

Power Services

Construction Works Interface Agreement

Introduction

This document is a template document published to comply with Power and Water Corporation's obligations under the Northern Territory National Electricity Rules. Specifically clause 5.3A.3 and Schedule 5.10.

This document is not an offer to enter into a contract.

In respect of each specific connection application made to Power and Water Corporation the terms of this document may need to be amended to reflect the circumstances of that connection application. In addition the schedules and other variables in this document will need to be negotiated and completed.

A binding contract may only arise once a formal offer has been made by Power and Water Corporation to a connection applicant in accordance with the procedures in the Northern Territory National Electricity Rules, which offer has been accepted by the applicant in accordance with the terms of the offer.

This template may be updated at any time. New versions of this template will be published on Power and Water Corporation's website in accordance with the Northern Territory National Electricity Rules.

Contents

1	Definitions and Interpretation	7
1.1	Definitions	7
1.2	Interpretation	10
1.3	Headings	10
1.4	Multiple parties	10
1.5	Payments	10
2	Conditions Precedent	11
2.1	Conditions	11
2.2	Responsibility for Satisfying	11
2.3	Notification	11
2.4	Effect of Satisfaction or Waiver	11
2.5	Termination	11
3	Works	12
3.1	Acknowledgement	12
3.2	Preconditions to commencement of PWC Works	12
3.3	Approvals and Land Access Rights	12
3.4	Delays in PWC Works	12
3.5	Payments	13
4	IUSA Works	13
4.1	Undertaking of the IUSA Works	13
4.2	Contractors	13
4.3	Detailed Design	13
4.4	Construction	14
4.5	Acknowledgements by IUSA Provider	14
4.6	Defect or danger notification	14
4.7	Payment of Contractors	14
5	Information and Co-Operation	15
5.1	Undertaking	15
5.2	No release	15
6	Coordination Committee	15
6.1	Members	15
6.2	Functions	15
6.3	Meetings	15
6.4	No authority	15
6.5	Information	15
7	Testing and Commissioning	16
7.1	Inspection Rights and Tests	16
7.2	Acceptance	16
8	Conditions to Energisation	17
8.2	Title and Risk in the Transferred Works	17
8.3	Risk in IUSA Works	17
8.4	Defects Liability Period	17
8.5	IUSA Works Security	18

Contents

9	Access	19
9.1	Mutual right of access	19
9.2	Access to IUSA Site	19
9.3	Procedures relating to Access	19
9.4	IUSA Site obligations	19
9.5	Survive termination	19
10	Records	19
11	Payments	19
11.1	Costs	19
11.2	PWC Costs	19
11.3	Payment	19
12	GST	19
13	Insurances	20
13.1	Public Liability Insurance	20
13.2	Works Insurance	20
13.3	Other Insurances	20
13.4	Evidence of Insurances	20
14	Force Majeure	20
14.1	Effect of force majeure event	20
14.2	Notice obligations	20
14.3	Mitigation of effect of Force Majeure Event	20
14.4	Amendment or expiration of document on account of Force Majeure Event	21
14.5	Effect on various dates	21
15	Termination for Default	21
16	Termination due to events impacting Works	21
17	Events Consequent upon termination	21
18	IUSA Provider Warranties	22
19	Liability	23
19.1	Effect of Legislation	23
19.2	Exclusion of Warranties	23
19.3	Australian Consumer Law Guarantees	23
19.4	Third Party Claims	23
19.5	Network Damage	23
19.6	PWC Liability	23
19.7	IUSA Provider Liability	23
20	Assignment and novation	23
20.1	Dealings with this Contract by the IUSA Provider	23
20.2	Change in control	24
20.3	Costs	24
20.4	Dealings with this Agreement by PWC	24
21	Dispute Resolution	24

Contents

22 Confidentiality	25
22.1 This document is confidential	25
22.2 Exceptions	25
22.3 Announcements	25
<hr/>	
23 Miscellaneous	25
23.1 PWC rights and powers at law	25
23.2 Power System Controller	25
23.3 Interaction with applicable law	25
23.4 Exercise of PWC rights	25
23.5 Waiver	25
23.6 Entire document	25
23.7 Amendment of Agreement	26
23.8 Governing Law and Jurisdiction	26
23.9 Operational Communications	26
23.10 Notices	26
23.11 Notices sent by email	26
23.12 Further assurance	26
23.13 Merger	26
23.14 Remedies	26
23.15 Costs	26
23.16 Duty	27
23.17 Indemnities	27
23.18 Severance	27
23.19 Accrued rights	27
23.20 Clauses surviving termination	27
23.21 Counterparts	27
23.22 Authority of signatory	27
<hr/>	
Schedule 1 – Contract Particulars	28
<hr/>	
Schedule 2 – PWC Connection Assets	30
<hr/>	
Schedule 3 – IUSA Works	31
<hr/>	
Schedule 4 – Interfaces	32
<hr/>	
Schedule 5 Access Rights	33
<hr/>	
Execution	34
<hr/>	
Annexure 1 – Operating Protocols	35
<hr/>	

Construction Works Interface Agreement

Date

Parties

- 1 **Power and Water Corporation** (ABN 15 947 352 360) of Level 2, Mitchell Centre, 55-59 Mitchell Street, Darwin, Northern Territory (**PWC**); and
- 2 **[Insert Name of IUSA Provider]** (ABN [insert]) of [insert] (**IUSA Provider**)

Recitals

- A The Customer has made an application to connect the Customer Facility to the Electricity Network.
- B In order to connect the Customer Facility to the Electricity Network, it will be necessary to design and construct the Connection Assets.
- C The Customer and the IUSA Provider have agreed that the IUSA Provider will design and construct the IUSA pursuant to the terms of the IUSA Works Agreement.
- D PWC and the Customer have agreed that PWC will design and construct the PWC Connection Assets pursuant to the terms of the Connection and Supply Contract.
- E This Agreement sets out the terms upon which the IUSA Provider and PWC have agreed to coordinate the undertaking of the IUSA Works and the PWC Works.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context requires otherwise.

Agreement means the agreement between PWC and the IUSA Provider, as set out in this document

Approval means:

- (a) any consent, authorisation, registration, filing, recording, agreement, notarisation, certificate, permission, licence, approval, permit, authority or exemption from, by or with, a Government Agency or judicial body; and
- (b) in relation to any act, matter or thing which may be proscribed or restricted in whole or in part by Law or otherwise if a Government Agency or judicial body intervenes or acts in any way within a specified period after lodgement, registration or other notification of the act, matter or thing, the expiration of the period without the intervention or action.

Australian Standards mean any standard issued from time to time by Standards Australia.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Darwin.

Certificate of Practical Completion means a certificate issued by PWC pursuant to clause 9.3.

Change in Law means the enactment, amendment, repeal, revocation or change in the application of any Law (including Government Agency policy relating to the practical application of the Law) after the Execution Date but excluding any Law relating to the imposition of income tax or capital gains tax.

Claim includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) whether present, unascertained, immediate, future or contingent and whether in tort (including negligence), contract (including for breach of warranty or under an indemnity), breach of statutory duty, at common law, in equity or otherwise.

Completion means that PWC determines, acting reasonably, that it has completed the PWC Works and is, subject to the IUSA Provider completing the IUSA Works and otherwise meeting the conditions in clause 8, ready to energise those PWC Works.

Conditions means the conditions precedent set out in Schedule 1.

Connection Assets means PWC Connection Assets, the IUSA, the Interfaces and all other assets which are used, or are to be used, to connect the Customer Facility to the Electricity Network.

Connection and Supply Contract means the agreement entered into by PWC and the Customer providing for, among other things, PWC to design and construct the PWC Connection Assets.

Connection Works means the PWC Works, the IUSA Works and all other works required to be undertaken to connect the Customer Facility to the Electricity Network.

Consequential Loss means each of the following forms of loss:

- (a) special loss;
- (b) indirect loss;
- (c) (incidental losses);
- (d) any loss of business opportunity;
- (e) business interruption;
- (f) loss of revenue or anticipated loss of revenue;
- (g) (loss of access to markets);
- (h) loss of goodwill, loss of business reputation, future reputation or publicity;
- (i) increased overhead costs;
- (j) costs of obtaining or using alternative fuels;
- (k) increased costs of carrying out operations;
- (l) damage to credit rating;
- (m) loss of use;
- (n) loss of interest;
- (o) loss of profit or anticipated loss of profit;
- (p) punitive or exemplary damages; and
- (q) liability to a third party (other than liability for personal injury or death caused to that third party),

and provided that no paragraph of this definition of Consequential Loss limits the scope of any other paragraph of this definition.

Contractor means a person engaged by the IUSA Provider to undertake and complete any part of the IUSA Works.

Coordination Committee means the coordination committee formed under clause 6.1.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the person described as such in Schedule 1.

Customer Facility means the facility and related equipment and electrical installations proposed to be constructed, owned and operated by the Customer and connected to the Electricity Network.

Date of Practical Completion means the date on which PWC issues a Certificate of Practical Completion.

Detailed Design means a set of 'as for construction' documents for the IUSA and the Interfaces.

Easements means easements granted, or to be granted, to PWC as part of the Land Access Rights.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

Electricity Laws means:

- (a) the ERA;
- (b) the *Utilities Commission Act* (NT);
- (c) (the NT NEL;
- (d) the NT NER;
- (e) the Network Technical Code;
- (f) the System Control Technical Code; and
- (g) any other legislation, regulations or legally binding instruments (including rules, codes, guidelines, directives, licence conditions or other regulatory instruments) made under legislation or regulations which are directly or indirectly binding on or are expressed to apply to PWC or the IUSA Provider from time to time and relate to:
 - (i) the undertaking of the PWC Works or the IUSA Works;
 - (ii) the operation, maintenance, ownership, safety or integrity of the Electricity Network or the IUSA;
 - (iii) the supply of electricity to the Customer Facility;
 - (iv) the export of electricity from the Customer Facility;
 - (v) the Northern Territory electricity industry; or
 - (vi) any actions required to be taken by PWC or the IUSA Provider to discharge their obligations or exercise their rights under this Agreement.

