

**'ATTACHMENT A'**

**GENERAL CONDITIONS FOR CONSULTANCY SERVICES**

**1. INTERPRETATION**

**1.1 In these Conditions:**

- (a) **"ANSTO"** means Australian Nuclear Science and Technology Organisation ("ANSTO");
- (b) **"ANSTO Representative"** means the person for the time being holding, occupying, or performing the duties of the position specified in the contract.
- (c) **"Confidential Information"** means information that:
  - is by its nature confidential;
  - is designated by ANSTO as confidential; or
  - the Consultant knows is confidential;

But does not include information which:

- is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;
  - is in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from ANSTO;
  - has been independently developed or acquired by the Consultant;
  - is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted under this Contract.
- (d) **"Consultant"** means the party who by the Contract undertakes to provide the Consultancy Services;
  - (e) **"Consultancy Services"** means the services to be performed under the Contract;
  - (f) **"Contract"** means the Contract under which the Consultancy Services are to be provided to ANSTO including these general conditions;
  - (g) **"Contract Material"** means all material brought or required to be brought into existence as part of, or for the purpose of performing the Consultancy Services including, but not limited to, documents, equipment, information and data stored by any means.
  - (h) **"Proportionate Liability Legislation"** means:
    - (i) section 82(1B) and Part VIA of the Trade Practices Act 1974 (Cth);
    - (ii) Part 4 of the Civil Liability Act 2002 (NSW); and
    - (iii) any similar applicable laws relating to proportionate liability;in each case which are capable of exclusion.

1.2 Words importing a gender include any other gender. Words in the singular number include the plural and words in the plural number include the singular.

**2. VARIATION OF AGREEMENT**

2.1 No agreement or understanding that varies or extends the Contract (including in particular the scope of the Consultancy Services) and would result in an increase in the monies payable by or other liability of ANSTO shall be legally binding upon either party unless in writing and signed by both parties.

### **3. SUBCONTRACTORS**

- 3.1 The Consultant agrees not to subcontract the performance of any part of the Consultancy Services without prior approval, in writing, from ANSTO.
- 3.2 ANSTO may impose any terms and conditions it considers appropriate when giving its approval under clause 3.1.
- 3.3 The Consultant shall be responsible for the performance of the Consultancy Services notwithstanding that the Consultant has subcontracted the performance of any part of those Consultancy Services in accordance with clause 3.1 and 3.2.

### **4. SPECIFIED PERSONNEL**

- 4.1 Where ANSTO and the Consultant have agreed that some or all of the Consultancy Services are to be provided by a particular person(s), the Specified Personnel shall be nominated in the Contract.
- 4.2 ANSTO shall be entitled to approve all personnel provided by the Consultant to undertake the Consultancy Services.
- 4.3 The Consultant shall ensure that the Specified Personnel undertake work in respect of the Consultancy Services in accordance with the terms of this Contract.
- 4.4 Where any of the Specified Personnel are unable to work or the personnel (including Specified Personnel) fail to perform with diligence, efficiency and skill then ANSTO may give notice requiring the Consultant to remove the personnel from work in respect of the Consultancy Services. The Consultant shall promptly arrange for their replacement with personnel acceptable to ANSTO and at no additional charge and at the earliest opportunity.

### **5. ASSIGNMENT AND NOVATION**

- 5.1 The Consultant cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from ANSTO.

### **6. ANSTO MATERIAL**

- 6.1 ANSTO agrees to provide Material to the Consultant, as specified in the Contract. The Consultant shall be responsible for the safe keeping and maintenance of the ANSTO Material.
- 6.2 ANSTO grants to the Consultant a royalty-free, non-exclusive licence to use, reproduce and adapt ANSTO Material for the purposes of this Contract.
- 6.3 The Consultant agrees to ensure that all ANSTO Material is used strictly in accordance with any conditions or restrictions direction by ANSTO and specified in the Contract.

### **7. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL**

- 7.1 Intellectual Property in all Contract Material vests or will vest in ANSTO.
- 7.2 Clause 7.1 does not affect the ownership of Intellectual Property in any existing Material which is specified in the Contract, but the Consultant grants to ANSTO a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any such existing Material in conjunction with the other Contract Material.
- 7.3 If requested by ANSTO, the Consultant agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 7.
- 7.4 The Consultant warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 7.

### **8. DISCLOSURE OF INFORMATION**

- 8.1 The Consultant agrees not to disclose to any person other than ANSTO, any Confidential Information relating to this Contract or the Consultancy Services without prior approval in writing from ANSTO. ANSTO may impose any conditions or restrictions it considers appropriate when giving its approval under this clause. This clause will survive the expiration or termination of this Contract.

