

Power and Water Corporation
Goods, Services and Works – Standard
Terms

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Contract Details

| Item # | Reference | Detail |
|--------|--|---|
| 1. | Contract No. | [Insert RFT number] |
| 2. | RFT | [Insert RFT title] |
| 3. | PWC (including address for notices under clause 39.1) | Power and Water Corporation (ABN 15 947 352 360) Attention: Chief Procurement Officer Address: GPO Box 1921 Darwin NT 0801 Email: ChiefProcurementOfficer.PWC@powerwater.com.au |
| 4. | PWC Representative (clause 3) | Name: [Insert name of Contract owner] Phone: [Insert phone number] Email: [Insert email address] |
| 5. | Contractor (including address for notices under clause 39.1) | [insert full name] [insert ABN/ACN] Address: [insert address] Email: [insert email] |
| 6. | Contractor Representative (clause 3) | Name: [Insert name] Phone: [Insert phone number] Email: [Insert email address] |
| 7. | Contract Model (clause 1.2) | This Contract is (select one option only): <input type="checkbox"/> a standing offer contract – sole supplier <input type="checkbox"/> a standing offer contract – multiple suppliers (panel arrangement). |
| 8. | Commencement Date (clause 2.1) | [Insert date prior to award] |

| | | | | |
|---------------------|--|--|---------------------|-----------------|
| 9. | Initial Term (clause 2.1) | <p>[insert duration of term e.g. 36 months from the Commencement Date]</p> <p>OR</p> <p>[Commences on the Commencement Date and ends on the completion of the Supplier's obligations in connection with the Supplies]</p> | | |
| 10. | Further Term (clause 2.2) | <p>Is there an option to extend the term of this Contract?</p> <p><input type="checkbox"/> Yes, as follows:</p> <table border="1" data-bbox="683 604 1476 672"> <tr> <td data-bbox="694 616 1013 660">Further Term</td> <td data-bbox="1029 616 1468 660">[insert months]</td> </tr> </table> <p><input type="checkbox"/> No, not applicable.</p> | Further Term | [insert months] |
| Further Term | [insert months] | | | |
| 11. | Security (clause 1.6) | <p>The Contractor must provide the following Security:</p> <p>A: Two (2) unconditional undertakings of equal value in a total amount equal to the value of not less than 5% of the Contract Price.</p> <p>OR</p> <p>B: Any amount directed by PWC, or otherwise agreed between the Parties, in respect of each Order (provided always that it cannot exceed 5% of the Contract Price payable under the Order).</p> | | |

12. **Reporting**
(clause 3.4)

Are there specific reports required to be provided by the Contractor under this Contract?

Yes, as follows:

| Report Type | Frequency | Report Timeframes/ Dates | Format |
|--------------------------------------|--|--|----------------------------|
| Self-assessment reporting KPI Survey | Submitted upon completion of each Order of works | Compiled and reviewed on quarterly basis by PWC Representative in consultation with supplier | Excel, Word or paper based |

No, not applicable.

13. **Key Performance Indicators**
(clause 4.3)

Are there Key Performance Indicators which the Contractor must achieve under this Contract?

Yes, as follows:

Key Performance Indicators

Subjective self-assessment reporting by Contractor to be undertaken upon completion of each Order of works.

| KPI Title | KPI Target Score | Quarterly Compliance Minimum of Reports | Score Range |
|-----------|------------------|---|-------------|
| [insert] | | | 1 to 5 |
| [insert] | | | |

No, not applicable

| 14. | Contractor Testing | Is the Contractor required to carry out Testing under this Contract? | | | | |
|---|--|---|--------------------------------|-------------------|---|--|
| | (clause 13.1) | <input type="checkbox"/> Yes <input type="checkbox"/> No, not applicable. | | | | |
| 15. | Adjustments (clause 15.11(d)) | Are Charges subject to adjustment? <input type="checkbox"/> No, not applicable <input type="checkbox"/> Yes, as follows: | | | | |
| | | <table border="1"> <thead> <tr> <th data-bbox="679 584 1038 685">Charges subject to adjustment:</th> <th data-bbox="1038 584 1455 685">Applicable Index:</th> </tr> </thead> <tbody> <tr> <td data-bbox="679 685 1038 898">[insert e.g. items X to Y in the Schedule of Rates]</td> <td data-bbox="1038 685 1455 898">[insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries]</td> </tr> </tbody> </table> | Charges subject to adjustment: | Applicable Index: | [insert e.g. items X to Y in the Schedule of Rates] | [insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries] |
| Charges subject to adjustment: | Applicable Index: | | | | | |
| [insert e.g. items X to Y in the Schedule of Rates] | [insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries] | | | | | |
| 16. | Key Personnel (clause 16.2) | Are Key Personnel required under this Contract? <input type="checkbox"/> Yes, as follows: Key Personnel [insert name or key position] <input type="checkbox"/> No, not applicable. | | | | |
| 17. | Confidential Information of PWC (clause 25) | The following information is also Confidential Information of PWC: Confidential Information of PWC [insert details, documents etc. or if none, insert 'none specified'] | | | | |
| 18. | Intellectual Property Rights (clause 26) | Intellectual Property Rights in Contract Material will be: <input type="checkbox"/> licensed to PWC (owned by the Contractor) <input type="checkbox"/> owned by PWC. | | | | |
| 19. | Invoicing (clause 15.5) | The Contractor will be entitled to invoice PWC for the Contract Price monthly in arrears following performance of the Repairs and Maintenance Works. | | | | |

20. Insurance
(clause 28)

| Insurance Type | Minimum Amount |
|------------------------|--|
| Public liability | [\$[Insert amount]] for each and every Claim from the date of this Contract to three years after the expiry of the Defect Rectification Period or termination of this Contract |
| Product Liability | [\$[Insert amount]] for each and every Claim and in the annual aggregate |
| Professional indemnity | If the Contractor is to undertake any design as part of the work under the Contract, \$[Insert amount] for each and every Claim and in the annual aggregate |
| Workers' compensation | As specified by the applicable Laws |

21. Defect Rectification Period
(clause 30.1)

Are Defect Rectification Periods applicable to this Contract?

Yes, [insert] weeks from Acceptance or as otherwise specified in an Order.

No, not applicable.

22. Cap on the Contractor's liability
(clause 32.3)

Subject to clauses 32.1 and 32.2, the cap on the Contractor's liability under this Contract is:

| Liability Cap |
|---|
| [insert \$ amount or method of determining amount of liability cap] |

23. Scope of Requirements
(Attachment 2)

Are Scope of Requirements applicable to this Contract?

Yes, as set out in Attachment 2.

No, not applicable.

24.

**Schedule of
Rates**

(Attachment 1)

Is there a specific Schedule of Rates?

Yes, as set out in Attachment 2.

No, not applicable.

TERMS AND CONDITIONS

1 CONTRACT

1.1 Formation of Contract

The Parties acknowledge and agree that, upon PWC issuing a Notice of Acceptance to the Contractor, a binding contract is formed between the Parties in relation to the Repairs and Maintenance Works on the Terms and Conditions of this Contract.

1.2 Appointment of the Contractor and Contract Model

Standing offer contract – sole supplier and Standing offer contract – multiple Contractors (panel arrangement)

- (a) The Contractor irrevocably makes a standing offer to provide the Repairs and Maintenance Works to PWC as and when required by PWC during the Term.
- (b) Prior to the issue of any Order, PWC may provide the Contractor with a quotation request specifying the Repairs and Maintenance Works required by PWC.
- (c) Promptly, but in any event within 5 Business Days of the date of receipt of a quotation request, or such longer period as may be agreed by PWC in writing, the Contractor must issue a written quotation to PWC responding to the quotation request (**RFQ Response**).
- (d) PWC may unilaterally issue an Order which is consistent with the Contractor's RFQ Response under clause 1.2(c), and that Order will be binding on the Contractor.
- (e) The Contractor must provide the Repairs and Maintenance Works set out in each Order issued to the Contractor by PWC in accordance with the terms of that Order and this Contract.
- (f) Notwithstanding any other provision of this Contract, PWC is not obliged to issue any Orders to the Contractor or to acquire any minimum volume of Repairs and Maintenance Works from the Contractor and has not made any representation or warranty to the Contractor that it will acquire any minimum volume of Repairs and Maintenance Works from the Contractor.

Standing offer contract – multiple Contractors (panel arrangement)

- (g) Where Item 7 provides that this Contract is a *standing offer contract – multiple suppliers (panel arrangement)*:
 - (i) PWC may from time to time issue Orders or quotation requests to any one or more Contractors on the panel in PWC's sole discretion;
 - (ii) PWC may add additional panel members to the panel at any time in PWC's sole discretion; and
 - (iii) the Contractor will not be entitled to any compensation from PWC as a result of the exercise by PWC of any of PWC's rights under clauses 1.2(g)(i) or 1.2(g)(ii).

1.3 PWC Entities to benefit from the Repairs and Maintenance Works

- (a) PWC may, at its discretion:
 - (i) allow PWC Entities to receive and enjoy the benefit of the Repairs and Maintenance Works; and
 - (ii) instruct the Contractor to provide some or all of the Repairs and Maintenance Works directly to PWC Entities.
- (b) Where PWC is entering into this Contract in order to facilitate the provision of the Repairs and Maintenance Works, whether in whole or in part, for the benefit of a PWC Entity, the Contractor further acknowledges and agrees that:
 - (i) PWC enters into this Contract as both a principal in its own right and also as an agent for and on behalf of the PWC Entity in respect of the Repairs and Maintenance Works;
 - (ii) the Contractor's liability for any Claims arising under this Contract extend to the PWC Entity in the same manner as if that PWC Entity was the 'Principal' under this Contract;
 - (iii) PWC is entitled to pursue any Claim arising under this Contract, whether in its own right or for and on behalf of the PWC Entity (in which case PWC holds the benefit of any Claims on trust for the PWC Entity); and
 - (iv) the Contractor's liability to PWC under this Contract is not limited, reduced or compromised in any way by the fact that the basis of the Claim relates to a PWC Entity as distinct to PWC as the principal entity.

1.4 Non-exclusive appointment

Nothing in this Contract prohibits PWC from acquiring goods or services or works that are the same as or similar to the Repairs and Maintenance Works at any time from any other person.

1.5 Orders

Each Order will form part of this Contract with effect on and from the date the relevant Order is issued by PWC. For clarity, Orders do not create contracts separate from this Contract, see clause 1.2(e). Except as required under an Order, the Contractor is not permitted to provide any Repairs and Maintenance Works or entitled to any payment under this Contract.

1.6 Security

Purpose

- (a) Security is for the purposes of ensuring due and proper performance of this Contract by the Contractor.

Provision of Security

- (b) The Contractor must give Security to PWC:

- (i) if as may be required in Item 11 of the Contract Details, within 10 Business Days of the Notice of Acceptance; or
- (ii) if specified in any Order, the Contractor must give Security to PWC within 10 Business Days of the date of the Order.

Recourse to Security

- (c) PWC may have recourse to the Security if it reasonably believes that:
 - (i) the Contractor has breached or failed to comply or is likely to breach or fail to comply with any of its obligations under this Contract;
 - (ii) the Contractor has suffered, or may possibly suffer an Insolvency Event;
 - (iii) PWC is, or will be, entitled to Claim payment of moneys from the Contractor in relation to the Repairs and Maintenance Works; or
 - (iv) PWC is, or will be, entitled to reimbursement of any moneys paid to or to be paid to others under or in connection with this Contract.

Release of Security

- (d) For Security provided under any Order in respect of the Works, subject to the terms of the applicable Order and this clause 1.6(d), PWC will:
 - (i) if the Order is terminated by PWC (other than for the Contractor's default) , within 10 Business Days of termination return the Security to the Contractor; or
 - (ii) within 10 Business Days after Acceptance of the Repairs and Maintenance Works, or that part of the Repairs and Maintenance Works the subject of an Order for which Security was given, return only so much of that Security provided by the Contractor as is required to leave a balance of 50% of the Security with PWC; and
 - (iii) within 10 Business Days after PWC's Representative receive the final invoice for the Repairs and Maintenance Works, or that part of the Repairs and Maintenance Works the subject of an Order for which Security was given, PWC must release the balance of that Security, subject to any amounts being retained by PWC to cover any claims PWC may have against the Contractor.
- (e) Where Item 11 identifies that the Contractor must provide Security on entering into this Contract, PWC will, subject to clause 1.6(c), return the Security identified in Item 11 on the expiration of the Term or earlier termination of the Contract.

2 TERM

2.1 Initial Term

This Contract commences on the Commencement Date and ends on the expiry of the Initial Term unless extended or terminated earlier in accordance with this Contract.

2.2 Further Term

- (a) The Parties may extend this Contract for the Further Term on the Terms and Conditions then in effect (including pricing) if:
 - (i) PWC provides the Contractor with notice in writing at least 30 days prior to the end of the Initial Term seeking the Contractor's consent to such an extension; and
 - (ii) the Contractor provides PWC with notice in writing at least 15 days prior to the end of the Initial Term that the Contractor consents to any such extension; and
- (b) subject to the Contractor providing consent under clause 2.2(a)(ii), the Further Term will commence on and from the expiry of the Initial Term.

3 CONTRACT MANAGEMENT

3.1 Contract Management

Appointment of Representative

- (a) Each Party must:
 - (i) appoint a representative under this Contract; and
 - (ii) ensure its representative (or their delegate if they are unavailable) is reasonably accessible to the other Party at all relevant times during the Term.
- (b) A Party may replace its representative by giving notice to the other Party before replacing the representative.

PWC Representative

- (c) The PWC Representative will represent PWC for the purposes of exercising PWC's powers, duties, discretions and authorities under this Contract. Nothing in this clause prevents PWC representatives from dealing with the Contractor on day to day operational matters in connection with the provision of the Repairs and Maintenance Works under this Contract.

Contractor Representative

- (d) The Contractor Representative will represent the Contractor for the purposes of exercising the Contractor's powers, duties, discretions and authorities under this Contract. Nothing in this clause prevents other Contractor representatives from dealing with PWC on day to day operational matters in connection with the provision of the Repairs and Maintenance Works under this Contract.
- (e) A direction given by PWC to the Contractor Representative will be regarded as having been given to the Contractor.

- (f) Matters within the knowledge of the Contractor Representative will be regarded as being within the knowledge of the Contractor.
- (g) If the PWC Representative makes a reasonable objection to the appointment of a person as the Contractor Representative, the Contractor must terminate the appointment and appoint another person to the position of Contractor Representative, subject again to any reasonable objection of the PWC Representative.

3.2 Delegation

- (a) The PWC Representative or the Contractor Representative may delegate their authority to another person from time to time. Any such delegation may, as that Party's representative determines from time to time, be:
 - (i) revoked or changed;
 - (ii) limited; or
 - (iii) made subject to conditions.
- (b) A Party's representative who delegates authority must, as soon as practicable (and in any event within 2 Business Days of the authority being delegated), give to the other Party's representative written notification of the person to whom the delegation has been made and the nature and scope of that delegate's authority.
- (c) Once a Party receives notice under clause 3.2(b), it is entitled to rely on it unless and until given notice by the other Party of the revocation of, or change to, that delegation by the other Party.
- (d) Any person to whom a power, right, authority, discretion, function or responsibility is delegated under this clause 3.2 has, to the extent of that delegation, full power and authority to act for and on behalf of and bind the Party they represent in relation to this Contract by virtue of that delegation.
- (e) A delegation of authority by the PWC Representative or the Contractor Representative does not prevent the PWC Representative or the Contractor Representative (as applicable) from exercising the delegated authority.
- (f) An act or omission of a delegate constitutes, to the extent of their delegation, an act or omission of the Party they represent by virtue of their delegation under this clause 3.2.

3.3 Meetings

- (a) The Parties will hold meetings (including meetings relating to planning, review and issue resolution) as necessary to ensure that PWC is fully informed in relation to all aspects of the provision of the Repairs and Maintenance Works under this Contract and the Contractor's performance of the Contractor's obligations under this Contract. The Contractor must attend all such meetings on the dates and at the times scheduled by PWC. PWC will give the Contractor reasonable prior notice of all such meetings.

- (b) The Contractor Representative and the PWC Representative must meet with each other as required by either of them to discuss performance of this Contract and the resolution of any issues.

3.4 Reporting

- (a) The Contractor must provide regular reports, as requested by PWC from time to time, acting reasonably, outlining the status of the provision of the Repairs and Maintenance Works and the performance of the Contractor's obligations under this Contract.
- (b) Without limiting clause 3.4(a), the Contractor must provide the specific reports as provided for in Item 12.
- (c) The reports required to be provided by the Contractor under this Contract must be provided:
 - (i) in accordance with the frequency, timeframes and format as provided for in Item 12 (if any);
 - (ii) as required under any other part of this Contract; or
 - (iii) as reasonably required from time to time by PWC.

3.5 Local Content

Local Benefit Commitments

- (a) The Contractor acknowledges PWC's commitment to the development of business and industry in the Northern Territory.
- (b) In the RFQ Response, the Contractor made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Contractor as part of this Contract. These promises and commitments form part of this Contract (**Local Benefit Commitment**).
- (c) The Contractor must fulfil all aspects of the Local Benefit Commitment.

Use of local contractors and suppliers

- (d) Subject to the *Competition and Consumer Act 2010* (Cth), and unless the Contractor demonstrates to PWC that, for commercial, technical or other reasons, it is impractical to do so, in carrying out the Contractor's obligations under this Contract, the Contractor must use:
 - (i) labour available within the Northern Territory;
 - (ii) subcontractors established in the Northern Territory; and
 - (iii) obtain supplies and materials supplied by businesses established in the Northern Territory.

Reporting and review

-
- (e) The Contractor must, on written request by PWC, provide a written report in relation to its compliance with clauses 3.5(c) and 3.5(d) within the timeframe specified in PWC's written request.
 - (f) The Contractor acknowledges and agrees that it must comply with the NTG's Buy Local Plan and that the Buy Local Industry Advocate may conduct audits of such compliance.
 - (g) The Contractor agrees to grant access rights to the Buy Local Industry Advocate to ensure the Supplier (and the Supplies) satisfy the Buy Local Plan.
 - (h) The Contractor must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 3.5.
 - (i) The Contractor is liable for its own costs of any audit or inspection conducted pursuant to this clause 3.5.
 - (j) The Contractor must meet with PWC to discuss in good faith any recommendations made by the Buy Local Industry Advocate following the completion of an audit. The Contractor will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Buy Local Plan as directed by PWC or the Buy Local Industry Advocate. The cost of implementing those recommendations will be borne by the Contractor.
 - (k) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause acknowledging and granting the Buy Local Industry Advocate the same rights as specified in this clause 3.5

Performance to be reported in Contractor's Performance Reports

- (l) The Contractor's compliance or non-compliance with this clause 3.5 will be recorded .in the Contractor's Performance Report to be prepared by PWC in accordance with clause 36.

