

[Insert date]

[Insert the Supplier's full company name and ACN]

(Attn: [Insert contact's full name])

[Insert address]

[Insert address]

(referred to in this notice as the **Supplier** or **you**)

Dear [Insert contact's first name]

## **SIMPLIFIED TERMS OF SUPPLY OF ICT GOODS AND/OR SERVICES TO PWC**

### **INTRODUCTION**

1. Thank you for agreeing to provide (or make available) to Power and Water Corporation (ABN 15 947 352 360) (**PWC, we, our** or **us**) ICT goods and/or services on a non-exclusive basis and on the terms and conditions set out in this letter and each Order issued under it (together, this **Contract**). Capitalised terms in this Contract have the meaning given in this letter or the relevant Order.

### **ORDERS**

2. This Contract relates to the Goods and Services set out in the initial Order and any subsequent Order PWC may issue. Each Order will specify which type of Order it is.
3. Where an Order is specified to be a one-off or fixed term Order, then PWC appoints the Supplier, and the Supplier agrees, to provide the Goods and Services set out in that Order.
4. Where an Order is specified to be a standing offer Order, then:
  - a) the Supplier irrevocably offers to provide the Goods and Services referred to in that standing offer Order to PWC as and when required by PWC during the term for that Order; and
  - b) the Supplier is only required to provide (and PWC is only obliged to pay for) any such Goods or Services in accordance with any subsequent Order which PWC may issue under the standing offer Order.
5. In respect of any subsequent Order, the charges for the relevant goods and services will be as:
  - a) proposed by the Supplier in response to a request for quotation or a request for tender;
  - b) set out in any relevant previous Order; or
  - c) otherwise agreed,and such subsequent Order will otherwise be in the same or similar form as the initial Order. Each subsequent Order will become binding upon issue by PWC to the Supplier.
6. The initial Order and all subsequent Orders (if any) form part of, and are governed by the terms of, this Contract. Any terms or conditions contained in, referred to, or endorsed upon the Goods or Services or any correspondence, invoices or documents provided by or connected to the Supplier in connection with this Contract do not form part of this Contract, except to the extent expressly specified otherwise in the relevant Order.

7. Notwithstanding any other provision of this Contract:
- a) PWC is not obliged to issue any subsequent Orders to the Supplier or to acquire any minimum volume of Goods or Services from the Supplier;
  - b) PWC has not made any representation or warranty to the Supplier that it will acquire any Goods or Services from the Supplier except as specified in the initial Order issued by PWC; and
  - c) except as required under an Order, the Supplier is not permitted to provide any Goods and Services or entitled to any payment under this Contract.

#### **PANEL CONTRACT ARRANGEMENT**

8. Where an Order is specified to be a standing offer Order – multiple suppliers (panel arrangement), then:
- a) PWC may from time to time issue subsequent orders, requests for quotation or requests for tender to any one or more suppliers on the panel in PWC's sole discretion;
  - b) PWC may suspend the Supplier's appointment to the panel of suppliers at any time, for any reason and for any period by giving written notice to the Supplier;
  - c) PWC may add additional panel members to the panel at any time in PWC's sole discretion; and
  - d) the Supplier will not be entitled to any compensation from PWC as a result of the operation of the panel arrangement, including the exercise by PWC of any of PWC's rights under this clause 8.

#### **GOODS AND SERVICES AND PERFORMANCE**

9. The Supplier must provide the Goods and Services:
- a) in a timely, efficient, diligent, proper and workmanlike manner using reasonable care, skill and diligence;
  - b) in accordance with the Timetable specified in the relevant Order or, if no Timetable is specified, in accordance with the reasonable timeframes specified by PWC;
  - c) in each case using any particular resources or Personnel of the Supplier expressly set out in the relevant Order (e.g. a particular named consultant); and
  - d) otherwise in accordance with this Contract.
10. Legal and beneficial title to (and property in) the Goods passes to PWC on the earlier of: (a) delivery of such Goods to PWC; or (b) payment by PWC for such Goods.
11. The Services must comply with the Specifications, including meeting or exceeding any Key Performance Indicators, stated in the relevant Order. The Services expressly include any related or incidental services not expressly set out in the relevant Order, but which are reasonably required for the proper provision of such Services. The Goods must comply with the Specifications stated in the relevant Order and accord with any samples or demonstrations given.
12. The Supplier must use a sufficient number of suitably trained, qualified, skilled and experienced Personnel to provide the Goods and Services. To assist the Supplier to provide the Goods and Services under a particular Order, PWC will use reasonable endeavours to provide to the Supplier any PWC Resources expressly set out in that Order.
13. PWC may direct the Supplier in writing to vary the Goods and Services, or some aspect of them (such as quantity). The Charges must be adjusted as contemplated in the Order or otherwise: (a) by reference to the value of the variation and the current Charges (for example, if we increase or decrease the number of Goods, the Charges will be adjusted on a *pro rata* basis); (b) in accordance with any updated cost estimate provided by the Supplier and approved by PWC; or (c) in such other manner as the parties may agree at that time in writing.

