

# **Conditions: Tendering and Contract Consultant Services**

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# CONDITIONS OF TENDERING AND CONTRACT CONSULTANT SERVICES

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>1. CONDITIONS OF TENDERING.....</b>                           | <b>5</b>  |
| 1.1 LODGEMENT OF TENDERS .....                                   | 5         |
| 1.2 TENDERERS TO INFORM THEMSELVES .....                         | 6         |
| 1.3 DOCUMENTS TO BE LODGED WITH TENDER FORM .....                | 6         |
| 1.4 TENDER VALIDITY .....  | 7         |
| 1.5 PERFORMANCE PLAN .....                                       | 7         |
| 1.6 ALTERNATIVE TENDERS .....                                    | 7         |
| 1.7 CHANGE TO CONDITIONS OF CONTRACT .....                       | 8         |
| 1.8 TAXES, DUTIES AND FEES ETC. ....                             | 8         |
| 1.9 PRICING .....  | 8         |
| 1.10 PART OFFER AND PART ACCEPTANCE .....                        | 8         |
| 1.11 TENDER ASSESSMENT CRITERIA .....                            | 8         |
| 1.12 DISCLOSURE OF PERCENTAGE WEIGHTINGS.....                    | 10        |
| 1.13 PRIVACY NOTICE .....  | 11        |
| 1.14 ADDITIONAL INFORMATION .....                                | 11        |
| 1.15 NEGOTIATIONS .....  | 11        |
| 1.16 NOTIFICATION OF ACCEPTANCE .....                            | 11        |
| 1.17 PERFORMANCE REPORT .....                                    | 11        |
| <b>2. CONDITIONS OF CONTRACT.....</b>                            | <b>12</b> |
| 2.1 INTERPRETATION.....  | 12        |
| 2.2 THE ENGAGEMENT .....   | 12        |
| 2.3 FEE AND PAYMENT .....  | 13        |
| 2.4 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT .....     | 14        |
| 2.5 STATUS OF CONSULTANT.....                                    | 14        |
| 2.6 CONFLICT OF INTEREST .....                                   | 14        |
| 2.7 RESPONSIBILITIES AND OBLIGATIONS OF THE PRINCIPAL.....       | 14        |
| 2.8 REPRESENTATIVES .....  | 15        |
| 2.9 DIRECTIONS BY THE PRINCIPAL.....                             | 15        |
| 2.10 NOTICES .....   | 15        |
| 2.11 DOCUMENTS .....   | 15        |
| 2.12 CONFIDENTIALITY AND PUBLICITY .....                         | 16        |
| 2.13 INDEMNITIES .....   | 16        |
| 2.14 INSURANCES.....   | 16        |
| 2.15 SERVICES AND DUTIES .....                                   | 18        |
| 2.16 PERFORMANCE PLAN AND PROCEDURES.....                        | 19        |
| 2.17 TIME FOR COMPLETION .....                                   | 19        |
| 2.18 PERFORMANCE REPORT .....                                    | 19        |
| 2.19 VARIATIONS.....   | 19        |
| 2.20 LOCAL CONSULTANTS AND SUPPLIERS.....                        | 19        |
| 2.21 TRANSFER OR ASSIGNMENT.....                                 | 19        |
| 2.22 SUBLETTING.....   | 20        |
| 2.23 TERMINATION, SUSPENSION AND DEFERMENT OF THE CONTRACT ..... | 20        |
| 2.24 DISPUTES .....  | 21        |
| 2.25 GOODS AND SERVICES TAX .....                                | 21        |
| 2.26 PRIVACY.....  | 21        |

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## 1. CONDITIONS OF TENDERING

### 1.1 LODGEMENT OF TENDERS

Tenders shall be in the form required by the Clause titled “Documents to be Lodged with Tender Form”. Tenders shall be enclosed in a sealed envelope marked with the Tender Number and closing date. Oral tenders or tenders submitted by electronic mail (other than via Tenders Online eLodgement service) shall not be considered.

#### 1.1.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of this Request for Tender (RFT).

#### 1.1.2 Delivered By Hand

The preferred Tender Box for lodgement of this Tender is as stated on the cover of this RFT.

Tenders however may be lodged by hand in any of the following Tender Boxes:

Department of Business and Employment  
Contract and Procurement Services  
Ground Floor, Enterprise House  
28-30 Knuckey Street  
DARWIN NT 0800

Department of Business and Employment  
1<sup>st</sup> Floor, Herbarium (Gaymark Plaza)  
4 Mansfield Street  
PALMERSTON NT 0830

Department of Business and Employment  
1<sup>st</sup> Floor, NT Government Centre  
5 First Street  
KATHERINE NT 0850

Department of Business and Employment  
1<sup>st</sup> Floor, Alice Plaza  
Corner Parsons Street and Todd Mall  
ALICE SPRINGS NT 0870

Department of Business and Employment  
Shop 2, Ground Floor, Barkly House  
99 Paterson Street  
TENNANT CREEK NT 0860

Department of Business and Employment  
Ground Floor, Arnhem Village  
Arnhem Road  
NHULUNBUY NT 0880

Tenderers lodging by hand in other than the Tender Box referred to on the front cover of this RFT must take particular care to show the Tender Number and closing date and time on the envelope.

#### 1.1.3 Delivery By Post

Tenders sent by prepaid post must be directed to the postal address stated on the cover of this RFT.

#### 1.1.4 Sent By Facsimile

Tenders sent by facsimile must be directed to the facsimile number stated on the cover of this RFT.

Where facsimile lodgement is used, Tenders must be faxed in full, by the closing time and date stated on the cover of this RFT. Tenders transmitted by facsimile that are not received in full by the stated closing time and date will be deemed late and will not be admitted for consideration.

#### 1.1.5 Lodged via Electronic Tender Lodgement (eLodgement)

Where electronic tender lodgement has been allowed, Tenders must be submitted:

- (a) in the electronic format as specified; and
- (b) using the eLodgement button;

on the Tenders Online eLodgement service, [www.nt.gov.au/Tenders](http://www.nt.gov.au/Tenders)

Tenders lodged at a different address or in an unspecified electronic format will be invalid and the Tender will not be admitted for consideration.

