

TERMS AND CONDITIONS

1. ACCEPTANCE OF TERMS

By accepting Sunwater's Purchase Order for the Supply or commencing the Supply, the Contractor agrees to be bound by these terms and conditions to the complete exclusion of any terms and conditions provided by the Contractor.

2. PERFORMANCE

- 2.1 The Contractor must perform its obligations (including by providing the Supply) using reasonable skill and care and in accordance with the timeframes set out in this Contract (including any applicable Delivery Dates).
- 2.2 The Contractor warrants that it will perform its obligations so that the Supply satisfies the requirements of the Specifications (if any) and is Fit for Purpose.

3. GOODS

To the extent the Supply includes the supply of goods:

- (a) the Contractor warrants that the goods are of merchantable quality and are free from all security interests and are not 'dumped goods' (as that term is defined in the Queensland Procurement Policy);
- (b) full and unencumbered title in the goods passes to Sunwater upon the earlier of payment for the goods or delivery;
- (c) risk in the goods remains with the Contractor until the goods are delivered (despite the passing of title);
- (d) the passing of ownership or the delivery of the goods to Sunwater does not constitute acceptance of the goods by Sunwater and does not affect Sunwater's rights in relation to defective goods;
- (e) if the Contractor is not the original goods manufacturer, the Contractor must:
- (i) ensure Sunwater receives a copy of the manufacturer's warranties; and
 - (ii) assign or otherwise provide the benefit of any manufacturer's warranties to Sunwater;
- (f) the Contractor must deliver the goods to the place directed by Sunwater in writing and in the manner Sunwater otherwise reasonably requires;
- (g) the Contractor must not deliver the goods prior to the Delivery Date without Sunwater's consent; and
- (h) any good that is found to be inoperable, defective or damaged on arrival or following inspection and testing of the goods by Sunwater must be promptly replaced by the Contractor with a new replacement good.

4. WORKS

To the extent the Supply includes the performance of works, the Contractor:

- (a) must ensure the works are carried out in a proper and workmanlike manner; and
- (b) warrants that the works incorporate only new materials or plant which are Fit for Purpose, of merchantable quality and free from all security interests.

5. DESIGN OBLIGATIONS

To the extent the Supply requires the Contractor to undertake any Design Obligations, the Contractor:

- (a) confirms that the description of the Supply is adequate for the Contractor to complete the Design Obligations in accordance with this Contract;
- (b) agrees that it will not rely on any information provided by or on behalf of Sunwater for any purpose whatsoever, except to the extent Sunwater specifically authorises the Contractor to do so in writing (which sets out the information to be relied upon and purpose for which it can be relied upon by the Contractor);
- (c) must complete and provide to Sunwater all Design Deliverables;

- (d) warrants that the product of the Design Obligations, when completed, will be Fit for Purpose; and
- (e) releases Sunwater from and indemnifies Sunwater against any loss or liability arising from the Contractor not complying with clause 5(b).

6. SUPPLY AS A RESELLER

- 6.1 To the extent the Contractor will provide reseller services which facilitate the supply of the Third Party Supply from the Third Party Provider specified in the Purchase Order to Sunwater, this clause 6 applies.
- 6.2 The Contractor must ensure Sunwater receives or is provided access to a copy of the terms of the contract for the supply of the Third Party Supply between Sunwater and the Third Party Provider prior to any order or commitment being made in respect of any Third Party Supply.
- 6.3 The terms of the contract for the supply of the Third Party Supply between Sunwater and the Third Party Provider will be:
- (a) attached to the Purchase Order; or
 - (b) available for Sunwater to accept online from a website nominated by the Contractor (including the website of the Third Party Provider),
- and such contract will be deemed accepted by Sunwater when Sunwater enters into this Contract.
- 6.4 Sunwater must pay the Amount for the Third Party Supply to the Contractor, and the Contractor must pay the Third Party Provider the amount agreed between the Contractor and the Third Party Provider for the Third Party Supply.

7. SITE ACCESS

- 7.1 If in providing the Supply the Contractor must access a Sunwater site, the Contractor must comply with all directions, requirements and policies as advised by Sunwater from time to time.
- 7.2 Sunwater may direct the Contractor to do one or more of the following in relation to the Contractor's officers, employees, agents and subcontractors, and their employees, agents and subcontractors, and any other person engaged in connection with the Supply identified in the direction, within such time as Sunwater directs:
- (a) remove them from a Sunwater site; and
 - (b) cease from participating in activities connected with the Supply, for any reason and for so long as determined by Sunwater in its absolute discretion. The Contractor must ensure that the person identified in a direction under this clause 7.2 must not after such direction is given return to Sunwater's sites, or participate in activities connected with the Supply, without the prior written approval of Sunwater.
- 7.3 The Contractor is not entitled to, and releases Sunwater from, any Claims in respect of a direction by Sunwater given under clause 7.2.