14. The parties acknowledge and agree that each Order (including the Charges and the Timetable) is prepared on the basis of any Assumptions expressly and clearly set out in that Order. Any other assumptions, considerations or understandings of the Supplier are hereby expressly excluded in full. If any of the Assumptions set out in an Order prove to be materially incorrect and this materially detrimentally impacts the performance of that Order by the Supplier as a consequence, each party must (if requested in writing by the other party) enter into discussions concerning any appropriate amendments to that Order. Any such agreed amendments must be in writing and must be executed in a similar manner to the Order being amended.

#### **SUBCONTRACTING AND ASSIGNMENT ETC.**

15. The Supplier must not subcontract, assign, novate, transfer or otherwise dispose of any or all of its rights and/or obligations under this Contract without the prior written consent of PWC (such consent not to be unreasonably withheld). PWC may assign or novate any or all of its rights or obligations under this Contract by written notice to the Supplier.
16. If the Supplier enters into a subcontract with any third party for the performance of any of its obligations under this Contract, any such subcontract does not excuse the Supplier from performing its obligations under this Contract. The Supplier must ensure that its Personnel comply with the Supplier's obligations under this Contract. The Supplier is liable for the acts and omissions of its Personnel as if such acts and omissions were those of the Supplier itself.

#### **SUPPLY TO THE NTG**

17. The Supplier will, upon an order being placed with the Supplier by the NTG referencing this Contract, fulfil that order on the same terms and conditions as this Contract (as if that order was an Order under this Contract and references to PWC in this Contract were references to the NTG).
18. For the avoidance of doubt, the issuing of an order by the NTG in accordance with clause 17 will create a separate contract between the NTG and the Supplier, and the Supplier acknowledges that: (a) PWC will not be bound by any such contract; (b) the Supplier will have no rights of recourse against PWC in connection with such contract; and (c) any such contract does not alter, limit or otherwise affect in any way this Contract or the Supplier's obligations under this Contract.
19. In this Contract, **NTG** means any of: (a) Northern Territory of Australia (ABN 84 085 734 992) as established under the *Northern Territory (Self-Government) Act 1978* (Cth); (b) any body established by the Administrator or by a Minister of the Northern Territory of Australia, including a department or unit of a department or other authority or body nominated as an "Agency" from time to time in an Administrative Arrangements Order; (c) any incorporated or unincorporated body or organisation over which the Northern Territory of Australia exercises control, whether or not an instrumentality of the Northern Territory of Australia; and (d) any government owned corporation as defined under the *Government Owned Corporations Act* (NT) including any "Subsidiary" (as defined in that Act) of that government owned corporation.

#### **PWC ENTITY BENEFICIARIES OF THE GOODS AND SERVICES**

20. PWC may, at its discretion: (a) allow any PWC Entity to receive and enjoy the benefit of the Goods and Services; and (b) instruct the Supplier to provide some or all of the Goods and Services directly to any PWC Entity.
21. The Supplier acknowledges and agrees that PWC, in entering into and obtaining the benefits, rights and remedies under this Contract (including the benefit of the Supplier's obligations and the indemnities given by the Supplier), acts on its own behalf and as trustee for each relevant PWC Entity and, accordingly: (a) PWC is able to recover from the Supplier all losses, liabilities and costs (including legal expenses on a solicitor client basis) sustained, incurred or suffered by every PWC Entity, as if those losses, liabilities and costs were sustained, incurred or suffered by PWC itself; and (b) each PWC Entity is entitled to separately and directly enforce against the Supplier the benefits, rights and remedies conferred on PWC by this Contract.
22. In this Contract, **PWC Entity** means: (a) every past, present and future "subsidiary" (as that term is defined in the *Government Owned Corporations Act* (NT)) of PWC; and (b) where any part of PWC's operations or businesses that receives the benefit of the Goods and Services under this Contract becomes or is transferred to a separate entity, that separate entity.

## **SUPPLIER TESTING**

23. The Supplier must carry out the Testing set out in the relevant Order (if any) or as reasonably directed by PWC. The Supplier must promptly rectify any defects identified (at its own cost) before repeating the Testing. For clarity, PWC may undertake its own testing, verification or other enquiries as it sees fit.

## **ACCEPTANCE**

24. Unless otherwise specified in the relevant Order, Charges for Services will only be payable once PWC has accepted the relevant deliverables by giving notice to the Supplier when PWC is satisfied that such deliverables conform with the standards, specifications and requirements of this Contract. Such acceptance will not, in itself, constitute evidence that such deliverables comply with the relevant requirements of this Contract, and this clause 24 does not limit the Supplier's obligations or PWC's rights and remedies.

## **REGULATORY OBLIGATIONS AND COMPLIANCE**

25. The Supplier acknowledges that PWC and its operations are extensively regulated. Accordingly, the Supplier agrees to strictly comply with all relevant regulatory obligations stated in the relevant Order (and any amendments or revisions to any such policies notified to the Supplier by PWC from time to time) (**Regulatory Obligations**) and the reasonable directions of PWC.

