



# Power and Water Corporation ICT – Standard Terms

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## Contract Details

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Item #	Reference	Detail
1.	Contract No.	[Insert contract number]
2.	<b>PWC</b>  (including address for notices under clause 31.13)	<b>Power and Water Corporation</b> (ABN 15 947 352 360)  Attention: Chief Procurement Officer Address: GPO Box 1921 Darwin NT 0801  Email: ChiefProcurementOfficer.PWC@powerwater.com.au
3.	<b>Principal's Representative</b>  (clause 5.6)	Name: [Insert name]  Phone: [Insert phone number]  Email: [Insert email address]
4.	<b>Supplier</b>  (including address for notices under clause 31.13)	[insert full name]  [insert ABN/ACN] Address:  [insert address]  Email:  [insert email address]
5.	<b>Supplier Representative</b>  (clause 5.6)	Name: [Insert name]  Phone: [Insert phone number]  Email: [Insert email address]
6.	<b>Commencement Date</b>  (clause 1.4)	[insert date]

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**7. General PWC Policies**  
**(clause 7.1)**

Are there specific PWC Policies which the Supplier must comply with under this Contract?

Yes, [Insert one of the following: [as follows:] OR [as set out in the Scope of Requirements]

[Insert the following if 'as follows' included above: Details:

.....  
.....  
.....]

No, not applicable.

**8. PWC Standards and Specifications**  
**(clause 7.2)**

Are there additional PWC Standards and Specifications which apply to the Supplies or which the Supplier must comply with under this Contract?

Yes, [Insert one of the following: [as follows:] OR [as set out in the Scope of Requirements]

[Insert the following if 'as follows' included above: Details:

.....  
.....  
.....]

No, not applicable.

**9. Cap on the Supplier's liability**  
**(clause 25.3.1)**

The cap on the Supplier's liability under this Contract is no less than the following amount:

\$[insert amount]

(See clause 25.3 for the full provision specifying the cap on the Supplier's liability under this Contract).

**10. Security – Performance Guarantee**  
**(clause 11.1.1)**

Is a Performance Guarantee required under this Contract?

Yes, as follows:

Guarantor: [insert name]

No, not applicable.



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**11. General Insurance**  
**(Clause 13)**

<b>Insurance Type</b>	<b>Minimum Amount</b>
Public liability	\$(Insert amount) for each and every Claim and for an unlimited number of Claims.
Product liability	\$(Insert amount) for each and every Claim and in the aggregate.
Professional indemnity	\$(Insert amount) for each and every Claim and for an unlimited number of Claims.
Worker's compensation	As specified by the applicable Laws.

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# **TERMS AND CONDITIONS**

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## **1. Appointment**

### **1.1 Formation of Contract**

The Parties acknowledge and agree that, upon PWC issuing a purchase order or Notice of Acceptance in relation to the RFT referred to in the initial Order to the Supplier, a binding contract is formed between the Parties on the terms and conditions of this Contract.

### **1.2 Commencement Date and Effective Date(s)**

This Contract commences on the Commencement Date and continues until terminated by either Party in accordance with its terms. Each Order issued by PWC under this Contract commences on its respective Effective Date and continues for its respective Term.

### **1.3 Reliance**

The Supplier acknowledges that PWC has entered into this Contract (and issues each Order) relying on the Supplier's representations, including:

1.3.1 those written or verbal representations contained in the RFT Response; and

1.3.2 that the Supplier possesses the necessary skill, experience and ability to provide the Supplies.

### **1.4 Non-exclusive appointment**

Nothing in this Contract prohibits PWC from acquiring goods or services that are the same as or similar to the Supplies at any time from any other person.

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## **2. Master agreement and Orders**

### **2.1 Master agreement framework**

2.1.1 This Contract establishes a master agreement framework, by which the Parties have agreed that the Supplier will provide, and PWC may acquire, certain Supplies, in accordance with:

(a) the initial Order, which is:

(i) set out in the Notice of Acceptance in relation to the RFT referred to in the initial Order;

(ii) attached to this Contract; or

(iii) otherwise entered into between the Parties;

(b) each subsequent Order (if any) added in accordance with the following terms:

(i) PWC may, from time to time, require the Supplier to provide additional Supplies, by issuing the Supplier with a subsequent Order for those additional Supplies;

(ii) prior to the issue of any subsequent Order, PWC may issue an RFT or provide the Supplier with a quotation request specifying the additional Supplies required by PWC and any proposed terms or requirements which are in addition to or differ from those under this Contract;

- (iii) where PWC issues a quotation request, the Supplier must promptly, but in any event within 5 Business Days of the date of receipt of any quotation request (or such longer period as may be agreed by PWC in writing), issue a written quotation to PWC responding to that quotation request;
  - (iv) PWC may unilaterally issue a subsequent Order which is consistent with the applicable RFT Response or the Supplier's written quotation under clause 2.1.1(b)(iii), and that subsequent Order will be binding on the Supplier; and
  - (v) the Supplier must provide the Supplies set out in each subsequent Order issued to the Supplier by PWC in accordance with the terms of that subsequent Order and otherwise in accordance with the terms and conditions of this Contract; and
- (c) each Subsidiary Order (if any) added in accordance with clause 2.4.
- 2.1.2 The initial Order and each subsequent Order (if any) will form part of this Contract with effect on and from their respective Effective Dates. For clarity, Orders do not create contracts separate from this Contract.
- 2.1.3 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 Supplies from the Supplier;
  - (b) PWC has not made any representation or warranty to the Supplier that it will acquire any Supplies 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 Supplies or entitled to any payment under this Contract.

## **2.2 Order types**

Each Order will specify whether that Order is:

- 2.2.1 a one-off or fixed term Order (in which case clause 2.3 will apply to that Order);
- 2.2.2 a standing offer Order – sole Supplier (in which case clause 2.4 will apply to that Order);
- 2.2.3 a standing offer Order – multiple suppliers (panel contract arrangement) (in which case clauses 2.4 and 2.5 will apply to that Order); or
- 2.2.4 a Subsidiary Order (in which case clause 2.4.6 will apply to that Order).

## **2.3 Orders for one-off or fixed term Supplies**

Where an Order specifies that it is a one-off or fixed term Order then, on and from the Effective Date for that Order:

- 2.3.1 PWC appoints the Supplier to provide the Supplies set out in that Order; and
- 2.3.2 the Supplier must provide the Supplies to PWC:
  - (a) in the timeframe(s) specified in that Order;
  - (b) for the Charges; and
  - (c) otherwise in accordance with the terms and conditions of this Contract.

## **2.4 Standing offer Orders and Subsidiary Orders**

Where an Order specifies that it is either a standing offer Order – sole supplier or a standing offer Order – multiple suppliers (panel arrangement), then:

- 2.4.1 the Supplier irrevocably makes a standing offer to provide the Supplies to PWC as and when required by PWC during the Term for that Order;
- 2.4.2 at any time during the respective Term, PWC may issue one or more Subsidiary Orders to the Supplier in relation to specific Supplies;
- 2.4.3 prior to the issue of any Subsidiary Order, PWC may provide the Supplier with a quotation request specifying the Supplies required by PWC and any proposed terms or requirements which are in addition to or differ from those under this Contract;
- 2.4.4 where PWC issues a quotation request, the Supplier must promptly, but in any event within 5 Business Days of the date of receipt of a quotation request (or such longer period as may be agreed by PWC in writing), issue a written quotation to PWC responding to the quotation request;
- 2.4.5 PWC may unilaterally issue a Subsidiary Order which is either consistent with the standing offer Order or (where applicable) consistent with the Supplier's written quotation under clause 2.4.4, and that Subsidiary Order will be binding on the Supplier;
- 2.4.6 the Supplier must provide the Supplies set out in each Subsidiary Order issued to the Supplier by PWC in accordance with the terms of that Subsidiary Order and otherwise in accordance with the terms and conditions of this Contract; and
- 2.4.7 notwithstanding any other provision of this Contract, PWC is not obliged to issue any Subsidiary Orders to the Supplier or to acquire any minimum volume of Supplies from the Supplier and has not made any representation or warranty to the Supplier that it will acquire any minimum volume of Supplies from the Supplier.

## **2.5 A standing offer Order – multiple suppliers (panel contract arrangement)**

Where an Order specifies that it is a standing offer Order – multiple suppliers (panel contract arrangement), then:

- 2.5.1 PWC may from time to time issue Subsidiary Orders or quotation requests to any one or more suppliers on the panel in PWC's sole discretion;
- 2.5.2 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;
- 2.5.3 PWC may add additional panel members to the panel at any time in PWC's sole discretion; and
- 2.5.4 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 2.5.

## **2.6 Supply to the NTG**

- 2.6.1 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).
- 2.6.2 For the avoidance of doubt, the issuing of an order by the NTG in accordance with clause 2.6.1 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) it 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.

## **2.7 PWC Entities are beneficiaries of the Supplies**

2.7.1 PWC may, at its discretion:

- (a) allow PWC Entities to receive and enjoy the benefit of the Supplies; and
- (b) instruct the Supplier to provide some or all of the Supplies directly to PWC Entities.

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## **3. Goods**

### **3.1 Supply of Goods**

Where an Order includes the provision of Goods, the Supplier must provide those Goods to PWC in accordance with that Order, including the relevant Specifications for those Goods, any Project Plan and the terms and conditions of this Contract.

### **3.2 Title to and property in the Goods**

Without limiting any rights of rejection that PWC may have under this Contract, legal and beneficial title to (and property in) the Goods (including Hardware and any physical medium on which Software is stored) passes to PWC on the earlier of:

- 3.2.1 delivery of such Goods to PWC; or
- 3.2.2 payment by PWC for such Goods.

### **3.3 Risk to the Goods**

The Supplier bears the risk of and must indemnify PWC and its Personnel against:

- 3.3.1 any loss of (including loss of use), or damage to, the Goods before Acceptance; and
- 3.3.2 any loss of (including loss of use), or damage to, the Goods arising from any act or omission of the Supplier after Acceptance.

### **3.4 Delivery of Goods**

- 3.4.1 The Supplier must ensure that the Goods are appropriately packed prior to shipping and that all relevant markings and labels are shown on or attached to all packages.
- 3.4.2 The Supplier must deliver the Goods:
  - (a) in the quantities specified in the relevant Order;
  - (b) to the Site (if applicable), any other location specified in the relevant Order or otherwise to the location specified in writing by PWC from time to time;
  - (c) between such hours as specified in writing by PWC from time to time; and
  - (d) to meet any timeframes and dates specified under the relevant Order or, if no timeframe or dates are specified under the relevant Order, with due expedition and without unnecessary or unreasonable delay following the issue of the relevant Order.
- 3.4.3 Unless otherwise approved in writing by PWC, the Supplier must ensure that the Goods are delivered in accordance with this Contract and PWC's requirements.

- 3.4.4 If, after delivery of any Goods, PWC determines and notifies the Supplier that there is an over-supply or shortfall in the quantity delivered or any visible damage to the Goods or any other issue with the Goods not being delivered in accordance with this Contract and PWC's requirements then, without limiting the Supplier's obligations or PWC's other rights or remedies, the Supplier must promptly correct any over-supply, shortfall or other issue and, without waiting for the damaged Goods to be returned by PWC, promptly replace any visibly damaged Goods (as applicable).
- 3.4.5 PWC will return (at the Supplier's cost and risk) any visibly damaged Goods to the Supplier either before or after receipt of replacement Goods from the Supplier.
- 3.4.6 PWC is under no obligation to return any packaging (including any crates or pallets) to the Supplier.
- 

## **4. Services**

### **4.1 Provision of Services**

- 4.1.1 Where an Order includes the provision of Services, the Supplier must provide those Services (including any transition in or exit assistance Services) to PWC:
- (a) in accordance with that Order, including the relevant Specifications for those Services, any Project Plan and the terms and conditions of this Contract;
  - (b) to meet any timeframes and dates specified under that Order; or
  - (c) if no timeframe or dates are specified under that Order, with due expedition and without unnecessary or unreasonable delay following the issue of that Order.
- 4.1.2 Other than the PWC Resources (if any), the Supplier must provide all equipment, facilities and other incidental items and materials necessary to perform the Services. All equipment must be properly maintained and appropriate for the purposes for which it is used or intended to be used.

### **4.2 Sites**

- 4.2.1 The Supplier must ensure that the Services are only provided from Sites within Australia except where and to the extent PWC otherwise authorises particular Services to be provided from Sites outside of Australia.
- 4.2.2 The Supplier must ensure that the Services are provided from the Sites and between such hours as specified in writing by PWC from time to time.
- 4.2.3 The Supplier must not change the location of any Site without the prior written consent of PWC.
- 4.2.4 The Supplier must at all reasonable times give PWC and any other person authorised by PWC access to any Site (that is not a PWC Site) from which the Supplier's obligations under this Contract are or will be performed.

### **4.3 Deliverables**

- 4.3.1 The Supplier must provide the Deliverables to PWC in accordance with the terms and conditions of this Contract.
- 4.3.2 Without limiting clause 4.3.1, the Supplier must provide each Deliverable provided for in the relevant Order by the relevant timeframe provided for in that Order.
- 4.3.3 Without limiting any rights of rejection that PWC may have under this Contract, legal and beneficial title to (and property in) the Deliverables (including any physical medium on which Deliverables are stored) passes to PWC on the earlier of:

- (a) delivery of such Deliverables to PWC; or
- (b) payment by PWC for such Deliverables.

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## **5. Performance**

### **5.1 Standard of performance**

Without limiting any other obligations of the Supplier, the Supplier must provide the Supplies to PWC and perform its other obligations under this Contract:

- 5.1.1 taking into account, and using its reasonable efforts to enable PWC to achieve, PWC's Objectives;
- 5.1.2 in a timely, efficient and proper manner using reasonable care, skill and diligence;
- 5.1.3 using the Key Personnel (if any) and otherwise using a sufficient number of suitably trained, qualified, skilled and experienced Personnel;
- 5.1.4 in accordance with all applicable Laws;
- 5.1.5 in accordance with all relevant Australian industry standards and Good Industry Practice;
- 5.1.6 in accordance with any rules, codes of conduct, policies, guidelines, processes and procedures of PWC (whether existing at the Commencement Date or introduced from time to time) where the Supplier is notified in writing by PWC of those rules, codes of conduct, policies, guidelines, processes or procedures;
- 5.1.7 to meet each Key Milestone (if any) by the relevant Key Milestone Date (if any);
- 5.1.8 in accordance with the reasonable directions of PWC;
- 5.1.9 using its own Systems, which the Supplier must ensure are compatible with the Systems of PWC;
- 5.1.10 in accordance with any variations agreed in any variation document executed by the Parties under clause 31.2; and
- 5.1.11 otherwise in accordance with the terms and conditions of this Contract.

### **5.2 Clean Site**

The Supplier must not do anything to adversely impact the cleanliness, tidiness, safety or security at PWC Sites. The Supplier must prevent nuisance to PWC and to other persons within or in the proximity of a PWC Site or any premises the Supplier accesses, and the public generally.

