

Conditions of contract – IT consultant services

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1. Interpretation of Terms

In these Conditions of Contract, unless the context otherwise requires:

'**Agency**' means a department, agency or statutory authority of the Northern Territory of Australia.

'**Annexure**' means the section in the RFT detailing the specific requirements applicable to the Conditions of Tendering and Contract.

'**Business Day**' means any day which is not a Saturday, Sunday or a NT wide public holiday within the meaning of the *Public Holidays Act*.

'**Business Hours**' means from 8.00am to 5.00pm on a Business Day at the place where the Services are to be provided.

'**Completion**' means the Principal has determined that the performance of the Services has been completed.

'**Consultant**' means the legal entity that, as party to the Contract is bound to perform the Services in accordance with the Contract and includes the successors and lawful assigns of the Consultant.

'**Consultant's Tender**' means the Tender submitted by the Consultant to the Principal in response to the RFT.

'**Contract**' means the document that constitutes or evidences or, as the case may be all the documents which constitute or evidence the final and concluded agreement between the Principal and the Consultant concerning the performance of the Services.

'**Contract Material**' means all material brought into existence by or on behalf of the Consultant for the purpose of this Contract and all material incorporated into a deliverable under this Contract, but excludes copies of internal working papers retained by the Consultant for record keeping purposes.

'**Date of Acceptance**' means the date, which appears on the Notice of Acceptance and if no date appears is the date on which the Principal sent the Notice of Acceptance issued by the Principal accepting the Consultant's Tender.

'**Developed Software**' means software specifically designed for the Principal under the Contract. Depending how advanced its development is, it may be either a Product or a Service or both.

'**Fee**' means the rate per any section or item of the Services as stated in the Contract.

'**Indigenous Person**' is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as Indigenous and is accepted in the community in which they live as an Indigenous person.

'**Intellectual Property**' means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, semiconductor or circuit layouts, trade secrets and know-how.

'**Law**' includes common or customary law, equity, judgement, legislation, order, regulation, statute, by-law, ordinance or any other legislative or regulatory measure in each case of any jurisdiction whatsoever and includes any amendment, modification or re-enactment of them (and "lawful" and "unlawful" shall be construed accordingly).

'**Licensed Software**' includes software to be used to fulfil the Services which was not developed by the Consultant or the Principal and which is not freely useable by any member of the public.

'**Lump Sum**' means the total sum (fee) which will have become payable to the Consultant by the Principal upon completion of the Services.

'**Notice of Acceptance**' means the written notification and any accompanying documentation sent to the Consultant by the Principal advising acceptance of its Tender to provide the Services under the Contract.

'**Principal**' means the Northern Territory of Australia.

'**Principal's Representative**' means the person nominated by the Principal or other person from time to time appointed in writing by the Principal to act as the Principal's Representative for the purposes of the Contract.

'**Request for Tender (RFT)**' means the document(s) containing or referring to the Conditions of Tendering, Conditions of Contract, the Annexure, Special Conditions of Contract (if any), Scope of Services, Response Schedules, Drawings or Diagrams (if any) and any other document issued for the purpose of inviting tenders for the Services.

'**Schedule of Rates**' means any schedule included in the Contract which, in respect of any section or item of the Services to be carried out, shows the respective rate (Fee) of payment for performance of that service and which may also include lump sums, other sums, quantities and prices.

'**Services**' means the work specified in Contract, and includes all information describing the functional, operational, qualitative, quantitative, time and cost requirements and other supporting information provided by the Principal from time to time, which the Consultant is required to provide, as stated in the Notice of Acceptance, and includes all variations and remedial work.

'**sub-consultant**' means a person other than the Consultant's employees engaged by the Consultant to carry out parts or a part of the Services for the Consultant.

'**Tax Invoice**' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

In the Contract, unless the contrary intention appears:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person is a reference to a natural or artificial person, including a body politic, body corporate, a partnership, joint venture (whether incorporated or unincorporated), an incorporated association, a government instrumentality, local government authority or an agency;
- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- i) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;
- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of the

Notice of Acceptance and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;

- l) the word 'includes' in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

2. Formation of the Contract

The Contract between the Principal and the Consultant shall comprise:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Consultant's Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Scope of Services;
- f) Drawings included in the RFT (if any);
- g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract;
- h) Conditions of Tendering and all other documents, other than those specified above in (a) to (f) inclusive, forming the RFT or the Contract (other than the Consultant's Tender); and
- i) the Consultant's Tender response including any drawings,

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

3. Fees and Charges

3.1. Basis of Payment

Unless otherwise provided for in the Contract, the fee and associated disbursement and expenses shall constitute the Consultant's only remuneration for the Services performed under the Contract and shall be deemed to include familiarisation and compliance with all the requirements, standards, procedures and instructions of the Principal.

The basis of payment will be as stated in the Annexure. Unless otherwise stated in the RFT, prices will be considered firm.

3.2. Lump Sum Fee

Where the fee is payable on a lump sum basis, the fee shall be the lump stated in the Contract and shall not be adjusted except as provided for in the clause titled "Variations".

3.3. Percentage Fee

Where the fee is payable on a percentage basis, the Services shall be carried out in stages and with the respective fee percentages applying to each stage as stated in the Contract. Fees shall not be adjusted except as provided for in the clause titled “Variations”.

