



Power and Water Corporation Goods and Services – 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 27.1)	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.	Principal's Representative (clause 4.6(c))	Name: [Insert name of Contract owner] Phone: [Insert phone number] Email: [Insert email address]
5.	Supplier (including address for notices under clause 27.1)	[insert full name] [insert ABN/ACN] Address: [insert address] Email: [insert email]
6.	Supplier Representative (clause 4.6(d))	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 one-off supply or fixed term contract <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)	The date specified as such in the Notice of Acceptance (or if no date is specified, the date of the Notice of Acceptance)
9.	Initial Term (clause 2.1)	[Insert the duration of the term of this Contract, e.g. one of: [insert months i.e. 36 months] from the Commencement Date OR Commences on the Commencement Date and ends on the completion of the Supplier's obligations in connection with the Supplies]

10. Further Term
(clause 2.2)

Is there an option to extend the term of this Contract?

Yes, as follows:

Further Term	[insert months]
---------------------	-----------------

No, not applicable.

11. Key Milestones and Key Milestone Dates
(clause 4.1(a)(vii))

Are there Key Milestones and Key Milestone Dates?

Yes, as follows:

Ref	Key Milestones	Key Milestone Dates
KM1	[insert details]	[insert date]
KM2		

No, not applicable.

12. Operating Life for Goods
(clause 19.2(g)(v))

Is there a required operating life of the Goods?

Yes, as follows:

Goods	Period	Commencement date
[insert description]	[insert months]	[insert commencement date]

No, not applicable.

13. Key Performance Indicators
(clause 4.2)

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

Yes, as follows:

Key Performance Indicators
[insert]

No, not applicable.

14. Supplier Testing
(clause 5.1)

Is the Supplier required to carry out Testing under this Contract?

Yes

No, not applicable.

15. Key Personnel
(clause 8.2)

Are Key Personnel required under this Contract?

Yes, as follows:

Key Personnel
[insert name or key position]

No, not applicable.

16. Reporting
(clause 4.8(b))

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

Yes, as follows:

Report type	Frequency	Report timeframes/dates	Format
[insert]	[insert frequency or 'not applicable']	[insert]	[insert format or 'not applicable']

No, not applicable.

17. Confidential Information of PWC
(clause 15)

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 16)

Intellectual Property Rights in Contract Material will be:

licensed to PWC (owned by the Supplier)

owned by PWC.

19. Invoicing
(clause 6.2)

The Supplier will be entitled to invoice the Charges:

- on delivery of the Goods (where applicable)
- monthly in arrears following performance of the Services (where applicable)
- as specified in the Payment Milestones as provided for in Item 20
- as follows:

Charges details:	Entitled to invoice:
[insert]	[insert]

20. Payment Milestones

Are any of the Charges payable based on Payment Milestones?

- Yes, as follows:

Payment Milestone	Payment Milestone Date	Payment Milestone Amount
[insert e.g. Acceptance of XXX]	[insert e.g. the date of Acceptance of XXX]	[insert]

- No, not applicable.

21. Expenses
(clause 6.3)

Expenses are:

- not recoverable by the Supplier
- recoverable by the Supplier, subject to the Supplier having obtained PWC's prior written consent
- recoverable by the Supplier, subject to the Supplier having obtained PWC's prior written consent and in accordance with the Schedule of Rates

22. Adjustments
(clause 6.9)

Are Charges subject to adjustment?

- No, not applicable
- Yes, as follows:

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]

23. Insurance
(clause 18)

Insurance type	Minimum amount
Public liability	[\$[Insert amount]] for each and every Claim
Product liability	[\$[Insert amount]] for each and every Claim and in the annual aggregate
Workers' compensation	As specified by the applicable Laws

24. Defect Rectification Period
(clause 20.1)

Are Defect Rectification Periods applicable to this Contract?

Yes, as follows:

Supplies	Period	Commencement date
[insert description]	[insert months]	Acceptance by PWC OR [insert commencement date]

No, not applicable.

25. Cap on the Supplier's liability
(clause 21.3)

Subject to clauses 21.1 and 21.2, the cap on the Supplier's liability under this Contract is:

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

26. Special Conditions
(clause 27.14)

Are Special Conditions applicable to this Contract?

Yes, as set out in Attachment 1

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 Supplier, a binding contract is formed between the Parties in relation to the provision of the Supplies on the terms and conditions of this Contract.

1.2 Appointment of the Supplier and contract model

A one-off supply or fixed term contract

- (a) Where Item 7 provides that this Contract is a *one-off supply or fixed term contract*:
- (i) on and from the Commencement Date, PWC appoints the Supplier to provide the Supplies;
 - (ii) the Supplier must provide the Supplies to PWC:
 - (A) in the timeframe(s) specified in this Contract;
 - (B) for the Charges; and
 - (C) otherwise in accordance with the terms and conditions of this Contract; and
 - (iii) subject to clause 1.3, PWC may from time to time during the Term, require the Supplier to provide additional Supplies, by issuing the Supplier with an Order for those additional Supplies.

A standing offer contract

- (b) Where Item 7 provides that this Contract is either a *standing offer contract – sole supplier* or a *standing offer contract – multiple suppliers (panel arrangement)*:
- (i) the Supplier irrevocably makes a standing offer to provide the Supplies to PWC as and when required by PWC during the Term; and
 - (ii) subject to clause 1.3, PWC will issue the Supplier with an Order for any Supplies required by PWC from the Supplier.

A standing offer contract – multiple suppliers (panel arrangement)

- (c) 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 suppliers 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 Supplier will not be entitled to any compensation from PWC as a result of PWC exercising its rights under clauses 1.2(c)(i) to 1.2(c)(ii) (inclusive).

1.3 Orders

- (a) Prior to the issue of any Order PWC may provide the Supplier with a quotation request specifying Supplies required by PWC.
- (b) 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 Supplier must issue a written quotation to PWC responding to the quotation request.

- (c) PWC may unilaterally issue an Order which is consistent with the Supplier's written quotation under clause 1.3(b) above, and that Order will be binding on the Supplier.
- (d) The Supplier must provide the Supplies set out in each Order issued to the Supplier by PWC in accordance with the terms of that Order and this Contract (for the avoidance of doubt, each Order creates additional obligations on the Parties with respect to the additional Supplies set out in that Order under the terms and conditions of this Contract).
- (e) Notwithstanding any other provision of this Contract, PWC is not obliged to issue any Orders to the Supplier or to acquire any minimum volume of Supplies from the Supplier and has not made any representation or warranty to the Supplier that it will acquire any Supplies from the Supplier.
- (f) 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. Except as required under an Order, the Supplier is not permitted to provide any Supplies or entitled to any payment under this Contract.

1.4 PWC Entities are beneficiaries of the Supplies

PWC may, at its discretion:

- (a) allow PWC Entities to receive and enjoy the benefit of the Supplies; and
- (b) instruct the Supplier to provide some or all of the Supplies directly to PWC Entities.

1.5 Non-exclusive appointment

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

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 Supplier 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 Supplier provides PWC with notice in writing at least 15 days prior to the end of the Initial Term that the Supplier consents to any such extension; and
- (b) subject to the Supplier providing consent under clause 2.2(a)(ii), the Further Term will commence on and from the expiry of the Initial Term.

3. SUPPLIES

3.1 Provision of Supplies

- (a) The Supplier must provide the Supplies 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 reasonably necessary and directed in writing by PWC before the relevant time for delivery.

- (b) Other than the PWC Resources (if any), the Supplier must provide all equipment, facilities and other incidental items and materials necessary to perform the Supplies. All equipment must be properly maintained and appropriate for the purposes for which it is used or intended to be used.

3.2 Sites

- (a) The Supplier must ensure that the Supplies are only provided from sites within Australia except where and to the extent PWC otherwise authorises in writing particular Supplies to be provided from sites outside of Australia.
- (b) The Supplier must ensure that the Supplies 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.
- (c) The Supplier must not change the location from where the Supplies will be provided without the prior written consent of PWC.
- (d) The Supplier must at all reasonable times give PWC and any other person authorised by PWC access to any site (that is not a PWC Site) from which the Supplier's obligations under this Contract are or will be performed.

