

Conditions of contract – supply of services period contract

1 November 2019

Version 5.4

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1. Interpretation of Terms

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

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

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

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

'Business Hours' means from 8.00am to 5.00pm on a Business Day at the place where the Services are to be provided.

'Common Use Contract' means a Standing Offer arrangement for the provision of Services to all Agencies.

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

'Contract' means the document that 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.

'Contract Material' means all material brought into existence by or on behalf of the Contractor for the purpose of this Contract and all material incorporated into a deliverable under this Contract, but excludes copies of internal working papers retained by the Contractor for record keeping purposes.

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

'Contractor's Tender' means the Tender submitted by the Contractor to the Principal 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 accepting the Contractor's Tender.

'Fixed Scheduled Services' means a procurement Contract subject to specified terms and conditions where the Principal is obliged to accept and the Contractor has agreed to provide the Services according to the timetable or program set out in the Contract.

'Indigenous Person' is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as Indigenous and is accepted in the community in which they live as an Indigenous person.

'Intellectual Property' includes all copyright and neighbouring rights, and all rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

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

'Official Order' means an order issued on the Contractor, whether on paper or by electronic means, which conveys the essential details of a particular service requirement under the Contract and includes any methods of ordering the Services specifically, referred to in the Contract.

'Ordering Officer' means any person within the Agency authorised to order particular Services under the Contract.

'Panel Period Contract' means Standing Offer arrangements have been entered into with more than one Contractor for the provision of the same Service.

'Principal' means the Northern Territory of Australia.

'Principal's Representative' means the person nominated by the Principal or other person from time to time appointed in writing by the Principal to act as the Principal's Representative for the purposes of the Contract.

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

'Request for Tender (RFT)' means the document(s) containing or referring to the Conditions of Tendering and Contract, the Annexure, Special Conditions of Contract (if any), 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.

'Scope of Services' means the statement set out in the Contract or Official Order specifying and describing the Services.

'Services' means the services described and quantified in the Scope of Services, Schedule of Rates, Notice of Acceptance or Official Order that are to be performed by the Contractor in accordance with the Contract, including all variations provided for by the Contract.

'Standing Offer' means the Contractor agrees to provide the Services from time to time if and when authorised by the Ordering Officer by the issue of an Official Order. The Contractor agrees that the Principal is not obliged to order a specific number of, or any, Services during the term of the Contract.

'sub-contractor' means a person other than the Contractor's employee, 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:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person is a reference to a natural or artificial person, including a body politic, body corporate, a partnership, joint venture (whether incorporated or unincorporated), an incorporated association, a government instrumentality, local government authority or an agency;
- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;

- i) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;
- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of the Notice of Acceptance and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- l) the word 'includes' in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

2. Formation of Contract

The Contract between the Principal and the Contractor shall comprise:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Contractor's Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Scope of Services;
- f) Drawings included in the RFT (if any);
- g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract;
- h) Conditions of Tendering and all other documents, other than those specified above in (a) to (f) inclusive, forming the RFT or the Contract (other than the Contractor's Tender); and
- i) the Contractor's Tender response including any drawings;

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

3. Nature of Contract

3.1. Type of Contract

The type of Contract is stated in the Annexure.

3.2. Basis of Payment

The basis for payment will be stated in Official Order issued for particular Services under the Contract.

Where the contract is deemed to be on a Standing Offer 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 set out in the Schedule of Rates.

Where the contract is deemed to be on a Fixed Scheduled Services basis, the sum payable shall be, subject to any adjustment made pursuant to the Contract, the monthly measured quantity of each item of the Services performed at the rate set out in the Schedule of Rates.

3.3. Period of Contract

The Contract is a Period Contract. The initial period of the Contract is the period stated in the Annexure. The Contract shall commence in accordance with the nomination in the Annexure, being either a specific date or the Date of Acceptance.

3.4. Contract Extension

The Principal has the right to extend the Contract for any further period(s) as stated in the Annexure. There is no obligation on the Principal to extend the Contract.

An extension to the Contract is not valid until the Principal gives the Contractor the opportunity to submit revised rates and the Principal agrees to any revised rates and notifies the Contractor in writing that the Contract is extended.

