

**GOVERNMENT INFORMATION TECHNOLOGY AND COMMUNICATIONS
(GITC) FRAMEWORK, VERSION WA4 ("GITC WA 4")**

(NON-SPIRIT VERSION)

DEPARTMENT OF [INSERT NAME OF AGENCY]
Superceded

[INSERT NAME OF CONTRACTOR]

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Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Contract:

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;

Approved Buyer means an entity, described in the Contract Details, which is entitled to acquire the Products or Services from the Contractor pursuant to this Contract;

Approved Subcontractor means those persons or entities listed as such in the Contract Details;

Associate means an agent, distributor, reseller, franchisee, other business associate trading on behalf of or in the name of the Contractor;

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

Consultancy Services means consultancy services to be supplied by the Contractor to the Customer, as specified in the Contract Details;

Contract means this agreement between the Customer and the Contractor;

Contract Authority means the party, specified in the Contract Details, which enters into this Contract with the Contractor on behalf of Approved Buyers;

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

Customer means, as the context dictates:

- (a) the Contract Authority; or
- (b) an Approved Buyer;

Developed Software means software created by the Contractor for the Customer under this Contract, as specified in the Contract Details;

Existing Taxes means those taxes that are in force at the commencement date of this Contract in any jurisdiction where the Services are provided;

Hardware means hardware to be supplied under this Contract by the Contractor to the Customer, as specified in the Contract Details;

Hardware Maintenance Services means maintenance services to be supplied by the Contractor in respect of equipment, as specified in the Contract Details;

Intellectual Property Rights means copyright, trademark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before, on or after the commencement date of this Contract;

Licensed Software means software specified in the Contract Details 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 Clause 10;

Managed Services means services whereby the Contractor agrees to either manage all or part of the Customer's information technology or otherwise to manage the external delivery of services to the Customer, as specified in the Contract Details;

Personnel includes employees, agents and subcontractors;

Product means a product deliverable specified in the Contract Details 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 ;

Service means a service deliverable specified in the Contract Details which is to be supplied to the Customer by or on behalf of the Contractor, 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 services whereby the Contractor agrees to develop software in accordance with the Customer's requirements, as specified in the Contract Details;

Software Support Services means services whereby the Contractor agrees to provide support, as specified in the Contract Details, in respect of either Developed Software, Licensed Software or Third Party Software;

Specifications means technical or descriptive specifications of functional, operational, performance or other characteristics required of a Service or Product, as appended to the Contract Details;

System means the system, which is the subject of the Systems Integration Services, as specified in Schedule 1 to the Contract Details;

Systems Integration Services means services whereby the Contractor agrees to implement a System, as specified in Schedule 1 to the Contract Details;

Telecommunications Services means services so described in the Contract Details referable to clause 13;

Third Party Software means software which is owned by a person other than the Customer or the Contractor and which is the subject of a Service.

1.2. INTERPRETATION

In this Contract, unless another intention is stated:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender does not exclude other genders;
- (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (e) 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;
- (f) all the provisions in any schedule, attachment or appendix to this Contract are incorporated in and form part of this Contract and bind the parties;
- (g) a reference to this Contract or another instrument includes any variation or replacement of either of them despite any change of party or any change in the identity of a party;
- (h) a reference to a condition, schedule, attachment or appendix is a reference to a condition, schedule, attachment or appendix to this Contract;
- (i) reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as e-mail and facsimile transmission;
- (j) 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;
- (k) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (l) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (m) 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;
- (n) no rule of interpretation is to be applied to disadvantage a party on the basis that the party was responsible for preparing this Contract or any part of this Contract;
- (o) if a date stipulated for doing an act is not a Business Day, the act must be done on the next Business Day;
- (p) a reference to a month is to a calendar month and a reference to a year is to a calendar year unless stipulated as a financial year; and

- (q) monetary references are references to Australian currency.
- (r) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.

1.3. DEFINITIONS USED IN APPENDICES

Terms which have defined meanings for the purposes of the Appendices are as described in the Contract Details.

1.4. MEANING OF "CONTRACT AUTHORITY" AND "CUSTOMER"

The following principles apply to the interpretation of this Contract:

