



# **GENERAL CONDITIONS OF CONTRACT**

**FOR THE SUPPLY OF**

**INFORMATION AND COMMUNICATIONS  
TECHNOLOGY**

**GOODS AND / OR SERVICES**

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## TABLE OF CONTENTS

<b>1. DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
1.1 DEFINITIONS.....	1
1.2 INTERPRETATION .....	7
<b>2. ORDER OF PRECEDENCE .....</b>	<b>9</b>
<b>3. NON-CUSTOMER CONTRACT.....</b>	<b>10</b>
<b>4. TERM AND EXTENSION.....</b>	<b>10</b>
4.1 TERM.....	10
4.2 EXTENSION .....	10
<b>5. SUPPLY OF GOODS.....</b>	<b>10</b>
5.1 APPLICATION OF THIS CLAUSE .....	10
5.2 SUPPLY OF GOODS.....	11
5.3 ORDERS .....	11
5.4 QUALITY OF GOODS.....	11
5.5 INSPECTION AND TESTING.....	11
5.6 SOURCES OF SUPPLY.....	12
5.7 PACKING.....	12
5.8 DELIVERY.....	12
5.9 VARIATION OF DELIVERY .....	12
5.10 DELAY IN DELIVERY DATE - CONTRACTOR CAUSED.....	13
5.11 DELAY IN DELIVERY DATE - CUSTOMER CAUSED.....	13
5.12 PAYMENT BEFORE ACCEPTANCE.....	14
5.13 ACCEPTANCE OF GOODS.....	14
5.14 PROPERTY, DELIVERY AND RISK.....	15
5.15 DEFECTS IN GOODS.....	15
5.16 REASONABLE TIME .....	15
5.17 REMEDIES FOR DEFECTS IN GOODS.....	16
5.18 SALE OF GOODS ACT 1895.....	16
<b>6. SUPPLY OF HARDWARE.....</b>	<b>16</b>
6.1 APPLICATION OF THIS CLAUSE .....	16
6.2 WARRANTY .....	16
6.3 NO APPLICATION TO HARDWARE LEASING .....	16
<b>7. SUPPLY OF SERVICES .....</b>	<b>17</b>
7.1 APPLICATION OF THIS CLAUSE .....	17
7.2 SUPPLY OF SERVICES.....	17
7.3 ORDERS .....	17
7.4 SCOPE AND QUALITY OF SERVICES .....	17
7.5 ADDITIONAL WORK .....	17
7.6 SPECIFIED PERSONNEL .....	18
7.7 UNSATISFACTORY SERVICES .....	18
<b>8. SUPPLY OF MANAGED SERVICES.....</b>	<b>19</b>
8.1 APPLICATION OF THIS CLAUSE .....	19
8.2 GENERAL OBLIGATIONS OF SUCCESSFUL RESPONDENT .....	19
8.3 TRANSITION IN .....	19
8.4 SERVICE DELIVERY AND SERVICE LEVEL AGREEMENT .....	21

8.5	TRANSITION OUT .....	21
<b>9.</b>	<b>SUPPLY OF HARDWARE MAINTENANCE SERVICES .....</b>	<b>22</b>
9.1	APPLICATION OF THIS CLAUSE .....	22
9.2	COMMENCEMENT OF MAINTENANCE .....	22
9.3	PREVENTATIVE MAINTENANCE .....	23
9.4	REMEDIAL MAINTENANCE .....	23
9.5	STORAGE OF CONTRACTOR MATERIALS .....	24
9.6	MAINTENANCE RECORDS .....	24
9.7	THIRD PARTY EQUIPMENT .....	24
<b>10.</b>	<b>SUPPLY OF SOFTWARE DEVELOPMENT SERVICES .....</b>	<b>24</b>
10.1	APPLICATION OF THIS CLAUSE .....	24
10.2	PREPARATION OF PROJECT PLAN .....	24
10.3	APPROVAL OF PROJECT PLAN .....	24
10.4	PREPARATION OF DESIGN SPECIFICATION .....	25
10.5	APPROVAL OF DESIGN SPECIFICATION .....	25
10.6	METHODOLOGY .....	25
10.7	SOURCE CODE .....	26
10.8	USE PRIOR TO ACCEPTANCE .....	26
<b>11.</b>	<b>SUPPLY OF SOFTWARE SUPPORT SERVICES .....</b>	<b>26</b>
11.1	APPLICATION OF THIS CLAUSE .....	26
11.2	COMMENCEMENT OF SUPPORT .....	26
11.3	CORRECTION OF DEFECTS .....	27
11.4	OTHER SUPPORT SERVICES .....	27
11.5	SERVICE RESPONSE TIMES .....	27
11.6	EXCLUSIONS .....	27
11.7	UPDATES AND NEW RELEASES .....	28
<b>12.</b>	<b>SUPPLY OF SYSTEMS INTEGRATION SERVICES .....</b>	<b>28</b>
12.1	APPLICATION OF THIS CLAUSE .....	28
12.2	HARDWARE COMPONENTRY .....	28
12.3	SOFTWARE COMPONENTRY .....	28
12.4	SYSTEM WARRANTY .....	29
12.5	EXCLUSIONS FROM SYSTEM WARRANTY .....	29
<b>13.</b>	<b>SUPPLY OF TELECOMMUNICATIONS SERVICES .....</b>	<b>30</b>
13.1	APPLICATION OF THIS CLAUSE .....	30
13.2	PROVISION OF SERVICES .....	30
13.3	INTEROPERABILITY .....	30
<b>14.</b>	<b>SOFTWARE LICENSING .....</b>	<b>30</b>
14.1	APPLICATION OF THIS CLAUSE .....	30
14.2	LICENCE RIGHTS .....	30
14.3	PERIOD OF LICENCE .....	31
14.4	PROTECTION AND SECURITY .....	31
14.5	CHANGE OF DESIGNATED EQUIPMENT .....	31
14.6	PROTECTION OF CONTRACTOR'S RIGHTS .....	32
14.7	TERMINATION OF LICENCE .....	32
14.8	ESCROW OF SOURCE CODE .....	32
14.9	NO APPLICATION TO SOFTWARE LEASING .....	32
14.10	THIRD PARTY SOFTWARE .....	32
<b>15.</b>	<b>ACCEPTANCE TESTING .....</b>	<b>33</b>

15.1	APPLICATION OF THIS CLAUSE .....	33
15.2	DATE OF ACCEPTANCE .....	33
15.3	LATE NOTIFICATION OF TESTS .....	33
15.4	CUSTOMER COOPERATION.....	33
15.5	DELAYS CAUSED BY THE CUSTOMER.....	33
15.6	TEST PROCEDURES.....	33
15.7	CERTIFICATE OF ACCEPTANCE.....	33
15.8	FAILURE .....	34
15.9	SUPPLEMENTARY TESTS .....	34
<b>16.</b>	<b>PAYMENT .....</b>	<b>34</b>
16.1	CONTRACT PRICE .....	34
16.2	VARIATIONS TO CONTRACT PRICE .....	35
16.3	TIMING OF INVOICE .....	35
16.4	INVOICES.....	35
16.5	PAYMENT OF INVOICE .....	35
16.6	METHOD OF PAYMENT .....	35
16.7	RIGHT TO REQUEST FURTHER DETAILS.....	36
16.8	NO OBLIGATION TO PAY .....	36
16.9	INCORRECT INVOICE BEFORE PAYMENT.....	36
16.10	INCORRECT INVOICE AFTER PAYMENT.....	36
16.11	TIMING OF PAYMENT .....	37
16.12	FAILURE TO PAY .....	37
16.13	GST AND OTHER DUTIES, TAXES AND CHARGES.....	38
<b>17.</b>	<b>CONTRACTOR'S GENERAL UNDERTAKINGS.....</b>	<b>38</b>
17.1	CONTRACTOR'S GENERAL WARRANTIES.....	38
17.2	GENERAL WARRANTIES MADE CONTINUOUSLY .....	39
17.3	CONTRACTOR'S UNDERTAKINGS.....	39
17.4	CONFLICT OF INTEREST.....	40
17.5	OBLIGATIONS RELATING TO GOVERNMENT PROCUREMENT POLICIES.....	40
17.6	CONTRACTOR'S EXPENSES AND EQUIPMENT .....	40
17.7	WARRANTIES .....	40
17.8	PREMISES .....	40
17.9	PERSONNEL .....	41
17.10	AWARDS, WORKPLACE AGREEMENTS.....	41
17.11	COOPERATION WITH OTHER SERVICE PROVIDERS.....	41
17.12	DATA SECURITY .....	41
<b>18.</b>	<b>ACCESS AND CONFIDENTIALITY .....</b>	<b>42</b>
18.1	ACCESS AND RECORDS.....	42
18.2	CONTRACT DISCLOSURE .....	43
18.3	CONFIDENTIALITY.....	43
18.4	RETURN OF CONFIDENTIAL INFORMATION .....	44
18.5	PUBLICITY .....	44
<b>19.</b>	<b>AUDITOR GENERAL.....</b>	<b>44</b>
<b>20.</b>	<b>INTELLECTUAL PROPERTY RIGHTS OWNED BY INTELLECTUAL PROPERTY OWNER .....</b>	<b>45</b>
20.1	APPLICATION OF THIS CLAUSE .....	45
20.2	OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS IN CONTRACT MATERIAL.....	45
20.3	LICENCE OF DEVELOPED SOFTWARE AND OTHER MATERIALS .....	45
20.4	PRE-EXISTING MATERIAL - LICENCE .....	45
20.5	WARRANTY .....	45

20.6	INTELLECTUAL PROPERTY RIGHTS INDEMNITY .....	46
20.7	CONTINUING OBLIGATION .....	46
<b>21.</b>	<b>INTELLECTUAL PROPERTY RIGHTS OWNED BY CONTRACTOR .....</b>	<b>46</b>
21.1	APPLICATION OF THIS CLAUSE .....	46
21.2	OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS IN CONTRACT MATERIAL.....	47
21.3	LICENCE OF INTELLECTUAL PROPERTY RIGHTS IN CONTRACT MATERIAL.....	47
21.4	PRE-EXISTING MATERIAL - LICENCE .....	47
21.5	WARRANTY .....	47
21.6	INTELLECTUAL PROPERTY RIGHTS INDEMNITY .....	48
21.7	CONTINUING OBLIGATION .....	48
<b>22.</b>	<b>INSURANCE .....</b>	<b>48</b>
22.1	INSURANCE REQUIREMENTS .....	48
22.2	REPUTABLE AND SOLVENT INSURER.....	49
22.3	MAINTENANCE OF INSURANCE.....	49
22.4	EVIDENCE OF INSURANCE.....	49
22.5	FAILURE TO PROVE INSURANCE.....	49
22.6	INCIDENTS AND CLAIMS.....	49
22.7	CONTINUING OBLIGATION .....	49
22.8	NO LIMITATION OF OTHER LIABILITIES .....	50
<b>23.</b>	<b>TERMINATION .....</b>	<b>50</b>
23.1	TERMINATION.....	50
23.2	CONSEQUENCES OF EXPIRATION OR TERMINATION.....	50
23.3	LIMITED LIABILITY.....	51
<b>24.</b>	<b>CONTRACT AUTHORITY'S REPRESENTATIVE AND CONTRACTOR'S REPRESENTATIVE.....</b>	<b>51</b>
24.1	CONTRACT AUTHORITY'S REPRESENTATIVE.....	51
24.2	CONTRACTOR'S REPRESENTATIVE .....	51
<b>25.</b>	<b>NOTICE.....</b>	<b>52</b>
<b>26.</b>	<b>MISCELLANEOUS .....</b>	<b>52</b>
26.1	CONSENT .....	52
26.2	NO DEALING OR SUBCONTRACTING.....	53
26.3	FURTHER ASSURANCE.....	54
26.4	RELATIONSHIPS – NO PARTNERSHIP .....	54
26.5	RIGHTS AND REMEDIES .....	54
26.6	RIGHT OF SET OFF .....	54
26.7	ENTIRE AGREEMENT.....	54
26.8	VARIATIONS.....	54
26.9	WAIVER .....	55
26.10	COSTS .....	55
26.11	GOVERNING LAW.....	55

**GENERAL CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF  
INFORMATION AND COMMUNICATIONS TECHNOLOGY  
GOODS AND/OR SERVICES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In these General Conditions, unless the context otherwise requires:

**Acceptance** means sign off by the Customer in acknowledgment that agreed acceptance test criteria or alternative acceptance formalities have been satisfied in respect of a Service or Product.

