



## **Conditions: Quoting and Contract**

### **Simple Consultant Services**

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# CONDITIONS OF QUOTING AND CONTRACT SIMPLE CONSULTANT SERVICES

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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 this request for quotation and includes all annexures, schedules, drawings, attachments and addendums.

### 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. Quotation form and all other Response Schedules);

- (a) in English;
- (b) in the form required; and
- (c) 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 as ineligible for consideration.

Oral Quotations or Quotations submitted by electronic mail (other than via Quotations and Tenders Online eLodgement Service), 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 Delivered By Hand/Courier Service

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

Quotations delivered by hand must be enclosed in a sealed envelope and marked with the Quotation Number and closing date.

Respondents lodging a Quotation by hand in 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 as ineligible for consideration.

#### 1.2.3 Sent By Post

Quotations **MUST NOT** be lodged by prepaid post. Any Quotation submitted by prepaid post shall be declared as ineligible for consideration.

#### 1.2.4 Sent By Facsimile

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

#### 1.2.5 Sent by Electronic Lodgement

Quotations sent by electronic lodgement must be submitted using the eLodgement button via the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFQ.

Quotations must be in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip).

## CONDITIONS OF QUOTING

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Quotations in an unspecified electronic format may result in the Quotation being declared as ineligible for consideration.

Where selected quotations have been sought and access to the RFQ is provided from an e-mail link, Quotations must be submitted electronically using the same e-mail 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 Services, an inspection of the site if applicable, and shall satisfy themselves as to the correctness and sufficiency of the RFQ documentation.

Arrangements for a Site inspection are as stated in the clause titled "Permission To Visit Site" below.

The NT Government Procurement Framework which includes the NT Procurement Code can be found at the web address [www.nt.gov.au/dbe/procurement\\_policy/framework.html](http://www.nt.gov.au/dbe/procurement_policy/framework.html) or is available at the point of issue of the RFQ.

### 1.4 SITE RULES

Respondents are advised that there may be restrictions on carrying out the Services to be performed at the Site. Respondents shall become familiar with the rules and regulations in force at the site as issued by the relevant security authority.

Where Site Rules apply 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-consultants undertaking work within the Site are made aware of the Site Rules, their application and that they comply with the Site Rules.

## 1.5 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.

## 1.6 RESPONDENT 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.

Any Respondent who believes the RFQ to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing to [capsassist.dbe@nt.gov.au](mailto:capsassist.dbe@nt.gov.au) as early as possible, but in any event before the stated time and date for closing of Quotations.

## 1.7 PERMISSION TO VISIT SITE

### **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.

## 1.8 SIGNING OF DOCUMENTS

The Respondent shall sign its Quotation as indicated below.

- (a) In the case of a corporation:
- (iii) With its common seal, in the manner prescribed by its Constitution; or
  - (ii) Without its common seal, if signed by:
    - 2 directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - (iii) By signature of two persons (other than the persons described in clause [ii]) 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):
- (iv) By signature of each proprietor of the firm.
  - (ii) Or in the case of firms having more than five proprietors, by signature of the proprietors authorised to bind the firm in contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal.
  - (v) 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 Quotation 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/BN) 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 Services will not be considered.

Where 'part only' offers are allowed, the Principal reserves the right to accept a portion or the whole 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 pricing shall allow for labour, materials, transport, freight, overheads, profits and other costs as applicable.

Any Schedule of Rates/Fees/Lump Sum Break-up, which is included in the Response Schedules shall be completed and lodged with the Quotation.

Pricing shall be submitted for each item in the Schedule. Any Quotation in which the Schedule is not fully completed may result in the Quotation being declared as ineligible for consideration.

#### 1.14 CHANGE TO THE CONDITIONS OF CONTRACT

The Respondent is **NOT PERMITTED** to request changes to the Conditions of Contract applicable to the RFQ, or propose alternative Conditions of Contract. Failure to comply with this provision will result in the Respondent's Quotation being declared as ineligible for consideration.