- (a) both the Contract Authority and each Customer are departments, agencies or instrumentalities of the State of Western Australia;
- (b) this Contract is entered into by the Contractor and the State of Western Australia;
- (c) a reference to the "Contract Authority" is a reference to a department, agency or instrumentality which enters into this Contract for the purpose of enabling other departments, agencies or instrumentalities of the State of Western Australia, and itself, to acquire the Products and/or Services from the Contractor;
- (d) if the Contract Details state that the contracting entity is not entering into this Contract as a "Contract Authority", the department, agency or instrumentality entering into this Contract is doing so for its own benefit and not for the benefit of any other department, agency or instrumentality of the State of Western Australia;
- (e) if it is stated in the Contract Details that the contracting entity entering into this Contract is a "Contract Authority":
 - i. each department, agency or instrumentality of the State of Western Australia is entitled to acquire the Products and/or Services on the terms set out in this Contract;
 - ii. a reference in this Contract to "Customer" is a reference to the department, agency or instrumentality (which may include the Contract Authority itself) which is acquiring the relevant products or services;
 - iii. a single contract exists between the Contractor and the State of Western Australia, as represented by the department, agency or instrumentality which executes this Contract;
 - iv. for the avoidance of doubt, a separate order lodged by an individual department, agency or instrumentality does not give rise to a distinct contractual relationship between the Contractor and the ordering department, agency or instrumentality, as distinct from a contractual relationship between the Contractor and the State of Western Australia as represented by the Contract Authority, in circumstances where a party has signed this Contract as a "Contract Authority";
 - v. the Contractor acknowledges that the rights of a Customer under this Contract may be enforced on behalf of the State of Western Australia by either the Contract Authority or by the department, agency or instrumentality which is a Customer.

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2. NON-COMPLETION OF CONTRACT DETAILS

To the extent that the parties have not completed particulars relevant to an item in the Contract Details, that item will be deemed 'not applicable' unless the contrary intention is expressed.

3. COMMENCEMENT DATE AND PERIOD

3.1. COMMENCEMENT OF CONTRACT

This Contract commences on the date specified in the Contract Details.

3.2. DURATION OF CONTRACT

This Contract will remain in force for the duration of the period stated in the Contract Details, subject to:

- (a) earlier termination or expiry in accordance with the provisions of this Contract; or
- (b) extension in accordance with the procedure (if any) specified in the Contract Details.

4. PRIORITY OF DOCUMENTS

4.1. PRIORITISATION OF CONTRACT DOCUMENTS

In the event and to the extent of any inconsistency between two or more documents, which form part of this Contract, those documents will be interpreted in the following order of priority:

- (a) the Contract Details and any attachments to the Contract Details;
- (b) these terms and conditions (including documents incorporated by reference in these terms and conditions); and
- (c) the remaining appendices to these terms and conditions (including documents incorporated by reference in any Appendix).

4.2. PRIORITISATION OF CONTRACT DETAILS AND SCHEDULES

In the event and to the extent of any inconsistency between the Contract Details and any Schedule to the Contract Details, the Contract Details will take priority.

4.3. PRIORITISATION OF DOCUMENTS IN APPENDIX 8

In the event that any of the following documents are form part of this Contract (whether by attachment to or by reference in Appendix 8), they will be interpreted in the following order of priority, ranking after the documents described in clause 4.1:

- (a) pre-contractual documentation which post-dates the tender;
- (b) the Contractor's tender;
- (c) the Customer's request for tender.

5. CONSULTANCY SERVICES

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5.1. DESCRIPTION OF CONSULTANCY SERVICES

Where the Contract Details state that the Contractor is to provide Consultancy Services, the Contract Details will specify, to the extent relevant:

- (a) the Consultancy Services required, including any functional and performance requirements for the Service, and the times and locations at which the work is to be done;
- (b) the resources required (including resources to be made available by the Customer) in support of the delivery of the Consultancy Services, identifying the party which is to provide them;
- (c) Specifications (and/or equivalent document, such as a statement of work) in the form of Schedule 1 to the Contract Details; and
- (d) a project plan in the form of Schedule 2 to the Contract Details.

5.2. METHODOLOGY

The Contractor will:

- (a) manage all stages of the supply of the Consultancy Services;
- (b) take timely and corrective action where the Consultancy Services are not being performed in accordance with the requirements of this Contract;
- (c) on request, provide the Customer with details of the action taken to correct any deficiencies in the Consultancy Services; and
- (d) ensure the timely development and provision of corresponding documentation or appropriate electronic records (if any) as specified in the Contract Details.

5.3. PERFORMANCE MEASURES

The Consultancy Services will comply with any service levels and other performance measures specified in the Contract Details.

6. MANAGED SERVICES

6.1. GENERAL OBLIGATIONS OF CONTRACTOR

Where the Contract Details 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 Details and to meet the Specifications and service levels for the Managed Services during the term of the Contract;
- (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 date of the Contract, whether or not the Contractor in fact conducted such due diligence;
- (c) without limiting clause 6.1 (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 date of the Contract; 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.

