Conditions: Tendering and Contract

Provision of Services under the Partnership Agreement with NTG

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# Conditions of Tendering

## General

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

In these Conditions of Tendering the following definitions apply:

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

**‘RFT’** means the request for tender inviting offers and includes all annexures, schedules, attachments and addenda.

**‘Tender’** means all documents lodged by the Tenderer in response to the RFT.

**‘Tenderer’** means the person lodging a Tender in response to the RFT.

## Lodgement of Tenders

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

1. in English;
2. in the form required; and
3. 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 declared ineligible for consideration.

Oral Tenders or Tenders submitted electronically (other than via the 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 Tenderer in the preparation of its Tender.

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

### Closing Time and Date

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

### Lodged by Hand/Courier Service/Post/Facsimile

Submission of Tenders by hand, commercial courier service, prepaid post or facsimile is **not** **allowed**.Any Tender submitted by these methods shall be declared ineligible for consideration.

### Lodged by Electronic Lodgement

Tenders may be **only sent** by electronic lodgement and must be:

1. submitted using the link provided in the covering email sent inviting the submission of an offer; and
2. in the electronic format as specified (ie .arf, .doc, .docx, .jpg, .pdf, .rtf, .tif, .txt, .xls, .xlsx, .zip).

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

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 using the 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 declared ineligible for consideration.

### Late Tenders

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

Notwithstanding the preceding paragraph, Tenderers may appeal such decisions however:

1. Tenders submitted via the Quotations and Tenders Online eLodgement Service will be considered if it can be established to the satisfaction of the Procurement Review Board 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.
2. The Procurement Review Board may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated 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.

## 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 Procurement Framework including the NT Procurement Code is available from the web address:
www.dob.nt.gov.au/business/tenders-contracts/legislative\_framework/Pages/default.aspx

## Compliance with NT Procurement Code

1. In preparing its Tender, submitting its Tender and throughout the tendering period and process the Tenderer shall comply with the Northern Territory Procurement Code (‘**Code**’).
2. A copy of the Code is available at the web address specified in the clause entitled “Tenderers to Inform Themselves”.
3. If the Principal:
4. has evidence that the Tenderer has not complied with the Code; or
5. is of the reasonable opinion that the Tenderer has not complied with the Code,

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

## Enquiries

Should the Tenderer

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

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

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

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

It is the sole responsibility of Tenderers to ensure that their contact details held by Quotations and Tenders Online Service are correct and up-to-date in order for them to receive any written addendum issued by the Principal.

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

## 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 Declaration by Tenderer form.

Each Tender shall also contain the Tenderer's full name, unique business identifier required by law (eg Business Registration Number), a 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.

## 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.

## 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.

## Part Offer and Part Acceptance

Tenderers shall offer for the whole of the Services.

## Taxes, Duties, Fees etc.

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

## Pricing

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

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

Any Tender in which the required pricing details are not fully completed may result in the Tender being declared ineligible for consideration.

## Local Content

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.

## Change to Conditions of Contract

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

## Disclosure of Weightings

Disclosure of percentage weightings will apply to all requests with an estimated value equal to or greater than $50,000.

Subject to the provisions of the previous paragraph, the assessment criteria and percentage weightings applicable to the RFT are detailed in the Annexure.

Although Tender assessment criterion may include sub-criteria, percentage weightings shall only be published as a cumulative percentage against the tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given percentage weightings, the weightings applying to the sub-criteria shall not be disclosed or published.

The clause titled “Tender Assessment Criteria” in the Conditions of Tendering provides examples of the types of consideration that may form part of each criterion if not stated as sub-criteria.

The Principal reserves the right to apply percentage weightings to each criterion in its total discretion, having regard to the required outcomes of the Tender.

## Tender Assessment Criteria

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

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

1. Past Performance:
2. Performance history including experience in providing similar Services and extent to which previous undertakings were achieved.
3. Standard/quality of Services provided.
4. Timeliness & Risk Management:
5. Ability to commence and complete within timeframes required.
6. Capacity:
7. Ability to perform the Services including the experience of personnel nominated to perform the Services, and those of any sub-contractors to be engaged (eg physical and technical capacity).
8. Number, details and value of Contracts in progress.
9. Risk
10. Local Content:
11. Enhancement of NT capability in the areas of economic, social, cultural and environmentally sustainable development including Indigenous development.
12. Scope Specific Criteria:
13. 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 applicable to the Services required.
14. Price:
15. Upfront costs; or
16. Through-life costs eg:
* Cost of ongoing training of Agency staff in performing the Services over a specific time.
* Cost of transit in and out or implementation from one Contractor to another.
1. Any other factors that would impact on costs to the Government.

