

CONTRACT DETAILS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires, the following words have the following meanings:

Approved Distance means (in kilometres) the distance from base to location (or locations in accordance with the requirement of an Order) and return, excluding incidental travel within the location and any other travel the Supplier elects to undertake during the Mobilisation.

Background IP means any Intellectual Property owned by a party that is pre-existing as at the date of a Contract, or subsequently brought into existence other than as the result of the performance of a Contract.

Business Day means a day that is not a Saturday, Sunday or public holiday in Northern Territory.

Code means the Northern Territory Procurement Code.

Contract has the meaning set out in clause 3(a).

Contract Details means the details of the Contract stated on the first page of this document.

Council means Roper Gulf Regional Council (ABN 947 469 560 90).

Deliverables means the deliverables, if any, resulting from the provision of the Services (if applicable).

Delivery Date means the date by which Goods and/or Services must be supplied to the Council at the delivery address specified in an Order, on a FIS (Free into Store) delivery basis (or such other delivery basis as may be specified by the Council in an Order).

Environmental Requirements means the requirements set out in Attachment A.

External Plant Hire Cost means the total actual plant hire cost to complete the Supply and any margin agreed by the Council (if any).

Event of Default means:

- (a) the Supplier breaches a term of this document and that breach is incapable of remedy;
- (b) the Supplier breaches a term of this document which is capable of remedy, but fails to rectify the breach within the time period specified in a written notice issued by the Council, specifying the breach and requesting its remedy;
- (c) the Supplier becoming an 'externally administered body corporate' as defined by the *Corporations Act 2001* (Cth);
- (d) any step being taken for the winding up or dissolution of the Supplier, including the appointment of an administrator;
- (e) the Supplier being insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (f) the Supplier committing an 'act of bankruptcy' as defined by the *Bankruptcy Act 1966* (Cth);

- (g) a receiver or a receiver and manager being appointed to the Supplier whether by a court or otherwise;
- (h) anything analogous or having substantially similar effect to any of the events specified in paragraphs (c) to (g) above (inclusive) happens under the law of any applicable jurisdiction;
- (i) a Force Majeure Event has persisted for 30 calendar days or more; or
- (j) the Council forms the opinion that the Supplier will not be able to supply the Goods and/or Services in accordance with the requirements of this document and/or the corresponding Order.

Force Majeure Event means anything outside a party's reasonable control including, without limitation, shortages of materials, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation.

Goods means the goods specified in an Order, as further described in the Contract Details.

GST means goods and services tax.

Insurances means insurance policies in respect of such risks that a reasonable, prudent person supplying the Goods and/or Services would be likely to insure against, including (without limitation) public liability insurance and professional indemnity insurance, and the specific insurance cover (if any) stipulated in the Contract Details.

Intellectual Property means any and all intellectual and industrial property rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with:

- (a) any related confidential information, trade secrets, know-how or any right to have information kept confidential (and including but not limited to confidential Information);
- (b) copyright (including future copyright and rights in the nature of or analogous to copyright);
- (c) inventions (including patents);
- (d) trade marks, service marks and other related marks;
- (e) designs;
- (f) business names, domain names and company names;
- (g) semiconductor rights, eligible layouts and circuit layouts; and
- (h) software, software programs and source code,

whether or not existing at the date of this document and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights and includes all renewals and extensions.

Mobilisation means the travel from base to work location/s and return.

Mobilisation Costs means the sum ascertained by multiplying the Approved Distance for each Mobilisation pursuant to the Contract by the rate accepted for the item plus the sum ascertained by multiplying the measured quantity of Passenger Travel for each Mobilisation pursuant to the Contract by the rate accepted for the item. Mobilisation Costs will include the carriage of tools and materials required to complete the Order. Mobilisation Costs for one trip shall be shared equitably between all commercial activity undertaken by the Supplier during that trip.

On Call Officer means a Council employee with the title of Chief Executive Officer, Director or Manager.

Order means the formal purchase order issued by the Council to the Supplier (in the form required by the Council from time to time) requesting the supply of the Goods and/or Services.

Passenger Travel means the cost added to the Mobilisation to cover the time of additional passengers.

Price means the amount stated in the Order, which must be consistent with the Supplier's standard pricing, and as further described in the Contract Details.

Project Manager means the Council employee responsible for managing all regional project activities. The Project Manager is also responsible for managing contractors in the performance of asset construction, maintenance and upgrade activities.

Regional Services Manager means a Council employee with the title of Chief Executive Officer, Director or Manager.

Response Schedule means the schedule completed by the Council and provided to the Supplier which sets out the type and best estimate of goods and/or services required by the Council.

Schedule of Rates means the schedule of rates provided by the Supplier to the Council which shows the rates that the Supplier will charge for the provision of different types of goods and/or services.

Services means the services specified in an Order, as further described in the Contract Details.

Site means the site at which the Goods and/or Services is to be supplied to, as specified in an Order.

Site Rules means any rules that are applicable to a particular Site, and which are developed and maintained by the person who has the control and management of the Site.

Sub-Contractor means a person or company appointed by the Supplier to supply Goods and/or Services on their behalf.

Special Conditions means the terms and conditions designated as such in an Order, or as set out in Schedule 1 of this document, if any.

Specifications means the technical requirements and specifications notified by the Council with which the Goods, Deliverables and/or Services must comply, if any.

Supplier means an entity from whom the Council requests the supply of Goods and/or Services, as further described in the Contract Details.

Supply means the supply of Goods and/or Services.

Warranty Period means the longer of 12 months, the agreed defects liability period or the period of any applicable manufacturer's warranty, commencing on the date on which the relevant Goods or Services (including Deliverables) are accepted by the Council under clause 4(d) of this document.

WHS Act means the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) and includes subordinate legislation made under that Act including regulations and approved codes of practice as well as any amendment, re-enactment or replacement of such Act. Any reference to the Workplace Health and Safety Act or Regulations is a reference to the WHS Act.

WHS Management Plan means a health and safety management plan or system in respect of workplace health and safety matters.

1.2 Interpretation

In this document, unless the contrary intention appears:

- (a) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any document is a reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (d) a reference to a party to this document includes that party's executors, administrators, successors and permitted assigns;
- (e) a reference to "\$" or "Dollars" is a reference to Australian currency;
- (f) the word "including" is not to be treated as a word of limitation;
- (g) in the event of any inconsistency between these Standard Terms and Conditions and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency;
- (h) a reference to time is a reference to the time in Darwin, Northern Territory; and
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally.

1.3 Attachment(s) and Schedules

The Attachments and Schedules are incorporated into, and form part of, this document.

2. REQUEST FOR QUOTATION AND COMPLIANCE WITH NT PROCUREMENT CODE

- (a) The Council may request that the Supplier provide the Council with a quotation for the provision of the Goods and/or Services. Depending on the nature of the Supply, this quotation process may or may not involve the Council providing the Supplier with a Response Schedule and then requiring the Supplier to provide the Council with a Schedule of Rates.
- (b) Any quotation so issued by the Supplier will be accepted or rejected by the Council in its sole and absolute discretion,

and if accepted, will be the subject of an Order issued in accordance with clause 3(a).

- (c) In preparing and submitting its quotation and throughout the quotation period and process, the Supplier must comply with the Code.
- (d) If the Council:
 - (i) has evidence that the Supplier has not complied with the Code; or
 - (ii) is of the reasonable opinion that the Supplier has not complied with the Code, the Council may, at its discretion, deem the quotation submitted by the Supplier to be "ineligible for consideration" and will not proceed further with such quotation.
- (e) Unless stipulated to the contrary in a quotation issued by the Supplier which is the subject of an Order by the Council, the rates or costs quoted are deemed to represent the full value of the Supply, inclusive of labour, Mobilisation Costs, External Plant Hire Costs materials and waste, plant and equipment, transport, material procurement and delivery, all incidentals to complete the provision of the Supply (e.g. fixings, glue, sealants, messing, clearances, transportation, fuel, oils, maintenance, gas, solder, welding rods, cutting blades, tools, consumables, finishing materials and the like (if applicable)), attendance, supervision and for overheads and profit.
- (f) Where a Schedule of Rate item for a Supply is stated to be "Labour Only" the rate quoted will include all of the above except for the purchase price and on cost of the primary material component (but only if the Council agrees that the Supplier should be responsible for sourcing the primary material).

