

Territory Innovation Challenges Program

Terms and Conditions

Territory Innovation Challenges Program Terms and Conditions

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1. Introduction

The Department of Industry, Tourism and Trade is the lead Government agency responsible for the Northern Territory Business Innovation Strategy 2.0 (“Innovation Strategy”) which focusses on strengthening the Territory’s business innovation culture, and creating a sustainable innovation ecosystem.

The Territory Innovation Challenges Program (“Program”) supports the Innovation Strategy:

Develop a \$4 billion Territory innovation ecosystem to support a \$40 billion economy in the Territory by 2030.

The Northern Territory Innovation Challenges Program is designed to leverage government procurement to support the development and commercialisation of innovation in the Territory. It delivers a range of outcomes as set out and described in the Innovation Strategy, including:

- Support for industry/public sector problem statement events;
- Facilitating opportunities for innovators to test-bed ideas within industry and public sectors;
- Encouraging innovation through the Northern Territory Government Procurement Framework; and
- Developing government intellectual property (IP) practices to support innovation.

2. General

2.1. Program Objectives

The Program aims to grow private sector jobs and investment, and increase the capacity of Territory enterprise by:

- Establishing local Innovation Clusters which foster collaboration between Territory enterprise and Research and Development;
- Developing and commercialising scalable and exportable innovations;
- Instituting a viable process for the Northern Territory Government to procure innovation;
- Growing the workforce capability of Territorians in new sectors to develop and commercialise 4.0 innovations;
- De-risking and attracting private sector investment into innovation;
- Expediting and amplifying commercialisation of innovation, and;
- Engaging with participants external to the Territory as part of Innovation Clusters to ensure the efficient transfer of knowledge and technology into the Territory.

2.2. Program Definitions

Agreement means a formal agreement between an Innovation Cluster and the Northern Territory of Australia (via the Challenge Sponsor and/or the Department), providing for funding to be granted to an Innovation Cluster to carry out the Project to develop a Solution, and the subsequent procurement by the Territory of the Developed Solution.

Buy Local Plan means the document of that name published on the Website from time to time.

Challenge is a problem that has been identified with a view to a Project being conducted to develop a solution.

Challenge Assessment Panel means a panel of assessors consisting of Department approved representatives.

Challenge Business Plan means the Business Plan developed by the Successful Proponent using an external consultant assigned by the Department for the purposes of guiding the Agreement deliverables and commercialisation of the Project.

Challenge Sponsor is the Government Related Entity that has a requirement for a solution.

Department means the Northern Territory Government, Department of Industry, Tourism and Trade.

Government Related Entity means a Northern Territory Government department or agency, a government owned corporation, a local government body, an educational or scientific institution, and any other corporation or body established by the Parliament of the Northern Territory.

Information includes all information contained in an application and brought into existence throughout the conduct of a Project by a Participant, including test-bed details and results, in any form whatsoever, (including documents, software, information and data stored), provided or disclosed by any means, whether electronic, written or otherwise, and where relevant, includes information provided verbally or visually.

An **Innovation Cluster** is a single legal entity formed for the purpose of carrying out the Project. The members of the Innovation Cluster must be physically co-located in the Northern Territory at least until any Agreement has been fully completed (including in relation to obligations of the Innovation Cluster to provide service after the Territory has procured a Developed Solution). An Innovation Cluster must include two or more Territory Enterprises and at least one research organisation (which may be public or private).

Participant includes a Challenge Sponsor, an applicant, a Successful Proponent and an Innovation Cluster.

Project means the carrying out of the scope of work required for the development of the Successful Proponent's idea into a Developed Solution, the terms and conditions of which will be set out in the Agreement.

Solution means a product or service that appears would meet the needs of the Challenge Sponsor after development based on the terms of an Agreement.

A **Successful Proponent** is an applicant whose idea is selected by the Panel to enter into negotiation of an Agreement.

Territory Enterprise is a business that satisfies all of the following:

- Is operating in the Northern Territory - the enterprise is currently engaged in productive activities out of a premises within the Northern Territory (i.e., production of goods or delivery of services); and
- Has a significant permanent presence - the enterprise maintains an office, manufacturing facilities or other permanent base within the Northern Territory; and
- If staff are employed, those employees are Northern Territory residents.

Website means www.innovation.nt.gov.au

3. Program participation and process

3.1. Eligibility and Program Participation

The Program is open to applicants that comply with the criteria set out in this section.

