

## REQUEST FOR TENDER

Department of Justice

Solicitor for the Northern Territory

<b>TENDER:</b>	ALL REGIONS – PANEL CONTRACT FOR THE PROVISION OF LEGAL SERVICES TO THE NORTHERN TERRITORY OF AUSTRALIA AND STATUTORY BODIES FOR A PERIOD OF 36 MONTHS
<b>NUMBER:</b>	D11-0230
<b>CLOSING:</b>	2:00 PM AUSTRALIAN CST WEDNESDAY, 28 JULY 2011 (Late Tenders Will Not Be Accepted)

**LODGEMENT OF TENDERS TO:**  
**The Tender Box**  
**Department of Business and Employment**

***By Hand:***

Department of Business and Employment  
Ground Floor Enterprise House  
28-30 Knuckey Street  
Darwin NT 0800

***or***

Department of Business and Employment  
1st Floor, Herbarium (Gaymark Plaza)  
4 Mansfield Street  
Palmerston NT 0830

***By Post:***

GPO Box 1551  
Darwin NT 0801

***By Facsimile:***

(08) 8999 1935

***By Electronic Delivery***

Via the electronic lodgement facility at [www.nt.gov.au/tenders](http://www.nt.gov.au/tenders)

**OR** Via the e-mail link supplied where the selected RFT is available from an e-mail link.

**Note:** no other form of e-mail or electronic delivery is acceptable.

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<b>RFT NUMBER:</b>	T11-XXXX
<b>RFT TITLE:</b>	ALL REGIONS – PANEL CONTRACT FOR THE PROVISION OF LEGAL SERVICES TO THE NORTHERN TERRITORY OF AUSTRALIA AND STATUTORY BODIES FOR A PERIOD OF 36 MONTHS

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RESPONSE SCHEDULES ARE PROVIDED SEPARATELY FROM THIS REQUEST FOR TENDER DOCUMENT

**PREPARED BY:**

Solicitor for the Northern Territory, Department of Justice

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## 1 CONDITIONS OF TENDERING

### 1.1 GENERAL

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

In these Conditions of Tendering the following definitions apply:

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

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

**'RFT'** means the request for tender and includes all annexures, schedules, attachments and addendums.

### 1.2 LODGEMENT OF TENDERS

For the Tender to be considered, the Tenderer shall complete in full and submit one copy of the documents listed in the section of the Annexure to the Conditions of Tendering titled "Documents to be Lodged with Tender" (i.e. Tender Form and all other Response Schedules);

- (a) in English;
- (b) in the form required; and
- (c) to be fully received by the stated time and date for closing of the Tender.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may be declared ineligible for consideration.

Oral Tenders or Tenders submitted by electronic mail (other than via Quotations and Tenders Online eLodgement Service), shall be declared ineligible for consideration.

The Principal will not be liable for any expense or loss, which may be incurred by any Tenderer in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

#### 1.2.1 Closing Time and Date

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

#### 1.2.2 Delivered by Hand

Tenders lodged by hand must be enclosed in a sealed envelope and marked with the RFT Number and closing date.

The preferred Tender Box for lodgement of the Tender is as stated on the cover of the RFT.

Tenders however may be lodged by hand in any of the following Quotation and Tender Boxes:

Department of Business and Employment  
Contract and Procurement Services  
Ground Floor, Enterprise House  
28-30 Knuckey Street  
DARWIN NT 0800

Department of Business and Employment  
1<sup>st</sup> Floor, Herbarium (Gaymark Plaza)  
4 Mansfield Street  
PALMERSTON NT 0830

Department of Business and Employment  
1<sup>st</sup> Floor, NT Government Centre  
5 First Street  
KATHERINE NT 0850

Department of Business and Employment  
1<sup>st</sup> Floor, Alice Plaza  
Corner Parsons Street and Todd Mall  
ALICE SPRINGS NT 0870

Department of Business and Employment  
Shop 2, Ground Floor, Barkly House  
99 Paterson Street  
TENNANT CREEK NT 0860

Tenderers lodging by hand in other than the Quotation and Tender Box referred to on the front cover of the RFT must take particular care to show the Tender Number and closing time and date on the envelope.

### **1.2.3 Delivery by Post**

Tenders sent by prepaid post must be directed to the postal address stated on the cover of the RFT.

### **1.2.4 Sent by Facsimile**

Tenders sent by facsimile must be directed to the facsimile number stated on the cover of the RFT.

### **1.2.5 Lodged via Electronic Lodgement**

Tenders sent by electronic lodgement must be submitted using the eLodgement button via the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT.

Tenders must be in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip).

Tenders in an unspecified electronic format may result in the Tender being declared as ineligible for consideration.

Where selected Tenders have been sought and access to the RFT is provided from an e-mail link, Tenders must be submitted electronically using the same e-mail link.

The Tender (i.e. tender form and all other response schedules) may be admitted for consideration on the basis that the transmission of the Tender is acknowledged by the Tenderer as being the true and legal version and is completed, submitted and acknowledged by the stated time and date for closing of Tenders.

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

If, for any reason, the electronic Tender (except pricing schedule[s]) submitted becomes corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. a hard copy or a further electronic copy of the Tender must be provided by the Tenderer on request from the Principal. Pricing schedule(s) submitted electronically that become corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc will result in the Tender being invalid and declared ineligible for consideration.

### **1.2.6 Late Tenders**

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

Notwithstanding the preceding paragraph Tenderers may appeal such decisions however:

- (a) Tenders submitted by prepaid post or a commercial courier service, received after the stated time and date for closing of Tenders may be considered only if it can be established to the satisfaction of the Procurement Review Board that they were posted or despatched before the stated time and date for closing of Tenders and in the ordinary course of business would not have been received late. Impressions of company owned franking machines are not acceptable evidence of timely posting or dispatch.
- (b) Tenders submitted via the Quotations and Tenders Online eLodgement Service may be considered only if it can be established to the satisfaction of the Procurement Review Board that they were submitted before the stated time and date for closing of Tenders, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.
- (c) The Procurement Review Board may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated time and date for closing of Tenders where those Tenders were not received before the stated time and date for closing of Tenders because of a fault or failure of Quotation and Tenders Online eLodgement Service.
- (d) Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

## **1.3 TENDERERS TO INFORM THEMSELVES**

Tenderers shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to performance of the Services, an inspection of the Site if applicable, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Legislative Procurement Framework which includes the NT Procurement Code can be found at the web address [www.nt.gov.au/dbeprocurement\\_policy/framework.html](http://www.nt.gov.au/dbeprocurement_policy/framework.html) or is available at the point of issue of the RFT.

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

If a Site inspection is required inspection arrangements are as stated in the Annexure. If the Tenderer fails to attend a Site inspection expressed as mandatory then, any Tender submitted by that Tenderer shall be invalid and declared ineligible for consideration.

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

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

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

#### **1.4 SIGNING OF DOCUMENTS**

The Tenderer shall sign its Tender as indicated below, and have the signature witnessed.