#### 1.15 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.nt.gov.au/dbe/tendering/competitive\\_neutrality/competitive\\_neutrality.html](http://www.nt.gov.au/dbe/tendering/competitive_neutrality/competitive_neutrality.html)

#### 1.16 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 Services; and

**CONDITIONS OF QUOTING**

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- (b) a Respondent's sub-consultants and their sub-consultants 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-consultants' work, in an applicable CAL category or sub-category.

The Quotation in the space provided, must state:

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

Any Quotation not complying with the requirements of this clause may be invalid and set aside. The Procurement Review Board shall be the sole arbiter of any Quotation set aside 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](http://www.accreditation.com.au) or is available from:

CAL Registrar  
PO Box 125  
PARAP NT 0804  
Telephone: (08) 8922 4600

Facsimile: (08) 8984 4003

**1.17 LOCAL DEVELOPMENT**

The NT Government is committed to supporting businesses that use local consultants, 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 Services.

Respondents must include in the Response Schedules provided and submit with its Quotation, details of Sub-consultants 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; or  
(b) the apprentice/trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Education and Training (DET).; or  
(c) the training being undertaken is a recognised accredited training course.

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 Education and Training  
11<sup>th</sup> Floor, Mitchell Centre  
55 – 59 Mitchell Street  
DARWIN NT 0800  
Telephone: (08) 8901 1321

OR

GPO Box 4821  
DARWIN NT 0801  
Facsimile: (08) 8901 1326

- (a) 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

OR

GPO Box 3049  
DARWIN NT 0801  
(08) 8935 8200

OR

19 Hartley Street  
ALICE SPRINGS NT 0870  
Telephone: (08) 8953 3311

### 1.18 QUOTATION 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 and the Rate/Price(s) submitted.

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 compliance with undertakings given, standard/quality of work.
  - (ii) Extent of supervision of the Respondent required.
  - (iii) Previous disputes and claims history.
  - (iv) References (including Contractor Accreditation Limited if applicable).
- (b) Timeliness:
  - (i) Ability to commence and complete within timeframes specified including any risks.
- (c) Capacity:
  - (i) Ability to perform the Services including the experience of personnel (CVs) nominated to perform the Services including those of any sub-consultants to be used. (eg. Physical and technical capacity).
  - (ii) Number and value of 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 trainees supported by the Respondent.
  - (iv) Number of jobs for Territorians including Indigenous Territorians supported by the Respondent.
- (e) Scope Specific Criteria (specified as required):
  - (i) Scope Specific Criteria are those criteria that are considered relevant to the nature of the Services being procured. Scope Specific Criteria could include, but is not limited to, any one or more of the following: technical requirements of the Services, environmental issues or requirements, and specific experience and expertise.
- (f) Innovation (specified as required):
  - (i) New technology.
  - (ii) Alternative solutions.

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.

### 1.19 ADDITIONAL INFORMATION

The Respondent may be called upon to supply information additional to that provided in its Quotation to demonstrate to the satisfaction of the Principal that the Respondent has the capacity to perform the Services.

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 as ineligible for consideration.

#### **1.20 NEGOTIATIONS**

- (a) The Principal may engage in detailed discussions and negotiations with one or more Respondents with the goal of maximising the benefits of the Quotation.
- (b) Without limiting sub-clause 1.20(a) 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) At the end of this phase, there will be selection of a preferred Respondent after all material business, financial, technical and legal issues have been resolved. The selection of a preferred Respondent is subject to successfully concluding final contract 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.

#### **1.21 PERFORMANCE REPORT**

The Respondent will, if awarded the Contract, agree to the preparation and use of the Performance Report in the manner set out in the Conditions of Contract.

#### **1.22 PRIVACY NOTICE**

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

Respondent's personal information provided in this form can be accessed by the Respondent upon request. Any queries should be directed to the Officer stated in the Annexure as the contact point.

