



Power and Water Corporation Consultancy 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 26.1)	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 4.5)	Name: [Insert name of Contract owner] Phone: [Insert phone number] Email: [Insert email address]
5.	Consultant (including address for notices under clause 26.1)	[insert full name] [insert ABN/ACN] Address: [insert address] Email: [insert email]
6.	Consultant Representative (clause 4.5)	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)

Item #	Reference	Detail									
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 Consultant's obligations in connection with the Services]									
10.	Further Term (clause 2.2)	Is there an option to extend the term of this Contract? <input type="checkbox"/> Yes, as follows: <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Further Term</td> <td>[insert months]</td> </tr> </table> <input type="checkbox"/> No, not applicable.	Further Term	[insert months]							
Further Term	[insert months]										
11.	Key Milestones and Key Milestone Dates (clause 4.1(a)(vii))	Are there Key Milestones and Key Milestone Dates? <input type="checkbox"/> Yes, as follows: <table border="1" style="width: 100%;"> <thead> <tr> <th>Ref</th> <th>Key Milestones</th> <th>Key Milestone Dates</th> </tr> </thead> <tbody> <tr> <td>KM1</td> <td>[insert details]</td> <td>[insert date]</td> </tr> <tr> <td>KM2</td> <td></td> <td></td> </tr> </tbody> </table> <input type="checkbox"/> No, not applicable.	Ref	Key Milestones	Key Milestone Dates	KM1	[insert details]	[insert date]	KM2		
Ref	Key Milestones	Key Milestone Dates									
KM1	[insert details]	[insert date]									
KM2											
12.	Key Personnel (clause 8.2)	Are Key Personnel required under this Contract? <input type="checkbox"/> Yes, as follows: <table border="1" style="width: 100%;"> <tr> <td>Key Personnel</td> </tr> <tr> <td>[insert name or key position]</td> </tr> <tr> <td> </td> </tr> </table> <input type="checkbox"/> No, not applicable.	Key Personnel	[insert name or key position]							
Key Personnel											
[insert name or key position]											
13.	Confidential Information of PWC (clause 14)	The following information is also Confidential Information of PWC: <table border="1" style="width: 100%;"> <tr> <td>Confidential Information of PWC</td> </tr> <tr> <td>[insert details, documents etc. or if none, insert 'none specified']</td> </tr> </table>	Confidential Information of PWC	[insert details, documents etc. or if none, insert 'none specified']							
Confidential Information of PWC											
[insert details, documents etc. or if none, insert 'none specified']											
14.	Intellectual Property Rights (clause 15)	Intellectual Property Rights in Contract Material will be: <input type="checkbox"/> licensed to PWC (owned by the Consultant) <input type="checkbox"/> owned by PWC.									

Item #	Reference	Detail									
15.	Invoicing (clause 6.2)	<p>The Consultant will be entitled to invoice the Charges:</p> <p><input type="checkbox"/> monthly in arrears following performance of the Services</p> <p><input type="checkbox"/> as specified in the Payment Milestones as provided for in Item 16</p> <p><input type="checkbox"/> as follows:</p> <table border="1"> <thead> <tr> <th>Charges details:</th> <th>Entitled to invoice:</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Charges details:	Entitled to invoice:	[insert]	[insert]					
Charges details:	Entitled to invoice:										
[insert]	[insert]										
16.	Payment Milestones	<p>Are any of the Charges payable based on Payment Milestones?</p> <p><input type="checkbox"/> Yes, as follows:</p> <table border="1"> <thead> <tr> <th>Payment Milestone</th> <th>Payment Milestone Date</th> <th>Payment Milestone Amount</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p><input type="checkbox"/> No, not applicable.</p>	Payment Milestone	Payment Milestone Date	Payment Milestone Amount	[insert]	[insert]	[insert]			
Payment Milestone	Payment Milestone Date	Payment Milestone Amount									
[insert]	[insert]	[insert]									
17.	Expenses (clause 6.3)	<p>Expenses are:</p> <p><input type="checkbox"/> not recoverable by the Consultant</p> <p><input type="checkbox"/> recoverable by the Consultant, subject to the Consultant having obtained PWC's prior written consent</p> <p><input type="checkbox"/> recoverable by the Consultant, subject to the Consultant having obtained PWC's prior written consent and in accordance with the Schedule of Rates</p>									
18.	Adjustments (clause 6.9)	<p>Are the Charges subject to adjustment?</p> <p><input type="checkbox"/> No, not applicable</p> <p><input type="checkbox"/> Yes, as follows:</p> <table border="1"> <thead> <tr> <th>Charges subject to adjustment:</th> <th>Applicable Index:</th> </tr> </thead> <tbody> <tr> <td>[insert e.g. items X to Y in the Schedule of Rates]</td> <td>[insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries]</td> </tr> </tbody> </table>	Charges subject to adjustment:	Applicable Index:	[insert e.g. items X to Y in the Schedule of Rates]	[insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries]					
Charges subject to adjustment:	Applicable Index:										
[insert e.g. items X to Y in the Schedule of Rates]	[insert e.g. Labour Price Index 6345.0, Table 2b, Total Hourly Rates of Pay excluding bonuses, Northern Territory, Private and Public, All Industries]										