Electricity Network means the electricity network (as defined in the ERA) operated by PWC.

Emergency means the actual or imminent occurrence of an event which in any way poses or has the potential to pose a threat to the safety of persons, hazard to any equipment or property or a threat to power system supply security.

Encumbrance means:

- (a) any mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as security for the payment of money or observance of any other obligation whether granted over real or personal property; and
- (b) anything which constitutes a "security interest" under the PPSA.

Equipment means:

- (a) in the case of the IUSA Provider, the IUSA; and
- (b) in the case of PWC, the PWC Connection Assets and any parts of the Electricity Network proximate to the IUSA Site.

ERA means the *Electricity Reform Act* (NT).

Execution Date means the date this Agreement is executed by the last party to execute it.

Force Majeure Event means any event or circumstance not within the reasonable control of a party and which by the exercise of reasonable care that party is not able to prevent or overcome.

Good Electricity Industry Practice has the meaning given to that term in the NT NER.

Government Agency means any government department or any statutory, public, municipal, local or other authority charged with the responsibility for administering any relevant legislation, regulation, ordinance or by-law.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning set out in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handover Certificate means a certificate described in clause 7.2.

Insolvency Event means, in respect of the IUSA Provider one or more of the following events occurs:

- (a) any execution or other process of any court or other authority is issued against or levied upon any material part of the IUSA Provider's property or assets;
- (b) a petition or application is presented (and not withdrawn within 10 Business Days), or an order is made or a resolution is passed for the winding-up or dissolution without winding-up of the IUSA Provider otherwise than for the purpose of reconstruction or amalgamation under a scheme to which PWC has given its consent;
- (c) a receiver or a receiver and manager of the undertaking or any material part thereof of the IUSA Provider is appointed;
- (d) the IUSA Provider proposes to enter into, or enters into, any arrangement, reconstruction or composition with or for the benefit of its creditors to which PWC has not given its consent;
- (e) an administrator of the IUSA Provider is appointed or the board of directors of the IUSA Provider passes a resolution of the type specified in section 436A(1) of the Corporations Act;
- (f) the IUSA Provider fails (as defined by section 459F of the Corporations Act) to comply with a statutory demand;
- (g) a controller (as defined in the Corporations Act) is appointed in respect of the IUSA Provider or the whole or a material part of the IUSA Provider's undertaking, property or assets;
- (h) application is made to a court for an order in respect of the IUSA Provider under section 233 of the Corporations Act; or
- (i) an event referred to in section 459C(2) of the Corporations Act occurs in respect of the IUSA Provider.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

Intellectual Property Rights means all statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade-marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

IUSA means the assets described in Item 1 of Schedule 3.

IUSA Site means the IUSA Provider's site as specified in Schedule 1.

IUSA Works means the works relating to the design and construction of:

- (a) the IUSA in accordance with the IUSA Works Agreement and this Agreement; and
- (b) the Interfaces, to the extent required by this Agreement to be undertaken by the IUSA Provider.

IUSA Works Agreement means the agreement entered into by the IUSA Provider and the Customer under which the IUSA Provider undertakes to design and construct the IUSA.

IUSA Works Specifications the functional specifications for the IUSA set out in Item 3 of Schedule 3, as amended from time to time by the agreement of the parties.

Interfaces means the interfaces between the PWC Connection Assets and the IUSA as detailed in Schedule 4.

Land Access Rights means the easements, leases and other land access rights which PWC requires to be obtained for the ongoing location and maintenance of and access to the IUSA as specified in Schedule 1.

Latent Condition means any unanticipated physical conditions (such as rocks, items of heritage value, weather conditions or artificial objects) which mean that:

- (a) PWC is unable to complete the PWC Works;
- (b) the PWC Works will take longer to undertake than estimated by PWC when PWC prepared the connection offer for the Connection and Supply Contract; or
- (c) in order to complete the PWC Works, PWC will incur additional costs to those it expected to incur when PWC prepared the connection offer for the Connection and Supply Contract.

Law means the written and unwritten laws in force in the Northern Territory (including all applicable Commonwealth laws) and including all Electricity Laws.

[Network Operating Agreement] means a network operating agreement (as that term is defined in the NT NER) entered into between PWC and the IUSA Provider.
[Include only if there is to be a Network Operating Agreement]

Network Technical Code means the network technical code made by PWC pursuant to section 111(2)(da) of the ERA and regulation 25 of the Electricity Reform (Administration) Regulations 2000.

NT NEL means the National Electricity Law as it applies in the Northern Territory.

NT NER means the National Electricity Rules as they apply in the Northern Territory.

Outages has the meaning given in the NT NER.

Original Defects Liability Period means a period of 2 years from the date of issue of the Handover Certificate as extended under clause 8.4(f). **[Remove if a Network Operating Agreement covering all the IUSA - will be dealt with in that document]**

Personnel means, in relation to a party:

- (a) the directors, officers, employees and agents of the party; and
- (b) all natural persons engaged to perform any aspect of the party's Works by any person, including a subcontractor, consultant or supplier.

Power System Controller means the system controller under the ERA.

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

Preliminary IUSA Works means those IUSA Works (if any) which must be undertaken as a condition to PWC commencing the PWC Works (as described in Item 2 of Schedule 3).

PWC Connection Assets means those assets which are to be designed and constructed by PWC under the Connection and Supply Contract, which assets are summarised in Schedule 2.

PWC Works means the works relating to the design and construction of:

- (a) the PWC Connection Assets pursuant to the terms of the Connection and Supply Contract; and
- (b) the Interfaces, to the extent required by this Agreement.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Related Entity has the meaning given in rule 5.2A.7(f) of the NT NER.

Standard Rates means PWC's standard rates for work or services undertaken or supplied by its employees as determined by PWC from time to time (and where an Electricity Law regulates how such rates are set then as determined in accordance with any requirements of that Electricity Law).

System Control Technical Code means the code of that name made pursuant to section 38(1) of the ERA.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

Works means:

- (a) in the case of PWC, the PWC Works; and
- (b) in the case of the IUSA Provider, the IUSA Works.

Other terms are defined in the clauses of this Agreement in which they are used.

1.2 Interpretation

In this Agreement, the following rules of interpretation apply unless a contrary intention appears.

- (a) The singular includes the plural and vice versa and a reference to a gender includes all other genders.
- (b) A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Government Agency;
- (c) A reference to:
 - (i) a person includes that person's successors, permitted substitutes and permitted assigns;
 - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;
 - (iii) this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
 - (iv) "agreement" includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to "document" includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;
 - (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
 - (vi) "include", "including" and "for example", and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
 - (vii) dollars or \$ is to Australian dollars;
 - (viii) time is to the time in Darwin; and
 - (ix) a day, month, quarter or year means a calendar day, month, quarter or year respectively.
- (a) A reference to PWC's published standards includes any PWC published standard, guideline or procedure on PWC's website.
- (b) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.
- (c) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (d) A period of time expressed to commence:
 - (i) before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and
 - (ii) on a given day, or on the day of an act or event, is to be calculated inclusive of that day.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.

1.4 Multiple parties

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.5 Payments

If a party is required to pay an amount under this Agreement, it must pay the amount by direct deposit of cleared funds to a bank account in the name of the payee, the details of which are notified by the payee at least two Business Days before the due date for payment, without any set-off, deduction, withholding or retention of any amount unless expressly contemplated by this Agreement, required by Law or directed by the payee.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

2. Conditions Precedent

2.1 Conditions

- (a) This Agreement, other than clauses 1, 18, 19, 20, 21, 22, 23 and this clause 2, will be of no force or effect unless and until each of the Conditions have been satisfied or waived.
- (b) The Conditions, and the party responsible for satisfying each Condition, are as specified in Schedule 1.
- (c) A Condition is for the benefit of the party specified in Schedule 1.

2.2 Responsibility for Satisfying

- (a) Each party must use its reasonable endeavours to procure the satisfaction of the Conditions which it is responsible for satisfying (as specified in Schedule 1) as soon as is reasonably practicable after the date of this Agreement.
- (b) Each party must provide the other party with such assistance as the other party may reasonably require to enable that other party to satisfy any Condition it is responsible for satisfying.

2.3 Notification

- (a) Each party must provide to the other such information as it reasonably requests in relation to the progress in satisfying the Conditions.
- (b) A party must, as soon as reasonably practicable after a Condition has been satisfied, notify the other party of that fact.
- (c) A party must, as soon as reasonably practicable, notify the other party if it forms the view that a Condition is unlikely to be satisfied.

2.4 Effect of Satisfaction or Waiver

- (a) A Condition may only be waived by the party for whose benefit the Condition exists. A Condition which is for the benefit of both parties may only be waived by agreement in writing between the parties.
- (b) A party may only waive a Condition for its sole benefit by giving notice of the waiver to the other party.
- (a) This Agreement becomes unconditional upon the satisfaction or waiver of all of the Conditions.

2.5 Termination

- (a) If the Conditions are not satisfied or waived by the date specified in Schedule 1, then either party may serve a notice under this clause 2.5(a). Unless the Conditions are satisfied or waived within 14 days of the service of that notice, this Agreement will terminate upon the expiration of 14 days from the service of that notice.
- (b) Termination of this Agreement under this clause 2.5 is without prejudice to the accrued rights and obligations of the parties under this Agreement.

Operative Part PART 2 – WORKS

3. Works

3.1 Acknowledgement

The parties acknowledge and agree that:

- (a) PWC must undertake and complete the PWC Works, and the IUSA Provider must undertake and complete the IUSA Works, so as to connect the Customer Facility to the Electricity Network; and
- (b) each party will be required to cooperate and liaise with the other party so that there is a coordinated and integrated approach with the undertaking of the Works and the installation and commissioning of the interfaces between the PWC Connection Assets and the IUSA.

