



Conditions: Quoting and Contract

Quotation - Works

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1 Conditions of Quoting

1.1 General

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

In these Conditions of Quoting 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 RFQ prior to the stated closing time and date.

'Quotation' means all documents lodged by the Respondent in response to the RFQ.

'Respondent' means the person lodging a Quotation in response to the RFQ.

'RFQ' means the request for quotation inviting offers and includes all annexures, schedules, drawings, attachments and addenda.

1.2 Lodgement of Quotations

For the Quotation to be considered, the Respondent shall complete in full and submit one copy of the documents listed in the section of the Annexure to the Conditions of Quoting 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 Quotation.

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

Oral Quotations or Quotations 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 Respondent in the preparation of its Quotation.

Once lodged, the Quotation shall become the property of the Principal.

1.2.1 Closing Time and Date

Quotations will close at the time and on the date stated on the front cover of the RFQ.

1.2.2 Lodged by Hand

Quotations delivered by hand must be lodged in the Quotation and Tender Box specified on the front cover of the RFQ.

Quotations must be enclosed in a sealed envelope and marked with the RFQ Number and closing date.

Quotations delivered by hand to any box other than the Quotation and Tender Box referred to on the front cover of the RFQ may result in the Quotation being declared ineligible for consideration.

1.2.3 Lodged by Post

Quotations **must not** be lodged by prepaid post. Any Quotation submitted by prepaid post shall be declared ineligible for consideration.

1.2.4 Lodged by Facsimile

Quotations sent by facsimile must be directed to the facsimile number stated on the front cover of the RFQ.

1.2.5 Lodged by Electronic Lodgement

Quotations 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 RFQ; and
- b) in the electronic format as specified (ie .arf, .doc, .docx .jpg, .pdf, .rtf, .tif, .txt, .xls, .xlsx .zip).

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

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

The Quotation may be admitted for consideration on the basis that the transmission of the Quotation is acknowledged by the Respondent as being the true and legal version and is completed, submitted and acknowledged by the stated time and date for closing of Quotation.

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

If, for any reason, the electronic Quotation (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 Quotation must be provided by the Respondent 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 Quotation being declared ineligible for consideration.

1.2.6 Late Quotations

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

Notwithstanding the preceding paragraph Respondents may appeal such decisions however:

- a) Quotations submitted by a commercial courier service, received after the stated time and date for closing of Quotations may be considered only if it can be established to the satisfaction of the Procurement Review Board that the Quotation was despatched before the stated time and date for closing of Quotations and in the ordinary course of business would not have been received late.
- b) Quotations submitted by 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 the Quotation was received before the stated time and date for closing of Quotations, 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 Quotations that appear to its satisfaction to have been submitted prior to the stated time and date for closing where those Quotations were not received before the stated time and date for closing of Quotations because of a fault or failure of Quotations and Tenders eLodgement Service.
- d) Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

1.3 Respondents to Inform Themselves

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

The NT Government Procurement Framework including the NT Procurement Code is available from the web address:

www.dob.nt.gov.au/dbe/business/tenders-contracts/references/Pages/default.aspx

1.4 Compliance with NT Procurement Code

- a) In preparing its Quotation, submitting its Quotation and throughout the quoting period and process the Respondent 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 "Respondents to Inform Themselves".
- c) If the Principal:
 - i. has evidence that the Respondent has not complied with the Code; or
 - ii. is of the reasonable opinion that the Respondent has not complied with the Code,

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

1.5 Enquiries

Should the Respondent

- a) have any doubts as to the meaning of any part of the RFQ; or
- b) find any discrepancy or error; or
- c) find any omission in the RFQ (ie all pages are numbered consecutively and that all drawings, attachments or supplements referred to are also included, etc.);

it 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 Quotations.

Where attachments or supplements have been referred to in any section of the RFQ 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 Respondents. No explanation or amendment to the RFQ shall be recognised unless in the form of a written addendum issued by the Principal.

It is the sole responsibility of Respondents 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 Respondent who believes the RFQ 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 Quotations.

1.6 Site Inspection

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

Optional – Applicable If Specified In Annexure - Anytime

Prior to submitting a Quotation it is recommended the Respondent inspect the Site.

