

## Conditions of Contract – Tier 2

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### 1. General

The contract between Power Generation Corporation trading as Territory Generation ABN: 72 687 980 755 (hereafter referred to as 'TGen') and the legal entity supplying TGen with goods, services, or works (hereafter referred to as 'the Contractor') comprises of these Conditions of Contract, the purchase order issued by TGen for goods, services, or works, TGen's request for quote (RFQ) and the Contractor's response to the RFQ (only as applicable in accordance with these Conditions of Contract) ('collectively referred to as 'the Contract'). If there is any inconsistency between any part of the Contract, a descending order (as listed in this paragraph) of precedence is to be accorded so that a former ranked document prevails over a later ranked document, to the extent of the inconsistency.

The Contractor warrants that no changes to the Contract are agreed by TGen unless approval for the changes has been provided by the person undertaking the role of General Counsel.

The Contract formed constitutes the entire agreement between the parties and supersedes any previous agreements or understandings in relation to those subject matters.

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

### 2. Interpretation

In this Contract, unless the context otherwise requires:

- a) a reference to any law includes any consolidations, modifications (statutory or otherwise), replacement or re-enactment of, or any regulatory provision substituted for, that Law;
- b) a reference to any Act of Parliament or to any section or provision of any Act of Parliament extends to and includes:
  - i. any regulations, codes, orders or other instruments made under that Act of Parliament; and
  - ii. any statutory modification, re-enactment or substitution for that Act of Parliament, section or provision;
- c) a reference to any person includes that person's successors, permitted substitutes and permitted assignees (and, where applicable, that person's legal personal representatives);
- d) words indicating the singular include the plural and vice versa and words importing one gender include all other genders;
- e) other grammatical forms of words or phrase defined in this Contract will have a corresponding meaning;
- f) a reference to a person includes a firm, body corporate, unincorporated association or authority whether or not it comprises a separate legal entity;
- g) a reference to a clause is a reference to a clause of this Contract;
- h) a reference to an agreement or document (including this Contract) is a reference to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document;
- i) a reference to writing includes any method of representing or reproducing words, figures, drawing or symbols in a visible and tangible form;
- j) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- k) a reference to dollars and \$ is to Australian currency;
- l) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included;
- m) a reference to time is a reference to Northern Territory time;
- n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it; and
- o) headings are used for convenience and do not affect the interpretation of this Contract.

### 3. General Obligations

The Contractor will at all times act reasonably and diligently in performing its obligations and exercising its rights, and work together with TGen in a collaborative manner.

The Contractor must observe and comply with the requirements of all Acts of the Commonwealth of Australia, Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, and with the lawful requirements of any relevant authority, regulator or standard setting entity as in force affecting or applicable to the goods, services, or works being provided under this Contract.

### 4. Directions

The Contractor must comply with any direction issued by TGen.

### 5. Contractor's Responsibilities and Obligations

**For goods:**

The Contractor warrants that:

- a) it has the right and will transfer title of goods to TGen (with such title passing on acceptance of the goods by TGen);
- b) the goods will be new and comply in all respects with the Contract;
- c) the goods will conform to the description, model number and the sample (if any) provided by the Contract;
- d) the goods will have an on-site warranty period being the period specified in the Contractor's response to the RFQ or, if no period is specified, 24 months;
- e) the goods have been manufactured or assembled at the place disclosed by the Contractor; and
- f) the goods are of a high standard, fit for purpose, are free from defects and conform to any applicable standards.

The Contractor must supply at its own cost everything necessary for the supply of the goods and the proper performance of its obligations under the Contract.

Where TGen is of the opinion that the goods do not meet the requirements of the Contract, TGen may reject the goods and direct that, at the Contractor's risk and cost, the goods are removed, refunded or replaced.

