

Power Services

Network Operating Agreement

Introduction

This document is a template document published to comply with Power and Water Corporation's obligations under the Northern Territory National Electricity Rules. Specifically clause 5.3A.7 and Schedule 5.10.

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

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

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

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

Contents

1	Definitions and Interpretation	7
1.1	Definitions	7
1.2	Interpretation	10
1.3	Headings	10
1.4	Multiple parties	10
1.5	Payments	11
2	Conditions Precedent	11
2.1	Conditions	11
2.2	Responsibility for Satisfying	11
2.3	Notification	11
2.4	Effect of Satisfaction or Waiver	11
2.5	Termination	11
3	Term	11
4	Use and Control of IUSA	12
4.1	Obligation to ensure Control Transfer Date corresponds to Handover Date	12
4.2	Assumption of Operational Control	12
4.3	Unrestricted use of IUSA and IUSA Site	12
4.4	Utilisation of IUSA	12
4.5	Intellectual Property	12
4.6	Information and co-operation	152
5	Title and Risk in IUSA	13
5.1	Title and risk remains with IUSA Provider	13
5.2	No Encumbrance	13
6	IUSA Provider's Access Rights	13
6.1	Access Rights	13
6.2	Procedures relating to Access	13
7	Provision of Services	14
7.1	Services	14
7.2	Standards of Services	14
7.3	Provision of PWC Service Items, Personnel and Consumables	14
7.4	Spares, spare parts and other IUSA components	14
8	Service Charge and Chargeable Costs	14
8.1	Service Charge	14
8.2	Variations to Service Charge	14
8.3	Chargeable Costs	14
9	Defects Liability	15
10	IUSA Reinstatement	15
10.1	IUSA Reinstatement Obligation	15
10.2	Commence of Reinstatement Works	15
10.3	Reinstatement Works	15
10.4	Defects Liability	16
10.5	Failure of IUSA Provider to undertake works	16

Contents

11	IUSA Changes required by Change in Laws	16
12	Payment and Invoicing	17
12.1	Service Charge	17
12.2	Costs	17
12.3	PWC Costs	17
12.4	Payment	17
12.5	Disputed Invoices	17
12.6	Set Off	17
13	GST	17
14	Financial Security	17
15	Insurances	18
15.1	Public Liability Insurance	18
15.2	Property Damage Insurance	18
15.3	Works Policy	18
15.4	Other Insurances	18
15.5	Evidence of Insurances	18
16	Force Majeure	19
16.1	Effect of force majeure event	19
16.2	Notice obligations	19
16.3	Mitigation of effect of Force Majeure Event	19
17	Termination Rights	19
17.1	PWC's termination rights	19
17.2	IUSA Provider's termination rights	19
17.3	Without prejudice	19
18	Events Consequent upon Expiry or Termination	19
18.1	Disconnection and Removal Right	19
18.2	Option to purchase	19
18.3	No Acquisition	20
19	IUSA Provider Warranties	21
20	Liability	21
20.1	Effect of Legislation	21
20.2	Exclusion of Warranties	21
20.3	Australian Consumer Law Guarantees	21
20.4	Third Party Claims	21
20.5	Network Damage	21
20.6	PWC Liability	22
20.7	IUSA Provider Liability	22
21	Assignment and novation	22
21.1	Dealings with this Contract by the IUSA Provider	22
21.2	Dealings with IUSA	22
21.3	Change in control	22
21.4	Costs	23
21.5	Dealings with this Agreement by PWC	23

Contents

22	Dispute Resolution	23
<hr/>		
23	Confidentiality	23
23.1	This Agreement is confidential	23
23.2	Exceptions	23
23.3	Announcements	24
<hr/>		
24	Miscellaneous	24
24.1	PWC rights and powers at law	24
24.2	Power System Controller	24
24.3	Interaction with applicable law	24
24.4	Exercise of PWC rights	24
24.5	Waiver	24
24.6	Entire Agreement	24
24.7	Amendment of Agreement	24
24.8	Governing Law and Jurisdiction	24
24.9	Notices	24
24.10	Notices sent by email	25
24.11	Further assurance	25
24.12	Merger	25
24.13	Remedies	25
24.14	Costs	25
24.15	Duty	25
24.16	Indemnities	25
24.17	Severance	25
24.18	Accrued rights	25
24.19	Clauses surviving termination	25
24.20	Counterparts	25
24.21	Authority of signatory	26
<hr/>		
	Schedule 1 – Contract Particulars	27
<hr/>		
	Schedule 2 – IUSA	29
<hr/>		
	Schedule 3 – Service Charge	30
<hr/>		
	Schedule 4 – Access Conditions	31
<hr/>		
	Schedule 5 – Spares, Spare Parts and Other IUSA Components	32
<hr/>		
	Schedule 6 – Items to be provided as a condition to Control Transfer Date	33
<hr/>		
	Execution	34
<hr/>		

Network Operating Agreement



Date

Parties

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

Recitals

- A The Customer has entered into the Connection and Supply Contract with PWC which provides for (among other things) the Customer Facility to be connected to the Electricity Network and for PWC to provide certain Network Access Services to the Customer.
- B In order to provide the Network Access Services under the Connection and Supply Contract, PWC needs to assume operational control of the IUSA which is owned by the IUSA Provider.
- C This Agreement sets out the terms upon which PWC will access, operate, maintain and control the IUSA.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

1. Definitions and interpretation

1.1 Definitions

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

Additional Service means any service, activity or work specified in Schedule 1.

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

Approval means:

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

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

Change in Imposts means a variation in the rate at which Imposts are levied or the circumstances in which they are imposed, the imposition of new Imposts or the removal of existing Imposts.

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

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

Conditions means the conditions precedent set out in Schedule 1.

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

Consequential Loss means each of the following forms of loss:

- (a) special loss;
- (b) indirect loss;

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

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

Construction Works Interface Agreement means the agreement so entitled entered into by PWC and the IUSA Provider on or about the date of this Agreement.

Contractor has the meaning given in the Construction Works Interface Agreement.

Control Transfer Date means the date on which each of the following have occurred:

- (a) a Handover Certificate has been issued by PWC; and
- (b) the IUSA Provider has provided to PWC all manuals, plans, passwords, keys, drawings, documents, access to hardware, software and firmware and other items specified in Schedule 6.

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

Customer has the meaning given in the Construction Works Interface Agreement.

Customer Facility has the meaning given in the Construction Works Interface Agreement.

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

Electricity Laws means:

- (a) the ERA;
- (b) the Utilities Commission Act (NT);
- (c) the NT NEL;
- (d) the NT NER;
- (e) the Network Technical Code;

Operative Part PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

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

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

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

Encumbrance means:

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

Equipment means:

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

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

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

Expiry Date means the date specified in Schedule 1.

Financial Security means the financial security required to be provided by the IUSA Provider pursuant to clause 13.

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

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

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

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

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

Handover Certificate means a handover certificate (as defined in the Construction Works Interface Agreement) issued by PWC.

Impost means any tax (excluding income tax and GST), duty, impost, levy, licence fee or other charge imposed by any government or Government Agency.

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

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

Intellectual Property Rights means all statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights),

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

confidential information, trade secrets, know-how, trade-marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Interest Rate means, at a point in time:

- (a) the current Westpac Indicator Lending Rate; or
- (b) if that rate is not published by Westpac Banking Corporation, the rate which it does publish as its base rate to which interest on overdrafts accounts of \$100,000 is calculated,

provided that if neither rate referred to above is published or can be determined, then the Interest Rate will be such interest rate as nominated by PWC acting reasonably as a rate which is an appropriate substitute for the Westpac Indicator Lending Rate.