8. CHANGES IN SUNWATER'S REQUIREMENTS

- 8.1 Sunwater may for any reason (including its convenience) direct the Contractor in writing to:
- (a) accelerate or delay the progress of, change the sequence of or suspend for any period the Supply or any part of it; or
 - (b) change the extent, character or quality of the Supply in any way (including by adding or omitting any part of the Supply or changing methods of Supply),
- in which case:
- (c) the Contractor must within five (5) days after receipt of Sunwater's direction and (unless Sunwater requires otherwise in writing) before the Contractor complies with the notice, advise Sunwater in writing of the costs or time which the Contractor will incur or save in complying with Sunwater's directions, failing

which the Contractor will have no Claim for any additional costs or extension of time; and

- (d) the Amount and Delivery Date will be adjusted by:
 - (i) if approved by Sunwater, the amounts set out in the Contractor's notice as the costs and time to be saved or incurred by the Contractor; or
 - (ii) if the amounts set out in the Contractor's notice are not approved by Sunwater, the amount which reflects the reasonable costs and time which a reasonably competent contractor would save or incur in complying with Sunwater's direction,

but if Sunwater's direction arises from an act, omission or default of the Contractor, officers, employees, agents and subcontractors or other representatives, the Contractor will have no Claim for any additional costs or extension of time. This clause 8 does not apply to licensed software or software as a service.

9. TIME AND PROGRAM

- 9.1 Where Sunwater requires a program, the Contractor must:
 - (a) prepare and obtain Sunwater's approval of a program for the Supply (in a form approved by Sunwater) before commencing the Supply;
 - (b) at all times comply with the approved program; and
 - (c) not change the approved program without Sunwater's prior written approval.

- 9.2 If the Contractor:
 - (a) is unavoidably delayed in achieving any Delivery Date or is prevented from performing the Supply by a cause that is beyond the Contractor's or any of its subcontractors' control;
 - (b) has not by its act or omission (or the act or omission of its subcontractor) contributed to the cause and has used all endeavours to minimise the delay arising from the cause; and
 - (c) has notified Sunwater in writing of:
 - (i) the existence of the cause, within two (2) days after the Contractor becomes aware of the circumstances giving rise to the cause; and
 - (ii) the length of the period of the delay for which the Contractor claims an extension, within two (2) days after the cause ends,

Sunwater will by notice in writing to the Contractor:

- (d) allow the Contractor a reasonable extension to any applicable Delivery Date; or
- (e) excuse the Contractor from performance for a reasonable period, within a reasonable period after the Contractor's claim in clause 9.2(c) is received.

9.3 The Contractor acknowledges that failure by Sunwater to extend any Delivery Date will not set time at large and Sunwater may in its discretion extend any Delivery Date at any time for any reason.

10. SITE CONDITIONS

Despite any other provision of this Contract, where the Contractor provides works on a Sunwater site:

- (a) the Contractor accepts the risk of all Site Conditions;
- (b) the Contractor is not entitled to any adjustment to the Amount or to any Claim (including for delay or disruption costs) or extension of time arising from any Site Conditions;
- (c) the Contractor must carry out all works required to ensure the Supply is in accordance with this Contract despite any Site Conditions; and
- (d) Sunwater gives no warranty and makes no representation as to the capacity of the site to support the Supply.

11. DEFECTS

- 11.1 Without limiting or excluding any of its other rights, Sunwater may require the Contractor to promptly undertake rectification, replacement, repair or re-supply for any part of the Supply which Sunwater reasonably finds to be defective at any time after the Delivery Date and before the date that is 12 months after the Delivery Date.
- 11.2 Without limiting or excluding other rights of Sunwater, if goods are reasonably determined by Sunwater to not be in compliance with this Contract:
 - (a) Sunwater may return the goods to the Contractor at the Contractor's risk and expense; and
 - (b) the Contractor must pay on demand to Sunwater:
 - (i) the Amount paid by Sunwater for the returned goods (if paid); and
 - (ii) the costs incurred by Sunwater in connection with the delivery and return of the returned goods.

12. SUBCONTRACTING

If the Contractor subcontracts any of the Supply, the Contractor:

- (a) remains fully responsible for the Supply and its obligations under this Contract;
- (b) must comply (and must ensure that its subcontractors comply) without limitation with any immigration laws, labour hire licensing laws, superannuation laws, employment laws, applicable modern awards or enterprise agreements, anti-discrimination laws and work health and safety laws that are applicable to the Supply; and
- (c) will be liable to Sunwater for acts or omissions of its subcontractors and their officers, employees, agents and contractors or other representatives as if they were acts or omissions of the Contractor.