Applications must be made to the Department in response to the publication of a Challenge. Applicants must comply with all processes and procedures contained in these Terms and Conditions and those that the Department may otherwise set from time to time, in order to be eligible to have their submissions assessed.

Eligibility Criteria

An applicant must be, or have the ability to form, an Innovation Cluster and:

- Have a registered ABN; and
- Include participants (whether natural or corporate) that are located in the Northern Territory and will actively participate in the Project.

Applicants may be participants in, or shareholders of, a special purpose vehicle (including an unincorporated body such as a partnership or joint venture). As part of the application process applicants will be required to provide the Department with the following documentation:

- I. a copy of their shareholders or joint venture agreement (or if not yet in place, then a full submission detailing the parties, their relationship, and the main commercial terms of their agreement) which must include evidence of co-location arrangements (or if not yet co-located, details of how this arrangement will be put in place;
- II. a sworn declaration by each of the principals of the applicant entity or entities that neither their submission containing their proposed Solution, nor the conduct of a Project or the entry into an Agreement, will infringe any third party intellectual property or confidentiality rights (including moral rights) held under any contract or any legislative or general law (whether in Australia or overseas) including without limitation the provisions of the *Copyright Act 1968 (Cth)*. An Innovation Cluster will be required to provide this warranty as a contractual condition of entry by the Northern Territory of Australia into the Agreement; and
- III. Evidence of the solvency status and financial capacity of each member participating in the Cluster to undertake the Project, including each member's most recent financial management statements as at submission date (including profit and loss statement and balance sheet), and most recent statutory financial statements (as required by law).

3.2. Program Process

3.2.1. Challenge Phase

The purpose of this phase is to select a winner of the 'Design Challenge' as set out in Table 6.2 of [Procurement Rules](#)¹, Table 6.2.1 "Alternative Procurement Method"

¹ https://nt.gov.au/_data/assets/pdf_file/0010/899146/procurement-rules-v1.5.1-200701.pdf

(a) Publication of Challenges

Challenges will be published on the Website and in other media as the Department sees fit. Details will include:

- Challenge description and judging criteria;
- Requirements for applications to address the Challenge, such as deadline, format and requirements for submitting submissions for proposed Solutions;
- Key dates for applicants to adhere to (including but not limited to workshop dates to address any queries and recommendations of Solutions, and submission deadlines); and
- Any other details or criteria the Department deems relevant having regard to the nature of the Challenge.

It is the responsibility of an applicant to ensure submissions adhere to all Challenge criteria.

Applicants must make their submission to develop a Solution in the format provided on the Website.

(b) Registration of entities to signal their interest in forming an Innovation Cluster

Entities wishing to participate in an Innovation Cluster for the purposes of the Program should register their interest in doing so via the process on the Website before submitting an application.

(c) Assessment of application submissions

The Department will review applications and conduct due diligence on registered Innovation Clusters (including analysis of the legal arrangements in place or to be put in place by the members of the Innovation Cluster). Eligible applications that satisfy the initial due diligence phase (in the absolute unfettered discretion of the Department) will be referred to the Panel for assessment.

The Panel will evaluate and assess all submissions in accordance with the challenge information published on the Website, the following challenge criteria, and overall benefit to the Territory:

- **Collaboration**
Level of collaboration with Territory business enterprises and Research and Development enterprise and any other entities
- **Solution**
Merit and feasibility of the proposed Solution (assuming it is successfully developed) to meet the Challenge requirements
- **Capacity to deliver**
Evidence of Innovation Cluster's capability and planning to develop and test-bed the proposed Solution, addressing the Challenge criteria set out on the Website and taking into account corporate stability, qualifications and experience
- **Scalability**
Potential to scale the Developed Solution for the purposes of further commercialising and exporting the Developed Solution
- **Value for Territory**
Potential for further benefits to the Territory, including jobs creation, investment attraction, local production and workforce development
- **Price**
The terms and price under which an Agreement may be entered into in order to undertake the Project and for the Territory to procure the Solution

Successful Proponent/s will be advised by the Department and their names published on the Website. Unsuccessful Proponents will be offered an opportunity to be debriefed by the Department.

The decision of the Panel (once endorsed by the Department), is final and binding, and other than a debrief (which will not under any circumstances reveal detail about any application other than the application of the debriefed applicant), no correspondence will be entered into with any applicant, and no review of the decision will be undertaken.