**Adjustment** has the same meaning as in the GST Act.

**Adjustment Note** has the same meaning as in the GST Act.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

**Business Hours** means the hours specified in the Contract Documents or, if none are specified, the hours between 8.00 am and 5.00 pm on a Business Day.

**Confidential Information** means information in respect of the Contract that:

- (a) is by its nature confidential; or
- (b) is specified by the Contract Authority or the Customer to be confidential, including any information specified to be confidential in the Contract Documents; or
- (c) the Contractor knows or ought to know is confidential.

**Consultancy Services** means the consultancy services (if any) described in the Contract Documents.

**Contract** means the contract between the Contract Authority and the Contractor for the supply of Goods and/or Services by the Contractor, the terms and conditions of which are contained in the Contract Documents.

**Contract Authority** means the person specified as the contract authority in the Contract Documents.

**Contract Details** means Appendix 1 to the Request, describing the specific requirements of the Customer in respect of Goods and/or Services or Products to be delivered by the Contractor and includes the Schedules to Appendix 1.

**Contract Documents** means:

- (a) the Letter;
- (b) the Offer;
- (c) the Special Conditions of Contract;
- (d) the Request, including any addenda; and
- (e) these General Conditions.

**Contract Material** means a Good and/or Service and a Product (if any) supplied under the Contract.

**Contract Price** means the price that is:

- (a) specified in the Contract Documents; or
- (b) determined by applying any formula or method that is specified in the Contract Documents.

**Contractor** means the person specified as the contractor in the Contract Documents and, where the context permits, references to the Contractor include Personnel.

**Copyright Act** means the *Copyright Act 1968 (Cth)*.

**Customer** means the person (if any) specified as the customer in the Contract Documents.

**Delivery Date** means the date for delivery of the Goods specified in the Contract Documents.

**Delivery Place** means the place for delivery of the Goods specified in the Contract Documents.

**Delivery Time** means the time for delivery of the Goods specified in the Contract Documents.

**Developed Software** means the software (if any) to be created by the Contractor under the Contract, as described in the Contract Documents.

**Discount** means any discount in respect of the Contract Price specified in the Contract Documents.

**Event of Default** means the occurrence of any one of the following events:

- (a) the Contractor breaches an obligation under the Contract that cannot be remedied; or
- (b) the Contractor breaches any other obligation under the Contract and that breach is not remedied within 10 Business Days after the Contract Authority gives a notice to the Contractor requiring the breach to be remedied; or



- (c) the Contractor commits 3 breaches of its obligations under the Contract over any 12 month period, whether or not the Contract Authority has given the Contractor notice of any such breaches and whether or not the Contractor has rectified such breaches; or
- (d) a representation or warranty made by the Contractor under the Contract Documents is or becomes untrue or is breached; or
- (e) an Insolvency Event occurs in respect of the Contractor; or
- (f) the Contractor ceases, or threatens to cease, to carry on business; or
- (g) the Contractor or any person included in the Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention; or
- (h) if the Contractor is a body corporate, the Contractor is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000; or
- (i) if in the reasonable opinion of the Contract Authority, the reputation of the Contract Authority, the Customer, the State of Western Australia or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Contractor.

**Faulty Goods** means any Goods that do not comply with the Contract or are otherwise defective in any manner.

**Faulty Services** means any Services that do not comply with the Contract or are otherwise defective in any manner.

**General Conditions** means these general conditions of contract for the supply of information and communications technology Goods and/or Services.

**Goods** means the goods (if any) described, and in the quantity specified, in the Contract Documents, including but not limited to the Hardware and excluding all Software.

**Goods and/or Services** means:

- (a) Goods, if the Contract is for the supply of Goods only; or
- (b) Services, if the Contract is for the supply of Services only; or
- (c) Goods and Services, if the Contract is for the supply of Goods and Services.

**GST** has the same meaning as in the *GST Act*.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

**Hardware** means the hardware (if any) to be supplied by the Contractor under the Contract as described, and in the quantity specified, in the Contract Documents.

**Hardware Maintenance Services** means the maintenance services (if any) described in the Contract Documents.

**Insolvency Event** means the happening of any of these events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001 (Cth)*) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate; or
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or
- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property;
- (g) a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:

- (A) insolvent or unable to pay its debts when they fall due; or
- (B) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
- (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)*; or
- (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- (h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001 (Cth)* or action is taken which could result in that event; or
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Owner** means:

- (a) the Public Authority or Public Authorities specified in the Contract Documents for the purposes of clause 20 of these General Conditions; or
- (b) if no Public Authority is specified in the Contract Documents, the Crown in right of the State of Western Australia.

**Intellectual Property Rights** means:

- (a) patents, copyright, moral rights, rights in circuit layouts, registered designs, trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights.

**Letter** means the letter signed by the Contract Authority that:

- (a) accepts the Offer; and
- (b) may also specify:
  - (i) any amendments to these General Conditions, the Special Conditions of Contract or both; and
  - (ii) any other terms and conditions which are to form part of the Contract,

which the Contract Authority and the Contractor have agreed.

**Licensed Software** means the software (if any) specified in the Contract Documents which is to be supplied by the Contractor to the Customer and in respect of which:

- (a) ownership does not pass to the Customer; and
- (b) the Customer's rights of use are subject to the conditions specified in clauses 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9 and 14.10.

**Managed Services** means the managed services (if any) described in the Contract Documents.

**Moral Right** has the same meaning as in the *Copyright Act*.

**Offer** means the offer submitted by the Contractor in response to the Request.

**Order** means a purchase order for Goods and/or Services made by the Customer.

**Personnel** means all employees, agents and subcontractors of the Contractor, and all employees or agents of subcontractors, engaged in relation to the supply of the Goods and/or Services.

**Pre-existing Material** means a work (as defined in the *Copyright Act*), a product or any other material which satisfies all of the following criteria:

- (a) the work, product or other material:
  - (i) was created prior to the commencement of the Term; or
  - (ii) is to be created during the Term outside the scope of the Contract, including any subsequent modifications to such work, product or other material;
- (b) the Intellectual Property Rights in the work, product or other material are not owned by the Crown in right of the State of Western Australia, the Intellectual Property Owner, the Contract Authority or the Customer; and
- (c) the work, product or other material is required specifically for, or in connection with, the Goods and/or Services or Records.

**Premises** means any premises which are owned or occupied by the Customer and:

- (a) are identified in the Contract Documents; or
- (b) are premises on which the Goods and/or Services are to be supplied or to which the Contractor has access in order to supply the Goods and/or Services,

and includes anything on those premises.

**Product** means a product deliverable specified in the Contract Documents which is to be supplied to the Customer by or on behalf of the Contractor, including but not

limited to Software, Hardware (including telecommunications equipment), plans and/or any supporting documentation.

**Public Authority** has the same meaning as in the *State Supply Commission Act 1991*.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Goods and/or Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Request** means the request issued by the Contract Authority for the supply of the Goods and/or Services.

**Services** means the services (if any) described in the Contract Documents, including but not limited to Consultancy Services, Managed Services, Software Development Services, Hardware Maintenance Services, Software Support Services, Systems Integration Services and Telecommunication Services.

**Software** means Developed Software, Licensed Software or Third Party Software, as the context dictates.

**Software Development Services** means the software development services (if any) described in the Contract Documents.

**Software Support Services** means the software support services (if any) described in the Contract Documents, in respect of either Developed Software, Licensed Software or Third Party Software.

**Special Conditions of Contract** means the special conditions of contract specified in the Contract Documents.

**Specification** means the specification of the Goods and/or Services specified, or referred to, in the Contract Documents.

**Specified Personnel** means the Personnel specified in the Contract Documents.

**System** means the system which is the subject of the Systems Integration Services, as described in the Contract Documents.

**Systems Integration Services** means the systems integration services (if any) described in the Contract Documents.

**Telecommunications Services** means the telecommunications services (if any) described in the Contract Documents.

**Term** means the term of the Contract specified in the Contract Documents.

**Third Party Software** means software which is owned by a person other than the Crown in right of the State of Western Australia, the Intellectual Property Owner, the Customer or the Contractor and which is the subject of a Service.

## 1.2 Interpretation

In these General Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Contractor consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Contractor under the Contract binds each person who comprises the Contractor jointly and severally;
  - (ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under the Contract to be undertaken;
  - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and
  - (iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;
- (g) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Contract Authority, the Customer or the Contractor;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, these General Conditions;
- (j) all the provisions in any schedule, attachment or appendix to these General Conditions are incorporated in, and form part of, these General Conditions and bind the Contract Authority, the Customer and the Contractor;
- (k) headings are included for convenience and do not affect the interpretation of these General Conditions;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (m) no rule of interpretation is to be applied to disadvantage the Contract Authority, the Customer or the Contractor on the basis that it was responsible for preparing the Contract;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (p) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
- (u) a reference to a monetary amount means that amount in Australian currency.

## **2. ORDER OF PRECEDENCE**

- (a) The Contract Documents shall be read in the order of precedence specified in the Contract Documents.
- (b) If no order of precedence is specified in the Contract Documents, then the Contract Documents shall be read in the following order of precedence:
  - (i) the Letter;
  - (ii) the Offer;
  - (iii) the Special Conditions of Contract;
  - (iv) the Request, including any addenda; and
  - (v) these General Conditions.
- (c) Where any inconsistency occurs between the provisions contained in two or more Contract Documents, the Contract Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

### 3. NON-CUSTOMER CONTRACT

If the Contract Authority has requested Goods and/or Services on its own behalf (and not on behalf of a Customer), then references to:

- (a) “the Customer”;
- (b) “the Contract Authority and the Customer”;
- (c) “the Contract Authority or the Customer”,
- (d) “the Contract Authority, the Customer and”;
- (e) “the Contract Authority, the Customer or”; and
- (f) “the Contract Authority, the Customer or both”,

in these General Conditions are to be read as references to “the Contract Authority” only.

### 4. TERM AND EXTENSION

#### 4.1 Term

The Contract is for the Term.

#### 4.2 Extension

- (a) The Contract Authority has the option or options to extend the Term for the period or periods (as applicable) specified in the Contract Documents.
- (b) If the Contract Authority wishes to exercise an option under clause 4.2(a), then the Contract Authority must give the Contractor a notice:
  - (i) by the date or dates specified in the Contract Documents; or
  - (ii) if no period is specified in the Contract Documents, at least 20 Business Days before the expiry of the Term,stating that the Contract is to be extended and the period of the extension.
- (c) If the Contract Authority exercises an option under clause 4.2(a), then references to “the Term” in these General Conditions are to be read as including the period of extension of the Term.

### 5. SUPPLY OF GOODS

#### 5.1 Application of this clause

If the Contract is for the supply of:

- (a) Goods; or
- (b) Goods and Services,

then this clause 5 forms part of the Contract.



## 5.2 Supply of Goods

The Contractor must supply the Goods during the Term in accordance with the Contract.

## 5.3 Orders

- (a) If the Contract Documents refer to the giving of Orders for the Goods, then the Contractor must supply the Goods in accordance with Orders given by the Customer.
- (b) The Customer may give the Contractor an Order at any time during the Term.
- (c) The Customer may give the Contractor any number of Orders.
- (d) An Order must specify:
  - (i) the Goods;
  - (ii) the quantity of the Goods; and
  - (iii) the date, time and place for delivery of the Goods if different from the Delivery Date, Delivery Time or Delivery Place.
- (e) An Order is subject to the terms and conditions of the Contract but to the extent of any inconsistency between the Order and the Contract, the Contract applies rather than the Order.

## 5.4 Quality of Goods

- (a) The Contractor must supply the Goods in accordance with the Specification.
- (b) All Goods delivered by the Contractor must conform:
  - (i) with all samples provided by the Contractor to the Contract Authority or the Customer; and
  - (ii) if no standards for the Goods are specified in the Specification, to all relevant and current standards published by the Standards Association of Australia.

