representative of each party must meet (either in person or by telephone conference) within three (3) Business Days after receipt of notice from the Professional Service Provider under clause 7.3;
- (b) the Professional Service Provider's representatives must propose how the Professional Service Provider will attempt to overcome or minimise the impact of the Problem and any Delay for Energex; and
- (c) the representatives may determine whether:
 - (i) a variation to the Services, the Service Fee or the timeframes for the performance for the Services is warranted; and
 - (ii) whether any compensation is payable by the Professional Service Provider to Energex for the Problem and any Delay,

but if the parties are unable to reach agreement within five (5) Business Days of first meeting to discuss the Delay, then either party may refer the matter to the dispute resolution procedures in clause 21 or exercise any other right or remedy granted under this Contract or any Professional Services Agreement in respect of the Delay.

7.6 Delays caused by the Professional Service Provider

Despite any other provision of the Professional Services Agreement, the Professional Service Provider must, at the sole cost and expense of the Professional Service Provider, use all reasonable endeavours to overcome any Delay which has been caused by the Professional Service Provider or a servant, agent or contractor of the Professional Service Provider, or which is within the control of the Professional Service Provider.

8. TEMPORARY SUSPENSION OF SERVICES

8.1 Suspension

Energex may by notice, require the Professional Service Provider to suspend the whole or any part of the Services for such time as Energex advises to the Professional Service Provider. Unless otherwise agreed, the suspension shall be effective:

- (a) five (5) Business Days after receipt of the suspension notice, in the event that suspension is required by Energex because of any change or proposed change in the nature, scope or timing of the Services; or
- (b) immediately upon receipt of the suspension notice, in the event that the Professional Service Provider acts or omits to act in such a way as to require, in the opinion of Energex, suspension of the Services including without limitation where such suspension is required for the protection or safety of any person or property or to avoid or mitigate against a breach of Work Health and Safety Requirements.

8.2 Recommencement of Work

Energex may by reasonable notice require the Professional Service Provider to recommence work on the suspended Services.

8.3 Completion of work by alternative professional service provider

If Energex suspends Services under this clause, without prejudice to its rights under the Professional Services Agreement, Energex may in its discretion and at its own initial cost and expense engage an alternative professional service provider to provide such Services as are necessary to complete the relevant Services. The Professional Service Provider will provide reasonable assistance to any alternative professional service provider engaged by Energex under this clause to enable the alternative professional service provider to complete the relevant Services. Unless the suspension arises from or in connection with negligence or breach of the Head Agreement or Professional Services Agreement on the part of the Professional Service Provider, Energex will pay the Professional Service Provider's reasonable additional costs incurred in providing its assistance to an alternative professional service provider pursuant to this clause.

8.4 Suspension Due to Change in Services (clause 8.1(a))

Where the Professional Service Provider is required to suspend Services under clause 8.1(a) for any period:

- (a) any deadlines, completion dates or milestone dates previously agreed for the Services will be postponed by a period equivalent to the duration of the suspension;
- (b) Energex shall pay the Professional Service Provider the Service Fee and reimbursable costs agreed under clause 9.2 for any Services properly rendered up to the date of suspension under clause 8.1(a); and
- (c) the Professional Service Provider and Energex will negotiate in good faith as to whether reasonable compensation (including reimbursement of costs reasonably and properly incurred by the Professional Service Provider) should be paid by Energex to the Professional Service Provider for loss or damage it sustained as a result of Energex's act or omission that gave rise to the suspension. If the parties cannot reach agreement, either party may refer the matter for resolution in accordance with clause 21.

8.5 Suspension Due to Act or Omission by Professional Service Provider (clause 8.1(b))

Where the Professional Service Provider is required to suspend the Services under clause 8.1(b):

- (a) the Professional Service Provider will not be entitled to any compensation for the suspension of the Services; and
- (b) the Professional Service Provider and Energex will negotiate in good faith as to whether reasonable compensation (including reimbursement of costs reasonably and properly incurred by Energex) should be paid by the Professional Service Provider to Energex for loss or damage sustained by Energex as a result of the Professional Service Provider's act or omission that gave rise to the suspension. If the parties cannot reach agreement, either party may refer the matter for resolution in accordance with clause 21.

8.6 Other Rights and Remedies

This clause does not limit the rights of either party under any other provision of this Contract or any Professional Services Agreement.

9. SERVICE FEE AND PAYMENT

9.1 Service Fee

- (a) Energex will pay to the Professional Service Provider a Service Fee as consideration for the provision by the Professional Service Provider of the Services.
- (b) Unless otherwise agreed in a Works Order, the Service Fee is to be calculated in accordance with the price list applicable at the date of the Works Order.

9.2 Reimbursement of Costs Incurred

In addition to the Service Fees, Energex will reimburse the Professional Service Provider for the reasonable costs and expenses, agreed to in writing in advance by Energex (such consent not to be unreasonably withheld), which have been properly incurred by the Professional Service Provider in relation to the provision of the Services upon the production of the relevant receipts or evidence of payment of such costs and expenses.

