



# **Power and Water Corporation Purchase and Removal of Goods – Standard Terms**

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**Contract Details**

Item #	Reference	Detail				
1.	<b>Contract No.</b>	[Insert RFT number]				
2.	<b>RFT</b>	[Insert RFT title]				
3.	<b>PWC</b> (including address for notices under clause 19.1)	<p><b>Power and Water Corporation</b> <b>(ABN 15 947 352 360)</b></p> <p>Attention: Chief Procurement Officer</p> <p>Address: GPO Box 1921 Darwin NT 0801</p> <p>Email: <a href="mailto:ChiefProcurementOfficer.PWC@powerwater.com.au">ChiefProcurementOfficer.PWC@powerwater.com.au</a></p>				
4.	<b>PWC Representative</b> (Clause 8.1)	<p>Name: [Insert name of Contract owner]</p> <p>Phone: [Insert phone number]</p> <p>Email: [Insert email address]</p>				
5.	<b>Buyer</b> (including address for notices under clause 19.1)	<p>[insert full name]</p> <p>[insert ABN/ACN]</p> <p>Address: [insert address]</p> <p>Email: [insert email]</p>				
6.	<b>Buyer Representative</b> (Clause 8.2)	<p>Name: [Insert name]</p> <p>Phone: [Insert phone number]</p> <p>Email: [Insert email address]</p>				
7.	<b>Deposit</b> (Clause 3.1(a))	<p>Is a Deposit required?</p> <p><input type="checkbox"/> Yes, as follows:</p> <table border="1"> <tr> <td><b>Amount</b></td> <td>\$( [insert amount of the deposit] ) (inc GST)</td> </tr> <tr> <td><b>Account Details</b></td> <td>                     Account Name: [insert]                      BSB: [insert]                      Account Number: [insert]                      Reference: [insert]                 </td> </tr> </table> <p><input type="checkbox"/> No, not applicable.</p>	<b>Amount</b>	\$( [insert amount of the deposit] ) (inc GST)	<b>Account Details</b>	Account Name: [insert] BSB: [insert] Account Number: [insert] Reference: [insert]
<b>Amount</b>	\$( [insert amount of the deposit] ) (inc GST)					
<b>Account Details</b>	Account Name: [insert] BSB: [insert] Account Number: [insert] Reference: [insert]					
8.	<b>Goods</b> (Clause 1.1)	[Insert a description of the Goods to be purchased and removed under this Contract]				

<b>9. Date for Removal</b> (Clause 6.3(a))	[Insert the date the Goods need to be removed on and, where relevant, the timeframe from this date that the Goods need to be removed within]						
<b>10. PWC's Premises</b> (Clause 6.1(a))	[Insert the address and any other description of where the Goods are to be removed from]						
<b>11. Invoicing</b> (Clause 4.1)	<p>PWC will be entitled to invoice the Purchase Price (less any Deposit paid in accordance with clause 3.1):</p> <p><input type="checkbox"/> on the issue of the Notice of Acceptance</p> <p><input type="checkbox"/> [30] days after the issue of the Notice of Acceptance</p> <p><input type="checkbox"/> [30] days prior to the Date for Removal</p> <p><input type="checkbox"/> on the Date for Removal</p> <p><input type="checkbox"/> [30] days after the Date for Removal</p> <p><input type="checkbox"/> as specified below:</p> <table border="1" data-bbox="600 824 1461 1032"> <thead> <tr> <th data-bbox="600 824 1038 891">Purchase Price details:</th> <th data-bbox="1038 824 1461 891">Date Entitled to invoice:</th> </tr> </thead> <tbody> <tr> <td data-bbox="600 891 1038 958">[insert]</td> <td data-bbox="1038 891 1461 958">[insert]</td> </tr> <tr> <td data-bbox="600 958 1038 1032"></td> <td data-bbox="1038 958 1461 1032"></td> </tr> </tbody> </table>	Purchase Price details:	Date Entitled to invoice:	[insert]	[insert]		
Purchase Price details:	Date Entitled to invoice:						
[insert]	[insert]						
<b>12. Time for Payment</b> (Clause 4.2(a))	<p>The Buyer must pay the Purchase Price (less any Deposit paid in accordance with clause 3.1) to PWC:</p> <p><input type="checkbox"/> in full on receipt of an invoice from PWC</p> <p><input type="checkbox"/> in full [insert] days of issue of invoice by PWC</p> <p><input type="checkbox"/> in full on the Date for Removal</p> <p><input type="checkbox"/> as follows:</p> <table border="1" data-bbox="600 1413 1461 1653"> <thead> <tr> <th data-bbox="600 1413 1038 1514">Payment details:</th> <th data-bbox="1038 1413 1461 1514">Amount of Purchase Price to pay:</th> </tr> </thead> <tbody> <tr> <td data-bbox="600 1514 1038 1581">[insert]</td> <td data-bbox="1038 1514 1461 1581">[insert]</td> </tr> <tr> <td data-bbox="600 1581 1038 1653"></td> <td data-bbox="1038 1581 1461 1653"></td> </tr> </tbody> </table>	Payment details:	Amount of Purchase Price to pay:	[insert]	[insert]		
Payment details:	Amount of Purchase Price to pay:						
[insert]	[insert]						
<b>13. Special Conditions</b> (Clause 19.13)	<p>Are Special Conditions applicable to this Contract?</p> <p><input type="checkbox"/> Yes, as set out in Attachment 1</p> <p><input type="checkbox"/> No, not applicable.</p>						