- (a) In the case of a corporation:
- (i) With its common seal, and the fixing of the seal witnessed by:
    - 2 directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - (ii) Without its common seal, if signed by:
    - 2 directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - (iii) By signature of two persons (other than the persons described in clause [ii]) authorised by the corporation to bind it in contract. In such circumstances a copy of the authorisation duly executed by the corporation in accordance with clause (i) or (ii) must be submitted with the Tender.
- (b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
- (i) By signature of each proprietor of the firm.
  - (ii) Or in the case of firms having more than five proprietors, by signature of the proprietors authorised to bind the firm in contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal.
  - (iii) Any proprietor who is a corporation must sign the Tender in the manner indicated in paragraph (a) above.

Where the Tenderer is lodging its Tender via the Quotations and Tenders Online eLodgement Service, there is no requirement to complete the "signature" or "witnessed" blocks on the Tender Form.

Where the Tender is from a:

- (a) person or persons, full given names are to be provided.
- (b) firm or business or trading name, full given names of each member of the firm are to be provided.
- (c) company, the full name and registered address are to be provided.

Each Tender shall also contain the Tenderer's unique business identifier required by law (eg ACN/BN) and an address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender and any subsequent contract arising out of acceptance of the Tender.

## 1.5 TENDER VALIDITY

Tenders shall remain valid for the period stated in the Annexure. If a Tender is not formal in accordance with these Conditions of Tendering, the Tender validity period shall commence from the date on which the Tender is formalised to the satisfaction of the Principal. A Tenderer may withdraw its Tender at any time after the expiration of the Tender validity period, but shall not withdraw its Tender prior to the expiration of such period unless such withdrawal is accepted by or on behalf of the Principal.

## 1.6 LOCAL DEVELOPMENT

The NT Government is committed to supporting businesses that use local contractors and suppliers and train and hire Territorians. Assessment will take into consideration businesses that demonstrate a commitment to employing Territorians including indigenous Territorians, accredited training of its employees and sourcing goods and services from local businesses.

Tenderers must include in the Response Schedules provided and submit with its Tender, details of sub-contractors to be used (where applicable), indigenous employees and all employees undertaking accredited training.

### 1.6.1 Apprentices and Trainees

Employees listed as undertaking accredited training through an apprenticeship or trainee pathway will only be recognised as being compliant for Tender purposes if:

- (a) a signed contract of training for the apprentice or trainee is currently registered with the Australian Apprenticeships NT Office; or
- (b) the apprentice or trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Education and Training (DET); or
- (c) the training being undertaken is a recognised accredited training course.

Further information on NT Government Policy on the use of apprentices or trainees on Government Contracts and accredited training programs can be obtained from:

Training Operations Unit, Department of Education and Training 11 <sup>th</sup> Floor, Mitchell Centre 55 – 59 Mitchell Street DARWIN NT 0800 Telephone: (08) 8901 1321	OR	GPO Box 4821 DARWIN NT 0801 Facsimile: (08) 8901 1326
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Further information regarding the employment of apprentices or trainees can be obtained from:

Australian Apprenticeships NT, 6 Searcy Street DARWIN NT 0800 Telephone: 1300 137 130	OR	GPO Box 3049 DARWIN NT 0801 (08) 8935 8200
19 Hartley Street ALICE SPRINGS NT 0870 Telephone: (08) 8953 3311	OR	

## 1.7 TAXES, DUTIES, FEES, ETC

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

## 1.8 PRICING

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

Any Schedule of Rates, which is included in the RFT shall be completed and lodged with the Tender. Pricing shall be submitted for each item in the Schedule. Any Tender in which the Schedule is not fully completed may be declared ineligible for consideration.



Unless otherwise stated, any quantities given in the Schedule are not guaranteed as to the amount of the Services to be undertaken under the Contract, but shall be used for Tender assessment purposes only. The Principal will only be liable for the acceptance, subject to Contract, of the Services ordered.

### **1.9 ALTERNATIVE TENDERS**

Tenderers may submit alternative Tenders where the RFT states that alternative Tenders are allowed. Where the RFT specifies that an alternative Tender must be accompanied by a conforming Tender, a conforming tender must be submitted with the alternative Tender.

Alternative Tenders must be clearly identified as an "Alternative Tender".

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

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

### **1.10 COMPETITIVE NEUTRALITY**

Government owned businesses, Local, Territory, State and Federal Government agencies and authorities responding to public tenders must submit two prices against each item in the pricing schedule provided. One price is to be the tendered price offered and the other being the adjusted competitively neutral price. The competitively neutral price is to be prepared in accordance with the "Northern Territory Government Competitive Tendering Guidelines". A copy of the Guidelines is available from the place of issue of the RFT documents or from the following web address:

[www.nt.gov.au/dbe/tendering/competitive\\_neutrality/competitive\\_neutrality.html](http://www.nt.gov.au/dbe/tendering/competitive_neutrality/competitive_neutrality.html)

### **1.11 PART OFFER AND PART ACCEPTANCE**

Unless otherwise stated in the Annexure, Tenderers shall offer for the whole of the Services.

Where part offers are allowed, the Principal reserves the right to accept a portion or the whole of any Tender at the price or prices tendered unless the Tenderer specifically states to the contrary in its offer.

### **1.12 PANEL PERIOD CONTRACT**

If so stated in the Annexure, the Principal will establish Panel Period Contracts for the Services specified in the RFT. The Contracts will be for either:

- (a) specific requirements at fixed rates; and/or
- (b) for a general scope of requirements without any rates/prices, and for which firm offers will be periodically sought from the Contractors.

For Practical reasons the Principal reserves the right to fix the size of the panel to a limited number of contractors who best meet the selection criteria.

The Panel Period Contracts will be administered in accordance with the provisions of the RFT.

### **1.13 COMMON USE CONTRACT**

If so stated in the Annexure, the Principal will establish a common use contract for the Services specified in the RFT.

If the Contract is designated common use, it is expected that all Agencies will utilise the Contract for the provision of Services of the nature and type specified in the Contract.

If the Contract is not designated common use, Agencies (other than the Agency(s) nominated) are not bound to use the Contract but may utilise the Contract subject to agreement with the Contractor.

#### 1.14 CHANGE TO THE CONDITIONS OF CONTRACT

Tenderers may request changes to or propose alternatives to, the Conditions of Contract applicable to the RFT, only if stated in the Annexure that this is allowed.

Where Tenderers request changes to the Conditions of Contract or propose alternative conditions, they must clearly specify in the Tender Response Schedules that changes to the Conditions are being requested or that alternative Conditions are being proposed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions of Contract, they do so at their own risk, as the changes will be deemed to have formed part of their offer and their Tender will be assessed on that basis. If the requested changes or the alternative Conditions included in a Tender are not acceptable to the Principal, the Tender will not be successful.

If the RFT states that the changes to the Conditions of Contract or alternative Conditions are not allowed, then Tenderers may not request changes to the Condition of Contract applicable to the RFT, or propose alternative Conditions of Contract. If a Tenderer does so, its Tender will be deemed non-conforming and will not be considered.