3.6 Quality control

The Contractor is at all times responsible for the quality and quality control of all of the Repairs and Maintenance Works and the implementation of any quality assurance throughout the Term.

3.7 Other Contractors

In the performance of the Contractor's obligations under this Contract, the Contractor must co-operate with other Contractors engaged by PWC as reasonably required by PWC from time to time.

3.8 Subcontracting

- (a) If the Contractor enters into a sub-contract with any third party for the performance of any of the Contractor's obligations under this Contract:
 - (i) any such sub-contract does not excuse the Contractor from performing the Contractor's obligations under this Contract;

- (ii) the Contractor must ensure that the Subcontractor and the Personnel of the Subcontractor comply with the Contractor's obligations under this Contract; and
 - (iii) the Contractor is liable for the acts and omissions of the Subcontractor and the Personnel of the Subcontractor as if such acts and omissions were those of the Contractor.
- (b) The Contractor must not subcontract any of the Contractor's obligations under this Contract without the prior written consent of the PWC's Representative (such consent not to be unreasonably withheld).

4 CONTRACTOR'S PRIMARY OBLIGATIONS, RISKS AND INDEMNITIES

4.1 Primary Obligations

The Contractor must:

- (a) provide the Repairs and Maintenance Works under the Contract in accordance with the Contract and so that the Repairs and Maintenance Works meet all requirements set out in the Contract; and
- (b) comply with all Legislative Requirements, all standards of Standards Australia and all PWC Standards and Specifications in connection with the provision of the Repairs and Maintenance Works under the Contract.

4.2 Obligations

- (a) Without limiting any other obligation of the Contractor or any provision of this Contract, the Contractor acknowledges and agrees that in performing its obligations under this Contract, the Contractor:
 - (i) is bound by the Scope of Requirements;
 - (ii) is bound by the Schedule of Rates;
 - (iii) will provide the Repairs and Maintenance Works in a timely, efficient and proper manner using reasonable care, skill and diligence, as expected of an experienced, prudent and competent contractor engaged in respect of works of a similar nature to provision of the Repairs and Maintenance Works under this Contract;
 - (iv) will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of the Repairs and Maintenance Works and, if requested by PWC's Representative, will provide such evidence of this at its own expense;
 - (v) will comply with all applicable Laws (including WH&S Laws) and/or Legislative Requirements;
 - (vi) will comply with any rules, codes of conduct, policies, guidelines, processes and procedures of PWC (whether existing at the Commencement Date or introduced from time to time) where the Contractor is notified in writing by

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- PWC of those rules, codes of conduct, policies, guidelines, processes or procedures;
- (vii) will comply with reasonable directions of PWC;
 - (viii) has, and it will be deemed to have done everything that would be expected of an experienced, prudent and competent contractor engaged in respect of works of a similar nature to the Repairs and Maintenance Works in:
 - (A) taking into account all of the Contractor Risks and the costs of bearing those risks;
 - (B) informing itself as to all matters which might impact on the Contractor Risks; and
 - (C) ensuring that any Works Construction Program contains sufficient flexibility to allow the Contractor to achieve Acceptance by the Date for Acceptance if any of the Contractor Risks eventuate;
 - (ix) has made proper allowance in the Schedule of Rates for:
 - (A) all matters contained in or capable of inference from this Contract;
 - (B) all matters which might impact upon the Contractor's ability to complete the work under the Contract or to complete the work within any particular time, cost or quality constraints; and
 - (C) the Contractor Risks;
 - (x) except as expressly provided for in this Contract, is not entitled to any adjustment in the Contract Price or to additional payment under this Contract or arising out of or in connection with the Repairs and Maintenance Works or the meeting of its obligations under this Contract;
 - (xi) has, or will be able to, obtain all the necessary consents, permits or authorities necessary in order for the Contractor to carry out the work under the Contract;
 - (xii) has not relied on any Non-Reliance Information, or the accuracy, adequacy, suitability or completeness of any Non-Reliance Information, for the purposes of entering into this Contract;
 - (xiii) has entered into this Contract based on its own investigations, interpretations, deductions, information and determinations;
 - (xiv) acknowledges and agrees that PWC did not and does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of the Contract Documents or Non-Reliance Information;
 - (xv) has carefully examined the Contract Documents and there are no ambiguities or discrepancies in the Contract Documents;

- (xvi) without limitation to clause 26, owns (or is otherwise entitled to use) the copyright or other intellectual property in relation to the Repairs and Maintenance Works and meet its obligations under this Contract in respect of the intellectual property;
- (xvii) is not insolvent within the meaning of section 95A of the *Corporations Act (2001)* (Cth) or otherwise and there is no unfulfilled or unsatisfied judgment or Court order outstanding against the Contractor;
- (xviii) in the RFT Response, in any interview or discussion leading up to the entering of this Contract or in response to any request from PWC, has provided accurate and complete information and has not provided any false, inaccurate or misleading information or failed to provide any material information relevant to the Contractor's ability to carry out the work under the Contract; and
- (xix) will comply fully with all of its obligations under this Contract,

(Contract Undertakings).

- (b) The Contractor may submit a Variation Notice in accordance with clause 9.8(b) if:
 - (i) after the Commencement Date, PWC notifies the Contractor under clause 4.2(a)(vi) of new or amended rules, codes of conduct, policies, guidelines, processes and procedures of PWC; and
 - (ii) the Contractor incurs additional costs in performing its obligations under this Contract as a result of the obligation to comply with any such new or amended rules, codes of conduct, policies, guidelines, processes and procedures of PWC.

4.3 Key Performance Indicators

- (a) Where Item 13 provides that Key Performance Indicators must be achieved by the Contractor under this Contract, the Repairs and Maintenance Works must be provided by the Contractor so as to meet or exceed the Key Performance Indicators.

4.4 Contractor's Risks

- (a) Each Contract Undertaking must be given full effect in its own right. No individual Contract Undertaking will be read down by reason of the existence, or absence of any other Contract Undertaking.
- (b) Except to the extent stated otherwise in this Contract, the Contractor accepts the following risks associated with, or arising in relation to, the carrying out of the Repairs and Maintenance Works (whether ascertainable or not):
 - (i) all delays, cost increases, re-execution of work or modification of the methodology for the carrying out of the Repairs and Maintenance Works caused by:
 - (A) adverse Site or weather conditions (other than Cyclones);
 - (B) access to and from the Site;

- (C) subject to clause 10.3 (if it applies), the physical conditions and characteristics on, in, under or over or at or in the vicinity of, the Site (including artificial things, sub-surface, latent conditions or hidden defects and asbestos, contamination or other hazardous materials of any kind) and its surroundings;
 - (D) the Repairs and Maintenance Works progressing at a rate different than may have been anticipated by the Contractor; or
 - (E) the availability and occupation of part of the work under the Contract as described in this Contract; and
- (ii) the availability of labour or materials necessary for the carrying out of the Repairs and Maintenance Works.

5 PWC'S PRIMARY OBLIGATIONS

PWC must:

- (a) pay to the Contractor any moneys which become due under this Contract in accordance with this Contract; and
- (b) subject to clause 10 and 18.3, ensure that it gives the Contractor sufficient access to any Site to allow it to provide the Repairs and Maintenance Works under this Contract.

6 DOCUMENTS AND INFORMATION

6.1 Non-Reliance Information

The Contractor and PWC agree that the Non-Reliance Information:

- (a) has been or will be provided only for the Contractor's convenience; and
- (b) has not been and will not be relied on by the Contractor for any purpose (including entering into this Contract or performing obligations under this Contract) and if it is relied upon by the Contractor, the Contractor does so entirely at its own risk.

6.2 Contractor Supplied Information

The Contractor warrants and represents that the Contractor Supplied Information is free from errors, omissions, inconsistencies, ambiguities and discrepancies and that the Contractor Supplied Information otherwise complies with this Contract.

6.3 Discrepancies

- (a) The several documents forming this Contract and the documents that are produced or issued under this Contract are to be taken as mutually explanatory of one another. However, if an inconsistency, ambiguity or discrepancy between those documents exists, the Contractor must promptly seek the direction of PWC's Representative regarding the interpretation to be adopted and comply with that direction.

- (b) In giving the direction, the PWC Representative may override the order of precedence set out in clause 40(f).
- (c) The Contractor is not entitled to make any Claim in connection with the direction unless the Contractor considers the direction constitutes a Variation, in which case the Contractor must give Notice to PWC's Representative under clause 9.8.

7 GOODS

7.1 Application of this clause

This clause 7 applies where the Contractor is required to provide and deliver Goods when executing the Repairs and Maintenance Works.

7.2 Title to and property in the Goods

Without limiting any rights of rejection that PWC may have under this Contract, legal and beneficial title to (and property in) the Goods passes to PWC payment by PWC for such Goods.

7.3 Risk to the Goods

The Contractor bears the risk of and must indemnify PWC and PWC Personnel against any loss of (including loss of use), or damage to, the Goods before delivery.

7.4 Delivery of Goods

- (a) The Contractor must ensure that the Goods are appropriately packed prior to delivery and that all relevant markings and labels are shown on or attached to all packages.
- (b) The Contractor must deliver the Goods:
 - (i) in the quantity(s) specified in this Contract (or, where applicable, the relevant Order) or as otherwise reasonably necessary and directed in writing by PWC before the relevant time for delivery;
 - (ii) to the Site and between such hours provided for in the Scope of Requirements (or, where applicable, the relevant Order) or as otherwise reasonably necessary to the location specified in writing by PWC before the relevant time for delivery;
 - (iii) to meet any timeframes and dates provided for in the Scope of Requirements (or, where applicable, the relevant Order) or if no timeframe or dates are provided, with due expedition and without unnecessary or unreasonable delay following the Commencement Date (or, where applicable, the issue of the relevant Order) or as otherwise directed in writing by PWC.
- (c) The Contractor acknowledges that delivery will not be taken to have occurred until delivery is acknowledged in writing by a representative of PWC.
- (d) The Contractor acknowledges and agrees that written confirmation of delivery given by a representative of PWC in accordance with clause 7.4(c):

- (i) is evidence only that Goods have been received; and
- (ii) is not evidence that:
 - (A) the correct quantity of Goods have been delivered; or
 - (B) the Goods have been Accepted or delivered in accordance with this Contract.
- (e) Other than PWC Resources, the Contractor must provide all equipment, facilities and other incidental items and materials necessary to deliver the Goods. All equipment must be properly maintained and appropriate for the purposes for which it is used or intended to be used.
- (f) Unless otherwise approved in writing by PWC, the Contractor must ensure that the Goods are delivered in accordance with this Contract. If after delivery of any Goods, PWC, acting reasonably, determines and notifies the Contractor that there is an over-supply or shortfall in the quantity delivered or any visible damage to the Goods which occurred before delivery or any other issue with the Goods not being delivered in accordance with this Contract, then, without limiting the Contractor's other obligations or PWC's other rights or remedies, the Contractor must promptly correct any over-supply or shortfall or other issue and promptly replace any visibly damaged Goods.
- (g) PWC will return (at the Contractor's cost and risk) any visibly damaged Goods to the Contractor, and may do so either before or after receipt of replacement Goods from the Contractor. PWC is under no obligation to return any packaging (including any crates or pallets) to the Contractor.

8 SERVICES

8.1 Application of this clause

This clause 8 applies where the Contractor is required to perform Services as part of the Repairs and Maintenance Works.

8.2 Provision of Services

- (a) The Contractor must provide the Services to PWC:
 - (i) to meet any timeframes and dates provided for in the Scope of Requirements (or, where applicable, the relevant Order);
 - (ii) if no timeframe or dates are provided, with due expedition and without unnecessary or unreasonable delay following the Commencement Date (or, where applicable, the issue of the relevant Order); or
 - (iii) as otherwise directed in writing by PWC, acting reasonably.
- (b) PWC must provide the Contractor with reasonable notice of any change to the timeframes and dates when giving a direction under clause 8.2(a)(iii).
- (c) Other than PWC Resources (if any), the Contractor must provide all equipment,

facilities and other incidental items and materials necessary to perform the Services. All equipment must be properly maintained and appropriate for the purposes for which it is used or intended to be used.

8.3 Deliverables

- (a) The Contractor must provide the Deliverables to PWC in accordance with the Terms and Conditions of this Contract.
- (b) Without limiting clause 8.3(a), the Contractor must provide each Deliverable provided for in the Scope of Requirements by the relevant timeframe provided for in the Scope of Requirements.
- (c) Without limiting clause 8.3(a), the Contractor must provide each Deliverable required by an Order by the relevant timeframe provided for in the Order.

8.4 Title to and property in the Deliverables

Without limiting any rights of rejection that PWC may have under this Contract, legal and beneficial title to (and property in) the Deliverables passes to PWC payment by PWC for such Deliverables.

8.5 Risk to the Deliverables

The Contractor bears the risk of and must indemnify PWC and PWC Personnel against any loss of (including loss of use), or damage to, the Deliverables before delivery.

9 WORKS

9.1 Application of this clause

This clause 9 applies where an Order expressly provides that the Contractor is required to perform Works as part of the Repairs and Maintenance Works.

9.2 Officer-in-Charge

PWC may, in accordance with clause 3.2, appoint an Officer-in-Charge to be responsible for the operation of a Works site.

9.3 Rate of progress

The Contractor must:

- (a) give the Officer-in-Charge 2 Business Days' notice in writing of the date upon which it intends to commence execution of the ordered Works; and
- (b) proceed with the ordered Works with due expedition and without delay.

9.4 Construction Program

- (a) If required in a RFQ or an Order, the Contractor must within 10 Business Days of any changes to the program or any request from time to time from the Officer-in-Charge or PWC's Representative, give a Construction Program to PWC for approval.

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- (b) If PWC's Officer in Charge or PWC's Representative rejects the Construction Program submitted by the Contractor under this clause 9.4, the Contractor must promptly amend the Construction Program and resubmit it to PWC for approval. No review, approval, acceptance or rejection by PWC of, nor any comment or direction by PWC upon or in connection with, the Construction Program will:
- (i) relieve the Contractor of any of its liabilities or obligations under this Contract;
 - (ii) evidence or constitute a direction by PWC to accelerate, disrupt, prolong or vary any or all of the Repairs and Maintenance Works; or
 - (iii) evidence or constitute the granting of an extension of time for Acceptance.
- (c) The Construction Program will not form part of this Contract but it may be used by PWC's Representative and PWC to:
- (i) monitor and assess the progress of the Repairs and Maintenance Works, and in the Contractor's Performance Report; and
 - (ii) have visibility over the Contractor's work activities and sequences for bringing the Repairs and Maintenance Works or ordered part thereof to Acceptance by the Date for Acceptance.
- (d) The Contractor must not depart from the Construction Program without reasonable cause or except where the departure is necessary to comply with another clause of this Contract. If the Contractor does depart from the Construction Program, it must update the Construction Program to take account of the changes and submit it to PWC's Representative for approval in accordance with clause 9.4(a).

9.5 Contract Management Plans

- (a) If directed by PWC's Representative, the Contractor must submit to PWC's Representative the following plans before the commencement of Works (unless the Contract requires the plan to be provided earlier):
- (i) a project control plan;
 - (ii) a traffic management plan;
 - (iii) the Environmental Management System (where described in an Order and otherwise where required by the Contract);
 - (iv) the Health and Safety Management Plan;
 - (v) Work Health and Safety Management System; and
 - (vi) any other documents as directed by PWC's Representative.
- (the Contract Management Plans)

- (vii) The Contractor must comply with the Contract Management Plans. The Contractor must not amend any of the Contract Management Plans without the consent of PWC's Representative.
- (viii) If PWC forms the view that any of the Contract Management Plans do not comply with this clause 9.5, and the Contractor is advised of this view and the reasons for this view, then the Contractor must amend the relevant Contract Management Plan so that the Contract Management Plan complies with the reasonable specified requirements by PWC within 5 Business Days.
- (ix) The Contractor is not entitled to rely upon any assumption contained in or capable of inference from the Contract Management Plans.

9.6 Covering up Work

- (a) The Contractor must comply with any provision of this Contract or any direction from PWC's Representative that any parts of the Works are not to be covered up or made inaccessible, without the prior approval of PWC's Representative.
- (b) The Contractor must not cover up any parts of the Works until PWC's Representative has been afforded a reasonable opportunity to inspect it.

9.7 Storage and erection of temporary structures on Site

- (a) The Contractor must not store or erect anything on the Site unless expressly permitted by PWC's Representative.
- (b) If permitted by PWC's Representative, the Contractor must comply with the directions of PWC's Representative in respect of that storage and with any applicable Statutory Requirements in respect of the storage of chemicals and/or dangerous goods.

9.8 Variation

- (a) Variations only as directed by PWC
 - (i) The Contractor must not alter the ordered or specified Repairs and Maintenance Works and any Deliverables in any way nor deviate from the requirements of this Contract except as directed by PWC's Representative.
 - (ii) PWC may direct a Variation
 - (A) PWC's Representative may give a direction to the Contractor to carry out a Variation.
 - (B) A direction to carry out a Variation is only valid if given or confirmed in writing by PWC's Representative and the mere issue of a direction by PWC's Representative does not entitle the Contractor to any additional payment unless the direction gives rise to a Variation.
 - (iii) PWC's Representative may give a direction to the Contractor to omit ordered or specified Repairs and Maintenance Works from the Contract. Any omitted work may be carried out by another contractor if required by PWC's

Representative concurrent with the Contractor carrying out the Contractor's activities.

(b) Variation Notice

(i) If:

- (A) PWC's Representative gives a direction to the Contractor; and
- (B) the Contractor considers that the implementation of the direction will give rise to a Variation,

the Contractor must give Notice to PWC's Representative that it considers that the direction is a Variation within 2 Business Days after the date on which the direction is given, giving reasons for its opinion that the direction will give rise to a Variation.

(ii) The Contractor's Notice must set out:

- (A) the Contractor's reasons for its opinion that the direction will give rise to a Variation;
- (B) the Contractor's estimate of any increase or decrease in the Contractor's scope of work resulting from the direction;
- (C) the Contractor's estimate of any impact on the Date for Acceptance of the Repairs and Maintenance Works or relevant part thereof; and
- (D) the Contractor's estimate of any adjustment to the Contract Price resulting from the Variation.

(iii) PWC's Representative may retract the direction by giving the Contractor a Notice within 2 Business Days of the date that the Contractor issued the Notice under clause 9.8(b)(i).

(iv) The Contractor's compliance with Notice requirements set out in clause 9.8(b)(i) and clause 9.8(b)(ii) is a precondition to the Contractor's entitlement to make any claim in relation to a Variation directed by PWC's Representative.

(v) If the Party who receives a Variation Proposal agrees to the proposed variation, then the Contractor will prepare the variation document (using PWC's template variation document) consistent with the Variation Proposal within 10 Business Days of the receiving Party's agreement to the proposed variation. Upon execution by the Parties, the Terms and Conditions of this Contract will be varied as agreed in the variation document.

