



Conditions: Tendering and Contract Minor Works and Services (MWS)

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1 Conditions of Tendering

1.1 General

Unless the contrary intention is indicated this RFT is to be interpreted in the same manner and words have the same meaning as in the Conditions of Contract.

In these Conditions of Tendering the following definitions apply:

'Addendum' means any document expressly stated to be an Addendum, which is issued by the Principal varying some provision in the original RFT prior to the stated closing time and date.

'RFT' means the request for tender inviting offers and includes all conditions, annexures, schedules, attachments and addenda.

'Tender' means all documents lodged by the Tenderer in response to the RFT.

'Tenderer' means the person lodging a Tender in response to the RFT.

1.2 Lodgement of Tenders

For the Tender to be considered, the Tenderer shall complete and submit one copy of the documents listed in the section of the Annexure to the Conditions of Tendering and Contract titled "Documents to be Lodged" (ie all Response Schedules).

- a) in English;
- b) in the form required, and
- c) to be fully received by the stated time and date for closing of the Tender.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may result in the Tender being declared ineligible for consideration.

Oral Tenders or Tenders submitted electronically (other than via the Quotations and Tenders Online eLodgement Service or by facsimile), shall be declared ineligible for consideration.

The Principal will not be liable for any expense or loss, which may be incurred by any Tenderer in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

1.2.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of the RFT.

1.2.2 Lodged by Hand

Tenders delivered by hand (including by a commercial courier service) are **not permitted**. Any Tender submitted by hand or commercial courier service shall be declared ineligible for consideration.

1.2.3 Lodged by Post

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

1.2.4 Lodged by Facsimile

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

1.2.5 Lodged by Electronic Lodgement

Where electronic lodgement has been allowed, Tenders sent by electronic lodgement must be:

- a) submitted using the eLodgement button via the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT; and
- b) in the electronic format as specified (ie .arf, .doc, .docx, .jpg, .pdf, .rtf, .tif, .txt, .xls, .xlsx, .zip).

Tenders lodged in an unspecified electronic format will be invalid and declared ineligible for consideration.

Where select tenders have been sought and access to the RFT is provided from a link contained in the covering email sent inviting the submission of an offer, Tenders must be submitted electronically using the same link.

The Tender 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 time and date for closing of Tenders.

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

If, for any reason, the electronic Tender (except 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 declared ineligible for consideration.

1.2.6 Late Tenders

Tenders received (in full or part) after the stated time and date for closing of Tenders are ineligible for consideration.

Notwithstanding the preceding paragraph Tenderers may appeal such decisions however:

- a) Tenders submitted by prepaid post received after the stated time and date for closing of Tenders may be considered only if it can be established to the satisfaction of the Procurement Review Board that the Tender was posted or despatched before the stated time and date for closing of Tenders and in the ordinary course of business would not have been received late. Impressions of company owned franking machines are not acceptable evidence of timely posting or despatch.
- b) Tenders submitted via the Quotations and Tenders Online eLodgement Service may be considered only if it can be established to the satisfaction of the Procurement Review Board that they were submitted before the stated time and date for closing of Tenders, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.
- c) The Procurement Review Board may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated time and date for closing of Tenders where those Tenders were not received before the stated time and date for closing of Tenders because of a fault or failure of Quotations and Tenders Online eLodgement Service.
- d) Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

1.3 Tenderers to Inform Themselves

Tenderers at their own expense shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to performance of the Works, an inspection of the Site if applicable and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Procurement Framework including the NT Procurement Code is available from the web address:
www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/Pages/default.aspx

1.4 Compliance with NT Procurement Code

- a) In preparing its Tender, submitting its Tender and throughout the tendering period and process the Tenderer shall comply with the Northern Territory Procurement Code ('Code').
- b) A copy of the Code is available at the web address specified in the clause entitled 'Tenderers to Inform Themselves'.
- c) If the Principal:
 - i. has evidence that the Tenderer has not complied with the Code; or
 - ii. is of the reasonable opinion that the Tenderer has not complied with the Code,

the Principal may, at its absolute discretion, deem the Tender submitted by the Tenderer to be ineligible for consideration.

1.5 Enquiries

Should the Tenderer

- a) have any doubts as to the meaning of any part of the RFT; or
- b) find any discrepancy or error; or
- c) find any omission in the RFT (for example all pages are not numbered consecutively and that all drawings, attachments or supplements referred to are not included, etc.);

the Tenderer shall seek clarification in writing (which may be by means of electronic transmission) from the person specified in the Annexure, as early as possible but in any event before the stated time and date for closing of Tenders.

Where attachments or supplements have been referred to in any section of the RFT these should be read in conjunction with the section to which they refer.

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.

It is the sole responsibility of Tenderers to ensure that their contact details held by Quotations and Tenders Online Service are correct and up-to-date in order for them to receive any 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 to CAPSAssist@nt.gov.au as early as possible, but in any event before the stated time and date for closing of Tenders.

1.6 Site Inspection

Arrangements for a Site inspection are as stated in the Annexure.

Applicable If Specified In Annexure - Anytime

Prior to submitting a Tender it is recommended the Tenderer inspect the Site.

Applicable If Specified In Annexure - By Arrangement - Not Mandatory

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site. Inspection of the Site is **not mandatory**. However permission to visit the Site must be first obtained by contacting the person nominated in the Annexure.

Applicable If Specified In Annexure – Set Time – Not Mandatory

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site. Inspection of the Site is **not mandatory**.

The Site inspection will be held at the location, date and time specified in the Annexure. Any additional information provided at the Site Inspection will be distributed to Tenderers by issue of an addendum.

Any subsequent Site Inspections will be solely at the Principal's discretion and, where subsequent Site inspections are organised, Tenderers will be advised and invited to attend by issue of an addendum.

Applicable If Specified In Annexure - Set Time - Mandatory

Prior to submitting a Tender, the Tenderer **must attend a Mandatory Site Inspection**. The Mandatory Site Inspection shall be held at the location, date and time specified in the Annexure.

All prospective Tenderers must attend the Mandatory Site Inspection regardless of any previous knowledge or familiarity with the Site. Subsequent or alternative inspections for individual Tenderers will not be permitted. Any additional information provided at the Mandatory Site Inspection will be distributed to Tenderers by issue of an addendum.

In addition to attending the Mandatory Site Inspection the Tenderer is required to lodge the Schedule of Attendance at the Mandatory Site Inspection ('Schedule') (which is included in the Response Schedules) with its Tender. The completed Schedule must contain a record of the name of the Tenderer's authorised representatives/s who attended the Mandatory Site Inspection.

A Tenderer may authorise a third party to attend the Mandatory Site Inspection as its authorised representative, however, it remains the responsibility of the Tenderer to have the Schedule of Attendance at the Mandatory Site Inspection completed and attendance on its behalf noted in the Principal's record of attendees at the Mandatory Site Inspection.

Failure to attend the Mandatory Site Inspection will result in the Tenderer's Tender being declared ineligible for consideration.

Failure to lodge the Schedule where attendance at the Site Inspection is expressed as mandatory will result in the Tenderer's Tender being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.

1.7 Industry Briefing

Arrangements for an Industry Briefing are as stated in the Annexure.

Optional – Applicable If Specified In Annexure - Not Mandatory

Prior to submitting a Tender the Tenderer is encouraged to attend the Industry Briefing. Attendance at the Industry Briefing is **not mandatory**.

The Industry Briefing will be held at the location, date and time specified in the Annexure. Any additional information provided at the Briefing will be distributed to Tenderers by issue of an addendum.

Any subsequent Industry Briefing will be solely at the Principal's discretion and, where subsequent Industry Briefing is arranged, Tenderers will be advised and invited to attend by issue of an addendum.

Optional – Applicable If Specified In Annexure - Mandatory

Prior to submitting a Tender the Tenderer **must attend the Mandatory Industry Briefing**. The Mandatory Industry Briefing shall be held at the location, date and time specified in the Annexure.

All prospective Tenderers must attend the Mandatory Industry Briefing regardless of any previous knowledge or familiarity with the Works. Subsequent or alternative briefings for individual Tenderers will not be permitted. Any additional information provided at the Mandatory Industry Briefing will be distributed to Tenderers by issue of an addendum.

In addition to attending the Industry Briefing the Tenderer is required to lodge the Schedule of Attendance at the Mandatory Industry Briefing ('**Attendance Record**') (which is included in the Response Schedules) with its Tender. The completed Attendance Record must contain a record of the name of the Tenderer's authorised representatives/s who attended the Mandatory Industry Briefing.

A Tenderer may authorise a third party to attend the Mandatory Industry Briefing as its authorised representative, however, it remains the responsibility of the Tenderer to have the Schedule of Attendance at the Mandatory Industry Briefing completed and attendance on its behalf noted in the Principal's record of attendees at the Mandatory Industry Briefing.

Failure to attend the Mandatory Industry Briefing will result in the Tenderer's Tender being declared ineligible for consideration.

Failure to lodge the Attendance Record where attendance at the Industry Briefing is expressed as mandatory will result in a Tenderer's Tender being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.