6.2. TRANSITION IN

The Contractor will, as necessary:

- (a) acquire from the Customer any assets so specified in Schedule 3 to the Contract Details;
- (b) comply with obligations specified in the transition plan regarding the transfer or management of third party contracts;
- (c) comply with the requirements of the transition plan concerning the future role of the Customer's existing Personnel, including making offers of employment to such Customer Personnel;
- (d) ensure it is able to deliver the Managed Services from the date stated in the transition plan;
- (e) 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;
- (f) prepare a procedures manual which, once agreed by the Customer, will form part of this Contract and which, in addition to any other requirements specified in the Contract Details, will describe how the Contractor will manage the delivery of the Managed Services, including:
 - i. how compliance with the service levels and other performance factors will be measured and met;
 - ii. procedures to identify and rectify failures in the quality of the Managed Services;
 - iii. the acceptance procedure for deliverables supplied pursuant to the Managed Services;
 - iv. how changes to the Managed Services or method of delivery will be identified and met;
 - v. proposed audit requirements; and
 - vi. staffing, reporting, planning, and supervisory activities normally undertaken in respect of similar services in similar circumstances.

6.3. 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 Details, 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 Details;
 - ii. the Contractor agrees to report to the Customer at monthly intervals (or such other intervals as are specified in the Contract Details) 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 Specifications or service levels should be revised to take account of new functions performed by the Customer that are outside the scope of this Contract (such revisions to be implemented, if at all, in accordance with the change control procedure set out in this 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 6.3(b) will not deprive the Customer of a right to pursue any other remedy under this Contract arising from the Contractor's failure to meet its obligations under the Contract.

6.4. TRANSITION OUT

On termination of the Managed Services for any reason, and subject to any qualification or provision to the contrary in the Contract Details, 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:

- (a) 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;
- (b) 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;
- (c) the transfer of the Customer's data to an alternative service provider and/or to the Customer itself; and
- (d) 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, save that:
 - i. there is no requirement pursuant to this sub-clause (d) for the Contractor 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.

Throughout the transition out process, the Contractor will continue to provide the Managed Services at the Contract rates if and to the extent requested by the Customer.

If and to the extent specified in Schedule 7 to Appendix 1, the Contractor's assistance under this clause 6.4 will be the subject of a transition charge.

This clause 6.4 (c) survives termination or expiry of the Contract.

7. SUPPLY OF HARDWARE

7.1. SALE

The Contractor will sell the Hardware to the Customer in accordance with the requirements specified in the Contract Details.

7.2. TITLE

The Contractor transfers title in each item, unit or module of Hardware to the Customer immediately upon Acceptance or upon full payment, whichever requirement is stated in the Contract Details.

7.3. IMPLEMENTATION SERVICES

The Contractor will install and integrate the Hardware and provide training to the Customer's Personnel to the extent specified in the Contract Details and in Schedules 1 and 2 to the Contract Details.

7.4. WARRANTY

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

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

7.5. NO APPLICATION TO HARDWARE LEASING

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

8. HARDWARE MAINTENANCE

8.1. AVAILABILITY OF MAINTENANCE SERVICES

If and to the extent specified in the Contract Details, the Contractor will provide the Customer with Hardware Maintenance Services. Without limiting any other provision of this clause, the Hardware Maintenance Services will comply with the requirements of Schedule 5 to the Contract Details.

8.2. COMMENCEMENT OF MAINTENANCE

Except to the extent stated to the contrary in Schedule 5 to the Contract Details, any defect rectification required during the warranty period will be provided to the Customer by the Contractor free of charge. The Hardware Maintenance Services will commence on the date specified in the Contract Details and will be renewable as specified in the Contract Details. For the removal of doubt, the initial term of the Hardware Maintenance Services will not commence, if the Services relate to Hardware purchased under this Contract, until the expiry of any relevant warranty period for the Hardware, unless specified to the contrary in the Contract Details.

8.3. PREVENTATIVE MAINTENANCE

If so provided in the Contract Details, the Contractor will provide Hardware Maintenance Services in the form of preventative maintenance and will ensure that:

- (a) preventative maintenance is carried out in accordance with the requirements of Schedule 5 to the Contract Details; and
- (b) preventative maintenance is carried out at times specified in 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.

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.

8.4. REMEDIAL MAINTENANCE

If so provided in the Contract Details, 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:

- (a) replace or repair parts;
- (b) comply with any response times specified in Schedule 5 to the Contract Details;
- (c) to the extent practical, implement measures to minimise disruption to the Customer's operations during maintenance work as specified in Schedule 5 to the Contract Details; and
- (d) comply with any other requirements as specified in Schedule 5 to the Contract Details.

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.

8.5. STORAGE OF CONTRACTOR MATERIALS

Unless provided to the contrary in Schedule 5 to the Contract Details, the Contractor may store manuals, tools and test equipment on site 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.

8.6. MAINTENANCE RECORDS

Where required in 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 four (4) days of request or within any other period specified in the Contract Details.

8.7. EXCLUDED SERVICES

The Hardware Maintenance Services do not include any services expressly excluded in Schedule 5 to the Contract Details.

8.8. 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 this Contract or at all.