(vi) Unless otherwise provided for in this Contract, this Contract may only be varied or replaced by a variation document duly executed by the Parties.

(c) Effect of Variations on Contract Price

The amount payable or deductible in relation to Variations directed by PWC's Representative will be added to or deducted from the Contract Price.

(d) Value of Variations

The Parties agree that the amount payable or deductible in relation to a Variation must be calculated as follows:

- (i) the agreed amount, if the Parties have agreed the value of the Variation;
- (ii) if clause 9.8(d)(i) does not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner in which a Variation is to be valued, then those rates or provisions will apply;
- (iii) if clauses 9.8(d)(i) and 9.8(d)(ii) do not apply and this Contract includes a Schedule of Rates or other provisions of this Contract that specify rates for or the manner of valuing work performed under this Contract, then those rates or provisions will apply; or
- (iv) if clauses 9.8(d)(i), 9.8(d)(ii) and 9.8(d)(iii) do not apply, an amount that is reasonable in all the circumstances having regard to the cost and the risk associated with the Variation, as determined by PWC's Representative.

9.9 Acceptance**(a) Date for Acceptance**

The Contractor must achieve Acceptance by the Date for Acceptance. PWC's Representative may, at any time, extend the Date for Acceptance if it reasonably considers the circumstances justify granting an extension.

(b) Acceptance

When the Contractor believes that Acceptance has been reached, the Contractor must:

- (i) immediately notify PWC's Representative in writing in accordance with clause 14; and
- (ii) within fourteen (14) days of the Contractor notifying PWC in writing in accordance with clause 9.9(b)(i), provide PWC's Representative with an Invoice for all Works performed, and Notice of any Claims of the Contractor, in the period prior to Acceptance.

(c) If PWC's Representative is not satisfied that the Works have reached Acceptance, the Contractor must complete or rectify all minor omissions and minor defects within 20 Business Days after the Date of Acceptance or such period as reasonably determined by PWC's Representative.

(d) When PWC is satisfied that the work under the Contract has reached the stage of Acceptance, PWC may notify the Contractor in accordance with clause 14, whether or not the Contractor has given a notice in accordance with this clause 9.9(b)(i).

9.10 Invoicing

The Contractor must invoice for the Works:

- (a) in accordance with clause 9.9(b)(ii);
- (b) in accordance with clause 15.5; or
- (c) as otherwise directed.

10 SITE ACCESS AND CONDITIONS

10.1 Conditions precedent to Site access

- (a) Conditions precedent to Site access may include:
 - (i) the Contractor has provided a proposed Construction Program;
 - (ii) Security is provided (if applicable);
 - (iii) the Contractor and Contractor Personnel have complete the Site induction in accordance with clause 18.4(b); or
 - (iv) the Contractor has provided evidence satisfactory to PWC that each insurance policy required under clause 28 is current.

10.2 Acceptance of Site Conditions

- (a) The Contractor must ensure that the Repairs and Maintenance Works are provided from the Sites and between such hours provided for in the Scope of Requirements (if applicable), any other location specified in the relevant Order or otherwise at the location specified in writing by PWC from time to time, acting reasonably.
- (b) Subject to clause 10.3(b), the Contractor acknowledges and agrees that prior to entering into this Contract, it has conducted a careful inspection and assessment of the Site and available information in relation to the Site, and accepts the state and condition of the Site and all risks associated with carrying out the Repairs and Maintenance Works on, under or adjacent to the Site.
- (c) The Contractor must not change the location from where the work will be provided without the prior written consent of PWC.
- (d) The Contractor must adhere with PWC Site access and obligation provisions set out at clause 18.

10.3 Notification of Latent Condition

- (a) Within 5 Business Days after the Contractor becomes aware or should reasonably have become aware of a Latent Condition while carrying out the Repairs and Maintenance Works, the Contractor must give PWC's Representative a written Notice setting out:
 - (i) the nature of the Latent Condition encountered and the respect in which it differs materially to the expected Site conditions, or the Site conditions that should reasonably have been expected having regard to any applicable Order;

- (ii) any delay or estimated delay to the Repairs and Maintenance Works caused by the Latent Condition; and
 - (iii) any additional Direct costs incurred or to be incurred as a result of the encountering of a Latent Condition.
- (b) The Contractor is only entitled to Claim additional Direct costs associated with the Latent Condition, and the Contractor is not entitled to make any further Claim in relation to a Latent Condition.

11 DESIGN

11.1 Design

If the Contractor is to undertake any design as part of the Repairs and Maintenance Works, the Contractor must ensure its Design Documents and other Deliverables meet the requirements set out in this clause 11.

11.2 Design Obligation

If the Contractor is to undertake any design as part of the Repairs and Maintenance Works , the Contractor must ensure the design:

- (a) is fully and professionally completed without error, omission or defects;
- (b) complies with:
 - (i) the requirements of this Contract, or to the extent that the standard is not prescribed, a standard consistent with Good Industry Practice for designs of a nature similar to that required for the Repairs and Maintenance Works; and
 - (ii) any specifications set out within this Contract;
- (c) is fit for construction;
- (d) is fit for all purposes for which it might reasonably be used;
- (e) addresses all safety in design requirements as required in accordance with any Legislative Requirements and as more specifically set out in Orders; and
- (f) is fit for any purposes made known to the Contractor prior to the date of this Contract or reasonably inferred from the information provided.

11.3 Design Documents

The Contractor must provide Design Documents to PWC as set out in any applicable Order or as reasonably directed by PWC.

12 CONSTRUCTION

12.1 Construction

The Contractor must, in performing the Repairs and Maintenance Works:

- (a) use workmanship of a Good Industry Practice which is fit for the intended purpose of the Repairs and Maintenance Works; and
- (b) comply with the requirements of this Contract, and, to the extent they are not inconsistent with the Contract requirements, with all relevant standards of Standards Australia.

12.2 Responsibility for the Repairs and Maintenance Works

The Contractor is responsible for the care and protection of the whole of the Repairs and Maintenance Works, including for the security of the Site, from the commencement of the Repairs and Maintenance Works to Acceptance in accordance with clause 14.

13 TESTING

13.1 Contractor Testing

- (a) Where Item 14 provides that the Contractor is required to carry out Testing, the Contractor must perform tests to validate that the Repairs and Maintenance Works comply with the requirements of this Contract (**Tested Components**) including any tests required to be performed as set out in the Scope of Requirements, before delivery or provision of the Tested Components to PWC, unless such Testing is required by PWC to be done at the relevant Site following delivery. The Contractor must give reasonable notice to PWC prior to undertaking Testing and give PWC the opportunity to oversee the Testing required to be undertaken by the Contractor.
- (b) The Contractor must submit to PWC a written report setting out the results of the Tests, the compliance of the Tested Components with the requirements of this Contract and, where any Tested Components have failed the Tests, the extent and cause of the failure.
- (c) If, on reasonable grounds, PWC notifies the Contractor that PWC requires the Tests to be rerun, the Contractor must promptly modify, repair, amend, update or replace the Tested Components before retesting (or procuring the retesting by a nominated third party) and then submitting an updated report to PWC.

13.2 PWC's Testing

Without limiting the Contractor's obligations to carry out Testing under this Contract, PWC may undertake any of PWC's own testing, verification or other enquiries with respect to the Repairs and Maintenance Works, including performing PWC's own testing that is the same as or similar to the Testing provided for in clause 13.1.

14 ACCEPTANCE

- (a) PWC will Accept the Repairs and Maintenance Works or any parts of those works directed by Order by giving notice to the Contractor when:
 - (i) PWC is satisfied that all or such parts of the Repairs and Maintenance Works conform with the standards, specifications and requirements of this Contract (including the relevant Specifications);
 - (ii) clause 14(b)(i) applies;

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- (iii) the Contractor has met the Contractor's obligations under clauses 14(b)(ii) or 14(b)(iv); or
 - (iv) the Repairs and Maintenance Works have been corrected under clause 14(b)(v).
- (b) Without limiting any other right or remedy available to PWC, if PWC is not, in respect of any parts of the Repairs and Maintenance Works, satisfied that such parts comply with the requirements of this Contract (including PWC Standards and Specifications) after the passing of the relevant dates or timeframes for delivery or provision under this Contract, PWC may by written notice to the Contractor in respect of such parts of the Repairs and Maintenance Works:
- (i) waive the relevant requirement of this Contract (including the relevant Specifications) and the Contract Price will be equitably reduced by an amount determined by PWC acting reasonably to reflect the reduction in the value of the Repairs and Maintenance Works to PWC;
 - (ii) conditionally Accept such parts of the Repairs and Maintenance Works subject to the Contractor agreeing, at the Contractor's own expense, to deliver a workaround and to otherwise correct the failure to meet the requirements of this Contract (including the relevant Specifications) within an agreed period in a manner that is acceptable to PWC, provided that PWC reserves the right to give a further written notice under this clause 14(b) should there be any failure by the Contractor to meet any of the Contractor's obligations under this clause 14(b)(ii);
 - (iii) reject such parts of the Repairs and Maintenance Works and:
 - (A) remove such parts of the Repairs and Maintenance Works from the scope of this Contract and the Contract Price will be equitably reduced by an amount determined by PWC acting reasonably; or
 - (B) terminate this Contract in accordance with clause 34.3, and require the Contractor, at the Contractor's cost, to promptly collect any part or all of the Repairs and Maintenance Works (where applicable);
 - (iv) require the Contractor, at the Contractor's cost, to collect the Repairs and Maintenance Works (where applicable) and promptly correct the Repairs and Maintenance Works so that those works conform with the requirements of this Contract (including PWC Standards and Specifications), provided that PWC reserves the right to give a further written notice under this clause 14(b) should there be any failure by the Contractor to meet any of the Contractor's obligations under this clause 14(b)(iv); or
 - (v) correct, or have a third party correct, the Repairs and Maintenance Works and the Contractor must reimburse PWC for all Losses sustained, incurred or suffered by PWC in connection with the correction of the Repairs and Maintenance Works.
- (c) For the purposes of clause 14(b), PWC must:

- (i) act reasonably when determining whether the Repairs and Maintenance Works comply with the Contract; and
 - (ii) when exercising any rights in respect of the Repairs and Maintenance Works that do not comply with the Contract, ensure that the consequences of exercising such rights for the Contractor are proportionate to the nature of the non-compliance.
- (d) Acceptance of any Repairs and Maintenance Works under this clause 14 will not, in itself, constitute evidence that such Repairs and Maintenance Works comply with the relevant requirements of this Contract (including the relevant Specifications), and this clause 14 does not limit the Contractor's obligations or PWC's rights and remedies.

15 PAYMENT

15.1 Performance and Payment Obligation

- (a) The Contractor agrees to provide the Repairs and Maintenance Works in accordance with this Contract.
- (b) Subject to any right to set-off which PWC may have under this Contract, PWC agrees to pay the Contractor the Contract Price and any other Charges which are payable by PWC to the Contractor for the Repairs and Maintenance Works in accordance with this Contract.

15.2 Contract Price

The Contractor acknowledges and agrees that the Contract Price is inclusive of the Contractor's costs and expenses together with any taxes (including GST), duties, levies, licence fees or other similar amounts, connected with the provision of the Repairs and Maintenance Works and the performance of the Contractor's obligations under this Contract.

15.3 Cost changes at Contractor's risk

The Contractor must not claim any amount in addition to the Contract Price based on changes in labour, materials or other resourcing costs, exchange rate changes, changes in Law or any other changes to the costs incurred by the Contractor in connection with the inputs that it requires to supply the Repairs and Maintenance Works.

15.4 Request for Quotation

- (a) Quantities in a RFQ are estimated quantities only; and
- (b) If the actual quantity of an item to be performed by the Contractor in an RFQ is greater or less than the quantity shown in the RFQ Response, the Parties may seek an adjustment in accordance with clause 15.11.

15.5 Invoicing

- (a) The Contractor must invoice PWC the Contract Price:

- (i) for on-going Repairs and Maintenance Works in accordance with Item 19; and
 - (ii) within fourteen (14) days of Acceptance.
- (b) Invoices must:
 - (i) be sent copy of PWC's representative;
 - (ii) be set out in the format prescribed by PWC or in the form of a tax invoice;
 - (iii) include the full amount payable by PWC;
 - (iv) where applicable, reference the relevant PWC purchase order number;
 - (v) provide a description of any Unscheduled Repairs and Maintenance Works performed and a breakdown of the Charges invoiced for those Repairs and Maintenance Works;
 - (vi) attach all timesheets that are relevant to the Repairs and Maintenance Works;
 - (vii) attach any additional information required by PWC for invoice substantiation, including breakdowns by the Contractor's Personnel, the calculations used to determine the amounts invoiced and supporting documentation;
 - (viii) be issued in Australian dollars;
 - (ix) include the Contractor's bank account details to enable EFT payment transmission;
 - (x) unless otherwise specified in the relevant Order, be sent via email to accounts.pwc@powerwater.com.au; and
 - (xi) comply with the requirements of the GST Act.

15.6 Payment of invoices

Subject to the Terms and Conditions of this Contract and the Contractor's compliance with this Contract, PWC will pay the Contractor within 30 days of receiving an invoice that complies with clause 15.5.

15.7 Disputed invoices

- (a) If PWC disputes the correctness of any invoice (including disagreeing with any amount invoiced for any reason), then PWC may issue a notice of dispute to the Contractor within 28 days of receipt of the invoice and withhold payment of the disputed amount until the dispute is resolved.
- (b) PWC will pay any newly issued invoice from the Contractor for the undisputed amount.

- (c) If the Contractor disagrees with PWC's assessment, it may refer the matter for resolution under clause 33.

15.8 Payment is payment on account only

Payment of an invoice by PWC is payment on account only and does not constitute approval or Acceptance of the Repairs and Maintenance Works.

15.9 Overpayments

If either Party becomes aware that PWC has overpaid or has been overcharged (including due to an incorrect invoice, incorrectly rendered invoice or an advance payment exceeding the amount ultimately payable), then, without limiting any other obligation of the Contractor or right or remedy of PWC:

- (a) that Party will promptly notify the other Party after becoming aware;
- (b) PWC may elect to have the overpayment set off against any amount due or subsequently due from PWC to the Contractor; and
- (c) if PWC does not exercise PWC's rights under clause 15.9(b), the Contractor will, within 15 Business Days of the notice under clause 15.9(a), reimburse PWC the amount overpaid or overcharged (including any overcharged GST).

15.10 Set off

- (a) Any amount owed by the Contractor to PWC under this Contract or otherwise or any Loss sustained, incurred or suffered by PWC which, in the reasonable opinion of PWC, is owed by the Contractor to PWC under or in connection with this Contract, may be deducted or set off against amounts payable by PWC to the Contractor under this Contract or any other contract with the Contractor.
- (b) PWC will notify the Contractor if making a deduction or set off under clause 15.10(a) when paying the affected invoice.
- (c) Any deduction or set off will not prevent PWC from recovering the balance (if any) of the amount owed by the Contractor.

15.11 Adjustments

Adjustments for actual quantities

- (a) If PWC has included quantities for the Contractor to price in a RFQ and the actual quantity of an item of the works required to be performed by the Contractor is greater than 115% or less than 85% of the quantity shown in the RFQ, if the Contractor accepted a rate for the item, either Party may give a Notice to the other Party that they consider the rate to be applied to the actual quantities should be varied having regard to the actual quantities, and PWC's Representative may issue a direction in respect of the reasonable applicable rate and any such direction will be valued in accordance with clause 9.8(d)(iv).
- (b) Subject to clause 15.11(c), the Contractor is not entitled to make any Claim against PWC if the items of work or quantities are incorrect, including where this is:

- (i) an incorrect quantity;
 - (ii) an item which should not have been included; or
 - (iii) an item which was omitted but should have been included.
- (c) Clauses 15.11(a) and 15.11(b) do not apply to the valuation of Variations directed by PWC's Representative under clause 9.8 of this Contract.

CPI Adjustment

- (d) Where Item 15 provides that Charges will be adjusted, the Charges stated in Item 15 are subject to adjustment for changes in the Applicable Index on each Date of Adjustment in accordance with the following formula:

$$\mathbf{NC = C + (C \times F)}$$

Where:

- (i) **NC** is the Charges payable in relation to the Supplies applicable for the year following the Date of Adjustment;
- (ii) **C** is the Charges payable in relation to the Supplies applicable immediately before the Date of Adjustment; and
- (iii) **F** is the adjustment factor calculated as follows:
 - (A) in the case of the first adjustment, the percentage difference between the Applicable Index for the quarter immediately before the Date of Adjustment and the Applicable Index for the corresponding quarter one year earlier; and
 - (B) in the case of each adjustment subsequent to the first adjustment, the percentage difference between the Applicable Index for the quarter immediately before the Date of Adjustment and the Applicable Index for the quarter immediately before the previous Date of Adjustment.

15.12 Interest

- (a) The parties will pay interest calculated daily on any:
- (i) amount which has been set out as payable by PWC's Representative under clause 15.6, but which is not paid by the party within the time required by this Contract (from the date on which the relevant amount was due for payment); and
 - (ii) damages or other liabilities of the Parties to each other (excluding any agreed damages agreed between the Parties in writing) arising under this Contract.
- (b) Interest must be claimed by the Parties within 20 Business Days after the date of payment by the other Party and such Claim must constitute a tax invoice in accordance with clause 15.5.

15.13 GST

- (a) Unless otherwise indicated, the consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract is inclusive of GST, where GST is calculated using the GST Rate at the Commencement Date.
- (b) The Party making a Supply must provide the Recipient with a tax invoice and/or adjustment note in relation to the Supply prior to an amount being paid by the Recipient under this Contract and must do all things reasonably necessary to enable and assist the Recipient to claim and obtain any Input Tax Credit available to it in respect of a Supply.
- (c) Where the GST Rate is changed after the Commencement Date, then any amount of consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract which:
 - (i) was specified in this Contract before the change to the GST Rate was announced; and
 - (ii) has not been invoiced at the time such change takes effect,
 - (iii) will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate.
- (d) If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an Input Tax Credit or otherwise.
- (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, and if GST is not already included in the amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream plus GST.
- (f) If an Adjustment Event arises in respect of a Supply made by a supplying Party, the GST amount payable by the receiving Party will be recalculated to reflect the Adjustment Event and a payment will be made by the receiving Party to the supplying Party, or by the supplying Party to the receiving Party, as the case requires.