3.5. Estimated Quantities

The estimated quantities required are shown in the pricing schedule contained in the Response Schedules. Although every endeavour has been made to form an accurate estimate of the Services required during the period of the Contract, the Principal does not bind itself to take the quantities stated, but reserves the right to order greater or lesser of the quantities according to requirements during that time.

If in the opinion of the Principal, specific requirements of the Agency are outside the scope and intent of the Contract, the Principal shall be free to obtain the requirements or any part of them by other means.

3.6. Price Adjustment

The basis of price adjustment if any, to the Contract Rates shall be as stated in the Annexure.

If 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 Rate.

Price Adjustment will be on the following basis:

- a) Contract Rates shall be firm for the first twelve (12) months and thereafter subject to price adjustment.
- b) The adjustment shall be undertaken at either the date allowed for in the Contract or the Contractor's application date, whichever is the latter. Adjustment shall apply until the next adjustment date.
- c) 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.

$$Pn = Pb \times ((Mc \times (Mn/Mb)) + Fc)$$

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

3.7. Panel Period Contract

Subject to any other provisions of the Contract, if the Contract is designated as a Panel Period Contract the following provisions will apply:

- a) Specific Requirements with Rates:
 - i. The Principal will issue an Official Order against the established rates to the Contractor offering the best value for-Territory outcome, within the required time frame.
- b) General Requirements with no Rates:
 - i. The Principal will select a Contractor in the following manner:
 - Prepare a request for quotation setting out the details of the specific Service required including deliverables, time frame for completion and assessment criteria to be applied.
 - Forward the request for quotation to a number of panel members depending on the estimated value of the particular Service:
 - If up to \$50,000 at least three panel members, if practicable
 - \$50,000 and greater all panel members.
 - ii. Selection will be based on the panellist offering the best value for Territory outcome within the required timeframe and against the specified selection criteria.

The Principal recognises that the panel members have been selected on the basis that they are capable of providing the Services and the opportunity for the different panel members to submit an offer for particular Services should be approximately equal over the life of the Contract.

The panel once established will remain closed for a period of twelve (12) months unless the Principal determines that owing to changed circumstances the size of the panel is inadequate. At the end of every

twelve (12) months or sooner if the Principal so determines, the Principal may appoint additional contractors to the panel under the same assessment criteria contained in the RFT. The Principal will notify existing panel members of any additions to, or withdrawal from, the panel.

3.8. Applicable Law

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

4. Entire Agreement

The Contract formed between the parties for the supply of the Services constitutes the entire agreement between the parties and supersedes any previous agreements or understandings.

5. General Obligations of the Parties

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

- a) act reasonably in performing their obligations and exercising their rights under the Contract;
- b) diligently perform their respective obligations under this Contract; and
- c) work together in a collaborative manner.

6. Principal's Responsibilities and Obligations

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

6.1. 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 is nominated in the Annexure.

6.2. Contract Manager

For the purpose of exercising some of the powers, duties, discretions and authorities, vested in him on behalf of the Principal, the Principal's Representative may from time to time appoint a representative ('**Contract Manager**'). The Contract Manager will be notified in the Notice of Acceptance.

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

The Contractor shall recognise and accept notices from the Contract Manager as if the Principal's Representative 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.

7. Supply of Services by Official Order

The Contractor shall fulfil all Official Orders for particular Services placed by the Ordering Officer during the currency of the Contract.

8. Directions

The Contractor shall comply with any direction either orally or in writing issued, given or served upon them 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.

9. 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;
- d) ensure that its employees, agents or sub-contractors meet the provisions of clause titled "Site Rules";
- 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; and;
- g) it has established and will comply with and maintain during the Contract, the Performance Plan arrangements set out in 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 requirements of all Acts of the Commonwealth of Australia Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code and 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.

10. 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.

11. Replacement of Contractor's Personnel

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

12. Power to Dismiss Persons

The Principal may require the instant dismissal from the Services, of any person employed in connection with the Services, whether directly employed by the Contractor or not who, in the opinion of the Principal, misconducts themselves or is incompetent or negligent in the performance of their duties.