#### **1.23 NOTIFICATION OF ACCEPTANCE**

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

Notice of acceptance of the Quotation shall be given in the form of a written notice and this notice shall constitute a binding Contract between the Principal and the successful Respondent. Written notices 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 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.

#### **1.24 DEBRIEFING 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.

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## 2. CONDITIONS OF CONTRACT

### 2.1 INTERPRETATION

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.

**'Business Day'** means any day which is not a Saturday, Sunday or a NT wide public holiday within the meaning of the *Public Holidays Act*.

**'Completion'** means the Principal has determined that the performance of the Services has reached the stage where the Services are complete.

**'Consultant'** means the legal entity that, as party to the Contract is bound to execute the Services in accordance with the Contract and includes the successors and lawful assigns of the Consultant.

**'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 Consultant concerning the performance of the Services.

**'Date of Acceptance'** means the date, which appears on the written notice issued by the Principal and if no date appears is the date on which the Principal sent the written notice to the Consultant.

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

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

**'Fee'** means the rate/price per any section or item of the Services as stated in 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.

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

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

**'Lump Sum'** means the total sum which will have become payable to the Consultant by the Principal upon completion of the Services.

**'Notice of Acceptance'** means the written notice and any accompanying documentation sent to the Consultant by the Principal advising acceptance of its Quotation to provide the Services under the Contract.

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

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

**'Request for Quotation (RFQ)'** means the document(s) containing or referring to the Conditions of Quoting and Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Scope of Services, Drawings or Diagrams (if any) Response Schedules and any other document issued for the purposes of inviting Quotations for the Services.

**'Schedule of Rates'** means any schedule included in the Contract which, in respect of any section or item of Services, shows the respective unit rate of payment for performance of that service and which may also include lump sums, other sums, quantities and prices.

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

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

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

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) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (f) 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;
- (g) a reference to a clause includes a reference to a subclause of that clause;
- (h) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- (i) 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;
- (j) the word 'includes' in any form is not a word of limitation; and
- (k) 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.

## 2.2 FORMATION OF THE CONTRACT

The Contract between the Principal and the Consultant shall comprise:

- (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) Scope of Services;
- (f) Drawings included in the RFQ;
- (g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract.

- (h) Conditions of Quoting and all other documents, other than those specified above in (a) to (f) inclusive, forming the RFQ or the Contract (other than the Respondent Quotation); and
  - (i) 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 Consultant shall be paid either on a Lump Sum or a Time Charge (Schedule of Rates) basis as stated in the Annexure. The Contract shall be on a firm price basis.

### **2.3.2 Lump Sum Fee**

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

### **2.3.3 Time Charge Fee**

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

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

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

### **2.3.4 Disbursements and Expenses**

Where not already included in the Lump Sum or Time Charge Fees, the Consultant shall be reimbursed for disbursements and expenses as have been reasonably and properly incurred in performing the Services. Such expenses must have the prior approval of the Principal and shall be limited to the following:

- (a) Travelling time allowance, where applicable, shall be paid at the appropriate hourly rate for the time spent in travelling, where the Consultant actually pays such an allowance.
- (b) Accommodation and meals shall be reimbursed at current allowances payable to officers of the Principal.
- (c) Car allowances shall be paid per kilometre in accordance with the current Australian Taxation Office rates.
- (d) Fares for travel by means of public transport shall be reimbursed at actual costs except for travel by air, which shall be limited to the cost of economy class fares.
- (e) Unless provided otherwise in the Contract, the cost of reproducing final documents in quantity where directed by the Principal, shall be reimbursed at commercial rates agreed in advance.
- (f) The cost of reproducing documents in small quantities for periodic reviews will not be reimbursed.
- (g) The cost of other approved expenses shall be reimbursed at cost.

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

Expenses associated with visiting sites or attending meetings within a 50 kilometre radius from the Consultant's office shall not be reimbursed.

Unless provided otherwise in the Contract, the cost of computer time shall not be reimbursed.