Where electronic tender lodgement has been allowed and the selected RFT is available from an e-mail link, Tenders must be submitted electronically using the same e-mail link.

The Tender (ie. tender form and all other response schedules) may be admitted for consideration on the basis that the transmission of the Tender is acknowledged by the Tenderer as being the true and legal version and is completed, submitted and acknowledged by the stated closing time and date.

## CONDITIONS OF TENDERING

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In choosing to use the eLodgement option, Tenderers agree to comply with the conditions of use, of the Tenders Online eLodgement service.

If, for any reason, the electronic Tender (with the exception of the pricing schedule[s]) submitted becomes corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. a hard copy or a further electronic copy of the Tender must be provided by the Tenderer on request from the Principal. Pricing schedule(s) submitted electronically that become corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc will result in the Tender being invalid and not admitted for consideration.

### 1.1.6 Late Tenders

Tenders received after the stated time and date for closing of Tenders are not admitted for consideration.

Notwithstanding the preceding paragraph:

- (a) Tenders submitted by prepaid post or a commercial courier service, received after the stated date and time for closing may be considered only if it can be established to the satisfaction of the Principal that they were posted or despatched before the stated date and time for closing and in the ordinary course of business would not have been received late. Impressions of franking machines are not acceptable evidence of timely posting or despatch.
- (b) Tenders submitted by the eLodgement option of the Tenders Online service, may be considered only if it can be established to the satisfaction of the Principal that they were submitted before the stated date and time for closing, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.

## 1.2 TENDERERS TO INFORM THEMSELVES

Tenderers shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including an inspection of the site if appropriate, assessment of eligibility for NT Government Contracts, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The "Minister's Procurement Directions" & "Northern Territory Procurement Code" can be found at the web address [www.nt.gov.au/dcis/procurement\\_policy/framework.html](http://www.nt.gov.au/dcis/procurement_policy/framework.html) or is available at the point of issue of the RFT.

Tenderers who have any doubts as to the meaning of any part of the RFT shall seek clarification in writing from the person specified in the Annexure to the Conditions of Tendering and Conditions of Contract (the Annexure).

Arrangements for a site inspection, are as stated in the Annexure. Failure to attend the site meeting where requested will result in the Tender being declared ineligible for consideration.

Should the Tenderer find any discrepancy, error or omission in the RFT they shall notify the Director, Contract and Procurement Services in writing as early as possible but in any event before the closing of Tenders.

Any clarification given pursuant to this clause may also be issued to all other prospective Tenderers. No explanation or amendment to the RFT shall be recognised unless in the form of a written addendum issued by the Principal.

Any Tenderer who believes the RFT to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing as early as possible, but in any event before the closing of Tenders.

## 1.3 DOCUMENTS TO BE LODGED WITH TENDER FORM

Tenders shall be English. The Tenderer shall complete in full and submit the number of copies of the documents listed in the Annexure.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may be regarded as informal and rejected.

The Principal will neither be responsible for, nor pay for, any expense or loss, which may be incurred by Tenderers in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

The Tenderer shall sign its Tender as indicated below, and have the signature witnessed.

- (a) In the case of a corporation:
  - (i) With its common seal, and the fixing of the seal witnessed by:

- 2 directors of the company; or
  - a director and a company secretary of the company; or
  - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
- (ii) Without its common seal, if signed by:
- 2 directors of the company; or
  - a director and a company secretary of the company; or
  - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
- (iii) By signature of two persons (other than the persons described in clause [ii]) authorised by the corporation to bind it in Contract. In such circumstances a copy of the authorisation duly executed by the corporation in accordance with clause (i) or (ii) must be submitted with the Tender.
- (b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
- (i) By signature of each proprietor of the firm.
- (ii) Or in the case of firms having more than five proprietors, by signature of the proprietors authorised to bind the firm in Contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal.
- (iii) Any proprietor who is a corporation must sign the Tender in the manner indicated in paragraph above.

Where the Tender is from a:

- (a) person or persons, full given names are to be provided.
- (b) firm or business or trading name full given names of each member of the firm are to be provided.
- (c) Company, the full name and Registered address are to be provided.

Where Tenderer's are lodging their Tender via the eLodgement option on the "Tenders Online" service, there is no requirement to complete the "signature" or "witnessed" blocks on the Tender Form.

Each Tender shall contain the Tenderer's ACN/BN and ABN and an address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender and any subsequent Contract arising out of acceptance of the Tender.

#### **1.4 TENDER VALIDITY**

Tenders shall remain valid for the period stated in the Annexure. If a Tender is not formal or complete in accordance with these Conditions of Tendering, the Tender validity period shall commence from the date on which the Tender is formalised or completed to the satisfaction of the Principal. A Tenderer may withdraw their Tender at any time after the expiration of the Tender validity period, but shall not withdraw their Tender prior to the expiration of such period unless such withdrawal is accepted by or on behalf of the Principal.

#### **1.5 PERFORMANCE PLAN**

If it is stated in the Annexure that the Services are to be carried out using a Performance Plan the Tenderer is required to submit a Performance Plan Proposal with the Tender. The Proposal shall include, but need not be limited to, the numbers of, and approximate dates of each type of check to be undertaken by the Consultant.

If required, any Tender in which the Performance Plan Proposal is not provided may be considered as informal and rejected.

#### **1.6 ALTERNATIVE TENDERS**

Tenderers may submit alternative tenders where the RFT states that alternative tenders are allowed. Where the RFT specifies that an alternative tender must be accompanied by a conforming tender, a conforming tender must be submitted with the alternative tender.