Optional – Applicable If Specified In Annexure - By Arrangement - Not Mandatory

Prior to submitting a Quotation the Respondent 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.

Optional – Applicable If Specified In Annexure - Set Time - Not Mandatory

Prior to submitting a Quotation the Respondent 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 Respondents by issue of an addendum.

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

Optional – Applicable If Specified In Annexure - Set Time - Mandatory

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

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

In addition to attending the Site Inspection the Respondent is required to have the Schedule of Attendance at the Mandatory Site Inspection (**'Schedule'**) (which is included in the Response Schedules) signed by the Principal's Officer conducting the Site inspection. The completed and signed Schedule must be lodged as part of the Respondent's Quotation. Where the Quotation is lodged electronically via the Quotations and Tenders Online eLodgement Service, the Site Inspection Schedule shall include the signature of Principal's Officer conducting the Site inspection (ie be a scanned document lodged in .pdf format or similar).

A Respondent may authorise a third party to attend the mandatory Site Inspection as its authorised representative, however, it remains the responsibility of the Respondent 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 Site Inspection.

Failure to attend the mandatory Site Inspection and/or lodge the signed Schedule where expressed as mandatory will result in the Respondent's Quotation being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Quotation 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 Quotation the Respondent 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 Respondents by issue of an addendum.

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

Optional – Applicable If Specified In Annexure - Mandatory

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

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

In addition to attending the Industry Briefing the Respondent is required to have the Schedule of Attendance at the Mandatory Industry Briefing ('**Attendance Record**') (which is included in the Response Schedules) signed by the Principal's Officer conducting the Industry Briefing. The completed and signed Attendance Record must be lodged as part of the Respondent's Quotation. Where the Quotation is lodged electronically via the Quotations and Tenders Online eLodgement Service, the Attendance Record Schedule shall include the signature of Principal's Officer conducting the Industry Briefing (ie be a scanned document lodged in .pdf format or similar).

A Respondent may authorise a third party to attend the mandatory Industry Briefing as its authorised representative, however, it remains the responsibility of the Respondent 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 Industry Briefing.

Failure to attend the mandatory Industry Briefing and/or lodge the signed Attendance Record where expressed as mandatory will result in a Respondent's Quotation being declared ineligible for consideration.

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

1.8 Signing of Documents

The Respondent shall sign its Quotation 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]) duly 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 Quotation.
- b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
- i. By signature of each proprietor of the firm.
 - ii. Or in the case of firms having more than five (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.
 - iii. Any proprietor who is a corporation must sign the Quotation in the manner indicated in paragraph (a) above.

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

Where the Quotation 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 is to be provided.

Each Quotation shall also contain the Respondent'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 Respondent in connection with its Quotation and any subsequent Contract arising out of acceptance of the Quotation.

1.9 Quotation Validity

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

1.10 Alternative Quotations

Respondents may only submit alternative Quotations where the Annexure states that alternative Quotations are allowed. Alternative Quotations must be clearly identified as an "Alternative Quotation".

Respondents 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 Respondent 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 specified otherwise in the Annexure, Quotations for "part only" of the Works will not be considered.

Where 'part only' offers are allowed, the Principal reserves the right to accept a portion or all of any Quotation at the price or prices submitted unless the Respondent specifically states to the contrary in its offer.

1.12 Taxes, Duties, Fees etc.

The Respondent shall ensure that the Quotation 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 Quotation. Unless otherwise allowed, pricing shall be submitted for each item in the Schedule.

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

1.14 Competitive Neutrality

Government owned businesses, Local, Territory, State and Federal Government agencies and authorities responding to public quotations must submit two prices against each item in the pricing schedule provided. One price is to be the quoted 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 RFQ documents or from the following web address: www.dob.nt.gov.au/business/tenders-contracts/references/tendering-contract/Pages/competitive-neutrality.aspx

1.15 Industry Accreditation

Optional – Applicable If Specified In Annexure

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

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

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

The Quotation, in the spaces provided must state:

- a) the Respondent's CAL Registration Number; and
- b) the CAL Registration Numbers of all proposed sub-contractors.