1.8 Signing of Documents

The Tenderer shall sign its Tender as indicated below.

- a) In the case of a corporation:
 - i. with its common seal, and the fixing of the seal witnessed by:
 - two (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:
 - two (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 (2) 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; or
 - ii. in the case of firms having more than five (5) 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; or
 - iii. any proprietor who is a corporation must sign the Tender in the manner indicated in paragraph (a) above.

Where the Tenderer is lodging its Tender via the Quotations and Tenders Online eLodgement Service there is no requirement to complete the "signature" block on the Declaration by Tenderer form.

Where the Tender is from a:

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

Each Tender shall contain the Tenderer's unique business identifier required by law (eg ACN/ARBN/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.

1.9 Tender Validity

Tenders shall remain valid for the period stated in the Annexure. If a Tender is not formal in accordance with these Conditions of Tendering, the tender validity period shall commence from the date on which the Tender is formalised 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.

1.10 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.

1.11 Part Offer and Part Acceptance

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

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.

1.12 Taxes, Duties, Fees etc.

The Tenderer shall ensure that the Tender is inclusive of all taxes, fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

1.13 Pricing

All prices shall be stated in Australian dollars and where applicable be inclusive of GST. Unless otherwise indicated all rates/prices shall allow for labour, materials, transport, freight, overheads, profits and other costs applicable.

Any Schedule of Rates/Lump Sum Price Breakdown, which is included in the Response Schedules shall be completed and lodged with the Tender. Unless otherwise required pricing shall be submitted for each item in the Schedule.

Any Tender in which the Schedule is not fully completed as required may result in the Tender being declared ineligible for consideration.

1.14 Competitive Neutrality

Government owned businesses, Local, Territory, State and Federal Government agencies and authorities responding to public tenders must submit two prices against each item in the pricing schedule provided. One price is to be the tendered price offered and the other being the adjusted competitively neutral price. The competitively neutral price is to be prepared in accordance with the "Northern Territory Government Competitive Tendering Guidelines". A copy of the Guidelines is available from the place of issue of the RFT documents or from the following web address: www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/tendering-contract/Pages/competitive-neutrality.aspx

1.15 Industry Accreditation

Optional – Applicable If Specified In Annexure

If the Annexure states that the Tender is subject to Industry Accreditation:

- a) the Tenderer tendering for the Works; and
- b) the Tenderer's sub-contractors and their sub-contractors proposed to undertake sub-contract work valued at \$50,000.00 or greater,

must, at the time the Tenderer submits its Tender, be accredited by Contractor Accreditation Limited (CAL) to a **rating of no less than the value of the Tenderer's Tender** or the sub-contractors' work, in an applicable CAL category/group/sub-group.

The Tender, in the spaces provided must state:

- a) the Tenderer's CAL Registration Number; and

- b) the CAL Registration Numbers of all proposed sub-contractors.

If, at the time of submitting its Tender, the Tenderer has an existing CAL accreditation in an applicable CAL category/group/sub-group, but requires an upgrade of the rating in that category/group/sub-group in order to tender for the works set out in the RFT, the Tenderer has fourteen (14) calendar days from the stated time and date for closing on the front cover of the RFT to:

- a) obtain an upgrade of the rating of that existing CAL accreditation; and
b) provide written evidence of the upgrade in of the rating to the Agency Project Officer identified in the RFT.

If written evidence from the Tenderer, of the upgrade in CAL accreditation, is not provided to the Agency Project Officer by the time that is fourteen (14) calendar days from the stated time and date for closing of Tenders (i.e.2:00 pm, fourteen (14) calendar days after the stated time and date for closing of Tenders as specified on the front cover of the RFT), the Tender will be deemed non-conforming and will not be admitted for consideration.

For the avoidance of doubt, where the Tenderer intends to obtain an upgrade of the rating of its existing CAL accreditation, it is still required to submit its Tender by the stated time and date for closing on the front cover of the RFT.

Nothing in this clause allows a Tenderer to obtain CAL accreditation in a new CAL category/group/sub-group in relation to the works tendered for after the stated time and date for closing of Tenders.

Any Tender not complying with the requirements of this clause may be invalid and declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.

Contractor Accreditation Limited (CAL) administers the accreditation process. More information on CAL, accreditation details and application forms can be found at the web address www.accreditation.com.au or is available from:

CAL Registrar
PO Box 125
Parap NT 0804
Telephone: (08) 8922 4600
Facsimile: (08) 8984 4003

1.16 Local Development

The NT Government is committed to supporting businesses that use local contractors and suppliers and hire and train Territorians. Assessment will take into consideration businesses that demonstrate a commitment to employing Territorians including Indigenous Territorians, employment of apprentices/trainees on the Works, accredited training of its employees and sourcing goods and services from local businesses.

Tenderers must include in the Response Schedules provided and submit with its Tender, details of sub-contractors/suppliers to be used (where applicable), Indigenous employees, apprentices/trainees to be used on the Works and all other employees undertaking accredited training.

1.16.1 Apprentices and Trainees

The Tenderer shall, if awarded the Contract, agree to employ and train a minimum number, as prescribed below, of apprentices/trainees who are registered in the Northern Territory:

Schedule of Minimum Number of Apprentices/Trainees.

Value Of Contract (\$000)	Trade Apprentice/Trainee	Non-Trade Trainee
300 – 599	1	-
600 – 999	2	-
1000 – 1999	3	1
2000 – 2999	4	1
3000 – Plus	5	1
Maximum Requirement	5	1

Employees undertaking apprenticeships/traineeships training will only be recognised as being compliant for Tender purposes if:

- a) a signed contract of training for the apprentice/trainee is currently registered with the Australian Apprenticeships NT Office; or
- b) the apprentice/trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Business; or
 - i. In complying with the use of accredited apprentices/trainees, the Tenderer may be:
 - directly employing apprentices/trainees;
 - utilising group training scheme apprentices/trainees;
 - utilising sub-contractors apprentices/trainees;
 - utilising any combination of the above.
 - ii. For contract values of \$1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Trainees.
 - iii. The level of compliance with this requirement will be reported on at the end of the Contract and taken into consideration on future tenders for a period of twelve (12) months.
- c) the training being undertaken is a recognised accredited training course.

Further information on NT Government Policy on the use of apprentices/trainees on Government Contracts and accredited training programs can be obtained from:

Training Operations Unit
 Department of Business
 11th Floor, Mitchell Centre,
 55 – 59 Mitchell Street
 Darwin NT 0800
 Telephone: (08) 8935 7707
 Facsimile: (08) 8901 1326
 email: govtcontracts@nt.gov.au

Or

GPO Box 3200
 Darwin NT 0801

Further information regarding the employment of apprentices/trainees can be obtained from:

Australian Apprenticeships NT
6 Searcy Street
Darwin NT 0800
Telephone: 1300 137 130 or Telephone: (08) 8935 8200
email: Darwin@aacnt.com.au

Or

GPO Box 3049
Darwin NT 0801

Or

19 Hartley Street
Alice Springs NT 0870|
Telephone: (08) 8953 3311

1.16.2 Indigenous requirements for Shire Councils

Optional – Applicable If Specified In Annexure

Where specified in the Annexure, the Tenderer shall, if awarded the Contract, maintain an Indigenous employment rate which will be no less than thirty per cent (30%) of the total workforce engaged in the delivery of the Works.

1.17 Indigenous Development Plan

Optional – Applicable If Specified In Annexure

Where specified in the Annexure Tenderers must submit, as part of its Tender, an Indigenous Development Plan Proposal.

Any Tender not complying with the requirements of this clause may be declared ineligible for consideration.

1.18 Project Control

Optional – Applicable If Specified In Annexure

If it is stated in the Annexure that the Works are to be carried out using Project Control then the provisions of this clause shall apply.

The Tenderer's attention is drawn to the section titled "Project Control" in the RFT.

The Tenderer is required to submit a Project Control Summary with the Tender. Any Tender in which the Project Control Summary is not provided may be declared ineligible for consideration.

1.19 Change to Conditions

1.19.1 Conditions of Tendering

Tenderers **are not permitted** to request changes or propose alternatives to the Conditions of Tendering applicable to the RFT. Any Tenderer who attempts to do so will have their Tender declared ineligible for consideration.

1.19.2 Conditions of Contract

Tenderers may request changes, or propose alternatives, to the Conditions of Contract applicable to this RFT, **only** if stated in the Annexure that this is allowed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions, they must clearly specify in the appropriate section of the Response Schedules the changes to the Conditions that are being requested or the alternative Conditions that 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 declared ineligible for consideration.

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

1.20 Impartiality of Requirements

Unless otherwise specified if an item is specified as being similar or equivalent to a particular brand in the Scope of Works this is to set an acceptable standard only and no preference is given to that brand.

Any items offered must be at least of the same standard and potential as specified in the Scope of Works, or as is inherent in the equivalent brand. The Principal may accept items of higher standard than specified if the items offer better value-for-money outcomes.