Item #	Reference	Detail								
19.	Insurance (clause 17)	<table border="1"> <thead> <tr> <th data-bbox="619 315 1010 367">Insurance type</th> <th data-bbox="1018 315 1399 367">Minimum amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 383 1010 472">Public liability</td> <td data-bbox="1018 383 1399 472">\$[insert amount] for each and every Claim.</td> </tr> <tr> <td data-bbox="619 483 1010 618">Professional indemnity</td> <td data-bbox="1018 483 1399 618">\$[insert amount] for each and every Claim and in the annual aggregate.</td> </tr> <tr> <td data-bbox="619 629 1010 707">Workers' compensation</td> <td data-bbox="1018 629 1399 707">As specified by the applicable Laws</td> </tr> </tbody> </table>	Insurance type	Minimum amount	Public liability	\$[insert amount] for each and every Claim.	Professional indemnity	\$[insert amount] for each and every Claim and in the annual aggregate.	Workers' compensation	As specified by the applicable Laws
Insurance type	Minimum amount									
Public liability	\$[insert amount] for each and every Claim.									
Professional indemnity	\$[insert amount] for each and every Claim and in the annual aggregate.									
Workers' compensation	As specified by the applicable Laws									
20.	Cap on the Consultant's liability (clause 20.3)	<p data-bbox="608 741 1337 808">Subject to clauses 20.1 and 20.2, the cap on the Consultant's liability under this Contract is:</p> <table border="1"> <thead> <tr> <th data-bbox="619 831 1399 891">Liability Cap</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 902 1399 987">[insert \$ amount or method of determining amount of liability cap]</td> </tr> </tbody> </table>	Liability Cap	[insert \$ amount or method of determining amount of liability cap]						
Liability Cap										
[insert \$ amount or method of determining amount of liability cap]										
21.	Special Conditions (clause 26.14)	<p data-bbox="608 1021 1209 1046">Are Special Conditions applicable to this Contract?</p> <p data-bbox="608 1068 1023 1104"><input type="checkbox"/> Yes, as set out in Attachment 1</p> <p data-bbox="608 1122 879 1155"><input type="checkbox"/> No, not applicable.</p>								

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

1.2 Appointment of the Consultant 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 Consultant to provide the Services;
 - (ii) the Consultant must provide the Services 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 Consultant to provide additional Services, by issuing the Consultant with an Order for those additional Services.

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 Consultant irrevocably makes a standing offer to provide the Services to PWC as and when required by PWC during the Term; and
 - (ii) subject to clause 1.3 PWC will issue the Consultant with an Order for any Services required by PWC from the Consultant.

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 Consultant 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 Consultant with a quotation request specifying the additional Services 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 Consultant must issue a written quotation to PWC responding to the quotation request.

- (c) PWC may unilaterally issue an Order which is consistent with the Consultant's written quotation under clause 1.3(b), and that Order will be binding on the Consultant.
- (d) The Consultant must provide the additional Services set out in each Order issued to the Consultant 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 Services 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 Consultant or to acquire any minimum volume of additional Services from the Consultant and has not made any representation or warranty to the Consultant that it will acquire any additional Services from the Consultant.
- (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 Consultant is not permitted to provide any Services or entitled to any payment under this Contract.

1.4 PWC Entities are beneficiaries of the Services

PWC may, at its discretion:

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

1.5 Non-exclusive appointment

Nothing in this Contract prohibits PWC from acquiring services that are the same as or similar to the Services 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 Consultant with notice in writing at least 30 days prior to the end of the Initial Term seeking the Consultant's consent to such an extension; and
 - (ii) the Consultant provides PWC with notice in writing at least 15 days prior to the end of the Initial Term that the Consultant consents to any such extension; and
- (b) subject to the Consultant providing consent under clause 2.2(a)(ii), the Further Term will commence on and from the expiry of the Initial Term.

3. SERVICES

3.1 Provision of Services

- (a) The Consultant must provide the Services 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 performance.

- (b) Other than the PWC Resources (if any), the Consultant must provide all equipment, facilities and other incidental items and materials necessary to perform the Services.

3.2 Sites

- (a) The Consultant must ensure that the Services are only provided from Sites within the Northern Territory except where and to the extent PWC otherwise authorises in writing particular Services to be provided from Sites outside of the Northern Territory.
- (b) The Consultant must ensure that the Services 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 Consultant must not change the location from where the Services will be provided without the prior written consent of PWC.
- (d) The Consultant 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 Consultant's obligations under this Contract are or will be performed.

3.3 Deliverables

- (a) The Consultant must provide the Deliverables to PWC in accordance with the terms and conditions of this Contract.
- (b) Without limiting clause 3.3(a), the Consultant must provide each Deliverable provided for in the Scope of Requirements by the relevant timeframe provided for in the Scope of Requirements.