3.2 Preconditions to commencement of PWC Works

- (a) PWC is not required to commence the PWC Works until such time as each of the following have occurred:
 - (i) the IUSA Provider has completed the IUSA Provider Preliminary Works to PWC's satisfaction;
 - (ii) the Approvals and Land Access Rights have been obtained in accordance with clause 3.3;
 - (iii) all preconditions under the Connection and Supply Contract to PWC commencing the PWC Works have occurred or been satisfied; and
 - (iv) any other precondition to the PWC Works identified in Schedule 1 has been satisfied.
- (b) If the conditions referred to in clause 3.2(a) have not been satisfied within the period specified in Schedule 1 then PWC may, by notice in writing to the IUSA Provider, terminate this Agreement.

3.3 Approvals and Land Access Rights

- (a) Except for such Approvals Schedule 1 expressly provides will be obtained by the IUSA Provider:
 - (i) PWC is responsible for obtaining all Approvals which it is required to hold under Law to undertake the PWC Works; and
 - (ii) the IUSA Provider is responsible for obtaining all Approvals which it is required to hold under Law to undertake the IUSA Works.
- (b) The IUSA Provider must (at its cost) obtain, and procure the grant to PWC at no cost to PWC, the Land Access Rights specified in Schedule 1 as required to be obtained by the IUSA Provider.
- (c) All Approvals and Land Access Rights required to be obtained by or granted to PWC must be on terms acceptable to PWC (acting reasonably) and will not be regarded as having been obtained or granted unless the terms thereof are so acceptable.
- (d) An Approval or Land Access Right will not be regarded as having been obtained until all rights for any person to challenge the acquisition, grant

or terms of that Approval or Land Access Right (whether by appeal, judicial review, Ministerial review or otherwise) have expired and been exhausted (including where there has been an appeal or review application on the date on which any review or appeal is dismissed, struck out or withdrawn or all questions raised by any such review or appeal have been finally determined (other than the question of costs)).

3.4 Delays in PWC Works

- (a) The undertaking of the PWC Works may be delayed (without limitation) by one or more of the following matters and PWC is not liable for any delay caused by such matters:
 - (i) any event, act or omission which causes a delay under the Connection and Supply Contract in undertaking the PWC Works (other than breach by PWC of that contract);
 - (ii) the IUSA Provider's failure to comply with this Agreement;
 - (iii) Force Majeure Events;
 - (iv) if Emergencies or other events adversely impact the Electricity Network and, as a prudent operator, PWC diverts resources to address those events;
 - (v) delays caused by third parties including Government Agencies or operators of other infrastructure (for example roads or telecommunications infrastructure);
 - (vi) Latent Conditions; or
 - (vii) where PWC suspends the PWC Works in the circumstances permitted by this Agreement.
- (b) In the case of delays referred to in clause 3.4(a)(iii), clause 3.4(a)(iv) clause 3.4(a)(v) and clause 3.4(a)(vi), PWC will take reasonable steps to overcome the delay but is not required to apply additional resources to the PWC Works than those which were planned to be applied prior to the delay. Further PWC has no obligation to undertake work outside the hours of 6.00am to 6.00pm on Business Days to overcome or mitigate the extent of any delay which has occurred.
- (c) The IUSA Provider acknowledges that to the extent the PWC Works require an Outage which will impact persons other than the Customer then PWC may only be able to undertake that Outage at specified times (Windows) and if due to a delay in the PWC Works or some other event a Window is missed then the Outage will not be able to be undertaken until the next available Window.
- (d) The availability of Windows will depend upon PWC obtaining any required Approvals and consents from other persons connected to the Electricity Network. PWC has no liability to the IUSA Provider if it cannot obtain the required Approvals and consents required to conduct an Outage during any specific timeframe.

Operative Part

PART 2 – WORKS

3.5 Payments

- (a) No amount is payable by PWC to the IUSA Provider for undertaking the IUSA Works.
- (b) PWC will be paid for the PWC Works by the Customer under the Connection and Supply Contract.
- (c) Clause 3.5(b) does not limit the IUSA Provider's obligation to pay PWC any amount required to be paid by an express provision of this Agreement.

4. IUSA Works

4.1 Undertaking of the IUSA Works

- (a) The IUSA Provider must undertake the IUSA Works in accordance with:
 - (i) all applicable Australian Standards;
 - (ii) Electricity Laws;
 - (iii) all applicable published PWC standards, design manuals and construction guidelines; and
 - (iv) any standards, design manuals and construction guidelines advised by PWC to the IUSA Provider prior to the Execution Date.
- (b) The IUSA Provider must ensure the IUSA Works comply with the IUSA Works Specifications and must undertake such testing as required by PWC to ensure the IUSA Works comply with those IUSA Works Specifications.
- (c) In undertaking the design and construction of the IUSA Works the IUSA Provider must comply with any reasonable directions given to it by PWC as to the undertaking of such design and construction provided such directions are consistent with the requirements of this Agreement.

4.2 Contractors

- (a) The IUSA Provider must ensure the Contractors engaged by the IUSA Provider to undertake the IUSA Works:
 - (i) have all necessary skills and experience to undertake that work in accordance with Good Electricity Industry Practice and the requirements of this Agreement;
 - (ii) hold all required Approvals to undertake that work in accordance with Electricity Laws; and
 - (iii) have all relevant accreditations from Government Agencies or industry bodies relevant to the specific works being undertaken by the Contractor.
- (b) The IUSA Provider must advise PWC of the name, address and contact details of each contractor proposed to be used by the IUSA Provider, before that contractor commences to undertake the IUSA Works. The IUSA Provider must notify PWC as soon as is reasonably practicable of any changes to these details.

- (c) The IUSA Provider must promptly give PWC whatever other information PWC may request from time to time about a Contractor.
- (d) The IUSA Provider may only use contractors to undertake the IUSA Works who are accredited with PWC. If the IUSA Provider wishes to use a contractor who is not accredited that contractor must obtain accreditation before the IUSA Provider commences use of the contractor.
- (e) PWC does not recommend any specific contractor and the IUSA Provider must form its own view as to whether any contractor complies with the requirements of clause 4.2(a).

4.3 Detailed Design

- (a) Before construction of the IUSA Works commences, the IUSA Provider must provide PWC with a copy of the proposed Detailed Design for the IUSA Works and a program of works appropriate to the type of IUSA Works and obtain PWC's approval to that Detailed Design and program of works.
- (b) The proposed Detailed Design must be based on the IUSA Works Specifications.
- (c) The IUSA Provider must ensure that, before preparing the proposed Detailed Design, the Contractors who will prepare that design review the IUSA Works Specifications and satisfy themselves the IUSA Works Specifications are correct. If the Contractors identify any issues with the IUSA Works Specifications, the IUSA Provider must ensure these are raised with PWC as soon as is reasonably practicable.
- (d) PWC may reject the Detailed Design of the IUSA Works if PWC considers, acting reasonably, the proposed Detailed Design does not meet the IUSA Works Specifications. If PWC rejects the proposed Detailed Design it will notify the IUSA Provider and provide its reasons for the rejection. The IUSA Provider must revise the Detailed Design to address the reasons for rejection and resubmit it to PWC for review. This process will continue until PWC approves the Detailed Design.
- (e) PWC may reject the program of works for the IUSA Works if PWC considers, acting reasonably, the proposed program is not appropriate having regard to the requirements of this Agreement and the nature of the IUSA Works and any PWC Works. If PWC rejects the program of works it will notify the IUSA Provider and provide its reasons for the rejection. The IUSA Provider must revise the program of works to address the reasons for rejection and resubmit it to PWC for review. This process will continue until PWC approves the program of works.
- (f) If PWC is required to review the Detailed Design or program of works on more than one occasion it may, unless the Customer is obliged to pay such costs under the Connection and Supply Contract, charge the IUSA Provider for its cost of doing so.

Operative Part PART 2 – WORKS

4.4 Construction

- (a) The IUSA Provider must ensure that the IUSA Works:
 - (i) are constructed in accordance with the IUSA Works Specifications and the approved Detailed Design;
 - (ii) are constructed in accordance with Electricity Laws and applicable Australian Standards, all applicable published PWC standards and any reasonable directions given by PWC;
 - (iii) are undertaken in accordance with the approved program of works;
 - (iv) are fit for their intended purpose;
 - (v) comply with Good Electricity Industry Practice;
 - (vi) are constructed using materials which are new; and
 - (vii) are of merchantable quality.
- (b) The IUSA Provider must ensure it gives all required notifications to Government Agencies prior to commencing a stage of the IUSA Works for which such a notice is required to be given. The IUSA Provider must provide a copy of each such notice to PWC.
- (c) Without limiting clause 4.4(a) (including the requirement to comply with all applicable published PWC standards):
 - (i) in undertaking the IUSA Works the IUSA Provider must comply with PWC standard "NP020 Guidelines for Developers of Subdivisions and Electricity Infrastructure" to the extent relevant given the nature of the IUSA Works; and
 - (ii) the construction and all other on-site activities relating to the IUSA Works must be undertaken in accordance with the PWC's "Safe Working Procedures" and "Access to Apparatus Materials List" as set out on PWC's website.
- (d) All materials used in the IUSA Works must be from a PWC approved manufacturer or supplier. Approved manufacturers and suppliers are set out in the "Power and Water Corporation – Power Networks – Approved Materials List" as set out on PWC's website.
- (e) The IUSA Provider must ensure that the IUSA Works do not infringe the Intellectual Property Rights of any person.
- (f) The IUSA Provider must:
 - (i) promptly give PWC whatever reasonable information PWC may request from time to time about the construction of the IUSA Works;
 - (ii) allow PWC to inspect the IUSA Works whenever PWC may require from time to time during their construction and, if required by PWC, the IUSA Provider must ensure that it, and any Contractor whose activities are relevant to the IUSA Works being inspected, are present during the course of that inspection and answer any questions put to them by PWC;

- (iii) allow PWC to undertake such tests of the IUSA Works as PWC wishes to undertake to assess whether the IUSA Works comply with the IUSA Works Specifications and comply with the other requirements of this Agreement; and

- (iv) provide such co-operation as PWC requires to allow it to undertake those tests.