### **5.3 Quality control**

The Supplier is at all times responsible for the quality and quality control of all of the Supplies and the implementation and maintenance of any Quality Assurance.

### **5.4 Other suppliers**

- 5.4.1 In the performance of the Supplier's obligations under this Contract, the Supplier must co-operate with other suppliers engaged by PWC as reasonably required by PWC from time to time.
- 5.4.2 Without limiting any other provision of this Contract, the Supplier must in the performance of the Supplier's obligations under this Contract:
  - (a) fully co-operate with PWC and PWC Personnel and any other suppliers to PWC; and

- (b) co-ordinate the Supplier's activities so as to support and facilitate, in PWC's best interests, the timely, effective and efficient completion of all work and other activities to be performed by PWC or for PWC by any other suppliers to PWC; and
- (c) not do anything (by the Supplier's act or omission) to prevent, hinder, delay or frustrate the performance of any work and other activities to be performed by PWC or for PWC by any other suppliers to PWC.

5.4.3 Any action or inaction on the part of the Supplier in breach of clause 5.4.2(c) which has the effect of delaying, obstructing, damaging, misleading or harassing PWC or any other suppliers to PWC will give PWC the right to terminate this Contract immediately by written notice to the Supplier.

## **5.5 Subcontracting and assignment etc.**

- 5.5.1 The Supplier must not assign, novate, transfer, subcontract, sublicense or otherwise dispose of any or all of its rights or obligations under this Contract without the prior written consent of PWC (such consent not to be unreasonably withheld).
- 5.5.2 PWC may assign, novate, transfer, or otherwise dispose of any or all of its rights and/or obligations under this Contract without the prior consent of the Supplier and, in the case of a novation, PWC, the Supplier and the relevant third party will each execute a novation agreement in a form reasonably prescribed by PWC.
- 5.5.3 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.

## **5.6 Contract Management**

### *Information, Communication and Technology*

- 5.6.1 Information, Communication and Technology is the lead business area within PWC responsible for managing corporate ICT systems and services.
- 5.6.2 The Supplier agrees that, except with the prior written consent of Information, Communication and Technology, the Supplier will not deal directly with business areas other than Information, Communication and Technology except in respect of day to day operational matters in connection with the provision of the Supplies under this Contract.
- 5.6.3 The Supplier must not, without the prior written consent of Information, Communication and Technology, enter into any contract or other understanding for the provision of ICT goods and/or services with PWC after the Commencement Date other than as expressly provided for under this Contract.

### *Appointment of Representative*

- 5.6.4 Each Party must:
  - (a) appoint a representative 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.

### *Principal's Representative*

- 5.6.5 The Principal's Representative will represent PWC for the purposes of exercising PWC's powers, duties, discretions and authorities under this Contract. Nothing in this clause prevents Principal's



Representatives from dealing with the Supplier on day to day operational matters in connection with the provision of the Supplies under this Contract.

#### *Supplier Representative*

- 5.6.6 The Supplier Representative will represent the Supplier for the purposes of exercising the Supplier's powers, duties, discretions and authorities under this Contract. Nothing in this clause prevents other Supplier representatives from dealing with PWC on day to day operational matters in connection with the provision of the Supplies under this Contract.
- 5.6.7 A direction given by PWC to the Supplier Representative will be regarded as having been given to the Supplier.
- 5.6.8 Matters within the knowledge of the Supplier Representative will be regarded as being within the knowledge of the Supplier.
- 5.6.9 If the Principal's Representative makes a reasonable objection to the appointment of a person as the Supplier Representative, the Supplier must terminate such appointment and appoint another person to the position of the Supplier Representative, subject again to any reasonable objection of the Principal's Representative.

### **5.7 Delegation**

- 5.7.1 The Principal's Representative or the Supplier Representative may delegate their authority to another person from time to time. Any such delegation may, as that Party's representative determines from time to time, be:
- (a) revoked or changed;
  - (b) limited; or
  - (c) made subject to conditions.
- 5.7.2 A Party's representative who delegates authority must, as soon as practicable (and in any event within 2 Business Days of the authority being delegated), give to the other Party's representative written notification of the person to whom the delegation has been made and the nature and scope of that delegate's authority.
- 5.7.3 Once a Party receives notice under clause 5.7.2 it is entitled to rely on it unless and until given notice by the other Party of the revocation of, or change to, that delegation by the other Party.
- 5.7.4 Any person to whom a power, right, authority, discretion, function or responsibility is delegated under this clause 5.7 has, to the extent of that delegation, full power and authority to act for and on behalf of and bind the Party they represent in relation to this Contract by virtue of that delegation.
- 5.7.5 A delegation of authority by the Principal's Representative or the Supplier Representative does not prevent the Principal's Representative or the Supplier Representative (as applicable) from exercising the delegated authority.
- 5.7.6 An act or omission of a delegate constitutes, to the extent of their delegation, an act or omission of the Party they represent by virtue of their delegation under this clause 5.7.

### **5.8 Meetings**

- 5.8.1 The Parties will hold meetings (including meetings relating to planning, review and issue resolution) as necessary to ensure that PWC is fully informed in relation to all aspects of the provision of the Supplies under this Contract and the Supplier's performance of the Supplier's obligations under

this Contract. The Supplier must attend all such meetings on the dates and at the times scheduled by PWC. PWC will give the Supplier reasonable prior notice of all such meetings.

5.8.2 The Supplier Representative and the Principal's Representative must meet with each other as required by either of them to discuss performance of this Contract and the resolution of any issues.

## 5.9 Reporting

The Supplier must provide regular reports, as requested by PWC from time to time, outlining the status of the provision of the Supplies and the performance of the Supplier's obligations under this Contract.

## 5.10 PWC Resources

5.10.1 To assist the Supplier to perform the Supplier's obligations under this Contract, PWC will make the PWC Resources available to the Supplier at such times as are agreed by the Parties.

5.10.2 Without limiting any other provision of this Contract, the Supplier must:

- (a) not use the PWC Resources for any purpose other than to perform the Supplier's obligations under this Contract;
- (b) not modify any PWC Resources without the prior written consent of PWC;
- (c) comply with any PWC policies or procedures and any directions given by PWC in connection with the use of any PWC Resources;
- (d) ensure that all PWC Resources in the custody or control of the Supplier are protected at all times from the elements, from unauthorised access or use by any person and from misuse, damage or destruction by any person;
- (e) promptly inform PWC of any Loss, destruction or damage to any PWC Resources; and
- (f) when the PWC Resources are no longer required by the Supplier to perform the Supplier's obligations under this Contract, immediately stop using or return (as applicable) the PWC Resources to PWC or, if notified in writing by PWC, dispose of the PWC Resources as soon as practicable, unless other arrangements are agreed in writing.

5.10.3 The Supplier acknowledges that the PWC Resources remain the property of PWC and this Contract does not affect the ownership of the PWC Resources.

## 5.11 Local Content

### *Local Benefit Commitments*

5.11.1 The Supplier acknowledges PWC's commitment to the development of business and industry in the Northern Territory.

5.11.2 In the RFT Response, 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 the relevant Order. These promises and commitments form part of this Contract (and are referred to in this clause 5.11 as the **Local Benefit Commitment**).

5.11.3 The Supplier must fulfil all aspects of the Local Benefit Commitment.

### *Use of Local Contractors and Suppliers*

5.11.4 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.

*Reporting and Review*

- 5.11.5 The Supplier must, on written request by PWC, provide a written report in relation to its compliance with clauses 5.11.3 and 5.11.4 within the timeframe specified in PWC's written request.
- 5.11.6 The Supplier acknowledges and agrees that it must comply with the **NTG's Buy Local Plan** and that the **Buy Local Industry Advocate** may conduct audits of such compliance.
- 5.11.7 The Supplier agrees to grant access rights to the Buy Local Industry Advocate to ensure the Supplier (and the Supplies) satisfy the Buy Local Plan.
- 5.11.8 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:
- (a) to investigate specific concerns of PWC or the Buy Local Industry Advocate in connection with the Supplier's compliance under the Buy Local Plan;
  - (b) for compliance with Law;
  - (c) 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;
  - (d) for the purpose of verifying that the Supplier has undertaken any action 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
  - (e) at the request of the Buy Local Industry Advocate.
- 5.11.9 In order for the Buy Local Industry Advocate to exercise any of the Buy Local Industry Advocate's audit rights under this clause 5.11, 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):
- (a) all information in relation to Subcontractors and Supplier's Personnel; and
  - (b) 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.
- 5.11.10 The Supplier must do all things necessary to comply with the requirements of the Buy Local Industry Advocate in relation to this clause 5.11.
- 5.11.11 The Supplier is liable for its own costs of any audit or inspection conducted pursuant to this clause 5.11.
- 5.11.12 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.

- 5.11.13 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 5.11.

*Performance to be reported in Supplier's Performance Reports*

- 5.11.14 The Supplier's compliance or non-compliance with this clause 5.11 will be recorded in the Supplier's Performance Report to be prepared by PWC in accordance with clause 30.

## **5.12 Viruses**

- 5.12.1 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 the Systems of PWC;
  - (b) must take all steps in accordance with Good Industry Practice to minimise the risk of any contamination of any Goods or Deliverables, or the Systems of PWC, including by implementing security procedures, firewalls and anti-virus detection and protection tools in accordance with Good Industry Practice; and
  - (c) must ensure that all Goods and Deliverables provided to PWC are tested for Viruses prior to delivery to PWC in accordance with Good Industry Practice.
- 5.12.2 If a Virus is introduced by the Supplier or its Personnel which affects any Goods or Deliverables, or the Systems of PWC 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.

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## **6. Testing and Acceptance**

### **6.1 Supplier Testing**

- 6.1.1 Where an Order provides that the Supplier is required to carry out testing or where PWC otherwise requests it in writing, the Supplier must perform tests to validate that the Supplies comply with the requirements of this Contract including the relevant Specifications (**Tested Components**), before delivery or provision of the Tested Components to PWC, unless such testing is required by PWC to be done at the relevant Site following delivery. The Supplier must give reasonable notice to PWC prior to undertaking testing and give PWC the opportunity to oversee the testing required to be undertaken by the Supplier.
- 6.1.2 The Supplier must submit to PWC a written report setting out the results of the tests undertaken by the Supplier, the compliance of the Tested Components with the requirements of this Contract (including the relevant Specifications) and, where any Tested Components have failed the tests, the extent and cause of the failure.
- 6.1.3 If PWC notifies the Supplier that PWC requires the tests to be rerun, the Supplier must promptly modify, repair, amend, update or replace the Tested Components before retesting (or procuring the retesting by a nominated third party) and then submitting an updated report to PWC.

### **6.2 PWC's Testing**

Without limiting the Supplier's obligations to carry out Testing under this Contract, PWC may undertake any of PWC's own testing, verification or other enquiries with respect to the Supplies, including performing PWC's own testing that is the same as or similar to the testing provided for in clause 6.1.

### 6.3 Acceptance

- 6.3.1 PWC will Accept the Supplies or any such parts by giving notice to the Supplier when:
- (a) PWC is satisfied that all or any parts of the Supplies conform with the standards, specifications and requirements of this Contract (including the relevant Specifications);
  - (b) clause 6.3.2(a) applies;
  - (c) the Supplier has met the Supplier's obligations under clauses 6.3.2(b) or 6.3.2(d); or
  - (d) the Supplies have been corrected under clause 6.3.2(e).
- 6.3.2 Without limiting any other right or remedy available to PWC, if PWC is not satisfied that any parts of the Supplies comply with the requirements of this Contract (including the relevant Specifications) after the passing of the relevant dates or timeframes for delivery or provision under this Contract, PWC may by written notice to the Supplier in respect of such parts of the Supplies:
- (a) waive the relevant requirement of this Contract (including the relevant Specifications) and the Charges will be equitably reduced by an amount determined by PWC acting reasonably to reflect the reduction in the value of the Supplies to PWC;
  - (b) conditionally Accept such parts of the Supplies subject to the Supplier agreeing, at the Supplier's own expense, to deliver a workaround and to otherwise correct the failure to meet the requirements of this Contract (including the relevant Specifications) within an agreed period in a manner that is acceptable to PWC, provided that PWC reserves the right to give a further written notice under this clause 6.3.2 should there be any failure by the Supplier to meet any of the Supplier's obligations under this clause 6.3.2(b);
  - (c) reject such parts of the Supplies and:
    - (i) remove such parts of the Supplies from the scope of the relevant Order and the Charges will be equitably reduced by an amount determined by PWC acting reasonably; or
    - (ii) terminate the relevant Order or this Contract in accordance with clause 27.2 and require the Supplier, at the Supplier's cost, to promptly collect the Supplies (where applicable);
  - (d) require the Supplier, at the Supplier's cost, to collect the Supplies (where applicable) and promptly correct the Supplies so that the Supplies conform with the requirements of this Contract (including the relevant Specifications), provided that PWC reserves the right to give a further written notice under this clause 6.3.2 should there be any failure by the Supplier to meet any of the Supplier's obligations under this clause 6.3.2(d); or
  - (e) PWC may correct, or have a third party correct, the Supplies and the Supplier must reimburse PWC for all Losses sustained, incurred or suffered by PWC in connection with the correction of the Supplies.
- 6.3.3 Acceptance of any Supplies under this clause 6.3 will not, in itself, constitute evidence that such Supplies comply with the relevant requirements of this Contract (including the relevant Specifications), and this clause 6.3 does not limit the Supplier's obligations or PWC's rights and remedies.

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## **7. PWC Policies and Compliance**

### **7.1 Compliance with the PWC Policies**

7.1.1 The Supplier must comply at all times, including while on-site at any PWC Sites, with the PWC Policies. PWC will provide the Supplier with reasonable prior notice of any changes after the Commencement Date to any such PWC Policies.

7.1.2 To the extent of any conflict between the PWC Policies and the Supplier's own policies, the PWC Policies will prevail except to the extent:

- (a) the Supplier's own policies provide more stringent, onerous or additional obligations on the Supplier; or
- (b) PWC agrees in writing to the Supplier's own policies prevailing over the PWC Policies.

### **7.2 PWC Standards and Specifications**

7.2.1 The Supplier must ensure that the Supplies meet the PWC Standards and Specifications, and the Supplier must comply with the PWC Standards and Specifications in the performance of the Supplier's obligations under this Contract.

7.2.2 PWC may amend or revise the PWC Standards and Specifications or adopt new standards and specifications by written notice to the Supplier from time to time after the Commencement Date. PWC must pay any reasonable costs incurred by the Supplier in implementing and complying with any amended, revised or new PWC Standards and Specifications, provided that such costs are material, agreed to by PWC in advance of being incurred and fully substantiated by the Supplier to the reasonable satisfaction of PWC.

### **7.3 Due examination**

The Supplier represents, warrants and undertakes that, prior to entering into this Contract and again prior to the issue of each subsequent Order, it has examined the PWC Policies, the PWC Standards and Specifications and all relevant Laws and satisfied itself of its capacity to execute its obligations under this Contract without breaching the PWC Policies, the PWC Standards and Specifications or any relevant Laws.

