

# **Indigenous Essential Services Part C - Conditions of Contract**

## **Utilities Support Contract**

**VERSION 6.1**

**Document version control**

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## Contract Details

Item #	Reference	Detail
1.	Contract No.	[Reference Number]
2.	Contract Title	[Title]
3.	Location	[Sites awarded to be confirmed following Issue of Notice of Acceptance]
4.	<b>Principal</b> <i>(including address for notices under clause 15)</i>	<b>Indigenous Essential Services Pty Ltd</b> <b>(ABN 50 105 269 363)</b>  Attention: Chief Procurement Officer  Postal Address: PO Box 1921, Darwin NT 0801  Email: <a href="mailto:ChiefProcurementOfficer.PWC@powerwater.com.au">ChiefProcurementOfficer.PWC@powerwater.com.au</a>
5.	<b>Principal's Representative</b> <b>(clause 6)</b>	Name: Manager Contract Management Email: <a href="mailto:ESOContracts@powerwater.com.au">ESOContracts@powerwater.com.au</a>
6.	<b>Ordering Officer</b> <b>(clause 6)</b>	Name: USC Contract Coordinator Email: <a href="mailto:ESOContracts@powerwater.com.au">ESOContracts@powerwater.com.au</a>
7.	<b>Correspondence in relation to Meter Reading</b>	Email: <a href="mailto:IES@powerwater.com.au">IES@powerwater.com.au</a>
8.	<b>Supplier</b> <b>(including address for notices under clause 15)</b>	[insert full name] [insert ACN/ABN]  Address: [insert address] Email: [insert email] Facsimile: [insert facsimile]
9.	<b>Supplier's Representative</b> <b>(clause 10)</b>	Name: [Insert] Position: [Insert position] Phone: [Insert phone number] Email: [Insert email address]
10.	<b>Term</b> <b>(clause 2.3)</b>	Commencement Date: [Insert Term] Expiry Date: [Insert Term] Period of Contract: [Insert Term] Extension Option: [Insert Term]



**11. Reporting  
(clause 54)**

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

Yes, as follows:

Report Type	Frequency	Report Timeframes/Dates	Format
[insert]	[insert frequency or 'not applicable']	[insert]	[insert format or 'not applicable']

No, not applicable.

**12. Confidential Information of the Principal  
(clause 17)**

The following information is also Confidential Information of the Principal:

<b>Confidential Information of the Principal</b>
[insert details, documents etc. or if none, insert 'none specified']

**13. Invoicing  
(clause 23.1 and 23.2)**

The Supplier will be entitled to invoice the Charges:

on Acceptance of the Goods (where applicable)

monthly in arrears following performance of the Services (where applicable)

as follows:

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

**14. Price Adjustment  
(clause 23.4)**

The Schedule of Rates will be firm for the first twelve (12) months and thereafter subject to price adjustment in accordance with the requirements of clause 23.4 of the Conditions of Contract

**15. Insurance**  
**(clause 22)**

<b>Insurance Type</b>	<b>Minimum Amount</b>
<b>Public liability</b>	[\$ <b>Insert amount</b> ] for each and every Claim and unlimited in the aggregate.
<b>Professional Indemnity Insurance</b>	Not applicable
<b>Workers' compensation</b>	As specified by the applicable Laws

**16. Limitation of Liability**  
**(clause 21.3)**

Subject to clause (b), the cap on the Supplier's liability under this Contract is:

<b>Liability Cap</b>
<b>[insert \$ amount or method of determining amount of liability cap]</b>

**17. Defects Liability Period**  
**(clause 46)**

Weeks from the completion of each item of work

**18. Documents included in this Contract**

**[Insert Document References]**  
Others as notified from time to time by the Principal

**19. Special Conditions**  
**(clause 2.1)**

Are Special Conditions applicable to this Contract?

- Yes, as set out in Attachment 1  
 No, not applicable.

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In these Conditions of Contract, unless the context otherwise requires:

'**Additional Work**' means work outside the scope of the Duties which the Principal requires to be performed from time to time (and does not include Ancillary Work) and the Principal will issue to the Supplier a Purchase Order for such work.

'**Additional Work Charges**' means the Charges so named in the Schedule of Rates or the charges agreed by the parties in respect of Additional Work.

'**Ancillary Work**' means any work or task that is necessarily required to be undertaken as a part of, as a precursor to or as a result of performing, any Duties or any other obligation to be performed by the Supplier under this Contract.

'**Assets**' means assets and infrastructure owned or used by the Principal or PWC and includes all other material, equipment and any other matter or thing that is owned by the Principal in connection with the Principal's business or operation.

'**Australian Drinking Water Guidelines**' means the guidelines by that name published and updated from time to time by the National Health and Medical Research Council.

'**Authorise**' means formal and written approval or permission from the Principal to the Supplier (and includes Authorised or Authorisations).

'**Business Day**' means any day which is not a Saturday, Sunday or a public holiday within the meaning of the *Public Holidays Act 1981* (NT) at the location where the Duties are performed.

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

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

'**Call Out**' is defined as any Works where a direction has been issued by the Principal or its representative to the Supplier for work to be conducted outside of Working Hours.

'**Charges**' means the charges set out in the Schedule of Rates.

'**Commencement Date**' means the date specified in Item 10.

'**Communities**' means the Aboriginal communities or outstations or minor centres described at Item 3 and '**Community**' means any of them.

'**Consumables**' means items that are provided by the Principal to the Supplier as outlined in CONTROL0756.

'**Contract**' means the document, which constitutes or evidences or as the cases may be all the documents which constitute or evidence the final and concluded agreement between the Principal and the Supplier concerning the execution of the Works.

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

'**CPI**' means the CPI Index 6401.0 All Groups – Darwin published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

'**Criminal History Check**' means a national check conducted by the Northern Territory Police determining whether a person has a criminal history.

'**Date of Acceptance**' means the date, appearing on the Notice of Acceptance and if no date appears, is the date on which the Principal sent the Notice of Acceptance to the Supplier.

'**Default**' is defined in clause 51.1.

'**Default Notice**' is defined in clause 51.2.

'**Defects Liability Period**' means the defects liability period set out in Item 17.

'**Documents**' means all material stored by any means and produced or used by the Supplier or subcontractors in the course of the Contract including sketches, plans, drawings, specifications, designs, estimates, calculations, reports, models, and other articles, equipment, information, files and data.

'**Drawings**' means the drawings referred to in the Scope of Works and any modification of such drawings notified to the Supplier by the Principal's Representative and includes such other drawings as may from time to time be supplied to the Supplier by the Principal's Representative, or the use of which has been permitted by the Principal's Representative, for the purposes of the Contract.

'**Duties**' means the duties relating to operation and maintenance of the Facilities as specified by the Principal from time to time and include:

- (a) all of the duties set out in the Schedule of Rates; and
- (b) those duties contained in, and to the standards prescribed under, the USC Procedure.

'**ERA**' means the Electricity Reform Act 2000 (NT);

'**Emergency Work**' means Additional Work requested by the Principal in or outside of Working Hours which involves a risk to health, safety, actual or potential Environmental Harm or any actual or potential damage to a Facility or any Essential Services and which must be commenced immediately.

'**Environment**' includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a), (b) or (c) above.

'**Environmental Harm**' means any actual or threatened adverse impact on or damage to, the Environment including harm as described under the *Waste Management and Pollution Control Act 1998* (NT).

'**Environmental Incident**' means any Environmental Harm or contamination caused by or in relation to the Duties including incidents as described under the *Waste Management and Pollution Control Act 1998* (NT).

'**Essential Services**' means the electricity, water supply and sewerage services provided by the Principal to Communities.

'**Facilities**' includes but is not limited to any of the following:

- (a) Community electricity generating facilities and electricity distribution system;
- (b) Community water sources including surface water intakes and bores, pipelines, tanks, disinfection and water treatment for water supply;
- (c) Community sewerage mains, manholes, pumping stations and sewerage treatment works and dispersal areas;
- (d) other equipment or infrastructure used to supply the Essential Services; and
- (e) infrastructure specified in the USC Procedure; and
- (f) Customer connections, sewage, water meter, power meter and similar equipment.

**'Inductor'** means the person appointed by the Supplier from time to time to carry out inductions for the Supplier's staff.

**'Insolvency Event'** means in respect of the Supplier:

- (a) any execution or other process of any court or authorities issued against or levied upon any material part of the Supplier's property or Assets;
- (b) a petition or application is presented (and not withdrawn within ten (10) Business Days) or an order is made or a resolution is passed for the winding up or dissolution without winding up of the Supplier otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the Principal has given consent;
- (c) a receiver, or a receiver and manager of the undertaking or any material part thereof of the Supplier is appointed;
- (d) the Supplier proposes to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors to which the Principal has not given its consent;
- (e) an administrator of the Supplier is appointed;
- (f) the Supplier fails (as defined by section 459F of the Corporations Act 2001 (Cth)) to comply with a statutory demand;
- (g) a controller (as defined in the Corporations Act 2001 (Cth)) is appointed in respect of the Supplier or the whole or a material part of the Supplier's undertaking, property or assets;
- (h) application is made to a court for an order in respect of the Supplier under section 233 of the Corporations Act; or
- (i) an event referred to in section 459C(2) of the Corporations Act 2001 (Cth) occurs in respect of the Supplier.

**'Instruction to Contractor' or 'ITC'** means a written notice issued by the Principal to the Supplier that contains an instruction or directive to the Supplier and which may include a Default Notice.

**'Insurance'** means each contract of insurance required to be effected or held by the Supplier under this Contract, as provided for in Item 15.

**'Item'** means an item of the Contract Details.

**'Land Council'** means any Aboriginal land council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**'Laws'** means the written and unwritten laws in force in the Northern Territory.

**'Notice of Acceptance'** means the written notification and any accompanying documentation sent to the Supplier by the Principal advising acceptance of the RFT Response to execute the Works.

**'NTG'** means any of the following:

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

- (d) any government owned corporation as defined under the Government Owned Corporations Act 2001 (NT) including any "Subsidiary" (as defined in that Act) of that government owned corporation.

'**On-Site Induction**' means an introduction to each Site and other Facilities during which the Supplier and any new Worker or Trainee complete BDOC2014/305.

'**Ordering Officer**' means any person appointed to act on behalf of the Principal's Representatives for specific Duties as nominated by the Principal's Representative from time to time.

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

'**Principal**' means the Indigenous Essential Services Pty Ltd ACN 105 269 363.

'**Principal's Material**' means all documents, statements, contracts, deeds, specifications, drawings, reports, records, studies, memorandums, correspondence, material, advice, opinions, data, knowledge and information made available (whether in writing, orally, by computer or some other form), by any party or their representative to the other party or brought into existence as a result of the performance of the Duties under this Contract.

'**Principal's Representative**' means the person named or holding the position in Item 5 as the Principal's Representative (or such other person from time to time appointed in writing by the Principal pursuant to clause).

'**Purchase Order**' means an order issued to the Supplier by the Principal's Representative, whether on paper or by electronic means, which conveys the essential details of a particular work requirement under the Contract.

'**Rate**' means the rate per any section or item of the Works as stated in the Contract.

'**Related Body Corporate**' has the same meaning as in the *Corporations Act 2001* (Cth).

'**Relevant Community**' means each Aboriginal community or outstation or minor centre where applicable in which a particular Worker is to undertake the Duties.

'**Request for Tender** or '**RFT**' means the document(s) containing or referring to the Conditions of Tendering and Contract, the Contract Details, Special Conditions of Contract (if any), Northern Territory Procurement Code, Preliminary clauses, Scope of Works, Response Schedules, Drawings and any other document issued for the purposes of inviting Request for Tenders for the Works.

'**Schedule of Deductions**' means the deductions set out in Attachment 4 (Deductions), subject to adjustment from time to time, pursuant to clause 23.4.

'**Schedule of Rates**' means the rates set out in Attachment 3 (Schedule of Rates), subject to adjustment from time to time pursuant to clause 23.5.

'**Scope of Works**' means the sections of the RFT, Part A Introduction and Scope of Requirements and associated documents detailing the technical requirements of the work to be carried out as existing at the Date of Acceptance of the Tender and any modification of such Works thereafter directed or the use of which has been permitted by the Principal's Representative for the purposes of the Contract.

'**Site**' means the lands, Facilities and other places, whether within or outside of the Relevant Community, and any other lands and places made available to the Supplier by the Principal for the purpose of the Contract.

'**SitePass**' means the database used by the Principal, and made available to the Supplier, to maintain records and information in relation to personnel, training, and qualifications required under this Contract and a reference in this Contract to SitePass will be taken to be a reference to any new or replacement record keeping system.

'**Statutory Requirements**' means any law applicable to the carrying out of the Duties, including Acts, ordinances, regulations, by-laws and other subordinate legislation.

'**Subcontractor**' means a person other than the Supplier's employees engaged by the Supplier who provides goods, services or works to the Supplier.

'**Supplier**' means the legal entity that as party to the Contract is bound to execute the Works in accordance with the Contract and includes the successors and lawful assigns of the Supplier.

'**Supplier's Representative**' means the person appointed by the Supplier as its representative and identified in Item 9 and includes any person acting in that role from time to time.