## 5.5 Inspection and Testing

- (a) Subject to the Customer:
  - (i) giving reasonable prior notice to the Contractor; and
  - (ii) complying with all reasonable directions and procedures of the Contractor relating to occupational health, safety, security and confidentiality in connection with the Contractor's premises,

the Customer may inspect and test any Goods at the Contractor's premises at any time during the Term.

- (b) The Contractor must do everything reasonably necessary to enable the inspection and testing to be carried out.

## **5.6 Sources of Supply**

If the Customer requests, the Contractor must use reasonable endeavours to promptly provide full details of:

- (a) the method and place of manufacture or production;
- (b) the materials used in manufacture or production;
- (c) the source of supply; and
- (d) everything else reasonably required by the Customer,

in connection with any of the Goods or any equipment provided or used by the Contractor in relation to the manufacture, production or supply of the Goods.

## **5.7 Packing**

All Goods must be properly and securely packaged and accurately labelled for identification and safety before delivery to the Customer.

## **5.8 Delivery**

- (a) Unless the Customer specifies otherwise in an Order, the Contractor must deliver the Goods to the Delivery Place on the Delivery Date at the Delivery Time.
- (b) If no Delivery Date or Delivery Time is specified in the Contract Documents or in an Order, then:
  - (i) the Contractor must give notice to the Customer at least 2 Business Days before the delivery of Goods; and
  - (ii) the Contractor must deliver the Goods during Business Hours.
- (c) If a period of days is specified as the Delivery Time, then the Contractor must deliver the Goods within Business Hours on any day in that period.
- (d) The Contractor must comply with all reasonable directions from the Customer or any other person who has control of the Delivery Place.

## **5.9 Variation of Delivery**

- (a) The Customer may at any time, including at the time of actual delivery, vary the Delivery Place, the Delivery Date or the Delivery Time.
- (b) When possible, the Customer will use reasonable endeavours to inform the Contractor of the variation a reasonable time before delivery is due.
- (c) The Customer must reimburse the Contractor for the Contractor's reasonable costs and expenses resulting from a variation to the Delivery Place, Delivery Date or Delivery Time under clause 5.9(a).

## 5.10 Delay in Delivery Date - Contractor Caused

- (a) If delivery of the Goods is likely to be delayed until after the Delivery Date due to an act or omission of the Contractor, then the Contractor must notify the Customer of the likely delay as soon as the Contractor becomes aware of it.
- (b) A notice from the Contractor under clause 5.10(a) does not release the Contractor from its obligations relating to delivery of the Goods or from any other obligation or liability under the Contract.
- (c) If:
  - (i) the Customer receives a notice under clause 5.10(a); or
  - (ii) the Goods are not delivered by the Delivery Date,and the Customer requires the Goods by the Delivery Date, then the Contract Authority or the Customer:
  - (iii) must give notice to the Contractor if it intends to purchase substitute goods from another supplier under clause 5.10(c)(iv) no later than 5 Business Days before the purchase of the substitute goods; and
  - (iv) may purchase from another supplier substitute goods which in the opinion of the Contract Authority or the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods.
- (d) If the Contract Authority or the Customer purchases substitute goods:
  - (i) the Customer does not have to take delivery of, or pay the Contract Price for, the Goods; and
  - (ii) the Contractor must reimburse the Contract Authority or the Customer (as applicable) for:
    - (A) any amount by which the cost of substitute goods exceeds the Contract Price for the Goods; and
    - (B) the Contract Authority's and the Customer's reasonable costs and expenses resulting from having to purchase substitute goods,within 10 Business Days from the date on which the Contract Authority or the Customer (as applicable) gives the Contractor an invoice for those costs.

## 5.11 Delay in Delivery Date - Customer Caused

- (a) If delivery of the Goods is likely to be delayed until after the Delivery Date due to an act or omission of the Customer and that act or omission justifies an extension of the Delivery Date, then the Contractor must, within 10 Business Days after the act or omission of the Customer giving rise to the delay, notify the Customer in writing of:

- (i) the strategies that the Contractor has developed and will implement to avoid, minimise or manage the consequences of the delay;
  - (ii) the period, or likely period, of delay;
  - (iii) the likely effect of the delay on the Contract; and
  - (iv) the additional costs which the Contractor will reasonably incur,
- and request an extension of time that is reasonable in the circumstances.
- (b) After receiving a request for an extension of time under clause 5.11(a), the Customer must:
- (i) promptly consent to a reasonable extension of time; and
  - (ii) pay all reasonable additional costs incurred by the Contractor within 20 Business Days of receiving the request,
- unless there are reasonable grounds for refusing its consent.

#### **5.12 Payment before Acceptance**

Despite any other provision of the Contract, if the Customer pays the Contract Price for Goods before the Customer has accepted the Goods, then the Contractor will hold that payment on trust for the Customer until:

- (a) the Customer accepts the Goods under clause 5.13; or
- (b) the Customer rejects the Goods, in which case the Contractor will immediately refund the Contract Price for the rejected Goods to the Customer.

#### **5.13 Acceptance of Goods**

- (a) Neither the delivery of the Goods by the Contractor to the Customer nor payment of the Contract Price by the Customer to the Contractor constitutes acceptance of the Goods by the Customer.
- (b) The Customer may reject the Goods by giving a notice of rejection to the Contractor within 10 Business Days after the delivery of the Goods to the Customer if:
  - (i) the Goods are Faulty Goods; or
  - (ii) the Goods are not supplied in full; or
  - (iii) the Customer is entitled to reject the Goods under the *Sale of Goods Act 1895*.
- (c) The Customer is taken to have accepted the Goods only if the Customer:
  - (i) notifies the Contractor that the Goods have been accepted; or
  - (ii) does not reject the Goods under clause 5.13(b).

#### **5.14 Property, Delivery and Risk**

- (a) Risk in the Goods passes to the Customer on delivery of the Goods to the Customer in accordance with the Contract.
- (b) Property in the Goods passes to the Customer on acceptance of the Goods by the Customer under clause 5.13.
- (c) Property and risk in any Goods removed by the Contractor or returned to the Contractor re-passes to the Contractor at the time the Goods are removed or returned.

#### **5.15 Defects in Goods**

- (a) If, before or after acceptance of the Goods under clause 5.13, the Customer finds that any Goods are Faulty Goods, then the Customer may by notice in writing to the Contractor:
  - (i) reject the Faulty Goods, in which case:
    - (A) the Customer must provide a reason or reasons for rejection, if requested by the Contractor;
    - (B) the Contractor must immediately remove the Faulty Goods at the Contractor's cost and refund the Contract Price for the Faulty Goods if already paid; and
    - (C) the Customer may purchase substitute goods in accordance with clauses 5.10(c) and 5.10(d); or
  - (ii) require the Contractor to replace the Faulty Goods with goods of the same kind and quality as the Goods; or
  - (iii) require the Contractor to repair or rectify the Faulty Goods.
- (b) Clause 5.15(a) does not apply if the Goods were subject to Acceptance testing under clause 15 or if:
  - (i) the Customer examined the Goods before acceptance of the Goods under clause 5.13;
  - (ii) that examination ought to have revealed that the Goods were Faulty Goods; and
  - (iii) the Customer accepted the Faulty Goods under clause 5.13.

#### **5.16 Reasonable Time**

If the Customer requires the Contractor to replace, repair or rectify the Faulty Goods under clauses 5.15(a)(ii) or 5.15(a)(iii), then the Contractor must:

- (a) do so within any reasonable time stipulated by the Customer; and
- (b) reimburse the Customer for the Customer's reasonable costs and expenses resulting from not having the use of the Goods while the Faulty Goods are being replaced, repaired or rectified.

## 5.17 Remedies for Defects in Goods

If the Contractor fails to comply with the Customer's notice under clause 5.15, then the Customer may do any one or more of the following:

- (a) return the Faulty Goods to the Contractor at the Contractor's cost;
- (b) hold the Faulty Goods as security for the performance of the Contractor's obligations under clause 5.15;
- (c) sell the Faulty Goods (without being liable to the Contractor in any way for the amount of the sale proceeds) and:
  - (i) keep so much of the net sale proceeds as is necessary to recover the Customer's costs, expenses and losses resulting from the Contractor's breach of the Contract; and
  - (ii) pay the balance of the net sale proceeds to the Contractor; and
- (d) purchase substitute goods in accordance with clauses 5.10(c) and 5.10(d).

Neither the Contract Authority nor the Customer is liable to the Contractor for any loss or damage to Faulty Goods resulting from the exercise of any right under this clause.

## 5.18 Sale of Goods Act 1895

The Contract Authority, the Customer and the Contractor acknowledge that:

- (a) the *Sale of Goods Act 1895* applies to the Contract; and
- (b) to the extent that there is any inconsistency between the *Sale of Goods Act* and the Contract, and to the extent permitted by law, the Contract applies rather than the *Sale of Goods Act*.

## 6. SUPPLY OF HARDWARE

### 6.1 Application of this clause

If the Contract is for the supply of Hardware, then, without limiting clause 5, this clause 6 forms part of the Contract.

### 6.2 Warranty

The Contractor warrants that, where required and for the period specified in the Contract Documents, the Hardware:

- (a) is free from defects in materials and workmanship; and
- (b) complies with the Specification.

### 6.3 No Application to Hardware Leasing

The Contract does not apply in relation to the leasing of Hardware to the Customer.

## **7. SUPPLY OF SERVICES**

### **7.1 Application of this clause**

If the Contract is for the supply of:

- (a) Services; or
- (b) Goods and Services,

then this clause 7 forms part of the Contract.

### **7.2 Supply of Services**

The Contractor must supply the Services during the Term in accordance with the Contract.

### **7.3 Orders**

- (a) If the Contract Documents refer to the giving of Orders for the Services, then the Contractor must supply the Services in accordance with Orders given by the Customer.
- (b) The Customer may give the Contractor an Order at any time.
- (c) The Customer may give the Contractor any number of Orders.
- (d) An Order must specify:
  - (i) the Services;
  - (ii) the scope of the Services; and
  - (iii) the date, time and place for performance of the Services (if applicable).
- (e) An Order is subject to the terms and conditions of the Contract but to the extent of any inconsistency between the Order and the Contract, the Contract applies rather than the Order.

### **7.4 Scope and Quality of Services**

- (a) The Contractor must supply the Services in accordance with the Specification.
- (b) If no standards for the Services are specified in the Specification, then the Contractor must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.

### **7.5 Additional Work**

If, at the written request of the Customer, the Contractor performs work that is additional to the Services, then the Customer must pay the Contractor for the additional work:

- (a) at the rate specified in the Contract Documents; or
- (b) if no rate is specified in the Contract Documents, at the rate agreed between the Contract Authority and the Contractor; or
- (c) if no rate is agreed under clause 7.5(b) within 10 Business Days from the date of the Customer's request, at the reasonable rate determined by the Contract Authority.

## **7.6 Specified Personnel**

- (a) If the Customer requires Specified Personnel, then the Contractor:
  - (i) must ensure that all Specified Personnel are available to carry out, and do carry out, the Services; and
  - (ii) must not allow the Services to be carried out by any other person without the prior written consent of the Customer.
- (b) The Contractor must remove any person included in the Specified Personnel from the supply of the Services if the Customer reasonably requires by notice in writing to the Contractor that the person be removed. If requested, the Customer must give the Contractor the reason for the removal of the person included in the Specified Personnel.
- (c) If the Customer gives a notice to the Contractor under clause 7.6(b), then the Contractor must promptly:
  - (i) remove the person included in the Specified Personnel; and
  - (ii) replace the person included in the Specified Personnel with additional Personnel of similar skills and experience reasonably acceptable to the Customer.
- (d) If Specified Personnel are replaced with additional Personnel under clause 7.6(c), then references to Specified Personnel are taken to include such additional Personnel.