9.3 Invoicing

The Professional Service Provider must render an invoice to Energex in respect of each Professional Services Agreement on the basis agreed between the parties at the time of sending the Work Order. Each invoice must be a valid Tax Invoice and must:

- (a) specify the Professional Service Provider's name and the Energex purchase order number;
- (b) provide details of the Service Fee and expenses for which payment is required and the basis upon which the Service Fee and/or expenses have been calculated for the invoice period;
- (c) provide sufficient detail to enable Energex to assess the Professional Service Provider's progress against any agreed budgets or targets;
- (d) where Services are charged on a time basis, be supported by records of time spent by individual persons in performance of the Services;
- (e) certify that the Services carried out by the Professional Service Provider comply with this Contract and the relevant Professional Services Agreement;
- (f) provide a general description of the Services performed during the relevant invoice period; and
- (g) contain such other details as Energex may reasonably require.

9.4 Payment

Subject to clauses 9.5, 9.7 and 9.8 and the Professional Service Provider's compliance with clause 9.3, Energex must pay the amount specified in the invoice within 30 days of the end of the month in which it is received, utilising an electronic funds transfer payment medium to one (1) bank account nominated by the Professional Service Provider.

9.5 Withholding of Payment

- (a) If Energex disputes in good faith the whole or any part of an invoice issued by the Professional Service Provider, then:

- (i) Energex must pay the undisputed portion of the invoice (if any) when due; and
 - (ii) Energex must give the Professional Service Provider a notice which specifies the amount in dispute and the reason why Energex disputes the amount is payable.
- (b) If the parties are not able to reach an agreement within five (5) Business Days following receipt of the notice under clause 9.5(a)(ii), the parties may refer the dispute for resolution under clause 21.
- (c) If the parties agree, or it is determined under clause 21 that:
- (i) the balance (in whole or in part) of the disputed amount is to be paid to the Professional Service Provider, then that amount must be paid within five (5) Business Days of that agreement being reached or that determination being made (as the case may be); and
 - (ii) a refund of all or part of the disputed amount paid is payable, then the amount of that refund must be paid within five (5) Business Days of that agreement being reached or that determination being made (as the case may be).

9.6 Correction of Invoice Errors by Professional Service Provider

If an error is discovered by the Professional Service Provider in the amount payable under any invoice, the Professional Service Provider must immediately issue a revised invoice which must meet the requirements of these terms.

9.7 Overpayment or underpayment

If an invoice is found to have been incorrectly rendered after payment, any overpayment will be immediately repaid by the Professional Service Provider to Energex or, at the election of Energex, offset against any subsequent invoice and any underpayment will be included in the following invoice.

9.8 Set-off

Energex may, at any time, set off any undisputed amount payable by it to the Professional Service Provider against any amount owing to it by the Professional Service Provider under or in connection with the Professional Service Agreement.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Title

Subject to clause 10.2 the Professional Service Provider:

- (a) retains ownership of all Intellectual Property Rights relating to the Services, including all documents, computer software, equipment, information and data created or produced or used by the Professional Service Provider in connection with or for the purpose of performing the Services (including Professional Service Provider Background IP); and
- (b) grants to Energex a non-exclusive, royalty-free, irrevocable and perpetual, fully assignable licence to use and develop all of the Intellectual Property Rights referred to in paragraph (a) for the purpose of allowing Energex to complete, enjoy, utilise, maintain and obtain the benefit of the Services.

10.2 Ownership of Energex Intellectual Property Rights

The parties agree ownership of the Energex Background IP will remain the property of Energex.

10.3 Licence to use Energex Background IP

Energex grants to the Professional Service Provider a non-exclusive, royalty-free licence to use all Energex Background IP in relation to the performance of the Services.

11. GUARANTEES, WARRANTIES AND INDEMNITIES

11.1 Authority to Enter into a Contract

Each party warrants to the other that:

- (a) it has and will continue (for as long as it has any obligation or liability under a Professional Services Agreement) to have, the requisite power and authority to enter into and perform its obligations and discharge its liabilities under that Professional Services Agreement; and
- (b) the Professional Services Agreement and the obligations created by it are binding obligations of that party.

11.2 Professional Service Provider's Warranties

The Professional Service Provider warrants:

- (a) the Services shall be rendered by the Professional Service Provider in a conscientious, expeditious and professional manner, according to the terms of the Professional Services Agreement;
- (b) that by providing the Services to Energex, it will not breach any contractual obligations owed by the Professional Service Provider to any third party;
- (c) that in providing the Services to Energex and otherwise complying with its obligations under the Professional Services Agreement, the Professional Service Provider is not infringing, and will not infringe or breach, the Intellectual Property Rights of any third party; and
- (d) all of its employees, agents and permitted subcontractors engaged in the performance of the Services, hold all required licences and qualifications to provide the Services.