4. PERFORMANCE

4.1 Standard of performance

- (a) Without limiting any other obligation of the Consultant, the Consultant must provide the Services to PWC and perform the Consultant's other obligations under this Contract:
 - (i) in a timely, efficient and professional 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 Consultant 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 Consultant 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 Consultant may submit a Variation Proposal in accordance with Clause 26.2 if:
 - (c) after the Commencement Date, PWC notifies the Consultant under clause 4.1(a)(vi) of new or amended rules, codes of conduct, policies, guidelines, processes and procedures of PWC; and
 - (d) the Consultant 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 Quality control

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

4.3 Other suppliers

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

4.4 Sub-contracting

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

4.5 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 the Principal's Representative from dealing with the Consultant on day to day operational matters in connection with the provision of the Services under this Contract.

Consultant Representative

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

4.6 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 Services under this Contract and the Consultant's performance of the Consultant's obligations under this Contract. The Consultant must attend all such meetings on the dates and at the times scheduled by PWC. PWC will give the Consultant reasonable prior notice of all such meetings.
- (b) The Consultant 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.

4.7 PWC Infrastructure

The Consultant must:

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

4.8 PWC Resources

- (a) To assist the Consultant to perform the Consultant's obligations under this Contract, PWC will make the PWC Resources available to the Consultant at such times as are agreed by the Parties.
- (b) Without limiting any other provision of this Contract, the Consultant must:
 - (i) not use the PWC Resources for any purpose other than to perform the Consultant'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 Consultant 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 Consultant acknowledges that the PWC Resources remain the property of PWC and this Contract does not affect the ownership of the PWC Resources.

4.9 Local Content

Local Benefit Commitments

- (a) The Consultant acknowledges PWC's commitment to the development of business and industry in the Northern Territory.
- (b) In the RFT Response, the Consultant made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Consultant as part of this Contract. These promises and commitments form part of this Contract (and are referred to in this clause 4.9 as the **Local Benefit Commitment**).
- (c) The Consultant 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 Consultant demonstrates to PWC that, for commercial, technical or other reasons, it is impractical to do so, in carrying out the Consultant's obligations under this Contract, the Consultant 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 Consultant must, on written request by PWC, provide a written report in relation to its compliance with clauses 4.9(c) and 4.9(d) within the timeframe specified in PWC's written request.
- (f) The Consultant 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 Consultant agrees to grant access rights to the Buy Local Industry Advocate to ensure the Consultant (and the Services) satisfy the Buy Local Plan.
- (h) The Consultant must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 4.9.
- (i) The Consultant is liable for its own costs of any audit or inspection conducted pursuant to this clause 4.9.
- (j) The Consultant 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 Consultant 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 Consultant.

- (k) The Consultant 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 4.9.

Performance to be reported in Consultant's Performance Reports

- (l) The Consultant's compliance or non-compliance with this clause 4.9 will be recorded in the Consultant's Performance Report to be prepared by PWC in accordance with clause 24.

4.10 Delay

- (a) The Consultant 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 Consultant's obligations by a reasonable period provided that:
 - (i) the Consultant 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 Consultant; and
 - (iii) the Consultant 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 six weeks, PWC may terminate the Contract and the Consultant will only be entitled to payment for Services provided to PWC before the date of termination that comply with this Contract.
- (d) PWC may at any time for any reason and at its absolute discretion extend the time for performance of any of the Contractor's obligations under this Contract.

5. REVIEW AND NON-COMPLIANT SERVICES

5.1 Consultant reviews

The Consultant must carry out the reviews specified in the Scope of Requirements (if any), or as reasonably directed by PWC, to validate that the Services comply with the requirements of this Contract. The Consultant must promptly rectify any defects identified in the Services (at its own cost) before repeating the reviews.

5.2 PWC's reviews

Without limiting the Consultant's obligations to carry out reviews under this Contract, PWC may undertake any of PWC's own reviews, verification or other validation with respect to the Services.

5.3 Non-compliant Services

- (a) PWC will Accept a Deliverable by giving notice to the Consultant when:
 - (i) PWC is satisfied that such Deliverable conforms with the standards, specifications and requirements of this Contract;
 - (ii) clause 5.3(b)(i) applies;

- (iii) the Consultant has met the Consultant's obligations under clauses 5.3(b)(ii) or 5.3(b)(iv); or
 - (iv) such Deliverable has 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 and Services, satisfied that such Services complies with the requirements of this Contract after the passing of the relevant dates or timeframes for delivery or provision under this Contract, PWC may by written notice to the Consultant in respect of such Services:
- (i) waive the relevant requirement of this Contract and the Charges will be equitably reduced by an amount determined by PWC acting reasonably to reflect the reduction in the value of such Services to PWC;
 - (ii) conditionally accept such Services subject to the Consultant agreeing, at the Consultant's own expense, to promptly correct such Services to meet the requirements of this Contract 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 should there be any failure by the Consultant to meet any of the Consultant's obligations under this clause 5.3(b)(ii);
 - (iii) reject such Services, and:
 - (A) remove such Services 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 22.3;
 - (iv) require the Consultant, at the Consultant's cost, to promptly correct or re-perform such Services to meet the requirements of this Contract, 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 Consultant to meet any of the Consultant's obligations under this clause 5.3(b)(iv); or
 - (v) correct, or have a third party correct, such Services and the Consultant must reimburse PWC for all Losses sustained, incurred or suffered by PWC in connection with the correction of such Services.
- (c) For the purposes of clause 5.3(b), PWC must:
- (i) act reasonably when determining whether Services comply with the Contract; and
 - (ii) when exercising any rights in respect of Services that do not comply with the Contract, ensure that the consequences of exercising such rights for the Consultant are proportionate to the nature of the non-compliance.
- (d) Acceptance of a Deliverable under this clause 5.3 will not, in itself, constitute evidence that such Deliverable complies with the relevant requirements of this Contract, and this clause 5.3 does not limit the Consultant's obligations or PWC's rights and remedies.