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### For services:

The Contractor warrants that:

- a) the services will be fit for purpose and carried out in accordance with the requirements of the Contract with all due care and skill and in accordance with appropriate standards, principles and practices;
- b) in addition to complying with the other provisions of this Contract, the Contractor must comply with all statements or representations as to its performance or the provision of the services contained in the Contractor's response to the RFQ;
- c) the services will be carried out by the Contractor or subcontractors approved by TGen;
- d) the services will be subject to a defects liability and on-site warranty period being the period specified in Contractor's response to the RFQ or, if no period is specified, 24 months;
- e) it will provide such further information in relation to the provision of the services as reasonably required by TGen; and
- f) the information contained in the Contractor's response to the RFQ is correct.

The Contractor must, unless the Contract otherwise provides, supply at its own cost everything necessary for the proper completion of the services and the proper performance of its obligations under the Contract.

Where TGen is of the opinion that the services have not met the requirements of the Contract, TGen may direct the Contractor to provide further rectification services at no risk or cost to TGen.

### For works:

The Contractor warrants that:

- a) it will execute the works in accordance with all laws and the requirements of this Contract;
- b) the works will be fit for purpose and carried out with all due care and skill and in accordance with appropriate standards, principles and practices;
- c) all materials used in the works and the standards of workmanship will conform to the provisions of the Contract and will be fit for purpose and consistent with the nature and character of the Works;
- d) the works will be carried out by the Contractor or subcontractors approved by TGen;
- e) the works will be subject to a defects liability and on-site warranty period being the period specified in Contractor's response to the RFQ or, if no period is specified, 24 months;
- f) it will provide such further information in relation to the works as reasonably required by TGen, including allowing TGen to inspect the works and audit the Contractor's performance of the works to ensure the Contractor's compliance with the Contract and applicable laws;
- g) the information contained in the Contractor's response to the RFQ is correct and it has informed itself to the extent necessary to perform the works in compliance with the Contract and applicable laws; and
- h) it will complete the works within the time required under the Contract, or within such extended time as agreed in writing by TGen.

The Contractor must unless the Contract otherwise provides, supply at its own cost everything necessary for the proper completion of the works and the proper performance of its obligations under the Contract.

Where TGen is of the opinion that the works have not met the requirements of the Contract, TGen may direct the Contractor to provide further rectification works at no risk or cost to TGen.

## 6. Parties' Representatives

The Contractor must appoint and advise TGen in writing of its representative ('the Contractor's Representative') to be the first point of contact with TGen. Any direction given to the Contractor's Representative will be deemed to be a direction issued to or served upon the Contractor.

TGen may appoint a Representative who will exercise the duties, discretions, and powers vested in TGen under the Contract, except this power of appointment. TGen's Representative may issue directions under clause 4, and may issue such directions orally which will be confirmed in writing as soon as reasonably practicable.

## 7. Storage of Contractor's Material

The Contractor's materials and plant must only be stored in the location approved by TGen. If no storage facilities are available, it is the responsibility of the Contractor to provide storage facilities. All care will be taken to avoid inconvenience to persons occupying and visiting the site where the goods, services, or works are being provided.

## 8. Power to remove persons

TGen may require the instant removal, of any person employed in connection with the goods, services, or works, whether directly employed by the Contractor or not who, in the opinion of TGen, misconducts themselves or is incompetent or negligent in the performance of their duties. The Contractor must immediately comply with such requirement.

## 9. Notices

Notice must be in writing and signed by a person duly authorised by the sender. Any notice given takes effect when it is: if hand delivered, on delivery; if sent by post, three (3) business days after the date of posting (or seven (7) business days after the date of posting if posted to or from a place outside Australia); and if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) business hours after the transmission, the recipient informs the sender that it has not received the notice.

## 10. Site Rules

The Contractor, its employees and subcontractors required to enter a TGen site must ensure that they obtain any relevant site rules and comply with all rules in force at the site, including security screening and criminal history checks where required. The Contractor is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by any relevant authority.

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### 11. Work Health and Safety Management

The Contractor must give priority to and is responsible for ensuring safe work practices. The Contractor must provide goods, services, or works safely, so as to protect persons and property and must maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property as a result of providing the goods, services, or works.

If TGen considers there is a risk of injury to people or damage to property, there is an unsafe or potentially unsafe practice or there is a breach of any site rules then in addition to any other rights it has under the Contract, TGen may direct the Contractor to change its manner of working or suspend the performance of the Contract and not lift the suspension until the work area is made safe and the unsafe practice removed.