This clause does not allow Tenderers to request changes or propose alternatives to the Conditions of Tendering applicable to the RFT. Any Tenderer who attempts to do so will have its Tender deemed non-conforming and declared ineligible for consideration.

Nothing in this clause affects the Principal's right to negotiate with one or more Tenderers as provided for in the RFT.

#### 1.15 TENDER ASSESSMENT CRITERIA

Selection of the successful Tenderer will be based on, a value for money assessment of Tenders against the following Tender Assessment Criteria and the rate(s)/price(s) submitted.

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

(a) Past Performance:

Performance history including standard of work/quality of Services.

Experience on Services of a similar nature.

References.

(b) Timeliness:

Ability to comply with timeframe requirements.

(c) Capacity:

Ability to perform the Services including regionally.

Impact of any existing Contracts in progress.

Legal action pending.

Financial capacity (including current credit rating).

(d) Local Development and Value Adding:

Contribution to the development of industry and business capability in the Northern Territory..

Proposed level of usage of graduates/students trainees and local Indigenous enterprise.

Proposed number of jobs for Territorians including jobs for Indigenous Territorians.

Accredited training programs supported by the Tenderer.

Regional development opportunities..

(e) Scope Specific Criteria

Scope Specific Criteria are those criteria that are considered relevant to the nature of the Services being sought. Scope Specific Criteria could include, but are not limited to, any one or more of the following: environmental issues or requirements, technical requirements, and specific experience and expertise.

Tenderers should provide all relevant factors addressing the specific assessment criteria shown in the Response Schedules.

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

**1.16 ADDITIONAL INFORMATION**

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

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

**1.17 DISCLOSURE OF PERCENTAGE WEIGHTINGS**

Disclosure of percentage weightings will apply to all tenders with an estimated value equal to or greater than \$200,000.

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

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

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

The following weightings will be applied to each assessment criterion:

<b>Assessment Criteria</b>	<b>Weighting %</b>
1. Past Performance	35
2. Timeliness	15
3. Capacity	25
4. Local Development and Value Adding	20
5. Scope specific - Risk	5
<b>TOTAL</b>	<b>100</b>

**1.18 PERFORMANCE REPORT**

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

**1.19 PRIVACY NOTICE**

The Principal is collecting the information on the Declaration of Business Status form to determine eligibility to contract with the Territory. This is required by Procurement Regulation 6 (7)(h). The Principal usually gives some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in the Tender being declared ineligible for consideration.

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

**1.20 NOTIFICATION OF ACCEPTANCE**

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

Notice of Acceptance of the Tender shall be given in the form of a written notice (letter of engagement) and this notice shall constitute a binding contract between the Principal and the successful Tenderer. Written notices of acceptance will, at the Principal's discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender Form.

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

#### **1.21 DEBRIEFING TENDERERS**

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

Information will be confined to discussion of the Tenderer's Tender and under no circumstances will information relating to another Tender be disclosed.

## ANNEXURE TO THE CONDITIONS OF TENDERING

<b>RFT NO</b>	
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<b>1. For enquiries contact</b> <i>(Clause 1.3 – Condition of Tendering)</i>	Name	Michele Anne Philip
	Telephone	89357820
	Facsimile	89357828
	Email	michele.philip@nt.gov.au

<b>2. Designated Time/Day for Site Inspection/Meeting</b> <i>(Clause 1.3 – Conditions of Tendering)</i>	Not Applicable
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<b>3. Alternative Tenders</b> <i>(Clause 1.9 – Conditions of Tendering)</i>	Alternative Tenders are not allowed
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<b>4. Change to Conditions of Contract</b> <i>(Clause 1.14 – Conditions of Tendering)</i>	Changes are not allowed
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<b>5. Tender Validity Period</b> <i>(Clause 1.5 – Conditions of Tendering)</i>	120 Days
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<b>6. Documents to be lodged with Tender</b>  <i>(Clause 1.3 – Conditions of Tendering)</i>	TENDER FORM DECLARATION OF BUSINESS STATUS COMPONENTS BEING TENDERED FOR SCHEDULE OF INSURANCE CONTRACT MANAGEMENT SCHEDULE OF RATES CLAIMS AGAINST ASSESSMENT CRITERIA
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<b>7. Part Offer Acceptable</b> <i>(Clause 1.11– Conditions of Tendering)</i>	Yes
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<b>8. Panel Period Contract</b> <i>(Clause 1.12 – Conditions on Tendering)</i>	Yes
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<b>9. Common use Contract</b> <i>(Clause 1.13 – Conditions of Tendering)</i>	No
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## 2 CONTRACT FOR THE PROVISION OF SERVICES

- (a) This contract (the "Contract") is made between the Firm named on the letter of engagement (Firm) and the Northern Territory of Australia (represented by the Solicitor for the Northern Territory (SFNT) and the client agency) (Principal).

### 2.1 Composition of Contract

- (a) The Contract is comprised of:
- (i) the request for tender issued by the Principal inviting tenders for legal services including all documents that comprise the request for tender (the "Request for Tender");
  - (ii) the tender response submitted by the Firm in response to the Request for Tender (the "Tender Response");
  - (iii) these conditions of contract; and
  - (iv) the letter of engagement.
- (b) In the event of any inconsistency between the documents that comprise the Contract, the documents will be interpreted in accordance with the following order of precedence:
- (i) the letter of engagement;
  - (ii) these conditions of contract;
  - (iii) the Request for Tender;
  - (iv) the Tender Response.

### 2.2 Scope of Services and Allocation of Work

- (a) The Firm will provide legal services (Services) to the Principal for those components set out in the letter of engagement (Components).
- (b) Work will be allocated in accordance with scope of services set out in the Request for Tender ("Scope of Services").

### 2.3 Term

- (a) The term of the Contract is set out in the scope of services contained in the Request for Tender.

### 2.4 Exclusions from the Scope of Services

- (a) The services (if any) specifically excluded from this Contract are set out in the Scope of Services.

### 2.5 Firm Not to Accept Certain Instructions

- (a) Where the Scope of Services provides that the Firm will not accept certain instructions to act against the Principal/client agency during the term of the Contract, the Firm must:
- (i) not accept such instructions; and
  - (ii) advise SFNT of any such existing matters immediately.
- (b) If requested by the SFNT, the Firm will divest itself of any such existing matters within the time agreed by the parties.

### 2.6 Volume of Work

- (a) The Scope of Services sets out:
- (i) details of the previous outsourcing model; and
  - (ii) the total expenditure of outsourced legal services (excluding disbursements and Counsel fees) for 08/09 and 09/10 financial years; and

- (iii) the estimated value of the overall panel contract, which has been calculated taking into account the actual amount billed over the past 2 years (excluding GST) and the increased capacity of the SFNT.
- (b) The Firm acknowledges that the actual value of the overall panel contract may be substantially more or less than the estimated value, as legal service requirements may vary considerably.
- (c) As legal services requirements vary, the Principal is unable to predict the value of work that may be outsourced under each Component.
- (d) Notwithstanding prior volume of work, the Principal gives no warranty as to the number of new matters that may be outsourced at any future time.