The Contractor shall immediately comply with or ensure immediate compliance with such requirement. The Contractor shall not again employ a person so dismissed on or in connection with the Services.

13. 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.

14. Notices

14.1. Services of Notices

Notice must be:

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

The Principal's address for service of notices is stated in the Annexure.

14.2. Effective on Receipt

Any notice given in accordance with sub-clause 14.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by post, three (3) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from a place outside Australia); and
- c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's

machine unless, within eight (8) 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 5.00pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

15. Site Rules

The Contractor, his employees and sub-contractors required to enter the Site in connection with the Services shall comply with all rules and regulations in force at the Site, including security screening through Criminal History Checks where required.

The Contractor is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by the appropriate Authority.

16. Work Health and Safety Management

16.1. Priority to safety issues

While carrying out the Services, the Contractor:

- a) must give priority to and is responsible for ensuring safe work practices in relation to the Services and the Contract;
- b) must carry out the Services safely and so as to protect persons and property; and
- c) must maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property as a result of carrying out the Services.

16.2. Compliance with laws and standards

Without limiting clause 16.1 or any other provision in the Contract, in carrying out the Services, the Contractor must, and must ensure that all persons for whom it is responsible or over whom it is capable of exercising control (including its subcontractors), comply with all laws and standards that are applicable to the performance of the Services and with any reasonable direction issued by the Principal or any other person with control and management of the Services.

16.3. Unsafe work

If the Principal considers:

- a) there is a risk of injury to people or damage to property arising from the Services; or
- b) there is an unsafe or potentially unsafe practice or there is a breach of the requirements of this clause 16 then, in addition to any other rights it has under the Contract, the Principal may:
 - i. direct the Contractor to change its manner of working; or
 - ii. suspend the performance of the Services associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

All costs, delay and disruption caused by any action taken under this clause 16.3 are the responsibility of the Contractor.

16.4. Substantive breach

Where, in the opinion of the Principal, the Contractor has committed a substantive breach of its obligations this clause 16.3, the Principal may immediately terminate this Contract, by written notice to the Contractor.

The remedy provided in this clause 16.4:

- a) applies notwithstanding any other provision of the Contract; and
- b) is in addition to the other remedies under this Contract.

17. Conflict of Interest

The Contractor warrants that:

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

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.

18. Confidentiality and Publicity

18.1. Confidentiality

- a) For the purposes of this sub-clause 18.1 “Confidential Information” means any information or material relating to the Contract or the Services including (without limitation):
 - i. any information that by its nature is confidential;
 - ii. any information designated as confidential; and
 - iii. any information that the Contractor knows is confidential.
- b) The Contractor shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
 - i. as authorised by the Principal under the Contract or otherwise;
 - ii. to its employees or sub-contractors, to the extent needed to perform their obligations under the Contract;
 - iii. where the disclosure is required to be disclosed by law.
- c) The Contractor shall ensure that its employees and all sub-contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 18.1.

18.2. Media and Publicity

- a) The Contractor shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising e. g. for sub-contractors), award nomination, document or article for publication concerning the Contract, the Services or the site in any media without the prior written approval of the Principal.

- b) Prior to taking any action or doing anything the Contractor shall refer:
 - i. any media enquiries concerning the Contract, the site, the Principal or the Services to the Principal for the Principal's written response; and
 - ii. any media requests concerning the Contract, the site, the Principal or the Services (including, without limitation, requests to access or take photographic or video footage of the site) to the Principal, for the Principal's written consent, which consent may be given or withheld, in the Principal's absolute discretion.
- c) The Contractor shall ensure that its employees and all sub-contractors, and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this sub-clause 18.2 and obtain the Principal's prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this sub-clause 18.2.

19. Industry Accreditation and Standards

Where applicable, the Contractor shall:

- a) maintain the currency of accreditation, to at least the same level as held at the time of Tendering, with Contractor Accreditation Limited during the life of the Contract; and
- b) comply with all industry standards on:
 - i. training;
 - ii. engagement, supervision and payment of sub-contractors;
 - iii. compliance measures;
 - iv. penalties; and
 - v. termination arrangements.