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

### **1.7 CHANGE TO THE CONDITIONS OF CONTRACT**

Tenderers may request changes to the Conditions of Contract applicable to this Request for Tender (RFT), or propose alternative Conditions of Contract only if the RFT states that this is allowed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions, they must clearly specify in the Tender Response Schedules that changes to the Conditions are being requested or that alternative Conditions are being proposed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions of Contract, they do so at their own risk, as the changes will be deemed to have formed part of their offer and their Tender will be assessed on that basis. If the requested changes or the alternative Conditions included in a Tender are not acceptable to the Principal, the Tender will not be successful.

If the RFT states that the changes to the Conditions of Contract or alternative Conditions are not allowed, then Tenderers may not request changes to the Condition of Contract applicable to this RFT, or propose alternative Conditions of Contract. If a Tenderer does so, their Tender will be deemed non-conforming and will not be considered.

This clause does not allow Tenderers to request changes or propose alternatives to the Conditions of Tendering applicable to this RFT. Any Tenderer who attempts to do so will have their Tender deemed non-conforming and set aside.

Nothing in this clause affects the Principal’s right to negotiate with one or more tenderers as provided for in this RFT.

### **1.8 TAXES, DUTIES AND FEES ETC.**

The Tenderer shall make due allowance for any fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

Tenderers shall submit a Tender that includes GST.

### **1.9 PRICING**

All prices shall be stated in Australian dollars. Unless otherwise indicated prices shall allow for labour, materials, transport, freight, overheads, profits and all other costs.

Any Schedule of Prices/Rates, which is included in the RFT shall be completed and lodged with the Tender. Pricing shall be submitted for each item in the Schedule. Any Tender in which the Schedule is not fully completed may be regarded as informal and rejected.

### **1.10 PART OFFER AND PART ACCEPTANCE**

Unless otherwise stated in the Annexure, Tenderers shall offer for the whole of the Services.

Where part offers are allowed, the Principal reserves the right to accept a portion or the whole of any Tender at the price or prices tendered unless the Tenderer specifically states to the contrary in its offer.

### **1.11 TENDER ASSESSMENT CRITERIA**

Selection of the successful Tenderer will be based on, but not necessary limited to, assessment of Tenders against the following standard Tender Assessment Criteria:



The elements under each standard criterion are offered for the purpose of providing tenderers examples of the types of consideration that may form part of each criterion. These elements as stated under each standard criterion are not to be considered exclusive to any specific tender.

- (i) Past Performance;
  - (a) *Standard of work Product quality*
  - (b) *Project delivery*
  - (c) *Degree of necessary supervision of the Contractor*
  - (d) *Performance history*
  - (e) *Previous disputes and claims*
  - (f) *References (including Contractor Accreditation Limited if applicable)*
  - (g) *Safe and fair workplace record*
  
- (ii) Local Development and Value Adding;
  - (a) *Enhancement of industry and business capability in the Northern Territory*
  - (b) *Improved capacity and quality in supply and service response*
  - (c) *Proposed level of usage of apprentices, trainees and local Indigenous enterprise*
  - (d) *Proposed number of jobs for Territorians.*
  - (e) *Proposed number of jobs for local Indigenous Territorians*
  - (f) *Accredited training programs supported by the Tenderer*
  - (g) *Regional development opportunities*
  - (h) *Northern Territory research and development proposals*
  
- (iii) Timeliness;
  - (a) *Whether the Supplies are available immediately*
  - (b) *Length of supply chain*
  - (c) *Supply chain vulnerability*
  - (d) *Completion time offered*
  
- (iv) Capacity;
  - (a) *Ability to perform services or supply product*
  - (b) *Number and value of Contracts in progress*
  - (c) *CAL accreditation*
  - (d) *Legal action pending*
  - (e) *Financial resources*
  - (f) *Financial capacity*

- (g) *Current credit rating*
  
- (v) Whole of Life Cost;
  - (a) *Operating costs*
  - (b) *Expected life and potential for upgrade*
  - (c) *Support services*
  - (d) *Warranties*
  - (e) *Compatibility with existing equipment*
  - (f) *Reliability*
  - (g) *Any other factors that would impact on costs to the Government*
  
- (vi) Innovation;
  - (a) *New Technology*
  - (b) *Alternative methods*
  
- (vii) Supply Specific Criteria
  - (a) *Supply Specific Criteria are those criteria that are considered relevant to the nature of the Supplies being procured. Supply Specific Criteria could include, but are not limited to, any one or more of the following:- environmental issues or requirements, technical requirements, and specific experience and expertise.*

Tenderers may provide on the Schedule of Tenderer's Information any relevant factors addressing the selection criteria, which may assist the Territory in making an assessment of the Tender.

The Principal reserves the right to apply weightings to each criterion in its total discretion, having regard to requirements contained in the Minister's Procurement Directions.

#### **1.12 DISCLOSURE OF PERCENTAGE WEIGHTINGS**

Disclosure of percentage weightings will apply to all tenders with an estimated value equal to or greater than \$200,000.

Tender assessment criterion may include sub-criteria, although percentage weightings shall only be published as a cumulative percentage against the standard tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given relative percentage weightings, the weightings applying to the sub-criteria shall not be disclosed or published.

The clause titled "Tender Assessment Criteria" in the Conditions of Tendering provides examples of the types of consideration that may form part of each criterion if not stated as sub-criteria.

The Principal reserves the right to apply percentage weightings to each criterion in its total discretion, having regard to the required outcomes of the tender.

Tender Assessment Criteria, including Supply Specific Tender Assessment Criteria and Relative Percentage Weightings are detailed in the document titled "Tender Assessment Criteria – Schedule of Percentage Weightings".

#### **1.13 PRIVACY NOTICE**

The Principal is collecting the information on the Declaration of Business Status form to determine eligibility to contract with the Principal. This is required by Procurement Regulation 6 (7)(h). The Principal usually gives some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in your Tender being not considered in the assessment process.

Your personal information provided in this form can be accessed. If you have any queries, please contact the Officer stated in the Annexure as the contact point.

#### **1.14 ADDITIONAL INFORMATION**

The Tenderer may be called upon to supply information additional to that provided in their Tender to demonstrate to the satisfaction of the Principal that the Tenderer has the capacity to perform the work specified.