1.21 Treatment of Low or Aberrant Prices

Where a Tender price (or a key element of a Tender price) is considered well below the median price and/or the estimated value of the Works, the Tenderer, as a part of the assessment process, may be requested to confirm the tendered price and/or respond to questions regarding particular aspects of the Tender. The Tenderer may also be asked to provide written confirmation that the Scope of Works and contractual obligations are fully understood. Where the price submitted is confirmed the Principal will, at its discretion, either:

- a) proceed with the evaluation of the Tender; or
- b) where there is evidence that acceptance of the Tender may pose a substantial risk to the Works and the sustainability of Tenderer, give consideration to passing over that Tender.

1.22 Disclosure of Weightings

Tender assessment criteria and percentage weightings applicable to the RFT are detailed in the Annexure.

Although Tender assessment criterion may include sub-criteria, percentage weightings shall only be published as a cumulative percentage against the tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given 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.

1.23 Tender Assessment Criteria

Tender responses will be scored against the assessment criteria. Selection of the successful Tenderer will be based on a best value for money assessment of Tenders against the Tender Assessment Criteria requested in the Response Schedules.

The elements under each 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 criterion are not to be considered exclusive to any specific Tender.

- a) Past Performance:
 - i. Performance history including experience in providing similar Works and extent to which previous undertakings were achieved
 - ii. Standard of work/quality of products.
 - iii. Extent of supervision of the Contractor required.
 - iv. Previous disputes and claims history.
 - v. References (including Contractor Accreditation Limited if applicable).
 - vi. Safe and fair workplace record.
- b) Timeliness:
 - i. Compliance with timeframe specified.
 - ii. Risks to the completion timeframe.
- c) Capacity:
 - i. Ability to perform the Works including the experience of the personnel nominated to perform the Works (eg physical and technical capacity).
 - ii. Number, details and value of all Contracts in progress.
 - iii. Appropriate CAL accreditation (where applicable).
 - iv. Legal action pending.
 - v. Financial capacity (including current credit rating).
 - vi. Risk.
- d) Local Development and Value Adding:
 - i. Enhancement of industry and business capability in the Northern Territory.
 - ii. Improved capacity and quality in supply and/or service response.
 - iii. Accredited training programs currently supported by the Tenderer and/or will be supported or utilised on these Works.
 - iv. Proposed level of usage of apprentices and/or trainees that will be supported or utilised on these Works.
 - v. Proposed number of jobs for Territorians that will be supported or utilised on these Works.
 - vi. Proposed number of jobs for Indigenous Territorians that will be supported or utilised on these Works.
 - vii. Accredited training programs supported by the Tenderer specifically for Indigenous Territorians.
 - viii. Proposed level of involvement of local Indigenous enterprise.
 - ix. Any regional development opportunities.
 - x. Any Northern Territory research and development proposals being undertaken or proposed by the Tenderer.
- e) Innovation:
 - i. New technology.
 - ii. Alternative solutions.
- f) Scope Specific Criteria:
 - i. Scope Specific Criteria are those criteria that are considered relevant to the nature of the Works being procured. Scope 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 applicable to the Works required.

- g) Price:
- i. Upfront costs; or
 - ii. Through-life costs eg
 - Operating costs.
 - Cost of transit in and out or implementation from one Contractor to another;
 - iii. Any other factors that would impact on costs to the Government.

Tenderers should provide all relevant factors addressing the selection criteria specified in the Response Schedules, which may assist the Principal in making an assessment of the Tender.

The Principal in its sole discretion, reserves the right to apply weightings to each criterion, having regard to requirements contained in the NT Government Procurement Framework.

1.24 Clarification and Additional Information

The Tenderer may be called upon to clarify information contained in their Tender or to supply information additional to that provided in their Tender to demonstrate to the satisfaction of the Principal that the Tenderer has the ability to perform the Works.

The Tenderer shall within the time specified comply with any such requests. Failure to submit any or all of the information required, in the time stipulated, may result in the Tender being declared ineligible for further consideration.

1.25 Negotiation

- a) The Principal may engage in detailed discussions and negotiations with one or more Tenderers.
- b) Without limiting sub-clause 1.25a) the selection of Tenderers under this clause does not bind the Principal to a contractual relationship and is not a representation that a contract will be entered into between the Principal and the Tenderer.
- c) The selection of a preferred Tenderer is subject to the successful conclusion of negotiations. The result of any negotiations will be incorporated into the final Contract.
- d) 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.

1.26 Performance Report

The Tenderer will, if awarded the contract, agree to the preparation and use of the Contractor's Performance Report in the manner set out in the Conditions of Contract.

1.27 Privacy Notice

The Principal is collecting the information in the Response Schedules to determine eligibility to contract with the Principal. This is required by Procurement Regulation 6 (7)(h). The Principal may give some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in the Tender being declared ineligible for consideration.

Personal information provided in Response Schedules can be accessed by the Tenderer on request. Any queries should be directed to the Officer stated in the Annexure as the contact point.

1.28 Notification of Acceptance

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

The Notice of Acceptance of the Tender shall constitute a binding contract between the Principal and the successful Tenderer (hereinafter called the '**Contractor**'). The Notice of Acceptance will,

at the Principal's discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender.

If a 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.

1.29 Debriefing Tenderers

Tenderers may request a debriefing as to the specific reasons why its Tender was unsuccessful. This is for the purpose of assisting Tenderers to improve competitiveness in future Tenders.

Information will be confined to discussion of the Tenderer's Tender and under no circumstances will information relating to another Tender be disclosed.

1.30 Specific Site Conditions – Royal Darwin Hospital

Optional – Applicable If Specified In Annexure

Attention is drawn to "Royal Darwin Hospital Site Rules for Contractors, Subcontractors and Tradespersons Engaged for the Purpose of Undertaking Work within the Royal Darwin Hospital" ('**Site Rules**'), copies of, which are available from the Major Projects Manager Engineering Services (MPMES).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Royal Darwin Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the MPMES. The designated day is shown in the Annexure.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract, will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Royal Darwin Hospital are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.31 Specific Site Conditions – Katherine Hospital

Optional – Applicable if Specified in Annexure

Attention is drawn to "Katherine Hospital Site Rules for Contractors, Sub-contractors and Tradespersons" ('**Site Rules**') copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Katherine Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the Annexure.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract, will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the

Katherine Hospital are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.32 Specific Site Conditions – Gove District Hospital

Optional – Applicable if Specified in Annexure

Attention is drawn to “Gove District Hospital Site Rules for Contractors, Sub-contractors and Tradespersons” (**Site Rules**) copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Gove District Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the Annexure.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract, will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Gove District Hospital are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.33 Specific Site Conditions – Tennant Creek Hospital

Optional – Applicable if Specified in Annexure

Attention is drawn to “Tennant Creek Hospital Site Rules for Contractors, Sub-contractors and Tradespersons” (**Site Rules**) copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Tennant Creek Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the Annexure.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract, will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Tennant Creek Hospital are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.34 Specific Site Conditions – Alice Springs Hospital

Optional – Applicable if Specified in Annexure

Attention is drawn to “Alice Springs Hospital Site Rules for Contractors, Sub-contractors and Tradespersons” (**Site Rules**) copies of which are available from the Engineering Services Manager (ESM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Alice Springs Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the ESM. The designated day is shown in the Annexure.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Alice Springs Hospital are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.35 Specific Site Conditions – Uluru – Kata Tjuta National Park

Optional – Applicable if Specified in Annexure

The Tenderer shall become familiar with the rules applicable to work at Uluru - Kata Tjuta National Park.

Attention is drawn to the National Parks and Wildlife Conservation Act and to "Environmental Protection - Uluru - Kata Tjuta National Park" both which are available from:

Uluru – Kata Tjuta National Park
PO Box 119
Yulara NT 0872
Attention: Works and Contracts Officer
Telephone: (08) 8956 1100
Facsimile: (08) 8956 2064

1.36 Specific Site Conditions – Kakadu National Park

OPTIONAL – Applicable if specified in Annexure

The Tenderer shall become familiar with the rules applicable to work at Kakadu National Park.

Attention is drawn to the National Parks and Wildlife Conservation Act and to "Environmental Protection - Kakadu National Park" both of which are available from:

Kakadu National Park
PO Box 71
Jabiru NT 0886
Attention: Works and Contracts Officer
Telephone: (08) 8938 1100
Facsimile: (08) 8938 1115

1.37 Specific Site Conditions – Workers Accommodation Jabiru

Optional – Applicable if Specified in Annexure

Tenderers shall become familiar with all rules and regulations limiting the locations, which can be occupied by construction workers at Jabiru. Further information can be obtained by contacting the:

West Arnhem Shire Council (now incorporates Jabiru Town Council)
PO Box 4646
Jabiru NT 0886
Telephone: (08) 8979 9444
Facsimile: (08) 8979 2488

1.38 Specific Site Conditions – Groote Eylandt

Optional – Applicable if Specified in Annexure

Tenderers are advised that there are restrictions on carrying out work in this area. It is the Tenderer's responsibility to ascertain from Groote Eylandt Mining Company (GEMCO) details of any conditions, restrictions and requirements in performing work in this area and to allow for the associated costs in the tender price.