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

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

## Clarification and Additional Information

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

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

## Negotiations

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

The result of any negotiations will be incorporated into the final Contract.

If the parties fail to complete satisfactory 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 the RFT.

## Performance Report

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

## Privacy Notice

The Principal is collecting the information in the Response Schedules 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 the Tender being declared ineligible for further consideration.

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

## Notification of Acceptance

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

The Notice of Acceptance of the Tender shall constitute a binding Contract between the Principal and the successful Tenderer (hereinafter called the ‘**Contractor**’). The Notice of Acceptance will, at the Principal’s discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender.

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

## 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.

# Conditions of Contract

## Interpretation of Terms

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

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

**'Annexure'** means the section detailing the specific requirements applicable to the Conditions of Tendering and Contract of the RFT.

**'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*.

**'Business Hours'** means from 8.00am to 4.30pm on a Business Day at the place where the Services are to be provided.

**'Commercial Gain'** means profit whether in cash or in kind other than as generated by fees paid by students in the ordinary course of the contractor’s business.

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

**'Confidential Information'** means all Information, whether oral, written, electronic or in other form, which is provided or disclosed by the Principal, its employees, advisors, agents or contractors to the Contractor, or accessed or obtained by the Contractor, and in particular including Information:

1. which is by its nature confidential;
2. which is marked confidential;
3. which the contractor knows, or ought to know, is confidential; or
4. which is designated by the Principal as constituting Confidential Information for the purposes of this Agreement;

but does not include Information which:

1. is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means; or
2. is in the possession of either Party prior to disclosure by the other Party, without any breach of an obligation of confidence; or
3. has been independently developed or acquired by a Party; or
4. is required to be released by law.

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

**'Contractor'** means the Institution named herein and includes its employees, officers, agents and subcontractors, and includes anybody that may be legislated in replacement or substitution of the Contractor from time to time.

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

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

**'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).

**'Background IP'** means any IP created independently of this Agreement (and includes any IP of third parties) which will be used by the Contractor when carrying out its obligations under this Agreement.

**'Foreground IP'** means IP developed in the course of and as a direct result of the Contractor carrying out its obligations under this Agreement.

**'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.

**'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 to exercise the duties; discretions and powers vested in the Principal under the Contract. The Principal's Representative is nominated in the Annexure.

**'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 and 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 other than the Contractor’ employees engaged by the Contractor who provides goods or services to the Contractor.

**'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:

1. headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
2. the singular includes the plural and vice-versa;
3. a reference to one gender includes the other;
4. a reference to a person includes a body politic, body corporate or a partnership joint venture, incorporated association, government, local government authority or agency;
5. 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;
6. 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;
7. a reference to time is to Australian Central Standard Time;
8. 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;
9. a reference to a “dollar”, “$”, “$A” or “AUD” means the Australian dollar unless otherwise stated;
10. a reference to a “measurement” means Australian legal units of measurement unless otherwise specified;
11. 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;
12. the word “includes” in any form is not a word of limitation;
13. a reference to a clause includes a reference to a subclause of that clause; and
14. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

## Formation of Contract

The Contract is comprised of:

1. these Conditions of Contract and any Special Conditions;
2. the Notice of Acceptance;
3. the RFT;
4. the Contractor’s Tender response; and
5. 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:

1. Special Conditions (if any);
2. these Conditions of Contract;
3. Annexure to the Conditions of Tendering and Contract;
4. Notice of Acceptance;
5. Scope of Services;
6. any other document expressly referred to in items (a) to (e) inclusive of this clause as forming part of the Contract;
7. Conditions of Tendering and all other documents, other than those specified above in (a) to (e) inclusive, forming the RFT or the Contract (other than the Contractor’s Tender); and
8. the Contractor’s Tender response including any other documents forming the Tender response;

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

## Nature of Contract

### 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.

Subject to sub-clause 2.3.3 prices will be considered firm for the duration of the Contract.

### 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.

### Price Adjustment

Where the Contract commencement and completion dates span a period greater than twelve (12) months the Principal may allow for price adjustment to the Contract Rates. The basis of price adjustment if any, to the Contract Rates shall be as stated in the Annexure.

Where the Contract allows a review of the Contract Rates during the Contract period the Contractor shall submit to the Principal for approval, a written application for price adjustment in accordance with the formula below. The application shall include adequate information to substantiate the adjustment in Rates.

It is the intention that revised Rates shall reflect the Contractor’s current costs based on relevant cost adjustment indices or other industry factors and shall not provide for increases in profit margin.

Price adjustment shall take effect at either the date allowed for in the Contract or the Contractor’s application date, whichever is the latter. There shall be no retrospective adjustment of the Contract Rates.