## **2.7 Reporting**

- (a) The Firm will be required to provide quarterly reports to the client agency and the SFNT in the form set out in Annexure B on:
  - (i) the progress of each current matter it is conducting under the Contract;
  - (ii) expenditure to date on each matter conducted or being conducted by it under the Contract;and
  - (iii) such other reports as may be required from time to time by the Principal.
- (b) All quarterly reports must be in the form set out at Annexure B.

## **2.8 Case Management**

- (a) The SFNT will appoint a case manager for each outsourced matter.
- (b) The case manager may, in consultation with the client agency and the Firm:
  - (i) establish a work plan for the provision of the Services;
  - (ii) negotiate a fee estimate and manage the work plan on an ongoing basis, according to the particular needs of all parties; and
  - (iii) manage any discrepancies between the estimate agreed upon for the work and the actual fees charged.
- (c) For each matter referred to it under the Contract where an estimate is requested by the case manager, the Firm will provide a cost estimate and a work plan to undertake the work required.
- (d) Any estimate provided will relate to work identified in the work plan. In cases where the nature or the quantity of the work changes, the Firm must negotiate with the case manager to revise the estimate and work plan before undertaking any further work. For any subsequent work, the Firm may be requested to provide a further cost estimate and work plan.
- (e) Unless expressly agreed in writing by the case manager, where an estimate is requested the Firm is not instructed to proceed with the work until the estimate and the work plan have been agreed.
- (f) Estimates agreed by the case manager and the client agency operate as a capped amount and not a quote. That is, where fees are being charged on a time basis pursuant to an agreed schedule of rates, the amount to be charged for the work will be the actual time, or the amount of the estimate, whichever is the lower.
- (g) The Firm may only recover more than the amount of an agreed estimate for the work to which it relates, in the following circumstances:
  - (i) where the Firm has direct instructions from the client agency to proceed with further work notwithstanding that the estimate may or will be exceeded (eg where litigation proceeds unexpectedly, an urgent application must be made, or urgent advice or other service is sought); or
  - (ii) where the Firm has obtained the approval of the case manager that the estimate in respect of the particular stage has been revised and increased.

- (h) Where an estimate is exceeded and neither of the above circumstances applies, then the Firm's tax invoice may, in the first instance, be returned to the Firm.
- (i) If the Firm instructs SFNT to short pay its tax invoice, the Firm will be deemed to accept that amount in full and final satisfaction of that particular tax invoice.
- (j) The Firm must notify SFNT when a matter has been completed and render its final tax invoice for that matter.
- (k) Estimates are deemed to be GST inclusive but do not include disbursements.
- (l) For the purposes of this Contract, GST means any tax imposed on a supply pursuant to the *New Tax System (Goods and Services Tax) Act 1999* and any related *Tax Imposition Act*.

## 2.9 General Responsibilities of the Parties

- (a) The Firm will, without limitation to the duties which ordinarily arise pursuant to solicitor/client relationships:
  - (i) Provide the Services to the client agency in accordance with the terms of this Contract, and any further instructions given by the SFNT and/or the client agency from time to time in a timely manner and to the highest professional standards.
  - (ii) In the event that any one of the Firm's staff identified in the Tender Response is unable to undertake work in respect of the Services, notify the SFNT and the client agency immediately. The Firm must, if so requested by the SFNT, provide replacement personnel acceptable to the SFNT at no additional charge and at the earliest opportunity.
  - (iii) Provide reports to the client agency and the SFNT as required by clause 2.7.
  - (iv) Seek instructions from the SFNT as well as the client agency on all strategic decisions at key phases of matters (for example but without limitation, whether or not to settle or whether or not to appeal).
  - (v) Promptly advise the SFNT as well as the client agency if in the Firm's opinion a matter involves or may involve an issue relating to the constitutional powers or status of the Commonwealth or the Territory, or their officers, courts, tribunals or statutory authorities, and if so, seek instructions as to whether the Solicitor-General or other senior counsel should be briefed to advise on, or appear in, the matter.
  - (vi) Hold confidential to the Principal all information obtained in the provision of the Services which, by its nature, is confidential information.
  - (vii) If any event occurs or is likely to occur which might result in the Firm or any person in the Firm having a direct or indirect personal interest in a particular matter or any other potential conflict of interest exists or is likely to arise, immediately notify the circumstances to the SFNT and the client agency.
  - (viii) Make recommendations to the SFNT and the client agency where it is considered that any matter of policy or legislative amendment arises in the course of the provision of the Services.
  - (ix) If at any time requested by the SFNT and subject to any lien for unpaid fees, forthwith deliver to the SFNT all working papers, advices and the other contents of files relating to any matter.
  - (x) Provide electronic copies of all advices and opinions created in the performance of the Services to the SFNT and the client agency at no charge to the client agency or the SFNT. Such advices may be included on the SFNT's opinions database and may be distributed to other government departments or instrumentalities at the discretion of the SFNT. The Firm must not provide copies of advices to any department or instrumentality other than the client agency without the written permission of the SFNT.
  - (xi) Advise the SFNT of any material change in the information provided in the Tender Response in particular, but not limited to, any material change in the numbers or details of staff performing or supervising the Services.



- (xii) Arrange to attend, in the Firm's own time and at the Firm's own expense, any briefing sessions in relation to the Services which may be conducted by the SFNT up to once each calendar year for a duration not exceeding two hours.
  - (xiii) Advise the client agency of instruments containing indemnities or guarantees pursuant to section 34 of the *Financial Management Act*.
  - (xiv) Ensure that all legal practitioners who provide the Services have current practising certificates and are members of the Law Society of the Northern Territory.
- (b) The client agency will:
- (i) Where appropriate, issue sufficiently informative and timely instructions to the Firm to enable it to provide the Services in accordance with this Contract.
  - (ii) Fully co-operate with the Firm in providing the Firm, subject to any restrictions imposed by law or government policy, timely access to such relevant personnel, documentation and/or other information through the client agency that the Firm may reasonably require to enable it to fulfil its obligations in accordance with this RFT.
  - (iii) Arrange the payment of fees for the provision of the Services in accordance with clause 2.14.
- (c) The SFNT will:
- (i) Issue sufficiently informative and timely originating instructions to the Firm to enable it to provide a cost estimate and work plan for the Services.
  - (ii) Consult with and keep the client agency informed of all relevant information in and about the matter.
  - (iii) Scrutinise billing in conjunction with the client agency.
  - (iv) Monitor service quality through the case management of individual matters.

## 2.10 Performance Reviews

- (a) Reviews of the performance of the Firm in the provision of the Services and the relationship between the Firm and the client agency may be undertaken by the SFNT as follows:
- (i) Questionnaires will be distributed to the client agency and the Firm for completion and return to the SFNT annually; and
  - (ii) informal reviews of performance and spot audits on particular matters conducted by the SFNT as and when it requires, upon giving reasonable notice to the Firm.

