

PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance of Terms

By signing the Contract Particulars for the Supply or commencing the Supply, the Vendor agrees to be bound by these terms and conditions to the complete exclusion of any terms and conditions provided by the Vendor.

2. Performance

- (a) The Vendor 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).
- (b) The Vendor 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 Vendor warrants that the goods are of merchantable quality and are free from all security interests;
- (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 Vendor 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 Vendor is not the original goods manufacturer, the Vendor 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 Vendor must deliver the goods to the place directed by Sunwater in writing and in the manner Sunwater otherwise reasonably requires;
- (g) the Vendor 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 Vendor with a new replacement good.

4. Works

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

- (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 Vendor to undertake any Design Obligations, the Vendor:

- (a) confirms that the description of the Supply is adequate for the Vendor 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 Vendor 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 Vendor);
- (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 Vendor not complying with clause 5(b).

6. Supply as a reseller

- (a) To the extent the Vendor will provide reseller services which facilitate the supply of the Third Party Supply from the Third Party Provider specified in the Contract Particulars to Sunwater, this clause 6 applies.
- (b) The Vendor 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.
- (c) The terms of the contract for the supply of the Third Party Supply between Sunwater and the Third Party Provider will be:
 - (i) attached to the Contract Particulars; or
 - (ii) available for Sunwater to accept online from a website nominated by the Vendor (including the website of the Third Party Provider),
 and such contract will be deemed accepted by Sunwater when Sunwater enters into this Contract.
- (d) Sunwater must pay the Amount for the Third Party Supply to the Vendor, and the Vendor must pay the Third Party Provider the amount agreed between the Vendor and the Third Party Provider for the Third Party Supply.

7. Site access

- (a) If in providing the Supply the Vendor must access a Sunwater site, the Vendor must comply with all directions, requirements and policies as advised by Sunwater from time to time.
- (b) Sunwater may direct the Vendor to do one or more of the following in relation to the Vendor'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:
 - (i) remove them from a Sunwater site; and
 - (ii) 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 Vendor must ensure that the person identified in a direction under this clause 7(b) 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.
- (c) The Vendor is not entitled to, and releases Sunwater from, any Claims in respect of a direction by Sunwater given under clause 7(b).

8. Changes in Sunwater's Requirements

Sunwater may for any reason (including its convenience) direct the Vendor 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 Vendor must within five (5) days after receipt of Sunwater's direction and (unless Sunwater requires otherwise in writing) before the Vendor complies with the notice, advise Sunwater in writing of the costs or time which the Vendor will incur or save in complying with Sunwater's directions, failing which the Vendor 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 Vendor's notice as the costs and time to be saved or incurred by the Vendor; or
 - (ii) if the amounts set out in the Vendor's notice are not approved by Sunwater, the amount reasonably determined by Sunwater having regard to 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 Vendor, officers, employees, agents and subcontractors or other representatives, the Vendor 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

- (a) Where Sunwater requires a program, the Vendor must:
 - (i) prepare and obtain Sunwater's approval of a program for the Supply (in a form approved by Sunwater) before commencing the Supply;
 - (ii) at all times comply with the approved program; and
 - (iii) not change the approved program without Sunwater's prior written approval.
- (b) If:
 - (i) the Vendor is unavoidably delayed in achieving any Delivery Date or is prevented from performing the Supply by a cause that is beyond the Vendor's or any of its subcontractors' control;
 - (ii) the Vendor 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
 - (iii) the Vendor has notified Sunwater in writing of:
 - (A) the existence of the cause, within two (2) days after the Vendor becomes aware of the circumstances giving rise to the cause; and
 - (B) the length of the period of the delay for which the Vendor claims an extension, within two (2) days after the cause ends,

Sunwater will by notice in writing to the Vendor:

- (iv) allow the Vendor a reasonable extension to any applicable Delivery Date; or
 - (v) excuse the Vendor from performance for a reasonable period,
- within a reasonable period after the Vendor's claim in clause (b)(iii) is received.
- (c) The Vendor 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 Vendor provides works on a Sunwater site:

- (a) the Vendor accepts the risk of all Site Conditions;
- (b) the Vendor 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 Condition;
- (c) the Vendor 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

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

12. Subcontracting

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

- (a) remains fully responsible for the Supply and its obligations under this Contract; and
- (b) 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 Vendor.