3.3 Delivery of Goods

- (a) In addition to the obligations under clauses 3.1 and 3.2, the Supplier must:
 - (i) 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; and
 - (ii) deliver the Goods:
 - (A) 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; and
 - (B) 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.
- (b) The Supplier acknowledges that delivery will not be taken to have occurred until delivery is acknowledged in writing by a representative of PWC.
- (c) The Supplier acknowledges and agrees that written confirmation of delivery given by a representative of PWC in accordance with clause (b):
 - (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 by PWC or delivered in accordance with this Contract.
- (d) If after delivery of any Goods, PWC determines and notifies the Supplier that there is an over-supply or shortfall in the quantity delivered or any visible damage to the Goods or any other issue with the Goods not being delivered in accordance with this Contract, then, without limiting the Supplier's other obligations or PWC's other rights or remedies, the Supplier must promptly correct any over-supply or shortfall or other

issue and, without waiting for the damaged Goods to be returned by PWC, promptly replace any visibly damaged Goods.

- (e) PWC will return (at the Supplier's cost and risk) any visibly damaged Goods to the Supplier, and may do so either before or after receipt of replacement Goods from the Supplier. PWC is under no obligation to return any packaging (including any crates or pallets) to the Supplier.

3.4 Title to Goods and Deliverables

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

3.5 Risk to the Goods and Deliverables

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

4. PERFORMANCE

4.1 Standard of performance

- (a) Without limiting any other obligation of the Supplier, the Supplier must provide the Supplies to PWC and perform the Supplier's other obligations under this Contract:
 - (i) in a timely, efficient and proper manner using reasonable care, skill and diligence;
 - (ii) using the Key Personnel (if any) and otherwise using a sufficient number of suitably trained, qualified, skilled and experienced Supplier Personnel;
 - (iii) in accordance with all applicable Laws;
 - (iv) in accordance with all relevant Australian industry standards and Good Industry Practice;
 - (v) in accordance with the standards, specifications and requirements of this Contract, including the PWC Standards and Specifications;
 - (vi) in accordance 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 Supplier is notified in writing by PWC of those rules, codes of conduct, policies, guidelines, processes or procedures;
 - (vii) to meet each Key Milestone (if any) by the relevant Key Milestone Date (if any);
 - (viii) in accordance with the reasonable directions of PWC; and
 - (ix) otherwise in accordance with the terms and conditions of this Contract.
- (b) The Supplier may submit a Variation Proposal in accordance with Clause 27.2 if:
 - (i) after the Commencement Date, PWC notifies the Supplier under clause 4.1(a)(vi) of new or amended rules, codes of conduct, policies, guidelines, processes and procedures of PWC; and
 - (ii) the Supplier 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.

4.2 Key Performance Indicators

- (a) Where Item 13 provides that Key Performance Indicators must be achieved by the Supplier under this Contract, the Supplies must be provided by the Supplier so as to meet or exceed the Key Performance Indicators.
- (b) Where the Key Performance Indicators provide for service credits or price reductions (or similar) in the event that the Supplier fails to meet the required levels of performance, the Supplier must, as directed by PWC:
 - (i) credit such amounts against the next invoice issued by the Supplier to PWC; or
 - (ii) pay such amounts to PWC within 10 Business Days of the end of the relevant period to which such service credits or price reductions (or similar) relate.
- (c) The Parties agree that:
 - (i) any service credits or price reductions (or similar) provided for by the Key Performance Indicators are a genuine pre-estimate of the Losses which PWC would suffer by reason of the Supplier's failure to perform the Supplier's obligations in accordance with the Key Performance Indicators; and
 - (ii) the purpose of the service credits or price reductions (or similar) is to incentivise the Supplier and that they are not intended as a penalty for non-performance or to quantify the full extent of PWC's Losses in relation to any such failure.
- (d) The rights and remedies of PWC under this clause 4.2 are in addition to and not in replacement of any other rights or remedies available to PWC under any other terms and conditions of this Contract or at Law.

4.3 Quality control

The Supplier is at all times responsible for the quality and quality control of all of the Supplies and the implementation of any Quality Assurance throughout the Term.

4.4 Other suppliers

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

4.5 Sub-contracting

- (a) The Supplier must not sub-contract any of the Supplier's obligations under this Contract without the prior written consent of PWC (such consent not to be unreasonably withheld).
- (b) If the Supplier enters into a sub-contract with any third party for the performance of any of the Supplier's obligations under this Contract:
 - (i) any such sub-contract does not excuse the Supplier from performing the Supplier's obligations under this Contract;
 - (ii) the Supplier must ensure that the Subcontractor and the Personnel of the Subcontractor comply with the Supplier's obligations under this Contract; and
 - (iii) the Supplier 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 Supplier.

4.6 Contract Management

Appointment and replacement 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.

Principal's Representative

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

Supplier Representative

- (d) The Supplier Representative will represent the Supplier for the purposes of exercising the Supplier's powers, duties, discretions and authorities under this Contract. Nothing in this clause prevents other Supplier representatives from dealing with PWC on day to day operational matters in connection with the provision of the Supplies under this Contract.
- (e) A direction given by PWC to the Supplier Representative will be regarded as having been given to the Supplier.
- (f) Matters within the knowledge of the Supplier Representative will be regarded as being within the knowledge of the Supplier.
- (g) If the Principal's Representative makes a reasonable objection to the appointment of a person as the Supplier Representative, the Supplier must terminate the appointment and appoint another person to the position of Supplier Representative, subject again to any reasonable objection of the Principal's Representative.

4.7 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 Supplies under this Contract and the Supplier's performance of the Supplier's obligations under this Contract. The Supplier must attend all such meetings on the dates and at the times scheduled by PWC. PWC will give the Supplier reasonable prior notice of all such meetings.
- (b) The Supplier Representative and the Principal's Representative must meet with each other as required by either of them to discuss performance of this Contract and the resolution of any issues.

4.8 Reporting

- (a) The Supplier must provide regular reports, as requested by PWC from time to time, acting reasonably, outlining the status of the provision of the Supplies and the performance of the Supplier's obligations under this Contract.
- (b) Without limiting clause 4.8(a), the Supplier must provide the specific reports as provided for in Item 16.
- (c) The reports required to be provided by the Supplier under this Contract must be provided:

- (i) in accordance with the frequency, timeframes and format as provided for in Item 16 (if any);
- (ii) as required under any other part of this Contract; or
- (iii) as reasonably required from time to time by PWC.

4.9 PWC Infrastructure

The Supplier must:

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

4.10 PWC Resources

- (a) To assist the Supplier to perform the Supplier's obligations under this Contract, PWC will make the PWC Resources available to the Supplier at such times as are agreed by the Parties.
- (b) Without limiting any other provision of this Contract, the Supplier must:
 - (i) not use the PWC Resources for any purpose other than to perform the Supplier's obligations under this Contract;
 - (ii) comply with any PWC policies or procedures and any directions given by PWC in connection with the use or return of any PWC Resources;
 - (iii) ensure that all PWC Resources in the custody or control of the Supplier 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.
- (c) The Supplier acknowledges that the PWC Resources remain the property of PWC and this Contract does not affect the ownership of the PWC Resources.

4.11 Local Content

Local Benefit Commitments

- (a) The Supplier acknowledges PWC's commitment to the development of business and industry in the Northern Territory.
- (b) In the RFT Response, the Supplier made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Supplier as part of this Contract. These promises and commitments form part of this Contract (and are referred to in this clause 4.11 as the **Local Benefit Commitment**).
- (c) The Supplier 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 Supplier demonstrates to PWC that, for commercial, technical or other reasons, it is impractical to do so, in carrying out the Supplier's obligations under this Contract, the Supplier must use:

- (i) labour available within the Northern Territory;
- (ii) subcontractors established in the Northern Territory; and
- (iii) the services located, and obtain supplies and materials supplied by businesses established, in the Northern Territory.

Reporting and review

- (e) The Supplier must, on written request by PWC, provide a written report in relation to its compliance with clauses 4.11(c) and 4.11(d) within the timeframe specified in PWC's written request.
- (f) The Supplier 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 Supplier 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 Supplier must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 4.11.
- (i) The Supplier is liable for its own costs of any audit or inspection conducted pursuant to this clause 4.11.
- (j) The Supplier 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 Supplier 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 Supplier.
- (k) The Supplier 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 4.11.