## 2.11 Fees and Disbursements

### (a) General

- (i) Except as otherwise provided in this Contract or as otherwise agreed in writing by the SFNT, the fees payable and the basis for charging the fees for the Services will be as set out in the Tender Response.
- (ii) If the Firm intends to change the level/category of staff providing the Services during the currency of the Contract, the Firm will give 30 days notice to the SFNT. If required by the SFNT, the Firm will handover the completion of some or all of the matters being handled by that person to another person to complete at the original billing level, and will bear, at its own cost, any additional costs associated with such handover.

### (b) Fixed Fees

Where a matter has been outsourced on a fixed fees basis, (except where the SFNT in its absolute discretion after consultation with the client agency determines that exceptional circumstances have arisen in respect of a particular matter and has agreed in writing to vary the fee), the total fee payable in relation to that matter will be as specified in the Firm's Tender Response.

**(c) Items Not To Be Charged For**

The Firm will not charge for:

- (i) the supervision of junior solicitors or graduate clerks;
- (ii) instructions of an administrative nature issued to graduate clerks and administrative staff;
- (iii) organising travel arrangements;
- (iv) organising video conferencing;
- (v) arrangements for travel and appointments for witnesses or experts;
- (vi) leaving telephone messages for someone to call back if unavailable;
- (vii) perusal of email correspondence which involves no legal skill;
- (viii) administrative tasks which involve no legal skill;
- (ix) file administration;
- (x) the total time spent by clerks in filing and serving documents where multiple documents are filed/served;
- (xi) a clerk or solicitor who is in attendance at a conference purely to obtain experience (not meaningfully participating in negotiations or discussions);
- (xii) additional persons attending a conference (charge is to be for one person only) unless prior arrangement is discussed and agreed to by the SFNT. Reference to such agreement should be given at the time the tax invoice is submitted for payment;
- (xiii) general inquiry telephone attendances or short personal attendances where a file is not to be opened and no written clarification is required;
- (xiv) briefing sessions held by the client agency and/or the SFNT;
- (xv) drawing of tax invoices and any queries relating to those and/or amended tax invoices;
- (xvi) work and perusal time incurred due to the transfer of a file within the Firm;
- (xvii) providing electronic copies of all relevant documents, correspondence, advices and opinions to the SFNT and/or the client agency;
- (xviii) the preparation and issue of quarterly reports on current matters provided in accordance with this RFT;
- (xix) the cost of local telephone calls, facsimile transmissions and postage and receiving faxes.

**(d) Telephone, Facsimile, Postage and Courier**

The Firm must charge all non-local telephone, postage, facsimile charges and all courier services to the client agency at cost, itemise same in its tax invoice and provide receipts if requested.

**(e) Photocopying**

The Firm must charge photocopying at the rate of:

- (i) .60 cents per page (inclusive of GST) up to and including 25 pages; or
- (ii) if more than 25 pages, at the rate of \$12.00 per six minute unit (inclusive of GST) and note the number of pages in disbursements.

**(f) Approval for Significant Disbursements**

The Firm must obtain the prior approval of the case manager through the client agency for all significant disbursements which must be itemised in its tax invoice and receipts provided.

**(g) Travel Guidelines**

The Firm must obtain prior approval of the case manager through the client agency for all travel and associated expenses. Expenses will be at cost and receipts must be produced. Except where alternative conditions are approved in advance, the following will be paid:

- (i) reasonable expenses necessarily incurred for economy class travel and standard rate accommodation;
- (ii) travel time when work is being done at the agreed hourly rate (inclusive of GST);
- (iii) taxi fares, hire car and fuel expenses at cost.

Incidental expenses (such as laundry, telephone, mini-bar and bar or coffee shop accounts) will not be paid.

**(h) Briefing of Counsel/Agents/Experts**

- (i) The Firm must obtain the approval of the case manager prior to briefing counsel, agents or experts.
- (ii) The Principal does not pay cancellation fees unless otherwise agreed in advance. If counsel, agents or experts are briefed for a matter that does not proceed, counsel, agents or experts will be paid only for work performed.
- (iii) A new brief will be required in accordance with these guidelines in a matter where Counsel has been briefed at trial level and that matter is subsequently appealed.
- (iii) Copies of all tax invoices from counsel/agents/experts are to be attached to a tax invoice or disbursement tax invoice of the Firm; and
- (iv) When the Firm's tax invoice or disbursement tax invoice is submitted for payment, the solicitor with the carriage of the matter is to endorse any such tax invoices with a statement that the amount claimed is fair and reasonable and in accordance with their instructions.

**2.12 Billing**

- (a) The Firm will:
  - (i) Render its tax invoices to the SFNT (addressed to the client agency) every two (2) calendar months (or as agreed) AND at the conclusion of every matter.
  - (ii) Ensure that all tax invoices are submitted in compliance with this clause and the format at Annexure "A" and contain all the information required, including the following:
    - A. professional fees calculated at the set rate;
    - B. disbursements incurred as a principal for the client agency. Disbursements must be calculated by reference to the actual cost incurred by the Firm net of any input tax credits claimable in relation to those disbursements; and
    - C. disbursements incurred by the Firm where it is clear that the disbursement is incurred directly as an agent for the client agency and it is intended that the client agency pays for that disbursement direct.
- (b) For the purposes of this clause unless the context otherwise requires:-
  - (i) "**GST Rate**" means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time; and
  - (ii) "**Input Tax Credit**", "**Recipient**", "**Supplier**" and "**Supply**" have the meaning they bear in the Act.
- (c) The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST Rate at the time of forming this Contract.
- (d) The Firm must provide the client agency with a tax invoice and/or adjustment notes in relation to the Services prior to an amount being paid by the client agency under this Contract and must do all things reasonably necessary to assist the client to enable it to claim and obtain any Input Tax Credit available to it in respect of a Services.

### 2.13 Processing Of Tax Invoices For Payment

- (a) The SFNT will:
  - (i) Process a tax invoice and ensure that it complies with the terms contained herein. Tax invoices requiring amendment will be returned to the Firm to re-issue. The SFNT will then re-process the amended/new tax invoice.

Forward the tax invoice to the principal action officer identified by the client agency to examine the tax invoice to ensure it is correct. The client agency will then forward the certified tax invoice to the relevant team leader for the particular client agency (Accounts Payable) at Department of Business and Employment which will then process the tax invoice for payment.

### 2.14 Payment

- (a) The client agency will pay the fees for the provision of the Services within thirty (30) days of receipt of a tax invoice by the Firm which meets the requirements of this Contract.
- (b) Failure by the client agency to pay within thirty (30) days will:
  - (i) not be grounds to vitiate or avoid the contract; and
  - (ii) entitle the Firm to make a claim for interest penalties on the late payment.
- (c) Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the client agency and the claim must be in the form of a tax invoice. Interest penalties are to be calculated daily for the period after the due date until the date payment is made by the client agency, at the ninety (90) day bank bill rate published on 1 June each year. Where an interest penalty period spans 1 June, the rate shall be the rate published in the year the original invoice was issued.
- (d) The client agency will not be liable for interest penalties on any payments in respect of interest penalties.