IUSA means the assets described in Item 1 of Schedule 2, which have the agreed boundaries detailed in Item 2 of Schedule 2.

IUSA Documents means the documents provided by the IUSA Provider to PWC under the Construction Works Interface Agreement in respect of the IUSA and the IUSA Works.

IUSA Works Specifications has the meaning given in the Construction Works Interface Agreement.

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

IUSA Works has the meaning given in the Construction Works Interface Agreement.

Land Access Rights means the Easements, leases and other land access rights which the IUSA Provider was required to obtain in respect of the IUSA under the Construction Works Interface Agreement.

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

Network Access Services means services of the type provided by PWC by use of the Electricity Network including ongoing connection services, the supply of electricity at exit points, the acceptance of electricity at entry points and any other services PWC is authorised to provide under Electricity Laws.

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

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

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

Original Defects Liability Period means a period of 2 years from the Commencement Date.

Personnel means, in relation to a party:

- (a) the directors, officers, employees and agents of the party; and
- (b) all natural persons engaged by the party in connection with or relating to this Agreement, including a subcontractor, consultant or supplier.

Power System Controller means the system controller under the ERA.

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

PWC Connection Assets has the meaning given in the Construction Works Interface Agreement.

PWC Service Items means all of the facilities, systems, equipment, tools and materials that are required to be utilised by PWC in order for it to perform the Services, other than those facilities, equipment, tools and materials that this Agreement states will be provided by the IUSA Provider.

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

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

Service Charge means the charge payable by the IUSA Provider for the provision of the Services, as specified in Schedule 3 and as that charge may be varied in accordance with this Agreement.

Service Costs Event means the occurrence of one or more of the following events or circumstances:

- (a) a Change in Law occurs after the Execution Date or such other date specified in Schedule 1;
- (b) a Change in Imposts occurs after the Execution Date or such other date specified in Schedule 1;
- (c) a change to any Approval (whether held by PWC or the IUSA Provider) or the terms of a Land Access Right after the date on which it is obtained (where, in respect of an Approval a change may include a variation in the terms of an Approval or the cancellation or the substitution of a new Approval);
- (d) the occurrence of a Force Majeure Event (whether affecting PWC or the IUSA Provider);
- (e) a failure by the IUSA Provider to comply with this Agreement;
- (f) PWC suspends the performance of the Services in circumstances permitted by this Agreement; and
- (g) any other event or circumstances specified in Schedule 1.

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

Services means:

- (a) the management, operation, repair and maintenance of the IUSA and the IUSA Site except for:
 - (i) the provision of the spares, materials or consumables required to be provided by the IUSA Provider under Schedule 5;
 - (ii) the reinstatement or rectification of the IUSA in the circumstances referred to in clause 10.1;
 - (iii) any obligation of the IUSA Provider under this Agreement or the Construction Works Interface Agreement;
 - (iv) any work, activity or matter listed in Schedule 1; and
- (b) any Additional Service.

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

Subsequent Connection and Supply Contract means, in relation to a Subsequent Customer, the agreement between PWC and the Subsequent Customer which provides for (among other things) PWC to provide certain Network Access Services to the Subsequent Customer.

Subsequent Customer means, in relation to a Subsequent Customer Facility, the owner or operator of that Subsequent Customer Facility.

Subsequent Customer Facility means a facility which is (or is to be) connected to the Electricity Network via the IUSA after the Execution Date.

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

Term means the period referred to in clause 3.

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

1.2 Interpretation

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

- (a) The singular includes the plural and vice versa and a reference to a gender includes all other genders.
- (b) A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Government Agency.
- (c) A reference to:
 - (i) a person includes that person's successors, permitted substitutes and permitted assigns;
 - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;

- (iii) this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;

- (iv) "agreement" includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to "document" includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;

- (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;

- (vi) "include", "including" and "for example", and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;

- (vii) dollars or \$ is to Australian dollars;

- (viii) time is to the time in Darwin; and

- (ix) a day, month, quarter or year means a calendar day, month, quarter or year respectively.

- (d) A reference to PWC's published standards includes any PWC published standard, guideline or procedure on PWC's website.

- (e) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.

- (f) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

- (g) A period of time expressed to commence:

- (i) before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and

- (ii) on a given day, or on the day of an act or event, is to be calculated inclusive of that day.

1.3 Headings

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

1.4 Multiple parties

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately,

Operative Part

PART 1 – DEFINITIONS, INTERPRETATION AND CONDITIONS PRECEDENT

so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.5 Payments

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

2. Conditions Precedent

2.1 Conditions

- (a) This Agreement, other than clauses 1, 18, 19, 20, 21, 22, 23, 24 and this clause 2, will be of no force or effect unless and until each of the Conditions have been satisfied or waived.
- (b) The Conditions, and the party responsible for satisfying each Condition, are as specified in Schedule 1.
- (c) A Condition is for the benefit of the party specified in Schedule 1.

2.2 Responsibility for Satisfying

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

2.3 Notification

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

2.4 Effect of Satisfaction or Waiver

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

- (c) This Agreement becomes unconditional upon the satisfaction or waiver of all of the Conditions.

2.5 Termination

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

3. Term

The term of this Agreement will commence on the Control Transfer Date and will continue in force and effect until the first to occur of:

- (a) the Expiry Date;
- (b) the termination of this Agreement in accordance with the terms of this Agreement; and
- (c) the parties mutually agreeing to terminate this Agreement.

Operative Part PART 2 – USE AND CONTROL OF IUSA AND IUSA SITE

4. Use and Control of IUSA

4.1 Obligation to ensure Control Transfer Date corresponds to Handover Date

- (a) The IUSA Provider must ensure PWC is, in accordance with the requirements of Schedule 6, provided with all manuals, plans, passwords, keys, drawings, documents, access and rights to hardware, software and firmware and other items specified in Schedule 6 within 1 Business Day of issue of a Handover Certificate.
- (b) (Nothing in clause 4.1(a) relieves the IUSA Provider of the obligation under the Construction Works Interface Agreement to take such steps as required to obtain issue of a Handover Certificate.

4.2 Assumption of Operational Control

On and from the Control Transfer Date until the end of the Term, PWC will assume operation and control of the IUSA.

4.3 Unrestricted use of IUSA and IUSA Site

The IUSA Provider:

- (a) grants PWC an exclusive, irrevocable licence to access and use the IUSA, and the IUSA Site, during the Term;
- (b) must not in any way prevent or restrict PWC from:
 - (i) accessing and using the IUSA and the IUSA Site during the Term;
 - (ii) undertaking and performing the Services; or
 - (iii) exercising any right conferred upon PWC under this Agreement; and
- (c) must not, without PWC's prior written consent, amend the terms of the Land Access Rights.

4.4 Utilisation of IUSA

The IUSA Provider acknowledges and agrees that, during the Term, PWC will:

- (a) be entitled to treat the IUSA as forming part of the Electricity Network in all respects (notwithstanding that PWC is not the owner of the IUSA);
- (b) operate and control the IUSA to provide Network Access Services to the Customer and any Subsequent Customers;
- (c) be entitled to:
 - (i) connect, disconnect and reconnect the Customer and any Subsequent Customers to the IUSA; and
 - (ii) provide Network Access Services to the Customer and those Subsequent Customers using the IUSA,

in accordance with:

- (iii) the NT NER and all other applicable Laws;

- (iv) the Connection and Supply Contract; and
- (v) the Subsequent Connection and Supply Contracts; and

- (d) be entitled to alter, replace, augment and perform works on the IUSA:
 - (i) in order to connect Subsequent Customers to the Electricity Network; or
 - (ii) as PWC otherwise, in good faith, considers appropriate given PWC's obligations under Electricity Laws,

without the IUSA Provider's consent.