### **2.3.5 Applicable Law**

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

## 2.4 RESPONSIBILITIES AND OBLIGATIONS OF THE PRINCIPAL

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

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

### 2.4.1 Principal's Representative

The Principal's Representative for the purposes of the Contract is as defined in the Annexure. The Principal's representative shall exercise the duties discretions and powers vested in the Principal under the Contract except this power of appointment and the powers, duties, discretions and authorities vested under the clauses titled "Termination" and "Disputes" of these Conditions of Contract.

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

### 2.4.2 Contract Manager

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

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

## 2.5 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT

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

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

The Consultant shall observe and comply with all requirements of all relevant Acts of the Commonwealth of Australia, Acts of the Northern Territory, the Northern Territory Procurement Code, and all requirements of any relevant authority, regulator or standard setting entity (including but not limited to those prescribed in the *Fair Work Act 2009*) as shall be in force in the place affecting or applicable to the Services or the performance of the Services.

### 2.5.1 Consultant's Representative

The Consultant shall appoint a representative ("**Consultant's Representative**") to be the first point of contact with the Principal. The Consultant's Representative shall be nominated to the Principal in writing.

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

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



The Consultant may, with the prior written approval of the Principal, cancel the appointment and shall nominate another Consultant's Representative.

## **2.6 REPLACEMENT OF CONSULTANT'S PERSONNEL**

The Consultant shall notify the Principal immediately of any changes in the Consultant's personnel undertaking the Services.

The Principal may, in its absolute discretion, give notice requiring the Consultant to remove any of its personnel or sub-contracted personnel from work in respect of the Services. The Consultant shall promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to the Principal. The Consultant shall not again employ a person so removed on or in connection with the Services.

## **2.7 STATUS OF CONSULTANT**

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

## **2.8 CONFLICT OF INTEREST**

The Consultant warrants that:

- (a) At the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and
- (b) It shall use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any sub-consultant.

The Consultant shall notify the Principal of any matter, which may give rise to an actual or potential conflict of interest between the Principal and the Consultant during the Contract. The Principal shall treat this information as confidential.

### **2.8.1 Conflict of Interest and Confidentiality Deed**

Following the award of a contract and upon request by the Principal, the Consultant shall:

- (a) execute a deed in favour of the Principal regarding confidentiality and conflicts of interests as they relate to the performance of the Services; and
- (b) ensure that each of its employees, agents and sub-consultants involved in performing the Services executes such a deed.

Sample Deeds can be found at the web address: [www.nt.gov.au/dbe/procurement\\_policy/framework.html](http://www.nt.gov.au/dbe/procurement_policy/framework.html)

## **2.9 NOTICES**

### **2.9.1 Address**

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

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

### **2.9.2 Effective Date of Service**

Service of any notice, direction, request or other communication pursuant to the above sub-clause shall be deemed to have been given or made when delivered personally at the time of such delivery or when posted as provided under the above sub-clause:

- (a) three (3) working days after the posting of the notice, direction, request or other communication; or

- (b) when delivered by electronic transmission, on production of a transmission report by the machine from which the notice was sent indicating that the notice sent electronically was received in its entirety at the recipient's machine.

## **2.10 CONFIDENTIALITY, PUBLICITY AND MEDIA**

### **2.10.1 Confidentiality**

- a) For the purposes of this clause 2.10.1 "Confidential Information" means any information or material relating to the Contract or the Services including (without limitation):
  - (i) any information that by its nature is confidential;
  - (ii) any information designated as confidential; and
  - (iii) any information that the Consultant knows is confidential.
- b) The Consultant 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 sub-consultant, to the extent needed to perform their obligations under the Contract;
  - (iii) where the disclosure is required to be disclosed by law.
- c) The Consultant shall ensure that its employees and all sub-consultants, contractors and suppliers engaged by the Consultant for the performance of the Contract comply with the requirements of this clause 2.10.1.