### **7.4 PWC Systems**

7.4.1 In providing the Supplies and in performing its other obligations under this Contract, the Supplier must not (and must ensure that its Personnel do not):

- (a) access or attempt to access, including by way of connecting (including wirelessly) any device or equipment to, the Systems of PWC without the prior written consent 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); or
- (b) disclose to any other person any passwords or other access mechanisms supplied by PWC.

7.4.2 The Supplier must only access the Systems of PWC to the extent necessary to perform its obligations under the relevant Order. The Supplier is responsible for safe custody of any such Systems while in the Supplier's possession or control.

### **7.5 PWC Infrastructure**

7.5.1 Other than in accordance with clause 7.4, the Supplier:

- (a) must not connect any part of the Supplies into any PWC Infrastructure without the prior written approval of PWC; and

- (b) must only access PWC Infrastructure to the extent necessary to perform the Supplier's obligations under this Contract.

## **7.6 Keeping of Records**

- 7.6.1 The Supplier must make and keep, and must ensure all Subcontractors of the Supplier make and keep, accurate financial records and other information relevant to the performance of the Supplier's obligations under this Contract, whether in writing or stored on any other medium, including:
- (a) records as to progress of the provision of the Supplies;
  - (b) time records;
  - (c) all reports and opinions obtained by the Supplier for whatever reason and all necessary supporting documents;
  - (d) invoices; and
  - (e) records and related financial statements and such records and information as are required to comply with any applicable Law.
- 7.6.2 The Supplier must give PWC access to and copies of the records and information required under clause 7.6.1 (excluding information relating to profit margins) within a reasonable time of a written request from PWC.

## **7.7 Audit Rights**

- 7.7.1 PWC may conduct audits of the performance of the Supplier's obligations under this Contract.
- 7.7.2 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:
- (a) to investigate specific concerns of PWC in connection with the Supplier's compliance with the Supplier's obligations under this Contract;
  - (b) for compliance with Law;
  - (c) at the request of the internal audit division of PWC in the course of conducting a broader audit activity;
  - (d) 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 the provision of the Supplies;
  - (e) for the purpose of verifying that the Supplier has undertaken any actions required as a result of a previous audit, provided that PWC cannot reasonably achieve that purpose without conducting an audit; or
  - (f) at the request or direction of the Auditor-General.
- 7.7.3 In order for PWC to exercise any of PWC's audit rights under this clause 7.7, the Supplier must give PWC through the PWC Audit Representative full access at all reasonable times and on reasonable notice to (without limitation):
- (a) any Site (that is not a PWC Site) from which the Supplier's obligations under this Contract are or will be performed;
  - (b) all Subcontractors and Supplier Personnel; and

- (c) all relevant equipment, 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.

7.7.4 The Supplier must do all things necessary to comply with the requirements of the PWC Audit Representative in the exercise of PWC's rights under this clause 7.7.

7.7.5 PWC is liable for PWC's own costs of any audit or inspection conducted pursuant to this clause 7.7, except where the Supplier is found to be in breach of this Contract, in which case the Supplier must, within 5 Business Days of a request by PWC, reimburse PWC for PWC's costs in connection with such audit.

7.7.6 The Supplier must meet with PWC to discuss in good faith any recommendations made by the PWC Audit Representative 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 Supplier's obligations under this Contract as directed by PWC. The cost of implementing those recommendations will be borne by the Supplier.

7.7.7 The Supplier must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting PWC the same rights as specified in this clause 7.7.

7.7.8 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General. The rights of PWC under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General.

## **7.8 Privacy**

7.8.1 The Supplier must, in respect of its performance of its obligations under this Contract:

- (a) comply with and do all things requested in writing by PWC to enable PWC to comply with all requirements of the Privacy Legislation;
- (b) comply with the provisions of the Privacy Legislation (to the extent applicable to PWC and/or the Supplier);
- (c) ensure that each Subcontractor complies with the provisions of the Privacy Legislation that are applicable to the Subcontractor;
- (d) comply with (and ensure that any Subcontractor complies 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 in respect of Personal Information;
- (e) comply with reasonable directions from PWC from time to time relating to privacy and Personal Information; and
- (f) without limiting the foregoing, otherwise comply with any Laws relating to privacy and Personal Information that may be applicable in the Northern Territory.

7.8.2 Without prejudice to the generality of clause 7.8.1, the Supplier must, in relation to any Personal Information processed in connection with the performance by the Supplier of its obligations under this Contract:

- (a) only use Personal Information held in conjunction with this Contract for the purpose of fulfilling its obligations under this Contract;
- (b) ensure that only the Supplier Personnel with a legitimate need for access have access to Personal Information;



- (c) unless authorised by this Contract, not disclose Personal Information to any third party without PWC's prior written consent, which consent may be granted or withheld by PWC in its sole discretion;
- (d) notify PWC when it becomes aware that a disclosure of Personal Information may be required by Law;
- (e) notify PWC immediately when it becomes aware of a breach, impending breach or possible breach of this clause 7.8 or any Law relating to privacy;
- (f) notify PWC immediately when it receives a complaint relating to privacy;
- (g) do everything reasonably necessary to enable PWC to properly deal with any complaint made relating to privacy;
- (h) not transfer Personal Information outside the Northern Territory without the prior approval of PWC;
- (i) comply with:
  - (i) any directions or determinations made by the Privacy Commissioner (Cth) or the Information Commissioner (NT); and
  - (ii) any other reasonable direction given and explicitly detailed in writing by PWC; and
- (j) ensure that any Subcontractor and the Supplier Personnel that have access to Personal Information comply with the Supplier's obligations under this clause 7.8 and execute written undertakings consistent with the provisions of this clause 7.8 (which undertakings must be provided promptly, and in any event within five days of PWC's request, to PWC on request).

7.8.3 Subject to clause 5.5.1, if the Supplier appoints a third party to carry out any of its obligations under this Contract (in whole or in part) so that such third party is processing Personal Information on the Supplier's behalf, then the Supplier must enter into a written agreement with such third party incorporating (with the necessary changes) this clause 7.8.

7.8.4 The Supplier must indemnify and hold harmless PWC against all Loss sustained, incurred or suffered by PWC as a result of any claim, action or proceeding by a third party to the extent arising from the Supplier's breach of this clause 7.8. The Supplier must comply with and do all things requested in writing by PWC (acting reasonably) to enable PWC to comply with all requirements of the Privacy Legislation.

## **7.9 Actual or potential Eligible Data Breaches**

7.9.1 In relation to any Personal Information the Supplier accesses, receives, collects or holds in relation to this Contract, the Supplier must ensure it has appropriate systems and processes in place to regularly check for and monitor potential Eligible Data Breaches.

7.9.2 If the Supplier becomes aware of an event that could amount to an Eligible Data Breach, the Supplier must:

- (a) as soon as possible, and in any event within 24 hours, of becoming so aware notify PWC of the event;
- (b) comply with its obligations under the Privacy Act in relation to the event;
- (c) provide PWC with all information that PWC requests in relation to the event; and

- (d) if PWC requires it, allow PWC to participate in the Supplier's assessment of the event to determine if the event is an Eligible Data Breach.

7.9.3 If:

- (a) the Supplier determines, or PWC determines and notifies the Supplier, that an Eligible Data Breach has or may have occurred; and
- (b) the Privacy Act requires that the Eligible Data Breach be notified to the Commissioner,

then the Supplier must, within 2 Business Days of the determination or notification (as applicable), prepare and give to PWC a draft notice to the Commissioner in respect of the Eligible Data Breach.

7.9.4 PWC may:

- (a) require the Supplier to make changes to the draft notice to the Commissioner; or
- (b) determine that PWC will notify the Commissioner of the Eligible Data Breach, in which case PWC will give the Supplier a copy of the notification before it is given to the Commissioner.

7.9.5 The Supplier must ensure that PWC is:

- (a) promptly advised of any investigation or other action taken by the Commissioner in connection with the actual or suspected Eligible Data Breach; and
- (b) kept informed in relation to the investigation or other action.

7.9.6 This clause 7.9 does not limit any other obligation of the Supplier under this Contract.

## **7.10 Security weaknesses or incidents**

Without limiting any other obligation of the Supplier under this Contract, the Supplier must promptly provide PWC with written notice of any security weaknesses or incidents that may impact or have impacted the Supplies, including and in relation to any software utilised by the Supplier in connection with its provision of the Supplies. 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.

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## **8. Work Health and Safety**

8.1.1 The Supplier must comply with, and ensure that its Personnel comply with:

- (a) the WH&S Act and the WH&S Regulations (including sections 22, 23, 24, 25 or 26 of the WH&S Act, to the extent such sections apply to the Supplier or its Personnel (as applicable) as a person conducting a business or undertaking);
- (b) all other applicable Laws relating to work health and safety;
- (c) any directions on safety issued by PWC or the Principal's Representative; and
- (d) any directions on safety issued by any relevant authorities or otherwise required by any Law or required under this Contract.

8.1.2 The Supplier must:

- (a) 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 Supplies;

- (b) notify the Principal's Representative immediately (and in any event within 24 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the provision of the Supplies; and
  - (c) if requested by the Principal's Representative or required by the WH&S Act, the WH&S Regulations or any other applicable Laws relating to work health and safety in respect of the provision of the Supplies, produce evidence of any approvals, licences, consents, permissions, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Supplier or any of its Personnel commences the relevant work.
- 8.1.3 In respect of any risks arising from the provision of the Supplies, the Supplier must provide information to PWC about any joint duties owed under the WH&S Act, the WH&S Regulations and any other applicable Laws relating to work health and safety and must consult and cooperate with PWC about these risks.
- 8.1.4 All terms used in this clause 8 have the meanings given to them in the WH&S Act and the WH&S Regulations.

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## **9. Sustainable supply chain management**

- 9.1.1 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 Supplies or any part of them.
- 9.1.2 Without limiting clause 9.1.1, if PWC develops a responsible sourcing code or similar, the Supplier will cooperate with PWC in relation to such code, including:
- (a) responding fully and accurately to any relevant questionnaire; and
  - (b) using reasonable efforts to improve any aspects of non-compliance with such code.

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## **10. Personnel**

### **10.1 Personnel generally**

- 10.1.1 The Supplier must ensure that its Personnel providing the Supplies have the relevant training, including any Site specific training required by PWC, qualifications, skills and experience necessary to provide the Supplies.
- 10.1.2 The Supplier must ensure that it properly supervises all of its Personnel.
- 10.1.3 PWC may require in writing that the Supplier ceases to use certain Supplier Personnel in the performance of the Supplier's obligations under this Contract and the Supplier must:
- (a) immediately cease to use and replace any such Personnel with replacements of suitable ability and qualifications; and
  - (b) ensure that any such Personnel are not redeployed in connection with this Contract without PWC's prior written approval.
- 10.1.4 PWC does not have the right to require the termination of any person's employment or contract with the Supplier or any Subcontractor. Clause 10.1.3 is only intended to give PWC the right to require that the Supplier discontinues using a particular person in the performance of the Supplier's obligations under this Contract.

- 10.1.5 If PWC requests, the Supplier must ensure that each of its Personnel involved in the performance of this Contract (including, in particular, the Key Personnel, if any):
- (a) enter into a legally binding written confidentiality agreement in favour of PWC and in a form acceptable to PWC;
  - (b) undergo any background verification, criminal history and security checks specified in writing by PWC from time to time; and
  - (c) review and accept all PWC Policies relating to the use of the Systems of PWC.

## **10.2 Key Personnel**

The Supplier must not transfer, reassign, reduce or change the involvement in the performance of the Supplier's obligations under this Contract or otherwise redeploy any Key Personnel without PWC's prior written consent, which consent will not be unreasonably withheld.

## **10.3 Authorised Personnel**

Where an Order specifies that requirements relating to Authorised Personnel are to apply, the Supplier:

- 10.3.1 must ensure that only Authorised Personnel are:
- (a) allocated or used to perform the Services; and
  - (b) permitted to access PWC information and systems,
- and then only to the extent contemplated by the relevant Order and necessary to perform the Services;
- 10.3.2 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); and
- 10.3.3 must maintain and provide to PWC on request an accurate and completed 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).

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## **11. Provision of Security**

### **11.1 Performance Guarantee**

- 11.1.1 Where Item 10 provides that a Performance Guarantee is required, the Supplier must arrange for the Guarantor to enter into the Performance Guarantee as security for the due and proper performance and completion of all the obligations of the Supplier under this Contract.
- 11.1.2 The Performance Guarantee is required to be provided to PWC on the Commencement Date (or by such other date as agreed by PWC in writing).
- 11.1.3 Without limiting PWC's rights or remedies, PWC is not obliged to make payments due under this Contract until the Supplier has provided the Performance Guarantee.

## 11.2 Financial Security

- 11.2.1 Where an Order provides that a Financial Security is required, the Supplier must provide the Financial Security in the amount stated in that Order.
- 11.2.2 The Supplier must provide to PWC the Financial Security on or before the Effective Date of the relevant Order or by such other date as agreed by PWC in writing.
- 11.2.3 Without limiting PWC's rights or remedies, PWC is not obliged to make payments due under this Contract in connection with the relevant Order until the Supplier has provided the Financial Security.
- 11.2.4 The Financial Security provided must:
- (a) be issued by an Australian domiciled bank, insurance company or other financial institution carrying on business in Australia that is well established, reputable, financially solvent, well known, rated by Standard & Poors or AM Best as 'A-' or higher, and otherwise acceptable to PWC;
  - (b) be issued in favour of PWC, PWC's successors and assigns;
  - (c) state that it is issued in respect of the Supplier's obligations under this Contract; and
  - (d) have an expiry date no earlier than 6 months after the termination or expiration of the relevant Order.
- 11.2.5 If the Supplier:
- (a) fails to comply with any of the Supplier's obligations under this Contract; or
  - (b) is subject to an Insolvency Event,

PWC may call on the Financial Security and apply the funds received from the Financial Security as it sees fit (provided that PWC may not call on the Financial Security in relation to a failure to comply which relates solely to an Order other than the Order(s) to which the Financial Security relates). Nothing in this clause 11.2.5 limits or obviates the Supplier's obligations under this Contract or limits any other rights or remedies PWC may have.

## 11.3 Disputes

PWC's entitlement to exercise PWC's rights in relation to the Performance Guarantee and Financial Security provided under this clause 11 is not limited in any way by the Parties being engaged in a dispute resolution process under clause 26.

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## 12. Escrow

- 12.1.1 Where required by an Order, the Supplier must as soon as practicable after the Effective Date of that Order enter into a tripartite escrow agreement with PWC and an escrow agent reasonably acceptable to PWC, on terms that provide that:
- (a) the Supplier will deliver to and at all times maintain with the escrow agent one copy of the most up-to-date version of the Source Code Materials for the relevant Software; and
  - (b) the escrow agent is irrevocably authorised to release those Source Code Materials to PWC on receipt of notice from PWC that:
    - (i) the Supplier is in breach of this Contract and the Supplier has failed to remedy the breach within 30 days of receipt of a notice requiring it to do so; or

(ii) PWC has terminated this Contract and/or the relevant Order under clause 27.2.