4.5 Intellectual Property

- (a) The IUSA Provider grants to PWC a perpetual, irrevocable, transferable, world-wide licence (capable of being sub-licensed) to use, reproduce, modify or adapt the Intellectual Property Rights in the IUSA Documents as required to provide the Services or to exercise any of the rights conferred on PWC under this Agreement. This clause does not extend to the Intellectual Property Rights of those entities which manufacture or distribute the actual equipment which makes up various components of the IUSA.
- (b) The IUSA Provider must ensure such documents are executed or entered into as PWC requires to ensure the effective transfer or grant of the Intellectual Property Rights referred to in clause 4.5(b) and that PWC is able to utilise and modify all documents the subject of those rights. Such documents required to be entered into may include moral rights waivers by the authors of any design or other documents.
- (c) The IUSA Provider must ensure that:
 - (i) the IUSA does not infringe the Intellectual Property Rights of any person;
 - (ii) its compliance with this clause 4.5 does not infringe the Intellectual Property Rights of any person.

4.6 Information and co-operation

- (a) Each party will:
 - (i) give to the other party all reasonable assistance and information; and
 - (ii) co-operate and liaise with the other party,
 so as to allow the other party to comply with any obligations imposed upon that other party under this Agreement or which is otherwise reasonably requested by the other party in connection with this Agreement.
- (b) Each party must notify the other party as soon as reasonably practicable if it becomes aware of any error or omission in any information provided by it or matter which has caused that information to cease to be correct.

Operative Part

PART 2 – USE AND CONTROL OF IUSA AND IUSA SITE

5. Title and Risk in IUSA

5.1 Title and risk remains with IUSA Provider

- (a) Subject to clause 5.1(b), title and ownership in the IUSA remains with the IUSA Provider at all times during the Term.
- (b) Any extension, enhancement or augmentation to the IUSA will be owned by PWC provided that extension, enhancement or augmentation can be separated from the IUSA without causing damage to the IUSA (other than minor and incidental damage which is readily repairable). Any other alterations to the IUSA during the Term will be owned by the IUSA Provider.
- (c) To avoid doubt any electricity infrastructure outside the boundaries of the IUSA as described in Schedule 2 does not form part of the IUSA.
- (d) Prior to the Control Transfer Date risk in the IUSA will be as determined by the Construction Works Interface Agreement.
- (e) On and from the Control Transfer Date and at all times during the Term, the IUSA Provider (subject to clause 5.1(f)) bears the risk of:
 - (i) loss or damage to the parts of the IUSA owned by the IUSA Provider (including loss or damage caused by ordinary wear and tear); and
 - (ii) fault, failure, malfunction, irregularity or defect in any component forming part of the IUSA which is owned by the IUSA Provider,

other than to the extent such loss, damage, fault, failure, malfunction or defect was directly caused by the negligence of PWC or PWC's breach of this Agreement.

- (f) Where PWC exercises its right to alter or augment the IUSA pursuant to clause 4.3(d), PWC will bear the risk of:
 - (i) loss or damage to those components added to the IUSA as a consequence of the exercise of that right; and
 - (ii) any fault, failure, malfunction, irregularity or defect in any such component.

5.2 No Encumbrance

The parties agree that nothing in this Agreement creates an Encumbrance in favour of the IUSA Provider which is registrable pursuant to the PPSA and agree that no such Encumbrance is to be registered at any time during the Term.

6. IUSA Provider's Access Rights

6.1 Access Rights

During the Term, PWC will provide the IUSA Provider and its Personnel with access to the IUSA Site for the purpose of allowing the IUSA Provider to inspect the IUSA and to exercise any of its rights under this Agreement.

6.2 Procedures relating to Access

In exercising its rights of access under clause 6.1, the IUSA Provider must:

- (a) provide PWC with not less than 10 Business Days prior notice, which notice must set out the reasons for the IUSA Provider requiring access;
- (b) only access the IUSA at a time convenient to PWC acting reasonably;
- (c) at all times be accompanied by representatives of PWC;
- (d) comply with all directions of those representatives;
- (e) reimburse PWC its costs of providing and supervising such access; and
- (f) comply with Schedule 4 and any other access procedures issued by PWC from time to time (which may add to or modify the principles in Schedule 4).

Operative Part

PART 2 – SERVICE AND SERVICE CHARGE

7. Provision of Services

7.1 Services

As from the Control Transfer Date PWC will, on and subject to the terms of this Agreement, provide the Services.

7.2 Standards of Services

- (a) PWC will provide the Services:
 - (i) in compliance with Electricity Laws; and
 - (ii) using (to the extent relevant as determined by PWC) the same procedures and protocols as used by PWC to manage, operate, repair and maintain the remainder of the Electricity Network.
- (b) In performing the Services, PWC will exercise its independent discretion as to the most appropriate and effective manner of providing the Services.
- (c) PWC may subcontract the undertaking of the Services to such persons it considers appropriate.

7.3 Provision of PWC Service Items, Personnel and Consumables

PWC will provide or make available:

- (a) all PWC Service Items necessary to perform the Services; and
- (b) (all consumables necessary for the provision of the Services (other any consumable that the IUSA Provider is required to supply under Schedule 5)).

7.4 Spares, spare parts and other IUSA components

- (a) Each party agrees to comply with its obligations in Schedule 5.
- (b) If any spare, spare part or component is not provided to PWC by the IUSA Provider in breach of Schedule 5, PWC may, in providing the Services and at the IUSA Provider's cost, utilise any spare, spare part or component that PWC is able to source from its own stock or from a third party.

8. Service Charge and Chargeable Costs

8.1 Service Charge

- (a) The amount payable by the IUSA Provider for the Services is the Service Charge as set out in Schedule 3.
- (b) The Service Charge is subject to:
 - (i) escalation in the manner set out in Schedule 3; and
 - (ii) adjustment in the circumstances set out in clause 8.2.
- (c) The IUSA Provider must pay the Service Charge at the times determined in accordance with Schedule 3.

8.2 Variations to Service Charge

- (a) The Service Charge has been determined by PWC based upon the information provided by the IUSA Provider to PWC, both directly and indirectly. If this information is inaccurate then PWC may:
 - (i) revise the Service Charge to reflect the level the Service Charge would have been set at had accurate information been provided to PWC; and
 - (ii) except to the extent recovered by clause 8.2(a) (i), charge the IUSA Provider for any costs incurred by PWC due to the provision of that inaccurate information.
- (b) Where PWC's costs of undertaking the Services are increased by one or more Service Costs Events PWC may increase the Service Charge. Any such change will be determined in accordance with any applicable requirements of Electricity Laws.
- (c) Without limiting the manner in which PWC's costs of undertaking the Services may be increased, they may be increased due to Changes in Law which require the Services to be undertaken to a different standard, by events which require PWC to apply additional resources to the Services, by events which require PWC to spend more time undertaking the Services than contemplated when determining the Service Charge or by events which increase the payments required to be made by PWC to third parties in respect of the undertaking of the Services.

8.3 Chargeable Costs

- (a) Where PWC provides an Additional Service, PWC may:
 - (i) if a charge is set out in Schedule 3 for that Additional Service, invoice that charge; or
 - (ii) if no such charge is set out, charge its costs incurred in the provision of that Additional Service.
- (b) PWC may charge the IUSA Provider for the additional costs which PWC incurs in providing the Services as a result of the IUSA Provider's failure to comply with this Agreement.