## **TERMS AND CONDITIONS**

### **1. CONTRACT**

#### **1.1 Formation of Contract**

The Parties acknowledge and agree that, upon PWC issuing a Notice of Acceptance to the Buyer, a binding contract is formed between the Parties in relation to:

- (a) the sale of the Goods by PWC; and
  - (b) the purchase and removal of the Goods by the Buyer,
- on the terms and conditions of this Contract.

#### **1.2 Contract Terms**

- (a) This Contract consists of:
  - (i) the Notice of Acceptance;
  - (ii) the Special Conditions (if any);
  - (iii) the Contract Details;
  - (iv) the Terms and Conditions;
  - (v) the Pricing Schedule;
  - (vi) all documents setting out the scope and/or description of the Goods issued by PWC in the RFT;
  - (vii) any other documents comprising the RFT; and
  - (viii) any schedules, annexures, appendices or other documents (if any) attached to or referred to in this Contract.
- (b) If there is any conflict or inconsistency between the parts of this Contract, the document listed earlier in clause 1.2(a) prevails to the extent of such conflict or inconsistency.
- (c) The terms and conditions of this Contract, being those contained in the documents described in clause 1.2(a), will apply to the exclusion of any other terms and conditions not contained within the documents described in clause 1.2(a), including any such terms and conditions that are or may be:
  - (i) contained in, or endorsed upon:
    - (A) the RFT Response; and
    - (B) any correspondence or documents issued by the Buyer in connection with this Contract; or
  - (ii) otherwise stated by the Buyer.

### **2. TERM**

This Contract continues until the completion of the Buyer's obligations under this Contract.

### **3. DEPOSIT**

#### **3.1 Payment of Deposit**

- (a) Within two (2) Business Days of PWC issuing a Notice of Acceptance to the Buyer, the Buyer must pay the Deposit to PWC via electronic funds transfer to the account provided in Item 7.

- (b) PWC will hold the Deposit pending completion of the purchase and removal of the Goods in accordance with this Contract.
- (c) The Deposit will vest absolutely in PWC by virtue of the completion of the purchase and removal of the Goods in accordance with this Contract and without the need for any direction authorising such vesting or any other notification.

### **3.2 Repayment of Deposit**

Except as otherwise provided in this Contract, if the purchase and removal of the Goods is not completed for any reason other than the default of the Buyer, then the Deposit will be refunded to the Buyer without deduction.

## **4. CHARGES AND PAYMENT TERMS**

### **4.1 Invoicing**

PWC may invoice the Buyer the Purchase Price at the times or in the manner provided for in Item 11.

### **4.2 Payment of invoices**

- (a) The Buyer must pay PWC's invoices within 21 days of issue of the relevant invoice unless otherwise specified in Item 12.
- (b) If the Buyer disputes an invoice, the Buyer may withhold payment of any amount it disputes in good faith until the dispute is resolved but must pay all undisputed amounts by the due date.

## **5. TITLE AND RISK**

### **5.1 Title**

The parties acknowledge and agree that title to the Goods passes to the Buyer on payment of the Purchase Price in full.

### **5.2 Risk**

Risk in relation to the Goods passes to the Buyer, and the Buyer accepts risk for loss of or damage to the Goods (except to the extent loss or damage is caused or contributed to by the negligent act or omission of PWC), on the earlier of:

- (a) removal of the Goods from PWC's Premises; or
- (b) payment of the Purchase Price.

## **6. REMOVAL OF GOODS**

### **6.1 PWC's Obligations**

Subject to the Buyer complying with this Contract, PWC will:

- (a) make the Goods available for removal by the Buyer from PWC's Premises on the Date for Removal; and
- (b) permit the Buyer to enter PWC's Premises with a transport vehicle to remove the Goods on the Date for Removal.

### **6.2 Removal at Buyer's Cost**

The Buyer will be responsible at its own cost for the removal of the Goods from PWC's Premises including the provision of all resources and equipment necessary to safely remove the Goods from PWC's Premises to the Buyer's transport vehicle.



### 6.3 Time for Removal of Goods

- (a) The Buyer must ensure that all of the Goods are collected and removed from PWC's Premises on the Date for Removal (or such later date as may be agreed in writing between the Buyer and PWC).
- (b) The Buyer must ensure that the Goods are removed from PWC's Premises only during Business Hours. The Buyer will not be permitted to be on PWC's Premises after Business Hours.