Pending notification in writing from the Principal of approval of an amendment to the Contract Rates, claims for payment shall be submitted at the existing Contract Rates.

Price Adjustment will be on the following basis:

1. Contract Rates shall be firm for the first twelve (12) months and thereafter subject to price adjustment.
2. The adjustment shall be undertaken once annually on anniversary of Contract commencement date. Adjustment shall apply until the next adjustment date.
3. The relevant statistics used for annual calculation of price adjustment shall be drawn from the most recent Australian Bureau of Statistics catalogue number 6401.0 All Groups – Darwin, available from www.abs.gov.au or by telephoning 1300 135 070 and selecting option 2.

**Pn** Is the New Price, expressed as $. Calculate New Price by applying the formula set out below to the Base Price.

**Pb** Is the Base Price, expressed as $. This is the price accepted by the Principal as the initial contract rate or sum.

**Mc** Is the price component subject to price adjustment and shall be 0.90 (90%).

**Fc** Is the price component not subject to price adjustment and shall be 0.10 (10%).

**Mn** Is the New CPI Index 6401.0 All Groups – Darwin, applicable at the adjustment date.

**Mb** Is the Base CPI Index 6401.0 All Groups – Darwin and for this RFT shall be the index effective at closing for this tender.

Pn = Pb X ( (Mc X (Mn/Mb) ) + Fc )

Note: “X” means multiply; “/” means divide by the value following the symbol; calculations in the internal brackets to be performed first.

### 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.

## 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.

## General Obligations of the Parties

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

1. act reasonably in performing their obligations and exercising their rights under the Contract;
2. diligently perform their respective obligations under this Contract; and
3. work together in a collaborative manner.

## Principal’s Responsibilities and Obligations

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

The address for the service of Notices is stated in the Annexure.

### Principal’s Representative

The Principal’s Representative shall exercise the duties discretions and powers vested in the Principal under the Contract except this power of appointment.

The Principal’s Representative for the purposes of the Contract is nominated in the Annexure.

### 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 Contract Manager will be notified in the Notice of Acceptance.

The Contract Manager will act as the first point of contact for the Contractor for all matters under the Contract.

The Contractor shall recognise and accept notices from the Contract Manager as if the Principal issued such. Any reference to the Principal 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.

## Directions

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.

## Contractor's Responsibilities and Obligations

The Contractor warrants that:

1. 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;
2. 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;
3. 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;
4. it shall remain fully responsible for all work undertaken by the Contractor regardless of any review or acceptance of that work by the Principal;
5. it shall provide such further information in relation to the provision of the Services as reasonably required by the Principal;
6. 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;
7. it has established and will comply with and maintain during the Contract, all Plans as required under in the Contract; and
8. it will maintain all certificates, licenses, authorisations required to perform the Services 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, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code and with the lawful requirements of any relevant authority, regulator or standard setting entity as shall be in force in the place affecting or applicable to the Services or the execution of the Services.

## Contractor's Representative

The Contractor shall appoint a representative (‘**Contractor’s Representative**’) to be the first point of contact with the Principal. The Contractor’s Representative shall be nominated to the Principal in writing.

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

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

The Contractor or its representative shall have sufficient command of the English language to be able to read, converse and receive instructions in English.

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

## 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.

## 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.

## Notices

### Services of Notices

Notice must be:

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

### Effective on Receipt

Any notice given in accordance with sub-clause 2.12.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

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

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

## 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.

## 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. In giving written consent the Principal may impose such terms and conditions as it thinks fit.

## Local Content

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.

## 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.

## Insurances

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

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

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

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

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

### 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.

### Professional Indemnity Insurance

The Contractor shall provide the Principal with copies of Certificates of Currency and summaries 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.

### 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.

### 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 under clause 2.17 including those of any sub-contractors (including self-employed contractors and persons employed under labour hire agreements):

1. prior to commencing the Services under the Contract;
2. within two (2) days of a written request by the Principal;
3. within seven (7) days after the Contractor renews an insurance policy; and
4. within seven (7) days after the Contractor makes any change to an insurance policy.

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

## Intellectual Property

### Background Intellectual Property

Each party is and remains the owner of the property in its own Background IP.

Each party hereby grants to each other a royalty-free, non exclusive licence to use that party’s Background IP for the purposes of carrying out their obligations under this Contract, but for no other purpose.

The parties warrant to each other that they are not aware that the use of their Background IP for the purposes of this Contract will or may infringe the IP rights of any third parties, or, if it may infringe third party rights, that they have been granted lawful rights to use any relevant part of the Background IP for the purposes of this Contract.