The Tenderer shall within the time specified comply with any such requests. Should the Tenderer fail to submit any or all of the information required, in the time stipulated, their Tender may be treated as informal and rejected.

#### **1.15 NEGOTIATIONS**

The Principal may engage in detailed discussions and negotiations with one or more Tenderers with the goal of maximising the benefits of the Tender.

As part of this process, Tenderers may be asked to improve any of the technical, commercial, financial, contractual and/or other aspects of their Tenders.

At the end of this phase, there will be selection of a preferred Tenderer after all material business, financial, technical and legal issues have been resolved. The selection of a preferred Tenderer is subject to successfully concluding final contract negotiations. The result of any negotiations will be incorporated into the final Contract.

If the parties fail to complete satisfactory negotiations, the Principal may, at its sole discretion, terminate negotiations with that Tenderer and commence negotiation with another Tenderer or to terminate this Tender Process or to exercise any other right reserved to the Principal under law or elsewhere in this RFT.

#### **1.16 NOTIFICATION OF ACCEPTANCE**

The Principal shall not be bound to accept the lowest or any Tender.

Notice of acceptance of the Tender shall be given in the form of an official order or written notice and this order or notice shall constitute a binding Contract between the Principal and the successful Tenderer (hereinafter called the "Consultant").

If notice of acceptance has not been given there shall be no agreement between the Principal and the Tenderer and the Tenderer shall not act on any representations or statements made by the Principal or its employees or agents prior to the issue of the notice of acceptance.

#### **1.17 PERFORMANCE REPORT**

The Tenderer shall, if awarded the Contract, agree to the preparation and use of the Performance Report in the manner set out in the Conditions of Contract. A copy of the pro-forma report is available at the point of issue of the RFT.

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## 2. CONDITIONS OF CONTRACT

### 2.1 INTERPRETATION

In these General Conditions, unless the context otherwise requires:

**'Consultant'** means the person who as party to the Contract is bound to execute the Services in accordance with the Contract and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns. The Consultant is also responsible for coordinating and integrating the work of any sub-contractor engaged under the Contract.

**'Contract'** means the documents, which constitute or evidence the final and concluded agreement between the Principal and the Consultant.

**'Direction'** includes any agreement, approval authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement which the Principal may make, give or issue pursuant to the provision of the Contract.

**'Documents'** means all material stored by any means and produced or used by the Consultant in the course of the Contract including sketches, plans, drawings, specifications, designs, estimates, calculations, reports, models and other articles, equipment, information, files and data.

**'Intellectual Property'** means all copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know how.

**'Law'** includes common or customary law, equity, judgement, legislation, order, regulation, statute, by-law, ordinance or any other legislative or regulatory measure in each case of any jurisdiction whatsoever and includes any amendment, modification or re-enactment of them (and "lawful" and "unlawful" shall be construed accordingly).

**'Notification of Acceptance'** means the official order or written notice and any accompanying documentation sent to the Consultant by the Principal advising acceptance of the Consultant's Tender to provide professional services and includes these Conditions of Contract.

**'Principal'** means the Northern Territory of Australia. The Principal for Power and Water Contracts is the Power and Water Corporation.

**'Request for Tender (RFT)'** means the document containing or referring to the Conditions of Tendering and Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Scope of Services, Drawings or Diagrams (if any) and any other document issued for the purposes of inviting tenders for the Services.

**'Services'** means the work under the Contract, and includes all information describing the functional, operational, qualitative, quantitative, time and cost requirements and other supporting information provided by the Principal from time to time, which the Consultant is required to provide, as stated in the official order or written notice, and includes all variations and remedial work.

**'sub-contractor'** means a person other than the Consultant's employees engaged by the Consultant to carry out a part of the Services for the Consultant.

Where two or more persons are named as a party to this Contract, the terms, conditions and warranties of this Contract shall bind all such persons jointly and each of them severally and they shall be jointly and severally entitled to the benefits and rights conferred by this Contract.

Clause headings shall not be used in the interpretation of these Conditions.

Words in the singular include the plural and words in the plural include the singular according to the requirements of the context.

Words importing a gender include every gender.

### 2.2 THE ENGAGEMENT

The Contract between the Principal and the Consultant shall:

- (a) be governed by and construed with reference to the laws for the time being in force in the Northern Territory of Australia;

- (b) be evidenced by:
- (i) the RFT;
  - (ii) the Consultant's Tender;
  - (iii) the official order or written notice; and
  - (iv) all documents issued during the currency of the Contract to which reference may properly be made in order to ascertain the rights and obligations of the parties in relation to the Contract.

## **2.3 FEE AND PAYMENT**

### **2.3.1 Payment**

For the purposes of this clause, 'Tax Invoice' has the meaning given in 'A New Tax System (Goods and Services Tax) Act'.

The fee payable by the Principal to the Consultant for the provision of the Services shall be calculated as specified in the Annexure.

Unless otherwise agreed, the Consultant shall not render fee claims more frequently than at monthly intervals and the Principal shall make payments within thirty (30) days of receipt of claims that are correct and in order for payment.

All claims made by the Consultant shall be in the form of a Tax Invoice. The claim for payment shall be substantiated by an itemised account of actual fees, disbursements and expenses incurred.

The Consultant's claim will include details of any Adjustments under clause titled 'Goods and Services Tax' of the Conditions of Contract and an explanation as to how such adjustments were calculated.

The Consultant shall provide any further details in regards to the Services upon request by the Principal.

The making of a payment is not acknowledgment of the satisfactory performance of the Services. The Principal reserves the right to recover any overpayment.

Unless otherwise provided for in the Contract, the fee and associated disbursement and expenses shall constitute the Consultant's only remuneration for the Services and shall be deemed to include familiarisation and compliance with all the requirements, standards, procedures and instructions of the Principal.