3.4. Upper Limit Estimate

Where the fee is payable on the basis of an upper limit estimate or fixed price comprising professional fees, disbursements and expenses will be specified in the Contract.

During the execution of the Contract should the anticipated costs exceed the upper limit estimate or fixed price the Consultant must seek the approval of the Principal for variation to the upper limit or fixed price before proceeding.

3.5. Time Charge Fee

Where the fee is payable on a time charge basis, the remunerative rate payable by the Principal in respect of any person engaged by the Consultant to perform the Services shall be relative to the level of the task performed by that person as set out in the Contract.

Hourly rates shall be applicable only to the Consultant’s professional and technical staff, and no payment shall be made in respect of time spent on the Services by support staff including managerial and administration staff and inexperienced students as due allowance for such staff shall be incorporated in the overhead loading included in the agreed hourly rates.

The Consultant shall keep accurate time sheets to substantiate any fee claims based on a time charge basis.

3.6. Disbursements and Expenses

Where not already included in the negotiated fee, the Consultant shall, by prior approval, be reimbursed for disbursements and expenses as have been reasonably and properly incurred in performing the Services.

The Consultant shall submit a claim for such authorised expenses and disbursements and provide the Principal with evidence of those costs.

4. Applicable Law

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the Northern Territory of Australia and waives any immunity or any objection it may have to any action in those Courts and to a claim that any action has been brought in an inconvenient forum or to those Courts not having jurisdiction

5. Entire Agreement

The Contract formed between the parties for undertaking the Services constitutes the entire agreement between the parties, and supersedes any previous agreements or understandings.

6. General Obligations of the Parties

Both the Principal and the Consultant will, at all times:

- a) act reasonably in performing their obligations and exercising their rights under the Contract;
- b) diligently perform their respective obligations under this Contract; and
- c) work together in a collaborative manner.

7. Principal's Responsibilities and Obligations

The Principal shall give or cause to be given to the Consultant timely instructions, decisions and information sufficient to define the requirements of the Services including budgetary arrangements and limitations.

7.1. Principal's Representative

The Principal's representative shall exercise the duties; discretions and powers vested in the Principal under the Contract except this power of appointment.

The Principal's Representative is nominated in the Annexure.

7.2. Contract Manager

For the purpose of exercising some of the powers, duties, discretions and authorities, vested in him on behalf of the Principal, the Principal's Representative may from time to time appoint a representative ('**Contract Manager**'). The Contract Manager will be notified in the Notice of Acceptance.

The Contract Manager will act as first point of contact for all matters under the Contract.

The Consultant shall recognise and accept notices from the Contract Manager as if the Principal issued such. Any reference to the Principal within these conditions shall be deemed to be a reference to the Contract Manager so far as it concerns the exercise of the Contract Manager's powers by virtue of his appointment.

7.3. Equipment Provided By Principal

The Principal shall provide the Consultant with adequate access to computer terminals and security clearance and access to data and codes necessary to perform the Services.

Word processing and other administrative support are the responsibility of the Consultant.

8. Directions

The Consultant shall comply with any direction either orally or in writing issued, given or served upon him by the Principal. Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing.

For the purposes of this clause the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal may make, give or issue pursuant to the provisions of the Contract.

9. Consultant's Responsibilities and Obligations

The Principal will be relying on the professional skills of the Consultant to provide a service, which is technically sufficient and complete. The Consultant shall:

- a) provide all professional advice and skills which are normally required for the class of services which it has agreed to provide under the Contract;
- b) remain fully responsible for all work undertaken by the Consultant regardless of any review or acceptance of that work by the Principal;
- c) supply publications, aids and documentation which is in English, of a reasonable standard in terms of presentation, accuracy, content and with all key terms, words and symbols adequately defined or explained;
- d) be liable for any loss or damage suffered as a result of any negligent act, error, omission or statement by it or its employees, agents or sub-consultants except to the extent that the loss or liability is directly attributable to the failure of the Principal, its employees or agents to take reasonable care;
- e) employ competent staff with qualifications and experience appropriate to their task for the Services;
- f) ensure that its employees, agents or sub-consultants meet the provisions of the clause titled "Site Rules";
- g) promptly inform the Principal in writing if information or any document provided or caused to be provided by the Principal is found to be insufficient or inaccurate;
- h) acknowledge that the provision of the Services within the required deadlines is an essential term of the engagement of the Consultant and of the provision of the Services; and
- i) when using the Principal's premises or facilities, comply with all security and office regulations in effect at those premises or in regard to those facilities, as notified by the Principal.

The Consultant shall observe and comply with all requirements of all relevant 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, the Northern Territory Procurement Code and with the lawful requirements of any relevant authority, regulator or standard setting as shall be in force in the place affecting or applicable to the Services or the execution of the Services.

10. Consultant's Representative

The Consultant shall appoint a representative ('**Consultant's Representative**') to be the first point of contact with the Principal. The Consultant's Representative shall be nominated to the Principal in writing.

Any direction given to the Consultant's Representative shall be deemed to be a direction issued to or served upon the Consultant.

Matters within the knowledge of the Consultant's Representative shall be deemed to be within the knowledge of the Consultant.

The Consultant or its representative shall have sufficient command of the English language to be able to read, converse and receive instructions in English.