## **KEEPING OF RECORDS AND AUDIT RIGHTS**

26. The Supplier must provide PWC with such written reports, evidence or information concerning the Goods and Services as may be requested by PWC from time to time.
27. The Supplier must make and keep, and must ensure all subcontractors make and keep, accurate records of the performance of the Supplier's obligations under this Contract. PWC will have the right at no cost to PWC to inspect and copy any record relating to this Contract at any time.
28. PWC or its nominated representative has the right at no cost to PWC at all reasonable times and on reasonable notice to visit the Supplier's and its Personnel's premises and audit and inspect all records, procedures and Systems of the Supplier and its Personnel which relate to the provision of the Goods or Services. The Supplier must (and must procure that its Personnel) fully co-operate with PWC in relation to any such audit or inspection.

## **PRIVACY PROTECTION AND DATA BREACH**

29. The Supplier must: (a) do all things required by PWC to enable PWC to comply with privacy laws, including the *Privacy Act 1988* (Cth) (**Privacy Act**) and the *Information Act* (NT) (**Information Act**); and (b) comply with (and ensure that its subcontractors comply with) the information privacy principles (IPPs) under the Information Act, and any code of practice or authorisation under that Act, in the same way and to the same extent as PWC is required to. The Supplier must process any 'personal information' (as defined in the Privacy Act and the Information Act) it acquires in connection with this Contract in accordance with the privacy laws and the Regulatory Obligations.
30. The Supplier must also, in relation to any such personal information, regularly check for any potential 'eligible data breach' (as defined in the Privacy Act). On becoming aware of any such potential breach, the Supplier must notify PWC as soon as possible (and in any event within 24 hours) and cooperate with PWC in all respects.

## **SECURITY WEAKNESSES OR INCIDENTS**

31. The Supplier must promptly provide PWC with written notice of any security weaknesses or incidents: (a) that may impact or have impacted the Goods or Services or PWC; and (b) in relation to any software utilised by the Supplier in connection with its provision of the Goods or Services. Within 7 days of giving any such notice, the Supplier must provide PWC with a detailed written report setting out the corrective actions planned to address the relevant weaknesses or incidents and to prevent similar weaknesses or incidents from reoccurring.

## **VIRUSES**

32. Without limiting any other obligations under this Contract, the Supplier:

- a) must not (and must ensure that its Personnel do not) introduce any virus into any Goods or deliverables, or PWC's systems; and
- b) must take all steps in accordance with good industry practice to minimise the risk of any contamination of any Goods or deliverables, or PWC's systems, including by implementing security procedures, firewalls and anti-virus detection and protection tools in accordance with good industry practice.

33. If a virus is introduced by the Supplier or its Personnel which affects any Goods or deliverables, or PWC's systems then, without limiting PWC's other rights, the Supplier must promptly notify PWC upon becoming aware and take all necessary steps at the Supplier's own cost and expense to remove the virus as soon as possible, remedy the problem and prevent it from happening again.

#### **WORK HEALTH AND SAFETY**

34. The Supplier must comply with, and must ensure that its Personnel comply with, the *Work Health and Safety (National Uniform Legislation) Act (NT)*, and the *Work Health and Safety (National Uniform Legislation) Regulations (NT)* and all other applicable laws relating to work health and safety (**WHS Laws**). The Supplier must conduct risk assessments as necessary and put in place measures to eliminate or reduce risks to health and safety arising from the provision of the Goods and Services. In respect of any risks arising from the provision of the Goods and Services, the Supplier must provide information to PWC about any joint duties owed under the WHS Laws and must consult and cooperate with PWC about these risks.

#### **SUSTAINABLE SUPPLY CHAIN MANAGEMENT**

35. All of PWC's suppliers play a vital part in PWC's sustainability performance. As such, the Supplier must comply with all environmental, human rights, labour, social, governance and other sustainability standards of conduct set by applicable laws and key international standards which are applicable in those jurisdictions where the Supplier sources, produces or provides the Goods and Services or any part of them. If PWC develops a responsible sourcing code or similar, the Supplier will cooperate with PWC in relation to such code, including responding fully and accurately to any relevant questionnaire and using reasonable efforts to improve any aspects of non-compliance with such code.

#### **PHYSICAL ASSETS AND EQUIPMENT**

36. The Supplier must not connect (including wirelessly) any device or equipment to any of PWC's information technology or other networks or infrastructure without the prior written approval of PWC. Any connections terminating within PWC's network boundary must be approved in writing by PWC's Chief Information Officer (or his/her authorised delegate).
37. The Supplier must only access PWC's equipment to the extent necessary to perform its obligations under the relevant Order. The Supplier is responsible for the safe custody of any such equipment while in the Supplier's possession or control.