Operative Part

PART 3 – DEFECT LIABILITY, IUSA REINSTATEMENT AND IUSA CHANGES REQUIRED BY CHANGE IN LAW

9. Defects Liability

- (a) For the purposes of this clause 9, a defect in the IUSA Works means any faulty workmanship, any defective goods or materials, software, firmware or hardware or other items comprising all or part of the IUSA or any non-compliance of the IUSA Works with requirements of the Construction Works Interface Agreement.
- (b) If any defect in the IUSA Works is identified during the Original Defects Liability Period then the IUSA Provider must, at PWC's option:
 - (i) rectify that defect within such reasonable period specified by PWC and to PWC's satisfaction; or
 - (ii) reimburse PWC the costs of rectifying the defect.
- (c) What is a reasonable time for the purposes of clause 9(b) will be determined by PWC having regard to all relevant factors, including any safety and legal issues created by the defect and the immediacy of the threat to the Electricity Network and the IUSA. Where the IUSA Provider fails to rectify the defect within the period specified by PWC (or where PWC reasonably forms the view the IUSA Provider will not be able to rectify the defect within that period) then PWC may proceed to undertake the rectification of the defect.
- (d) The IUSA Provider must reimburse PWC the costs PWC incurs in rectifying a defect (whether pursuant to clause 9(b) or clause 9(c)).
- (e) Nothing in this clause 9 limits any other rights, powers or remedies PWC may have against the IUSA Provider or the Contractors in respect of any defect or deficiency in the IUSA Works.
- (f) Shortly before the end of the Original Defects Liability Period PWC will undertake an inspection of the IUSA. The IUSA Provider or a Contractor nominated by the IUSA Provider may attend that inspection. If any defects are identified during that inspection then clauses 9(b) and clause 9(c) will apply to them. Upon completion of the inspection or rectification of any defects identified during that inspection (whichever occurs later) PWC will issue a certificate acknowledging the Original Defects Liability Period has ended. Even if more than 2 years of the Original Defects Liability Period has elapsed the Original Defects Liability Period will not be taken to have ended until such certificate is issued.
- (g) If the IUSA Provider rectifies a defect under clause 9(b), then there will be a further defects liability period in respect of the rectified defect of 12 months from completion of the rectification. Clauses 9(b) to 9(e) will apply to any defect identified during that additional 12 month period. Issue of a certificate under clause 9(f) does not affect the continuing operation of such additional 12 month periods.

10. IUSA Reinstatement

10.1 IUSA Reinstatement Obligation

If, during the Term, the IUSA:

- (a) systematically or catastrophically fails; or
- (b) suffers damage which will cost more than the amount specified in Schedule 1 to repair,

the IUSA Provider must (at its cost) reinstate and restore the IUSA, other than to the extent that the relevant failure or event giving rise to the damage or destruction of the IUSA was directly caused by the negligence of or breach of this Agreement by PWC.

10.2 Commence of Reinstatement Works

- (a) The IUSA Provider must commence the reinstatement of the IUSA in accordance with clause 10.1(a) as soon as reasonably practicable following the occurrence of the relevant failure or damage and, in any event, by no later than 60 days after that failure or event (or such other date as the parties may agree).
- (b) Despite clause 10.1 and clause 10.2(a), PWC may, at its absolute discretion, elect to undertake the reinstatement works in which case the IUSA Provider must reimburse PWC its costs of undertaking that reinstatement (as determined in accordance with any applicable requirements of Electricity Laws). PWC may, before it commences such works, require the IUSA Provider to pay to PWC in advance PWC's estimate of the costs of undertaking such works. To the extent the estimate exceeds the actual costs incurred PWC will refund the excess upon completion of the reinstatement works.

10.3 Reinstatement Works

- (a) The works undertaken by the IUSA Provider in the reinstatement of the IUSA must:
 - (i) comply with Good Electricity Industry Practice, all applicable Laws, applicable Australian Standards and all applicable published PWC standards;
 - (ii) be fit for their intended purpose;
 - (iii) be of merchantable quality; and
 - (iv) be undertaken in accordance with any reasonable directions issued by PWC.
- (b) (The directions issued by PWC may include, without limitation, such directions as PWC considers required to preserve the integrity of the Network and minimise interference in supply of electricity to PWC's customers.
- (c) In undertaking the reinstatement works the IUSA Provider must comply with clauses 4.2, 4.4(b), 4.4(c), 4.4(d), 4.4(e), 4.4(f), 4.4(g), 4.6 and 4.7 of the Construction Works Interface Agreement as though

Operative Part

PART 3 – DEFECT LIABILITY, IUSA REINSTATEMENT AND IUSA CHANGES REQUIRED BY CHANGE IN LAW

references in those clauses to the “IUSA Works” were to the reinstatement works and as though reference in clause 4.7(b) to “As a condition to issue of a Handover Certificate” were to “as a condition to PWC approving completion of the reinstated works”.

- (d) The IUSA Provider must provide to PWC such:
- (i) drawings, documents and information in respect of the reinstatement works;
 - (ii) manuals, plans, passwords, keys, access to hardware, software and firmware and other items of the nature set out in Schedule 6,

as required by PWC to enable PWC to verify the reinstatement works have been undertaken in accordance with the requirements of this Agreement and to enable PWC to provide the Services in respect of the IUSA as reinstated.

- (e) The IUSA Provider must, in accordance with the directions of PWC and Electricity Laws, commission and test the reinstated IUSA upon completion of the reinstatement works. The IUSA Provider must reimburse PWC its costs of attending at such commissioning and testing and undertaking any inspection of the reinstated IUSA and the IUSA PWC considers is required.

10.4 Defects Liability

If the IUSA is reinstated by the IUSA Provider under this clause 10:

- (a) the provisions of clause 9 will apply (with the necessary changes) to the works undertaken by the IUSA Provider in reinstating the IUSA, with:
 - (i) a defect being faulty workmanship, any defective goods or materials, software, firmware or hardware or other items comprising all or part of the reinstatement works or any non-compliance of the reinstatement works with requirements of this Agreement; and
 - (ii) the original defects liability period being the 2 year period commencing on the date of energisation of the reinstated IUSA; and
- (b) before commencing the reinstatement works the IUSA Provider must provide Financial Security in accordance with clause 14 (which clause will apply with the necessary changes) which Financial Security must for the amount required by that clause 14.

10.5 Failure of IUSA Provider to undertake works

If the IUSA Provider does not commence work to reinstate the IUSA within the timeframe set out in clause 10.2 or ceases such works before they are complete PWC may, at its absolute discretion, elect to either:

- (a) reinstate the IUSA, in which case clause 10.2(b) will apply; or
- (b) terminate this Agreement by notice to that effect to the IUSA Provider.

11. IUSA Changes required by Change in Laws

- (a) PWC will alter, augment, repair, replace or update any component of the IUSA where required, in PWC's reasonable opinion, as the result of a Change in Law.
- (b) The IUSA Provider must reimburse PWC the costs PWC incurs in altering, augmenting, repairing, replacing or updating any component of the IUSA pursuant to clause 11(a).

Operative Part PART 5 – GENERAL PROVISIONS

12. Payment and Invoicing

12.1 Service Charge

PWC may issue an invoice for the Service Charge at the times the Service Charge becomes due in accordance with clause 8.

12.2 Costs

Where this Agreement requires the IUSA Provider to pay or reimburse PWC's costs or to pay an amount in respect of Additional Services then PWC may issue an invoice to the IUSA Provider for those costs or that amount.

12.3 PWC Costs

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

12.4 Payment

- (a) The IUSA Provider must pay PWC the amount set out in an invoice within 21 days of the date of issue of that invoice.
- (b) If the IUSA Provider fails to comply with clause 12.4(a) then, without prejudice to PWC's other rights, the IUSA Provider must pay interest on any unpaid amount calculated daily at the Interest Rate from 21 days after the date of issue of the invoice, until payment.