'**Supplier's Tender**' means the Tender submitted by the Supplier in response to the RFT.

'**Tax Invoice**' has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

'**Term**' is defined in clause 3.1.

'**Trainee**' means a person who is employed by the Supplier and undertakes formal and/or on the job training to enable them to become an approved Worker, as agreed by Principal.

'**Utilities Support Contract (USC)**' means this contract, the supplier, and any of their representatives, Workers or trainees completing the Works of this contract.

'**USC Competency Assurance Plan**' means the plan CONTROL0368 contained in Attachment 5 (USC Competency Assurance Plan) as updated by the Supplier in consultation with the Principal from time to time or, where there is no plan developed at the date of this Contract, the plan developed in accordance with clause 37.

'**USC Procedure**' means the document titled 'Utilities Support Contract (USC) Procedure' BDOC2013/330 and annexed as Attachment 6 (USC Procedure) and as updated by the Principal from time to time and the USC Procedure for Supporting Documents Booklet for the ESO Manual BDOC2017/20. This document was previously referred as the 'Essential Service Operators Manual (ESO Manual)'.

'**Worker**' means the person or any other person nominated by the Supplier on CONTROL0728 G-174 USC New Starter Nomination Form for all Regions – Part A and approved by the Principal pursuant to clause 9.1 (including any person from time to time acting temporarily as a Worker). Any reference to Essential Service Operator (ESO) means the same as Worker.

'**Works**' means the provision of day to day operation and maintenance of power, water and sewerage systems in each Relevant Community, including the Duties, which must be executed in accordance with the Contract, and including all variations and remedial work provided for by the Contract.

'**Working Hours**' means the hours between 6:00 am to 6:00 pm (Australian Central Standard Time) only on a Business Day.

'**WHS Legislation**' means:

- (a) Work Health and Safety (National Uniform Legislation) Act 2011 (NT);
- (b) Work Health and Safety (National Uniform Legislation) Regulations 2011 (NT); and
- (c) any legislation in other States and Territories of Australia addressing work health and safety.

'**WSSSA**' means the *Water Supply and Sewerage Services Act 2000 (NT)*.

## 1.2 Interpretation of Terms

Unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and must not be used in the interpretation of these conditions;
- (b) the singular includes the plural and vice-versa;

- (c) a reference to one gender includes the other;
- (d) a reference to a person includes a body politic, body corporate or a partnership joint venture, incorporated association, government, local government authority or agency;
- (e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novate any part of the Contract;
- (f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action must be done no later than the end of the next Business Day;
- (g) a reference to time is to Australian Central Standard Time;
- (h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (i) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- (j) a reference to a 'measurement' means Australian legal units of measurement unless otherwise specified;
- (k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on its effective date and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- (l) the word 'includes' in any form is not a word of limitation;
- (m) a reference to a clause includes a reference to a subclause of that clause; and
- (n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

## **2. FORMATION OF CONTRACT**

### **2.1 Contract Documents**

The Contract is comprised of:

- (a) these Conditions of Contract including the Contract Details and all other schedules and annexures to this document;
- (b) any Special Conditions of Contract;
- (c) the RFT including the Scope of Works;
- (d) the Notice of Acceptance;
- (e) the USC Procedure and USC Procedure – Supporting Documents Booklet;
- (f) any documents referred to as "BDOCs/CONTROL" specified in Item 18; and
- (g) the Supplier's Tender response.

### **2.2 Order of Precedence**

If there is any inconsistency between any part of the Contract, a descending order of precedence will be accorded to the:

- (a) Special Conditions of Contract (if any);
- (b) these Conditions of Contract;
- (c) the Contract Details;



- (d) Notice of Acceptance;
- (e) the RFT incorporating the Scope of Works;
- (f) the USC Procedure;
- (g) Drawings, plans and specifications included with the RFT;
- (h) any other document expressly referred to in the documents set out in clauses (a) to (e);
- (i) Conditions of Tendering and all other documents, other than those specified above in (a) to (e) inclusive, forming the RFT or the Contract (other than the Supplier's Tender); and
- (j) the Supplier's Tender response including any Drawings,
- (k) so that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.

### **2.3 The Principal's Appointed Agent**

The Principal may, at its discretion, appoint PWC as its agent to manage this Contract, the Works and any associated matters that might arise between the Principal and the Supplier.

## **3. PERIOD, EXTENSION AND QUANTITIES**

### **3.1 Period of Contract**

This Contract is effective from the Commencement Date and continues until the earliest of:

- (a) expiry of the period set out in Item 10 ;
- (b) the expiry of sixty (60) days written notice of termination by the Principal to the Supplier;
- (c) termination of this Contract pursuant to clause 51.1 (Default); or
- (d) termination of this Contract pursuant to clause 36.3 (Substantive Breach),

and the period of the Contract is described in this Contract as '**the Term**'.

### **3.2 Contract Extension**

- (a) While the Principal has the right to extend the Contract for any further period(s) as stated in Item 10, the parties acknowledge that there is no obligation on the Principal to do so.
- (b) An extension to the Contract is not valid until the Principal gives the Supplier the opportunity to submit revised rates and the Principal agrees to any revised rates and notifies the Supplier in writing that the Contract is extended.

### **3.3 No Exclusivity**

The Principal will be free to obtain the requirements, including any services that may otherwise be a part of the Duties, or any part of them by other means.

## **4. GENERAL OBLIGATIONS OF THE PARTIES**

Both the Principal and the Supplier will, at all times:

- (a) act reasonably in performing their obligations and exercising their rights under the Contract;
- (b) diligently perform their respective obligations under this Contract; and
- (c) work together in a collaborative manner.

## **5. PRINCIPAL'S RESPONSIBILITIES AND OBLIGATIONS**

The Principal must give or cause to be given to the Supplier timely instructions, decisions and information sufficient to define the requirements of the Works.

## **6. PRINCIPAL AND PRINCIPAL'S REPRESENTATIVE**

- (a) The Principal hereby appoints the Principal's Representative as its agent to represent it, and warrants that the Principal's Representative has all necessary authority to represent and bind the Principal in all matters arising out of this Contract.
- (b) The Principal may, at any time, by notice to the Supplier, change the Principal's Representative.
- (c) For the purpose of exercising some of the powers, duties, discretions and authorities, vested in the Principal's Representative on behalf of the Principal, the Principal's Representative may from time to time appoint an agent ('the Ordering Officer').
- (d) The Supplier must recognise and accept notices from the Ordering Officer as if the Principal or Principal's Representative issued them. Any reference to the Principal's Representative within these conditions will be deemed to be a reference to the Ordering Officer so far as it concerns the exercise of the Ordering Officer's powers by virtue of his or her appointment.

## **7. DIRECTIONS AND EVIDENCE OF COST**

### **7.1 Directions Generally**

- (a) The Principal's Representative may issue directions under the Contract and the Supplier must comply with any direction given either orally or in writing by the Principal's Representative.
- (b) Any direction given orally must, as soon as practicable after it is given, be confirmed in writing.
- (c) For the purposes of this clause 7, 'direction' includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal's Representative may make, give or issue pursuant to the provisions of the Contract.

### **7.2 Direction to Work**

- (a) The Supplier will not undertake any Additional Work (other than Emergency Work) under the Contract unless specifically directed to do so by the Principal following receipt of an Instruction to Supplier. A direction to work may be issued to the Supplier by the Principal's Representative or Ordering Officer in any one or more of the following forms:
  - (i) Purchase Order;
  - (ii) Service request;
  - (iii) Telephone call, text, facsimile or email; or
  - (iv) Urgent call out - outside of Working Hours.
- (b) The Supplier must use best endeavours to contact the Principal and seek approval to undertake Emergency Work prior to undertaking any such work, but may proceed with Emergency Work without approval where failing to undertake the work would result in an unacceptable risk to health, safety, actual or potential Environmental Harm or any actual or potential damage to a Facility or any Essential Service.
- (c) In the event that a direction to work has been issued by any method other than Purchase Order or service request, a confirmation Purchase Order will be raised and issued to the Supplier within two business days.

### **7.3 Additional Work**

- (a) The Principal's Representative/Ordering Officer may require the Supplier to undertake Additional Work from time to time by giving a direction to the Supplier to do so.
- (b) The Supplier agrees to perform the Additional Work in accordance with and to the standards set out in this Contract including the USC Procedure and any other instructions provided.
- (c) Before appointing any person to undertake Additional Work the Supplier must seek the Principal's approval of the relevant person.

### **7.4 Emergency Work**

- (a) The Principal's Representative/Ordering Officer may require the Supplier to undertake Emergency Work from time to time by giving a direction to the Supplier to do so. Emergency Work is defined as unplanned works that are not otherwise scheduled.
- (b) The Supplier agrees to perform the Emergency Work as directed from time to time and shall be undertaken in accordance with and to the standards set out in this Contract including the USC Procedure.
- (c) Before appointing any person to undertake Emergency Work, the Supplier must seek the approval from the relevant representative of the Principal.

### **7.5 Call Out Fee**

- (a) A call out fee will apply when the Principal's Representative/Ordering Officer directs the Supplier to undertake Emergency Work during those hours outside of the Working Hours. The Supplier will be paid a Call Out Fee in accordance with the Schedule of Rates.
- (b) A call out will be treated as continuous with an earlier call out if it is received within the minimum payment period in accordance with the Schedule of Rates.
- (c) Any work in respect of Emergency Work undertaken outside of Working Hours and in excess of the minimum call out payment period will be calculated at the actual time in accordance with the Schedule of Rates.
- (d) For the avoidance of doubt, the Supplier is not entitled to any Call Out Fee for any Works completed within the Working Hours.

## **8. EQUIPMENT HIRE**

### **8.1 General**

The Supplier warrants that all plant and equipment used by the Supplier in respect of its performance under this Contract shall:

- (a) be kept in good working order;
- (b) be fit for purpose; and
- (c) meet relevant legislative requirements for its use.

### **8.2 Equipment Hire**

- (a) The Supplier agrees to hire the plant and equipment listed in the Schedule of Rates to the Principal, subject to availability and upon request from the Principal from time to time, at the rates set out in the Schedule of Rates.
- (b) The Supplier warrants that the plant and equipment for hire to the Principal shall be provided in a clean and safe working order.

## **9. SUPPLIER'S RESPONSIBILITIES AND OBLIGATIONS**

### **9.1 Worker**

(a) The Supplier:

- (i) hereby appoints the Worker;
- (ii) is fully responsible for the Duties, and for the Worker's compliance with clause 9.1(b);
- (iii) is vicariously liable to the Principal for all acts, omissions and defaults of the Supplier's employees, agents and subcontractors including any Workers relating to, or in any way connected with carrying out the Duties; and
- (iv) must ensure that all employees engaged under this contract act in accordance with the PWC Code of Conduct at all times.

(b) The Worker must:

- (i) reside in the Relevant Community, unless otherwise approved in writing by Principal;
- (ii) be available on standby 24 hours a day to attend any actual or potential interruption to the Principal's provision of the Essential Services or other critical event in relation to the Essential Services or any Facility;
- (iii) must contact the Principal's Representative immediately when any interruption to the provision of any Essential Service or any other critical event with respect to the Essential Services or a Facility occurs;
- (iv) respond to:
- (v) a request for or direction to undertake Emergency Work immediately and must commence rectification or remedial work as soon as reasonably practicable after any such request or direction;
- (vi) a request for or direction to undertake Additional Work within and outside Working Hours within one (1) Business Day, and must commence work as soon as reasonably practicable, or at the agreed time after any such request or direction;
- (vii) be suitably skilled and able to undertake the Duties; and
- (viii) be approved by the Principal.

(c) The Supplier may, with the Principal's prior written consent, change any Worker or the Supplier's Representative at any time.

### **9.2 General Responsibilities and Obligations**

- (a) The Supplier will be responsible for executing the Works in accordance with these conditions and Scope of Works.
- (b) The Supplier shall provide personal protective equipment/Clothing (PPE/C) for the Worker in accordance with the Principal's published policies.
- (c) The Supplier, the Supplier's personnel and its subcontractors must act in accordance with the Principal's published policies of code of conduct.
- (d) The Supplier must supply at his own cost and expense all consumables and everything necessary for the proper completion of the Works and the proper performance of his obligations under the Contract, except for the Consumables outlined in CONTROL0756.
- (e) The Supplier and the Worker must observe and comply with the requirements of all Acts of the Commonwealth of Australia, Acts of the Northern Territory, and with the

requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code, and all requirements of any relevant authority, regulator or standard setting entity as in force in the place affecting or applicable to the Works or the execution of the Works.