11.3 Design Warranty

The Professional Service Provider warrants:

- (a) the correctness and accuracy of each design that the Professional Service Provider delivers in connection with the Services until the earlier of:
 - (i) two years after the date of design acceptance by Energex; or;
 - (ii) the date that construction based on each design is, in Energex's assessment, complete; and

- (b) each design delivered in connection with the Services complies with all of Energex's design requirements and obligations in connection with the Professional Service Agreement and when described in the Work Order will be reasonable fit for the purpose, having regard to the assumptions that the Professional Services Provider is entitled to make in accordance with sound professional principles..

11.4 Rectification of Design defects

- (a) In the event that any design in connection with the Services is determined by Energex, acting reasonably, to be deficient or defective due to an act or omission of the Professional Services Provider, the Professional Services Provider:
 - (i) will at Energex's option re-perform or rectify any deficient or defective design at no cost to Energex;
 - (ii) indemnifies Energex for and against all reasonable actual costs, loss, damage and expense incurred by Energex to the extent caused by the re-performance or rectification of any deficient or defective design.
- (b) The Professional Service Provider shall not be entitled to, and shall not claim, any extension of time nor any payment, damages or compensation under the Professional Service Agreement or otherwise at law in respect of any re-performance or rectification required in accordance with this clause.

11.5 Reliance by Professional Service Provider

Where the performance of Services by the Professional Service Provider is based on information supplied to the Professional Service Provider by Energex, except to the extent otherwise stated by the Professional Service Provider, the Services will be carried out on the basis the information is accurate, not misleading in any material respect and (if represented as such) complete. Unless otherwise agreed by the parties, the Professional Service Provider shall not be responsible for verifying the truth or accuracy of information supplied by Energex. Despite any other provision the Professional Services Agreement, Energex does not warrant to the Professional Service Provider that any information supplied by or on behalf of Energex is complete or accurate or not misleading.

11.6 Indemnity

Subject to clause 11.7, the Professional Service Provider indemnifies Energex against all liability, proceedings, claims, expenses, losses, damages and costs (on a solicitor and own client basis) that Energex sustains or incurs as a result of any actual or alleged:

- (a) breach of the Professional Services Agreement by the Professional Service Provider, including but not limited to a breach in respect of which Energex exercises an express right to terminate the Professional Services Agreement;
- (b) claim by a third party arising out of any unlawful, wilful or negligent act or omission by the Professional Service Provider, its employees or permitted subcontractors, in provision and delivery of the Services; or
- (c) loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Professional Service Provider or its officers, employees, or permitted subcontractors.

11.7 Limitation of Liability

- (a) Subject to paragraph (b) and (c) the liability of the Professional Service Provider to Energex arising out of or in connection with the Head Agreement and any Professional Services Agreement whether in contract, tort (including negligence) or equity, under statute, under any warranty or indemnity, or otherwise will:
- (i) be reduced proportionately to the extent that the liability has been caused by the negligent or unlawful act or omission of Energex;
 - (ii) be reduced proportionately to the extent that the liability has been caused by the negligent or unlawful act or omission of third parties (other than third parties for which the Professional Service Provider is responsible either under the Professional Services Agreement or the general law); and
 - (iii) exclude any liability for loss of Energex's profit or expected profit, revenue, goodwill or business opportunity or damage to Energex's reputation, loss of use, loss of production or third party pure economic loss, loss of contract and any other indirect or consequential loss whether suffered directly by Energex or claimed against Energex or by any third party;
- (b) for liability not reduced or excluded by paragraph (a), the liability of the Professional Service Provider to Energex arising out of or in connection with the Head Agreement or any Professional Services Agreement shall be limited to the the maximum aggregate amount of (\$5,000,000 (the "Liability Cap") for liability arising under or in connection with those Professional Services Agreements executed in each Liability Limitation Period (defined in paragraph (c)).
- (c) For the purpose of this clause 11.7, "Liability Limitation Period" means:
- (i) each period of three years, with the first Liability Limitation Period commencing on the commencement date of the Head Agreement (the "Liability Start Date") and ending on the date that is three years after the Liability Start Date; and
 - (ii) each subsequent Liability Limitation Period, being the next consecutive three year period commencing at the end of the preceding Liability Limitation Period, with such Liability Limitation Periods to continue until termination of the Head Agreement.
- (d) Any liability which arises solely under the Head Agreement (and not under or in connection with any Professional Services Agreement) will be included in the Liability Cap of the first Liability Limitation Period.
- (e) Energex will not in any circumstances be liable to the Professional Service Provider (whether in contract, tort (including negligence) or equity, under statute or otherwise) for any loss of profit or expected profit, revenue, goodwill or business opportunity, damage to reputation, loss of use, loss of production or third party pure economic loss, loss of contract and any other indirect or consequential loss whether suffered directly by the Professional Service Provider or claimed against the Professional Service Provider or by any third party.

12. INSURANCE

The Professional Service Provider shall have valid policies covering the insurances set out in the schedule to the Head Agreement and provide written evidence of this to Energex upon request.

13. NEGATION OF EMPLOYMENT, PARTNERSHIP, AGENCY

The Professional Services Agreement:

- (a) does not create a relationship of partnership, employment or agency between Energex and the Professional Service Provider; and
- (b) does not authorise the Professional Service Provider or any employee of the Professional Service Provider to enter into any contracts or commitments which bind Energex in any manner.

