Conditions: Tendering and Contract

Provision of Services
Under the Partnership Agreement with NTG

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1. CONDITIONS OF TENDERING

1.1 LODGEMENT OF TENDERS

For the Tender to be considered, the Tenderer shall fully complete and submit one copy:

(a) of the documents listed and in the form required by the Annexure clause titled “Documents to be Lodged” (ie. Tender Form and all other Response Schedules);

(b) in English; and

(c) to be fully received by the stated time and date for closing of Tenders.

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

Oral Tenders or Tenders submitted by electronic mail (other than via Quotations and Tenders Online eLodgement Service) shall not be considered.

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

1.1.1 Closing Time and Date

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

1.1.2 Sent by Hand/Courier Service/Post/Facsimile

Submission of Tenders by hand, courier service, prepaid post or facsimile is NOT ALLOWED.

1.1.3 Sent by Electronic Lodgement

Tenders may be only sent by electronic lodgement:

(a) in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip); and

(b) by using the eLodgement button;

on the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT.

Access to the RFT is provided from a link (to the Quotations and Tenders Online eLodgement Service) in the e-mail sent inviting Tenders, Tenders must be returned electronically using the same e-mail link.

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

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

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

1.1.4 Late Tenders

Tenders received (in full or part) after the stated time and date for closing of Tenders are not admitted for consideration.

Notwithstanding the preceding paragraph:

(a) Tenders submitted via the Quotations and Tenders Online eLodgement Service will be considered if it can be established to the satisfaction of the Principal that it was received before the stated date and time for closing, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.

(b) The Principal may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated date and time for closing of Tenders where those Tenders were not
received before the stated date and time for closing of Tenders because of a fault or failure of Quotations and Tenders Online eLodgement Service.

1.2 TENDERERS TO INFORM THEMSELVES

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

The NT Government Legislative Procurement Framework including the NT Procurement Code can be found at the web address www.nt.gov.au/dbe/procurement_policy/framework.html or is available at the point of issue of the RFT.

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

Should the Tenderer find any discrepancy, error or omission in the RFT they shall notify the person specified in the Annexure, in writing, as early as possible but in any event before the stated time and date for closing of Tenders.

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

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

1.3 SIGNING OF DOCUMENTS

The Tenderer shall complete and ensure its Tender is submitted by the person(s) authorised by the entity to bind it in contract.

Note: In lodging via the Quotations and Tenders Online eLodgement Service, there is no requirement to “sign” the “signature” block on the Tender Form.

Each Tender shall also contain the Tenderer's full name, unique business identifier required by law (eg Business Registration Number), an registered address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender and any subsequent Contract arising out of acceptance of the Tender.

1.4 TENDER VALIDITY

Tenders shall remain valid for the period stated in the Annexure. A Tenderer may withdraw its Tender at any time after the expiration of the Tender validity period, but shall not withdraw its Tender prior to the expiration of such period unless such withdrawal is accepted by or on behalf of the Principal.

1.5 ALTERNATIVE TENDERS

Tenderers may submit alternative Tenders where stated in the Annexure that alternative Tenders are allowed.

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

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

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

The Tenderer shall make due allowance for any fees, duties, royalties, premiums, costs, charges and the like which will be due and payable under the requirements of the country of operation to any person or authority. Tenderers shall submit a Quotation that includes GST.

1.7 **PRICING**

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

Any Tender in which the Schedule is not fully completed may be regarded as informal and rejected.

1.8 **PART OFFER AND PART ACCEPTANCE**

Tenderers shall offer for the whole of the Services.

1.9 **LOCAL DEVELOPMENT**

The Partnership Agreement recognises the growing needs of the Territory and promotes collaboration between the NT Government and Charles Darwin University/Batchelor Institute of Indigenous Tertiary Education for the benefit of all Territorians in the areas of economic, social, cultural and environmentally sustainable development and also to improve the economic and social outcomes of Indigenous Territorians respectively.

Assessment will take into consideration how this Service will address the core outcomes of the Partnership Agreements.

