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GITC3 Terms & Conditions

(Western Australia)

*(This document details the GITC3 terms and conditions
relating to the Customer and the Contractor)*

**Information Technology &
Telecommunications Contracts**

December 1999

Version 1.0

REVISION STATUS

(Terms & Conditions)

REVISION	DATE	REVISION DESCRIPTION	REFERENCE
1.	16/3/2000	Delete Heading for Clause 14.1.3 “GST Pricing” Insert Heading for Clause 14.1.3 “GST Pricing – Pre 1 July 2000 Contracts Only”	BB558/99V03 dated 16 March 2000
2.	16/6/2000	Delete Clauses 14.1.3 “GST Pricing – Pre 1 July 2000 Contracts Only”, 14.1.4 “GST Price Adjustment” and 14.1.5 “Invoices”. <i>(These Clauses will still be applicable for all contracts prior to 1 July 2000)</i> Insert new Clauses 14.1.3, 14.1.3.1, 14.1.3.2 and 14.1.3.3 for “Goods and Services Tax – Post 30 June 2000 Contracts Only”	BB558/99V03 dated 16 June 2000
3.	30/6/2000	Replace capital ‘C’ with a small ‘c’ for the word ‘Customers’ in the first sentence of Clause 10.6.1.	BB558/99V03 dated 30 June 2000

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User Guide

For a brief general explanation of these Terms & Conditions, and possible alternative conditions, please refer to the GITC3 User Guide.

Users should not attempt or agree to any alteration, amendment, addition or deletion without first obtaining expert advice from their legal and/or other relevant professional advisers.

The User Guide provides general guidelines only and does not purport to provide legal or any other professional, technical or specialised advice.

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GITC3 Terms and Conditions (Western Australia)

1 HOW TO MAKE A CONTRACT - CONTRACT DETAILS

- 1.1 An Agreement will not come into effect until the parties have agreed to the Contract Details.
- 1.2 The Customer will issue the Contract Details as agreed with the Contractor if the Customer wishes to obtain Services and/or Products.
- 1.3 The Contract Details form part of the Contract between the Contractor and the Customer.

2 COMMENCEMENT DATE AND PERIOD

- 2.1 The Contract is in force during the period specified in the Contract Details.

3 PRIORITY

- 3.1 The Contractor agrees that, in the event of inconsistency, the Head Agreement (if any) takes precedence, then the Contract Details, then these Terms and Conditions, then the Customer's Specifications, then the Schedules, then the Contractor's response to the request for tender or other invitation (if any), then the request for tender or other invitation (if any), and finally the manufacturer's or developer's published available Specifications.

4 SERVICES

- 4.1 The Customer and the Contractor will set out in the Contract Details:
 - 4.1.1 a statement of the work to be done, including any functional and performance requirements for the Service, and the times and locations at which the work must be done;
 - 4.1.2 the resources, Products, other Services and facilities required (including any Services and Products to be made available by the Customer) and the party that is to provide them; and
 - 4.1.3 a project plan as required, setting out how and when the Contractor will supply the Service.

The Customer may change the functional and performance requirements on giving the Contractor the period of notice set out in the Contract Details, and meeting any other Contract change requirements as agreed with the Contractor.

4.2 Methodology

The Contractor will:

- 4.2.1 manage the supply of the Service and manage all stages of it;
- 4.2.2 take timely and corrective action where the Service is not being performed in accordance with the Specifications and record the action taken in accordance with approved procedures stated in the Contract details; and

4.2.3 ensure the timely development and provision of corresponding documentation.

4.3 Performance measures

The Service will be performed in accordance with the performance measures specified in the Contract Details.

4.4 Measurements

The Contractor will not be liable for failing to comply with the performance measures where failure results from either:

4.4.1 the Customer not performing obligations as specified in the Contract Details which are necessary for the Contractor to achieve the performance measures; or

4.4.2 the Customer not implementing recommendations for improvement made by the Contractor which have been accepted in writing by the Customer as being necessary in order to achieve the performance measures.

5 TELECOMMUNICATIONS SERVICES

5.1 Where the Contract Details provide that the Contractor is to supply telecommunications Services, the Contractor will provide the Service, including any Hardware, Software and other Products needed to perform the Service, in accordance with the pricing stated in the Contract Details.

The Contractor must obtain all permissions, licences or powers necessary in order to provide a Service, within the time limited by the Contract Details.

5.2 The Contractor will ensure that the Services provided will continue to provide interoperability and interworking with all relevant:

5.2.1 current and future Customer telecommunications systems and networks;

5.2.2 other Customer service providers, switch vendors, network managers and Customer premises equipment providers; and

5.2.3 current and future telecommunications systems including both public and private networks.

5.3 The Contractor must not back bill for any period in excess of 3 months prior to the date when the Service was delivered.

6 MANAGED SERVICES INCLUDING FACILITIES MANAGEMENT

6.1 Where the Contract Details state that the Contractor is to provide a managed Service including facilities management and outsourcing, the Contractor shall meet the Specification for the Service during the term of the Contract.

6.1.1 That Specification will be deemed to include information that the Contractor could reasonably obtain during the due diligence phase of the pre-Contract period as to the nature of the Service and the work performed by the person who performed the Service during the 12 months prior to the date of the Contract, even where a particular aspect of the Service is not included in the Specification attached to the Contract. The Specification will also be read from time to time to reflect advances in technology and improvements in work practices for the delivery of similar Services to other customers of the Contractor.

6.1.2 Except in the case of a new Service, it is a precondition of the parties entering into the Contract that the Customer has given the Contractor sufficient

opportunity to conduct a due diligence examination as to how the Service has been delivered and to examine any Service or Product that is to be transferred to the Contractor prior to the date of the Contract.

6.2 Implementation

The Service will be delivered within the following management framework:

6.2.1 Transition in

The Contractor will as necessary:

6.2.1.1 acquire from the Customer any hardware, Software or other resources to be provided by the Customer including arranging for the transfer of any Licensed Software as set out in the transition plan attached to the Contract Details;

6.2.1.2 comply with obligations set out in the Contract Details regarding the transfer of third party contracts;

6.2.1.3 comply with the requirements of the transition plan concerning the Customer's Personnel, including the transfer of the Customer's Personnel;

6.2.1.4 deliver the Service from the date specified in the transition plan in the Contract Details;

6.2.1.5 use its best endeavours to ensure that all new software licences incorporate a term requiring that the licensor will consent to novation of the licence to a new service provider or to the Customer itself upon termination of the Service;

6.2.1.6 prepare a procedures manual that describes how the Contractor will manage the delivery of the Service including

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6.2.1.6.1 how the performance factors will be measured and met including procedures to identify and rectify failures in the quality of the Service;

6.2.1.6.2 how changes to the Service or method of delivery will be identified and met; and

6.2.1.6.3 meet staffing, reporting, planning, oversight activities and audit requirements normally undertaken at facilities that provide Services of the type the Contractor is to provide under the Contract.

6.2.2 The Customer will provide to the Contractor the accommodation, facilities and other benefits (including the transfer of licences held by the Customer and relevant third party contracts to the Contractor) as set out in the transition plan, but limited to the purposes of the Service only.