The Consultant may, with the prior written approval of the Principal, cancel the appointment and shall nominate another Consultant's Representative.

11. Replacement of Consultant's Personnel

The Consultant shall notify the Principal immediately of any changes in the Consultant's personnel undertaking the Services.

The Principal may, in its absolute discretion, give notice requiring the Consultant to remove any of its personnel or sub-contracted personnel from work in respect of the Services.

The Consultant shall promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to the Principal. The Consultant shall not again employ a person so removed on or in connection with the Services.

12. Status of Consultant

The Consultant, its employees and sub-consultants thereof, in performing the Services, are not for any purpose a servant or employee of the Principal.

13. Notices

13.1. Services of Notices

Notice must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices set out in the Contract, as varied by any Notice given by the recipient to the sender.

The Principals address for service of Notices is as stated in the Annexure.

13.2. Effective on Receipt

Any notice given in accordance with sub-clause 13.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;
- b) 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
- c) 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 entire Notice;

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day..

14. Site Rules

The Consultant, his employees and sub-consultants required to enter the Site in connection with the Services shall comply with all rules and regulations in force at the Site, including security screening through Criminal History Checks where required.

The Consultant is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by the appropriate Authority.

15. Work Health and Safety Management

15.1. Priority to safety issues

While carrying out the Services, the Consultant:

- a) must give priority to and is responsible for ensuring safe work practices in relation to the Services and the Contract;
- b) must carry out the Services safely and so as to protect persons and property; and
- c) must maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property as a result of carrying out the Services.

15.2. Compliance with laws and standards

Without limiting clause 15.1 or any other provision in the Contract, in carrying out the Services, the Consultant must, and must ensure that all persons for whom it is responsible or over whom it is capable of exercising control (including its sub-consultants), comply with all laws and standards that are applicable to the performance of the Services and with any reasonable direction issued by the Principal or any other person with control and management of the Services.

15.3. Unsafe work

If the Principal considers:

- a) there is a risk of injury to people or damage to property arising from the Services; or
- b) there is an unsafe or potentially unsafe practice or there is a breach of the requirements of this clause 15 then, in addition to any other rights it has under the Contract, the Principal may:
 - i. direct the Consultant to change its manner of working; or
 - ii. suspend the performance of the Services associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

All costs, delay and disruption caused by any action taken under this clause 15.3 are the responsibility of the Consultant.

15.4. Substantive breach

Where, in the opinion of the Principal, the Consultant has committed a substantive breach of its obligations under clause 15.3, the Principal may immediately terminate this Contract, by written notice to the Consultant.

The remedy provided in this clause 15.4:

- a) applies notwithstanding any other provision of the Contract; and
- b) is in addition to the other remedies under this Contract.

16. Conflict of Interest

The Consultant warrants that:

- a) At the Date of Acceptance, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and
- b) It shall 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 sub-consultant.

The Consultant shall notify the Principal of any matter, which may give rise to an actual or potential conflict of interest of the Consultant at any time during the currency of the Contract. The Principal shall treat this information as confidential.

16.1. Conflict of Interest and Confidentiality Deed

Following the award of a contract and upon request by the Principal, the Consultant shall:

- a) execute a deed in favour of the Principal regarding confidentiality and conflicts of interests as they relate to the performance of the Services; and
- b) ensure that each of its employees, agents and sub-consultants involved in performing the Services executes such a deed.

Sample Deeds can be found at the web address:

<https://nt.gov.au/industry/procurement/understanding-the-rules/conditions-contract/consultant-services>

17. Confidentiality and Publicity

17.1. Confidentiality

- a) For the purposes of this sub-clause 17.1 'Confidential Information' means any information or material relating to the Contract or the Services including (without limitation):
 - i. any information that by its nature is confidential;
 - ii. any information designated as confidential; and
 - iii. any information that the Consultant knows is confidential.
- b) The Consultant shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
 - i. as authorised by the Principal under the Contract or otherwise;
 - ii. to its employees or sub-consultant, to the extent needed to perform their obligations under the Contract;
 - iii. where the disclosure is required to be disclosed by law.
- c) The Consultant shall ensure that its employees and all sub-consultants, contractors and suppliers engaged by the Consultant for the performance of the Contract comply with the requirements of this sub-clause 17.1.

17.2. Media and Publicity

- a) The Consultant shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising eg for sub-consultants), award nomination, document or article for publication concerning the Contract, the Services or the site in any media without the prior written approval of the Principal.
- b) Prior to taking any action or doing anything the Consultant shall refer:
 - i. any media enquiries concerning the Contract, the site, the Principal or the Services to the Principal for the Principal's written response; and

- ii. any media requests concerning the Contract, the site, the Principal or the Services (including, without limitation, requests to access or take photographic or video footage of the site) to the Principal, for the Principal's written consent, which consent may be given or withheld, in the Principal's absolute discretion.
- c) The Consultant shall ensure that its employees and all sub-consultants, contractors and suppliers engaged by the Consultant for the performance of the Contract comply with the requirements of this sub-clause 17.2 and obtain the Principal's prior written consent (through the Consultant) before responding to enquiries or publishing anything of the type referred to in this sub-clause 17.2.

18. Local Content

18.1. Local Benefit Commitments

The Consultant acknowledges the Principal's commitment to the development of business and industry in the Northern Territory.