### 2.15 Intellectual Property

- (a) The property and copyright in all material produced under or in accordance with the terms of this Contract including, without limitation, advices, agreements, reports, technical information, software, plans, charts, photographs, drawings, calculations, tables, schedules and any other data produced in hard copy or electronically (Material) shall, upon its creation, vest solely in the Principal and the Material shall not be used by the Firm, its employees or agents for any purpose other than for the purpose of providing the Services pursuant to this Contract and the Letter of Engagement. The Principal shall have the right to use the Material for any purpose it deems fit.
- (b) The Firm must do all such things as may be required in order to confer property and copyright interests upon the Principal, including the property and copyright in any material sourced by the Firm from any third persons (including, without limitation, any subcontractors engaged by the Firm).

### 2.16 Information Act

- (a) The Firm acknowledges that it may, from time to time, hold information or records on its files which are either:
  - (i) records which the Firm and its contractors and subcontractors collect or handle on behalf of the SFNT or the client agency, which constitute "government information" pursuant to section 4 of the *Information Act*; or
  - (ii) records of the Firm (which are the property of the Firm as opposed to the property of the SFNT or the client agency); and which may be accessible to the public pursuant to the provisions of the *Information Act*

- (b) The Firm will:
- (i) comply with the provisions of the *Information Act* in its role as a "Contract Service Provider" to the Principal to the extent that it holds "government information" on its hard copy or electronic files or other records which are provided for in the Act;
  - (ii) on receipt of a request from the client agency or any member of the public for access to "government information" ("the Request"), promptly advise the SFNT of the Request;
  - (iii) promptly deliver to the SFNT, if requested, all relevant files and records in respect of the Request so as to enable the SFNT to determine what information (if any) is required to be disclosed to the person making the Request.
  - (iv) comply with the Information Privacy Principles contained in the Schedule to the *Information Act*.
  - (v) comply with the Northern Territory Government Legal Services Disposal Schedule located at [www.nt.gov.au/justice](http://www.nt.gov.au/justice)
  - (vi) comply with any practices and procedures notified to the Firm which have been implemented by the client agency and/or the SFNT for the purpose of safeguarding custody and ensuring proper preservation of "government information".
  - (vii) give the SFNT all other assistance reasonably requested in order that the SFNT and the client agency are able to comply with the *Information Act*.
  - (viii) utilise the proposed privacy statement (below) when collecting personal information on behalf of the SFNT when it is not for an exempt purpose under the *Information Act*. Exempt purposes include but are not limited to where the collection of personal information does not concern a proceeding before a court or tribunal, it is not for the purposes of investigating an unlawful activity, required by law, requested by or on behalf of a law enforcement agency within the Northern Territory or for statistical purposes.

**Proposed Privacy Statement**

*[Name of firm] will only use the personal information you provide for the purpose of legal advice to, and/or representation of the Northern Territory. Should you wish to change or add to any of this information, you may contact the solicitor you saw initially. Such information shall not be disclosed to any third party without your consent, or as required by law. It will be kept securely for the length of the proceeding or the period in which the legal advice is utilised and archived thereafter when it will be subject to the Northern Territory Government Legal Services Disposal Schedule.*

**2.17 Insurance**

- (a) The Firm must effect and keep in force policies of insurance for:
- (i) professional indemnity, in the amount of \$5,000,000.00 per claim and \$10,000,000.00 in the aggregate;
  - (ii) public liability, in the amount of \$10,000,000.00 in respect of any one occurrence and unlimited in the number of occurrences; and
  - (iii) any insurance required by the *Workers Compensation and Rehabilitation Act*.
- (b) The Firm must provide copies of such policies and certificates of currency forthwith if requested by the Principal.

**2.18 Notices**

- (a) All notices, approvals, consents, demands or other communications required or permitted to be given under this Contract shall be in writing and shall be served personally or by pre-paid certified post or facsimile transmission at the address of the party set out below or at such other address as a party may have substituted for it by notice to the other.
- (b) In the case of a notice sent by facsimile, (and a correct and complete transmission report for that transmission is obtained by the sender) it shall be deemed to be received upon transmission if transmission takes place on a business day before 4:00pm in the place to which the

communication is transmitted and in any other case at 9:00am on the business day next following the day of transmission.

- (c) In the case of a notice sent by mail, it shall be deemed to have been received on the second business day from and including the date of posting.

## 2.19 Termination of Engagement

- (a) The Principal may terminate this Contract by ninety (90) days notice in writing to the Firm if the Principal changes its procurement policy such that the outsourcing of the Services is no longer required.
- (b) The Principal may terminate this Contract by 24 hours' notice in writing to the Firm, if any member or employee of the Firm engaged in providing the Services at any time:
- (i) knowingly or negligently commits any serious or persistent breach of the terms or conditions of this Contract;
  - (ii) is, in the reasonable opinion of the Principal, guilty of any misconduct, misbehaviour, incompetence, negligence, carelessness or gross inefficiency in the discharge of his/her duties under the terms and conditions of this Contract;
  - (iii) becomes bankrupt or makes any arrangement or composition with his/her creditors;
  - (iv) becomes of unsound mind; or
  - (v) is convicted of any criminal offence other than an offence which in the opinion of the Principal does not affect the provision of the Services.
- (c) The Principal may terminate this Contract by 24 hours notice in writing to the Firm, if the Firm at any time:
- (i) ceases to carry on the profession of a legal practitioner offering legal services in the Northern Territory;
  - (ii) being a company, has an application or order made, or a resolution passed for its deregistration or winding up, goes into liquidation, stops payment of its debts or is unable to pay its debts as and when they fall due within the meaning of the *Corporations Act*, is placed under official management, or has a receiver, manager or external administrator appointed in respect of any of its assets or undertaking; or
  - (iii) is, in the reasonable opinion of the Principal, unable or unwilling, for any reason, to undertake the provision of the Services in a manner satisfactory to the Principal.

## 2.20 Expiry of Contract

- (a) At the expiry of the term of the Contract, the Firm must continue to provide the Services in relation to matters referred to it prior to expiry for a period of 12 months (Further Period) on the same terms and conditions.
- (b) If a matter continues beyond the Further Period, then, where the Firm:
- (i) has had a Component under which the file was outsourced and is successful in tendering for that Component for a further term; or
  - (ii) has received the file on an ad hoc basis and is subsequently successful in tendering for the relevant Component;

the hourly charge-out rates and the other terms and conditions of the new Component will apply, and for the purposes of future adjustments to the hourly charge-out rates, the file will be treated as if it was a matter outsourced under the new Component.