3. ORDERS AND CONTRACTS

- (a) The Council will make an offer to the Supplier, in the form of the Order, to acquire from the Supplier the Goods and/or Services on the terms and conditions specified in this document and the Order, to the exclusion of all other terms and conditions.
- (b) If the Supplier is unable to supply the requested Goods and/or Services by the applicable Delivery Date, or otherwise wishes to refuse the Order, it must notify the Council of this in writing within 2 Business Days of the Council sending the Order.
- (c) The Supplier will be deemed to have accepted the Order if:
 - (i) the Council does not receive a notice issued under clause 3(b) within the stipulated time period; or
 - (ii) the Supplier provides the Goods and/or Services to the Council.

The Supplier can in its discretion issue the Council with a formal acceptance of Order.

- (d) A contract between the Council and the Supplier for the supply by the Supplier, and the purchase by the Council, of the Goods and/or Services will come into existence on the date the Order is accepted by the Supplier under clause 3(c) (**Contract**).

- (e) The Contract will comprise the terms and conditions of this document (which includes Attachment A), the Special Conditions in Schedule 1 (if any), and the Order to the exclusion of any other terms and conditions (including but not limited to the standard terms of supply of the Supplier, or any variation to this document purported to be made by the Supplier, including in any formal Order acceptance issued by the Supplier). For the avoidance of doubt, a separate Contract is entered into when the Council issues each Order which is accepted by the Supplier.
- (f) The quantity, quality and description of Goods and/or Services to be supplied to the Council will be as set out in the Order. The Council is not obliged to purchase a specific number or quantity of Goods or Services from the Supplier.
- (g) The Council can at any time by notice in writing make changes to an Order, and if a change varies the Price payable or the Delivery Date, the Council will specify the variations in writing and send this notice to the Supplier. The Supplier must acknowledge any notice issued by the Council by signing and returning a copy of the notice issued by the Council within 2 Business Days of the Council issuing the notice, and should it fail to do so, will be deemed to have acknowledged and accepted the modification.
- (h) The Supplier cannot vary any Order or work to be performed under any Contract without the prior written agreement of the Council, unless expressly permitted by this document.

4. PERFORMANCE OF CONTRACTS AND ORDER FULFILMENT

- (a) The Supplier will use its best endeavours to provide the Goods and/or Services, in conformance with any relevant Specifications, on or before the Delivery Date. It is agreed by the parties that time will be of the essence in respect of the provision of Goods and/or Services to the Council.
- (b) Delivery of Goods or Services will not be complete unless and until the relevant items are received by the Council at the relevant delivery address specified in the Order and accepted in accordance with clause 4(d).
- (c) The Supplier will provide the Goods and Services (including any Deliverables) requested in each Order with the level of skill and care which is appropriate in the circumstances, to professional standards using suitable equipment, resources and personnel (as applicable) and in compliance with any notified Specifications.
- (d) The Council will issue a written acceptance of all Goods and Services (including Deliverables) provided by the Supplier when it is satisfied that the provided items comply with all applicable laws, regulations and standards together with the terms of this document and any Specifications and other requirements notified by the Council to the Supplier. The Council reserves the right to conduct such testing as it considers necessary to determine compliance, at its own cost. If the Council in its discretion determines that any Goods or Services are non-compliant then it can refuse to accept such items, and if so, must issue the Supplier with a written rejection notice setting out the reasons for its rejection in reasonable

detail. Such a notice may direct the Supplier to remove the non-compliant items from the Council's premises or any other location at which they are present at the Supplier's cost, and the Supplier agrees to comply with such a direction.

- (e) The Council's inspection, testing or acceptance at any time of some or all of the Goods or Services (including Deliverables) does not in any way:
 - (i) waive, change or affect the Supplier's obligations or warranties under this document; or
 - (ii) affect the Council's right to claim for any damage or loss it may suffer because of the Supplier's breach, other failure to comply or actions generally, or the Council's rights and remedies under applicable laws.
- (f) If the Supplier fails to meet the Delivery Date, then the Council is entitled to cancel the corresponding Order and terminate the relevant Contract in its sole discretion. If this occurs, the Council is not obliged to purchase the relevant Goods or Services from the Supplier, or pay any amounts to the Supplier in respect of such items, and the Supplier must immediately reimburse to the Council in full all amounts paid in respect of the relevant Goods or Services.
- (g) The Supplier must comply with the Environmental and Cultural Requirements set out in Attachment A of this document of this document, to the extent these are relevant to the provision of the Goods and/or Services under a Contract, including but not limited to if the Council notifies the Supplier that compliance is a fundamental condition of the Contract.

5. TITLE AND RISK

- (a) Title and risk in the Goods and any Deliverables resulting from the Services will pass to the Council upon acceptance in accordance with clause 4(d), except as specified in clauses 5(b) or 5(c).
- (b) Title to, and risk in, the Goods and any Deliverables resulting from the Services which are defective, faulty or otherwise contain errors will remain with the Supplier unless and until such items are accepted by the Council (and regardless of whether or not a rejection notice is issued by the Council under clause 4(d)), despite delivery to the Council in accordance with the requirements of this document.
- (c) If, following acceptance, a rejection notice is issued by the Council to the Supplier under clause 4(d), then risk in respect of the relevant Goods or Deliverables resulting from the Services which are the subject of the notification immediately reverts to the Supplier and will not again revert to the Council unless and until such items are again accepted by the Council.

6. WORK HEALTH AND SAFETY MANAGEMENT

The Supplier must:

- (a) provide the Goods and/or Services safely and in a manner that does not put the health and safety of any persons at risk;
- (b) in providing the Goods and/or Services, ensure that its employees, Sub-Contractors and agents comply with the WHS Act, Australian Standards and the requirements of any

government or statutory authority or utility service provider in so far as they are applicable to the provision of the Goods and/or Services;

- (c) ensure that if any statutory requirement requires that:
 - (i) a person be authorised or licensed to supply the Goods and/or Services, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence;
 - (ii) a person has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; or
 - (iii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (d) not direct or allow a person to provide the Goods and/or Services, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any statutory or contractual requirement are met;
- (e) if requested by the Project Manager or required by the WHS Act, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Project Manager before the Supplier or any Sub-Contractor provides the Goods and/or Services; and
- (f) keep the Project Manager fully informed of all health and safety matters relating to the Supply and will provide the following reports to the Project Manager:
 - (i) a copy of any incident notification provided to NT WorkSafe under section 38 of the WHS Act at the same time such notification is made to NT WorkSafe.

7. WORK HEALTH AND SAFETY MANAGEMENT PLAN

7.1 Supplier to inform themselves

- (a) Where specified by the Council, the Supplier is required to submit, as part of its quotation, a WHS Management Plan (if one is not already lodged with the Council as part of the Supplier's membership application to the Council's current panel of contractors).
- (b) Any quotation not complying with the requirements of this clause may be declared ineligible for consideration.
- (c) Where the Supplier submitted a WHS Management Plan with the Supplier's quotation, the Supplier must:
 - (i) maintain and implement the WHS Management Plan throughout the course of the Contract; and
 - (ii) carry out the Works in accordance with the WHS Management Plan; and
 - (iii) periodically revise the WHS Management Plan and provide any such revised plan to the Council and to all persons for whom it is responsible for or over whom it is

capable of exercising control (including Sub-Contractors).