### **2.10.2 Media and Publicity**

- a) The Consultant shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising eg for sub-consultants), award nomination, document or article for publication concerning the Contract, the Services or the site in any media without the prior written approval of the Principal.
- b) Prior to taking any action or doing anything the Consultant shall refer:
  - (i) any media enquiries concerning the Contract, the site, the Principal or the Services to the Principal for the Principal's written response; and
  - (ii) any media requests concerning the Contract, the site, the Principal or the Services (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 Consultant shall ensure that its employees and all sub-consultants, contractors and suppliers engaged by the Consultant for the performance of the Contract comply with the requirements of this clause 2.10.2 and obtain the Principal's prior written consent (through the Consultant) before responding to enquiries or publishing anything of the type referred to in this clause 2.10.2.

## **2.11 INDUSTRY ACCREDITATION AND STANDARDS**

Where applicable, the Consultant shall:

- a) maintain the currency of the required 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-consultants;
  - (iii) compliance measures;
  - (iv) penalties; and
  - (v) termination arrangements.

## **2.12 LOCAL DEVELOPMENT**

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

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

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

The Consultant's level of compliance with the requirements of this clause will be included in the Performance Report on the Consultant 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.

## **2.13 INDEMNITIES**

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

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

## **2.14 INSURANCES**

### **2.14.1 Workers Compensation Insurance**

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

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

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

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

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

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

### **2.14.2 Public Liability**

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

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

### **2.14.3 Professional Indemnity**

Before commencing the Services, the Consultant shall take out, and shall maintain during the currency of the Contract a Professional Indemnity Insurance policy for an amount not less than the sum stated in the Annexure.

The Consultant shall continue to maintain a professional indemnity policy after the conclusion of the Contract for a period and for such amount as is necessary to indemnify the Consultant in respect of all liabilities arising out of this Contract. The Consultant's liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy.

### **2.14.4 Insurance of Documents**

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

### **2.14.5 Lodgement of Certificates of Currency**

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

## **2.15 DOCUMENTS**

### **2.15.1 Ownership and Custody**

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

The Principal may re-use the documents prepared by the Consultant without payment or any additional fee or royalty to the Consultant provided that:

- (a) the Consultant's name is eliminated from the documents;
- (b) no costs or charges are borne by the Consultant, and
- (c) the Consultant is indemnified by the Principal against any liability for loss or damage resulting from any error or omission in the documents with respect to any such reuse of documents.

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

### **2.15.2 Warranty and Indemnity**

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

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

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

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

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

#### **2.15.4 Patents**

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

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

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

#### **2.16 TIME FOR COMMENCEMENT AND COMPLETION**

The Consultant shall commence the Services within the time stated in the Contract.

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

#### **2.17 SERVICES AND DUTIES**

##### **2.17.1 Program**

The Consultant shall, within fourteen (14) days of award of Contract, submit for the Principal's agreement a program for the delivery of the Services to meet the completion date or dates stated in the Annexure.

The program shall be in a form appropriate to the Services and acceptable to the Principal and may:

- (a) indicate the interdependencies of each component part of the Services;
- (b) allow appropriate periods for the review by the Principal of documents to be produced by the Consultant;
- (c) clearly indicate any allowances made in the program for delays to the provision of the Services or any component parts of the Services outside the Consultant's control; and
- (d) include a separate time line for each discrete component of the Services and a completion date for each of those components.

During the Contract, the Consultant shall progressively make the necessary adjustments to the program to ensure each stated completion date is achieved. If the Consultant at any time believes that the Consultant may be unable to meet a completion date for any reason, the Consultant shall notify the Principal in writing and state the remedial action necessary to achieve the completion date.

If the Principal considers that the Consultant may not meet a completion date, it may notify the Consultant and require the Consultant to notify within a reasonable time specified in the notice what remedial action (if any) the Consultant proposes to take to ensure that the relevant completion date is met.

The Consultant shall submit reports to the Principal in an agreed format and at agreed intervals as to the progress of the Services. The Consultant shall attend progress review and co-ordination meetings in accordance with the requirements of the Principal and at a location specified by the Principal and shall attend any other meetings, which are desirable to ensure the proper and effective provision of the Services by the Consultant.

