

1. FORMATION OF AGREEMENT

- 1.1 An agreement between the Contractor and Powerlink is formed when Powerlink issues to the Contractor a Purchase Order for the Deliverables, the terms of which are those set out in this document and any expressly stated in the Purchase Order (**Agreement**). The Agreement is formed whether or not receipt of the Purchase Order is acknowledged by the Contractor.
- 1.2 If the Purchase Order expressly incorporates by reference the Contractor's written quotation, tender or other offer to supply, including any specifications for the Deliverables, those documents are incorporated into this Agreement but only to the extent they are not inconsistent with the terms of this document.
- 1.3 If there is an existing contract between the parties for the supply of the Deliverables, the parties acknowledge and agree that the terms of that contract prevail to the extent of any inconsistency with the terms of this Agreement.
- 1.4 This Agreement commences on the date that Powerlink issues, or as specified in, the Purchase Order and continues until the later of the "Due By" date stated in the Purchase Order or expiry of the Warranty Period, unless terminated earlier.

2. CONDITIONS OF SUPPLY

- 2.1 The Contractor represents, warrants and agrees that it and its Personnel will:
 - (a) perform this Agreement in accordance with its terms, including by properly supplying the Deliverables within the timeframes specified and to the locations required;
 - (b) supply the Deliverables in accordance with their specifications and their description in the Purchase Order; and
 - (c) upon Powerlink's request, provide reasonable support to Powerlink in relation to the Deliverables.
- 2.2 The Contractor represents, warrants and agrees that the Deliverables will be:
 - (a) free of encumbrances, liens and reservations of title;
 - (b) designed, fabricated, tested, packaged, loaded on transport, delivered (and, if required by this Agreement, installed and commissioned) in accordance with this Agreement including all laws, requirements of any government agency and Powerlink's requirements; and
 - (c) of merchantable quality and Fit for Purpose.
- 2.3 Ownership of the Deliverables (other than any services and the software licensed to Powerlink under clause 4) passes to Powerlink upon the earlier of payment or delivery. The passing of ownership or their delivery to Powerlink does not constitute acceptance of the Deliverables.
- 2.4 The Deliverables are at the Contractor's risk until they are accepted by Powerlink. Unless otherwise stated in this Agreement, Powerlink may only accept Deliverables by giving the Contractor written notice to that effect.
- 2.5 Powerlink must provide the Contractor with safe access to Powerlink's premises and equipment, where applicable, to enable the Contractor to supply the Deliverables. Powerlink must ensure that its premises are safe and are a suitable working environment.

3. DELIVERY OBLIGATIONS

- 3.1 When delivering the Deliverables, the Contractor must provide Powerlink with sufficient delivery documents to enable Powerlink to identify the contents of the delivery which must include the Purchase Order number.
- 3.2 The Contractor must deliver the Deliverables during Powerlink's normal business hours at the location specified in the Purchase Order. This information is available from Powerlink upon request.
- 3.3 The Contractor must unload the Deliverables at the delivery location in accordance with Powerlink's directions and requirements. If the Deliverables have any unloading requirements, the Contractor must notify Powerlink of these in sufficient time prior to their due date for delivery.

- 3.4 As soon as reasonably practicable after delivery, Powerlink may inspect and test the Deliverables to confirm their compliance with this Agreement. If the Deliverables fail such as inspection and test, the Deliverables are rejected and Powerlink will give the Contractor written notice of such rejection. The Contractor must promptly and at no cost to Powerlink remove the rejected Deliverables and, within a time required by Powerlink, replace them with Deliverables that comply with this Agreement.
- 3.5 If the Contractor does not remove the rejected Deliverables within 30 days of Powerlink's notice of rejection under clause 3.4, Powerlink may have the Deliverables removed at the Contractor's risk and cost.
- 3.6 If Powerlink does not give a notice of rejection under clause 3.4 within 10 Business Days after their delivery, Powerlink will, for the purposes of this Agreement only, be taken to have accepted the Deliverables.
- 3.7 The parties acknowledge that all materials in which the Deliverables are packed belong to the Contractor. Unless Powerlink agrees otherwise in writing, the Contractor must remove these packing materials from the delivery location on the delivery date, at no cost to Powerlink.

4. SOFTWARE LICENCE

- 4.1 If the Contractor is to licence any software to Powerlink under this Agreement, the Contractor grants to Powerlink a licence to such software and related documentation on the terms of this Agreement on and from commencement of this Agreement.
- 4.2 Unless otherwise specified in the Purchase Order, the duration of the licence granted under clause 4.1 is for the term of this Agreement and it is worldwide, non-exclusive, transferable with a right to sublicense and is for the purpose of Powerlink receiving the benefit of the Deliverables.
- 4.3 The Contractor must provide Updates and New Releases free of charge to Powerlink during the term of the licence. Each Update and New Release will be deemed to form part of the software on and from the date of delivery to Powerlink and this Agreement will apply to the Update or New Release accordingly.
- 4.4 The Contractor represents, warrants and agrees that any software licensed to Powerlink under this Agreement does not contain any virus or other disabling or destructive code and that it will not introduce such code in performing this Agreement.
- 4.5 This clause 4 applies to the extent a Deliverable contains any software or firmware.