14. AUDIT RIGHTS, RECORDS AND ACCESS

14.1 Inspection and Examination

The Professional Service Provider permits Energex and its representatives on receipt of reasonable notice from Energex, for the purpose of monitoring compliance by the Professional Service Provider with the Professional Services Agreement and/or to verify accuracy of Service Fees invoiced under the Professional Services Agreement, to examine the Professional Service Provider's relevant Books and Records. The Professional Service Provider will fully co-operate with Energex and its representatives to enable Energex to exercise its rights under this clause. Energex will not exercise its rights under this clause unreasonably and only after the commencement of the Prequalification Scheme.

14.2 Production of Books and Records

Upon the giving of reasonable notice by Energex, the Professional Service Provider must produce all its relevant Books and Records relating to the Professional Services Agreement.

15. TERMINATION

15.1 Termination for breach by Professional Service Provider

Energex may terminate a Professional Services Agreement with immediate effect by giving notice to the Professional Service Provider if:

- (a) the Professional Service Provider breaches any provision or the relevant Professional Services Agreement and:
 - (i) if the breach is capable of remedy, fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so; and
 - (ii) if the breach cannot be remedied, fails to take steps to prevent the recurrence of the breach to the reasonable satisfaction of Energex;
- (b) the Professional Service Provider has failed to comply with either an obligation relating to safety (including without limitation those obligations in clause 29 or any of the Work Health and Safety Requirements) or a direction given pursuant to clause 3.1(c) which, in the opinion of Energex, is of a significant nature justifying termination of the Professional Services Agreement;

- (c) the Professional Service Provider ceases to be prequalified under the Prequalification Scheme;
- (d) there is any change in the direct or indirect beneficial ownership or control of the Professional Service Provider;
- (e) the Professional Service Provider disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (f) the Professional Service Provider ceases to carry on business;
- (g) the Professional Service Provider ceases to be able to pay its debts as they become due;
- (h) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Professional Service Provider's assets, operations or business;
- (i) any step is taken to enter into any arrangement between the Professional Service Provider and its creditors;
- (j) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the Professional Service Provider's assets, operations or business; or
- (k) where the Professional Service Provider is a partnership, any step is taken to dissolve that partnership.

15.2 Termination at will

Energex may terminate the Professional Services Agreement at any time and for any reason, by giving such period of written notice to the Professional Service Provider (being not less than 10 calendar days) as Energex considers appropriate in the circumstances.

15.3 Termination for breach by Energex

The Professional Service Provider may terminate a Professional Services Agreement with immediate effect by giving notice to Energex if Energex breaches any provision the relevant Professional Services Agreement (as the case may be) and Energex fails to remedy that breach within 30 business days.

15.4 Energex Right to Rectify

Energex may remedy any breach of a Professional Services Agreement by the Professional Service Provider and shall be entitled to seek to recover its costs of rectification from the Professional Service Provider in any court of competent jurisdiction.

15.5 Service Fee entitlement upon Termination

If Energex terminates the Professional Services Agreement for any reason other than breach by the Professional Service Provider, Energex shall pay to the Professional Service Provider any Service Fee and reimbursable costs properly and reasonably incurred by the Professional Service Provider up to the date such termination becomes effective, provided that the Professional Service Provider must not perform any Services after receiving notice of termination without the prior written direction of Energex.

15.6 Termination Assistance by Professional Service Provider

Upon termination a Professional Services Agreement the Professional Service Provider must:

- (a) at its own cost, deliver all Confidential Information in its possession to a person or persons nominated by Energex or destroy such information at the election of Energex, except that the Professional Service Provider shall be entitled to retain all of its working papers and one (1) copy of any Confidential Information and any other material provided by Energex strictly for the purposes of complying with its document retention policies and principles of good corporate governance;
- (b) at its own cost, return all Customer Records and other material derived by the Professional Service Provider in the performance of the Services; and
- (c) at Energex's cost, provide such other assistance as Energex may reasonably request to enable it to perform the Services or engage another professional service provider to perform the Services.

15.7 Post Termination Services by Professional Service Provider

Within 10 Business Days of the termination of the Professional Services Agreement, the Professional Service Provider must give Energex a written report on:

- (a) the current status of the Professional Service Provider's work;
- (b) any work requested by Energex but not completed by the Professional Service Provider, a work plan setting out the steps required to complete that work; and
- (c) any other transactions, matters and things related to Energex or the affairs of Energex with which the Professional Service Provider was engaged.

Such report shall be produced at no cost to Energex where the Professional Services Agreement has been terminated pursuant to clause 15.1 but otherwise the costs of preparation of the report shall be chargeable by the Professional Service Provider in accordance with the Service Fees.

15.8 Accrued Rights and Remedies

Termination of the Professional Services Agreement does not affect any accrued rights or remedies of either party.

16. FORCE MAJEURE

16.1 Definition of 'Force Majeure Event'

'Force Majeure Event' affecting a party means anything outside that party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage or epidemic.