Options for review/extension to period contracts will not be offered unless the Contractor has current accreditation.

20. Local Content

20.1. Local Benefit Commitments

The Contractor acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.

In the Contractor's Tender, the Contractor made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Contractor as part of the Contract. These promises and commitments form part of the Contract (and are referred to in the clauses below as the "Local Benefit Commitment").

The Contractor shall fulfil all aspects of the Local Benefit Commitment.

20.2. Use of Local Labour, Supplies and Services

Without limiting clause 20.1, the Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:

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

20.3. Reporting to the Principal and Right of Audit

The Contractor shall, within 7 days of a written request by the Principal, submit a written report to the Principal detailing how it has complied or is complying with clauses 20.1 and 20.2.

The Principal may, after giving 7 day's written notice to the Contractor, inspect and conduct an audit of the Contractor's records to determine the Contractor's level of compliance with this clause 20. The Principal may conduct this audit itself or may engage a third party to conduct the audit on the Principal's behalf.

20.4. Failure to Fulfil Local Benefit Commitment

If the Contractor fails to fulfil or otherwise comply with the Local Benefit Commitment, or if the Contractor fails to comply with any other obligation placed on the Contractor by this clause 20, the Principal may take action under clause 32.

20.5. Performance to be reported in Contractor Performance Reports

The Contractor's compliance or non-compliance with this clause 20 will be recorded in the Contractor Performance Report to be prepared by the Principal in accordance with clause 35.

21. Performance Plan

Where a Performance Plan has been specified in the Annexure, the Contractor will establish, document, implement and maintain a Performance Plan throughout the course of the Contract.

Within fourteen (14) days of award of Contract, the Contractor shall submit to the Principal for approval one copy of the Performance Plan. The Principal shall within a reasonable time from receipt either approve the Performance Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Plan for approval.

22. Industry Participation Plan

Where an Industry Participation Plan has been specified, the Contractor will implement and maintain the Industry Participation Plan throughout the course of the Contract.

Within fourteen (14) days of award of Contract, the Contractor shall submit one copy of the Industry Participation Plan to the Principal for approval. The Principal shall within a reasonable time from receipt, either approve the Industry Participation Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Plan for approval.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Industry Participation Plan within thirty (30) days of the completion of the Contract.

23. Liabilities

The Contractor must indemnify the Principal and employees or agents of the Principal against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person or for damage to any property arising from the carrying out or in connection with the Services and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

23.1. Reduction in Liability

The Contractor's liability to indemnify the Principal under this clause is reduced proportionately to the extent that any negligent act or omission of the Principal contributed to the relevant liability, loss, claim, action or proceeding.

23.2. Limitation of Liability

If specified in the Annexure, the liability of the Contractor in respect of each single occurrence or a series of related occurrences arising from a single cause to the extent caused or contributed by the Contractor in connection with or directly arising out of this Contract will be limited to the amount specified in the Annexure.

Unless otherwise specified, any limit on the liability of the Contractor does not apply in relation to:

- a) personal injury (including sickness and death);
- b) an infringement of Intellectual Property rights;
- c) a breach of any obligation of confidentiality, security requirement or privacy; or
- d) liability which is or would have been included in an insurance policy, but for:
 - i. the inclusion of the limit on liability under sub-clause 23.1; or
 - ii. a failure by the Contractor to fulfil its insurance obligations under the Contract or the insurance policies or due to the insolvency of the insurer for the relevant insurance.

23.3. Joint and Several Liability

Where the Contractor consists of two or more persons, this Contract shall bind them jointly and severally. In particular, any agreement, representation, warranty or indemnity by one or more persons constituting the Contractor binds all the persons constituting the Contractor jointly and severally and any agreement, representation, warranty or indemnity in favour of one or more persons constituting the Contractor is for the benefit of all the persons constituting the Contractor jointly and severally.

24. Insurances

24.1. Workers Compensation Insurance

For the purpose of this clause "worker" shall have the definition it is given in the *Return to Work Act 2015* (NT).

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 *Return to Work Act 2015* (NT) and policies shall be purchased from Northern Territory approved insurers. Details can be found at the following web address www.worksafe.nt.gov.au

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Return to Work Act 2015* (NT).