## **7.7 Unsatisfactory Services**

- (a) If the Customer finds that any of the Services are Faulty Services, then, without limiting any other remedy available to the Contract Authority or the Customer, the Customer may by notice to the Contractor require the Contractor to re-supply the Faulty Services and the Contractor must re-supply the Faulty Services at no cost to the Customer.
- (b) If the Contractor receives a notice under clause 7.7(a) and the Contractor does not re-supply the Faulty Services within a reasonable time, then the Contract Authority or the Customer may purchase from another supplier substitute services which in the opinion of the Contract Authority or the Customer (as applicable) are most suitable, even though such services may be of a different kind, quantity and quality from the Services.
- (c) If the Contract Authority or the Customer purchases substitute services, then:



- (i) the Customer does not have to pay the Contract Price for the Faulty Services; and
- (ii) the Contractor must reimburse the Contract Authority or the Customer (as applicable) for:
  - (A) any amount by which the cost of substitute services exceeds the Contract Price for the Faulty Services; and
  - (B) the Contract Authority's and the Customer's reasonable costs and expenses resulting from having to purchase substitute services,

within 5 Business Days from the date that the Contract Authority or the Customer (as applicable) gives the Contractor an invoice for those costs.

## **8. SUPPLY OF MANAGED SERVICES**

### **8.1 Application of this clause**

If the Contract is for the supply of Managed Services, then, without limiting clause 7, this clause 8 forms part of the Contract.

### **8.2 General Obligations of Successful Respondent**

Where the Contract Documents state that the Contractor is to provide Managed Services:

- (a) the Contractor agrees to commence the Managed Services on the service commencement date specified in the Contract Documents and to meet the Specification and service levels for the Managed Services during the Term;
- (b) the Contractor will be deemed to have knowledge of information that the Contractor could reasonably have obtained during due diligence which it had the opportunity to conduct prior to the service commencement date (as specified in the Contract Details), whether or not the Contractor in fact conducted such due diligence;
- (c) without limiting clause 8.2(b), the Contractor will be deemed to have made use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the service commencement date (as specified in the Contract Details); and
- (d) unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other government customers at the same time and in similar circumstances.

### **8.3 Transition In**

- (a) If a transition plan is contained in the Contract Documents (including, if applicable, Schedule 3 to the Contract Details), then the Contractor will, as necessary:

- (i) comply with obligations specified in the transition plan contained in the Contract Documents (including, if applicable, Schedule 3 to the Contract Details) regarding the transfer or management of third party contracts;
  - (ii) comply with the requirements of the transition plan concerning the future role of the Customer's existing officers, employees and agents, including making offers of employment to such officers, employees and agents;
  - (iii) ensure it is able to deliver the Managed Services from the date stated in the transition plan;
  - (iv) ensure (to the extent practical) that all third party software licences and other relevant third party agreements entered into by the Contractor from the commencement of the transition in process incorporate a term requiring the licensor or third party supplier to consent to novation or assignment of the licence to an alternative service provider or to the Customer itself upon termination of the Managed Services for any reason, with the cost of any increased charges resulting from the inclusion of that term to be borne by the Customer (subject to prior notification to the Customer), unless agreed by the parties to the contrary; and
  - (v) prepare a procedures manual which, once agreed by the Customer, will form part of the Contract and which, in addition to any other requirements specified in the Contract Documents, will describe how the Contractor will manage the delivery of the Managed Services, including:
    - (A) how compliance with the service levels and other performance factors will be measured and met;
    - (B) procedures to identify and rectify failures in the quality of the Managed Services;
    - (C) the acceptance procedure for deliverables supplied pursuant to the Managed Services;
    - (D) how changes to the Managed Services or method of delivery will be identified and met;
    - (E) proposed audit requirements; and
    - (F) staffing, reporting, planning and supervisory activities normally undertaken in respect of similar services in similar circumstances.
- (b) If no transition plan is contained in the Contract Documents, then the Contractor will comply with the obligations regarding the transfer or management of third party contracts which are agreed between the Customer and the Contractor.

#### 8.4 Service Delivery and Service Level Agreement

- (a) Unless the Customer agrees otherwise in writing, the Managed Services will be performed in Australia and, in addition:
- (i) from the service commencement date specified in the Contract Documents, the Contractor agrees to provide the Managed Services in accordance with the service level documentation and any other performance measures attached to or specified in the Contract Documents;
  - (ii) the Contractor agrees to report to the Customer at monthly intervals (or such other intervals as are specified in the Contract Documents) and in conformity with any agreed format, as to the effectiveness of service delivery, including the extent to which the Managed Services are being or have been adapted to meet the Customer's changing business needs; and
  - (iii) the Contractor will advise the Customer if it considers the Specification or service levels should be revised to take account of new functions performed by the Customer that are outside the scope of the Contract (such revisions to be implemented, if at all, in accordance with the change control procedure set out in the Contract).
- (b) If the Contractor fails to meet performance requirements for the Managed Services as specified in the service level documentation or fails to meet other performance measures specified in Schedule 4 to the Contract Details, the Contractor will promptly:
- (i) investigate the underlying causes of the problem and use all commercially reasonable efforts to preserve any data indicating the cause of the problem; and
  - (ii) advise the Customer of the status of remedial efforts being undertaken with respect to the underlying cause of the problem.
- (c) Compliance by the Contractor with clause 8.4(b) will not deprive the Contract Authority or the Customer of a right to pursue any other remedy under the Contract arising from the Contractor's failure to meet its obligations under the Contract.

#### 8.5 Transition Out

- (a) On termination of the Managed Services for any reason, and subject to any qualification or provision to the contrary in the Contract Documents, the Contractor will, if requested by the Customer, assist the Customer in transferring responsibility for providing the Managed Services either to an alternative service provider or to the Customer itself and this will include making arrangements for:
- (i) the novation or assignment (to the extent practical) of software licences and any other relevant third party agreements from the Contractor to an alternative service provider or to the Customer itself, or if the Contractor is managing third party licences or

agreements on behalf of the Customer, the transfer of management responsibility in respect of such licences and/or agreements from the Contractor to an alternative service provider or to the Customer itself, with the cost of any new or increased charges to be borne by the Customer (subject to prior notification to and agreement from the Customer) unless agreed by the parties to the contrary;

- (ii) an offer to sell to the alternative service provider or to the Customer itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Managed Services;
  - (iii) the transfer of the Customer's data to an alternative service provider and/or to the Customer itself; and
  - (iv) the granting by the Contractor to an alternative service provider and/or to the Customer itself of access to all material developed specifically for the Customer as part of the Managed Services regardless of the manner of storage.
- (b) For the purposes of clause 8.5(a)(iv):
- (i) the Contractor is not required to assign any Intellectual Property Rights in such material; and
  - (ii) the Customer must agree to comply with any reasonable security and confidentiality requirements specified by the Contractor in respect of access to such material.
- (c) Throughout the transition out process, the Contractor will continue to provide the Managed Services at the Contract Price if and to the extent requested by the Customer.
- (d) If and to the extent specified in the Contract Documents, the Contractor's assistance under this clause 8.5 will be the subject of a transition charge.
- (e) This clause 8.5 survives termination or expiry of the Contract.

## **9. SUPPLY OF HARDWARE MAINTENANCE SERVICES**

### **9.1 Application of this clause**

If the Contract is for the supply of Hardware Maintenance Services, then, without limiting clause 7, this clause 9 forms part of the Contract.

### **9.2 Commencement of Maintenance**

- (a) Except to the extent stated to the contrary in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details), any rectification of defects in the Hardware which are required during the warranty period will be provided to the Customer by the Contractor free of charge.

- (b) The Hardware Maintenance Services will commence on the date specified in the Contract Documents and will be renewable as specified in the Contract Documents.
- (c) For the removal of doubt, if the Services relate to Hardware purchased under the Contract, then the initial term of the Hardware Maintenance Services will not commence until the expiry of any relevant warranty period for the Hardware, unless specified to the contrary in the Contract Documents.

### **9.3 Preventative Maintenance**

- (a) If so provided in the Contract Documents, the Contractor will provide Hardware Maintenance Services in the form of preventative maintenance and will ensure that:
  - (i) preventative maintenance is carried out in accordance with the requirements of the Contract Documents (including, if applicable, Schedule 5 to the Contract Details); and
  - (ii) preventative maintenance is carried out at the times specified in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details) or otherwise at times when the equipment is either not operational or else at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer.
- (b) The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide preventative maintenance to the required standard.

### **9.4 Remedial Maintenance**

- (a) If so provided in the Contract Documents, the Contractor will provide Hardware Maintenance Services in the form of remedial maintenance. Where the Contractor is required to provide remedial maintenance, it will, after being notified of a fault condition or possible fault condition in the equipment, promptly restore the equipment to good working order and will, as necessary:
  - (i) replace or repair parts;
  - (ii) comply with any response times specified in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details);
  - (iii) to the extent practical, implement measures to minimise disruption to the Customer's operations during maintenance work as specified in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details); and
  - (iv) comply with any other requirements as specified in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details).

- (b) The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide remedial maintenance to the required standard.

#### **9.5 Storage of Contractor Materials**

Unless provided to the contrary in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details), the Contractor may store manuals, tools and test equipment on the Premises as required for the purposes of the Contract. The Customer agrees not to use any such manuals, tools or test equipment without the Contractor's consent.

#### **9.6 Maintenance Records**

Where required in the Contract Documents (including, if applicable, Schedule 5 to the Contract Details), the Contractor will keep full records of its Hardware Maintenance Services and will provide copies of those records to the Customer within 5 Business Days of request or within any other period specified in the Contract Documents.

#### **9.7 Third Party Equipment**

For the removal of doubt, equipment which is the subject of the Hardware Maintenance Services may consist wholly or partly of hardware or office machines which have not been supplied by the Contractor under the Contract or at all.

### **10. SUPPLY OF SOFTWARE DEVELOPMENT SERVICES**

#### **10.1 Application of this clause**

If the Contract is for the supply of Software Development Services, then, without limiting clause 7, this clause 10 forms part of the Contract.

#### **10.2 Preparation of Project Plan**

The Contractor will prepare a project plan in relation to the Software Development Services (including relevant milestones) and submit it to the Customer for approval by the date specified in the Contract Documents.

#### **10.3 Approval of Project Plan**

- (a) The Customer will promptly review the project plan submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the requirements of the Contract.
- (b) The Customer must approve the project plan when satisfied that it is consistent with the requirements of the Contract. The project plan must be approved by the date specified in the Contract Details or, if applicable, before the expiry of any extended period which is specified in the Contract Documents or which is otherwise agreed between the parties.
- (c) The Customer is not required to approve the project plan if it is inconsistent with the requirements of the Contract. The Customer will provide the Contractor with details as to why it considers the project plan is inconsistent with the requirements of the Contract and provide the Contractor with an

opportunity to rectify that inconsistency prior to the date upon which approval of the project plan is due.

- (d) The project plan will, when approved by both parties, become part of the Specification.

#### **10.4 Preparation of Design Specification**

The Contractor will prepare a detailed specification in relation to the Developed Software ('Design Specification') and submit it to the Customer for approval by the date specified in the Contract Documents. The Design Specification will give a technical explanation of how the functions in the Specification will be met. To the extent reasonably required, the Customer will assist the Contractor in the preparation of the Design Specification.

#### **10.5 Approval of Design Specification**

- (a) The Customer will promptly review the Design Specification submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the Specification.
- (b) The Customer must approve the Design Specification when satisfied that either it conforms with the Specification or that any departures from the Specification are reasonable in the circumstances. The Design Specification must be approved by the date specified in the Contract Documents or, if applicable, before the expiry of any extended period which is permitted in the Contract Documents or which is otherwise agreed between the parties.
- (c) The Customer is not required to approve the Design Specification if it is inconsistent with the requirements of the Contract. The Customer will provide the Contractor with details as to why it considers the Design Specification is inconsistent with the requirements of the Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the Design Specification is due.
- (d) The Design Specification will, when approved by both parties, become part of the Specification.