Any Quotation 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 Quotation declared ineligible for consideration under the provisions of this clause.

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, accredited training of its employees and the use of apprentices/trainees who are registered in the Northern Territory and sourcing goods and services from local businesses in the performance of the Works.

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

Employees/apprentices/trainees undertaking training will only be recognised as being compliant for Quotation 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
- c) the training being undertaken is a recognised accredited training course.
 - i. In the case of compliance for apprentices/trainees, Respondents may:
 - directly employ apprentices/trainees;
 - utilising group training scheme apprentices/trainees;
 - utilising sub-contractors apprentices/trainees;
 - utilising any combination of the above.

Further information on NT Government Policy on the use of apprentices or 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 7711
Facsimile: (08) 8901 1326

Or

GPO Box 3200
Darwin NT 0801

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

Australian Apprenticeships NT,
6 Searcy Street
Darwin NT 0800
Telephone: 1300 137 130
(08) 8935 8200

Or

GPO Box 3049
Darwin NT 0801

Or

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

1.16.1 Indigenous requirements for Shire Councils

Optional – Applicable If Specified In Annexure

Where specified in the Annexure, the Respondent 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 – Only For Works Identified As Suitable For Such Plan

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

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

1.18 Change to the Conditions of Contract

1.18.1 Conditions of Quoting

Respondents **are not permitted** to request changes or propose alternatives to the Conditions of Quoting applicable to the RFQ. Any Respondent who attempts to do so will have their Quotation declared ineligible for consideration.

1.18.2 Conditions of Contract

Respondent may request changes to the Conditions of Contract applicable to this RFQ, or propose alternative Conditions of Contract **only** if stated in the Annexure that this is allowed.

Where Respondents 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 Respondents 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 Quotation will be assessed on that basis. If the requested changes or the alternative Conditions included in a Quotation are not acceptable to the Principal, the Quotation will not be successful.

If the RFQ states that the changes to the Conditions of Contract or alternative Conditions are not allowed, then Respondents may not request changes to the Condition of Contract applicable to this RFQ, or propose alternative Conditions of Contract. If a Respondent does so, their Quotation will be declared ineligible for consideration.

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

1.19 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.

1.20 Treatment of Low or Aberrant Prices

During Quotation assessment the following approach may be taken to low or aberrant prices. Where a quotation price (or a key element of a quotation price) is considered well below the median price and/or the projects estimated value, the Respondent, as a part of the assessment process, may be requested to confirm the quoted price and /or respond to questions regarding particular aspects of the Quotation. The Respondent may also be asked to provide written confirmation that the scope of work 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 Quotation; or
- b) where there is evidence that acceptance of the Quotation may pose a substantial risk to the Works and the sustainability of Respondent, give consideration to passing over that Quotation.

1.21 Disclosure of Weightings

Quotation assessment criteria and percentage weightings applicable to the RFQ are detailed in the Annexure,

Although Quotation assessment criterion may include sub-criteria, percentage weightings shall only be published as a cumulative percentage against the quotation 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 "Quotation Assessment Criteria" in the Conditions of Quoting 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 Quotation.

1.22 Quotation Assessment Criteria

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

The elements under each criterion are offered for the purpose of providing Respondents 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 Quotation.

- 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 Respondent required.
 - iv. Previous disputes and claims history.
 - v. References (including Contractor Accreditation Limited if applicable).
 - vi. Safe and fair workplace record.
- b) Timeliness:
 - i. Capability and capacity to meet timeframes specified.
- c) Capacity:
 - i. Ability to perform the Works including the experience of the business and 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 (eg 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 service response.
 - iii. Accredited training programs and apprentices/trainees supported by the Respondent and/or opportunities that will be supported or be utilised on these Works.
 - iv. Number of jobs for Territorians supported by the Respondent and/or opportunities that will be supported or utilised on these Works.
 - v. Number of jobs for Indigenous Territorians supported by the Respondent and/or opportunities that will be supported or be utilised on these Works.
 - vi. Proposed level of involvement of local Indigenous enterprise.
 - vii. Any regional development opportunities.
 - viii. Any Northern Territory research and development being undertaken by the Respondent.
- 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 is not limited to, any one or more of the following: technical requirements of the Works, environmental issues or 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.