13. LAWS AND LEGAL REQUIREMENTS

The Contractor must:

- (a) comply with and ensure the Supply and all of the Contractor's officers, employees, agents and subcontractors comply with:
 - (i) Sunwater's reasonable directions and all agreements and policies of Sunwater applicable to the Supply (as advised by Sunwater from time to time), including but not limited to the Supplier Code of Conduct available on the Sunwater website (www.sunwater.com.au); and
 - (ii) all relevant laws, legal requirements and relevant industry standards, including the *Fair Work Act 2009* (Cth) and any applicable modern award or other industrial instrument;
- (b) keep and maintain for seven years, accurate employment records in compliance with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth), including in relation to the terms of employment, timesheets, recording actual hours worked, overtime, pay slips, leave and superannuation; documentation to show an employee's right to work in Australia; and any other records required by law. The Contractor must make these records available to Sunwater on request;
- (c) rectify any Underpayment of a worker that has been substantiated to the reasonable satisfaction of Sunwater within twenty (20) days after Sunwater has notified the Contractor that Sunwater requires the Contractor to do so;
- (d) provide evidence to Sunwater (if requested by Sunwater) to confirm its compliance with any requirement arising under clause 13(a), including that workers are receiving their full minimum entitlements under all applicable employment and superannuation laws;
- (e) ensure that it and its officers, employees, agents and subcontractors hold and maintain at all times during this Contract all Licence and Competency Requirements; and
- (f) provide evidence of its Licence and Competency Requirements where requested by Sunwater and notify Sunwater of any breach of any Licence and Competency Requirements.

14. WORK HEALTH SAFETY AND ENVIRONMENT

14.1 The Contractor must:

- (a) comply with and ensure the Supply and all of the Contractor's officers, employees, agents and subcontractors comply with:
 - (i) any legislative requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons acting in the exercise of statutory powers relating to health and safety, including but not limited to the *Work Health and Safety Act 2011* (Qld), the *Work Health and Safety Regulation 2011* (Qld), and the *Electrical Safety Act 2002* (Qld);
 - (ii) any requirements of Sunwater or any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of carrying out the Supply or any other provisions of this Contract in each case relating to health and safety; and
 - (iii) Work Health and Safety Codes published by www.WorkSafe.qld.gov.au;
- (b) maintain safe work practices and ensure that all workers are qualified and/or licensed to undertake the work required by the Supply;
- (c) ensure that any activities carried out in connection with the Supply are conducted in a safe manner and do not place others or the environment at risk of harm;
- (d) ensure that it and all workers comply with the directions of Sunwater (or any person nominated by Sunwater as having the authority to give directions) in connection with health and safety;
- (e) consult fully with Sunwater in respect of any matter relevant to health and safety, including, without limitation, how the Supply can be undertaken in a way which prevents or minimises all risks to health and safety; and
- (f) ensure that it maintains adequate records of all health and safety matters and promptly reports all incidents to, and follow all lawful directions by, Sunwater.

14.2 Without limiting any of its rights, Sunwater may terminate this Contract on written notice if, in Sunwater's opinion, the Contractor fails to:

- (a) maintain safe work practices; or
- (b) ensure that activities carried out in connection with the Supply are conducted in a safe manner,

in which case the Contractor will have no further Claim against Sunwater.

15. MODERN SLAVERY

15.1 The Contractor warrants and agrees that:

- (a) it has not, and will not, engage in any Modern Slavery practices;
- (b) it will comply with all laws relating to Modern Slavery;
- (c) it has taken reasonable steps to investigate its labour and business practices, and those of its subcontractors and direct suppliers, to ensure there is no Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its subcontractors or direct suppliers;
- (d) it will do all things necessary to immediately rectify or avoid any modern slavery risk (including complying with any direction given by Sunwater), and provide written notice to Sunwater of such rectification or avoidance, including supporting documentary evidence as reasonably required by Sunwater; and
- (e) it will provide all information as may be reasonably required by Sunwater to comply with any law or legal requirement.

15.2 Sunwater may (without limiting any other rights of Sunwater) terminate this Contract immediately by written notice to the Contractor if the Contractor breaches, or Sunwater reasonably believes that the

Contractor has breached, clause 15.1, in which case the Contractor will have no further Claim against Sunwater.

16. QUEENSLAND GOVERNMENT POLICIES

Clauses 6 and 7 of the Additional Conditions of Contract are deemed to form part of this Contract.

17. ANIMAL WELFARE

If:

- (a) any food or beverage products are to be supplied pursuant to the Contract; and
- (b) the Contractor is a 'Person in Charge' (as that term is defined in the *Animal Care and Protection Act 2011* (Qld) (**ACP Act**)) of any animals used to produce those food and beverage products,

then the Contractor will comply with the ACP Act and all associated regulations, codes, standards and guidelines throughout the term of the Contract.

18. ADDITIONAL CONDITIONS OF CONTRACT

Where the Purchase Order or tender documentation applicable to the Supply provides that:

- (a) the Best Practice Principles and Best Practice Industry Conditions;
- (b) the Queensland Charter for Local Content; or
- (c) Commonwealth Funded Building Work,

is applicable, the relevant clauses of the Additional Conditions of Contract are deemed to form part of this Contract.