#### **10.6 Methodology**

The Contractor will fully document the development process and will:

- (a) manage the Software Development Services;
- (b) take timely corrective action prior to Acceptance, where this is required, in accordance with the agreed methodology;
- (c) take timely corrective action prior to Acceptance where the Developed Software is not performing in accordance with the Specification;
- (d) ensure concurrent development and supply of user documentation as specified in the Contract Documents; and

- (e) ensure that the Developed Software is written and documented in a way which would enable future modification by a competent developer without further reference to the Contractor.

#### **10.7 Source Code**

- (a) Where the Contract Documents state that ownership of the Developed Software is to be retained by the Contractor, the Contractor agrees if so requested by the Customer to enter into an escrow arrangement in the form specified in Appendix 5 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), unless it is expressly stated in the Contract Documents that the source code is not to be placed in escrow.
- (b) Where the Contract Documents state that ownership of the Developed Software is to pass to the Intellectual Property Owner, the Contractor will deliver the source code to the Intellectual Property Owner in accordance with the project plan. For the removal of doubt, the Contractor must in these circumstances supply the Intellectual Property Owner with all documentation that was developed in conjunction with the Developed Software and provide the Intellectual Property Owner with the source code and other materials required to support the Software and otherwise ensure that it may be modified by a competent software developer without further reference to the Contractor in the future.

#### **10.8 Use Prior to Acceptance**

The Customer may not use the Developed Software in production prior to Acceptance unless so specified in the Contract Documents.

### **11. SUPPLY OF SOFTWARE SUPPORT SERVICES**

#### **11.1 Application of this clause**

If the Contract is for the supply of Software Support Services, then, without limiting clause 7, this clause 11 forms part of the Contract.

#### **11.2 Commencement of Support**

- (a) The Software Support Services will commence on the date specified in the Contract Documents and will be renewable as specified in the Contract Documents.
- (b) For the removal of doubt, if the Services relate to Software supplied under the Contract, then the initial term of the Software Support Services will not commence until the expiry of the relevant warranty period for the Software unless specified to the contrary in the Contract Documents.
- (c) Defect correction, the implementation of updates and new releases and the provision of help desk services will be provided free of charge during the warranty period unless specified to the contrary in the Contract Documents (including, if applicable, Schedule 7 to the Contract Details).



### **11.3 Correction of Defects**

Where the Customer identifies and reports a defect in the Licensed Software subsequent to the commencement of the Software Support Services, the Contractor will as soon as possible (and, where relevant, within the response times specified in the Contract Documents, including, if applicable, Schedule 6 to the Contract Details) provide either defect correction information, a work-around or other remedial services as are necessary to restore the Licensed Software to compliance with its Specification.

### **11.4 Other Support Services**

Unless specified to the contrary in the Contract Documents (including if applicable, Schedule 6 to the Contract Details), the Software Support Services will include, in addition to defect correction pursuant to clause 11.3, ensuring:

- (a) by responding to the Customer's notification of defects or by acting in a manner otherwise specified in the Contract Documents (including if applicable, Schedule 6 to the Contract Details), that the Software remains in conformity with the operating specifications or any other specifications, standards or service levels described in the Contract Documents (including if applicable, Schedule 6 to the Contract Details);
- (b) the provision of a help desk service, full particulars of which will be as specified in the Contract Documents (including if applicable, Schedule 6 to the Contract Details); and
- (c) subject to any qualification expressed in the Contract Documents (including if applicable, Schedule 6 to the Contract Details), the correction of documentation so that it is at all times up to date.

### **11.5 Service Response Times**

The Contractor will respond to a request from the Customer for Software Support Services within the timeframes, and subject to any conditions, specified in the Contract Documents (including if applicable, Schedule 6 to the Contract Details).

### **11.6 Exclusions**

Unless specified to the contrary in the Contract Documents (including if applicable, Schedule 6 to the Contract Details), the Software Support Services do not include services involving:

- (a) correction of defects caused by:
  - (i) operation of the Software in a manner which contravenes the Customer's obligations as specified in the Contract;
  - (ii) failure by the Customer to operate the Software in accordance with its Specification or any other specifications or standards which have been made known by the Contractor to the Customer;
  - (iii) use by the Customer of the Software in an information technology environment other than that provided for in the Specification; or

- (iv) failure by the Customer to use the Software in conformity with user documentation provided by the Contractor under the Contract;
- (b) correction of errors or defects caused by the reproduction or adaptation of the Software by the Customer pursuant to the *Copyright Act 1968 (Cth)* section 47E or 47F;
- (c) equipment maintenance; or
- (d) any other service expressly excluded in the Contract Documents (including if applicable, Schedule 6 to the Contract Details).

For the removal of doubt, the Contract Documents (including if applicable, Schedule 6 to the Contract Details) may expand, reduce or otherwise vary the foregoing list of excluded services.

## 11.7 Updates and New Releases

- (a) Updates and new releases will be made available by the Contractor to the Customer on the terms specified in the Contract Documents. Notwithstanding the foregoing, the Contractor will provide any update or new release at no cost where the Contractor or third party owner makes such updates or new releases generally available to other government customers under similar circumstances at no cost. Where there is a cost, the charges and level of support applicable to the update or new release will be as specified in the Contract Documents.
- (b) The Customer is not obliged to accept an update or new release offered by the Contractor pursuant to this clause. If the Customer rejects the offer of an update or new release, the Contractor must continue to maintain the version of the Licensed Software which immediately precedes the most recent update or new release issued by the Contractor from time to time for a period commencing on the date upon which the rejected update or new release was formally offered by the Contractor to the Customer and ending on the expiry of the Term or any earlier date specified by the Customer.

## 12. SUPPLY OF SYSTEMS INTEGRATION SERVICES

### 12.1 Application of this clause

If the Contract is for the supply of Systems Integration Services, then, without limiting clause 7, this clause 12 forms part of the Contract.

### 12.2 Hardware Componentry

To the extent that the System comprises equipment, the equipment will be supplied in accordance with the requirements of clauses **Error! Reference source not found.**, 6.2 and 6.3 unless and to the extent specified in the Contract Documents (including if applicable, Schedule 1 to the Contract Details).

### 12.3 Software Componentry

- (a) To the extent that the supply of the System involves the development of Software, such development will take place in accordance with clauses 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8 unless and to the extent

specified in the Contract Documents (including if applicable, Schedule 1 to the Contract Details).

- (b) To the extent that the supply of the System requires the licensing of Software from the Contractor to the Customer, the Software will be supplied in accordance with the provisions of clauses 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9 and 14.10 unless and to the extent specified in the Contract Documents (including if applicable, Schedule 1 to the Contract Details).
- (c) To the extent that the supply of the System requires the licensing of Third Party Software from a third party licensor direct to the Customer, and except as specified to the contrary in the Contract Documents (including if applicable, Schedule 1 to the Contract Details), the Contractor will procure for the Customer a non-exclusive, non-transferable licence to use such Third Party Software on terms consistent with the Customer's requirements as set out in the Contract.

#### **12.4 System Warranty**

In addition to and notwithstanding warranties otherwise provided by the Contractor to the Customer under the Contract, and notwithstanding any warranties provided by a third party to the Customer under a direct licence from the third party to the Customer or by reason of an assignment of warranty pursuant to clause 17.7, the Contractor warrants that, subject to clause 12.5, for a period of 90 days from Acceptance (or such other period as is specified in the Contract Documents including, if applicable, Schedule 1 to the Contract Details):

- (a) the System is free from defects;
- (b) all components of the System will interact with each other in accordance with the Specification; and
- (c) the System as installed will interact with the Customer's existing information technology environment as required by the Specification.

#### **12.5 Exclusions from System Warranty**

- (a) The Contractor does not warrant that:
  - (i) the System will perform free of minor errors or uninterrupted;
  - (ii) the System will operate in combination with other systems or software selected for use by the Customer which are not set out in the Specification;
  - (iii) functions contained in the System will meet the Customer's requirements unless such requirements are expressly set out in the Specifications; or
  - (iv) the Contractor will correct all minor and immaterial System errors.
- (b) The warranty in clause 12.4 only applies where:

- (i) the System is used in accordance with the documentation provided to the Customer by the Contractor; and
- (ii) there have been no unauthorised modifications to the System.

## **13. SUPPLY OF TELECOMMUNICATIONS SERVICES**

### **13.1 Application of this clause**

If the Contract is for the supply of Telecommunications Services, then, without limiting clause 7, this clause 13 forms part of the Contract.

### **13.2 Provision of Services**

- (a) Where the Contract Details provide that the Contractor is to supply Telecommunications Services, the Contractor will provide the Telecommunications Services, including related Hardware, Software and other Products as specified in the Contract Details and in accordance with the pricing stated in Schedule 7 to the Contract Details.
- (b) Telecommunications Services supplied by the Contractor pursuant to this clause will be provided in accordance with any additional terms and conditions agreed by the Contract Authority and the Contractor and set out in the Contract Details.
- (c) The Contractor must obtain all permissions, licences and powers necessary in order to provide a Telecommunications Service within the time prescribed by the Contract Details.

### **13.3 Interoperability**

To the extent specified in the Contract Details, the Contractor will ensure that the Telecommunications Services provide interoperability and inter-working with and between:

- (a) current and future Customer telecommunications systems and networks;
- (b) other Customer service providers, switch vendors, network managers and Customer premises equipment providers; and
- (c) current and future telecommunications systems including both public and private networks.

## **14. SOFTWARE LICENSING**

### **14.1 Application of this clause**

If the Contract is for the licensing of Software, then this clause 14 forms part of the Contract.

### **14.2 Licence Rights**

- (a) Unless otherwise stated in the Contract Documents, the Contractor grants the Customer a non-exclusive licence at the charges specified in the Contract Documents to:

- (i) copy the Licensed Software into machine readable form to the extent permitted under the *Copyright Act 1968 (Cth)*;
  - (ii) use the Licensed Software on the hardware platform/operating system combination, subject to any licence conditions specified in the Contract Documents;
  - (iii) use the documentation supplied by the Contractor with the Licensed Software;
  - (iv) make such number of copies of the Licensed Software as is specified in the Contract Documents; and
  - (v) transfer the licence to one or more Public Authorities which are carrying out the same functions as the Customer, subject to prior written notice to the Contractor and subject further to the other agency consenting to the terms of the licence.
- (b) Subject to clause 14.2(a)(v), the licence granted to the Customer is non-transferable unless specified to the contrary in the Contract Documents.
- (c) The licence terms specified in this clause 14.2 will be supplemented (and, to the extent of any inconsistency, overridden) by licence terms contained in or appended to the Contract Documents. Such licence terms contained in or appended to the Contract Documents will not, however, have the effect of supplementing or overriding any provision of the Contract apart from the provisions of this clause 14.2. For the removal of doubt, if the Contractor seeks to supplement or override any clause other than clause 14.2 by reference to licence terms contained in or appended to the Contract Documents, the Contract Documents referable to the other clauses must make specific reference to the relevant provisions of those licence terms.

#### **14.3 Period of Licence**

Unless earlier terminated in accordance with the Contract or otherwise surrendered by the Customer, the licence remains in force for the period specified in the Contract Documents.

#### **14.4 Protection and Security**

The Customer will:

- (a) if and to the extent required by the Contract Documents, maintain records of the location of all copies of the Licensed Software;
- (b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property Rights which accompanies the Licensed Software; and
- (c) ensure that, prior to disposal of any media, any Licensed Software contained on it has been erased or destroyed.

#### **14.5 Change of Designated Equipment**

- (a) The Contract Documents may specify that use of the Licensed Software by the Customer is restricted to a particular processor.

- (b) If use of the Licensed Software is restricted to a particular processor, the Customer may, subject to any alternative licence conditions specified in the Contract Documents and subject further to obtaining the prior written consent of the Contractor (such consent not to be unreasonably withheld):
  - (i) transfer the Licensed Software to an alternative processor of substantially the same capacity and performance standards; and
  - (ii) use the Licensed Software on any back-up hardware while the specified hardware is for any reason temporarily inoperable.

#### **14.6 Protection of Contractor's Rights**

The Customer agrees not to do anything that would prejudice the Contractor's right, title or interest in the Licensed Software.