7.2 Work Health and Safety Management Guidelines

- (a) The Supplier will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
- (i) the implementation of, and compliance with, the requirements of the WHS Management Plan; or
 - (ii) any direction by the Project Manager concerning the WHS Management Plan or the Supplier's compliance or non compliance with the WHS Management Plan; or
 - (iii) any audit or other monitoring by the Council or its nominee of the Supplier's compliance with the WHS Management Plan; or
 - (iv) any failure by the Project Manager or anyone else acting on behalf of the Council, to detect any defect in or omission from the WHS Management Plan including where any such failure arises from any negligence on the part of the Project Manager or other person.
- (b) The WHS Management Plan must set out arrangements with regards to the management of health and safety matters in relation to the works and will include:
- (i) the names, positions and health and safety responsibilities of all persons involved with the Works whose positions or roles involve specific health and safety responsibilities; and
 - (ii) the arrangements in place for consultation, cooperation and coordination; and
 - (iii) the arrangements in place for ensuring adequate health and safety training and induction training;
 - (iv) the arrangements in place for managing any workplace health and safety incidents, including reporting and incident notification;
 - (v) any project specific health and safety rules and the arrangements for ensuring that all persons involved with the works are informed of these rules;
 - (vi) the arrangements in place to identify, assess and control hazards and risks; and
 - (vii) the arrangements to collect and assess, monitor and review safe work method statements.
- (c) In addition to the WHS Management Plan described in clause 7.2(b), the Supplier must ensure that a Site-specific health and safety plan is prepared prior to the provision of any Goods and/or Services at a site, and such plan will include those matters listed in clause 7.2(b)(i) to (b)(vii).
- (d) The Site-specific health and safety plan must be consistent with any Site Rules. Further, the Supplier will comply with any reasonable direction of a person having control and management of the site.
- (e) The Council or its nominee may, at any time, monitor, inspect or audit the performance of the Supplier in relation to its compliance with the WHS Management Plan, any Site-

specific health and safety plan and the requirements of the Contract relating to Workplace Health and Safety generally.

- (f) The Supplier must allow the Council or its nominee access to the WHS Management Plan, Site-specific health and safety plan and any relevant documents or activities so as to enable such monitoring, inspection or audit.

8. BREACHES TO WORK HEALTH AND SAFETY MANAGEMENT GUIDELINES

- (a) If the Project Manager considers, on reasonable grounds, that:
- (i) there is a risk of injury to people or damage to property arising from the Supply; or
 - (ii) there is an unsafe or potentially unsafe practice or breach of the Work Health and Safety requirements of the Contract;
- then, in addition to any other rights under the Contract, the Project Manager may:
- A. direct the Supplier to change its manner of working; or
 - B. suspend the performance of the Supply 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 and delay and disruption caused by any action taken under clause 8 are the responsibility of the Supplier.
- (b) Where, in the reasonable opinion of the Council, the Supplier has committed a substantive breach of its obligations under this clause 8, the Council may terminate the Contract by immediate written notice to the Supplier.
- (c) The remedy provided in this clause 8:
- (i) applies notwithstanding any other provision of the Contract; and
 - (ii) is in addition to the other remedies under the Contract.

9. SITE AND PERMITS

9.1 Site rules and access

- (a) The Supplier must make itself aware of all rules and regulations in force at the Site that pertain to the Supply, including for the avoidance of doubt by submitting inquiries to the Council as required. The Supplier, its employees and Sub-Contractors who are required to enter the Site in connection with the Supply must comply with all rules and regulations in force at the Site, including security screening through criminal history checks where required. Also refer to the specific "Site Conditions Clause" of the Request For Tender or Request for Quote documentation provided by the Council (if any).
- (b) The Supplier is responsible for obtaining all relevant permits required for the Supply and the payment of all associated fees and/or charges which are levied by the appropriate government authority, and where pass-through of such costs is stipulated in the Order, the Supplier must seek reimbursement

for such costs by invoicing the Council with evidence to support its claim for reimbursement.

- (c) The Supplier is required to make its own arrangements with the local regional office of the Council for access or entry to the Site to carry out Supply as shown on the Orders. Prior to entering the Site, the Supplier must contact the local Regional Services Manager or nominated officer-in-charge of the Site to explain the nature of the Supply to be carried out and for permission to enter to carry out the Supply.
- (d) The Supplier is responsible for arranging access to occupied dwellings or functional premises. The Council will assist in regard to providing telephone numbers, working hours etc which will be recorded on the Order.
- (e) If the Supplier is unable to contact the Regional Services Manager or nominated officer-in-charge, or is refused permission to enter the Site, the Supplier must immediately notify the Project Manager and the Supplier must not proceed with provision of the Supply in such areas until further advised by the Project Manager.
- (f) Upon entry into the Site, occupied dwellings or premises, the Supplier must ensure that at all times, no nuisance is to be created, or damage to lawns, gardens, shrubs, furniture personal property and the like. All damage shall be made good at the Supplier's expense. Any denied entry to a government building must be reported to the Project Manager.
- (g) The Supplier must not bring dogs or domestic animals to a work site or to accommodation provided by the Council.

9.2 Site inspection

The Project Manager will conduct mandatory site inspections as it sees fit and if applicable (depending on the nature of the Supply), the Project Manager will conduct site mandatory site inspections during each stage of the Supply.

10. DESCRIPTION OF THE SUPPLY

- (a) The quantity of specific items listed in the Response Schedules is the Council's best estimate. Unless specifically stipulated in an Order, the Council does not guarantee that any quantity of any specific item will be ordered. The Council reserves the right to order such quantities of any or all items as may be required from time to time and to carry out, by other means (ie employment of other commission, government agency contractors and/or seeking quotations from other companies etc), any services or order any goods of the type and classification as described in the Schedule of Rates.
- (b) Allocation of work will be subject to capacity and capability to perform the required work based on current employment of tradespersons in the respective trades. A Supplier can elect which trades they wish to quote for and write "Not Applicable" against any items in the Response Schedule where the Supplier does not have current employees qualified to deliver services.

11. ACCESS IN RELATION TO SUPPLY

- (a) If the Supplier is required to enter an Aboriginal community in connection with the Supply then before entering such community, the Supplier must have obtained from the relevant Land Council all necessary permits/permissions and have paid all costs applicable to working in that community. Where pass-through of such costs is stipulated in the Order, the Supplier must seek reimbursement for such costs by invoicing the Council with evidence to support its claim for reimbursement. The Supplier shall ensure that it informs itself fully about all rules and laws relevant to working in a particular Aboriginal community to which the Supply relate, and that all employees engaged on the Contract (including those of Sub-Contractors) are fully aware of, and comply with, all laws and rules relevant to working in that community (including restrictions banning the consumption of alcohol).
- (b) The Supplier must supply to the Project Manager not less than 5 working days before entering an area of the Site, a complete list showing the full name, address and date and place of birth of every person who will be required to enter that area in connection with the Supply under the Contract.
- (c) Each person desiring to enter an area of the Site must comply with all local regulations relating to the issue of an entry permit and conditions of entry to the establishment. These requirements will apply to any other persons requiring entry to the area in connection with the Supply under the Contract.

12. INSURANCE

- (a) The Supplier must have in effect, before provision of the Supply and maintain until the end of the Contract period, the following insurances:
 - (i) workers' compensation or the like required by law for all deemed workers public liability insurance for not less than \$10,000,000; and
 - (ii) where the Supplier personally provides the Supply, personal accident and disability insurance for the Supplier, at least equivalent in amount to the workers' compensation insurance.
- (b) The Supplier must ensure and take all reasonable steps to procure that all of its Sub-Contractors have the same insurance as stipulated in this clause and whenever requested by the Council, the Supplier provide written evidence of current insurances (Certificate of Currency or equivalent).

13. SUPPLY DETAILS

13.1 Supplier to provide all equipment

The Supplier must provide all general and specialised equipment, tools and materials to provide and test the Supply (if such testing is applicable given the nature of the Supply). It is the responsibility of the Supplier to be fully equipped on each attendance call.

13.2 Supplier to provide all equipment

All materials salvaged from the Supply, other than that specified to remain the property of the Council, shall become the property of the Supplier, either for re-use in the Supply as may be specified, or, if not so re-used, for disposal by the Supplier clear of the Site.

13.3 Dial before you dig

- (a) If relevant to the provision of the Supply, the Supplier is solely responsible for contacting and must contact Dial Before You Dig (DBYD) at least 2 working days before it plans to excavate and must obtain the plans of the underground services before commencing excavation.
- (b) The Supplier must provide a written notice to the Project Manager stating that the plans have been received and include the DBYD sequence number.
- (c) As at the date of the Contract, DBYD can be contacted at the following numbers:

Telephone: 1100

(8am to 5pm weekdays, excluding public holidays)

Facsimile 1300 652 077

(Anytime a standard form is available)

Internet: www.1100.com.au

13.4 Protection of telecommunication underground cables

- (a) In addition to the requirements of clause 13.3, and prior to commencing any excavation, boring of holes, rock breaking, soil compaction or similar activity in the vicinity of telecommunication underground cables, whether fibre optic or copper, the Supplier must obtain the location of the cables from the accredited plant locater, and pay all fees. If the Supplier requires the Council to reimburse such fees to the Supplier, this must be stipulated in the Supplier's quotation and accepted in writing by the Council. If such fees have been accepted by the Council then the Council will pay the invoiced amount of the fees to the Supplier provided that the Supplier provides evidence to support its claim for reimbursement with the invoice.
- (b) The Supplier must follow all directions and instructions issued by the owner of such telecommunication underground cables in relation to work in the vicinity of such cables.