Tenderers are required to submit with their Tender, written confirmation that their price includes for these requirements and that satisfactory credit arrangements, if necessary, have been made with GEMCO for the provision of services etc. Failure to provide this information with the Tender may result in their Tender being declared ineligible for further consideration.

1.39 Specific Site Conditions – Work on Communities

Optional – Applicable if Specified in Annexure

Tenderers are advised that restrictions may apply to entering and working in an Aboriginal Community. It is the Tenderer's responsibility to ascertain from the relevant Community Council or Land Council details of any permits, conditions, restrictions, requirements, fees etc. applicable to working in that Community. All permissions, permits and charges are the responsibility of the successful Tenderer.

1.40 Specific Site Conditions – NT Prisons

Optional – Applicable if Specified in Annexure

Attention is drawn to the Northern Territory Correctional Services publication titled: "Application To Visit Prison" ('**Site Rules**') which is available from:

Northern Territory Correctional Services
Old Admiralty House
66 The Esplanade
Darwin NT 0800
Attention: Chief Prison Officer – Security
Telephone: Darwin (08) 8922 0111
Alice Springs: (08) 8951 8911

The Tenderer shall become familiar with the rules that apply to work to be carried out in a NT Prison, prior to submitting a Tender.

If so required in the Annexure, inspections of the Site are to be made only at the designated time and date and in conjunction with the Prison Superintendent.

Failure of the Tenderer to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within a NT Prison are aware of the Site Rules and their application.

1.41 Specific Site Conditions – NT Schools

Optional – Applicable if Specified in Annexure

Attention is drawn to "Site Rules for Contractors Entering School Premises" ('**Site Rules**') copies of which are available from the relevant School Principal.

The Tenderer shall become familiar with the Sites Rules that apply to work to be carried out in a NT School, prior to submitting a Tender.

If so required in the Annexure, inspections of the Site are to be made only in at the designated time and date stated.

Failure of the Tenderer to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the school are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.42 Specific Site Conditions – Access to Parliament House

Optional – Applicable if Specified in Annexure

Attention is drawn to “Parliament House Site Rules for Contractors, Sub-contractors and Tradepersons” (**Site Rules**). Copies are available from the reception desk in Parliament House.

Tenderers shall become familiar with the rules that apply to work to be carried out in Parliament House, prior to submitting a Tender.

If so required in the clause titled “Permission to Visit Site”, inspection of the Site is to be made only at the designated time and date stated.

Failure of Tenderers to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within Parliament House are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.43 Specific Site Conditions – NT Police Fire and Emergency Services Assets

Optional – Applicable if Specified in Annexure

Attention is drawn to the Northern Territory Police, Fire and Emergency Services (NTPFES) publication titled: "Instructions and Procedures - Security – Annexure A" (**Site Rules**) which is available from the Facilities Manager, NTPFES Facilities Management Branch Telephone: 8922 3301.

Tenderers shall become familiar with the rules (which may include a Criminal History Check) that apply to work to be carried out in a NTPFES facility, prior to submitting a Tender.

If so required in the Annexure, inspection of the Site is to be made only at the designated time and date stated and in conjunction with the OIC of the NTPFES facility.

Failure of the Tenderer to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to comply with the Site Rules pay all associated fees and to ensure that their employees and sub-contractors undertaking work within a

NTPFES facility are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.44 Specific Site Conditions – Aerodromes

Optional – Applicable if Specified in Annexure

The attention of the Tenderer is particularly drawn to Appendix 1 (Directions Relating to Aerodrome Works) to Chapter 13 of the Civil Aviation Safety Authority document "Rules and Practices for Aerodromes" issued by Air Services Australia.

1.45 Specific Site Conditions – Work In Defence Areas

Optional – Applicable if Specified in Annexure

Tenderers are advised that there are restrictions on carrying out work in Proclaimed Defence Areas.

Tenderers shall become familiar with the rules and regulations in force at the Site as issued by the Commonwealth security authorities.

1.46 Special Security Conditions

Optional – Applicable if Specified in Annexure - Other Than Those Mentioned Above

Tenderers are advised that there are restrictions on carrying out work in the area.

Tenderers shall become familiar with the rules and regulations in force at the Site as issued by the relevant security authority.

1.47 Specified Sub-Contractors

Optional – Applicable if Specified in Annexure – Only Applicable To Work Done In Leased Buildings

The proprietor of the building has specified that only particular sub-contractors may carry out certain components of work required by the RFT.

Tenderers may select any one of the specified sub-contractors listed in the Annexure, for a specific component of work and shall include in its Tender, a price, for the work to be performed by that specified sub-contractor. Tenderers shall satisfy themselves that the specified sub-contractor has the resources and is able to perform its component of the work so as to not delay the overall programme of the Works.

2 Conditions of Contract

2.1 Interpretation of Terms

In these Conditions of Contract, unless the context otherwise requires:

'Agency' means a department, agency or statutory authority of the Northern Territory of Australia.

'Annexure' means the section in the RFT that details the specific requirements applicable to the Conditions of Tendering and Contract concerning the execution of the Works.

'Completion' means the Superintendent has determined that the execution of the Works has reached the stage where the Works are complete except for minor omissions and/or minor defects.

'Contract' means the document which constitutes or evidences or as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor concerning the execution of the Works.

'Contractor' means the legal entity that as party to the Contract is bound to execute the Works in accordance with the Contract and includes the successors and lawful assigns of the Contractor.

'Contractor's Tender' means the Tender submitted by the Contractor in response to the RFT.

'Date of Acceptance' means the date, appearing on the Notice of Acceptance and if no date appears is the date on which the Principal sent the Notice of Acceptance to the Contractor.

'Defects Liability Period' means the defects liability period referred to in the clause entitled 'Defects Liability Period' and stated in the Annexure.

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

'Drawings' means the drawings referred to in the Scope of Works and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract.

'Indigenous Person' is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as Indigenous and is accepted in the community in which they live as an Indigenous person.

'Lump Sum' means the total sum which will have become payable to the Contractor by the Principal upon completion of the Works.

'Notice of Acceptance' means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of its Tender to execute the Works.

'Order' means an order issued on the Contractor by the Superintendent, whether on paper or by electronic means, which conveys the essential details of a particular work requirement under the Contract and includes any methods of ordering the Works specifically referred to in the Contract.

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

'Portion of the Works' means the Superintendent has directed the Contractor to carry out particular work in accordance with the Contract, such work representing a part of the total Works required under the Contract.

'Rate' means the rate per any section or item of the Works as stated in the Contract.

'Request for Tender (RFT)' means the document(s) containing or referring to the Conditions of Tendering and Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Preliminary Clauses, Scope of Works, Response Schedules, Drawings and any other document issued for the purposes of inviting Tenders for the Works.

'Schedule of Rates' means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the respective unit rate of payment for execution of that work and which may also include lump sums, provisional sums other sums, quantities and prices.

'Site' means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract.

'Scope of Works' means the sections of the RFT detailing the technical requirements of the work to be carried out as existing at the Date of Acceptance of the Tender and any modification of such Works thereafter directed or the use of which has been permitted by the Superintendent for the purposes of the Contract.

'sub-contractor' means a person other than the Contractor's employees engaged by the Contractor who provides goods, services or Works to the Contractor.

'Superintendent' means the person named in the Annexure as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent for the purposes of the Contract, and notified as such in writing to the Contractor by the Principal.

'Tax Invoice' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

'Works' means the whole of the work to be executed in accordance with the Contract, including all variations and remedial work provided for by the Contract.

In the Contract, unless the contrary intention appears:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person includes a body politic, body corporate or a partnership joint venture, incorporated association, government, local government authority or agency;
- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- i) a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;

- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- l) the word “includes” in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

2.2 Formation of Contract

The Contract is comprised of:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Contractor’s Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Preliminary clauses;
- f) Scope of Works;
- g) Drawings and Scope of Works included in the RFT;
- h) any other document expressly referred to in items (a) to (g) inclusive of this clause as forming part of the Contract;
- i) Conditions of Tendering and all other documents, other than those specified above in (a) to (g) inclusive, forming the RFT or the Contract (other than the Contractor’s Tender); and
- j) the Contractor’s Tender response including any Drawings;

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

2.3 Nature of Contract

2.3.1 Basis of Payment

The Contractor shall be paid either on a Lump Sum or a Schedule of Rates basis as stated in the Annexure.

Where payment is to be made on a Lump Sum basis the sum payable shall, subject to any adjustment made pursuant to the Contract, be the Lump Sum.

Where payment is to be made on a Schedule of Rates basis the quantities in the Schedule are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out: the lower and upper limits of accuracy for each quantity are eighty five per cent (85%) and one hundred and fifteen per cent (115%) respectively of the stated quantity. When the actual quantity is greater than the upper limit or less than the lower limit, an adjustment may be made to the rate applicable to the quantity outside the limits of accuracy. Any adjustment to the

rate shall be as agreed between the Contractor and the Superintendent, or in the event of failure to agree, as determined by the Superintendent.