### **9.3 Appointment as Electricity Officer and Services Officer**

- (a) Subject to any conditions determined by the Minister under section 52(1) of the ERA and section 55(1) of the WSSSA, and to the extent strictly required to undertake the Duties and the Works and to otherwise comply with the Supplier's obligations under this Contract, the Principal hereby appoints the Worker as:
- (i) an Electricity Officer for the Principal pursuant to section 52(1) of the ERA; and
  - (ii) a Services Officer for the Principal pursuant to section 55(1) of the WSSSA.
- (b) Any appointment under this clause is only for so long as that person remains the Worker, and may be terminated at any time by the Principal.
- (c) The parties must ensure that, as and when required, the Worker has an identity card as required by section 54 of the ERA and section 57 of the WSSSA.
- (d) The Supplier must ensure that the Worker:
- (i) does not exercise any of the powers granted to electricity officers under the ERA unless the Worker has been appointed as an electricity officer for the Principal;
  - (ii) does not exercise any of the powers granted to services officers under the WSSSA unless the Worker has been appointed as a services officer for the Principal; and
  - (iii) complies with the ERA and WSSSA when acting or purporting to act as an electricity officer or services officer respectively for the Principal.

### **9.4 Relief Worker**

- (a) The Supplier must ensure that at all times during the Term it has appropriate contingency arrangements in place to ensure the Duties are performed in a timely manner and will provide details of those arrangements to the Principal upon request.
- (b) In the event that the Worker is unable to perform the Duties for any reason (including without limitation, illness, accident, annual leave, attending training courses or bereavement), the Supplier must ensure that it has an alternative fully trained Worker, able to act as a relief Worker to perform the Duties efficiently, to the standard required and in the timeframes agreed. Any alternative Worker must be approved by the Principal and be qualified and able to undertake the Duties and be available in the relevant Community.
- (c) The Supplier:
- (i) must advise the Principal's Representative in writing prior to any absence of the Worker and at the same time advise details of the Relief Worker; and
  - (ii) must submit to the Principal's Representative 'G-171 - USC Relief Nomination Form' (CONTROL0730) for each relief period, a minimum of 48 hours prior to departure of Worker.
  - (iii) The Principal's Representative must approve the Relief Worker, using best endeavours to do so prior to them commencing the duties. In the absence of approval prior to them commencing the duties, the Relief Worker's continued engagement remains subject to Principal approval.

**9.5 Principal's Step-in**

- (a) The Principal may, either itself or by a third party, carry out an obligation under this Contract which the Supplier has failed to carry out within the time required in accordance with this Contract, or, if no time is specified, within a reasonable time or any agreed time.
- (b) The costs, expenses and damages suffered or incurred by the Principal in carrying out any Works or Duties pursuant to clause (a) will be a debt due from the Supplier to the Principal and may be set-off against amounts due by the Principal to the Supplier in accordance with this Contract.

**10. SUPPLIER'S REPRESENTATIVE**

**10.1 Appointment and General Duties**

- (a) The Supplier hereby appoints the Supplier's Representative as its agent to represent it, and have all necessary authority to represent and bind the Supplier in all matters arising out of this Contract.
- (b) The Supplier's Representative's duties include:
  - (i) Ensuring the requirements of the Contract are fulfilled;
  - (ii) Managing the Worker and operational requirements of the Contract;
  - (iii) Providing adequate supervision, direction and guidance to Worker to ensure the Duties are being performed on time and to standards set out in the USC Procedure;
  - (iv) Ensuring the Worker are appropriately inducted at each Site, qualified and undertake required training in accordance with clause 12 and implement the USC Competency Assurance Plan; and
  - (v) Ensuring compliance with safety and environmental and any other relevant legislative requirements.
- (c) The Supplier is vicariously liable to the Principal for all acts, omissions and defaults of the Supplier's Representative and the Worker relating to, or in any way connected with carrying out the obligations of the contract.
- (d) The Supplier must notify the Principal's Representative in writing of the name of the Supplier's Representative and prior to any subsequent change of its representative must obtain the approval of the Principal's Representative.
- (e) Any direction given by the Principal or the Principal's Representative to the Supplier's Representative will be deemed to be a direction issued to or served upon the Supplier.
- (f) Matters within the knowledge of the Supplier's Representative will be deemed to be within the knowledge of the Supplier.
- (g) The Supplier, the Supplier's Representative and the Worker must have sufficient command of the English language (being minimum year 10 literacy and numeracy equivalence) and of Australian building and technical terminology to be able to read, converse and receive instructions in English.

**10.2 Contact and Availability**

- (a) The Supplier's Representative and the Worker must be equipped with a fully operational mobile telephone connected to a service providing the maximum possible service coverage over each Relevant Community, or must employ a suitable alternative communications system acceptable to the Principal's Representative at its own cost. The mobile phone or communication device must remain with the on call Worker.
- (b) The Supplier:

- (i) must provide a fully operational communications system which allows twenty-four (24) hours a day, seven (7) days a week contact for its representative and the Worker; and
  - (ii) must provide availability to deploy the Worker all works described under this contract as required by the Principal's Representative.
- (c) The Principal will have first call on the services of the Supplier and the Worker.

## **11. PERFORMANCE OF DUTIES**

### **11.1 Duties**

- (a) The Supplier must perform the Duties so as to ensure:
- (i) the Facilities are, throughout the Term, in good working order and are able to meet the Principal's obligations to supply the Essential Services; and
  - (ii) that water quality monitoring is undertaken at all times in accordance with:
  - (iii) the Australian Drinking Water Guidelines; and
  - (iv) any other legislative requirement(s) including but not limited to those set out under the *Public and Environmental Health Act 2011 (NT)* and *Food Act 2004 (NT)*; and
  - (v) the Principal's obligations and responsibilities (including operational responsibilities)
- (b) Without limiting the generality of clause 31, the Supplier must ensure that all equipment forming part of the Facilities is maintained in proper and safe working order.

### **11.2 Standard of Performance**

- (a) The Supplier must act and present itself in a professional manner at all times when performing the Duties, and must perform the Duties:
- (i) in accordance with the USC Procedure and the Schedule of Duties;
  - (ii) in accordance with the ERA and WSSSA;
  - (iii) in accordance with all relevant legislation, acts, standards, regulations, guidelines, manufacturer's recommendations, common law duties and any other applicable Laws;
  - (iv) in accordance with any direction given by the Principal and any procedures provided by the Principal in respect of the Duties or in respect of the use of any equipment forming part of the Facilities;
  - (v) in a proper and workmanlike manner and with a reasonable degree of care, skill and diligence;
  - (vi) efficiently and within a reasonable time;
  - (vii) in accordance with any applicable codes and Australian Standards;
  - (viii) in compliance with the standard terms and conditions fixed from time to time pursuant to section 91 of the ERA and the minimum standards of service and safety imposed under section 92 of the ERA; and
  - (ix) using only persons who have the mandatory qualifications as specified in clause 12.
- (b) The Supplier must provide customers of the Principal with prompt, professional and courteous service and must notify the Principal in writing of any complaints, suggestions

or requests from customers without delay, including providing the Principal with any written complaints, suggestions or requests received from customers.

- (c) The Supplier must, from time to time as required by the Principal, make information available to each relevant community in respect of changes, amendments or any scheduled interruptions to Essential Services. This can be done by placing information sheets, flyers and other notices around each Relevant Community or by other means agreed with the Principal. Any notices must be placed in prominent locations where likely to maximise exposure to customers.

## **12. SKILLS AND COMPETENCY**

### **12.1 General**

- (a) The Supplier must at its cost ensure that the Worker, any Trainees and the Supplier's Representative undertake adequate training and personal development to ensure that a minimum level of competency, in respect of the Works and the Duties and performance of the Supplier's obligations under this Contract satisfactory to the Principal, is held at the Commencement Date and is maintained in accordance with the requirements of clause 12.
- (b) The Supplier acknowledges that the Supplier's Representative or Inductor is required to undertake induction sessions under clause 12.3 and/or on the job up skilling organised by the Principal from time to time. Up skilling may be outside of the Relevant Community, and attendance will be at the cost of the Supplier, unless otherwise specified.
- (c) The Supplier is required to provide all Workers and any Trainees with an On-Site Induction for each Site they will be required to work at.
- (d) The Supplier must at its cost ensure the USC Competency Assurance Plan is implemented and adhered to for all Workers, any Trainees and the Supplier's Representatives, with the aim of providing competent and efficient staff to carry out all duties.

### **12.2 Supplier/Worker Skills and Safety Objectives**

- (a) The Supplier agrees:
  - (i) to promote a safe work place and 'zero harm' including by undertaking task based risk assessments when carrying out the Duties;
  - (ii) to comply with and implement the USC Competency Assurance Plan;
  - (iii) to recruit and retain Workers with the required skills and qualifications to carry out the Duties;
  - (iv) to recruit and retain Workers and with a minimum of year 10 literacy and numeracy skills;
  - (v) to provide management of Workers ensuring they maintain their skills and qualifications;
  - (vi) to provide feedback and information to the Principal ensuring the Workers can carry out their duties to the standard required under this Contract;
  - (vii) to make its best endeavours to ensure the Worker holds or acquires a minimum of Certificate II in Remote Area Essential Services;
  - (viii) to actively contribute to, build and support the Principal's Reconciliation Action Plan (RAP) in each Relevant Community;
  - (ix) to promote a commitment to public health, including the provision of safe, reliable drinking water in each of the Relevant Communities; and
  - (x) to promote best practice environmental management.



- (b) The Supplier's performance (or otherwise) of the objectives set out in this clause 12.2 will be taken into account and may form part of the Principal's reporting pursuant to clause 54.

### 12.3 Supplier Induction

- (a) The Principal may at the commencement of this contract deliver induction sessions to the Supplier which may be delivered on or off site, and attendance at which will be at the Supplier's expense. The Principal will provide written notice to the Supplier of the location, date and time of each session.
- (b) The Principal will bear the reasonable cost of providing the induction training, on one (1) event during the Term, to one (1) person nominated by the Supplier (the Supplier Inductor). If the Supplier requires the Principal to provide more than one (1) induction session during the Term, the Supplier agrees that all costs associated with those further sessions will be borne solely by the Supplier (including travel, accommodation and allowances).
- (c) Following satisfaction of the induction training provided by the Principal, to be determined at the Principal's discretion, the Supplier shall then:
  - (i) identify all those persons (Workers) who require induction in order for the Supplier to carry out its Duties under the Contract;
  - (ii) facilitate and present induction sessions and training, at the Supplier's cost, to those Workers and any other relevant person in connection with the Duties performed under this Contract;
  - (iii) be responsible, on behalf of the Supplier, for determining whether those Workers, or other persons as the case may be, have successfully completed the induction program at a satisfactory level; and
  - (iv) complete and provide to the Principal for approval the relevant documentation, as notified by the Principal from time to time, confirming satisfaction of the induction program by those Essential Service Operators and other persons.
- (d) The Principal's approval described in clause 12.3(c)(iv) above shall be deemed to authorise such persons to carry out the Duties described in this Contract with such confirmation to be recorded in SitePass by the Principal.
- (e) The Supplier must:
  - (i) for the duration of the Term, monitor the Authorisation of each relevant person and ensure that Duties are not commenced until such Authority is recorded in SitePass; and
  - (ii) within 2 calendar weeks from the commencement of this Contract, provide a statutory declaration, signed by the Supplier's company director, chief executive officer, general manager or equivalent authorised person, confirming that all of the Supplier's relevant personnel have satisfied the induction requirements in this clause 12.3 (and provide subsequent signed statutory declarations for any further personnel inducted during the Term).

### 12.4 Skill Requirement by Position

The Supplier must:

- (a) in respect of each Supplier's Representative, ensure they have the following **mandatory** skills or qualifications:
  - (i) On-Site Induction training at each Site and each Facility;
- (b) in respect of each Worker:
  - (i) ensure they have the following **mandatory** skills or qualification:

- A. On-Site Induction at each Site and each Facility where they are required to perform the Duties;
  - B. Prepare to Work Safely in the Construction Industry "White Card" (Course Code CPCCWHS1001); and
  - C. NT Driver Licence with Class C endorsement and, in Communities where there is a requirement to transport fuel, a Driver Licence with MR endorsement;
- (ii) ensure they have the following **mandatory** qualifications prior to commencing work as a Worker at sites where there are gas chlorination systems:
- A. Operate & Control Liquefied Chlorine Gas Disinfection System (Course Code NWPTRT013) or other equivalent course subject to prior written approval from the Principal; and
  - B. Operate Breathing Apparatus (Course Code MSAPMOHS216A); and
- (iii) ensure they have the following **mandatory** qualifications as soon as practicable prior to commencing work as a Worker at sites where there are non-gas chlorination systems:
- A. Monitor and Operate Hypochlorite Disinfection Processes (Course Code NWPTRT022)
- (iv) for day to day operation and maintenance of the Power station at Wadeye, ensure they have the following mandatory qualifications at commencement of contract:
- A. NT A Grade Worker's Electrical Licence and that the contract holder has an NT A Grade Contractor's licence OR
  - B. NT A Grade Contractor's Licence.
- (v) use best endeavours to ensure they have the following **desirable** training:
- A. Certificate II or Certificate III in Water Operations;
  - B. Certificate II in Remote Area Essential Services; and
  - C. Cultural Awareness Training,
- or otherwise obtain an exemption from the Principal based on historic long term acceptable performance as a Worker.
- (c) in respect of each Trainee:
- (i) ensure they have the following **mandatory** training before commencing work as a trainee:
    - A. On-Site Induction at each Site and each Facility; and
    - B. Prepare to Work Safely in the Construction Industry "White Card" (Course Code CPCCWHS1001);
  - (ii) at sites where there are gas chlorination systems ensure each trainee undertakes the following **mandatory** training during their traineeship:
    - A. Operate & Control Liquefied Chlorine Gas Disinfection System (Course Code NWPTRT013); and
    - B. Operate Breathing Apparatus (Course Code MSAPMOHS216A);
  - (iii) at sites where there are non-gas chlorination systems ensure each trainee undertakes the following **mandatory** training during their traineeship:

- A. Monitor and Operate Hypochlorite Disinfection Processes (Course Code NWPTRT022)
- (iv) make its best endeavours to ensure they have the following **desirable** training during their traineeship:
  - A. Certificate II in Remote Area Essential Services; and
  - B. Certificate II or Certificate III in Water Operations.