Performance to be reported in Supplier's Performance Reports

- (l) The Supplier's compliance or non-compliance with this clause 4.11 will be recorded in the Supplier's Performance Report to be prepared by PWC in accordance with clause 25.

4.12 Delay

- (a) The Supplier must promptly notify PWC if it is or may be delayed in performance of its obligations under this Contract (including delay to any Milestones), such notice to include the cause of delay and anticipated effects of the delay (**Delay Notice**).
- (b) PWC may extend the relevant dates for performance of the Contractor's obligations by a reasonable period provided that:
 - (i) the Supplier has submitted a Delay Notice;
 - (ii) the cause of the delay is a Force Majeure Event or is otherwise beyond the reasonable control of the Supplier; and
 - (iii) the Supplier has taken all reasonable steps to mitigate the effects of the delay.
- (c) Where the delay is likely to extend for a period of greater than [6] weeks, PWC may terminate the Contract and the Supplier will only be entitled to:
 - (i) payment for Supplies provided to PWC before the date of termination that comply with this Contract; and

- (ii) the cost of Goods reasonably ordered by the Supplier before the date of termination and which the Supplier is legally obliged to accept but only if they will become the property of PWC on payment, subject to the Supplier mitigating these costs.
- (d) PWC may at any time for any reason and at its absolute discretion extend the time for performance of any of the Supplier's obligations under this Contract.

5. TESTING AND ACCEPTANCE

5.1 Supplier Testing

- (a) Where Item 14 provides that the Supplier is required to carry out Testing, the Supplier must perform tests to validate that the Supplies 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 Supplier 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 Supplier.
- (b) The Supplier 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 Supplier that PWC requires the Tests to be rerun, the Supplier 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.

5.2 PWC's Testing

Without limiting the Supplier'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 Supplies, including performing PWC's own testing that is the same as or similar to the Testing provided for in clause 5.1.

5.3 Acceptance

- (a) PWC will Accept the Supplies or any parts of the Supplies by giving notice to the Supplier when:
 - (i) PWC is satisfied that all or such parts of the Supplies conform with the standards, specifications and requirements of this Contract (including the relevant Specifications);
 - (ii) clause 5.3(b)(i) applies;
 - (iii) the Supplier has met the Supplier's obligations under clauses 5.3(b)(ii) or 5.3(b)(iv); or
 - (iv) the Supplies have been corrected under clause 5.3(b)(v).
- (b) Without limiting any other right or remedy available to PWC, if PWC is not, in respect of any parts of the Supplies, satisfied that such parts comply with the requirements of this Contract (including the relevant Specifications) after the passing of the relevant dates or timeframes for delivery or provision under this Contract, PWC may by written notice to the Supplier in respect of such parts of the Supplies:
 - (i) waive the relevant requirement of this Contract (including the relevant Specifications) and the Charges will be equitably reduced by an amount

determined by PWC acting reasonably to reflect the reduction in the value of the Supplies to PWC;

- (ii) conditionally accept such parts of the Supplies subject to the Supplier agreeing, at the Supplier'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 5.3(b)(ii) should there be any failure by the Supplier to meet any of the Supplier's obligations under this clause 5.3(b)(ii);
 - (iii) reject such parts of the Supplies and:
 - (A) remove such parts of the Supplies from the scope of this Contract and the Charges will be equitably reduced by an amount determined by PWC acting reasonably; or
 - (B) terminate this Contract in accordance with clause 23.3, and require the Supplier, at the Supplier's cost, to promptly collect the Supplies (where applicable);
 - (iv) require the Supplier, at the Supplier's cost, to collect the Supplies (where applicable) and promptly correct the Supplies so that the Supplies conform with the requirements of this Contract (including the relevant Specifications), provided that PWC reserves the right to give a further written notice under this clause 5.3(b)(iv) should there be any failure by the Supplier to meet any of the Supplier's obligations under this clause 5.3(b)(iv); or
 - (v) correct, or have a third party correct, the Supplies and the Supplier must reimburse PWC for all Losses sustained, incurred or suffered by PWC in connection with the correction of the Supplies.
- (c) For the purposes of clause 5.3(b), PWC must:
- (i) act reasonably when determining whether Supplies comply with the Contract; and
 - (ii) when exercising any rights in respect of Supplies that do not comply with the Contract, ensure that the consequences of exercising such rights for the Supplier are proportionate to the nature of the non-compliance.
- (d) Acceptance of any Supplies under this clause 5.3 will not, in itself, constitute evidence that such Supplies comply with the relevant requirements of this Contract (including the relevant Specifications), and this clause 5.3 does not limit the Supplier's obligations or PWC's rights and remedies.

6. PAYMENT

6.1 Cost changes at Supplier's risk

The Supplier must not claim any amount in addition to the Charges 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 Supplier in connection with the inputs that it requires to supply the Supplies.

6.2 Invoicing

- (a) The Supplier may invoice PWC the Charges at the times provided for in Item 19.
- (b) Invoices must:

- (i) be set out in the format prescribed by PWC or, if PWC has not prescribed a format, an easy to understand, user-friendly format;
- (ii) include the full amount payable by PWC;
- (iii) reference the relevant PWC purchase order number;
- (iv) provide a description of the Supplies supplied and a breakdown of the Charges invoiced for those Supplies;
- (v) attach all timesheets that are relevant to the Supplies;
- (vi) attach any additional information required by PWC for invoice substantiation, including breakdowns by the Supplier's Personnel, the calculations used to determine the amounts invoiced and supporting documentation;
- (vii) be issued in Australian dollars (or such other currency as agreed in writing between the Parties);
- (viii) include the Supplier's bank account details to enable EFT payment transmission;
- (ix) unless otherwise specified in the relevant Order, be sent via email to accounts.pwc@powerwater.com.au; and
- (x) comply with the requirements of the GST Act.

6.3 Charges inclusive

- (a) The Supplier acknowledges and agrees that, except as expressly provided for in Item 21, the Charges are inclusive of the Supplier's costs and expenses together with any taxes (including GST), duties, levies, licence fees or other similar amounts, connected with the provision of the Supplies and the performance of the Supplier's obligations under this Contract.
- (b) Where Item 21 provides that Expenses are recoverable by the Supplier, the Supplier must supply evidence of such Expenses having been incurred with any invoice requiring payment of such Expenses.

6.4 Payment of invoices

Subject to the terms and conditions of this Contract and the Supplier's compliance with this Contract, PWC will pay the Supplier within 30 days of receiving an invoice that complies with clause 6.2.

6.5 Disputed invoices

- (a) If PWC disputes the correctness of any invoice (including disagreeing with any amount invoiced for any reason), then PWC may withhold payment of the disputed amount until the dispute is resolved.
- (b) PWC will pay any newly issued invoice from the Supplier for the undisputed amount.
- (c) If the Supplier disagrees with PWC's assessment, it may refer the matter for resolution under clause 22.

6.6 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 Supplies.

6.7 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 Supplier 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 Supplier; and
- (c) if PWC does not exercise PWC's rights under clause 6.7(b), the Supplier will, within 15 Business Days of the notice under clause 6.7(a), reimburse PWC the amount overpaid or overcharged (including any overcharged GST).

6.8 Set off

- (a) Any amount owed by the Supplier to PWC under this Contract may be deducted or set off against amounts payable by PWC to the Supplier under this Contract.
- (b) PWC will notify the Supplier if making a deduction or set off under clause 6.8(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 Supplier.

6.9 Adjustments

Where Item 22 provides that Charges will be adjusted, the Charges stated in Item 22 are subject to adjustment for changes in the Applicable Index on each Date of Adjustment in accordance with the following formula:

$$NC = C + (C \times F)$$

Where:

- (a) **NC** is the Charges payable in relation to the Supplies applicable for the year following the Date of Adjustment;
- (b) **C** is the Charges payable in relation to the Supplies applicable immediately before the Date of Adjustment; and
- (c) **F** is the adjustment factor calculated as follows:
 - (i) 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
 - (ii) 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.

7. 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.

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- (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,
- 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.

