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Request for Tender

("RFT")

February 2025

Procurement title: Reducing the regulatory and training burden for rail workers using technology

Reference number: N2303

Close date: 14/03/2025 (5:00pm AEDT)

National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 3000

 (03) 9236 5000

 enquiries@ntc.gov.au

 ntc.gov.au

ABN 67 890 861 578

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Details schedule		
Supplier's particulars:	Company:	[Type here]
	Address:	[Type here]
	Contact person:	[Type here]
	Email:	[Type here]
	Phone:	[Type here]
NTC's representative:	Name:	Athanasios Athanasopoulos
	Address:	Level 3, 600 Bourke Street, MELBOURNE 3000
	Email:	NRAP-Secretariat@ntc.gov.au
	Phone:	(03) 9236 5057
NTC's reference number:	N2303	
Title of Tender:	Technology solutions to reduce the regulatory and training burden for rail workers.	
Lodgement details:	Please submit response to the National Transport Commission via email by the closure date (5:00 pm on 14/03/2025 AEDT)	
Lodgement email address:	NRAP-Secretariat@ntc.gov.au	
Evaluation criteria:	<p>The evaluation panel will be evaluating all proposals received on the basis of:</p> <ol style="list-style-type: none"> 1. Technical knowledge of and experience in the utilisation of existing AI solutions, namely Large Language Models. 2. Experience and capacity of proposed staff/team to undertake deliverables within the agreed timeframes. 3. Demonstrated experience in communicating technical information to clients in a clear and simple manner, both verbally and in writing. 4. Ability and capacity to deliver the project, in compliance with the appropriate standards and best practice. 5. Value for money. 	

Part A – Tender conditions

By submitting a Tender in response to this Request for Tender (RFT)

You agree:

- that you are bound by these Tender Conditions;
- that these Tender Conditions, together with the Specification and the Tender Form and any other documents declared by the NTC to form part of the Request for Tender (“RFT”), comprise the RFT;
- to submit all documents as required by the RFT (“Tender Documents”);
- that the Tender Documents become the NTC’s property upon lodgement;
- that the Tender Documents will be succinct and free from elaborate artwork, bindings or any other forms of unnecessary presentation;
- to keep confidential all information provided by the NTC in connection with the RFT when such information is not already publicly available;
- not to reproduce the RFT (or any part of it) except where necessary for preparation and submission of your Tender;
- to license the NTC to use and reproduce the whole or any portion of the Tender Documents for evaluation and audit and to publish (on the internet and / or by any other means) the value of the successful Tender(s) and the Supplier’s name together with the provisions of the contract generally;
- that your response to this RFT (“Tender”) will remain open for acceptance by the NTC for 3 months from the Closing Time and Date (and for any further period or periods agreed) even if the NTC negotiates with you or others;
- that you have declared all actual or potential conflicts of interest in your Tender;
- that, in lodging a Tender, you did not rely on any express or implied statement, warranty, or representation, whether oral, written, or otherwise made by or on behalf of the NTC, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;
- that you have otherwise obtained all information and advice (including legal and financial advice, if applicable) necessary for the preparation of your Tender;
- that you are responsible for all costs and expenses related to the preparation and lodgement of your Tender, any subsequent negotiation, and any future process connected with or relating to the RFT;
- that if successful, and if the NTC notifies you that it has accepted your Tender, you will be expected to enter into a contract incorporating the conditions set out in Part C;
- that no legal relationship will exist between the NTC and a successful quoter for supply of the services described in the Specification until such time as a binding contract is executed by them;

- that you will direct all communications through the NTC's Representative named in the Details Schedule;
- that the NTC is not bound to accept the lowest or any Tender it receives; and
- in the event that the Tender exceeds \$100,000 then the Publishing Tender and Contract Information as referred to in Part D shall apply.

The NTC:

- will assess quotes against the evaluation criteria noted in the Details Schedule and determine which best meets its requirements and offers best value for money;
- is under no obligation to appoint a successful service provider or providers, or to enter into a contract, if it is unable to identify a Tender that complies in all relevant respects with the requirements of the NTC, or if to do so would otherwise not be in the public interest;
- will advise the outcome of the RFT process;
- will not warrant the accuracy of the RFT; and
- will not be liable for any deficiency within the RFT.

The NTC may, without incurring any liability to you:

- change any details in the RFT;
- require additional information from, interview, negotiate with or hold discussions with any person or organisation which submits a Tender, on any matter contained (or proposed to be contained) in a Tender to the exclusion of other persons or organisations;
- reject any Tender which is received after the Lodgement close date, or which does not comply with the requirements of the RFT;
- at any time, cancel or suspend, in whole or in part, any or all of this RFT;
- extend the Closing Time and/or Date;
- reject your Tender in its absolute discretion;
- negotiate with one or more suppliers; and
- accept the whole or any part of a Tender (including your Tender) or more than one Tender.

Please note that:

- A. The minimum insurance limits required of the successful tenderer are:
1. Public Liability insurance at \$10,000,000 per claim and in the aggregate, and
 2. Professional Indemnity insurance at \$20,000,000 per claim and in the aggregate.

The respective certificates of currency must be provided to the NTC for the contract between the two parties to be executed.

- B. For the purposes of this project, a **two-stage Tender assessment** will be followed:
1. **Stage 1:** Evaluation of written submissions and shortlisting of suppliers.
Shortlisted suppliers will then be invited to present their proposals to the evaluation panel during a 30-minute interview.
 2. **Stage 2:** Evaluation of presentations, and determination of successful supplier.
- C. The NTC requests that respondents limit the number of pages for submissions to no more than 20 (standard A4 size). This includes the form in Part D, but excludes detailed resumes for the proposed team members.

PART B – Specification

1. The NTC

The National Transport Commission (NTC) leads national land transport reform in support of Australian governments to improve safety, productivity, environmental outcomes, and regulatory efficiency. We are a key contributor to the national reform agenda with accountability to the Infrastructure and Transport Ministers' Meeting (ITMM) and its advisory body, the Infrastructure and Transport Senior Officials' Committee (ITSOC).

The NTC's purpose is to develop, propose, monitor, maintain and review nationally consistent reforms to improve the productivity, safety, environmental impacts, and regulatory efficiency of land transport in Australia.

2. Requirement

A. Background: National Rail Interoperability

Advancing national rail interoperability is a priority of National Cabinet and Infrastructure and Transport Ministers.

Ministers have tasked the NTC with delivering a four-year work program (National Rail Action Plan / NRAP) to lift national productivity, support Australian supply chains, improve safety performance, increase rail capacity, future proof faster rail and enhance sustainability.

One of NRAP's priority areas aims to reduce the burden on train drivers, crew and maintenance workers. Increasing commonality in operating rules across Australia will reduce the burden on workers, improve safety and drive down costs and time lost to training. It will also make it simpler and easier for workers to move across networks, improving workforce capability. To address this problem, an initial set of four Safeworking rules for standardisation and five actions have been proposed under the Standardising National Rail Network Rules project. Through this project, the NTC is exploring ways to accelerate harmonisation and interoperability efforts using technology.

The NTC is also progressing interoperability reforms from the Rail Safety National Law (RSNL) review, to embed interoperability outcomes by requiring decision makers to consider impacts on adjacent networks and the national network.

B. Project Objectives

Reduce the regulatory and training burden for rail workers and accelerate harmonisation by using an artificial intelligence (AI) technology solution to understand what is different and what is common across operating rules, units of competencies, network signage, and network glossaries.