Superceeded

9. SOFTWARE DEVELOPMENT

9.1. CUSTOMER SPECIFICATIONS AND RESOURCES

Where the Customer requires the Contractor to create Developed Software (including modifications to Licensed Software unless such modifications are embraced by clause 11.3 and 11.4), the Contract Details will:

- (a) contain the Specifications for the Developed Software ('Customer Specifications') in the form of Schedule 1 to the Contract Details; and
- (b) specify the resources involved (including any resources to be made available by the Customer).

9.2. PREPARATION OF PROJECT PLAN

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

9.3. APPROVAL OF PROJECT PLAN

The Customer will promptly review the project plan when the Contractor submits it. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the requirements of this Contract.

The Customer must approve the project plan when satisfied that it is consistent with the requirements of this 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 Details or which is otherwise agreed between the parties.

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.

The project plan will, when approved by both parties, become part of the Specifications.

9.4. PREPARATION OF DESIGN SPECIFICATION

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

9.5. APPROVAL OF DESIGN SPECIFICATION

The Customer will promptly review the Design Specification when the Contractor submits it. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the Specifications.

The Customer must approve the Design Specification when satisfied that either it conforms with the Specifications or that any departures from the Specifications are reasonable in the circumstances. The Design Specification must be approved by the date specified in the Contract Details or, if applicable, before the expiry of any extended period which is permitted in the Contract Details or which is otherwise agreed between the parties.

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 this 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.

The Design Specification will, when approved by both parties, become part of the Specifications.

9.6. 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 Specifications;
- (d) ensure concurrent development and supply of user documentation as specified in the Contract Details; 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.

9.7. SOURCE CODE

Where the Contract Details 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 (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 Details that the source code is not to be placed in escrow.

Where the Contract Details state that ownership of the Developed Software is to pass to the Customer, the Contractor will deliver the source code to the Customer in accordance with the project plan. For the removal of doubt, the Contractor must in these circumstances supply the Customer with all documentation that was developed in conjunction with the Developed Software and provide the Customer 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.

9.8. USE PRIOR TO ACCEPTANCE

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

10. LICENSING OF SOFTWARE

10.1. LICENCE RIGHTS

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

- (a) copy the Licensed Software into machine readable form to the extent permitted under the *Copyright Act 1968* (Cwlth);
- (b) use the Licensed Software on the hardware platform/operating system combination, subject to any licence conditions specified in the Contract Details;
- (c) use the documentation supplied by the Contractor with the Licensed Software;
- (d) make such number of copies of the Licensed Software as is specified in the Contract Details; and
- (e) transfer the licence to another agency within the same tier of government 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.

Subject to clause 10.1(e), the licence granted to the Customer is non-transferable unless specified to the contrary in the Contract Details.

The licence terms specified in this clause 10.1 will be supplemented (and, to the extent of any inconsistency, overridden) by licence terms contained in or appended to the Contract Details. Such licence terms contained in or appended to the Contract Details will not, however, have the effect of supplementing or overriding any provision of this Contract apart from the provisions of this clause 10.1. For the removal of doubt, the Contractor hereby declares that it does not intend to, and shall not, override any clause other than clause 10.1 by reference to licence terms contained in or appended to the Contract Details, the Contract Details referable to the other clauses must make specific reference to the relevant provisions of those licence terms.

Superseded

10.2. PERIOD OF LICENCE

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

10.3. PROTECTION AND SECURITY

The Customer will:

- (a) if and to the extent required by the Contract Details, 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.

10.4. IMPLEMENTATION SERVICES

The Contractor will install and integrate the Licensed Software, and provide training to the Customer's Personnel, to the extent specified in the Contract Details and Schedules 1 and 2 to the Contract Details.

10.5. 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 Details. 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 Schedule 7 to the Contract Details.

- (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 the Customer is using until the expiry of 18 months (or other alternative period published by the third party owner or specified in the Contract Details) from the date upon which the rejected update or new release was formally offered by the Contractor to the Customer.

10.6. CHANGE OF DESIGNATED EQUIPMENT

- (a) The Contract Details 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 Details 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
 - i. use the Licensed Software on any back-up hardware while the specified hardware is for any reason temporarily inoperable.

10.7. 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. The Customer acknowledges and agrees that any such act may constitute a breach to which clause 29 applies.

10.8. TERMINATION OF LICENCE

Within 30 days (or such other period as may be specified in the Contract Details) 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 Details) 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 Details.

10.9. ESCROW OF SOURCE CODE

If so specified in the Contract Details, 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 (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 Details.

10.10. NO APPLICATION TO SOFTWARE LEASING

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

10.11. THIRD PARTY SOFTWARE

Unless and to the extent stated to the contrary in the Contract Details, where the Customer acquires Third Party Software in connection with this 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 this Contract.

11. SOFTWARE SUPPORT

11.1. AVAILABILITY OF SUPPORT SERVICES

If and to the extent specified in the Contract Details, the Contractor will provide the Customer with Software Support Services in respect of the Software. Without limiting any other provision of this clause, the Software Support Services will comply with the requirements of Schedule 6 to the Contract Details.