1.10 **TENDER ASSESSMENT CRITERIA**

Selection of the successful Tenderer will be based on, but not necessarily limited to, assessment of Tenders against the Tender Assessment Criteria and the cost of the Service offered.

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

(a) **Past Performance:**
   (i) Performance history including standard/quality of work.

(b) **Timeliness:**
   (i) Ability to commence and complete within timeframes required.

(c) **Capacity:**
   (i) Ability to perform the Services including the experience of personnel (CVs) nominated to perform the Services, and those of any sub-contractors to be engaged.
   (ii) Number, details and value of Contracts in progress.
   (iii) Risk.

(d) **Local Development and Value Adding:**
   (i) Enhancement of NT capability in the areas of economic, social, cultural and environmentally sustainable development including indigenous development.

(e) **Scope Specific Criteria:**
   (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: understanding issues or requirements of the Services, and specific experience and expertise.
Tenderers should provide all relevant factors addressing the selection criteria specified in the Response Schedules, which may assist the Principal in making an assessment of the Tender.

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

1.11 ADDITIONAL INFORMATION

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

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

1.12 NEGOTIATIONS

The Principal may engage in detailed discussions and negotiations with the Tenderer with the goal of maximising the benefits of the Tender.

As part of this process, Tenderers may be asked to improve any of the technical, commercial, financial, contractual and/or other aspects of their Tender. The result of any negotiations will be incorporated into the final Contract.

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

1.13 PERFORMANCE REPORT

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

1.14 PRIVACY NOTICE

The Principal is collecting the information on the Declaration of Business Status form to determine eligibility to contract with the Territory. 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 a Tender not being considered in the assessment process.

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

1.15 NOTIFICATION OF ACCEPTANCE

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

Notice of acceptance of the Tender shall be given in the form of a written notice and this notice shall complete a binding Contract between the Principal and the successful Tenderer (hereinafter called the “Contractor”). 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 Tender Form.

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

1.16 DEBRIEFING TENDERERS

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

Information will be confined to discussion of the Tenderer’s Tender only.
2. CONDITIONS OF CONTRACT

2.1 INTERPRETATION OF TERMS

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

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

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

'Contract' means, in the order of precedence in which they should be read, these conditions of contract, the Notice of Acceptance, the RFT Response Schedules and, to the extent it is not inconsistent with any of the above, the Tenderer's response that constitutes or evidences the final and concluded agreement between the Principal and the Contractor concerning the performance of the Services.

'Contract Manager' means the person who from time to time is appointed or authorised by the Principal's Representative as Contract Manager and includes any person for the time being acting for or on behalf of the Contract Manager. The Contract Manager is nominated in the Annexure.

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

'Contractor's Representative' means the person appointed by the Contractor to be the first point of contact with the Principal. The Contractor's Representative shall be nominated to the Principal in writing. The Contractor may, with the prior written approval of the Principal, cancel the nomination and nominate another Contractor's Representative.

'Date of Acceptance' means the date, which appears on the notice of acceptance issued by the Principal accepting the Tenderer's Tender.

'Intellectual Property' includes all copyright and neighbouring rights, and all rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, and confidential information (including trade secrets and know how).

'Lump Sum' means the Contractor has agreed to provide the Services for the total price as set out in the Contract.

'Notice of acceptance' means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of the Contractor's Tender to provide Services.

'Person' means a natural person, or a corporation, partnership, joint venture, incorporated association, government, local government authority or agency.

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

'Principal's Representative' means the person nominated by the Principal to exercise the duties; discretions and powers vested in the Principal under the Contract. The Principal's Representative is nominated in the Annexure. The nomination 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 Contractor. The Contractor shall recognise and accept notices from the Principal's Representative as if the Principal issued such. Any reference to the Principal within these conditions shall be deemed to be a reference to the Principal's Representative so far as it concerns the exercise of the Principal's Representative's powers by virtue of his nomination.

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

'Request for Tender (RFT)' means the document containing or referring to the Conditions of Tendering, the Conditions of Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Scope of Services, Response Schedules and any other document issued for the purposes of inviting tenders for the Services.
'Schedule of Rates' means any schedule included in the Contract which, in respect of any section or item of the Services to be carried out, shows the respective unit rate of payment for performance of that Service.