- (g) If any part of the IUSA Works is sealed in an enclosure, covered up or buried before PWC has undertaken any inspection or test PWC might wish to undertake, the IUSA Provider must open the seal, uncover or expose those IUSA Works as required by PWC to enable it to undertake that inspection or test.

4.5 Acknowledgements by IUSA Provider

The IUSA Provider acknowledges and agrees that:

- (a) PWC does not assume or owe a duty of care to the IUSA Provider when it reviews, comments on or approves the Detailed Design prepared by the IUSA Provider;
- (b) PWC's approval of the Detailed Design:
 - (i) does not relieve the IUSA Provider of its obligations or liability under this Agreement, or limit any right of PWC under this Agreement;
 - (ii) is not to be taken as a representation or acknowledgement that the Detailed Design complies with this Agreement or the IUSA Works Specifications; or
 - (iii) does not give rise to any right of Claim against PWC.

4.6 Defect or danger notification

The IUSA Provider must immediately notify PWC if any defect or danger is identified in any of the equipment installed, or being installed, by the IUSA Provider as part of the IUSA Works.

4.7 Payment of Contractors

- (a) The IUSA Provider must ensure that all Contractors engaged by the IUSA Provider, and all subcontractors to those Contractors, are paid all amounts due to them in respect of the design, construction, installation, testing and commissioning of the IUSA Works.
- (b) As a condition to issue of a Handover Certificate, the IUSA Provider must provide to PWC a certificate from each of its Contractors confirming they have been paid all amounts due to them in respect of the design, construction, installation, testing and commissioning of the IUSA Works and that they have paid all their subcontractors all amounts due to them.
- (c) The IUSA Provider must provide promptly to PWC whatever information PWC may request to satisfy PWC clauses 4.7(a) and 4.7(b) have been complied with. This information may include invoices, receipts or other documents issued by the IUSA Provider, Contractors or from the suppliers of goods and materials used in the IUSA Works.

Operative Part

PART 3 - INFORMATION, CO-OPERATION AND COORDINATION MATTERS

5. Information and Co-Operation

5.1 Undertaking

- (a) Each party will:
- (i) give to the other party all reasonable assistance and information; and
 - (ii) co-operate and liaise with the other party,

so as to allow that other party to comply with any obligations imposed upon that other party under this Agreement or the Connection and Supply Contract or which is otherwise reasonably requested by the other party and which relates to the PWC Works or the IUSA Works.

- (b) Without limiting clause 5.1(a), each party must:
- (i) promptly provide the other party such information requested which is reasonably necessary to enable the other party to undertake its Works;
 - (ii) provide the other party such assistance and do all things as the other party may reasonably require from time to time in relation to any activity required to undertake its Works; and
 - (iii) notify the other party as soon as reasonably possible if any information provided by it changes or if it becomes aware of any error or omission in that information or matter which has caused that information to cease to be correct.

5.2 No release

No input, advice, comments, directions or inspection from PWC in relation to the IUSA Works relieves the IUSA Provider from its obligations under this Agreement.

6. Coordination Committee

6.1 Members

- (a) The parties will form a Coordination Committee comprising:
- (i) two representatives to be nominated by PWC;
 - (ii) two representatives to be nominated by the IUSA Provider; and
 - (iii) any other persons which the parties may agree from time to time.
- (b) Each party may replace either of its representatives on the Coordination Committee with another representative by notice to the other party from time to time.
- (c) Each representative of a party on the Coordination Committee may, by notice to the other party from time to time, appoint an alternate representative to attend meetings of the Coordination Committee in writing by notice to each party.

6.2 Functions

Without limiting any obligation under this Agreement, the functions of the Coordination Committee are to:

- (a) coordinate, schedule and oversee the progress of the Works;
- (b) ensure that, where required, the parties take a collaborative and integrated approach to the Works and the performance of their obligations under this Agreement;
- (c) ensure that each party is kept informed as the status of the Works being undertaken by the other party;
- (d) identify the steps needed to be taken by each party to minimise the impact of any interference on the other party's Works; and
- (e) such other functions in connection with the Works as the parties may from time to time agree the Coordination Committee is to perform.

6.3 Meetings

- (a) The Coordination Committee will meet:
- (i) monthly; and
 - (ii) at such other times as required to perform its functions or as parties' representatives on the Coordination Committee may agree from time to time.
- (b) A quorum for meetings of the Coordination Committee is one representative from each of the parties.
- (c) The Coordination Committee will appoint one of the representatives of PWC as chairperson.
- (d) The chairperson will ensure one of the representatives of the Coordination Committee prepares and distributes minutes of the meetings to Coordination Committee members.

6.4 No authority

- (a) Subject to clauses 6.4(b), the Coordination Committee has no authority to bind either party.
- (b) Each party must:
- (i) consider in good faith any recommendation made by the other party's representatives on the Coordination Committee; and
 - (ii) adopt and action any recommendation which is unanimously approved by the Coordination Committee.

6.5 Information

Each party must ensure that all information and materials reasonably required by the Coordination Committee to properly perform its functions are made available in a timely manner to the representatives on the Coordination Committee.

Operative Part PART 4 – TESTING, COMMISSIONING AND PRACTICAL COMPLETION

7. Testing and Commissioning

7.1 Inspection Rights and Tests

- (a) PWC is entitled to undertake such inspections of the IUSA Works as PWC requires to satisfy PWC that the IUSA will:
 - (i) not adversely affect the Electricity Network;
 - (ii) comply with the requirements of Electricity Laws; and/or
 - (iii) comply with the requirements of this Agreement.
- (b) The IUSA Provider must undertake the tests:
 - (i) set out in the IUSA Works Specifications;
 - (ii) as otherwise required in accordance with published PWC standards, Good Electricity Industry Practice and Electricity Laws; and
 - (iii) as otherwise requested by PWC to satisfy PWC that the IUSA Works meet the requirements specified in this Agreement.
- (c) The tests referred to in clause 7.1(b) must be undertaken in accordance with PWC's directions and any requirements of the Network Technical Code and the NT NER. Such testing must be undertaken by the IUSA Provider at the IUSA Provider's cost.
- (d) Where any inspection or test shows the IUSA Works do not comply with the requirements of this Agreement or otherwise may adversely affect the Electricity Network then the IUSA Provider must, at its cost, arrange for any necessary remedial work to be undertaken and notify PWC once this is completed. PWC will then be entitled to undertake such further inspections of the IUSA Works as it requires to satisfy PWC that the IUSA Works comply with the requirements of this Agreement, and, in addition, may require the IUSA Provider to undertake such further testing as PWC requires. Except to the extent the Customer is required to pay such costs under the Connection and Supply Contract, the IUSA Provider must pay PWC its costs of undertaking such inspection and testing. This clause 7.1(d) will continue to apply until all inspections and tests have been satisfactorily completed.
- (e) The IUSA Provider must provide to PWC such evidence that the IUSA Works have passed the tests referred to in this clause 7 as required by Electricity Laws and as required by PWC to satisfy PWC such tests have been successfully passed
- (f) When the tests have been undertaken and successfully passed, the IUSA Provider must ensure there is provided to PWC:
 - (i) a certificate showing the results of those tests; and
 - (ii) a certificate certifying that every Contractor has completed its portion of the IUSA Works and agrees those works are in a condition ready for energisation.

Each certificate must be signed by the relevant Contractor and must be in the form required by PWC from time to time.

7.2 Acceptance

- (a) When the IUSA Provider considers the IUSA Works are complete it must issue a request to PWC seeking an "Handover Certificate". The request must be accompanied by the following (unless previously provided to PWC):
 - (i) the certificates referred to in clause 7.1(f);
 - (ii) the certificates referred to in clause 4.7(b);
 - (iii) as constructed drawings for the IUSA Works in A1 and A3 hard copies and DGN electronic copies prepared in accordance with Good Electricity Industry Practice, published PWC standards and any requirements notified by PWC to the IUSA Provider (including filed recordings prepared after trenching and before backfilling of the exact locations of any underground cable ducts, cables and joints);
 - (iv) a "Certificate of Completion and Handover" (in such form as specified by PWC) signed by the IUSA Provider or its head Contractor certifying that the IUSA Works have been completed in accordance with the approved Detailed Design and the remaining requirements of this; and
 - (v) any other document required by Schedule 3.
- (b) Upon receipt of the IUSA Provider's request under clause 7.2(a), PWC will issue a Handover Certificate if PWC considers the IUSA Works are complete and PWC has received each of the documents and instruments referred to in clause 7.2(a). If PWC considers the IUSA Works are incomplete or PWC has not received each of the documents and instruments referred to in clause 7.2(a), PWC may, at its discretion, issue a Handover Certificate or refuse to issue a Handover Certificate.
- (c) If PWC refuses to issue a Handover Certificate it will notify the IUSA Provider of the reasons for the refusal and the IUSA Provider must address the reasons for refusal as soon as is reasonably practicable. Once the IUSA Provider has addressed those reasons the IUSA Provider may make a further application for a Handover Certificate which will be considered by PWC in accordance with clause 7.2(b).
- (d) The issue of a Handover Certificate by PWC:
 - (i) is not a representation by PWC that the IUSA Works comply with the requirements of this Agreement; and
 - (ii) does not relieve the IUSA Provider of any liability or responsibility if the IUSA Works do not comply with the requirements of this Agreement.

Operative Part PART 4 – TESTING, COMMISSIONING AND PRACTICAL COMPLETION

8. Conditions to Energisation

PWC will not energise the IUSA (except as PWC considers is required for testing of the IUSA) until:

- (a) the PWC Works have achieved Completion;
- (b) PWC is required to energise the connection under the Connection and Supply Contract;
- (c) a Handover Certificate has been issued by PWC;
- (d) all Approvals for the IUSA are in place;
- (e) the IUSA Provider has ensured that all Easements and leases required to be granted to PWC as part of the Land Access Rights have been registered (in a manner satisfactory to PWC) against the titles to the relevant land; and
- (f) the IUSA Provider has discharged all of its obligations under this Agreement (other than those which, of their nature, arise or are not required to be discharged prior to energisation of the IUSA).