#### **14.7 Termination of Licence**

Within 30 days (or such other period as may be specified in the Contract Documents) after termination of the licence, the Customer will destroy or return to the Contractor all copies of the Licensed Software and all related documentation, save that the Customer may (unless specified to the contrary in the Contract Documents) retain a copy of the Licensed Software and its related documentation for archival purposes only. The use of Licensed Software for archival purposes will be subject to the restrictions specified in the Contract Documents.

#### **14.8 Escrow of Source Code**

If so specified in the Contract Documents, the Contractor will enter into an escrow arrangement in respect of the source code of the Licensed Software, substantially in the form set out in Appendix 5 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), and with the escrow agent named (if any) in the Contract Documents.

#### **14.9 No application to Software Leasing**

The Contract does not apply in relation to the leasing of software to the Customer.

#### **14.10 Third Party Software**

Unless and to the extent stated to the contrary in the Contract Documents, where the Customer acquires Third Party Software in connection with the Contract:

- (a) the Customer will enter into a licence direct with the third party licensor as required; and
- (b) the Contractor will not be liable for loss or damage suffered by the Customer arising out of a deficiency in the Third Party Software or a breach by the third party of its obligations under the third party licence, except to the extent that the Customer acquired the Third Party Software on the Contractor's recommendation as part of a Product, Service, solution or other deliverable supplied by the Contractor pursuant to the Contract.

## **15. ACCEPTANCE TESTING**

### **15.1 Application of this clause**

If the Contract involves Acceptance testing, then, without limiting clause 5.13, this clause 15 forms part of the Contract.

### **15.2 Date of Acceptance**

- (a) The Customer will accept a Service and/or Product on the date the tests have been successfully completed in accordance with the requirements for Acceptance testing as specified in the Contract Documents (including if applicable, Appendix 2 to the Request).
- (b) Where the Contract Documents do not specify that Acceptance tests are required:
  - (i) the Service will be deemed to have been accepted on the date the Contractor delivers or (if installation is involved) installs the Service in accordance with all relevant Contract stipulations; and
  - (ii) acceptance of the Product will occur in accordance with clause 5.13.

### **15.3 Late notification of tests**

If no Acceptance tests are specified in the Contract Documents (including if applicable, Appendix 2 to the Request), the Customer may (if so specified in the Contract Documents) stipulate reasonable tests to be conducted prior to Acceptance being deemed pursuant to clause 15.2.

### **15.4 Customer Cooperation**

To the extent specified in the Contract Documents (including, if applicable, Appendix 2 to the Request) and otherwise as reasonably requested by the Contractor, the Customer will provide materials and facilities reasonably necessary for the conduct of the tests, including power, environment, consumables and data media.

### **15.5 Delays Caused by the Customer**

Should the Customer cause a delay in the performance of the Acceptance tests for any reason, the Customer will agree to an extension of time for completing the tests that is reasonable in the circumstances. The Customer will be responsible for the reasonable additional costs incurred by the Contractor in these circumstances.

### **15.6 Test Procedures**

The parties will conduct the Acceptance tests, and discharge their respective responsibilities, in the manner specified in the Contract Documents (including, if applicable, Appendix 2 to the Request).

### **15.7 Certificate of Acceptance**

Where the Contract provides for Acceptance testing as a condition of payment, the Customer will issue a certificate of Acceptance within 5 Business Days of the date of Acceptance or within any other period specified in the Contract Documents (including, if applicable, Appendix 2 to the Request). The certificate of Acceptance

will indicate the actual date of Acceptance and will be in the form specified in the Contract Documents (including, if applicable, Appendix 2 to the Request). The certificate of Acceptance constitutes an acknowledgment that the Contract requirements in respect of the tested Service or Product have been satisfied as at the date of Acceptance.

## **15.8 Failure**

If the Customer concludes that a Service and/or Product has failed an Acceptance test, the Customer must set out the basis of this conclusion in writing. Subject to consideration of any explanation provided by the Contractor in respect of the failure, the Customer may:

- (a) waive the requirement for the test in question to be satisfactorily completed;
- (b) require that further reasonable tests be conducted at the Contractor's expense, such tests to be satisfactorily completed as a condition of Acceptance within 30 days of the scheduled commencement date or within such other period as the parties agree;
- (c) conditionally accept the Service or Product, subject to the Contractor agreeing to deliver a work-around or to otherwise rectify any outstanding deficiency within a set time frame, or
- (d) subject to the Customer having provided the Contractor with at least one opportunity to conduct further tests pursuant to clause 15.9, reject the Service or Product concerned, whereupon the Contractor will be in breach of the Contract. Without limiting any other remedy which may be available in these circumstances, the Customer may require the removal of the rejected Product or any materials associated with the rejected Service.

## **15.9 Supplementary Tests**

- (a) If the Customer reasonably concludes at any time prior to Acceptance that there is a reasonable likelihood of non-compliance with the Acceptance criteria, it may require the Contractor to carry out supplementary tests to establish whether the relevant Service or Product in fact complies with the Acceptance criteria.
- (b) The Contractor will pay the costs of any such supplementary tests which demonstrate the Service or Product does not comply with the Acceptance criteria. Otherwise, the costs of such tests will be borne by the Customer.
- (c) The Contractor will not be responsible for delays caused by supplementary tests unless those tests demonstrate the Service or Product does not comply with the Acceptance criteria.

## **16. PAYMENT**

### **16.1 Contract Price**

The Customer must pay to the Contractor the Contract Price in accordance with this clause 16.



## **16.2 Variations to Contract Price**

- (a) If a formula or method for variation of the Contract Price is specified in the Contract Documents, then the Contract Price may only be varied in accordance with that formula or method.
- (b) If no formula or method for variation of the Contract Price is specified in the Contract Documents, then the Contract Price is fixed for the Term and cannot be varied unless agreed by the Contract Authority and the Contractor in writing.

## **16.3 Timing of Invoice**

- (a) If the time or times at which the Contractor must submit invoices to the Customer is or are specified in the Contract Documents, then the Contractor must submit invoices at that time or those times.
- (b) If no time or times at which the Contractor must submit invoices to the Customer is or are specified in the Contract Documents, then the Contractor must submit invoices to the Customer at a time or times agreed between the Customer and the Contractor, provided that the Contractor must not submit any invoice later than 20 Business Days after the expiration or termination of the Contract.

## **16.4 Invoices**

An invoice given by the Contractor to the Customer must:

- (a) be set out in a manner that clearly identifies which Goods and/or Services the invoice covers and the amount of the Contract Price payable for those Goods and/or Services, minus any Discount; and
- (b) specify the relevant Order (if applicable).

## **16.5 Payment of Invoice**

Subject to clauses 16.4 and 16.8, the Customer must pay the amount specified in an invoice within 20 Business Days after the date the invoice is received if the amount:

- (a) claimed in the invoice is properly payable; and
- (b) specified in the invoice is correctly calculated in accordance with the Contract.

## **16.6 Method of Payment**

- (a) The Customer may pay the amount specified in an invoice:
  - (i) by cash;
  - (ii) by cheque;
  - (iii) by electronic funds transfer to the account with a financial institution nominated by the Contractor; or

- (iv) by credit card.
- (b) The Contractor must not impose a surcharge on the Customer for payment by credit card.

#### **16.7 Right to Request Further Details**

If the Customer requests, the Contractor must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Contract.

#### **16.8 No Obligation to Pay**

Subject to clause 23.2(d), the Customer has no obligation to make any payment to the Contractor unless and until:

- (a) if the Contract is for the supply of Goods, the Customer has accepted the Goods under clause 5.13 or clause 15.2;
- (b) if the Contract is for the supply of Services, the Services have been supplied in accordance with clause 7; and
- (c) the Customer is satisfied that no Event of Default has occurred and continues unremedied.

#### **16.9 Incorrect Invoice before Payment**

If, before payment of an invoice, the Customer or the Contractor finds that the invoice does not comply with clause 16.4 or clause 16.5 and:

- (a) an Adjustment arises, then the Contractor must immediately issue an Adjustment Note; and
- (b) no Adjustment arises, then the Contractor must immediately issue a correct invoice.

#### **16.10 Incorrect Invoice after Payment**

If, after payment of an invoice, the Customer or the Contractor finds that the invoice did not comply with clause 16.4 or clause 16.5 and the Customer has paid:

- (a) less than the amount that should have been paid and an Adjustment arises, then:
  - (i) the Contractor must immediately issue an Adjustment Note; and
  - (ii) the Customer must pay the difference to the Contractor within 20 Business Days after the date that the Adjustment Note is received; or
- (b) less than the amount that should have been paid and no Adjustment arises, then:
  - (i) the Contractor must immediately issue a correct invoice; and

- (ii) the Customer must pay the difference to the Contractor within 20 Business Days after the date that the correct invoice is received; or
- (c) more than the amount that should have been paid and an Adjustment arises, then the Contractor must:
  - (i) immediately issue an Adjustment Note; and
  - (ii) pay the difference to the Customer (including any interest paid under clause 16.12 in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor; or
- (d) more than the amount that should have been paid and no Adjustment arises, then the Contractor must:
  - (i) immediately issue a correct invoice; and
  - (ii) pay the difference to the Customer (including any interest paid under clause 16.12 in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor.

#### **16.11 Timing of Payment**

For the purpose of determining the date of payment under clause 16.12(b) and for the purpose of calculating any Discount applicable under the Contract for settlement of accounts:

- (a) if payment is by cash – payment is taken to be made immediately the cash is received by the Contractor;
- (b) if payment is by cheque – payment is taken to be made on the date on which the cheque is received by the Contractor;
- (c) if payment is by electronic funds transfer – payment is taken to be made at the time the funds are sent electronically; or
- (d) if payment is by credit card – payment is taken to be made on the date on which the Customer signs the credit card voucher.

#### **16.12 Failure to Pay**

- (a) If demanded by the Contractor, the Customer must pay interest on any payment not made by the Customer by the date required by clause 16.5 or any later date for payment agreed by the Contractor.
- (b) Interest under clause 16.12(a) is to be:

- (i) calculated from the due date for payment determined under clause 16.12(a) until (but not including) the date of payment (as determined under clause 16.11); and
- (ii) at the rate specified in the Contract Documents or, if no rate is specified in the Contract Documents, at the rate payable under the Rules of the Supreme Court on unpaid judgments.

### **16.13 GST and other duties, taxes and charges**

- (a) In this clause 16.13, the expressions “**consideration**”, “**recipient**”, “**supply**”, “**tax invoice**” and “**taxable supply**” have the meanings given to those expressions in the *GST Act*.
- (b) All sums payable, or consideration to be provided, under the Contract are expressed inclusive of GST.
- (c) If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 16.13(c) must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under the Contract.
- (e) If a GST-inclusive price is charged or varied under the Contract, the supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- (g) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Goods and/or Services are payable by the Contractor.

## **17. CONTRACTOR’S GENERAL UNDERTAKINGS**

### **17.1 Contractor’s General Warranties**

Except where the Contractor has otherwise disclosed in writing to the Contract Authority and the Customer, and the Contract Authority and the Customer have given their prior written consent to the matter disclosed, the Contractor warrants in favour of the Contract Authority and the Customer that:

- (a) the Contractor has no conflict of interest arising out of the Contract;
- (b) the Contractor is properly authorised and has the power to enter into the Contract and perform the Contractor’s obligations under the Contract;

- (c) the Contractor's obligations under the Contract are valid and binding and are enforceable against the Contractor;
- (d) all information provided by the Contractor to the Contract Authority, the Customer or both in connection with the Contract Documents is true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Contractor which could have a materially adverse effect on the Contractor's ability to supply the Goods and/or Services in accordance with the Contract;
- (f) neither the Contractor nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention; and
- (g) except where lawfully excused under the Contract, there is nothing that prevents the Contractor from complying with any obligation under the Contract.

## **17.2 General Warranties Made Continuously**

The warranties made by the Contractor under clause 17.1 are taken to be made continuously throughout the Term.