8. PERSONNEL

8.1 Personnel generally

- (a) The Supplier must ensure that Supplier Personnel have the relevant training, including any Site specific training required by PWC, qualifications, skills and experience necessary to provide the Supplies.
- (b) The Supplier must ensure that it properly supervises all of the Supplier Personnel.
- (c) PWC may, acting reasonably, require in writing that the Supplier ceases to use certain Supplier Personnel in the performance of the Supplier's obligations under this Contract and the Supplier 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 Supplier or any Subcontractor. Clause 8.1(c) is only intended to give PWC the right to require that the Supplier discontinues using a particular person in the performance of the Supplier's obligations under this Contract.
- (e) The Supplier must ensure that the Supplier Personnel are aware of and comply with the Supplier's obligations under this Contract including the Supplier's obligations in respect of the Confidential Information of PWC, Personal Information and PWC Data, and the Supplier will be liable for the acts and omissions of such Personnel as if they were the acts or omissions of the Supplier.
- (f) If PWC requests, the Supplier must at its own cost ensure that Supplier 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.

8.2 Key Personnel

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

9. COMPLIANCE

9.1 Compliance with the PWC Policies

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

9.2 PWC Standards and Specifications

- (a) The Supplier must ensure that the Supplies meet the PWC Standards and Specifications, and the Supplier must comply with the PWC Standards and Specifications in the performance of the Supplier's obligations under this Contract.
- (b) PWC may amend or revise the PWC Standards and Specifications or adopt new standards and specifications by written notice to the Supplier from time to time after the Commencement Date. PWC must pay any reasonable costs incurred by the Supplier in implementing and complying with any amended, revised or new PWC Standards and Specifications, provided that such costs are material, agreed to by PWC in advance of being incurred and fully substantiated by the Supplier to the reasonable satisfaction of PWC.

9.3 Keeping of records

- (a) The Supplier must make and keep, and must ensure all Subcontractors of the Supplier make and keep, accurate financial records and other information relevant to the performance of the Supplier's obligations under this Contract, whether in writing or stored on any other medium, including:
 - (i) records as to progress of the provision of the Supplies;
 - (ii) time records;
 - (iii) all reports and opinions obtained by the Supplier for whatever reason and all necessary supporting documents;
 - (iv) invoices; and
 - (v) records and related financial statements and such records and information as are required to comply with any applicable Law.
- (b) The Supplier must give PWC access to and copies of the records and information required under clause 9.3(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.

9.4 Audit rights

- (a) PWC may conduct audits of the performance of the Supplier'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 Supplier's compliance with the Supplier's obligations under this Contract;
 - (ii) for compliance with Law;
 - (iii) at the request of the internal audit division of PWC in the course of conducting a broader audit activity;
 - (iv) for the purpose of verifying the accuracy of any report provided by the Supplier in relation to a significant failure, or recurring failures, in relation to the provision of the Supplies;
 - (v) for the purpose of verifying that the Supplier 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 9.4, the Supplier 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 Supplier's obligations under this Contract are or will be performed;
 - (ii) all Subcontractors and Supplier Personnel; and
 - (iii) all relevant equipment, software, data, records, accounts, documents, reports, records and systems (whether prepared by the Supplier or not) relating to the Supplier's obligations under this Contract.
- (d) The Supplier 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 9.4.
- (e) PWC is liable for PWC's own costs of any audit or inspection conducted pursuant to this clause 9.4, except where the Supplier is found to be in breach of this Contract, in which case the Supplier must, within 5 Business Days of a request by PWC, reimburse PWC for PWC's costs in connection with such audit.
- (f) The Supplier must meet with PWC to discuss in good faith any recommendations made by the PWC Audit Representative following the completion of an audit. The Supplier will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Supplier's obligations under this Contract as directed by PWC. The cost of implementing those recommendations will be borne by the Supplier.
- (g) The Supplier 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 9.4.
- (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.

10. PWC SITES

10.1 Access to PWC Sites

- (a) The Supplier must obtain permission from PWC prior to accessing any PWC Sites.
- (b) PWC:
 - (i) is not obliged to provide the Supplier with sole access to the PWC Sites;
 - (ii) is not obliged to carry out any work or provide any facilities to the Supplier (other than as stated in this Contract); and
 - (iii) may engage other suppliers to work upon or in the vicinity of the PWC Sites at the same time as the Supplier.

10.2 Supplier's obligations with respect to the PWC Sites

- (a) The Supplier must only access the PWC Sites during PWC's business hours as notified to the Supplier from time to time and as otherwise reasonably necessary to perform its obligations under the Contract, subject to obtaining PWC's prior written consent.
- (b) Unless otherwise agreed in writing, the Supplier must give PWC at least 2 Business Days prior notice each time before entering the PWC Sites. If PWC advises the Supplier that the proposed date or time of entry onto the PWC Sites is inconvenient to PWC for any reason, the Supplier must not enter onto the PWC Sites on that date or at that time (as applicable) but on an alternative date and/or time as advised by PWC.
- (c) The Supplier must ensure that all Supplier Personnel requiring access to the PWC Sites have completed the necessary site induction and complied with all PWC's requirements for access to the PWC Sites before accessing them.
- (d) The Supplier must:
 - (i) ensure that activities of the Supplier on the PWC Sites are carried on at all times in a safe manner, including ensuring Supplier Personnel wear appropriate protective equipment, and follow such directions concerning safety as PWC may issue;
 - (ii) provide such instruction and supervision to the Supplier Personnel as is necessary to ensure safe conduct of the activities on the PWC Sites;
 - (iii) comply with any PWC rules and requirements in respect of the PWC Sites with regard to conduct, behaviour, safety, secrecy and security;
 - (iv) comply with all directions given by PWC in respect of the PWC Sites;
 - (v) remove any refuse or rubbish created by the Supplier at the PWC Sites;
 - (vi) as required by PWC, make good any damage to the PWC Sites or any property on the PWC Sites caused by the Supplier or Supplier Personnel, to the satisfaction of PWC; and
 - (vii) 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 the PWC Sites or any person or property on or in the vicinity of the PWC Sites which comes to the attention of the Supplier or any Supplier Personnel, whether caused by the Supplier or otherwise.
- (e) The Supplier must not:
 - (i) use the PWC Sites other than to perform the Supplier's obligations under this Contract;
 - (ii) inconvenience PWC or other users of the PWC Sites;

- (iii) do anything to adversely impact the cleanliness, tidiness, safety or security at the PWC Sites;
- (iv) cause disruption to or interference with PWC or third party users of the 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 the PWC Sites;
- (vi) cause damage to the PWC Sites or any property on the PWC Sites;
- (vii) leave any material, equipment or rubbish on the PWC Sites; and
- (viii) do anything that will or might constitute a breach of any Law affecting the PWC Sites or that will or might wholly or in part vitiate any insurance effected in respect of the PWC Sites from time to time.

10.3 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 Supplier in connection with the PWC Sites, including in relation to the existing conditions at the PWC Sites or any area in the vicinity of the PWC Sites.
- (b) The Supplier acknowledges that the information or data described in clause 10.3(a) does not form part of this Contract except to the extent expressly stated in this Contract.

11. WORK HEALTH AND SAFETY

- (a) The Supplier must comply with, and ensure that its Personnel comply with:
 - (i) the WH&S Act and the WH&S Regulations (including sections 22, 23, 24, 25 or 26 of the WH&S Act, to the extent such sections apply to the Supplier or its Personnel (as applicable) as a person conducting a business or undertaking);
 - (ii) all other applicable Laws relating to work health and safety;
 - (iii) any directions on safety issued by PWC or the Principal's Representative; and
 - (iv) any directions on safety issued by any relevant authorities or otherwise required by any Law or required under this Contract.
- (b) The Supplier must:
 - (i) conduct risk assessments as necessary and put in place measures to eliminate or reduce risks to health and safety arising from the provision of the Supplies;
 - (ii) notify the Principal's Representative immediately (and in any event within 24 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the provision of the Supplies; and
 - (iii) if requested by the Principal's Representative or required by the WH&S Act, the WH&S Regulations or any other applicable Laws relating to work health and safety in respect of the provision of the Supplies, produce evidence of any approvals, licences, consents, permissions, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Supplier or any of its Personnel commences the provision of the Supplies.
- (c) In respect of any risks arising from the provision of the Supplies, the Supplier must provide information to PWC about any joint duties owed under the WH&S Act, the

WH&S Regulations and any other applicable Laws relating to work health and safety and must consult and cooperate with PWC about these risks.