16.2 Notice of Force Majeure Event

If a Force Majeure Event affecting a party precludes that party ('**Precluded Party**') partially or wholly from complying with its obligations (other than an obligation to pay money) under the Professional Services Agreement then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of:
- (i) the Force Majeure Event;
 - (ii) which obligations in respect of the Professional Services Agreement the Precluded Party is precluded from performing (**'Affected Obligations'**);
 - (iii) the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations (**'Precluded Extent'**); and
 - (iv) the expected duration of the delay arising directly out of the Force Majeure Event;
- (b) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event (**'Actual Delay'**); and
- (c) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

16.3 Termination Due to Force Majeure

If the Actual Delay in respect of a Professional Services Agreement continues for more than 60 days, the other party may terminate that Professional Services Agreement immediately by giving notice to the Precluded Party.

16.4 Effect of Termination due to a Force Majeure Event

Termination of the Professional Services Agreement due to a Force Majeure Event does not affect any accrued rights or remedies of either party.

17. CONFIDENTIALITY AND DISCLOSURE

17.1 Confidentiality Undertaking

A party shall treat as confidential, and keep confidential, all information, in whatever form, forming part of the other party's Confidential Information.

17.2 Use of Confidential Information

A party may make use of the other's Confidential Information solely for the purposes of performing its obligations under the Professional Services Agreement and not for any other purpose.

17.3 Exceptions

- (a) The obligations of confidentiality imposed upon a party under these terms do not extend to information that:
- (i) is rightfully known to or in the possession of or control of the party and not subject to an obligation of confidence on the party;
 - (ii) is public knowledge in the form in which it was disclosed or made available by or on behalf of the other party (otherwise than as a result of a breach of these terms); or

- (iii) the party is required by Law or by rules of a relevant stock exchange or accounting standard, to disclose.
- (b) In its discretion, Energex is entitled to disclose the Professional Services Agreement and any Confidential Information disclosed under the Professional Services Agreement to:
 - (i) the shareholding Minister(s) of Energex Limited appointed under the *Government Owned Corporations Act 1993 (Qld)*; and
 - (ii) any Related Body Corporate of Energex.

17.4 Permitted Disclosure

Subject to clauses 17.3(b) and 17.5, each party may disclose Confidential Information only to:

- (a) those of its officers, employees, agents and permitted subcontractors; and
- (b) its financial or other professional advisors and their respective employees and officers,

who have a need to know (and only to the extent that they have a need to know) and are aware that the Confidential Information must be kept confidential.

17.5 Additional obligation on Professional Service Provider

In addition to the other obligations of confidentiality under this clause, to ensure compliance with ring fencing protocols the Professional Service Provider agrees not to disclose Energex Limited Confidential Information to any retailer of electricity with whom Energex does business, where disclosure of such information may provide a perceived or actual benefit or advantage to the entity to whom disclosure is made over other electricity retailers and service providers

17.6 Acknowledgment

Each party acknowledges for itself and for each of its officers, employees, permitted subcontractors and advisors that:

- (a) it is aware that any breach of this clause will result in the other party suffering damage, for which damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of any obligation of confidentiality under the Head Agreement or any Professional Services Agreement, the affected party shall be entitled to seek injunctive relief.

17.7 Public Statements

The Professional Service Provider must not make any public statements or issue any media releases criticising or condemning Energex in respect of any act, omission or other matter arising within the scope of the Professional Services Agreement.

18. CONFLICT OF INTEREST

18.1 Warranty

The Professional Service Provider warrants that:

- (a) to its knowledge no conflict of duty or interest exists or is likely to arise in the performance of its obligations under the Professional Services Agreement; and
- (b) it will use its best endeavours to ensure that no conflict of duty or interest arises during the performance of its obligations under the Professional Services Agreement.

18.2 Notice of Conflict

While it is part of the Prequalification Scheme, the Professional Service Provider must notify Energex as soon as it becomes aware that a conflict of duty or interest exists or is likely to arise in the performance of its obligations under the Professional Services Agreement and must advise as to how it proposes to remove or minimise such conflict or risk of conflict.

19. ASSIGNMENT AND NOVATION

19.1 Consent

Except as otherwise permitted by these terms, a party must not assign or novate the Professional Services Agreement or any right under the Professional Services Agreement unless that party:

- (a) is not in breach of the relevant Professional Services Agreement;
- (b) obtains the prior written consent of the other party, which must not be unreasonably withheld; and
- (c) ensures that the assignee agrees to be bound by all of that party's obligations under the Professional Services Agreement.

19.2 Assignment by Energex

Energex may assign or novate any or all of its rights and obligations under the Professional Services Agreement to a body corporate if:

- (a) the body corporate is a Related Body Corporate of Energex; and
- (b) the body corporate agrees to be bound by all of Energex's obligations under the Professional Services Agreement.

The Professional Service Provider agrees that, if required by Energex, the Professional Service Provider must execute and deliver to Energex a novation deed in a form reasonably required by Energex to give effect to this novation.