### **9. CONFLICT OF INTEREST**

- 9.1 The Consultant warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, the Consultant undertakes to notify ANSTO immediately in writing of that conflict or risk.

### **10. SECURITY AND CONDUCT AT ANSTO PREMISES**

- 10.1 The Consultant agrees that when using ANSTO premises or facilities for the purposes of the Consultancy Services, it will comply with all directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including ANSTO's smoke-free work-place policy and, prior to commencement at the site, completion of the Safety Induction Course) whether specifically drawn to the attention of the Consultant or as might be inferred from the circumstances.

#### **11. NEGATION OF EMPLOYMENT AND AGENCY**

- 11.1 The Consultant shall not represent itself, and shall ensure that its employees do not represent themselves, as being employees or agents of ANSTO.
- 11.2 The Consultant shall not by virtue of this Contract be or for any purpose be deemed to be an employee or agent of ANSTO, nor does the Consultant have any power or authority to bind or represent ANSTO.

#### **12. INDEMNITY**

- 12.1 The Consultant must indemnify ANSTO from and against any physical injury to persons (including death), or loss or damage to property in so far as the injury or damage is attributable to any act of the Consultant or its employees, agents or subcontractors in the course of the carrying out of the Consultancy Services, irrespective of whether there was fault on the part of the person whose conduct gave rise to the relevant liability, loss or damage, or loss or expense.

#### **13. TERMINATION OF CONTRACT**

- 13.1 ANSTO may, by written notice, terminate or constrict the Contract or any part of the Contract and upon such notice being given the Consultant shall cease or reduce work according to the tenor of the notice and shall immediately do everything possible to mitigate consequential losses.
- 13.2 In that event the Consultant may submit a claim for compensation and ANSTO shall pay to the Consultant such sums as are agreed by the parties in respect of any loss sustained by the Consultant in unavoidable consequence provided that:
- (a) The Consultant shall not be entitled to compensation for loss of prospective profits; and
  - (b) ANSTO shall not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the Consultant under the Contract, would together exceed the full price of the Consultancy Service ordinarily payable under the Contract.

#### **14. DEFAULT**

- 14.1 If the Consultant fails within 14 days after receipt of written notice, to remedy any default in performance of the following obligations, namely:
- (a) To commence or to proceed at the rate of progress strictly in accordance with the Contract; or
  - (b) To perform or observe the terms and conditions of the Contract,
- ANSTO may, by written notice, terminate the Contract in whole or in part, but without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

#### **15. WAIVER**

- 15.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right. In this clause, 'rights' means rights or remedies provided by this Contract or at law.

#### **16. PAYMENT**

- 16.1 ANSTO agrees to pay the contract price subject to clause 16.2 and the terms of the Contract.
- 16.2 Unless otherwise agreed payment will not be made prior to the receipt by ANSTO of the specified services required to be supplied under the Contract, and a correct Invoice.
- 16.3 The Consultant must forward correctly addressed invoices to ANSTO by including the following information:
- (a) **PO number;**
  - (b) Invoice reference number of Consultant;
  - (c) Name of the designated ANSTO officer;
- and must be accompanied by any essential supporting documents to the reasonable satisfaction of ANSTO.
- \* **NOTE:** Where a submitted Invoice does not include the Contract number, the Invoice will be returned to the Consultant unpaid.
- 16.4 The due date for payment by ANSTO is 30 days after delivery of a correctly rendered invoice (subject to the provisions of Clause 16.2) unless otherwise agreed in writing. ANSTO reserves the right to specify from time to time the manner in which invoices are to be lodged, including electronically.
- 16.5 ANSTO will be entitled, in addition to any other right it may have, to delay payment or any instalment of the contract price until the Consultant has completed to the satisfaction of ANSTO that part of the Supplies to which the payment relates.
- 16.6 Advance Payments: **It is ANSTO policy not to make any Advanced Payments.**
- 16.7 However in certain circumstances ANSTO at its sole discretion may agree to Advanced Payments subject to the Consultants agreement to provide the following;
- (a) an appropriate discount, and

- (b) provision of security, at the Contractors expense, in the form of an Unconditional Undertaking from a recognised Bank. It is preferred that the security be provided in the form of a Bank Guarantee issued in ANSTO's favour for the full amount of the Advanced Payment.

ANSTO will only make advanced payments upon receipt of the security, which will be retained until the specified goods and or services have been delivered and accepted in accordance with the provisions of the Contract.

#### **17. INSURANCE**

17.1 The Consultant agrees, for so long as any obligations remain in connection with this Contract to effect and maintain the following:

- Workers compensation insurance, for an amount required by the relevant State or Territory legislation;
- Public Liability Insurance, for an amount of not less than Ten Million Dollars (\$10,000,000.00) and
- Professional Indemnity Insurance, for an amount not less than Five Million Dollars (\$5,000,000.00).