## 12.5 Specific Training Requirements

- (a) The Supplier must ensure all of its employees engaged in performing the Duties attend an On-Site Induction for each Site and each Facility prior to their commencement of Duties or entry to any land, easements, facilities or Sites under the ownership or control of the Principal.
- (b) Where the Principal is required to provide an additional On-Site Induction to the Worker, all costs associated with providing this On-Site Induction shall be borne by the Supplier.
- (c) The Supplier must notify the Principal of the commencement of new Workers, or Trainees.
- (d) The following forms must be completed by the Supplier when the relevant persons complete the On-Site Induction:
  - (i) (G-174)\_ Utilities Support Contract (USC) New Worker Nomination Form– Part A (CONTROL0728);
  - (ii) (G-171) Utilities Support Contract (USC) Relief Worker Nomination Form (CONTROL0730);
  - (iii) (G-173) Supplier Utilities Support Contract (USC) Worker Site Induction form – Part B (CONTROL0729); and
  - (iv) (G-007) Visitor / Supplier HSE Induction CONTROL0754.
- (e) All completed forms must be saved into SitePass, by the Supplier upon completion.
- (f) The Principal must ensure all Workers who are required to check and replace service fuses and Expulsion Drop Out fuses (EDOs) have been signed off as competent, by authorised employees of either PWC or the Principal in the following competencies:
  - (i) CONTROL0276 Utilities Support Contract (USC) Electrical Competencies - Testing Live / Dead with a Modiewark Voltage Proximity Tester Work Instruction;
  - (ii) CONTROL0275 Utilities Support Contract (USC) Electrical Competencies - How to check & replace a service fuse Work Instruction;
  - (iii) CONTROL0274 Utilities Support Contract (USC) Electrical Competencies - How to replace an High Voltage (HV) Expulsion Drop Out Fuse (EDO) Work Instruction;
  - (iv) CONTROL0602 Utilities Support Contract (USC) Electrical Competencies – Replacing a plug in power meter;

And been signed off as completed competencies on the CONTROL0277 Attendance Sheet - 3 Utilities Support Contract (USC) Electrical Competencies and CONTROL601 Utilities Support Contract (USC) Electrical Competencies – Plug in power meter replacement visual Assessment. The Supplier must save the completed documents in SitePass.

## 12.6 Timing of Skills and Qualifications Requirements

- (a) Where any requirement is described in clause 12.4 as **mandatory** in respect of any position, the Supplier must ensure that each person appointed to the relevant position holds the relevant qualification or has successfully undertaken the relevant training at the time of or before the person commences undertaking Duties in the relevant position, unless stated otherwise.
- (b) Where any requirement is described in clause 12.4 as **desirable** in respect of any position, the Supplier must make its best endeavours to ensure that each person appointed to the relevant position successfully undertakes the relevant training, or achieves the relevant qualification during the term of the Contract.
- (c) The Principal may, but shall not under any circumstances be obliged to, agree that a Supplier's employee undertaking the Duties in a particular position may be excused from holding a particular qualification. The Principal may make any such agreement conditional including, without limitation, on the condition that the Supplier must make its best endeavours to have the relevant employee undertake training and obtain the qualification as soon as reasonably possible.

## 12.7 Transport of Fuel and Other Chemicals

- (a) The Supplier must ensure that during the transportation of fuel, hypochlorite, chlorine or other hazardous chemicals that these are adequately stored and secured, suitable emergency response equipment is available and regularly maintained and a documented transport risk assessment is completed, if transported goods are categorized as high risk hazardous chemicals.
- (b) Where dangerous goods are transported, the Supplier must comply with:
  - (i) the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010* (NT) (the **TDGRR Act**);
  - (ii) the *Dangerous Goods (Road and Rail Transport) Regulations 2011* (NT) (the **TDGRR Regulations**);
  - (iii) and the *Australian Dangerous Goods Code (ADG Code)*,

which collectively govern the way in which chemicals, including explosives and fuel gas, are transported and handled in the Northern Territory.

- (c) The Supplier must not permit any Trainees to control any vehicle transporting fuel or other dangerous good or chemical.
- (d) The Supplier agrees that it has received, read, understood and advised its personnel on the requirements stated in the following documents:
  - (i) CONTROL0559 Water Services Transfer of Sodium Hypochlorite Work Instruction; and
  - (ii) CONTROL0557 Water Services – Handling of 200L Hypochlorite Drums Work Instruction,

of which the Supplier and its personnel will adhere to throughout the Term of this Contract.

## 12.8 Skills Assessment

- (a) In order to assist the Supplier in promoting a safe work place and 'zero harm' the Principal may, from time to time, undertake competency assessments of Workers. The intent of the competency assessment is to ensure that the Supplier's personnel have and maintain the required knowledge and skills to operate effectively and safely.

- (b) Where deficiencies are identified the Principal may notify the Supplier's Representative who will be required to address these deficiencies either through additional training or by appointing a suitably skilled replacement Worker in a timely manner.

#### **12.9 Records Maintenance – SitePass**

- (a) The Supplier must maintain in the SitePass database, or any other Supplier management system nominated by the Principal, up to date information, forms, controlled electronic documents and documentation in relation to the Supplier, Supplier's Representative, all Workers and Trainees, including (without limitation) in relation to all licences, qualifications, training, education, site inductions, familiarisation courses, photographic identification and any other information required.
- (b) Newly attained licences, qualifications and inductions for each of the Supplier's personnel must be updated within the SitePass database as soon as reasonably practicable. The Principal will issue SitePass authorisation cards for each Worker.

#### **13. POWER TO DISMISS**

The Principal's Representative may require the instant dismissal from the Works, of any agent, overseer, foreman or other person employed on the Works, or in connection with the Works, whether employed by the Supplier or not and the Supplier must immediately comply with or ensure immediate compliance with such requirement and the Supplier must not again employ a person so dismissed on or in connection with the Works.

#### **14. STATUS OF SUPPLIER**

The Supplier, its employees, agents and subcontractors, in performing the Works, are not for any purpose a servant, agent or employee of the Principal or PWC. The Supplier is at all times an independent Supplier of the Principal and PWC.

#### **15. NOTICES**

##### **15.1 Service of Notices**

- (a) Any notices, approval, consent, demand or other communication given under or in connection with this Contract ('**Communications**') must be in writing, in English, and sent to the address of each party set out in Item 4 and 8, respectively, or such other address as notified pursuant clause 15.3.
- (b) Any Communications must be:
  - (i) delivered by hand; or
  - (ii) sent by pre-paid certified post; or
  - (iii) sent by facsimile; or
  - (iv) sent by such other electronic means the parties may agree.

##### **15.2 Effective on Receipt**

Any notice given in accordance with clause 15.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by post, three (3) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from a place outside Australia); and
- (c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the

recipient's machine unless, within eight (8) Working Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

but if the delivery, receipt or transmission is not on a Business Day or is after 4.30 pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

### **15.3 Change of Notice Address**

Each party must notify the other of any change of address for service of notices within 7 days of the change.

## **16. SITE AND SITE RULES**

### **16.1 Aboriginal Communities**

Before entering any Relevant Community the Supplier must obtain from the relevant Community Council or Land Council (or other authority as applicable) all necessary approvals and permits to enter on the relevant land and must pay all costs applicable to working in that Community. The Supplier must ensure that all employees engaged on the Contract (including those of subcontractors) comply with all laws and rules relevant to working in that Community (including restrictions on, or banning of, consumption of alcohol).

### **16.2 General Site Conditions or Rules**

- (a) The Supplier, its employees, agents and subcontractors required to enter any Site in connection with the Works must comply with all rules and regulations in force at the Site, including security screening through a satisfactory Criminal History Check where required.
- (b) The Supplier is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by the appropriate authority.

### **16.3 Easements or Adjacent Land**

Where any Works or Duties are to be carried out in easements in favour of the Principal on private (including Aboriginal) land, or on land adjacent to the Principal's land, facilities or easements, for the purpose of connecting services or joining up of roads (or similar) the Supplier must obtain any permits, approvals or licences (or other authority) to work in those areas.

## **17. CONFIDENTIALITY, PUBLICITY AND MEDIA**

### **17.1 Confidentiality**

For the purposes of this clause 17, 'Confidential Information' means any information or material relating to the Contract, the Works, any Site or any Facility including (without limitation):

- (a) any information that by its nature is confidential;
- (b) any information designated as confidential;
- (c) any information that the Supplier knows, or ought reasonably to know, is confidential;
- (d) the information (if any) referred to in Item 12.

### **17.2 Use and Disclosure of Confidential Information**

- (a) The parties must hold all Confidential Information in confidence and must not make any use of it, except for the purposes of performing obligations or exercising rights under the Contract and must not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
  - (i) as required by Law;

- (ii) to the employees of the disclosing party or a Related Body Corporate of the disclosing party for the purposes of fulfilling the disclosing party's obligations under this Contract;
  - (iii) to Suppliers, consultants or agents of a party who have entered into undertakings of confidentiality as contained in this clause 17 in favour of all parties;
  - (iv) to any government or competent authority in connection with applications for approval from authorities and consents in relation thereto;
  - (v) to any bona fide potential assignee of rights under this Contract who have entered into undertakings of confidentiality as contained in this clause 17 in favour of all parties;
  - (vi) in the case of the Principal;
  - (vii) to any Minister of the Government of the Northern Territory for the purpose of the proper discharge of such Minister's functions and responsibilities; or
  - (viii) to the Utilities Commission; or
  - (ix) to the Australian Energy Regulator.
- (b) The Supplier must ensure that its employees and all agents, consultants, subcontractors and suppliers engaged by the Supplier for the performance of the Contract comply with the requirements of this clause 17.

### **17.3 General Exceptions**

This clause 17 will not apply to information which:

- (a) is now or in the future becomes information within the public domain other than through a breach by a party of this clause 17; or
- (b) corresponds in substance to information provided to the party by a third person without restriction on disclosure.

### **17.4 Media and Publicity**

- (a) The Supplier must not issue or be involved with the release or issue of, any information, publication, statement, interview, advertisement (other than the legitimate advertising for subcontractors), award nomination, document or article for publication concerning the Contract, the Works or any Site in any media without the prior written approval of the Principal.
- (b) Prior to giving any response whatsoever the Supplier must refer:
  - (i) any media enquiries concerning the Contract, any Site or any Facility, the Principal or the Works to the Principal for the Principal's written response; and
  - (ii) any media requests concerning the Contract, any Site or any Facility, the Principal or the Works (including, without limitation, requests to access or take photographic or video footage of any Site) to the Principal, for the Principal's written consent, which consent may be given or withheld in the Principal's absolute discretion.
- (c) The Supplier must ensure that its employees and all employees, consultants, subcontractors and suppliers engaged by the Supplier for the performance of the Contract comply with the requirements of this clause 17.4.

### **17.5 Survival of Obligations of Confidentiality**

The obligations of the parties under this clause 17 survive termination or expiry of this Contract.

## 18. INDUSTRY ACCREDITATION AND STANDARDS

Where applicable, the Supplier must:

- (a) maintain the currency of accreditation, to at least the same level as held at the commencement of the Contract with Supplier Accreditation Limited throughout the life of the Contract; and
- (b) comply with all industry standards on:
  - (i) training;
  - (ii) engagement, supervision and payment of subcontractors;
  - (iii) compliance measures;
  - (iv) penalties; and
  - (v) termination arrangements.

## 19. CONTINUOUS IMPROVEMENT

- (a) The Principal and the Supplier acknowledge that the Principal is committed to improving the manner in which it delivers Essential Services including developing and retaining competent Workers.
- (b) The Supplier is encouraged to approach the Principal with innovative or alternative ideas regarding the manner in which the Works can be delivered and Duties performed, or the manner in which the Contract is managed.

## 20. LOCAL CONTENT

### 20.1 Local Benefit Commitment

- (a) The Supplier acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.
- (b) In the Supplier's Tender, the Supplier made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Supplier as part of this Contract. These promises and commitments form part of the Contract (and are referred to in the clauses below as the "**Local Benefit Commitment**").
- (c) The Supplier must fulfil all aspects of the Local Benefit Commitment.