13. Laws and legal requirements

The Vendor must:

- (a) comply with and ensure the Supply and all of the Vendor'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 any specified in the Contract Particulars);
- (b) 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
- (c) 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

(a) The Vendor must:

- (i) comply with and ensure the Supply and all of the Vendor's officers, employees, agents and subcontractors comply with:

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- (A) 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 the *Work Health and Safety Act 2011* (Qld), the *Work Health and Safety Regulation 2011* (Qld), and the *Electrical Safety Act 2002* (Qld);
- (B) 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
- (C) Work Health and Safety Codes published by www.WorkSafe.qld.gov.au;
- (ii) maintain safe work practices and ensure that all workers are qualified and/or licensed to undertake the work required by the Supply;
- (iii) 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;
- (iv) 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;
- (v) 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
- (vi) 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.
- (b) Without limiting any of its rights, Sunwater may terminate this Contract on written notice if, in Sunwater's opinion, the Vendor fails to:
- (i) maintain safe work practices; or
- (ii) ensure that activities carried out in connection with the Supply are conducted in a safe manner,
- in which case the Vendor will have no further Claim against Sunwater.
- 15. Modern Slavery**
- (a) The Vendor warrants and agrees that:
- (i) it has not, and will not, engage in any Modern Slavery practices;
- (ii) it will comply with all laws relating to Modern Slavery;
- (iii) 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;
- (iv) 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
- (v) it will provide all information as may be reasonably required by Sunwater to comply with any law or legal requirement.
- (b) Sunwater may (without limiting any other rights of Sunwater) terminate this Contract immediately by written notice to the Vendor if the Vendor breaches, or Sunwater reasonably believes that the Vendor has breached clause 15(a), in which case the Vendor 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. Additional Conditions of Contract**
- Where the Contract Particulars 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.
- 18. Payment**
- (a) Sunwater must pay the Vendor the Amount in the manner set out in this Contract.
- (b) The Vendor may, at each time for a payment claim set out in the Contract Particulars, submit a Tax Invoice.
- (c) The amount which the Vendor must be paid at the time of each claim for payment must be:
- (i) the amount specified in this Contract as payable; or
- (ii) 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:
- (iii) previous amounts paid;
- (iv) amounts representing the value of unfixed plant or materials, unless Sunwater has agreed to such value being included; and
- (v) amounts which this Contract otherwise provides are not payable for any reason (including by way of set-off).
- (d) Sunwater shall pay the Vendor within 15 business days after Sunwater receives a Tax Invoice in accordance with clause 18(b).
- (e) 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.
- 19. Insurance and Indemnities**
- (a) The Vendor 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:
- (i) public and products liability insurance with a limit of liability of not less than \$20 million for any one occurrence;
- (ii) where this Contract requires the Vendor 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:
- (A) where the total Amount payable by Sunwater is less than \$100,000, \$1 million per claim and in the annual aggregate; or
- (B) 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
- (C) where the total Amount payable by Sunwater is more than \$250,000.00, \$10 million per claim and in the annual aggregate.
- Any professional indemnity insurance policy must be maintained for a period of six years following completion of this Contract;
- (iii) third party personal injury and property motor vehicle insurance for not less than \$20 million per claim;
- (iv) workers compensation or personal injury insurance (as applicable); and
- (v) any other insurance required by Sunwater.
- (b) On request, the Vendor shall provide certificates of currency as evidence of insurances the Vendor or its subcontractors are required to effect under the terms of this Contract.
- (c) The Vendor must ensure all subcontractors effect and maintain insurances required to be maintained by the Vendor (unless the subcontractors are covered by the Vendor's insurance).
- (d) The Vendor 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 Vendor or any of its officers, employees, agents and subcontractors or other representatives.
- 20. Cap on Liability and Exclusion of Liability**
- (a) Subject to clause 20(b), 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.
- (b) The cap of liability in clause 20(a) does not apply in relation to:
- (i) personal injury, including sickness, injury or death; or
- (ii) loss of, or damage to, tangible property; or
- (iii) wilful default, wilful misconduct, unlawful act or omission of, or failure to comply with applicable law by the Vendor or its officers, employees, agents, subcontractors or other representatives; or
- (iv) any claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights; or
- (v) 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 Vendor's liability to Sunwater, which would have been recoverable but for the Vendor's failure to meet the insurance requirements under this Contract; or
- (vi) a breach of clauses 25 or 26 by the Vendor or its officers, employees, agents, subcontractors or other representatives.
- (c) Notwithstanding anything else in this Contract, neither party will have any liability to the other for any Consequential Loss.
- 21. Default and Termination**
- If the Vendor:
- (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 Vendor that Sunwater requires the Vendor 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 Vendor; 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 Vendor.
- 22. Termination for Convenience**
- Sunwater may at any time and for any reason (including for its convenience where there is no default by the Vendor) terminate this Contract (in whole or in part) by five (5) days' prior notice in writing to the Vendor in which case:
- (a) the Vendor must cease all parts of the Supply to the extent set out in Sunwater's notice and mitigate any costs incurred by the Vendor consequent upon termination;
- (b) Sunwater must pay the Vendor for the value of the Supply provided to Sunwater in accordance with the Contract;
- (c) the Vendor 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 Vendor will not be affected.
- 23. GST**
- (a) Capitalised terms in this clause 23 have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless stated otherwise in this Contract, the Price is exclusive of GST.
- (c) Sunwater will not be obliged to pay the Vendor any amount payable in respect of a Taxable Supply until the Vendor has provided to Sunwater a tax invoice in respect of the amount payable.
- 24. Trusts**
- Where the Vendor is a trustee:
- (a) the Vendor incurs all obligations under this Contract in its own right and in its capacity as trustee;
- (b) the Vendor 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 Vendor warrants it is empowered by the trust deed to enter into and perform this Contract.
- 25. Confidentiality**
- (a) The Vendor must:
- (i) keep confidential all Confidential Information;
- (ii) not use the Confidential Information except for the purposes of this Contract; and
- (iii) not disclose Confidential Information to any person except:
- (A) to the Vendor's officers, employees, subcontractors, agents and advisors on a need to know basis and under confidentiality obligations equivalent to those under this clause 25;
- (B) with Sunwater's consent;
- (C) if required by law; or
- (D) if it is in the public domain, except as a result of a breach of this Contract.