#### **18. ANSTO REPRESENTATIVE**

18.1 The ANSTO Representative is responsible for supervision of the Contract on behalf of ANSTO and has authority to issue and receive any written notification under the Contract.

18.2 The Consultant agrees to liaise with the ANSTO Representative, provide any information the ANSTO Representative may require and comply with any request made by the ANSTO Representative.

#### **19. CONSULTANTS OBLIGATIONS**

19.1 The Consultant must perform the Services at a high standard and in accordance with professional standards of conduct applying to the performance of such work at the time and/or as required by the Specification;

19.2 The Consultant shall provide any additional work requested in writing by ANSTO and agreed by the parties.

19.3 The Consultant shall certify that all investigations, calculations and designs produced in the final report have been checked by appropriately qualified and experienced personnel who shall be approved by ANSTO.

19.4 The Consultant agrees to comply with the time frame for the performance of the Consultancy Services. Any additional work requested by ANSTO shall comply with any time frames agreed in writing by the parties.

19.5 The Consultant warrants that:

- (a) it has the necessary expertise, experience, capacity and facilities required to perform the Services in accordance with this Deed, and
- (b) the Services will be carried out with due care and skill and that any Material supplied in connection with the Services will be reasonably fit for the purpose for which it is supplied.

#### **20. APPLICABLE LAW**

20.1 The Contract shall be governed by and construed in accordance with the law for the time being in force in the State of New South Wales and the parties submit to the jurisdiction of the courts of that State.

20.2 As Amended - The Consultant agrees, in carrying out this Contract, to comply with:

- (a) the laws (particularly the Crimes Act 1914, Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992) from time to time in force in the State or Territory in which the Consultancy Services, or any part thereof, are to be carried out;
- (b) the Information Privacy Principles contained in the Privacy Act 1988, as amended by the Privacy Amendment (Private Sector) Act 2000, to the extent that the content of those principles apply to the types of activities the Consultant is undertaking under this Contract, and co-operate with any demands or inquiries made by the ANSTO Representative on the basis of the exercise of the functions of the Privacy Commissioner under the Privacy Act 1988 including, but not limited to, a request from the ANSTO Representative to comply with a guideline concerning the handling of Personal Information;
- (c) any obligations it has under the *Equal Employment Opportunity for Women Act 1999*;
- (d) any obligations it, or its subcontractors, have under the Charter of the United Nations (Anti-terrorism Measures) Regulations 2001.

20.3 To the extent permitted by law, the Proportionate Liability Legislation is excluded and does not apply to any claim arising under this Contract.

#### **21. GOODS AND SERVICES TAX**

21.1 The amounts paid by ANSTO as determined in accordance with clause 3 includes Goods and Services Tax (GST) for Consultancy Services made under this Contract which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* ("the GST Act").

21.2 In relation to taxable supplies made under this Contract, the Consultant must issue ANSTO with either:

- (a) a tax invoice in accordance with the GST Act; or
- (b) a document satisfying the minimum information requirements set out in GSTB 1999/1 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

21.3 Each party warrants that it holds and will continue to hold an Australian Business Number (ABN) pursuant to the *A New Tax System (Australian Business Number) Act 1999* during the term of this Contract and any further term.

## **22. CO-OPERATIVE AGENCY PROCUREMENT:**

Co-Operative Agency Procurement refers to procurements involving more than one agency as the purchaser. Agencies procure cooperatively by approaching the market together (known as clustering) or by joining contractual agreement or standing offer arrangement of another agency (known as piggybacking).

In responding to this tender the Consultant agrees to participate in a "Co-Operative Procurement Agreement", where that requirement forms part of this request for tender.

Participation by Consultant in such an arrangement is at the sole discretion of ANSTO after receiving approval from participating agencies.

## **23. WITHHOLDING TAX:**

The Consultant acknowledges that where the payment of an amount under this contract is subject to the provisions of Division 12 of Schedule 1 of the Taxation Administration Act 1953, amounts will be withheld as required by this Division.

Such withholdings include withholdings under Sub division 12-FB which will apply where a payment is made under this contract to a Foreign Resident of an amount covered by Regulation 44C, which deals with Construction and Related Activities.

## **24. BEST AND FINAL OFFERS:**

ANSTO may seek best and final offers from short listed Consultants after evaluation of initial offers.

While ANSTO requires Tenderers/ Consultants to submit their best and final offer in their tender submission, ANSTO reserves the right to negotiate further with any number of Tenderers/ Consultants should it deem that acceptance of any of the offers received would not constitute a best value for money decision for ANSTO.