In the Consultant's Tender, the Consultant made certain promises and commitments with regard to the development of business and industry in the Northern Territory, to be achieved by the Consultant as part of the Contract. These promises and commitments form part of the Contract (and are referred to in the clauses below as the "Local Benefit Commitment").

The Consultant shall fulfil all aspects of the Local Benefit Commitment.

18.2. Use of Local Labour, Supplies and Services

Without limiting clause 18.1, the Consultant shall, except in those cases where the Consultant can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:

- a) use labour, including apprentices and trainees and Indigenous labour, available within the Northern Territory; and
- b) use the services located and obtain supplies/materials available within the Northern Territory.

18.3. Reporting to the Principal and Right of Audit

The Consultant shall, within 7 days of a written request by the Principal, submit a written report to the Principal detailing how it has complied or is complying with clauses 18.1 and 18.2.

The Principal may, after giving the Consultant 7 day's written notice to the Contract, inspect and conduct an audit of the Consultant's records to determine the Consultant's level of compliance with this clause 18. The Principal may conduct this audit itself or may engage a third party to conduct the audit on the Principal's behalf.

18.4. Failure to Fulfil Local Benefit Commitment

If the Consultant fails to fulfil or otherwise comply with the Local Benefit Commitment, or if the Consultant fails to comply with any other obligation placed on the Consultant by this clause 18, the Principal may take action under clause 29.

18.5. Performance to be Reported in Performance Reports

The Consultants compliance or non-compliance with this clause 18 will be recorded in the Performance Report to be prepared by the Principal in accordance with clause 30.

19. Liabilities

The Consultant must indemnify the Principal and employees or agents of the Principal 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 Services and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

19.1. Reduction in Liability

The Consultant's liability to indemnify the Principal under this clause is reduced proportionately to the extent that any negligent act or omission of the Principal contributed to the relevant liability, loss, claim, action or proceeding.

19.2. Limitation of Liability

If specified in the Annexure, the liability of the Consultant in respect of each single occurrence or a series of related occurrences arising from a single cause to the extent caused or contributed by the Consultant in connection with or directly arising out of this Contract will be limited to the amount specified in the Annexure.

Unless otherwise specified, any limit on the liability of the Consultant does not apply in relation to:

- a) personal injury (including sickness and death);
- b) an infringement of Intellectual Property rights;
- c) a breach of any obligation of confidentiality, security requirement or privacy; or
- d) liability which is or would have been included in an insurance policy, but for:
 - i. the inclusion of the limit on liability under sub-clause 19.1; or
 - ii. a failure by the Consultant to fulfil its insurance obligations under the Contract or the insurance policies or due to the insolvency of the insurer for the relevant insurance.

19.3. Joint and Several Liability

Where the Consultant consists of two or more persons, this Contract shall bind them jointly and severally. In particular, any agreement, representation, warranty or indemnity by one or more persons constituting the Consultant binds all the persons constituting the Consultant jointly and severally and any agreement, representation, warranty or indemnity in favour of one or more persons constituting the Consultant is for the benefit of all the persons constituting the Consultant jointly and severally.

20. Insurances

20.1. Workers Compensation Insurance

For the purpose of this clause "worker" shall have the definition it is given in the *Return to Work Act 2015* (NT).

Before commencing the Services, the Consultant shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Consultant. This cover shall comply with the *Return to Work Act 2015* (NT) and policies shall be purchased from Northern Territory approved insurers. Details can be found at the following web address: www.worksafe.nt.gov.au

The Consultant shall ensure that all sub-consultants who employ workers have Workers Compensation insurance cover in accordance with the *Return to Work Act 2015* (NT).

The Consultant shall ensure that all persons employed under labour hire agreements, whether by the Consultant or through a labour hire firm, are appropriately covered by Workers Compensation insurance.

Self-employed Consultants should ensure that they have adequate insurance coverage in place.

The Consultant shall be responsible for ensuring that all sub-consultants have appropriate insurance policies, and, upon request, shall provide to the Principal copies of all Certificates of Currency, including those of any sub-consultants (including self-employed consultants and persons employed under labour hire agreements).

20.2. Public Liability Insurance

Before commencing the Services, the Consultant shall take out and shall maintain during the currency of the Contract a Public Liability policy of insurance to cover its liabilities to third parties.

The Policy shall:

- a) note the Principal for its respective rights and interests;
- b) include a cross-liability clause in which the insurer accepts the term “insured” as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

The effecting of insurance shall not limit the liabilities or obligations of the Consultant under other provisions of the Contract.

The Consultant shall ensure that all sub-consultants take out Public Liability insurance that meets the requirements of this clause.

20.3. Professional Indemnity Insurance

Before commencing the Services, the Consultant shall take out, and shall maintain during the currency of the Contract a Professional Indemnity insurance policy for an amount not less than the sum stated in the Annexure.

The Consultant shall continue to maintain a professional indemnity policy after the conclusion of the Contract for a period and for such amount as is necessary to indemnify the Consultant in respect of all liabilities arising out of this Contract. The Consultant’s liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy.

20.4. Insurance of Documents

Until all original documents are finally delivered to the Principal, all risks whatsoever connected with the total or partial loss of the documents shall be the responsibility of the Consultant. The Consultant shall ensure that this responsibility is met at all times by an appropriate insurance policy.