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- (b) If the Vendor becomes aware of a suspected or actual breach of this clause or clause 26, the Vendor must:
- (i) immediately notify Sunwater of that suspected or actual breach; and
 - (ii) 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.
- (c) On termination or expiry of this Contract or at any other time requested by Sunwater, the Vendor 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.
- 26. Privacy**
- If the Vendor, 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 Vendor must and must ensure that Relevant Persons:
- (a) at all times comply with the Privacy Act as if the Vendor was an entity to which that Act applies and any other Privacy Laws which apply to the Vendor;
 - (b) not do or omit to do anything that cause Sunwater to breach the Privacy Laws or Sunwater's published privacy policy;
 - (c) not use or disclose Sunwater Personal Information other than for the purpose of performing its obligations under this Contract, unless required by applicable law;
 - (d) 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;
 - (e) immediately notify Sunwater if it becomes aware that a disclosure of Sunwater Personal Information is, or may be, required or authorised by applicable law;
 - (f) comply with any directions or inquiries notified by Sunwater in relation to the Vendor's handling of Sunwater Personal Information or compliance with this clause 26; and
 - (g) in the event of a Data Breach, immediately notify Sunwater. The Vendor 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 Vendor must notify a Data Breach to the Australian Information Commissioner or other persons in accordance with Sunwater's reasonable directions.
- 27. Intellectual Property Rights**
- (a) This Contract does not affect the ownership of any Intellectual Property Rights in Background Material.
 - (b) All Intellectual Property Rights in New Material are immediately assigned to and vest in Sunwater upon creation.
 - (c) Sunwater grants the Vendor 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 Vendor performing its obligations under this Contract.
 - (d) The Vendor 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 Vendor's Background Material).
 - (e) 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 Vendor must with Sunwater's consent (not to be unreasonably withheld) promptly and at the Vendor's expense:
 - (i) procure the rights necessary for use of the affected service or Deliverable; or
 - (ii) 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.
 - (f) If the Vendor is unable to comply with clause 27(e), the Vendor must refund all amounts paid by Sunwater in connection with the affected service or Deliverable.
- 28. Sunwater Data**
- (a) Sunwater owns all information (including personal information), material, data, datasets or databases provided by Sunwater to the Vendor 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 Vendor must ensure that Sunwater Data in its possession or control is identified as Sunwater Data and is accessible to Sunwater at all times.
 - (b) The Vendor 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.
 - (c) The Vendor 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.
 - (d) On the Vendor ceasing to provide the Supply for any reason, the Vendor 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 Vendor must permanently and irretrievably delete the Sunwater Data.
- 29. Legislation Relating to Works**
- (a) To the extent the Supply or any part of the Supply is subject to the QBCC Act:
 - (i) 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
 - (ii) without limiting any other provision of this Contract, the Vendor must maintain its registration under the QBCC Act (under the licence number set out in the Contract Particulars, if any) to carry out the Supply.
 - (b) To the extent the Supply is subject to the BIF Act:
 - (i) Chapter 3 of the BIF Act applies to this Contract;
 - (ii) the Vendor must immediately notify Sunwater of:
 - (A) it receiving; or
 - (B) 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;
 - (iii) the amount of each progress payment to which the Vendor 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 Vendor may claim or Sunwater must pay;
 - (iv) if the Vendor suspends the Supply pursuant to the BIF Act, the Vendor 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
 - (v) if a subcontractor of the Vendor suspends the provision of any work, services or supply pursuant to the BIF Act, the Vendor will have no Claim (including without limitation for an extension to any Delivery Date).
- 30. Investigations**
- The Vendor must, and must ensure that all of the Vendor'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 investigations in the cyber controls and data protection mechanisms utilised by the Vendor.
- 31. General**
- (a) The law of Queensland applies to this Contract and the parties submit to the jurisdiction of the courts of Queensland.
 - (b) Clauses 19(d), 20, 25, 26 and 30 survive the termination of this Contract.
 - (c) The Vendor'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.
 - (d) This Contract constitutes the entire agreement between Sunwater and the Vendor in relation to the Supply.
 - (e) 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 Vendor must continue to carry out the Supply despite any dispute.
 - (f) This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
 - (g) Each party warrants that, immediately prior to entering this Contract, it has unconditionally consented to:
 - (i) the requirement for a signature under any law being met; and
 - (ii) 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.
 - (h) 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 agreement.
 - (i) 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.
 - (j) Attachment 1 (ICT Terms) forms part of this Contract. To the extent of any inconsistency between:
 - (i) the Special Conditions;
 - (ii) the Contract Particulars;
 - (iii) clauses 1 to 32 of this Contract;
 - (iv) Attachment 1 (ICT Terms);
 - (v) any Specification; or
 - (vi) terms incorporated under clause 6(c),
 the terms in the earlier listed document above prevail.
- 32. Definitions:**
- (a) **Additional Conditions of Contract** mean the Additional Conditions of Contract available from Sunwater's website (<https://www.sunwater.com.au/about/suppliers-and-contractors/>).
 - (b) **Amount** has the meaning described in the Contract Particulars.
 - (c) **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.
 - (d) **BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
 - (e) **Claims** means claims, demands, actions, costs, charges, expenses, damages, losses and other liabilities.
 - (f) **Confidential Information** means all information provided by or obtained from Sunwater in relation to this Contract.
 - (g) **Consequential Loss** means loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings.
 - (h) **Contract** means the Contract Particulars, the Special Conditions and these terms and conditions (including Attachment 1 (ICT Terms) and any attachments referenced in the Contract Particulars).
 - (i) **Contract Particulars** means the document enclosed with these Purchase Order Terms and Conditions (Executable) containing a table entitled 'Contract Particulars'.
 - (j) **Data Breach** means any misuse, interference or loss, or any unauthorised access, modification or disclosure of Sunwater Personal Information.
 - (k) **Deliverable** means anything provided or required to be provided by the Vendor under this Contract.
 - (l) **Delivery Date** has the meaning described in the Contract Particulars.
 - (m) **Design Deliverables** means all drawings, specifications or other documents or materials required to give effect to the Vendor's Design Obligations, or otherwise required to be provided by the Vendor.
 - (n) **Design Obligations** means any part of the Supply that includes design work or design services.
 - (o) **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:
 - (i) the Sunwater ICT Environment, any Sunwater Data or any Confidential Information; or