The Contract shall be on a firm price basis.

2.3.2 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the Northern Territory of Australia.

2.4 Entire Agreement

The Contract formed between the parties to undertake the Works constitutes the entire agreement between the parties and supersedes any previous agreements or understandings.

2.5 General Obligations of the Parties

Both the Principal and the Contractor will, at all times:

- a) act reasonably in performing their obligations and exercising their rights under the Contract;
- b) diligently perform their respective obligations under this Contract; and
- c) work together in a collaborative manner.

2.6 Principal's Responsibilities and Obligations

The Principal shall give or cause to be given to the Contractor timely instructions, decisions and information sufficient to define the requirements of the Works.

2.7 Superintendent and Superintendent's Representative

The Superintendent for the purposes of the Contract is as defined in the Annexure.

For the purpose of exercising some of the powers, duties, discretions and authorities, vested in him on behalf of the Principal, the Superintendent may from time to time appoint a representative ('**Superintendent's Representative**'). The limitations imposed on the Superintendent's Representative will be as laid down in the notice of appointment.

The Contractor shall recognise and accept notices from the Superintendent's Representative as if the Superintendent issued such. Any reference to the Superintendent within these conditions shall be deemed to be a reference to the Superintendent's Representative so far as it concerns the exercise of the Superintendent's Representative's powers by virtue of his appointment.

2.8 Directions

The Superintendent has the power to issue directions under the Contract and the Contractor shall comply with any direction either orally or in writing issued, given or served upon him by the Superintendent.

Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing. For the purposes of this clause the work "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Superintendent may make, give or issue pursuant to the provisions of the Contract.

Where such phrases as "as may be directed", to "approval", or "approved" or the like are used in the Contract, they shall mean that the direction and approval of the Superintendent is referred to, irrespective of any trade usage.

Also refer to the section of the RFT titled "Procedures, Calls and Payments" regarding directions to work.

2.9 Contractor's Responsibilities and Obligations

The Contractor shall be responsible for executing the Works in accordance with these conditions, the Drawings and Scope of Works.

The Contractor shall be liable for any loss or damage to the Works from any cause whatsoever (except loss or damage caused by any negligent act, omission or default of the Principal or employees or agents of the Principal), and shall at his own cost make good any such loss or damage.

The Contractor shall, unless the Contract provides otherwise, supply at his own cost and expense everything necessary for the proper completion of the Works and the proper performance of his obligations under the Contract.

The Contractor shall observe and comply with the requirements of all Acts of the Commonwealth of Australia Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code, and all requirements of any relevant authority, regulator or standard setting entity as shall be in force in the place affecting or applicable to the Works or the execution of the Works.

Sub clause 2.9.1 is only applicable to Power and Water Contracts

2.9.1 Rates of Wages to be paid

- a) Subject to subclause 2.9.1b) the terms and conditions of employment for employees of the Contractor shall be those contained in the Contractor's relevant Federal or State Award/Agreement.
- b) When employees of the Contractor perform the work as defined in Clause 2.9.1e) of this Contract they shall be entitled to rates of pay and allowances which in aggregate shall be no less favourable than the current minimum rate that applies to the same or similar classifications of employees engaged under the Northern Territory Power and Water Corporation Employees Award 2009. Such aggregation shall include the following:
 - i. Salary/Wages: At base trade level where applicable;
 - ii. Allowances: Applicable Industry, Power Station or other Site allowance;
 - iii. Locality Allowance, Shift Allowance and other allowances paid to Power and Water employees under the Award.
- c) Superannuation/Severance Payments: The Contractor shall make payments on behalf of the Contractor's employees to superannuation funds and severance funds in accordance with the relevant Federal or State Award/Agreement/Legislation.
- d) Preservation of Salary/Wage Rates: Employees of the Contractor shall not have their actual ordinary all-purpose hourly rate reduced as a result of the application of Clause 2.9.1c) of this clause but nor shall any allowance already paid by the contractor be ignored.
- e) Definitions:
 - i. Generation activities shall mean operations and routine maintenance work (other than major overhauls) currently performed by Power and Water Corporation employees on the following power station plant which is directly associated with the generation of electricity:
 - Boilers;
 - Turbo Generators;
 - Unit Auxiliary Plant;
 - Chemical Plant.

- ii. Transmission activities shall mean work which is directly associated with the operation and routine maintenance work (other than major overhauls) of substation plant, control systems and associated in house communications and electronics, fines and cables and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water Corporation employees.
- iii. Distribution activities shall mean work which is directly associated with the operations and routine maintenance (other than major overhauls) of substation plant, overhead mains, underground cabling and jointing, pole inspection and street lighting, customer emergency services (eg loss of supply, voltage complaints) and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water Corporation employees.

2.10 Contractor's Representative

The Contractor shall personally supervise the execution of the Works or have a competent representative ('**Contractor's Representative**') acceptable to the Superintendent present on the Site at all times where the work is being carried out.

The Contractor or his representative shall be equipped with a mobile telephone or employ a suitable communications system acceptable to the Superintendent.

The Contractor shall notify the Superintendent in writing of the name of his representative and prior to any subsequent change of his representative shall obtain the approval of the Superintendent.

Any direction given to the Contractor's Representative shall be deemed to be a direction issued to or served upon the Contractor.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

The Contractor or his representative shall have sufficient command of the English language and of Australian building and technical terminology to be able to read, converse and receive instructions in English.

2.11 Power to Dismiss Workers

The Superintendent may require the instant dismissal from the Works, of any agent, overseer, foreman or other person employed on the Works, or in connection with the Works, whether employed by the Contractor or not and the Contractor shall immediately comply with or ensure immediate compliance with such requirement and the Contractor shall not again employ a person so dismissed on or in connection with the Works.

2.12 Status of Contractor

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

2.13 Notices

2.13.1 Services of Notices

Notice must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices set out in the Contract, as varied by any Notice given by the recipient to the sender.

2.13.2 Effective on Receipt

Any notice given in accordance with sub-clause 2.13.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by post, three (3) Working Days after the date of posting; and
- c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) Working Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

but if the delivery, receipt or transmission is not on a Working Day or is after 4.30pm on a Working Day, the Notice is taken to be received at 8.00am on the next Working Day.

2.14 Site Rules

The Contractor, his employees and sub-contractors required to enter the Site in connection with the Works shall comply with all rules and regulations in force at the Site, including security screening through Criminal History Checks where required. Also refer to the specific Site Rules nominated in the Preliminary Clauses.

The Contractor is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by the appropriate Authority.

2.15 Confidentiality, Publicity and Media

2.15.1 Confidentiality

- a) For the purposes of this sub-clause 2.15.1 "Confidential Information" means any information or material relating to the Contract or the Works including (without limitation):
 - i. any information that by its nature is confidential;
 - ii. any information designated as confidential; and
 - iii. any information that the Contractor knows is confidential.
- b) The Contractor shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
 - i. as authorised by the Principal under the Contract or otherwise;
 - ii. to its employees or contractors, to the extent needed to perform their obligations under the Contract;
 - iii. where the disclosure is required to be disclosed by law.
- c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 2.15.1.

2.15.2 Media and Publicity

- a) The Contractor shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising for sub-contractors), award nomination, document or article for publication concerning the Contract, the Works or the Site in any media without the prior written approval of the Principal.
- b) Prior to taking any action or doing anything the Contractor shall refer:
 - i. any media enquiries concerning the Contract, the Site, the Principal or the Works to the Principal for the Principal's written response; and

- ii. any media requests concerning the Contract, the Site, the Principal or the Works (including, without limitation, requests to access or take photographic or video footage of the Site) to the Principal, for the Principal's written consent, which consent may be given or withheld, in the Principal's absolute discretion.
- c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 2.15.2 and obtain the Principal's prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this sub-clause 2.15.2.

2.16 Industry Accreditation and Standards

Where applicable, the Contractor shall:

- a) maintain the currency of accreditation with Contractor Accreditation Limited during the life of the Contract; and
- b) comply with all industry standards on:
 - i. training;
 - ii. engagement, supervision and payment of sub-contractors;
 - iii. compliance measures;
 - iv. penalties; and
 - v. termination arrangements.

2.17 Local Development

The Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons to do so use on, or in connection with, the Works:

- a) labour, including Indigenous labour, available within the Northern Territory;
- b) the services located and obtain supplies/materials available within the Northern Territory; and
- c) accredited apprentices/trainees who are registered in the Northern Territory..
 - i. In complying with the use of accredited apprentices/trainees, the Contractor may:
 - directly employ apprentices/trainees;
 - utilise group training scheme apprentices/trainees;
 - utilise sub-contractors apprentices/trainees;
 - utilise any combination of the above.
 - ii. For contract value of \$1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Trainees.

The Contractor is solely responsible for ensuring that the specified requirements are met.

The Contractor shall, provide statements as required on the use of accredited apprentices/trainees and/or Indigenous employees on the Works. The Principal may conduct spot audits on compliance with the use of accredited apprentices/trainees on the Works.