- (c) If a matter continues beyond the Further Period, and the Firm has had a Component under which the file was outsourced and was not successful in tendering for that Component for a further term, then the terms and conditions of the Component under which the work was outsourced will continue to apply, save that the hourly charge-out rates shall be adjusted on the expiry of the Further Period, and annually thereafter, to an amount which is the lesser of either:
- (i)  $A = R \times \underline{I}$

**B**

Where:

A = the adjusted hourly charge-out rate (rounded to the nearest \$)

R = the hourly charge-out rates payable pursuant to the original contract

I = the latest Australian Average Weekly Earnings figure published, in ABS Catalogue 6302.0 at the time the adjustment is due

B = the Australian Average Weekly Earnings figure published 12 months prior to I in ABS Catalogue 6302.0.

**OR**

- (ii) The rate that the Firm unsuccessfully tendered for the Component in response to the RFT.

**2.21 Interpretation**

- (a) In the interpretation of the Contract unless such interpretation is excluded by or repugnant to the context:
- (i) words importing the singular number include the plural number and vice versa;
  - (ii) words importing any gender shall include all other genders;
  - (iii) "person" includes a corporation;
  - (iv) all references to statutes refer to statutes amending or re-enacting or replacing the statutes referred to and includes a reference to all proclamations orders in council regulations rules by-laws ordinances and any other instruments and directions (if any) made thereunder;
  - (v) all covenants warranties undertakings and agreements herein shall if entered into by more than one (1) person be deemed to be joint and several;
  - (vi) headings and sub-headings have been included for ease of reference only and this Contract is not to be construed or interpreted by reference to such headings or sub-headings;
  - (vii) the Annexures to this Contract shall be read and construed as part of this Contract.

**2.22 Governing Law**

- (a) This Contract is governed by and construed in accordance with the law for the time being in force in the Northern Territory and the parties hereto submit to the jurisdiction of the Supreme Court of the Northern Territory at Darwin in respect of all matters arising hereunder or related hereto.

**2.23 Compliance With Laws**

- (a) The Firm must comply with all laws in force in the Northern Territory from time to time.

**2.24 Assignment**

- (a) The Firm shall not assign or otherwise deal with this Contract or any right under this Contract without the prior written consent of the other party.

## ANNEXURE A - SAMPLE BILL

Department of Justice

Client agency: *(responsible for payment)*

GPO Box 1722

Client agency mailing address:

DARWIN NT 0801

Attention: Agency Legal Services

Attention: *(client agency contact)*

Re: XYZA Pty Ltd -v- NTA

Date	Description of Item	Rate	Cost
<b>Services:</b>			
dd/mm/yy	Drafting Letter to "XXX" (‘y’ units - partner “k”)	‘z’	‘yz’
dd/mm/yy	Telephone Conference with "XXX" (‘y1’ units – senior solicitor “k1”)	‘z1’	‘y1z1’
<b>Disbursements (Principal):</b>			
dd/mm/yy	Photocopy - 8 pages	“b” per page	“8b”
<b>Disbursements (Agent):</b>			
dd/mm/yy	Counsel’s fees (copy attached)		“SSS”
			_____
		<b>TOTAL</b>	

**SUMMARY OF TIME BY LAWYER:**

Partner ‘k’	Total units	Hourly rate	Total cost \$
Senior Solicitor “k1”	Total units	Hourly rate	Total cost \$

**FOOTNOTE**

*This sample is not meant to be a tax invoice for the purposes of the GST legislation. The sample is provided to particularise the level of detail required in relation to services performed by the Firm.*

*The Firms will need to ensure that invoices provided by it meet GST requirements.*



**ANNEXURE B - QUARTERLY REPORTING FORMAT**

[Name of Client Agency]

Status of current matters as at [date]

<b>Dept of Justice Tender Component No and Name</b> [insert component number and name]				
<b>Matter Description</b>		<b>Current Status</b>	<b>Client Agency Contact Person</b>	<b>Firm Contact Person</b>
1.				
2.				

**Original to:**

**Dept of Justice, Solicitor for the Northern Territory:** [sfntlegalservices.doj@nt.gov.au](mailto:sfntlegalservices.doj@nt.gov.au).

**Copy to:**

**Client Agency.**

### 3 SCOPE OF SERVICES

#### 3.1 Provision of Legal Services to Government

In broad terms, the Northern Territory Government and its statutory bodies obtain their legal services in civil matters through the statutory office of the Solicitor for the Northern Territory (SFNT) and through outsourcing matters to legal service providers under the supervision of a case manager from the SFNT.

#### 3.2 Background of Legal Services Outsourcing

The outsourcing of legal services was introduced in 1998. The general policy surrounding outsourcing remains unchanged and the SFNT will continue to take an active role in relation to:

- (a) dealing with whole of government, sensitive or strategic matters in-house; and
- (b) coordinating, monitoring and managing outsourced legal services.

#### 3.3 Current Outsourcing Model

The gradual expansion of the SFNT over recent years and resultant increase in capacity has impacted on the number and type of matters outsourced to the private profession. Due to the nature of the work retained by the SFNT, some tender Components have been affected more than others. This has led SFNT to undertake ongoing reviews of its outsourcing model.

The current outsourcing model is based on achieving the following outcomes:

- the provision of quality advice, representation and documentation to client agencies in a timely manner;
- value for money;
- servicing of regional centres;
- development of the local profession;
- efficiency in the tender process and contract management of tender Components; and
- regular reporting to client agencies.

The current outsourcing model adopted by the SFNT, which will be used for this Request for Tender, is detailed further in the Scope of Services, has the following key features:

1. One Tender is called for all legal services to government in all regions for a period of 3 years.
2. The Tender is comprised of six (6) components sorted by type of work as follows :
  - Property Law
  - Commercial Law
  - Intellectual Property and Technology Law
  - Litigation
  - Health, Children and Families
  - Work Health

Descriptions of the services required under each component are set out in the table at paragraph 4.2 of the Scope of Services.

3. Potential tenderers are asked to tender for one or more components depending on the type of service they wish to provide.
4. Tenderers are requested to indicate in their tender response whether they are willing to provide services to regional centres (Katherine, Alice Springs).
5. Panels of one or more successful tenderers will be appointed to each component. The number of successful tenderers appointed to each component will depend on the services required and the volume of work envisaged under the particular component.

6. The cab rank rule applies for Component 5: Health, Children and Families matters (e.g. Family & Children's Services, Adoptions, Adult Guardianship). Work under all other Components work will be allocated according to availability, background (previous) knowledge of the matter, the type of work, size of project and capacity of provider, the particular expertise required, recent experience, any unique requirements of the agency and possible conflicts of interest.

In respect to the allocation of work, the SFNT has internal procedures in place to monitor and manage the distribution of work under each component.

Notwithstanding that legal service providers will be engaged to provide legal services pursuant to a tender Component, the Principal reserves its right to:

- (a) obtain, from any source, services which a firm or a panel may already have been engaged to provide as a result of calls for tenders; and
- (b) in its absolute discretion, withdraw or transfer files/briefs from, or refrain from giving further work to the relevant firm/s and to obtain the same or similar legal services from other local, interstate or overseas sources.