Stakeholder engagement has confirmed that the disparities and inconsistencies of Safeworking rules across Rail Infrastructure Managers (RIMs) and their networks are the single largest contributors of regulatory and training burden. Each RIM has their own operating rules, resulting in workers needing to maintain Safeworking knowledge and

competencies across multiple boundaries. This results in additional training and assessment of operational differences and network competencies. Subsequently, terminology differs across networks. This means that workers operating across different networks need to be across each term used for the networks they work on. Symbols, language and size of rail signage also vary. There is no specific standard that applies across Australia.

To accelerate harmonisation and assist in the reduction of the burden experienced by rail workers there is a critical need to understand what is different, what can be harmonised, and what will help if harmonisation or standardisation is not possible. The NTC requires specialist technical advice to determine how technology and tools such as Large Language Models (LLM) can assist with this. Testing an LLM as a pilot project will provide the NTC, and the rail sector more broadly, with an understanding of the feasibility and validity of the role AI can play in reducing burden by assessing current knowledge and skills and training gaps. This may result in the development of mutually recognised units of competencies, a standardised glossary, standardised railway signage, and standardised Safeworking rules.

Understanding what is the same and what is different across networks is a key enabler to reduce the regulatory and training burden for rail workers. It may also provide visibility over different network competencies and operating rules so that RIMs can deliver gap training and assessment.

C. Project Scope

Compare, contrast and undertake a gap analysis of current knowledge, skills and training gaps in rail by leveraging an existing Large Language Model (LLM) tool. To determine its suitability, the project will identify and quantify differences between networks such as units of competency, Safeworking rules, network glossaries, and network signage. The project must also consider potential benefits and outline costs to deliver this tool at scale. It will also consider established standards regarding the use of AI and risks to determine if it is fit for purpose and appropriate to be used in relevant contexts.

In more detail, the project must achieve the following outcomes:

1. Demonstrate the applicability of an AI solution to accelerate harmonisation of complex rail operating rules and systems through:
 - a. an analysis and comparison of Safeworking rulebooks, railway signage across networks, units of competencies, and respective RIM glossaries.
 - b. an analysis and comparison of Digital Train Control (DTC) network rules across the Eastern Seaboard, including draft rules.
2. A gap analysis of Safely Access the Rail Corridor (SARC) offerings across four Registered Training Organisations (RTOs) approved by RIMs.
3. Outline the cost implications, including implementation, maintenance, and training, associated with the use of an existing or new tool.
4. Interrogate barriers and challenges to implementation, such as those that may relate to intellectual property, Copyright, cyber security (including relevant Australian

Government standards relating to Artificial Intelligence) and complex contractual arrangements that AI solutions may raise.

5. Articulate benefits and risks of the proposed technology solution, as well as provide a risk mitigation strategy and plan.
6. Validate the rulebook, glossary and signage analysis and comparison through stakeholder engagement.

The project outcomes must be presented in a final report, as outlined in Section D below.

D. Project Deliverables

The consultant must deliver the following:

1. At the completion of the project, a final report that will include, but is not limited to:
 - a. Analysis and comparison of nine Safeworking rulebooks, glossaries and national railway signage analysis using an AI tool. The consultant is to make a proposal regarding the number of glossaries and railway signage for the purposes of this project. This analysis will help inform recommended actions for standardisation, and demonstrate the viability of AI tools to assist RIMs and operators with improving portability of rail skills.
 - b. An analysis and comparison of Digital Train Control (DTC) network rules focussed on the Eastern Seaboard, including draft rules. This will assist in harmonising the rollout of digital train technology.
 - c. A gap analysis of what is the same and what is different across four offerings of *Safely Access the Rail Corridor* (SARC) training. This will help facilitate a mutually recognised entry-level unit of competency and support portability of critical resources.
2. At intermediate milestones, draft material for review and feedback by the NTC.

NOTES:

- a. The proposed approach for testing the AI tool or similar solution as a proof of concept must be confirmed with the NTC at an inception meeting at the start of the project.
- b. The NTC will provide the successful proponents with available Safeworking rulebooks and previous reports produced for the NTC to help build on work undertaken to-date.
- c. The NTC will also provide the Rail Industry Safety and Standards Board's (RISSB's) Network Rules Data from their work to harmonise 5 Australian Network Rules and Procedures (ANRP) rules.

- d. The NTC will identify the stakeholders that need to be consulted with for the purposes of this project. The successful consultant will be required to engage with stakeholders and assist in obtaining data and information from those stakeholders. Key stakeholders include (but are not limited to):
 - a. The Rail Industry Safety and Standards Board (RISSB)
 - b. ONRSR
 - c. Registered Training Organisations (RTOs)
 - d. Rail Infrastructure Managers and Rolling Stock Operators
 - e. Government

E. Delivery Schedule

All project work must be completed by 30/06/2025.

The indicative milestones outlined below will be confirmed with the successful proponent.

Deliverable	Due by (Indicative dates to be confirmed with successful tenderer)
1. Project inception meeting	Early to mid April 2025
3. Initial Stakeholder engagement and consultation	April to early May 2025
4. LLM testing and analysis	May 2025
5. Testing and analysis outcomes shared with stakeholders, and draft report	Early June 2025
6. Final report	Late June 2025

F. Response to this RFT

As outlined in Part D, all responses must be provided either within the specified fields of Part D or in the form of the Supplier’s own proposal, ensuring all information requested is included, and must respond to the Specification (Part B) and Proposed Contract (Part C) in accordance with the Conditions of Tender (Part A) in the Request for Tender.

Respondents may provide supplementary material to support their Tender.

The NTC requests that respondents limit the number of pages for submissions to no more than 20 (standard A4 size). This includes the form in Part D, but excludes detailed resumes for the proposed team members.

G. Reporting requirements

The supplier's key representative for this initiative will report to the respective NTC policy reform team. The NTC's Representative for the purposes of this procurement activity is identified in the schedule on Page 2 of this RFT document.

H. Supporting Information – Project Context

This section provides a summary of relevant work completed to-date as context to facilitate the preparation of responses to this RFT. Detailed documentation and a briefing will be provided to the successful proponent at the commencement of this project.

1. A review of the Rail Safety National Law (RSNL) undertaken by the NTC made 24 recommendations for legislative and regulatory amendments that were supported by ITMM¹. Legislative and regulatory reform will be required to achieve NRAP's interoperability objectives. Pertinent to reducing the regulatory burden on rail workers, the review called for the establishment of a national set of skills competencies. This extends to national Safeworking rules and mandated accredited training to tighten existing laws to remove the possibility of opting out of national competencies.
2. Inconsistent requirements and disparate rulebooks demonstrating that risk has been managed 'So Far As Is Reasonably Practicable' (SFAIRP) amongst the 18 RIMs in Australia have resulted in 12 different sets of Safeworking rules, and significant regulatory, compliance, and training burden on the rail workforce. This burden may increase the likelihood of safety risks when considered at a national level, due to:
 - a. workers needing to undertake additional training and retain a large volume of network-specific knowledge,
 - b. an increase in training costs for organisations, and
 - c. an increased risk of human error.
3. There are five systemic barriers that must be addressed to support and achieve the standardisation of Safeworking rules. This includes:
 - a. RIM ownership of the SFAIRP argument.
 - b. Opt-in adoption of Safeworking rules (RISSB framework).
 - c. ONRSR investigation recommendations being directed at the RIM, not the industry.
 - d. Interoperability does not have an equivalent legislated mandate to the Rail Safety National Law.
 - e. Incompatible technology.
4. A lack of recognition of skills and knowledge across jurisdictions creates barriers for workers being able to move across networks, decreasing productivity. Significant effort has been made to create harmonised Safeworking rules to alleviate this burden. However, there is limited progress due to the current opt-in approach and a lack of legislation to enforce consistency.
5. Stakeholders have repeatedly identified the need for drivers to be competent in route knowledge across networks. Operators also incur significant training costs to understand different signalling requirements, and to use multiple communications and train control systems. These complex requirements increase human factor safety