### 20.2 Use of Local Labour, Apprentices, Trainees and Supplies

- (a) Without limiting clause 20.1 and subject to the *Competition and Consumer Act 2010* (Cth), the Supplier must, except in those cases where the Supplier can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:
  - (i) use labour, including Aboriginal labour, available within the Northern Territory;
  - (ii) use the services located and obtain supplies/materials available within the Northern Territory; and
  - (iii) use accredited apprentices/trainees who are registered in the Northern Territory on this project in accordance with the Contract:
- (b) In complying with the use of accredited apprentices/trainees, the Supplier may:
  - (i) directly employ apprentices/trainees;
  - (ii) utilise group training scheme apprentices/trainees;
  - (iii) utilise subcontractor apprentices/trainees;



(iv) utilise any combination of the above.

(c) The Supplier's level of compliance with this requirement will be taken into consideration for further tenders issued by the Principal for a period of twelve (12) months.

### **20.3 Reporting to the Principal and Right of Audit**

- (a) The Supplier must, within seven (7) days of a written request by the Principal's Representative, submit a written report to the Principal's Representative detailing how it has complied or is complying with clauses 20.1 and 20.2.
- (b) The Supplier must, within five (5) Business Days, advise the Principal's Representative of any changes to the Supplier's employment of Aboriginal persons.
- (c) The Supplier acknowledges and agrees that it must comply with the NTG's Buy Local Plan and that the Buy Local Industry Advocate may conduct audits of such compliance.
- (d) The Supplier agrees to grant access rights to the Buy Local Industry Advocate to audit and ensure the Supplier (and its performance of the Duties and Works) satisfies the Buy Local Plan.
- (e) Audits will be conducted no more than once unless a second or subsequent audit is required to be conducted:
- (f) to investigate specific concerns of the Principal or the Buy Local Advocate in connection with the Supplier's compliance under the Buy Local Plan;
- (g) for compliance with Law;
- (h) for the purpose of verifying the accuracy of any report provided by the Supplier in relation to a significant failure, or recurring failures, in relation to its compliance under the Buy Local Plan;
- (i) for the purpose of verifying that the Supplier has undertaken any action required as a result of a previous audit, provided that the Buyer Local Industry Advocate cannot reasonably achieve that purpose without conducting an audit; or
- (j) at the request of the Buyer Local Industry Advocate.
- (k) In order for the Buy Local Industry Advocate to exercise any of the Buy Local Industry Advocate's audit rights under this clause 20.3, the Supplier must give the Buy Local Industry Advocate, through the Principal where necessary, full access at all reasonable times and on reasonable notice to (without limitation):
- (l) all information in relation to the Supplier's personnel; and
- (m) all relevant software, data, records, accounts, documents, reports, records and systems (whether prepared by the Supplier or not) relating to the Supplier's obligations under this Contract.
- (n) The Supplier must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 20.3.
- (o) The Supplier is liable for its own costs of any audit or inspection conducted pursuant to this clause 20.3.
- (p) The Supplier must meet with the Principal to discuss in good faith any recommendations made by the Buy Local Industry Advocate following the completion of an audit. The Supplier will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Buy Local Plan as directed by the Principal or the Buy Local Industry Advocate. The cost of implementing those recommendations will be borne by the Supplier.

- (q) The Supplier must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause acknowledging and granting the Buy Local Industry Advocate the same rights as specified in this clause 20.3.

#### **20.4 Failure to Fulfil Local Benefit Commitment**

If the Supplier fails to fulfil or otherwise comply with the Local Benefit Commitment, or if the Supplier fails to comply with any other obligation placed on the Supplier by this clause 20, the Principal may take action under clause 50 (Termination).

#### **20.5 Performance to be Reported in Supplier Performance Reports**

The Supplier's compliance or non-compliance with this clause 20 will be recorded in the Supplier Performance Report to be prepared by the Principal's Representative in accordance with clause 54.

#### **20.6 Supplier's corporate structure**

The Supplier must, within five (5) Business Days, advise the Principal's Representative of any changes to the Supplier's corporate structure, including changes to the directorship or shareholding.

### **21. LIABILITIES**

#### **21.1 Indemnity**

- (a) The Supplier hereby indemnifies the Principal, and must hold the Principal harmless, in respect of any legal liability, loss, damage, claim, costs or proceedings (including legal costs on a solicitor and own client basis) sustained or incurred by the Principal (including its employees, and any Related Body Corporate) arising out of, in respect of, or in any way in connection with:
- (i) any breach of this Contract by the Supplier;
  - (ii) the Supplier's performance (including non-performance) of the Duties or the Works;
  - (iii) the personal injury to or death of any person;
  - (iv) damage to or destruction of property; and
  - (v) the negligence of the Supplier (including any employee, agent, consultant, subcontractor or invitee).
- (b) The Supplier's liability is limited to the extent that such liability is caused by the act or omission of the Principal, the Principal's personnel or a Related Body Corporate of the Principal.

#### **21.2 Reduction in Liability**

The Supplier's liability to indemnify the Principal under this clause 21 is reduced proportionately to the extent that any negligent act or omission of the Principal contributed to the relevant liability, loss, claim, action or proceeding.

#### **21.3 Limitation of Liability**

- (a) If specified in Item 16, the liability of the Supplier to indemnify the Principal under this Contract will be limited to the amount specified in Item 16.
- (b) Any limit on the liability of the Supplier does not apply in relation to:
- (i) personal injury (including sickness and death);
  - (ii) an infringement of Intellectual Property rights;
  - (iii) a breach of any obligation of confidentiality, security requirement or privacy;
- or

- (iv) liability which is or would have been included in an insurance policy, but for:
- (v) the inclusion of the limit on liability under clause (a); or
- (vi) a failure by the Supplier to fulfil its insurance obligations under the Contract or the insurance policies or due to the insolvency of the insurer for the relevant insurance.

#### **21.4 Intellectual Property Indemnity**

The Supplier must indemnify the Principal at all times against any compensation paid or any action, claim, demand, cost or expense arising from or incurred by reason of the infringement of any patent, design, trademark or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement, used or fixed or supplied by the Supplier in connection with the carrying out of the Works or the performance of the Duties.

#### **21.5 The Principal's Agent**

The Supplier acknowledges and agrees that the Principal, in entering into and obtaining the benefits, rights and remedies under this Contract (including the benefit of the Supplier's obligations and the indemnities given by the Supplier), engages PWC to act on its behalf, and accordingly:

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

### **22. INSURANCES**

#### **22.1 Workers Compensation Insurance**

- (a) For the purpose of this clause 22, 'Worker' has the definition it is given in the *Return to Work Act 2015* (NT).
- (b) Before commencing the Works or the Duties the Supplier must take out and must maintain for the duration of the Contract appropriate Workers Compensation Insurance cover for all Workers employed by the Supplier. This cover must comply with the *Return to Work Act 2015* (NT) and policies must be purchased from Northern Territory approved insurers.
- (c) The Supplier must ensure that all subcontractors who employ Workers have Workers Compensation Insurance cover in accordance with the *Return to Work Act 2015* (NT).
- (d) The Supplier must ensure that all persons employed under labour hire agreements, whether by the Supplier or through a Labour Hire Firm, are appropriately covered by Workers Compensation insurance.
- (e) Self-employed Suppliers must ensure that they have adequate insurance coverage in place.
- (f) The Supplier must ensure that all subcontractors have appropriate policies in place.

#### **22.2 Public Liability Insurance and Professional Indemnity Insurance**

- (a) Before commencing the Works, the Supplier must take out and must maintain during the Term of the Contract, Public Liability and Professional Indemnity policies of Insurance to cover its liabilities to third parties, including the liabilities as set out in the clause 21.1 (and in the case of Professional Indemnity Insurance, throughout the Term and for 7 years after the Term).
- (b) Each Policy must:
  - (i) note the Principal for its respective rights and interests;

- (ii) include a cross-liability clause in which the insurer accepts the term 'insured' as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
  - (iii) cover an amount not less than the amount stated in the Contract Details, for any one occurrence.
- (c) The effecting of insurance does not limit the liabilities or obligations of the Supplier under other provisions of the Contract.
- (d) The Supplier must ensure that all subcontractors take out Public Liability and Professional Indemnity Insurances that meet the requirements of this clause 22.

### **22.3 Lodgement of Certificates of Currency**

- (a) The Supplier must provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required under clause 22 including those of any subcontractors (including self-employed Suppliers and persons employed under labour hire agreements):
- (i) prior to commencing the Works under the Contract;
  - (ii) within two (2) Business Days of a written request by the Principal;
  - (iii) within seven (7) Business Days after the Supplier renews an Insurance Policy; and
  - (iv) within seven (7) Business Days after the Supplier makes any change to an Insurance Policy.
- (b) The Supplier must not cancel any insurance policy, or conduct itself in a manner that brings about such a cancellation of an Insurance Policy or vitiates or renders any such policy void or unenforceable, except with the written consent of the Principal.

## **23. INVOICING AND PAYMENT**

### **23.1 Monthly Invoices**

- (a) Annually throughout the Term the Principal must provide a Purchase Order to the Supplier in respect of the performance of the Duties for that period, which must be in an amount equal to the sum of the annual Duties as set out in the Schedule of Rates.
- (b) The Supplier must, each month during the Term:
- (i) provide a Tax Invoice to the Principal in an amount for the agreed Duties as specified in Schedule of Rates, any additional duties as specified in Schedule of Rates that have been completed in the month, including any Deductions to be applied as per clause 24; and
  - (ii) certify all Works and Duties the subject of the relevant Tax Invoice have been completed and done to the standard required by the Principal and set out in this Contract; and
  - (iii) provide any evidence required by the Principal of completed duties, including but not limited to timesheets, photos, subcontractor invoices, copies of monthly status reports, and/or task check-sheets.

### **23.2 Invoices for Additional Work or Emergency Work**

The Supplier must within thirty (30) Business Days of completion of any Additional Work or Emergency Work, provide:

- (a) a Tax Invoice to the Principal showing quantities of materials and labour used in the work and calculated against the rates set out in the Schedule of Rates;

- (b) evidence of any costs sought to be recovered;
- (c) a copy of the Purchase Order provided by the Principal to the Supplier.

### **23.3 Payment**

Subject to clauses 23.1 and 23.2, and provided the Supplier has complied with this Contract in respect of the relevant Duties, Works, Additional Work or Emergency Work, the Principal will pay the Supplier's Tax Invoices within thirty (30) Business Days of its receipt of each Tax Invoice.

### **23.4 Price Adjustment and Deductions Adjustment**

- (a) All rates and prices set out in the Schedule of Rates will be adjusted in accordance with clause 23.5, upon application by the Supplier from time to time, but not more than once in any period of twelve (12) months.
- (b) The amounts of all deductions set out in the Schedule of Deductions will be adjusted at the same times and are to be calculated in the same way as any adjustment to the Schedule of Rates.

### **23.5 Calculation of Adjustment**

Adjustment of rates and prices under clause 23.4 is in accordance with the following formula:

$$\mathbf{NR} = \mathbf{R} + (\mathbf{R} \times \mathbf{CPI})$$

Where:

- (a) **NR** is the rates and prices payable for the year following the date of adjustment under this clause;
- (b) **R** is the rates and prices payable immediately before the date of adjustment under this clause; and
- (c) **CPI** is:
  - (i) in the case of the first adjustment, the percentage difference between the Consumer Price Index for the quarter immediately before the date of adjustment under this clause and the Consumer Price Index for the corresponding quarter one year earlier; and
  - (ii) in the case of each adjustment subsequent to the first adjustment, the percentage difference between the Consumer Price Index for the quarter immediately before the date of adjustment under this clause and the Consumer Price Index for the quarter immediately before the previous date of adjustment under this clause.

### **23.6 Disputed Invoices**

- (a) If the parties dispute:
  - (i) any amount claimed on a Tax Invoice, the Principal may withhold payment of the disputed amount, until the dispute is resolved in accordance with this Contract; or
  - (ii) whether any Tax Invoice has been prepared and submitted in accordance with this Contract, the Principal may withhold payment of the whole amount of the invoice until the dispute is resolved in accordance with this Contract.
- (b) The parties will each use reasonable endeavours to resolve the dispute as soon as possible.
- (c) The Principal reserves the right to carry out inspections and verifications of all works and to request amended Tax Invoices in relation to any disputed amount.
- (d) If a tax Invoice is disputed or otherwise incorrect, the Supplier must provide an updated Tax Invoice reflecting changes to the amount due as a result of any resolution to the relevant dispute.

### **23.7 Setting Off**

The Principal may set-off any amount (including an unliquidated amount) it is entitled to receive from the Supplier pursuant to this Contract, against any amounts due to the Supplier under this Contract.

## **24. DEDUCTIONS**

### **24.1 Acknowledgements**

The Supplier acknowledges that:

- (a) the Duties, any Additional Work and any Emergency Work relate to Facilities which are required to provide Essential Services to the Communities;
- (b) the safe, efficient, effective and professional execution of Duties ensures safe, reliable and cost effective operation of power, water and sewerage systems in remote communities;
- (c) the accurate recording and reporting of information in reports, log sheets and through a daily scheduled telephone call (as required under the USC Procedure) enables the Principal to respond to issues, order materials and schedule work in a timely manner;
- (d) the delivery of fuel and other chemicals poses an environmental risk and strict adherence to the USC Procedure is required;
- (e) water quality is essential to public health and tasks associated with water treatment and sampling must receive high priority;
- (f) the revenue that the Principal receives from the supply of electricity and water services to customers is dependent upon meters being read accurately and in a timely manner;
- (g) if the Supplier fails to carry out any Duties, Additional Work or Emergency Work in the manner and within the time required by this Contract, the Principal may make alternative arrangements (such as engaging an alternative Supplier) to perform such Duties, Additional Work or Emergency Work; and
- (h) the Communities are isolated and it is difficult and often impossible for the Principal to locally engage such alternative Supplier.