### 6.4 Access to PWC's Premises

- (a) PWC may:
  - (i) in the interests of safety, in the event of an emergency, immediately suspend or prohibit access to PWC's Premises or any part of PWC's Premises; or
  - (ii) for any other reasonable purposes, suspend or prohibit access to PWC's Premises or any part of PWC's Premises, at any time by giving at least 5 days' written notice to the Buyer,

and PWC will not be liable to the Buyer for any costs or expenses suffered or incurred by the Buyer as a result of such suspension or prohibition.

- (b) The Buyer must:
  - (i) obtain permission from PWC prior to accessing PWC's Premises; and
  - (ii) unless otherwise agreed in writing by PWC, give PWC at least two (2) Business Days prior written notice each time before accessing PWC's Premises to remove the Goods and must detail in that notice the transport vehicle that will be used to remove the Goods. If PWC, acting reasonably, advises the Buyer that the proposed date or time of entry onto PWC's Premises is inconvenient to PWC for any reason, the Buyer must not enter onto PWC's Premises on that date or at that time (as applicable) but on an alternative date and/or time as advised by PWC.

### 6.5 Buyer's Obligations

- (a) The Buyer must:
  - (i) hold and comply with all licences, authorities, approvals and consents required for the lawful performance of its obligations under this Contract, including all relevant licences whether required under the Laws of the Northern Territory or the Laws of any other jurisdiction to transport the Goods from PWC's Premises to the Buyer's premises;
  - (ii) ensure that the Buyer and all of its employees, servants, contractors and agents requiring access to PWC's Premises have completed the necessary site induction and complied with all PWC's requirements for access to PWC's Premises before accessing PWC's Premises;
  - (iii) ensure that activities of the Buyer and of its employees, servants, contractors and agents on PWC's Premises are carried on at all times in a safe manner, including wearing appropriate personal protective equipment (PPE), and must follow such directions concerning the safety of the activities as PWC may issue;
  - (iv) comply with the requirements of all Laws, PWC's rules and regulations in respect of PWC's Premises and directions given by PWC in respect of PWC's Premises;

- (v) as required by PWC, acting reasonably, make good any damage caused by the Buyer and its employees, servants, contractors and agents to PWC's Premises or any property on PWC's Premises, to the reasonable satisfaction of PWC; and
  - (vi) give notice to PWC as soon as reasonably practicable on becoming aware of an emergency, accident or circumstance likely to be or to cause a danger, risk or hazard to PWC's Premises or any person or property on or in the vicinity of PWC's Premises, whether caused by the Buyer or otherwise.
- (b) The Buyer must not:
- (i) access PWC's Premises other than to remove the Goods and must not leave any material, equipment or rubbish on PWC's Premises;
  - (ii) inconvenience or cause disruption to, or interference with, PWC or any third party users of PWC's Premises;
  - (iii) do or permit to be done anything which might be or become unlawful, immoral or cause annoyance, nuisance, risk, hazard or damage to PWC or any third party users of PWC's Premises;
  - (iv) do or permit to be done anything which might put PWC in breach of Laws or cause damage to PWC's Premises or any property on PWC's Premises; or
  - (v) do anything that will or might constitute a breach of any statutory requirement affecting PWC's Premises or that will or might wholly or in part vitiate any insurance effected in respect of PWC's Premises from time to time.

## **7. SUBCONTRACTING**

- (a) The Buyer must not subcontract, assign, novate, transfer or otherwise dispose of any of its rights and/or obligations under this Contract without the prior written consent of PWC (such consent not to be unreasonably withheld).
- (b) If the Buyer enters into a subcontract with any third party for the performance of any of the Buyer's obligations under this Contract:
  - (i) any such subcontract does not excuse the Buyer from performing the Buyer's obligations under this Contract;
  - (ii) the Buyer must ensure that the subcontractor complies with the Buyer's obligations under this Contract; and
  - (iii) the Buyer is liable for the acts and omissions (including negligent acts and omissions) of the subcontractor as if such acts and omissions were those of the Buyer.

## **8. PARTY REPRESENTATIVES**

### **8.1 Appointment of Representative**

Each Party must:

- (a) appoint a representative under this Contract for the purposes of exercising its powers, duties, discretions and authorities under this Contract; and
- (b) ensure its representative (or their delegate if they are unavailable) is reasonably accessible to the other Party at all relevant times during the Term.

### **8.2 Buyer Representative**

- (a) A direction given by PWC to the Buyer Representative will be regarded as having been given to the Buyer.

- (b) Matters within the knowledge of the Buyer Representative will be regarded as being within the knowledge of the Buyer.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1 Exclusion of Representations and Warranties**

- (a) The Buyer expressly acknowledges and agrees that no warranties, representations, assurances or conditions (other than as are contained in this Contract) are given by or on behalf of PWC in relation to the Goods and all warranties, representations, assurances and conditions (other than as are contained in this Contract) are excluded and negated to the fullest extent permissible at Law.
- (b) The Buyer warrants that it entered into this Contract on the basis of its own enquiries, inspections and investigations, or those of its representatives and advisors independently of any representations, inducements or statements made by or on behalf of PWC which are not included within this Contract.
- (c) Without limiting the generality of clause 9.1(b), the Buyer warrants that unless this Contract states otherwise, it has not been induced to enter into this Contract by any express or implied statement, warranty or representation made by or on behalf of PWC (whether oral, written or otherwise) in respect of anything relating to, or which could have an effect on, the Goods including:
  - (i) the fitness, suitability or adequacy of the Goods for any purpose;
  - (ii) the use of the Goods;
  - (iii) any financial return or income derived or to be derived from the Goods; or
  - (iv) the quantity, quality or the condition of the Goods.