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

### 12. Conflict of Interest

The Contractor warrants that at the date of the Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract and it will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subcontractor. The Contractor must inform TGen of any matter, which may give rise to an actual or potential conflict of interest of the Contractor at any time during the currency of the Contract. This information will be treated confidentially.

### 13. Confidentiality and Publicity

For the purposes of this clause, “Confidential Information” means any information or material relating to the Contract or the goods, services or works including (without limitation): any information that by its nature is confidential; any information designated as confidential; and any information that the Contractor knows is confidential.

The Contractor must hold all Confidential Information in confidence and will not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and must not disclose or permit or cause the Confidential Information to be disclosed to any person, except: as authorised by TGen; to its employees or subcontractors, to the extent needed to perform their obligations under the Contract; and where the disclosure is required to be disclosed by law.

The Contractor must ensure that its employees and all subcontractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause.

### 14. Media and Publicity

The Contractor must not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising eg for subcontractors), award nomination, document or article for publication concerning the Contract, the services or the site in any media without the prior written approval of TGen.

The Contractor must ensure that its employees and all subcontractors, and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause and obtain TGen’s prior written approval (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this clause.

### 15. Liabilities

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

Upon the satisfactory completion of works, the defects liability period provided for in clause 5 will commence. The Contractor will maintain the works for the defects liability period and will make good at its own expense any defective workmanship or materials and all damage, loss or injury to the works occasioned by the faulty workmanship or materials. If the Contractor fails to make good any defects within the time reasonably specified by TGen, TGen may, by notice in writing, take action to rectify those defects, with the costs it reasonable incurs being a debt due and payable by the Contractor.

### 16. Insurances

The Contractor must ensure for the duration of the Contract that it, and its subcontractors, have valid:

- a) workers compensation insurance;
- b) public liability (in the amount of \$20 million for any one occurrence); and
- c) professional indemnity insurance (in the amount specified in TGen’s RFQ). The Contractor must maintain this insurance after the conclusion of the Contract for a period of not less than five years.

The Contractor must ensure that any subcontractors (including self-employed contractors and persons employed under labour hire agreements) comply with the same insurance requirements in this clause.

The Contractor must provide TGen with copies of certificates of currency (including those of any subcontractor) for all insurance policies required under this clause immediately upon request.

### 17. Intellectual Property

The Intellectual Property produced from this Contract is owned exclusively by TGen. The Contractor warrants that any Intellectual Property embodied in or used in connection with the provision of the goods, services, or works is the sole property of the Contractor or the Contractor is legally entitled to use same and grants to TGen a perpetual world-wide, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that intellectual property to the extent required to receive full benefit of the goods, services, or works.

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### 18. Invoicing and Payment

The Contractor must provide TGen with a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* showing the value of the goods delivered, or services or works carried out pursuant to the Contract.

The Contractor's Tax Invoice shall include details of any adjustments under clause 19 and an explanation as to how such adjustments were calculated. The Contractor shall provide any further details in regards to the goods, services, works, or tax invoice upon request by TGen.

TGen will make payment within thirty (30) days of receipt of a tax invoice that is not disputed.

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

The payment of monies pursuant to this clause shall not be taken as evidence against or as an admission by TGen that any goods have been delivered, or services or work has been executed, in accordance with the Contract or the value thereof, but is to be taken to be payment on account only.

Without prejudice to any other rights or remedies, TGen may at any time deduct from any moneys which are payable to the Contractor in connection with this Contract any money or debt due and payable by the Contractor to TGen.

### 19. GST

Unless the context otherwise requires, terms used in this clause have the meanings given in *A New Tax System (Goods and Services Tax) Act 1999 ('Act')*.

Unless otherwise expressly stated in this agreement, prices or other sums payable or consideration to be provided under or in connection with this Contract are exclusive of GST.

If a party makes a taxable supply under or in connection with this Contract, the other party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.

The supplier must, as a precondition to the payment of GST, give the other party a valid tax invoice and shall do all things reasonably necessary to assist the recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a supply.