6. PAYMENT

6.1 Cost changes at Consultant's risk

The Consultant 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 Consultant in connection with the inputs that it requires to perform the Services.

6.2 Invoicing

- (a) The Consultant may invoice PWC the Charges at the times provided for in Item 15.
- (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 Services performed and a breakdown of the Charges invoiced for those Services;
 - (v) attach all timesheets that are relevant to the Services;
 - (vi) attach any additional information required by PWC for invoice substantiation, including breakdowns by the Consultant'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 Consultant'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 Consultant acknowledges and agrees that, except as expressly provided for in Item 17, the Charges are inclusive of the Consultant's costs and expenses together with any taxes (including GST), duties, levies, licence fees or other similar amounts, connected with the provision of the Services and the performance of the Consultant's obligations under this Contract.
- (b) Where Item 17 provides that Expenses are recoverable by the Consultant, the Consultant 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 Consultant's compliance with this Contract, PWC will pay the Consultant 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 Consultant for the undisputed amount.
- (c) If the Consultant disagrees with PWC's assessment, it may refer the matter for resolution under clause 21.

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 Services.

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 Consultant 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 Consultant; and
- (c) if PWC does not exercise PWC's rights under clause 6.7(b), the Consultant 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 Consultant to PWC under this Contract may be deducted or set off against amounts payable by PWC to the Consultant under this Contract.
- (b) PWC will notify the Consultant 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 Consultant.

6.9 Adjustments

Where Item 18 provides that Charges will be adjusted, the Charges stated in item 18 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 Services applicable for the year following the Date of Adjustment;
- (b) **C** is the Charges payable in relation to the Services 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.
- (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 Consultant must ensure that Consultant Personnel have the relevant training, including any Site specific training required by PWC, qualifications, skills and experience necessary to provide the Services.
- (b) The Consultant must ensure that it properly supervises all of the Consultant Personnel.
- (c) PWC may, acting reasonably, require in writing that the Consultant ceases to use certain Consultant Personnel in the performance of the Consultant's obligations under this Contract and the Consultant 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 Consultant or any Subcontractor. Clause 8.1(c) is only intended to

give PWC the right to require that the Consultant discontinues using a particular person in the performance of the Consultant's obligations under this Contract.

- (e) The Consultant must ensure that the Consultant Personnel are aware of and comply with the Consultant's obligations under this Contract including the Consultant's obligations in respect of the Confidential Information of PWC, Personal Information and PWC Data, and the Consultant will be liable for the acts and omissions of such Personnel as if they were the acts or omissions of the Consultant.
- (f) If PWC requests, the Consultant must at its own cost ensure that Consultant 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 Consultant must not transfer, reassign, reduce or change the involvement in the performance of the Consultant's obligations under this Contract or otherwise redeploy any Key Personnel without PWC's prior written consent (which consent will not be unreasonably withheld).

8.3 No solicitation

- (a) Neither party may, during the Term and for a period of six months after the Term, solicit, or attempt to solicit, any of the other Party's Personnel, or any person who was in the employment of that other Party during the Term, without the other Party's prior written consent.
- (b) A general solicitation for employment which is placed in good faith such as a website or recruiter advertisement will not constitute a breach of clause 8.3(a).

9. COMPLIANCE

9.1 Compliance with the PWC Policies

- (a) The Consultant must comply at all times, including while on-site at any PWC Sites, with the PWC Policies. PWC will provide the Consultant 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 Consultant's own policies, the PWC Policies will prevail except to the extent PWC agrees in writing to Consultant's own policies prevailing over the PWC Policies.

9.2 PWC Standards and Specifications

- (a) The Consultant must ensure that the Services meet the PWC Standards and Specifications, and the Consultant must comply with the PWC Standards and Specifications in the performance of the Consultant'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 Consultant from time to time after the Commencement Date. PWC must pay any reasonable costs incurred by the Consultant 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 Consultant to the reasonable satisfaction of PWC.