12.5 Disputed Invoices

- (a) If the IUSA Provider disputes an invoice the IUSA Provider must nevertheless pay the amount of the invoice by the due date.
- (b) Any amount paid by the IUSA Provider under clause 12.5(a) but which it is subsequently found that PWC was not permitted, by this Agreement, to include in the invoice, must be refunded by PWC with interest calculated daily at the Interest Rate from the date the IUSA Provider paid the amount to the date PWC repays the amount to the IUSA Provider.

12.6 Set Off

- (c) Any rights the IUSA Provider has at common law or in equity to set off payments due to PWC are excluded.

13. GST

- (a) Subject to clause 13(b) and clause 13(c), where any supply occurs under or in connection with this Agreement, the party making the supply (Supplier) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where an amount is payable to the Supplier for a supply under or in connection with this Agreement which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the

supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 13(a).

- (c) Clause 13(a) does not apply to any Service Charge under this Agreement which is expressly described as being expressed on a GST inclusive basis.
- (d) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (e) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (f) All amounts payable under this Agreement are taken to be expressed on a GST exclusive basis unless expressly provided otherwise in this Agreement
- (g) In this clause 13 terms defined in GST Legislation have the meaning given to them in GST Legislation.

14. Financial Security

- (a) The IUSA Provider must provide to PWC the Financial Security in the amount specified in Schedule 1 on or before the Commencement Date.
- (b) The Financial Security must be an unconditional, irrevocable bank guarantee from a financial institution acceptable to PWC (with an office in Darwin at which the Financial Security may be presented for payment) and otherwise be on terms acceptable to PWC.
- (c) The financial institution providing the Financial Security must have a credit rating of at least A- (Standard & Poor's) or A3 (Moody's Investor Services).
- (d) PWC may call on the Financial Security to recover any amount owing to it under clause 9 or for any amount of loss or damage it suffers or costs or expenses it incurs due to the IUSA Provider's breach of this Agreement.
- (e) The IUSA Provider must ensure that the Financial Security remains in place until the expiry of the Defects Liability Period (including to avoid doubt the additional periods under clause 9(g)).
- (f) The IUSA Provider must not seek to restrain or prevent PWC from calling on the Financial Security, the issuer of the Financial Security from paying any amount pursuant to the Financial Security or PWC from using or applying any amount obtained by it by calling on the Financial Security.
- (g) If the Financial Security ceases to be valid, binding or enforceable, the issuer of the Financial

Operative Part

PART 5 – GENERAL PROVISIONS

Security claims that it is no longer valid, binding or enforceable or the issuer of the Financial Security ceases to have a credit rating of at least the amount referred to in clause 14(c) then the IUSA Provider must within 5 Business Days provide to PWC new Financial Security complying with the requirements of this clause 14.

- (h) If at any time the uncalled amount of the Financial Security is less than the amount required by Schedule 1 (including because PWC has called upon the Financial Security) then the IUSA Provider must within 5 Business Days provide PWC with an additional or replacement bank guarantee so the amount of the Financial Security held by PWC is not less than the amount specified in Schedule 1. Without limiting PWC's other rights, if the IUSA Provider fails to do so, then PWC may call on the Financial Security and hold the amount called down as cash security for the performance of the IUSA Provider's obligations under clause 9.

15. Insurances

15.1 Public Liability Insurance

- (a) The IUSA Provider must effect and maintain a public liability policy with reputable insurers acceptable to PWC covering liability to third parties for all types of loss or damage ordinarily covered by a public liability policy, for the amount set out in Schedule 1.
- (b) The insurance required under clause 15.1(a) must be on an occurrence basis and must be kept and maintained from the issue of the Handover Certificate to the expiry or termination of this Agreement.
- (c) The insurance under clause 15.1(a) must:
- (i) be in the joint names of the IUSA Provider, PWC and all contractors and consultants engaged by PWC in the performance of the Services; and
 - (ii) contain:
 - (A) a cross-liability clause (providing that claims between insureds are covered and that the contract of insurance acts as if it were a separate policy in respect of each insured party); and
 - (B) a waiver of subrogation clause, providing that the insurer waives its rights of subrogation against each insured party.

15.2 Property Damage Insurance

- (a) The IUSA Provider must effect and maintain a policy of insurance (Property Insurance Policy) with reputable insurers acceptable to PWC in respect of the loss or destruction of, or damage to, the IUSA which:
- (i) has a limit of liability that is not less than the replacement value of the USA;
 - (ii) includes PWC as a named insured;

- (iii) has a deductible or excess of not more than \$50,000;
- (iv) provides that the policy operates as if there was a separate contract of insurance covering each insured (subject to there being no increase in the aggregate limit on the insurer's liability);
- (v) contains a waiver of subrogation in favour of PWC;
- (vi) is primary to and without contribution from any insurance which PWC may effect and maintain in respect of the loss or destruction of, or damage to, the IUSA from time to time; and
- (vii) otherwise is on terms acceptable to PWC.

- (b) The Property Insurance Policy must be effected and maintained from the issue of the Handover Certificate until the earlier of ownership of the IUSA vesting in PWC or the expiry of PWC's rights under clause 18.2 to acquire the IUSA.

15.3 Works Policy

- (a) If the IUSA Provider undertakes any reinstatement works under clause 10, the IUSA Provider must take out and maintain, or procure its head contractor to take out and maintain, a contractor's works insurance policy covering the reinstatement costs of the IUSA and the reinstatement works (including design costs and unfixed goods and materials to be incorporated into the relevant works) for the period from the commencement of undertaking of the reinstatement works until their completion or earlier termination of this Agreement.
- (b) The insurance under clause 15.3(a) must be in the joint names of the IUSA Provider, its contractors undertaking the reinstatement works and PWC, for their respective rights and interests and otherwise be on terms acceptable to PWC.

15.4 Other Insurances

The IUSA Provider will keep and maintain all other insurances required by Schedule 1.

15.5 Evidence of Insurances

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

- (a) certificates evidencing that the insurance policies required by this clause 15 have been effected and all premiums have been paid; and
- (b) such other reasonable documentation as PWC may require from time to time to confirm that the insurance policies are valid, current and meet the requirements of this clause 15.

Operative Part PART 5 – GENERAL PROVISIONS

16. Force Majeure

16.1 Effect of force majeure event

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

16.2 Notice obligations

If a party wishes to invoke clause 16.1, it must:

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

16.3 Mitigation of effect of Force Majeure Event

The party invoking clause 16.1:

- (a) must use its reasonable endeavours to mitigate the effects of the Force Majeure Event;
- (b) must use its reasonable endeavours to overcome or remove the Force Majeure Event; and
- (c) will not be required against its will to settle a strike, lock-out or other industrial disturbance by acceding to the demands of the disputants.

17. Termination Rights

17.1 PWC's termination rights

In addition to the termination rights conferred on PWC under any other provision of this Agreement, PWC may terminate this Agreement by notice to the IUSA Provider where:

- (a) the IUSA Provider fails to make a payment under this Agreement by the due date and fails to make such

payment within 7 days of notice from PWC requiring such payment;

- (b) the IUSA Provider breaches clause 14 and does not remedy that breach within 7 days of notice from PWC;
- (c) the IUSA Provider fails to cure any breach of any other material obligation under this Agreement within 60 days of receiving a notice of that breach from PWC;
- (d) an Insolvency Event occurs in relation to the IUSA Provider; or
- (e) the Connection and Supply Contract is terminated for any reason or expires.

17.2 IUSA Provider's termination rights

- (a) The IUSA Provider may terminate this Agreement by giving notice to PWC if PWC fails to cure any breach of a material obligation under this Agreement within 90 days of receiving a notice of the breach from the IUSA Provider.
- (b) Any common law rights the IUSA Provider would otherwise have to terminate this Agreement are excluded.