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 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).

24.2. Public Liability Insurance

Before commencing the Services, the Contractor shall take out and shall maintain during the currency of the Contract a public liability policy of insurance to cover its liabilities to third parties.

The Policy shall:

- a) note the Principal for its respective rights and interests;
- b) include a cross-liability clause in which the insurer accepts the term “insured” as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- c) 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.

24.3. Professional Indemnity Insurance

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.

24.4. Lodgement of Certificates of Currency

The Contractor shall, if so requested, provide the Principal with copies of Certificates of Currency and summaries of coverage for all insurance policies required under clause 24 including those of any sub-contractors (including self-employed contractors and persons employed under labour hire agreements):

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

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

25. Intellectual Property

The ownership of Intellectual Property in Contract Material is specified in the Annexure. If no party is named in the Annexure, clause 25.1 applies and ownership vests in the Principal.

25.1. Ownership by the Principal

The Intellectual Property in all Contract Material vests and is owned exclusively by the Principal as such rights are created.

The Principal grants to the Contractor a world-wide, non-exclusive, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate the Contract Material for the term of the Contract and to the extent required to undertake the Services or as otherwise agreed by the Principal.

25.2. Ownership by the Contractor

The Intellectual Property in all Contract Material vests and is owned exclusively by the Contractor as such rights are created.

The Contractor grants to the Principal a perpetual world-wide, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate the Contract Material to the extent required to receive full benefit of the Services.

25.3. Existing Material

This clause does not affect the ownership of Intellectual Property in any material owned by a party prior to this Contract or produced by a party outside of the provision of the Services.

25.4. Warranty

The Contractor warrants that:

- a) any Intellectual Property embodied in or used in connection with the Services is the sole property of the Contractor or the Contractor is legally entitled to use same for the performance of the Services; and
- b) it has the right to grant the licences specified in clause.

26. Time for Completion

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

27. Invoicing and Payment

27.1. Invoicing

A Contractor operating on a Fixed Schedule Basis must provide the Principal a valid invoice monthly in arrears when Services are completed during the month.

A Contractor operating on a Standing Offer Arrangement must provide the Principal a valid invoice showing the value of the Services completed.

The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Principal.

For the purpose of this clause 27.1 an invoice is valid if it:

- a) is correctly addressed and calculated in accordance with this Contract,
- b) relates only to the Services that have been delivered to the Principal in accordance with this Contract and for which the Contractor is entitled to invoice under this Contract;
- c) complies with *A New Tax System (Goods and Services Tax) Act 1999*; and
- d) complies with the requirements stipulated in this Contract.

The invoice must include:

- a) the Agency name, business unit of the Agency and address of the Agency;
- b) a reference number being the Official Order number, the Contract name and number or all of these details;
- c) details of any adjustments made under the clause titled “Goods and Services Tax” of these Conditions of Contract and an explanation as to how such adjustments were calculated.

The Principal’s preferred method of receiving invoices is by electronic means, through the Principal’s electronic invoicing system (“EIS”) at the following web address: <https://invoicentg.nt.gov.au/>.

If the Contractor is not able to send invoices using the EIS it shall send invoices by email to: AccountsPayable@nt.gov.au

If the Contractor is not able to send invoices using the EIS or by email pursuant to the above clauses, the Contractor shall send invoices by post to the Principal at the following address:

Agency Name
Business Unit
PO Box 43475
CASUARINA NT 0811

27.2. Payment

The Principal will make payments within twenty (20) days of receipt of an undisputed invoice valued less than \$1 million. The Principal will make payments within thirty (30) days of receipt of an undisputed invoice valued \$1 million or more.

If the Principal disputes the invoice amount the Principal shall certify the amount it believes is due for payment, which shall be paid by the Principal and the liability of the balance of the payment shall be determined in accordance with the Contract.

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

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.

27.3. Incorrect Invoice Payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Principal to the Contractor under this Contract.

27.4. Method and Currency of Payment

Payments under this Contract may be made by electronic transfer directly to the nominated bank account of the relevant payee.