9.3 Keeping of records

- (a) The Consultant must make and keep, and must ensure all Subcontractors of the Consultant make and keep, accurate financial records and other information relevant to the performance of the Consultant'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 Services;
 - (ii) time records;
 - (iii) all reports and opinions obtained by the Consultant 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 Consultant must give PWC access to and copies of the records and information required under clause 9.3(a) (excluding information relating to profit margins, 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 Consultant'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 Consultant's compliance with the Consultant'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 Consultant in relation to a significant failure, or recurring failures, in relation to the provision of the Services;
 - (v) for the purpose of verifying that the Consultant 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 Consultant 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 Consultant's obligations under this Contract are or will be performed;
 - (ii) all Subcontractors and Consultant Personnel; and
 - (iii) all relevant equipment, software, data, records, accounts, documents, reports, records and systems (whether prepared by the Consultant or not) relating to the Consultant's obligations under this Contract.

- (d) The Consultant 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 Consultant is found to be in breach of this Contract, in which case the Consultant must, within 5 Business Days of a request by PWC, reimburse PWC for PWC's costs in connection with such audit.
- (f) The Consultant must meet with PWC to discuss in good faith any recommendations made by the PWC Audit Representative following the completion of an audit. The Consultant will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Consultant's obligations under this Contract as directed by PWC. The cost of implementing those recommendations will be borne by the Consultant.
- (g) The Consultant 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 Consultant must obtain permission from PWC prior to accessing any PWC Sites.
- (b) PWC:
 - (i) is not obliged to provide the Consultant with sole access to the PWC Sites;
 - (ii) is not obliged to carry out any work or provide any facilities to the Consultant (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 Consultant.

10.2 Consultant's obligations with respect to the PWC Sites

- (a) The Consultant must only access the PWC Sites during PWC's business hours as notified to the Consultant 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 Consultant must give PWC at least 2 Business Days prior notice each time before entering the PWC Sites. If PWC advises the Consultant that the proposed date or time of entry onto the PWC Sites is inconvenient to PWC for any reason, the Consultant 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 Consultant must ensure that all Consultant 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 Consultant must:
 - (i) ensure that activities of the Consultant on the PWC Sites are carried on at all times in a safe manner, including ensuring Consultant Personnel wear

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- appropriate protective equipment, and follow such directions concerning safety as PWC may issue;
 - (ii) provide such instruction and supervision to the Consultant 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 Consultant 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 Consultant or Consultant 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 Consultant or any Consultant Personnel, whether caused by the Consultant or otherwise.
- (e) The Consultant must not:
- (i) use the PWC Sites other than to perform the Consultant'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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Services;
 - (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 Services; 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 Services, 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 Consultant or any of its Personnel commences the provision of the Services.
- (c) In respect of any risks arising from the provision of the Services, the Consultant 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

- (a) All of PWC's suppliers play a vital part in PWC's sustainability performance. As such, the Consultant 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 Consultant sources, produces or provides the Services or any part of them.
- (b) Without limiting clause 12(a), if PWC develops a responsible sourcing code or similar, the Consultant 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.

13. PRIVACY AND SECURITY REQUIREMENTS

13.1 Privacy

If, as a result of this Contract, the Consultant is able to access any Personal Information that is collected, handled or held by or on behalf of PWC, the Consultant 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 Consultant 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 Consultant 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 13.1(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 Consultant must use such Personal Information pursuant to this Contract;
- (d) restrict access to any such Personal Information to Consultant Personnel and Subcontractors who need to access the Personal Information to fulfil the Consultant'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 13.1(a).

13.2 Security requirements

- (a) The Consultant 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 Consultant must establish, maintain and apply security procedures which ensure that Consultant Personnel are appropriately vetted and meet the requirements of clause 13.2(a).
- (c) The Consultant must comply with any specific security requirements in the performance of the Consultant's obligations under this Contract as provided for in the Scope of Requirements.
- (d) The Consultant must promptly provide PWC with written notice of any security weaknesses or incidents:
 - (i) that have impacted or may impact the Services; and
 - (ii) in connection with the performance of the Consultant's obligations under this Contract.
- (e) Within 5 Business Days of giving any notice under clause 13.2(d), the Consultant 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.

14. CONFIDENTIALITY

- (a) Subject to the provisions of clauses 14(b) and 14(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 14(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 14(b)(i), must be made so as to minimise any such disclosure.
- (c) The obligations on PWC under this clause 14 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 Consultant 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.

15. INTELLECTUAL PROPERTY

15.1 Contract Material

- (a) Where Item 14 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 Consultant 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 14 provides that Intellectual Property Rights in Contract Material will be licensed to PWC (and owned by the Consultant), all Intellectual Property Rights in the Contract Material that are created by the Consultant will remain vested in the Consultant.
- (c) On expiry or termination of this Contract or otherwise on request, the Consultant must promptly provide PWC with complete copies of the Contract Material.

15.2 Existing Material

This clause 15 does not affect the ownership of:

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

15.3 Licences

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

15.4 Third Party Material

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

15.5 Moral Rights

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

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

16. PUBLICITY

16.1 Public statements

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

16.2 Reputation

The Consultant 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.

16.3 PWC name

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

17. INSURANCE

17.1 Insurance coverage

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

17.2 Evidence of insurance coverage

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

17.3 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 Consultant has provided copies of the certificates of currency to PWC required to be provided under clause 17.2.
- (b) If the Consultant fails to:

- (i) effect insurance in accordance with clause 17.1; or
- (ii) provide copies of the certificates of currency to PWC in accordance with clause 17.2 upon request,

then the Consultant must not commence or must cease the provision of the Services under this Contract.