#### **PERSONNEL**

38. The Supplier must procure that its Personnel: (a) comply with all rules, regulations and safety and security policies (including those set out in the Regulatory Obligations) in respect of access to the relevant sites; (b) do not access or attempt to access PWC's systems without prior written consent; and (c) do not disclose any passwords or other access mechanisms to any third party.
39. If PWC requests, the Supplier must ensure that each of its Personnel involved in the performance of this Contract: (a) enter into a written, legally binding confidentiality agreement in favour of PWC and in a form acceptable to PWC; and (b) under-go any necessary background verification, criminal history and security checks specified in writing by PWC from time to time.
40. In this Contract, **Personnel** includes, in relation to a party: (a) that party's officers, employees and agents; (b) that party's affiliates, advisers, consultants and subcontractors (and their respective officers, employees and agents); and (c) any other persons under that party's direction or control.

## **AUTHORISED PERSONNEL**

41. The Supplier must ensure that only Authorised Personnel are permitted to access PWC's information and systems, and then only to the extent contemplated by the relevant Order and necessary to perform the Services.
42. The Supplier acknowledges and agrees that PWC may, acting reasonably, require a particular named Authorised Personnel to be immediately (or within such other period specified by PWC) removed as an Authorised Personnel and promptly replaced by a new person who is approved in writing by PWC's Approver for Authorised Personnel (so as to ensure continuity of service).
43. The Supplier must maintain and provide to PWC on request an accurate and complete list of all Authorised Personnel in respect of each relevant Order. The Supplier must provide to PWC an updated version of such list each time a new Authorised Personnel is added to or removed from the list of Authorised Personnel for a particular Order and each time any details in relation to a particular Authorised Personnel are agreed by the Approver for Authorised Personnel to be amended (including the duration of a particular Authorised Personnel's appointment).
44. In this Contract:

**Approver for Authorised Personnel** means the PWC representative named as such in the relevant Order or other appropriately authorised representative; and

**Authorised Personnel** means, in relation to a particular Order, the Supplier Personnel (if any), subject to clause 42:

- a) named as such in the relevant Order; and
- b) agreed in writing (including by way of email correspondence) by PWC's Approver for Authorised Personnel, from time to time, to be Authorised Personnel in connection with the relevant Order.

## **INSURANCE**

45. The Supplier must effect and maintain during the term of this Contract the following insurances: (a) workers compensation, as required by applicable law; (b) public liability with a minimum cover of \$20,000,000 for each and every claim and unlimited in the aggregate; (c) product liability with a minimum cover of \$20,000,000 for each and every claim and in the aggregate; (d) professional indemnity insurance with a minimum limit of indemnity as specified in the relevant Order and with a deductible not exceeding the amount specified in the relevant Order; and (e) any other specific insurances set out in the relevant Order for the period set out in that Order. The Supplier must provide copies of the certificates of currency or the schedules of insurance and policy documents for the insurances within 7 days of any written request. The insurances must not contain any exclusionary provisions which apply to the Goods or Services being provided or PWC or its operations.

## **WARRANTIES**

46. The Supplier represents, warrants and undertakes to PWC that: (a) all information which it provides to PWC, whether prior to, on or after the date of this Contract, is true and correct in every respect and is not misleading or deceptive; (b) it has examined the terms of this Contract and has satisfied itself of its capacity to provide the Goods and Services in accordance with its terms and that, in entering into this Contract, it has not relied upon any representation, warranty or inducement from PWC; (c) the Goods and Services, and their use, possession or receipt by PWC, will not infringe the Intellectual Property Rights or other rights of any third party; (d) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract; (e) the Services will be of satisfactory quality and accord with the Specifications; and (f) the Goods will: (i) accord with the Specifications and any samples; (ii) be fit for any purpose(s) that PWC has made known to the Supplier; (iii) be of satisfactory quality; (iv) be free from defects in materials, workmanship and installation; (v) be supplied free and clear of any liens, charges, security interests, encumbrances or other third party rights; and (v) be free from computer viruses and any 'CopyLeft' or open-source software.

## **CHARGES AND PAYMENT TERMS**

47. PWC will pay the Charges in accordance with the relevant Order, subject to the set-off, withholding or deduction of any amounts owing to PWC from the Supplier. Unless expressly stated in the relevant Order, the Charges are

fixed and inclusive of all taxes (including GST), duties, levies and 'out-of-pocket' costs and expenses. Payment of the Charges is conditional upon receipt of a GST compliant tax invoice, which may only be issued in arrears.

48. Each tax invoice issued in connection with this Contract must (at a minimum): (a) show the amount of the Charges claimed in respect of the Goods and Services performed during the relevant period; (b) contain sufficient evidence to allow PWC to verify to its reasonable satisfaction that the Supplier has supplied the Goods and Services in accordance with this Contract; (c) show the amount of applicable GST and PWC's purchase order number; (d) include the details of PWC's representative; (e) include the Supplier's bank account details to enable EFT payment transmission; and (f) be sent electronically to [accounts.pwc@powerwater.com.au](mailto:accounts.pwc@powerwater.com.au). PWC will pay the Supplier's properly rendered tax invoices within 30 days of receipt by PWC.
49. In the event of a payment dispute, PWC will pay any undisputed amount by reference to the Charges set out in the relevant Order. PWC may require a written statement from the Supplier indicating compliance with any aspect of the Regulatory Obligations as a prior condition for payment.
50. Where an Order provides that CPI adjustments apply, the Charges payable in relation to the Services under that Order are subject to adjustment on each anniversary of the date the Order is issued by PWC (**Date of Adjustment**) in accordance with the formula:  $NC = C + (C \times CPI)$ , where:

**NC** is the Charges payable in relation to the Services applicable for the year following the Date of Adjustment;

**C** is the Charges payable in relation to the Services applicable immediately before the Date of Adjustment; and

**CPI** is the percentage difference between the Consumer Price Index for Darwin as published from time to time by the Australian Bureau of Statistics (**Consumer Price Index**) for the quarter immediately before the Date of Adjustment and the Consumer Price Index for the corresponding quarter one year earlier.