## **17.3 Contractor's Undertakings**

The Contractor must:

- (a) properly provide for the care, safety, security and protection of:
  - (i) the Goods, if the Contract is for the supply of Goods, until risk in the Goods passes to the Customer under clause 5.14(a);
  - (ii) all Records (whether created by the Contract Authority, the Customer, the Contractor or any other person) that are in the custody or control of the Contractor; and
  - (iii) all property supplied by the Contract Authority, the Customer or both to the Contractor in connection with the Contract;
- (b) promptly notify the Customer if any warranty under clause 17.1 is breached or becomes untrue;
- (c) always act ethically in connection with the Contract and in accordance with good corporate governance practices;
- (d) comply with all State and Commonwealth laws relevant to the Contract;
- (e) if the Contractor has custody or control of State records in the supply of the Goods and/or Services, comply with the Customer's record keeping plan to the extent necessary under the *State Records Act 2000*;
- (f) cooperate fully with the Contract Authority and the Customer in respect of the administration of the Contract; and

- (g) use its best endeavours to ensure that no Personnel cause the Contractor to breach the Contract.

#### **17.4 Conflict of Interest**

If a conflict of interest arises in respect of the Contractor, the Contractor must:

- (a) promptly notify the Customer that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with the Customer to remove the conflict.

#### **17.5 Obligations relating to Government Procurement Policies**

If any obligations relating to Government procurement policies are specified in the Contract Documents, then those obligations form part of the Contract and the Contractor must comply with them.

#### **17.6 Contractor's Expenses and Equipment**

Unless the Contract Authority agrees otherwise in writing, the Contractor must:

- (a) pay all out-of-pocket expenses incurred by the Contractor in connection with the Contract including travel expenses, accommodation and subsistence expenses, and
- (b) provide everything necessary to enable it to fully comply with all of its obligations under the Contract, subject to the Customer doing everything that is required under the Contract to enable the Contractor to so comply.

#### **17.7 Warranties**

- (a) The Contractor must give, or must ensure that the Contract Authority and the Customer have the benefit of, any warranties specified in the Contract Documents.
- (b) The Contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties that are obtained by any subcontractor, and must ensure that the Contract Authority and the Customer have the benefit of those warranties.

#### **17.8 Premises**

The Contractor must:

- (a) comply with all reasonable directions and procedures of the Customer and the owner or occupier of the Premises relating to occupational health, safety, security and confidentiality in connection with the Premises;
- (b) keep the Premises in the same state that the Premises were in before the Contractor commenced supply of the Goods and/or Services and regularly remove all rubbish and excess materials resulting from the supply of the Goods and/or Services;

- (c) leave the Premises in the same state that the Premises were in before the Contractor commenced supply of the Goods and/or Services;
- (d) do everything reasonably necessary to protect people and property on the Premises;
- (e) avoid unnecessary interference with the passage of people and vehicles, and with the operations of the Customer and the owner or occupier of the Premises and their employees, agents and contractors;
- (f) prevent any nuisance or disturbance being caused at the Premises resulting from the supply of the Goods and/or Services; and
- (g) remove any Personnel from the Premises if the Customer or the owner or lawful occupier of the Premises requires by notice in writing to the Contractor that those Personnel be removed.

### **17.9 Personnel**

The Contractor must ensure that all Personnel:

- (a) are properly qualified and suitable for the tasks that they are to do;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

### **17.10 Awards, Workplace Agreements**

The Contractor must ensure that the remuneration and terms of employment of all Personnel for the duration of the Contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

### **17.11 Cooperation with other Service Providers**

- (a) Subject to clause 17.11(b), the Contractor must cooperate with any third party service provider appointed by the Customer where this is necessary to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.
- (b) Nothing in clause 17.11(a) will require the Contractor to disclose its confidential information to a third party service provider.

### **17.12 Data Security**

The Contractor must:

- (a) comply with all Customer data security requirements in respect of access to and use of Customer data as specified in the Contract Details, in addition to any statutory obligation relevant to data security;

- (b) prohibit and prevent any Personnel who does not have the appropriate level of security clearance from gaining access to Customer data;
- (c) without limiting clause 17.12(b), use reasonable endeavours to prevent any unauthorised person from gaining access to Customer data; and
- (d) notify the Customer immediately, and comply with all directions of the Customer, if the Contractor becomes aware of any contravention of the Customer's data security requirements.

## **18. ACCESS AND CONFIDENTIALITY**

### **18.1 Access and Records**

- (a) Subject to the Contract Authority, the Customer or both (as applicable):
  - (i) giving reasonable prior notice to the Contractor; and
  - (ii) complying with all reasonable directions and procedures of the Contractor relating to occupational health, safety, security and confidentiality in connection with the Contractor's premises,
- (b) the Contractor must allow the Contract Authority, the Customer or both to:
  - (i) have reasonable access to any premises used or occupied by the Contractor in connection with the Goods and/or Services;
  - (ii) have reasonable access to all Records in the custody or control of the Contractor;
  - (iii) examine, audit, copy and use any Records in the custody or control of the Contractor; and
  - (iv) photograph, film or otherwise record anything done by the Contractor in supplying the Goods and/or Services, if reasonably required by the Contract Authority, the Customer or both.
- (c) The Contractor must keep accurate, complete and current written Records in respect of the Contract, including:
  - (i) if the Contract is for the supply of Goods:
    - (A) the type and quantity of the Goods supplied to the Customer;
    - (B) the date and time on which the Contractor supplied the Goods to the Customer; and
    - (C) the place to which the Contractor delivered the Goods to the Customer; and
  - (ii) if the Contract is for the supply of Services:
    - (A) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;



- (B) the time that the Contractor spent providing the Services on each day during the Term; and
  - (C) the name, job status and title of all Personnel who provided the Services or were responsible for supervising the provision of the Services.
- (d) The Contractor must comply with the directions of the Contract Authority and the Customer in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.
- (e) The Contractor must keep all Records for at least 7 years after:
  - (i) final payment under the Contract or after the expiry of the Term, whichever is later; or
  - (ii) termination of the Contract, if the Contract is terminated before the end of the Term.
- (f) The Contractor must do everything necessary to obtain any third party consents which are required to enable the Contract Authority and the Customer to have access to Records under this clause 18.1
- (g) This clause 18.1 survives expiration or termination of the Contract.

## 18.2 Contract Disclosure

- (a) The Contract Authority, the Customer or both may publicly disclose:
  - (i) the identity of the Contractor;
  - (ii) the value of the Contract; and
  - (iii) a general description of the Goods and/or Services supplied under the Contract.
- (b) The Contractor acknowledges that:
  - (i) the Contract Documents; and
  - (ii) information held or compiled by the Contract Authority, the Customer or the State of Western Australia in relation to the Contract or the Goods and/or Services supplied under the Contract,

are subject to the *Freedom of Information Act 1992*.

## 18.3 Confidentiality

The Contractor must keep the Contract Authority's and the Customer's Confidential Information confidential. The Contractor must not use or disclose to any person the Contract Authority's or the Customer's Confidential Information except:

- (a) where necessary for the purpose of supplying the Goods and/or Services; or

- (b) as authorised in writing by the Contract Authority or the Customer (as applicable); or
- (c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Contractor); or
- (d) as required by any law, judicial or parliamentary body or governmental agency; or
- (e) when required (and only to the extent required) to the Contractor's professional advisers, and the Contractor must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Contractor under this clause 18.3.

#### **18.4 Return of Confidential Information**

Except to the extent that the Contractor is required by law to retain any Records, the Contractor must return all Records containing the Contract Authority's and the Customer's Confidential Information immediately at the expiration or termination of the Contract.

#### **18.5 Publicity**

- (a) Unless:
  - (i) the Contract Authority or the Customer gives its prior written consent; or
  - (ii) the Contractor is required by law to do so,
 the Contractor must not:
  - (iii) use the Contract or the Contract Authority's or the Customer's name or logo; or
  - (iv) use the name or logo of any Public Authority specified in the Contract Documents for the purposes of this clause; or
  - (v) refer to the Contractor's association with the State of Western Australia or the Government of Western Australia which results from the Contract; or
  - (vi) make any statement concerning the Contract, in any publication, advertisement or media release.
- (b) The Customer may use the Contract and the Contractor's name and logo for reasonable promotional or publicity purposes at the Customer's discretion, but if the Customer uses the Contract or the Contractor's name or logo for such purposes, then the Customer must acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

#### **19. AUDITOR GENERAL**

- (a) The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of the Contract.

- (b) The Contractor must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning the Contract.

## **20. INTELLECTUAL PROPERTY RIGHTS OWNED BY INTELLECTUAL PROPERTY OWNER**

### **20.1 Application of this clause**

If the Contract Documents state that the Intellectual Property Rights in the Contract Material are to be owned by the Intellectual Property Owner, then this clause 20 forms part of the Contract.

### **20.2 Ownership of Intellectual Property Rights in Contract Material**

The Contractor automatically assigns the entire future Intellectual Property Rights in all Contract Material to the Intellectual Property Owner upon their creation.

### **20.3 Licence of Developed Software and other materials**

To the extent that the Intellectual Property Owner is the owner of the Developed Software or other items that have been developed for the Customer under the Contract, the Customer grants to the Contractor a revocable, royalty-free, non-exclusive licence to use the Developed Software or other items to the extent necessary to provide the Services. The licence will terminate on the expiration or termination of the Term.

### **20.4 Pre-existing Material - Licence**

- (a) Nothing in clause 20.2 affects the ownership of any Intellectual Property Rights in any Pre-existing Material.
- (b) The Contractor:
  - (i) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights (other than moral rights) in any Pre-existing Material grants, to the Intellectual Property Owner in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Pre-existing Material during the remainder of the duration of the Intellectual Property Rights in that Pre-existing Material; and
  - (ii) must, if a third party owns moral rights in any Pre-existing Material, obtain a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Pre-existing Material without regard to the third party's moral rights.

### **20.5 Warranty**

The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted under clause 20.4(b)(i);

- (b) no Intellectual Property Rights in any Contract Material is or will be owned by any third party unless:
  - (i) if the third party owns any Intellectual Property Rights (other than moral rights) in the Contract Material, the Contractor has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 20.4(b)(i); and
  - (ii) if the third party owns moral rights in the Contract Material, the Contractor has obtained a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Contract Material without regard to the third party's moral rights;
- (c) the Contract Material will not infringe the Intellectual Property Rights of any third party; and
- (d) all Personnel:
  - (i) who are employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any Contract Material vest in the Intellectual Property Owner on the creation of that Contract Material; and
  - (ii) who are not employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any work (as defined in the *Copyright Act*), product or other material created by the Personnel vest in the Contractor on the creation of that work, product or other material.

## **20.6 Intellectual Property Rights Indemnity**

The Contractor indemnifies and will keep indemnified the Contract Authority, the Customer, the Intellectual Property Owner, the State of Western Australia and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Contractor's failure to comply with this clause 20, including any breach of warranty under clause 20.5, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights of any third party by the Contractor.

## **20.7 Continuing obligation**

The obligations of the Contractor under this clause 20 are continuing obligations and survive expiration or termination of the Contract.

## **21. INTELLECTUAL PROPERTY RIGHTS OWNED BY CONTRACTOR**

### **21.1 Application of this clause**

If the Contract Documents state that the Intellectual Property Rights in the Contract Material are to be owned by the Contractor, then this clause 21 forms part of the Contract.

## **21.2 Ownership of Intellectual Property Rights in Contract Material**

The Contract Authority and the Customer acknowledge that the entire future Intellectual Property Rights in all Contract Material are to be owned by the Contractor upon their creation.

## **21.3 Licence of Intellectual Property Rights in Contract Material**

Without limiting clauses 10 and 14, the Contractor:

- (a) grants to the Customer an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Contract Material during the remainder of the duration of the Intellectual Property Rights in that Contract Material; and
- (b) must, if a third party owns moral rights in any Contract Material, obtain a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Contract Material without regard to the third party's moral rights.

## **21.4 Pre-existing Material - Licence**

- (a) Nothing in clause 21.2 affects the ownership of any Intellectual Property Rights in any Pre-existing Material.
- (b) The Contractor:
  - (i) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights (other than moral rights) in any Pre-existing Material grants, to the Intellectual Property Owner in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Pre-existing Material during the remainder of the duration of the Intellectual Property Rights in that Pre-existing Material; and
  - (ii) must, if a third party owns moral rights in any Pre-existing Material, obtain a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Pre-existing Material without regard to the third party's moral rights.