19. PAYMENT

19.1 Sunwater must pay the Contractor the Amount in the manner set out in this Contract.

19.2 The Contractor may, at each time for a payment claim set out in a Purchase Order, submit a Tax Invoice.

19.3 The amount which the Contractor must be paid at the time of each claim for payment must be:

- (a) the amount specified in this Contract as payable; or
- (b) if no amount is specified, the amount of the value of the Supply provided to the reasonable satisfaction of Sunwater to the time of the progress payment claim,

but excluding any:

- (c) previous amounts paid;
- (d) amounts representing the value of unfixed plant or materials, unless Sunwater has agreed to such value being included; and
- (e) amounts which this Contract otherwise provides are not payable for any reason (including by way of set-off).

19.4 Sunwater shall pay the Contractor within 15 business days after Sunwater receives a Tax Invoice in accordance with clause 19.2.

19.5 Neither payment by Sunwater nor delivery of the Supply will be evidence that Sunwater accepts that any of the Supply has been performed in accordance with this Contract.

20. INSURANCE AND INDEMNITIES

20.1 The Contractor warrants that it has obtained and will maintain through the duration of this Contract (including any defects liability period) all insurances required by law and by this Contract, including but not limited to, the following:

- (a) public and products liability insurance with a limit of liability of not less than \$20 million for any one occurrence;
- (b) where this Contract requires the Contractor to provide professional services or to prepare or provide any design, formula or specification (including any Design Obligations), professional indemnity insurance with a minimum cover as set out below:
 - (i) where the total Amount payable by Sunwater is less than \$100,000.00, \$1 million per claim and in the annual aggregate; or

- (ii) where the total Amount payable by Sunwater is between \$100,000.00 and \$250,000.00, \$5 million per claim and in the annual aggregate; or
 - (iii) where the total Amount payable by Sunwater is more than \$250,000.00, \$10 million per claim and in the annual aggregate.
 - (c) third party personal injury and property motor vehicle insurance for not less than \$20 million per claim;
 - (d) workers compensation or personal injury insurance (as applicable); and
 - (e) any other insurance required by Sunwater.
- 20.2 Any professional indemnity insurance policy must be maintained for a period of six years following completion of this Contract.
- 20.3 On request, the Contractor shall provide certificates of currency as evidence of insurances the Contractor or its subcontractors are required to effect under the terms of this Contract.
- 20.4 The Contractor must ensure all subcontractors effect and maintain insurances required to be maintained by the Contractor (unless the subcontractors are covered by the Contractor's insurance).
- 20.5 The Contractor indemnifies Sunwater against Claims arising from or contributed to by the carrying out of the Supply, or any breach or unlawful, negligent or fraudulent act or omission of the Contractor or any of its officers, employees, agents and subcontractors or other representatives.
- 20.6 The indemnity in clause 20.4 does not apply to the extent that indemnification is not permitted under applicable work health and safety legislation.

21. CAP ON LIABILITY AND EXCLUSION OF LIABILITY

- 21.1 Subject to clause 21.2, the maximum aggregate liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with this Contract, is an amount equal to the total of all Amounts (including additional expenses and charges) payable under the Contract, multiplied by 1.5.
- 21.2 The cap of liability in clause 21.1 does not apply in relation to:
- (a) personal injury, including sickness, injury or death; or
 - (b) loss of, or damage to, tangible property; or
 - (c) wilful default, wilful misconduct, unlawful act or omission of, or failure to comply with applicable law by the Contractor or its officers, employees, agents, subcontractors or other representatives; or
 - (d) any claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights; or
 - (e) Claims to the extent recoverable by the relevant party under a policy of insurance to the limit of that insurance required under this Contract or, in the case of the Contractor's liability to Sunwater, which would have been recoverable but for the Contractor's failure to meet the insurance requirements under this Contract; or
 - (f) a breach of clauses 26 or 27 by the Contractor or its officers, employees, agents, subcontractors or other representatives.
- 21.3 Notwithstanding anything else in this Contract, neither party will have any liability to the other for any Consequential Loss.

22. DEFAULT AND TERMINATION

If the Contractor:

- (a) does not comply with any of its obligations in accordance with this Contract and fails to rectify the breach within five (5) days after Sunwater has notified the Contractor that Sunwater requires the Contractor to do so;
- (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt or becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration,

- winding up or other external administration or a mortgagee enters into possession or takes control in respect of any of the assets of the Contractor; or
- (c) is found to have made false statements in any tender documentation relevant to the Supply, as determined by Sunwater in its sole discretion, then without limiting Sunwater's rights, Sunwater may terminate this Contract by notice in writing to the Contractor.

23. TERMINATION FOR CONVENIENCE

Sunwater may at any time and for any reason (including for its convenience where there is no default by the Contractor) terminate this Contract (in whole or in part) by five (5) days' prior notice in writing to the Contractor in which case:

- (a) the Contractor must cease all parts of the Supply to the extent set out in Sunwater's notice and mitigate any costs incurred by the Contractor consequent upon termination;
- (b) Sunwater must pay the Contractor for the value of the Supply provided to Sunwater in accordance with this Contract;
- (c) the Contractor will have no Claim whatsoever for any loss of profit, damages or other amounts; and
- (d) the rights of Sunwater arising from prior breaches by the Contractor will not be affected.