11.2. COMMENCEMENT OF SUPPORT

The Software Support Services will commence on the date specified in the Contract Details and will be renewable as specified in the Contract Details. For the removal of doubt, the initial term of the Software Support Services will not commence, if the Services relate to Software supplied under this Contract, until the expiry of the relevant warranty period for the Software unless specified to the contrary in the Contract Details. Defect correction, the implementation of updates and new releases and the provision of help desk services will be provided free of charge during such warranty period unless specified to the contrary in 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 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 Specifications.

11.4. OTHER SUPPORT SERVICES

Unless specified to the contrary in 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 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 Schedule 6 to the Contract Details;
- (b) the provision of a help desk service, full particulars of which will be as specified in Schedule 6 to the Contract Details; and
- (c) subject to any qualification expressed in 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 Schedule 6 to the Contract Details.

11.6. EXCLUSIONS

Unless specified to the contrary in 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 this Contract;
 - ii. failure by the Customer to operate the Software in accordance with its Specifications 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 Specifications; or
 - iv. failure by the Customer to use the Software in conformity with user documentation provided by the Contractor under this Contract;
- (b) correction of errors or defects caused by the reproduction or adaptation of the Software by

- (c) the Customer pursuant to the *Copyright Act 1968* (Cwlth) section 47E or 47F;
 - (c) equipment maintenance; or
 - (d) any other service expressly excluded in Schedule 6 to the Contract Details.
- For the removal of doubt, Schedule 6 to the Contract Details may expand, reduce or otherwise vary the foregoing list of excluded services.

12. SYSTEMS INTEGRATION

12.1. SUPPLY OF SYSTEM

The Contractor will supply and integrate the System described in Schedule 1 to the Contract Details. The Contractor further undertakes to comply with the project plan (if any) set out in Schedule 2 to the Contract Details.

12.2. SYSTEM COMPONENTS

The System will comprise the equipment, software and other components specified in Schedule 1 to the Contract Details.

12.3. HARDWARE COMPONENTRY

To the extent that the System comprises equipment, the equipment will be supplied in accordance with the requirements of clause 7 unless and to the extent specified in Schedule 1 to the Contract Details.

12.4. 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 clause 9 unless and to the extent specified in Schedule 1 to the Contract Details.
- (b) To the extent 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 clause 11 unless and to the extent specified in Schedule 1 to the Contract Details.
- (c) To the extent 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 Schedule 1 to the Contract Details, the Contractor will procure for the Customer a non-exclusive, non-transferable licence to use such software on terms consistent with the Customer's requirements as set out in this Contract.

12.5. SYSTEM WARRANTY

In addition to and notwithstanding warranties otherwise provided by the Contractor to the Customer under this 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 18.4, the Contractor warrants that for a period of 90 days from Acceptance (or such other period as is specified in 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 Specifications; and
- (c) the System as installed will interact with the Customer's existing information technology environment as required by the Specifications.

13. TELECOMMUNICATIONS SERVICES

13.1. PROVISION OF SERVICES

Where the Contract Details provide that the Contractor is to supply Telecommunications Services, the Contractor will provide the Service, including related Hardware, Software and other Products as specified in the Contract Details and in accordance with the pricing stated in Schedule 7 to Appendix 1.

Telecommunications Services supplied by the Contractor pursuant to this clause will be provided in accordance with any additional terms and conditions agreed by the parties and set out in the Contract Details.

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.

13.2. 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.

13.3. NO BACK-BILLING

The Contractor may not back-bill in respect of a period greater than 180 days unless a longer period is agreed with the Customer.

14. GENERAL RESPONSIBILITIES OF THE CONTRACTOR AND THE CUSTOMER

The parties will:

- (a) fully cooperate with each other to ensure timely progress and fulfilment of the Contract;
- (b) act reasonably and in good faith with respect to matters that relate to the Contract;
- (c) if, and to the extent, specified in the Contract Details, hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Contract; and
- (d) perform their obligations and responsibilities by the dates specified in this Contract.

15. SPECIFIC RESPONSIBILITIES OF THE CONTRACTOR

15.1. CUSTOMER REQUIREMENTS

The Contractor will ensure the Services and Products comply with the Specifications, standards and service levels as specified in the Contract Details. The Contractor will comply with reasonable directions given by the Customer in discharging these obligations.

15.2. FACILITIES AND ASSISTANCE

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

- (a) subject to any stipulation in the Contract Details, establish and maintain all necessary facilities for the effective conduct and management of its responsibilities;
- (b) record any material changes in relevant facilities or procedures and make this record available to the Customer on request or as otherwise specified in the Contract Details; and
- (c) provide all reasonable assistance required by the Customer.