Both parties must have an ABN and be registered for GST.

### 20. Assignment

The Contractor must not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract, without the consent of TGen.

### 21. Subcontracting

Should the Contractor desire to subcontract any part of the Contract it must submit to TGen for approval the names of the proposed subcontractors, the nature and value of the goods, services, or works, that it is intended they provide. No subcontractor is to be employed in connection with the Contract unless such approval is first obtained.

The Contractor will be fully liable to TGen for the goods, services, or works of the subcontractor or any employee or agent of the subcontractor. Nothing contained in the Contract will in any way be construed as relieving the Contractor of their responsibility for the performance of the Contract.

### 22. Dispute Resolution

If a dispute arises between the parties, either party may issue a notice of dispute to the other party referring the dispute to senior representatives of each party, who must meet and negotiate in good faith with a view to resolving the dispute.

Failing resolution within 20 business days of that referral, the parties will negotiate in good faith with a view to agreeing the further dispute resolution process to be followed in respect of that dispute. If no agreement can be reached as to the further dispute resolution process to be followed within a further 10 business days, either party may refer the dispute to a court of competent jurisdiction.

Despite the existence of a dispute, the Contractor must continue to fulfil its obligations under the Contract and comply with all directions given to it by TGen.

### 23. Termination

Without prejudice to any other remedy of TGen at law, if the Contractor:

- a) fails to perform any of its material obligations under this Contract;
- b) fails to carry on the Contract at a rate of progress satisfactory to TGen;
- c) neglects or omits to carry out any instruction of TGen in respect of the Contract;
- d) commits a breach of its work health and safety obligations;
- e) fails to complete the whole of the Contract within the period required by TGen;
- f) indicates (in the opinion of TGen) that the Contractor is unwilling or unable to complete the Contract;
- g) becomes insolvent or bankrupt, being a company goes into liquidation,

TGen may by notice in writing:

- a) terminate the Contract whereupon all sums of money which may remain in the hands of TGen may be forfeited to TGen and on being so forfeited will become vested in or become payable to TGen; or
- b) take the Contract wholly or partly out of the control of the Contractor and complete the Contract by any other means TGen so decides.

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Should TGen take action pursuant to this clause then all losses, costs, charges and expenses incurred or sustained by TGen will be deemed to be a debt due to TGen by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies are less than the amount so deductible the amount of the deficiency will be a debt due by the Contractor to TGen.

### 24. Novation

Without limiting TGen's other rights under the Contract, TGen may require the Contractor to enter into a deed of novation to novate TGen's or the Contractor's rights under the Contract. The Contractor must comply with any direction given by TGen including the provision of information, assistance, corporation and the execution of the deed.

### 25. Adherence to Corporate Values

The Contractor must adhere to Territory Generation's corporate Values which are Focus, Integrity, Respect, Safety and Teamwork known by the acronym FIRST, for the duration of the Contract. The Values are more comprehensively defined in Territory Generation's Code of Conduct which can be obtained from Territory Generation.

### 26. Local Benefit Commitment

The Contractor acknowledges TGen's commitment to the development of business and industry in the Northern Territory. Where the Contractor's response to the RFQ made certain promises or commitments to the development of business and industry in the Northern Territory, the Contractor must comply with those promises or commitments.

### 27. Privacy

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

'Act'	means the <i>Information Act (NT)</i> .
'Privacy Laws'	means the Act; and the Information Privacy Principles set out in the Act or any "code of practice" approved under the Act that applies to any of the parties to this Contract.
'Personal Information'	means all information about a person that is "personal information" as defined in the Act, which is collected and/or handled by any of the parties in connection with this Contract.

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

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

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

The Contractor is to ensure that any employees, agents or subcontractors, and any other person who may have access to Personal Information held by the Contractor, are aware of the obligations of the Contractor under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.

The Contractor is to take all reasonable measures to ensure that Personal Information is protected from misuse, loss, unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

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

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

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

- either return to TGen all records containing Personal information;
- retain any material containing Personal Information in a secure manner as approved by TGen; or
- destroy or delete any Personal Information.

This clause will survive the expiration or termination of this Contract.