6.3 Service Delivery and Service Level Agreement

6.3.1 The Service will be performed in Western Australia and in accordance with the following requirements:

6.3.1.1 the Contractor shall implement the Service level agreement attached to the Contract Details and report in writing to the Customer at the regular intervals stated in the Contract Details as to how the Service is being delivered;

6.3.1.2 the Contractor shall report in writing to the Customer at the regular intervals stated in the Contract Details as to how the delivery of the Service is being adapted to meet developments in the Customer's business, and shall inform the Customer when the Specification for the Service needs to

be revised to take account of new functions performed by the Customer that are outside the scope of the Specification for the Service; and

6.3.1.3 none of the Customer's data will be taken outside Western Australia.

6.3.2 If the Contractor fails to meet performance levels and factors for the Service the Contractor will:

6.3.2.1 promptly investigate the underlying causes of the failure and do all things necessary to preserve any data indicating the cause of the failure;

6.3.2.2 promptly advise the Customer in writing of the status of remedial efforts being undertaken with respect to the underlying cause of the failure; and

6.3.2.3 remedy the failure as soon as possible;

but such action will not deprive the Customer of a right to pursue any other remedy under the Contract arising from the failure to meet the performance levels and factors.

6.4 Reversion/Transition Out

On termination of the Services, the Contractor will, if requested assist the Customer in transferring responsibility for providing the Service either to an alternative service provider or to the Customer itself and this will include making arrangements for:

6.4.1 the novation or assignment of Software licenses and any other relevant third party agreements from the Contractor to the alternative service provider or to the Customer itself;

6.4.2 offering to sell to the alternative service provider or the Customer itself at fair market value any equipment used by the Contractor in conjunction with the delivery of the Service;

6.4.3 the transfer of the Customer's data to the alternative service provider or to the Customer itself; and

6.4.4 access to all material, regardless of the manner of storage, held by the Contractor and produced by means of the Service.

7 DEVELOPED SOFTWARE

7.1 Where the Contractor is required to develop Software, including any modification to Licensed Software, the Customer will specify in the Contract Details:

7.1.1 the Specifications that the Developed Software is required to satisfy;

7.1.2 an outline of the project plan for the Software to achieve the Specifications;

7.1.3 the resources and facilities to be committed by the Customer; and

7.1.4 details relating to the ownership of the Intellectual Property Rights in the Developed Software if the Rights are not to be owned by the Customer under clause 20.

7.2 Methodology

7.2.1 The Contractor will:

- 7.2.1.1 manage the development of the Developed Software;
- 7.2.1.2 take timely corrective action where the Developed Software is not performing in accordance with the Specifications and will record the action taken in accordance with approved procedures stated in the Contract Details;
- 7.2.1.3 ensure that the development of the Software and the provision of corresponding documentation occur concurrently; and
- 7.2.1.4 ensure that the Developed Software may be modified by a competent developer without further reference to the Contractor.

7.3 Design Specification

The Contractor will prepare a design specification and submit it to the Customer for approval by the date set out in the Contract Details. The Contractor must ensure that the design specification gives a detailed technical explanation of how the functions in the Specifications will be met.

7.4 Approval of Design Specification

The Customer will promptly review the design specification when it is submitted by the Contractor. The Contractor will accommodate any requests for alteration made by the Customer in order to meet the Specifications.

The Customer will approve the design specification when satisfied that it is consistent with the Specifications.

The design specification will, when approved by the Customer, then become part of the Specification in the Contract.

7.5 Project Plan

The Contractor will prepare a project plan by the date set out in the Contract Details. The project plan will include a detailed technical explanation of how the functions in the Specifications will be met.

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7.6 Approval of Project Plan

The Customer will promptly review the project plan when it is submitted by the Contractor. The Contractor will accommodate any requests for alteration made by the Customer in order to meet the requirements of the Contract.

The Customer will approve the project plan when satisfied that it is consistent with the requirements of the Contract.

The project plan will, when approved by the Customer, then become part of the Specifications in the Contract.

7.7 Support Services

The Contractor will provide Services to support the Developed Software in the manner and for the period set out in the Contract Details.

Where the Customer owns the Developed Software or has the right to modify it, the Contractor will supply to the Customer all documentation that was developed in conjunction with the Software and will provide the Customer with the source code and other material required to support the Software and otherwise ensure that it may be modified by a competent Software developer without further reference to the Contractor.

7.8 Source Code

Where the Developed Software is not to be owned by the Customer, the Customer may require that the source code be put into escrow in accordance with the requirements for Licensed Software contained in clause 10.10.

8 HARDWARE MAINTENANCE

- 8.1 The Contract Details will contain a list of the Hardware to be maintained, describe the type of maintenance to be provided and the standard of maintenance, and will

provide details of the period of maintenance and when and where the maintenance is to be provided.

The Customer may change the category of maintenance Service required or other aspects provided for in the Contract Details, on giving the Contractor the period of notice set out in the Contract Details and agreeing to adjust the fee as set out in the Contract Details.

8.2 Preventative Maintenance

The Contractor may provide preventative maintenance to maintain the Products listed in the Contract Details in accordance with the performance requirements of the Specifications. This maintenance may include all the functions listed in clause 8.3.

8.3 Fault Repair

Upon being notified of a fault condition, the Contractor will promptly restore the Hardware to good working order and operating condition, including:

8.3.1 replacing parts if necessary, upon terms stated in the Contract Details;

8.3.2 undertaking preventative measures to minimise disruption to the Customer's operations during maintenance work as set out in the Contract Details;

8.3.3 keeping maintenance records in accordance with approved procedures stated in the Contract Details and making them available to the Customer within 2 days of a request; and

8.3.4 providing engineering changes and specifying to the Customer which of them it considers mandatory for installation.

The Customer will cooperate with the Contractor by providing access, storage and facilities as necessary to enable the Contractor to provide maintenance Service to the required standard.

8.4 Storage

The Customer consents to the Contractor storing manuals, tools and test equipment on site, and agrees not to use any such manuals, tools or test equipment without the Contractor's prior consent.

8.5 For the purpose of this clause 8, "Hardware" may consist wholly or partly of hardware and office machines which have not been supplied by the Contractor under this Contract or at all.

9 HARDWARE AND OTHER PRODUCTS

9.1.1 Title and Risk of Loss

The Contractor transfers title (except for leased items), risk of loss and responsibility for each item, unit or module of Hardware and other Products specified in the Contract Details to the Customer at midnight on the date of Acceptance.

9.1.2 Availability of Support

If provided for in the Contract Details, the Contractor will install, integrate and support and provide training, maintenance and parts for the Hardware and other Products supplied by it during the period set out in the Contract Details.

9.1.3 Warranty

The Contractor warrants that the Hardware and other Products will be newly manufactured and that it will comply with the Specifications for the warranty period stated in the Contract Details.

10 LICENSED SOFTWARE

10.1 Unless otherwise specified in the Contract Details, the Contractor grants the Customer a non-exclusive, transferable licence to use the Software specified in the Contract Details for the fees as set out, to:

- 10.1.1** copy the Licensed Software in machine readable form into a machine for processing, transmit it to a machine for processing and to perform processing, and make a back-up copy;
- 10.1.2** use the Licensed Software on back-up hardware while the specified hardware is temporarily inoperable, where the terms of the licence limits the use of Software to a particular processor;
- 10.1.3** assemble or compile a program on another machine if the specified processor and its associated units cannot assemble or compile the program;
- 10.1.4** use the documentation supplied by the Contractor with the Licensed Software to support the Customer's use of the Licensed Software;
- 10.1.5** make the number of copies of the Software set out in the Contract Details; and
- 10.1.6** transfer the licence to another agency within the Western Australian Government, on written notice to the Contractor and on that other agency consenting to the terms of the licence.