20. SUBCONTRACTING

20.1 Professional Service Provider as Principal Professional Service Provider

Subject to clause 19, the Professional Service Provider is, and must remain the principal professional service provider to Energex in respect of the performance of the Services.

20.2 Subcontracting

The Professional Service Provider may not subcontract to any person the performance of any of its obligations under the Professional Services Agreement without the written approval of Energex, which must not be unreasonably withheld.

21. DISPUTE RESOLUTION

21.1 Precondition

Unless otherwise expressly stipulated in the Professional Services Agreement, a party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless it has complied with this clause.

21.2 No Relief from Obligations

The existence of a dispute or the application of any part of the process described in this clause 21 will not relieve the parties from any obligation under the Professional Services Agreement.

21.3 Notice of Dispute

- (a) A party claiming that a dispute has arisen must give written notice to the other party describing in detail the nature of the dispute and nominating its representative in negotiations (which must be a person who has not been involved in the dispute and is a manager or other senior officer of the party with authority to settle the dispute).
- (b) The party receiving a notice under clause 21.3(a) must advise the other party (within seven (7) days of receipt of the notice of dispute) of the identity of that party's representative in negotiations (which must be a person who has not been involved in the dispute and is a manager or other senior officer of that party with authority to settle the dispute).

21.4 Executive Negotiations

Within 10 Business Days after a party has been given a notice under clause 21.3(a) (or longer period agreed in writing by the parties) the parties' representatives nominated under clause 21.3(b) must meet and negotiate in good faith (but having regard to their commercial interests) to attempt to resolve the dispute.

21.5 Further Resolution of Disputes

If the parties are unable to resolve the dispute within 10 Business Days after the parties' representatives first meet, either party may:

- (a) refer the dispute to an independent expert under clause 21.6, if the dispute is of a technical nature; or
- (b) refer the dispute to mediation under clause 21.7, if the dispute is of a legal, accounting, financial or otherwise non-technical nature.

21.6 Expert

- (a) The independent expert must be chosen by agreement between the parties within 10 Business Days, or in default of agreement, by the Chairman of Lawyers Engaged in Alternative Dispute Resolution Inc ('LEADR') or the Chairman's nominee, at the request of either party.
- (b) The independent expert must act as an expert and not as an arbitrator and must determine the rules for the conduct of the process.

- (c) The costs and expenses of any determination by the independent expert must be borne by either or both of the parties to the dispute as the expert making the determination may decide.
- (d) For determinations for disputes of \$150,000 or less, the determination made by an expert pursuant to this clause is final and binding upon the parties.

21.7 Mediation

- (a) The mediation will be conducted by a mediator agreed on by the parties or failing agreement, a mediator nominated by the Chairman of LEADR or the Chairman's nominee, at the request of either party.
- (b) The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- (c) Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the dispute.
- (d) Each party must bear its own costs of attending the mediation and the parties must bear equally the costs of any mediator engaged.

22. TAXES AND DUTIES

Subject to clause 23, the Professional Service Provider must pay any royalty, tax, penalty (including late penalties), excise, levy, rate or charge imposed by the Commonwealth of Australia, the State of Queensland or any governmental, semi-governmental or other body authorised by law to impose that obligation which is directly or indirectly payable in respect of the Professional Services Agreement.

23. GST

23.1 Goods and Services Tax

Any Consideration to be paid or provided for any supply made under or in connection with the Professional Services Agreement, unless expressly described in the Professional Services Agreement as including GST, does not include an amount on account of GST.

Despite any other provision in the Professional Services Agreement, if a party ('**Supplier**') makes a Taxable Supply under or in connection with the Professional Services Agreement on which GST is imposed:

- (a) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under the Professional Services Agreement but for the application of this clause is increased by, and the recipient of the supply ('**Recipient**') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

23.2 Reimbursements

If a payment to a party under or in connection with the Professional Services Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

23.3 Adjustment Events

If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Professional Services Agreement, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 23.1. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

23.4 GST Group

If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

23.5 Non Monetary Consideration

If a supply made under the Professional Services Agreement is a Taxable Supply made for non-monetary consideration then:

- (a) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Contract or any Professional Services Agreement is GST inclusive.

23.6 Definitions

Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition and amending Acts have the same meaning in this clause.

23.7 Survival

This clause will continue to apply after expiration or termination of the Professional Services Agreement.

24A. PPSA

24A.1 Meanings of Terms

In this clause, '**PPSA**' means the *Personal Property Securities Act 2009* (Cth) and '**security interest**' and '**perfected**' have the meanings given to them in the PPSA.