8.2 Title and Risk in the Transferred Works

[To be included if IUSA Provider Works are being transferred to PWC without a Network Operating Agreement]

- (a) Until a Handover Certificate is issued the IUSA Provider has control of, and all risk in, the IUSA Works. The IUSA Provider is responsible for remedying, at its own cost, any defect or deficiency in, or damage to, the IUSA Works and is responsible for any damage caused by the IUSA Works to any other property or person.
- (b) (Upon the issue of a Handover Certificate PWC will assume control of, and risk in, the IUSA Works (but without limiting the IUSA Provider's obligations under clause 8.3) and title to the IUSA Works will pass to PWC.
- (c) The IUSA Provider must ensure no Encumbrances are created, or arise, over the IUSA Works in favour of any person and that good and unencumbered title to the IUSA Works vests in PWC. The IUSA Provider must ensure that no act or event occurs which prejudices PWC's ownership interest in the IUSA Works.
- (d) The IUSA Provider must pay any stamp duty and other taxes which are imposed in respect of the transfer of the ownership of the IUSA Works in accordance with this clause 8.2 and arrange for any necessary stamping and registration of documents.
- (e) The IUSA Provider must provide PWC with whatever documents PWC requires from time to time to evidence or further assure its title to the IUSA Works and to confirm the IUSA Provider's compliance with this clause 8.2. These documents must be in form and substance satisfactory to PWC.
- (f) Upon the issue of the Handover Certificate, the IUSA Provider must ensure there is transferred to PWC all of the right, title, interest and claim the IUSA Provider

and its Contractors have under any manufacturers' warranties in relation to the IUSA Works. The IUSA Provider must ensure there is executed and provided to PWC such documents as PWC requires to evidence and effect that transfer.

- (g) The IUSA Provider must ensure either that any Intellectual Property Rights in the IUSA Works and in any designs, plans or other documents relating thereto are transferred to PWC or that PWC is given a perpetual, irrevocable, transferable, world-wide licence (capable of being sub-licensed) to use those Intellectual Property Rights as required to operate, maintain, upgrade, repair, manage and otherwise utilise the IUSA Works. This clause does not extend to the Intellectual Property Rights of those entities which manufacture or distribute the actual equipment which makes up the IUSA Works in that equipment.
- (h) The IUSA Provider must ensure such documents are executed or entered into as PWC requires to ensure the effective transfer or grant of the Intellectual Property Rights referred to in clause 8.2(g) and that PWC is able to utilise and modify all documents the subject of those rights. Such documents required to be entered into may include moral rights waivers by the authors of any design or other documents.

8.3 Risk in IUSA Works

[Include if there is a Network Operating Agreement]

- (a) Until such time as PWC assumes control of the IUSA Works in accordance with the Network Operating Agreement the IUSA Provider has control of, and all risk in, the IUSA Works. The IUSA Provider is responsible for remedying, at its own cost, any defect or deficiency in, or damage to, the IUSA Works and is responsible for any damage caused by the IUSA Works to any other property or person.

8.4 Defects Liability Period

[To be included if there is no Network Operating Agreement. If there is a Network Operating Agreement this provision will be included in that agreement]

- (a) A defect in the IUSA Works means any faulty workmanship, any defective goods, materials, software, firmware or hardware or other items comprising all or part of the IUSA Works or any non-compliance of the IUSA Works with the requirements of this Agreement.
- (b) If any defect in the IUSA Works is identified during the Original Defects Liability Period then the IUSA Provider must, at PWC's option:
 - (i) rectify that defect within such reasonable period specified by PWC and to PWC's satisfaction; or
 - (ii) reimburse PWC the costs of rectifying the defect.
- (c) What is a reasonable time for the purposes of clause 8.4(b) will be determined by PWC having regard to all relevant factors, including any safety and legal issues created by the defect and the immediacy of

Operative Part PART 4 – TESTING, COMMISSIONING AND PRACTICAL COMPLETION

the threat to the Electricity Network. Where the IUSA Provider fails to rectify the defect within the period specified by PWC (or where PWC reasonably forms the view the IUSA Provider will not be able to rectify the defect within that period) then PWC may proceed to undertake the rectification of the defect.

- (d) The IUSA Provider must reimburse PWC the costs PWC incurs in rectifying a defect (whether pursuant to clause 8.4(b) or clause 8.4(c)).
- (e) Nothing in this clause 8.4 limits any other rights, powers or remedies PWC may have against the IUSA Provider or the Contractors in respect of any defect or deficiency in the IUSA Works.
- (f) Shortly before the end of the Original Defects Liability Period PWC will undertake an inspection of the IUSA Works. The IUSA Provider or a Contractor nominated by the IUSA Provider may attend that inspection. If any defects are identified during that inspection then clauses 8.4(b) and clause 8.4(c) will apply to them. Upon completion of the inspection or rectification of any defects identified during that inspection (whichever occurs later) PWC will issue a certificate acknowledging the Original Defects Liability Period has ended. Even if more than 2 years of the Original Defects Liability Period has elapsed the Original Defects Liability Period will not be taken to have ended until such certificate is issued.
- (g) If the IUSA Provider rectifies a defect under clause 8.4(b), then there will be a further defects liability period in respect of the rectified defect of 12 months from completion of the rectification. Clauses 8.4(b) to 8.4(e) will apply to any defect identified during that additional 12 month period. Issue of a certificate under clause 8.4(f) does not affect the continuing operation of such additional 12 month periods.
- (e) The IUSA Provider must ensure that the IUSA Works Security remains in place until the expiry of the Defects Liability Period (including those periods under clause 8.4(g)).
- (f) The IUSA Provider must not seek to restrain or prevent PWC from calling on the IUSA Works Security, the issuer of the IUSA Works Security from paying any amount pursuant to the IUSA Works Security or PWC from using or applying any amount obtained by it by calling on the IUSA Works Security.
- (g) If the IUSA Works Security ceases to be valid, binding or enforceable, the issuer of the IUSA Works Security claims that it is no longer valid, binding or enforceable or the issuer of the IUSA Works Security ceases to have a credit rating of at least the amount referred to in clause 8.5(c) then the IUSA Provider must within 5 Business Days provide to PWC new IUSA Works Security complying with the requirements of this clause 8.5.
- (h) If at any time the uncalled amount of the IUSA Works Security is less than the amount required by Schedule 1 (including because PWC has called upon the IUSA Works Security) then the IUSA Provider must within 5 Business Days provide PWC with an additional or replacement bank guarantee so the amount of the IUSA Works Security held by PWC is not less than the amount specified in Schedule 1. Without limiting PWC's other rights, if the IUSA Provider fails to do so, then PWC may call on the IUSA Works Security and hold the amount called down as cash security for the performance of the IUSA Provider's obligations under clause 8.4.

8.5 IUSA Works Security

[To be included if there is no Network Operating Agreement. If there is a Network Operating Agreement this provision will be included in that agreement]

- (a) The IUSA Provider must provide to PWC the IUSA Works Security in the amount specified in Schedule 1.
- (b) The IUSA Works Security must be an unconditional, irrevocable bank guarantee from a financial institution acceptable to PWC (with an office in Darwin at which the IUSA Works Security may be presented for payment) and otherwise be on terms acceptable to PWC.
- (c) (The financial institution providing the IUSA Works Security must have a credit rating of at least A- (Standard & Poor's) or A3 (Moody's Investor Services).
- (d) PWC may call on the IUSA Works Security to recover any amount owing to it under clause 8.4 or for any amount of loss or damage it suffers or costs or expenses it incurs due to the IUSA Provider's breach of this Agreement.

Operative Part

PART 5 – GENERAL PROVISIONS

9. Access

9.1 Mutual right of access

A party must provide the other party with access to its property where such access is necessary to fulfil that other party's obligations under this Agreement.

9.2 Access to IUSA Site

In addition to the right of access given under clause 9.1, the IUSA Provider must give PWC access to the IUSA Site for the purpose of allowing PWC to exercise its rights of inspection of the IUSA Works and its other rights under this Agreement.

9.3 Procedures relating to Access

In exercising its rights of access under this clause 9 a party must comply with:

- (a) Schedule 5; and
- (b) any other documented controlled record of access procedures agreed between the parties from time to time (which may add to or modify the principles in Schedule 5).

9.4 IUSA Site obligations

- (a) The IUSA Provider must ensure that:
 - (i) the IUSA Site meets the IUSA Provider's and PWC's safety standards;
 - (ii) all known hazards at the IUSA Site have been shown to PWC prior to commencement of the PWC Works or PWC otherwise first accessing the IUSA Site; and
 - (iii) any safety procedures relating to the IUSA Site have been provided and demonstrated to PWC prior to commencement of the PWC Works.
- (b) If due to hazards or other matters at the IUSA Site PWC, having regard to occupational health and safety standards which apply to PWC, considers (acting reasonably) it is unsafe for PWC to undertake the PWC Works at the IUSA Site, then PWC may suspend the undertaking of the PWC Works and notify the IUSA Provider of the unsafe conditions. The IUSA Provider is responsible for rectifying the unsafe conditions and PWC will not recommence the PWC Works until the unsafe conditions are rectified.
- (c) On the termination of this Agreement for any reason, PWC may access the IUSA Site at any time in order to disconnect, dismantle and remove from the IUSA Site any goods and equipment supplied by PWC for the purposes of undertaking the PWC Works (without prejudice to any other rights of recovery that may be available to PWC). The IUSA Provider must not hinder or disrupt any such access by PWC to the IUSA Site.

9.5 Survive termination

This clause 9 will survive termination of this Agreement for a period of 6 months.