12.1.2 Without limiting any other right or remedy available to PWC, PWC is not obliged to make any payments due under this Contract in connection with an Order which requires the Supplier to enter into a tripartite escrow agreement until the Supplier has done so and is otherwise in compliance with its obligations under this clause 12.

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## **13. Insurance**

### **13.1 Effect Insurance**

The Supplier must:

13.1.1 on or before the Commencement Date obtain, pay for and maintain the General Insurances in full force and effect; and

13.1.2 on or before the Effective Date of each Order obtain, pay for and maintain the Order Insurances in full force and effect.

### **13.2 Specific matters**

13.2.1 The Insurances must cover the respective legal liability, however arising, in connection with the carrying out of the Supplier's obligations under this Contract and the Supplier's performance generally:

- (a) in the case of the professional indemnity or errors and omissions Insurance, covering professional services or a breach of professional duty. It must also contain a definition of 'profession' broad enough to cover all work undertaken by the Supplier's Personnel;
- (b) in the case of the combined public and product liability Insurance, covering any loss of or damage to any real or personal property of PWC (including loss of use) and personal injury to or death of any person;
- (c) in the case of the marine transit Insurance, covering damage to, and physical destruction of, the Goods until Acceptance and all other matters for which the Supplier bears the risk of loss or damage under this Contract and the relevant Order;
- (d) in the case of the workers' compensation Insurance, as required by applicable Laws; and
- (e) in the case of the motor vehicle compulsory third party Insurance, covering all vehicles owned or controlled by the Supplier and extending to the Supplier's legal liability for personal injury, illness or death of all Personnel and any other person, together with damage to any real or personal property (including that of PWC).

13.2.2 All Order Insurances must comply with any further details set out in the relevant Order. They must be effected and maintained with an insurance office or underwriter that is well established, reputable, financially solvent, well known, rated by Standard & Poors or AM Best as 'A-' or higher, and otherwise satisfactory to PWC.

13.2.3 The Supplier must maintain the professional indemnity or errors and omissions Insurance until the seventh anniversary of the end of the Term of the last Order to be terminated or expire. The Supplier must maintain all other Insurances until the end of the Term of the last Order to be terminated or expire.

13.2.4 The Supplier is solely responsible for the payment of any deductible or excess payable in connection with any claim made in respect of any Insurances.

- 13.2.5 The Supplier must ensure that the Insurances do not contain any exclusionary provisions which apply to the Supplies being provided or to PWC or its operations.

### **13.3 Notification and compliance**

- 13.3.1 If requested by PWC in writing, the Supplier must, within 5 Business Days of such request, promptly provide copies of the certificates of currency, schedules of insurance and policy documents for the Insurances or such other evidence as requested by PWC that the Insurances have been effected.

- 13.3.2 The Supplier must promptly notify PWC in writing if:

- (a) an insurer gives any relevant notice in respect of one or more of the Insurances, including a notice of cancellation;
- (b) the Supplier has otherwise ceased to comply with this clause 13, including a failure to renew or pay the required premiums; or
- (c) it becomes aware or has reason to suspect that an act or omission has occurred which is likely to give rise to a claim under any of the Insurances.

- 13.3.3 Without limiting any other right or remedy available to PWC, PWC is not obliged to make any payments due under this Contract until the Supplier has provided copies of the certificates of currency, schedules of insurance and policy documents or other evidence required to be provided under clause 13.3.1.

- 13.3.4 If the Supplier fails to:

- (a) effect insurance in accordance with this Contract; or
- (b) provide copies of the certificates of currency, schedules of Insurance and policy documents or other evidence satisfactory to PWC in accordance with clause 13.3.1 upon request,

then the Supplier must not commence or must cease provision of the Supplies under this Contract (where the failure relates to General Insurance) or the relevant Order (where the failure relates to Order Insurance).

- 13.3.5 If the Supplier does not remedy a breach of clause 13.3.4 within 5 Business Days of a notice in writing from PWC requiring it to do so, PWC may, without limiting any other right or remedy available to PWC:

- (a) effect the insurance and the cost will be a debt due from the Supplier to PWC, and the Supplier must promptly reimburse PWC on demand; or
- (b) terminate this Contract (where the failure relates to General Insurance) or the relevant Order (where the failure relates to Order Insurance).

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## **14. Key Performance Indicators**

- 14.1.1 The Supplies must be provided by the Supplier so as to meet or exceed the required levels of performance set out in any Key Performance Indicators.

- 14.1.2 Where a Key Performance Indicator provides for service credits or price reductions (or similar), in the event that the Supplier fails to meet the required levels of performance, the Supplier must either (depending on which is earlier):

- (a) credit such amounts against the next invoice issued by the Supplier to PWC; or

- (b) pay such amounts to PWC within 10 Business Days of the end of the relevant period to which such service credits or price reductions (or similar) relate.
- 14.1.3 The Parties agree that any service credits or price reductions (or similar) provided for by a Key Performance Indicator are a genuine pre-estimate of the minimum damage which PWC would suffer by reason of the Supplier's failure to perform its obligations in accordance with the terms and conditions of this Contract and the relevant Order. The Parties agree that the purpose of the service credits or price reductions (or similar) is to incentivise the Supplier and that they are not intended as a penalty for non-performance or to quantify the full extent of PWC's losses in relation to any failure.
- 14.1.4 The rights and remedies of PWC under this clause 14 are in addition to and not in replacement of any other rights or remedies available to PWC under any other terms and conditions of this Contract or at common law or in equity.

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## **15. Warranties**

### **15.1 Warranties**

The Supplier represents, warrants and undertakes to PWC that:

- 15.1.1 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;
- 15.1.2 it has and will maintain all approvals, licences, consents, and permissions, including from any regulator, necessary for the performance of its obligations under this Contract and each relevant Order;
- 15.1.3 the Supplies will meet the Specifications, be of satisfactory quality and free from Defects in materials, workmanship and installation;
- 15.1.4 the Goods will be fit for the purpose for which they are provided;
- 15.1.5 the Goods and any Deliverables will be free from Viruses and, where the Goods or any Deliverables include Software, that Software will not:
  - (a) (despite any other provision in this Contract or the relevant Order) contain or incorporate any software or other materials licensed from any third party under an Open Source Software Copyleft Licence; and
  - (b) unless agreed otherwise in writing, contain or incorporate any Open Source Software;
- 15.1.6 it is entitled to, and has the right and power to, provide the Goods and any Deliverables to PWC;
- 15.1.7 unless expressly stated otherwise in the Order, at the time of delivery to PWC, the Goods and any Deliverables are legally and beneficially owned by the Supplier;
- 15.1.8 all Goods and any Deliverables supplied are free and clear of any liens, charges, security interests, encumbrances or other third party rights;
- 15.1.9 the Hardware will be new and unused by any person;
- 15.1.10 the Goods will have an operating life of 10 years from the date of Acceptance (or such other period as specified in the relevant Order), provided that the Goods are operated and maintained in accordance with the Specifications; and



- 15.1.11 it will provide manuals for the Goods in English that are complete, accurate, suitable and sufficiently comprehensive so as to enable PWC to make full and proper use of and to properly maintain and support the Goods.

## **15.2 Trustee warranty**

If the Supplier has entered into this Contract as trustee of a trust (the **Trust**), the Supplier:

- 15.2.1 enters into this Contract personally and in its capacity as trustee;

15.2.2 warrants that:

- (a) the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettle the Trust, and no date or event has occurred for the vesting of the assets of the Trust;
- (b) it is the only trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Supplier under this Contract;
- (c) the trust deed of the Trust discloses all of the terms of the Trust;
- (d) it has power under the trust deed of the Trust to enter into and observe its obligations under this Contract and has formed the view that it is prudent to enter into this Contract;
- (e) it has in full force and effect the authorisations necessary to enter into this Contract, perform obligations under this Contract and allow this Contract to be enforced;
- (f) it is not in material default under the trust deed of the Trust and is not aware of any action proposed to terminate the Trust;
- (g) the entry into and the performance of this Contract is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;
- (h) it has a right to be indemnified fully out of the assets of the Trust concerning all of the obligations and liabilities incurred by it under this Contract, the assets of the Trust are sufficient to satisfy that right in full, and it has not released or disposed of its equitable lien over the assets of the Trust; and
- (i) it has disclosed to PWC full particulars of the Trust and of any other trust or fiduciary relationship affecting the assets of the Trust, and has given PWC a complete, up to date copy of the Trust Deed;

15.2.3 makes the warranties in this clause 15.2.2 on the Commencement Date and on the last Business Day of each month after that date; and

15.2.4 must give PWC promptly on written request:

- (a) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trust; or
- (b) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust and the trustee of the Trust.

## **15.3 Manufacturer warranties**

The Supplier will take all reasonable steps (including as may be requested in writing by PWC) to ensure that PWC obtains the full benefit of any additional warranties that may be provided by the manufacturer or the Supplier of any Goods provided by the Supplier under this Contract. The Supplier will not do, or omit to do, anything that will or might jeopardise or affect PWC's entitlements under any such warranties.

## **15.4 PPSA**

15.4.1 To the extent the PPSA applies to any Goods, Deliverables, materials or other items supplied by the Supplier to PWC, the Supplier warrants that:

- (a) the supply of Goods, Deliverables, materials or other items to PWC does not breach any security agreement the Supplier has with any third party; and
- (b) the supply of goods, deliverables, materials or other items to PWC is within the ordinary course of the Supplier's business.

15.4.2 The Supplier must indemnify and hold harmless PWC against all Loss sustained, incurred or suffered by PWC in connection with any infringement of, or Claim in relation to, any third party security agreement or security interest under the PPSA arising as a result of or in connection with:

- (a) the carrying out the Supplier's obligations under this Contract; or
- (b) the Goods, Deliverables, materials or other items supplied to PWC by the Supplier infringing that third party's rights under the PPSA.

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## **16. Rectification of Defects**

### **16.1 Defect Rectification Period**

16.1.1 If any Defect in any Supplies (including any breach of the warranties set out in clause 15.1 or of the Supplier's other obligations under this Contract in relation to the Supplies) arises within the Defect Rectification Period then (notwithstanding the termination or expiration of this Contract) PWC may at PWC's sole election and without limiting PWC's other rights or remedies:

- (a) by notice to the Supplier and at the Supplier's own expense, require the Supplier to repair or replace the Goods and/or resupply or rectify the Services as soon as practicable;
- (b) have the Goods repaired or replaced by a third party and/or have the Services resupplied or rectified by a third party, at the Supplier's cost; or
- (c) whether or not PWC has previously required the Supplier to repair or replace the Goods and/or resupply or rectify the Services, accept the Supplier's breach and require the repayment of the relevant Charges.

16.1.2 If required by PWC, any repaired or replaced Supplies will be subject to testing in accordance with clause 6.1.

16.1.3 An additional Defect Rectification Period, of the same duration as the original Defect Rectification Period, applies in respect of any Defect corrected by the Supplier under this clause 16.

16.1.4 Without limitation, any further Defect which is introduced by the Supplier's correction of an initial Defect must be corrected in accordance with this clause 16.

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## **17. Delays**

### **17.1 Delay Events**

17.1.1 If:

- (a) an Event occurs; or

- (b) there is a material delay by PWC to perform any obligation of PWC by the time specified for such performance,

which adversely affects the ability of the Supplier to perform the Supplier's obligations under this Contract by the required dates or timeframes set out in this Contract (**Delay Event**), then the Supplier must:

- (c) submit to PWC a written notification of the Delay Event within 5 Business Days of the date on which the Supplier first became aware, or ought reasonably to have become aware, of the Delay Event's occurrence (**Delay Notice**):
  - (i) proposing extended required dates or timeframes set out in this Contract, provided that any proposed extensions must be no greater than the actual period of delay caused by the Delay Event; and
  - (ii) describing with reasonable particularity the reason for the delay, an estimate of the likely duration of the delay, and the impact of the Delay Event on the required dates or timeframes set out in this Contract; and
- (d) take all reasonable actions within the Supplier's control to adhere to the required dates or timeframes set out in this Contract and otherwise mitigate the impact of the Delay Event, including the use of alternate sources and the development of suitable work-around plans where appropriate.

17.1.2 Within 5 Business Days of receiving a Delay Notice PWC must do one of the following:

- (a) accept the Delay Notice in writing, in which case:
  - (i) the extensions to the relevant required dates or timeframes proposed by the Supplier in the Delay Notice will be made; and
  - (ii) the required dates or timeframes set out in this Contract will automatically be deemed to be varied so that they are consistent with such extensions;
- (b) reject the Delay Notice in writing on the basis that PWC does not believe that the length of the extension claimed is reasonable having regard to the circumstances, and issue an amended Delay Notice setting out the extension PWC believes is reasonable having regard to the circumstances and this clause 17; or
- (c) reject the Delay Notice in writing on the basis that PWC does not believe that there has been a Delay Event or any of clauses 17.1.4 and 17.1.5 applies so that the Supplier is not entitled to any extension.

17.1.3 If the Supplier disagrees with PWC's notice under clause 17.1.2(b) or 17.1.2(c), the matter will be resolved in accordance with the dispute resolution procedures set out in clause 26.

17.1.4 The Supplier will not be entitled to an extension of the required dates or timeframes set out in this Contract to the extent that:

- (a) in relation to a material delay by PWC to which clause 17.1.1(b) applies, such delay has been caused or contributed to by the Supplier, any Subcontractor or Supplier Personnel including as a result of the Supplier failing to properly manage the performance of the Supplier's obligations under this Contract; or
- (b) the Supplier has failed to comply with clause 17.1.1(d).

17.1.5 Where a delay is attributable in part to the Supplier and in part to PWC but the delay would still have occurred irrespective of the delay attributable to PWC, the Supplier will not be entitled to an extension in accordance with clause 17.1.2.

## **17.2 Unforeseen Events**

17.2.1 Without limiting clause 17.1:

- (a) a Party is excused from performing its obligations under this Contract to the extent it is prevented by an Event, except an Event that is the subject of the Supplier's disaster recovery or business continuity plan; and
- (b) each Party must make all reasonable efforts to minimise the effects of the Event.

17.2.2 If an Event occurs which adversely affects the ability of the Supplier to perform the Supplier's obligations under this Contract:

- (a) the amounts payable by PWC to the Supplier will be reduced by an amount reasonably determined by PWC, which amount must be proportionate to the Supplier's obligations not performed as a result of the Event and take into account any temporary measures that have been implemented by the Supplier; and
- (b) if the Supplier is adversely affected for more than 20 Business Days, PWC may terminate this Contract by giving written notice to the Supplier. Each party will bear its own costs arising from termination under this clause 17.2.2(b).

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## **18. Charges and Payment Terms**

### **18.1 Payment**

Subject to the Supplier performing its obligations under and in accordance with this Contract, PWC will pay (by electronic funds transfer) the Charges for the Supplies in accordance with this Contract.