The Contractor's level of compliance with the use of accredited apprentices/trainees and/or Indigenous employees on the Works will be included in the Performance Report on the Contractor at the completion of the Contract and will be taken into consideration for future Works for a period of twelve (12) months.

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

2.18 Indigenous Development Plan

Where an Indigenous Development Plan has been specified, the Contractor will maintain and implement the Indigenous Development Plan throughout the course of the Contract.

Within fourteen (14) days of the Date of Acceptance, the Contractor shall submit one copy of the Indigenous Development Plan to the Superintendent for approval. The Superintendent shall within a reasonable time from receipt, either approve the Indigenous Development Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Indigenous Development Plan for approval.

The Contractor shall provide timesheets with employment (hours worked) and training records for all Indigenous people engaged on the Works with all progress claims for payment.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Indigenous Development Plan within thirty (30) days of the Completion of the Contract.

2.19 Project Control Plan

Where a Project Control Plan has been specified, the Contractor will maintain and implement the Plan throughout the course of the Contract. The Superintendent will provide a framework document with guide notes to assist in the preparation of the document, which should be prepared by the Contractor and not a third party.

Within fourteen (14) days of the Date of Acceptance, the Contractor shall submit to the Superintendent for approval one copy of the Project Control Plan. The Superintendent shall within a reasonable time from receipt either approve the Project Control Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Project Control Plan for approval.

2.20 Indemnities

The Contractor shall keep the Principal and employees or agents of the Principal indemnified against any legal liability, loss, claim, action or proceeding including (without limitation) for personal injury to, or death of any person or for damage to any property arising from the carrying out of the Works (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 Contractor 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 infringement 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 Contractor in connection with the carrying out of the Works.

2.21 Insurances

2.21.1 Workers Compensation Insurance

For the purpose of this clause “worker” shall have the definition it is given in the *Workers Rehabilitation and Compensation Act 2009*.

Before commencing the Works the Contractor shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Contractor. This cover shall comply with the *Workers Rehabilitation and Compensation Act 2009* of the Northern Territory and policies shall be purchased from Northern Territory approved

insurers. Details can be found at the following web address:
www.worksafe.nt.gov.au/ServiceProviders/Insurers/Pages/Find-an-Approved-Insurance-Company.aspx

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Workers Rehabilitation and Compensation Act 2009*.

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

Self-employed Contractors must ensure that they have adequate insurance coverage in place.

The Contractor shall be responsible for ensuring that all sub-contractors have appropriate insurance policies in place.

2.21.2 Public Liability Insurance

Before commencing the Works, the Contractor 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, including the liabilities as set out in the first paragraph of clause titled "Indemnities".

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 Contractor under other provisions of the Contract.

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

2.21.3 Lodgement of Certificates of Currency

The Contractor shall provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required under clause 2.21 including those of any sub-contractors (including self-employed contractors and persons employed under labour hire agreements):

- a) prior to commencing the Works under the Contract;
- b) within two (2) days of a written request by the Principal;
- c) within seven (7) days after the Contractor renews an Insurance Policy; and
- d) within seven (7) days after the Contractor makes any change to an Insurance Policy.

The Contractor will not cancel any Insurance Policy, or conduct itself in a manner that brings about such a cancellation of an Insurance Policy, except with the written consent of the Principal.

2.22 Time for Commencement

The Contractor shall commence the Works within the time stated in the Annexure and shall, unless otherwise specified, give at least four (4) days written notice to the Superintendent prior to the commencement of work.

2.23 Time for Completion

The Contractor shall complete the Works within the time stated in the Annexure or within such extended time as agreed to in writing by the Superintendent.

2.24 Invoicing and Payment

The Contractor shall submit to the Superintendent a Tax Invoice at intervals of not less than one (1) month or as otherwise determined by the Superintendent, showing the value of the work carried out in performance of the Contract.

The Contractor's Tax Invoice shall 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 Contractor shall provide any further details in regards to the Works and/or Tax Invoice upon request by the Superintendent.

Principal shall make payments within thirty (30) days of receipt of a Tax Invoice that is not disputed.

The payment of monies pursuant to this clause shall not be taken as evidence against or as an admission by the Principal that any work has been executed in accordance with the Contract or the value thereof, but shall be taken to be payment on account only.

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 Contractor 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 swap rate published on 1 June each year by the Australian Financial Markets Association. Where interest penalty period spans 1 June in any year, 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.

2.25 Storage of Contractor's Material

The Contractor's materials and plant shall only be stored in the location approved by the Superintendent. If no storage facilities are available, it shall be the responsibility of the Contractor to provide storage facilities.

All care shall be taken to avoid inconvenience to persons occupying and visiting the Site of the Works.

2.26 Working Hours

The customary working hours and ordinary working days shall be those for day workers as stated in the Building and Construction Industry (NT) Award (or Electrical Engineering and Contracting Industries (NT) Award for Power and Water) or other relevant awards and no work will be performed outside of customary working hours or on other than ordinary working days without the prior approval of the Superintendent.

The working hours and working days of the Principal's supervisory personnel shall be 8.00 am to 4.30 pm Monday to Friday excluding a day that is a public holiday in the Northern Territory (**'Working Day'**). The Contractor shall provide at least forty-eight (48) hours written prior notice to the Superintendent of the intention to work outside the working hours and working days of the Principal's supervisory personnel.

Notwithstanding the preceding paragraphs, the Contractor may carry out work outside the customary working hours or ordinary working days without the prior approval of the Superintendent, where it is necessary in the interests of safety of the Works or where the work is required to protect life or property. In such circumstances the Contractor shall inform the Superintendent in writing of the circumstances as early as possible.

2.27 Obvious Work

The Contractor shall carry out all work, which obviously forms part of the Contract even though not specifically listed or detailed in the Scope of Works or Drawings.

2.28 Access to Works and Material

The Superintendent or any other persons authorised by him, shall have free and uninterrupted access at all times to the Works and during working hours to any workshop or premises not on the Site of Works where materials may be in preparation or stored for the purpose of the Contract.

The Contractor if so required by the Superintendent shall give the Superintendent all particulars as to the mode and place of manufacture of any of the materials proposed to be used in connection with the Contract and shall facilitate inspection of the materials.

2.29 Materials and Workmanship

All material used in the Works and the standards of workmanship shall conform to the provisions of the Contract. In the absence of such provisions that material or standard of workmanship shall be of a kind that is fit for its purpose and is consistent with the nature and character of the Works.

Any material not otherwise specified shall be new and, where applicable material and workmanship shall be in accordance with the relevant standard of Standards Australia. If the Superintendent is of the opinion that any material or the work, whether fixed or not, is unsatisfactory he may direct its replacement, removal or correction at the Contractor's expense.

2.30 Proprietary Items

Where items are specified as being a particular maker's brand, trade name or catalogue number then unless specifically stated to the contrary, it is not intended to give any preference to the manufacturer or brand mentioned wherever a proprietary item is specified.

If the Contractor proposes to use a substitute proprietary item, he must provide full particulars of the item he proposes to use to the Superintendent for approval and the Superintendent shall decide whether or not the proposed substitute may be used.

2.31 Connection of Services

Unless otherwise specified the Contractor is responsible for connection of all water, drainage, sewerage, gas and electricity services to the Works and the Contractor shall apply for all relevant permits and pay all associated fees and/or charges which are levied by the appropriate Authority.

2.32 Work Health and Safety Management

2.32.1 Definitions

For the purposes of this clause 2.32

'Construction Project' means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure where the cost of the work is \$250 000 or more;

'High Risk Construction Work' has the meaning given to it in the *WHS Act*;

'Plant' means any machinery, equipment, appliance, container, implement, tool or any component thereof and anything connected or fitted thereto;

'Principal Contractor' means a person authorised to have management and control of the Site for the purposes of the Works and who is appointed by the Principal under clause 2.32.3 as a principal contractor for the purposes of the *WHS Act*;

'Safe Work Method Statement' has the meaning given to it in the *WHS Act*;

'Structure' has the meaning given to it in the *WHS Act*;

'Substance' means any natural or artificial substance, whether solid, liquid, gas or vapour;

'WHS Act' means the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* and includes subordinate legislation made under that Act including regulations and approved codes of practice as well as any amendment, re-enactment or replacement of such Act ; and

'WHS Management Plan' means a health and safety management plan or system in respect of workplace health and safety matters in connection with the Works.