24. GST

- 24.1 Capitalised terms in this clause 24 have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 24.2 Unless stated otherwise in this Contract, the Price is exclusive of GST.
- 24.3 Sunwater will not be obliged to pay the Contractor any amount payable in respect of a Taxable Supply until the Contractor has provided to Sunwater a tax invoice in respect of the amount payable.

25. TRUSTS

Where the Contractor is a trustee:

- (a) the Contractor incurs all obligations under this Contract in its own right and in its capacity as trustee;
- (b) the Contractor must comply with the terms of the relevant trust deed and ensure there is no restriction or limitation on or derogation from its right of subrogation or indemnity under the relevant trust deed; and
- (c) the Contractor warrants it is empowered by the trust deed to enter into and perform this Contract.

26. CONFIDENTIALITY

26.1 The Contractor must:

- (a) keep confidential all Confidential Information;
- (b) not use the Confidential Information except for the purposes of this Contract; and
- (c) not disclose Confidential Information to any person except:
 - (i) to the Contractor's officers, employees, subcontractors, agents and advisors on a need to know basis and under confidentiality obligations equivalent to those under this clause 25;
 - (ii) with Sunwater's consent;
 - (iii) if required by law; or
 - (iv) if it is in the public domain, except as a result of a breach of this Contract.

26.2 If the Contractor becomes aware of a suspected or actual breach of this clause or clause 27, the Contractor must:

- (a) immediately notify Sunwater of that suspected or actual breach; and
- (b) take reasonable steps and do all things necessary as directed by Sunwater, at its own expense, to limit, prevent or stop the suspected or actual breach.

26.3 On termination or expiry of this Contract or at any other time requested by Sunwater, the Contractor will and will ensure its officers, employees,

subcontractors, advisors and agents and their officers, employees, subcontractors, advisors and agents promptly return or destroy (at Sunwater’s option) all Confidential Information in their possession or control and will confirm to Sunwater when this has been done.

27. PRIVACY

If the Contractor, its officers, employees, subcontractors, advisors or agents or their officers, employees, subcontractors, advisors or agents (**Relevant Persons**) collect, hold, generate, use, disclose, process or have access to or otherwise handles Personal Information in connection with this Contract (**Sunwater Personal Information**), then the Contractor must and must ensure that Relevant Persons:

- (a) at all times comply with:
- (b) the Privacy Act as if the Contractor was an entity to which that Act applies; and
- (c) any other Privacy Laws which apply to the Contractor;
- (d) not do or omit to do anything that causes Sunwater to breach the Privacy Laws or Sunwater’s published privacy policy;
- (e) not use or disclose Sunwater Personal Information other than for the purpose of performing its obligations under this Contract, unless required by applicable law;
- (f) not transfer, disclose or access, or allow any person to transfer, disclose or access, any Sunwater Personal Information outside of Australia, except with Sunwater’s prior written consent;
- (g) immediately notify Sunwater if it becomes aware that a disclosure of Sunwater Personal Information is, or may be, required or authorised by applicable law;
- (h) comply with any directions or inquiries notified by Sunwater in relation to the Contractor’s handling of Sunwater Personal Information or compliance with this clause 27; and
- (i) in the event of a Data Breach, immediately notify Sunwater. The Contractor must not notify any other person of a Data Breach (whether or not an ‘eligible data breach’) without Sunwater’s prior written consent. Where Sunwater requires, the Contractor must notify a Data Breach to the Australian Information Commissioner or other persons in accordance with Sunwater’s reasonable directions.

28. INTELLECTUAL PROPERTY RIGHTS

- 28.1 This Contract does not affect the ownership of any Intellectual Property Rights in Background Material.
- 28.2 All Intellectual Property Rights in New Material are immediately assigned to and vest in Sunwater upon creation.
- 28.3 Sunwater grants the Contractor a non-exclusive, royalty-free, non-transferable and revocable licence for the term of this Contract to use, copy and modify New Material solely for the purpose of the Contractor performing its obligations under this Contract.
- 28.4 The Contractor grants to Sunwater a non-exclusive, royalty-free, transferable, irrevocable and perpetual licence (including the right to sublicense) to exercise all Intellectual Property Rights in the Background Material to the extent necessary to enable Sunwater to receive the benefit of the services or use any Deliverables (where those Deliverables incorporate the Contractor’s Background Material).
- 28.5 In addition to Sunwater’s other rights, if there is an allegation that a service or Deliverable (or any use of it) infringes the Intellectual Property Rights or moral rights, or breaches the confidence of, any third party, the Contractor must with Sunwater’s consent (not to be unreasonably withheld) promptly and at the Contractor’s expense:
 - (a) procure the rights necessary for use of the affected service or Deliverable; or
 - (b) promptly replace or modify the affected service or Deliverable so that the alleged infringement ceases and the replaced or modified service or Deliverable complies with the Specifications and other requirements of this Contract.