10.2 Period of Licence

Unless earlier terminated for default, the licence remains in effect from the date of supply of the Software for the period stated in the Contract Details or until terminated on no less than one month's notice by the Customer at any time, notwithstanding that a licence period is stated in the Contract Details and that the license period has not expired.

10.3 Protection and Security

The Customer will:

- 10.3.1** maintain records of the location of the copies of the Licensed Software as specified in the Contract Details;
- 10.3.2** not alter or remove the copyright statement on any of the copies;
- 10.3.3** ensure that, prior to disposing of any media, any Licensed Software contained on it has been erased or destroyed; and
- 10.3.4** where required by the Contractor in the Contract Details, ensure the confidentiality of Licensed Software.

10.4 Support Services

The Contractor will install, integrate, support and provide training and maintenance for the Licensed Software in the manner and for the period set out in the Contract Details.

10.5 Defect Support

Where the Customer has identified and reported a defect in the Licensed Software when it is used in accordance with the Contract, the Contractor will provide free of charge defect correction information or a work-around:

- 10.5.1** during the warranty period set out in the Contract Details at no charge; or

10.5.2 during the period prescribed in clause 16.2 (if longer than the warranty period), at no charge, and

10.5.3 beyond the warranty period, for the additional period at the charge set out in the Contract Details.

10.6 Maintenance, updates and new releases

10.6.1 The Contractor will provide any update, new release or other support at no additional cost where the Contractor makes them generally available at no additional cost to other customers. Where there is a cost, the charges and level of support to be provided will be as specified in the Contract Details.

10.6.2 The Contractor will continue to maintain older versions of Software for either 18 months from the date of availability of a new version or the duration of this Contract, whichever is shorter.

10.7 Change of Specified Hardware

Where the licence has restricted the use of the Software to a particular processor, the Customer may change the processor on which the Licensed Software is to be used, for a processor of substantially the same capacity and performance standards, at any time upon giving reasonable notice to the Contractor.

10.8 Reverse Engineering

The Customer may not reverse assemble or reverse compile the Licensed Software except to the extent specifically permitted by the *Copyright Act 1968 (Cth)*.

10.9 Termination of licence

Within 30 days after termination of the licence, the Customer will destroy or return to the Contractor all copies of the Licensed Software and documentation, except that the Customer may retain a copy of the Licensed Software for archival purposes only.

10.10 Escrow of source code

10.10.1 The Contractor shall, if required by the Customer in the Contract Details, place a copy of the current source code of an item of Software nominated by the Customer (“the Escrow Software”) into escrow to be held by an escrow agent for the purpose of enabling access by a Customer to the Escrow Software in the event that the Contractor is unable or unwilling to support it.

10.10.2 The Contractor shall arrange for an escrow agent approved by the Customer to make an escrow agreement substantially in the form of the escrow agreement attached to the Contract by which a copy of the current source code of the Escrow Software and its associated documentation is to be held in escrow for the period during which a Customer has a licence to use the Escrow Software.

10.10.3 The costs of the escrow arrangement are to be borne by the Contractor unless otherwise agreed between the parties in writing.

10.10.4 The Contractor shall consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent.

11 LEASING AND FINANCING

11.1 Where the parties agree that a Product will be leased through a third party, the terms of the lease to the extent that they affect the Contractor and the Customer, will be specified in the Contract Details, including details of the Product, its value for buyout purposes, what will happen at the end of the lease, upgrades of Products, trade-ins and their values.

11.2 The following provisions apply where a Product is placed into the Customer's possession and control by the Contractor otherwise than pursuant to a sale or licence (i.e. on a leasing basis):

11.2.1

- (a) The Customer is not responsible for any loss of or damage to the Product so long as it uses reasonable skill and care in its use of the Product.
- (b) The Customer must only use the Product for the purpose for which it was provided.
- (c) The Contractor shall keep the Product well maintained and in a good state of repair but the Customer is responsible for any maintenance or repairs arising out of its failure to comply with the obligation of care in this clause 11.2.
- (d) The Customer may attach to the Product the items of equipment stated in the Contract Details.

11.2.2 The Contractor must install, put the Product in good working order and have it accepted by the Customer, and the Customer will not be obliged to pay leasing charges until the Product has been accepted.

11.2.3 The Customer must not part with possession of or give a third party an interest in the Product without the consent of the Lessor.

11.2.4 Quiet Possession

The Contractor shall ensure that the Customer has quiet possession of the Product for the duration of the lease.

11.2.5 Access

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The Customer shall allow the Contractor, at times agreed between the parties, to enter the place where the Product is located to:

11.2.5.1 inspect its condition; or

11.2.5.2 check whether the terms of this Contract and the Lease are being complied with; or

11.2.5.3 exercise any of the Contractor's rights under the Contract.

11.2.6 Leasing charges.

The Customer shall pay leasing charges as calculated in accordance with the Contract Details.

The Customer agrees that if the Product is not returned at the end of the term of the Lease, it remains under a continuing obligation to pay leasing charges and comply with the terms and conditions of the Lease until the Product is returned.

11.2.7 Loss or Damage

11.2.7.1 The Customer shall notify the Contractor, in writing, immediately if the Product is stolen, lost, destroyed or damaged to such an extent that repair is impractical or uneconomic.

11.2.7.2 Upon receipt of the Customer's notification under clause 11.2.7.1, the Contractor will replace the Product with a Product of identical or equivalent functionality, but if this is not possible, the Contract will terminate. The Customer incurs no liability to the Contractor under this clause 11.2.7 unless the loss or damage of the Product arose out of a failure to comply with its obligation of care under clause 11.2.

11.2.8 Return of the Product

On the date specified as the end of the term in the Contract Details, the Customer shall have the Product (in the same condition as it was supplied excluding fair wear and tear) ready to be returned to the Contractor.

12 GENERAL RESPONSIBILITIES OF THE CONTRACTOR AND CUSTOMER

The parties will:

- 12.1** cooperate fully with each other to ensure timely progress and fulfilment of the Contract;
- 12.2** hold meetings (including for planning, review, and issue resolution) as stated in the Contract Details and otherwise as necessary and report progress to one another on a regular basis as stated in the Contract Details so as to keep each other fully informed; and
- 12.3** perform their obligations and responsibilities under the Contract according to the Contract Details, Specifications and plans, by the dates required and in this respect time shall be of the essence of the Contract.

13 SPECIFIC RESPONSIBILITIES OF THE CONTRACTOR

13.1 Supply

The Contractor will supply the Services and/or Products, to the standards or service levels as set out in the Contract Details

13.2 Facilities and Assistance

To enable timely progress and completion of the Contract the Contractor will:

- 13.2.1** establish and maintain all necessary facilities for the effective conduct and management of its responsibilities and, without limiting the foregoing, those facilities listed in the Contract Details record changes and developments in accordance with approved procedures stated in the Contract Details, and make this record available to the Customer on request;
- 13.2.2** provide all reasonable assistance and reports required by the Customer; and
- 13.2.3** comply with all reasonable directions given by the Customer.