10. Records

- (a) The IUSA Provider must keep records, data and other information necessary to demonstrate compliance with this Agreement or which is reasonably required by PWC.
- (b) The IUSA Provider must provide copies of such records, data and information to PWC upon request.

11. Payments

11.1 Costs

Where this Agreement requires the IUSA Provider to reimburse PWC's costs then PWC will issue an invoice for those costs.

11.2 PWC Costs

Where this Agreement requires the IUSA Provider to pay or reimburse PWC its costs then, subject to any requirements of Electricity Laws, the cost of PWC employees will be taken to be equal to the time spent by those employees on the relevant matter charged at the Standard Rates.

11.3 Payment

The IUSA Provider must pay PWC the amount set out in an invoice within 21 days of the date of issue of that invoice

12. GST

- (a) Subject to clause 12(b), where any supply occurs under or in connection with this Agreement, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with this Agreement which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 12(b).
- (c) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (d) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.

Operative Part PART 5 – GENERAL PROVISIONS

- (e) All amounts payable under this Agreement are taken to be expressed on a GST exclusive basis unless expressly provided otherwise in this Agreement.
- (f) In this clause 12 terms defined in GST Legislation have the meaning given to them in GST Legislation.

13. Insurances

13.1 Public Liability Insurance

- (a) The IUSA Provider must keep and maintain a public liability policy with reputable insurers covering liability to third parties for all types of loss or damage ordinarily covered by a public liability policy, in relation to the IUSA and the IUSA Works, for the amount set out in Schedule 1.
- (b) The insurance required under clause 13.1(a) must be on an occurrence basis and must cover the period from the commencement of construction of the IUSA to the date of completion of such construction or earlier termination of this Agreement.
- (c) The insurance under clause 13.1(a) must:
 - (i) be in the joint names of the IUSA Provider, PWC, and all contractors and consultants engaged in the undertaking of the IUSA Works; and
 - (ii) contain:
 - (A) a cross-liability clause (providing that claims between insureds are covered and that the contract of insurance acts as if it were a separate policy in respect of each insured party); and
 - (B) a waiver of subrogation clause, providing that the insurer waives its rights of subrogation against insured parties.

13.2 Works Insurance

- (a) The IUSA Provider must take out and maintain, or procure the relevant contractor to take out and maintain, a contractor's works insurance policy covering the reinstatement costs of the IUSA and the IUSA Works (including design costs and unfixed goods and materials to be incorporated into the relevant works) for the period from the commencement of construction of the IUSA until date of completion of such construction or earlier termination of this Agreement.
- (b) The insurance under clause 13.2(a) must be in the joint names of the Contractors, the IUSA Provider and PWC, for their respective rights and interests.

13.3 Other Insurances

The IUSA Provider will keep and maintain all other insurances required either by:

- (a) Good Electricity Industry Practice; and
- (b) Schedule 1.

13.4 Evidence of Insurances

The IUSA Provider will upon PWC's request provide PWC with:

- (a) certificates evidencing that the insurance policies required by this clause 13 have been effected and all premiums have been paid; and
- (b) such other reasonable documentation as PWC may require from time to time to confirm that the insurance policies are valid, current and meet the requirements of this clause 13.

14. Force Majeure

14.1 Effect of force majeure event

If either party is prevented from performing or observing any of its material obligations under this Agreement (other than obligations to pay money) by a Force Majeure Event, its obligations (other than obligations to pay money) will be suspended during the period in which the party is unable to perform those obligations due to the Force Majeure Event.

14.2 Notice obligations

If a party wishes to invoke clause 14.1, it must:

- (a) notify the other party;
- (b) as soon as practicable after providing the above notice, give particulars to the other party of the Force Majeure Event and of the obligations of the affected party under this Agreement which have been, will be or are likely to be, affected by the Force Majeure Event;
- (c) keep the other party informed, both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
 - (i) the affected party's estimate of the likely duration of the Force Majeure Event;
 - (ii) the action taken and the action proposed to be taken to mitigate the effect of the Force Majeure Event;
 - (iii) the cessation of that Force Majeure Event or the successful mitigation or minimisation of the effects of that Force Majeure Event; and
 - (iv) any other matter which the other party may reasonably request in connection with the occurrence of the Force Majeure Event.

14.3 Mitigation of effect of Force Majeure Event

The party invoking clause 14.1:

- (a) must use its reasonable endeavours to mitigate the effects of the Force Majeure Event;
- (b) must use its reasonable endeavours to overcome or remove the Force Majeure Event; and

Operative Part

PART 5 – GENERAL PROVISIONS

- (c) will not be required against its will to settle a strike, lock-out or other industrial disturbance by acceding to the demands of the disputants.

14.4 Amendment or expiration of document on account of Force Majeure Event

If the Force Majeure Event continues to prevent a party from performing or observing its material obligations under this Agreement for 6 months from the date of its occurrence, either party may upon not less than 10 Business Days' notice terminate this Agreement.

14.5 Effect on various dates

No Force Majeure Event will result in an extension to the time periods under clause 3.2(b).

15. Termination for Default

- (a) PWC may terminate this Agreement by notice to the IUSA Provider where:
- (i) the IUSA Provider fails to make a payment under this Agreement by the due date and fails to remedy such default within 7 days of receiving notice from PWC requiring such payment; or
 - (ii) the IUSA Provider fails to cure any other default under this Agreement within 60 days of receiving a notice of that default from PWC; or
 - (iii) an Insolvency Event occurs in relation to the IUSA Provider.
- (b) The IUSA Provider may terminate this Agreement by giving notice to PWC if PWC fails to cure any default under this Agreement within 60 days of receiving a notice of default from the IUSA Provider.
- (c) Where the IUSA Provider is in breach of this Agreement, PWC may suspend the undertaking of the PWC Works where and for so long as PWC considers this is required to preserve the safety and security of the Electricity Network, persons or property.
- (d) Termination under this clause 15 is without prejudice to accrued rights of the parties or any legal or equitable rights that a party may otherwise have with respect to that termination.

16. Termination due to events impacting Works

- (a) PWC may terminate this Agreement if:
- (i) the IUSA Provider's acts or omissions cause delays for a period of more than 90 days to the undertaking of the PWC Works;
 - (ii) the IUSA Provider has not completed the IUSA Works within the period specified in Schedule 1;
 - (iii) due to Latent Conditions PWC is unable to complete the PWC Works; or

- (iv) the Connection and Supply Agreement is terminated.

- (b) Nothing in this clause 16 will limit either party's right to recover damages from the other party for breach of contract.

17. Events Consequent upon termination

- (a) (If this Agreement is terminated, PWC will be entitled to disconnect, dismantle, decommission and remove any of its Equipment.
- (b) If this Agreement is terminated PWC may, within 30 days of such termination, elect to acquire the IUSA Works for their fair market value. PWC may exercise such option by notice to the IUSA Provider.
- (c) If the IUSA Provider owns land upon which the IUSA Works are located (IUSA Land) PWC may also elect to acquire that land as part of the exercise of the option in which case the fair market value of the land must also be separately determined in accordance with the procedures in this clause 17.
- (d) If PWC exercises its option to acquire the IUSA Works, then unless the fair market value of the IUSA Works (and if applicable IUSA Land) is agreed by the parties within 20 days of exercise of the option, PWC must appoint an independent expert to determine the fair market value of the IUSA Works (and if applicable IUSA Land). The independent expert will be that person agreed by the parties or, in default of agreement within 10 Business Days of PWC first proposing a list of experts, the person determined in accordance with the Resolution Institute Expert Determination Rules.
- (e) The expert must agree to act impartially between the parties and will conduct their determination in accordance with Resolution Institute Expert Determination Rules. The parties will each pay 50% of the costs of the independent expert.
- (f) Within 10 Business Days of the expert's determination PWC may withdraw the exercise of its option:
- (i) as it relates to the IUSA Works, in which case PWC will not acquire the IUSA Works or the IUSA Land;
 - (ii) as it relates to the IUSA Land, in which case PWC will still acquire the IUSA Works but not the IUSA Land.
- (g) Upon the fair market value being agreed by the parties or upon the expiry of the 10 Business Day period referred to in clause 17(f):
- (i) the IUSA Provider must transfer to PWC good and unencumbered title to the IUSA Works and to any IUSA Land being acquired by PWC;
 - (ii) if the IUSA Provider owns the land upon which any component of the IUSA Works are located (and that land is not being transferred to PWC)

Operative Part PART 5 – GENERAL PROVISIONS

- the IUSA Provider must grant PWC an easement or easements over that land in such form as required by PWC (which form will be consistent with PWC standard practice for easements) and ensure such easement or easements are registered;
- (iii) the IUSA Provider must transfer to PWC any Land Access Rights not already in the name of PWC;
- (iv) the IUSA Provider must issue an invoice to PWC for the amount payable by PWC for the IUSA Works (and if applicable IUSA Land); and
- (v) PWC must pay that invoice within 21 days of its receipt.
- (h) If the IUSA Provider fails to grant or register an easement as required by clause 17(g) then PWC may take such steps it considers required to procure grant or registration of that easement. The IUSA Provider must reimburse PWC its costs of undertaking such steps. The IUSA Provider appoints PWC, or such officer of PWC nominated by PWC, its attorney for the purposes of taking such steps and agrees to ratify any action taken by the attorney.
- (i) The IUSA Provider must pay any stamp duty and other taxes which are imposed in respect of the transfer of the ownership of the IUSA Works and IUSA Land in accordance with this clause 17 and arrange for any necessary stamping and registration of documents.
- (j) The IUSA Provider must provide PWC with whatever documents PWC requires from time to time to evidence or further assure its title to the IUSA Works and any IUSA Land being transferred to PWC, and to confirm the IUSA Provider's compliance with this clause 17. These documents must be in form and substance satisfactory to PWC.
- (k) The IUSA Provider must ensure there is transferred to PWC all of the right, title, interest and claim the IUSA Provider and its Contractors have under any manufacturers' warranties in relation to the IUSA Works. The IUSA Provider must ensure there is executed and provided to PWC such documents as PWC requires to evidence and effect that transfer.
- (l) The IUSA Provider must ensure either that any Intellectual Property Rights in the IUSA Works and in any designs, plans or other documents relating thereto are transferred to PWC or that PWC is given a perpetual, irrevocable, transferable, world-wide licence (capable of being sub-licensed) to use those Intellectual Property Rights as required to operate, maintain, upgrade, repair, manage and otherwise utilise the IUSA Works. This clause does not extend to the Intellectual Property Rights of those entities which manufacture or distribute the actual equipment which makes up the IUSA Works in that equipment.
- (m) The IUSA Provider must ensure such documents are executed or entered into as PWC requires to ensure the effective transfer or grant of the Intellectual Property Rights referred to in clause 17(l) and that PWC is able to utilise and modify all documents the subject of those rights. Such documents required to be entered into may include moral rights waivers by the authors of any design or other documents.
- (n) (If PWC acquires the IUSA Works then it may retain ownership of any documents or items provided to it by the IUSA Provider relating to the IUSA Works (and the IUSA Provider must take such steps as required by PWC to ensure good and unencumbered title to such items vests in PWC).