3.2.2. Development of Solution

Successful Proponents (the winner of the Design Challenge) will develop their submission into a Challenge Business Plan, for submission to the Department for the purposes of being invited to enter into an Agreement and develop a Solution under the terms and conditions contained therein. The Department is entitled to obtain independent advice on the final Challenge Business Plan.

Throughout participation in the Program, the Successful Proponent is required to comply with the Buy Local Plan in the sourcing of material and labour.

The Agreement will contain all commercial and legal provisions the Territory requires and that would ordinarily be found in a funding agreement and/or contract for the procurement of goods and services by the Territory. In particular the Agreement will contain provisions about the following:

- (a) The extent of the funding to be granted (including:
 - An amount of seed funding in a sum to be published on the Website, which will be used for the purposes of mobilisation of the Innovation Cluster); and
 - An amount of funding in a sum to be determined by the Territory for the carrying out of the Project and the timing and stages at which it will be released to the Innovation Cluster;
 - (b) Performance criteria and milestones to be reached at certain points in time;
 - The Department, in conjunction with the Challenge Sponsor, will set performance criteria which the Solution must achieve. Performance criteria may be in various formats such as desired outcomes, specifications, benchmarks or attributes.
 - Any further investment of the Northern Territory Government or any other body that is required, or has or may be obtained by the Innovation Cluster (or any member of the Innovation Cluster) to achieve performance criteria or milestones;
 - (c) Test bedding
 - The Innovation Cluster must successfully demonstrate that the proposed Solution achieves the performance criteria in a test-bed that the Challenge Sponsor will make available to the Successful Proponent for the purpose.
 - Challenge Sponsors and Successful Proponents will be required to comply with the Northern Territory government test-bed policy (in development), at the Department's discretion.
 - (d) Intellectual Property
 - The Intellectual Property underpinning the innovation and as developed and forming part of the Developed Solution, will be and remain the property of the recipient entity at all times and ongoing IP use granted to the Territory will be subject to the terms of the Agreement .
 - (e) Procurement of the Developed Solution
 - a covenant on the part of the Territory to pay a price (or provide a mechanism for calculation of a price) for the Developed Solution (including use of the Intellectual Property in the Developed Solution), and
 - a covenant on the part of the Innovation Cluster to maintain its business in the Northern Territory for such duration as may be required by the Territory having regard to the nature of the procurement; and
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- a covenant on the part of the Innovation Cluster to support and maintain the Developed Solution to the satisfaction of the Territory for a certain period of time following the procurement by the Territory of the Developed Solution.

The Agreement will be prepared by lawyers for the Department and provided to the successful Proponent within 14 days after the Successful Proponent's Challenge Business Plan has been completed to a professional standard.

If despite both parties negotiating in good faith, the Innovation Cluster has not executed an Agreement within 30 days (or such longer timeframe as is specified by the Territory), then the Territory may, (but is not obliged to) terminate its discussions with the Successful Proponent and commence discussions with another applicant, or terminate the process all together. If the Department exercises its right under this clause:

- (a) the result may be published on the Website (and if the decision to terminate discussions is mutual, that will be specified); and
- (b) the terminated applicant/Innovation Cluster will have no right to monetary or any other form of compensation, in respect of damage or loss of any kind suffered by the applicant or the Innovation Cluster including without limitation, in relation to time spent in making an application, expenses in forming a special purpose vehicle, negotiating an Agreement, reputational damage, or any other loss or damage whatsoever.

4. Intellectual Property and Public Disclosure

4.1. Management of Intellectual Property and Confidential Information before specific Agreement/s entered into

Intellectual Property in all information contained in an application, any part of a Project, or a Developed Solution (as developed from time to time throughout the course of participation in the Program) remains vested in the applicant until such time as the Solution is test bedded and the Intellectual Property becomes vested in accordance with an Agreement.

All information of an Innovation Cluster will be used by the Territory only upon and subject to the terms of the Department's policy in relation to the use of Intellectual Property and Confidential Information for the Program.

4.2. Participants warranty and protection of Intellectual Property in information

Participants warrant to the Department that they are and will be throughout their participation in the Program, entitled to deal with Information developed as a consequence of their participation in the Program in any way they see fit and any disclosure or dealings will not infringe the intellectual property rights of any third party, (including any Moral Rights within the meaning of the *Copyright Act 1968 (Cth)*).

Subject to any contrary agreement with the Department and/or a Challenge Sponsor, Participants must ensure that they take such measures as are prudent and adequate at each stage of participation in the Program to protect their intellectual property rights in any information contained in their submission to carry out a Project.