13.3 Sourcing from Government Contracts

The Contractor will act as the Customer's agent to obtain Services and/or Products from a third party as specified in the Contract Details.

13.4 Documentation

The Contractor will supply the documentation, publications and aids it usually makes available to its customers generally without additional charge for the Service and/or Product specified in the Contract Details. Without limiting the foregoing, the Contractor will also supply the documentation which is specified in the Contract Details in the manner and at the times stated in the Contract Details. The Contractor must ensure that all documentation supplied to the Customer will be:

- 13.4.1** of a reasonable standard in terms of presentation, accuracy and scope;
- 13.4.2** the most current and up to date version available; and
- 13.4.3** in English with all key terms, words and symbols adequately defined or explained.

If any documentation is revised or replaced for whatever reason, the Contractor will supply the Customer with revisions or replacements at no additional cost to the Customer if it also supplies them at no additional cost to its other customers.

13.5 Training

The Contractor will provide the training in the manner, at the times, to the extent, and at the price specified in the Contract Details.

13.6 Invoices

After Acceptance of the Service and/or Product by the Customer, or as otherwise specified in the Contract Details, the Contractor will promptly and correctly prepare and deliver an invoice setting out the amounts then properly due to the Contractor by the Customer.

13.7 Preparation of invoices

To prepare the invoice correctly, the Contractor will ensure it:

13.7.1 contains sufficient detail to enable the Customer to identify the Service and/or Product concerned, when it was supplied and/or accepted, and the amount payable in respect of it; and

13.7.2 is addressed in accordance with the Customer's requirements as stated in the Contract Details or otherwise advised to the Contractor in writing.

13.8 Site Specification

Where required, the Contractor will provide to the Customer in the Contract Details full details of the environmental requirements of a Service and/or Product it is supplying, to permit the Customer to have the site prepared accordingly.

13.9 Insurance Requirements

13.9.1 The Contractor will arrange and maintain with a reputable insurance company for the term of the Contract:

(a) a broad form public liability policy of insurance to the value of at least \$5 million in respect of each claim; and

(b) additional insurance as specified in the Contract Details.

13.9.2 The Contractor will, on request, produce to the Customer satisfactory evidence that the Contractor has effected and renewed a particular insurance policy.

13.9.3 The Contractor must maintain professional indemnity insurance required under the Contract in force for at least six (6) years of the expiration of the term of the Contract.

13.10 Performance Guarantee

13.10.1 If stated in the Contract Details, the Contractor will provide a performance guarantee, substantially in the form attached to this Contract. The guarantee may be sought from individual directors of the Contractor or from an approved third party, as stated in the Contract Details.

13.10.2 Except where the Customer wishes to secure a prepayment to the Contractor, the Customer shall not require any further security from the Contractor or any person associated with the Contractor, but the Customer may request the Contract Authority to change any security in place in accordance with the Head Agreement (if any).

13.11 Customer procedures and Occupational Health and Safety

13.11.1 The Contractor shall, when using the Customer's premises, comply with all reasonable directions and Customer procedures relating to occupational health (including the Customer's smoke free work place policy), safety and security in effect at those premises, as notified by the Customer or as might reasonably be inferred from the use to which the premises or facilities are being put.

13.11.2 The Contractor must when working on the Customer's premises comply with all applicable Commonwealth, State and Local government laws, regulations and procedures relating to occupational health and safety as if those provisions applied to the Contractor.

13.12 Auditor General's Office

The Contractor shall promptly give the Auditor General's Office or other auditor appointed by the Customer, the assistance they reasonably require in conducting any audits, including full access at all reasonable times and on reasonable notice to all premises, equipment and Software used in connection with the Service or Product, subject always to the provisions of clause 19.

13.13 Hazards

The Contractor must list in the Contract Details all or any hazardous conditions or attributes of the Product which may cause injury or damage to persons or property or the environment. The Contractor must fix the hazard free of charge within the time stated in the Contract Details.

13.14 Financial Undertaking

If stated in the Contract Details, the Contractor will provide security in the form of an unconditional and irrevocable financial undertaking from a guarantor approved in writing by the Customer. The financial undertaking shall be substantially in the form attached to this Contract.

14 SPECIFIC RESPONSIBILITIES OF CUSTOMER

14.1 Payment

The Customer will pay the amounts to be paid by it as specified in the Contract Details, within 30 days of the date of Acceptance or invoice, whichever is later.

14.1.1 Where the Customer disputes an amount in an invoice, pending resolution of the dispute, the Customer will pay any part of the amount invoiced not in dispute.

14.1.2 The Contractor may by notice to the Customer vary the Contract price in respect of any variation in the duties or taxes (except income tax) imposed in Australia and required to be paid by the Contractor which were not in existence at the date of the Contract, unless the Customer is exempt from the duty or tax and produces the relevant documentation to the Contractor.

14.1.3 Goods and Services Tax – Post 30 June 2000 Contracts Only

14.1.3.1 For the purposes of this clause 14.1.3:

- (a)** "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b)** "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing

with GST applying for the time being in the State of Western Australia.

- (c) "Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act.

14.1.3.2 Where the supply of the Products or Services or any part thereof is a taxable supply under the GST Act:

- (a) The Contract price shall be inclusive of all applicable GST at the rate in force for the time being;
- (b) The obligation of the Customer to pay the Contract price or any instalment thereof and the right of the Contractor to recover the Contract price or any instalment thereof shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Customer of a tax invoice in respect of the Contract price, or the relevant instalment thereof, which complies in all respects with the GST Act; and
- (c) This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.

14.1.3.3 The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Products and Services under the Contract.

14.2 Resources

The Customer will provide the resources and facilities it has agreed to provide as set out in the Contract Details at the cost stated in the Contract Details.

14.3 Site

The Customer will prepare the site to permit installation of the Product and/or performance of the Service.

14.4 Facilities

So far as the Customer is able to determine, any resources and facilities (including items of hardware and software) it makes available to the Contractor are suitable for enabling the Contractor to fulfil its obligations under the Contract.

14.5 Access

The Customer will provide the Contractor with access to the Customer's premises on dates stated in the Contract Details to the extent necessary to enable the Contractor to fulfil its obligations. Where access is temporarily denied or suspended, the Customer will permit a resumption of access as soon as practicable and the Contractor shall not be responsible for any delay caused by such denial or suspension.

15 ACCEPTANCE

15.1 Date of Acceptance

The Customer will accept a Service and/or Product on the date the Customer agrees the tests have been successfully completed in accordance with the requirements for Acceptance testing as set out in the Contract Details.

Where the Contract Details state that Acceptance tests are not required, the Service and/or Product will be deemed to have been accepted where the Contractor has complied with the Specifications and the Contract Details, and delivered and/or installed the Products and/or Service in accordance with the Contract.

15.2 Acceptance testing

The Customer will specify in the Contract Details the Services and/or Products to be tested before it will accept them, and what tests it requires.