5. DEFECTIVE DELIVERABLES

- 5.1 If Powerlink gives the Contractor notice that a Deliverable does not comply with this Agreement during the Warranty Period, the Contractor must, within the time required by Powerlink, and at no cost to Powerlink, rectify or replace the Deliverables so that they comply with this Agreement.
- 5.2 All the requirements of this Agreement apply to Deliverables the subject of rectification or replacement under clause 5.1 and they will be subject to a new Warranty Period of the same duration as the initial Warranty Period commencing on the date the rectification or replacement is properly completed.

6. LAWS, WARRANTIES AND COMPETENCE

The Contractor and its Personnel must:

- (a) obtain and maintain at their own cost any licences, consents, by-law exemptions and authorities required to comply with this Agreement;
- (b) comply with all laws, standards, approvals and other regulations that apply to this Agreement and/or the Deliverables;
- (c) perform this Agreement in a good, proper and workmanlike manner and to the best practice and standard of care, skill, judgement and diligence expected of a contractor experienced in providing the same or similar Deliverables; and
- (d) obtain for Powerlink's benefit all usual manufacturers', contractors' and any other applicable third party

warranties for the Deliverables, together with other any warranties required by Powerlink.

7. PAYMENT

- 7.1 Subject to proper performance of the Contractor's obligations under this Agreement, Powerlink must pay the Contractor the Charges within 30 days after Powerlink receives the tax invoice under clause 7.4. Any such payment is on account only.
- 7.2 The Contractor acknowledges that the Charges include all costs and expenses it may incur in supplying the Deliverables and its other obligations under this Agreement.
- 7.3 The Contractor must only submit a tax invoice to Powerlink after the Deliverables have been accepted by Powerlink.
- 7.4 Payment will not be due until Powerlink receives a correctly rendered tax invoice. A tax invoice is correctly rendered if it states the Purchase Order number and it:
- (a) only contains correctly calculated Charges for Deliverables actually supplied to Powerlink in accordance with this Agreement; and
 - (b) is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount in a manner that enables Powerlink to ascertain the Deliverables to which the invoice relates and the Charge payable for those Deliverables.
- 7.5 Any money owing from Powerlink to the Contractor under this Agreement may be set off by Powerlink against any amount owing to Powerlink by the Contractor, whether under this Agreement or at law.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Contractor represents, warrants and agrees that its performance of this Agreement and the supply of the Deliverables (including any software licensed to Powerlink under clause 4) will not infringe the Intellectual Property Rights of any person.
- 8.2 All Intellectual Property Rights in any material produced by a party under this Agreement will vest in Powerlink immediately upon creation. The Contractor immediately assigns or transfers all Intellectual Property Rights and ownership of such material to Powerlink.
- 8.3 During the term of this Agreement, Powerlink grants to the Contractor a royalty free and non-transferable licence to use the material under clause 8.2 for the sole purpose of the Contractor performing this Agreement.
- 8.4 Powerlink acknowledges that clause 8.2 does not affect the Intellectual Property Rights in any of the Contractor's or a third party's proprietary pre-existing material developed independently of this Agreement. The Contractor grants to Powerlink (or will so procure) a royalty free, perpetual and irrevocable licence to use the Intellectual Property Rights in such material for the purpose of Powerlink receiving the benefit of the Deliverables.
- 8.5 The Contractor must pay all royalties and expenses, and be liable for all claims, for the use of all Intellectual Property Rights in relation to the supply of the Deliverables.

9. INSURANCE

Before performing any of its obligations under this Agreement, the Contractor must ensure that it has effected and maintained such insurances as are appropriate given the Deliverables to be supplied, including for public and products liability, professional indemnity and workers' compensation insurance. If Powerlink so requests, the Contractor must give to Powerlink evidence of the currency of such insurances.

10. CONFIDENTIAL INFORMATION

Each party and its Personnel must not disclose the other party's information it acquires which is marked as, or is by its nature, confidential to the first party, except to the extent required by law or with the first party's written consent.

The parties agree to keep confidential the existence and terms of this Agreement.

11. SAFETY, ACCESS AND SECURITY

- 11.1 The Contractor acknowledges and agrees that in performing the Agreement, it must comply with:
- (a) The Workplace Conduct for Powerlink Contractors;
 - (b) all directions given by Powerlink at any time in connection with health, safety and the environment; and
 - (c) when supplying any Deliverables at place owned, occupied or operated by Powerlink, any occupational health and safety policy and any other workplace behaviour policies of Powerlink or the relevant third party that are made available to the Contractor from time to time.
- 11.2 The Contractor must ensure all Powerlink information and materials (including Powerlink's systems and any data stored or accessed by or through the Deliverables) in the Contractor's possession or control are protected at all times from unauthorised access or use, or misuse, damage or destruction.
- 11.3 The Contractor will comply with all security regulations or procedures or directions as may be given by Powerlink from time to time regarding security or access to Powerlink's premises and systems.