13.5 Work in easements

- (a) If the nature of the Supply requires access or works to be performed in an easement, drainage reserve or the like, the Supplier must confine its operations to within the boundaries of such easement or reserve. Any concessions the Supplier may desire outside the above mentioned boundaries to obtain access to the easement or for any other purpose must be obtained by the Supplier at its own expense from the property owner or other party concerned. Any agreement reached must be confirmed in writing and copies forwarded to the Project Manager and the land owner concerned.
- (b) On completion of the Contract, the easement or reserve and everything appertaining thereto must be restored as near as possible to the condition prevailing immediately prior to commencement of the access or works performed by the

Supplier and to the satisfaction of the owner. Before final payment is made the Supplier must, if so requested by the Project Manager, produce a written certificate from the landowner stating that all claims for compensation and damages have been paid in full.

13.6 Light and Power

- (a) Where a suitable electric light and power supply is available, the Supplier will be permitted to use this light and power supply subject to any restrictions imposed by the officer-in-charge or occupier of the Site. Where the Supply is carried out in an occupied residence, the Supplier must reach agreement, in relation to reimbursement of costs and conditions under which the light and power may be used, with the tenant of the residence prior to connecting any electrical appliance to the residence's power supply. The Supplier must promptly pay the tenant all costs agreed relating to the consumption of electric power by the Supplier and Sub-Contractors.
- (b) Where no suitable supply is available, the Supplier must arrange for the supply of all electric light and power required, and pay all charges and costs incurred unless the Order stipulates that such costs will be borne by the Council, in which case the Supplier may seek reimbursement of such costs from the Council by invoicing the Council for them and enclosing supporting evidence with the invoice.

13.7 Water

Where a suitable water supply is available, the Supplier will be permitted to use this water supply subject to any restrictions imposed by the officer-in-charge or occupier of the Site. Where no suitable water supply is available the Supplier must arrange for the provision of water required and pay all charges and costs incurred, unless the Order stipulates that such costs will be borne by the Council, in which case the Supplier may seek reimbursement of such costs from the Council by invoicing the Council for them and enclosing supporting evidence with the invoice.

13.8 Sanitary accommodation

If required by the Supplier, the Supplier may be permitted to use the existing sanitary accommodation provided that the facilities are properly used in accordance with the requirements of the officer-in-charge or occupier of the Site. Where no suitable accommodation is available, the Supplier must arrange for the provision of sanitary accommodation and pay all charges and costs incurred, unless the Order stipulates that such costs will be borne by the Council, in which case the Supplier may seek reimbursement of such costs from the Council by invoicing the Council for them and enclosing supporting evidence with the invoice.

13.9 Qualified personnel

- (a) All tradesmen undertaking electrical, plumbing and mechanical works as part of the Order must be suitably qualified in accordance with the following legislated requirements:
 - (i) Electrical – Self certified, licensed registered electrician;
 - (ii) Plumbing – Self certified, licensed registered plumber;
 - (iii) Mechanical – All Refrigeration Mechanics and refrigeration and air conditioning (A/C) businesses,

undertaking refrigeration and A/C related works, require the following mandatory licenses and facilities:

- (A) All employers require an artic refrigerant purchasing licence (which requires an approved storage facility, recovery capabilities etc.) so that refrigerant can be purchased by the employer.
- (B) Each refrigeration and A/C mechanic also is required to have a refrigerant handling licence (to safely transport and handle refrigerant),
- (C) Each refrigeration and A/C mechanic requires a recognised trade qualification in the refrigeration and A/C mechanical field.
- (D) Each refrigeration and A/C mechanic requires an "R" grade electrical licence to work on refrigeration and A/C units and systems anywhere in the Northern Territory.

(b) The Supplier must provide all registration, licenses and certification paperwork to the Project Manager prior to the commencement of the Contract.

14. PROCEDURE

14.1 Direction to work

- (a) A direction to work may be issued in the following forms:
 - (i) In writing and issued by the Project Manager.
 - (ii) As an Order issued by the Council.;
 - (iii) Urgent call out work outside of normal working hours - Urgent call out work outside of normal working hours may be communicated to the Supplier by the relevant Regional Services Manager, On Call Officer or the Project Manager.
- (b) If the Project Manager considers any particular work requirement is urgent he/she must so advise the Supplier and must cause the Order subsequently issued to be stamped "URGENT".
- (c) The Supplier must visit the office of the Project Manager if and as reasonably required by the Project Manager, to collect any hard copy directions to work.

14.2 Authority to Undertake Work

The Supplier will not undertake any work unless specifically directed to do so by the Project Manager in writing.

14.3 Conduct of persons

The Supplier must be responsible for the good and proper conduct of the persons, employees, agents and Sub-Contractors engaged by it and employed in the performance of the Contract. Persons, employees, agents and Sub-Contractors must be neatly dressed in a company uniform clearly displaying a company name and logo at all times and be of a neat and tidy appearance. All employees and Sub Contractor are required to have minimum Personal Protective Equipment (PPE) (singlets, thongs or sandals are not acceptable). PPE must be worn at all times whilst working in Northern Territory government buildings.

14.4 Technical and administrative control

The Supplier must ensure that the technical and administrative work (including invoicing) performed under the Contract is adequately supervised by a responsible member of the Supplier's staff.

14.5 Performance requirements

- (a) If the Project Manager determines that any remedial, protective, installation, manufacturing and/or other like work is urgent to prevent loss or damage to work or to any property, or likely to cause personal injury or death to any person, the Project Manager must convey the required work by telephone. The Supplier must ensure that an official urgent confirmation Order is collected by the next working day.
- (b) If the Supplier fails to carry out the work as directed, the Project Manager may arrange to have the work carried out by other means. If the Project Manager determines, on reasonable grounds, that such work was the responsibility of the Supplier pursuant to the Contract, all costs and charges properly incurred in doing the work will be a debt due from the Supplier and which may be deducted from monies owing to the Supplier or otherwise recovered.
- (c) The service performance requirements for the following categories must be as follows, and must commence from the time of the provision of the Order, or the giving of an instruction to the Supplier. The Supplier must perform the work at the time and within the period specified in the Order, or as the Project Manager may reasonably direct.

General Maintenance Services

- (i) **Immediate** - Attended to and rendered safe within four (4) hours of notification.

Repairs required due to an immediate safety and or security failure such as but not limited to a dangerous electrical fault, unsecured door and or window and the like.
- (ii) **Urgent** – Attend and satisfactorily concluded within two (2) working days of notification.

Repairs required due to a health, safety, or security failure and or where further damage could be expected if action is not taken such as but not limited to burst water services, blocked toilets and or sewerage system.
- (iii) **Routine** – Attend and satisfactorily concluded within ten (10) working days of notification.

Repair work that needs to be undertaken to correct a failure and or fault that is not deemed to be immediate or urgent, but now be inconvenient and could develop into a health, safety or security risk if not corrected promptly such as but not limited to leaking taps, individual parts of a stove, or leaking toilet cistern.

- (d) The Project Manager may issue multiple Orders indicating work to be done on various government assets per community; these must be issued in the weeks prior to a scheduled trip to a community. When the trip is complete material and labour will be allocated to each Order as to accurately indicate time labour and associated material used on each individual Order, accommodation, freight, airfares, car hire, overnight allowances, traveling allowances, and all other associated costs are required to be broken down and allocated to each Order to reflect the true cost value of that Order to Council.
- (e) If the Supplier does not execute the work in a time considered satisfactory by the Project Manager (such determination made on reasonable grounds), the work may be carried out by other means and no payment will be made to the Supplier except for works already performed.