2.32.2 WHS Management Plan

- a) This clause 2.32.2 only applies where the Works comprise a Construction Project.
- b) Prior to commencing any Works at the Site the Contractor must prepare a WHS Management Plan and provide it to the Principal.
- c) The Contractor must:
 - i. for the duration of the Contract, provide:
 - the Principal; and
 - each person who is to carry out construction work in connection with the Works,
 - any further information in relation to the WHS Management Plan that may be requested of the Contractor, including allowing those parties to inspect the WHS Management Plan at their request;
 - ii. maintain the WHS Management Plan throughout the course of the Contract;
 - iii. carry out the Works in accordance with the WHS Management Plan;
 - iv. review and, as necessary, revise the WHS Management Plan and provide any such revised plan to the Principal and to each person who is to carry out work in connection with the Works (including sub-contractors); and
 - v. keep a copy of the WHS Management Plan until the Works to which it relates have reached completion, or for at least two years after a notifiable incident occurs in connection with the Works, whichever is the latter.
- d) The WHS Management Plan must address all those matters required to be covered in a WHS Management Plan as specified in the *WHS Act*.
- e) The Contractor will not be relieved from compliance with any of its obligations under the Contract or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
 - i. any direction by the Superintendent concerning the WHS Management Plan or the Contractor's compliance or non-compliance with the WHS Management Plan;

- ii. any audit or other monitoring by the Principal or its nominee of the Contractor's compliance with the WHS Management Plan; or
- iii. any failure by the Superintendent, or anyone else acting on behalf of the Principal, to detect any defect in or omission from the WHS Management Plan including where any such failure arises from any negligence on the part of the Superintendent or other person.

2.32.3 Appointment of Contractor as Principal Contractor

- a) This clause 2.32.3 only applies where the Works comprise a Construction Project.
- b) On and from the Date of Acceptance, the Principal appoints and the Contractor accepts such appointment as the Principal Contractor for the Works for the purposes of the *WHS Act* and the Contractor must:
 - i. discharge the duties imposed on a Principal Contractor by the *WHS Act* in respect of carrying out the Works;
 - ii. accept that, as Principal Contractor, the Contractor is the person responsible for the control and management of the Site and the Works at all times until Completion;
 - iii. ensure that any sub-contract entered into contains enforceable obligations requiring the sub-contractor to comply with the *WHS Act* and cooperate and comply with any direction of the Contractor in relation to work health and safety matters.

2.32.4 General Obligations

The Contractor must:

- a) carry out a risk assessment in relation to all of the Works;
- b) carry out the Works safely and manage the risk of harm to persons or property;
- c) ensure that it complies with any statutory requirement that requires a person to be authorised, licensed, supervised or to have prescribed qualifications or experience or that requires a workplace, Plant, Substance or design, or work (or class of work) to be authorised or licensed;
- d) put in place and maintain suitable emergency management procedures relevant to the Works; and
- e) if requested by the Superintendent, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Superintendent before the Contractor or any sub-contractor commences any Works; and
- f) generally comply with the requirements of the *WHS Act*.

2.32.5 High Risk Construction Work

Where the Works include or comprise High Risk Construction Work, the Contractor will ensure that:

- a) any person carrying out high risk construction work is licensed in accordance with the *WHS Act*;
- b) before the work is carried out, a Safe Work Method Statement is prepared in respect to the High Risk Construction Work in accordance with the *WHS Act*, and that a copy of the Safe Work Method Statement is:
 - i. provided to the Superintendent before the High Risk Construction Work is carried out and at any other time requested by the Superintendent; and
 - ii. kept at the area of the Site where the High Risk Construction Work is being or is to be carried out;
- c) the High Risk Construction Work is carried out in accordance with the Safe Work Method Statement.

2.32.6 Contractor's Obligations to Inform

The Contractor must keep the Superintendent fully informed of all health and safety matters relating to the Works and will provide the Superintendent with a copy of any incident notification provided to NT WorkSafe under the *WHS Act* at the same time or as soon as practicable after such notification is made to NT WorkSafe.

2.32.7 Right of Principal to Monitor and Audit

The Principal or its nominee may, at any time, monitor, inspect or audit the performance of the Contractor in relation to its compliance with the WHS Management Plan and this clause 2.32 generally and the Contractor must allow the Principal or its nominee access to the Site, the WHS Management Plan and any relevant documents or activities so as to enable such monitoring, inspection or audit to occur.

2.32.8 Powers of Superintendent Regarding Work Health and Safety

If the Superintendent considers that there is:

- a) a risk of injury to people or damage to property arising from the Works; or
- b) an unsafe or potentially unsafe practice or breach of the requirements of this clause 2.32,

then, in addition to any other rights the Principal has under the Contract, the Superintendent may:

- c) direct the Contractor to change its manner of working; or
- d) suspend the performance of the Works associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

All costs and delay and disruption caused by any action taken under this clause 2.32.8 are the responsibility of the Contractor.

2.32.9 Works Involving Asbestos

If the Works include Works Involving Asbestos (as that term is defined in the *WHS Act*) the Contractor must ensure that it, its employees and its sub-contractors comply with all requirements of the *WHS Act* applicable to Works Involving Asbestos.

2.32.10 Design, Manufacture and Installation Safety Matters

Where the Contract requires the Contractor to design, install or manufacture all or part of the Works, (including management or supervision of a design, installation or manufacture component) the Contractor must ensure that it and its consultants and sub-contractors comply with the *WHS Act* and ensure that any Structure, Plant or Substance it designs, installs or manufactures (or manages the design, installation or manufacture of, as the case may be) is, so far as is reasonably practicable, designed, installed or manufactured without risk to the health and safety of persons who will use, occupy, construct, handle or carry out any activity at or in the vicinity of the Structure, Plant or Substance (as the case may be). In particular, the Contractor must:

- a) implement a risk management process to ensure that any hazards associated with the design, installation or manufacture are identified, assessed and, as far as reasonably practicable, eliminated or minimised;
- b) consult, cooperate and coordinate with others who may contribute to the safe design, installation or manufacture of the Structure, Plant or Substance including the Principal, sub-contractors and end users;
- c) maintain appropriate records regarding the design process and the risk management process, including the results of any calculation, analysis, testing or examination, risk assessment and any conditions to ensure the Structure, Plant or Substance is safe, and provide such records to:

- i. the Principal and each person who is provided with the design or Structure, Plant or Substance (as the case may be); and
- ii. any other person who uses, occupies, constructs, handles or carries out any activity at or in the vicinity of the Structure, Plant or Substance (as the case may be) on request;
- d) provide the Principal with any information it requests that is relevant to the design, installation or manufacture of any Plant, Structure or Substance; and
- e) on completion of the design, installation or manufacture, provide a report to the Principal detailing the health and safety aspects of the design, Structure, Plant or Substance (as the case may be) which includes information about any identified or potential hazards, hazardous substances used in the design, installation or manufacture, access problems or any handling risks associated with the design, installation or manufacture. Such report will be in a form approved by the Superintendent.

2.32.11 Breach by Contractor

- a) Where, in the reasonable opinion of the Principal or the Superintendent, the Contractor has:
 - i. where applicable, commenced the Works without having first complied with clause 2.32.2(b); or
 - ii. committed a breach of any of its other obligations under clauses 2.32.2 to 2.32.10, the Principal may immediately terminate this Contract by written notice to the Contractor.
- b) The remedy provided in clause 2.32.11(a):
 - i. applies notwithstanding any other provision of the Contract; and
 - ii. is in addition to the other remedies under this Contract.

2.32.12 Work in the vicinity of Power and Water Assets

Prior to commencing work in the vicinity of any sewerage system, high voltage cable or power line or other high voltage structure, the Contractor shall contact Power and Water and obtain and become cognisant with written guidelines or procedures setting out safe practices for working in or adjacent such hazardous areas.

Whilst working in the vicinity of sewerage systems, high voltage cables or power lines or other high voltage structures the Contractor shall follow all directions and instructions issued by Power and Water.

2.32.13 Work in the vicinity of Natural Gas Pipelines

In accordance with the *Energy Pipelines Act*, the Contractor shall obtain the written approval of the operator of the pipeline before commencing any of the following activities in the vicinity of high-pressure natural gas pipelines:

- a) Any activities within the pipeline right-of-way, which involve construction of any kind including:
 - i. excavation for drains, pipelines or sewers;
 - ii. excavation for buried utilities or services;
 - iii. construction or maintenance of roads or tracks;
 - iv. boring of holes for fence posts or installation of power/telephone poles;
 - v. any survey or exploration work involving excavation, explosives or vibration.
- b) Any nearby construction activities that is likely to affect the right-of-way, such as re-routing surface water flows, construction of high voltage lines, or erection of large metal structures.
- c) Any passage of heavy vehicles and equipment over the pipeline other than on public roads.

Whilst working in the vicinity of natural gas pipelines the Contractor shall follow all directions and instructions issued by the operator of the pipeline.

2.32.14 Fire Precautions

The Contractor shall take all necessary precautions to ensure that no fire hazard is created through the carrying out of the Works.

Where a fire alarm is activated due to actions of the Contractor or his sub-contractors, resulting in a call out of the Fire Service, the Contractor will be required to pay for the subsequent call out fee.

2.32.15 Scaffolding and Excavation

All scaffolding and excavation must conform to the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*. The Contractor is to provide all ladders and scaffolding necessary to carry out the Works.

2.32.16 Disabled Access

Where there is likelihood that the Works may cause a danger or inconvenience to the disabled, the Contractor shall seek advice from the Department of Health, Office of Disability. The Contractor may be required to advertise in relevant newspapers or on community radio programs giving forewarning of the Works.

