

## ESPERANCE ENERGY TRANSITION PROJECT TRADE CONTRACT

The Customer agrees to the following terms and conditions:

### 1 OVERVIEW OF THE CONTRACT

- (a) The Contractor must perform the Works, and any other obligations under the Contract, for each Customer in accordance with the Contract, each Customer Contract and the relevant Customer Quote.
- (b) Subject to the Contractor properly performing the Works for the relevant Customer, Horizon Power must pay the Contractor the Approved Amount in accordance with clause 8. If the Contract Price is greater than the Approved Amount, it is the Contractor's responsibility to ensure it is paid the difference between the Contract Price and the Approved Amount by the Customer.
- (c) The Contract Price will be the sole consideration payable by Horizon Power to the Contractor for the performance of the Contract and each Customer Contract.
- (d) The Contractor will be responsible for all costs, expenses and liabilities incurred by the Contractor in performance of the Works.
- (e) To the extent of any inconsistency between the Contract and the Contractor's Trade Terms, the Contract prevails.

### 2 TERM

This Contract commences on the Commencement Date and terminates on the earlier of:

- (a) the End Date;
- (b) the date on which Horizon Power advises the Contractor that their participation in the Project is terminated, including under clause 3; and
- (c) the date on which the Contract is terminated by Horizon Power pursuant to clause 9.

### 3 REGISTERED CONTRACTOR

- (a) The Contract does not come into force or effect until:
  - (1) the Contractor completes and submits to Horizon Power a Supplier Accreditation Form; and
  - (2) Horizon Power, in its sole and absolute discretion, approves the Contractor as a Registered Contractor.
- (b) If Horizon Power does not approve the Contractor as a Registered Contractor, Horizon Power may terminate the Contract immediately upon written notice to the Contractor and the Contract will be of no further force or effect.
- (c) Horizon Power is not liable for any Claim by the Contractor (and the Contractor is absolutely barred from making any Claim) arising or in connection with termination of the Contract in accordance with clause 3(b).

### 4 PERFORMANCE OF THE WORKS

- (a) The Contractor represents and warrants to Horizon Power that the Contractor:
  - (1) will, at all times, ensure that the Contractor is suitably qualified and experienced, and the Contractor exercises the skill, care and diligence expected of a contractor in carrying out the work of a nature similar to the Works;
  - (2) subject to clause 6, will engage and retain subcontractors who are suitably qualified and experienced and must coordinate the activities of the subcontractors so that the Works are performed and completed in a proper and workmanlike manner and in accordance with the Contract;

- (3) will be responsible for any damage to the Customer's property;
  - (4) will, and ensure that any and all subcontractors or other persons engaged in the provision of the Works will, comply with all work health and safety Laws and Horizon Power's work health and safety requirements as set out in Annexure 1;
  - (5) will perform and complete the Works so that the Works are in accordance with all Laws; and
  - (6) will carry out the Works in accordance with Good Industry Practice and compliance with relevant Australian standards and codes.
- (b) At any time during the term of this Contract:
    - (1) a Customer may request the Contractor to give a quote for the Works to the Customer;
    - (2) within 5 Business Days of a request, the Contractor must give notice to the Customer as to whether the Contractor can give the Customer a quote;
    - (3) if the Contractor notifies the Customer that the Contractor can give a quote, within 15 Business Days of the notice, the Contractor must attend the Customer's premises and provide the Customer with a written quote for performance of the Works which includes the Contract Price and the timeframe for performance of the Works (Customer Quote). The Customer Quote must be open and available for acceptance for a period of 60 days; and
    - (4) if the Customer accepts the Customer Quote, the Contractor and the Customer must enter into the Contractor's Trade Terms, or terms substantially similar to the Contractor's Trade Terms, (Customer Contract) and the Contractor must perform the Works at its own cost and risk and in accordance with the time agreed between the Contractor and the Customer. The Contractor acknowledges that if the Contractor does not commence or complete performance of the Works within the timeframe as agreed with the Customer, the Customer may terminate the Customer Contract with immediate effect and the Customer may engage another contractor to perform the Works.
  - (c) If an accident, notifiable incident (being an incident which is notifiable under health, safety and environmental Laws), injury, property damage or unsafe condition occurs during performance of the Works:
    - (1) the Contractor must promptly notify Horizon Power (and, in any case, within 24 hours) of, and provide Horizon Power all such information Horizon Power requires in respect of, any such accident, incident or condition;
    - (2) Horizon Power may:
      - (A) suspend the whole or part of the Works; and
      - (B) remove the Contractor as a Registered Contractor and terminate the Contract; and
    - (3) if the accident, incident, damage or condition is a result of the Contractor's breach of any work health and safety Laws or Horizon Power's work health and safety requirements, the Contractor must bear any costs as a result of the suspension under clause 4(c)(2).

## 5 DISPOSAL OF APPLIANCES

- (a) Subject to clause 5(b), the Contractor must dispose of any appliances removed in performance of the Works in compliance with all environmental Laws and in an environmentally friendly manner.
- (b) A Customer reserves the right to retain appliances upon request.