#### **PWC INFORMATION AND ACCESS**

51. The Supplier acknowledges and agrees that it will only be provided with copies of or access to certain limited information of PWC, as set out in the relevant Order, and that the agreed mechanisms for obtaining copies of or access to such information are limited to those mechanisms set out in the relevant Order. The Supplier must not access any other information of PWC or use any other mechanism for accessing any information of PWC.
52. The Supplier must ensure that it has and maintains in place all necessary and appropriate security controls, which must be consistent with the requirements of PWC's Information Security Policies and Procedures, to protect any information of PWC in its possession or control or which could otherwise be impacted by the Supplier's activities.

#### **CONFIDENTIALITY**

53. This Contract and any 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 only be used by the receiving party as necessary to exercise its rights or to perform its obligations under this Contract. Both parties must keep all confidential information secure and must return it to the disclosing party or destroy it on demand. Any confidential information must not be disclosed without the prior written consent of the disclosing party, other than: (a) to that party's Personnel or as may be required by law; or (b) in the case of PWC, to the Northern Territory of Australia, to a Minister or Cabinet, or to the Legislative Assembly or a committee of the Legislative Assembly, of the Northern Territory of Australia.

#### **INTELLECTUAL PROPERTY**

54. The Supplier grants to PWC a world-wide, non-exclusive, irrevocable, royalty-free licence to use, copy and modify any software specified in an Order as being licensed by the Supplier to PWC, together with any new releases or versions of such software and related documentation in accordance with the terms and conditions of this Contract. Such licence is perpetual unless otherwise specified in the relevant Order. PWC may sublicense such software and documentation to its Personnel (including for the purposes of providing services to PWC) and third party end-users of the Goods and Services.
55. Other than where expressly stated in this Contract or any Order, nothing in this Contract or an Order operates to transfer to one party any Intellectual Property Rights of the other party.

56. Other than where an Order expressly states that certain Intellectual Property Rights developed by the Supplier in connection with the performance of that Order will not be owned by PWC (for example, in respect of specifically identified deliverables), the Supplier hereby assigns (and must procure that its Personnel assign and transfer) to PWC on and from creation its entire right, title and interest in and to all Intellectual Property Rights (excluding, for clarity, any Supplier Background IP) developed or created by or on behalf of the Supplier (including by any Personnel) in connection with the provision of the Goods and Services in that Order (**Developed IP**). If requested to do so, the Supplier must execute (and must procure that its Personnel execute) any document, agreement or form that PWC deems necessary or desirable to perfect PWC's rights above.
57. To the extent that any Supplier Background IP is developed, created or used by the Supplier in connection with the performance of an Order (including by way of incorporation into any Developed IP), the Supplier hereby grants to PWC a worldwide, non-exclusive, perpetual, royalty-free, transferable and sub-licensable licence to use, copy and modify any and all Intellectual Property Rights in such Supplier Background IP for any purpose whatsoever.
58. In all cases, the Supplier must obtain from its Personnel written, unconditional and irrevocable consents and waivers to any act or omission by PWC, its licensees and successors in title the doing of which would otherwise infringe that individual's moral rights, as that term is defined in Part IX of the *Copyright Act 1968* (Cth).

59. In this Contract:

**Intellectual Property Rights** means all industrial and intellectual property rights anywhere in the world, including patents, trade marks, design rights, trade or business names, copyright (including rights in computer software and databases), inventions, know-how, secret formulae and processes, customer lists, domain names, goodwill and moral rights, whether registered or unregistered and including all attaching common law and statutory rights; and

**Supplier Background IP** means, in respect of an Order, any Intellectual Property Rights:

- a) owned or licensed by the Supplier prior to the date of that Order;
- b) licensed from any third party (excluding the Supplier's affiliates and Personnel) during the performance of that Order; and/or
- c) obtained (whether created, purchased or licensed) by the Supplier during the performance of that Order, but separately from and otherwise than in connection with that Order and this Contract.