2.33 Precautions in Carrying out Works

The Contractor and sub-contractors shall comply with all requirements under Acts, regulations, by-laws, orders and rules and other special requirements of proper Authorities concerning storage, transport and use of materials, plant, equipment; work processes and safety precautions.

The Contractor and sub-contractors shall observe all rules and regulations in force in the area where the Works are to be carried out.

Where any current Australian standard published by Standards Australia is appropriate to storage, transport and use of materials, plant and equipment, to work processes or to safety precautions, the provisions of such standard shall be observed except if it conflicts with any statutory or special requirements of proper Authority in which case the latter shall apply.

In the absence of any such statutory or special requirements or relevant Australian Standard, the Contractor and all sub-contractors shall ensure that suitable procedures are observed and all proper care is taken.

2.34 Damage to Services

The Contractor shall contact the officer-in-charge of the area that includes the work Site, or his representative, before work commences and in company with the Superintendent check with them the location of all services.

The Contractor shall immediately notify the Superintendent and the officer-in-charge of the area, in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area.

The Contractor shall render any assistance required in connection with any such incident, but otherwise work in that vicinity shall be stopped immediately and not recommenced until instructions are received from the Superintendent.

Where the service is indicated on the drawing and/or in the Scope of Works, or is evident on the Site, or has been pointed out by the officer-in-charge of the area or by the Superintendent or by a representative of either, the Contractor shall be liable for the cost of any necessary repairs.

Where the Contractor encounters any services, details of which are not given in the drawings and/or Scope of Works and which are not evident on the Site or which have not been pointed out

to him, and has carried out his operation with reasonable care, the cost of reinstatement, diversion or other associated work may be paid as an extra to the Contract.

2.35 Care of Work and Cleaning Up

The Contractor shall keep the Works clean and tidy as they proceed and regularly remove from the Site rubbish and surplus material arising from the execution of the Works. On Completion of the Works the Contractor shall clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind and shall leave the Site of the Works, existing structures and areas adjacent thereto in as good a state of repair as they were in when he commenced the Works excluding for fair wear and tear.

2.36 Protection and Provision for Traffic

The Contractor shall provide all necessary lights, barriers, flags and the like to ensure the safety of all persons, vehicles and animals.

2.37 Protection for Occupants

Where work is carried out in occupied or partially occupied premises the Contractor shall arrange the execution of the Works to minimise nuisance to the occupants. The occupants are to be protected against fumes, dust, dirt, noise or other nuisance.

2.38 Protection of Property

The Contractor shall take all necessary precautionary measures to protect all property against loss, theft or damage resulting from the activities of the Contractor, sub-contractors and agents.

2.39 Protection of Equipment

All equipment, whether supplied under the Contract or existing at the Site and surroundings, likely to be damaged or affected by ingress or deposit of foreign matter resulting from the Contractor's operations or those of sub-contractors or agents shall be properly protected by the Contractor. If necessary protected equipment shall be able to function.

2.40 Strong Wind Precautions

The Contractor shall ensure that unfinished work, equipment, sheds, hoardings, materials and any other movable items on the Site, are protected, stored, or secured to the extent necessary to ensure that in strong wind conditions they will not be a danger to persons or property because of collapse, movement or any other cause.

2.41 Custody of Keys – Power and Water Assets

Where applicable, the Contractor will be provided with keys for the purposes of accessing Power and Water assets.

The Contractor must not label the keys with the name of the asset or make duplicate keys and shall take all care to prevent theft or loss of the keys.

All keys issued to the Contractor shall be returned at the Completion of the Contract. Failure to return keys within seven (7) days of the Contract Completion occurring will incur a fee of \$100.00 per key.

The cost of replacing lost or stolen keys shall be at the Contractor's expense and if the Superintendent so determines shall include the cost of replacing or re-keying master locks.

2.42 Variations

The Superintendent may direct a variation to the Works and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the Superintendent or failing agreement by the Superintendent and the Contract Rate or price increased or decreased accordingly.

2.43 Defects Liability Period

Upon determination by the Superintendent that the Works have been satisfactorily completed, the Defects Liability Period, if any, shall commence. The Contractor shall maintain the Works for the Defects Liability Period stated in the Annexure and shall make good at his own expense all defective workmanship or materials and all damage, loss or injury to the Works occasioned by faulty workmanship or materials. If the Contractor fails to make good any defects within a reasonable time or within the time stipulated in a direction given by the Superintendent, the Superintendent may, by notice in writing, take action to complete those defects outstanding at the Contractor's expense.

2.44 Assignment

The Contractor shall not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract without consent of the Principal. Such consent shall not be unreasonably withheld.

2.45 Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the Works he shall submit to the Superintendent the names of his proposed sub-contractors the nature and value of the work, which it is intended they undertake, their CAL Registration Number (if applicable) and seek the written approval of the Superintendent in respect of them. No sub-contractor shall be employed in connection with the Works unless such approval is first obtained. Such approval shall not be unreasonably withheld.

If Contractor Accreditation is applicable to work to be sub-contracted under the Contract the Contractor shall ensure that all sub-contractors and their sub-contractors for any part of the Works valued at over \$50,000 are accredited by Contractor Accreditation Limited to an appropriate category/group/sub-group and rating.

Any sub-contract shall be in writing and contain the provision that progress payments to the sub-contractor shall be made within fourteen (14) days after the Contractor has received payment from the Principal.

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

2.46 Disputes

The Contractor 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 Superintendent for decision and the Superintendent shall as soon as practicable thereafter give his decision in writing to the Contractor. Any decision given by the Superintendent pursuant to these Conditions shall be final and binding upon the Contractor.

2.47 Termination

If the Contractor fails to carry on the Works at a rate of progress satisfactory to the Superintendent, or neglects or omits to carry out any instruction of the Superintendent in respect of the Works or fails to complete the whole of the Works within the period specified for completion or such extended time as the Superintendent may approve, or intimates that he is unwilling or unable to complete the Works, or becomes insolvent or bankrupt, or being a company goes into liquidation, the Superintendent may, by notice in writing either:

- a) terminate the Contract whereupon all sums of money which may remain in the hands of the Principal together with all materials on or about the Site which are the property of the Contractor and have been provided by him for the purpose of carrying out the Works may be forfeited to the Principal and on being so forfeited shall become vested in or become payable to the Principal; or
- b) take the Works wholly or partly out of the control of the Contractor, or any other person in whose control or possession the Works or part of them may be, and complete the same by any other means he so decides. The Principal may take possession of and permit other persons to use any materials, plant or other things on or about the Site of the Works, which are the property of the Contractor and are deemed to be requisite and necessary for the purpose of any such completion.

2.48 Rights of Principal to Recover Monies

Without limiting the Principal's rights under any other provision in the Contract should the Superintendent take action pursuant to clause titled "Defect Liability Period" and/or "Termination" sub-clause (b) or any other clause in this Contract then all losses, costs, charges, outgoings and expenses incurred or sustained by the Principal in completing the Works or rectifying any breach of the Contractor under this Contract will be deemed to be a liquidated debt due to the Principal by the Contractor and will be deducted and set off from any monies that may then or may thereafter become due to the Contractor whether under this Contract or any other Contract whatsoever between the Principal and the Contractor and if the monies are less than the amounts so deductible then the amount of the deficiency shall be a liquidated debt due by the Contractor to the Principal.

Without prejudice to any other rights available to the Principal to recover such a liquidated debt the Principal may demand payment for and recover such liquidated debt against any bank guarantee, guarantee or other security that the Contractor may have given to or in favour of the Principal pursuant to this Contract or any other Contract whatsoever between the Contractor and the Principal.

2.49 Contractor's Performance Report

The Contractor agrees that upon completion of the Works or the termination of the Contract:

- a) the Superintendent will prepare a Contractor's Performance Report ('**Report**');
- b) the Superintendent shall liaise with the Contractor in completing the Report although the Superintendent reserves the ultimate right to complete the Report (other than the contractor's comments); and
- c) the Principal will use and/or release the Report to Contractor Accreditation Limited and be entitled to release the report to any other department of the Commonwealth or any State or Territory.

The Contractor agrees that neither the Contractor 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.

2.50 Goods and Services Tax

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

'GST' means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999 ('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 ('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' 'Entity' and 'Supplies' have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

- a) **"Entity"** shall also mean Contractor;
- b) **"Recipient"** shall also mean Principal;
- c) **"Supplies"** shall also mean the Works.

'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 Contractor 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.

2.51 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.

The Contractor 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 Contractor were a public sector organisation.

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

The Contractor 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 Contractor is to immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

The Contractor is to ensure that any employees, agents or sub-contractors, and any other person who may have access to Personal Information held by the Contractor, are aware of the obligations of the Contractor 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 Contractor is to take all reasonable measures to ensure that Personal Information is protected from misuse, loss, 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 Contractor 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 Contractor acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.

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

The Contractor 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 Contractor under this Contract.

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

- a) return to the Principal all records containing Personal information; or
- 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.