## 6 SUBCONTRACTORS

- (a) Any subcontract entered into by the Contractor does not relieve the Contractor from any obligation under the Contract and does not create or impose any obligation or liability on Horizon Power.
- (b) The Contractor is liable to Horizon Power for acts or omissions of subcontractors as if they were acts or omissions of the Contractor.

## 7 INDEMNITY AND LIABILITY

- (a) The Contractor indemnifies Horizon Power against any Loss and/ or Claims suffered or incurred by Horizon Power in connection with any act or omission by the Contractor arising from or in connection with the performance or non-performance of the Works, including any:
  - (1) breach of contract;
  - (2) tort, including negligence or breach of a law; and
  - (3) breach of equitable duty, including breach of confidentiality or breach of fiduciary duty.
- (b) The indemnity in clause 7(a) does not apply to any Loss to the extent that the Loss is caused by Horizon Power's negligence or breach of the Contract.
- (c) The Contractor performs the Contract at the Contractor's sole risk, and to the extent permitted at law, Horizon Power will not be liable to the Contractor or any other person for any Loss sustained by any person or to any property, howsoever caused, arising out of or in connection with the Contract, except as arising out of or as a result of negligence or breach of contract by Horizon Power.
- (d) No party will be liable to the other party for any Consequential Loss.

## 8 PAYMENT

- (a) Upon completion of the Works for a Customer, the Contractor must submit to Horizon Power a tax invoice, supported by evidence of the amount due to the Contractor and any information that Horizon Power reasonably requires to support that claim. The amount specified in the tax invoice must not be greater than the Approved Amount.
- (b) If the Contract Price is greater than the Approved Amount, the Contractor must submit a separate tax invoice to the relevant Customer to be paid for the difference between the Contract Price and the Approved Amount.
- (c) Each tax invoice must:
  - (1) include a unique number specified on the quote;
  - (2) include the amount of the Contract Price being claimed by the Contractor; and
  - (3) have payment of any GST recognised.
- (d) Tax invoices to Horizon Power must be submitted electronically to [supplierinvoices@horizonpower.com.au](mailto:supplierinvoices@horizonpower.com.au) and [esperance-etp@horizonpower.com.au](mailto:esperance-etp@horizonpower.com.au).

- (e) Subject to Horizon Power's satisfaction that the Contractor has completed the Works in accordance with the Contract, Horizon Power must pay the Contractor the amount shown in the tax invoice within 30 days of Horizon Power receiving the tax invoice.
- (f) The Contractor agrees that Horizon Power may:
  - (1) deduct from amounts due to the Contractor any money due or which may become due from the Contractor to Horizon Power under, or in connection with, the Contract; and
  - (2) if the Customer reasonably considers that the Works have not been performed in accordance with the requirements of the Customer Contract, withhold payment of the Approved Amount pending resolution of the issue.
- (g) Any payment of moneys by Horizon Power to the Contractor under clause 8(e) is not:
  - (1) evidence of the value of work;
  - (2) an admission of liability; and
  - (3) approval by Horizon Power of the Contractor's performance or compliance with the Contract,

and is only to be taken as payment on account and does not prevent Horizon Power subsequently disputing an amount claimed for payment.

## 9 TERMINATION

- (a) Horizon Power may, by notice to the Contractor, terminate the Contract with immediate effect:
  - (1) if the Contractor breaches the Contract and fails to remedy the breach within 10 Business Days of being notified of the breach;
  - (2) if the Contractor becomes insolvent; or
  - (3) without prejudice to Horizon Power's other rights under the Contract, by delivering a Termination for Convenience Notice to the Contractor at any time and for its sole convenience.
- (b) Without limiting Horizon Power's rights at common law or in equity, if the Contract is terminated under clause 9(a)(3) Horizon Power must pay the Contractor, as the Contractor's exclusive remedy for the termination:
  - (c) the amount for the Works properly carried out prior to the date of termination which would have been payable if the Contract had not been terminated and the Contractor had made a tax invoice in accordance with clause 8 for work done up to the date of the termination; and
  - (d) any cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing its obligations.

## 10 DISPUTES

- (a) If a dispute between the Contractor and Horizon Power arises out of or in connection with the Contract, including a dispute concerning termination of the Contract, a senior representative of each of the parties will meet in to attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within 5 Business Days of meeting, then either party may issue proceedings.
- (b) Nothing in this clause prevents either party from issuing court proceedings for urgent injunctive relief or to protect a limitation period.

## 11 CONFIDENTIALITY

The Contract and any information (including documents) exchanged between the parties or otherwise created for the purposes of the Contract is confidential and may not be disclosed to a third party without Horizon Power's prior written consent.