16 PERSONNEL**16.1 Personnel generally**

- (a) The Contractor must ensure that Contractor Personnel have the relevant training, including any Site specific training required by PWC, qualifications, skills and experience necessary to provide the works.
- (b) The Contractor must ensure that it properly supervises all Contractor Personnel.
- (c) PWC may, acting reasonably, require in writing that the Contractor ceases to use certain Contractor Personnel in the performance of the Contractor's obligations under this Contract and the Contractor must:

- (i) immediately (or within such other time as agreed between the parties) cease to use and replace any such Personnel with replacements of suitable ability and qualifications; and
 - (ii) ensure that any such Personnel are not redeployed in connection with this Contract without PWC's prior written approval.
- (d) PWC does not have the right to require the termination of any person's employment or contract with the Contractor or any Subcontractor. Clause 16.1(c) is only intended to give PWC the right to require that the Contractor discontinues using a particular person in the performance of the Contractor's obligations under this Contract.
- (e) The Contractor must ensure that the Contractor Personnel are aware of and comply with the Contractor's obligations under this Contract including the Contractor's obligations in respect of the Confidential Information of PWC, Personal Information and PWC Data, and the Contractor will be liable for the acts and omissions of such Personnel as if they were the acts or omissions of the Contractor.
- (f) If PWC requests, the Contractor must at its own cost ensure that Contractor Personnel involved in the performance of this Contract (including, in particular, the Key Personnel):
 - (i) enter into a legally binding written confidentiality agreement or deed in favour of PWC and in a form acceptable to PWC; and
 - (ii) undergo any necessary background verification and security checks specified in writing by PWC from time to time.

16.2 Key Personnel

The Contractor must not transfer, reassign, reduce or change the involvement in the performance of the Contractor's obligations under this Contract or otherwise redeploy any Key Personnel without PWC's prior written consent (which consent will not be unreasonably withheld).

17 COMPLIANCE

17.1 Compliance with PWC Policies

- (a) The Contractor must comply at all times, including while on-site at any PWC Sites, with PWC Policies. PWC will provide the Contractor with reasonable prior notice of any changes to any such PWC Policies.
- (b) To the extent of any conflict between PWC Policies and the Contractor's own policies, PWC Policies will prevail except to the extent PWC agrees in writing to the Contractor's own policies prevailing over PWC Policies.

17.2 PWC Standards and Specifications

- (a) The Contractor must ensure that the Repairs and Maintenance Works meet PWC Standards and Specifications, and the Contractor must comply with PWC Standards and Specifications in the performance of the Contractor's obligations under this Contract.

- (b) PWC may amend or revise PWC Standards and Specifications or adopt new standards and specifications by written notice to the Contractor from time to time after the Commencement Date. The Contractor must implement and comply with any amended, revised or new PWC Standards and Specifications, and the Contractor may Claim as a Variation the additional costs incurred executing the Repairs and Maintenance Works that are material, agreed to by PWC in advance of being incurred and fully substantiated by the Contractor to the reasonable satisfaction of PWC.

17.3 Keeping of Records

- (a) The Contractor must make and keep, and must ensure all Subcontractors of the Contractor make and keep, accurate financial records and other information relevant to the performance of the Contractor's obligations under this Contract, whether in writing or stored on any other medium, including:
 - (i) records of Contractor Personnel qualifications and training;
 - (ii) records as to progress of the provision of the Repairs and Maintenance Works;
 - (iii) timesheets;
 - (iv) all reports and opinions obtained by the Contractor for whatever reason and all necessary supporting documents;
 - (v) invoices; and
 - (vi) records and related financial statements and such records and information as are required to comply with any applicable Law.
- (b) The Contractor must give PWC access to and copies of the records and information required under clause 17.3(a) (excluding information relating to profit margins, or that is personal information, commercial in confidence or subject to legal privilege) within a reasonable period of a written request from PWC.

17.4 Audit Rights

- (a) PWC may conduct audits of the performance of the Contractor's obligations under this Contract.
- (b) Audits will be conducted no more than once in any 12 month period unless a second or subsequent audit during that period is required to be conducted:
 - (i) to investigate specific concerns of PWC in connection with the Contractor's compliance with the Contractor's obligations under this Contract;
 - (ii) for compliance with the Law;
 - (iii) at the request of the internal audit division of PWC in the course of conducting a broader audit activity;

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- (iv) for the purpose of verifying the accuracy of any report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to the provision of the Repairs and Maintenance Works;
 - (v) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that PWC cannot reasonably achieve that purpose without conducting an audit; or
 - (vi) at the request or direction of the Auditor-General.
- (c) In order for PWC to exercise any of PWC's audit rights under this clause 17.4, the Contractor must give PWC through the PWC Audit Representative full access at all reasonable times and on reasonable notice to (without limitation):
- (i) any Site (that is not a PWC Site) from which the Contractor's obligations under this Contract are or will be performed;
 - (ii) all Subcontractors and Contractor Personnel; and
 - (iii) all relevant equipment, software, data, records, accounts, documents, reports, records and systems (whether prepared by the Contractor or not) relating to the Contractor's obligations under this Contract.
- (d) The Contractor must do all things necessary to comply with the requirements of the PWC Audit Representative in the exercise of PWC's rights under this clause 17.4.
- (e) PWC is liable for PWC's own costs of any audit or inspection conducted pursuant to this clause 17.4, except where the Contractor is found to be in breach of this Contract, in which case the Contractor must, within 5 Business Days of a request by PWC, reimburse PWC for PWC's costs in connection with such audit.
- (f) The Contractor must meet with PWC to discuss in good faith any recommendations made by the PWC Audit Representative following the completion of an audit. The Contractor will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Contractor's obligations under this Contract as directed by PWC. The cost of implementing those recommendations will be borne by the Contractor.
- (g) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting PWC the same rights as specified in this clause 17.4.
- (h) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General. The rights of PWC under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General.

18 PWC INFRASTRUCTURE, RESOURCES AND SITES

18.1 PWC Infrastructure

The Contractor must:

- (a) not connect any part of the Works into any PWC Infrastructure without the prior written approval of PWC;
- (b) only access PWC Infrastructure to the extent necessary to perform the Contractor's obligations under this Contract; and
- (c) not disclose to any other person any passwords or other access mechanisms supplied by PWC.

18.2 PWC Resources

- (a) To assist the Contractor to perform the Contractor's obligations under this Contract, PWC will make PWC Resources available to the Contractor at such times as agreed by the Parties.
- (b) Without limiting any other provision of this Contract, the Contractor must:
 - (i) not use PWC Resources for any purpose other than to perform the Contractor's obligations under this Contract;
 - (ii) comply with any PWC policies or procedures and any directions given by PWC, acting reasonably, in connection with the use or return of any PWC Resources;
 - (iii) ensure that all PWC Resources in the custody or control of the Contractor are protected at all times from the elements, from unauthorised access or use by any person and from misuse, damage or destruction by any person; and
 - (iv) promptly inform PWC of any loss, destruction or damage to any PWC Resources, and in any event within two business days.
- (c) The Contractor acknowledges that PWC Resources remain the property of PWC and this Contract does not affect the ownership of PWC Resources.

18.3 Access to PWC Sites

- (a) Unless otherwise directed or access is permitted by way of an Order, the Contractor must obtain permission from PWC prior to accessing any PWC Sites.
- (b) If PWC, acting reasonably, advises the Contractor that a date or time of entry onto PWC Sites is inconvenient to PWC (for example, for operational reasons), the Contractor must not enter onto PWC Sites on that date or at that time (as applicable) but on an alternative date and/or time as advised by PWC.
- (c) PWC:
 - (i) is not obliged to provide the Contractor with sole access to PWC Sites;
 - (ii) the Contractor's access to those parts of the Site reasonably necessary for the Contractor to comply with its obligations under this Contract, may be:
 - (A) restricted for a limited period of time;

- (B) non-continuous; or
 - (C) hindered by other works, including the works of other contractors;
 - (iii) is not obliged to carry out any work or provide any facilities to the Contractor (other than as stated in this Contract); and
 - (iv) may engage other contractors to work upon or in the vicinity of PWC Sites at the same time as the Contractor.
- (d) Once access to the Site is granted by PWC, the Contractor agrees to immediately commence carrying out the Repairs and Maintenance Works and to diligently and regularly continue to perform its obligations under this Contract.

18.4 Contractor's obligations with respect to PWC Sites

- (a) The Contractor must only access PWC Sites during Normal Working Hours.
- (b) The Contractor must ensure that all Contractor Personnel requiring access to PWC Sites have completed the necessary site induction and complied with all PWC's requirements for access to PWC Sites before accessing them.
- (c) The Contractor must:
 - (i) ensure that activities of the Contractor on PWC Sites are carried on at all times in a safe manner, including ensuring Contractor Personnel wear appropriate protective equipment, and follow such directions concerning safety as PWC may issue;
 - (ii) comply with WHS Law as set out in clause 20;
 - (iii) provide such instruction and supervision to the Contractor Personnel as is necessary to ensure safe conduct of the activities on PWC Sites;
 - (iv) comply with any PWC rules and requirements in respect of PWC Sites with regard to conduct, behaviour, safety, secrecy and security;
 - (v) comply with all directions given by PWC in respect of PWC Sites;
 - (vi) remove any refuse or rubbish created by the Contractor at PWC Sites;
 - (vii) as required by PWC, make good any damage to PWC Sites or any property on PWC Sites caused by the Contractor or Contractor Personnel, to the satisfaction of PWC; and
 - (viii) give notice to PWC as soon as reasonably practicable in the case of an emergency, accident or circumstance likely to be or cause a danger, risk or hazard to PWC Sites or any person or property on or in the vicinity of PWC Sites which comes to the attention of the Contractor or any Contractor Personnel, whether caused by the Contractor or otherwise.
- (d) The Contractor must not:

- (i) use PWC Sites other than to perform the Contractor's obligations under this Contract;
- (ii) inconvenience PWC or other users of PWC Sites;
- (iii) do anything to adversely impact the cleanliness, tidiness, safety or security at PWC Sites;
- (iv) cause disruption to or interference with PWC or third party users of PWC Sites;
- (v) do or permit to be done anything which might be or become unlawful, immoral or cause annoyance, nuisance or damage to other users of PWC Sites;
- (vi) cause damage to PWC Sites or any property on PWC Sites; and
- (vii) do anything that will or might constitute a breach of any Law affecting PWC Sites or that will or might wholly or in part vitiate any insurance effected in respect of PWC Sites from time to time.

18.5 PWC Sites information

- (a) PWC does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information made available to the Contractor in connection with PWC Sites, including in relation to the existing conditions at PWC Sites or any area in the vicinity of PWC Sites.
- (b) The Contractor acknowledges that the information or data described in clause 18.5(a) does not form part of this Contract except to the extent expressly stated in this Contract.

19 USE OF HAZARDOUS SUBSTANCES

The Contractor must notify as applicable the Officer-In-Charge or PWC's Representative of any hazardous substances or dangerous goods to be brought onto the Site and must ensure that it complies with all Statutory Requirements applicable to the use, transportation, storage and disposal of any hazardous, dangerous, waste or deleterious substances on or in the vicinity of the Site or in respect of the Repairs and Maintenance Works.

20 WORK HEALTH AND SAFETY

20.1 Work Health and Safety Plan

- (a) Prior to the Commencement Date, the Contractor must, if a Work Health and Safety Plan is required under the Scope of Requirements:
 - (i) prepare a Work Health and Safety Plan applicable to the nature of works being undertaken; and
 - (ii) provide the Work Health and Safety Plan to PWC's Representative.

- (b) The Contractor must, and must ensure its Personnel engaged in the performance of the Repairs and Maintenance Works, comply with:
 - (i) the Work Health and Safety Plan;
 - (ii) any directions on safety issued by the Principal or the PWC's Representative; and
 - (iii) any directions on safety issued by any authorities or otherwise required by any Statutory Requirement or required under this Contract.

20.2 Work Health and Safety

The Contractor must, when undertaking the Repairs and Maintenance Works:

- (a) comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the Repairs and Maintenance Works, comply with all WH&S Legislation and other requirements of this Contract concerning work health and safety management;
- (b) comply with all reasonable directions of the PWC's Representative given following any potential perceived breach of any WHS Legislation concerning work health and safety management;
- (c) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site and the Repairs and Maintenance Works;
- (d) ensure that all Repairs and Maintenance Works are executed in a manner that ensures the health and safety of persons present on the Site;
- (e) provide PWC's Representative with a written report, all work health and safety matters, or any other relevant matters as PWC's Representative may require from time to time, including a summary of the Contractor's compliance with the WH&S Legislation; and
- (f) on request by PWC's Representative or required by the WH&S Legislation, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of PWC's Representative before the Contractor or any subcontractor commences such work.

21 SUSTAINABLE SUPPLY CHAIN MANAGEMENT

21.1 Responsible sourcing

- (a) All of PWC's contractors play a vital part in PWC's sustainability performance. As such, the Contractor must comply with all environmental, human rights, labour, social, governance and other sustainability standards of conduct set by applicable Laws and key international standards which are applicable in those jurisdictions where the Contractor sources, produces or provides the Repairs and Maintenance Works or any part of them.

- (b) Without limiting clause 21.1, if PWC develops a responsible sourcing code or similar, the Contractor will cooperate with PWC in relation to such code, including:
 - (i) responding fully and accurately to any relevant questionnaire; and
 - (ii) using reasonable efforts to improve any aspects of non-compliance with such code.

21.2 Modern Slavery

- (a) Without limiting clause 21.1, the Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the Contractor's operations and in its supply chains used in the provision of the Repairs and Maintenance Works.
- (b) If at any time the Contractor becomes aware of Modern Slavery practices in its operations and/or supply chains used in the performance of the Contract, the Contractor must as soon as reasonably practicable notify PWC and take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- (c) The Contractor must include in its agreements with Subcontractors obligations on its Subcontractors to the effect of this clause 21.2.

22 ENVIRONMENT

22.1 Obligations of Contractor in respect of the environment

- (a) The Contractor must, in connection with the Contractor's obligations under this Contract:
 - (i) comply with all Environmental Laws in force from time to time;
 - (ii) not cause or allow any Site to be the subject of any Contaminant or Environmental Incident; and
 - (iii) comply with any specific requirements with respect to the environment as provided for in the Scope of Requirements.
- (b) The Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in a breach of Environmental Laws.
- (c) Without limiting clause 22.1(b), in conducting the Contractor's activities on a Site, the Contractor must not do or permit to be done or omit to do any act or thing in connection with the Contractor's obligations under this Contract which would result or be likely to result in PWC breaching any Environmental Laws.

22.2 Environmental Incidents

- (a) If the Contractor becomes aware that an Environmental Incident has occurred or may occur on, over or under the Site as a result of or in connection with the Contractor's acts, omissions or obligations under this Contract, the Contractor must immediately notify PWC of the Environmental Incident that has occurred or may occur.

- (b) The Contractor must comply with all directions by PWC in respect of any Environmental Incident occurring on, over or under the Site as a result of or in connection with the Contractor's acts, omissions or obligations under this Contract.

22.3 Contractor Personnel

The Contractor must ensure that all Contractor Personnel required to enter onto the Site are inducted in all relevant environmental, safety and emergency policies and procedures applying to the Site. This obligation does not in any way derogate from the Contractor's own obligations at Law or impose any obligation on PWC to supervise or take responsibility for Contractor Personnel.

22.4 Indemnity

The Contractor must indemnify PWC against all Loss sustained, incurred or suffered by PWC as a result of or in connection with any breach of the Contractor's obligations contained in this clause 22, provided always that the Contractor's liability to indemnify PWC will be reduced proportionately to the extent that an act or omission of PWC or PWC Personnel caused or contributed to the Loss.

23 PRIVACY

- (a) If, as a result of this Contract, the Contractor is able to access any Personal Information that is collected, handled or held by or on behalf of PWC, the Contractor must comply with:
 - (i) the Privacy Act 1988 (Cth);
 - (ii) the Information Privacy Principles under the *Information Act* (NT);
 - (iii) all other applicable Laws relating to privacy that may be applicable during the Term;
 - (iv) any privacy code or policy which has been adopted by PWC, provided that a copy of the adopted privacy code or policy is provided a reasonable period in advance of the Contractor being required to start complying with that privacy code or policy;
 - (v) any code of practice or authorisation issued under any of the above; and
 - (vi) such other Laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information,to the extent bound by the above and, if not bound by any of the above, as if the Contractor were bound in the same way and to the same extent as PWC is bound in respect of such Personal Information;
- (b) comply with any directions of PWC from time to time relating to privacy that are consistent with the laws, codes and policies referred to in clause 23(a);
- (c) not use any such Personal Information for any purpose, except where and to the extent expressly authorised by PWC in writing, in which case the Contractor must use such Personal Information pursuant to this Contract;

- (d) restrict access to any such Personal Information to Contractor Personnel and Subcontractors who need to access the Personal Information to fulfil the Contractor's obligations under this Contract, and then only to the extent expressly authorised by PWC in writing;
- (e) promptly notify PWC in writing of any request made for access to any such Personal Information by an individual to whom that information relates; and
- (f) co-operate with PWC in the resolution of any complaint under, or relating to, any of the Laws, codes or policies referred to in clause 23(a).

24 SECURITY

- (a) The Contractor must comply with all rules, policies, guidelines, processes and procedures of PWC in relation to security (whether existing at the Commencement Date or introduced from time to time) notified in writing by PWC.
- (b) The Contractor must establish, maintain and apply security procedures which ensure that Contractor Personnel are appropriately vetted and meet the requirements of clause 24(a).
- (c) The Contractor must comply with any specific security requirements in the performance of the Contractor's obligations under this Contract as provided for in the Scope of Requirements.
- (d) The Contractor must promptly provide PWC with written notice of any security weaknesses or incidents:
 - (i) that have impacted or may impact the Repairs and Maintenance Works; and
 - (ii) in connection with the performance of the Contractor's obligations under this Contract.
- (e) Within 5 Business Days of giving any notice under clause 24(d), the Contractor must provide PWC with a detailed written report setting out the corrective actions planned to address the relevant weaknesses or incidents and to prevent similar weaknesses or incidents.

25 CONFIDENTIALITY

- (a) Subject to the provisions of clauses 25(b) and 25(c), each Party must:
 - (i) treat as strictly confidential and only use the Confidential Information of the other Party solely for the purposes contemplated by this Contract;
 - (ii) not, without the prior written consent of the Party to whom the Confidential Information relates (which may be withheld in that Party's sole discretion), publish, use or otherwise disclose to any person the Confidential Information of the other Party, except for the purposes contemplated by this Contract;
 - (iii) maintain adequate security for the Confidential Information of the other Party while in its possession or control, including protecting the same against

any use, disclosure, access, damage or destruction which is inconsistent with the Terms and Conditions of this Contract; and

- (iv) not make use of the Confidential Information of the other Party to the reputational, commercial, financial or competitive disadvantage of the other Party.
- (b) Each Party may disclose Confidential Information which would otherwise be subject to clause 25(a) if, but only to the extent, it can demonstrate that:
- (i) such disclosure is required by applicable Law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
 - (ii) the Confidential Information was lawfully in its possession prior to its disclosure by the other Party (as evidenced by written records);
 - (iii) the Confidential Information was independently developed by that Party; or
 - (iv) the Confidential Information has come into the public domain other than as a result of a breach of this Contract or any other obligation of confidence,
 - (v) provided that any such disclosure must not be made without prior consultation with the Party the Confidential Information relates to and, in the case of disclosures under clause 25(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on PWC under this clause 25 will not be taken to have been breached to the extent that Confidential Information is communicated or disclosed by PWC:
- (i) to any person for the purposes of PWC's business or operations or for improving the provision of power, water or sewerage services anywhere in Australia;
 - (ii) to the Northern Territory of Australia;
 - (iii) to a Minister, Cabinet or the Legislative Assembly, of the Northern Territory of Australia;
 - (iv) to a committee of the Legislative Assembly of the Northern Territory of Australia;
 - (v) to any public-sector agency (whether of the Northern Territory of Australia, a State, other Territory or the Commonwealth) where required to meet any reporting obligations on PWC or for any other government business or initiative relating to or in connection with the business or operations of PWC, provided that as far as reasonably practicable information that is identifiable as related to this Contract or the Contractor will not be made public by PWC; or
 - (vi) in accordance with any licence rights granted under this Contract.