- (c) If the Consultant does not remedy a breach of clause 17.3(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 Consultant to PWC, and the Consultant must promptly reimburse PWC on demand; or
 - (ii) terminate this Contract.

17.4 Insurance does not affect obligations

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

18. WARRANTIES

18.1 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.

18.2 Consultant warranties

The Consultant represents, warrants and undertakes to PWC that:

- (a) where the Consultant is a company, the Consultant 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 Consultant's knowledge challenges or may have a material adverse impact on this Contract or the ability of the Consultant to perform the Consultant's obligations under this Contract (and the Consultant 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 Consultant does not require any material action by, or material deliverables from, PWC in order to fully perform the Consultant'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 Consultant's obligations under this Contract;
- (g) the Services (including any Deliverables) will:
 - (i) provide the functions and meet the standards, specifications and requirements set out in this Contract;
 - (ii) subject to exercise of the standard of care specified in clause 4.1 be fit for the purposes set out in or reasonably ascertainable from this Contract; and
 - (iii) be free from Defects;
- (h) it is entitled to, and has the right and power to, provide the Services (including any Deliverables) to PWC;
- (i) unless expressly stated otherwise in the relevant Order, at the time of delivery to PWC, the Deliverables are legally and beneficially owned by the Consultant; and
- (j) any use, possession or receipt of the Services in accordance with this Contract will not infringe the Intellectual Property Rights or other rights of any third party.

18.3 Trustee warranty

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

- (a) enters into this Contract personally and in its capacity as trustee;
- (b) warrants that:
 - (i) the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettlement the Trust, and no date or event has occurred for the vesting of the assets of the Trust;
 - (ii) it is the only trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Consultant 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 18.3(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.

18.4 Reliance

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

19. DEFECTS

19.1 Defect Rectification

- (a) If any Defect in any Services (including any breach of the warranties set out in clause 18 or of the Consultant's other obligations under this Contract in relation to the Services) arises PWC may, acting reasonably, and without limiting PWC's other rights or remedies:
 - (i) by notice to the Consultant and at the Consultant's own expense, require the Consultant to 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 Consultant fails to resupply or rectify the Services within the time period specified in a notice given under clause 19.1(a)(i), have the Services resupplied or rectified by a third party, at the Consultant's cost; or
 - (iii) whether or not PWC has previously required the Consultant to resupply or rectify the Services, accept the Consultant's breach and require the repayment of the relevant Charges.
- (b) If required by PWC, any repaired or replaced Deliverables will be subject to reviews in accordance with clause 5.
- (c) Without limitation, any further Defect which is introduced by the Consultant's correction of an initial Defect must be corrected in accordance with this clause 19.

20. LIMITATION OF LIABILITY AND INDEMNITIES

20.1 Unlimited liability

The exclusions and limitations on the Consultant'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 13 (**Privacy and Security Requirements**) or 14 (**Confidentiality**); or
- (f) any liability to the extent that the same may not be excluded or limited as a matter of applicable Law.

20.2 Exclusion of Consequential Loss

- (a) Subject to clauses 20.1 and 20.2(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 Consultant acknowledges and agrees that, notwithstanding clause 20.2(a) and without limitation, PWC is entitled, subject to clause 20.3, to recover:
 - (i) any direct loss or damage;
 - (ii) any amounts expressly provided for under this Contract; and
 - (iii) any:
 - (A) 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;
 - (B) costs of implementing any reasonably necessary temporary workaround in relation to the Services;
 - (C) administrative costs and expenses, including for management and staff time;
 - (D) consultants' fees; and
 - (E) 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 Consultant or PWC's termination of this Contract pursuant to clause 22.3.

20.3 Cap on the Consultant's liability

Subject to clauses 20.1 and 20.2, the Consultant'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 20, save and except where such liability exceeds such amount and is covered by the insurance policies of the Consultant, in which case the Consultant's liability will reflect the maximum level of insurance cover provided by such insurance policies.

20.4 Cap on PWC's liability

Subject to clause 20.2, PWC's total maximum liability to the Consultant for all Loss sustained, incurred or suffered by the Consultant (a **Consultant 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 Consultant Claims in aggregate to an amount equal to 100% of the total of the amounts paid or payable by PWC to the Consultant under or in connection with

this Contract in the twelve-month period immediately prior to the most recent Consultant Claim.

20.5 Consultant Indemnity – negligence and wilful misconduct

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

20.6 Other risks

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

20.7 Third party IPR indemnity

- (a) The Consultant 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 Services (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 negligent act or omission of PWC or PWC Personnel.
- (b) Without limiting the Consultant's obligations under clause 20.7(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 Consultant must, with minimal disruption to PWC, at the Consultant's option, promptly and at the Consultant'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 Consultant's obligations under this Contract.
- (c) If the Consultant fails to comply with clause 20.7(b)(i) within 10 Business Days of the Consultant becoming aware of any IPR Claim or if PWC is not reasonably satisfied with any modification or replacement made by the Consultant pursuant to clauses 20.7(b)(ii) or 20.7(b)(iii), then:
 - (i) the Consultant 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 Consultant and, without limiting PWC's other rights and

remedies, the Consultant must refund the Charges paid in respect of the Infringing Item.