15.3. SOURCING FROM THIRD PARTIES

In the event the Contractor sources Services or Products from a third party, it must comply with prevailing Western Australian Government procurement policies in respect of the sourcing as if it were an agency of the Western Australian Government. The foregoing does not, however, constitute the Contractor as an agent of the Customer or any other instrumentality of the Western Australian Government unless it is expressly so stated in the Contract Details.

15.4. DOCUMENTATION

The Contractor will ensure that the documentation, publications and aids relevant to any Service or Product to be provided by the Contractor pursuant to this Contract are:

- (a) of a reasonable standard in terms of presentation, accuracy and scope;
- (b) the most current, accurate and up-to-date versions available at the date of the Contract; and
- (c) published in English with all key terms, words and symbols adequately defined or explained.

If any documentation is revised or replaced for any reason, the Contractor will supply the Customer with revisions or replacements at no additional cost to the Customer if the Customer is at that time in receipt of Services to which the documentation relates.

15.5. TRAINING

The Contractor will provide the training specified in the Contract Details, at the price specified in the Contract Details.

15.6. TAXES

- (a) Except to the extent specified to the contrary in the Contract Details, all Existing Taxes imposed or levied in Australia or overseas in connection with the provision of Products or Services under this Contract will be the responsibility of the Contractor.
- (b) Without limiting clause 15.6 (a), and unless specified to the contrary in Schedule 7 to the Contract Details, all prices are exclusive of Goods and Services Tax ('GST') on the Services and Products and other supplies made under this Contract ('the Supplies') to the extent that they are taxable supplies within the meaning of the A New Tax System (Goods and Services Tax Act) 1999 (Cwlth) ('the GST Act').
- (c) In relation to any GST payable, the Contractor will issue the Customer with a tax invoice in accordance with the GST Act.
- (d) If Schedule 7 to the Contract Details specifies that the Customer is responsible for payment of GST on specified Supplies, it will make such payment when the relevant charges are due or otherwise as required by the Contract Details.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Contract (for example, a claim for damages for breach of contract) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST.
- (f) If a party has a claim under or in connection with this Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (g) If a party has a claim under or in connection with this Contract and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (h) In this clause 15.6, words have the same meaning as in the GST Act unless the context makes it clear that a different meaning is intended.
- (i) If there is a change in law such that any applicable taxes are increased or decreased or new taxes introduced or any applicable taxes are abolished after the commencement date such that the cost to the Contractor of providing the Services is increased or decreased (as the case may be), the price payable by the Customer will be increased or decreased (as the case may be) by the net effect of such increased, decreased, new or abolished taxes.

15.7. PREPARATION OF INVOICES

After Acceptance of a Service or Product, or as otherwise specified in Schedule 7 to the Contract Details, the Contractor will promptly and correctly prepare and deliver an invoice setting out the amounts then properly due to it from the Customer. To prepare the invoice correctly, the Contractor will ensure that:

- (a) the invoice contains detail such is sufficient to enable the Customer, acting reasonably, to identify:
 - i. the Service or Product concerned;
 - ii. when the Service or Product was supplied and (if relevant) accepted; and

- iii. the amount payable in respect of each item;
- (b) the invoice is addressed in accordance with the Customer's requirements as specified in Schedule 7 to the Contract Details, or as otherwise advised in writing;
- (c) the invoice sets out the amount paid by the Customer as GST for supplies made under this Contract which are taxable supplies; and
- (d) the invoice is a valid tax invoice for the purposes of the GST Act.

15.8. SITE SPECIFICATION

To the extent specified in the Contract Details, the Contractor will provide the Customer with particulars of the implementation and environmental requirements of a Service and/or Product in order to permit the Customer to prepare the site accordingly.

15.9. INSURANCE REQUIREMENTS

Except to the extent that alternative and/or additional requirements are specified in the Contract Details, the Contractor will ensure that throughout the term of this Contract it is insured with, or is the beneficiary under a policy with, a reputable insurance company encompassing:

- (a) professional indemnity insurance – to a minimum value of \$1 million per claim;
- (b) public liability insurance – to a minimum value of \$5 million per claim; and
- (c) product liability insurance – to a minimum value of \$5 million per claim.

The Contractor will, on request, produce to the Customer satisfactory evidence that the Contractor has effected and/or renewed a particular insurance policy or that the Contractor continues to be a beneficiary under a particular insurance policy. Such evidence will be in the form of either a certificate of currency or a copy of the policy, unless the Customer advises the Contractor that alternative evidence will be acceptable.

15.10. PERFORMANCE GUARANTEE AND FINANCIAL UNDERTAKING

- (a) The Contractor will, to the extent specified in the Contract Details and if reasonably required by the Customer, provide or procure a performance guarantee (conditional or unconditional) financial undertaking or other similar arrangement substantially in the form specified in Appendices 6A, 6B and/or 7 as applicable.
- (b) The Customer will in good faith consider any reasonable submission by the Contractor as to the necessity for the provision of a guarantee, undertaking or similar arrangement pursuant to clause 15.10(c).
- (c) The Customer will consent to the discharge of a performance guarantee, financial undertaking or similar arrangement made pursuant to clause 15.10 if, at any time following the termination or expiry of this Contract, the Contractor can demonstrate to the Customer's reasonable satisfaction that there is no basis for any claim to be made against the performance guarantee, financial undertaking or similar arrangement in the future.