### Foreground Intellectual Property

Subject to this clause, the Principal owns and remains the owner of the Foreground Intellectual Property.

The Principal acknowledges that Intellectual Property generated in the course of contracts with the Contractor should be managed to maximise the socioeconomic benefit to the Northern Territory generally, and in pursuance of that acknowledgement grants to the Contractor a non-exclusive royalty free licence to use the outcomes of this Contract containing the Foreground Intellectual Property without the prior consent of the Principal for the following academic purposes:

1. In the preparation of teaching materials for dissemination to students of the Contractor;
2. For use in future research projects being undertaken by the Contractor alone or in conjunction with other not-for-profit or educational institutions; and
3. For publication in academic publications

### IP Licence Conditions

The Licence is granted subject to and conditional upon the following terms and conditions:

1. Acknowledgement of the Principal’s copyright and contribution;
2. The material must not contain Confidential Information belonging to the Principal;
3. Where the material contains third party Intellectual Property:
4. any necessary consents have been obtained by the Contractor from those third parties;
5. proof of that consent has been provided to the Principal; and
6. third party Intellectual Property must be acknowledged;
7. The Contractor must not receive any Commercial Gain from use of the material pursuant to this clause;

### Consent for other Purposes

If the Contractor wishes to use material for purposes other than as specified at sub-clause 2.18.2 or that does not meet the conditions specified in sub-clause 2.18.3 then it must first obtain the written consent of the Principal, which consent will not be unreasonably with-held.

The Principal must consider the application promptly and provide the Contractor with its consent or reasons for not consenting within thirty days (30) days of receipt of the application.

## Time for Commencement and Completion

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

### Program

The Contractor within fourteen (14) days of Contract award submit to the Principal a program for the delivery of the Services to meet the completion date as stated in the Annexure.

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

### 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, five per cent (5%) of the estimated total or fixed price for the first ten (10) Business Days lapsed after the completion date or amended completion date, and an additional amount of five per cent (5%) of the estimated total or fixed price for every five (5) Business Days thereafter until the completion of the Services, but the total amount of reduction shall not exceed fifteen per cent (15%) of the estimated total or fixed price.

### 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.

### Compliance with Laws

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.

### 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.

### 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.

### Review of Work by Others

Where the Contractor is required to take over work provided by or on behalf of the Principal, the Contractor 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.

## Invoicing and Payment

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

The Contractor shall be entitled to receive payment for the value of work done at intervals of not less than one (1) month. All claims made by the Contractor shall be in the form of a Tax Invoice, showing an itemised account of the value of the Services completed including disbursements and expenses occurred as applicable.

The Contractor’s Tax Invoice 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.

The Contractor shall provide any further details in regard to the Services and/or Tax Invoice upon request by the Principal.

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

The payment of monies pursuant to this clause shall not be taken as evidence against or as an admission by the Principal 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:

1. will not be grounds to vitiate or avoid the contract; and
2. will entitle the Contractor to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of a Tax Invoice. Interest penalties are to be calculated daily, for the period after the due date until the date payment is made by the Principal, at the ninety (90) day bank bill swap rate published on 1 June each year by the Australian Financial Markets Association. Where 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.

## 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 or rate increased or decreased accordingly.

## Assignment

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

## Sub-Contracting

Should the Contractor desire to sub-contract 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 and value 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.

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

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.

## 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 web address:
www.dob.nt.gov.au/business/tenders-contracts/legislative\_framework/tendering-contract/Pages/eddr.aspx

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.

## Termination

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:

1. 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
2. take the Services wholly or partly out of the control of the Contractor and complete the Services by any other means the Principal so decides.

## 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.

## 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.

## Contractor's Performance Report

The Contractor agrees that every twelve (12) months during the Contract term, and/or upon completion of the Services, the termination of the Contract or such other frequency as the Principal may be determine:

1. the Principal will prepare a Contractor's Performance Report (‘**Report**’);
2. 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
3. the Principal may use/and or release the Report to another 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.

## Goods and Services Tax

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

**'GST'** means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999* (‘**Act**’) and any related *Tax Imposition Act* and "New Tax System Changes" has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999* (‘**TPA**’). Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

**'GST Rate'** means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time;

**'Input Tax Credit'** has the meaning it bears in the Act;

**'Recipient'** **'Entity' and 'Supplies'** have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

1. "**Entity**" shall also mean Contractor;
2. "**Recipient**” shall also mean Principal;
3. "**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.

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

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

1. policies for the management of personal information; and
2. 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:

1. either return to the Principal all records containing Personal information;
2. retain any material containing Personal Information in a secure manner as approved by the Principal; or
3. destroy or delete any Personal Information.

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