Failure by the Principal to pay the amount by the due date:

- (a) will not be grounds to vitiate or avoid the contract; and
- (b) will entitle the Consultant to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of a tax invoice. Interest penalties are to be calculated daily, for the period after the due date until the date payment is made by the Principal, at the ninety (90) day bank bill rate published on 1 June each year. Where an interest penalty period spans 1 June, the rate shall be the rate published in the year the original invoice was issued.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties.

### **2.3.2 Percentage Fee**

Where the fee is payable on a percentage basis, the Services shall be carried out in stages and with the respective fee percentages applying to each stage as stated in the Contract. Fees shall not be adjusted except as provided for in the clause titled "Variations".

### **2.3.3 Upper Limit Estimate**

Where the fee is payable on the basis of an upper limit estimate or fixed price comprising professional fees, disbursements and expenses will be specified in the Contract.

During the execution of the Contract should the anticipated costs exceed the upper limit estimate or fixed price the Consultant must seek the approval of the Principal for variation to the upper limit or fixed price before proceeding.

### **2.3.4 Lump Sum Fee**

Where the fee is payable on a lump sum basis, the fee shall be the lump stated in the Contract and shall not be adjusted except as provided for in the clause titled "Variations".

### **2.3.5 Time Charge Fee**

Where the fee is payable on a time charge basis, the remunerative rate payable by the Principal in respect of any person engaged by the Consultant to perform the Services shall be relative to the level of the task performed by that person as set out in the Contract.

Hourly rates shall be applicable only to the Consultant's professional, technical and drafting staff, and no payment shall be made in respect of time spent on the Services by support staff including managerial and administration staff, inexperienced students and typists as due allowance for such staff shall be incorporated in the overhead loading included in the agreed hourly rates.

The Consultant shall keep accurate time sheets to substantiate any fee claims based on a time charge basis.

### **2.3.6 Disbursements and Expenses**

Where not already included in the negotiated fee, the Consultant shall be reimbursed for disbursements and expenses as have been reasonably and properly incurred in performing the Services.

The Consultant shall submit a claim for such authorised expenses and disbursements and provide the Principal with evidence of those costs.

## **2.4 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT**

The Principal will be relying on the professional skills of the Consultant to provide a service, which is technically sufficient and complete. The Consultant shall:

- (a) provide all professional advice and skills which are normally required for the class of services which it has agreed to provide under the Contract;
- (b) remain fully responsible for all work undertaken by the Consultant regardless of any review or acceptance of that work by the Principal;
- (c) be liable for any loss or damage suffered as a result of any negligent act, error, omission or statement by it or its employees, agents or sub-contractors except to the extent that that loss or liability is directly attributable to the failure of the Principal, its employees or agents to take reasonable care;
- (d) employ competent staff with qualifications and experience appropriate to their task for the Services;
- (e) promptly inform the Principal in writing if information or any document provided or caused to be provided by the Principal is found to be insufficient or inaccurate; and
- (f) acknowledge that the provision of the Services within the required deadlines is an essential term of the engagement of the Consultant and of the provision of the Services.

The Consultant shall observe and comply with all requirements of all relevant Acts of the Commonwealth of Australia, Act of the Northern Territory, the Northern Territory Procurement Code, and all requirements of any relevant authority, regulator or standard setting entity (including but not limited to those prescribed in the *Workplace Relations Act*) as shall be in force in the place affecting or applicable to the Services or the execution of the Services.

## **2.5 STATUS OF CONSULTANT**

The Consultant, employees and sub-contractors thereof, in performing the Services, are not for any purpose a servant or employee of the Principal.

## **2.6 CONFLICT OF INTEREST**

The Consultant shall inform the Principal of any matter, which may give rise to an actual or potential conflict of interest of the Consultant at any time during the currency of the Contract. This information will be treated confidentially.

## **2.7 RESPONSIBILITIES AND OBLIGATIONS OF THE PRINCIPAL**

The Principal shall give or cause to be given to the Consultant timely instructions, decisions and information sufficient to define the requirements of the Services including budgetary arrangements and limitations.

**2.8 REPRESENTATIVES**

**2.8.1 Principal's Representative**

The Principal shall appoint a Principal's representative to exercise the duties; discretions and powers vested in the Principal under the Contract. The Principal's Representative is nominated in the Annexure.

The appointment of a Principal's Representative shall not prevent the exercise of a duty, discretion or power by the Principal and the Principal may, at any time, alter such appointment by written notice to the Consultant.

**2.8.2 Consultant's Representative**

The Consultant shall appoint a Consultant's Representative to be the first point of contact with the Principal. The Consultant's Representative shall be nominated to the Principal in writing. The Consultant may, with the prior written approval of the Principal, cancel the appointment and shall nominate another Consultant's Representative.

**2.9 DIRECTIONS BY THE PRINCIPAL**

Unless the Contract expressly provides otherwise, the Principal may give any direction to the Consultant either in writing or orally followed by written confirmation if deemed necessary.

**2.10 NOTICES**

**2.10.1 Address**

Where any notice, direction, request or other communication is to be given in writing pursuant to this Contract, service thereof shall be effected by its delivery by hand or facsimile or being sent by prepaid post as follows:

- (a) If given to the Principal, signed by the Consultant and addressed to the Principal at the address set out in the Annexure as the address for service on the Principal or as otherwise notified by the Principal; and
- (b) If given by the Principal, signed by the Principal and addressed to the Consultant at the address set out in the Contract as the address for service on the Consultant or as otherwise notified by the Consultant.

**2.10.2 Effective Date of Service**

Service of any notice, direction, request or other communication pursuant to the above sub-clause shall be deemed to have been given or made when delivered personally at the time of such delivery or when posted as provided under the above sub-clause three (3) working days after the posting of the notice, direction, request or other communication. or when delivered by facsimile transmission, on production of a transmission report by the machine from which the notice was sent indicating that the notice sent by facsimile was received in its entirety at the recipient's facsimile number.

**2.11 DOCUMENTS**

**2.11.1 Ownership and Custody**

The property in all documents produced under the Contract, including title thereto and all Intellectual Property therein shall invest upon their creation in the Principal. Upon completion of the work under Contract, the Consultant shall deliver to the Principal the originals and all copies and reproductions of all documents required by the Principal.