15.11. SECURITY

The Contractor acknowledges that it must:

- (a) as appropriate, inform its Personnel involved in the provision of the Products and Services, of the provisions of any legislation relating to secrecy and security which is listed in the Contract Details. The Contractor further acknowledges that prior to being granted access to documents, materials or information pursuant to this Contract, any such Personnel may first be required to provide the Customer with an acknowledgment that he or she is aware of any applicable legislation or security instructions. Nothing in this clause 15.11 excuses compliance by the Contractor or its Personnel, with any applicable legislation;
- (b) comply with such other Commonwealth, State or Territory legislation relating to matters of security as may be specified in the Contract Details;
- (c) subject to the Contract Details, comply with Western Australian government Internet security standards as published from time to time; and
- (d) comply with any other security requirements specified in the Contract Details.

15.12. PRIVACY

- (a) The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cwlth) to the extent relevant to this Contract. The Contractor also agrees to comply with:
 - i. such other Commonwealth, State or Territory legislation related to privacy which is relevant to this Contract;
 - ii. any directions made by a Privacy Commissioner relevant to this Contract;
 - iii. any privacy procedures stated in the Contract Details; and
 - iv. any other reasonable direction relating to privacy which is given by the Customer.
- (b) If the Contractor is exempt from compliance with the *Privacy Act 1988* (Cwlth) because its annual turnover is less than the prescribed threshold, and if the Contractor is not subject to an approved privacy code, the Contractor must comply from no later than 21 December 2002 with the National Privacy Principles set out in the *Privacy Act 1988* (Cwlth) as if it were required to comply with that legislation.

15.13. ANTI-DISCRIMINATION

- (a) The Contractor agrees to comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* (Cwlth). The Contractor agrees not to enter into a subcontract with an entity named in a report tabled in Commonwealth Parliament by the Director of Equal Opportunity for Women in the Workplace as a supplier that has not complied with the Act.
- (b) The Contractor further agrees to comply with such other Commonwealth, State or Territory legislation relevant to anti-discrimination as may be relevant to this Contract.
- (c) The Contractor further agrees to comply with such other anti-discrimination policies and obligations as are set out in the Contract Details.

15.14. OCCUPATIONAL HEALTH AND SAFETY

- (f) The Contractor agrees, when using the Customer's premises, to comply with all reasonable directions of the Customer, including but not limited to documented procedures relating to occupational health, safety and security in effect at those premises. This obligation extends to all procedures which are notified to the Contractor by the Customer or which might reasonably be inferred by the Contractor in all the circumstances.
- (a) In addition to the requirements of clause 15.14 (f), the Contractor agrees that when working on the Customer's premises, it will comply with all applicable Commonwealth, State and local government laws, regulations and procedures relating to occupational health and safety.

15.15. ARCHIVAL REQUIREMENTS

The Contractor agrees to comply with, and to follow any reasonable directions by the Customer, which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.

15.16. MAINTENANCE OF RECORDS

Unless specified to the contrary in the Contract Details, the Contractor must at all times maintain full, true, and up-to-date accounts and records relating to this Contract. Such accounts and records must:

- (a) include appropriate audit trails for transactions performed;
- (b) record all receipts and expenses in relation to the Services performed for the Customer;
- (c) be kept in a manner that permits them to be conveniently and properly audited;
- (d) be drawn in accordance with any applicable Australian Accounting Standards;
- (e) in the case of any Service performed on a time and materials or cost plus basis, identify the time spent by the Contractor's Personnel in performing that Service; and
- (f) be made available to the Customer as required for the performance of the Contractor's obligations under the Contract.

15.17. COOPERATION WITH OTHER SERVICE PROVIDERS

- (a) Subject to clause 15.17(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 15.17(a) will require the Contractor to disclose its confidential information to a third party service provider.

15.18. DATA SECURITY

The Contractor must:

- (a) comply with all Customer data security requirements in respect of access to and use of data as specified in the Contract Details, in addition to any statutory obligation relevant to data security;
- (b) prohibit and prevent any Contractor Personnel who does not have the appropriate level of security clearance from gaining access to data;
- (c) without limiting clause 15.18(b), use reasonable endeavours to prevent any unauthorised person from gaining access to 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.

15.19. SECURITY ACKNOWLEDGMENT BY CONTRACTOR

The Contractor acknowledges and agrees that:

- (a) the Customer holds and deals with highly sensitive information;
- (b) the Customer is concerned that such information is not improperly used or disclosed contrary to this Contract or any laws; and
- (c) use or disclosure of such information contrary to this Contract may constitute a breach to which clause 28.14 applies.