### **18.2 Invoices**

18.2.1 Each invoice issued by the Supplier must:

- (a) unless otherwise specified in the relevant Order, be sent via email to [accounts.pwc@powerwater.com.au](mailto:accounts.pwc@powerwater.com.au); and
- (b) comply with this Contract and any additional requirements specified in the relevant Order.

18.2.2 The Supplier may issue invoices in accordance with the Payment Plan. If no Payment Plan is specified in the relevant Order, then:

- (a) the Charges payable for any Goods must not be invoiced until Acceptance of all of the Goods to be provided under that Order; and
- (b) the Charges payable for any Services will be invoiced monthly in arrears.

18.2.3 If the Supplier does not invoice PWC in respect of any element of the Supplies within 3 months after the date on which it is first entitled to do so under this Contract, the Supplier is not entitled to recover that element and will be deemed to have irrevocably waived the Supplier's right to invoice PWC in respect of that element.

### **18.3 Charges inclusive**

The Supplier acknowledges and agrees that, except as expressly set out in the relevant Order, the Charges are inclusive of the Supplier's costs and Expenses together with any other taxes (excluding GST), duties, levies, licence fees or other similar amounts connected with the provision of the Supplies and the performance of that Order.

#### **18.4 Disputed invoices**

If PWC disputes the correctness of any invoice (or disagrees with any amount invoiced for any reason), then it may withhold payment of the disputed sum. PWC will pay any newly issued invoice from the Supplier for the undisputed amount. If the Supplier disagrees with PWC's assessment, it may refer the matter for resolution under clause 26.

#### **18.5 Payment is payment on account only**

Payment of an invoice by PWC is payment on account only and does not constitute approval or Acceptance of the Supplies.

#### **18.6 Overpayments**

If either Party becomes aware that PWC has overpaid or has been overcharged (including due to an incorrect invoice, incorrectly rendered invoice or an advance payment exceeding the amount ultimately payable), then, without limiting any other obligation of the Supplier or right or remedy of PWC:

18.6.1 that Party will promptly notify the other Party after becoming aware;

18.6.2 PWC may elect to have the overpayment set off against any amount due or subsequently due by PWC to the Supplier; and

18.6.3 if PWC does not exercise PWC's rights under clause 18.6.2, the Supplier will, within 15 Business Days of the notice under clause 18.6.1, reimburse PWC the amount overpaid or overcharged (including any overcharged GST).

#### **18.7 Set off by PWC**

Without limiting PWC's rights under any other provision of this Contract or otherwise at law, any debt due from the Supplier to PWC or any other claim to money which PWC may have against the Supplier, whether for damages or otherwise, under this or any other contract between the Parties may be set off in full against the Charges owing under this Contract or any Financial Security.

#### **18.8 Procedural aspects of payment**

18.8.1 Each invoice issued by the Supplier must:

- (a) be set out in the format prescribed by PWC or, if PWC has not prescribed a format, an easy to understand, user-friendly format;
- (b) include the full amount payable by PWC;
- (c) reference the relevant Order;
- (d) reference the relevant PWC purchase order number;
- (e) provide a description of the Supplies supplied and a breakdown of the Charges invoiced for those Supplies;
- (f) attach all timesheets that are relevant to the Supplies;
- (g) attach any additional information required by PWC for invoice substantiation, including breakdowns by Supplies, the calculations used to determine the amounts invoiced and supporting documentation;
- (h) be issued in Australian dollars (or such other currency as agreed in writing between the Parties);
- (i) include the Supplier's bank account details to enable EFT payment transmission;

- (j) be sent to the email address provided for in the Order; and
- (k) comply with the requirements of the GST Act.

18.8.2 PWC will pay the Supplier within 30 days of receiving an undisputed invoice complying with clause 18.8.1.

## 18.9 Adjustments

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 Date of Adjustment in accordance with the following formula:

$$NC = C + (C \times CPI)$$

Where:

- (a) **NC** is the Charges payable in relation to the Services applicable for the year following the Date of Adjustment;
- (b) **C** is the Charges payable in relation to the Services applicable immediately before the Date of Adjustment; and
- (c) **CPI** is:
  - (i) in the case of the first adjustment, the percentage difference between the Consumer Price Index for the quarter immediately before the Date of Adjustment and the Consumer Price Index for the corresponding quarter one year earlier; and
  - (ii) in the case of each adjustment subsequent to the first adjustment, the percentage difference between the Consumer Price Index for the quarter immediately before the Date of Adjustment and the Consumer Price Index for the quarter immediately before the previous Date of Adjustment.

## 18.10 GST

18.10.1 Except as otherwise provided by this clause or this Contract generally, all consideration payable under this Contract in relation to any supply is inclusive of GST, where GST is calculated using the GST Rate at the Commencement Date.

18.10.2 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.

18.10.3 Where the GST Rate is changed after the Commencement Date, then any amount of consideration expressed to be payable under this Contract for any Supply made under or in connection with this Contract which:

- (a) was specified in this Contract before the change to the GST Rate was announced; and
- (b) 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.

18.10.4 If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an Input Tax Credit or otherwise.

- 18.10.5 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, and if GST is not already included in the amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream plus GST.
- 18.10.6 If an Adjustment Event arises in respect of a Supply made by a supplying Party, the GST amount payable by the receiving Party will be recalculated to reflect the Adjustment Event and a payment will be made by the receiving Party to the supplying Party, or by the supplying Party to the receiving Party, as the case requires.

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## 19. PWC information and access

- 19.1.1 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.
- 19.1.2 The Supplier must ensure that, without limiting clause 20, 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.

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## 20. Confidentiality

- 20.1.1 Subject to the provisions of clauses 20.1.2 to 20.1.3, each Party must:
- (a) treat as strictly confidential and only use the other Party's Confidential Information solely for the purposes contemplated by this Contract and the relevant Order;
  - (b) not, without the prior written consent of the Party from whom the Confidential Information was obtained (which may be withheld in that Party's sole discretion), publish, use or otherwise disclose to any person the other Party's Confidential Information except for the purposes contemplated by this Contract and the relevant Order;
  - (c) maintain adequate security for the other Party's Confidential Information while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Contract or the relevant Order; and
  - (d) not make use of the other Party's Confidential Information to the commercial, financial or competitive disadvantage of the other Party.
- 20.1.2 Each Party may disclose Confidential Information which would otherwise be subject to clause 20.1.1 if, but only to the extent, it can demonstrate that:
- (a) such disclosure is required by applicable Law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
  - (b) the Confidential Information was lawfully in its possession prior to its disclosure by the other Party (as evidenced by written records) and had not been obtained from the other Party; or
  - (c) the Confidential Information has come into the public domain other as a result of a breach of this Contract or any other obligation of confidence,

provided that any such disclosure must not be made without prior consultation with the Party from whom the Confidential Information was obtained and in the case of disclosures under clause 20.1.2(a), must be made so as to minimise any such disclosure.

- 20.1.3 The obligations on PWC under this clause 20 will not be taken to have been breached to the extent that Confidential Information is communicated or disclosed by PWC:
- (a) to any person for the purposes of PWC's business or operations;
  - (b) to the Northern Territory of Australia;
  - (c) to a Minister, Cabinet or the Legislative Assembly, of the Northern Territory of Australia;
  - (d) to a committee of the Legislative Assembly of the Northern Territory of Australia;
  - (e) to any public-sector agency (whether of the Northern Territory of Australia, a State, other Territory or the Commonwealth) where required to meet any reporting obligations on PWC or for any other government business or initiative relating to or in connection with the business or operations of PWC, provided that as far as reasonably practicable information that is identifiable as related to this Contract or the Supplier will not be made public by PWC; or
  - (f) in accordance with any licence rights granted under this Contract.
- 20.1.4 Each Party may for the purposes contemplated by this Contract and a relevant Order, disclose the other Party's Confidential Information to its Personnel and its professional advisers, auditors, bankers and insurers, acting as such, provided that such persons have first been directed by the disclosing Party to keep it confidential. The disclosing Party under this clause 20.1.4 must enforce each direction at its own cost.
- 20.1.5 A Party must promptly give notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the other Party's Confidential Information and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

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## **21. Publicity**

### **21.1 Public statements**

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

### **21.2 Reputation**

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

21.2.1 damage, bring into disrepute or ridicule PWC's name, messages or reputation; or

21.2.2 attract public or media attention which may be prejudicial or otherwise detrimental to PWC's brand, messages, reputation or interests.

### **21.3 PWC name**

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



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## **22. Intellectual Property**

### **22.1 Licence of Software**

- 22.1.1 The Supplier grants to PWC a world-wide, non-exclusive, irrevocable, royalty-free licence to use, copy and modify any Software and Documentation (including any Intellectual Property Rights in respect of the same) in accordance with the terms and conditions of this Contract. Such licence is perpetual unless otherwise specified in the relevant Order. PWC may sublicense the Software and Documentation to its Personnel (including for the purposes of providing services to PWC) and third party end-users of the Supplies.
- 22.1.2 Without limiting the generality of clause 15.1.2, in respect of any Software or Documentation which is proprietary to a third party the Supplier will:
- (a) disclose the fact of the third party's ownership to PWC before this Contract (or the relevant Order) is entered into; and
  - (b) upon request by PWC, arrange for the relevant third party to confirm in writing to PWC that the Supplier has all necessary rights to license the relevant Software and Documentation to PWC in accordance with this Contract.
- 22.1.3 The Supplier acknowledges and agrees that, save for the payment of the Charges by PWC to the Supplier in accordance with the terms and conditions of this Contract, no additional fees or charges (including royalties) are payable by PWC or any third party to the Supplier or any third party with respect to the licence granted under clause 22.1.1 or the exercise by PWC of its rights in accordance with such licence.

### **22.2 Assignment of ownership in any Deliverables**

- 22.2.1 Subject to clause 22.3, the Supplier must procure that the Intellectual Property Rights in any Deliverables (including all related Source Code Materials) vest in PWC upon creation and the Supplier hereby absolutely assigns and transfers (and will procure that the Supplier's Affiliates and Personnel assign and transfer) to PWC all existing and future Intellectual Property Rights throughout the entire world in any Deliverables, including all statutory and common law rights attaching to any Deliverables.
- 22.2.2 The Supplier must, as soon as practicable after their creation, deliver to PWC the Source Code Materials for any Deliverables consisting of software to which clause 22.2.1 applies.

### **22.3 Licence of the Supplier Background IPR**

Clause 22.2.1 will not apply if and only to the extent that:

- 22.3.1 the Deliverables contain Supplier Background IPR; and
- 22.3.2 the Supplier notifies PWC in writing of the fact that Supplier Background IPR will form part of the Deliverables prior to the relevant Effective Date,

in which case the Supplier and its licensors (as applicable) will retain ownership of such Supplier Background IPR and the Supplier hereby grants to PWC a world-wide, non-exclusive, perpetual, irrevocable, royalty free licence to use, copy and modify such Supplier Background IPR (specifically including any Intellectual Property Rights in respect of the same) in accordance with the terms and conditions of this Contract and the relevant Order. PWC may sublicense such Supplier Background IPR to its Personnel (including for the purposes of providing services to PWC) and third party end-users of the Supplies.

### **22.4 Moral Rights**

To the extent permitted by applicable Law, the Supplier must ensure that any individual that contributed to the Supplies:

- 22.4.1 unconditionally and irrevocably consents to any act or omission that would otherwise infringe any Moral Rights in relation to the Supplies, whether occurring before or after a consent is given; and
- 22.4.2 unconditionally and irrevocably waives all Moral Rights in relation to the Supplies,
- for the benefit of PWC and its Personnel, customers and other suppliers and contractors.

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## **23. Software audit**

- 23.1.1 The Supplier will have the right to audit and verify PWC's compliance with the terms (including any specified usage metrics) of any Software licence in accordance with this clause 23 where expressly stated in the relevant Order. Otherwise, the Supplier will not have such right and this clause 23 will not apply.
- 23.1.2 PWC must, on reasonable notice from the Supplier and no more than once in any calendar year, provide the Supplier or the Supplier's authorised representatives with reasonable access to PWC's premises during normal business hours to audit PWC's records of its installation and use of the Software to confirm that PWC is complying with the terms (including usage metrics) of the relevant Software licence. PWC must provide the Supplier or the Supplier's authorised representatives with any co-operation, access and information reasonably required to perform any such audit, but such audit must not involve the deployment or use of any software or tool on any PWC System. If requested by PWC, the Supplier will ensure that all individuals involved in the audit enter into a confidentiality deed with PWC on terms the same in all material respects as those set out in clause 20.
- 23.1.3 If an audit demonstrates that PWC has not used the licensed Software in accordance with the relevant licence:
- (a) the Parties will discuss in good faith whether PWC is able to adjust the manner in which it deploys or uses the relevant Software in order to become compliant, in which case PWC will do so as soon as reasonably practicable;
  - (b) if PWC is not able to adjust the manner in which it deploys or uses the relevant Software in order to become compliant and as a result has underpaid the Supplier, then PWC must pay to the Supplier the unpaid licence fees in respect of the relevant Software that would have been payable had the correct licence been acquired at the time that it was first over-used, provided that:
    - (i) a grace period will apply such that PWC will not be required to make any additional payment for a period of 90 days following the conclusion of the good faith discussions referred to in clause 23.1.3(a);
    - (ii) PWC will not be charged for any usage which occurred more than 12 months prior to the conclusion of the good faith discussions referred to in clause 23.1.3(a);
    - (iii) if PWC's usage fluctuates over time, the applicable usage will be taken as the average usage by PWC over the 12 month period immediately prior to the conclusion of the good faith discussions referred to in clause 23.1.3(a); and
    - (iv) usage by PWC in any non-production environment will be disregarded.

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## **24. Indemnities**

### **24.1 Negligence, reckless conduct, wilful misconduct**

The Supplier must indemnify and hold harmless PWC and its Personnel against all Losses sustained, incurred or suffered by PWC or its Personnel as a result of any negligence, reckless conduct or wilful misconduct by the Supplier, any Subcontractor or their respective Personnel.

### **24.2 Other risks**

The Supplier must indemnify and hold harmless PWC and its Personnel against:

24.2.1 any loss of (including loss of use) or damage to property (real or personal) of PWC; and

24.2.2 any liability to, or any claims, actions or proceedings by, a third party (including PWC's Personnel) in respect of loss of or damage to property (real or personal) or injury to or death of persons,

caused by the Supplier, or arising out of, or in any way in connection with, the Supplier's performance of this Contract. This indemnity will be reduced proportionally to the extent that a wrongful or negligent act or omission of PWC or its Personnel contributed to the injury death, loss or damage.

### **24.3 Third party IPR indemnity**

24.3.1 The Supplier must indemnify and hold harmless PWC and its Personnel against all Losses sustained, incurred or suffered by PWC or its Personnel as a result of any claim, action or proceeding that the use, possession or receipt by PWC or its Personnel of the Supplies or Deliverables (an **Infringing Item**) infringes the Intellectual Property Rights or other rights of any third party (an **IPR Claim**).