Respondents should provide all relevant factors addressing the selection criteria specified in the Response Schedules, which may assist the Territory in making an assessment of the Quotation.

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.

1.23 Clarification and Additional Information

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

The Respondent 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 Quotation being declared ineligible for consideration.

1.24 Negotiation

- a) The Principal may engage in detailed discussions and negotiations with one or more Respondents.
- b) Without limiting sub-clause 1.24a) the selection of Respondents 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 Respondent.
- c) The selection of a preferred Respondent 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 Respondent and commence negotiation with another Respondent or to terminate this Quotation process or to exercise any other right reserved to the Principal under law or elsewhere in this RFQ.

1.25 Performance Report

The Respondent shall, 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.

1.26 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 Quotation being declared as ineligible for consideration.

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

1.27 Notification of Acceptance

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

The Notice of Acceptance of the Quotation shall constitute a binding Contract between the Principal and the successful Respondent. 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 Quotation.

If a Notice of Acceptance has not been given there shall be no agreement between the Principal and the Respondent and the Respondent 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.

1.28 Debriefing of Respondents

Respondents may request a debriefing as to the specific reasons why its Quotation was unsuccessful. This is for the purpose of assisting Respondent to improve its competitiveness for future Quotations.

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

1.29 Specific Site Conditions – Royal Darwin Hospital

Optional – Applicable If Specified In Annexure

Attention is drawn to Royal Darwin Hospital Site Rules for Contractors, sub-contractors 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).

Respondents 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 Quotation.

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 Respondents to inspect the site or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 and their application and that they comply with the Site Rules.

1.30 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).

Respondents 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 Quotation.

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 Respondents to inspect the site or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 aware of the Site Rules and their application and that they comply with the Site Rules.

1.31 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).

Respondents 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 Quotation.

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 Respondents to inspect the site or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 aware of the Site Rules and their application and that they comply with the Site Rules.

1.32 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).

Respondents 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 Quotation.

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 Respondents to inspect the site or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 aware of the Site Rules and their application and that they comply with the Site Rules.

1.33 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 Hospital Maintenance Manager (HMM).

Respondents 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 Quotation.

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

Failure of Respondents to inspect the site or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 aware of the Site Rules and their application and that they comply with the Site Rules.

1.34 Specific Site Conditions – Kakadu National Park

Optional – Applicable If Specified In Annexure

Respondents 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 Regulations) 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

1.35 Specific Site Conditions – Uluru – Kata Tjuta National Park

Optional – Applicable If Specified In Annexure

Respondents 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 Regulations) 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 – Workers Accommodation Jabiru

Optional – Applicable If Specified In Annexure

Respondents 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

1.37 Specific Site Conditions – Groote Eylandt

Optional – Applicable If Specified In Annexure

Respondents are advised that there are restrictions on carrying out work in this area. It is the Respondent'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 Quotation price.

Respondents are required to submit with its Quotation, 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 Quotation may result in their Quotation being declared ineligible for further consideration.

1.38 Specific Site Conditions – Work on Communities

Optional – Applicable If Specified In Annexure

Respondents are advised that restrictions may apply to entering and working in an Aboriginal Community. It is the Respondent'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 Respondent.

1.39 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
68 The Esplanade
Darwin NT 0800
Attention: Chief Prison Officer – Security
Telephone: Darwin (08) 8922 0111
Alice Springs: (08) 8951 8911

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

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 Respondents to inspect the Site (if required to do so) or failure to be familiar with the Site Rules may result in their Quotation being declared ineligible for further consideration.

The Respondent, 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 and that they comply with the Site Rules.

1.40 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 Respondent shall become familiar with the rules that apply to work to be carried out in the NT Schools, prior to submitting a Quotation.

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

The Respondent 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.

1.41 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.

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

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 Respondents to inspect the site (if required to do so) or failure to be familiar with the Site Rules will result in their Quotation being declared ineligible for further consideration.

The Respondent 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.

1.42 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.

Respondents 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 Quotation.