### **9.2 Buyer's Acceptance of Condition**

The Buyer agrees that:

- (a) it is purchasing the Goods on an 'as is where is' basis;
- (b) it has satisfied itself as to the nature, quality and condition of the Goods;
- (c) it has satisfied itself as to the use of the Goods; and
- (d) it accepts the Goods in its present condition and state of repair with all faults and defects (if any) latent and patent.

### **9.3 No Objection**

- (a) The Buyer acknowledges that it has examined or has had the opportunity of examining the Goods prior to entering into this Contract and will not be entitled to make any Claim, requisition or objection in relation to the Goods or rescind or terminate this Contract based on the quality or the condition of the Goods as at the date of the issue of the Notice of Acceptance.
- (b) Clause 9.3(a) does not prevent the Buyer from making a Claim, requisition or objection in relation to the Goods, or from rescinding or terminating this Contract, to the extent that the Buyer can demonstrate that the Goods have been damaged, at no fault of the Buyer, during the period commencing at the time the Notice of Acceptance is issued and ending at the time at which risk in the Goods passes to the Buyer under clause 5.2.

## **10. RELEASE AND INDEMNITY**

- (a) The Buyer releases PWC from any Claim or Loss suffered by the Buyer in connection with the Goods to the extent that such Claim or Loss is not caused by the negligent acts or omission or wilful misconduct of PWC.

- (b) The Buyer hereby indemnifies PWC against all Loss that PWC may sustain or incur as a result, whether directly or indirectly, of:
- (i) any negligent, unlawful or otherwise wrongful act or omission of the Buyer;
  - (ii) injury to or death of a person that was caused or contributed to by the Buyer under or in connection with this Contract; or
  - (iii) any loss, destruction or damage whatsoever to any real or tangible property caused by an act or omission of the Buyer,
- except to the extent caused by any negligent act or omission or wilful misconduct of PWC, its officers, agents or employees.

## 11. COMPLIANCE WITH CONSUMER LAWS

- (a) To the extent, if any, that the terms and conditions of the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law, or other statutory Law prevents PWC from excluding certain liability as set out in this Contract, such liability will be limited to the extent permitted by such Law to one or more of the following in respect of a supply of the Goods, to:
- (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (b) Notwithstanding any other provision of this Contract to the contrary, nothing in this Contract will derogate from any requirement to provide a refund under the Australian Consumer Law.
- (c) If the Buyer is acquiring goods as a “consumer” for the purposes of the Australian Consumer Law, the benefits given by any warranties under this Contract that are a “warranty against defects” (as such term is defined in the Australian Consumer Law) are in addition to any other rights and remedies available to the Buyer under a Law in relation to the Goods to which such warranty relates and, in such case ‘Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure’.

## 12. TERMINATION BY PWC FOR CAUSE

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

- (a) if the Buyer is in Material Breach of this Contract and such breach is incapable of being remedied;
- (b) if the Buyer is in Material Breach of this Contract and such breach is capable of being remedied, but the Buyer fails to remedy the breach within 20 Business Days of the Buyer’s receipt of a notice requiring it to do so;
- (c) if the Buyer breaches clause 16 (**Publicity**);
- (d) if the Buyer is subject to an Insolvency Event; or
- (e) where otherwise permitted pursuant to any terms and conditions of this Contract.

## **13. EFFECT OF TERMINATION**

### **13.1 Rights on Termination**

If PWC terminates this Contract pursuant to clause 12, then PWC may, in addition to any other rights or remedies it may have under this Contract or otherwise at Law, retain the Deposit and:

- (a) sue the Buyer for damages for breach (and at its option retain the Goods); or
- (b) without further notice to the Buyer, resell the Goods in such manner as PWC acting reasonably deems fit.

### **13.2 Accrued Rights**

Termination or expiration of this Contract for whatever reason does not affect the rights and obligations of the Parties which have accrued prior to the date of termination or expiration, including any right to claim damages as a result of a breach of this Contract.

## **14. GST**

- (a) Unless otherwise indicated, the consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract is inclusive of GST, where GST is calculated using the GST Rate at the date of the issue of the Notice of Acceptance.
- (b) The Party making a Supply must provide the Recipient with a tax invoice and/or adjustment note in relation to the Supply prior to an amount being paid by the Recipient under this Contract and must do all things reasonably necessary to enable and assist the Recipient to claim and obtain any Input Tax Credit available to it in respect of a Supply.
- (c) Where the GST Rate is changed after the date of the issue of the Notice of Acceptance, then any amount of consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract which:
  - (i) was specified in this Contract before the change to the GST Rate was announced; and
  - (ii) has not been invoiced at the time such change takes effect,will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate.