The Principal may direct the Consultant to deviate from the current program provided by the Consultant. The Consultant shall be entitled to recover any extra costs and expenses incurred by it as a consequence of any deviation directed by the Principal under clause titled Directions by the Principal only if the deviation is required for the convenience of the Principal or the deviation is due to a cause outside the reasonable control of the Consultant.

##### **2.17.2 Compliance with Laws**

The Consultant shall take due care that all documents comply with all relevant Laws and shall, as far as practicable, obtain all necessary approvals necessary for the project or that part of the project to which the Services relates to be provided by the Consultant under this Contract.

The Consultant shall promptly notify the Principal in writing should the requirements of the Project or that part of the Project to which this work relates, conflict with any Laws or if any necessary approvals have not been obtained.

The obligations under this sub-clause shall not apply if a failure to obtain a necessary approval is due to an act, default or omission on the part of the Principal or the Principal's Representative.

#### **2.17.3 Checking, Signing and Certification**

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

The Consultant shall coordinate all documents provided or to be provided by a sub-consultant, with documents generated by the Consultant under the Contract.

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

#### **2.17.4 Corrections**

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

The Consultant shall be entitled to an additional fee only where the correction or clarification arises from an act, default or omission of the Principal.

#### **2.17.5 Project Cost Control**

The Consultant shall employ appropriate cost control techniques such as outlined in the National Public Services Conference Cost Control Manual and follow forms and procedures as the Principal may direct in order to ensure that project cost limitations as stated in the Contract are not exceeded. Where, during the course of providing work under the Contract, circumstances put such cost limits at risk, the Consultant shall promptly advise the Principal and recommend remedial action for the Principal's determination.

Where the lowest conforming construction Quotation exceeds the project cost limitations, the Consultant shall review his documents, advise the Principal of the reasons for the excess and recommend remedial action for the Principal's determination.

The Consultant shall, on written request by the Principal, amend the documents prepared by him to achieve the stated project cost limitations. The Consultant shall only be entitled to an additional fee where the correction or clarification arises from a fault of the Principal.

#### **2.17.6 Review of Work by Others**

Where the Consultant is required to take over or develop work provided by or on behalf of the Principal, it shall review that work and notify the Principal in writing whether:

- (a) the work is satisfactory for use by the Consultant as to form and content; or
- (b) it is necessary for the Consultant to remedy deficiencies in the work before the work may be used for its intended purpose and shall specify the deficiencies and the remedial work necessary.

If the Consultant provides a written notice under this clause, and the Principal directs the Consultant to undertake remedial work, then the remedial work undertaken by the Consultant shall be valued as though a variation under the clause titled "Variations" and the sub-clauses titled "Corrections" and "Project Cost Control" under this clause.

### **2.18 INVOICING AND PAYMENT**

The fee payable by the Principal to the Consultant for the provision of the Services shall be calculated on a lump sum, or time charge basis or a combination of these, as specified in the Annexure.

Unless otherwise agreed, the Principal shall pay the fee payable to the Consultant under the Contract progressively.

The Consultant shall submit to the Principal during the Contract a claim for a progressive payment of the fee "Progress Claim". The claim shall be in the form of a Tax invoice and shall include not less than the following details:

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- (a) Details of the Services performed by the Consultant during the period to which the claim relates (“Claim Period”).
- (b) The Consultant’s estimate of the proportion of the fee payable to the Consultant by the Principal for Services provided during the Claim Period.
- (c) The basis on which the Consultant has calculated the proportion of the fee payable for the Claim Period.
- (d) Any adjustments to the fee properly due and payable to the Consultant in the Claim Period.
- (e) If the Consultant is claiming payment for costs and disbursements reimbursable to the Consultant under the Contract, any invoices or receipts necessary to substantiate that the Consultant has incurred the costs and disbursements claimed.
- (f) The Consultant shall notify the Principal of any matters which have arisen to the date of the claim which may affect the total fees payable under this Clause and, where practical provide an estimate of the amount thereof.