## 12 GENERAL

- (a) In the Contract:
- words that are capitalised have the meaning given to those terms in clause 13; and
- headings are provided for convenience and do not affect the interpretation of the Contract.
- (b) If all or a part of the Contract (a "provision") is void, unenforceable or illegal in a jurisdiction, it is severed for the purposes of that jurisdiction. The remainder of the Contract is of full force and effect and the validity of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the Contract or is contrary to public policy.
- (c) The Contract is governed by the law in force in Western Australia from time to time and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and the courts of appeal from those courts.
- (d) The Contract constitutes the entire agreement between the Contractor and Horizon Power about its subject matter and any previous agreements, representations, understandings and negotiations on that subject matter cease to have any effect.
- (e) The rights, powers and remedies provided in the Contract are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of the Contract.
- (f) No amendment or waiver of any clause in the Contract will be valid or effective unless made in writing and duly executed by the party giving the waiver.
- (g) Nothing in the Contract excludes, restricts or prejudices any of the Contractor's or Horizon Power's rights or remedies under any Laws or subsidiary legislation.
- (h) Clauses 7 (**INDEMNITY AND LIABILITY**), 10 (**DISPUTES**), 11 (**CONFIDENTIALITY**), 12 (**GENERAL**) and 13 (**DEFINITIONS**) in the Contract survive the expiry or termination of the Contract and will continue in full force and effect.

## 13 DEFINITIONS

**Approved Amount** means the subsidy or grant amount approved by Horizon Power, in reference to the Customer's application, which is payable by Horizon Power to the Contractor for completion of the Works.

**Business Days** means a day on which banks are open for general banking business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.

**Claim** means a demand, action or proceeding of any nature whether actual or threatened and includes any claim for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, the Contract, including any direction by Horizon Power;
- (b) arising out of, or in any way in connection with the Works; or

- (c) arising otherwise under Law or in equity including:
  - (1) by statute;
  - (2) in tort for negligence or otherwise, including negligent misrepresentations; or
  - (3) for restitution.

**Commencement Date** means the date upon which the Contractor accepts these terms and conditions.

**Consequential Loss** includes any consequential, indirect or special loss, loss of opportunity, loss of anticipated savings, loss of profit, loss of revenue or business or damage to reputation.

**Contract** means these terms and conditions including its annexures.

**Contractor** means the contractor which accepts these terms and conditions.

**Contract Price** means the amount payable to the Contractor for the Works performed for the relevant Customer as specified and accepted in the relevant Customer Quote.

**Contractor's Trade Terms** means the Contractor's standard terms and conditions as at the Commencement Date.

**Customer** means an individual person or business who is a customer of Horizon Power or is an eligible person or business for the subsidy or grant under the Project, or a nominated representative.

**Customer Quote** has the meaning given to it in clause 4(b)(3).

**Customer Contract** has the meaning given to it in clause 4(b)(4).

**End Date** means 30 June 2023.

**Good Industry Practice** means:

- (a) the exercise of the degree of skill, diligence, prudence and foresight that reasonably would be expected from a similar contractor in performing work similar to the Works and under conditions comparable to those applicable to the Works;
- (b) compliance with the standards and codes specified in the Contract or, if the Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied by a principal in the circumstances; and
- (c) compliance with any applicable Laws and approvals, licences or any other requirements of government departments or agencies.

**GST** means the tax levied on goods and services under the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other act, ordinance, regulation, public binding ruling, or subordinate legislation relating to the imposition of GST.

**Horizon Power** means Regional Power Corporation, trading as Horizon Power.

**Laws** means any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of Horizon Power or the State or Territory in which the Works are being carried out.

**Loss** means:

- (a) any liability, cost, expense, loss, personal injury (including illness), death or damage; and

(b) in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis.

**Project** means the Esperance energy transition project.

**Registered Contractor** means a contractor approved by Horizon Power to participate in the Project.

**Supplier Accreditation Form** means the form submitted by the Contractor to become an accredited supplier with Horizon Power.

**Termination for Convenience Notice** means a notice terminating the Contract under clause 9(a)(3).

**Works** means the works the Contractor is required to complete for each Customer as specified in the Customer Quote.

## Annexure 1 – Work health and safety requirements

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All works must be undertaken in accordance with the Work Health and Safety Act. Reference material for the Act can be found at <https://www.dmirs.wa.gov.au/safety-regulation/work-health-and-safety-laws/introduction-whs-laws/introduction-whs-laws/work-0>

Resources to support your compliance with the relevant legislation can be found at <https://www.commerce.wa.gov.au/worksafe/how-get-started>

Horizon Power may request copies of your Work Health and Safety documentation, including but not limited to:

- Risk assessments
- Proof of competencies and qualifications
- Safe Work Method Statements / Job Safety Analysis
- Incident reports

Due to the age of homes that may be worked on, all works must be undertaken with particular attention to asbestos risks. Information regarding how to safely work in asbestos containing locations can be found at <https://asbestosawareness.com.au/asbestos-for-tradies/>.

For the duration of this agreement, Horizon Power may conduct audits of documentation and works to assess compliance with health and safety requirements. Horizon Power may also conduct safety interactions or knowledge sharing sessions (including inductions). Such sessions or engagements will be undertaken at a mutually agreed time between both parties.

In addition, Horizon Power will monitor safety performance on a regular basis and the Contractor must provide all necessary information in a timely manner to support safety reporting.

Should you have any questions in regard to health and safety, or require guidance in improving your systems and processes, please contact Horizon Power at [esperance-etp@horizonpower.com.au](mailto:esperance-etp@horizonpower.com.au).