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

20.9 Apportionment

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

20.10 Obligation to mitigate

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

20.11 PWC Entities

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

- (a) PWC is able to recover from the Consultant 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 Consultant the benefits, rights and remedies conferred on PWC by this Contract.

21. DISPUTE RESOLUTION

21.1 Application of this clause and notification of Disputes

- (a) This clause 21 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 21, except where:
 - (i) a Party seeks urgent injunctive relief; or
 - (ii) the Dispute relates to compliance with this clause 21.

- (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.

21.2 Primary Level Discussions

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

21.3 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 Consultant of commensurate seniority (**Secondary Level Discussions**).

21.4 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.

21.5 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 21.5(a) within 30 Business Days of the date of a Dispute Notice, either Party may commence court proceedings in relation to the Dispute.

21.6 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.

22. TERMINATION AND SUSPENSION

22.1 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 Services.

22.2 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 Consultant.
- (b) If PWC terminates this Contract under clause 22.2(a), the Consultant:
 - (i) must mitigate the Consultant's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to avoid or minimise the Consultant's costs; and
 - (ii) subject to clause 22.2(b)(i), will be entitled to payment for any reasonable and unavoidable direct costs incurred by the Consultant in the performance of the Consultant's obligations relating to the Services prior to the date PWC issues the notice under clause 22.2(a) (but excluding costs incurred in relation to any Services which had already been invoiced), but no other amounts will be payable by PWC.

22.3 Termination by PWC for cause

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

- (a) if the Consultant is in Material Breach of this Contract and such breach is incapable of being remedied;
- (b) if the Consultant is in Material Breach of this Contract and such breach is capable of being remedied, but the Consultant fails to remedy the breach within 20 Business Days of the Consultant's receipt of a notice requiring it to do so;
- (c) if the Consultant or the Consultant Personnel act or omit to act in a manner calculated or likely to bring PWC into disrepute;
- (d) if the Consultant breaches clause 11 (**Work Health and Safety**);
- (e) if the Consultant breaches clause 14 (**Confidentiality**);
- (f) if the Consultant is subject to an Insolvency Event;
- (g) if there is a Change of Control Event in respect of the Consultant that, in PWC's reasonable opinion, adversely affects the Consultant's ability to provide the Services; or
- (h) where otherwise permitted pursuant to any terms and conditions of this Contract.

22.4 Termination by the Consultant

- (a) The Consultant 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 Consultant 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 Consultant;
 - (iv) the Consultant 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 Consultant 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 22.4(a)(i) or a termination of an Order under clause 22.4(a)(ii) each in accordance with clause 22.4(a), the Consultant has no right or entitlement to terminate this Contract or an Order.

22.5 Suspension

- (a) PWC may:
 - (i) in the interests of safety, or in the event of an emergency, direct the Consultant 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 Consultant to redirect the Consultant's resources at any time by giving at least 5 days' written notice to the Consultant, such notice to include the reasons for and extent of suspension.
- (b) Subject to clause 22.5(c), if PWC suspends this Contract under clause 22.5(a), and provided that the Consultant is not in breach of this Contract, the Consultant will be entitled to payment for any reasonable and unavoidable direct costs (if any) incurred by the Consultant during the period of suspension, but no other amounts will be payable by PWC.
- (c) The Consultant must mitigate the Consultant's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to minimise the Consultant's costs.
- (d) To the extent this Contract is suspended by PWC under clause 22.5(a), the Consultant must immediately recommence the performance of its relevant obligations under this Contract as directed by PWC.

23. EFFECT OF TERMINATION

23.1 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.

23.2 Return of Confidential Information and property

On termination (in whole or in part) or expiration of this Contract, the Consultant 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 Deliverables, whether complete or partially complete;
- (b) all Confidential Information (including copies, summaries and excerpts);
- (c) all relevant documentation, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
- (d) any other relevant property,

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

- (e) is not required to return or destroy any record or document where it is not reasonably practicable for the Consultant to do so and PWC agrees (acting reasonably) that it is not reasonably practicable for the Consultant 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
- (f) may retain one copy of any record or document returned or destroyed under this clause 23.2 on a confidential basis as required by Law or in accordance with the Consultant's reasonable internal record-keeping policies.

23.3 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.

24. CONSULTANT'S PERFORMANCE REPORT

- (a) The Consultant agrees that following the performance of the Services or the termination of this Contract:
 - (i) PWC may prepare a report on the Consultant's performance under this Contract (**Consultant's Performance Report**);
 - (ii) PWC will liaise with the Consultant in completing the Consultant's Performance Report although PWC reserves the right to complete the Consultant's Performance Report (other than the Consultant's comments); and
 - (iii) PWC may use and/or release the Consultant'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 Consultant's performance in the assessment of future tenders.
- (b) The Consultant agrees that:
 - (i) neither the Consultant 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 Consultant's Performance Report; and

- (ii) the Consultant's Performance Report will not, in itself, constitute evidence that the Services comply with the relevant requirements of this Contract, or otherwise limit the Consultant's obligations or PWC's rights and remedies.