¹ A copy of the report is available via this link:

https://www.ntc.gov.au/sites/default/files/assets/files/Rail%20Safety%20National%20Law%20Review%20-%20Final%20report%20%28June%202024%29%20%281%29_0.pdf

- risks, reduce staff mobility, increase fatigue management concerns, and result in driver shortages and difficulties in retaining and replacing an ageing workforce. These risks apply to the train driver crew, contractor workforce and infrastructure workers.
6. The Australian Rail Industry Safety and Standards Board (RISSB) has worked towards the national harmonisation of Safeworking rules by developing the Australian Harmonised National Rules (AHNR) and the Australian Network Rules and Procedures (ANRP). However, only about half of the RIMs have adopted the broader rule framework, and there remains significant differences in the content of the rules. This is largely due to the opt-in nature of the frameworks.
 7. Engagement to date has confirmed that the existing RISSB, ANRP and ANHR rules should be used as the basis for developing common operating rules. It has also been recommended that common operating rules be implemented in phased tranches. International benchmarking was conducted to determine best practice for their adoption. Findings were then workshopped with RIMs and Operators to review options and an initial four Safeworking rules were analysed for common content.
 8. A line-by-line extraction and review of clauses from Safeworking rules for each available rulebook has been conducted. This was followed by testing with stakeholders and validated as being potentially suitable for standardisation. Four initial rules were identified to commence this work. Three of the identified four rules have already been subject to existing efforts by RISSB (with exception to Reporting and Responding to a Condition Affecting the Network). Reports completed to date will be provided to the successful proponent.
 9. RISSB has already conducted a gap analysis on the various network rules across the National Network for Interoperability.
 10. The initial four rules are:
 - a. Walking in the danger zone,
 - b. Communications,
 - c. Planning works in the rail corridor, and
 - d. Reporting and responding to a condition affecting the network.
 11. Further analysis was conducted, and a decision-making framework was developed to identify options that would further support the standardisation of Safeworking rules and reduce burden. Six high-benefit actions were recommended and validated with stakeholders. These are:
 - a. Implementing a standard glossary of rail terms.
 - b. Implementing a national rail signage standard.
 - c. Implementing the Australian Standard for PPE.
 - d. Rationalise and standardise hand gestures across the Australian rail industry.
 - e. Standardise Safeworking paper forms.
 - f. Harmonise rail industry worker role titles (this work is currently being pursued by the NTC and the ARA).
 12. These actions will increase portability and productivity and reduce cognitive load and confusion. High-level next steps to progress this work have been identified, and broadly include further consultation with industry and the revision of existing documentation and practices.
 13. Currently, rail skills training and assessment is tailored to the network. This means that courseware is highly contextualised and bespoke to meet domain and network requirements.

14. This limits the skills and knowledge that rail workers can transfer to other networks, limiting their ability to move across networks and presenting a barrier to entry into rail.
15. The NTC developed a Blueprint for Mutual Recognition to address this issue. The Blueprint outlined five steps to achieve mutual recognition across entry level rail competencies across Australia. This project is now known as the Rail Mutual Recognition Project.
16. This project is split into two phases.
 - a. Phase 1 comprises National Rail Mutual Recognition Principles, Validation and moderation guidance for competency assessment, and guidance for the development, delivery and assessment of entry level rail skills.
 - b. Phase 2 comprises establishing a rail skills curriculum with publicly accessibly entry-level rail training programs and establishing a governance mechanism with industry, educators, regulators, and government.
17. Industry Skills Australia (ISA) is delivering Phase 1 of the Rail Mutual Recognition Project. This will include a Rail Mutual Recognition Companion Volume for the Transport and Logistics Training Package.
18. The companion volume will prescribe industry's minimum expectations for the design and deliver of training and assessment.
19. Establishing mutual recognition of entry-level skills and competencies will create a more mobile workforce, increase productivity and operational efficiency, and reduce training time. Facilitating a national Safety Access the Rail Corridor (SARC) is the first step in this process. This is one of the objectives that the NTC is seeking to achieve through the AI proof of concept, if successful and feasible.
20. Undertaking a gap analysis of SARC offerings across 3 RTOs will help understand the feasibility of the national SARC, and how current offerings differ.

Part C – Indicative agreement for the provision of goods and/or services

NTC Agreement

Date: / /2025

Parties

1. **National Transport Commission** ABN 67 890 861 578 a body corporate incorporated by the *National Transport Commission Act 2003* of Level 3, 600 Bourke Street, Melbourne, Victoria (“**we**”, “**us**”, “**our**” and “**NTC**”)
2. **The person set out in item 1 of the Particulars (“you”, “the Consultant” or “the Contractor”)**

Particulars

1. The Consultant or The Contractor	Name: ABN: Address: Contact Person: Telephone: Fax: Email:
2. Project Code	
3. Nominated Principal	Name: Position: Company: Address: Telephone: Fax: Email:
4. NTC Project Manager	Name: Position: Company: Address: Telephone: Fax: Email:
5. Commencement Date	
6. Expiry Date	
7. Goods or Services	

<p>8. Purchase Fee and/or Project Fee</p>	
<p>9. Invoicing</p>	<p>The Consultant or Contractor must invoice the NTC as follows (please tick)</p> <p><input type="checkbox"/> Fortnightly in respect of the Goods and/or Services provided in the preceding fortnight.</p> <p><input type="checkbox"/> Monthly in respect of the Goods and/or Services provided in the preceding month.</p> <p><input type="checkbox"/> on completion of each Milestone that has been met or achieved to the satisfaction of NTC (as advised by NTC in writing).</p>
<p>10. Payment of Purchase Fee and/or Project Fee</p>	<p>The Purchase Fee and/or Project Fee is payable as follows:</p> <p>(a) If Invoicing is provided fortnightly or monthly as set out or referred to in item 9 of the Particulars then subject to clause 4.2, within 30 days after the date of the relevant Invoice.</p> <p>(b) If invoicing is provided prior to each Milestone, then subject to clause 4.2, in accordance with the following:</p> <p>(i) \$.....</p> <p>Within 30 days of the date the Invoice is rendered by the Consultant or Contractor in respect of Milestone 1;</p> <p>(ii) \$.....</p> <p>Within 30 days of the date the Invoice is rendered by the Consultant or Contractor in respect of Milestone 2; and</p> <p>(iii) \$.....</p> <p>Within 30 days of the date the Invoice is rendered by the Consultant or Contractor in respect of the Final each Milestone.</p>
<p>11. Performance Review</p>	
<p>12. Insurance</p>	<p>(a) Workers' compensation and employment liability insurance as required by Law;</p> <p>(b) public liability insurance with a minimum cover of [TBC] per claim;</p> <p>(c) professional indemnity insurance with a minimum cover of [TBC] per claim;</p> <p>(d) any insurance required to be maintained by the Consultant or Contractor (having regard to the nature of the Goods and/or Services) under any Law.</p>

Background

- A. NTC provides safety and maintenance services to road, rail and intermodal transport systems across Australia.
- B. NTC agrees to engage the Consultant or the Contractor to provide the Goods and/or Services and the Consultant or the Contractor agrees to perform the Goods and/or Services on the terms and conditions of this Agreement.