### **24.2 Deductions regarding Competencies**

If the Supplier fails to meet its requirements of training, competency and demonstrated performance by:

- (a) satisfying its reporting obligations under this Contract;
- (b) permitting the Principal access to the Site or the Supplier's office as required under this Contract; or
- (c) any other reasonable means determined by the Principal,

then such failure will be deemed to be a breach of the Contract warranting a deduction in the manner described in clause 24.3.

### **24.3 Deductions and Setting Off**

If the Supplier fails to carry out any Duties or Additional Work or any Emergency Work in the manner and within the time required by this Contract:

- (a) the amount otherwise payable to the Supplier pursuant to this Contract will be reduced by an amount determined in accordance with clause 24.4; and
- (b) The Principal may, by itself or by engaging Suppliers or agents, undertake the relevant Duties, Additional Work or Emergency Work and any costs or losses incurred by the Principal as a result:

- (i) must be reimbursed by the Supplier to the Principal on demand or
- (ii) may be recovered from the Supplier by the Principal by way of set-off under clause 23.7.

#### **24.4 Calculation of Deduction or Set Off**

- (a) Where the Supplier has not executed any Duties or Additional Work or any Emergency Work in the manner and within the time required by this Contract the Principal may deduct, or offset from a subsequent invoice, an amount calculated in accordance with this clause 24.4.
- (b) Deductions or set-offs under this clause 24.4 will be as follows:
  - (i) Where the relevant Duties are set out in the Schedule of Deductions, the amount set out in respect of those Duties.
  - (ii) For Additional Work or Emergency Work not performed by the Supplier in accordance with this Contract, an amount calculated as follows:
$$\text{Deduction amount} = \text{Number of occurrences} \times \text{duration of the task (in hours)} \times \text{Hourly Rate}$$
  - (iii) For subclause 24.4(ii), 'Hourly Rate' means the hourly rate for Additional Work or Emergency Work (as the case may be) set out in the Schedule of Rates.
  - (iv) The total amount of deductions for any month must not exceed the monthly invoice amount.
- (c) The parties agree and acknowledge that:
  - (i) the amounts of each deduction set out in the Schedule of Deductions, or otherwise calculated in accordance with this clause 24.4, are a reasonable pre-estimate of the damages likely to be suffered by the Principal in the event of each failure to perform relevant Duties, and are not intended to be and do not amount to a penalty; and
  - (ii) the Principal's right to deductions pursuant to this clause 24.4 is in addition to and does not limit the Principal's legal rights against the Supplier in any way and will not be taken to be a limitation of liability.

#### **25. STORAGE OF SUPPLIER'S MATERIAL**

- (a) The Supplier's materials and plant must only be stored in the location approved by the Principal's Representative. If no storage facilities are available, it will be the responsibility of the Supplier to provide storage facilities.
- (b) The Supplier must use best endeavours to avoid or reduce any inconvenience to persons occupying and visiting any Site or Facility.

#### **26. WORKING HOURS**

The working hours and Business Days of the Principal's supervisory personnel will be 8:00am to 4:30pm Monday to Friday excluding a day that is a public holiday in the place where the Duties are to be undertaken.

#### **27. ANCILLARY WORK**

The Supplier must carry out all Ancillary Work, and such work will be taken to be part of the Works and Duties, which is necessarily required for the purpose of performing the Duties, the Works or otherwise performing the Supplier's obligations under this Contract even though not specifically listed or detailed in the Scope of Works or Drawings, this Contract or the USC Procedure.

## 28. ACCESS TO WORKS AND MATERIAL

- (a) The Principal's Representative or any other persons authorised by the Principal's Representative, will have free and uninterrupted access at all times to all Sites, Facilities and Works and during Working Hours to any workshop or premises not on any Site where materials may be in preparation or stored for the purpose of the Contract. The Supplier must notify the Principal's Representative if the Works will disrupt or be disrupted by other work being done by the Principal or its agents.
- (b) The Supplier, if required by the Principal's Representative, must give the Principal's Representative all particulars as to the mode and place of manufacture of any of the materials proposed to be used in connection with the Contract and must facilitate inspection of the materials.

## 29. MATERIALS AND WORKMANSHIP

- (a) All materials used in the Duties or Works and the standards of workmanship must conform to the provisions of the Contract. In the absence of any specific provision to the contrary, all materials and standards of workmanship must be fit for its purpose specified in the Purchase Order, as described in this Contract and consistent with the nature and character of the Works, the Duties and each Facility.
- (b) Unless specified or agreed by the Principal in writing otherwise, all materials must be new and, where applicable, material and workmanship must be in accordance with the relevant standard of Standards Australia. If the Principal's Representative is of the opinion that any material or the work, whether fixed or not, is unsatisfactory the Principal's Representative may direct its replacement, removal or correction at the Supplier's expense.

## 30. PROPRIETARY ITEMS

Where any items, materials or products are specified in this Contract as being a particular brand, trade name or catalogue number the Supplier may use a substitute proprietary item of substantially equal quality and functionality provided the Supplier first provides full particulars of the item proposed to be used to the Principal's Representative for approval and the Principal's Representative may decide whether or not the proposed substitute may be used.

## 31. WORK HEALTH AND SAFETY MANAGEMENT

### 31.1 Definitions

For the purposes of this clause 31:

'**High Risk Construction Work**' has the meaning given to it in the WHS Act;

'**Plant**' means any machinery, equipment, appliance, container, implement, tool or any component thereof and anything connected or fitted thereto;

'**Safe Work Method Statement**' has the meaning given to it in the WHS Act;

'**Structure**' has the meaning given to it in the WHS Act;

'**Substance**' means any natural or artificial substance, whether solid, liquid, gas or vapour;

'**WHS Act**' means the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) and includes subordinate legislation made under that Act including regulations and approved codes of practice as well as any amendment, re-enactment or replacement of that Act; and

'**WHS Plan**' means a plan prepared by the Supplier and provided to the Principal at the commencement of this Contract as a result of the Supplier's assessment carried out under clause 31.2(a) and which documents how the Supplier will comply with 31.2(b), (c) and (d).



### **31.2 General Obligations**

The Supplier must:

- (a) carry out a risk assessment in relation to all of the Works;
- (b) carry out the Works safely and manage the risk of harm to persons or property;
- (c) ensure that it complies with any statutory requirement that requires a person to be authorised, licensed, supervised or to have prescribed qualifications or experience or that requires a workplace, Plant, Substance or design, or work (or class of work) to be authorised or licensed;
- (d) put in place and maintain suitable emergency management procedures relevant to the Works;
- (e) if requested by the Principal's Representative, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Supplier or any subcontractor commences any Works; and
- (f) generally comply with the requirements of the WHS Act.

### **31.3 High Risk Construction Work**

Where the Works include or comprise High Risk Construction Work, the Supplier will ensure that:

- (a) any person carrying out high risk construction work is licensed in accordance with the WHS Act;
- (b) before the work is carried out, a Safe Work Method Statement is prepared in respect to the High Risk Construction Work in accordance with the WHS Act, and that a copy of the Safe Work Method Statement is:
  - (i) provided to the Principal's Representative before the High Risk Construction Work is carried out and at any other time requested by the Principal's Representative; and
  - (ii) kept at the area of the Site where the High Risk Construction Work is being or is to be carried out;
- (c) the High Risk Construction Work is carried out in accordance with the Safe Work Method Statement.

### **31.4 Supplier's Obligations to Inform**

The Supplier shall comply with the Principal's incident notification procedure and advise the Principal's Representative of any serious incidents whilst carrying out the Works or on the Principal's facility as soon as reasonably practicable. The Supplier must keep the Principal's Representative fully informed of all health and safety matters relating to the Works and will provide the Principal's Representative with a copy of any incident notification provided to NT WorkSafe under the WHS Act at the same time or as soon as practicable after such notification is made to NT WorkSafe.

### **31.5 Right of Principal to Monitor and Audit**

The Principal or its nominee may, at any time during the Term, monitor, inspect or audit the performance of the Supplier by:

- (a) attending the Site, without prior notice to the Supplier; and
- (b) attending the Supplier's office, after two (2) Business Days prior written notice to the Supplier, to inspect all reports, records and documents of the Supplier,

in relation to its compliance with this clause 31 generally and the Supplier must allow the Principal or its nominee access to the Site, the Contactor's office and any relevant documents or activities so as to enable such monitoring, inspection or audit to occur.

### **31.6 Powers of Principal's Representative Regarding Work Health and Safety**

(a) If the Principal's Representative considers that there is:

- (i) a risk of injury to people or damage to property arising from the Works; or
- (ii) an unsafe or potentially unsafe practice or breach of the requirements of this clause 31, then, in addition to any other rights the Principal has under the Contract, the Principal's Representative may:
- (iii) direct the Supplier to change its manner of working; or
- (iv) suspend the performance of the Works associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

(b) All costs and delay and disruption caused by any action taken under this clause 31.6 are the responsibility of the Supplier.

### **31.7 Works Involving Asbestos, hazardous chemicals and dangerous good**

The Supplier must comply with all requirements of the WHS Act and any regulations under that Act applicable to works involving asbestos, asbestos containing materials (ACM), hazardous chemicals and dangerous goods.

### **31.8 Breach by Supplier**

Where, in the reasonable opinion of the Principal or the Principal's Representative, the Supplier has:

(a) committed a breach of any of its other obligations under this clause 31, the Principal may immediately terminate this Contract by written notice to the Supplier.

The remedy provided in clause (a):

- (b) applies notwithstanding any other provision of the Contract; and
- (c) is in addition to the other remedies under this Contract and otherwise at law.

### **31.9 Work in the vicinity of Assets**

(a) Prior to commencing work in the vicinity of any Assets, including water or sewerage mains, cable or power line or related structure, the Supplier must contact the Principal and obtain and become cognisant with written guidelines or procedures setting out safe practices for working in or adjacent such hazardous areas.

(b) Whilst working in the vicinity of water or sewerage mains, high voltage cables or power lines or other high voltage structures the Supplier must follow all directions and instructions issued by the Principal.

### **31.10 Work in the vicinity of Natural Gas Pipelines**

The Supplier must comply at all times with the *Energy Pipelines Act* when performing its obligations under this Contract.

### **31.11 Fire Precautions**

(a) The Supplier must take all necessary precautions to ensure that no fire hazard is created through the carrying out of the Works.

- (b) Where a fire alarm is activated due to actions of the Supplier or their subcontractor, resulting in a call out of the Fire Service, the Supplier will be required to pay any relevant call out or other fee, charge, cost or penalty.

### **31.12 Elevated Work Platforms and Excavation**

All elevated work platforms, including scaffolding and excavations must conform to the WHS Act and the *Work Health and Safety (National Uniform Legislation) Regulations 2011* (NT) applicable to works involving excavations and scaffolding or elevated work platforms. The Supplier must provide all ladders, elevated work platforms and scaffolding material necessary to carry out the Works.

## **32. PRECAUTIONS IN CARRYING OUT WORKS**

- (a) The Supplier must, and must ensure that all of its subcontractors, comply with all requirements under Acts, regulations, by laws, orders and rules and other special requirements of proper Authorities concerning storage, transport and use of materials, plant, equipment; work processes and safety precautions.
- (b) The Supplier must, and must ensure that all subcontractors, observe all rules and regulations in force in respect of the Works.
- (c) Where any current Australian standard published by Standards Australia is appropriate to storage, transport and use of materials, plant and equipment, to work processes or to safety precautions, the provisions of such standard must be observed except if it conflicts with any statutory or special requirements of proper Authority in which case the latter will apply.
- (d) In the absence of any such statutory or special requirements or relevant Australian Standard, the Supplier and all subcontractors must ensure that suitable procedures are observed and all proper care is taken.

## **33. DAMAGE TO SERVICES**

- (a) The Supplier must contact the officer in charge of the area that includes the work Site, or his representative, before work commences and in company with the Principal's Representative check with them the location of all services.
- (b) The Supplier must immediately notify the Principal's Representative and the officer in charge of the area, in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area.
- (c) The Supplier must render any assistance required in connection with any such incident, but otherwise work in that vicinity must be stopped immediately and not recommenced until instructions are received from the Principal's Representative.
- (d) Where the service is indicated on the drawing and/or in the Scope of Works, or is evident on the Site, or has been pointed out by the officer-in-charge of the area or by the Principal's Representative or by a representative of either, the Supplier will be liable for the cost of any necessary repairs.
- (e) Where the Supplier encounters any services, details of which are not given in the drawings and/or Scope of Works and which are not evident on the Site or which have not been pointed out to the Supplier, and has carried out his operation with reasonable care, the cost of reinstatement, diversion or other associated work may be paid as an extra to the Contract.