12. TERMINATION

- 12.1 Powerlink may terminate this Agreement immediately by notice in writing to the Contractor:
- (a) at any time prior to the supply of the Deliverables;
 - (b) for convenience, by giving the Contractor not less than 14 days' written notice;
 - (c) if the Contractor breaches this Agreement;
 - (d) if the Contractor becomes, threatens to become or is in jeopardy of becoming, insolvent.
- 12.2 The Contractor's sole entitlement for a termination by Powerlink under clauses 12.1(a) or 12.1(b) is the payment by Powerlink of the value of any substantiated preparatory work properly completed by the Contractor in genuine anticipation of supplying the Deliverables as assessed by Powerlink at the date of termination as due and payable but unpaid, capped at the total amount of the Charges.
- 12.3 Upon termination or expiry of this Agreement, the Contractor must provide all reasonable assistance necessary to enable the transfer of Powerlink's property and all related data, documentation and records to Powerlink or a third party nominated by Powerlink at no cost to Powerlink.

13. DISPUTES

- 13.1 Despite the existence of a dispute, each party must continue to perform its obligations under this Agreement.
- 13.2 If a dispute between the parties arises in relation to this Agreement, neither party will institute legal proceedings until the process in this clause 13 has been followed.
- 13.3 Either party may give the other party a notice in writing setting out details of the existence, nature and surrounding circumstances of the dispute.
- 13.4 If a dispute notice under clause 13.3 is issued, the parties must meet within 28 days after the date of the notice to attempt to reach some mutually agreeable outcome in relation to the dispute.
- 13.5 If agreed by both parties, the parties may appoint a suitably qualified person to resolve the dispute.

14. GENERAL

- 14.1 This Agreement can only be amended or replaced by another document executed by the parties or if Powerlink issues an amended Purchase Order in relation to the Deliverables.
- 14.2 This Agreement and any dispute arising out of or in connection with this Agreement is governed by the law in force in the State of Queensland, Australia.

- 14.3 The Contractor may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with Powerlink's prior written consent.
- 14.4 Any legislation that adversely affects an obligation of the Contractor, or the exercise by Powerlink of a right or remedy, under or relating to this Agreement is excluded to the full extent permitted by law.
- 14.5 Time is of the essence in respect of the Contractor's obligations under this Agreement.
- 14.6 A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or email.
- 14.7 No rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward the document or any part of it.
- 14.8 This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- 14.9 Each provision of this Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severed provision had never existed.
- 14.10 Where a date appears in relation to this Agreement, it will be numerically depicted as follows: DD/MM/YYYY.
- 14.11 Clauses 7.5, 10, 12.3, and this clause 14.11 survive the termination or expiry of this Agreement.

15. DEFINITIONS

The following definitions apply in this Agreement:

Agreement	has the meaning given in clause 1.1.
Business Day	means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.
Charges	means the amount specified in the Purchase Order that is payable by Powerlink under this Agreement.
Code of Conduct	means Powerlink's Workplace Conduct for Powerlink Contractors and its related policies and procedures, as amended from time to time, copies of which are available from Powerlink upon request. The Workplace Conduct for Powerlink Contractors is available to download from: http://www.powerlink.com.au/default.aspx
Contractor	means the other party to this Agreement as set out in the Purchase Order.
Deliverables	means any hardware, software, licences, goods, services, documentation and other deliverables supplied or to be supplied by the Contractor under this Agreement and includes any incidental work reasonably necessary to satisfy this Agreement.

Fit for Purpose	means that the Deliverable: (a) is fit for the purposes made known by Powerlink to the Contractor at or before the date of its supply and any other purposes for which the Deliverable is ordinarily used; (b) is free from defects, faults, errors or omissions in design, materials and workmanship during the Warranty Period; (c) meets or exceeds its performance data, measurements and similar measures as may be specified or claimed in the Contractor's catalogues, brochures, quotations, offers, tenders or other literature; and (d) otherwise meets or exceeds each of the purposes, functions, utilities, performance standards, outcomes and requirements set out in or which can be reasonably ascertained from this Agreement.
Intellectual Property Rights	means any and all existing and future intellectual and industrial property rights throughout the world, whether conferred by statute, common law or equity, including rights in relation to copyright, trade marks, designs, circuit layouts, plant varieties, business and domain names, trade secrets, patent rights and rights to require that know how be kept confidential (including the right to apply for registration of any such rights) and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.
New Release	means software provided primarily to provide an extension, alteration, improvement or additional functionality to the software.
Personnel	means officers, employees, agents, contractors and consultants engaged by a party (but does not include the other party) and, in the case of the Contractor, includes its subcontractors and any officers, employee and agents of those subcontractors.
Powerlink	means Queensland Electricity Transmission Corporation Limited ACN 078 849 233, ABN 82 078 849 233 or such related body corporate as may be stated in the Purchase Order.
Purchase Order	means a purchase order in a form suitable to Powerlink in its absolute discretion.
Update	means a version of the software produced primarily to overcome defects in the software.
Warranty Period	unless stated otherwise in the Purchase Order, means five years on and from the date of supply of the Deliverable to Powerlink.