Executed as an agreement.

Signed by the Chief Executive for and on behalf of the
National Transport Commission in the presence of:)
)
)
)

.....
Signature of witness

.....
Signature of Chief Executive

.....
Name (please print)

.....
Name (please print)

Executed by the **Consultant or the Contractor** in
accordance with section 127(1) of the *Corporations Act*
2001 (Cth):)
)
)
)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

Agreement means this agreement and includes the background, the Particulars and the Schedule;

Background Technology means the Intellectual Property Rights possessed by you before the Commencement Date, together with any inventions and technology specifically set out in the Specifications, which are reasonably necessary for the carrying out of the Services and which you are free to disclose to us without being in breach of any obligation to a third party;

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Australia;

Claim means actions, proceedings, claims, demands, damages including, losses, costs, charges, expenses and liabilities whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement;

Code of Practice means a code of practice as defined in, and approved under, the *Privacy Act 1988* (Cth);

Commencement Date means the date set out in item 5 of the Particulars;

Conditions means this Agreement for the Provision of Goods and/or Services;

Confidential Information means all information of NTC, which is in fact, or which is reasonably regarded as, confidential by NTC, in whatever form, including without limitation, all technical data, research and development information, know-how, trade secrets, designs, techniques, specifications, processes, marketing procedures, business records, notes, accounting procedures or financial information, names and details of customers, suppliers and agents, employee details, secret information and tests and reports;

Consultant means the person providing Goods and/or Services in accordance with these Conditions;

Contractor means the person providing Goods and/or Services in accordance with these Conditions;

Corporations Act means *Corporations Act 2001* (Cth);

Date for Delivery is the date stated in the Purchase Order by which delivery of the Goods or provision of the Services must be effected by the Consultant or Contractor to the NTC;

Defect means any non-conformance with the Specifications or requirements of the NTC in respect of the relevant Goods and/or Services from time to time;

Delivery Point is the location or address for delivery of the Goods set out in the Specification;

Dispute has the meaning given to that term in clause **Error! Reference source not found.**;

Event of Default means, in relation to a party, the occurrence of any one or more of the following events or circumstances:

- (a) the party fails to comply with any of its obligations under this Agreement;
- (b) an Insolvency Event occurs in relation to the party;
- (c) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
- (d) the party fails to pay by the due date any amount due and payable by it under this Agreement;
- (e) any representation, warranty or statement made or repeated by the party in or in connection with this Agreement is untrue or misleading in any material respect (including by omission) when so made or repeated; or
- (f) the party ceases or threatens to cease to carry on business or a substantial part of it;

Expert means an independent person:

- (a) having appropriate qualifications and experience relevant to determining the Dispute;
- (b) who is agreed by the parties or, failing agreement within 5 Business Days, is nominated at the request of any party by the Australian Disputes Centre (**ADC**) in accordance with the ADC Rules for Expert Determination; and
- (c) who does not act, or whose firm does not act, generally for any party;

Expiry Date has the meaning given to that term in item 6 of the Particulars;

Goods means the goods to be supplied by the Contractor which shall conform to the Specification and these Conditions;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

GST has the meaning given to that expression in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Information means all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised

data, or photographic recordings, audio or audio visual recordings;

Insolvency Event means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any Law;

Insurance Policies means those policies of insurance referred to in item 12 of the Particulars;

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, inventions, designs, copyright, trademarks, brand names, product names, domain names, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals, divisions and extensions of these rights;

Invoice means any invoice rendered by you to NTC in accordance with this Agreement;

Key Consultant or Contractor Personnel means the person nominated in the Specifications;

Laws means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a

Government Agency that have the force of law;

Material means any questionnaires, data, records, documents, drawings, plans, tabulations, reports, computer programmes, manuals and other works created by you in connection with the Goods and/or Services together with any copyright work (whether or not currently in existence) created, assigned, licensed, delivered, contributed to or otherwise provided by the Consultant or Contractor to NTC in the course of this Agreement;

Milestone means achievement of the relevant milestone or Project deliverable set out or referred to in the Specifications having been met or achieved to the satisfaction of NTC;

Moral Rights means moral rights as defined in the *Copyright Act 1968 (Cth)*;

NTC means the National Transport Commission;

Nominated Principal means the person identified by that title in the Particulars, or any other person nominated in writing from time to time by you, and approved by us in writing, to be the Nominated Principal;

NTC Project Manager means the person identified by that title in the Particulars, or any other person who we notify you in writing is the NTC Project Manager from time to time;

Particulars means the schedule of particulars set out at the start of this Agreement;

Performance Review means any review to be undertaken in accordance with item 11 of the Particulars;

Personal Information has the same meaning as in the *Privacy Act 1988 (Cth)*;

Personnel means any employee, agent or contractor of the Consultant or Contractor (and includes their Key Consultant or Contractor Personnel);

Privacy Laws means all Laws relating to the privacy, confidentiality or use of any information about individuals including but not limited to: the *Privacy Act 1988 (Cth)*, *Health Records (Privacy and Access) Act 1997 (ACT)*, *Information Privacy Act 2014 (ACT)*, *Health Records and Information Privacy Act 2002 (NSW)*, *Privacy and Personal Information Protection Act 1998 (NSW)*, *Privacy and Data Protection Act 2014 (Vic)*, *Public Records Act 1973 (Vic)*, *Health Records Act 2001 (Vic)*, *Information Privacy Act 2009 (Qld)*, *Personal Information Protection Act 2004 (Tas)*, *Freedom of Information Act 1992 (WA)*, *Information Act 2002 (NT)*; and any registered Code of Practice that bind NTC;

Project means the project described in the Particulars and includes the Specifications;

Project Fee means the fee specified in the Particulars;

PSPF means the Australian Government's Protective Security Policy Framework, which sets out the requirements for the protection of its people, information and assets, as amended or replaced from time to time, including the glossary of security terms and security of outsourced services, as

amended or replaced from time to time, and available at <http://www.protectivesecurity.gov.au>.

Purchase Order means an order from the NTC for the provision of Goods and/or Services which incorporates these Conditions;

Services means the labour and/or services, to be provided or performed by the Consultant or Contractor (and the Nominated Principal on behalf of the Consultant or Contractor) as part of the Project, which are described in the Particulars;

Specifications means the specifications in relation to a Project as set out in the Schedule; and

Term has the meaning given in clause **Error!**
Reference source not found..

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (c) a reference to a party includes that party's officers, employees, agents and permitted assigns;
- (d) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (e) any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them individually;
- (f) the word "month" means calendar month;
- (g) a reference to dollars is a reference to Australian currency; and
- (h) the words "in writing" include any communication sent by letter or email.