### **34. CARE OF WORK AND CLEANING UP**

The Supplier must keep Works clean and tidy as they proceed and regularly remove from each Site rubbish and surplus material arising from the execution of the Works. On completion of Works the Supplier must clear away and remove from the Site all construction plant, surplus materials, rubbish and temporary works of every kind and must leave the Site of the Works, existing structures and areas adjacent thereto in as good a state of repair as they were in when the Supplier commenced the Works.

### **35. ENVIRONMENTAL MANAGEMENT**

#### **35.1 General**

The Supplier must:

- (a) ensure that in carrying out the Duties:
  - (i) it complies with all Laws and Statutory Requirements and other requirements of the Contract for the protection of the Environment;
  - (ii) it does not cause any Environmental Incident;
  - (iii) without limiting clause 35.1(ii), it does not cause or contribute to contamination of the land upon which any of the Facilities are situated or any other land, air or water, or cause or contribute to any contamination emanating from such land;
- (b) it immediately notifies the Principal's Representative of:
  - (iv) any non-compliance with the requirements of this clause 35;
  - (v) a breach of any Statutory Requirement for the protection of the Environment;
  - (vi) any Environmental Incident; or
  - (vii) the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
- (c) its subcontractors comply with the requirements referred to in this clause 35.1; and
- (d) clean up and restore, at its own cost, the Environment, including any contamination or Environmental Harm arising out of, or in any way in connection with, the Duties, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment.

#### **35.2 Assistance**

Information and assistance in respect to environmental management is available from the PWC Environmental Services work group:

Phone: (08) 8995 5824 or 0418 731 200 (on-call)

Email: [environment.pwc@powerwater.com.au](mailto:environment.pwc@powerwater.com.au)

### **36. UNSAFE WORK**

#### **36.1 Directions to Alter or Suspend Works**

- (a) If the Principal's Representative considers:
  - (i) there is a risk of injury to people or damage to property arising from the performance of the Duties; or
  - (ii) there is an unsafe or potentially unsafe practice or breach of the requirements of this clause 36, then, in addition to any other rights under this Contract, the Principal Representative may:

- (iii) direct the Supplier to change its manner of working, which direction must be complied with by the Supplier as soon as reasonably practicable and at the Supplier's cost; or
  - (iv) suspend the performance of the Duties associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.
- (b) All costs and delay and disruption caused by any action taken under this clause 36 are the responsibility of the Supplier.

### **36.2 Supplier Not Relieved**

The Supplier will not be relieved from any of its Contract obligations or from any of its liabilities whether under this Contract or otherwise according to law as a result of:

- (a) the implementation of, and compliance with, the requirements of its WHS Plan;
  - (b) any direction or other action by the Principal's Representative, or anyone else acting on behalf of Principal, under this clause 36;
  - (c) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of Principal, of the Supplier's compliance with the WHS Plan or the Supplier's other obligations under this clause 36; or
  - (d) any failure by the Principal Representative, or anyone else acting on behalf of the Principal, to detect any failure to comply with the WHS Plan or the Supplier's other obligations under this clause 36, including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

### **36.3 Substantive Breach**

- (a) Where in the opinion of the Principal's Representative, the Supplier has committed a substantive breach of its obligations under this clause 36, the Principal's Representative may terminate this Contract, by notice to the Supplier.
- (b) The remedy provided in this clause:
  - (i) applies notwithstanding any other provision of this Contract; and
  - (ii) is in addition to the other remedies under this Contract.

## **37. USC COMPETENCY ASSURANCE**

### **37.1 USC Competency Assurance Plan**

The Supplier:

- (a) must, in carrying out the Duties and in performing its other obligations under this Contract, comply with the USC Competency Assurance Plan; and
- (b) will not be relieved from any compliance with any of its obligations or from any of its liabilities, whether under this Contract or otherwise according to law as a result of the implementation of, and compliance with, the USC Competency Assurance Plan or any other requirement of this Contract or the USC Procedure;
- (c) must review and update the USC Competency Assurance Plan at a maximum 12 month interval throughout the Term, when requested by the Principal, or where the Suppliers staff have changed.

### **37.2 Plan Development**

- (a) If the USC Competency Assurance Plan has not been developed and negotiated at the date of this Contract the Supplier must establish a conforming competency assurance system

aligned with the Power and Water USC Competency Assurance Framework and approved by the Principal within one month from the date of Notice of Acceptance.

- (b) The Supplier must perform all of its obligations under this Contract, and payments to the Supplier shall accrue to the Supplier in respect of all performed obligations, but the Supplier shall not be entitled to any payment under this Contract until an USC Competency Assurance Plan has been submitted by the Supplier and approved by the Principal (acting reasonably) in accordance with clause (a).
- (c) If a USC Competency Assurance Plan has not been developed and approved by the Principal within three (3) months after commencement of this Contract, the Principal may terminate this Contract by notice in writing to the Supplier.

**38. PROTECTION AND PROVISION FOR TRAFFIC**

The Supplier must provide all necessary lights, barriers, flags and the like to ensure the safety of all persons, vehicles and animals.

**39. PROTECTION FOR OCCUPANTS**

Where work is carried out in occupied or partially occupied premises, Facilities or Sites, the Supplier must arrange the execution of the Works to minimise nuisance to the occupants and must make appropriate arrangement to protect any occupants from fumes, dust, dirt, noise or other nuisance.

**40. PROTECTION OF PROPERTY**

The Supplier must take all necessary precautionary measures to protect all property against loss, theft or damage resulting from the activities of the Supplier, subcontractors and agents.

**41. PROTECTION OF EQUIPMENT**

All equipment, whether supplied under the Contract or existing at any Site and surroundings, likely to be damaged or affected by ingress or deposit of foreign matter resulting from the Supplier's operations or those of subcontractors or agents will be properly protected by the Supplier.

**42. STRONG WIND PRECAUTIONS**

The Supplier must ensure that unfinished work, equipment, sheds, hoardings, materials and any other movable items on any Site, are protected, stored, or secured to the extent necessary to ensure that in strong wind conditions they will not be a danger to persons or property because of collapse, movement or any other cause.

**43. CUSTODY OF KEYS – PRINCIPAL'S ASSETS**

- (a) Where applicable, the Supplier will be provided with keys for the purposes of accessing the Principal's Assets, Sites and Facilities.
- (b) The Supplier must not label the keys with the name of the Asset, Site or Facility or make duplicate keys and must take all care to prevent theft or loss of the keys.
- (c) All keys issued to the Supplier must be returned at the expiry or sooner termination of this Contract. Failure to return keys within seven (7) days of expiry or sooner termination of this Contract will incur a fee of \$500.00 per set of keys.
- (d) The cost of replacing lost, damaged or stolen keys will be at the Supplier's expense and if the Principal's Representative so determines will include the cost of replacing or re-keying master locks.

**44. ACCESS TO APPARATUS RULES**

The Supplier must, and must ensure that its employees and subcontractors comply with the Principal's *Access to Apparatus Rules* as published by the Principal from time to time when undertaking the works or services.

**45. VARIATIONS**

The Principal's Representative may direct a variation to the Works and such direction will not invalidate the Contract. The variation will be valued by mutual agreement between the Supplier and the Principal's Representative or failing agreement by the Principal's Representative and the Contract Rate or price increased or decreased accordingly.

**46. DEFECTS LIABILITY PERIOD**

- (a) The Supplier must maintain all of its Works for the Defects Liability Period and must make good at its own expense all defective workmanship or materials and all damage, loss or injury to the Works, any Site or any Facility occasioned by any such defect.
- (b) If the Supplier fails to make good any defects within a reasonable time or within the time stipulated in a direction given by the Principal's Representative, the Principal's Representative may take action to rectify those defects at the Supplier's expense.

**47. ASSIGNMENT**

- (a) The Supplier must not assign the Contract, or mortgage, charge or encumber any of the monies payable under the Contract or any other obligation or benefit whatsoever arising under the Contract without consent of the Principal, which consent may be given or withheld in the absolute discretion of the Principal and may be granted upon conditions including (without limitation) a condition that the assignee enter into a contract in a form determined by the Principal acknowledging and agreeing to observe the terms of this Contract.
- (b) The Supplier must pay the costs of the Principal (including legal costs) of any assignment under this clause 47.
- (c) The Principal may assign or novate its rights and obligations pursuant to this Contract to another Government Owned Corporation (as that term is defined by the *Government Owned Corporations Act 2001* (NT)) or government agency upon notice to the Supplier.

**48. SUBCONTRACTING**

- (a) Should the Supplier desire to subcontract any part or parts of the Works it must submit to the Principal's Representative the names of all proposed subcontractors, the nature and value of the work which it is intended they undertake, the CAL Registration Number (if applicable) of all proposed subcontractors and must seek the written approval of the Principal's Representative in respect of them.
- (b) The Supplier must not employ or otherwise engage any subcontractor in connection with the Works unless written approval is first obtained from the Principal's Representative. Such approval must not be unreasonably withheld.
- (c) If Supplier Accreditation is applicable to work to be sub contracted under the Contract the Supplier must ensure that all subcontractors and their subcontractors for any part of the Works valued at over \$100,000 are accredited by Supplier Accreditation Limited to an appropriate category/group/sub-group and rating.
- (d) Any approval by the Principal to engage a subcontractor for any part of Works will not relieve the Supplier from any of its liabilities under the Contract. The Supplier will be fully

liable to the Principal for the work of all subcontractors or any employee or agent of any subcontractor.

## **49. DISPUTES**

Each party must follow the procedures in this clause 49 before starting court proceedings, other than for urgent injunctive or other interlocutory relief.

### **49.1 Notice of Dispute**

Any party to this Contract who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

### **49.2 Meeting of Parties**

Within five (5) Business Days of the provision of the written notice, a nominated representative of each of the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute.

### **49.3 Appointment of Mediator**

- (a) If the dispute is not resolved within five (5) Business Days of the parties meeting (or within such further period as the parties agree is appropriate) then one or both parties may nominate a mediator to determine the dispute.
- (b) If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the dispute.
- (c) The parties will bear the costs of the mediator equally.

### **49.4 Appointment of Independent Expert**

- (a) If the dispute is not resolved within twenty (20) Business Days after the appointment of the mediator (or within such further period as the parties agree is appropriate) then one or both parties may nominate an independent expert to determine the dispute.
- (b) If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an independent expert to determine the dispute.
- (c) The expert must not be the same person as the mediator.
- (d) The parties will bear the costs of the independent expert's determination equally, unless the independent expert determines otherwise.
- (e) The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

### **49.5 Decision of Independent Expert**

- (a) The decision of the independent expert is absolute and final and will bind the parties accordingly and this Contract will be deemed to be amended to incorporate the terms of the independent expert's decision.
- (b) The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.

### **49.6 Continuation of Work during Disputes**

During disputes each party must, at all times, continue to fulfil its obligations under the Contract provided that such obligations do not directly touch upon or concern the subject



matter of the dispute in respect of which written notice has been given in accordance with this clause 49.

## **50. TERMINATION**

### **50.1 Termination for Convenience**

- (a) Either party may terminate the Contract by giving sixty (60) days written notice to the other party.
- (b) Termination of the Contract under this clause 50.1 will not relieve the Principal or the Supplier of their respective rights and obligations under the Contract up to and including the date of any such termination.

## **51. TERMINATION DUE TO DEFAULT OR BANKRUPTCY**

### **51.1 Default**

- (a) The Supplier is in default ('Default') if:
  - (i) it fails to observe or perform any obligation required to be observed by it under this Contract including the USC Procedure; or
  - (ii) an Insolvency Event occurs in relation to the Supplier.
- (b) If a Default occurs, the Principal may give the Supplier a written notice specifying the Default ('Default Notice').

### **51.2 Default Notice**

Upon receipt of a Default Notice the Supplier must remedy the Default the subject of the Default Notice within ten (10) Business Days. The Supplier must notify the Principal immediately after it has remedied the Default.

### **51.3 Remedy for Default**

If the Supplier does not remedy the Default within the time specified in clause 51.2 or if the Default is not capable of being remedied, the Principal may, by notice, terminate this Contract.

### **51.4 Costs of Default**

If the Supplier is in Default, the Supplier agrees to pay the damages, costs and expenses of the Principal arising from or in connection with the Default including:

- (a) legal expenses on a solicitor and own client basis;
- (b) expenses associated with engaging an appropriate substitute Worker; and.
- (c) the costs described in clause 24.

## **52. TRANSITION PLANNING**

### **52.1 Transition Planning**

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

- (a) affording all reasonable assistance necessary for the timely and efficient transition of the provision of the Services to the Principal and/or any new supplier;

- (b) responding to all requests for information, advice and assistance by the Principal and providing the information, advice and assistance to the Principal within 5 Business Days of receiving a request from the Principal; and
- (c) permitting the Principal to assign the Principal's personnel or any personnel of the new supplier to work with the Supplier's personnel to facilitate the transfer of any information and materials that the Principal believes is required.
- (d) To the extent that the Supplier's compliance with clause 52.1(a) requires the Supplier to deploy additional resources which results in the Supplier incurring additional costs, the Supplier will be entitled to charge the Principal for such additional costs, on a time and materials basis, by reference to the rates specified in the Schedule of Rates, or if no rates are specified, by reference to reasonable and industry competitive daily rates. No additional amounts are payable if additional resources are not utilised.