20.5. Lodgement of Certificates of Currency

The Consultant shall, if so requested, provide the Principal with copies of Certificates of Currency and summaries of coverage for all insurance policies required under clause 20 including those of any sub-consultants (including self-employed consultants and persons employed under labour hire agreements):

- a) prior to commencing the Services under the Contract;
- b) within two (2) Business Days of a written request by the Principal;
- c) within seven (7) days after the Consultant renews an insurance policy; and
- d) within seven (7) days after the Consultant makes any change to an insurance policy.

The Consultant will not cancel any insurance policy, or conduct itself in a manner that brings about such a cancellation of an insurance policy, except with the written consent of the Principal.

21. Documents

21.1. Custody

Upon completion of the Services, the Consultant must deliver to the Principal the originals and all copies and reproductions of all documents required by the Principal.

Unless otherwise instructed by the Principal, all manuals, standard drawings, computer programs and other documents supplied to the Consultant for reproduction or guidance during the course of the Contract must be returned to the Principal by the Consultant upon termination or completion of the Contract.

With the approval of the Principal, the Consultant may retain one (1) complete copy of any document(s) prepared for the Principal in carrying out the Services for its own internal records. This document remains the property of the Principal and is subject to ongoing obligations of confidentiality and privacy.

21.2. Intellectual Property

The ownership of Intellectual Property in Contract Material is specified in the Annexure. If no party is named in the Annexure, clause 21.2.1 applies and ownership vests in the Principal.

21.2.1. Ownership by the Principal

The Intellectual Property in all Contract Material vests and is owned exclusively by the Principal as such rights are created.

The Principal grants to the Consultant a world-wide, non-exclusive, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate the Contract Material for the term of the Contract and to the extent required to undertake the Services or as otherwise agreed by the Principal.

21.2.2. Ownership by the Consultant

The Intellectual Property in all Contract Material vests and is owned exclusively by the Consultant as such rights are created.

The Consultant grants to the Principal a perpetual world-wide, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate the Contract Material to the extent required to receive full benefit of the Services.

21.2.3. Existing Material

This clause does not affect the ownership of Intellectual Property in any material owned by a party prior to this Contract or produced by a party outside of the provision of the Services.

21.3. Warranty

The Consultant warrants that:

- a) any Intellectual Property embodied in or used in connection with the Services is the sole property of the Consultant or the Consultant is legally entitled to use same for the performance of the Services; and
- b) it has the right to grant the licences specified in sub-clause 21.2.2.

22. Time for Commencement and Completion

The Consultant shall commence and complete the Services within the time stated in the Annexure or within such extended time as agreed to in writing by the Principal.

22.1. Program

The Consultant within fourteen (14) days of Date of Acceptance, submit to the Principal a program for the delivery of the Services to meet the completion date as stated in the Annexure.

The program shall be in a form appropriate to the Services and acceptable to the Principal and may:

- a) indicate the interdependencies of each component part of the Services;
- b) allow appropriate periods for the review by the Principal of documents to be produced by the Consultant;
- c) clearly indicate any allowances made in the program for delays to the provision of the Services or any component parts of the Services outside the Consultant's control; and
- d) include a separate time line for each discrete component of the Services and a completion date for each of those components.

During the Contract, the Consultant shall progressively make the necessary adjustments to the program to ensure each stated completion date is achieved.

22.2. Completion Date

As soon as it becomes evident to the Consultant that the commissioned completion date is delayed or cannot be met, the Consultant may request to the Principal in writing, together with a statement of the facts on which the claim is based, an extension to the completion date.

Upon receipt of the request, the Principal will determine whether the circumstances of the delay are such as to justify any extension of time to the completion date, and notify the Consultant as soon as practicable whether the extension has been granted or not.

Notwithstanding that the Consultant has not claimed an extension of time to the completion date, the Principal may, for any reason, by notice to the Consultant extend the completion date, by nominating a date which shall be deemed to be the amended completion date.

Extra costs incurred by the Consultant by reason or as a result of or arising from the exercise by the Principal of the power to determine any extension of time shall be borne and paid by the Principal only if

the extension of time was due to a breach of the provisions of the Contract by the Principal, or an act or omission on the part of the Principal or any other cause provided for elsewhere in the Contract.

If the Consultant fails to achieve the completion date or amended completion date, the amount of moneys payable to the Consultant, for the Services completed under the Contract by the Principal, shall be reduced by the amount, five per cent (5%) of the upper limit estimate or fixed price for the first ten (10) working days lapsed after the completion date or amended completion date, and an additional amount of five per cent (5%) of the upper limit estimate/fixed price/lump sum for every five (5) working days thereafter until the completion of the Services, but the total amount of reduction shall not exceed fifteen per cent (15%) of the upper limit estimate/fixed price/lump sum.

22.3. Progress Reports

The Consultant shall submit reports to the Principal in an agreed format and at agreed intervals as to the progress of the Services. The Consultant shall attend progress review and coordination meetings as directed by the Principal.

22.4. Compliance with Laws

The Consultant shall, unless instructed by the Principal in writing that compliance is not required, ensure that the documents produced under the Contract comply with relevant Laws and shall obtain all required approvals in respect thereof.