2. Provision of Goods and/or Services

2.1 Goods and/or Services

- (a) This Agreement applies to the supply of Goods and/or Services by the Consultant or Contractor to NTC during the Term.
- (b) You agree to provide the Goods and/or Services to us, as directed by the NTC Project Manager on the terms set out in this Agreement.
- (c) The Goods and/or Services must be provided free from Defect.
- (d) To the extent we reasonably believe there is any Defect in the provision of the Goods and/or Services you must rectify the Defect, at your cost, in accordance with NTC's reasonable directions.
- (e) You must provide, at your own cost and expense, all consumables and equipment necessary to provide the Goods and/or Services to NTC in accordance with this Agreement.
- (f) If you are, or expect to be, unable to provide the Goods and/or Services at any time (including rectifying any Defect as required by NTC in accordance with its reasonable requirements), then if the cost to NTC of obtaining the Goods

and/or Services (or rectifying the Defect) from or by an alternative provider are greater than the costs that would have been payable to you for the same Goods and/or Services (or to rectify that Defect) (Additional Costs), then you acknowledge and agree that you must pay to NTC on demand an amount equal to the Additional Costs.

- (g) The parties must review the Goods and/or Services in accordance with any Performance Review set out or referred to in this Agreement.
- (h) If the NTC Project Manager or Consultant or Contractor identifies any variations to scope or contract value outside that specified in the particulars, a contract variation must be entered into before future work is commenced.
- (i) If the NTC Project Manager or Consultant identifies an extension of time is required beyond what is specified in the particulars, this can be agreed in writing between the NTC and the Consultant or Contractor.

2.2 Supply and delivery of Goods

- (a) The Consultant or Contractor will supply and deliver the Goods which shall comply in all respects with the requirements of the Specification;
- (b) The Consultant or Contractor shall deliver the Goods to the Delivery Point by the Date for Delivery or by such other date as is agreed between the NTC and the Consultant or Contractor.
- (c) If requested by the NTC's Representative, the Consultant or Contractor shall give reasonable notice of the date it will deliver the Goods.
- (d) Where the Goods can be manually unloaded at the Delivery Point in accordance with applicable legislation or occupational health and safety codes, delivery shall include the cost of unloading the Goods and shall be the responsibility of the Consultant or Contractor. Where the Goods cannot be so unloaded arrangements must be made for unloading by the NTC.
- (e) Delivery of the Goods shall not be complete unless acknowledgment of delivery is signed by an appropriate representative of the NTC.

2.3 Provision and delivery of Services

- (a) The Consultant or Contractor shall provide the Services by the Date for Delivery.
- (b) If a lump sum Service Fee is not stated in the Purchase Order or otherwise agreed, Services are to be performed on the basis of Service Rates and they shall be performed only under these Conditions and only upon and in accordance with the instructions of the NTC. Service Rates are fixed for the term of the Agreement.
- (c) The NTC may cancel the order for the provision of Services at any time by giving written notice to the Consultant or Contractor and the Consultant or Contractor shall, on receipt of such notice, immediately cease all work under the Agreement

and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the relevant Services. The NTC shall pay the reasonable fees and expenses of the Consultant or Contractor (based upon the Service Rates) for all work performed by the Contractor in accordance with the terminated Services but not any loss of prospective profits. In no circumstances shall the Service Fees payable for terminated Services exceed the fees that would have been paid had the relevant Services been completed.

2.4 Acceptance or rejection of Goods

- (a) Acceptance of Goods - If the Goods conform with the Specification or sample are fit for purpose and of merchantable quality the NTC shall promptly accept the Goods by written notice to the Consultant or Contractor. If the Goods do not conform, are not fit for purpose or are not of merchantable quality the NTC may reject the Goods within 30 days by written notice to the Consultant or Contractor giving reasons for such rejection. If the NTC does not accept or reject the Goods within 30 days of delivery, the Goods shall be deemed to be accepted at the expiration of that period.
- (b) The Consultant or Contractor shall at its cost, collect and remove all Goods which have been rejected, from the NTC's premises (or wherever else they may be held) as soon as practicable or the NTC may return such Goods to the Consultant or Contractor or store them at the Consultant or Contractor's expense.

2.5 Ownership of and risk to Goods

Ownership and risk of the Goods shall pass to the NTC when the Goods are Accepted by the NTC

3. Term

- (a) The Agreement commences on the Commencement Date and ends on the Expiry Date, unless terminated earlier in accordance with clause **Error! Reference source not found.** (Term).
- (b) The Project must be completed by the Expiry Date or by such later date as the NTC Project Manager and you agree in writing. If you and the NTC Project Manager agree to extend the date by which the Project is required to be completed, then the Expiry Date will be deemed to have been extended to that date.
- (c) For the purposes of this Agreement, the Project is not completed until the NTC Project Manager has certified that the Project has been satisfactorily completed.

4. Payments and invoicing

4.1 Invoicing

- (a) The Purchase Fee and/or Project Fee is deemed to include all of your costs and expenses incurred in connection with the performance of the Goods and/or Services.
- (b) The Consultant or Contractor must provide an Invoice to NTC in accordance with item 9 of the Particulars.

- (c) Each Invoice must be in a form and substance that constitutes a tax invoice (as defined in the GST Act). For the avoidance of doubt, we are not liable to pay you the Purchase Fee and/or Project Fee until we receive an Invoice in accordance with this clause **Error! Reference source not found.**

4.2 Payment of Purchase Fee and/or Project Fee

- (a) Provided the Goods and/or Services have been provided or performed by you in accordance with this Agreement and to the reasonable satisfaction of NTC are free from Defects, we will pay you the Purchase Fee and/or Project Fee in accordance with item 10 of the Particulars.
- (b) To the extent that NTC reasonably determines that the Goods and/or Services have not been provided or performed by you in accordance with this Agreement and/or to the reasonable satisfaction of NTC, you must rectify any Defect with the Goods and/or Services in accordance with clause 2.1, prior to NTC making payment to you in accordance with this clause 4.
- (c) Payment of the Purchase Fee and/or Project Fee, or any portion of the Purchase Fee and/or Project Fee, to you does not constitute an admission by us that the Goods and/or Services have been, or are, in conformity with this Agreement, and no such payment releases you from any of the requirements under this Agreement.

4.3 Disputes over Invoices

If NTC in good faith disputes whether the whole or any part of an Invoice (Invoice Dispute) submitted by you is payable:

- (a) NTC must pay the undisputed amount of the Invoice by the due date for payment;
- (b) NTC must give written notice to the Consultant or Contractor within 10 Business Days after receiving the Invoice, of the amount disputed and the reasons for the Invoice Dispute;
- (c) if the parties are unable to resolve any dispute between them regarding the amount invoiced within 5 Business Days of the Consultant or Contractor receiving a notice under clause **Error! Reference source not found.**, they must (at the instigation of either party) refer the matter to the dispute resolution process in clause **Error! Reference source not found.**;
- (d) the parties must comply with all of their other obligations under this Agreement until the Invoice Dispute is resolved; and
- (e) if the decision made or reached in respect of the Invoice Dispute is that a greater amount than the amount paid by NTC is payable, NTC will pay the balance of the Invoice to the Consultant or Contractor within 10 Business Days of resolution of the Invoice Dispute.

5. Obligations of the parties

5.1 NTC obligations

In consideration of you carrying out the Goods and/or Services, we agree to pay you the Purchase Fee

and/or Project Fee, in accordance with this Agreement.

5.2 Consultant and Contractor's obligations

- (a) You must, and you must procure that the Nominated Principal, complies with and ensures that its employees, subcontractors and agents comply with any Laws, regulations, local laws and by-laws, Codes of Practice, Australian Standards and the NTC's WHS policy and procedures that are in any way applicable to this Agreement or the performance of the Goods and/or Services.
- (b) Unless the parties otherwise agree, the Nominated Principal must attend NTC's offices within 8 weeks of the Commencement Date to complete induction training in accordance with the NTC Work Health and Safety Management System. Alternative options may be explored if the Consultant or Contractor is located interstate or working remotely.