## **15. PRIVACY AND CONFIDENTIALITY**

- (a) The Buyer must not (without prior written approval of PWC) use, access, retain or disclose Personal Information that is collected, handled or held by or on behalf of PWC and must comply with (and ensure that all of the Buyer's employees, servants, contractors and agents comply with) the information principles under the *Information Act 2002* (NT), and any code of practice or authorisation under that Act, in the same way and to the same extent as PWC is required to.
- (b) All Confidential Information of the other party obtained or received by a party in connection with this Contract must be kept strictly confidential by the receiving party and must be used only by the receiving party as necessary to exercise its rights or to perform its obligations under this Contract. Any Confidential Information must not be disclosed (other than to that party's employees, servants, contractors, agents and professional advisers on a strict "need-to-know" basis or as may be required by applicable Law, or by PWC to the Northern Territory of Australia, to a Minister or Cabinet, or to the Legislative Assembly of the Northern Territory of Australia or a committee of the Legislative Assembly of the Northern Territory of Australia) without

the prior written consent of the disclosing party. Both parties must keep all Confidential Information secure and must return it to the other party or destroy it on demand.

## **16. PUBLICITY**

### **16.1 Public statements**

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

### **16.2 Reputation**

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

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

### **16.3 PWC name**

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

## **17. DISPUTE RESOLUTION**

### **17.1 Application of this clause and notification of Disputes**

- (a) This clause 17 applies to any dispute or disagreement arising out of or relating to any aspect of this Contract, including any dispute arising out of or relating to:
  - (i) the existence, formation, breach or termination of this Contract;
  - (ii) the correct interpretation of any provision of this Contract; or
  - (iii) any claim in tort, in equity or pursuant to any statute which relates to this Contract,

**(Dispute).**
- (b) A Party must not commence any court proceedings relating to a Dispute unless it has complied with the provisions of this clause 17, except where:
  - (i) a Party seeks urgent injunctive relief; or
  - (ii) the Dispute relates to compliance with this clause 17.
- (c) A Party claiming that a Dispute has arisen must give written notice to the other Party setting out the nature of the Dispute (**Dispute Notice**). The Dispute Notice must set out:
  - (i) reasonable particulars of the matter in dispute; and
  - (ii) the action that the Party issuing the Dispute Notice requires of the other Party in order to resolve the Dispute.

### **17.2 Primary Level Discussions**

- (a) On receipt of a Dispute Notice, the PWC Representative and the Buyer Representative must promptly commence discussions to attempt in good faith to resolve the Dispute (**Primary Level Discussions**).
- (b) The PWC Representative and the Buyer Representative will meet as often as necessary to:

- (i) gather, and (subject to legal professional privilege) furnish to the other, all information with respect to the Dispute which is appropriate in connection with its resolution; and
- (ii) discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute without the necessity of resorting to any formal proceeding.

### **17.3 Secondary Level Discussions**

If the Dispute has not been resolved within 10 Business Days (or such other period as may be agreed by the Parties) after commencement of Primary Level Discussions, the Parties must attempt to resolve the Dispute by holding good faith discussions between PWC's Chief Executive (or his/her authorised delegate) and a representative of the Buyer of commensurate seniority (**Secondary Level Discussions**).

### **17.4 Location**

Where Primary Level Discussions or Secondary Level Discussions require the Parties to meet, the place for that meeting will be in Darwin, Australia, unless the Parties otherwise agree.

### **17.5 Referral to mediation**

- (a) If the Parties are unable to resolve the Dispute within 20 Business Days of the date of a Dispute Notice, a Party may by notice to the other Party refer the Dispute for mediation.
- (b) If a Party refers a Dispute for mediation, the Dispute must be mediated in accordance with, and subject to, the mediation rules of the Australian Commercial Disputes Centre.
- (c) If neither Party refers a Dispute for mediation as contemplated by clause 17.5(a) within 30 Business Days of the date of a Dispute Notice, either Party may commence court proceedings in relation to the Dispute.

### **17.6 Continued performance**

- (a) The Parties will continue performing their respective obligations under this Contract while the Dispute is being resolved, unless and until such obligations are terminated or expire in accordance with the provisions of this Contract.
- (b) Where a Dispute is reasonably foreseeable, each Party must use its best endeavours to ensure that it is dealt with at a sufficiently early stage to ensure that there is minimum effect on the ability of either Party to perform its obligations under this Contract.