- (d) All terms used in this clause 11 have the meanings given to them in the WH&S Act and the WH&S Regulations.

12. SUSTAINABLE SUPPLY CHAIN MANAGEMENT

12.1 Responsible sourcing

- (a) All of PWC's suppliers play a vital part in PWC's sustainability performance. As such, the Supplier 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 Supplier sources, produces or provides the Supplies or any part of them.
- (b) Without limiting clause 12.1, if PWC develops a responsible sourcing code or similar, the Supplier 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.

12.2 Modern Slavery

- (a) Without limiting clause 12.1, the Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the Supplier's operations and in its supply chains used in the provision of the Supplies
- (b) If at any time the Supplier becomes aware of Modern Slavery practices in its operations and/or supply chains used in the performance of the Contract, the Supplier 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 Supplier must include in its agreements with Subcontractors obligations on its Subcontractors to the effect of this clause 12.2.

13. ENVIRONMENT

13.1 Obligations of Supplier in respect of the environment

- (a) The Supplier must, in connection with the Supplier'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 Supplier must not do or permit to be done or omit to do any act or thing in connection with the Supplier's obligations under this Contract which would result or be likely to result in a breach of Environmental Laws.
- (c) Without limiting clause 13.1(a)(i), in conducting the Supplier's activities on a Site, the Supplier must not do or permit to be done or omit to do any act or thing in connection with the Supplier's obligations under this Contract which would result or be likely to result in PWC breaching any Environmental Laws.

13.2 Environmental Incidents

- (a) If the Supplier 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 Supplier's acts, omissions or obligations under this Contract, the Supplier must immediately notify PWC of the Environmental Incident that has occurred or may occur.
- (b) The Supplier 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 Supplier's acts, omissions or obligations under this Contract.

13.3 Supplier Personnel

The Supplier must ensure that all Supplier Personnel required to enter onto the Sites 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 Supplier's own obligations at Law or impose any obligation on PWC to supervise or take responsibility for the Supplier Personnel.

13.4 Indemnity

The Supplier must indemnify PWC against all Loss sustained, incurred or suffered by PWC as a result of or in connection with any breach of the Supplier's obligations contained in clause 13.1, 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.

14. PRIVACY AND SECURITY REQUIREMENTS

14.1 Privacy

If, as a result of this Contract, the Supplier is able to access any Personal Information that is collected, handled or held by or on behalf of PWC, the Supplier must:

- (a) 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 Supplier 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 Supplier 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 14.1(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 Supplier must use such Personal Information pursuant to this Contract;

- (d) restrict access to any such Personal Information to Supplier Personnel and Subcontractors who need to access the Personal Information to fulfil the Supplier'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 14.1(a).

14.2 Security requirements

- (a) The Supplier 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 Supplier must establish, maintain and apply security procedures which ensure that Supplier Personnel are appropriately vetted and meet the requirements of clause 14.2(a).
- (c) The Supplier must comply with any specific security requirements in the performance of the Supplier's obligations under this Contract as provided for in the Scope of Requirements.
- (d) The Supplier must promptly provide PWC with written notice of any security weaknesses or incidents:
 - (i) that have impacted or may impact the Supplies; and
 - (ii) in connection with the performance of the Supplier's obligations under this Contract.
- (e) Within 5 Business Days of giving any notice under clause 14.2(d), the Supplier 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.

15. CONFIDENTIALITY

- (a) Subject to the provisions of clauses 15(b) and 15(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 15(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,
- 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 15(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on PWC under this clause 15 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 Supplier 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.

16. INTELLECTUAL PROPERTY

16.1 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 Supplier 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 Supplier), all Intellectual Property Rights in the Contract Material that are created by the Supplier will remain vested in the Supplier.
- (c) On expiry or termination of this Contract or otherwise on request, the Supplier must promptly provide PWC with complete copies of the Contract Material.

16.2 Existing material

This clause 16 does not affect the ownership of:

- (a) PWC's or its licensors' Intellectual Property Rights in any PWC IPR; or
- (b) the Supplier's or its licensors' Intellectual Property Rights in any Supplier IPR.

16.3 Licences

- (a) The Supplier 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 Supplier IPR to the extent required for PWC to receive the full benefit of the Supplies.
- (b) PWC grants the Supplier a non-exclusive, non-transferable and royalty-free licence for the Term to use the PWC IPR solely for the purpose of performing the Supplier's obligations under this Contract.
- (c) The Supplier 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 the PWC IPR.

16.4 Third Party Material

Before using any Third Party Material under this Contract, the Supplier 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.

16.5 Moral Rights

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

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

17. PUBLICITY

17.1 Public statements

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

17.2 Reputation

The Supplier must not do or omit to do anything which may:

- (a) damage, bring into disrepute or ridicule PWC's name, messages or reputation; or
- (b) attract public or media attention which may be prejudicial or otherwise detrimental to PWC's brand, messages, reputation or interests.

17.3 PWC name

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

18. INSURANCE**18.1 Insurance coverage**

The Supplier must obtain, pay for and maintain in full force and effect throughout the Term the Insurances.

18.2 Evidence of insurance coverage

If requested in writing by PWC, the Supplier must, within 5 Business Days of such request, provide PWC with copies of the certificates of currency issued by the Supplier's insurers 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 Supplies being provided or to PWC or its operations.

18.3 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 Supplier has provided copies of the certificates of currency to PWC required to be provided under clause 18.2.
- (b) If the Supplier fails to:
 - (i) effect insurance in accordance with clause 18.1; or
 - (ii) provide copies of the certificates of currency to PWC in accordance with clause 18.2 upon request,then the Supplier must not commence or must cease supply of the Goods and/or the provision of the Services under this Contract.
- (c) If the Supplier does not remedy a breach of clause 18.3(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 Supplier to PWC, and the Supplier must promptly reimburse PWC on demand; or
 - (ii) terminate this Contract.

18.4 Insurance does not affect obligations

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

19. WARRANTIES**19.1 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.

19.2 Supplier warranties

The Supplier represents, warrants and undertakes to PWC that:

- (a) where the Supplier is a company, the Supplier is incorporated under the *Corporations Act 2001* (Cth) and registered for GST pursuant to the GST Act;
- (b) there is no proceeding pending or threatened, no conflict of interest, or any other event, matter, occurrence or circumstance which to the Supplier's knowledge challenges or may have a material adverse impact on this Contract or the ability of the Supplier to perform the Supplier's obligations under this Contract (and the Supplier must promptly inform PWC of any such proceeding, conflict, event, matter, occurrence or circumstance that occurs during the Term);
- (c) as at the Commencement Date, it is not suffering and has not suffered an Insolvency Event;
- (d) except for the PWC Resources, the Supplier does not require any material action by, or material deliverables from, PWC in order to fully perform the Supplier's obligations under this Contract;
- (e) 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;
- (f) it has and will maintain all approvals, licences, consents and permissions, including from any regulator, necessary for the performance of the Supplier's obligations under this Contract;
- (g) the Supplies (including any Deliverables) will:
 - (i) 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 Supplier's (or the original manufacturer's) standard documentation for such Supplies);
 - (ii) subject to exercise of the standard of care specified in clause 4.1(a)(i), be fit for the purposes set out in or reasonably ascertainable from this Contract;
 - (iii) be free from Defects;
 - (iv) be new and unused by any person and of merchantable and satisfactory quality; and
 - (v) have a minimum operating life of the period provided for in Item 12, provided that the Goods are operated and maintained in accordance with the Specifications;
- (h) it is entitled to, and has the right and power to, provide the Supplies to PWC;
- (i) unless expressly stated otherwise in the relevant Order, at the time of delivery to PWC, the Supplies are legally and beneficially owned by the Supplier;

- (j) any use, possession or receipt of the Supplies in accordance with this Contract will not infringe the Intellectual Property Rights or other rights of any third party; and
- (k) 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.

19.3 Trustee warranty

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

- (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 resettle 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 Supplier 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 19.3(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.

19.4 Manufacturer warranties

The Supplier 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 supplier of any Goods provided by the Supplier under this Contract.