14.6 Variation approval

- (a) Any variation from the extent of work as per an Order or as may be requested by the occupants of the premises must be approved in writing by the Project Manager prior to the varied work being carried out.
- (b) Where an item of work is ordered pursuant to an Order and the Supplier considers the item to be outside the scope of the Order, the Supplier must obtain the approval of the Project Manager prior to carrying out the varied works. The Supplier must in the case of any authorised variation insert on the Order the approving officer's name, the date of such approval and obtain the approving officer's signature on the revised Order.

14.7 Monthly meetings

The Council and the Supplier may mutually agree to hold monthly meetings to discuss compliance and performance issues relating to the Contract. The meeting agenda will include non conformance issues, invoicing and any other matters considered necessary by the parties.

14.8 Availability of Supplier

The Supplier must provide twenty-four (24) hours a day; seven (7) days a week telephone contact and availability of labour to deploy to the Supply should the Project Manager so direct. Any such direction of the Project Manager will be made on reasonable grounds only, and in the event of such a direction, the Council shall have first call on the services of the Supplier.

14.9 Use of Sub-Contractor

- (a) The Supplier may engage the services of a Sub-Contractor who is in the vicinity of a community to be used for items of an emergency urgent or priority nature. The Supplier shall be responsible for any defective work which pertains to the Contract. Defective work will be rectified immediately and all costs of the rectification will be entirely borne by the Supplier including air fares, material, labour, hire car, accommodation, and labour hourly rates and all other

associated costs. These costs must be totally absorbed by the Supplier irrespective of whether or not its Sub-Contractor does the rectification work or not.

- (b) The Supplier must confer with any Sub-Contractors and persons engaged on separate orders in connection with the Supply and with the Project Manager for the purpose of coordination and execution for the various phases of the works. The Supplier is responsible for arranging that each shall attend upon and assist the other trades.
- (c) The Supplier must ascertain from the Sub-Contractor and persons engaged on separate contracts the extent of all chasing, cutting and forming of all openings, holes, grooves and the like. The Supplier must ascertain the routes of all services and the position of all floor outlets, traps and the like in connection with the installation of plant and services and arrange for the construction of work accordingly. The breaking and cutting of complete work must be avoided wherever possible.

15. PRICE AND PAYMENT TERMS

15.1 Issue of invoice

- (a) Council will pay the Price to the Supplier for the Goods and/or Services set out in an Order.
- (b) The Supplier must provide the Council and the Project Manager with a valid, GST compliant tax invoice for the Price payable:
 - (i) in respect of each delivery of Goods, at the time of delivery or as soon as practicable thereafter, or at such other time(s) as may be specified in the relevant Order; or
 - (ii) in respect of the provision of the Services, upon successful completion of the Services and provision and acceptance of the relevant Deliverables to the Council (if any) in accordance with the requirements of this document, or as soon as practicable thereafter, or at such other time(s) as may be; or
 - (iii) specified in the relevant Order.

15.2 GST

The Supplier is responsible for collecting the GST and remitting it to the Tax Office.

15.3 Invoice layout

Unless otherwise instructed by the Project Manager, the Supplier must issue one (1) invoice for each Order. The invoice must attach the Order and correspond with the Price and provide the following information (as applicable depending on the nature of the Supply):

- (a) Invoice number;
- (b) Issue date;
- (c) Order number;
- (d) Allotment and location of work;
- (e) A description of the Goods and/or Services provided and/or the deliverables to which the invoice relate;
- (f) All dates upon which work was undertaken and completed;

- (g) Number of labour hours per labourer (tradesperson, trade assistant, apprentice or other person required to complete job specified on the Order);
- (h) Cost of labour;
- (i) Total number of travel kilometres allocated to the job;
- (j) Number of hours of Indigenous employment;
- (k) Cost of equipment hire associated to the Order (if such costs were approved in advance by the Council);
- (l) Cost of mobilisation associated to the Order (if such costs were approved in advance by the Council);
- (m) Cost of travel both number of kilometres and time; and
- (n) Any other information reasonably requested by the Council.

15.4 Retention payment

- (a) A retention payment will be held by the Council upon completion of the Contract for a maximum period of three months at a rate specified in the Special Conditions which will be agreed by the Council and the Supplier.
- (b) The retention payment is for the purpose of a warranty that the Goods, Services and Deliverables will be free of defects in materials and workmanship, for the Warranty Period. If the Council considers that there is defect in materials or workmanship during the Warranty Period, that is not an emergency, it will notify the Supplier of this in writing, and the Supplier will have Two (2) weeks from the date of such notice to rectify the fault to the Council's reasonable satisfaction. If this does not occur, the Council will be entitled to engage an alternative service provider to remedy the defect, and seek reimbursement of the costs incurred in doing so from the Supplier. If the Council identifies a defect during the Warranty Period which it considers on reasonable grounds to be an emergency, the Supplier must immediately take all appropriate steps to rectify the defect as soon as possible, to the Council's reasonable satisfaction, and if this does not occur, the Council will be entitled to engage an alternative service provider to remedy the defect, and seek reimbursement (from the retention payment or any other means) of the costs incurred in doing so from the Supplier.

15.5 Order

The Order must be signed in every instance. No Order will be accepted as completed by the Project Manager or his/her representative without the required signatures and dates of completion endorsed on the Order as described. The amount of the invoice must correspond if the dwelling or asset is vacant when the work is carried out, the original copy is to be endorsed by the Project Manager's representative and the Supplier shall provide photographic evidence on completion

15.6 Remittance

- (a) The Council will pay each tax invoice issued by the Supplier in within 30 calendar days of the date of receipt, subject to negotiation.
- (b) Payment of validly issued tax invoices will be subject to a pro-rata adjustment by the Council, as determined by the Council in its sole and absolute discretion, to account for any shortage in the number of Goods delivered or any non-complaint Goods or Deliverables rejected by the Council under this document.

- (c) Without limiting its rights in any way, if the Council disputes all or part of a tax invoice, it must notify the Supplier of this in writing within 10 business days of receipt of that invoice. The Council must pay the Supplier an amount equal to the undisputed portion of the invoice in accordance with clause 15.6(a), and the disputed portion will be subject to clause 26.

16. QUOTATION BASED ON HOURLY BASIS

16.1 Clause 15 applies

Clause 15 sets out the price and payment terms which apply to the Contract. If the Supply is of an on-going nature or it is not possible to provide a fixed price for the Supply and the Council has accepted a quotation for the Supply based on an hourly basis, then the Council will inform the Supplier of the indicative budget set for the Supply. See clause 16.3 below for further details.

16.2 Material costs

Unless otherwise specified on the Order, the Council will cover material costs or will provide all materials required to complete the requested work. If the Council requires the Supplier to procure materials, then the materials costs incurred by the Supplier are to be itemised separately.

16.3 Evidence of costs

- (a) The indicative budget for the Supply is subject to revision by the Project Manager. All labour costs incurred by the Supplier on the Supply must be recorded on an hourly basis. The total cost payable for the labour will be the sum ascertained by multiplying the measured quantity of each item of work actually carried out and completed pursuant to the Contract by the rate accepted for the item.
- (b) Total works costs are to be invoiced weekly, with each invoice including details of hours and dates worked, materials used, and completion of tasks as defined in the Order. Progress payment or milestone payments are subject to negotiation. All work will be subject to retention payments.
- (c) Where it becomes evident during the course of an item of work that the cost will exceed \$5,000 (labour and materials), the Supplier will not proceed without the approval of the Project Manager.

16.4 Right of audit

The Supplier must keep full and proper records and all the documents relating to the transactions affecting the Supply. The Council will have, at all reasonable times, access to and the right to reproduce the Supplier's books, documents, correspondence, instructions, receipts, vouchers and memoranda of any description including what is stored in computers which shall be made available in legible form together with any other information (such as codes) needed for its comprehension plus access to the Supplier's staff and their records relating to the works undertaken under the Contract for the purpose of auditing and verifying costs of the Supply and for any other reasonable purposes. The Supplier must preserve and procure that its Sub-Contractors preserve the documents for three years after termination of the Contract.