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

The Respondent 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.

1.43 Specific Site Conditions – Aerodromes

Optional – Applicable If Specified In Annexure

The attention of Respondents 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.

1.44 Specific Site Conditions – Work In Defence Areas

Optional – Applicable If Specified In Annexure

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

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

1.45 Special Security Conditions

Optional – Applicable If Specified In Annexure

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

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

1.46 Specified Sub-Contractors

Optional – As Required – 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 RFQ.

Respondents may select any one of the specified sub-contractors listed in the Annexure, for a specific component of work and shall include in its Quotation, a price, for the work to be performed by that specified sub-contractor. Respondents 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 RFQ detailing the specific requirements applicable to the Conditions of Quoting and Contract.

'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.

'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.

'Documents' means all material stored by any means and produced or used by the Contractor or sub-contractor 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 the Respondent's Quotation 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 Quotation (RFQ)' means the document(s) containing the Conditions of Quoting and Contract, the Annexure, Special Conditions of Contract (if any), Scope of Works, Response Schedules, Drawings and any other document issued for the purposes of inviting Quotations for the Works.

'Schedule of Rates' means any schedule included in the Contract which, in respect of any section or item of work, 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 RFQ detailing the technical requirements of the work to be carried out as existing at the Date of Acceptance of the Quotation 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 RFQ;
- d) the Respondent's Quotation 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 Quoting and Contract;
- d) Notice of Acceptance;
- e) General clauses;
- f) Scope of Work;
- g) Drawings and Scope of Work included in the RFQ;
- 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 Quoting and all other documents, other than those specified above in (a) to (g) inclusive, forming the RFQ or the Contract (other than the Respondent Quotation); and
- j) the Respondent's Quotation 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.

Unless the Contract expressly provides otherwise, the Principal shall give any direction to the Contractor in accordance with the clause titled "Directions" and "Notices".

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", "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.

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 otherwise provides, 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 comply with all provisions 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 Power and Water Authority Award. 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 0(c) 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 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, lines and cables and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water 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 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 General Clauses section of the RFQ.

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 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 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 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 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 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) 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.

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

The Contractor shall, when requested by the Principal, submit a written report concerning the compliance with the provisions of this clause. 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 this requirement will be included in the Performance Report on the Contractor at the completion of the Contract and will be taken into consideration for further Northern Territory Government contracts for a period of twelve (12) months.

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 to the Superintendent for approval one copy of the Indigenous Development Plan. 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 Project Control 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 work under the Contract, the Contractor shall take out and 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 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 work under the Contract, 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 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 Payments

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 any 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.

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 shall apply for all relevant permits and pay all associated fees and/or charges which are levied by the appropriate Authority.

2.32 Safe Work Practices

Further to the Conditions of Contract, in particular clause titled "Contractor's Responsibilities and Obligations", the Contractor shall ensure that his employees, agents or sub-contractors or their employees or agents comply with the requirements of the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*, the *Dangerous Goods Act*, Australian Standards and the requirements of Power and Water and NT Gas Pty Ltd in so far as they are applicable to the execution of the work under the Contract.

The Contractor shall make itself aware of all potential hazards and of all safety requirements relating to the Works.

2.32.1 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.

2.32.2 Work in the vicinity of Natural Gas Pipelines

In accordance with the *Energy Pipelines Act*, the Contractor shall obtain the written approval of NT Gas Pty Ltd 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 NT Gas Pty Ltd.

2.32.3 Asbestos

Where the Contractor removes, repairs and/or renovates products containing asbestos it must do so in accordance with the National Code of Practice for the Safe Removal of Asbestos, 2nd Edition [NOHSC:2002(2005)] and NT WorkSafe Information Bulletins published by NT WorkSafe.

In accordance with the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*, the Contractor shall obtain necessary approvals before commencing any work on or with products that contain asbestos; evidence of approval shall be presented to the Superintendent before commencing work.

2.32.4 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.

2.32.5 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.

2.32.6 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, 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 Work 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 Site 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 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 price or rate 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 written 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 the 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 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 for assessment for future work.

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 Supply 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 and loss and from unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

The 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.