- (d) Each Party may for the purposes contemplated by this Contract, disclose the Confidential Information of the other Party to its Personnel and its professional advisers, auditors, bankers and insurers, provided that such persons have first been directed by the disclosing Party to keep it confidential.
- (e) A Party must promptly give notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the Confidential Information of the other Party and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

26 INTELLECTUAL PROPERTY

26.1 Contract Material

- (a) Where Item 18 provides that Intellectual Property Rights in Contract Material will be owned by PWC, all Intellectual Property Rights in the Contract Material vest in PWC with effect from the date of creation and the Contractor irrevocably and unconditionally assigns to PWC, including by way of an assignment of future Intellectual Property Rights, all of the Intellectual Property Rights in Contract Material on creation.
- (b) Where Item 18 provides that Intellectual Property Rights in Contract Material will be licensed to PWC (and owned by the Contractor), all Intellectual Property Rights in the Contract Material that are created by the Contractor will remain vested in the Contractor.
- (c) On expiry or termination of this Contract or otherwise on request, the Contractor must promptly provide PWC with complete copies of the Contract Material.

26.2 Existing Material

- (a) This clause 26 does not affect the ownership of:
 - (i) PWC's or its licensors' Intellectual Property Rights in any PWC IPR; or
 - (ii) the Contractor's or its licensors' Intellectual Property Rights in any Contractor IPR.

26.3 Licences

- (a) The Contractor grants to, or must obtain for, PWC a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence (including the right to sub-license) to use, copy, modify, reproduce, publish, adapt, distribute, communicate, and create derivative works from, the Contractor IPR to the extent required for PWC to receive the full benefit of the works.
- (b) PWC grants the Contractor a non-exclusive, non-transferable and royalty-free licence for the Term to use PWC IPR solely for the purpose of performing the Contractor's obligations under this Contract.

-
- (c) The Contractor must comply with any directions of, or conditions imposed by, PWC (including conditions imposed on PWC by a third-party owner or licensor of PWC IPR) in relation to PWC IPR.

26.4 Third Party Material

Before using any Third Party Material under this Contract, the Contractor must obtain all necessary copyright and other Intellectual Property Right permissions required for the use of such Third Party Material and the granting of any licences under this Contract.

26.5 Moral Rights

To the extent permitted by applicable Law, the Contractor must ensure that any individual that contributed to the works:

- (a) unconditionally and irrevocably consents to any act or omission that would otherwise infringe any Moral Rights in relation to the works, whether occurring before or after a consent is given; and
- (b) unconditionally and irrevocably waives all Moral Rights in relation to the works, for the benefit of PWC and PWC Personnel, customers and other Contractors.

27 PUBLICITY

27.1 Public statements

The Contractor must not make any public statements, including issuing any media release, in connection with this Contract without the prior written consent of PWC.

27.2 Reputation

- (a) The Contractor must not do or omit to do anything which may:
 - (i) damage, bring into disrepute or ridicule PWC's name, messages or reputation; or
 - (ii) attract public or media attention which may be prejudicial or otherwise detrimental to PWC's brand, messages, reputation or interests.

27.3 PWC name

The Contractor must not use PWC's name in any of the Contractor's advertising, marketing, promotional or other similar material without the prior written consent of PWC.

28 INSURANCE

28.1 Insurance Coverage

- (a) If the Contractor is to undertake any Services and design as part of the Repairs and Maintenance Works, the Contractor must obtain professional indemnity insurance to the amount specified in 20

- (b) The Contractor must obtain, pay for and maintain in full force and effect the Insurances throughout the Term (and in the case of professional indemnity insurance, throughout the Term and for 7 years after the Term).

28.2 Evidence of Insurance Coverage

If requested in writing by PWC, the Contractor must, within 5 Business Days of such request, provide PWC with copies of the certificates of currency confirming that all the Insurance policies required by this Contract are current and that the Insurance has the required and appropriate scope and limits of cover. The Insurances must not contain any exclusionary provisions which apply to the Repairs and Maintenance Works being provided or to PWC or its operations.

28.3 PWC Entitlement

- (a) Without limiting any other right or remedy available to PWC, PWC is not obliged to make any payments due under this Contract until the Contractor has provided copies of the certificates of currency to PWC required to be provided under clause 28.2.

- (b) If the Contractor fails to:

- (i) effect insurance in accordance with clause 28.1; or
- (ii) provide copies of the certificates of currency to PWC in accordance with clause 28.2 upon request,

then the Contractor must not commence or must cease supply, provision or performance of the Repairs and Maintenance Works under this Contract.

- (c) If the Contractor does not remedy a breach of clause 28.3(b) within 5 Business Days of a notice in writing from PWC requiring it to do so, PWC may, without limiting any other right or remedy available to PWC:

- (i) effect the insurance and the cost will be a debt due from the Contractor to PWC, and the Contractor must promptly reimburse PWC on demand; or
- (ii) terminate this Contract.

28.4 Insurance does not affect obligations

The effecting of insurance does not limit the liabilities or obligations of the Contractor under the other provisions of this Contract.

29 WARRANTIES

29.1 Mutual Warranties

Each Party represents, warrants and undertakes to the other Party that:

- (a) it is validly existing under the Laws of the place of its incorporation or establishment and has the power and authority to carry on its business as that business is now being conducted;

- (b) it has the power, capacity and authority to enter into and observe its obligations under this Contract;
- (c) its representative has the authority to provide such consents and approvals as are required for the purposes of this Contract and to take decisions, exercise rights and issue instructions and directions as necessary for the purposes of this Contract, on behalf of that Party; and
- (d) this Contract and the obligations created by this Contract are legal, valid and binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any other agreement or any judgment or court order to which it is bound.

29.2 Contractor Warranties

- (a) The Contractor represents, warrants and undertakes to PWC that:
 - (i) where the Contractor is a company, the Contractor is incorporated under the *Corporations Act 2001* (Cth) and registered for GST pursuant to the GST Act;
 - (ii) there is no proceeding pending or threatened, no conflict of interest, or any other event, matter, occurrence or circumstance which to the Contractor's knowledge challenges or may have a material adverse impact on this Contract or the ability of the Contractor to perform the Contractor's obligations under this Contract (and the Contractor must promptly inform PWC of any such proceeding, conflict, event, matter, occurrence or circumstance that occurs during the Term);
 - (iii) as at the Commencement Date, it is not suffering and has not suffered an Insolvency Event;
 - (iv) except for the PWC Resources, the Contractor does not require any material action by, or material deliverables from, PWC in order to fully perform the Contractor's obligations under this Contract;
 - (v) all information which it provides to PWC, whether prior to, on or after the Commencement Date, is true and correct in every respect and is not misleading or deceptive;
 - (vi) it has and will maintain all approvals, licences, consents and permissions, including from any regulator, necessary for the performance of the Contractor's obligations under this Contract;
 - (vii) the Repairs and Maintenance Works (including any Deliverables) will:
 - (A) provide the functions and meet the standards, specifications and requirements set out in this Contract (and where not fully detailed, the functional and performance specifications set out or referred to in the Contractor's (or the original manufacturer's) standard documentation for such works);

- (B) subject to exercise of the standard of care specified in clause 4.2(a) be fit for the purposes set out in or reasonably ascertainable from this Contract;
 - (C) be free from Defects; and
 - (D) be new and unused by any person and of merchantable and satisfactory quality;
- (viii) it is entitled to, and has the right and power to, provide the works to PWC;
 - (ix) unless expressly stated otherwise in the relevant Order, at the time of delivery to PWC, the works are legally and beneficially owned by the Contractor;
 - (x) any use, possession or receipt of the works in accordance with this Contract will not infringe the Intellectual Property Rights or other rights of any third party; and
 - (xi) it will provide Documentation in English that is complete, accurate, suitable and sufficiently comprehensive so as to enable PWC to make full and proper use of and to properly maintain the Goods.

29.3 Trustee warranty

If the Contractor has entered into this Contract as trustee of a trust (the **Trust**), the Contractor:

- (a) enters into this Contract personally and in its capacity as trustee;
- (b) warrants that:
 - (i) the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettlement the Trust, and no date or event has occurred for the vesting of the assets of the Trust;
 - (ii) it is the only trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Contractor under this Contract;
 - (iii) the trust deed of the Trust discloses all of the terms of the Trust;
 - (iv) it has power under the trust deed of the Trust to enter into and observe its obligations under this Contract and has formed the view that it is prudent to enter into this Contract;
 - (v) it has in full force and effect the authorisations necessary to enter into this Contract, perform obligations under this Contract and allow this Contract to be enforced;
 - (vi) it is not in material default under the trust deed of the Trust and is not aware of any action proposed to terminate the Trust;

- (vii) the entry into and the performance of this Contract is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;
 - (viii) it has a right to be indemnified fully out of the assets of the Trust concerning all of the obligations and liabilities incurred by it under this Contract, the assets of the Trust are sufficient to satisfy that right in full, and it has not released or disposed of its equitable lien over the assets of the Trust; and
 - (ix) it has disclosed to PWC full particulars of the Trust and of any other trust or fiduciary relationship affecting the assets of the Trust, and has given PWC a complete, up to date copy of the Trust Deed;
- (c) makes the warranties in clause 29.3(b) on the Commencement Date and on the last Business Day of each month after that date; and
- (d) must give PWC promptly on written request:
- (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trust; or
 - (ii) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust and the trustee of the Trust.

29.4 Manufacturer warranties

The Contractor must take all reasonable steps (including as may be requested in writing by PWC) to ensure that PWC obtains the full benefit of any additional warranties that may be provided by the manufacturer or Contractor of any Goods provided by the Contractor under this Contract. The Contractor will not do, or omit to do, anything that will or might jeopardise or affect PWC's entitlements under any such warranties.

29.5 PPS Act

- (a) The Contractor acknowledges and agrees that:
- (i) if and to the extent that the PWC at any time forms a belief on reasonable grounds that PWC is, or will become, a secured party arising out of or in connection with this Contract, the Principal may at the Contractor's expense take all steps that PWC considers advisable to:
 - (A) perfect, protect, record, register, amend or remove the registration of, PWC's security interest in any relevant personal property that is the subject of this security interest (Relevant Personal Property); and
 - (B) better secure PWC's position in respect of Relevant Personal Property under the PPS Act;
 - (ii) it will do all things reasonably necessary to assist PWC to take the steps described in clause 29.5(a)(i);
 - (iii) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change

statement relating to any security interests of PWC in Relevant Personal Property;

- (iv) if, and only if, the Principal is or becomes a secured Party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a security interest in Relevant Personal Property, the Contractor and PWC agree that, in accordance with section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those security interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, section 121(4), section 125, section 129, section 130, section 132(3)(d), section 132(4), section 142 and section 143;
 - (v) subject to section 275(7) of the PPS Act, it will not disclose the contents of this Contract, the amount or performance obligation secured by PWC 's security interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPS Act in accordance with section 275(4) of the PPS Act;
 - (vi) it must immediately notify PWC if it becomes aware of any person other than PWC taking steps to register, or registering, a financing change statement in relation to Relevant Personal Property; and
 - (vii) it must arrange for the removal or cessation of any registration of any security interest that affects the priority of PWC 's security interest in Relevant Personal Property.
- (b) For the purposes of this clause 29.5, "financing statement", "financing change statement", "personal property", "registration", "secured party", "security interest" and "verification statement" each have the meaning given to those terms in the PPS Act.

29.6 Reliance

The Contractor acknowledges that PWC has entered into this Contract relying on the Contractor's representations that the Contractor possesses the necessary skill, authority, experience and ability to provide the Repairs and Maintenance Works.

30 RECTIFICATION OF DEFECTS

30.1 Defect Rectification Period

- (a) If any Defect in any Repairs and Maintenance Works (including any breach of the warranties set out in clause 29 or of the Contractor's other obligations under this Contract in relation to the Repairs and Maintenance Works) arises within the Defect Rectification Period then (notwithstanding the possible expiry of the Term) PWC may, acting reasonably, and without limiting PWC's other rights or remedies:
 - (i) by notice to the Contractor and at the Contractor's own expense, require the Contractor to repair or replace the Goods and/or resupply or rectify the Repairs and Maintenance Works within a reasonable time period specified in the notice (which period must not be less than 5 Business Days after notice);

- (ii) if the Contractor fails to repair or replace the Goods and/or resupply or rectify the Repairs and Maintenance Works within the time period specified in a notice given under clause 30.1(a)(i), have the Goods repaired or replaced by a third party and/or have the Repairs and Maintenance Works resupplied or rectified by a third party, at the Contractor's cost; or
 - (iii) whether or not PWC has previously required the Contractor to repair or replace the Goods and/or resupply or rectify the works, accept the Contractor's breach and require the repayment of the relevant Contract Price or Charges.
- (b) If required by PWC, any repaired or replaced Repairs and Maintenance Works will be subject to testing in accordance with clause 12.
 - (c) An additional Defect Rectification Period, of the same duration as the original Defect Rectification Period, applies in respect of any Defect corrected by the Contractor under this clause 30.
 - (d) Without limitation, any further Defect which is introduced by the Contractor's correction of an initial Defect must be corrected in accordance with clause 30.1(a).

31 LIABILITY

31.1 Care and Protection of Property and Persons

- (a) The Contractor must provide, erect and maintain all temporary works including barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and anything else required by the relevant authorities or necessary for the protection of the Repairs and Maintenance Works, people or property or for the safety and convenience of the public and others including people who may use or occupy the Site and must remove such temporary works when no longer required.
- (b) The Contractor must avoid interference with, or damage to property on or adjacent to the Site and must provide temporary protection for and must repair and reinstate all damage caused thereto by the Contractor, its employees, agents, suppliers or Subcontractors, or the employees of any such agents or Subcontractors.
- (c) Subject to clause 31.1(d), from the Commencement Date of this Contract until Acceptance or Acceptance as applicable, the Contractor will be liable for any loss or damage to Repairs and Maintenance Works from any cause whatsoever, and must at its own cost rectify any such loss or damage so that the Repairs and Maintenance Works conforms in every respect with the provisions of this Contract.
- (d) To the extent that loss or damage to the Repairs and Maintenance Works being caused by any Relief Event, the Contractor must, if and to the extent directed by PWC's Representative, rectify the loss or damage, which will be deemed to be a Variation under clause 9.8.
- (e) Insofar as clauses 31.1(e) to 31.1(g) apply to property, those clauses apply to property other than the Repairs and Maintenance Works.
- (f) The Contractor must indemnify PWC against, and will keep PWC indemnified against all Loss, damage, cost or expense suffered or incurred by PWC by reason of:

- (i) loss of or damage to property of PWC, including existing property in or upon which the Repairs and Maintenance Works is being carried out; and
- (ii) claims by any person against PWC, its Personnel, employees or agents of PWC in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the Repairs and Maintenance Works, but the Contractor's liability to indemnify PWC shall be reduced proportionally to the extent that the act or omission of PWC, PWC's Representative or the employees or agents of PWC contributed to the loss, damage, death or injury.

- (g) Clauses 31.1(e) to 31.1(f) will not apply to:
 - (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
 - (ii) exclude any other right of PWC to be indemnified by the Contractor;
 - (iii) things for the care of which the Contractor is responsible under clause 31.1; and
 - (iv) claims in respect of the right of PWC to have the Repairs and Maintenance Works carried out.
- (h) PWC must indemnify the Contractor in respect of claims referred to in clause 31.1(g)(iv).

32 LIMITATION OF LIABILITY AND INDEMNITIES

32.1 Unlimited liability

The exclusions and limitations on the Contractor's liability in this Contract do not apply in the case of:

- (a) fraud;
- (b) death or personal injury;
- (c) damage to tangible property (real and personal);
- (d) reckless conduct or wilful misconduct;
- (e) a breach of clauses 23 (Privacy) or 25 (Confidentiality); or
- (f) any liability to the extent that the same may not be excluded or limited as a matter of applicable Law.

32.2 Exclusion of Consequential Loss

- (a) Subject to clauses 32.1 and 32.2(b), neither Party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in

connection with this Contract for any Consequential Loss, even if such Party has been advised of the possibility of such Consequential Loss.

- (b) The Contractor acknowledges and agrees that, notwithstanding clause 32.2(a) and without limitation, PWC is entitled, subject to clause 32.3, to recover:
- (i) any direct loss or damage;
 - (ii) any amounts expressly provided for under this Contract; and
 - (iii) any:
 - (A) costs of repairing, replacing or obtaining the Goods, including the cost of procuring goods of equivalent functionality and performance from a third party;
 - (B) costs of re-performing the Services or the Works, including the cost of re-performing works internally and the cost of procuring equivalent replacement services from a third party;
 - (C) costs of implementing any reasonably necessary temporary workaround in relation to the Repairs and Maintenance Works;
 - (D) administrative costs and expenses, including for management and staff time;
 - (E) consultants' fees; and

mitigation costs and expenses; sustained, incurred or suffered by PWC, which is caused by or arises from any wrongful act or omission, tort (including negligence) or breach of this Contract by the Contractor or PWC's termination of this Contract pursuant to clause 34.

32.3 Cap on the Contractor's liability

Subject to clauses 32.1 and 32.2, the Contractor's total maximum liability to PWC for any or all Loss sustained, incurred or suffered by PWC (a **PWC Claim**) arising under or in connection with this Contract, is limited for all PWC Claims to the amount specified in Item 22, save and except where such liability exceeds such amount and is covered by the insurance policies of the Contractor, in which case the Contractor's liability will reflect the maximum level of insurance cover provided by such insurance policies.

32.4 Cap on PWC's liability

Subject to clause 32.2, PWC's total maximum liability to the Contractor for all Loss sustained, incurred or suffered by the Contractor (a **Contractor Claim**) arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited for all Contractor Claims in aggregate to an amount equal to 100% of the total of the amounts paid or payable by PWC to the Contractor under or in connection with this Contract in the twelve-month period immediately prior to the most recent Contractor Claim.