17.3 Without prejudice

Termination of this Agreement under this clause 17 or any other provision of this Agreement is without prejudice to accrued rights of the parties or any legal or equitable rights that a party may otherwise have with respect to that termination.

18. Events Consequent upon Expiry or Termination

18.1 Disconnection and Removal Right

Upon the expiry or termination of this Agreement, PWC will be entitled to disconnect, dismantle, decommission and remove any of its Equipment from the IUSA Site. The IUSA Provider must reimburse PWC its costs of doing so unless this Agreement was terminated under clause 17.2(a).

18.2 Option to purchase

- (a) Within 30 days of the expiry or termination of this Agreement, PWC may elect to acquire the IUSA for its fair market value. PWC may exercise such option by notice to the IUSA Provider. Such fair market value will exclude any modifications made by PWC to the IUSA unless such modifications were funded by the IUSA Provider and will exclude any parts of the IUSA already owned by PWC.
- (b) If the IUSA Provider owns land upon which the IUSA is located (IUSA Land) PWC may also elect to acquire that land as part of the exercise of the option in which case the fair market value of the land must also be separately determined in accordance with the procedures in this clause 18.2.

Operative Part

PART 5 – GENERAL PROVISIONS

- (c) If PWC exercises its option to acquire the IUSA, then unless the fair market value of the IUSA (and if applicable IUSA Land) is agreed by the parties within 20 days of exercise of the option, PWC must appoint an independent expert to determine the fair market value of the IUSA (and if applicable IUSA Land). The independent expert will be that person agreed by the parties or, in default of agreement within 10 Business Days of PWC first proposing a list of experts, the person determined in accordance with the Resolution Institute Expert Determination Rules.
- (d) The expert must agree to act impartially between the parties and will conduct its determination in accordance with Resolution Institute Expert Determination Rules. The parties will each pay 50% of the costs of the independent expert.
- (e) Within 10 Business Days of the expert's determination PWC may withdraw the exercise of its option:
- (i) as it relates to the IUSA, in which case PWC will not acquire the IUSA or the IUSA Land;
 - (ii) as it relates to the IUSA Land, in which case PWC will still acquire the IUSA but not the IUSA Land.
- (f) PWC may continue to control, operate, maintain and manage the IUSA in accordance with clause 4.3 and 4.4 until:
- (i) expiry of the option in clause 18.2(a) without that option being exercised;
 - (ii) PWC withdraws its exercise of the option to acquire the IUSA under clause 18.2(e)(i); or
 - (iii) PWC acquires the IUSA.
- (g) Upon the fair market value being agreed by the parties or upon the expiry of the 10 Business Day period referred to in clause 18.2(e):
- (i) the IUSA Provider must transfer to PWC good and unencumbered title to the IUSA and to any IUSA Land being acquired by PWC;
 - (ii) if the IUSA Provider owns the land upon which any component of the IUSA is located (and that land is not being transferred to PWC) the IUSA Provider must grant PWC an easement or easements over that land in such form as required by PWC (which form will be consistent with PWC standard practice for easements) and ensure such easement or easements are registered;
 - (iii) the IUSA Provider must transfer to PWC any Land Access Rights not already in the name of PWC;
 - (iv) the IUSA Provider must issue an invoice to PWC for the amount payable by PWC for the IUSA (and if applicable IUSA Land); and
 - (v) PWC must pay that invoice within 21 days of its receipt.
- (h) If the IUSA Provider fails to grant or register an easement as required by clause 18.2(g) then PWC may take such steps it considers required to procure grant or registration of that easement. The IUSA Provider must reimburse PWC its costs of undertaking such steps. The IUSA Provider appoints PWC, or such officer of PWC nominated by PWC, its attorney for the purposes of taking such steps and agrees to ratify any action taken by the attorney.
- (i) The IUSA Provider must pay any stamp duty and other taxes which are imposed in respect of the transfer of the ownership of the IUSA and IUSA Land in accordance with this clause 18 and arrange for any necessary stamping and registration of documents.
 - (j) The IUSA Provider must provide PWC with whatever documents PWC requires from time to time to evidence or further assure its title to the IUSA and any IUSA Land being transferred to PWC, and to confirm the IUSA Provider's compliance with this clause 18. These documents must be in form and substance satisfactory to PWC.
 - (k) The IUSA Provider must ensure there is transferred to PWC all of the right, title, interest and claim the IUSA Provider and its Contractors have under any manufacturers' warranties in relation to the IUSA. The IUSA Provider must ensure there is executed and provided to PWC such documents as PWC requires to evidence and effect that transfer.
 - (l) The IUSA Provider must ensure either that any Intellectual Property Rights in the IUSA and in any designs, plans or other documents relating thereto are transferred to PWC or that PWC is given a perpetual, irrevocable, transferable, world-wide licence (capable of being sub-licensed) to use those Intellectual Property Rights as required to operate, maintain, upgrade, repair, manage and otherwise utilise the IUSA. This clause does not extend to the Intellectual Property Rights of those entities which manufacture or distribute the actual equipment which makes up the IUSA in that equipment.
 - (m) The IUSA Provider must ensure such documents are executed or entered into as PWC requires to ensure the effective transfer or grant of the Intellectual Property Rights referred to in clause 18.2(l) and that PWC is able to utilise and modify all documents the subject of those rights. Such documents required to be entered into may include moral rights waivers by the authors of any design or other documents.
 - (n) If PWC acquires the IUSA then it may retain ownership of any documents or items provided to it by the IUSA Provider relating to the IUSA (including all items listed in Schedule 6) and the IUSA Provider must take such steps as required by PWC to ensure good and unencumbered title to such items vests in PWC.
- ### 18.3 No Acquisition
- (a) If PWC does not elect to acquire the IUSA then upon termination or expiry of this Agreement:
 - (i) the IUSA Provider must, in accordance with PWC's directions, disconnect the IUSA from the Electricity Network;

Operative Part

PART 5 – GENERAL PROVISIONS

- (ii) PWC will return to the IUSA Provider any property of the IUSA Provider in the possession or control of PWC.
- (b) The IUSA Provider must reimburse PWC its costs of overseeing the disconnection of the IUSA (or undertaking the disconnection if the IUSA Provider fails to comply with clause 18.3(a)(i)) and otherwise taking action to make safe the previous area of connection between the IUSA and the Electricity Network.

19. IUSA Provider Warranties

The IUSA Provider represents and warrants to PWC that:

- (a) the IUSA Provider is a corporation validly existing under the laws of the place of its incorporation;
- (b) it will at all times hold all Approvals required for it to own the IUSA;
- (c) it has the power to enter into and perform its obligations under this Agreement;
- (d) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
- (e) the execution and performance by it of this Agreement does not and will not breach a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;
 - (ii) its constitution; and
 - (iii) any other document or agreement to which it is a party; and
- (f) it is and will at all time be the sole owner of the IUSA, and it will not permit any other person to obtain any proprietary interest of any nature in the IUSA nor will it grant any Encumbrance over the IUSA, unless it first has PWC's prior written consent given under clause 21.2;
- (g) the IUSA Provider:
 - (i) does not (and will not) own operate or control a generating facility (as that term is defined in the NT NER);
 - (ii) does not (and will not) own, operate or control a facility (as that term is defined in the NT NER) using electrical energy; or
 - (iii) is not (and will not be) a Related Entity of a person who owns, operates or controls any such generating facility or facility utilising electrical energy,
- (h) that is connected to the IUSA.