The Consultant shall promptly advise the Principal in writing should the requirements of the Services or that part of the Services to which this work relates, conflict with any Laws or if any necessary approvals have not been obtained.

The obligations under this sub-clause shall not apply if a failure to obtain a necessary approval is due to an act, default or omission on the part of the Principal.

22.5. Checking, Signing and Certification

All documents prepared under the Contract shall be signed by the Consultant to certify that the documents have been prepared by competent staff and have been checked and approved for accuracy, compliance with relevant Laws, the requirements of the Contract and coordination with related documents.

The Consultant shall coordinate all documents provided or to be provided by a sub-consultant, with documents generated by the Consultant under the Contract.

The Consultant is not required to check standard documents provided by the Principal, but shall ensure that the standard documents are appropriate for their proposed use.

22.6. Corrections

Notwithstanding any reviews, approvals or directions undertaken or given by the Principal with respect to documents prepared by the Consultant, any error, ambiguity or deficiency, which subsequently becomes apparent, and is referred to the Consultant for correction or clarification shall be corrected or clarified by the Consultant to the satisfaction of the Principal.

The Consultant shall not be entitled to an additional fee where the correction or clarification arises from a fault of the Consultant.

The Consultant is not required to check standard documents provided by the Principal, but shall ensure that the standard documents are appropriate for their proposed use.

22.7. Review of Work by Others

Where the Consultant is required to take over work provided by or on behalf of the Principal, they shall review such work before proceeding. If following this review it is considered necessary by the Principal for the Consultant to make good deficiencies in such work, an additional fee will be chargeable.

In such a case, the Consultant shall obtain the Principal's written approval before proceeding with the additional work.

23. Testing and Acceptance

23.1. Completion Date

The Principal will accept the Services on the date the Principal agrees the tests have been successfully completed in accordance with the requirements for acceptance testing ('**Acceptance Testing**') as set out in the Contract.

Where the parties agree, that acceptance tests are not required the Services will be deemed to have been accepted where it has been delivered and/or installed in accordance with the Contract.

23.2. Certificate of Acceptance

Where the Contract provides for acceptance testing as a condition of payment, the Principal will issue a Certificate of Acceptance within five (5) working days after the date of completion of the Acceptance Testing. The Certificate of Acceptance will indicate the actual date of completion of the Acceptance Testing.

23.3. Acceptance Testing

The Principal will specify in the Contract, the Services to be tested before acceptance, and details of the testing required.

If the tests are not agreed in the Contract, and are deemed to be required, the Principal and the Consultant will agree on the content of the test, the timeframe within which it is to be conducted, the method for conducting it and the criteria, in sufficient time for the testing to be performed before the Services is due to be delivered and/or installed in accordance with the Contract.

The Principal will provide whatever is reasonably necessary for the conduct of the tests, including power, environment, consumables and data media.

23.4. Failure

If the Services fail an Acceptance Test, if required, the Principal may:

- a) require further tests, at the Consultant's expense; or
- b) reject the Services and require its removal.

23.5. Additional Tests

The Principal may at any time during the Acceptance Testing period require the Consultant to carry out additional or different tests which are reasonably required to establish whether or not the Services complies with the requirements of Contract.

The Principal will pay the costs of any additional or different test except where the test was reasonably required to establish that the Services did not comply with the requirements of the Contract. In the latter situation, the Consultant will pay the costs.

24. Invoicing and Payment

24.1. Invoicing

The Consultant must provide the Principal a valid invoice showing the value of the Services completed. The Consultant must provide any further details in regard to an invoice that are reasonably requested by the Principal.

For the purpose of this clause 24.1 an invoice is valid if it:

- a) is correctly addressed and calculated in accordance with this Contract,
- b) relates only to the Services that have been delivered to the Principal in accordance with this Contract and for which the Consultant is entitled to invoice under this Contract;
- c) complies with *A New Tax System (Goods and Services Tax) Act 1999*; and
- d) complies with the requirements stipulated in this Contract.

The invoice must include:

- a) the Agency name, business unit of the Agency and address of the Agency;
- b) a reference number being the Official Order number, the Contract name and number or all of these details;
- c) details of any adjustments made under the clause titled “Goods and Services Tax” of these Conditions of Contract and an explanation as to how such adjustments were calculated.

The Principal’s preferred method of receiving invoices is by electronic means, through the Principal’s electronic invoicing system (“EIS”) at the following web address:

<https://invoicentg.nt.gov.au/>.

If the Consultant is not able to send Invoices using the EIS it shall send Invoices by email to:

AccountsPayable@nt.gov.au

If the Consultant is not able to send Invoices using the EIS or by email pursuant to the above clauses, the Consultant shall send Invoices by post to the Principal at the following address:

Agency Name
Business Unit
PO Box 43475
CASUARINA NT 0811

24.2. Payment

The Principal will make payments within twenty (20) days of receipt of an undisputed invoice valued less than \$1 million. The Principal will make payments within thirty (30) days of receipt of an undisputed invoice valued \$1 million or more.

If the Principal disputes the invoice amount the Principal shall certify the amount it believes is due for payment, which shall be paid by the Principal 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 the Principal that the Services have been executed in accordance with the Contract or the value thereof, but shall be taken to be payment on account only.