5.3 Compliance with PSPF

The Consultant or Contractor must, and must ensure that its Personnel, comply with:

- (a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
- (b) the requirements of the NTC's protective security policies and procedures under the PSPF;
- (c) any additional security requirements specified by the NTC; and
- (d) any other security requirements that are notified by the NTC to the Consultant or Contractor from time to time, including any changes to the requirements referred to in clauses 9.1(a), 9.1(b) and/or 9.1(c). Such other security requirements must be complied with from the date specified in the Notice, or if none is specified, within 5 Business Days of receipt of the Notice.

5.4 Warranties for Goods

You warrant that:

- (a) the Consultant or Contractor has the right to sell and transfer title to the Goods to the NTC;
- (b) the Goods:
 - (i) (except as otherwise provided in the Specification) are new when delivered;
 - (ii) are fit for the purpose stated in the Specification or otherwise in the Agreement, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
 - (iii) conform to the description, model number and the sample (if any) provided by the Consultant or Contractor;
 - (iv) conform with the requirements of the Specification;

- (v) are free from defects including any defect in installation;
- (vi) have been manufactured, constructed or assembled in the factory disclosed by the Consultant or Contractor as the place of manufacture, construction or assembly of the Goods; and
- (vii) are of merchantable quality and conform to any legally applicable standards;

5.5 Warranties for Services

You warrant that:

- (a) in carrying out the Services, you will (and will procure that the Key Consultant or Contractor Personnel and Nominated Principal as applicable) exercise due care skill and judgment and at all times act in accordance with all applicable professional principles, practices and standards;
- (b) you will carry out the Services to the reasonable satisfaction of the NTC Project Manager, in accordance with all Specifications and free from Defects;
- (c) you will comply with such further directions and requirements as may be conveyed to you by the NTC Project Manager;
- (d) you will comply with the provisions of any Laws which may relate to the carrying out of the Services and or the Project;
- (e) you will prepare and submit to the NTC Project Manager such progress statements, draft or other reports or material as the NTC Project Manager may require from time to time;
- (f) you will, at your cost, provide any draft or other reports required by this Agreement in both electronic and printed form and in a form that is suitable for publishing and that meets our report style and format requirements; and in the case of the electronic versions of documents, in a form that is compatible with the latest version of Microsoft Office (or such other software as notified by the NTC to you from time to time during the Term);
- (g) you will, at your cost, provide any map that you provide in an electronic version in connection with the Services in a form that is compatible with MapInfo (or such other software as notified by the NTC to you from time to time during the Term); and
- (h) you will provide all office accommodation, equipment, facilities, and similar that you need to perform the Services and/or carry out the Project (at your cost).

5.6 Warranty period

Without limiting any other warranty implied by statute or generally at law:

- (a) if a defect (fair wear and tear excepted) appears in the Goods within the Warranty Period the Consultant or Contractor shall promptly remedy such defect by either repairing or replacing defective Goods without cost to the NTC; and

- (b) the Consultant or Contractor shall where the Specification so provides obtain for the NTC the benefit of any manufacturer's warranty.

6. Directions and inspections

- (a) You must comply with all directions we provide in connection with the performance or delivery of the Goods and/or Services. You must report to and work under the direction of the Nominated Principal.
- (b) You must nominate a suitably qualified person to act as the Nominated Principal to be responsible for managing the business relationship with us.
- (c) You acknowledge that NTC or the NTC Project Manager may at any time inspect or review the provision by the Consultant or Contractor of the Goods and/or Services under this Agreement.
- (d) You must maintain a complete and accurate set of records relevant to the performance of this Agreement at all times during the Term and for at least 12 months expiry or termination of this Agreement (which must be available for inspection by us on reasonable notice, at no cost to us).

7. Parties' representatives

7.1 Nominated Principal

- (a) The Nominated Principal represents you and must be available at all reasonable times for consultation on your behalf with us and our officers in connection with any matter arising under this Agreement.
- (b) For the purposes of this Agreement, the Nominated Principal is your agent in respect of any decision made or information given or received by him or her concerning any matter arising under this Agreement. A breach of this Agreement by your Nominated Principal will be deemed to be a breach of this Agreement by you.

7.2 Authority to represent

- (a) The NTC Project Manager may represent us, and the Nominated Principal may represent you, for the purposes of this Agreement. Each of them may give and receive any notices required to be given or received for the purposes of this Agreement and may do all things necessary to be done by a party under this Agreement.
- (b) Any person signing this Agreement for and on behalf of you warrants that they are duly authorised and has the capacity to act on your behalf and that authority has not been revoked.

7.3 Change of Personnel

- (a) If at any time during the Term, in NTC's reasonable opinion, any of the Consultant or Contractor's Personnel do not perform to the standard or behave in a manner required by NTC, then:
- (i) NTC must report the nature of the substandard work or misbehaviour to the Nominated Principal and the Consultant or Contractor must take immediate action to improve the standard of work or

behaviour of the relevant Personnel to a standard acceptable to NTC having regard to the terms of this Agreement; and

- (ii) if, after complying with clause **Error! Reference source not found.**, NTC reasonably believes that the same Personnel has continued to not perform to the standard or behave in a manner reasonably required by NTC under this Agreement, then NTC may reasonably request that the Consultant or Contractor withdraw that Personnel from providing any further Goods and/or Services, under this Agreement (Withdrawal Request).

- (b) On receipt of a Withdrawal Request, the Consultant or Contractor must within 10 Business Days (or as otherwise directed by NTC):

- (i) arrange for the relevant Personnel to cease their involvement in the provision of the Goods and/or Services; and
- (ii) arrange the replacement of the relevant Personnel with another person of suitable ability, experience and qualifications within a reasonable time period.

8. Corrections to documents

- (a) You must, if requested in writing by the NTC Project Manager, at your cost, correct any mistake in any draft or final report produced under this Agreement or in any material relating to this Agreement.
- (b) A request by the NTC Project Manager to you under clause **Error! Reference source not found.** must be made within 30 days after the date on which a final report or material produced under this Agreement is submitted to the NTC Project Manager for final approval, or within such other time as is agreed in writing by the parties.
- (c) A request by the NTC Project Manager to you under this clause does not prejudice any of our rights, powers and remedies, whether under this Agreement or otherwise.

9. Confidentiality and privacy

9.1 Confidential Information

- (a) You agree that you, and your employees, agents, directors, partners, shareholders and consultants, are not to disclose to any person any Confidential Information or information relating to us or the affairs of others that may have come to your, or their, knowledge as a result of this Agreement.
- (b) All Confidential Information remains our property and (where possible) must be returned by you to us on completion of this Agreement.
- (c) Any Confidential Information supplied to you under this Agreement may be used only as directed by us and must not be reproduced or used for any purpose other than one required or permitted under this Agreement.
- (d) You must not divulge any information regarding the nature or progress of the Project or give any

publicity concerning the Goods and/or Services or Project without our prior written consent (such consent to be given or withheld in our absolute discretion).

9.2 Exceptions

The obligations of confidentiality under clause **Error! Reference source not found.** do not apply to any information that:

- (a) is generally available to the public (other than by reason of a breach of this Agreement); or
- (b) is required to be disclosed by any applicable Law.