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- (ii) any Vendor 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.
- (p) **Fit for Purpose** means fit for the purposes set out in, or which are reasonably ascertainable from, this Contract.
- (q) **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.
- (r) **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.
- (s) **Licence and Competency Requirements** means all qualifications, certificates, licences, permits, approvals, skills, experience, and competencies required for the purposes of carrying out the Supply.
- (t) **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.
- (u) **Modern Slavery** has the meaning given to it in the *Modern Slavery Act 2018* (Cth).
- (v) **New Material** means Material created by or on behalf of the Vendor, its contractors or agents or their officers or employees in the course of performing this Contract.
- (w) **Personal Information** has the meaning defined in the Privacy Act.
- (x) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (y) **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.
- (z) **QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (Qld).
- (aa) **Site Conditions** means all conditions of the site which are known, were identified in information provided by Sunwater to the Vendor or ought reasonably to have been known to the Vendor 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)).
- (bb) **Specifications** means any document provided to the Vendor, or otherwise made known to the Vendor, 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 Vendor, any published specifications of the Vendor or a third party manufacturer or supplier relating to the licensed software or software as a service.
- (cc) **Sunwater** means any of the following, as noted in the Contract Particulars:
 - (i) Sunwater Limited ACN 131 034 985;
 - (ii) Eungella Water Pipeline Pty Limited ACN 070 999 236;
 - (iii) North West Queensland Water Pipeline Pty Ltd ACN 070 999 218; or
 - (iv) Burnett Water Pty Ltd ACN 097 206 614.
- (dd) **Sunwater ICT Environment** means the physical and computing environment to which access is made available to the Vendor by Sunwater for the purposes of providing the Supply.
- (ee) **Supply** means the services, goods, works or software described in the Contract Particulars.
- (ff) **Tax Invoice** means an invoice from the Vendor to Sunwater for the Supply (accompanied by all supporting documentation required by Sunwater), which must include the Vendor's name, ABN number, description of the Supply provided, the amount claimed and such other details Sunwater reasonably requires from time to time.
- (gg) **Third Party Supply** means services, good or software supplied by the Vendor as a reseller, as set out in the Contract Particulars.
- (hh) **Vendor** means the person described as such in the Contract Particulars.