20. Liability

20.1 Effect of Legislation

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

20.2 Exclusion of Warranties

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

20.3 Australian Consumer Law Guarantees

- (a) Pursuant to section 64A of the Australian Consumer Law this clause 20.3(a) and clause 20.3(b) apply in respect of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but this clause 20.3(a) and clause 20.3(b) will not apply if a party establishes that reliance on them would not be fair and reasonable. This clause 20.3(a) and clause 20.3(b) prevail over any inconsistent provisions in this Agreement.
- (b) Liability of PWC for failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to:
 - (i) in the case of goods, to any one of the following as determined by PWC:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (D) the payment of the cost of having the goods repaired;
 - (ii) in the case of services, to any one of the following as determined by PWC:
 - (A) the supplying of the services again;
 - (B) the payment of the cost of having the services supplied again.

20.4 Third Party Claims

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

20.5 Network Damage

The IUSA Provider must reimburse PWC any costs and expenses incurred by PWC in rectifying damage to the Electricity Network caused by the IUSA Provider's breach

Operative Part PART 5 – GENERAL PROVISIONS

of this Agreement or the Construction Works Interface Agreement or its negligent act or omission in connection with this Agreement (including, without limitation, due to any failure of IUSA Works to comply with the requirements of the Construction Works Interface Agreement).

20.6 PWC Liability

- (a) In no circumstances (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) is PWC liable to the IUSA Provider for any Consequential Loss.
- (b) PWC's aggregate liability to the IUSA Provider for all acts, omissions or events under this Agreement (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) is capped at the amount specified in Schedule 1 as the PWC Liability Cap.
- (c) Without limiting clause 20.6(a) or clause 20.6(b), PWC's liability to the IUSA Provider for any damage caused by PWC to the IUSA is limited to an obligation of PWC to rectify that damage.
- (d) PWC has no liability under this Agreement (whether for breach of contract, in tort (including in negligence), in equity, under statute or on any other basis whatsoever) for any act or omission performed by PWC in its capacity as Power System Controller or performed by PWC in connection with PWC providing advice, services or assistance to or acting in accordance with the directions of the Power System Controller.

20.7 IUSA Provider Liability

- (a) Subject to clause 20.7(b) the IUSA Provider is not liable to PWC under this Agreement for any Consequential Loss.
- (b) Clause 20.7(a) does not limit the IUSA Provider's liability:
 - (i) to reimburse or pay PWC any costs, where the IUSA Provider is required to pay or reimburse those costs pursuant to an express provision of Agreement;
 - (ii) for any liability of PWC to third parties for losses of the nature described in clause 20.7(a);
 - (iii) for any deliberate breach of this Agreement, gross negligence or wilful misconduct;
 - (iv) for any breach of Laws; or
 - (v) to the extent the IUSA Provider has insurance in place which provides indemnity for such amounts (or would have had such insurance in place or would have received such indemnity had the IUSA Provider complied with its insurance obligations under this Agreement).

21. Assignment and novation

21.1 Dealings with this Contract by the IUSA Provider

The IUSA Provider must not:

- (a) assign, transfer, novate or deal with any of its rights or obligations under this Agreement; or
- (a) grant any mortgage, pledge, charge or otherwise encumber its rights to and interest in this Agreement,

unless the IUSA Provider has PWC's prior written consent, which consent will not be unreasonably withheld or delayed or given on unreasonable conditions.

21.2 Dealings with IUSA

The IUSA Provider must not:

- (a) grant or permit any person to obtain a proprietary interest in the IUSA or any land upon which the IUSA is located; or
- (b) grant an Encumbrance over the IUSA or any land upon which the IUSA is located,

unless the IUSA Provider has PWC's prior written consent, which consent will not be unreasonably withheld or delayed or given on unreasonable conditions. However PWC is not required to give such consent unless satisfied arrangements are in place so there is no adverse impact upon PWC's rights under this Agreement (including its rights to control, use and acquire the IUSA).

21.3 Change in control

- (a) In this clause 21.3, a "Change in Control" occurs in respect of a person where a change occurs in the persons which directly or indirectly:
 - (i) control the composition of the board of that person; or
 - (ii) are directly or indirectly in a position to cast, or control the casting of, more than one-half of the maximum number of votes that may be cast at a general meeting of that person; or
 - (iii) hold more than one-half of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (iv) where that person is a trustee of a unit trust, hold more than one half of the beneficial ownership of the units in the unit trust.
- (b) The IUSA Provider must ensure that no Change in Control of the IUSA Provider occurs without PWC's prior written consent, which PWC will not unreasonably withhold, delay or give on unreasonable conditions.
- (c) Clause 21.3(b) does not apply if:
 - (i) the IUSA Provider is listed on the Australia Securities Exchange or another recognised securities exchange; or

Operative Part PART 5 – GENERAL PROVISIONS

- (ii) the event which causes the Change in Control of the IUSA Provider is a Change in Control of a Related Body Corporate (as defined in the Corporations Act 2001) of the IUSA Provider which Related Body Corporate is listed on the Australian Securities Exchange or another recognised securities exchange.

21.4 Costs

The IUSA Provider must pay PWC costs of considering whether to give consent under clause 21.1, clause 21.2 or clause 21.3 and of preparing and negotiating any documentation executed to give effect to the transactions referred to in those clauses. Such costs include the time of PWC employees at the Standard Rates and external legal costs. The IUSA Provider must pay any stamp duty and other taxes levied upon such documents and the transactions they evidence.

21.5 Dealings with this Agreement by PWC

- (a) PWC may:
 - (i) without the IUSA Provider's consent, assign, transfer or novate PWC's rights and obligations under this Agreement to (or otherwise deal with those rights and obligation in favour of) any person to whom ownership (including an ownership interest as lessee) of the Electricity Network (relevant to the IUSA) has been transferred or which person is authorised by Law to operate that part of the Electricity Network;
 - (ii) without the IUSA Provider's consent, mortgage, pledge, charge or otherwise encumber PWC's rights to and interest in this Agreement; and
 - (iii) otherwise assign, transfer, novate or deal with PWC's rights and obligations under this Agreement with the IUSA Provider's prior written consent, which consent will not be unreasonably withheld or delayed or given on unreasonable conditions.
- (b) PWC may assign, transfer or novate PWC rights and obligations under clause 21.5(a)(i) by notice to the IUSA Provider (which notice may be given personally to the IUSA Provider or may be given by publication on PWC's website or by publication in a newspaper circulating generally within the city of Darwin).
- (c) The IUSA Provider must execute such documentation as reasonably required by PWC to evidence or give effect to any assignment, transfer, novation or other dealing which PWC is entitled to make under clause 21.5(a). PWC must pay any stamp duty and other taxes levied upon such documents and the transactions they evidence.

22. Dispute Resolution

- (a) If a dispute arises between the parties, it will be resolved in accordance with any applicable Laws.
- (b) If no Laws regulate the resolution of the dispute then the parties will negotiate in good faith to resolve the

dispute. If the dispute is not resolved by such good faith negotiations within 10 Business Days of being raised it will be referred to mediation in accordance with the Rules for Mediation of the Resolution Institute.

- (c) Nothing in this clause 22 prevents a party seeking injunctive or declaratory relief from a court or exercising any right under this Agreement.