17. GST

- (a) Unless otherwise expressly stated, the Price and other sums payable or consideration to be provided under this document is exclusive of GST.
- (b) If GST is payable by the Council on any supply made by the Supplier under this document, the Council must pay to the Supplier an additional amount that is equal to the amount payable by the Council for the relevant supply multiplied by the prevailing GST rate. This additional amount is payable at the same time as the Price or other consideration for the relevant supply to which the additional amount relates.
- (c) In the event of a taxable supply, the Supplier will provide a valid tax invoice (in the form prescribed by the *A New Tax System (Goods & Services Tax) Act 1999* (Cth)) to the Council as a precondition to payment in accordance with clause 17(b).

18. SUB-CONTRACTORS

- (a) If the Supplier engages the service of a Sub-Contractor in supplying the Goods and/or Services under an Order, the Supplier must ensure that any Sub-Contractors it proposes to use have been approved in writing by the Council prior to the engagement of such Sub-Contractors.
- (b) The Supplier must ensure that each Sub-Contractor complies with these all the applicable terms and conditions of the Contract.
- (c) It is the responsibility of the Supplier to ensure that all Sub-Contractors are paid accordingly.

19. WARRANTY AGAINST DEFECTS

- (a) The Supplier warrants that the Goods, Services and Deliverables, as relevant to any Contract, will be free of faults, defects and errors for the duration of the Warranty Period.
- (b) If the Council advises the Supplier that any Goods, Services or Deliverables (as applicable) contain defects, errors or are otherwise faulty at any time during the Warranty Period, then the Supplier must (without limiting the remedies available to the Council under this document or applicable law) at its sole cost and expense and as directed by the Council:
 - (i) in the case of Goods and Deliverables - replace the relevant item, the supply of equivalent goods, repair of the relevant item, payment of the cost of replacing the relevant item or acquiring equivalent goods, or payment of the costs of having the relevant item repaired;
 - (ii) in the case of the Services - the supply of the services again or payment of the cost of having the services supplied again; or
 - (iii) collect the non-conforming Goods or Deliverables from the Council's premises and refund or otherwise credit to the Council the total amount the Council has paid with respect to the non-conforming items, or not invoice the Council for such amounts (as appropriate).
- (c) If any replacement or substitute Goods, Services or Deliverables are supplied to the Council under clause 19(b)(i),

the Warranty Period will re-commence in respect of such items as at the date of acceptance by the Council in writing of the replacement or substituted items.

20. RECALL OF GOODS

- (a) The Supplier must immediately notify the Council if it becomes aware that it is necessary or desirable to withdraw the Goods or Deliverables from the marketplace, because of non-compliance with the requirements of this document or applicable laws and regulations, or if the items are (or are suspected to be) defective or otherwise faulty, or a competent authority has directed or is likely to direct that the relevant Goods or Deliverables be withdrawn, or any other reasonable grounds.
- (b) The Council will be responsible for carrying out any recall of Goods or Deliverables, at the Supplier's cost, unless it otherwise notifies the Supplier, and the Supplier must reimburse the Council for all costs it has incurred in respect of any recall (regardless of whether or not carried out by the Council).

21. INTELLECTUAL PROPERTY

- (a) The Supplier acknowledges and agrees that nothing in this document gives the Supplier any right or entitlement to any of the Intellectual Property of the Council, including but not limited to the Background IP of the Council, and that except to the extent strictly necessary for it to perform its obligations under this document, it must not access or use any of the Intellectual Property of the Council, and does not otherwise have any legal or equitable claim or right to such Intellectual Property.
- (b) The Council acknowledges and agrees that with the exception of the Deliverables, and its Background IP, the Intellectual Property rights associated with the Goods and/or Services are Background IP of the Supplier.
- (c) The parties agree that ownership of the Deliverables will vest in the Council immediately upon creation and will be the sole and absolute property of the Council, and the Supplier will not have any legal or equitable claim or right to any part of the Intellectual Property comprised in and associated with the Deliverables. The Supplier agrees to execute (and procure the execution of) any documentation required by the Council to confirm this.
- (d) The Supplier grants to the Council a perpetual, fee-free and royalty-free, non-exclusive, worldwide, irrevocable, transferable licence, with a right to sub-license, to access, use, copy, modify, reproduce and otherwise exploit the Background IP of the Supplier to the extent that this is required for the Council to fully enjoy, use and exploit the Goods, Services and any Deliverables supplied by the Supplier under any Contract.

22. TERMINATION

- (a) The Council may terminate this document, or any Contract or Order, with immediate effect by written notice to the Supplier if

- an Event of Default occurs or is threatened to occur in respect of the Supplier.
- (b) Termination of this document or any Contract or Order will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in this document.
 - (c) The Council will not be required to pay any sums on account of Goods or Services as at the date of termination of this document or any Contract.
 - (d) In the event of termination of this document or any Contract, the Supplier must deliver to the Council, on request, all information and Intellectual Property necessary for the Council to obtain supply from an alternative supplier.
 - (e) Clauses 19, 20, 21, 23 and 25 survive the expiry or termination of this document or any Contract together with any other provision which is by its nature or effect reasonably intended to survive.

23. SUPPLIER WARRANTY AND INDEMNITY

- (a) The Supplier warrants and represents to the Council that:
 - (i) it has the authority and ability to enter into this document and perform its obligations, and will do so;
 - (ii) it is the owner or authorised licensor of any Background IP provided or made available to the Council under this document;
 - (iii) the Goods and the Deliverables (if any) will be free from encumbrances and will not infringe the Intellectual Property rights of any third party;
 - (iv) all Goods and Deliverables provided to the Council will be of acceptable and merchantable quality, free of defects in design, workmanship or materials for the duration of the Warranty Period, fit for their intended purpose, comply with their descriptions and any relevant Specifications, conform with all samples, be free of any encumbrances and other charges or securities and have available repair facilities and spare parts as appropriate;
 - (v) the Services, if any, will be supplied with due care and skill, will be fit for any particular purpose made aware to the Supplier by the Council (whether expressly or implicitly), will be suitable (together with any relevant Deliverables) to achieve any particular result or outcome made aware to the Supplier by the Council (whether expressly or implicitly);
 - (vi) it will comply with all applicable laws in relation to the performance of its obligations under this document, including any applicable occupational health and safety laws and any standard notified by the Council from time to time, and that the Goods, Deliverables and/or Services provided to the Council will also comply with such requirements; and
 - (vii) it has all necessary permits, licences, government approvals and other necessary registrations or documentation to lawfully provide the Goods and/or Services.

- (b) To the fullest extent permitted by law, the Supplier will be solely responsible for the Goods, Deliverables and/or Services provided to the Council under this document (including any consequences resulting from the use of the Goods or Deliverables by end user customers), and in no circumstances will the Council or any of its related entities be liable to the Supplier or any other party for any loss or damage sustained by any party in connection with the Goods, Services or Deliverables, including death, physical damage, injury, illness, special, indirect or consequential loss or damage, loss of opportunity, lost revenue or lost profits to any party.
- (c) The Supplier agrees to indemnify, defend and hold harmless the Council and each of its officers, agents and employees, against any and all claims, demands, suits, causes of action, damages (including but not limited to special or consequential damages) and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any failure by the Supplier to comply with its obligations under this document, or any breach of the warranties set out in clause 23(a).
- (d) The indemnities provided by the Supplier to the Council under this document will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

24. INSURANCE

- (a) The Supplier must take out and maintain the Insurances with reputable insurers.
- (b) The Supplier Party must immediately provide the Council with such proof of compliance with its obligations under this clause as the Council may reasonably request from time to time.

25. CONFIDENTIALITY

25.1 Obligation

The Supplier must keep the Confidential Information of the Council secret and confidential, and must not use or disclose such Confidential Information for any purpose other than to the extent strictly necessary for it to perform its obligations under this document.

25.2 Exclusions

The obligations of confidence under this document do not apply to any information that:

- (a) is in the public domain (other than through any breach of this document);
- (b) the Supplier can prove was known to it at the time of disclosure by the Council, free from any obligation of confidence; or
- (c) the Supplier is required by law to disclose.

25.3 Survival of obligations

The obligations of confidentiality under this document and each Contract survive expiration or termination.

25.4 Permitted disclosure

The Supplier may disclose the Confidential Information of the Council to those of its representatives or professional advisers who need to know the information to enable the Supplier to properly perform its obligations under this document or any Contract and who are aware of the confidential nature of the information.