#### **TERMINATION AND SUSPENSION**

60. PWC may immediately suspend or terminate any Order or this Contract (in each case in whole or in part) for convenience at any time and for any reason by giving written notice to the Supplier. PWC will have no obligation to disclose its reason(s) to the Supplier. Where PWC suspends or terminates an Order or this Contract under this clause, PWC will pay the outstanding proportion of the Charges (if any) which relates to any relevant Goods or Services provided prior to the written notice. All other costs, damages and expenses of the Supplier will be borne by the Supplier in full. To the extent any Order or this Contract is suspended by PWC under this clause 60, the Supplier must immediately recommence the performance of its relevant obligations under any Order or this Contract as directed by PWC.
61. PWC may also immediately suspend or terminate any Order or this Contract (in each case in whole or in part) by written notice if the Supplier: (a) suffers an insolvency event; (b) breaches an Order or this Contract and fails to remedy it within 30 days of a written demand to do so; or (c) commits a breach of an Order or this Contract which, in the opinion of PWC, is incapable of remedy.
62. If PWC suspends or terminates any Order or this Contract for breach under clause 61(b) or 61(c), PWC will not be obliged to make any further payments to the Supplier. If PWC suspends or terminates any Order or this Contract under clause 61(a), PWC will pay the outstanding proportion of the Charges (if any) which relates to any relevant Goods or Services provided prior to the written notice. In either case, all other costs, damages and expenses of the Supplier will be borne by the Supplier in full.
63. The Supplier may terminate an Order by giving written notice to PWC of such termination (in which notice the effective termination date must be no less than 30 days after the date of the notice) if all of the following occur: (a) PWC has not paid an undisputed amount due to the Supplier under that Order within 60 days after the date



on which PWC received the correctly rendered invoice for that undisputed amount from the Supplier; (b) the Supplier has given PWC a first notice not less than 60 days after the due date for payment of that undisputed amount due, specifying the failure to pay and giving PWC at least 15 days to pay that undisputed amount due; and (c) the Supplier has given PWC a second notice not less than 75 days after the due date for payment of that undisputed amount due, referring to the first notice and giving PWC at least 15 days to pay that undisputed amount due.

64. The Supplier is not entitled to terminate this Contract, and will only be entitled to terminate an Order in accordance with clause 63.

#### **RETURN OF CONFIDENTIAL INFORMATION AND PROPERTY**

65. On termination or expiration of any Order or this Contract (in whole or in part), the Supplier must upon PWC's request promptly provide or return to PWC (or at the request or with the consent of PWC, destroy):

- a) all relevant deliverables arising out of the Services, including any Developed IP, whether complete or partially complete;
- b) all confidential information (including copies, summaries and excerpts);
- c) all relevant software, hardware, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
- d) any other relevant property,

(in whatever form, including in electronic format) of or belonging to PWC which are in its possession or control.

#### **INDEMNITIES**

66. The Supplier must indemnify and keep indemnified PWC against all losses, liabilities and costs (including legal expenses on a solicitor client basis) sustained, incurred or suffered by PWC arising from or in connection with any: (a) breach of the Supplier's obligations under this Contract (including the warranties provided by the Supplier in this Contract); (b) claim, action or proceeding that the use, possession or receipt by PWC of the Goods or Services infringes the Intellectual Property Rights or other rights of any third party; (c) negligence, reckless conduct or wilful misconduct by the Supplier or its Personnel; (d) death, personal injury or property damage caused by the Supplier; or (e) claim, action or proceeding by any person against PWC arising from or in connection with the Goods or Services.
67. Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination of this Contract.
68. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to all and any rights, obligations and liabilities under this Contract.

#### **LOCAL CONTENT**

69. The Supplier acknowledges PWC's commitment to the development of business and industry in the Northern Territory.
70. In the Supplier's response to the relevant request for quotation or tender documentation issued by PWC in connection with an Order, the Supplier made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Supplier as part of that Order. These promises and commitments form part of this Contract (and are referred to in this Contract as the **Local Benefit Commitment**).
71. The Supplier must fulfil all aspects of the Local Benefit Commitment.
72. Subject to the *Competition and Consumer Act 2010* (Cth), and unless the Supplier demonstrates to PWC that, for commercial, technical or other reasons, it is impractical to do so, in carrying out the Supplier's obligations under this Contract, the Supplier must use:
- a) labour available within the Northern Territory;