#### **52.2 Transition Out**

- (a) Upon expiry or any earlier termination of this Contract, the Supplier shall:
  - (i) leave all facilities in a spotless and tidy condition and deliver to the Principal's Representative all keys and any copies; and
  - (ii) ensure all paperwork, documents, manuals, tools and equipment, personal protective equipment supplied by the Principal and all associated items and keys associated with the Contract remains at the Site.
- (b) All items listed above shall be in good working order and all stock on hand or spare stock must remain at the Site.

#### **52.3 Transition In**

- (a) The Supplier shall complete an audit and condition report of the facilities and any inventory to ensure all items are provided and obtain the new Supplier's confirmation approval of the same. Date stamped photographs should be taken and kept with the report. The condition report and any photographs should be provided to the Principal for their records.
- (b) The Principal's Representative will facilitate an On-Site Induction at each Site.

### **53. RIGHTS OF PRINCIPAL TO RECOVER MONIES**

Without limiting the Principal's rights under any other provision in this Contract, if the Principal terminates this Contract for or in respect of any Default of the Supplier then:

- (a) all losses, costs, charges, outgoings and expenses incurred or sustained by the Principal as a result of or in connection with any such default or termination will be a liquidated debt due to the Principal by the Supplier and may (without limitation) be deducted and set off from any monies that may then or may thereafter become due to the Supplier whether under this Contract or any other Contract whatsoever between the Principal and the Supplier;
- (b) if the monies are less than the amounts so deductible then the amount of the deficiency will be a liquidated debt due by the Supplier to the Principal; and
- (c) without prejudice to any other rights available to the Principal to recover such a liquidated debt, the Principal may demand payment for and recover such liquidated debt against any bank guarantee, guarantee or other security that the Supplier may have given to or in favour of the Principal pursuant to this Contract or any other Contract whatsoever between the Supplier and the Principal.

## **54. CONTRACT REVIEW AND SUPPLIER'S PERFORMANCE REPORT**

### **54.1 Supplier's Performance Report**

- (a) The Supplier agrees that during the Term at intervals as specified in Item 11, upon expiry of the Term, or any termination of the Contract:
- (i) the Principal's Representative may prepare a Supplier's Performance Report ('Report');
  - (ii) the Principal's Representative must liaise with the Supplier in completing the Report although the Principal's Representative reserves the ultimate right to complete the Report (other than the Supplier's comments);
  - (iii) The Supplier's Performance Report will include, but not be limited to, a review of Supplier's performance of its obligations under this Contract, including the Duties and compliance with the USC Procedure;
  - (iv) the Principal may use and/or release the Report to Contractor Accreditation Limited and be entitled to release the report to any other department of the Commonwealth or any State or Territory.
- (b) The Supplier agrees that neither the Supplier nor any other person will have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation, use or disclosure of the Report and the Supplier hereby releases, discharges and forever indemnifies the Principal in respect of any such preparation, use or disclosure.
- (c) If, following a review during the Term of this Contract, the Principal considers that the Supplier's or the Worker's performance of the Duties in accordance with this Contract and the USC Procedure is unsatisfactory, it may provide notice to the Supplier of those aspects of this Contract or the USC Procedure which have not been satisfactorily complied with.
- (d) The Supplier may, within twenty-five (25) Business Days of any notice given by the Principal pursuant to clause (c), comply to the Principal's satisfaction (or to provide a plan satisfactory to the Principal that will ensure future compliance) with those aspects of this Contract or the USC Procedure which have not been satisfactorily complied with.
- (e) If the Supplier fails to comply with clause (d) the Principal may terminate this Contract.

### **54.2 Contract Review and Reporting**

- (a) The Supplier must provide regular reports, as requested by PWC from time to time, outlining the status of the provision of the Supplies and the performance of the Supplier's obligations under this Contract.
- (b) Without limiting clause 54.2(a), the Supplier must provide the specific reports as provided for in Item 11.
- (c) The reports required to be provided by the Supplier under this Contract must be provided:
- (i) in accordance with the frequency, timeframes and format as provided for in Item 11 (if any);
  - (ii) as required under any other part of this Contract; or
  - (iii) as reasonably required from time to time by PWC.

## **55. GOODS AND SERVICES TAX**

- (a) For the purposes of this clause 55, unless the context otherwise requires:

'**GST**' means any tax imposed on Supplies by or through the *A New Tax System (Goods and Services Tax) Act 1999* ('Act').

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

'**Input Tax Credit**', '**Recipient**', '**Entity**' and '**Supplies**' have the meaning they bear in the Act,

'**Adjustment**' means each form of adjustment to consideration provided for in this clause 55.

- (b) Where any other term is used in this clause 55, which is defined in the Act it will have the meaning which it bears in the Act.
- (c) The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming this Contract.
- (d) The Supplier must provide the Recipient with a tax invoice and/or adjustment notes in relation to the supply prior to an amount being paid by the Recipient under this Contract, and must do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply.
- (e) Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the date of formation of this Contract.

## 56. **PRIVACY**

- (a) For the purposes of this clause 56, unless the context otherwise requires:

'**Act**' means the *Information Act 2002* (NT);

'**Privacy Laws**' means the Act; and the Information Privacy Principles set out in the Act or any 'code of practice' approved under the Act that applies to any of the parties to this Contract.

'**Personal Information**' means all information about a person that is 'personal information' as defined in the Act, which is collected and/or handled by any of the parties in connection with this Contract.

- (b) The Supplier agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Supplier were a public sector organisation.
- (c) The Supplier must collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling its obligations under this Contract and not for any other purpose.
- (d) The Supplier is not to disclose Personal Information without the written authority of the Principal, and in any event disclosure must be in accordance with the Privacy Laws. The Supplier must immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.
- (e) The Supplier must ensure that any employees, agents or subcontractors, and any other person who may have access to Personal Information held by the Supplier, are aware of the obligations of the Supplier under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.
- (f) The Supplier must take all reasonable measures to ensure that Personal Information is protected from misuse, loss, unauthorised access, modification, disclosure or other misuse

and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

- (g) The Supplier must develop, and obtain the written approval of the Principal for:
  - (i) policies for the management of personal information; and
  - (ii) complaint handling procedures.
- (h) Each party must immediately notify the other when a complaint is received. The Supplier acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.
- (i) The Supplier must not transfer Personal Information outside the Northern Territory without the prior approval of the Principal. The Supplier, in respect to Personal Information, must immediately notify the Principal where the Supplier becomes aware of a breach of this clause 56 or the Privacy Laws.
- (j) The Supplier indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Supplier under this Contract.
- (k) When this Contract expires or is terminated, the Supplier must, at the Principal's discretion:
  - (iii) either return to the Principal all records containing Personal Information;
  - (iv) retain any material containing Personal Information in a secure manner as approved by the Principal; or
  - (v) destroy or delete any Personal Information.
- (l) This clause 56 will survive the expiration or termination of this Contract.

## **57. OWNERSHIP AND RETURN OF PRINCIPAL'S MATERIAL AND PRINCIPAL'S PROPERTY**

### **57.1 Principal's Material**

The Supplier must, upon expiry or any earlier termination of this Contract, or immediately on request by the Principal:

- (a) return all the Principal's Material in its possession (including in the possession of the Supplier's Representative, the Worker or any agent, employee or subcontractor of the Supplier); or
- (b) destroy by shredding any part of or all of the Principal's Material in its possession (including in the possession of the Supplier's Representative, the Worker or any agent, employee or subcontractor of the Supplier),
- (c) and not retain any copies or replicas of any Principal's Material (unless, and only to the extent, it is required to do so by law or permitted by the Principal).

### **57.2 Principal's Property**

- (a) Any equipment provided by the Principal to the Supplier for the purposes of carrying out the Duties:
  - (i) remains the property of the Principal; and
  - (ii) must be promptly returned to the Principal on demand.
- (b) Subject to fair wear and tear, the Supplier must reimburse to the Principal on demand as a debt due the cost of repair or replacement of any equipment provided by the Principal to the Supplier which is damaged, lost or destroyed by the Supplier.

- (c) The Supplier must notify the Principal within 24 hours if it has an impact on services, or within two (2) Business Days in other circumstances, if it suspects or becomes aware of any of the following:
- (i) damage to or apparent illegal use of the Facilities; or
  - (ii) any breakage, breakdown or other act, matter or thing likely to effect the safe and proper working of any part of the Facilities; and
  - (iii) any matter or thing which may affect the ability of the Facilities to provide the Essential Services.

## **58. RATES OF WAGES TO BE PAID**

- (a) Subject to clause (b), the terms and conditions of employment for employees of the Supplier must be those contained in the relevant Federal or State Award/Agreement.
- (b) When employees of the Supplier perform work under this Contract they will be entitled to rates of pay and allowances which in aggregate must be no less favourable than the current minimum rate that applies to the same or similar classifications of employees engaged under the current and relevant award or enterprise agreement, in particular, rates of pay must include:
- (i) Salary/Wages: At base trade level where applicable;
  - (ii) Allowances: Applicable Industry, Power Station or other site allowance;
  - (iii) Locality Allowance, Shift Allowance and other allowances paid to Power and Water employees under the Award.
  - (iv) Superannuation/Severance Payments: The Supplier must make payments on behalf of the Supplier's employees to superannuation funds and severance funds in accordance with the relevant Federal or State Award/Agreement/Legislation.
  - (v) Preservation of Salary/Wage Rates: Employees of the Supplier must not have their actual ordinary all-purpose hourly rate reduced as a result of the application of this clause (b).

## **59. FORCE MAJEURE**

### **59.1 Definitions**

(a) "Force Majeure" means:

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

but only to the extent that the:

- (i) Force Majeure is beyond a party's control;
- (ii) the party affected by the Force Majeure could not reasonably have avoided or provided against it;

(iii) having arisen, the party affected could not have reasonably avoided or overcome it;

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

#### **59.2 Force Majeure**

- (a) If a party is or will be prevented from performing any of its obligations under this Contract (except for payment obligations) by Force Majeure, then it shall give notice in writing to the other party of the event or circumstance constituting the Force Majeure, performance of which is or will be prevented, with details of the impact the Force Majeure has had or is likely to have on the performance by it of its obligations under this Contract.
- (b) The party shall, having given the notice above, be excused from performance of such obligations for so long as such Force Majeure prevents it from performing them.
- (c) Each party shall endeavour to minimise any delay in the performance of this Contract as a result of the Force Majeure.
- (d) Force Majeure shall not entitle any party to make a claim to recover its costs or expenses incurred or loss or damage suffered in connection with the Force Majeure, either under this Contract or otherwise at law or in equity.
- (e) A party shall give notice to the other party when it ceases to be affected by the Force Majeure.

#### **59.3 Civil Unrest**

In the event of civil unrest, the Principal may stand down the Supplier but only subject to such direction from the local law enforcement. Any costs incurred by the Supplier in respect of the stand down will be borne wholly by the Supplier.

#### **60. AMENDMENT AND WAIVER**

Subject to clause 45, any variation or amendment to this Contract or any waiver of any rights of any party has no effect unless and until it is in writing signed by the parties (in the case of an amendment) or by the party granting the waiver (in the case of a waiver).

#### **61. SEVERANCE**

If it is determined by a court of competent jurisdiction that any term or other part of this Contract is void, invalid or unenforceable it will be read down or, to the extent required, severed from this Contract but the remaining terms will remain valid.

#### **62. FURTHER ACTS**

Each party must do all things and sign all further documents as may be necessary or reasonably required to give full effect to this Contract, and must not do or omit to do anything which might prevent full effect being given to the Contract.

#### **63. COSTS**

Each party must pay its own legal costs incurred in the negotiation, preparation and execution of this Contract.

**64. COMPLIANCE WITH LAWS**

Each party must comply with all relevant Laws in the performance of their respective obligations under the Contract and must cooperate with the other to allow it to comply with all relevant Laws.

**65. APPLICABLE LAW**

The Contract will be governed by and construed in accordance with the laws of the Northern Territory of Australia and the parties unconditionally and irrevocably submit to the non-exclusive jurisdiction of the Courts in the Northern Territory and must not make any objection to the jurisdiction of those Courts on the grounds of inconvenience.

**66. ENTIRE AGREEMENT**

The Contract formed between the parties constitutes the entire agreement between the parties in respect of its subject matter and supersedes any previous statements, representations agreements or understandings.



## **Attachment 1 Special Conditions**

Not used.

## **Attachment 2 Scope of Requirements**

[Attach RFT – Scope of Requirements prior to award]

**Attachment 3 Schedule of Rates**

[Attach RFT Response – Schedule of Rates prior to award]

**Attachment 4 Schedule of Deductions**

[Attach Schedule of Deductions prior to award]

**Attachment 5 USC Competency Assurance Plan**

[Attach USC Competency Assurance Plan prior to award]

**Attachment 6 USC Procedure**

[Attach USC Procedure prior to award]