Failure by the Principal to pay the amount by the due date:

- a) will not be grounds to vitiate or avoid the contract; and
- b) will entitle the Consultant to make a claim for interest penalties on the late payment.

24.3. Incorrect Invoice Payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Principal to the Consultant under this Contract.

24.4. Method and Currency of Payment

Payments under this Contract may be made by electronic transfer directly to the nominated bank account of the relevant payee.

Unless otherwise agreed by the parties, all payments by the Principal to the Consultant will be made to a bank account in Australia.

All invoices from the Consultant to the Principal must be in accordance with the currency of the Lump Sum or Schedule of Rates.

24.5. Interest on Late Payments

The Principal will pay interest on late payments calculated at the rate set annually in accordance with the Principal's payment policy (as amended by time to time).

Interest is only payable on undisputed amounts exceeding the payment terms from the date of receipt by the Principal of a relevant valid invoice.

Where a valid invoice is disputed by the Principal the payment period referred to in clause 24.2 commences in respect of the disputed portion when the dispute has been resolved.

Where the Consultant believes that it is entitled to claim interest on a late payment it must raise a separate invoice for the interest claimed showing all relevant details within ninety (90) days from receipt of payment of the amount in respect of which the interest is claimed. Failure by the Consultant to do so will void any claim to payment of interest on the late payments.

Where the purposes of this clause the "relevant details" are:

- a) the date of deemed receipt of the original properly rendered invoice (being three (3) Business Days after the date of dispatch of the original properly rendered invoice);
- b) the date of payment;
- c) a copy of the original properly rendered invoice;
- d) the period for which the Consultant considers interest is due; and
- e) the amount of interest sought.

The Consultant's entitlement to interest under this clause 24.5. Will be its sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties under this clause 24.5.

25. Variations

The Principal may, by written notice during the currency of the Contract, direct or permit the Consultant to vary the scope or nature of the Services including the program order of work without prejudice to the Contract. Any resultant adjustment to the fee payable to the Consultant shall be negotiated and agreed by the parties.

26. Assignment

The Consultant shall 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 consent of the Principal. Such consent shall not be unreasonably withheld.

27. Sub-Contracting

Unless specifically provided for in the Contract, the Consultant shall not sub-contract any part of the Services without the prior written approval of the Principal. Such approval shall not be unreasonably withheld.

Any sub-contract shall be in writing and contains the provision that:

- a) progress payments to the sub-consultant shall be made within fourteen (14) days after the Consultant has received payment from the Principal; and
- b) reflect the insurance, liability and indemnity clauses contained in this Contract.

Any approval by the Principal to engage a sub-consultant for any part of the Services shall not relieve the Consultant from any of its liabilities under the Contract. The Consultant shall be fully liable to the Principal for the work of the sub-consultant or any employee or agent of the sub-consultant.

28. Disputes

28.1. Disputes

Each party must follow the procedures in this clause 28 before starting court proceedings, other than for interlocutory relief.

28.2. Notice of Dispute

Any party to this Contract who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

28.3. Meeting of Parties

Within five (5) Business Days of the provision of the written notice, a nominated representative of each of the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute.

28.4. Appointment of Mediator

If the dispute is not resolved within five (5) Business Days of the parties meeting (or within such further period as the parties agree is appropriate) then one or both parties may nominate a mediator to determine the dispute.

If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the dispute.

The parties will bear the costs of the mediator equally.

28.5. Appointment of Independent Expert

If the dispute is not resolved within twenty (20) Business Days after the appointment of the mediator (or within such further period as the parties agree is appropriate) then one or both parties may nominate an independent expert to determine the dispute.

If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an independent expert to determine the dispute.

The expert must not be the same person as the mediator.

The parties will bear the costs of the independent expert's determination equally, unless the independent expert determines otherwise.

The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

28.6. Decision of Independent Expert

The decision of the independent expert is absolute and final and will bind the parties accordingly and this Contract will be deemed to be amended to incorporate the terms of the independent expert's decision.

The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.

28.7. Continuation of Work during Disputes

During disputes and until such time that work under the Contract are completed, the Consultant shall at all times continue to fulfil its obligations under the Contract and comply with all directions given to it by the Principal in accordance with the provision of the Contract, provided that such directions do not touch upon the subject matter of the dispute in respect of which written notice has been given in accordance with this clause.

29. Termination, Suspension and Deferment of the Contract

29.1. Termination by Mutual Agreement

The Contract may be terminated at any time by mutual agreement between the Principal and the Consultant or by either party giving thirty (30) days' notice to the other party. Termination shall be without prejudice to any claim, which either party may have against the other arising out of any negligent act or omission prior to the date of termination.

Upon termination, the Consultant shall provide the Principal with all documents produced up to the date of termination regardless of their stage of completion.

29.2. Termination due to Default

The Principal may terminate the Contract if the Consultant:

- a) commits any serious breach or persistent breach either expressly or implicitly of the Contract;
- b) is guilty of any grave misconduct or any wilful neglect in the discharge of its duties;
- c) makes any assignment or arrangement or composition with, or for the benefit of its creditors;
- d) is guilty of any inefficiency, misbehaviour, incompetence, negligence or carelessness in accordance with its obligations under the Contract;
- e) is unable to provide acceptable replacement personnel;
- f) fails to comply with the clause titled "Conflict of Interest"

Where the Principal gives notice in accordance with this sub clause then the Contract shall terminate immediately with effect from the date of the service of such notice.