28.6 If the Contractor is unable to comply with clause 28.5, the Contractor must refund all amounts paid by Sunwater in connection with the affected service or Deliverable.

29. SUNWATER DATA

- 29.1 Sunwater owns all information (including personal information), material, data, datasets or databases provided by Sunwater to the Contractor and any information created, produced or derived from that information on and from creation, including any Intellectual Property Rights in the data (**Sunwater Data**). The Contractor must ensure that Sunwater Data in its possession or control is identified as Sunwater Data and is accessible to Sunwater at all times.
- 29.2 The Contractor must not access, use or modify or permit a third party to use, access or modify Sunwater Data except to the extent required to perform this Contract and must promptly notify Sunwater upon becoming aware of any loss, destruction, damage to or unauthorised access, use or disclosure of any Sunwater Data.
- 29.3 The Contractor must establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to industry-standard levels (and no lower than ISO27001 and as otherwise specified in the Specifications) to protect Sunwater Data from complete or partial loss or corruption, malicious or accidental deletion or unauthorised access, use, misuse, modification or disclosure.
- 29.4 On the Contractor ceasing to provide the Supply for any reason, the Contractor must, for 30 days following cessation of the Supply and subject to this clause, retain the Sunwater Data in the same format and provide the Sunwater Data to Sunwater. After Sunwater has provided its consent to the deletion of Sunwater Data, the Contractor must permanently and irretrievably delete the Sunwater Data.

30. LEGISLATION RELATING TO WORKS

- 30.1 To the extent the Supply or any part of the Supply is subject to the QBCC Act:
 - (a) the rights and obligations of the parties under this Contract are subject to the provisions of the QBCC Act to the extent they apply, and where there is any inconsistency between this Contract and the QBCC Act, the QBCC Act will prevail to the extent necessary to avoid the inconsistency; and
 - (b) without limiting any other provision of this Contract, the Contractor must maintain its registration under the QBCC Act (under the licence number set out in the Purchase Order, if any) to carry out the Supply.
- 30.2 To the extent the Supply is subject to the BIF Act:
 - (a) Chapter 3 of the BIF Act applies to this Contract;
 - (b) the Contractor must immediately notify Sunwater of:
 - (i) it receiving; or
 - (ii) it becoming aware of any party providing any work, services or supply required in connection with the Supply receiving,
 any notice under sections 77, 78 or 92 of the BIF Act;
 - (c) the amount of each progress payment to which the Contractor is at any time entitled in relation to this Contract must be calculated in accordance with all provisions of this Contract relevant to the amount which the Contractor may claim or Sunwater must pay;
 - (d) if the Contractor suspends the Supply pursuant to the BIF Act, the Contractor will have no Claim apart from a claim for an extension to any Delivery Date or excuse from performance (as the case may be) subject to the terms of this Contract; and
 - (e) if a subcontractor of the Contractor suspends the provision of any work, services or supply pursuant to the BIF Act, the Contractor will have no Claim (including without limitation for an extension to any Delivery Date).

31. INVESTIGATIONS

The Contractor must, and must ensure that all of the Contractor's officers, employees, agents and subcontractors, and their officers, employees, agents and subcontractors, and any other person engaged in connection with the Supply, cooperate fully with any investigation conducted by Sunwater or any third party engaged by Sunwater. To avoid doubt, an investigation under this clause may include (but is not limited to):

- (a) investigations in the cyber controls and data protection mechanisms utilised by the Contractor; and
- (b) investigations and audits of any situation where Sunwater reasonably suspects (including but not limited to circumstances where it has received a complaint via a regulator such as the Fair Work Ombudsman, or another channel) that there has been non-compliance by the Contractor or its subcontractor, such as an Underpayment.

32. GENERAL

- 32.1 The law of Queensland applies to this Contract and the parties submit to the jurisdiction of the courts of Queensland.
- 32.2 Clauses 20.4, 21, 26, 27 and 31 survive the termination of this Contract.
- 32.3 The Contractor's appointment is non-exclusive, so Sunwater may acquire the Supply, or similar goods, services, works or software, from other persons or perform the Supply or similar services itself, including goods, software, services or works which have been removed from or terminated under this Contract.
- 32.4 This Contract constitutes the entire agreement between Sunwater and the Contractor in relation to the Supply.
- 32.5 In the event of a dispute, the parties will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation. Unless otherwise required by Sunwater, the Contractor must continue to carry out the Supply despite any dispute.
- 32.6 Each party warrants that immediately prior to entering this Contract, it has unconditionally consented to:
 - (a) the requirement for a signature under any law being met; and
 - (b) any other party to this agreement executing it, by any method of electronic signature the other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.
- 32.7 Without limitation, the parties agree that their communication of an offer or acceptance of this Contract may be by any electronic method that evidences that party's execution of this Contract.
- 32.8 For the purposes of sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001* (Qld), each party unconditionally consents to the other party giving to it any information it is required or permitted to give under the laws of the State of Queensland by way of an electronic communication.
- 32.9 Attachment 1 (ICT Terms) forms part of this Contract. To the extent of any inconsistency between:
 - (a) the Purchase Order;
 - (b) clauses 1 to 33 of this Contract;
 - (c) Attachment 1 (ICT Terms);
 - (d) any Specification; or
 - (e) terms incorporated under clause 6.3,
 - (f) the terms in the earlier listed document above prevail.