Unless otherwise instructed by the Principal, all manuals, standard drawings, computer programs and other documents supplied to the Consultant for reproduction or guidance during the course of the Contract shall be returned to the Principal by the Consultant upon termination or completion of the Contract.

**2.11.2 Warranty and Indemnity**

The Consultant warrants that any Intellectual Property embodied in or used in connection with the Services is the sole property of the Consultant or the Consultant is legally entitled to use same for the performance of the Services.

## CONDITIONS OF CONTRACT

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The Consultant shall indemnify and at all times keep the Principal indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses associated therewith:

- (a) under Part VII of the Copyright Act 1968 or Part XIV of the Patents Act 1952 in respect of the use or exercise of any letters patent or copyright; or
- (b) for any infringement or alleged infringement of letters patent, trademark, design, copyright or other protected rights, in respect of any equipment, software, machinery, plant, material or thing, system or method of using, fixing, working or arrangements used or fixed or supplied by the Consultant (hereinafter collectively referred to as "the equipment") but such indemnity shall not cover any use of any of the equipment otherwise than in accordance with the Contract.

### **2.11.3 Intellectual Property in Material Supplied by the Principal**

Intellectual Property in all manuals, standard drawings, computer programs and other information supplied to the Consultant for reproduction or guidance in relation to the Services remains vested in the Principal. This information may not be used or reproduced for any other purpose without the prior written approval of the Principal.

### **2.11.4 Patents**

Without limiting the generality of sub-clause titled "Ownership and Custody", any patentable inventions or processes arising in the course of, or out of the Contract are the property of the Principal and the Consultant will on demand execute such notices, waivers or assignments as may be necessary to enable the Principal to register patents.

If any analysis, design, process or construction proposed by the Consultant involves, or might involve, the payment of royalties, fees or licence fees, the Consultant shall notify the Principal in writing. Unless the Principal approves in writing of the proposal, the Consultant shall amend its proposal so that such payments are avoided.

Where any document, procedure, design or patentable work is produced as a consequence of an original or unique concept of the Consultant, the Principal may agree that the copyright or patent may vest in the Consultant or be vested jointly in the Consultant and the Principal on agreed terms.

## **2.12 CONFIDENTIALITY AND PUBLICITY**

The Consultant shall not release any document or article or divulge any information gained in the course of the Contract to the media or any person without the approval of the Principal.

Should the Consultant wish to submit any of the Services produced under the Contract for publication in journals, exhibitions or entry for awards, prior written approval must be obtained from the Principal by submitting for a decision full details of the material to be published.

Should the Principal publicise the Services, it will acknowledge the contribution made by the Consultant where practicable.

## **2.13 INDEMNITIES**

The Consultant shall keep the Principal and employees or agents of the Principal indemnified against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person or for damage to any property arising from the carrying out of the Services (except loss or damage caused by any negligent act, omission or default of the Principal or employees or agents of the Principal) and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

The Consultant shall indemnify the Principal at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the existence of any patent, design, trademark or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement, used or fixed or supplied by the Consultant in connection with the carrying out of the Services.

## **2.14 INSURANCES**

### **2.14.1 Workers Compensation Insurance**

For the purpose of this clause "worker" shall have the definition it is given in the *Work Health Act (1986)* as amended.



Before commencing the Services, the Consultant shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Consultant. This cover shall comply with the *Work Health Act* of the Northern Territory and policies shall be purchased from Northern Territory approved insurers.

The following information shall be provided with all tenders and as requested during the currency of the Contract:

- (a) for Consultants employing workers:
  - (i) workers compensation policy number;
  - (ii) name of insurer; and
  - (iii) date of expiry.
- (b) for Consultants not employing workers:
  - (i) written advice that they are not employing nor intending to employ workers during the currency of the contract.

The Consultant shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Work Health Act (1986)* as amended.

The Consultant shall ensure that all persons employed under labour hire agreements, whether by the Consultant or through a Labour Hire Firm, are appropriately covered by Workers Compensation insurance.

Self-employed Consultants should ensure that they have adequate insurance coverage in place.

The Consultant shall be responsible for ensuring that all sub-contractors have appropriate insurance policies, and, upon request, shall provide to the Principal copies of all Certificates of Currency, including those of any sub-contractors (including self-employed Consultants and persons employed under Labour Hire Agreements).

#### **2.14.2 Public Liability**

Before commencing the Services, the Consultant shall take out and shall maintain during the currency of the Contract a Public Liability policy of insurance to cover its liabilities to third parties.

The Policy shall:

- (a) note the Principal for its respective rights and interests;
- (b) include a cross-liability clause in which the insurer accepts the term "insured" as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- (c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

The effecting of insurance shall not limit the liabilities or obligations of the Consultant under other provisions of the Contract.

The Consultant shall ensure that all sub-contractors take out Public Liability Insurance that meets the requirements of this clause.

#### **2.14.3 Professional Indemnity**

Before commencing the Services, the Consultant shall take out and shall maintain during the currency of the Contract a Professional Indemnity Insurance policy for an amount not less than that stated in the Annexure. The Consultant shall continue to maintain a professional indemnity policy after the conclusion of the Contract for a period and for such amount as is necessary to indemnify the Consultant in respect of all liabilities arising out of this Contract.

The Consultant's liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy.

#### **2.14.4 Insurance of Documents**

Until all original documents are finally delivered to the Principal, all risks whatsoever connected with the total or partial loss of the documents shall be the responsibility of the Consultant. The Consultant shall ensure that this responsibility is met at all times by an appropriate Insurance Policy.

### **2.14.5 Lodgment of Certificates of Currency**

The Consultant shall, if so requested, provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required.

## **2.15 SERVICES AND DUTIES**

### **2.15.1 Completion Date**

As soon as it becomes evident to the Consultant that the commissioned completion date is delayed or cannot be met, the Consultant may request to the Principal or Principal's Representative in writing, together with a statement of the facts on which the claim is based, an extension to the completion date.