If the tests are not stated in the Contract Details, the Customer and the Contractor must agree on the details of the testing including the content of the test, the time frame within which it is to be conducted, the method for conducting it and the criteria in sufficient time for the test to be performed before the Service and/or Product is due to be delivered and/or installed in accordance with the Contract. In default of agreement within a reasonable time, the Customer may specify reasonable tests, including content, time frame, method and acceptance criteria.

15.3 Tests Requirements

To the extent stated in the Contract Details or 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.

15.4 Delays

Should either party cause a delay in performing the tests for whatever reason, the other party will grant an extension that is reasonable in the circumstances. The party causing the delay will be responsible for the reasonable additional costs incurred by the other.

15.5 Certificate of Acceptance

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

15.6 Failure

If a Service and/or Product fails an Acceptance test, the Customer may:

15.6.1 require further tests, at the Contractor's expense;

15.6.2 accept the Service and/or Product, on the Contractor agreeing to deliver a work-around within a set time frame; or

15.6.3 reject the Service and/or Product and require its removal.

The issuing of a Certificate of Acceptance does not constitute a waiver of any rights of the Customer in relation to pre-existing defects.

15.7 Additional Tests

The Customer may at any time during the Acceptance testing period, require the Contractor to carry out additional or different tests which are reasonably required to establish whether or not the Service and/or Product complies with the Specifications. The Customer will pay the costs of any additional or different test except where the test was reasonably required to establish that the Service or Product did not comply with the Specifications. In the latter situation, the Contractor will pay the costs.

16 WARRANTIES – CONTRACTOR

16.1 General

The Contractor warrants that:

16.1.1 during the warranty period, each Service and/or Product conforms to the Specifications;

16.1.2 at the time ownership of a Product passes to the Customer, the Product is free from any charge or encumbrance;

16.1.3 each Hardware Product, at the time of Acceptance, is newly manufactured and is free from defects in materials and workmanship;

16.1.4 it has the right to grant all the licences stated in the Contract Details; and

16.1.5 the Service and/or Product it supplies will not infringe the Intellectual Property Rights of a third party.

16.2 Warranty Period

Without limiting any other rights of the Customer, the Contractor will promptly rectify any error or defect in a Service and/or Product at no charge if it becomes aware of the error or defect:

16.2.1 during the warranty period set out in the Contract Details: or

16.2.2 during the first 12 months after Acceptance:

whichever is longer.

16.3 Standards and Year 2000 and Leap Year Compliance

16.3.1 A Service and /or Product supplied by the Contractor will comply with the applicable Australian standard, or if there is no such standard, the applicable International standard (if any).

16.3.2 All Services and /or Products supplied under the Contract will be Year 2000 Compliant.

“Year 2000 Compliant” means, in relation to a Product or Service, that neither performance nor functionality of the Product or Service is affected by dates prior to, during or after the year 2000. In particular, but without limiting the foregoing

Superceeded

16.3.2.1 no value for the current date will cause any interruption in the operation of the Product or Service;

16.3.2.2 date based functionality must behave consistently and correctly for all dates, and the change to or from any date, prior to, during or after the year 2000;

16.3.2.3 in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or interfacing rules;

16.3.2.4 the year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366; and

16.3.2.5 the Product must be able to interface with and continue to operate when interfaced with any related products, whether that related product references years before and after the end of 1999 by two or four digits.

16.4 Third Party Warranties

Where the Contractor provides Products supplied by a third party, the Contractor assigns to the Customer, to the extent permitted by law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the Contractor from the warranties to the Customer undertaken by the Contractor in relation to all Services and/or Products supplied by the Contractor.

16.5 This clause 16 will survive the termination of the Contract.

17 WARRANTIES – CUSTOMER

17.1 General

The Customer warrants that:

17.1.1 any facilities (including items of hardware and Software) it makes available to the Contractor comply with any standards and Specifications set out in the Contract Details; and

17.1.2 when necessary, it will maintain those facilities specified in the Contract Details.

17.2 Facility to meet required standards

Should a facility which is provided by the Customer fail to meet, or fail to continue to meet the requirements specified in the Contract Details without limiting any other rights of the Contractor, the Customer will promptly do whatever is reasonably necessary to ensure that the facility meets the requirements.

18 PERSONNEL

18.1 Provide Personnel

The Contractor and the Customer will each make Personnel available for the fulfilment of the Contract for the period specified in the Contract Details.

If no Personnel are specified, the parties will provide the Personnel necessary to enable each of them to fulfil their respective obligations under the Contract.

Each party will ensure that the Personnel it provides have the requisite skills and experience.

18.2 Customer's premises

The Contractor will:

18.2.1 provide information concerning the Personnel it proposes to bring on to the Customer's premises as reasonably requested by the Customer;

18.2.2 provide suitable replacement Personnel should the Customer, on reasonable grounds, deny access to anyone or request removal of a person permitted access;

18.2.3 ensure that its Personnel, when on the Customer's premises or when accessing the Customer's facilities and information, comply, as necessary, with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security (including submitting to security checks as required). A reasonable requirement includes any legal requirement imposed on the Customer; and

18.2.4 comply with the Customer's limitations on access to its premises as stated in the Contract Details.

18.3 Specified individuals

Where particular Personnel are named in the Contract Details, the Contractor will provide those Personnel to fulfil its obligations under the Contract. If a named individual is unavailable at any time, the Contractor will promptly advise the Customer and propose a substitute. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to conditions. Should the Contractor fail to advise the Customer of the unavailability of specified personnel or fail to provide an acceptable substitute, the Customer may consider the Contractor to be in default and the provisions of clause 27 shall apply.

19 NON-DISCLOSURE

19.1 Information

Neither the Contractor nor the Customer will, without the written approval of the other (which will not be withheld unreasonably), make public or disclose the information of the other which is confidential. Confidential information includes information marked as confidential, and information which by its nature is confidential, which is known to be confidential or which the party ought to have known was confidential, or which is listed as confidential in the Contract Details.

This restriction on disclosing information does not apply to information which was already in a party's possession prior to disclosure to that party by the other party, without any breach of an obligation of confidence, nor does this restriction apply to information which is legally required to be disclosed.

19.2 Employees

Each party will ensure that its employees, agents or subcontractors engaged to perform work under this Contract do not disclose confidential information of the other party, obtained during the course of performing such work. Either Party may at any time require the other Party to arrange for its employees, agents or sub-contractors engaged in work under this Contract to execute a Deed of Confidentiality relating to the non-disclosure of confidential information in the form annexed to the Contract.

19.3 Media

Neither party will disclose information regarding this Contract or work performed under it to the news media without the written consent of the other party.

19.4 This clause will survive the termination of the Contract.

20 INTELLECTUAL PROPERTY RIGHTS

20.1 Developed Software and other items produced under the Contract.

20.1.1 Unless the parties provide otherwise in the Contract Details, all Intellectual Property Rights in Developed Software and any other items that have been specifically developed or produced for the Customer by or on behalf of the Contractor under the Contract or by or on behalf of any subcontractor are assigned to the Customer.

The Contractor will supply all documentation that was developed in conjunction with the Developed Software and those other items to the Customer and will provide the Customer with the source code or other material required to support the Developed Software and those other items.

Nothing in this clause will affect the ownership of any pre-existing intellectual property (as hereinafter defined).