'Services' means the services that are to be performed by the Contractor in accordance with the Contract, including all variations provided for by the Contract.

'sub-contractor' means a Person who provides goods and/or services to the Contractor. The Contractor is responsible for all payments to sub-contractors.

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

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

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

Words importing a gender include every gender.

A reference to persons includes Corporations.

2.2 NATURE OF CONTRACT

2.2.1 Basis of Payment

The basis for payment will be stated in the Annexure.

Where the Contract is deemed to be on a Lump Sum basis, the sum payable shall be, subject to any adjustment made pursuant to the Contract, the amount and under the provisions as stated in the Contract.

Where the Contract is deemed to be on a Schedule of Rates basis the sum payable shall, subject to any adjustment made pursuant to the Contract, be the measured quantity of each item of the Services actually carried out at the rate, timetable or program set out in the Schedule of Rates.

2.2.2 Disbursements and Expenses

Where not already included in the Lump Sum or Schedule of Rates charges, the Contractor may 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 the Contractor shall submit with its claim for such authorised expenses and disbursements evidence of those costs.

2.2.3 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the Northern Territory of Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that Territory.

2.3 ENTIRE AGREEMENT

The Contract formed between the parties for undertaking the Services constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes any previous agreements or understandings.

2.4 GENERAL OBLIGATIONS OF THE PARTIES

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

(a) act reasonably in performing their obligations and exercising their rights under the Contract;

(b) diligently perform their respective obligations under this Contract; and

(c) work together in a collaborative manner.
2.5 CONTRACTOR'S RESPONSIBILITIES AND OBLIGATIONS

The Contractor warrants that:

(a) the Services shall be fit for purpose and carried out in accordance with the requirements of the Contract and with all due care and skill and in accordance with appropriate standards, principles and practices;

(b) in addition to complying with the other provisions of this Contract the Contractor shall comply with all statements or representations as to its performance or the provision of the Services contained in the Tender;

(c) the Services shall be carried out by the Contractor's employees, or sub-contractors approved by the Principal and no additional charge will be claimed where replacement employees are required;

(d) it shall remain fully responsible for all work undertaken by the Contractor regardless of any review or acceptance of that work by the Principal;

(e) it shall provide such further information in relation to the provision of the Services as reasonably required by the Principal;

(f) the information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and the Contractor's employees and sub-contractors is correct;

(g) it has established and will comply with and maintain during the Contract, all Plans as required under in the Contract; and

(h) it will maintain all certificates, licenses, authorisations required to perform the Service as required under the Contract.

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

The Contractor 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 or that are at any time during the term of the Contract brought into existence, in the place affecting or applicable to the Services or the execution of the Services.

2.6 STATUS OF CONTRACTOR

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

2.7 REPLACEMENT OF CONTRACTOR'S PERSONNEL

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

The Principal may require the Contractor to replace, at its absolute discretion, personnel employed in performing the Services, whether employed by the Contractor or not and the Contractor shall immediately comply with or ensure immediate compliance with such requirement and the Contractor shall not again employ a person so removed on or in connection with the Services.

2.8 DIRECTIONS AND NOTICES

The Contractor shall comply with any direction either orally or in writing issued, given or served upon it by the Principal. Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing. For the purposes of this clause the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal may make, give or issue pursuant to the provisions of the Contract.
2.9 SERVICE OF DOCUMENTS

Any notice in writing by the Principal or the Contractor, sent to the address set out in the Contract, shall be deemed to have been duly received:

(a) in the case of delivery by post, seven (7) business days after the date of posting; and

(b) in the case of electronic transmissions, on receipt by the sender of a transmission report from the despatching machine indicating that the transmission sent was received.

2.10 CONFLICT OF INTEREST

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

2.11 CONFIDENTIALITY AND PUBLICITY

The Contractor agrees that the Contractor or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any confidential information or documentation relating to the Principal or the affairs of others which may have come to its or their knowledge as a result of the Contract or performance of the Services and shall take all necessary precautions to prevent unauthorised access to such information or documentation.

The Contractor shall not divulge any information regarding the nature or progress of the Services or give any publicity concerning the Services except with the written consent of the Principal.