18. IUSA Provider Warranties

The IUSA Provider represents and warrants to PWC that:

- (a) the IUSA Provider is a corporation validly existing under the laws of the place of its incorporation;
- (b) it will at all times hold all Approvals required for it to construct and own the IUSA;
- (c) it has the power to enter into and perform its obligations under this Agreement;
- (d) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
- (e) the execution and performance by it of this Agreement does not and will not breach a provision of:
- (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;
- (ii) its constitution; and
- (iii) any other document or agreement to which it is a party; and
- (f) the IUSA Provider:
- (i) does not (and will not) own operate or control a generating facility (as that term is defined in the NT NER);
- (ii) does not (and will not) own, operate or control a facility (as that term is defined in the NT NER) using electrical energy; or
- (iii) is not (and will not be) a Related Entity of a person who owns, operates or controls any such generating facility or facility utilising electrical energy.

Operative Part PART 5 – GENERAL PROVISIONS

19. Liability

19.1 Effect of Legislation

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by Law cannot be excluded, restricted or modified.

19.2 Exclusion of Warranties

All warranties in relation to the supply of electricity or other services by PWC which may otherwise be implied by use, statute or otherwise are, to the maximum extent permitted by Law, excluded including any warranties of fitness for purpose, merchantable quality or otherwise relating to the quality or continuity of any service or the supply of electricity.

19.3 Australian Consumer Law Guarantees

- (a) Pursuant to section 64A of the Australian Consumer Law this clause 19.3(a) and clause 19.3(b) apply in respect of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but this clause 19.3(a) and clause 19.3(b) will not apply if a party establishes that reliance on them would not be fair and reasonable. This clause 19.3(a) and clause 19.3(b) prevail over any inconsistent provisions in this Agreement.
- (b) Liability of PWC for failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to:
 - (i) in the case of goods, to any one of the following as determined by PWC:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (D) the payment of the cost of having the goods repaired;
 - (ii) in the case of services, to any one of the following as determined by PWC:
 - (A) the supplying of the services again;
 - (B) the payment of the cost of having the services supplied again.

19.4 Third Party Claims

The IUSA Provider must indemnify and keep PWC indemnified against any third party claims against PWC which arise due to the IUSA Provider's breach of this Agreement or negligent act or omission in connection with this Agreement.

19.5 Network Damage

The IUSA Provider must reimburse PWC any costs and expenses incurred by PWC in rectifying damage to

the Electricity Network caused by the IUSA Provider's breach of this Agreement or negligent act or omission in connection with this Agreement (including without limitation due to any failure of IUSA Works to comply with the requirements of this Agreement).

19.6 PWC Liability

- (a) (In no circumstances (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) is PWC liable to the IUSA Provider for any Consequential Loss.
- (b) PWC's aggregate liability to the IUSA provider for all acts, omissions or events under this Agreement (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) is capped at the amount specified in Schedule 1 as the PWC Liability Cap.
- (c) PWC has no liability under this Agreement (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) for any act or omission performed by PWC in its capacity as Power System Controller or performed by PWC in connection with PWC providing advice, services or assistance to or acting in accordance with the directions of the Power System Controller.

19.7 IUSA Provider Liability

- (a) Subject to clause 19.7(b) the IUSA Provider is not liable to PWC under this Agreement for any Consequential Loss.
- (b) Clause 19.7(a) does not limit the IUSA Provider's liability:
 - (i) to reimburse or pay PWC any costs, where the IUSA Provider is required to pay or reimburse those costs pursuant to an express provision of Agreement;
 - (ii) for any liability of PWC to third parties for losses of the nature described in clause 19.7(a);
 - (iii) for any deliberate breach of this Agreement, gross negligence or wilful misconduct;
 - (iv) for any breach of Laws; or
 - (v) to the extent the IUSA Provider has insurance in place which provides indemnity for such amounts (or would have had such insurance in place or would have received such indemnity had the IUSA Provider complied with its insurance obligations under this Agreement).

20. Assignment and novation

20.1 Dealings with this Contract by the IUSA Provider

The IUSA Provider must not:

- (a) assign, transfer, novate or deal with any of its rights or obligations under this Agreement; or

Operative Part PART 5 – GENERAL PROVISIONS

(b) grant any mortgage, pledge, charge or otherwise encumber its rights to and interest in this Agreement, unless the IUSA Provider has PWC's prior written consent, which consent will not be unreasonably withheld or delayed or given on unreasonable conditions.

20.2 Change in control

- (a) In this clause 20.2, a "Change in Control" occurs in respect of a person where a change occurs in the persons which directly or indirectly:
- (i) control the composition of the board of that person; or
 - (ii) are directly or indirectly in a position to cast, or control the casting of, more than one-half of the maximum number of votes that may be cast at a general meeting of that person; or
 - (iii) hold more than one-half of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (iv) where that person is a trustee of a unit trust, hold more than one half of the beneficial ownership of the units in the unit trust.
- (b) The IUSA Provider must ensure that no Change in Control of the IUSA Provider occurs without PWC's prior written consent, which PWC will not unreasonably withhold, delay or give on unreasonable conditions.
- (c) Clause 20.2(b) does not apply if:
- (i) the IUSA Provider is listed on the Australia Securities Exchange or another recognised securities exchange; or
 - (ii) the event which causes the Change in Control of the IUSA Provider is a Change in Control of a Related Body Corporate (as defined in the Corporations Act 2001) of the IUSA Provider which Related Body Corporate is listed on the Australian Securities Exchange or another recognised securities exchange.

20.3 Costs

The IUSA Provider must pay PWC costs of considering whether to give consent under clauses 20.1 to 20.2 and of preparing and negotiating any documentation executed to give effect to the transactions referred to in those clauses. Such costs include the time of PWC employees at the Standard Rates and external legal costs. The IUSA Provider must pay any stamp duty and other taxes levied upon such documents and the transactions they evidence.

20.4 Dealings with this Agreement by PWC

- (a) PWC may:
- (i) without the IUSA Provider's consent, assign, transfer or novate PWC's rights and obligations under this Agreement to (or otherwise deal with

those rights and obligation in favour of) any person to whom ownership (including an ownership interest as lessee) of the Electricity Network (relevant to the IUSA) has been transferred or which person is authorised by law to operate that part of the Electricity Network;

- (ii) without the IUSA Provider's consent, mortgage, pledge, charge or otherwise encumber PWC's rights to and interest in this Agreement; and
 - (iii) otherwise assign, transfer, novate or deal with PWC's rights and obligations under this Agreement with the IUSA Provider's prior written consent, which consent will not be unreasonably withheld or delayed or given on unreasonable conditions.
- (b) PWC may assign, transfer or novate PWC rights and obligations under clause 20.4(a) by notice to the IUSA Provider (which notice may be given personally to the IUSA Provider or may be given by publication on PWC's website or by publication in a newspaper circulating generally within the city of Darwin).
- (c) The IUSA Provider must execute such documentation as reasonably required by PWC to evidence or give effect to any assignment, transfer, novation or other dealing which PWC is entitled to make under clause 20.4(a). PWC must pay any stamp duty and other taxes levied upon such documents and the transactions they evidence.

21. Dispute Resolution

- (a) If a dispute arises between the parties, it will be resolved in accordance with any applicable Laws.
- (b) If no Laws regulate the resolution of the dispute then the parties will negotiate in good faith to resolve the dispute. If the dispute is not resolved by such good faith negotiations within 10 Business Days of being raised it will be referred to mediation in accordance with the Rules for Mediation of the Resolution Institute.
- (c) Nothing in this clause 21 prevents a party seeking injunctive or declaratory relief from a court or exercising any right under this Agreement.

Operative Part PART 5 – GENERAL PROVISIONS

22. Confidentiality

22.1 This document is confidential

Subject to clause 22.2, each party must keep confidential:

- (a) the terms of this Agreement;
- (b) all negotiations between it and the other party in connection with, and all information given to it under, this Agreement; and
- (c) all information in connection with this Agreement of the kind mentioned in section 275(1) of the PPSA.

22.2 Exceptions

- (a) Despite clause 22.1, Confidential Information may be disclosed by a party receiving that information in the following circumstances:
 - (i) to its employees, its professional advisers or its financiers who require that information for the purpose of carrying out the functions assigned to them by the party;
 - (ii) to its insurers;
 - (iii) with the consent of the party who provided the information, which consent may not be unreasonably withheld;
 - (iv) where the information was already known to it at the time it received it in the manner contemplated by clause 22.1;
 - (v) the information is known publicly other than as a consequence of a breach of clause 22.1 by that party;
 - (vi) to a bona fide prospective purchaser of:
 - (A) its share capital or of any relevant part of its business undertaking; or
 - (B) the share capital of a holding company of that party;
 - (vii) when required by Law (other than section 275(1) of the PPSA) or by the requirements of any stock exchange on which the shares of the party or any of its Related Bodies Corporate are listed;
 - (viii) in connection with the refinancing of any debt of that party or of any holding company of that party;
 - (ix) to any Related Body Corporate;
 - (x) in the case of disclosure by PWC, to any Minister of the Government of the Northern Territory or to any Northern Territory Government Agency;
 - (xi) as necessary to enable a party to claim force majeure under another contract or to enable a party to deal with any claim that it is in breach of another contract; or
 - (xii) as required to discharge a party's obligations under this Agreement or to exercise its rights under this Agreement.