Within thirty (30) days of the date of receipt by the Principal of a Progress Claim, the Principal shall assess the claim and pay to the Consultant all amounts claimed by the Consultant that are, in the opinion of the Principal, properly due and payable to the Consultant under the Contract. The Consultant shall provide any further details in regard to the work upon request by the Principal.

The Principal may at any time after receipt of a Progress Claim and shall with the payment to the Consultant under this Clause, inform the Consultant of the reason for any difference between the Progress Claim and the sum which the Principal considers to be properly due and payable under the Contract for work under the Contract provided by the Consultant during the relevant Claim Period. The Principal reserves the right to recover any overpayment.

The making of a payment by the Principal under this clause shall not constitute an admission by the Principal that any Services, provided by the Consultant, conforms to the requirements of the Contract.

The Consultant’s claim will include details of any Adjustments under clause titled “Goods and Services Tax” of the Conditions of Contract and an explanation as to how such adjustments were calculated and details of any GST which the Consultant regards as payable on the contract value.

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

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

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

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

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

### 2.19 VARIATIONS

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

### 2.20 TRANSFER OR ASSIGNMENT

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

## **2.21 SUB-CONTRACTING**

Unless specifically provided for in the Contract, the Consultant shall not sub-contract any part of work under the Contract without the prior written approval of the Principal. Such approval shall not be unreasonably withheld.

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

## **2.22 PERFORMANCE REPORT**

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

- (a) The Principal will prepare a Performance Report (“**the Report**”);
- (b) The Principal shall liaise with the Consultant in completing the Report although the Principal reserves the ultimate right to complete the Report (other than the Consultant’s comments); and
- (c) The Principal may release the Report to any other NT Government Agency for evaluation of the Consultant’s performance in the assessment of future Quotations.

The Consultant agrees that neither the Consultant nor any other persona 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.

## **2.23 DISPUTES**

### **2.23.1 Continuation of Work during Disputes**

During disputes and until such time that work under the Contract are completed, the Consultant shall at all times continue to fulfil its obligations under the Contract and comply with all directions given to it by the Principal in accordance with the provision of the Contract, provided that such directions do not touch upon the subject matter of the dispute in respect of which written notice has been given in accordance with the following sub-clause.

### **2.23.2 Procedures for Resolution of Disputes**

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

If the Consultant is dissatisfied with the decision of the Principal's Representative, the Consultant may, not later than fourteen (14) days after the decision is given, refer the matter to the Principal who shall appoint an appropriate person (as so determined by the Principal) to hear the matter. That person shall, as soon as practicable thereafter, give a decision in writing to the Consultant.

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

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

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

### **2.24.1 Termination by Mutual Agreement**

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

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



### 2.24.2 Termination due to Default

The Principal may terminate the Contract if the Consultant:

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

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

### 2.24.3 Change in Constitution of Consultant

Where the financial position of the Consultant materially changes or where the Consultant, being a partnership, company, consortium or other composite body, undergoes a change in its structure which shall, in the opinion of the Principal, limit the capacity of the Consultant to provide work under the Contract, or precludes the Consultant from providing the Services in accordance with the Contract, the Principal may terminate the Contract.

### 2.24.4 Incapacitation of Consultant

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

### 2.24.5 Suspension and Deferment

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

### 2.24.6 Fee Entitlement upon Termination

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

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

## 2.25 GOODS AND SERVICES TAX

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

- 'GST'** means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999* ("**the Act**") and any related *Tax Imposition Act* and "**New Tax System Changes**" has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999* ("**the TPA**"). Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;
- 'GST Rate'** means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time;
- 'Input Tax Credit'** has the meaning it bears in the Act;

**'Recipient' '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:

"Entity" shall also mean Consultant;

"Recipient" shall also mean Principal;

"Supplies" shall also mean the Goods and/or Service.

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

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

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

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

## 2.26 PRIVACY

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

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

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

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

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

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

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

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

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

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

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

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

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

## CONDITIONS OF CONTRACT

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

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

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

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