2.12 INDEMNITIES

The Contractor shall keep the Principal and employees or agents of the Principal indemnified against any legal liability, loss, claim, action or proceeding including (without limitation) for personal injury to, or death of any person or for damage to any property arising from the carrying out of the 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 Contractor shall indemnify the Principal at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the existence of any patent, design, trademark or copyright or other protected right in connection with the carrying out of the Services.

2.13 INSURANCES

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

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

a) for Contractors employing workers:
   
   (i) workers compensation policy number;
   
   (ii) name of insurer; and
   
   (iii) date of expiry.

b) for Contractors not employing workers:

   (i) written advice that they are not employing nor intending to employ workers during the currency of the contract.
The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Workers Rehabilitation and Compensation Act 2009*. Self-employed Contractors should ensure that they have adequate insurance coverage in place.

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

### 2.13.2 Public Liability Insurance

Before commencing the Services, the Contractor shall take out and maintain for the currency of the Contract a Public Liability policy of insurance to cover any liability that it may have or that may arise to third parties.

The Policy shall be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

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

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

### 2.13.3 Professional Indemnity

Before commencing the Services, the Contractor 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 Contractor 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 Contractor in respect of all liabilities arising out of this Contract. The Contractor’s liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy.

### 2.13.4 Insurance of Documents

Where relevant 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 Contractor. The Contractor shall ensure that this responsibility is met at all times by an appropriate Insurance Policy.

### 2.13.5 Lodgement of Certificates of Currency

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

### 2.14 INTELLECTUAL PROPERTY

All Intellectual Property Rights in all things produced by the Contractor in the course of performance of the Services shall belong with the Principal, including without limitation the future copyright in all things produced by the Contractor in the course of performance of the Services, which future copyright is hereby assigned to the Principal. The Contractor must disclose to the Principal all Intellectual Property Rights arising out of or in connection with the performance of the Services and do anything necessary to vest in the Principal the Intellectual Property Rights in all things produced by the Contractor.

Should the Contractor wish to submit any of the work produced under the Contract for publication in journals, exhibitions or entry for awards, prior written approval must be obtained from the Principal by submitting for a decision full detail of the material to be published. Such consent shall not be unreasonably withheld.

Should the Principal publicise the work, it will acknowledge the contribution made by the Contractor where practicable.

Nothing in this agreement shall affect the property rights in existing material. The Principal does not own Intellectual Property Rights in the Contractor’s methodologies or other proprietary information or copyright in existing publications or other work produced by or on behalf of the Contractor in existence at or prior to the commencement of the Contract.
If the contract is terminated prior to the completion of the Services, the Contractor must license to the Principal free of charge the Intellectual Property Rights in the prior existing work if the Principal requires that work for the purpose of completing the Services.

2.15 LOCAL DEVELOPMENT

The Contractor shall, when requested by the Principal, submit a written report on how the Services contributed to the Core Outcomes of the Partnership Agreement.

2.16 TIME FOR COMMENCEMENT AND COMPLETION

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

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

2.16.1 Completion Date

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

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

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

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

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

2.16.2 Progress Reports

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

2.16.3 Compliance with Statutory Requirements

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

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

2.16.4 Checking, Signing and Certification

All documents prepared under the Contract shall be signed by the Contractor 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 Contractor is not required to check standard documents provided by the Principal, but shall ensure that the standard documents are appropriate for their proposed use.
2.16.5 Corrections
Notwithstanding any reviews, approvals or directions undertaken or given by the Principal with respect to documents prepared by the Contractor, any error, ambiguity or deficiency, which subsequently becomes apparent, and is referred to the Contractor for correction or clarification shall be corrected or clarified by the Contractor to the satisfaction of the Principal.

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

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

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

2.17 INVOICING AND PAYMENT

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

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

Unless otherwise agreed, the Contractor shall provide to the Principal a Tax Invoice, not more frequently than at monthly intervals, showing an itemised account of the value of the Services completed including disbursements and expenses occurred as applicable. The Contractor shall provide any further details in regard to the Services claimed upon request by the Principal.

The Contractor’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.