Unless otherwise agreed by the parties, all payments by the Principal to the Contractor will be made to a bank account in Australia.

All invoices from the Contractor to the Principal must be in accordance with the currency of the Lump Sum or Schedule of Rates.

27.5. Interest on Late Payments

The Principal will pay interest on late payments calculated at the rate set annually in accordance with the Principal's payment policy (as amended by time to time).

Interest is only payable on undisputed amounts exceeding the payment terms from the date of receipt by the Principal of a relevant valid invoice.

Where a valid invoice is disputed by the Principal the payment period referred to in clause 27.2 commences in respect of the disputed portion when the dispute has been resolved.

Where the Contractor believes that it is entitled to claim interest on a late payment it must raise a separate invoice for the interest claimed showing all relevant details within ninety (90) days from receipt of payment of the amount in respect of which the interest is claimed. Failure by the Contractor to do so will void any claim to payment of interest on the late payments.

Where the purposes of this clause the "relevant details" are:

- a) the date of deemed receipt of the original properly rendered invoice (being three (3) Business Days after the date of dispatch of the original properly rendered invoice);
- b) the date of payment;
- c) a copy of the original properly rendered invoice;
- d) the period for which the Contractor considers interest is due; and
- e) the amount of interest sought.

The Contractor's entitlement to interest under this clause 27.5 will be its sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties under this clause 27.5.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties under this clause 27.5.

28. 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.

29. 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.

30. Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the Services it shall submit to the Principal the names of the proposed sub-contractors 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.

If Contractor Accreditation is applicable to work to be sub-contracted under the Contract the Contractor shall ensure that all sub-contractors undertaking works valued at \$100,000 and over are accredited by Contractor Accreditation Limited to an appropriate category/group and rating.

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

Any approval by the Principal to engage a sub-contractor for any part of the 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.

31. Disputes

31.1. Disputes

Each party must follow the procedures in this clause 31 before starting court proceedings, other than for interlocutory relief.

31.2. Notice of Dispute

Any party to this Contract who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

31.3. Meeting of Parties

Within five (5) Business Days of the provision of the written notice, a nominated representative of each of the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute.

31.4. Appointment of Mediator

If the dispute is not resolved within five (5) Business Days of the parties meeting (or within such further period as the parties agree is appropriate) then one or both parties may nominate a mediator to determine the dispute.

If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the dispute.

The parties will bear the costs of the mediator equally.

31.5. Appointment of Independent Expert

If the dispute is not resolved within twenty (20) Business Days after the appointment of the mediator (or within such further period as the parties agree is appropriate) then one or both parties may nominate an independent expert to determine the dispute.

If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an independent expert to determine the dispute.

The expert must not be the same person as the mediator.

The parties will bear the costs of the independent expert's determination equally, unless the independent expert determines otherwise.

The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

31.6. Decision of Independent Expert

The decision of the independent expert is absolute and final and will bind the parties accordingly and this Contract will be deemed to be amended to incorporate the terms of the independent expert's decision.

The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.

31.7. Continuation of Work during Disputes

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

32. 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:

- 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 so decides.

33. Voluntary Termination

Either party may terminate the Contract by giving thirty (30) days written notice to the other party.

Termination of the Contract under this clause shall not relieve the Principal or the Contractor of their respective rights and obligations under the Contract or any Official Order up to and including the date of any such termination.

34. Rights of Principal to Recover Monies

Should the Principal take action pursuant to the Clause titled "Termination" 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.

35. Contractor's Performance Report

The Contractor agrees that upon completion of each Official Order under the Contract, or every twelve (12) months or upon completion of the Services or the termination of the Contract:

- a) the Principal will prepare a Contractor's Performance Report ('**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 use and/or release the Report to Contractor Accreditation Limited or any other Agency of 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.

36. 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:

- a) **"Entity"** shall also mean Contractor;
- b) **"Recipient"** shall also mean Principal;
- c) **"Supplies"** shall also mean the Goods and/or Service.

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

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

The 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.

37. Privacy

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

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

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

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

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

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

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

The Contractor is to ensure that any employees, agents or 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 of:

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

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

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

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

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

- 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.