29.3. Change in Constitution of Consultant

Where the Consultant, being a partnership, company, consortium or other composite body, undergoes a change in its structure, which in the opinion of the Principal renders the Consultant unsuitable, the Principal may terminate the Contract.

29.4. Incapacitation of Consultant

Where the Consultant, due to circumstances beyond his control such as retirement, death, physical or mental injury, is in the opinion of the Principal rendered incapable of completing the Services, the Principal may terminate the Contract without prejudice to the accrued rights of either party in relation to the other.

29.5. Suspension and Deferment

The Principal may, at any time by written notice to the Consultant, suspend or defer all or any part of the Services. Upon such suspension or deferment, the Consultant shall be entitled to payment of those fees

and expenses, which have been properly accrued under the Contract up to the effective date of suspension or deferment.

29.6. Fee Entitlement upon Termination

If the Principal terminates the Contract for any reason other than default by the Consultant, the Principal shall pay to the Consultant a fair and reasonable fee for the Services as at the date of termination together with reimbursement for any expenses reasonably incurred by the Consultant in contemplation of it carrying out the balance of the Services.

If the Principal terminates the Contract as a result of default by the Consultant or the Consultant terminates the Contract for any reason other than default by the Principal, the Consultant shall be liable for any extra cost incurred by the Principal in obtaining completion of any unfinished Services.

30. Performance Report

The Consultant agrees that upon completion of the Services or the termination of the Contract:

- a) the Principal will prepare a performance report ('**the Report**');
- b) the Principal shall liaise with the Consultant in completing the Report although the Principal reserves the ultimate right to complete the Report (other than the Consultant's comments); and
- c) the Principal may use and/or release the report to any other Agency for evaluation of the Consultant's performance in the assessment of future tenders.

The Consultant agrees that neither the Consultant nor any other person shall have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation and use of the Report.

31. Waiver

Any failure or omission by a party either wholly or in part to enforce strict compliance with any of the Terms and Conditions or any act, mission, delay, forbearance, or indulgence granted by a party to the other shall not operate as a waiver and shall not affect or impair that provision in any way or impair the rights of the party to avail itself of the remedies it may have in respect of any breach of any such provision.

No waiver by a party of any breach of any provision of Contract shall be a waiver of any preceding or succeeding breach of the same or any other provision.

32. Force Majeure

Neither party shall be responsible for any failure to fulfil any of its obligations hereunder to the extent that fulfilment has been delayed, hindered or prevented by any event of Force Majeure. The party unable to fulfil its obligation in the circumstances provided in this clause shall promptly notify the other party stating the particulars of such circumstances and the time that it estimates that non-performance will continue. The party effected by the occurrence will only be relieved from liability for a reasonable period of time within which by the exercise of due diligence such party could have remedied the situation preventing its performance.

Once the intervening event has ended the Consultant shall carry out all acts that it would have been liable to carry out had the intervening event not occurred.

The Consultant shall take all reasonable steps to ameliorate and eliminate the intervening event and resume performance as promptly as practicable.

In this context Force Majeure means any occurrence beyond the reasonable control of the party effected by it and without limiting the generality of the above includes:

- a) an act of a public enemy, a war declared or undeclared, explosion, insurrection, public riot, civil commotion, military action, an act of sabotage;
- b) a strike, blockade, lockout, an industrial action, dispute or disturbance of any kind;
- c) an act of restraint of any government or any governmental authority including foreign governments and authorities;
- d) an act of God;
- e) a storm, tempest, lightning, fire, flood, earthquake or other natural calamity; and
- f) unavailability of equipment.

33. Goods and Services Tax

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

'**GST**' means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999 ('Act')* and any related *Tax Imposition Act* and "New Tax System Changes" has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999 ('TPA')*. Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

'**GST Rate**' means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time;

'**Input Tax Credit**' has the meaning it bears in the Act;

'**Recipient**' '**Entity**' and '**Supplies**' have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

- a) "**Recipient**" shall also mean Consultant;
- b) "**Entity**" shall also mean Principal;
- c) "**Supplies**" shall also mean the Service.

'**Adjustment**' means each form of adjustment to consideration provided for in this clause.

The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST Rate at the Date of Acceptance.

The Consultant shall provide the Recipient with a Tax Invoice and/or Adjustment notes in relation to the Supply prior to an amount being paid by the Recipient under this Contract, 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.

Where the GST Rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the Date of Acceptance.

34. Privacy

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

'Act' means the *Information Act (NT)*;

'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 Consultant 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 Consultant were a public sector organisation.

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

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

The Consultant is to ensure that any employees, agents or sub-consultants, and any other person who may have access to Personal Information held by the Consultant, are aware of the obligations of the Consultant 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 Consultant 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.

The Consultant is to develop, and obtain the written approval of the Principal of:

- a) policies for the management of Personal Information; and
- b) complaint handling procedures.

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

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

The Consultant indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Consultant under this Contract.

When this Contract expires or is terminated, the Consultant must, at the Principal's discretion:

- a) return to the Principal all records containing Personal Information;
- b) retain any material containing Personal Information in a secure manner as approved by the Principal; or
- c) destroy or delete any Personal Information.

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