- b) subcontractors established in the Northern Territory; and
  - c) the services located, and obtain supplies and materials supplied by businesses established, in the Northern Territory.
73. The Supplier must, on written request by PWC, provide a written report in relation to its compliance with clauses 71 and 72 within the timeframe specified in PWC's written request.
74. The Supplier's compliance or non-compliance with clauses 71, 72 and 73 will be recorded in the Supplier's Performance Report to be prepared by PWC in accordance with clause 76.
75. The Supplier acknowledges and agrees that it must comply with the Northern Territory Government's (**NTG**) standards and requirements, as published from time to time, in respect of promoting local procurement in the Northern Territory (the **Buy Local Plan**) and that the person appointed by the NTG to provide an independent advocacy function on behalf of local industry, investigate complaints directly from local industry and act on their own initiative to audit contractors (the **Buy Local Industry Advocate**) may conduct audits of the Supplier as to such compliance and:
- a) The Supplier agrees to grant access rights to the Buy Local Industry Advocate to ensure the Supplier (and the Goods and Services) satisfy the Buy Local Plan.
  - b) Audits will be conducted no more than once in any 12 month period unless a second or subsequent audit during that period is required to be conducted:
    - i. to investigate specific concerns of PWC or the Buy Local Industry Advocate in connection with the Supplier's compliance under the Buy Local Plan;
    - ii. for compliance with Law;
    - iii. for the purpose of verifying the accuracy of any report provided by the Supplier in relation to a significant failure, or recurring failures, in relation to its compliance under the Buy Local Plan;
    - iv. for the purpose of verifying that the Supplier has undertaken any actions required as a result of a previous audit, provided that the Buy Local Industry Advocate cannot reasonably achieve that purpose without conducting an audit; or
    - v. at the request of the Buy Local Industry Advocate.
  - c) In order for the Buy Local Industry Advocate to exercise any of the Buy Local Industry Advocate's audit rights under this clause 75, the Supplier must give the Buy Local Industry Advocate, through PWC where necessary, full access at all reasonable times and on reasonable notice to (without limitation):
    - i. all information in relation to Subcontractors and Supplier's Personnel; and
    - ii. all relevant software, data, records, accounts, documents, reports, records and systems (whether prepared by the Supplier or not) relating to the Supplier's obligations under this Contract.
  - d) The Supplier must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 75.
  - e) The Supplier is liable for its own costs of any audit or inspection conducted pursuant to this clause 75.
  - f) The Supplier must meet with PWC to discuss in good faith any recommendations made by the Buy Local Industry Advocate following the completion of an audit. The Supplier will act upon and immediately implement any recommendations that are necessary to ensure full compliance with the Buy Local Plan as directed by PWC or the Buy Local Industry Advocate. The cost of implementing those recommendations will be borne by the Supplier.
  - g) The Supplier must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause acknowledging and granting the Buy Local Industry Advocate the same rights as specified in this clause 75.

## SUPPLIER'S PERFORMANCE REPORT

76. The Supplier agrees that following delivery of the Goods and/or the performance of the Services or the termination of any Order or this Contract:
- a) PWC may prepare a report on the Supplier's performance under any Order or this Contract (**Supplier's Performance Report**);
  - b) PWC will liaise with the Supplier in completing the Supplier's Performance Report although PWC reserves the right to complete the Supplier's Performance Report (other than the Supplier's comments); and
  - c) PWC may use and/or release the Supplier's Performance Report to any other agency of the Commonwealth or of any State or Territory (**Recipient Agency**) in relation to the evaluation of the Supplier's performance in the assessment of future tenders.
77. The Supplier agrees that:
- a) neither the Supplier nor any other person will have any Claim against PWC or any Recipient Agency or any of their respective Personnel under any circumstances as a result of the preparation and use of the Supplier's Performance Report; and
  - b) the Supplier's Performance Report will not, in itself, constitute evidence that the Supplies comply with the relevant requirements of this Contract (including the relevant Specifications), or otherwise limit the Supplier's obligations or PWC's rights and remedies.

## COMPLIANCE WITH RINGFENCING GUIDELINES

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

b) the operation of this clause will change accordingly.

83. The Supplier 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 Supplier's obligations under this clause.
84. The Supplier must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Goods and/or Services are provided by the Supplier in a manner that is consistent with the requirements of this clause.
85. The Supplier 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.
86. The Supplier must provide PWC with such written reports, evidence or other information concerning the Supplier's compliance with this clause as may be requested by PWC from time to time.
87. The Supplier must make and keep, and must ensure that all Personnel make and keep, accurate records of the performance of the Supplier'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.
88. PWC or its nominated representative has the right (at no cost to PWC) at all reasonable times and on reasonable notice to visit the Supplier's and its Personnel's premises and audit and inspect all records, procedures and systems of the Supplier and its Personnel which relate to the Supplier's compliance with this clause. The Supplier must (and must ensure that its Personnel fully co-operate with PWC in relation to any such audit or inspection.

#### **GENERAL**

89. This Contract is governed by, and must be construed in accordance with, the laws of the Northern Territory of Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that Territory.
90. Unless expressly stated otherwise, the Supplier must pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Contract.
91. Except as specified in clauses 2 and 13, no variation of an Order or this Contract is effective unless made in writing and signed by both parties. None of the applicable terms can be varied, waived or released at law or in equity unless both parties agree in writing.
92. This Contract (including any Orders and any documents incorporated by reference, as amended from time to time) constitutes the entire agreement between the parties in respect of its subject matter.
93. Nothing in this Contract constitutes, or may be deemed to constitute, a partnership, agency, employment or joint venture relationship between the parties. The Supplier acknowledges that it is an independent subcontractor and its Personnel are not employees of PWC.
94. The rights, powers, privileges and remedies provided under any provision of this Contract 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.
95. If there is any ambiguity, conflict or inconsistency between the documents comprising this Contract then, except to the extent expressly specified otherwise in the relevant Order, the following order of precedence shall apply: (a) all applicable laws set out in the Regulatory Obligations; (b) the terms of this letter; (c) any Orders under this letter; (d) any Regulatory Obligations other than those referred to in subclause (a) above; and (d) any other document incorporated by reference.