25.5 Destruction of documents

On written notice from the Council, the Supplier must immediately destroy or deliver to the Council all Confidential Information in a recorded form (including any copies of that information) which is in the possession or control of the Supplier or its Representatives.

25.6 Public statements

Neither party will make any public statement or communication or make any representation in relation to this document or any part of it, or in relation to the other party, or any representative or customer of the other party, without the prior written consent of the other party unless the statement, communication or representation is required to be made:

- (a) as part of the proper provision of the Goods and/or Services by the Supplier, or in use of the Goods and/or Services or Deliverables by the Council;
- (b) by law or the rules of any stock exchange; or
- (c) pursuant to any order of a court, tribunal or government or regulatory body, authority or agency.

26. DISPUTE RESOLUTION

26.1 Negotiation

All disputes between the parties relating to a Contract must be referred in writing to a representative appointed by each party (**Representative**) who will attempt to resolve the dispute by negotiations in good faith.

26.2 Mediation

- (a) If the dispute is not settled within 14 calendar days of the receipt by each Representative of notification of a dispute pursuant to clause 26.1, the parties agree to refer the dispute to a mediator to be mutually agreed, or in default of document within five days of either party requesting the other to agree a mediator, to be appointed by the President for the time being of the Law Society Northern Territory.
- (b) The mediation will be held in Katherine, Northern Territory, and the parties will equally share the costs of the mediator while otherwise each bearing their own costs of attending and participating in the mediation.

26.3 Legal proceedings

If mediation pursuant to clause 26.2 fails to resolve the dispute, each party is free to commence legal proceedings to resolve the dispute.

26.4 Interlocutory relief

Nothing in this clause 26 is to be interpreted as preventing either party from obtaining interlocutory relief from an appropriate court if it is reasonably necessary to do so to protect the interests of that party.

27. GENERAL

27.1 Costs

Each party will pay its own costs in connection with the negotiation, preparation and execution of this document and/or each Contract.

27.2 Amendment

This document may only be amended in writing signed by all the parties and may not be amended in any other manner.

27.3 Entire document

This document, and each Contract, contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect. For the avoidance of doubt, this document supersedes and overrides any terms for the supply of Goods or Services tendered to the Council by the Supplier, whether before or subsequent to the date any Order is placed, and including for the avoidance of doubt any terms and conditions attached to any quotations issued by the Supplier to the Council.

27.4 Force Majeure

If a Force Majeure Event precludes either party from partially or wholly complying with its obligations under this document then as soon as reasonably practicable after that Force Majeure Event arises, the affected party must notify the other of the Force Majeure Event, and that party's obligation to perform in accordance with this document will be suspended for the duration of the actual delay arising directly out of the Force Majeure Event or 30 calendar days, whichever is shorter, provided that the affected party does everything reasonably possible to mitigate the effects of the Force Majeure Event.

27.5 Assignment and Subcontracting

The Supplier must not assign or transfer any of its rights or obligations under this document, or appoint a Sub-Contractor to perform its obligations under this document, without the prior written consent of the Council, which will be granted or withheld by the Council in its absolute discretion.

27.6 Waiver

No waiver by the Council of any breach or default by the Supplier is effective unless reduced to writing and signed by the Council, and any such waiver does not constitute a waiver of any other continuing breach or default under this document.

27.7 Remedies

Other than as provided in this document the rights and remedies provided under this document are cumulative and not exclusive of any rights or remedies provided by law or of any other such right or remedy. Any single or partial exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under this document. The rights and obligations of the parties pursuant to this document are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

27.8 Severance

If any provision of this document is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

27.9 Governing Law

This document is governed by the law in force in the Northern Territory of Australia. The parties submit to the exclusive jurisdiction of the courts of that Territory and the Registry of the Federal Court of Australia located in that Territory in respect of all proceedings arising in connection with this document.

27.10 Further Assurances

Each party will promptly do all things required by law or reasonably requested by any other party to give effect to this document.

27.11 No Merger

No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

27.12 Notices

- (a) Any notice given under this document must be in writing and signed by or for the sender and delivered by priority post, hand or email to the last known address of the recipient.
- (b) A notice or other communication is deemed given if:
 - (i) personally delivered, upon delivery;
 - (ii) mailed within Australia by priority post, at 9am on the sixth (6th) business day after the date of posting (whether received or not); and
 - (iii) sent by email, at the time of transmission provided that the sender receives confirmation of the successful delivery of the notice to a server accessible by the recipient.

SCHEDULE ONE - SPECIAL CONDITIONS

Item 1. Interpretation

Unless the context otherwise requires, capitalised terms used in the Special Conditions that are defined in the Standard Terms and Conditions have the meanings given to them in the Standard Terms and Conditions.

[insert Special Conditions (if any)]

Retention Payment: [insert]

Attachment A - Environmental Requirements

Item 1. Definitions

Unless the context otherwise requires, capitalised terms used in this attachment have the same meaning given to those terms in the Standard Terms and Conditions. In this attachment, the following terms will have the following meanings:

AAPA means the Aboriginal Areas Protection Authority

NTASSA means the *Northern Territory Aboriginal Sacred Sites Act* (NT)

Item 2. General

This section specifies the requirements for the environmental management of the Supply, including general environmental controls, the Environmental Management Plan, if required, heritage and cultural clearances, materials extraction approvals and specific requirements with regard to soil erosion and weed management.

Item 3. Responsibility

The Supplier is responsible for ensuring that the provisions of this section and any other environmental protection provisions in the Contract are complied with and that the requirements of any statute by-law, standard and the like related to environmental protection are observed.

Item 4. Statutory requirements and guidelines

The Supplier must comply with all relevant legislation, including but not exclusively the following Acts as applicable:

- *Bushfires Management Act 2016* (NT)
- *Northern Territory Aboriginal Sacred Sites Act* (NT)
- *Dangerous Goods Act* (NT)
- *Environmental Assessment Act* (NT)
- *Environmental Offences and Penalties Act* (NT)
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- *Heritage Act* (NT)
- *Soil Conservation and Land Utilisation Act* (NT)
- *Territory Parks and Wildlife Conservation Act* (NT)
- *Waste Management and Pollution Control Act* (NT)
- *Water Act* (NT)
- *Weeds Management Act* (NT)

If the listed Acts are superseded by future legislation, the future legislation shall come into force.

Reference Guidelines

- Managing Urban Stormwater, Soils and Construction – Vol 1, 4th Edition, Landcom

This document is available at www.landcom.nsw.gov.au

- Roads and the Environment - Council Road Network document published in 2004

Item 5. Environmental Management Plan

An Environmental Management Plan is not mandatory for the Supply; however, the works in relation to the Supply

must be carried out in accordance with the environmental requirements of this attachment.

Item 6. General Environmental Controls

(i) **Submit Proposals – Hold Point**

Hold Point - Submit to the Project Manager the proposal for traffic movement, temporary structures (including lamps) cleaning up (including burning off) erosion control, demolition and the like prior to any work commencing on the Site.

After the Project Manager has agreed to the proposals, the Supplier will be responsible for ensuring that the agreed proposals are observed. Any changes to the agreed proposals are to be requested by the Supplier and be subject to the agreement of the Project Manager.

(ii) **Site Control**

Do not form any new tracks, alter any existing tracks, erect any camps, remove any trees or shrubs, cut any fences or water, sewer, power or telecommunications lines or perform other activities not specified or indicated on the drawings or otherwise required under the Contract without the prior approval of the Project Manager.

(iii) **Site Clearing**

Contain the extent of Site clearing to the limits specified or indicated on the drawings or otherwise approved by the Project Manager. If any areas of vegetation within the limits of clearing are to be retained, fence off with temporary fencing.

In urban areas remove the cleared vegetation and other material, excluding weeds, from the site and chip and mulch for re-use off-Site, as directed by the Project Manager. Dispose of unwanted mulch at a council waste disposal site and pay all fees and charges.

In rural areas cleared vegetation, excluding weeds, may be chipped for reuse as mulch on site in conjunction with environmental control measures, if suitable. Remove excess or unwanted material from the site and dispose in accordance with local authority requirements and guidelines.

(iv) **Lighting of Fires**

Do not light fires under any circumstance, without prior consent from the Project Manager. Where fires are accidentally started, it is the responsibility of the Supplier to extinguish the fires.