5. Insurance and Risk

A Participant must ensure that it puts in place and maintains for the entire period it is participating in the Program, and until any funding granted by the Department or any other funding body is acquitted, policies of insurance adequate to cover all the Participant's risks relating to the Solution.

Participation in the Program is entirely at the Participant's risk in all things. As a condition of entry to the Program, Participants fully release, discharge and indemnify the Northern Territory Government, the Department (including its employees, contractors and agents) and any other person, organisation or government/semi government body that assists a Participant at any stage of the Program (**Those Indemnified**), against any and all damage or loss of any kind and any costs in relation thereto, accruing to a Participant or to a third party to whom the participant may be liable, in the course of, or as a result of, participation in the Program, regardless of whether such loss or damage arises from an act or omission, and whether that act or omission is wrongful, negligent or in breach of legislation, or not.

The release and indemnity contained in this section survives the Participant's period of participation in the Program and continues for the benefit of Those Indemnified.

6. Due Diligence, Audit and Privacy

All Participants acknowledge that the Department will, in addition to anything specifically referred to in these Program Terms and Conditions, conduct such due diligence enquiries as it sees fit throughout the participation process and through the term of any Agreement, in order to ensure the integrity of the Program and that the allocated funding is to be used strictly in accordance with the intent of the relevant Government policy. Such enquiries may include (but are not necessarily limited to) company, association and business name searches on a Business, title and other searches for the Premises, searches of the courts and/ or the Trustee in Bankruptcy, credit checks, and enquiries of private businesses or institutions as the Department sees fit, together with any enquiries as to matters contained in its application.

All Participants must be solvent at the time of participating in the Program and must have no reason to believe that they may become insolvent during the period of their participation in the Program. If a Participant has an external administrator or liquidator appointed or the Department receives other evidence of insolvency then the Department may (but is not obliged to) terminate participation by the insolvent entity (acting reasonably having regard to the circumstances).

All Participants in the Program acknowledge and accept that the Department will seek from, and share, information with other Northern Territory Government agencies, as well as such external professional advisers as it may need to do in order to assess eligibility, such as conveyancers/ solicitors.

Personal information may be collected as part of the application process and will be used to assess your eligibility for the Program, including conducting due diligence, and if approved, subsequent Program management and administration.

The Department has a legal obligation under the *Information Act (NT) 2002* not to disclose personal information other than for the primary purpose for which it was collected, unless otherwise agreed to, or authorised by law.

The Department will handle your personal information in accordance with its [Privacy Policy²](#) which outlines how you can access or seek to correct your personal information, or lodge a complaint about a breach of the Northern Territory's Privacy Principles. You can access or find out more about how the Department manages your personal information by contacting the Privacy Officer at the Department of

² <https://industry.nt.gov.au/publications/business/policies/privacy-policy>

Industry, Tourism and Trade via GPO Box 3200, Darwin, NT 0801, or by telephoning (08) 8999 1792 or emailing Centralrecords.DTBI@nt.gov.au.

In addition to the Privacy Laws, the Department is subject to, and may do anything in connection with this Program that may be required for compliance with the *Independent Commissioner against Corruption Act 2017*.

The Department reserves the right to conduct an audit of a Participant (including inspecting records of expenditure of funding, or attending at a Participant's place of business to inspect progress through all stages of the Program) at any time during the period of participation or within 12 months after the conclusion of the Applicant's participation in the Program.

7. Compliance with Laws

By applying to participate and as a continuing obligation throughout any period of participation in the Program, all Participants must comply with all laws relevant to their participation in the Program including, without limitation, the *Independent Commissioner Against Corruption Act 2017*.

Participants warrant to the Department that they have read, understood and fully accept these Program terms and conditions and fully release and indemnify the Department against any loss or damage he / she / it / they may suffer of any nature whatsoever (including without limitation personal injury or death) caused or contributed to by their participation in the Program.

8. Program duration and changes

The Program opens on 24 January 2021 and will end when the funding is fully committed. Timelines applicable to each individual Challenge will be published.

The Department reserves the right to:

- Vary these Program Terms and Conditions, the eligibility requirements or any other documented rule, procedure or information relating to the Program at any time without notice, whether retrospectively or otherwise;
- Accept or reject any application for participation in any stage of the Program in its absolute discretion;
- Cease the Program at any time without any liability to any participant should Northern Territory Government policy change or the budget allocation for the Program be re-prioritised or reduced.