Any subsequent offers received as a result of these negotiations will be subject to the same terms and conditions applying to this Request for Tender.

## **25. SPECIAL CONDITIONS**

The Consultant must comply with the conditions (if any) set out in Attachment B (Special Conditions) and notified to the Consultant prior to the issue of the Contract or as agreed by the parties. Special Conditions prevail to the extent of any inconsistency with the other provisions of this Contract.

## **26. PROTECTION OF PERSONAL INFORMATION**

26.1 This clause applies only where the Consultant deals with personal information when, and for the purpose of, providing Consultancy Services under this Contract.

26.2 The Consultant acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act 1988 ("the Privacy Act"), and agrees in respect of the provision of Consultancy Services under this Contract:

- (a) to use personal information obtained during the course of providing Consultancy Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle ("IPP") contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose personal information the Consultant holds, that complaints about acts or practices of the Consultant may be investigated by the Privacy Commissioner who has power to award compensation against the Consultant in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Consultant, unless;
  - (i) in the case of section 16F of the Privacy Act - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under clause 20 of this Contract; or
  - (ii) in the case of an NPP or an APC – where the activity or the practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under clause 20 of this Contract, and the activity or practice which is authorised by clause 19 of this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;

- (g) to immediately notify the agency if the Consultant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23, whether by the Consultant or any subcontractor; and
- (h) to ensure that any employee of the Consultant who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Consultant set out in this clause 23.

26.3 The Consultant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Consultant has under this clause, including the requirement in relation to subcontracts.

26.4 The Consultant agrees to indemnify ANSTO in respect of any loss, liability or expense suffered or incurred by the ANSTO which arises directly or indirectly from a breach of any of the obligations of the Consultant under this clause 23, or a subcontractor under the subcontract provisions referred to in subclause 23.3.

26.5 In this clause 23, the terms "agency", Approved Privacy Code (APC), "Information Privacy Principles" (IPPs) and "National Privacy Principles" (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and "personal information", which also has the meaning it has in section 6 of the Privacy Act, means:

*"information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".*

26.6 The provisions of this clause 23 survive termination or expiration of this Contract.

## **27. DISPUTE RESOLUTION**

27.1 The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, either party may commence legal proceedings if:
  - (i) there is no resolution or agreement; or
  - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days.

27.2 Despite the existence of a dispute, the Consultant will (unless requested in writing not to do so) continue to perform the Consultancy Services.

27.3 **This clause 19 does not apply to:**

- (a) action by either party under or purportedly under clause 13,
- (b) action by ANSTO under or purportedly under clause 3.2, or clause 20; or
- (c) either party commencing legal proceedings for urgent interlocutory relief.

## **28. DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (DEEWR)**

28.1.1 The Contractor must comply with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines), revised September 2005, reissued June 2006. Copies of the Code and Guidelines are available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building).

28.1.2 Compliance with the Code and Guidelines shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code and Guidelines.

28.1.3 Where a change in the Contract is proposed and that change would affect compliance with the Code and Guidelines, the Contractor shall submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code and Guidelines will be affected.

28.1.4 The Contractor shall maintain adequate records of the compliance with the Code and Guidelines by:

- (a) the Contractor;
- (b) its Subcontractors;

- (c) material suppliers;
- (d) consultants; and
- (e) its Related Entities<sup>1</sup>.

28.1.5 If the Contractor does not comply with the requirements of the Code or the Guidelines in the performance of this Contract such that a sanction is applied by the Code Monitoring Group, the Commonwealth, without prejudice to any rights that would otherwise accrue, shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

28.1.6 The Contractor agrees to require that the contractor and its material suppliers, consultants, subcontractors and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project and Works the subject of
- (c) this Contract; and
- (d) interview any person.

as is necessary to allow validation of its compliance with the Code and Guidelines.

Additionally, the Tenderer agrees that the Tenderer and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

28.1.7 For the avoidance of doubt, Clause 6 applies in relation to the Contractor's new privately funded construction sites.

28.1.8 The Contractor shall not appoint a subcontractor, consultant or material supplier in relation to the Project where the appointment would breach a sanction imposed by the Code Monitoring Group<sup>2</sup>.

28.1.9 The Contractor shall ensure that all subcontracts impose obligations on the subcontractor's equivalent to the obligations under this Clause.

## **29. PUBLICITY**

The Contractor shall not disclose any information concerning the project for distribution through any communications media without the Principal's prior written approval (which shall not be unreasonably withheld). The Contractor shall refer to the Principal inquiries from any media concerning the project.

<sup>1</sup> **Related Entity** and **Material Supplier** has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)

<sup>2</sup> **'Code Monitoring Group'** has the same meaning as is given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)