32.5 Contractor indemnity – negligence and wilful misconduct

Notwithstanding any other provision of this Contract, the Contractor must indemnify and hold harmless PWC and PWC Personnel against all Loss sustained, incurred or suffered by PWC or PWC Personnel as a result of any negligence, reckless conduct or wilful misconduct by the Contractor, any Subcontractor or their respective Personnel, except to the extent that such Loss was caused or contributed to by a negligent act or omission of PWC or PWC Personnel.

32.6 Other risks

To the extent caused by the Contractor, any Subcontractor or their respective Personnel, or arising out of, or in any way in connection with, the Contractor's performance of this Contract, the Contractor must indemnify PWC against:

- (a) any loss of (including loss of use), or damage to, property (real or personal) of PWC; and
- (b) any liability to or any Claims by a third party (including PWC Personnel) in respect of loss of or damage to property (real or personal) or injury to or death of any persons,

provided always that the Supplier's liability to indemnify PWC will be reduced proportionately to the extent that an act or omission of PWC or PWC Personnel caused or contributed to the Loss.

32.7 Third party Intellectual Property Rights indemnity

- (a) The Contractor must indemnify PWC against all Losses sustained, incurred or suffered by PWC as a result of any Claim that the use, possession or receipt by of the Repairs and Maintenance Works (an **Infringing Item**) infringes the Intellectual Property Rights or other rights of any third party (an **IPR Claim**), except to the extent that such Loss was caused or contributed to by a wrongful or negligent act or omission of PWC or PWC Personnel.
- (b) Without limiting the Contractor's obligations under clause 32.7(a), if any person makes an IPR Claim, or in either Party's reasonable opinion an IPR Claim is likely to be made, then the Contractor must, with minimal disruption to PWC, at the Contractor's option, promptly and at the Contractor's own expense:
 - (i) procure for PWC the right to continue using, possessing or receiving the Infringing Item free from any IPR Claim;
 - (ii) modify the Infringing Item so that PWC's use, possession or receipt of the Infringing Item ceases to infringe the rights (including Intellectual Property Rights) of the relevant third party; or
 - (iii) replace the Infringing Item with a non-infringing substitute item that complies with the Contractor's obligations under this Contract.
- (c) If the Contractor fails to comply with clause 32.7(b)(i) within 10 Business Days of the Contractor becoming aware of any IPR Claim or if PWC is not reasonably satisfied with any modification or replacement made by the Contractor pursuant to clauses 32.7(b)(ii) or 32.7(b)(iii), then:

- (i) the Contractor must comply with any reasonable settlement of the IPR Claim (including by paying money) negotiated by PWC; or
- (ii) PWC may terminate this Contract, with immediate effect, by providing written notice to the Contractor and, without limiting PWC's other rights and remedies, the Contractor must refund the Contract Price paid in respect of the Infringing Item.

32.8 Treatment of indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Contract.
- (b) The Contractor must pay PWC any sum claimed by PWC pursuant to an indemnity on demand from PWC without any deduction or set-off.

32.9 Apportionment

Notwithstanding any other provision of this Contract, the liability of a Party for any Loss sustained, incurred or suffered by the other Party arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, is reduced to the extent that any unlawful or negligent act or omission of the other Party caused or contributed to such Loss.

32.10 Obligation to mitigate

Each Party must use reasonable efforts, to the extent within that Party's control and consistent with each Party's obligations under this Contract, to promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by it under or in connection with this Contract.

32.11 PWC Entities

- (a) The Contractor acknowledges and agrees that PWC, in entering into and obtaining the benefits, rights and remedies under this Contract (including the benefit of the Contractor's obligations and the indemnities given by the Contractor), acts on its own behalf and as trustee for each relevant PWC Entity, and accordingly:
 - (i) PWC is able to recover from the Contractor all Losses sustained, incurred or suffered by all PWC Entities, as if those Losses were sustained, incurred or suffered by PWC itself; and
 - (ii) each PWC Entity is entitled to separately and directly enforce against the Contractor the benefits, rights and remedies conferred on PWC by this Contract.

33 DISPUTE RESOLUTION

33.1 Application of this clause and notification of Disputes

- (a) This clause 33 applies to any dispute or disagreement arising out of or relating to any aspect of this Contract, including any dispute arising out of or relating to:

- (i) the existence, formation, breach or termination of any Order or this Contract;
 - (ii) the correct interpretation of any provision of any Order or this Contract; or
 - (iii) any claim in tort, in equity or pursuant to any statute which relates to any Order or this Contract, (**Dispute**).
- (b) A Party must not commence any court proceedings relating to a Dispute unless it has complied with the provisions of this clause 33, except where:
- (i) a Party seeks urgent injunctive relief; or
 - (ii) the Dispute relates to compliance with this clause 33.
 - (iii) A Party claiming that a Dispute has arisen must give written notice to the other Party setting out the nature of the Dispute (**Dispute Notice**). The Dispute Notice must set out:
 - (A) reasonable particulars of the matter in dispute; and
 - (B) the action that the Party issuing the Dispute Notice requires of the other Party in order to resolve the Dispute.

33.2 Primary Level Discussions

- (a) On receipt of a Dispute Notice, the PWC Representative and the Contractor Representative must promptly commence discussions to attempt in good faith to resolve the Dispute (**Primary Level Discussions**).
- (b) The PWC Representative and the Contractor Representative will meet as often as necessary to:
 - (i) gather, and (subject to legal professional privilege) furnish to the other, all information with respect to the Dispute which is appropriate in connection with its resolution; and
 - (ii) discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute without the necessity of resorting to any formal proceeding.

33.3 Secondary Level Discussions

If the Dispute has not been resolved within 10 Business Days (or such other period as may be agreed by the Parties) after commencement of Primary Level Discussions, the Parties must attempt to resolve the Dispute by holding good faith discussions between PWC's Chief Executive (or his/her authorised delegate) and a representative of the Contractor of commensurate seniority (**Secondary Level Discussions**).

33.4 Location

Where Primary Level Discussions or Secondary Level Discussions require the Parties to meet, the place for that meeting will be in Darwin, Australia, unless the Parties otherwise agree.

33.5 Referral to mediation

- (a) If the Parties are unable to resolve the Dispute within 20 Business Days of the date of a Dispute Notice, a Party may by notice to the other Party refer the Dispute for mediation.
- (b) If a Party refers a Dispute for mediation, the Dispute must be mediated in accordance with, and subject to the Australian Disputes Centre (ADC) Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.
- (c) If neither Party refers a Dispute for mediation as contemplated by clause 33.5(a) within the latter of:
 - (i) 30 Business Days of the date of a Dispute Notice; or
 - (ii) 30 Business Days from the commencement of Primary Level Discussions or Secondary Level Discussions,either Party may commence court proceedings in relation to the Dispute.

33.6 Continued performance

- (a) The Parties will continue performing their respective obligations under this Contract while the Dispute is being resolved, unless and until such obligations are terminated or expire in accordance with the provisions of this Contract.
- (b) Where a Dispute is reasonably foreseeable, each Party must use its best endeavours to ensure that it is dealt with at a sufficiently early stage to ensure that there is minimum effect on the ability of either Party to perform its obligations under this Contract.

34 TERMINATION AND SUSPENSION**34.1 Termination in whole or in part**

The right of PWC to terminate this Contract includes the right to terminate this Contract in part, including in respect of:

- (a) any part or component of the relevant Order; or
- (b) all or any of the Repairs and Maintenance Works.

34.2 Termination by PWC for convenience

- (a) PWC may, in circumstances where PWC reasonably considers this Contract would otherwise fetter the NTG's discretion to exercise any executive or statutory right, duty or function, terminate this Contract for convenience by giving at least 30 days' prior written notice to the Contractor.
- (b) If PWC terminates this Contract under clause 34.2(a), the Contractor:

- (i) must mitigate the Contractor's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to avoid or minimise the Contractor's costs; and
- (ii) subject to clause 34.2(b)(i), will be entitled to payment for any reasonable and unavoidable direct costs incurred by the Contractor in the performance of the Contractor's obligations relating to the Repairs and Maintenance Works prior to the date PWC issues the notice under clause 34.2(a) (but excluding costs incurred in relation to any Repairs and Maintenance Works which had already been invoiced), but no other amounts will be payable by PWC.

34.3 Termination by PWC for cause

PWC may terminate this Contract with immediate effect by providing written notice to the Contractor:

- (a) if the Contractor is in Material Breach of this Contract and such breach is incapable of being remedied;
- (b) if the Contractor is in Material Breach of this Contract and such breach is capable of being remedied, but the Contractor fails to remedy the breach within 20 Business Days of the Contractor's receipt of a notice requiring it to do so;
- (c) if the Contractor or the Contractor Personnel act or omit to act in a manner calculated or likely to bring PWC into disrepute;
- (d) if the Contractor breaches clause 20 (Work Health and Safety);
- (e) if the Contractor breaches clause 25 (Confidentiality);
- (f) if the Contractor is subject to an Insolvency Event;
- (g) if there is a Change of Control Event in respect of the Contractor that, in PWC's reasonable opinion, adversely affects the Contractor's ability to provide the Repairs and Maintenance Works; or
- (h) where otherwise permitted pursuant to any Terms and Conditions of this Contract.

34.4 Termination by the Contractor

- (a) The Contractor may terminate this Contract or an Order by giving written notice to PWC of such termination (in which notice the effective termination date must be no less than 30 days after the date of the notice) if all of the following occur:
 - (i) PWC has not paid an undisputed amount due to the Contractor in relation to this Contract or an Order (as applicable) within 60 days after the date on which PWC received the correctly rendered invoice for that undisputed amount from the Contractor;
 - (ii) the Contractor has given PWC a first notice not less than 60 days after the due date for payment of that undisputed amount due, specifying the failure

to pay and giving PWC at least 15 days to pay that undisputed amount due; and

(iii) (the Contractor has given PWC a second notice not less than 75 days after the due date for payment of that undisputed amount due, referring to the first notice and giving PWC at least 15 days to pay that undisputed amount due.

(b) Except for a termination of this Contract in accordance with this clause 34.4(a)(i), the Contractor has no right or entitlement to terminate this Contract or an Order.

34.5 Suspension

(a) PWC may:

(i) in the interests of safety, or in the event of an emergency, direct the Contractor to immediately suspend this Contract (in whole or in part); or

(ii) for any other reasonable purposes, suspend all or any part of the Repairs and Maintenance Works or this Contract (in whole or in part), or require the Contractor to redirect the Contractor's resources at any time by giving at least 2 days' written notice to the Contractor, such notice to include the reasons for and extent of suspension.

(b) Subject to clause 34.5(c) and clause 37, if PWC suspends this Contract under clause 34.2(a), because of any act, omission or default of PWC or its representative, and provided that the Contractor is not in breach of this Contract, the Contractor will be entitled to payment for any reasonable and unavoidable direct costs (if any) incurred by the Contractor during the period of suspension. The Contractor's entitlement to payment of additional direct costs will be PWC's sole liability for any suspension.

(c) The Contractor must mitigate the Contractor's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to minimise the Contractor's costs.

(d) To the extent this Contract is suspended by PWC under clause 34.5(a), the Contractor must immediately recommence the performance of its relevant obligations under this Contract as directed by PWC.

(e) On being directed by PWC to recommence all or part of the Repairs and Maintenance Works, the Contractor must immediately recommence performance of Repairs and Maintenance Works.

35 EFFECT OF TERMINATION

35.1 Effect on Orders

(a) Unless otherwise specified by PWC, termination of this Contract by PWC will terminate all Orders under this Contract.

(b) Where there is a termination of this Contract in part and such termination is in respect of any Order or any part or component of an Order, only that particular

Order is terminated (in whole or in part) and this Contract and all other Orders will be unaffected by any such termination.

35.2 Return of Confidential Information and property

(a) On termination (in whole or in part) or expiration of this Contract, the Contractor must upon PWC's request promptly provide or return to PWC (or at the request or with the consent of PWC, destroy):

- (i) all relevant Goods, whether complete or partially complete;
- (ii) all relevant Deliverables, whether complete or partially complete;
- (iii) all Confidential Information (including copies, summaries and excerpts);
- (iv) all relevant Documentation, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
- (v) any other relevant property,

(in whatever form, including in electronic format) of or belonging to PWC which are in the Contractor's possession or control, provided that the Contractor:

- (vi) is not required to return or destroy any record or document where it is not reasonably practicable for the Contractor to do so and PWC agrees (acting reasonably) that it is not reasonably practicable for the Contractor to do so (e.g. where held on backup systems/media/email and the record or document cannot be returned or destroyed without significant effort, time and expense); and
- (vii) may retain one copy of any record or document returned or destroyed under this clause 35.2 on a confidential basis as required by Law or in accordance with the Contractor's reasonable internal record-keeping policies.

35.3 Exit assistance

(a) From the date commencing on the expiry or termination of this Contract (or such earlier date as notified to the Contractor in writing), the Contractor must provide all reasonable assistance and cooperation to PWC or any new Contractor appointed by PWC to provide the Repairs and Maintenance Works to ensure the orderly transfer of responsibility as required by PWC, which may include:

- (i) affording all reasonable assistance necessary for the timely and efficient transition of the provision of the Repairs and Maintenance Works to PWC and/or any new Contractor;
- (ii) responding to all requests for information, advice and assistance by PWC and providing the information, advice and assistance to PWC within 5 Business Days of receiving a request from PWC; and
- (iii) permitting PWC to assign PWC Personnel or any Personnel of the new Contractor to work with Contractor Personnel to facilitate the transfer of any information and materials that PWC believes is required.

- (b) To the extent that the Contractor's compliance with clause 35.3(a) requires the Contractor to deploy additional resources which results in the Contractor incurring additional costs, the Contractor will be entitled to charge PWC for such additional costs, on a time and materials basis, by reference to the rates specified in the Schedule of Rates, or if no rates are specified, by reference to reasonable and industry competitive daily rates. No additional amounts are payable if additional resources are not utilised.
- (c) PWC may terminate any or all Repairs and Maintenance Works required to be provided under this clause 35.3 at any time by providing written notice to the Contractor. Where PWC issues a notice under this clause 35.3(c), the notice must specify the date on which the transition out services will end. No additional amounts will be payable by PWC to the Contractor in relation to any transition out Repairs and Maintenance Works provided after that date.

35.4 Accrued Rights

Termination or expiration of this Contract for whatever reason does not affect the rights and obligations of the Parties which have accrued prior to the date of termination or expiration, including any right to claim damages as a result of a breach of this Contract.

36 CONTRACTOR'S PERFORMANCE REPORT

- (a) The Contractor agrees that following provision of the Repairs and Maintenance Works or the termination of this Contract:
 - (i) PWC may prepare a report on the Contractor's performance under this Contract (**Contractor's Performance Report**);
 - (ii) PWC will liaise with the Contractor in completing the Contractor's Performance Report although PWC reserves the right to complete the Contractor's Performance Report (other than the Contractor's comments); and
 - (iii) PWC may use and/or release the Contractor's Performance Report to any other agency of the Commonwealth or of any State or Territory (**Recipient Agency**) in relation to the evaluation of the Contractor's performance in the assessment of future tenders.
- (b) The Contractor agrees that:
 - (i) neither the Contractor nor any other person will have any Claim against PWC or any Recipient Agency or any of their respective Personnel under any circumstances as a result of the preparation or use of the Contractor's Performance Report; and
 - (ii) the Contractor's Performance Report will not, in itself, constitute evidence that the Repairs and Maintenance Works comply with the relevant requirements of this Contract (including the relevant Specifications), or otherwise limit the Contractor's obligations or PWC's rights and remedies.

37 FORCE MAJEURE

37.1 Notice of Relief Event

- (a) If a Relief Event directly causes a Party to be unable, wholly or in part, to perform the Repairs and Maintenance Works or any of its obligations under this Contract or is delayed in performing those obligations:
 - (i) the affected party must immediately give notice to the other party setting out full details of the Relief Event, the reasons why the Relief Event is preventing that Party from performing the Works or the affected obligations under this Contract and the steps that the Party has taken or will take to:
 - (A) avoid, mitigate, resolve or to otherwise manage the effect of the Relief Event; and
 - (B) minimise any additional costs of the Relief Event;
 - (ii) the Repairs and Maintenance Works or the affected obligations identified in the notice will be suspended but only so far as, and for so long as, the performance of the Repairs and Maintenance Works or obligations is affected by the Relief Event; and
 - (iii) the affected Party must use its best endeavours to overcome or remove the effects of the Relief Event as quickly as possible.
- (b) Upon the impact of a Relief Event ceasing to affect a Party's obligations, the affected Party must as soon as reasonably practicable give notice to the other Party and recommence the performance of the affected Repairs and Maintenance Works or obligations under this Contract.

37.2 Effect of Relief Event

- (a) To the extent permitted by law the Contractor has no Claim or entitlement and PWC has no liability for:
 - (i) any costs, losses, expenses, penalties, damages or the payment or any part payment of the Contract Price; and
 - (ii) any delay costs or damages in any way incurred by the Contractor,for the period that the Contractor is unable, wholly or in part, to perform the Repairs and Maintenance Works or any of its obligations under this Contract due to a Relief Event.
- (b) A Relief Event does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to that event.
- (c) If the Party affected by a Relief Event described in clause 37.1 is the Contractor and the Contractor complies with its obligations as such under clause 37.1, PWC may exercise its discretion to extend the Date for Practical Completion by the period the

Repairs and Maintenance Works or Contractor's ability to perform its obligation are suspended because of the Relief Event.

38 COMPLIANCE WITH RING-FENCING GUIDELINE

- (a) This clause applies notwithstanding any other clause in this Contract.
- (b) The Contractor acknowledges that PWC must comply with the Ring-Fencing Guideline.
- (c) The Contractor must, and must ensure that Contractor Personnel:
 - (i) take all necessary steps to understand PWC's obligations under the Ring-Fencing Guideline as they apply to the provision of Goods, Works and/or Services under this Contract, including attending training from time to time as reasonably required by PWC;
 - (ii) provide the Goods, Works and/or Services and otherwise conduct themselves in a manner that strictly complies with the obligations (including the non-discrimination and confidentiality obligations) set out in the Ring-Fencing Guideline as if the Contractor was acting as PWC; and
 - (iii) not engage in any conduct that, if engaged in by PWC, would breach or be contrary to PWC's obligations under the Ring-Fencing Guideline (including, in particular, the obligations under clause 4 of the Ring-Fencing Guideline).
- (d) The Contractor acknowledges that:
 - (i) the application of the Ring-Fencing Guideline to PWC may change overtime (including, for example, where obligations under the Ring-Fencing Guideline which do not currently apply to PWC commence to apply to PWC); and
 - (ii) the operation of this clause will change accordingly.
- (e) The Contractor must notify PWC in writing as soon as reasonable possible after becoming aware of the occurrence, or the suspected or potential occurrence, of a material breach of the Contractor's obligations under this clause.
- (f) The Contractor must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Goods, Works and/or Services are provided by the Contractor in a manner that is consistent with the requirements of this clause.
- (g) The Contractor must cooperate with, and promptly provide assistance to, PWC, to the extent reasonably required by PWC to comply with PWC's obligations under the Ring-Fencing Guideline, including any obligation to report or provide information to a regulatory authority, or otherwise cooperate with any investigation conducted by a regulatory authority.
- (h) The Contractor must provide PWC with such written reports, evidence or other information concerning the Contractor's compliance with this clause as may be requested by PWC from time to time.