33. DEFINITIONS

Additional Conditions of Contract mean the Additional Conditions of Contract available on Sunwater's website (<https://www.sunwater.com.au/about/suppliers-and-contractors/>).

Amount has the meaning described in the Purchase Order.

Background Material means Material that is a Deliverable or is incorporated into a Deliverable but excludes New Material and any licensed software or software as a service.

BIF Act means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

Claims means claims, demands, actions, costs, charges, expenses, damages, losses and other liabilities.

Confidential Information means all information provided by or obtained from Sunwater in relation to this Contract.

Consequential Loss means loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings.

Contract means the Purchase Order and these terms and conditions (including Attachment 1 (ICT Terms)).

Contractor has the meaning described in the Purchase Order.

Data Breach means any misuse, interference or loss, or any unauthorised access, modification or disclosure of Sunwater Personal Information.

Deliverable means anything provided or required to be provided by the Contractor under this Contract.

Delivery Date has the meaning described in the Purchase Order.

Design Deliverables means all drawings, specifications or other documents or materials required to give effect to the Contractor's Design Obligations, or otherwise required to be provided by the Contractor.

Design Obligations means any part of the Supply that includes design work or design services.

Electronic Incident means an unauthorised action by a known or unknown person which is an attack, penetration, denial of service, misuse of access, unauthorised access to or use of or intrusion to (hacking) a computer system that is intended to have, is likely to have or does have an adverse effect on the security or reliability of data on the system or the accessibility of the system, or introduction of Harmful Code affecting:

- (a) the Sunwater ICT Environment, any Sunwater Data or any Confidential Information; or
- (b) any Contractor IT system which is used to provide the Supply or the Supply itself,

or any other security related occurrence that could result in negative consequences for Sunwater or the Queensland Government.

Fit for Purpose means fit for the purposes set out in, or which are reasonably ascertainable from, this Contract.

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract.

Licence and Competency Requirements means all qualifications, certificates, licences, permits, approvals, skills, experience, and competencies required for the purposes of carrying out the Supply.

Material means any software, hardware, data, tools, object libraries, document or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions.

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

New Material means Material created by or on behalf of the Contractor, its contractors or agents or their officers or employees in the course of performing this Contract.

Personal Information has the meaning defined in the Privacy Act.

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

Privacy Laws means the Privacy Act and any other statutory law, ordinance, regulation, by-law or lawful requirement or direction made under or arising from or through the foregoing (e.g. the requirements of a mandatory code arising under a statute) relating to privacy or the handling of information about individuals whether in Australia or elsewhere.

Purchase Order means a Sunwater purchase order in respect of the Supply.

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld).

Site Conditions means all conditions of the site which are known, were identified in information provided by Sunwater to the Contractor or ought reasonably to have been known to the Contractor through appropriate site inspection and other due inquiries (including without limitation natural or artificial conditions, contamination, services, facilities and improvements on the site (including those installed or constructed by other contractors)).

Specifications means any document provided to the Contractor, or otherwise made known to the Contractor, describing Sunwater's requirements for the Supply or, in respect of any licensed software or software as a service required to be provided by the Contractor, any published specifications of the Contractor or a third party manufacturer or supplier relating to the licensed software or software as a service.

Sunwater means any of the following, as noted in the Purchase Order:

Sunwater Limited ACN 131 034 985;

Eungella Water Pipeline Pty Limited ACN 070 999 236;

North West Queensland Water Pipeline Pty Ltd ACN 070 999 218; or

Burnett Water Pty Ltd ACN 097 206 614.

Sunwater ICT Environment means the physical and computing environment to which access is made available to the Contractor by Sunwater for the purposes of providing the Supply.

Supply means the services, goods, works or software described in the Purchase Order.

Tax Invoice means an invoice from the Contractor to Sunwater for the Supply (accompanied by all supporting documentation required by Sunwater), which must include the Contractor's name, ABN number, description of the Supply provided, the amount claimed and such other details Sunwater reasonably requires from time to time.

Third Party Supply means services, good or software supplied by the Contractor as a reseller, as set out in the Purchase Order.

Underpayment means any underpayment or non-payment of wages or applicable entitlements owing to an employee in respect of the Supply, to the extent that there is a shortfall to the minimum remuneration prescribed in accordance with the *Fair Work Act 2009* (Cth), other employment laws and industrial instruments (including underpayment or non-payment of overtime and penalty rates) which has been identified, substantiated and quantified to the reasonable satisfaction of Sunwater by way of an investigation or audit, or any other means.