The Supplier will not do, or omit to do, anything that will or might jeopardise or affect PWC's entitlements under any such warranties.

19.5 PPSA

- (a) The Supplier acknowledges and agrees that:
- (i) if and to the extent that 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, PWC may at the Supplier'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 PPSA; and
 - (ii) it will do all things reasonably necessary to assist PWC to take the steps described in clause 19.5(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, PWC is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a security interest in Relevant Personal Property, the Supplier and PWC agree that, in accordance with section 115 of the PPSA, the following provisions of the PPSA 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 PPSA, 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 PPSA in accordance with section 275(4) of the PPSA;
 - (vi) it must immediately notify PWC if it becomes aware of any person other than PWC taking steps to register, or registering, a financing 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 19.5, "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 PPSA.

19.6 Reliance

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

20. RECTIFICATION OF DEFECTS

20.1 Defect Rectification Period

- (a) If any Defect in any Supplies (including any breach of the warranties set out in clause 19 or of the Supplier's other obligations under this Contract in relation to the Supplies) 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 Supplier and at the Supplier's own expense, require the Supplier to repair or replace the Goods and/or resupply or rectify the Services within a reasonable time period specified in the notice (which period must not be less than 5 Business Days after notice);
 - (ii) if the Supplier fails to repair or replace the Goods and/or resupply or rectify the Services within the time period specified in a notice given under clause 20.1(a)(i), have the Goods repaired or replaced by a third party and/or have the Services resupplied or rectified by a third party, at the Supplier's cost; or
 - (iii) whether or not PWC has previously required the Supplier to repair or replace the Goods and/or resupply or rectify the Services, accept the Supplier's breach and require the repayment of the relevant Charges.
- (b) If required by PWC, any repaired or replaced Supplies will be subject to testing in accordance with clause 5.1(c).
- (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 Supplier under this clause 20.
- (d) Without limitation, any further Defect which is introduced by the Supplier's correction of an initial Defect must be corrected in accordance with this clause 20.

21. LIMITATION OF LIABILITY AND INDEMNITIES

21.1 Unlimited liability

The exclusions and limitations on the Supplier'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 14 (**Privacy and Security Requirements**) or 15 (**Confidentiality**);
- (f) any liability to the extent that the same may not be excluded or limited as a matter of applicable Law.

21.2 Exclusion of Consequential Loss

- (a) Subject to clauses 21.1 and 21.2(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 Supplier acknowledges and agrees that, notwithstanding clause 21.2(a) and without limitation, PWC is entitled, subject to clause 21.3, 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, including the cost of re-performing services 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 Supplies;
 - (D) administrative costs and expenses, including for management and staff time;
 - (E) consultants' fees; and
 - (F) 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 Supplier or PWC's termination of this Contract pursuant to clause 23.3.

21.3 Cap on the Supplier's liability

Subject to clauses 21.1 and 21.2, the Supplier's total maximum liability to PWC for 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 25, save and except where such liability exceeds such amount and is covered by the insurance policies of the Supplier, in which case the Supplier's liability will reflect the maximum level of insurance cover provided by such insurance policies.

21.4 Cap on PWC's liability

Subject to clause 21.2, PWC's total maximum liability to the Supplier for all Loss sustained, incurred or suffered by the Supplier (a **Supplier 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 Supplier Claims in aggregate to an amount equal to 100% of the total of the amounts paid or payable by PWC to the Supplier under or in connection with this Contract in the twelve-month period immediately prior to the most recent Supplier Claim.

21.5 Supplier indemnity - negligence and wilful misconduct

Notwithstanding any other provision of this Contract, the Supplier 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 Supplier, 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.

21.6 Other risks

To the extent caused by the Supplier, any Subcontractor or their respective Personnel, or arising out of, or in any way in connection with, the Supplier's performance of this Contract, the Supplier 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.

21.7 Third party IPR indemnity

- (a) The Supplier 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 PWC of the Supplies (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 Supplier's obligations under clause 21.7(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 Supplier must, with minimal disruption to PWC, at the Supplier's option, promptly and at the Supplier'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 Supplier's obligations under this Contract.
- (c) If the Supplier fails to comply with clause 21.7(b)(i) above within 10 Business Days of the Supplier becoming aware of any IPR Claim or if PWC is not reasonably satisfied with any modification or replacement made by the Supplier pursuant to clauses 21.7(b)(ii) or 21.7(b)(iii), then:
- (i) the Supplier 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 Supplier and, without limiting PWC's other rights and remedies, the Supplier must refund the Charges paid in respect of the Infringing Item.

21.8 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 Supplier must pay PWC any sum claimed by PWC pursuant to an indemnity on demand from PWC without any deduction or set-off.

21.9 Vienna Convention

The Parties agree that, to the extent permitted by applicable Law, the Vienna Convention of 1980 (*The Convention on Contracts for the International Sale of Goods*) and all international and domestic legislative (or other) implementations of that Convention do not apply in relation to the supply of the Supplies under this Contract.

21.10 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.

21.11 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.

21.12 PWC Entities

The Supplier acknowledges and agrees that PWC, in entering into and obtaining the benefits, rights and remedies under this Contract (including the benefit of the Supplier's obligations and the indemnities given by the Supplier), acts on its own behalf and as trustee for each relevant PWC Entity, and accordingly:

- (a) PWC is able to recover from the Supplier all Losses sustained, incurred or suffered by all PWC Entities, as if those Losses were sustained, incurred or suffered by PWC itself; and
- (b) each PWC Entity is entitled to separately and directly enforce against the Supplier the benefits, rights and remedies conferred on PWC by this Contract.

22. DISPUTE RESOLUTION

22.1 Application of this clause and notification of Disputes

- (a) This clause 22 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 22, except where:
 - (i) a Party seeks urgent injunctive relief; or
 - (ii) the Dispute relates to compliance with this clause 22.
- (c) 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:
 - (i) reasonable particulars of the matter in dispute; and
 - (ii) the action that the Party issuing the Dispute Notice requires of the other Party in order to resolve the Dispute.

22.2 Primary Level Discussions

- (a) On receipt of a Dispute Notice, the Principal's Representative and the Supplier Representative must promptly commence discussions to attempt in good faith to resolve the Dispute (**Primary Level Discussions**).
- (b) The Principal's Representative and the Supplier 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.

22.3 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 Supplier of commensurate seniority (**Secondary Level Discussions**).

22.4 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.

22.5 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 22.5(a) within 30 Business Days of the date of a Dispute Notice, either Party may commence court proceedings in relation to the Dispute.

22.6 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.

23. TERMINATION AND SUSPENSION

23.1 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 Supplies.

23.2 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 to any executive or statutory right, duty or function, terminate this Contract for convenience by giving at least 30 days' prior written notice to the Supplier.
- (b) If PWC terminates this Contract under clause 23.2(a), the Supplier:

- (i) must mitigate the Supplier's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to avoid or minimise the Supplier's costs; and
- (ii) subject to clause 23.2(b)(i), will be entitled to payment for any reasonable and unavoidable direct costs incurred by the Supplier in the performance of the Supplier's obligations relating to the Supplies prior to the date PWC issues the notice under clause 23.2(a) (but excluding costs incurred in relation to any Supplies which had already been invoiced), but no other amounts will be payable by PWC.

23.3 Termination by PWC for cause

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

- (a) if the Supplier is in Material Breach of this Contract and such breach is incapable of being remedied;
- (b) if the Supplier is in Material Breach of this Contract and such breach is capable of being remedied, but the Supplier fails to remedy the breach within 20 Business Days of the Supplier's receipt of a notice requiring it to do so;
- (c) if the Supplier or the Supplier Personnel act or omit to act in a manner calculated or likely to bring PWC into disrepute;
- (d) if the Supplier breaches clause 11 (**Work Health and Safety**);
- (e) if the Supplier breaches clause 15 (**Confidentiality**);
- (f) if the Supplier is subject to an Insolvency Event;
- (g) if there is a Change of Control Event in respect of the Supplier that, in PWC's reasonable opinion, adversely affects the Supplier's ability to provide the Supplies; or
- (h) where otherwise permitted pursuant to any terms and conditions of this Contract.