20.1.2 When the Customer agrees in the Contract Details that the Intellectual Property Rights to the Developed Software and those other items produced under the Contract will remain the property of the Contractor, a subcontractor or other third party, the Contractor grants and shall ensure that relevant subcontractors and other third parties grant to the Customer a non-exclusive non-transferable irrevocable licence to use, reproduce and adapt for the Customer's own purposes and use the Developed Software and those other items.

20.2 Pre-existing Intellectual Property

The Contract does not affect the Intellectual Property Rights in items that existed prior to the date of the Contract ("pre-existing intellectual property"), but the

Contractor hereby grants and shall ensure that relevant subcontractors and other third parties grant to the Customer, a non-exclusive, non-transferable licence:

20.2.1 to use, reproduce and adapt the pre-existing intellectual property for its own purposes; and

20.2.2 where specified in the Contract Details, to perform any other act with respect to the pre-existing intellectual property and to manufacture, sell, hire or otherwise exploit a Product or process, or to provide a Service, or to licence any third party to do any of those things in respect of the pre-existing intellectual property but only as part of the Intellectual Property developed under the Contract.

20.3 Licensed Software

The Contractor retains title to Intellectual Property Rights in the Licensed Software, and grants to the Customer the rights contained in the licence set out in these Terms and Conditions.

20.4 The Contractor warrants that:

20.4.1 it has and that the relevant subcontractors and other third parties have the right to grant the licences granted by it or them in this clause 20; and

20.4.2 the Services supplied or the intellectual property items provided to the Customer pursuant to the Contract by the Contractor or any subcontractor or other third party will not infringe the intellectual property rights of a third party.

20.5 The Contractor at its own cost must do all things reasonably requested by the Customer including executing documents, to enable the Customer to further assure its rights as set out under this clause.

20.6 This clause will survive the termination of the Contract.

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21 INDEMNITY

21.1 The Contractor will indemnify the Customer including its employees, agents or subcontractors (“those indemnified”) from and against all loss, injury, damage or destruction to or of persons or property (including death and reasonable legal costs and expenses) and all liability that has been incurred by those indemnified and all claims made or threatened by a third party where that loss, injury, damage, destruction, claim or liability was caused by a wilful, unlawful or negligent act, default or omission, in connection with the Contract, the Product or the Services, by the Contractor, its employees, agents or sub-contractors.

The Contractor will also indemnify those indemnified against a loss, claim or liability as aforesaid in circumstances where it is alleged that a Service or Product or intellectual property item provided by the Contractor infringes the Intellectual Property Rights of a third party.

Where the Customer wishes to rely on this indemnity it must:

21.1.1 give the Contractor written notice as soon as practicable;

21.1.2 permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and

21.1.3 provide all reasonable assistance to the Contractor in the conduct of negotiations or litigation.

21.2 Continued Use or Replacement

If a claim of infringement is made, or threatened, by a third party, the Customer will allow the Contractor, at the Contractor's expense, to:

21.2.1 obtain for the Customer the right to continued use of the Product; or

21.2.2 replace or modify the Product so that the alleged infringement ceases but the Product continues to provide the Customer with the same function and performance.

21.3 The Customer will indemnify the Contractor (including its employees, agents or sub-contractors) against a loss or liability that has been reasonably incurred by the Contractor as the result of a claim made by a third party where that loss or liability was caused by a wilful, unlawful or negligent act or omission, in connection with the Contract, by the Customer, its employees, agents or sub-contractors.

21.4 Where the Contractor wishes to rely on this indemnity it must:

21.4.1 give to the Customer written notice as soon as practicable;

21.4.2 permit the Customer, at the Customer's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and

21.4.3 provide all reasonable assistance to the Customer.

21.5 This clause will survive the termination of the Contract

22 PROBLEM RESOLUTION

22.1 Objective

The Contractor and the Customer must use their best endeavours to resolve any problem that arises by negotiating with each other. Neither party will resort to legal proceedings or terminate the Contract until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

22.2 Notification

If a problem arises (including a breach or an alleged breach) which is not resolved at the operational level, or is sufficiently serious that it cannot be resolved at the operational level, the party concerned about the problem must promptly notify the other party about it. Management representatives of each of the parties will endeavour to agree on a resolution within five (5) working days of notification of the problem.

22.3 Mediation

Should the management representatives fail to reach a solution within five (5) working days of notification of the problem, the parties may seek to settle the matter by referring the issue to the Contract Authority (if any) for mediation. If mediation through the Contract Authority fails, either party may refer the issue to an external mediator.

22.4 Arbitration

If mediation fails, or either party states that it does not wish to attempt settlement through a mediator, the parties may agree to arbitration. Where a party elects to proceed by arbitration, the parties must conduct the arbitration under the provisions of the Commercial Arbitration Act, 1985. The parties may state in advance in the Contract Details their agreement to arbitrate rather than litigate and the name of their referred arbitrator.

22.5 Legal Proceedings

If the parties do not agree to arbitrate, either party may then commence legal

proceedings against the other as it sees fit. If the parties have agreed to arbitrate, legal proceedings must not be commenced prior to completion of the arbitration.

22.6 Continued Performance

Unless prevented by the nature of the dispute, the parties will continue to perform their obligations under this Contract while attempts are made to resolve the dispute.

22.7 Availability and Rebates

Where the Customer believes that the Contractor has continually not met the performance standards applicable to the services under the Contract, the Customer may require the Contractor to grant an appropriate reduction in the fee for the Services.

If the reduction in the fee does not cover the loss or damage suffered by the Customer, the Customer may claim the balance of the loss or damage from the Contractor.

If the Contractor fails to supply the Service or Products in accordance with the Contract (this includes delay in Acceptance), the Contract price will be reduced by the amount of the loss or damage suffered by the Customer because of that failure. The parties may specify in the Contract Details the amount of rebate applicable to specific defaults.

23 LIABILITY

23.1 Liability

The liability of either party for breach of the Contract or for any other common law or statutory cause of action arising out of the operation of the Contract, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

23.2 Limitation

The Customer and the Contractor have agreed to limit the liability of either or both of the parties arising under clause 23.1 to an amount specified in the Contract Details, for each single occurrence or a series of related occurrences arising from a single cause of action or in the aggregate.

This limitation does not apply to liability for:

23.2.1 personal injury, including sickness and death;

23.2.2 loss of, or damage to, tangible property;

23.2.3 an indemnity; or

23.2.4 infringement of Intellectual Property Rights.

23.3 In the event the parties negotiate a reduction in the cost of a Product or Service due to a repeated failure of the Product or Service to meet the performance standards, the Customer retains a right to pursue a claim for damages (subject to any limitation imposed pursuant to clause 23.2) in respect of net loss or damage suffered.

23.4 The Customer has a right to offset any proven entitlement to damages against the price applicable to Services or Products subsequently supplied under this Contract.

23.5 This clause will survive the termination of the Contract

24 APPROVAL, CONSENT OR AGREEMENT

24.1 Where the Contractor has fulfilled all its obligations under the Contract and the Customer unreasonably refuses to grant any approval (including but not limited to the issuing a certificate of Acceptance) stipulated in the Contract Details, the Contractor may terminate the Contract, subject to clause 22.