## **18. COMPLIANCE WITH RING-FENCING GUIDELINE**

- (a) This clause applies notwithstanding any other clause in this Contract.
- (b) The Buyer acknowledges that PWC must comply with the Ring-Fencing Guideline.
- (c) The Buyer must, and must ensure that its directors, officers, employees, contractors and agents (**Buyer Personnel**):
  - (i) take all necessary steps to understand PWC's obligations under the Ring-Fencing Guideline as they apply to the provision of Goods under this Contract, including attending training from time to time as reasonably required by PWC;
  - (ii) provide the Goods and otherwise conduct themselves in a manner that strictly complies with the obligations (including the non-discrimination and confidentiality obligations) set out in the Ring-Fencing Guideline as if the Buyer was acting as PWC; and

- (iii) not engage in any conduct that, if engaged in by PWC, would breach or be contrary to PWC's obligations under the Ring-Fencing Guideline (including, in particular, the obligations under clause 4 of the Ring-Fencing Guideline).
- (d) The Buyer acknowledges that:
  - (i) the application of the Ring-Fencing Guideline to PWC may change overtime (including, for example, where obligations under the Ring-Fencing Guideline which do not currently apply to PWC commence to apply to PWC); and
  - (ii) the operation of this clause will change accordingly.
- (e) The Buyer must notify PWC in writing as soon as reasonable possible after becoming aware of the occurrence, or the suspected or potential occurrence, of a material breach of the Buyer's obligations under this clause.
- (f) The Buyer must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Goods are provided by the Buyer in a manner that is consistent with the requirements of this clause.
- (g) The Contractor must cooperate with, and promptly provide assistance to, PWC, to the extent reasonably required by PWC to comply with PWC's obligations under the Ring-Fencing Guideline, including any obligation to report or provide information to a regulatory authority, or otherwise cooperate with any investigation conducted by a regulatory authority.
- (h) The Contractor must provide PWC with such written reports, evidence or other information concerning the Contractor's compliance with this clause as may be requested by PWC from time to time.
- (i) The Contractor must make and keep, and must ensure that all Buyer Personnel make and keep, accurate records of the performance of the Contractor's obligations under this clause. PWC will have the right, at no cost to PWC, to inspect and copy any record relating to this clause at any time.
- (j) PWC or its nominated representative has the right (at no cost to PWC) at all reasonable times and on reasonable notice to visit the Buyer's and the Buyer Personnel's premises and audit and inspect all records, procedures and systems of the Buyer and the Buyer Personnel which relate to the Buyer's compliance with this clause. The Buyer must (and must ensure that the Buyer Personnel fully co-operate with PWC in relation to any such audit or inspection).

## **19. GENERAL**

### **19.1 Notices**

- (a) Any notice or other communication required to be given under this Contract (**Notice**) must be in writing and in the English language. Subject to clause 19.1(b), a Notice must be sent to each Party in accordance with the details set out in Items 3 and 5, as updated from time to time.
- (b) A Notice may be sent by email if the relevant Notice is signed by an authorised person, scanned and attached as a PDF or other readable format to an email and sent to the receiving Party's Email Service Address.
- (c) Any Notice is regarded as given and received:
  - (i) if sent by mail: 3 Business Days after it is posted; and
  - (ii) if sent by email:



- (A) when the sender receives an automated message confirming delivery; or
- (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first and provided that, if a Notice is sent by email after 5pm or on a day that is not a Business Day then, unless the sender receives an automated message that delivery failed, notice will be effective at 9am on the following Business Day.

- (d) Where there is a dispute in relation to the provision of a Notice by email, the sender must disclose copies of electronic records or logs to the other Party evidencing that the relevant email has been sent from its IT systems.

## **19.2 Variation**

No variation, alteration, addition or amendment of this Contract will be effective unless they are in writing and signed by each of the Parties.

## **19.3 PWC trustee for its Personnel**

In entering into and obtaining the benefits, rights and remedies under this Contract, including the benefit of the Buyer's obligations and any indemnity given by the Buyer, PWC acts on its own behalf and as trustee for each of its directors, officers, employees, advisors, contractors and agents. Each of PWC's directors, officers, employees, advisors, contractors and agents is entitled to separately and directly enforce against the Buyer the benefits, rights and remedies conferred on PWC by this Contract.

## **19.4 Entire agreement**

- (a) This Contract constitutes the whole agreement between the Parties relating to this Contract's subject matter and, except to the extent expressly included, any standard terms and conditions of the Buyer do not apply.
- (b) Each Party acknowledges that it has not been induced to enter into this Contract by any representation or warranty other than those contained in this Contract and, having negotiated and freely entered into this Contract, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

## **19.5 RFT Response**

- (a) If directed by PWC, the Buyer must comply with the RFT Response to the extent that any matter or thing addressed in the RFT Response is not provided for in this Contract.
- (b) Where the RFT Response is capable of assisting in ascertaining the meaning of a particular provision of this Contract, regard may be had to the RFT Response to:
  - (i) confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account the provision's context in this Contract and the purpose or object underlying this Contract; or
  - (ii) determine the meaning of a provision of this Contract when the provision is ambiguous or obscure.

## **19.6 Rights, delays, etc.**

- (a) The rights, powers, privileges and remedies provided under any provision of this Contract, including under any indemnity, are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Contract or by applicable Law or otherwise.