23.4 Termination by the Supplier

- (a) The Supplier may terminate:
 - (i) where Item 7 provides that this Contract is a *one-off supply or fixed term contract*, this Contract; and
 - (ii) where Item 7 provides that this Contract is either a standing offer contract – sole supplier or a standing offer contract – multiple suppliers (panel arrangement), 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:

 - (iii) PWC has not paid an undisputed amount due to the Supplier in relation to this Contract or that Order (as applicable) within 60 days after the date on which PWC received the correctly rendered invoice for that undisputed amount from the Supplier;
 - (iv) the Supplier 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
 - (v) the Supplier 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 under clause 23.4(a)(i) or a termination of an Order under clause 23.4(a)(ii) each in accordance with clause 23.4(a), the Supplier has no right or entitlement to terminate this Contract or an Order.

23.5 Suspension

- (a) PWC may:
- (i) in the interests of safety, or in the event of an emergency, direct the Supplier to immediately suspend this Contract (in whole or in part); or
 - (ii) for any other reasonable purposes, suspend this Contract (in whole or in part), or require the Supplier to redirect the Supplier's resources at any time by giving at least 5 days' written notice to the Supplier, such notice to include the reasons for and extent of suspension.
- (b) Subject to clause 23.5(c), if PWC suspends this Contract under clause 23.5(a), and provided that the Supplier is not in breach of this Contract, the Supplier will be entitled to payment for any reasonable and unavoidable direct costs (if any) incurred by the Supplier during the period of suspension, but no other amounts will be payable by PWC.
- (c) The Supplier must mitigate the Supplier's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to minimise the Supplier's costs.
- (d) To the extent this Contract is suspended by PWC under clause 23.5(a), the Supplier must immediately recommence the performance of its relevant obligations under this Contract as directed by PWC.

24. EFFECT OF TERMINATION

24.1 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.

24.2 Return of Confidential Information and property

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

- (a) all relevant Goods, whether complete or partially complete;
 - (b) all relevant Deliverables, whether complete or partially complete;
 - (c) all Confidential Information (including copies, summaries and excerpts);
 - (d) all relevant Documentation, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
 - (e) any other relevant property,
- (in whatever form, including in electronic format) of or belonging to PWC which are in the Supplier's possession or control, provided that the Supplier:
- (f) is not required to return or destroy any record or document where it is not reasonably practicable for the Supplier to do so and PWC agrees (acting reasonably) that it is not reasonably practicable for the Supplier 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

- (g) may retain one copy of any record or document returned or destroyed under this clause 24.2 on a confidential basis as required by Law or in accordance with the Supplier's reasonable internal record-keeping policies.

24.3 Exit assistance

- (a) From the date commencing on the expiry or termination of this Contract (or such earlier date as notified to the Supplier in writing), the Supplier must provide all reasonable assistance and cooperation to PWC or any new supplier appointed by PWC to provide the Supplies 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 Supplies to PWC and/or any new supplier;
 - (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 supplier to work with Supplier Personnel to facilitate the transfer of any information and materials that PWC believes is required.
- (b) To the extent that the Supplier's compliance with clause 24.3(a) requires the Supplier to deploy additional resources which results in the Supplier incurring additional costs, the Supplier 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 services required to be provided under this clause 24.3 at any time by providing written notice to the Supplier. Where PWC issues a notice under this clause 24.3(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 Supplier in relation to any transition out services provided after that date.

24.4 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.

25. SUPPLIER'S PERFORMANCE REPORT

- (a) The Supplier agrees that following delivery of the Goods and/or the performance of the Services or the termination of this Contract:
 - (i) PWC may prepare a report on the Supplier's performance under this Contract (**Supplier's Performance Report**);
 - (ii) PWC will liaise with the Supplier in completing the Supplier's Performance Report although PWC reserves the right to complete the Supplier's Performance Report (other than the Supplier's comments); and
 - (iii) PWC may use and/or release the Supplier'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 Supplier's performance in the assessment of future tenders.

- (b) The Supplier agrees that:
 - (i) neither the Supplier 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 Supplier's Performance Report; and
 - (ii) the Supplier's Performance Report will not, in itself, constitute evidence that the Supplies comply with the relevant requirements of this Contract (including the relevant Specifications), or otherwise limit the Supplier's obligations or PWC's rights and remedies.

26. COMPLIANCE WITH RING-FENCING GUIDELINE

- (a) This clause applies notwithstanding any other clause in this Contract.
- (b) The Supplier acknowledges that PWC must comply with the Ring-Fencing Guideline.
- (c) The Supplier must, and must ensure that its Personnel:
 - (i) take all necessary steps to understand PWC's obligations under the Ring-Fencing Guideline as they apply to the supply of the Goods and/or the provision of the Services under this Contract, including attending training from time to time as reasonably required by PWC;
 - (ii) supply the Goods and/or provide the 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 Supplier 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 Supplier 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 Supplier 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 Supplier's obligations under this clause.
- (f) The Supplier must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Goods and/or Services are provided by the Supplier in a manner that is consistent with the requirements of this clause.
- (g) The Supplier 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 Supplier must provide PWC with such written reports, evidence or other information concerning the Supplier's compliance with this clause as may be requested by PWC from time to time.
- (i) The Supplier must make and keep, and must ensure that all Personnel make and keep, accurate records of the performance of the Supplier'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 Supplier's and its Personnel's premises and audit and inspect all records, procedures and systems of the Supplier and its Personnel which relate to the Supplier's compliance with this clause. The Supplier must (and must ensure that its Personnel fully co-operate with PWC in relation to any such audit or inspection.

27. GENERAL

27.1 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 clause 27.1(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.

27.2 Variation

- (a) A Party may at any time give a Variation Proposal to the other Party proposing a variation to this Contract.
- (b) A Party who receives a Variation Proposal must respond within 10 Business Days of receiving the Variation Proposal.
- (c) If the Party who receives a Variation Proposal does not agree to the proposed variation, then the Parties must negotiate that Variation Proposal.
- (d) If the Party who receives a Variation Proposal agrees to the proposed variation, then the Supplier 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.

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

27.3 PWC trustee for its Personnel

In entering into and obtaining the benefits, rights and remedies under this Contract, including the benefit of the Supplier's obligations and any indemnity given by the Supplier, 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 Supplier the benefits, rights and remedies conferred on PWC by this Contract.

27.4 Assumptions

The Parties acknowledge and agree that:

- (a) this Contract (including the Charges) 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 Supplier, each Party must (if requested in writing by the other Party) enter into discussions concerning any appropriate variation of this Contract.

27.5 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 (specifically including any standard terms and conditions of the Supplier).
- (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.

27.6 RFT Response

- (a) If directed by PWC, the Supplier 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.

27.7 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.

27.8 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.

27.9 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.

27.10 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.

27.11 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.

27.12 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 Supplier without the prior consent of the Supplier and, in the case of a novation, PWC, the Supplier and the relevant third party will each execute a novation agreement in a form reasonably prescribed by PWC.
- (b) The Supplier must not assign, novate, transfer, sub-licence or otherwise dispose of any or all of the Supplier's rights and/or obligations under or in connection with this Contract without the prior written consent of PWC (which may be withheld in PWC's sole discretion).
- (c) The Supplier must pay all fees and expenses reasonably incurred by PWC in connection with any consent sought under clause 27.12(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

27.13 Survival

- (a) The following terms will survive the termination or expiry of this Contract:
 - (i) clause 6.8 (**Set off**);
 - (ii) clause 9.3 (**Keeping of records**);

- (iii) clause 9.4 (**Audit rights**);
 - (iv) clause 13.1 (**Environment**);
 - (v) clause 14 (**Privacy and security requirements**);
 - (vi) clause 15 (**Confidentiality**);
 - (vii) clauses 16 (**Intellectual Property**);
 - (viii) clause 17 (**Publicity**);
 - (ix) clause 18 (**Insurance**);
 - (x) clause 19 (**Warranties**);
 - (xi) clause 20 (**Rectification of Defects**);
 - (xii) clause 21 (**Limitation of liability and indemnities**);
 - (xiii) clause 22 (**Dispute resolution**);
 - (xiv) clause 24 (**Effects of termination**);
 - (xv) clause 27 (**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 Supplier 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 Supplier.