9.3 Privacy

- (a) You agree to comply with all Privacy Laws with respect to any act done, or practice engaged in, by you for the purposes of this Agreement in the same way and to the same extent as NTC would have been bound by those Privacy Laws, in respect of that act or practice had it been directly done, or engaged in, by NTC.
- (b) If you are collecting any Personal Information from individuals, you must:
 - (i) procure all necessary consents, authorisations and approvals from each individual as required by Privacy Laws to enable NTC to collect, use and disclose that Personal Information for the purposes required by NTC (including the provision of the Personal Information to third parties as required); and
 - (ii) provide each individual with a privacy collection statement in the form required by NTC.
- (c) You must not do anything with any Personal Information collected by you in connection with this Agreement that will cause NTC to breach any Privacy Laws and will co-operate with NTC to resolve any complaint made against NTC under any Privacy Laws.

10. Conflict of interest

- (a) You warrant that you do not hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any arrangement whereby, directly or indirectly, duties or interests are, or might be, created that are in conflict with, or that might appear to be in conflict with, your duties and interests under this Agreement.
- (b) You must inform the NTC Project Manager of any matter that gives rise to, or that may give rise to, an actual or potential conflict of interest of the nature described in subclause **Error! Reference source not found.** at any time during the term of this Agreement, and must do so as soon as possible after you become aware of the matter. We may regard a conflict of interest as a breach of a fundamental term of this Agreement and may elect to terminate this Agreement under clause **Error! Reference source not found.**

11. Intellectual Property Rights

11.1 Use of Intellectual Property Rights

- (a) You warrant that you are entitled to use any Intellectual Property Rights that may be used by you in connection with carrying out the Project.
- (b) You indemnify us against any action, claim, suit or demand, including a claim, suit or demand for, or liability to pay compensation or damages and costs or expenses arising out of or in respect of, any breach of any third party's Intellectual Property Rights relating to the carrying out of the Project.

11.2 Ownership of, and access to, Materials

- (a) The ownership of all Intellectual Property Rights in all Material, whether completed or not, created by you, or on your behalf, as a result of the carrying out of the Goods and/or Services vests in us on its creation.
- (b) You will, and agree to ensure that your employees, sub-consultants and agents will, execute all documents that may be necessary for the purposes of that vesting as requested by us.
- (c) You must make available to us upon request by the NTC Project Manager, all Material created by you under this Agreement, whether completed or not, and without cost to us.

11.3 Moral Rights

- (a) The Consultant or Contractor must ensure that before developing the Material it obtains all necessary author consents as are required in order to allow NTC to:
 - (i) perform, exhibit, reproduce, adapt and communicate any part of the Material in any medium and anywhere in the world without attributing the Consultant or Contractor or any other person as an author of or contributor to that Material;
 - (ii) adapt or change any of the Material in any way, including by addition or subtraction from the Material; and
 - (iii) combine or juxtapose the Material with anything else.
- (b) At NTC's request, the Consultant or Contractor will promptly produce to NTC for inspection a copy of each author consent referred to in clause **Error! Reference source not found.**
- (c) The Consultant or Contractor indemnifies NTC from and against all claims, demands and proceedings which may be brought against or suffered or incurred by NTC alleging that the Material or the use of the Material infringes any third party Moral Rights.

11.4 Improper publication

You must not publish, and must not permit the publication by any of your principals, employees or sub-consultants of, any material, including articles, books or presentation papers, based on information obtained or developed during the course of the Project, without our prior written approval. In the event of such approval being given, appropriate acknowledgments to both us and to any other source

providing financial assistance for the Project must be made.

11.5 Rights to, and ownership of, background technology

- (a) All rights (including the Intellectual Property Rights) to the Background Technology applied by you in carrying out the Goods and/or Services remain vested solely in you. Background Technology refers to the technology used to deliver the output, not the output itself. The output is deemed the Goods and/or Services and is the Intellectual Property of the NTC.
- (b) We acknowledge that any enhancement, improvement or addition to the Background Technology arising during the carrying out of the Goods and/or Services will not form part of the Material but will form part of your Background Technology.

12. Insurance

- (a) The Consultant or Contractor must effect and maintain (and procure that any approved subcontractor effects and maintains) throughout the Term and for a period of 12 months following expiry or termination of the Term, at its own expense:
 - (i) the Insurance Policies; and
 - (ii) any other insurance required to ensure its policies include insurance cover for the Consultant or Contractor in respect of the full scope of the Goods and/or Services provided under this Agreement; and
 - (iii) any other insurance that a reasonable and prudent person engaged in the provision of the Goods and/or Services would effect and maintain.
- (b) The Consultant or Contractor must produce to NTC on request copies of all current certificates of insurance (of the Consultant or Contractor and each subcontractor, if any) confirming that each of the required policies referred to in clause **Error! Reference source not found.** is current.
- (c) You indemnify us and must keep us indemnified, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of a breach of this clause **Error! Reference source not found.** by you or any of your Personnel.

13. Default and termination

13.1 Default notice

- (a) If an Event of Default, other than an Insolvency Event, occurs in relation to a party (Relevant Party), the other party may give a notice (Default Notice) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 5 Business Days (or such longer period as determined by NTC) after the Default Notice is received by the Relevant Party.

- (b) If you are the Relevant Party, then without limiting our other rights under this Agreement, we may suspend payment of the Project Fee, until the breach is remedied.

13.2 Termination notice

If the Relevant Party:

- (a) receives a Default Notice and does not comply with the Default Notice within the relevant period referred to in clause **Error! Reference source not found.**; or
- (b) is the subject of an Insolvency Event, then the other party, without limiting its other rights and remedies, may terminate this Agreement by giving to the Relevant Party notice with immediate effect.

13.3 Consequences of expiry or termination

Subject to clause **Error! Reference source not found.**, on the expiry or termination of this Agreement:

- (a) This Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the expiry or termination; and
- (b) You must do everything reasonably necessary (as determined by NTC), at your cost, to transition the Goods and/or Services to any third party (or to NTC directly).

13.4 Clauses surviving termination

Despite any other provision of this Agreement, clause **Error! Reference source not found.** and clauses 1, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.** survive the expiry or termination of this Agreement.

14. Disputes

14.1 Negotiation

- (a) Subject to the parties first complying with clause **Error! Reference source not found.** (if appropriate), the procedure set out in this clause applies if any dispute in relation to this Agreement arises between the parties (Dispute).
- (b) Any party to the dispute may by notice to the other party (Dispute Notice) refer the dispute to the NTC Project Manager and the Nominated Principal (Authorised Representatives) for resolution. The Dispute Notice must specify in reasonable detail the nature of the Dispute.
- (c) If the Dispute is referred to the Authorised Representatives, the Authorised Representatives must meet to resolve the Dispute within 5 Business Days after the service of the Dispute Notice, and a decision of the Authorised Representatives is binding on the parties.
- (d) If the Authorised Representatives do not resolve the Dispute within 10 Business Days after service of the Dispute Notice either party may refer the Dispute to an Expert in accordance with clause **Error! Reference source not found.**