## **21.5 Warranty**

The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted under clause 21.4(b)(i);
- (b) no Intellectual Property Rights in any Contract Material is or will be owned by any third party unless:
  - (i) if the third party owns any Intellectual Property Rights (other than moral rights) in the Contract Material, the Contractor has obtained

a written licence from the third party owner to the same effect as the licence referred to in clause 21.4(b)(i); and

- (ii) if the third party owns moral rights in the Contract Material, the Contractor has obtained a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Contract Material without regard to the third party's moral rights;
- (c) the Contract Material will not infringe the Intellectual Property Rights of any third party; and
- (d) all Personnel:
  - (i) who are employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any Contract Material vest in the Intellectual Property Owner on the creation of that Contract Material; and
  - (ii) who are not employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any work (as defined in the Copyright Act), product or other material created by the Personnel vest in the Contractor on the creation of that work, product or other material.

## **21.6 Intellectual Property Rights Indemnity**

The Contractor indemnifies and will keep indemnified the Contract Authority, the Customer, the Intellectual Property Owner, the State of Western Australia and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Contractor's failure to comply with this clause 21, including any breach of warranty under clause 21.5, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights of any third party by the Contractor.

## **21.7 Continuing obligation**

The obligations of the Contractor under this clause 21 are continuing obligations and survive expiration or termination of the Contract.

## **22. INSURANCE**

### **22.1 Insurance Requirements**

- (a) The Contractor must take out and maintain insurance in relation to all liabilities of the Contractor under the Contract as specified in the Contract Documents, for the benefit of the parties named in the Contract Documents.
- (b) The insurance required under clause 22.1(a) must be on the terms, for the period of time and for the amounts specified in the Contract Documents.

## **22.2 Reputable and Solvent Insurer**

Any policy of insurance taken out by the Contractor under the Contract must be taken out with a reputable and solvent insurer acceptable to the Contract Authority which carries on business in Australia and is authorised by the Australian Prudential Regulation Authority.

## **22.3 Maintenance of Insurance**

The Contractor must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 22.1;
- (b) not vary or cancel any insurance required under clause 22.1 or as otherwise required under the Contract or allow it to lapse during the Term or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (c) without limiting clause 22.3(b), promptly reinstate any insurance required under clause 22.1 if it lapses or if cover is exhausted.

## **22.4 Evidence of Insurance**

The Contractor must give to the Contract Authority sufficient evidence of the insurance required under clause 22.1 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Contract Authority at any time.

## **22.5 Failure to Prove Insurance**

If the Contractor does not comply with clauses 22.1, 22.2, 22.3 and 22.4, then without limiting any other remedy available to the Contract Authority or the Customer, the Customer may withhold payment of any money due under the Contract to the Contractor until the Contractor has complied.

## **22.6 Incidents and claims**

- (a) If the Contract Authority or the Customer or the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 22.1, it must as soon as reasonably practicable notify the Contract Authority, the Customer and the Contractor (as applicable) in writing of that event or incident.
- (b) Failure to comply with this clause 22.6 will not invalidate or otherwise affect the rights of the Contract Authority or the Customer, or the obligations of the Contractor, under clause 3.2(e) ("Indemnities, Liabilities and Releases") of the Special Conditions of Contract.

## **22.7 Continuing obligation**

- (a) The Contractor must maintain the insurance required under clause 22.1 for the period specified in the Contract Documents.

- (b) If no period is specified in the Contract Documents, then:
  - (i) the insurances (except for the professional indemnity insurance) required under clause 22.1 are to be maintained throughout the Term; and
  - (ii) the professional indemnity insurance (if any) required under clause 22.1 is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Contract.
- (c) The obligations of the Contractor under this clause 22 are continuing obligations and survive expiration or termination of the Contract for so long as the obligations of the Contractor under this clause 22.7 continue.

#### **22.8 No Limitation of Other Liabilities**

Nothing in this clause 22 limits the Contractor's other liabilities under the Contract or restricts the Contractor from insuring for sums or risks greater than those required under the Contract.

### **23. TERMINATION**

#### **23.1 Termination**

The Contract Authority may terminate the Contract by notice to the Contractor at any time after an Event of Default occurs.

#### **23.2 Consequences of Expiration or Termination**

- (a) The expiration or termination of the Contract does not affect any rights, liabilities or obligations of the Contract Authority, the Customer or the Contractor as a result of anything occurring before the expiration or termination.
- (b) On expiration or termination of the Contract, the Contractor must:
  - (i) complete as soon as practicable, or cease to fulfil, any outstanding Order as the Customer directs.
  - (ii) deliver to the Customer all Records as required by the Customer as soon as practicable after the later of the completion of all outstanding Orders under clause 23.2(b)(i) or the date of expiration or termination of the Contract; and
  - (iii) vacate the Premises as soon as practicable after the later of the completion of all outstanding Orders under clause 23.2(b)(i) or the date of expiration or termination of the Contract.
- (c) Without limiting clause 23.2(b), on termination of the Contract, the Contractor must:
  - (i) allow the Customer to use at the Customer's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Premises if required in connection with the Contract, but the Customer must



pay the Contractor for any materials or consumables used by the Customer as a result of using that property; and

- (ii) in every other respect cooperate with the Customer as reasonably required by the Customer in order to minimise any loss, damage or inconvenience to the Customer resulting from the expiration or termination of the Contract.
- (d) The Customer must pay to the Contractor:
- (i) the Contract Price for Goods and/or Services supplied as a result of the Customer directing the completion of an outstanding Order under clause 23.2(b)(i); and
  - (ii) a reasonable price for the materials or consumables used under clause 23.2(c)(i).

### **23.3 Limited Liability**

Other than where the Contract Authority has repudiated the Contract or damages are not an appropriate remedy, if the Contract Authority breaches the Contract, then the remedies of the Contractor are limited to damages.

## **24. CONTRACT AUTHORITY'S REPRESENTATIVE AND CONTRACTOR'S REPRESENTATIVE**

### **24.1 Contract Authority's Representative**

- (a) Any person described in the Contract Documents as the Contract Authority's representative may act as the representative of the Contract Authority in relation to the Contract.
- (b) The Contractor agrees and acknowledges that the Contract Authority's representative may administer the Contract and any such administration by the Contract Authority's representative will be deemed to be administration by the Contract Authority for the purposes of the Contract.
- (c) The Contract Authority may by notice to the Contractor at any time:
  - (i) vary or terminate the appointment of the Contract Authority's representative; and
  - (ii) appoint any other person to act as the Contract Authority's representative in relation to the Contract.

### **24.2 Contractor's Representative**

- (a) Any person described in the Contract Documents as the Contractor's representative may act as the representative of the Contractor in relation to the Contract.
- (b) The Contract Authority and the Customer agree and acknowledge that the Contractor's representative may administer the Contract and any such administration by the Contractor's representative will be deemed to be administration by the Contractor for the purposes of the Contract.

- (c) The Contractor may by notice to the Contract Authority and the Customer at any time:
  - (i) vary or terminate the appointment of the Contractor's representative; and
  - (ii) appoint any other person to act as the Contractor's representative in relation to the Contract.

## 25. NOTICE

Each notice or other communication given under the Contract:

- (a) must be in writing;
- (b) may be given by an authorised officer or solicitor of the Contract Authority, the Customer or the Contractor (as applicable);
- (c) must be:
  - (i) hand delivered or sent by prepaid post to the address of the recipient specified in the Contract Documents; or
  - (ii) sent by facsimile to the facsimile number of the recipient specified in the Contract Documents;
- (d) subject to clause 25(e), is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the third Business Day after posting; and
  - (iii) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## 26. MISCELLANEOUS

### 26.1 Consent

- (a) Whenever the consent of the Contract Authority is required under the Contract:
  - (i) that consent may be given or withheld by the Contract Authority in the Contract Authority's absolute discretion and may be given subject to such conditions as the Contract Authority may determine;
  - (ii) the Contract Authority is not required to provide a reason or reasons for giving or refusing its consent; and
  - (iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 26.1(a)(i) will constitute a breach of a condition by the Contractor under the Contract.

- (b) Whenever the consent of the Customer is required under the Contract:
  - (i) that consent may be given or withheld by the Customer in the Customer's absolute discretion and may be given subject to such conditions as the Customer may determine;
  - (ii) the Customer is not required to provide a reason or reasons for giving or refusing its consent; and
  - (iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 26.1(b)(i) will constitute a breach of a condition by the Contractor under the Contract.

## 26.2 No Dealing or Subcontracting

- (a) Unless the Contractor obtains the Contract Authority's prior written consent, the Contractor must not:
  - (i) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Contract; or
  - (ii) subcontract any of its rights or obligations under the Contract.
- (b) If the Contractor is a corporation (other than a public company as defined in the *Corporations Act 2001 (Cth)*) the Contractor is taken to have assigned the Contract if:
  - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person, or
  - (ii) there is any change in control of the Contractor within the meaning of the *Corporations Act 2001 (Cth)*.
- (c) Any consent given by the Contract Authority under clause 26.2(a) to subcontract the Contract is taken to be subject to the following terms and conditions unless otherwise stated in the consent:
  - (i) the Contractor must include in any subcontract provisions consistent with clauses 18.3, 20, 21 and 22 and this clause 26.2, as if references in those clauses to the Contractor referred instead to the subcontractor;
  - (ii) the Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
  - (iii) the engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligation to perform the Contractor's obligations under the Contract; and

- (iv) the Contractor must, if requested by the Contract Authority, supply to the Contract Authority a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with clauses 26.2(c)(i) and 26.2(c)(ii).

### **26.3 Further Assurance**

The Contract Authority, the Customer and the Contractor must do everything reasonably necessary, including signing further documents, to give full effect to the Contract.

### **26.4 Relationships – No Partnership**

- (a) The Contractor is an independent contractor, and nothing in the Contract may be construed to make the Contractor a partner, agent, employee or joint venturer of the Contract Authority or the Customer.
- (b) The Contractor must not represent that the Contractor or any of its Personnel are the employees, agents, partners or joint venturers of the Contract Authority or the Customer.

### **26.5 Rights and Remedies**

The rights, powers and remedies in the Contract are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

### **26.6 Right of Set Off**

The Customer may set off or deduct any amount claimed by the Contract Authority or the Customer, including any amount claimed under the indemnity in clause 3.2(e) (“Indemnities, Liabilities and Releases”) of the Special Conditions of Contract, from any amount owing by the Customer to the Contractor on any account under the Contract or any other contract between the Contractor and the Contract Authority or the Customer.

### **26.7 Entire Agreement**

The Contract supersedes all prior negotiations, understandings and agreements between the Contract Authority, the Customer and the Contractor relating to the matters covered by the Contract and constitutes the full and complete agreement between the Contract Authority, the Customer and the Contractor relating to the matters covered by the Contract.

### **26.8 Variations**

- (a) The Customer and the Contractor may vary the Specifications, the Contract Details or any other technical requirements of the Customer by completing and signing a change order in the form specified in Appendix 3 to the Request.
- (b) Subject to clause 26.8(a), the Contract may only be varied in writing executed by the Contract Authority and the Contractor.

## **26.9 Waiver**

- (a) Any waiver by the Contract Authority, the Customer or the Contractor must be in writing and signed by the party waiving the right.
- (b) Any waiver by the Contract Authority, the Customer or the Contractor does not affect its rights in respect of any other breach of the Contract by another party.
- (c) Subject to clause 26.9(a), any failure by the Contract Authority, the Customer or the Contractor to enforce any right under the Contract will not be construed as a waiver of their respective rights under the Contract.

## **26.10 Costs**

- (a) Unless otherwise stated, the Contractor must comply with all obligations of the Contractor at the Contractor's cost.
- (b) The Contract Authority, the Customer and the Contractor must pay their own legal and other costs in connection with the preparation and signing of the Contract.
- (c) The Contractor must pay all stamp duty on the Contract.

## **26.11 Governing Law**

The Contract is governed by the laws of the State of Western Australia. The Contract Authority, the Customer and the Contractor irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.