27.14 Special Conditions

The Parties agree to be bound by any Special Conditions.

27.15 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.

28. 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 Special Conditions;
 - (iii) the Contract Details;
 - (iv) the Terms and Conditions;
 - (v) the Notice of Acceptance;
 - (vi) the Schedule of Rates;
 - (vii) the Scope of Requirements;
 - (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.

29. DEFINITIONS

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

Acceptance means the Supplies have been accepted by PWC in accordance with the procedures set out in clause 5.3. **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 Supplier, any company or other entity that directly or indirectly controls, or is controlled by, or is under common control with, the Supplier.

Applicable Index means the adjustment index (if any) specified in Item 22 applicable to a price, fee or charge.

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).

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

Buy Local Industry Advocate means the person appointed by the NTG to provide an independent advocacy function on behalf of local industry, investigate complaints directly from local industry and act on their own initiative to audit contractors.

Buy Local Plan means the standards and requirements as published by the NTG from time to time in respect of promoting local procurement in the Northern Territory.

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 the Supplies set out, referred to or otherwise calculated in accordance with the relevant Order for such Supplies, in accordance with the Schedule of Rates 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 the 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.

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 means this contract, consisting of the documents listed in clause 28(f).

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

Contract Material means all materials created by the Supplier or Supplier Personnel before, on or following the Commencement Date in the course of, as a consequence of, or in anticipation of, performing the Supplier's obligations 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 Goods or Services or any aspect of the Goods or Services, which is not in accordance with the requirements of this Contract, including:

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

Defect Rectification Period means, in relation to any Supplies, the relevant period of time commencing on Acceptance of such Supplies (or such other date as provided for in Item 24) and ending on the expiry of the period of time as provided for in Item 24 or, in relation to any Supplies corrected by the Supplier under clause 20, the period commencing on the correction and ending on the expiry of the period of time as provided for in Item 24.

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

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 Supplier, its email address set out in Item 5 or such other email address of which the Supplier 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 Supplier under or in connection with this Contract.

Force Majeure Event means

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies or terrorism;
(b) rebellion, revolution, insurrection, military or usurped power, civil war, riot, commotion or disorder, industrial activity or action;
(c) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, use of such munitions, explosives, radiation or radioactivity; and
(d) an exceptional event or circumstances of natural catastrophes including flood, earthquake, hurricane, typhoon or volcanic activity,

but only to the extent that:

- (e) the event is beyond a party's control;
(f) the party affected could not reasonably have avoided or provided against it;
(g) having arisen, the party affected could not have reasonably avoided or overcome it, and

provided that:

- (h) the event was not substantially attributable to a party to the Contract; and
(i) the event did not arise out of or in connection with any act of negligence of the party or any person for whom the party is responsible including the persons employed or otherwise engaged by the party.

Further Term means the period specified in Item 10.

Good Industry Practice means, in relation to any undertaking and any circumstances, the exercise of a 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:

- (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.

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

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

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

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:
 - (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 Supplier under this Contract, as provided for in Item 23.

Intellectual Property Rights means (a) patents, trade marks, 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 suppliers 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 Milestone means any milestone provided as a 'Key Milestone' in Item 11.

Key Milestone Date means, in relation to a Key Milestone, the relevant date for completion of that Key Milestone, as provided for in Item 11 (and as may be extended in accordance with this Contract).

Key Performance Indicators means all or any of the key performance indicators which the Supplier must achieve in providing the Supplies as provided for in Item 13.

Key Personnel means the Supplier Personnel who, or key positions within the Supplier's organisation which, are provided for as 'Key Personnel' in Item 15.

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.

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

Material Breach includes:

- (a) any breach of any of the following clauses:
 - (i) clause 3.1 (**Provision of Supplies**);
 - (ii) clause 3.3 (**Delivery of Goods**);

- (iii) clause 4.5(a) (**Sub-contracting**);
 - (iv) clauses 4.11(c) or 4.11(d) (**Local Content**);
 - (v) clause 8.1(f)(i) (**Key Personnel**);
 - (vi) clause 12 (**Sustainable Supply Chain Management**);
 - (vii) clause 13.1 (**Environment**);
 - (viii) clause 14 (**Privacy and Security Requirements**); or
 - (ix) clause 16 (**Intellectual Property**);
- (b) where there is a failure to comply with clause 20.1(a) (**Defect Rectification Period**); and
- (c) where the Supplier has failed to meet the required dates or timeframes for the performance of the Supplier's obligations under this Contract, including any failure to achieve any Key Milestones (if any) by the Key Milestone Dates (if any).

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).

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

NTG means any of the following:

- (a) Northern Territory of Australia (ABN 84 085 734 992) as established under the *Northern Territory (Self-Government) Act 1978* (Cth);
- (b) any body established by the Administrator or by a Minister of the Northern Territory of Australia, including a department or unit of a department or other authority or body nominated as an "Agency" from time to time in an Administrative Arrangements Order;
- (c) any incorporated or unincorporated body or organisation over which the Northern Territory of Australia exercises control, whether or not an instrumentality of the Northern Territory of Australia; and
- (d) any government owned corporation as defined under the *Government Owned Corporations Act* (NT) including any "Subsidiary" (as defined in that Act) of that government owned corporation.

Order means the document or documents setting out the scope of, and PWC's requirements for, any Supplies that are required to be provided by the Supplier under this Contract which may be issued by PWC as contemplated by clause 1.3.

Parties means PWC and the Supplier, each a **Party**.

Payment Milestone Amount means, in relation to a Payment Milestone, the relevant amount payable by PWC to the Supplier on the Payment Milestone Date, as provided for in Item 20.

Payment Milestone Date means, in relation to a Payment Milestone, the relevant date on which the relevant Payment Milestone Amount may be invoiced by the Supplier as provided for in Item 20.

Payment Milestones means the payment milestones as provided for in Item 20.

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.

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

Principal's 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 Supplier, being the person provided for in Item 4, or any other person named by written notice from PWC to the Supplier.

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

PWC Audit Representative means any representative of PWC who is appointed for the purpose of conducting an audit in accordance with clause 9.4.

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 Supplies 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 Supplier,

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

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 Supplier by PWC from time to time.

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

PWC Site means any Site or other relevant location accessed or used by the Supplier in the connection with the performance of the Supplier'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 Supplies 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 Supplier by PWC from time to time in accordance with clause 9.2(b).

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.

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.

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

- (a) any written response by or on behalf of the Supplier to a request from PWC for clarification or further information given before the Commencement Date; and
- (b) any written statement made by or on behalf of the Supplier to PWC before the Commencement Date in relation to the Supplies.

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.

Schedule of Rates means the prices, fees and charges for the Supplies as provided for in Attachment 3.

Scope of Requirements means PWC's requirements with respect to the Supplies as provided for in Attachment 2.

Services means:

- (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 Supplier to enable an effective provision of the Services.

Site means those places where the Supplies will be delivered or provided by the Supplier under this Contract and includes those places as provided for in the Scope of Requirements.

Special Conditions means the special conditions as provided for in Item 26.

Specifications means, in relation to any Supplies:

- (a) the required functionality and performance criteria for the Supplies 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 Supplier's standard documentation for the Supplies, including in the Documentation,

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.

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

Supplier means the entity as provided for in Item 5.

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

- (a) existing prior to the Commencement Date;
- (b) licensed from any third party (excluding the Supplier's Affiliates and Supplier Personnel) during the Term; and/or
- (c) obtained (whether created, purchased or licensed) by the Supplier 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 Supplier, Supplier IPR includes Contract Materials.

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

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

Supplies means, as the context requires:

- (a) the Goods;
- (b) the Services; or
- (c) the Goods and the Services.

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

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

Testing means the testing of the Tested Components in accordance with clause 5.1 to determine whether they are accepted (in whole or in part). **Test** has the corresponding meaning.

Term means the Initial Term and any Further Term that applies under clause 2.2.

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

Tested Components has the meaning given in clause 5.1(a).

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

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

Attachment 1 Special Conditions

[insert special conditions or "Not used" if they are provided for in Item 26 or if there are no special conditions]

Attachment 2 Scope of Requirements

[Attach RFT – Scope of Requirements]

Attachment 3 Schedule of Rates

[Attach RFT Response – Schedule of Rates]