24.3.2 Without limiting the Supplier's obligations under clause 24.3.1, if any person makes an IPR Claim, or in either Party's reasonable opinion an IPR Claim is likely to be made, then the Supplier must, with minimal disruption to PWC, at its option, promptly and at its own expense either:

- (a) procure for PWC the right to continue using, possessing or receiving the Infringing Item free from any IPR Claim;
- (b) modify the Infringing Item so that PWC's use, possession or receipt of the Infringing Item ceases to infringe the rights (including Intellectual Property Rights) of the relevant third party; or
- (c) replace the Infringing Item with a non-infringing substitute item that complies with the Supplier's obligations under this Contract and the relevant Order.

24.3.3 If the Supplier fails to comply with clause 24.3.2(a) within 10 Business Days of becoming aware of any IPR Claim or if PWC is not reasonably satisfied with any modification or replacement made by the Supplier pursuant to clauses 24.3.2(b) or 24.3.2(c), then:

- (a) the Supplier must comply with any reasonable settlement of the IPR Claim (including by paying money) negotiated by PWC; or
- (b) PWC may terminate this Contract (in whole or in part) with immediate effect, by providing written notice to the Supplier and, without prejudice to PWC's other rights and remedies, the Supplier must refund Charges paid under the terminated Orders (or, for of any Orders partially terminated, Charges paid under the terminated part).

### **24.4 Treatment of indemnities**

24.4.1 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Contract (or any part of it).

- 24.4.2 It is not necessary for PWC to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
- 24.4.3 The Supplier must pay PWC any sum claimed by PWC pursuant to an indemnity on demand from PWC without any deduction or set off.
- 24.4.4 The Supplier waives any right of subrogation it may have in respect of any indemnity given by it under this Contract.

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## **25. Limitation of liability and further indemnities**

### **25.1 Unlimited liability**

The exclusions and limitations on a Party's liability in this Contract do not apply in the case of:

- 25.1.1 fraud;
- 25.1.2 death or personal injury;
- 25.1.3 damage to tangible property (real and personal);
- 25.1.4 negligence;
- 25.1.5 reckless conduct or wilful misconduct;
- 25.1.6 a breach of clauses 7.8 (Privacy) or 20 (Confidentiality);
- 25.1.7 the indemnities given under this Contract; or
- 25.1.8 any liability to the extent that the same may not be excluded or limited as a matter of applicable Law.

### **25.2 Exclusion of Consequential Loss**

- 25.2.1 Subject to clauses 25.1 and 25.2.2, neither Party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Contract for any Consequential Loss, even if such Party has been advised of the possibility of such Consequential Loss.
- 25.2.2 The Supplier acknowledges and agrees that, notwithstanding clause 25.2.1 and without limitation, PWC is entitled, subject to clause 25.3, to recover:
  - (a) any direct loss or damage;
  - (b) any amounts expressly provided for under this Contract; and
  - (c) any:
    - (i) costs of repairing, replacing or obtaining the Goods, including the cost of procuring goods of equivalent functionality and performance from a third party;
    - (ii) costs of re-performing the Services, including the cost of re-performing services internally and the cost of procuring replacement services of equivalent functionality and performance from a third party;
    - (iii) costs of implementing any reasonably necessary temporary workaround in relation to the Supplies;

- (iv) administrative costs and expenses, including for management and staff time;
- (v) consultants' fees;
- (vi) mitigation costs and expenses; and
- (vii) expenditure on preserving or restoring goodwill,

sustained, incurred or suffered by PWC, which is caused by or arises from any wrongful act or omission, tort (including negligence) or breach of this Contract by the Supplier or PWC's termination of this Contract pursuant to clause 27.2.

### **25.3 Cap on the Supplier's liability**

Subject to clauses 25.1 and 25.2, the Supplier's total maximum liability to PWC for all Loss sustained, incurred or suffered by PWC (a **PWC Claim**) arising under or in connection with this Contract, is limited for all PWC Claims to the greater of:

25.3.1 the amount specified in Item 9; and

25.3.2 2 x the aggregate of all the Charges paid, payable or expected to be paid under this Contract,

save and except where such liability exceeds such amount and is covered by the insurance policies of the Supplier, in which case the Supplier's liability will reflect the maximum level of insurance cover provided by such insurance policies.

### **25.4 Cap on PWC's Liability**

Subject to clauses 25.1 and 25.2, PWC's total maximum liability to the Supplier for all Loss sustained, incurred or suffered by the Supplier (a **Supplier Claim**) arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited for all Supplier Claims in aggregate to an amount equal to 100% of the total of the amounts paid or payable by PWC to the Supplier under or in connection with this Contract in the twelve-month period immediately prior to the most recent Supplier Claim.

### **25.5 Proportionate liability regimes excluded**

To the extent permitted by applicable Law, the operation of any legislative proportionate liability regime is excluded in relation to any Claim against the Supplier under or in connection with this Contract.

### **25.6 Apportionment**

Notwithstanding any other provision of this Contract, the liability of a Party for any Loss sustained, incurred or suffered by the other Party arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, is reduced to the extent that any unlawful or negligent act or omission of the other Party caused or contributed to such Loss.

### **25.7 Obligations to mitigate and to assign resources**

25.7.1 Each Party must use reasonable efforts, to the extent within that Party's control and consistent with each Party's obligations under this Contract, to promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by it under or in connection with this Contract.

25.7.2 Without limiting clause 25.7.1 and notwithstanding any other provision of this Contract, in the event that PWC considers the Supplier has breached this Contract and PWC requests the Supplier to do so in writing, the Supplier must urgently assign additional Personnel to work on a dedicated basis (and, if required, software, equipment or other resources) in order to resolve and remedy the breach and mitigate any resulting adverse effects, provided that the Supplier will not be required to:

- (a) provide such additional Personnel for a period exceeding 15 days; or
- (b) utilise software, equipment or other resources not already owned by or licensed to the Supplier.

25.7.3 The Supplier will be responsible for the cost of any Personnel (and other any required resources) provided by the Supplier under clause 25.7.2, unless the Supplier demonstrates or the Parties later agree that the Supplier had not breached this Contract, in which case PWC will meet the Supplier's actual, substantiated and reasonable additional costs in complying with clause 25.7.2.

25.7.4 For clarity, the Supplier's obligations under clause 25.7.2 apply even if some or all of the Losses or potential Losses of PWC arising in relation to the breach are Consequential Losses.

## **25.8 PWC Entities**

25.8.1 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), PWC 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 sustained, incurred or suffered by all PWC Entities, as if those Losses 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.

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## **26. Dispute Resolution**

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

26.1.1 This clause 26 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:

- (a) the existence, formation, breach or termination of any Order or this Contract;
- (b) the correct interpretation of any provision of any Order or this Contract; or
- (c) any claim in tort, in equity or pursuant to any statute which relates to any Order or this Contract,

**(Dispute).**

26.1.2 A Party must not commence any court proceedings relating to a Dispute unless it has complied with the provisions of this clause 26, except where:

- (a) a Party seeks urgent injunctive relief; or
- (b) the Dispute relates to compliance with this clause 26.

26.1.3 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:

- (a) reasonable particulars of the matter in dispute; and
- (b) the action that the Party issuing the Dispute Notice requires of the other Party in order to resolve the Dispute.

## **26.2 Primary Level Discussions**

26.2.1 On receipt of a Dispute Notice, the Principal's Representative and the Supplier Representative must promptly commence discussions to attempt in good faith to resolve the Dispute (**Primary Level Discussions**).

26.2.2 The Principal's Representative and the Supplier Representative will meet as often as necessary to:

- (a) 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
- (b) discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute without the necessity of resorting to any formal proceeding.

## **26.3 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 Supplier of commensurate seniority (**Secondary Level Discussions**).

## **26.4 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.

## **26.5 Referral to mediation**

26.5.1 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.

26.5.2 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.

26.5.3 If neither Party refers a Dispute for mediation as contemplated by clause 26.5 within 30 Business Days of the date of a Dispute Notice, either Party may commence court proceedings in relation to the Dispute.

## **26.6 Continued performance**

26.6.1 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.

- 26.6.2 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.

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## **27. Termination and Suspension**

### **27.1 Termination by PWC for convenience**

- 27.1.1 PWC may 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 at least 30 days' prior written notice to the Supplier.
- 27.1.2 If PWC terminates an Order under clause 27.1.1, the Supplier will be entitled to payment of any Early Termination Payment amount set out in the relevant Order. If PWC terminates this Contract under clause 27.1.1 and there are no outstanding or ongoing Orders at that time, no Early Termination Payments are payable.
- 27.1.3 For the sake of clarity, PWC has an unfettered discretion to terminate this Contract in accordance with this clause 27.1. Any implied obligations or restrictions relating to the exercise of the right to terminate this Contract under this clause 27.1 by PWC are expressly excluded to the extent permitted by Law.

### **27.2 Termination by PWC for cause**

PWC may terminate any Order or this Contract (in each case in whole or in part) with immediate effect by providing written notice to the Supplier:

- 27.2.1 if the Supplier is in breach of an Order or this Contract and such breach is incapable of being remedied;
- 27.2.2 if the Supplier is in breach of an Order or this Contract and such breach is capable of being remedied, but the Supplier fails to remedy the breach within 20 Business Days of its receipt of a notice requiring it to do so;
- 27.2.3 if the Supplier is not performing in accordance with the Project Plan (if any), or has otherwise failed to meet any Key Milestones (if any) by the Key Milestone Dates (if any);
- 27.2.4 if the Supplier is in breach of clause 5.11.3 or 5.11.4 (Local Content);
- 27.2.5 if the Supplier is persistently in breach of an Order or this Contract (including any persistent or recurring Defects in the Goods or Services);
- 27.2.6 if the Supplier or the Supplier's Personnel act or omit to act in a manner calculated or likely to bring PWC into disrepute;
- 27.2.7 in accordance with clause 5.4.3 (Other suppliers);
- 27.2.8 in accordance with clause 6.3.2(c) (Acceptance);
- 27.2.9 if the Supplier breaches clause 8 (Work Health and Safety);
- 27.2.10 if the Supplier breaches clause 20 (Confidentiality);
- 27.2.11 in accordance with clause 24.3.3(b) (Third Party IPR Indemnity);
- 27.2.12 if there is a Change of Control Event in respect of the Supplier that, in PWC's reasonable opinion, adversely affects the Supplier's ability to provide the Supplies; or
- 27.2.13 if the Supplier is subject to an Insolvency Event.



### **27.3 Termination by the Supplier**

27.3.1 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 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.

27.3.2 The Supplier is not entitled to terminate this Contract, and will only be entitled to terminate an Order in accordance with clause 27.3.1.

### **27.4 Suspension**

27.4.1 PWC may in PWC's sole discretion suspend any Order or this Contract (in each case in whole or in part) or require the Supplier to redirect the Supplier's resources at any time by giving at least 5 days' written notice to the Supplier.

27.4.2 Subject to clause 27.4.3, if PWC suspends any Order or this Contract under clause 27.4.1 and, provided that the Supplier is not in breach of this Contract, the Supplier will be entitled to payment for any reasonable and unavoidable direct costs (if any) incurred by the Supplier during the period of suspension, but no other amounts will be payable by PWC.

27.4.3 The Supplier must mitigate the Supplier's costs and, without limitation, ensure that, to the extent it is able to, it redeploys resources so as to minimise the Supplier's costs.

27.4.4 To the extent any Order or this Contract is suspended by PWC under clause 27.4.1, the Supplier must immediately recommence the performance of its relevant obligations under any Order or this Contract as directed by PWC.

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## **28. Effects of Termination**

### **28.1 Effect on Orders**

28.1.1 Termination of this Contract will terminate all Orders under this Contract.

28.1.2 If a particular Order is terminated (in whole or in part), then this Contract and any other Orders will be unaffected and both Parties must continue to perform their obligations in accordance with the relevant terms.

### **28.2 Return of Confidential Information and property**

On termination of this Contract or termination or expiration of an Order (in each case, 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):

28.2.1 all relevant Deliverables, whether complete or partially complete;

28.2.2 all Confidential Information (including copies, summaries and excerpts);

- 28.2.3 all relevant software, hardware, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
- 28.2.4 any other relevant property,
- (in whatever form, including in electronic format) of or belonging to PWC which are in its possession or control, provided that the Supplier:
- 28.2.5 is not required to return or destroy any record or document where it is not reasonably practicable for the Supplier to do so and PWC agrees (acting reasonably) that it is not reasonably practicable for the Supplier to do so (e.g. where held on backup systems/media/email and the record or document cannot be returned or destroyed without significant effort, time and expense); and
- 28.2.6 may retain one copy of any record or document returned or destroyed under this clause 28.2 on a confidential basis as required by Law or in accordance with the Supplier's reasonable internal record-keeping policies.

### **28.3 Exit assistance**

- 28.3.1 From the date commencing on the termination or expiration of an Order (or such earlier date as notified to the Supplier in writing), the Supplier must provide all reasonable assistance and cooperation to PWC or any new supplier appointed by PWC to provide the relevant Supplies to ensure the orderly transfer of responsibility as required by PWC, which may include:
- (a) affording all reasonable assistance necessary for the timely and efficient transition of the provision of the Supplies to PWC and/or any new supplier;
  - (b) responding to all requests for information, advice and assistance by PWC and providing the information, advice and assistance to PWC within 5 Business Days of receiving a request from PWC; and
  - (c) permitting PWC to assign PWC Personnel or any Personnel of the new supplier to work with Supplier Personnel to facilitate the transfer of any information and materials that PWC believes is required.
- 28.3.2 To the extent that the Supplier's compliance with clause 28.3.1 requires the Supplier to deploy additional resources which results in the Supplier incurring additional costs, the Supplier will be entitled to charge PWC for such additional costs, on a time and materials basis, by reference to the rates specified in the Schedule of Rates, or if no rates are specified, by reference to reasonable and industry competitive daily rates. No additional amounts are payable if additional resources are not utilised.
- 28.3.3 Notwithstanding the scheduled termination or expiration of an Order, PWC may, by giving written notice to the Supplier, extend the Term of that Order by up to 6 months, in which case the Supplier must continue to provide the relevant Supplies for the same Charges and on the same terms and conditions as applied immediately preceding such notice.
- 28.3.4 PWC may terminate any or all services required to be provided under this clause 28.3 at any time by providing written notice to the Supplier. Where PWC issues a notice under this clause 28.3.4, the notice must specify the date on which the exit assistance Services will end. No additional amounts will be payable by PWC to the Supplier in relation to any exit assistance services provided after that date.

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### **29. Compliance with Ring-Fencing Guideline**

- 29.1.1 This clause applies notwithstanding any other clause in this Contract.
- 29.1.2 The Supplier acknowledges that PWC must comply with the Ring-Fencing Guideline.