ICT TERMS AND CONDITIONS

1. LICENSED SOFTWARE

To the extent the Supply includes licensed software:

- (a) for the period specified in the Purchase Order (**Licence Period**), the Contractor grants Sunwater a non-exclusive licence to install, configure, copy and use (including to sub-licence) the software for the purposes of Sunwater's business or operations;
- (b) the Contractor warrants it has the right to grant the licence under this section 1 and that the licensed software does not include, and the Contractor will not introduce in the Sunwater ICT Environment, any Harmful Code;
- (c) during the Warranty Period (if any) specified in the Purchase Order, the licensed software will not be defective. During such Warranty Period, the Contractor must remedy all defects in the licensed software by repair or modification and take reasonable measures to enable Sunwater to continue to use the licensed software during a repair or modification; and
- (d) unless otherwise specified in the Purchase Order, the Contractor must provide any updates and new releases of the licensed software at the option of and at no additional cost to Sunwater.

2. SOFTWARE AS A SERVICE (SAAS)

To the extent the Supply includes software as a service (**SaaS**):

- (a) the Contractor grants Sunwater a right to access and use the SaaS and will allow any users authorised by Sunwater (including Sunwater's personnel and third party service providers) to access and use the SaaS, in the manner set out in the Purchase Order Specifications and Additional Requirements;
- (b) unless otherwise specified in the Purchase Order, the SaaS must be accessible to Sunwater 99.9% of the time, 7 days a week (excluding any period of planned or scheduled maintenance set out in the Specifications);
- (c) the SaaS must be provided so that Sunwater's use of the SaaS can be increased or decreased in any quantity at any time, with no upper or lower limit, and such changes are provisioned immediately by the Contractor;
- (d) unless otherwise specified in the Purchase Order, the Contractor must only use infrastructure located in Australia to provide the SaaS;
- (e) the Contractor will supply the SaaS during the period specified in the Purchase Order (Subscription Period) or (if no Subscription Period is specified in the Purchase Order) for 12 months from the date of acceptance of the SaaS by Sunwater. The subscription will automatically renew at the then-current price at the end of the Subscription Period for further Subscription Periods of 1 year each unless Sunwater notifies the Contractor of its intention not to renew at any time prior to the end of a Subscription Period;
- (f) subject to section 2(g), the Contractor will regularly update the SaaS at no additional cost to Sunwater; and
- (g) the Contractor must not change the SaaS so as to reduce any functionality, feature, performance or other characteristic of the SaaS. Sunwater may without liability terminate the SaaS by providing 30 days' notice in writing to the Contractor where the Contractor fails to comply with this section.

3. ACCEPTANCE

- 3.1 There is no deemed acceptance of any software forming part of the Supply.
- 3.2 Without limiting clause 11, Sunwater may within a reasonable period of time after delivery or implementation (whichever is later) (and no later than 60 days after such delivery or implementation), carry out any acceptance tests on any software forming part of the Supply that Sunwater considers appropriate (acting reasonably) to determine whether the software complies with this Contract.

3.3 If the acceptance tests are passed, Sunwater will issue a certificate of acceptance to the Contractor.

3.4 If the acceptance tests are not passed, Sunwater will issue a notice of defects to the Contractor. Unless Sunwater takes the action described in clause 11.1, Sunwater may (at its option) reject the software and require the Contractor to immediately refund all amounts paid by Sunwater or replace or repair the software. Sunwater may re-test any repaired or re-supplied software.

4. ELECTRONIC INCIDENTS AND HARMFUL CODE

4.1 Where access to the Sunwater ICT Environment is required to provide the Supply or is otherwise granted to the Contractor by Sunwater, the Contractor must not tamper with, hinder the operation of (except as expressly permitted by this Contract) or make unauthorised modifications to the Sunwater ICT Environment or maliciously or negligently introduce any Harmful Code to the Sunwater ICT Environment.

4.2 If any Harmful Code is found in, or to have had access to the Sunwater ICT Environment from the Contractor's ICT systems, the Contractor must immediately use its best efforts to eliminate the Harmful Code and ameliorate its effect. If the Harmful Code causes a loss of operation efficiency or data, the Contractor must mitigate and restore the loss as quickly as possible.

4.3 The Contractor must immediately notify Sunwater upon becoming aware, or where it ought reasonably to have become aware, of an actual or suspected Electronic Incident. The Contractor will provide reasonable assistance requested by Sunwater with the investigation, mitigation of the effect and (where required by law) notification of the Electronic Incident.

4.4 Upon receipt of a notification by the Contractor, or upon Sunwater otherwise becoming aware of an Electronic Incident under section 4.3, in consultation with the Contractor, Sunwater may, at its reasonable discretion, require that:

- (a) the Contractor's ability to access, process, or store Sunwater Data and the Sunwater ICT Environment be suspended;
- (b) connectivity with the Contractor be terminated; or
- (c) other appropriate action be taken pending such resolution,

provided that upon any such action by Sunwater or required of the Contractor by Sunwater, the Contractor will be relieved of its obligations under this Contract to the extent it is unable to perform under such circumstances and so notifies Sunwater.