24A.2 Security Interests of Third Parties

- (a) The Professional Service Provider must not without Energex's consent (which will not be unreasonably withheld) give or allow to exist any security interest in

the Professional Services Agreement, any Professional Service Provider's Services Equipment, Energex Services Equipment or documents or other deliverables prepared by the Professional Service Provider in the discharge of its obligations under the Professional Services Agreement;

- (b) The Professional Service Provider must, whenever requested by Energex, provide Energex with any form, notice, consent, agreement or other information relating to a security interest referred to in paragraph (a); and
- (c) Despite any other provision of the Professional Services Agreement, Energex will not be obliged to pay for and the Professional Service Provider will not be entitled to make a claim for the value of any documents, deliverables or other materials which are provided by the Professional Service Provider under the Professional Services Agreement until the Professional Service Provider has demonstrated to Energex that the documents, deliverables or materials are not the subject of security interests in favour of any person (other than Energex).

24A.3 Retention Moneys or Payments Withheld

Despite any other provision of the Professional Services Agreement:

- (a) the Professional Service Provider has no right, title or interest in or in respect of retention moneys or other amounts withheld by Energex under the Professional Services Agreement; and
- (b) the retention moneys or other amounts withheld comprise amounts of consideration under the Professional Services Agreement in respect of which Energex has no payment or other obligations,

until those retention moneys or other amounts withheld are required by the Professional Services Agreement to be paid to the Professional Service Provider.

24A.4 Energex Services Equipment

Despite any other provision of the Professional Services Agreement:

- (a) Energex at all times retains full ownership of any Energex Services Equipment despite possession or control of the Energex Services Equipment being given to the Professional Service Provider;
- (b) if for any reason Energex Services Equipment made available to the Professional Service Provider is not:
 - (i) used up in the performance of Services; or
 - (ii) returned to Energex by the time the Services are completed or upon the earlier termination of the Professional Services Agreement (free of any security interest or other third party claim),

the value of that Energex Services Equipment as reasonably determined by Energex will be a debt due from the Professional Service Provider to Energex and payable within 14 days of demand by Energex whether or not the Energex Services Equipment was provided to the Professional Service Provider free of charge.

24. NOTICES

24.1 Delivery of Notices

A party giving notice or notifying under the Professional Services Agreement must do so in writing (which includes email).

All notices must be:

- (a) directed to the recipient's physical address, or email address, specified in the Head Agreement or other address advised by a party to the other party; and
- (b) hand delivered or sent by prepaid post or by email to that address.

24.2 Receipt of Notices

A notice is deemed to have been given to or received by a party:

- a) on the date it is handed to the party or left at the address specified in the Head Agreement;
- b) on the date four business days after it is posted; or
- c) for email, on the date of transmission unless the sender receives notice that delivery did not occur or has been delayed.

25. TRUSTS

25.1 Trust

Where the Head Agreement indicates that the Professional Service Provider is a trustee, unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Professional Service Provider includes its transactions, assets, acts of liabilities as trustee. Where the Professional Service Provider incurs an obligation, it incurs that obligation both in its own right and in its capacity as trustee, unless the obligation relates only to an asset which it holds in its own right and not as trustee.

25.2 Trustee representations and warranties

The Professional Service Provider warrants and represents that:

- (a) it is empowered by its trust deed:
 - (i) to enter into and perform the Contract or any Professional Services Agreement to which it is expressed to be a party and to carry on the transactions contemplated by the Contract or any Professional Services Agreement; and
 - (ii) to carry on its business as now conducted or contemplated and to own its assets,

in its capacity as trustee of the trust and there is no restriction on or condition of its doing so;

- (b) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust deed for it to enter into and perform the Contract or any Professional Services Agreement to which it is expressed to be a party;

26. PARTNERSHIP

26.1 Partnership

Where the Head Agreement indicates that the Professional Service Provider is a partnership, this clause 26 applies.

26.2 Execution

The person who signs this Contract on behalf of Professional Service Provider represents and warrants that:

- (a) they are a Partner of the Partnership;
- (b) they have the authority of the Partnership to execute this Contract on behalf of the Partnership; and
- (c) the execution of this Contract is in the ordinary course of business of the Partnership.

27. WORK HEALTH AND SAFETY

- (a) Without limiting any other provision of the Professional Services Agreement, the Professional Service Provider must ensure that the provision of Services is carried out in accordance with Work Health and Safety Law.
- (b) Without limiting paragraph (a), the Professional Service Provider must at all times:
 - (i) discharge its duties under Work Health and Safety Law; and
 - (ii) ensure its officers, employees, agents and subcontractors and its subcontractors' officers, employees and agents (**'Professional Service Provider's Personnel'**) discharge their respective duties under Work Health and Safety Law,

in connection with the provision of Services.
- (c) The Professional Service Provider must ensure that the Professional Service Provider and Professional Service Provider's Personnel:
 - (i) comply with the directions of Energex (or any other person nominated by Energex as having the authority to give directions (**'Energex's Nominee'**)) in connection with health and safety;
 - (ii) consult fully with Energex and Energex's Nominee in respect of:
 - (A) any matter relevant to health and safety; and
 - (B) without limiting subparagraph (A), how the provision of Services can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the provision of Services;
 - (iii) to the extent that the provision of the Services involves the Professional Service Provider accessing any site owned, occupied or controlled by Energex, complete a full site induction program which complies with the requirements of the Professional Services

Agreement and Work Health and Safety Requirements before commencing the provision of Services;