- (i) The Contractor must make and keep, and must ensure that all Contractor Personnel make and keep, accurate records of the performance of the Contractor's obligations under this clause. PWC will have the right, at no cost to PWC, to inspect and copy any record relating to this clause at any time.
- (j) PWC or its nominated representative has the right (at no cost to PWC) at all reasonable times and on reasonable notice to visit the Contractor's and its Personnel's premises and audit and inspect all records, procedures and systems of the Contractor and its Personnel which relate to the Contractor's compliance with this clause. The Contractor must (and must ensure that its Personnel fully co-operate with PWC in relation to any such audit or inspection.

39 GENERAL

39.1 Notices

- (a) Any notice or other communication required to be given under this Contract (**Notice**) must be in writing and in the English language. Subject to 39.1(b), a Notice must be sent to each Party in accordance with the details set out in Items 3 and 5, as updated from time to time.
- (b) A Notice may be sent by email if the relevant Notice is signed by an authorised person, scanned and attached as a PDF or other readable format to an email and sent to the receiving Party's Email Service Address.
- (c) Any Notice is regarded as given and received:
 - (i) if sent by mail: 3 Business Days after it is posted; and
 - (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first and provided that, if a Notice is sent by email after 5pm or on a day that is not a Business Day then, unless the sender receives an automated message that delivery failed, notice will be effective at 9am on the following Business Day.

- (d) Where there is a dispute in relation to the provision of a Notice by email, the sender must disclose copies of electronic records or logs to the other Party evidencing that the relevant email has been sent from its IT systems.

39.2 Weather Event

If natural disaster occurs, or if a tropical low is identified with the likelihood of developing into a Cyclone, the Contractor must be willing and prepared to mobilise to assist in emergency response efforts when:

- (a) it is safe to do so; and
- (b) when directed to mobilise by PWC.

39.3 Variation

- (a) The Contractor may at any time give a Variation Proposal to PWC proposing a variation:
 - (i) as provided for in the Scope of Requirements; or
 - (ii) for Unscheduled Work valued at \$3,000 or greater.

39.4 PWC trustee for its Personnel

In entering into and obtaining the benefits, rights and remedies under this Contract, including the benefit of the Contractor's obligations and any indemnity given by the Contractor, PWC acts on its own behalf and as trustee for each of its Personnel. Each of PWC's Personnel is entitled to separately and directly enforce against the Contractor the benefits, rights and remedies conferred on PWC by this Contract.

39.5 Assumptions

The Parties acknowledge and agree that:

- (a) this Contract (including the Contract Price) is prepared on the basis of the Assumptions; and
- (b) if any of the Assumptions set out in this Contract prove to be materially incorrect and this has a consequential material detrimental effect on the performance of this Contract by the Contractor, each Party must (if requested in writing by the other Party) enter into discussions concerning any appropriate variation of this Contract.

39.6 Entire agreement

- (a) This Contract constitutes the whole agreement between the Parties relating to this Contract's subject matter and supersedes and extinguishes any prior drafts, agreements or undertakings, whether in writing or oral, relating to such subject matter.
- (b) Each Party acknowledges that it has not been induced to enter into this Contract by any representation or warranty other than those contained in this Contract and, having negotiated and freely entered into this Contract, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

39.7 RFT Response

- (a) If directed by PWC, the Contractor must comply with the RFT Response to the extent that any matter or thing addressed in the RFT Response is not provided for in this Contract.

- (b) Where the RFT Response is capable of assisting in ascertaining the meaning of a particular provision of this Contract, regard may be had to the RFT Response to:
 - (i) confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account the provision's context in this Contract and the purpose or object underlying this Contract; or
 - (ii) determine the meaning of a provision of this Contract when the provision is ambiguous or obscure.

39.8 Rights, delays, etc.

- (a) The rights, powers, privileges and remedies provided under any provision of this Contract, including under any indemnity, are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Contract or by applicable Law or otherwise.
- (b) No failure by PWC to exercise, nor any delay by PWC in exercising, any right, power, privilege or remedy under this Contract will impair or operate as a waiver of any right, power, privilege or remedy under this Contract in whole or in part.
- (c) No single or partial exercise of any right, power, privilege or remedy under this Contract prevents any further or other exercise of any right, power, privilege or remedy under this Contract or the exercise of any other right, power, privilege or remedy.

39.9 Further assurances

At any time after the Commencement Date each of the Parties must, at the request of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the Terms and Conditions of this Contract.

39.10 Invalidity

If any provision of this Contract is held to be illegal, void, invalid or unenforceable under the applicable Laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Contract in that jurisdiction is not affected, and the legality, validity and enforceability of the whole of this Contract in any other jurisdiction is not affected.

39.11 Costs

Unless expressly stated otherwise, each Party must:

- (a) pay its own costs of and incidental to the negotiation, preparation and entry into this Contract; and
- (b) comply with all of its obligations under this Contract at its own cost.

39.12 Relationship of the Parties

- (a) Nothing in this Contract constitutes, or will be deemed to constitute, a relationship of employer and employee between the Parties, a partnership between the Parties or any Party the agent of the other Party for any purpose.
- (b) Subject to any express provision in this Contract to the contrary, neither Party has any right or authority to and must not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

39.13 Assignment and Novation

- (a) PWC may assign, novate, transfer, or otherwise dispose of any or all of PWC's rights and/or obligations under this Contract to any PWC Entity or another Government Owned Corporation (as that term is defined by the *Government Owned Corporations Act* (NT)) or government agency) upon notice to the Contractor without the prior consent of the Contractor and, in the case of a novation, PWC, the Contractor and the relevant third party will each execute a novation agreement in a form reasonably prescribed by PWC.
- (b) The Contractor must not assign, novate, transfer, sub-licence or otherwise dispose of any or all of the Contractor's rights and/or obligations under or in connection with this Contract without the prior written consent of PWC (which consent must not be unreasonably withheld).
- (c) The Contractor must pay all fees and expenses reasonably incurred by PWC in connection with any consent sought under clause 39.13(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

39.14 Survival

- (a) The following terms will survive the termination or expiry of this Contract:
 - (i) clause 15.10 (Set off);
 - (ii) clause 17.3 (Keeping of records);
 - (iii) clause 17.4 (Audit rights);
 - (iv) clause 22 (Environment);
 - (v) clause 23 (Privacy requirements);
 - (vi) clause 25 (Confidentiality);
 - (vii) clauses 26 (Intellectual Property);
 - (viii) clause 27 (Publicity);
 - (ix) clause 28 (Insurance);

- (x) clause 29 (Warranties);
 - (xi) clause 30 (Rectification of Defects);
 - (xii) clause 32 (Limitation of liability and indemnities);
 - (xiii) clause 33 (Dispute resolution);
 - (xiv) clause 35 (Effects of termination);
 - (xv) clause 39 (General); and
 - (xvi) any other provision of this Contract which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Contract.
- (b) Any licences granted by the Contractor under this Contract survive termination or expiration of this Contract.
- (c) Notwithstanding the termination or expiry of this Contract, this Contract continues to apply as between the Parties to the extent necessary until all Orders have been either terminated or delivered or provided in full by the Contractor.

39.15 Governing law and jurisdiction

This Contract is governed by, and must be construed in accordance with, the laws of the Northern Territory of Australia. Each Party submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia.

40 INTERPRETATION

- (a) In this Contract, unless the context requires otherwise:
- (i) any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
 - (ii) references to any legislation, statute or statutory provisions include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;
 - (iii) references to clause(s), Schedule(s) and Attachments are references to clause(s), Schedule(s) and Attachments of and to this Contract;
 - (iv) references to any Party include that Party's successors (whether by operation of applicable Law or otherwise) and permitted assigns;
 - (v) any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;

- (vi) references to the singular include the plural and vice versa;
 - (vii) a reference to time is to Northern Territory time and any references to day mean a period of 24 hours running from midnight to midnight; and
 - (viii) a reference to '\$' or 'dollars' is a reference to Australian dollars.
- (b) The headings and sub headings in this Contract are inserted for convenience only and do not affect the meaning of this Contract.
- (c) If a payment or other act is required by this Contract to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- (d) Where an Item is provided for as being "not applicable" then the clauses relating to that Item as specified in that Item will not apply and be excluded from this Contract.
- (e) Where an Item is not completed then that Item will be completed as directed by PWC.
- (f) In the event of any conflict or inconsistency between the Terms and Conditions of this Contract, the terms and conditions or documents listed earlier below prevail to the extent of such conflict or inconsistency, and the provisions or documents listed later below are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency:
- (i) the Order/s (if any);
 - (ii) the Contract Details;
 - (iii) the Terms and Conditions;
 - (iv) the Notice of Acceptance;
 - (v) the Schedule of Rates;
 - (vi) the Scope of Requirements;
 - (vii) any other documents comprising the RFT Response;
 - (viii) any other documents comprising the RFT; and
 - (ix) any schedules, annexures, appendices or other documents (if any) attached to or referred to in this Contract.

41 DEFINITIONS

In this Contract the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:

Acceptance means the Repairs and Maintenance Works have been accepted by PWC in accordance with the procedures set out in clause 14. Accept and Accepted have the corresponding meaning.

Adjustment Event has the meaning assigned to that term in the GST Act.

Affiliate means, in respect of the Contractor, any company or other entity that directly or indirectly controls, or is controlled by, or is under common control with, the Contractor.

Applicable Index means the adjustment index (if any) specified in Item 15 applicable to a price, fee or charge.

Approvals means any approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences or waivers under any Statutory Requirements or by any Authority, including any condition attached to the approval, authorisation, consent, permission, permit, determination, certificate, notice, licence or waiver and under any renewal, amendment or variation thereof:

- (a) For the construction of the Repairs and Maintenance Works and use of the Repairs and Maintenance Works; and
- (b) To the extent that the Contractor has design obligations and design responsibility under clause 11, for the design of the Repairs and Maintenance Works.

Assumptions means the assumptions (if any) expressly and clearly set out as such in the RFT Response and expressly and specifically agreed in writing by PWC prior to the issuance of a Notice of Acceptance.

Auditor-General has the meaning given in section 3(1) of the *Audit Act* (NT).

Authority means any court or tribunal within the relevant jurisdiction, or any public or statutory or government (whether federal, territory or local) body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects any aspect of the Repairs and Maintenance Works, or any private or corporate provider of a Utility.

Business Day means any day which is not a Saturday or a Sunday or a public holiday in Darwin.

Change of Control Event means, in relation to an entity, an event the occurrence of which has the effect that:

- (a) if a person controlled the entity prior to the time the event occurred, the person ceased to control the entity or another person obtained control of the entity;
- (b) if no person controlled the entity prior to the time the event occurred, a person obtained control of the entity; or
- (c) if the entity is owned or controlled by a group or consortium of persons, or if the group or consortium could control the entity were they to act collectively, there is any material change in the composition of the group or consortium.

For the purposes of this definition, “control” and “controlled” have the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Charges means the prices, fees and charges for Repairs and Maintenance Works calculated in accordance with the Schedule of Rates (including Unscheduled Works) or as otherwise agreed between the Parties in writing.

Claim means a claim, demand, proceedings or other action.

Commencement Date means the commencement date of this Contract, as provided for in Item 8.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is communicated by the disclosing party to the confidant as confidential;
- (c) the confidant knows or ought to know is confidential; or
- (d) relates to:
 - (i) the financial, the corporate and the commercial information of any Party; and
 - (ii) the strategies, practices and procedures of a Party,

and, for the avoidance of doubt, the following items comprise Confidential Information of PWC:

- (e) PWC Data;
- (f) Personal Information that is collected, handled or held by or on behalf of PWC;
- (g) all details relating to PWC Infrastructure and PWC Sites; and
- (h) the information (if any) referred to in Item 17.

Consequential Loss means any loss, damage or expense recoverable at Law:

- (a) which is a loss of opportunity, goodwill, profits, anticipated savings or business; and
- (b) including any costs or expenses incurred in connection with any of the losses referred to in paragraph (a),

but excluding any loss, damage or expense which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant loss, damage or expense.

Construction Program is a statement in writing showing the dates by which or the times within which the various parts of the work under the Contract are to be executed or completed, including the Deliverables, and as submitted by the Contractor and approved by PWC in accordance with clause 9.4.

Consumer Price Index means the Consumer Price Index for Darwin as published from time to time by the Australian Bureau of Statistics, or in its absence any index published in its substitution.

Contaminant means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Site or the area surrounding or near the Site:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) otherwise environmentally degraded; or
- (d) not comply with any Environmental Laws in force from time to time.

Contract Details means the section at the front of this Contract headed 'Contract Details'.

Contract Documents means the documents listed in clause 40(f).

Contract Material means all materials created by the Contractor or Contractor Personnel before, on or following the Commencement Date in the course of, as a consequence of, or in anticipation of, performing the Contractor's obligations under this Contract.

Contract means this contract, consisting of the Contract Documents listed in clause 40(f).

Contract Price means:

- (a) where the Parties have agreed a lump sum, the lump sum;
- (b) where the Parties have agreed rates under the Schedule of Rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out in accordance with the terms of this Contract by the relevant agreed rate set out in the Schedule of Rates for that section or item; and
- (c) where both a lump sum and rates apply, the sum of (a) and (b),

in respect of the Repairs and Maintenance Works required under this Contract, and including the sum as referred to or otherwise calculated in accordance with an Order or Charges for approved Unscheduled Work. For the avoidance of doubt, the Contract Price is inclusive of all labour, Contractor's Plant, Equipment, Materials and all other things necessary for the Repairs and Maintenance Works, whether or not expressly mentioned in this Contract.

Contractor Risks means the risks accepted by the Contractor set out in clause 4.4.

Contract Undertakings means the Contractor obligations arising under this Contract as agreed to by the Contractor in clause 4.2.

Contractor IPR means any Intellectual Property Rights in material made available by the Contractor in connection with this Contract that is:

- (a) existing prior to the Commencement Date;
- (b) licensed from any third party (excluding the Contractor's Affiliates and Contractor Personnel) during the Term; and/or
- (c) obtained (whether created, purchased or licensed) by the Contractor during the Term but separately from and otherwise than in connection with this Contract,

and where Item 18 provides that Contract Materials will be owned by the Contractor, Contractor IPR includes Contract Materials.

Contractor means the entity as provided for in Item 5.

Contractor Personnel means the Personnel of the Contractor and includes all Personnel of the Contractor's Affiliates and any Subcontractor.

Contractor Representative means the person appointed by the Contractor to manage the exercise of the Contractor's rights and performance of the Contractor's obligations under this Contract and to act as the single point of contact at the Contractor for PWC, being the person as provided for in Item 6, or any other person named by written notice from the Contractor to PWC.

Contractor Supplied Information means any information (whether written or otherwise) supplied or made available to PWC or PWC's Representative by the Contractor before, on or after the Award Date in connection with the Repairs and Maintenance Works, the Site or anything in connection with this Contract.

Contractor's Plant means all appliances, equipment, plant, vehicles, vessels, tools and things that the Contractor supplies or is required to supply for the performance of the Repairs and Maintenance Works, whether owned, leased or hired.

Cyclone means a cyclone named and categorised under the Australian Cyclone Severity Scale by the Bureau of Meteorology.

Date for Acceptance means the date specified in an Order as the date by which the Contractor is required to reach Acceptance of the ordered or required Repairs and Maintenance Works and as may be adjusted or under this Contract.

Date of Adjustment means the first and each subsequent anniversary of the Commencement Date during the Term.

Defect means any defect, fault, error or omission in the Repairs and Maintenance Works or any aspect of the Repairs and Maintenance Works, which is not in accordance with the requirements of this Contract, including:

- (a) any failure of Services, Goods or Works to meet the standards, specifications and requirements of this Contract (including the relevant Specifications);
- (b) any failure of the Services, Goods or Works to meet the relevant PWC Standards and Specifications; and
- (c) any defect, fault, error or omission in the Services, Goods or Works that:
 - (i) results in the Repairs and Maintenance Works not being able to be used for their intended use;
 - (ii) results in the Repairs and Maintenance Works doing something that they are not designed to do; or
 - (iii) results in the Repairs and Maintenance Works not doing something that they were designed to do.

Defect Rectification Period means, in relation to any Repairs and Maintenance Works, the relevant period of time commencing on Acceptance of such Repairs and Maintenance Works (or such other date as provided for in Item 21) and ending on the expiry of the period of time as provided for in Item 21 or, in relation to any Repairs and Maintenance Works corrected by the Contractor under clause 30.1, the period commencing on the correction and ending on the expiry of the period of time as provided for in Item 21.

Deliverables means any outputs of the Services and the Repairs and Maintenance Works that are provided or are required to be provided by the Contractor in the performance of the Contractor's obligations under this Contract, including the Deliverables provided for in the Scope of Requirements.

Design Documents means those:

- (a) documents and Deliverables referred to in an Order that the Contractor is to supply as part of its design obligation; and
- (b) drawings or specifications:
 - (i) supplied to the Contractor by PWC and/or:
 - (ii) provided by the Contractor and approved by the PWC Representative in accordance with this Contract.

Dispute has the meaning assigned to that term in clause 33.1(a).

Dispute Notice has the meaning assigned to that term in clause 33.1(b)(iii).

Documentation means the user manuals, reference manuals and other materials and documentation (in whatever form, including in electronic format) relating to the installation, use, operation, performance, capacity, quality, scope or functionality of the Goods.

Email Service Address means:

- (a) in the case of the Contractor, its email address set out in Item 5 or such other email address of which the Contractor gives notice in writing to PWC; or
- (b) in the case of PWC, the email address set out in Item 3 or such other email address of which PWC gives notice in writing.

Environmental Incident means:

- (a) a likely or actual breach of Environmental Laws applying or relating to the Site; or
- (b) a real, present or potential danger to the safety of persons or property on the Site or to the environment.

Environmental Laws means all Laws regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, heritage, coastal protection, water catchments, weed management, pollution of the land, air or waters, noise, soil or ground water contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades

or any other aspect of protection of the environment or person or property from environmental harm.

Expenses means any travel or accommodation expenses incurred by the Contractor under or in connection with this Contract.

Further Term means the period specified in Item 10 and commences on and from the expiry of the Initial Term.

Good Industry Practice means, in relation to any undertaking and any circumstances, the exercise of a high degree of skill, diligence, prudence and foresight as can be expected from a reasonably skilled and experienced person engaged in the same or similar type of undertaking under the same or similar circumstances.