- 29.1.3 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).
- 29.1.4 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.
- 29.1.5 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.
- 29.1.6 The Supplier must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Services are provided by the Supplier in a manner that is consistent with the requirements of this clause.
- 29.1.7 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.
- 29.1.8 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.
- 29.1.9 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.
- 29.1.10 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.

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## 30. Supplier's Performance Report

- 30.1.1 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.

30.1.2 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 Supplier complies with the relevant requirements of this Contract (including the relevant Specifications), or otherwise limit the Supplier's obligations or PWC's rights and remedies.

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## **31. General**

### **31.1 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.

### **31.2 Variation**

31.2.1 A Party may at any time give a Variation Proposal to the other Party proposing a variation to this Contract.

31.2.2 A Party who receives a Variation Proposal must respond within 10 Business Days of receiving the Variation Proposal.

31.2.3 If the Party who receives a Variation Proposal does not agree to the proposed variation, then the Parties must negotiate that Variation Proposal.

31.2.4 If the Party who receives a Variation Proposal agrees to the proposed variation, then the Supplier will prepare the variation document (using PWC's template variation document) consistent with the Variation Proposal within 10 Business Days of the receiving Party's agreement to the proposed variation. Upon execution by the Parties, the terms and conditions of this Contract will be varied as agreed in the variation document.

31.2.5 Unless otherwise provided for in this Contract, this Contract may only be varied or replaced by a variation document duly executed by the Parties.

### **31.3 Costs**

The Supplier must pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Contract (including any Orders).

### **31.4 Further assurances**

The Supplier must, at the request of PWC, execute or procure the execution of such documents and do or procure the doing of such acts and things as PWC may reasonably require to give PWC the full benefit of all the terms and conditions of this Contract.

### **31.5 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.

### **31.6 PWC trustee for its Personnel**

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

### **31.7 Assumptions**

The Parties acknowledge and agree that each Order (including the Charges) is prepared on the basis of any Assumptions. Any other assumptions, considerations or understandings of the Supplier that are not expressly set out in writing in that Order are hereby expressly excluded in full. If any of the Assumptions set out in an Order prove to be materially incorrect and this has a consequential material detrimental effect on the performance of that Order by the Supplier, each Party must (if requested in writing by the other Party) enter into discussions concerning any appropriate Variation.

### **31.8 Entire agreement**

This Contract constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter (specifically including any standard terms and conditions of the Supplier). Each Party acknowledges that it has not been induced to enter into this Contract (including any Order) 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.

### **31.9 RFT Response**

- 31.9.1 If directed by PWC, the Supplier 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.
- 31.9.2 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:
- (a) 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
  - (b) determine the meaning of a provision of this Contract when the provision is ambiguous or obscure.

### **31.10 Relationship of the Parties**

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. Subject to any express provision in this Contract or a relevant Order 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.

### **31.11 Rights, delays, etc.**

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

### **31.12 Vienna Convention does not apply**

The Parties agree that, to the extent permitted by applicable Law, the Vienna Convention of 1980 (*The Convention on Contracts for the International Sale of Goods*) and all international and domestic legislative (or other) implementations of that Convention do not apply in relation to the supply of the Supplies under this Contract.

### **31.13 Notices**

31.13.1 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 31.13.2, a Notice must be sent to each Party in accordance with the details set out in Items 2 and 4, as updated from time to time.

31.13.2 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.

31.13.3 Any Notice is regarded as given and received:

(a) if sent by mail: 3 Business Days after it is posted; and

(b) if sent by email:

(i) when the sender receives an automated message confirming delivery; or

(ii) 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.

31.13.4 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.

### **31.14 Survival**

31.14.1 On termination of this Contract and expiration or termination of each relevant Order, the obligations of confidentiality (but not the rights to use or disclose) under clause 20, together with clauses 13, 15, 16, 18.6, 18.9, 21, 22, 24, 28, this clause 31, clauses 32 and 33 and any other provision of this Contract which expressly or by implication is intended to come into or remain in force on or after termination of this Contract or expiration or termination of the relevant Order, will continue in full force and effect notwithstanding any such termination.

31.14.2 Notwithstanding the termination or expiry of this Contract, this Contract continues to apply as between the Parties to the extent necessary until all Orders have been either terminated or delivered or provided in full by the Supplier.

### **31.15 Accrued rights**

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

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## **32. Interpretation**

**32.1** The following rules of interpretation apply to this Contract and each relevant Order.

32.1.1 Unless the context requires otherwise:

- (a) 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;
- (b) references to any legislation, statute or statutory provisions includes 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;
- (c) references to clause(s), Schedule(s) and Appendix(ices) are references to clause(s), Schedule(s) and Appendix(ices) of and to this Contract or the Order;
- (d) references to any Party include its successors (whether by operation of applicable Law or otherwise) and permitted assigns;
- (e) 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;
- (f) references to the singular include the plural and to the masculine include the feminine, and in each case vice versa; and
- (g) a reference to '\$' or 'dollars' is a reference to Australian dollars.

32.1.2 The headings and sub headings in this Contract are inserted for convenience only and do not affect the meaning of this Contract or that Order.

32.1.3 Any schedules, annexures, appendices or other documents attached or referred to this Contract or an Order has effect as if set out in this Contract or that Order.

32.1.4 If a payment or other act is required by this Contract or an Order 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.

32.1.5 Words and expressions that are not defined in this Contract or Order but which have a defined meaning in the GST Law, have the same meaning as in the GST Law.

32.1.6 In the event of any conflict or inconsistency between the provisions of this Contract, except to the extent expressly specified otherwise in the relevant Order, the provisions listed earlier below prevail to the extent of such conflict or inconsistency, and the provisions or documents listed later below are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency:

- (a) all applicable Laws referred to in the PWC Policies;

- (b) the terms of this Contract (excluding Orders and schedules, annexures, appendices or other documents attached or referred to in, an Order);
- (c) an Order (or, if necessary, the most recent Order);
- (d) the schedules, annexures, appendices or other documents attached or referred to an Order (or, if necessary, the most recent Order);
- (e) any schedules, annexures, appendices or other documents attached or referred to in this Contract; and
- (f) the PWC Policies.

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### 33. Definitions

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

**Acceptance** means PWC accepting the relevant Supplies in accordance with clause 6.3.1, and **Accept** and **Accepted** are to be construed accordingly.

**Affected Party** has the meaning given in the definition of Event.

**Affiliate** means, in respect of a company or other business entity, any company or other business entity controlled by, controlling, or under the common control of that company or other business entity.

**Approver for Authorised Personnel** means the Principal's Representative named as such in the relevant Order or other appropriately authorised representative.

**Assumptions** means, in respect of an Order, the assumptions (if any) expressly and clearly set out as such in that Order.

**Authorised Personnel** means, in relation to a particular Order, the Supplier Personnel (if any), subject to clause 10.3.2:

- (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.

**Business Day** means any day which is not a Saturday or a Sunday or a public holiday in the Northern Territory.

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

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

**Change of Control Event** means, in relation to an entity, an event the occurrence of which has the effect that:

- (a) if a person controlled the entity prior to the time the event occurred, the person ceased to control the entity or another person obtained control of the entity;
- (b) if no person controlled the entity prior to the time the event occurred, a person obtained control of the entity; or



- (c) if the entity is owned or controlled by a group or consortium of persons, or if the group or consortium could control the entity were they to act collectively, there is any material change in the composition of the group or consortium.

For the purposes of this definition, “control” and “controlled” have the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

**Charges** means the prices, fees and charges for the Supplies set out, referred to or otherwise calculated in accordance with the relevant Order for such Supplies, in accordance with the Schedule of Rates or as otherwise agreed between the Parties in writing.

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

**Commencement Date** means the commencement date of this Contract, as set out in the Contract Details.

**Commissioner** means the Information Commissioner or Privacy Commissioner (as those terms are defined in the *Australian Information Commissioner Act 2010* (Cth)).

**Confidential Information** means, in relation to a Party, all information relating to that Party, including all information concerning the business, products, services, systems, procedures and records (in whatever form, including in electronic format) of that Party, and their relationships with their customers and suppliers. Confidential Information of PWC includes the terms and conditions of this Contract.

**Consequential Loss** means any loss, damage or expense recoverable at Law:

- (a) which is a loss of opportunity, goodwill, profits, anticipated savings or business; and
- (b) including any costs or expenses incurred in connection with any of the losses referred to in paragraph (a),

but excluding any loss, damage or expense which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant loss, damage or expense.

**Consumer Price Index** means the Consumer Price Index for Darwin as published from time to time by the Australian Bureau of Statistics, or in its absence any index published in its substitution.

**Contract** means this contract, consisting of the Contract Details, these Terms and Conditions, any Orders issued by PWC hereunder and any schedules, annexures, appendices or other documents attached or referred to in this contract.

**Contract Details** means the section of this Contract headed ‘Contract Details’.

**Date of Adjustment** means the first and each subsequent anniversary of the Effective Date during the Term of an Order.

**Defect** means any defect, fault, error or omission in the Goods or Services or any aspect of the Goods or Services, which is not in accordance with the requirements of this Contract and any relevant Order, including

- (a) any failure of the Goods or Services to meet the standards, specifications and requirements of this Contract (including the relevant Specifications);
- (b) any failure of the Goods or Services to meet the relevant PWC Standards and Specifications; and
- (c) any defect, fault, error or omission in the Goods that:
- (i) results in the Goods or Services not being able to be used for their intended use;
- (ii) causes an error message to be displayed by the Goods or any system that the Goods are being run on, are interoperating with or being accessed from;

- (iii) results in the Goods doing something that they are not designed to do;
  - (iv) results in the Goods not doing something that they were designed to do; or
- (d) any failure of the Goods or Services to pass the tests carried out under this Contract.

**Defect Rectification Period** means, in respect of an Order, the relevant period of time (eg 'defect rectification period', 'warranty period' or similar, however so-called) stated in that Order during which the Supplier must rectify any Defects in the Goods or Services at the Supplier's sole cost and expense.

**Deliverables** means:

- (a) in respect of an Order, any deliverables (excluding the Hardware and Software) set out or referred to as such in that Order; and
- (b) any other outputs of the Services that are provided or are required to be provided by the Supplier in the performance of the Supplier's obligations under this Contract or otherwise arise out of, or in anticipation of, the performance of the Services,

including any Documentation (in whatever form, including in electronic format).

**Dispute** has the meaning given in clause 26.1.1.

**Dispute Notice** has the meaning given in clause 26.1.3.

**Documentation** means the user manuals, reference manuals and other materials and documentation (in whatever form, including in electronic format) relating to the installation, use, operation, performance, capacity, quality, scope or functionality of the Goods.

**Early Termination Payment** means, in respect of an Order, the amount (if any) set out or referred to as such in that Order.

**Effective Date** means the date on which a relevant Order becomes effective, as set out or referred to as such in that Order.

**Eligible Data Breach** has the same meaning as it has in the Privacy Act.

**Email Service Address** means:

- (a) in the case of the Supplier, its email address set out in Item 4 (as may be updated from time to time by the Supplier giving notice in writing to PWC); or
- (b) in the case of PWC, the email address set out in Item 2 (as may be updated from time to time by PWC giving notice in writing to the Supplier).

**Expenses** means any 'out-of-pocket' third party expenses (for example, travel, accommodation and subsistence) incurred by the Supplier under or in connection with this Contract or a relevant Order.

**Event** means a circumstance beyond the reasonable control of a Party (the **Affected Party**) (but, where the Supplier is the Affected Party, excluding any acts or omissions of any Subcontractors or any Supplier Personnel, or an Insolvency Event) that results in the Affected Party being unable to perform an obligation on time and includes:

- (a) natural events like cyclone, flood or earthquake;
- (b) national emergency;
- (c) terrorist acts, sabotage, malicious damage or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or

(e) embargo, war (declared or undeclared) or hostilities between nations;

but in each case only if, and to the extent that:

(f) the default or delay could not have been prevented by the Affected Party taking steps required under this Contract or by taking other steps or precautions or remedial measures in accordance with Good Industry Practice (including invoking any relevant disaster recovery plan or business continuity plan); and

(g) the Affected Party is otherwise without fault in causing the default or delay, and the default or delay cannot reasonably be circumvented by the Affected Party at the Affected Party's expense through the use of alternate sources, workaround plans or other means.

**Financial Security** means the financial security (if any) that is required to be provided in accordance with clause 11.2 and an Order, which is in a form reasonably acceptable to PWC.

**General Insurance** means each contract of insurance required to be effected or held by the Supplier in respect of this Contract, as provided for in Item 11.

**General PWC Policies** means the specific PWC policies (including where applicable, NTG policies) referred to in Item 7.

**Good Industry Practice** means, in relation to any undertaking and any circumstances, the exercise of the skill, diligence, prudence, foresight and judgment which would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the best standards currently generally applied in the Supplier's industry.

**Goods** means the Software (if any), the Hardware (if any) and any other goods or items:

(a) provided for in an Order; or

(b) in respect of an Order specified to be a standing offer Order, provided for in the relevant Subsidiary Order.

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

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

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

**Hardware** means, in respect of an Order, the hardware (if any) set out or referred to as such in that Order.

**Information Act** means the *Information Act* (NT).

**Information Commissioner (NT)** has the meaning assigned to the term "Commissioner" in the Information Act.

**Information, Communication and Technology** has the meaning given in clause 5.6.1 and includes any other business area of PWC that assumes responsibility for the management of PWC's corporate ICT systems and services.

**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;

(ii) 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;

- (iii) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
  - (iv) 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;
  - (v) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors;
  - (vi) a resolution is passed to wind up or dissolve that corporation;
  - (vii) the corporation is dissolved;
  - (viii) 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;
  - (ix) 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;
  - (x) 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;
  - (xi) 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
  - (xii) 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.

**Insurance** means the General Insurance and the Order Insurance.

**Intellectual Property Rights** means (a) patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and suppliers and other proprietary knowledge and information; (b) internet domain names; rights protecting goodwill and reputation; (c) database rights; and (d) all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

**Key Milestone** means, in respect of an Order, any project milestone identified as a 'key milestone' (or similar, however so-called) in that Order (including the Project Plan for that Order).

**Key Milestone Date** means, in respect of an Order, any required date for completion of a Key Milestone (or similar, however so-called), as set out or referred to as such in that Order (including the Project Plan for that Order).

**Key Performance Indicators** means, in respect of an Order, the key performance indicators (if any) set out or referred to as such in that Order.

**Key Personnel** means, in respect of an Order, the Supplier Personnel who, or key positions within the Supplier's organisation which, are listed as 'key personnel' or 'key positions' (or similar, however so-called) in that Order.

**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, judgment 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** includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

**Moral Rights** means rights conferred under Part IX of the *Copyright Act 1968* (Cth) and any similar or analogous rights which exist or come to exist anywhere in the world.

**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** has the meaning given in clause 31.13.1.

**Notice of Acceptance** means the written notification and any accompanying documentation sent to the Supplier by PWC advising acceptance of its RFT Response to provide the Supplies under this Contract.