- (iv) comply strictly with the Work Health and Safety Requirements;
 - (v) consult fully with Energex or Energex's Nominee in respect of, and demonstrate to Energex or Energex's Nominee, compliance by the Professional Service Provider and Professional Service Provider's Personnel with the requirements of this clause 27 and Work Health and Safety Requirements; and
 - (vi) satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of Energex.
- (d) The Professional Service Provider must immediately notify Energex of:
- (i) any breach or potential breach by the Professional Service Provider or any Professional Service Provider's Personnel of Work Health and Safety Requirements; or
 - (ii) any notice or direction received by the Professional Service Provider or any Professional Service Provider's Personnel under or in connection with Work Health and Safety Law (including by providing a copy of the notice or direction to Energex).
- (e) Despite any other provision of the Professional Services Agreement, Energex's rights under the Professional Services Agreement relating to health and safety (including without limitation the rights under this clause 27, to give directions to the Professional Service Provider, provide, approve or review any plan or other document to be implemented or relied upon by the Professional Service Provider (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under the Professional Services Agreement) (**'Safety Enforcement Rights'**):
- (i) are for the benefit of Energex;
 - (ii) may be exercised by Energex in its absolute discretion (without Energex being under any obligation to do so); and
 - (iii) do not prejudice or otherwise affect the Professional Service Provider's full responsibility for ensuring strict compliance with all of the Professional Service Provider's obligations under the Professional Services Agreement and under Work Health and Safety Requirements.
- (f) The Professional Service Provider must provide to Energex and also to any person who the Professional Service Provider is aware has been or will be engaged by Energex to undertake any activities relating to the provision of the Services (**'Relevant Professional Service Provider'**), all information relevant to the provision of the Services:
- (i) required to be disclosed by the Professional Service Provider in the discharge of its duties under Work Health and Safety Law; or
 - (ii) received (or which should have been received) by the Professional Service Provider or any subcontractor of the Professional Service Provider from any other person required to disclose the information to

the Professional Service Provider or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.

28. GENERAL

28.1 Severability

Part or all of any provision of the Professional Services Agreement that is illegal or unenforceable may be severed from the relevant Professional Services Agreement and the remaining provisions of the Professional Services Agreement continue in force.

28.2 Waivers

The failure of a party at any time to insist on performance of any provision of the Professional Services Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of the Professional Services Agreement.

28.3 Consents

A party must not unreasonably withhold or delay any approval or consent required from that party under the Professional Services Agreement.

28.4 Entire Agreement

The Head Agreement and the Professional Services Agreement (including its schedules, annexures and exhibits):

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

28.5 General Conduct of Contract

Both parties must perform and exercise their rights and obligations under the Professional Services Agreement in good faith, and must undertake all things necessary to give effect to the Professional Services Agreement.

28.6 Amendments and Variations

Unless otherwise expressly prohibited by the terms of the Professional Services Agreement may be altered by agreement in writing and signed by both parties.

28.7 Governing Law

The Professional Services Agreement is governed by the laws of Queensland and each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

28.8 Survival

Clauses 1, 6, 10, 11, 12, 14, 15.7, 17, 21, 22, 24, 28 and 29 survive the termination or expiry of the Professional Services Agreement.

28.9 Costs

Each party must bear their own costs (including legal fees) incurred in the negotiation, drafting and execution of the Professional Services Agreement.

29. ANTI BRIBERY AND CORRUPTION

In the performance of the Professional Service Agreements, no party, nor their directors, officers, employees or agents shall pay, offer, promise to pay, or authorise the payment, directly or indirectly through any other person or firm, partnership, company or other entity, of any money, financial instruments or anything of value to any person or firm, partnership, company or other entity employed by or acting for or on behalf of the agency or entity issuing a solicitation for bids ("Agency") in connection with the Services, whether such Agency is private or governmental, or any public official or employee or any political party or candidate for political office, for the purpose of inducing or rewarding any action favourable to Energex or the Professional Services Providers.

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts.

APPENDIX 1 - WORKS ORDER

Works Order Number	<input type="text"/>
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Name of Project	<input type="text"/>
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Date of Works Order	<input type="text"/>
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To: The Professional Service Provider	<input type="text"/>
	of <input type="text"/> ABN # (If a company)
From: [Energex entity]	<input type="text"/> [Energex entity]
	of <input type="text"/> ABN #

1.	Services to be provided by Professional Service Provider	<input type="text"/>
2.	Fee for Services	<input type="text"/>
3.	Date for Payment <i>(If blank, the last day of each month during the Term)</i>	<input type="text"/>
4.	Commencement Date for Services <i>(If blank, date of acceptance or deemed acceptance by Professional Service Provider, whichever date is earlier)</i>	<input type="text"/>
5.	Completion Date for Services <i>(If blank, not applicable)</i>	<input type="text"/>
6.	Timetable for provision of Services	<input type="text"/>
7.	Works Order Special Conditions	<input type="text"/>

**This work order is bound by
PQS004 – Professional Services Terms and Conditions.**