14.2 Expert determination

- (a) The Expert:
- (i) must conduct its determination in accordance with the ADC Rules for Expert Determination, which Rules are taken to be incorporated into this Agreement;
 - (ii) will act as an expert and not as an arbitrator;
 - (iii) may determine the time, place and procedures (which will be as informal as is consistent with the proper conduct of the matter) for the determination by the Expert, having regard to the nature of the Dispute and the provisions of this Agreement;
 - (iv) may communicate privately with the parties or with their lawyers;
 - (v) may accept written submissions from a party in relation to the Dispute, provided a copy of the submission is also given to all other parties;
 - (vi) may co-opt other expert assistance;
 - (vii) must have regard to the fairness and reasonableness of any matters pertaining to the Dispute; and
 - (viii) must deal with any matter as expeditiously as possible and by no later than 20 Business Days after referral to the Expert.
- (b) If an Expert is required to resolve a Dispute:
- (i) the Expert's determination will, except in the case of manifest error, be final and binding on the parties;
 - (ii) the parties must attend the sessions with the Expert and make a determined and genuine effort to resolve the Dispute as soon as reasonably possible;
 - (iii) the parties must use reasonable endeavours to make available to the Expert all information relevant to the Dispute and which the Expert reasonably requires in order to resolve the Cost Dispute;
 - (iv) everything that occurs before the Expert must be in confidence and in closed session;
 - (v) any information or documents disclosed by a party under this clause **Error! Reference source not found.** must be kept confidential and cannot be used (and cannot be called into evidence in any subsequent litigation by any party) except to attempt to resolve the Dispute in circumstances where the parties have consented to such disclosure;
 - (vi) all discussions must be without prejudice;
 - (vii) each party must pay its own costs of complying with this clause unless the Expert otherwise determines, having regard to all the circumstances and the costs of the Expert and any other costs of complying with this clause must be shared equally by the parties; and

- (viii) the parties must continue performing their obligations under this Agreement while the Dispute is being resolved.

15. Indemnity

You indemnify us and must keep us indemnified, including our officers, employees and contractors, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of any one or more of the following:

- (a) any breach or nonperformance of this Agreement by you; and
- (b) any wrongful, wilful or negligent act or omission of you or any of your officers, employees, agents or contractors (including the Nominated Principal and Key Consultant or Contractor Personnel).

16. GST

16.1 Definitions

In this clause **Error! Reference source not found.**:

- (a) the expressions *Consideration*, *GST*, *Input Tax Credit*, *Recipient*, *Supply*, *Tax Invoice* and *Taxable Supply* have the meanings given to those expressions in the GST Act; and
- (b) *Supplier* means any party treated by the GST Act as making a Supply under this Agreement.

16.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

16.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

16.4 Reimbursement of expenses

If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and

- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,
- (c) such that after the Other Party meets the GST liability, it retains the Net Amount.

17. General

17.1 Nature of obligations

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

17.2 Entire understanding

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

17.3 No adverse construction

This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

17.4 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

17.5 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

17.6 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

17.7 Subcontracting and assignment

- (a) You must not assign or sub-contract or attempt to assign or sub-contract any of your rights or obligations under this Agreement, without the prior written consent of the NTC Project Manager.
- (b) This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause **Error! Reference source not found.**
- (c) The giving of approval under clause **Error! Reference source not found.** does not diminish your responsibility for the satisfactory performance of the Goods and/or Services by you.

17.8 Consents and approvals

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

17.9 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

17.10 Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

17.11 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

17.12 Notices

Any notice or other communication to or by a party under this Agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) in accordance with the Particulars or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) must be signed:
 - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
 - (ii) in the case of a corporation registered outside of Australia, by a person duly

authorised by the sender in accordance with the laws governing the place of registration of that corporation; and

- (d) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, at 9.00 am on the second Business Day after the date of posting to the addressee whether delivered or not; or
 - (iii) if sent by email, on the date and time shown on the email notice received by the server of the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

17.13 Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

17.14 No merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the undertakings, warranties and indemnities in this Agreement or the rights or remedies of the parties under this Agreement which continue unchanged.

17.15 Operation of indemnities

Unless this Agreement expressly provides otherwise:

- (a) each indemnity in this Agreement survives the expiry or termination of this Agreement; and
- (b) a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

17.16 Relationship of parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

Schedule: Specifications

Title	National Rail Action Plan
Project	N2301
Background	See Attachment A.
Project Objectives	See Attachment A.
Project Tasks	See Attachment A.
Milestones	See Attachment A.
Methodology	See Attachment A.
Output	See Attachment A.
Timing	See Attachment A.
Key Consultant or Contractor Personnel	See Attachment A.
Attachments	See Attachment A: Services and Payment Schedule.

PART D – Tender form

All responses must be provided either within the specified fields of Part D or in the form of the Supplier's own proposal, ensuring all information requested is included, and must respond to the Specification (Part B) and Proposed Contract (Part C) in accordance with the Conditions of Tender (Part A) in the Request for Tender.

Respondents may provide supplementary material to support their Tender.

Tender Offer – the supply of Goods and the provision of Services

By this Tender, I/we offer to supply the Goods and perform the Services in accordance with the contract conditions in Part C on the basis set out in this Tender Form. I/We warrant that:

- a) all information contained in this Tender Form is accurate and complete.
- b) I/we have not provided any inaccurate or misleading information to the NTC in connection with this RFT.
- c) I/we have read the RFT and am/are fully acquainted with all matters in connection with the proposed contract.

Conflict of interest

Conflict of interest declaration and related parties	
<input type="checkbox"/>	[Please provide details]

Publishing Tender and contract information

The Conditions of Tender include a provision for disclosure of contract information.

Please identify any information in your Tender which you consider falls within the following categories and which you consider should not be published.

Trade secrets
[Type here]

Unreasonable disadvantage
[Type here]

Quoted fees and expenses – services

Amount of Quote	
Lump Sum Price or price on some other basis.	
GST exclusive amount:	\$
GST amount:	\$
Total price (including GST):	\$

Breakdown (including value add items)			
Description	GST exclusive amount	GST amount	Total (including GST)
	\$	\$	\$

Service rates				
Personnel Description	Unit [per hour, per day, etc.] Rate	Rate (GST exclusive amount)	Rate (GST amount)	Rate Total amount (including GST)
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$

Staff to perform services

Available staff		
Name	Title	Available from
		[Day] / [Month] / [Year]
		[Day] / [Month] / [Year]
		[Day] / [Month] / [Year]

Capacity and capability to perform the services

The responses to this section can be supplied in a format of the supplier's choice e.g. separate document and will be treated as an addendum.

Specific expertise in specified work
<p>Briefly detail recent experience with providing similar services or work. The NTC desires to obtain succinct and relevant information. Information is only required in relation to the three most relevant activities. The reason why each activity is relevant is also required.</p> <p>[Type here]</p>
Capacity to handle specified work
<p>Briefly describe the ability and capacity to handle the specific project, in compliance with the appropriate standards and best practice:</p> <p>[Type here]</p>
Capability of key staff
<p>Please provide details of the capability of key staff proposed to undertake the Services:</p> <p>[Type here]</p>
Roles and responsibilities of key staff
<p>Please describe the roles and responsibilities of the key staff proposed to undertake the Services.</p> <p>[Type here]</p>
Project plan
<p>Provide details of the method proposed to undertake the project. The method must be in the form of a project plan which describes all tasks and stages required to complete the project. The project plan must include:</p> <ul style="list-style-type: none"> • milestones, being completion of key stages or components within the project; • a listing of key staff involved with each stage or component; • details of how the Supplier intends to provide the deliverables for each stage or component and the contents of each deliverable; and • an indicative timetable to complete the project. <p>[Type here]</p>
Other relevant information
<p>Provide any other information relevant to the Goods or Services and this Request for Tender:</p> <p>[Type here]</p>

OFFICIAL

OFFICIAL

Signature

Dated: [Day] / [Month] / [Year]

Company name:	
Address:	
ABN:	
Contact name:	
Title or position:	
Contact telephone no.:	
Contact facsimile no.:	
Contact email address:	