Upon receipt of the request, the Principal or Principal's Representative will determine whether the circumstances of the delay are such as to justify any extension of time to the completion date, and notify the Consultant as soon as practicable whether the extension has been granted or not.

Notwithstanding that the Consultant has not claimed an extension of time to the completion date, the Principal or Principal's Representative may, for any reason, by notice to the Consultant extend the completion date, by nominating a date which shall be deemed to be the amended completion date.

Extra costs incurred by the Consultant by reason or as a result of or arising from the exercise by the Principal or Principal's Representative of the power to determine any extension of time shall be borne and paid by the Principal only if the extension of time was due to a breach of the provisions of the Contract by the Principal, or an act or omission on the part of the Principal or any other cause provided for elsewhere in the Contract.

If the Consultant fails to achieve the completion date or amended completion date, the amount of moneys payable to the Consultant, for the Services completed under the Contract by the Principal, shall be reduced by the amount, 5 per cent (5%) of the upper limit estimate or fixed price for the first ten (10) working days lapsed after the completion date or amended completion date, and an additional amount of 5 per cent (5%) of the upper limit estimate or fixed price for every five (5) working days there after until the completion of the Services, but the total amount of reduction shall not exceed 15 per cent (15%) of the upper limit estimate or fixed price.

### **2.15.2 Progress Reports**

The Consultant shall submit reports to the Principal in an agreed format and at agreed intervals as to the progress of the Services. The Consultant shall attend progress review and coordination meetings as directed by the Principal.

### **2.15.3 Compliance with Statutory Requirements**

The Consultant shall, unless instructed by the Principal in writing that compliance is not required, ensure that the documents produced under the Contract comply with relevant Laws and shall obtain all required approvals in respect thereof.

The Consultant shall promptly advise the Principal in writing should the requirements of the Services conflict with any such Laws.

### **2.15.4 Checking, Signing and Certification**

All documents prepared under the Contract shall be signed by the Consultant to certify that the documents have been prepared by competent staff and have been checked and approved for accuracy, compliance with relevant Laws, the requirements of the Contract and coordination with related documents.

The Consultant is not required to check standard documents provided by the Principal, but shall ensure that the standard documents are appropriate for their proposed use.

### **2.15.5 Corrections**

Notwithstanding any reviews, approvals or directions undertaken or given by the Principal with respect to documents prepared by the Consultant, any error, ambiguity or deficiency, which subsequently becomes apparent, and is referred to the Consultant for correction or clarification shall be corrected or clarified by the Consultant to the satisfaction of the Principal.

The Consultant shall not be entitled to an additional fee where the correction or clarification arises from a fault of the Consultant.

**2.15.6 Review of Work by Others**

Where the Consultant is required to take over work provided by or on behalf of the Principal, he shall review such work before proceeding. If following this review it is considered necessary by the Principal for the Consultant to make good deficiencies in such work, an additional fee will be chargeable.

In such a case, the Consultant shall obtain the Principal's written approval before proceeding with the additional work.

**2.16 PERFORMANCE PLAN AND PROCEDURES**

Where it has been specified that a Performance Plan is required, the Consultant will establish, document, implement and maintain a Performance Plan and associated Procedures throughout the course of the Contract.

Within fourteen days of award of Contract, the Consultant shall submit to the Principal for approval one copy of the Performance Plan and Procedures. The Principal shall within a reasonable time from receipt either approve the Performance Plan and Procedures, or reject it, giving reasons for the rejections. The Consultant shall rectify the deficiencies and resubmit the Plan and/or Procedures for approval.

**2.17 TIME FOR COMPLETION**

The Consultant shall complete the Services within the time stated in the Annexure or within such extended time as agreed to in writing by the Principal.

**2.18 PERFORMANCE REPORT**

The Consultant agrees that upon completion of the Services or the termination of the Contract:

- (a) the Principal will prepare a Performance Report ("the Report") in the form referred to in the Conditions of Tendering;
- (b) the Principal shall liaise with the Consultant in completing the Report although the Principal reserves the ultimate right to complete the Report (other than the Consultant's comments); and
- (c) the Principal may release the report to any other NT Government Agency for evaluation of the Consultant's performance in the assessment of future tenders.

The Consultant agrees that neither the Consultant nor any other person shall have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation and use of the Report.

**2.19 VARIATIONS**

The Principal may, by written notice during the currency of the Contract, direct or permit the Consultant to vary the scope or nature of the Services including the program without prejudice to the Contract. Any resultant adjustment to the fee payable to the Consultant shall be negotiated and agreed by the parties.

**2.20 LOCAL CONSULTANTS AND SUPPLIERS**

Except in those cases where the Consultant can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons to do so, the Consultant shall:

- (a) use labour available within the Northern Territory; and
- (b) use the services located and obtain supplies/materials available within the Northern Territory.

The Consultant shall, when requested by the Principal, submit a written report concerning the compliance with the provisions of this clause.

**2.21 TRANSFER OR ASSIGNMENT**

The Consultant shall not, without the prior written approval of the Principal and except on such terms and conditions as are determined in writing by the Principal, transfer, assign, mortgage, charge or encumber all or any part of the Services or any benefit or monies or interest thereunder. Such consent shall not be unreasonably withheld.

## **2.22 SUBLETTING**

Unless specifically provided for in the Contract, the Consultant shall not sublet any part of the Services without the prior written approval of the Principal. Such approval shall not be unreasonably withheld.

Any approval by the Principal to engage a sub-contractor for any part of the Services shall not relieve the Consultant from any of its liabilities under the Contract. The Consultant shall be fully liable to the Principal for the work of the sub-contractor or any employee or agent of the sub-contractor.

## **2.23 TERMINATION, SUSPENSION AND DEFERMENT OF THE CONTRACT**

### **2.23.1 Termination by Mutual Agreement**

The Contract may be terminated at any time by mutual agreement between the Principal and the Consultant or by either party giving fourteen (14) days notice to the other party. Termination shall be without prejudice to any claim, which either party may have against the other arising out of any negligent act or omission prior to the date of termination.