24.2 The Customer will pay for work performed in accordance with the Contract up to the point where the approval should reasonably have been granted and shall further be liable in respect of all additional costs reasonably incurred by the Contractor in seeking that approval. Upon payment in these circumstances, the Customer will acquire ownership of any Products which are the subject of the payment and ownership of Intellectual Property Rights will be determined in accordance with the provisions of this Contract.

25 COMMUNICATION

25.1 Electronic Commerce

Where agreed in the Contract Details, the Customer and the Contractor will co-operate fully in doing business by electronic commerce.

25.2 Notices

A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits it by electronic mail/facsimile to the address of the relevant officer, marked to their attention.

Each party shall advise the other of any change in the address or the identity of the relevant officer.

25.3 Deemed Receipt

A notice or other communication is deemed to be received:

25.3.1 if sent by post, at the time it would have been delivered in the ordinary course of post to the address to which it was sent; or

25.3.2 if sent electronically, at the time the machine on which it has been sent records that it has been transmitted satisfactorily; or

25.3.3 if delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

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26 GENERAL

26.1 Subcontracting

26.1.1 Subject to the approval of the Customer, which shall not be unreasonably withheld, the Contractor may subcontract the work to be performed under the Contract. The Contractor however is in no way relieved by the subcontract from performing all its obligations under the Contract

26.1.2 The Contractor will ensure that the subcontractor is aware of the provisions of the Contract relevant to the part of the work to be performed by the subcontractor. The Contractor shall insert in every subcontract a provision requiring the subcontractor and its Personnel to observe, perform and comply with all the provisions of the Contract as may be relevant and applicable to the work, goods or services provided or to be provided by the subcontractor, including (without limitation) clause 20, as if references therein to the Contractor referred instead to the subcontractor.

26.1.3 The Contractor shall, if requested, supply to the Customer a complete copy of the subcontract made by the Contractor and the subcontractor.

26.1.4 The Contractor shall indemnify and keep indemnified the Customer from and against all losses, injuries, damages, liabilities, costs and expenses whatsoever and howsoever incurred or sustained by the Customer and all actions, suits, claims, demands and proceedings brought, instituted or made by any person against the Customer arising out of, in respect of or in consequence of a breach, default or non-compliance by any subcontractor of the Contractor of, under or with any provision of this Contract.

26.1.5 The Customer has the power to reasonably request withdrawal and replacement of any subcontractor at any time, and the Contractor must comply promptly with that request. The parties may list approved subcontractors in the Contract Details.

26.1.6 Nothing in this clause shall limit, restrict or exclude or affect any other right or remedy of the Customer or the interpretation or application of any other provision of this Contract.

26.2 Entire Agreement

The Head Agreement (if any), these Terms and Conditions, the Contractor's response to tender or other invitation, the request for tender or other invitation and the manufacturer's or developer's publicly available Specifications, the Contract Details and any material attached to the Contract Details constitute the entire agreement of the parties about the subject matter of the Contract, and no written or oral agreement, arrangement or understanding made or entered into prior to the execution of the Contract may in any way be read or incorporated into the Contract.

26.3 Novation and Assignment

26.3.1 Neither party shall novate or assign the Contract without the prior written consent of the other party.

26.3.2 The Customer shall not be obliged to consent to any novation. Where the Contractor proposes to enter into an arrangement which will require novation of the Contract, it shall consult with the Customer within a reasonable period prior to the proposed novation and provide the Customer with all the information necessary to enable the Customer to make an informed decision on whether or not to consent.

26.4 Circumstances beyond Control

26.4.1 A party is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than the lack of funds for whatever reason).

26.4.2 When these circumstances arise, the affected party will give notice of them to the other as soon as possible, identifying the effect they will have on its performance, and will make all reasonable efforts to minimise the effects.

26.4.3 If non-performance or diminished performance by the affected party continues for a period which the other party regards as commercially unreasonable, the other party may terminate the Contract. If the Contract is terminated in these circumstances, each party will bear its own costs and neither party will incur further liability to the other.

26.5 Waiver

A waiver by either party of a breach will not be regarded as a waiver of any other breach. A failure to enforce a provision or Acceptance of less than the required Service and/or Product by a party will not be interpreted as a waiver.

26.6 Applicable Law

The Contract will be governed by, and construed in accordance with, the laws for the time being in force in the State of Western Australia. The parties subject themselves to the jurisdiction of the courts of that State.

26.7 Conflict of Interest

Each party warrants to the other that, to the best of its knowledge, at the date of execution of the Contract no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. Each party will promptly notify the other in writing if a conflict of interest arises during the course of the Contract or

is likely to arise. Should a conflict arise which significantly affects the interests of the other party, that conflict may be treated by the other party as a breach of the Contract in accordance with clause 27.

26.8 Variation

The Contract may only be varied in writing and with the agreement of both parties. The parties may agree to use the form of Variation Order in the Schedules hereto in appropriate cases.

27 TERMINATION

27.1 Default

Either party may terminate the Contract immediately on written notice to the other, while preserving to itself whatever rights may have accrued to it:

27.1.1 where the other commits a material breach of the Contract which is not capable of being remedied and the other party has been so notified in writing;

27.1.2 where the other party fails to remedy a breach of the Contract capable of remedy within the period specified in the notice (which period must be reasonable in the circumstances);

27.1.3 where the other party has on two or more occasions breached the Contract (despite a rebate being allowed) and the other party has unsuccessfully sought to resolve the issue in accordance with the problem resolution procedures of the Contract; or

27.1.4 commits an act of insolvency, comes under any form of insolvency administration, or assigns its rights otherwise than in accordance with the Contract.

27.2 Convenience

The Customer may terminate the Contract at any time by written notice. The Contractor will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Contract. The Customer will indemnify the Contractor against any liabilities or expenses (but not loss of profit) which are reasonably and properly incurred by the Contractor to the extent that those liabilities or expenses cannot be further mitigated.

The Contractor will, in each subcontract, reserve a right of termination in similar terms to this clause, exercisable in the event that the Customer terminates the Contract under this clause.

28 CONSULTANCY SERVICE

28.1 The Contractor shall perform the Consultancy Service in accordance with the Contract and with the Acceptance criteria, to the standard and using the methodology in each case specified in the Contract Details.

28.2 The Contractor shall perform the Consultancy Service at the times and in the manner stated in the Contract Details and shall supply the Deliverables to the Customer for the Contract price, licence fee or charge set out in the Contract Details and in accordance with the Contract in all things.

28.3 Except to the extent set out in the Contract Details, in addition to the requirements of Clause 18, the Contractor shall ensure that the Specified Personnel shall not, during the period of the Consultancy Service, be engaged on any work other than the Consultancy Service, without the prior written consent of the Customer.

28.4 The Contractor shall ensure that the materials supplied by the Customer are used, copied, supplied or reproduced only for the purposes of this Contract. The Contractor shall ensure the safe keeping of any material supplied by the Customer.

28.5 The material supplied by the Customer shall remain the property of the Customer and, on the expiration or early termination of the Contract, the Contractor shall return to the Customer all Customer material if requested.

28.6 The Contractor and its employees, shall not by virtue of the Contract be, or for any purpose be deemed to be, employees or agents of the Customer.