- (b) Except in the case of clause 22.2(a)(iii), clause 22.2(a)(iv), clause 22.2(a)(v) and clause 22.2(a)(vi), a party disclosing Confidential Information under clause 22.2 must use its reasonable endeavours to ensure that the persons to whom it discloses that information undertake to keep the information confidential.

22.3 Announcements

Except for securities exchange announcements required by Law or securities exchange rules, a party must not make any public announcement or issue any media release relating to this Agreement, without the prior written approval of the other party. The parties shall, where appropriate, endeavour to issue joint public announcements and media releases in relation to this Agreement.

23. Miscellaneous

23.1 PWC rights and powers at law

Nothing in this Agreement limits or restricts PWC exercising any powers or rights which PWC has pursuant to Law (including without limitation rights to interrupt or curtail supply of electricity, access rights and rights of entry and to take action to address emergencies).

23.2 Power System Controller

Without limiting clause 23.1, nothing in this Agreement limits PWC's rights and powers in its capacity as Power System Controller.

23.3 Interaction with applicable law

Where a provision of this Agreement is inconsistent with the Law, then the provision of this Agreement prevails but only to the extent permitted by that Law. Otherwise the Law prevails to the extent of the inconsistency.

23.4 Exercise of PWC rights

Unless this Agreement expressly requires otherwise and subject to Law:

- (a) PWC may give or withhold any consent or approval, or exercise any other right, power, authority, discretion or remedy, under or in connection with this Agreement in PWC's absolute discretion; and
- (b) where PWC has the right to approve or consent to a matter of thing under this Agreement, PWC may impose conditions on the approval or consent.

23.5 Waiver

A provision of this Agreement may only be waived by PWC and the IUSA Provider by an instrument in writing signed by the authorised officer of each party.

23.6 Entire document

- (a) This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express or implied in any

Operative Part PART 5 – GENERAL PROVISIONS

way extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to any of the matters to which this Agreement relates.

- (b) Each of the parties covenants and irrevocably acknowledges that it has not been induced to enter into this Agreement by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person including the other party, other than as expressly recorded in this Agreement.
- (c) The provisions of clause 23.6(a) and clause 23.6(b) will operate and remain in full force and effect, except in the case of fraud by a party to this Agreement.

23.7 Amendment of Agreement

Any amendments to this Agreement must be in writing and signed by both parties in order to be effective.

23.8 Governing Law and Jurisdiction

This Agreement is governed by the law in force in the Northern Territory, and the parties submit to the exclusive jurisdiction of the courts of, or exercising jurisdiction in, the Northern Territory and warrant that they will not take any objection to the jurisdiction of those Courts on grounds of convenience.

23.9 Operational Communications

- (a) Any operational communications given by or on behalf of a party may be by telephone or other instantaneous means of communication.
- (b) Operational communications are to be recorded in a manner satisfactory to both parties. The parties will ensure that logs are kept in which persons giving and receiving operational communications record brief details of their substance and timing.

23.10 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as set out in Schedule 1;
- (c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by email in accordance with clause 23.11, by hand or posted by prepaid priority post to the address, or sent by fax to the number, of the addressee; and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third Business Day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the tenth Business Day after the date of posting by airmail;

- (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

- (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day ("business day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

23.11 Notices sent by email

- (a) Any communications may be sent by email:
 - (i) to the relevant email address set out in Schedule 1 or the email address last notified by the intended recipient to the sender; and
 - (ii) where the sender keeps an electronic or printed copy of the communication.
- (b) (A communication sent under clause 23.11(a) will be taken to be duly received:
 - (i) on return of a receipt produced by the system to which the email was sent which indicates that the email was sent to the email address of the recipient; or
 - (ii) where no return receipt is produced by the recipient's email system and the sender has not otherwise received a notification that the email was unable to be delivered, by the end of the day the email was sent if prior to 5pm on a Business Day and otherwise the next Business Day.

23.12 Further assurance

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of further documents.

23.13 Merger

The warranties, undertakings and indemnities in this Agreement do not merge on termination of this Agreement.

23.14 Remedies

The rights, powers and remedies provided in this Agreement are cumulative with, and not exclusive of, the rights, powers or remedies provided by Law independently of this Agreement.

23.15 Costs

Each party is responsible for its own costs in relation to the negotiation, preparation, execution and performance of this Agreement, except to the extent this Agreement provides otherwise.

Operative Part

PART 5 – GENERAL PROVISIONS

23.16 Duty

Except where expressly provided otherwise in this Agreement, the IUSA Provider must pay any duty (including, to the extent permitted by law, any fine or penalty) payable in respect of this Agreement, any document executed under it or any dutiable transaction evidenced, effected or required in connection with it. If a party other than the IUSA Provider pays any duty payable by the IUSA Provider under this clause 23.16, the IUSA Provider must pay that amount to the paying party on demand.

23.17 Indemnities

Unless this Agreement provides otherwise:

- (a) each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement;
- (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement; and
- (c) the making of a claim by a party under an indemnity contained in this Agreement in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of the same event.

23.18 Severance

If a provision of this Agreement would, but for this clause 23.18, be void, unenforceable or illegal in a jurisdiction:

- (a) the provision is read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction,

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this Agreement. This clause 23.18 has no effect if its operation alters the basic nature of this Agreement or is contrary to public policy.

23.19 Accrued rights

Termination or expiry of this Agreement for any reason does not affect the accrued rights of the parties under it.

23.20 Clauses surviving termination

Clauses 11, 12, 17, 19, 21, 22, and 23 survive termination or expiry of this Agreement as do any other clauses that are by their nature intended to survive the termination or expiry of this Agreement.

23.21 Counterparts

This Agreement may be executed in counterparts which together constitute one instrument but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged. Each party consents to the exchange of counterparts by facsimile, email or other electronic means.

23.22 Authority of signatory

Each person, who executes this Agreement on behalf of a party under a power of attorney or other authority, declares and warrants that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that authority.

Schedule 1 Contract Particulars

Table 1 Customer's details

--

Table 2 Conditions

Condition	Party Responsible for Satisfying	Party for whose benefit Condition is included	Date for Satisfaction
[Execution of Network Operating Agreement]			
[Satisfaction of all conditions precedent to the Connection and Supply Contract]			

Table 3 IUSA Site

--

Table 4 Other Particulars

Other Conditions to PWC Works (see clause 3.2(a)(iv))	
Period for satisfying Conditions to PWC Works (see clause 3.2(b))	
Approvals to be obtained by the IUSA Provider (see clause 3.3(a))	
Longstop Date for Completion of IUSA Provider Works (see clause 16(a)(ii))	
IUSA Works Security (see clause 8.5(a))	
PWC Liability Cap (see clause 19.6(b))	

Schedule 1 Contract Particulars

Table 5 Insurance Requirements

Type of Insurance	Limits of Indemnity	Other Requirements

Table 6 PWC Notice Details

Delivery Address	
Postal Address	
Email	
Facsimile	

Table 7 IUSA Provider Notice Details

Delivery Address	
Postal Address	
Email	
Facsimile	

Schedule 2 Connection Assets

Schedule 3 IUSA Works

Item 1: Description of IUSA:

[]

Item 2: Preliminary IUSA Works

[]

Item 3: IUSA Works Specifications

[Cross-reference to additional annexure as requires]

Item 4: Documents to be provided by IUSA Provider

[]

Schedule 4 Interfaces



Schedule 5 Access Rights

A party (**owning party**) must provide access to the other party (accessing party) to the premises and facilities of the owning party for any of the purposes set out in clause 9 and at all times during the normal business hours of the owning party on not less than 24 hours prior notice.

Emergency Access

In an Emergency, a party may enter the premises of the other party at any time and without notice in order to take such action (as is consistent with Good Electricity Industry Practice) that is reasonably necessary to deal with the Emergency.

Site Procedures

The accessing party must comply with all reasonable site procedures communicated to the accessing party by the owning party.

Occupational Health and Safety

The accessing party must ensure that it complies with all occupational health and safety laws, and any reasonable directions issued by the owning party from time to time concerning occupational health and safety issues.

The accessing party must immediately notify the owning party if an accident involving its Personnel occurs on the owning party's premises or in relation to any of the owning party's Equipment.

Environment

The accessing party must ensure that it complies with all environmental laws, and any reasonable directions issued by the owning party from time to time concerning environmental issues.

A party and its personnel, when exercising a right of access, must take all reasonable precautions to prevent pollution, damage or injury to air, soil, water, animal or plant life and property.

Each party must immediately notify the other party of the existence of any environmental hazard or the occurrence of any environmental incident which has or may potentially impact upon the other party.

No Proprietary Rights

The rights granted to the accessing party under this Agreement are contractual only and will not create or vest in the accessing party any estate, interest or right of a proprietary nature in the property of the owning party.

Any equipment belonging to the accessing party which is situated on the owning party's premises will remain the property of the accessing party.

Execution

Executed as a deed

**The common seal of Power and Water Corporation
ABN 15 947 352 360** was affixed in accordance with
its constitution in the presence of:

Signature

Signature

Full name (BLOCK LETTERS)

Full name (BLOCK LETTERS)

Position

Position

Executed by [Insert name and ABN of
Customer] in accordance with section 127
of the Corporations Act 2001 (Cth) by:

Signature of Director

Signature of Director/Secretary

Full name
(BLOCK LETTERS)

Full name
(BLOCK LETTERS)

Annexure 1 Operating Protocols