**NTG** means any of the following:

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

**Open Source Software** means software that would be considered by the Open Source Initiative (also known as the 'OSI') to be 'open source' software, as per the OSI's 'Open Source Definition' from time to time (as at the date of this Contract, the OSI's definition is available at: <http://www.opensource.org/docs/osd>).

**Open Source Software Copyleft Licence** means any licence commonly referred to as a 'copyleft licence', a 'reciprocal licence' or a 'viral copyright licence', including any licence for software under the terms of which any other software containing and/or derived from the original software or any modification and/or addition to the original software must be made available to other licensees of the software.

**Order** means an order under this Contract, being the initial Order and any subsequent Orders (which, for clarity, include any Subsidiary Orders) issued in accordance with clause 2, and which, unless otherwise agreed by PWC, will be based on the Order template contained in Attachment 1 (Order template).

**Order Insurance** means each contract of insurance required to be effected in respect of a relevant Order, as set out in that Order.

**Order PWC Policies** means the additional PWC policies (and where applicable, NTG policies) which apply in respect of a relevant Order, as set out in that Order.

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

**Payment Plan** means, in respect of an Order, the payment plan (if any) set out or referred to as such in that Order.

**Performance Guarantee** means the performance guarantee (if any) that is required to be provided in accordance with clause 11.1 and Item 10, which is in a form reasonably acceptable to PWC.

**Personal Information** has the meaning given to that term in the Privacy Legislation.

**Personnel** includes, in relation to a Party:

- (a) that Party's officers, employees and agents;
- (b) that Party's Affiliates, advisers, consultants and subcontractors;
- (c) the officers, employees and agents of that Party's Affiliates, advisers, consultants and subcontractors; and
- (d) any other person under that Party's direction or control.

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

**Primary Level Discussions** has the meaning given in clause 26.2.1.

**Principal's Representative** means the person appointed by PWC to manage the exercise of its rights and performance of its obligations under this Contract and to act as the single point of contact at PWC for the Supplier, being the person set out in the Contract Details (as varied, from time to time, in an Order for that Order only), or any other person named by written notice from PWC to the Supplier.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Legislation** means the Privacy Act, the Information Act and any applicable analogous legislation in any jurisdiction from time to time.

**Project Plan** means, in respect of an Order, the project plan (if any) set out or referred to as such in that Order.

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

**PWC Audit Representative** means any representative of PWC who is appointed for the purpose of conducting an audit in accordance with clause 7.7.

**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 Supplies under this Contract becomes or is transferred to a separate entity, that separate entity.

**PWC Infrastructure** means power, water and sewerage infrastructure owned or used by PWC and includes all other assets, information technology equipment (including hardware and software), material and any other matter or thing that is owned or used by PWC in connection with PWC's business or operations.

**PWC Policies** means the General PWC Policies and the Order PWC Policies, and includes amendments or revisions to any such policies notified to the Supplier by PWC from time to time.

**PWC Resources** means, in respect of an Order, the specific assistance, resources, personnel or other assistance (if any) to be provided by PWC to the Supplier, as set out in that Order.

**PWC Site** means any Site or other relevant location accessed or used by the Supplier in the connection with the performance of the Supplier's obligations under this Contract that is owned or controlled by PWC.

**PWC Standards and Specifications** means the specific standards and specifications in connection with the Supplies referred to in Item 8, and includes any amendments or revisions to any such standards and specifications or new standards and specifications adopted by PWC as notified to the Supplier by PWC from time to time in accordance with clause 7.2.2.

**PWC's Objectives** mean, in respect of an Order, the objectives of PWC in entering into that Order, as set out or referred to in that Order.

**Quality Assurance** means, in respect of an Order, the quality assurance system (if any) set out in that Order.

**Release** means, in relation to any Software, each update or release of the Software (or any part of it) that corrects an error or Defect in that software or enhances its previous form, without being a new Version.

**RFT** means, as the context requires:

- (a) the request for tender document referred to in the initial Order; and
- (b) any subsequent request for tender document(s) issued by PWC from time to time for the purposes of inviting tenders for the Supplies referred to in any subsequent Orders.

**RFT Response** means, in relation to an RFT, the tender submitted by the Supplier to PWC in response to that RFT and includes:

- (a) any written response by or on behalf of the Supplier to a request from PWC for clarification or further information given before PWC's acceptance of that tender;
- (b) any written statement made by or on behalf of the Supplier to PWC before PWC's acceptance of that tender in relation to the Supplies;
- (c) any verbal response by or on behalf of the Supplier to a request from PWC for clarification or further information given before PWC's acceptance of that tender; and
- (d) any verbal statement made by or on behalf of the Supplier to PWC before the PWC's acceptance of that tender in relation to the Supplies.

**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.

**Schedule of Rates** means any schedule included in the relevant Order or the relevant RFT Response which, in respect of any of the Supplies to be carried out, states the respective rate of payment for performance of that service and/or the respective price for those goods, and which may also include lump sums, other sums, quantities and prices.

**Scope of Requirements** means the document by that name that is attached or incorporated into the relevant RFT, or such other documents or documents attached to or incorporated into the relevant RFT that state PWC's requirements with respect to the Supplies.

**Secondary Level Discussions** has the meaning given in clause 26.3.

**Services** means, the services as provided for in the relevant Order including the provision of the Deliverables and any ancillary services that are reasonably necessary or incidentally required or reasonably expected to be completed by the Supplier to enable an effective provision of the Services.

**Site** means those places where the Supplies will be delivered or provided by the Supplier under this Contract and includes those places provided for in the relevant Order or that PWC may otherwise specify from time to time.

**Software** means, in respect of an Order, the software (if any) specified in that Order as being licensed by the Supplier to PWC, together with any new Releases or Versions of the Software provided or made available by the Supplier.

**Source Code Materials** means, in relation to any software:

- (a) the human-readable computer programming language version of that software (as it exists prior to being processed by a compiler or assembler) as current from time to time; and
- (b) all other information, software and documentation necessary to enable PWC to understand the program logic of and to maintain that software.

**Specifications** means, in relation to any Supplies:

- (a) the required functionality and performance criteria for the Supplies set out or referred to as such in this Contract or the relevant Order; and
- (b) the functional and performance specifications set out or referred to as such in the Supplier's standard documentation for the Supplies, including in the Documentation,

and in the event of any conflict or inconsistency between (a) and (b) above, the functionality and performance criteria in paragraph (a) prevails to the extent of such conflict or inconsistency.

**Subcontractor** means a person or entity contracted or otherwise engaged by the Supplier to perform any obligations of the Supplier under this Contract, and includes all other subcontractors of that person or entity.



**Subsidiary Order** means, in relation to an Order specified to be a standing offer Order, a subsequent Order issued by PWC in relation to specific Supplies under clause 2.4.

**Supplier** means the entity specified in Item 4.

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

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

**Supplier Representative** means the person named in the Contract Details to manage the performance by the Supplier of this Contract and all Orders hereunder, and to act as the single point of contact for PWC at the Supplier.

**Supplies** means, as the context requires:

- (a) the Goods;
- (b) the Services; or
- (c) the Goods and the Services.

**Systems** includes telecommunications systems, computer systems, networks, computer programs and databases, and the tangible media on which they are recorded and their supporting Documentation.

**Term** means, in respect of an Order, the term of that Order as set out in that Order.

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

**Tested Components** has the meaning given in clause 6.1.

**Variation** means any change or amendment to this Contract (including an Order).

**Version** means, in relation to any Software, a version of the Software (or any part of it) that provides major new functionality compared to the previous version.

**Virus** means any thing or device (including any software, code, file or programme) which may (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**WH&S Act** means the *Work Health and Safety (National Uniform Legislation) Act* (NT) or the applicable analogous legislation in any jurisdiction from time to time.

**WH&S Regulations** means the *Work Health and Safety (National Uniform Legislation) Regulations* (NT) or the applicable analogous legislation in any jurisdiction from time to time.

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# Attachment 1

# Order template

This Order forms part of and is entered into under and in accordance with the terms and conditions set out in the ICT Contract between PWC and the Supplier dated [insert date], with this Contract No. [insert].

## ORDER PARTICULARS

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**Effective Date** [Insert date on which the Supplier is to begin performing this Order, e.g. 'The date stated above']  
(clauses 1.2 and 33)

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**Term** [Insert the term of this Order e.g. "The period of 12 months commencing on the Effective Date" OR "... ending on the date of Acceptance of all Supplies in this Order" etc.]  
(clause 33)

This Order [may/may not] be extended [by PWC giving written notice to the Supplier].

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**RFT** [Specify the relevant RFT relating to this Order]  
(clause 33)

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**Contract Model** This Order is (select one option only):  
(clause 2.2)

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

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**PWC's Objectives** PWC's objectives in entering into this Order are:  
(clauses 5.1.1 and 33)

[Insert a detailed description of PWC's objectives (e.g. business, operational, financial, information security, compliance, functionality, efficiency, other) in entering into this Order]

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**Services, Deliverables and Specifications** [Insert a detailed description of any Services to be provided under this Order (including any transition in and/or exit assistance Services), such as particular consultancy services or support and maintenance services, or cross-refer to the relevant document and append it to this Order. In each case, you must include comprehensive Specifications for the Services to be provided. Alternatively write 'Nil'.]  
(clauses 4 and 33)

[Insert detailed description of any Deliverables to be provided under this Order or cross-refer to the relevant document and append it to this Order. In each case, you must include comprehensive Specifications for the Deliverables to be provided. Alternatively write 'Nil'.]

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<b>Goods and Specifications</b>	[Insert a detailed description of any Goods to be provided under this Order.]
(clauses 3 and 33)	<p>Hardware: [Insert detailed description of any Hardware to be provided under this Order or cross-refer to the relevant document and append it to this Order. In each case, you must include comprehensive Specifications for the Hardware to be provided. Alternatively write 'Nil'.]</p> <p>Software: [Insert detailed description of any Software to be provided under this Order or cross-refer to a the relevant document and append it to this Order. In each case, you must include comprehensive Specifications for the Software to be provided. Alternatively write 'Nil'.]</p>
	<p>Others [Insert detailed description of any other goods or items to be provided under this Order or cross-refer to the relevant document and append it to this Order. In each case, you must include comprehensive Specifications for the goods or items to be provided. Alternatively write 'Nil'.]</p>
<b>Supplier Testing</b>	[Insert details of testing required to be carried out by the Supplier. Alternatively write 'Not applicable'.]
(clause 6.1)	
<b>Escrow</b>	[Where Software is to be provided, specify whether an escrow arrangement is required under clause 12. Alternatively write 'Not applicable'.]
(clause 12)	
<b>Key Performance Indicators</b>	[Insert detailed description of any KPIs or similar performance criteria that apply to the Supplies to be provided under this Order or cross-refer to the relevant document and append it to this Order. Alternatively write 'Not applicable'.]
(clause 14)	
<b>Quality Assurance</b>	[Insert details of the applicable quality assurance standards. Alternatively write 'Not applicable'.]
(clause 5.3)	
<b>Project Plan</b>	[Insert the Project Plan (which should include any transition in and/or exit assistance Services) or cross-refer to the relevant document and append it to this Order. Alternatively write 'Not applicable'.]
(clauses 3.1, 4.1.1 & 33)	
<b>Key Milestones and Key Milestone Dates</b>	[Insert details of the Key Milestones with the attendant Key Milestone Dates (including reference to any transition in and/or exit assistance Services), or cross-refer to the relevant document (eg as set out in the Project Plan) and append it to this Order. Alternatively write 'Not applicable'.]
(clause 5.1.7)	
<b>Charges and Payment Plan</b>	[Insert details of the Charges payable under this Order and the payment plan applicable to such Charges or cross-refer to the relevant document and append it to this Order.]
(clause 18)	

<b>PWC Resources</b>  (clause 5.10)	PWC will make the following resources available to the Supplier in connection with the performance of this Order: [insert list].
<b>Assumptions and out of scope</b>  (clause 31.7)	[Insert details of any Assumptions agreed by the Parties e.g. the Charges assume that PWC will provide particular approvals or information by the date specified in the Project Plan. Check such assumptions extremely 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 Supplies to be provided by the Supplier under this Order [insert description or write 'N/A'].
<b>PWC information and access</b>  (clause 19)	[Insert details of 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.]
<b>Authorised Personnel</b>  (clause 10.3)	Do the requirements for Authorised Personnel in clause 10.3 apply?  [Yes/No]  [If yes, include the following:  For the purposes of this Order, the following the Supplier Personnel are Authorised Personnel:  [Insert a list of the names of all the 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.]  The following representative/s of PWC is/are permitted to approve Authorised Personnel and changes to the Authorised Personnel:  [Insert details of Principal's Representatives/s who is/are authorised to approve to the nomination of Authorised Personnel and changes to the list of Authorised Personnel.]
<b>Key Personnel</b>  (clause 10.2)	The Supplier Representative.  [Insert other names and/or key positions, e.g. the name of a particular consultant that is required to provide the Services or a key position within the Supplier's organisation.]
<b>Defect Rectification Period</b>  (clause 16)	[Insert period of time e.g. 36 months from Acceptance of the Goods.]
<b>Variations to the Contract Details</b>	[Insert details of any Variations to the Contract Details e.g. a change of Principal's Representative for this Order (only) or permitted subcontracting. Alternatively write 'Not applicable'.]

**Order PWC Policies**  
**(clause 33)**

As well as the General PWC Policies set out in the Contract Details, the Supplier is also required to comply with the following PWC Policies in relation to this Order:

[Insert details of which additional policies or laws are to apply to this particular Order. Alternatively write 'Not applicable'.]

**Financial Security**  
**(clause 11.2)**

Is a Financial Security required under this Order:

Yes, as follows:

Form of security: [Insert details, i.e. bank guarantee]

Amount: [Insert \$amount]

Other Orders to which the Financial Security will also relate:

[insert as applicable, e.g. 'All other Orders under this Contract', 'none' or [specify the Order(s)]]

No, not applicable.

**Adjustments – Services**  
**(clause 18.9)**

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

Yes

No, not applicable.

**Order Insurance**  
**(clauses 13.1.2 and 33)**

As well as the General Insurances set out in the Contract Details, the Supplier is also required to obtain and maintain the following insurance policies in relation to this Order:

<b>Insurance Type</b>	<b>Minimum Amount</b>
<b>Additional Public and Product liability</b>	a minimum of [[\$insert applicable amount e.g. \$10,000,000]] for each and every claim (in addition to the Public and Product liability insurance required as General Insurance).
<b>Additional Professional indemnity</b>	[\$insert applicable amount e.g. \$10,000,000] with a deductible not exceeding [insert applicable amount e.g. \$100,000] (in addition to the Professional indemnity insurance required as General Insurance).
<b>Motor Vehicle CTP</b>	As stated in clause 13.2.1(e) of this Contract.]
<b>Marine Transit Insurance</b>	[insert amount]

[Alternatively write 'Not applicable'.]

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**Any additional or differing terms or requirements for this Order**

Do any terms or requirements which are additional to or different from those in this Contract apply to this Order?

Yes, as follows:

[Insert details]

No, not applicable.

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