- (b) No failure by PWC to exercise, nor any delay by PWC in exercising, any right, power, privilege or remedy under this Contract will impair or operate as a waiver of any right, power, privilege or remedy under this Contract in whole or in part.
- (c) No single or partial exercise of any right, power, privilege or remedy under this Contract prevents any further or other exercise of any right, power, privilege or remedy under this Contract or the exercise of any other right, power, privilege or remedy.

#### **19.7 Further assurances**

At any time after the issue of the Notice of Acceptance each of the Parties must, at the request of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the terms and conditions of this Contract.

#### **19.8 Invalidity**

If any provision of this Contract is held to be illegal, void, invalid or unenforceable under the applicable Laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Contract in that jurisdiction is not affected, and the legality, validity and enforceability of the whole of this Contract in any other jurisdiction is not affected.

#### **19.9 Costs**

Unless expressly stated otherwise, each Party must:

- (a) pay its own costs of and incidental to the negotiation, preparation and entry into this Contract; and
- (b) comply with all of its obligations under this Contract at its own cost.

#### **19.10 Relationship of the Parties**

- (a) Nothing in this Contract constitutes, or will be deemed to constitute, a relationship of employer and employee between the Parties, a partnership between the Parties or any Party the agent of the other Party for any purpose.
- (b) Subject to any express provision in this Contract to the contrary, neither Party has any right or authority to and must not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

#### **19.11 Assignment and Novation**

- (a) PWC may assign, novate, transfer, or otherwise dispose of any or all of PWC's rights and/or obligations under this Contract to any third party (including another Government Owned Corporation (as that term is defined by the *Government Owned Corporations Act 2001* (NT)) or government agency) upon notice to the Buyer without the prior consent of the Buyer and, in the case of a novation, PWC, the Buyer and the relevant third party will each execute a novation agreement in a form reasonably prescribed by PWC.
- (b) The Buyer must not assign, novate, transfer, sub-licence or otherwise dispose of any or all of the Buyer's rights and/or obligations under or in connection with this Contract without the prior written consent of PWC (which consent must not be unreasonably withheld).
- (c) The Buyer must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by PWC in connection with any consent sought under clause 19.11(b)

and the investigation of any proposed assignee or new party, whether or not consent is granted.

#### **19.12 Survival**

The following terms will survive the termination or expiry of this Contract:

- (a) clause 3 (**Deposit**);
- (b) clause 10 (**Release and Indemnity**);
- (c) clause 15 (**Privacy and Confidentiality**);
- (d) clause 16 (**Publicity**);
- (e) clause 17 (**Dispute Resolution**);
- (f) clause 11 (**Compliance with Consumer Laws**);
- (g) clause 13 (**Effects of Termination**);
- (h) clause 19 (**General**); and
- (i) any other provision of this Contract which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Contract.

#### **19.13 Special Conditions**

The Parties agree to be bound by any Special Conditions.

#### **19.14 Governing law and jurisdiction**

This Contract is governed by, and must be construed in accordance with, the Laws of the Northern Territory of Australia. Each Party submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia.

### **20. INTERPRETATION**

- (a) In this Contract, unless the context requires otherwise:
  - (i) any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
  - (ii) references to any legislation, statute or statutory provisions include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;
  - (iii) references to clause(s), Schedule(s) and Attachments are references to clause(s), Schedule(s) and Attachments of and to this Contract;
  - (iv) references to any Party include that Party's successors (whether by operation of applicable Law or otherwise) and permitted assigns;
  - (v) any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;
  - (vi) references to the singular include the plural and vice versa;
  - (vii) a reference to time is to Northern Territory time and any references to day mean a period of 24 hours running from midnight to midnight; and
  - (viii) a reference to '\$' or 'dollars' is a reference to Australian dollars.

- (b) The headings and sub headings in this Contract are inserted for convenience only and do not affect the meaning of this Contract.
- (c) If a payment or other act is required by this Contract to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- (d) Where an Item is not completed then that Item will be completed as directed by PWC.

## 21. DEFINITIONS

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

**Australian Consumer Law** means Schedules 1 and 2 of the *Competition and Consumer Act 2010* (Cth) and any other relevant provisions contained in that Act.

**Business Day** means a day which is not Saturday, Sunday, nor a public holiday in Darwin.

**Business Hours** means from 8:00am to 4:30pm on a Business Day.

**Buyer** means the entity as provided for in Item 5.

**Buyer Representative** means the person provided for in Item 6, or any other person named by written notice from the Buyer to PWC to act as the Buyer's representative for the purposes of this Contract.

**Claim** means a claim, demand, proceedings or other action.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is communicated by the disclosing party to the confidant as confidential;
- (c) the confidant knows or ought to know is confidential; or
- (d) relates to:
  - (i) the financial, the corporate and the commercial information of any Party; and
  - (ii) the strategies, practices and procedures of a Party.

**Contract** means this Contract, consisting of the documents listed in clause 1.2(a).

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

**Date for Removal** means the date specified in Item 9.

**Deposit** means the amount specified in Item 7.

**Email Service Address** means:

- (a) in the case of the Buyer, its email address set out in Item 5 or such other email address of which the Buyer gives notice in writing to PWC; or
- (b) in the case of PWC, the email address set out in Item 3 or such other email address of which PWC gives notice in writing.