(v) **Solid, Liquid and Gaseous Contaminants**

Take responsibility for the proper disposal of all solid, liquid and gaseous contaminants in accordance with the statutory and contractual requirements, including the provisions of this section. Do not dispose of liquid paint materials or other hazardous materials by flushing down any sewer, stormwater system or natural waterway.

(vi) **Noise Control**

Take all practical precautions to minimise noise resulting from the work activities. Fit all construction equipment with noise suppressors so that noise is minimised. Do not use

loud hammers in built up areas. In, or near residential areas restrict working hours as appropriate and consult with affected residents and local government bodies prior to the commencement of work.

(vii) Compressor Silencing

Fit all compressor sets used in the performance of this work with effective acoustic canopies and engine exhaust silencers of a type as recommended by the compressor manufacturer. Alternatively, compressor sets specially designed for quiet operation may be used. Keep compressor sets and canopies in effective operating condition at all times. Keep any access panels in acoustic canopies closed at all times while the sets are running.

(viii) Jackhammer Silencing

Fit all jackhammers used in the performance of this work with effective silencers of a type as recommended by the jackhammer manufacturer. Keep all tools and silencers in first class condition at all times. Closely supervise jackhammer operators to ensure that the silencers are always in place while the tools are being used.

(ix) Vibration

Take reasonable action to ensure that construction works do not result in vibration causing damage adjacent to the site. If necessary use monitoring equipment to measure vibration levels in terms of the peak particle velocity in accordance with Australian Standard 2187.2.

(x) Dust and water

Protect adjoining owners, residents and the public against dust, dirt and water nuisance. Use dust screens and watering to reduce the dust nuisance.

(xi) Air Quality

Ensure that all emissions of smoke, dust, pesticides, herbicides and other substances into the atmosphere are minimised in accordance with the *Waste Management and Pollution Control Act* (NT).

Item 7. Community Liaison

(i) Notify Council Staff

Notify local Council staff about new or changed construction activities which will affect access to their properties or otherwise significantly disrupt residents or occupiers use of their premises. Such notification must be at least Five (5) working days before commencing the work affecting residents, unless the work is of an urgent nature for safety reasons and must advise of the following;

- the nature of the work
- why it is necessary
- the expected duration
- changes to arrangements for traffic or property access
- the name and 24 hour contact telephone number of the Supplier's representative who can respond to Regional Office concerns.

The Project Manager will provide a contact point for Aboriginal communities.

(ii) Complaints

Within one (1) working day of receiving a complaint about any environmental issue, including pollution, supply a written report to the Project Manager detailing the complaint and action taken to alleviate the problem. Keep a register of all environmental complaints and action taken.

Item 8. Waste Management

(i) Waste Management Generally

Comply with the requirements of the *Waste Management and Pollution Control Act* (NT).

Remove from the site and dispose of all waste materials, including green waste, food scraps and the like, construction waste, chemicals and effluent in an appropriate manner. Recycle waste materials where appropriate.

Handle all refuse and waste materials in a manner so as to confine the material completely and prevent dust emission.

(ii) Waste Management Plan

Include a Waste Management Plan in the Environmental Management Plan. The Waste Management Plan, as a minimum must address the following items:

- Identify major waste streams that will be generated during the Contract including;
 - green waste
 - construction waste, including;
 - spoil
 - demolition waste
 - asphalt or bitumen
 - concrete and metal
 - grease, oils and fuels
 - paint materials
 - office waste
 - kitchen waste
 - sewage effluent;
- For each waste stream indicate how and where the waste is to be reused, recycled, treated or disposed of.
- How the waste will be transported between the site and point of reuse, recycling, stockpiling or disposal and who will be responsible.
- Methods for monitoring the Waste Management Plan.
- Maintain records to demonstrate that all surplus materials are reused, recycled or disposed of in accordance with statutory requirements.

Item 9. Cultural Heritage

(i) Protect Artefacts

Should any item be encountered which is suspected to be an artefact of heritage value or any relic, artefact or material suspected of being of Aboriginal origin, cease all construction work that might affect the item and protect the item from damage or disturbance. Notify the Project Manager immediately, who will then arrange for appropriate specialists and community representatives to inspect the site.

Ensure that all personnel working on site have received training regarding their responsibilities regarding cultural heritage and are made aware of any sites/areas which must be avoided. Such sites/areas must be identified on a site map and made available to all relevant personnel during the works.

(ii) Heritage Listed Buildings and Sites

Ensure that Ministerial approval has been obtained before commencing any work on any heritage listed buildings or sites.

Item 10. Sacred Sites Protection

(i) Sacred Sites Protection Conditions

The Council will apply for and obtain certificates under the NTASSA for the proposed road works to enable the Supplier to undertake the works. Copies of certificates are included in the specification. If the Supplier elects to work outside of the areas covered by the certificates provided, the Supplier must apply for and obtain certificates for those works under the NTASSA. The costs associated with obtaining certificates are to be determined in accordance with the Regulations of the NTASSA.

Prior to work commencing the Supplier will develop a plan for the adequate protection of any identified sacred sites potentially affected by the work and consistent with the conditions attached to the certificate. This plan may include, as the occasion requires, placing coloured tape, plastic mesh, bollards and/or temporary fencing around the sites and restriction areas. Submit the plan to the Project Manager for approval prior to its implementation. Once the Project Manager's written approval is given, the Supplier will implement the plan.

Once the protective measures are in place and prior to work commencing, the Supplier will ensure and submit in writing to the Project Manager, that the protective measures have been completed in accordance with the plan and authority certificates.

Prior to work commencing, the Project Manager will conduct a protection of sacred sites briefing session for all on-site employees and on-site Sub-Contractors regarding the protection of the sites during construction. The conditions applying to the protection of the sites will be reinforced, as will the principle that responsibility for the restoration of any damage to these sites rests with the Supplier. The AAPA will be given the opportunity to attend such briefings. The Council will bear the cost of the AAPA expenses associated with attending the meeting. The Supplier will ensure that all relevant documentation, including work plans, clearly show all sites and restricted areas identified on the certificate. The Supplier will be responsible for any failure to comply with the conditions of the AAPA Certificate in accordance with the Breach of Sacred Site Protection Conditions clauses set out below.

(ii) Breach of Sacred Site Protection Conditions

If AAPA notifies the Project Manager that a certificate condition applying to the protection of a sacred site has allegedly been breached, the Project Manager will instruct the Supplier to stop work in the near vicinity of the affected site or to undertake essential works to maintain public access then stop work until the Project Manager is advised by the AAPA that the breach has been resolved and the Project Manager issues an instruction to advise work can recommence.

The Project Manager will arrange for a meeting between custodians, the Supplier and AAPA to be held in order to view the affected site, discuss when work might resume and agree to any restorative measures that may be needed.

Following this meeting occurring, the Project Manager will document and issue a letter to all parties specifying the restorative measures, if any, which have been agreed upon at the meeting referred to above and which are to be implemented together with a timetable for implementation. All parties will respond to the letter to confirm agreement, and then the Project Manager will instruct the Supplier on the restorative measures, if any, to be undertaken.

The Supplier will meet its own costs, together with some or all of the following reasonable costs, if mutually agreed with the Council:

- AAPA representatives and the custodians to attend the site meeting in accordance with clause 19G of the NTASSA and Regulation 8 of the Northern Territory Aboriginal Sacred Sites Regulations, Regulation 6 Guidelines as to charges that may apply for non-standard application or conference;
- Any restorative measures agreed upon between AAPA and the custodians; and
- any reasonably incurred costs of the Council.

A breach of the conditions will be a factor taken into account in the Supplier's Performance Report rating for "Contract Relations/Administration" and "Environmental Protection" in the awarding of future contracts by the Northern Territory, and will also influence future rating by Contractor Accreditation Ltd. AAPA will independently investigate whether a prosecution should also be pursued under the NTASSA.

(iii) Compliance with Clearances and Permits

Comply with the requirements of any clearances or permits, whether obtained by the Supplier or obtained by the Council for the particular work and ensure the protection of the sites from interference.

Item 11. CONTROL OF DEFECTS

Provide details of procedures employed to ensure that defective material or work is not used on the project. Develop a pro-forma document for use in recording details of defects and the remedial action taken.