Goods means as the context requires:

- (a) the goods and other items as provided for in the Scope of Requirements; or
- (b) the goods and other items as provided for in an Order and the Scope of Requirements including any Documentation (in whatever form, including in electronic format) and including any components and sub-components of the relevant goods and/or other items.

Government Requirements includes all PWC policies, plans, manuals, guidelines, instructions (including procurement policy instructions) and other Northern Territory Government entity requirements which are, or may become, applicable to the Site or the Repairs and Maintenance Works. To the extent that any of the requirements would require or suggest the insertion of provisions into this Contract, then:

- (a) those provisions will be incorporated by reference into this Contract; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved in accordance with Clause 40(f).

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST has the meaning assigned to that term in the GST Act.

GST Rate means the percentage amount of GST payable determined under section 9-70 of the GST Act as amended from time to time.

ICAM means root cause analysis investigation or any other similar systemic investigation into how and why an incident has occurred.

Infringing Item has the meaning assigned to that term in clause 32.7.

Initial Term means the period provided for in Item 9.

Input Tax Credit has the meaning assigned to that term in the GST Act.

Insolvency Event means any of the following events:

- (a) in the case of a corporation:

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- (i) an application is made to a court for an order or an order is made that the corporation be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order;
 - (iii) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
 - (iv) except to reconstruct or amalgamate while solvent, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them;
 - (v) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors;
 - (vi) a resolution is passed to wind up or dissolve that corporation;
 - (vii) the corporation is dissolved;
 - (viii) the corporation is or becomes or states that it is insolvent or any of the events mentioned in subsection 459C(2) (a) to (f) inclusive of Part 5.4 of the *Corporations Act 2001* (Cth) occurs in respect of the corporation;
 - (ix) the appointment of an administrator in respect of the corporation or a receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation;
 - (x) as a result of the operation of Part 5.4 of the *Corporations Act 2001* (Cth) the corporation is taken to have failed to comply with a statutory demand;
 - (xi) the corporation is, or makes a statement from which it may be reasonably deduced that the corporation is the subject of an event described in s459C(2)(b) or s585 of the *Corporations Act 2001* (Cth); or
 - (xii) anything analogous or having a substantially similar effect to any of the events specified in subparagraphs (i) to (xi) (inclusive) above has occurred under the Law of any applicable jurisdiction or PWC reasonably believes any of the above has or will occur in the next 6 months;
- (b) in the case of an individual or a partnership:
- (i) the individual or any partner in the partnership proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of that individual's or that partner's creditors or any class of them;
 - (ii) the individual or any partner in the partnership commits an act of bankruptcy;

- (iii) in relation to a partnership, the partnership is dissolved or has an administrator appointed under relevant Law; or
- (iv) anything analogous or having a substantially similar effect to any of the events specified subparagraphs (i) to (iii) (inclusive) above has occurred under the law of any applicable jurisdiction or PWC reasonably believes any of the above has or will occur in the next 6 months.

Insurance means each contract of insurance required to be effected or held by the Contractor under this Contract, as provided for in Item 20.

IPR Claim has the meaning assigned to that term in clause 32.7.

IPR or Intellectual Property Rights means (a) patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and Contractors and other proprietary knowledge and information; (b) internet domain names; rights protecting goodwill and reputation; (c) database rights; and (d) all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

Item means an item of the Contract Details.

Key Performance Indicators means all or any of the key performance indicators which the Contractor must achieve in providing the Repairs and Maintenance Works as provided for in Item 13.

Key Personnel means the Contractor Personnel who, or key positions within the Contractor's organisation which, are provided for as 'Key Personnel' in Item 16.

Latent Conditions means any physical conditions at the Site, excluding all weather conditions and ground conditions resulting from weather conditions wherever occurring, as at the date of lodgement of the Contractor's RFT Response which could not have been anticipated by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing the Contractor's RFT Response. Latent Conditions do not include physical conditions associated with tidal movements.

Law includes:

- (a) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (b) the common law and the law of equity;
- (c) any binding court order, judgement or decree;
- (d) any applicable industry code, policy or standard, whether or not enforceable by law; and
- (e) any applicable direction, policy, rule or order that is given in writing by a regulator, whether or not enforceable by law.

Legislative Requirement includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Repairs and Maintenance Works or the particular part thereof are being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Repairs and Maintenance Works; and
- (c) fees and charges payable in connection with the foregoing.

Local Benefit Commitment has the meaning assigned to that term in clause 3.5(b).

Loss includes claims, actions, proceedings, losses, damages, liabilities, costs and expenses (including legal expenses).

Maintenance means the Repairs and Maintenance Works required to maintain PWC infrastructure in service and/or functioning in good operating order and condition. It includes the following sub-categories:

- (a) Condition-Based Maintenance – performed after one or more indicators show that the asset is going to fail or that asset performance is deteriorating
- (b) Overhaul – involves:
 - (i) partial or complete disassembly of the asset
 - (ii) inspection to detect damaged, defective, or worn components
 - (iii) repair or replacement of damaged, defective, or worn components
 - (iv) reassembly, testing, and trial-run prior to returning the asset to full operating order
 - (v) Overhaul typically resets all or most Periodic Maintenance schedules for an asset to zero hours
- (c) Periodic Maintenance – pre-planned Preventative Maintenance, and can be date-based, based on equipment running hours, or on distance travelled to ensure that an asset is operating correctly and to therefore avoid any.
- (d) Planned Maintenance – refer Periodic Maintenance
- (e) Preventative Maintenance – an action performed on an asset to specifically prevent failure, malfunction or unscheduled downtime. It can include including systematic inspection, tests, measurements, adjustments, parts replacement, and cleaning
- (f) Routine Maintenance – refer Periodic Maintenance
- (g) Scheduled Maintenance – refer Periodic Maintenance

Material Breach includes:

any breach of any of the following clauses:

- (a) clause 7.4 (Delivery of Goods);
- (b) clause 8 (Provision of Services);
- (c) clause 3.8 (Subcontracting);
- (d) clauses 3.5 (Local Content);
- (e) clause 16.2 (Key Personnel);
- (f) clause 21 (Sustainable Supply Chain Management);
- (g) clause 22 (Environment);
- (h) clause 23 (Privacy);
- (i) clause 24 (Security Requirements);
- (j) clause 26 (Intellectual Property);
- (k) where there is a failure to comply with clause 30.1 (Defect Rectification Period); or
- (l) where the Contractor has failed to meet the required dates or timeframes for the performance of the Contractor's obligations under this Contract, including any Order.

Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

Moral Rights means rights conferred under Part IX of the *Copyright Act 1968* (Cth) and any similar or analogous rights which exist or come to exist anywhere in the world.

National Electricity Rules means the 'National Electricity Rules' as defined in the National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA), having force as a law of the Northern Territory under section 6 of the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT).

Non-Reliance Information means any information (whether written or otherwise) not forming part of the Contract that is supplied or made available to the Contractor:

- (a) by or on behalf of PWC; or
- (b) by or on behalf of PWC's Representative,

before, on or after the Commencement Date of this Contract in connection with the Repairs and Maintenance Works, the Site or anything in connection with this Contract.

Normal Working Hours means 0600 to 1800 on a Working Day that is not a Saturday and 0600 to 1500 on a Working Day that is a Saturday.

Notice of Acceptance means the written notification and any accompanying documentation sent to the Contractor by PWC advising of acceptance of the RFT Response to provide the works under this Contract.

Officer-in-Charge is a person attributed delegated authority by the Contractor in accordance with clause 3.2 to manage Works asset out in clause 9.2.

Order Date means the date on which an Order is issued to a Contractor.

Order means the document or documents (including a purchase order) setting out the scope of, and PWC's requirements for, any works that are required to be provided by the Contractor under this Contract which may be issued by PWC as contemplated by clause 1.2.

Other Contractors means any contractor, subcontractor, consultant, artist, tradesperson or other person engaged to do work on or near the Site (whether by PWC or a third party) or otherwise in connection with the Works other than the Contractor and its subcontractors.

Parties means PWC and the Contractor, each a Party.

Payment Statement means

Personal Information has the meaning given to it in the *Information Act* (NT), except where the term is used in relation to the *Privacy Act 1988* (Cth) (in which case it has the meaning given to it in that Act).

Personnel means an entity's directors, officers, employees, advisors, contractors and agents who are natural persons and any other natural person under that entity's direction or control.

Plant, Equipment and Work means those things used, or work undertaken, by the Contractor, to deliver the works, but which will not form part of the works.

PPE/C means Personal Protective Equipment and Clothing as required pursuant to clause 20. For the avoidance of doubt, the Contractor is the person who must provide the PPE/C to its workers for the purposes of Chapter 3, Part 3.2, Division 5 of the WH&S Regulations.

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

Primary Level Discussions has the meaning assigned to it in clause 33.2.

Professional Indemnity Insurance means an insurance policy to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its subcontractors in carrying out the Repairs and Maintenance Works.

Public Liability Insurance means an insurance policy covering the Contractor, and noting the interests of PWC, the PWC Representative and all subcontractors, for their respective liabilities to:

- (a) third parties; and
- (b) the Parties,

for loss of or damage to property and death of or injury to any person, arising out of, or in any way in connection with, the Repairs and Maintenance Works.

PWC Audit Representative means any representative of PWC who is appointed for the purpose of conducting an audit in accordance with clause 17.4.

PWC Claim has the meaning assigned to it in clause 32.3.

PWC Data means all data and information relating to PWC, PWC's operations, facilities, customers, clients, constituents, personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through PWC's computing and communications infrastructure by or on behalf of PWC and includes any other data and information provided to, collected or recorded by PWC.

PWC Entity means:

- (a) every past, present and future "subsidiary" (as that term is defined in the *Government Owned Corporations Act (NT)*) of PWC; and
- (b) where any part of PWC's operations or businesses that receives the benefit of the Repairs and Maintenance Works under this Contract becomes or is transferred to a separate entity, that separate entity.

PWC Infrastructure means power, water and sewerage infrastructure owned or used by PWC and includes all other assets, information technology equipment (including hardware and software), material and any other matter or thing that is owned or used by PWC in connection with PWC's business or operations.

PWC IPR means any Intellectual Property Rights in material made available by PWC in connection with this Contract that is:

- (a) existing prior to the Commencement Date;
- (b) licensed from any third party to PWC during the Term; and/or
- (c) obtained (whether created, purchased or licensed) by PWC during the Term but not from the Contractor,

and where Item 18 provides that Contract Materials will be owned by PWC, PWC IPR includes Contract Materials.

PWC means Power and Water Corporation (ABN 15 947 352 360).

PWC Personnel means the Personnel of PWC.

PWC Policies means the specific PWC policies as provided for in the Scope of Requirements and includes amendments or revisions to any such policies notified to the Contractor by PWC from time to time.

PWC Representative means the person appointed by PWC to manage the exercise of PWC's rights and performance of PWC's obligations under this Contract and to act as the single point of contact at PWC for the Contractor, being the person provided for in Item 4, or any other person named by written notice from PWC to the Contractor.

PWC Resources means the specific assistance, resources, personnel or other assistance (if any) to be provided by PWC to the Contractor, as provided for in the Scope of Requirements.

PWC Site means any Site or other relevant location accessed or used by the Contractor in the connection with the performance of the Contractor's obligations under this Contract that is owned or controlled by PWC.

PWC Standards and Specifications means the specific standards and specifications in connection with the Repairs and Maintenance Works as provided for in the Scope of Requirements and includes any amendments or revisions to any such standards and specifications or new standards and specifications adopted by PWC as notified to the Contractor by PWC from time to time in accordance with clause 17.2.

Quality Assurance means the quality assurance systems, processes and procedures (if any) set out in the RFT Response.

Recipient has the meaning assigned to that term in the GST Act.

Repair means to restore an asset to good working order (where it performs its intended function for a prolonged period) after a failure or malfunction, or to improve a damaged asset to prevent further damage. In some circumstances, it may also be called corrective maintenance.

Repairs and Maintenance Works means, as the context requires, the:

- (a) Goods;
- (b) Services;
- (c) Works; or
- (d) any combination of (a), (b) or (c).

Relief Event means any of the following described events or circumstances occurring after the date of this Contract beyond the control and not caused or contributed to by the fault or negligence of the Party affected and which by the exercise of reasonable diligence the affected Party was unable to prevent provided that event or circumstance is limited to:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) earthquakes, flood, fires (other than on the site), Cyclones or other physical natural disaster, but excluding other weather conditions regardless of severity;
- (c) strikes at national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its consultants or suppliers, but excluding any industrial dispute which is specific to the site or consultant or the performance of this Contract; and
- (d) disease that is characterised as a pandemic by the World Health Organisation,

and any Legislative Requirement and acts of an Authority arising therefrom.

RFQ means a quotation request issued by PWC to a Contractor or a number of Contractors requesting specified works. As set out in clause 1.2(d), PWC may unilaterally issue an Order which is consistent with the Contractor's written quotation to PWC responding to the quotation request.

RFT means the request for tender or quotation issued by PWC that has the title as provided for in Item 2, including all conditions, annexures, schedules, attachments and addenda to it.

RFQ Response means the written quotation submitted by the Contractor to PWC in response to a RFQ issued by PWC.

RFT Response means the written tender or quotation submitted by the Contractor to PWC in response to the RFT and includes:

- (a) any written response by or on behalf of the Contractor to a request from PWC for clarification or further information given before the Commencement Date;
- (b) any written statement made by or on behalf of the Contractor to PWC before the Commencement Date in relation to the Repairs and Maintenance Works;
- (c) any verbal response by or on behalf of the Contractor to a request from PWC for clarification or further information given before the Commencement Date; and
- (d) any verbal statement made by or on behalf of the Contractor to PWC before the Commencement Date in relation to the Repairs and Maintenance Works.

Ring-Fencing Guideline means the Australian Energy Regulator's Electricity Distribution Ring-Fencing Guideline made under clause 6.17.2 of the National Electricity Rules, as that guideline applies in the Northern Territory from time to time.

Safe Work Method Statement or SWMS means

Schedule of Rates means the prices, fees and charges for the Repairs and Maintenance Works as provided for in Attachment 1.

Scope of Requirements means PWC's requirements with respect to the Repairs and Maintenance Works as provided for in Attachment 2.

Secondary Level Discussions has the meaning assigned to it in clause 33.3.

Services means, as the context requires:

- (a) the services as provided for in the Scope of Requirements; or
- (b) the services as provided for in an Order and the Scope of Requirements including the provision of the Deliverables and any ancillary services that are reasonably necessary or incidentally required or reasonably expected to be completed by the Contractor to enable an effective provision of the Services.

Site means those places where the Repairs and Maintenance Works will be delivered, performed or provided by the Contractor under this Contract.

Specifications means:

- (a) the required functionality and performance criteria for the Repairs and Maintenance Works set out or referred to as such in this Contract; and
- (b) the functional and performance specifications set out or referred to as such in the Contractor's standard documentation for the Repairs and Maintenance Works, including in the Documentation,
- (c) and in the event of any conflict or inconsistency between (a) and (b) above, the functionality and performance criteria in paragraph (a) prevails to the extent of such conflict or inconsistency.

Standards Australia means the not-for-profit organisation 'Standards Australia' which, amongst other things, develops and adopts standards in Australia.

Statutory Requirements means all:

- (a) Legislative Requirements;
- (b) Government Requirements; and
- (c) Environmental Laws,

except for those Statutory Requirements identified in the Scope of Requirements. Order or elsewhere in this Contract that the Contractor is not required to comply with.

Subcontractor means a person or entity contracted or otherwise engaged by the Contractor to perform any obligations of the Contractor under this Contract, and includes all other subcontractors of that person or entity.

Supply has the meaning assigned to that term in the GST Act.

Systems includes telecommunications systems, computer systems, networks, computer programs and databases, and the tangible media on which they are recorded and their supporting documentation.

Taxable Supply has the meaning assigned to that term in the GST Act.

Temporary Repair means a repair to quickly restore an asset to working order (where it performs its intended function until a full repair can be undertaken), with the intent to return and effect a full repair to restore the asset to good working order (where it performs its intended function for a prolonged period)

Term means the Initial Term and any Further Term that applies under clause 2.

Terms and Conditions means the section of this Contract headed 'Terms and Conditions'.

Tested Components has the meaning given in 13.1.

Testing means the testing of the Tested Components in accordance with clause 13 to determine whether they are Accepted (in whole or in part). Test has the corresponding meaning.

Third Party Material means any material in respect of which the Contractor does not own the Intellectual Property Rights.

Unscheduled Works means Repairs and Maintenance Works not contemplated by the Scope of Requirements and Schedule of Rates.

Utility means any utility service, including water, electricity, gas, telecommunication and electronic communications (including voice and data), drainage and sewerage, and supply of all supporting structures and media necessary for such services.

Variation means any:

- (a) increase, decrease or omission of any part of the Works;
- (b) change to the character, method of performance or quality of any ordered or specified Goods, material or Works;
- (c) change in the levels, lines, position or dimensions of any part of the Works;
- (d) execution of additional Works; and/or
- (e) demolition or removal of material or Works no longer required by PWC,

as directed by PWC's Representative in accordance with clause 9.8.

Variation Proposal means a proposal to vary this Contract that is in the form required by PWC.

WH&S Act means the *Work Health and Safety (National Uniform Legislation) Act* (NT) or the applicable analogous legislation in any jurisdiction from time to time.

WH&S Law means the WH&S Act and the WH&S Regulation or the applicable analogous legislation in any jurisdiction from time to time. As well as, all other applicable Laws relating to work health and safety.

WH&S Regulation means the *Work Health and Safety (National Uniform Legislation) Regulations* (NT) or the applicable analogous legislation in any jurisdiction from time to time.

Work Health and Safety Plan means the work health and safety plan, if required under the Scope of Requirements or Order, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Repairs and Maintenance Works from a work health and safety perspective; and
- (b) describe how the Contractor proposes to ensure the Repairs and Maintenance Works are performed consistently with Statutory Requirements in relation to work health and safety.

Working Day means the working hours and working days of the Contractor, customarily being between 0600 and 1800 Monday to Friday, and between 0600 and 1500 on Saturdays, excluding a day that is a public holiday in the Northern Territory.

Works where an Order or the context requires means:

- (a) the works which the Contractor must:
 - (i) design; and
 - (ii) commission, complete, construct and hand over to PWC in accordance with this Contract (including repairs, maintenance and servicing) as set out in the Scope of Requirements or an Order; and
- (b) all things or tasks which are necessary, or may be necessary, for the Contractor to do to comply with this Contract, including Variations, remedying any Defects and all Plant, Equipment and Work.

ATTACHMENT 1 - Schedule of Rates

[Attach RFT Response – Schedule of Rates]

ATTACHMENT 2 - Scope of Requirements

[Attach RFT – Scope of Requirements]