ATTACHMENT 1 (ICT TERMS)

1. Licensed software

To the extent the Supply includes licensed software:

- (a) for the period specified in the Contract Particulars (**Licence Period**), the Vendor 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 Vendor warrants it has the right to grant the licence under this section 1 and that the licensed software does not include, and the Vendor will not introduce in the Sunwater ICT Environment, any Harmful Code;
- (c) during the Warranty Period (if any) specified in the Contract Particulars, the licensed software will not be defective. During such Warranty Period, the Vendor 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 Contract Particulars, the Vendor 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 Vendor 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 Specifications and Additional Requirements;
- (b) unless otherwise specified in the Contract Particulars, 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 Vendor;
- (d) unless otherwise specified in the Contract Particulars, the Vendor must only use infrastructure located in Australia to provide the SaaS;

- (e) the Vendor will supply the SaaS during the period specified in the Contract Particulars or if no Subscription Period is specified in the Contract Particulars, 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 Vendor of its intention not to renew at any time prior to the end of a Subscription Period;
- (f) subject to section 2(g), the Vendor will regularly update the SaaS at no additional cost to Sunwater; and
- (g) the Vendor 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 Vendor where the Vendor fails to comply with this section.

3. Acceptance

- (a) There is no deemed acceptance of any software forming part of the Supply.
- (b) 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.
- (c) If the acceptance tests are passed, Sunwater will issue a certificate of acceptance to the Vendor.
- (d) If the acceptance tests are not passed, Sunwater will issue a notice of defects to the Vendor. Unless Sunwater takes the action described in clause 11(a), Sunwater may (at its option) reject the software and require the Vendor 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

- (a) Where access to the Sunwater ICT Environment is required to provide the Supply or is otherwise granted to the Vendor by Sunwater, the Vendor must not tamper with, hinder the operation of (except as expressly permitted by this Contract) or make unauthorised

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modifications to the Sunwater ICT Environment or maliciously or negligently introduce any Harmful Code to the Sunwater ICT Environment.

- (b) If any Harmful Code is found in, or to have had access to the Sunwater ICT Environment from the Vendor's ICT systems, the Vendor 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 Vendor must mitigate and restore the loss as quickly as possible.
- (c) The Vendor must immediately notify Sunwater upon becoming aware, or where it ought reasonably to have become aware, of an actual or suspected Electronic Incident. The Vendor will provide reasonable assistance requested by Sunwater with the investigation, mitigation of the effect and (where required by law) notification of the Electronic Incident.
- (d) Upon receipt of a notification by the Vendor, or upon Sunwater otherwise becoming aware, of an Electronic Incident under section 4(c), in consultation with the Vendor, Sunwater may, at its reasonable discretion, require that:
 - (i) the Vendor's ability to access, process, or store Sunwater Data and the Sunwater ICT Environment be suspended;
 - (ii) connectivity with the Vendor be terminated; or
 - (iii) other appropriate action be taken pending such resolution,provided that upon any such action by Sunwater or required of the Vendor by Sunwater, the Vendor will be relieved of its obligations under this Contract to the extent it is unable to perform under such circumstances and so notifies Sunwater.