Yours Sincerely,

[Insert name]

[Insert title]

[Insert full customer name]

## ORDER

This Order constitutes a notice of acceptance of [EITHER 'the response you submitted to our request for quotation on [insert the date of the quotation]' OR 'the tender you submitted in response to our request for tender [specify the relevant RFT relating to this Order]'].

This Order forms part of and is made under and in accordance with the terms and conditions set out in the Contract between the parties dated [insert date], with the Contract No.[insert] (**Contract**).

### 1. Order Type

This Order is (select one option only):

- a one-off or fixed term Order
- a standing offer Order – sole Supplier
- a standing offer Order – multiple suppliers (panel arrangement)
- a subsequent Order under the standing offer Order issued by PWC to the Supplier on [insert date] regarding [insert applicable description].

### 2. Services – Specifications And Deliverables

[Insert a detailed description of what Services are required (or, in the case of a standing offer Order, will be made available for PWC to order by issuing a subsequent Order), the Specifications (e.g. the required functionality), a reference to any relevant documentation provided by the Supplier and any known deliverables. If no Services or deliverables are to be provided write 'N/A'.

Also insert here the names of any particular Supplier Personnel (eg 'key personnel' or named consultants) who are required to deliver the Services.]

### 3. Key Performance Indicators

[Insert a short description of any required Key Performance Indicators that the Supplier is required to meet when performing the Services, along with any remedies in case of breach (e.g. service credits). If no Key Performance Indicators are applicable write 'N/A'.]

### 4. Goods - Specifications

[Insert a detailed description of what Goods are required (or, in the case of a standing offer Order, will be made available for PWC to order by issuing a subsequent Order) (including, where applicable any software to be licensed by the Supplier to PWC), the Specifications (e.g. the model number), a reference to any samples provided by the Supplier to which the Goods must adhere and the quantity. If no Goods are to be provided write 'N/A'.]

### 5. Timetable And Commencement

This Order commences on [insert e.g. 'the date of the Contract' or 'the date stated above'. Where the Order is for a set period or has a particular end date, state this].

[Insert details of when the Goods and Services are to be provided and for what period, by reference to the commencement date, together with any milestones (e.g. for certain deliverables) and related matters such as hours of operation.]

### 6. Location

The Goods must be delivered to [insert location(s) for delivery (and if more than one, specify the quantities and types of Goods to be delivered at each location)].

The Services must be provided at [insert location(s) (and if more than one, specify the Services to be provided at each location)].

## 7. Charges

[Insert details of the Charges payable, including invoice dates. In the case of a standing offer Order, state the Charges which will be payable if the Goods and Services are ordered by PWC in a subsequent Order. If this Order covers Goods, insert the quantity and the per unit price.]

## 8. PWC Resources

PWC will make the following resources available to the Supplier in connection with the performance of this Order:

[Insert list or write 'N/A'].

## 9. Assumptions And Out Of Scope

[Insert details of any Assumptions agreed by the parties e.g. the Charges and Timetable assume that PWC will provide particular approvals or information by the date specified in the Timetable. Check such assumptions very carefully. If there are no relevant Assumptions for this Order write 'N/A'.]

The following matters are expressly agreed to be out of scope of the Goods and Services to be provided by the Supplier under this Order:

[Insert description or write 'N/A'.]

## 10. PWC Information And Access

[Insert details of the PWC information (or access to such information) that will be provided to the Supplier and the mechanism(s) by which such information (or access) will be provided to the Supplier.]

## 11. Adjustments – Services

Are the Charges payable in relation to the Services subject to CPI adjustment?

yes

no, not applicable.

## 12. Professional Indemnity Insurance

Professional indemnity insurance with a minimum limit of indemnity of [insert applicable amount] with a deductible not exceeding \$[insert amount].

## 13. Additional Insurance

[Insert details of any additional insurances required for the purposes of clause 45. If no additional insurances are required, write 'N/A'.]

## 14. Testing

[Insert any tests or inspections the Supplier is required to conduct e.g. conformity of the Services with the Specifications. If no additional tests or inspections are required from the Supplier, write 'N/A'.]

## 15. Authorised Personnel

### The Supplier's Authorised Personnel:

For the purposes of this Order, the following Supplier Personnel are Authorised Personnel:

[Insert a list of the names of all Supplier Personnel who are authorised to perform the Services and permitted to access PWC's information and systems, in connection with this Order. Include all other relevant details, including job title, duration of the appointment etc.]

### PWC's Approver for Authorised Personnel:

The following representative/s of PWC is/are permitted to approve Authorised Personnel and changes to the Authorised Personnel:

[Insert details of the PWC representatives/s who is/are authorised to approve to the nomination of Authorised Personnel and changes to the list of Authorised Personnel.]

## 16. Regulatory Obligations

The Supplier must comply with the following Regulatory Obligations. Any documents referred to below but not attached to this Order are expressly incorporated by reference:

[Note: specify the Regulatory Obligations relevant to this Order.]