### **3.5 Purpose of Request for Tender**

The purpose of this Request for Tender (RFT) is to invite tenders from suitably qualified and experienced legal service providers to provide legal services to the Northern Territory of Australia and its statutory bodies (Principal) in the areas specified in this Scope of Services and further set out in the Contract for the Provision of Services which will be awarded to the successful tenderer/s (Contract).

### **3.6 Role of the Parties**

The Principal is represented by the Solicitor for the Northern Territory, the Client Agencies, and the Department of Business and Employment (Contract and Procurement Services).

#### **a) Solicitor for the Northern Territory (SFNT)**

The SFNT is a body corporate established by the *Law Officers Act* which provides that it may act as solicitor for the Territory, its Ministers, agencies and persons suing or being sued on behalf of the Territory. The Chief Executive Officer of the Department of Justice may act personally in the name of the SFNT and may authorise an officer of the Department of Justice who is a legal practitioner to act in the name of the SFNT.

The SFNT initiates and coordinates the outsourcing of legal services provided to the Principal. Each matter outsourced by the Principal will have a case manager assigned to it. The case manager will be an officer working within the SFNT with appropriate skills and qualifications who will be available to assist the client agency and the outsourced provider with issues that arise in the course of the matter and will oversee the work generally. Further details regarding Case Management is set out in paragraph 3.7 of this document and in clause 2.8 of the Contract.

#### **(b) Outsourced Provider**

The role of the outsourced provider (Firm) will be to provide quality legal advice and representation to the Principal in a timely manner and in accordance with the terms of its Tender Response, the Contract and the Letter of Engagement issued to it.

#### **(c) Client Agencies**

The client agency is the government agency or statutory body seeking the legal advice or representation. Once instructions have been issued by the SFNT, the client agency may deal directly with the Firm, or it may be appropriate for the case manager to deal with the Firm. The needs of the client agency will be assessed on a case by case basis.

#### **(d) Department of Business and Employment**

Contract and Procurement Services, a division of the Department of Business and Employment (DBE) is responsible for issuing this RFT and receiving tenders, and for the final stage of processing tax invoices for payment.

**3.7 Case Management**

The Case Management procedures implemented by SFNT in 2003 to optimise the outcomes for agencies in outsourced legal services have not undergone any substantial changes and will continue under the outsourcing arrangements.

The SFNT will appoint a case manager for each matter referred to the Firm.

The case manager will, in conjunction with the client agency and the Firm:

- (a) establish a work plan for the provision of the Services;
- (b) negotiate a fee commitment (commitment) and manage the work plan on an ongoing basis, according to the particular needs of all parties; and
- (c) manage any discrepancies between the commitment agreed upon for the work and the actual fees charged.

The Contract sets out the procedure for and conditions relating to the provision of cost estimates in relation to matters referred to the Firm.

**3.8 Contract**

A binding contract between the Firm and the Principal will be formed upon the issue of a Letter of Engagement to the Firm.

**3.9 Scope of Services Required**

- (a) The successful tenderer (the “Firm”) will provide legal services (Services) to the Northern Territory of Australia (the “Principal”) for a period of 36 months in the following areas:

Component	Service Description
<b><u>Component 1</u> – Property</b>	Real Property and Conveyancing Leases and Licences Planning Wills and Estates Trusts
<b><u>Component 2</u> – Commercial Law</b>	Contract and Tendering Taxation and Stamp Duty Trade Practices/Competition Consumer Credit Corporations Law Construction & Project Management Risk Management & Insurance Banking and Finance Joint Ventures Environmental (including Climate Change), Water and Energy Minerals & Petroleum Primary Industries Fisheries Marine and Maritime Law Genetic Modification
<b><u>Component 3</u> – Intellectual Property and Technology Law</b>	Intellectual Property (Copyright, Patents, Trademarks) Biotechnology Information Technology

<b><u>Component</u></b>	<b><u>Service Description</u></b>
<p><b><u>Component 4 – Litigation</u></b></p> <p><i>Note: Panel Members for this Component may not receive all litigation work on behalf of the Territory, as litigation may form a natural part of work undertaken by Panel Members under other Components.</i></p>	<p>Expertise and resources to conduct litigation or represent the Territory in any jurisdiction affecting the Northern Territory of Australia.</p> <p><i>Particular Services are:</i></p> <ul style="list-style-type: none"> <li>Personal Injuries</li> <li>Building Disputes</li> <li>Coronial Inquests</li> <li>Prosecutions</li> <li>Defamation</li> </ul>
<p><b><u>Component 5 – Health, Children and Families</u></b></p>	<ul style="list-style-type: none"> <li>Child Protection</li> <li>Adoptions</li> <li>Adult Guardianship</li> <li>Mental Health</li> <li>Volatile Substance Abuse</li> </ul>
<p><b><u>Component 6 – Work Health</u></b></p>	<ul style="list-style-type: none"> <li>Workers Compensation</li> </ul>

**3.10 Commencement Dates and Term**

- (a) The Contract is for a period of 36 months, commencing on 1 October 2011.

**3.11 Fee Structure**

**(a) General - Hourly rates**

Other than specific requirements in relation to Component 1 (Property) the fees payable and the basis for charging the fees for services provided will be the hourly rates specified by the Firm in their Tender Response.

**(b) Component 1 (Property)**

Fixed fees will apply to the preparation of new leases and lease variations for Northern Territory Property Management (NTPM) using the NTPM standard Memorandum of Common Provisions (MCP). If tendering for Component 1, Firms must provide a fixed fee for such matters in their Tender Response.

For all other matters under this Component and in exceptional circumstances in relation to an NTPM standard MCP lease the fees payable will be the hourly rates specified by the Firm in their Tender Response.

**3.12 Appeals and Exceptional Circumstances**

The Tendered hourly rates are applicable for appeals and exceptional circumstances, subject to prior approval being given by the SFNT. What constitutes exceptional circumstances is in the absolute discretion of the SFNT. Exceptional circumstances may include complex negotiations and precedent setting circumstances, appeals to the Supreme Court and Court of Appeal.

**3.13 Firm not to Accept Certain Instructions – Component 6 (Work Health) ONLY**

- (a) The Firm will not, during the term of the Contract, accept instructions to act against the Territory/client agency in a matter which is within Component 6 of the Scope of Services.
- (b) If requested by the SFNT, the Firm will divest itself of any such existing matters within the time agreed by the parties.

**3.14 Volume of Work**

The estimated value of the overall Panel Contract for the 36 month term is \$4.5M. This has been based on two factors:

- (i) the total expenditure of outsourced legal services (excluding GST, disbursements and Counsel fees) for 08/09 (\$5.3M) and 09/10 (6M) financial years; and
- (ii) the increased capacity of the Solicitor for the Northern Territory. Due to the nature of legal services requirements, the SFNT is unable to predict the value of work that may be outsourced under each Component.

Tenderers are referred to clause 2.6 of the Contract in regard to volume of work.

**3.15 Reporting**

- (a) The Firm will be required to provide quarterly reports to the client agency and the SFNT as required by the Contract