**Goods** means the goods described in Item 8, which are to be purchased and removed by the Buyer in accordance with this Contract.

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

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

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

**Input Tax Credit** has the meaning assigned to that term in the GST Act.

**Insolvency Event** means any of the following events:

- (a) in the case of a corporation:
  - (i) an application is made to a court for an order or an order is made that the corporation be wound up;
  - (i) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order;
  - (ii) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
  - (iii) except to reconstruct or amalgamate while solvent, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them;
  - (iv) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors;
  - (v) a resolution is passed to wind up or dissolve that corporation;
  - (vi) the corporation is dissolved;
  - (vii) the corporation is or becomes or states that it is insolvent or any of the events mentioned in subsection 459C(2) (a) to (f) inclusive of Part 5.4 of the *Corporations Act 2001* (Cth) occurs in respect of the corporation;
  - (viii) the appointment of an administrator in respect of the corporation or a receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation;
  - (ix) as a result of the operation of Part 5.4 of the *Corporations Act 2001* (Cth) the corporation is taken to have failed to comply with a statutory demand;
  - (x) the corporation is, or makes a statement from which it may be reasonably deduced that the corporation is the subject of an event described in s459C(2)(b) or s585 of the *Corporations Act 2001* (Cth); or
  - (xi) anything analogous or having a substantially similar effect to any of the events specified in subparagraphs (i) to (xi) (inclusive) above has occurred under the Law of any applicable jurisdiction or PWC reasonably believes any of the above has or will occur in the next 6 months;
- (b) in the case of an individual or a partnership:
  - (i) the individual or any partner in the partnership proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of that individual's or that partner's creditors or any class of them;
  - (ii) the individual or any partner in the partnership commits an act of bankruptcy;
  - (iii) in relation to a partnership, the partnership is dissolved or has an administrator appointed under relevant Law; or
  - (iv) anything analogous or having a substantially similar effect to any of the events specified subparagraphs (i) to (iii) (inclusive) above has occurred under the Law

of any applicable jurisdiction or PWC reasonably believes any of the above has or will occur in the next 6 months.

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

**Law** includes:

- (a) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (b) the common law and the law of equity;
- (c) any binding court order, judgement or decree;
- (d) any applicable industry code, policy or standard, whether or not enforceable by law; and
- (e) any applicable direction, policy, rule or order that is given in writing by a regulator, whether or not enforceable by law.

**Loss** means liabilities, losses, damages, expenses and costs (including, but not limited to legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature whether arising in contract or tort (including negligence) or under a statute, including:

- (a) loss of anticipated profits, revenue, savings, loss of opportunity and pure economic loss;
- (b) any other consequential, special or indirect loss or damage.

**Material Breach** means any breach of any of the following clauses:

- (a) clause 3.1(a) (payment of Deposit);
- (b) clause 4.2(a) (payment of invoices); and
- (c) clause 6.3(a) (time for removal of Goods).

**National Electricity Rules** means the 'National Electricity Rules' as defined in the National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA), having force as a law of the Northern Territory under section 6 of the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT).

**Notice of Acceptance** means the written notification and any accompanying documentation sent to the Buyer by PWC advising of acceptance of the RFT Response to purchase and remove the Goods under this Contract.

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

**Personal Information** has the meaning given to it in the *Information Act 2002* (NT), except where the term is used in relation to the *Privacy Act 1988* (Cth) (in which case it has the meaning given to it in that Act).

**Pricing Schedule** means the prices and charges payable to PWC for the purchase of the Goods as provided for in Attachment 2.

**Purchase Price** means the total price for the purchase and removal of the Goods set out, referred to or otherwise calculated in accordance with the Pricing Schedule or as otherwise agreed between the Parties in writing.

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

**PWC's Premises** means the location specified in Item 10.

**PWC Representative** means the person provided for in Item 4, or any other person named by written notice from PWC to the Buyer to act as PWC's representative for the purposes of this Contract.

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

**RFT** means the request for tender or quotation issued by PWC that has the title as provided for in Item 2, including all conditions, annexures, schedules, attachments and addenda to it.

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

- (a) any written response by or on behalf of the Buyer to a request from PWC for clarification or further information given before the issue of the Notice of Acceptance; and
- (b) any written statement made by or on behalf of the Buyer to PWC before the issue of the Notice of Acceptance in relation to the purchase of the Goods.

**Ring-Fencing Guideline** means the Australian Energy Regulator's Electricity Distribution Ring-Fencing Guideline made under clause 6.17.2 of the National Electricity Rules, as that guideline applies in the Northern Territory from time to time.

**Special Conditions** means the special conditions as provided for in Item 13.

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

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

**Attachment 1 Special Conditions**

[insert special conditions or "Not used" if they are provided for in Item 13 or if there are no special conditions]



**Attachment 2 Pricing Schedule**

[Attach RFT Response – Pricing Schedule]