25. COMPLIANCE WITH RING-FENCING GUIDELINE

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

must (and must ensure that its Personnel fully co-operate with PWC in relation to any such audit or inspection).

26. GENERAL

26.1 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 26.1(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.

26.2 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 Consultant 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.

26.3 PWC trustee for its Personnel

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

26.4 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 Consultant, each Party must (if requested in writing by the other Party) enter into discussions concerning any appropriate variation of this Contract.

26.5 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 Consultant).
- (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.

26.6 RFT Response

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

26.7 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.

26.8 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.

26.9 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.

26.10 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.

26.11 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.

26.12 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 Consultant without the prior consent of the Consultant and, in the case of a novation, PWC, the Consultant and the relevant third party will each execute a novation agreement in a form reasonably prescribed by PWC.
- (b) The Consultant must not assign, novate, transfer, sub-licence or otherwise dispose of any or all of the Consultant'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 Consultant must pay all fees and expenses reasonably incurred by PWC in connection with any consent sought under clause 26.12(b) and the investigation of any proposed assignee or new party, whether or not consent is granted.

26.13 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 (**Privacy and security requirements**);
 - (v) clause 14 (**Confidentiality**);
 - (vi) clauses 15 (**Intellectual Property**);
 - (vii) clause 16 (**Publicity**);
 - (viii) clause 17 (**Insurance**);
 - (ix) clause 18 (**Warranties**);
 - (x) clause 19 (**Rectification of Defects**);
 - (xi) clause 20 (**Limitation of liability and indemnities**);
 - (xii) clause 21 (**Dispute resolution**);
 - (xiii) clause 23 (**Effects of termination**);
 - (xiv) clause 26 (**General**); and
 - (xv) 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 Consultant 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 Consultant.

26.14 Special Conditions

The Parties agree to be bound by any Special Conditions.

26.15 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.

27. 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.

28. DEFINITIONS

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

Acceptance means the Services 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 Consultant, any company or other entity that directly or indirectly controls, or is controlled by, or is under common control with, the Consultant.

Applicable Index means the adjustment index (if any) specified in Item 18 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 Services set out, referred to or otherwise calculated in accordance with the relevant Order for such Services, 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 7.

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 13.

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.

Consultant means the entity as provided for in Item 5.

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

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

and where Item 14 provides that Contract Materials will be owned by the Consultant, Consultant IPR includes Contract Materials.

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

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

Contract means this contract, consisting of the documents listed in clause 27(f).

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

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

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

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

Email Service Address means:

- (a) in the case of the Consultant, its email address set out in Item 5 or such other email address of which the Consultant 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.

Expenses means any travel or accommodation expenses incurred by the Consultant 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.

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 Consultant under this Contract, as provided for in Item 19.

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 Consultants 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 Personnel means the Consultant Personnel who, or key positions within the Consultant's organisation which, are provided for as 'Key Personnel' in Item 12.

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(a) (**Provision of Services**);
 - (ii) clause 4.4(a) (**Sub-contracting**);
 - (iii) clauses 4.9(c) or 4.9(d) (**Local Content**);
 - (iv) clause 8.2 (**Key Personnel**);
 - (v) clause 12 (**Sustainable Supply Chain Management**);
 - (vi) clause 13 (**Privacy and Security Requirements**); or
 - (vii) clause 15 (**Intellectual Property**); or
- (b) where there is a failure to comply with clause 19.1(a) (**Defect Rectification**); and
- (c) where the Consultant has failed to meet the required dates or timeframes for the performance of the Consultant's obligations under this Contract, including any failure to achieve any Key Milestones (if any) by the Key Milestone Dates (if any).

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 Consultant by PWC advising of acceptance of the RFT Response to provide the Services 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 Services that are required to be provided by the Consultant under this Contract which may be issued by PWC as contemplated by clause 1.3.

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

Payment Milestone Amount means, in relation to a Payment Milestone, the relevant amount payable by PWC to the Consultant on the Payment Milestone Date, as provided for in Item 16.

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 Consultant as provided for in Item 16.

Payment Milestones means the payment milestones as provided for in Item 16.

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

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 Services 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 Consultant,

and where Item 14 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 Consultant 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 Consultant, as provided for in the Scope of Requirements.

PWC Site means any Site or other relevant location accessed or used by the Consultant in the connection with the performance of the Consultant'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 Services 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 Consultant 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 Consultant to PWC in response to the RFT and includes:

- (a) any written response by or on behalf of the Consultant 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 Consultant to PWC before the Commencement Date in relation to the Services.

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 Services as provided for in Attachment 3.

Scope of Requirements means PWC's requirements with respect to the Services 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 applicable 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 Consultant to enable an effective provision of the Services.

Site means those places where the Services will be delivered or provided by the Consultant 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 21.

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

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

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

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'.

Third Party Material means any material in respect of which the Consultant 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 21 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]