Principal shall make payments within thirty (30) days of receipt of claims that are correct and in order for payment. Failure by the Principal to pay the amount payable at the due time will not be grounds to vitiate or avoid the Contract.

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

Failure by the Principal to pay the amount by the due date:
(a) will not be grounds to vitiate or avoid the contract; and
(b) will entitle the Contractor to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of an 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.

2.18 VARIATIONS

The Principal may direct a variation to the Services and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the Principal or failing agreement, by the Principal, and the Contract price increased or decreased accordingly.
2.19 ASSIGNMENT

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

2.20 SUB-CONTRACTING

Should the Contractor desire to sublet any part or parts of the Services it shall submit to the Principal for approval the names of the proposed sub-contractors and the nature of the Services that it is intended they undertake. No sub-contractor shall be employed in connection with the Services unless such approval is first obtained. Such approval shall not be unreasonably withheld.

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

Nothing contained in the Contract shall in any way be construed as relieving the Contractor of its responsibility for the performance of the Contract according to its tenor.

2.21 CONTRACTOR’S PERFORMANCE REPORT

The Contractor agrees that upon completion of the Services, the termination of the Contract or such other frequency as the Principal may determine:

(a) the Principal will prepare a Contractor's Performance Report ("the Report");
(b) the Principal shall liaise with the Contractor in completing the Report although the Principal reserves the ultimate right to complete the Report (other than the contractor's comments); and
(c) the Principal may release the Report to other Agency or the Commonwealth or any State or Territory for evaluation of the Contractor's performance in the assessment of future tenders.

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

2.22 DISPUTES

The Contractor shall, in respect of any dispute or difference arising out of the Contract and not later than twenty one (21) days after the dispute or difference arises, submit the matter at issue in writing with detailed particulars of the matter at issue to the Principal for decision and the Principal shall as soon as practicable thereafter give a decision in writing to the Contractor.

If the Contractor is dissatisfied with the decision of the Principal, the Contractor may, not later than thirty-five (35) days after the decision is given, notify the Principal that it requires the matter to be referred for expert determination, in accordance with the expert determination process detailed in “Northern Territory of Australia - Expert Determination”, a copy of which is available from the place of issue of the tender documents or from www.nt.gov.au/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.

2.23 DEFAULT OR BANKRUPTCY/LIQUIDATION

Without prejudice to any other remedy of the Principal at Law, if the Contractor fails to carry on the Services at a rate of progress satisfactory to the Principal, or neglects or omits to carry out any instruction of the Principal in respect of the Services or fails to complete the whole of the Services within the period specified for completion or such extended time as the Principal may approve, or intimates that the Contractor is unwilling or unable to complete the Services, or becomes insolvent or bankrupt, or being a company goes into liquidation, the Principal may, by notice in writing:

(a) cancel the Contract whereupon all sums of money which may remain in the hands of the Principal may be forfeited to the Principal and on being so forfeited shall become vested in or become payable to the Principal; or
(b) take the Services wholly or partly out of the control of the Contractor and complete the Services by any other means the Principal or so decides.

2.24 TERMINATION BY MUTUAL AGREEMENT

The Contract may be terminated at any time by mutual agreement between the Principal and the Contractor 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, and as applicable, the Contractor shall provide the Principal with all documents produced up to the date of termination regardless of their stage of completion.

2.25 RIGHTS OF PRINCIPAL TO RECOVER MONIES

Should the Principal take action pursuant to the clause titled Default or Bankruptcy sub-clause (b), then all losses, costs, charges and expenses incurred or sustained by the Principal in completing the Services will be deemed to be a debt due to the Principal by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies are less than the amount so deductible the amount of the deficiency shall be a debt due by the Contractor to the Principal.

2.26 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 Contractor;

"Recipient" shall also mean Principal;

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

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

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

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

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

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

'Act' means the Information Act (NT);

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

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

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

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

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

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

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

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

(a) policies for the management of personal information; and

(b) complaint handling procedures.

Each party is to immediately notify the other when a complaint is received. The Contractor acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them and the Contractor agrees to allow such access in accordance with that right.

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

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

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

(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.