23. Confidentiality

23.1 This Agreement is confidential

Subject to clause 23.2, each party must keep confidential:

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

23.2 Exceptions

- (a) Despite clause 23.1, Confidential Information may be disclosed by a party receiving that information in the following circumstances:
 - (i) to its employees, its professional advisers or its financiers who require that information for the purpose of carrying out the functions assigned to them by the party;
 - (ii) to its insurers;
 - (iii) with the consent of the party who provided the information, which consent may not be unreasonably withheld;
 - (iv) where the information was already known to it at the time it received it in the manner contemplated by clause 23.1;
 - (v) the information is known publicly other than as a consequence of a breach of clause 23.1 by that party;
 - (vi) to a bona fide prospective purchaser of:
 - (A) its share capital or of any relevant part of its business undertaking; or
 - (B) the share capital of a holding company of that party;
 - (vii) when required by Law (other than section 275(1) of the PPSA) or by the requirements of any stock exchange on which the shares of the party or any of its Related Bodies Corporate are listed;
 - (viii) in connection with the refinancing of any debt of that party or of any holding company of that party;
 - (ix) to any Related Body Corporate;
 - (x) in the case of disclosure by PWC, to any Minister of the Government of the Northern Territory or to any Northern Territory Government Agency;

Operative Part

PART 5 – GENERAL PROVISIONS

- (xi) as necessary to enable a party to claim force majeure under another contract or to enable a party to deal with any claim that it is in breach of another contract; or
 - (xii) as required to discharge a party's obligations under this Agreement or to exercise its rights under this Agreement.
- (b) Except in the case of clause 23.2(a)(iii), clause 23.2(a)(iv), clause 23.2(a)(v) and clause 23.2(a)(vi), a party disclosing Confidential Information under clause 23.2 must use its reasonable endeavours to ensure that the persons to whom it discloses that information undertake to keep the information confidential.

23.3 Announcements

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

24. Miscellaneous

24.1 PWC rights and powers at law

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

24.2 Power System Controller

Without limiting clause 24.1, nothing in this Agreement limits PWC's rights and powers in its capacity as Power System Controller or as operator of the Northern Territory wholesale electricity market.

24.3 Interaction with applicable law

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

24.4 Exercise of PWC rights

Unless this Agreement expressly requires otherwise and subject to Law:

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

24.5 Waiver

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

24.6 Entire Agreement

- (a) This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to any of the matters to which this Agreement relates.
- (b) Each of the parties covenants and irrevocably acknowledges that it has not been induced to enter into this Agreement by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person including the other party, other than as expressly recorded in this Agreement.
- (c) The provisions of clause 24.6(a) and clause 24.6(b) will operate and remain in full force and effect, except in the case of fraud by a party to this Agreement.
- (d) Clause 24.6(a) does not limit the operation of the Construction Works Interface Agreement.

24.7 Amendment of Agreement

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

24.8 Governing Law and Jurisdiction

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

24.9 Notices

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

- (a) must be in writing;
- (b) must be addressed as set out in Schedule 1;
- (c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by email in accordance with clause 24.10, by hand or posted by prepaid priority post to the address, or sent by fax to the number, of the addressee; and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third Business Day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the tenth Business Day after the date of posting by airmail;

Operative Part

PART 5 – GENERAL PROVISIONS

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

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

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

24.10 Notices sent by email

- (a) Any communications may be sent by email:
- (i) to the relevant email address set out in Schedule 1 or the email address last notified by the intended recipient to the sender; and
 - (ii) where the sender keeps an electronic or printed copy of the communication.
- (b) A communication sent under clause 24.10(a) will be taken to be duly received:
- (i) on return of a receipt produced by the system to which the email was sent which indicates that the email was sent to the email address of the recipient; or
 - (ii) where no return receipt is produced by the recipient's email system and the sender has not otherwise received a notification that the email was unable to be delivered, by the end of the day the email was sent if prior to 5pm on a Business Day and otherwise the next Business Day.

24.11 Further assurance

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

24.12 Merger

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

24.13 Remedies

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

24.14 Costs

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

24.15 Duty

Except where expressly provided otherwise in this Agreement, the IUSA Provider must pay any duty (including, to the extent permitted by law, any fine or penalty) payable in respect of this Agreement, any document executed under it or any dutiable transaction evidenced, effected or required in connection with it. If a party other than the IUSA Provider pays any duty payable by the IUSA Provider under this clause 24.15, the IUSA Provider must pay that amount to the paying party on demand.

24.16 Indemnities

Unless this Agreement provides otherwise:

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

24.17 Severance

If a provision of this Agreement would, but for this clause 24.17, be void, unenforceable or illegal in a jurisdiction:

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

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this Agreement. This clause 24.17 has no effect if its operation alters the basic nature of this Agreement or is contrary to public policy.

24.18 Accrued rights

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

24.19 Clauses surviving termination

Clauses 12, 18, 20, 22, 23, and 24 survive termination or expiry of this Agreement as do any other clauses that are by their nature intended to survive the termination or expiry of this Agreement.

24.20 Counterparts

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

Operative Part

PART 5 - GENERAL PROVISIONS

24.21 Authority of signatory

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

Schedule 1 Contract Particulars

Table 1 Conditions

Condition	Party Responsible for Satisfying	Party for whose benefit Condition is included	Date for Satisfaction

Table 2 IUSA Site

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Table 3 Other Particulars

Expiry Date	
Activities and matters excluded from the scope of the Services (see paragraph (a) of the definition of Services)	
Additional Service	
Date for Change in Law and Change in Imposts	
Additional Service Costs Events (see paragraph (g) definition)	
Reinstatement threshold (see clause 10.1(b))	
Financial Security (see clause 14)	
PWC Liability Cap (see clause 20.6(b))	

Table 4 Insurance Requirements

Type of Insurance	Limits of Indemnity	Other Requirements

Schedule 1 Contract Particulars

Table 5 PWC Notice Details

Delivery Address	
Postal Address	
Email	
Facsimile	

Table 6 IUSA Provider Notice Details

Delivery Address	
Postal Address	
Email	
Facsimile	

Schedule 2 IUSA

Item 1: Description of IUSA:

[]

Item 2: Agreed Boundaries and Physical Connections

[Cross-reference to additional annexure as required]

Schedule 3 Service Charge

Item 1 - Service Charge

[]

Item 2 - Escalation of Service Charge

[]

Schedule 4 Access Conditions

Access Times

Except where PWC otherwise approves, the IUSA Provider may only access the IUSA Site during normal business hours.

Site Procedures

The IUSA Provider must ensure that it and its Personnel comply with all site procedures communicated to the IUSA Provider by PWC.

Occupational Health and Safety

The IUSA Provider must ensure that it and its Personnel comply with all occupational health and safety laws, and any lawful directions issued by PWC from time to time concerning occupational health and safety issues.

The IUSA Provider must immediately notify PWC if an accident involving its Personnel occurs on the IUSA Site or in relation to any of its Equipment.

Environment

The IUSA Provider must ensure that it and its Personnel comply with all environmental laws, and any lawful directions issued by PWC from time to time concerning environmental issues.

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

The IUSA Provider must immediately notify PWC of the existence of any environmental hazard or the occurrence of any environmental incident which has or may potentially impact upon PWC or the IUSA.

Other Conditions

The IUSA Provider must:

- (a) ensure that, while accessing the IUSA Site, its Personnel:
 - (i) do not impede PWC's provision of the Services or PWC's ability to comply with applicable Law or this Agreement; and
 - (ii) do not interfere with or damage any plant, materials, stores, or any other property on the IUSA Site; and
- (b) allow PWC to supervise the IUSA Provider's or its Personnel's activities and conduct when accessing the IUSA Site, but any such supervision will not relieve the IUSA Provider from responsibility for its activities.

Schedule 5 Spares, Spare Parts and Other IUSA Components

[Schedule to reflect agreed position with respect to the provision of spares, spare parts and other IUSA components]

1 PWC's obligations

[]

2 IUSA Provider's obligations

[]

Schedule 6 Items to be provided as a condition to Control Transfer Date

All items must comply with the requirements set out below and otherwise be in a form satisfactory to PWC acting reasonably

Execution

Executed as a deed

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

Signature

Signature

Full name (BLOCK LETTERS)

Full name (BLOCK LETTERS)

Position

Position

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

Signature of Director

Signature of Director/Secretary

Full name
(BLOCK LETTERS)

Full name
(BLOCK LETTERS)