Upon termination, the Consultant shall provide the Principal with all documents produced up to the date of termination regardless of their stage of completion.

### **2.23.2 Termination due to Default**

The Principal may terminate the Contract if the Consultant:

- (a) commits any serious breach or persistent breach either expressly or implicitly of the Contract;
- (b) is guilty of any grave misconduct or any wilful neglect in the discharge of its duties;
- (c) make any assignment or arrangement or composition with, or for the benefit of its creditors;
- (d) is guilty of any inefficiency, misbehaviour, incompetence, negligence or carelessness in accordance with its obligations under the Contract;
- (e) is unable to provide acceptable replacement personnel;
- (f) if circumstances arise as described in the clause titled "Conflict of Interest".

Where the Principal gives notice in accordance with this sub clause then the Contract shall terminate immediately with effect from the date of the service of such notice.

### **2.23.3 Change in Constitution of Consultant**

Where the Consultant, being a partnership, company, consortium or other composite body, undergoes a change in its structure, which in the opinion of the Principal renders the Consultant unsuitable, the Principal may terminate the Contract.

### **2.23.4 Incapacitation of Consultant**

Where the Consultant, due to circumstances beyond his control such as retirement, death, physical or mental injury, is in the opinion of the Principal rendered incapable of completing the Services, the Principal may terminate the Contract without prejudice to the accrued rights of either party in relation to the other.

### **2.23.5 Suspension and Deferment**

The Principal may, at any time by written notice to the Consultant, suspend or defer all or any part of the Services. Upon such suspension or deferment, the Consultant shall be entitled to payment of those fees and expenses, which have been properly accrued under the Contract up to the effective date of suspension or deferment.

### **2.23.6 Fee Entitlement Upon Termination**

If the Principal terminates the Contract for any reason other than default by the Consultant, the Principal shall pay to the Consultant a fair and reasonable fee for the Services as at the date of termination together with reimbursement for any expenses reasonably incurred by the Consultant in contemplation of it's carrying out the balance of the Services.

If the Principal terminates the Contract as a result of default by the Consultant or the Consultant terminates the Contract for any reason other than default by the Principal, the Consultant shall be liable for any extra cost incurred by the Principal in obtaining completion of any unfinished Services.

## 2.24 DISPUTES

The Consultant shall, in respect of any dispute or difference arising out of the Contract and not later than fourteen (14) days after the dispute or difference arises, submit the matter at issue in writing with detailed particulars of the matter at issue to the Principal for decision and the Principal shall as soon as practicable thereafter give a decision in writing to the Consultant.

If the Consultant is dissatisfied with the decision of the Principal, the Consultant may, not later than twenty-eight (28) days after the decision is given, notify the Principal that it requires the matter to be referred for expert determination, in accordance with the expert determination process detailed in "Northern Territory of Australia - Expert Determination", a copy of which is available from the place of issue of the tender documents or from [www.nt.gov.au/dcis/procurement\\_policy](http://www.nt.gov.au/dcis/procurement_policy).

If the Principal does not receive the notice requiring expert determination within the prescribed time, the Principal's decision shall not be subject to expert determination.

## 2.25 GOODS AND SERVICES TAX

For the purposes of this Clause unless the context otherwise requires:

**'GST'** means any tax imposed on Supply by or through the *New Tax System (Goods and Services Tax) Act 1999* ("**the Act**") and any related *Tax Imposition Act* and "**New Tax System Changes**" has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999* ("**the TPA**"). Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

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

**'Input Tax Credit'** has the meaning it bears in the Act;

**'Recipient'** have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

**'Supplier' and 'Supply'**

**"Supplier"** shall also mean Consultant;

**"Recipient"** shall also mean Principal;

**"Supply"** shall also mean the Goods and/or Service.

**'Adjustment'** means each form of adjustment to consideration provided for in this clause.

The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming this Contract.

The Supplier shall provide the Recipient with a tax invoice and/or adjustment notes in relation to the supply prior to an amount being paid by the Recipient under this Contract, and shall do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply.

Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the date of formation of this Contract.

## 2.26 PRIVACY

For the purposes of this Clause unless the context otherwise requires:

**'Act'** means the *Information Act (NT)*;

**'Privacy Laws'** means the Act; and the Information Privacy Principles set out in the Act or any "code of practice" approved under the Act that applies to any of the parties to this Contract.

**'Personal Information'** means all information about a person that is "personal information" as defined in the Act, which is collected and/or handled by any of the parties in connection with this Contract.

## CONDITIONS OF CONTRACT

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The Consultant agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Consultant were a public sector organisation.

The Consultant is to collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling its obligations under this Contract.

The Consultant is not to disclose Personal Information without the written authority of the Principal, and in any event disclosure is to be in accordance with the Privacy Laws. The Consultant is to immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

The Consultant is to ensure that any employees, agents or sub-consultants, and any other person who may have access to Personal Information held by the Consultant, are aware of the obligations of the Consultant under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.

The Consultant is to take all reasonable measures to ensure that Personal Information is protected from misuse and loss and from unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

The Consultant is to develop, and obtain the written approval of the Principal:

- (a) policies for the management of personal information; and
- (b) complaint handling procedures.

Each party is to immediately notify the other when a complaint is received. The Consultant acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.

The Consultant must not transfer Personal Information outside the Northern Territory without the prior approval of the Principal. The Consultant, in respect to Personal Information, is to immediately notify the Principal where the Consultant becomes aware of a breach of this clause or the Privacy Laws.

The Consultant indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Consultant under this Contract.

When this Contract expires or is terminated, the Consultant must, at the Principal's discretion:

- (a) either return to the Principal all records containing Personal information;
- (b) retain any material containing Personal Information in a secure manner as approved by the Principal;  
or
- (c) destroy or delete any Personal Information.

This sub-clause will survive the expiration or termination of this Contract.