29 PACKAGED SOFTWARE

29.1 Unless otherwise specified in the Contract Details, the Contractor grants the Customer a licence in respect of the Packaged Software specified in the Contract Details upon the same terms as that for Licensed Software as provided in Clause 10 for the period during which the Customer remains in possession of the Packaged Software. In addition, the Contractor licenses the Customer to:

29.1.1 use the Packaged Software on a network for up to the number of concurrent users specified in the Contract Details provided that a licence fee has been paid for each workstation on the network that is simultaneously using the Packaged Software at any time. Installing the Packaged Software onto a Server for the purposes of this clause does not count as one use;

29.1.2 continue to use and possess the Packaged Software and materials held by it in circumstances where the Customer undertakes a change of designation or change of location but remains in possession of the Packaged Software and materials.

29.2 If the Packaged Software is permanently installed on the hard disk or other storage device of a processor (other than a network server) and one person uses that processor more than 80% of the time that it is in use, that person shall be entitled to use the Packaged Software on a portable or home computer provided that the Packaged Software is not in concurrent use on the first mentioned processor.

29.3 The Contractor shall supply the Packaged Software in the format, on the storage medium and together with the number of copies of storage media and Documentation specified in each case in the Contract Details.

29.4 The Contractor shall deliver, install or implement the Packaged Software to the extent and in the manner stated in the Contract Details.

29.5 The Contractor may appoint Distributors to supply Packaged Software to the Customer. The Contractor shall appoint only those Distributors as specified in the Contract Details. The appointment of a Distributor shall in no way release, relieve or discharge the Contractor from the due and proper and complete performance of the Contractor's obligations under the Contract. The Customer may lodge the Contract Details with the Distributor and the Contractor shall ensure that the Packaged Software is supplied by the Distributor in accordance with the Contract Details and the Contract. Clause 6 of the Head Agreement (if any) shall apply as between Contractor and Customer as if the Customer were the Contract Authority.

29.6 A reference to anything to be done, any obligation to be met, any warranty to be given or any liability to be assumed by the Distributor shall be construed as binding the Contractor to procure the doing of that thing, performance of that obligation, giving and honouring of that warranty or assumption and meeting of that liability, as the case may be, by the Distributor as if the Distributor were a Party hereto and, in the event of any failure by the Distributor to do so, by the Contractor itself.

29.7 The Distributor may appoint dealers to accept the Contract Details from the Customer. Only those dealers specified in the Contract Details may accept the Contract Details from the Customer.

29.8 The Contractor may:

29.8.1 grant to the Distributor a licence to reproduce Packaged Software to the extent necessary; or

29.8.2 direct the Distributor to supply only Packaged Software supplied by the Contractor;

in order to fulfil the Contract Details lodged by the Customer with a dealer.

29.9 The Distributor shall take all reasonable measures in accordance with currently accepted commercial practice to ensure the accuracy and quality of any storage media supplied to the Customer.

29.10 The Contractor shall ensure that all Distributors appointed by it have established all necessary facilities for the effective conduct and management of the obligations of the Contractor and the Distributor under the Contract.

29.11 The provisions of the Contract relating to Licensed Software shall apply, mutatis mutandis, to the Packaged Software, except where inconsistent with this clause 29.

29.12 The Contractor shall be bound by all representations, undertakings and warranties made or given by the Distributor about the Packaged Software and relied on by the Customer as if the Contractor had made or given them.

30 DEFINITIONS

Acceptance means authorisation for payment of the price. It is not a waiver of rights.

Consultancy Service means the consultancy service specified in the Contract Details to be provided by the Contractor in accordance with the Contract under clause 28.

Contract means the agreement between the Customer and the Contractor as set out in the Contract Details and includes these GITC Terms and Conditions.

Contract Authority means the Contract Authority under the Head Agreement

Contract Details means the details forming part of the Contract agreed between the Customer and the Contractor regarding specific requirements of the Customer for Services and/or Products to be delivered by the Contractor.

Contractor means the party to the Contract specified as the Contractor in the Contract Details and includes authorised employees, agents, Distributors and subcontractors of the Contractor.

Customer means the party to the Contract specified as the Customer in the Contract Details and includes authorised employees, agents and successors of the Customer.

Deliverables means any Products and Services that are to be provided by the Contractor as set out in the Contract Details.

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

Distributor means the agent of the Contractor appointed for the purpose of supplying Products to a Customer in accordance with the Contract Details.

GITC3 Terms and Conditions means these terms and conditions.

Goods and Services Tax or GST means a goods and services tax, value added tax, consumption tax or tax of similar effect.

Hardware means hardware to be supplied by the Contractor, as specified in the Contract Details and includes office machines.

Head Agreement means an agreement (if any) between the Contractor and the Contract Authority relevant to the provision of Services or Products under the Contract.

Intellectual Property Rights means all intellectual property rights, including, without limitation:

- (a) Patents, copyrights, rights in circuit layouts, plant breeders' rights, registered designs, trade marks, and the right to have confidential information kept confidential; and
- (b) Any application or right to apply for registration of any of those rights.

Lease means a hire or rental arrangement for Products.

Licensed Software means Software to be used to fulfil the Contract which was not developed at the request of and exclusively for the Customer and which is not freely useable by any member of the public.

Packaged Software means Software which is usually commercially available from the Contractor or agents of the Contractor in packaged (shrink wrap) form and is described as Packaged Software in the Contract Details.

Personnel means the staff, employees, agents, contractors and subcontractors of either party, and also includes the staff, employees, agents and contractors of those subcontractors.

Product includes Software, Hardware, telecommunication equipment, plans and any supporting documentation to be supplied by the Contractor or a third party, as stated in the Contract Details.

Service means a service to be supplied by the Contractor, as stated in the Contract Details.

Site means the place specified in the Contract Details where the Product is to be installed or Service is to be provided

Software means software to be supplied by the Contractor, as stated in the Contract Details.

Specifications means all the functional, operational, performance or other characteristics required of a Product or Service found in:

- (a) the Customer's requirements referred to in the Contract Details;
- (b) the invitation or tender issued by the Customer to the extent to which the Contractor's response has indicated acceptance of the requirements set out in the invitation or tender;
- (c) the Contractor's response as accepted and agreed to by the Customer as indicated;
- (d) this Contract and Schedules to this Contract; and
- (e) the manufacturer's or developer's publicly available specifications.

Specified Personnel means the key Personnel specified by name or qualification in the Contract Details as Personnel required to undertake the Service or part of the work constituting the Service.

Subcontractor means any person or body performing or obliged to perform obligations of the Contractor under the Contract pursuant to a subcontract with the Contractor or a subcontract with any subcontractor of the Contractor.

Support Services means:

- (a) in relation to Developed Software, the services described in clause 7.7;
- (b) in relation to Hardware and Office Machines, the services described in clause 9.2.1; and
- (c) in relation to Licensed Software, the services described in clause 10.4;

as more fully set out in the Contract Details.

31 ADDITIONAL CONDITIONS

31.1 The Customer and the Contractor may agree in writing to such other terms and conditions as they think fit and may set them out in the Contract Details but no such additional condition shall, without the prior written consent of the Contract Authority, derogate expressly or impliedly from the provisions of the Head Agreement (if any) or the GITC3 Terms and Conditions and, to the extent of any such derogation, the additional condition shall be void and of no effect.

Superceeded