15.20. HAZARDS

The Contractor must, when providing any Services under this Contract, provide the Customer with a list of all or any hazardous conditions or attributes, which may cause injury or damage to persons or property or the environment in the course of performing its obligations under the Contract. The Contractor must rectify any such hazards, to the extent that such hazards are within the Contractor's control, free of charge within the time stated in the Project Plan.

15.21. CONFLICT OF INTEREST

- (a) The Contractor warrants that it is not aware of any conflict of interest, either actual or potential, which could reasonably be expected to prevent it from discharging its obligations under this Contract fully and effectively.
- (b) The Contractor will disclose to the Customer, conflicts of interest either actual or potential as soon as it becomes aware of such conflict of interest.
- (c) The Contractor must take steps as are necessary to remove the actual potential conflict of interest within 30 days of notification to the Customer.
- (d) A failure by the Contractor to disclose a conflict of interest pursuant to this clause will entitle the Customer to terminate this Contract pursuant to clause 29.1(b).

15.22. CRIMINAL CONVICTIONS AND CHARGES

The Contractor warrants that it has disclosed and will continue to disclose during the term of this Contract full details of all criminal convictions and all pending criminal charges against it or any of its Personnel, Associates or subcontractors that would reasonably be expected to adversely affect the Contract or the Contractor's capacity to fulfil its obligations under this Contract. The Contractor is not required to provide information to the Customer in a form or in a manner which would cause the Contractor to breach its obligations arising under the Privacy Act 1988 (Cth) but the Contractor

will take all reasonable steps to either:

- (a) provide sufficient information to enable the Customer to assess the level of any risk or conflict posed to it by the existence of such conviction or pending charge; or
- (b) take such steps as are necessary to ensure that the person who is the subject of the conviction or pending charge ceases to be directly or indirectly involved with this Contract.

A failure to make any such disclosure will be treated as a material breach of this Contract.

16. SPECIFIC RESPONSIBILITIES OF CUSTOMER

16.1. CHARGES AND PAYMENT

- (a) The charges payable in respect of this Contract, and the manner of payment, are as specified in Schedule 7 to the Contract Details.
- (b) The Customer will make payment within 30 days of receipt of a correctly rendered invoice, unless an alternative period for payment is specified in Schedule 7 to the Contract Details.
- (c) The parties agree that payments may be effected by electronic transfer of funds in the manner specified in Schedule 7 to the Contract Details or as otherwise agreed from time to time.
- (d) In the event of a dispute as to whether an amount is payable pursuant to an invoice, the Customer may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion within the period specified in clause 16.1 .
- (e) A fixed price stated in Schedule 7 to the Contract Details will be deemed to cover the cost of complying with all terms and conditions of this Contract and all matters and things necessary or relevant for the due and proper supply, delivery, performance and completion of the Contractor's obligations under this Contract.

16.2. CUSTOMER RESOURCES

The Customer will provide the resources so specified in the Contract Details. Such resources will, to the Customer's reasonable knowledge and belief, fit for any purpose stated in this Contract.

16.3. FACILITIES

The Customer warrants that:

- (a) any facilities (including items of equipment and software) which it makes available to the Contractor will comply with the Specifications and any other standards set out in the Contract Details;
- (b) facilities made available to the Contractor will be maintained in the manner specified (if at all) in the Contract Details; and
- (c) should a facility which is provided by the Customer under this clause fail at any time to meet the requirements specified in the Contract Details, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.

16.4. SITE PREPARATION

To the extent specified in the Contract Details, the Customer will be responsible for site preparation to enable delivery and implementation of a Product and/or the performance of a Service.

16.5. ACCESS TO CUSTOMER'S PREMISES

The Customer will provide the Contractor with access to the Customer's premises as specified in the Contract Details to enable the Contractor to fulfil its obligations under the Contract. Access may be temporarily denied or suspended by the Customer, at its sole discretion. Where access is temporarily denied or suspended by the Customer (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Contractor's Personnel), the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access. Without limiting the foregoing, the Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

17. ACCEPTANCE

17.1. DATE OF ACCEPTANCE

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 Appendix 2. Where Appendix 2 does not specify that Acceptance tests are required, the Service or Product will be deemed to have been accepted on the date the Contractor delivers or (if installation is involved) installs the Service or Product in accordance with all relevant Contract stipulations.

17.2. LATE NOTIFICATION OF TESTS

If no Acceptance tests are specified in Appendix 2, the Customer may (if so specified in Appendix 2) stipulate reasonable tests to be conducted prior to Acceptance being deemed pursuant to clause 17.1.

17.3. CUSTOMER COOPERATION

To the extent specified in Appendix 2 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.

17.4. 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.

17.5. TEST PROCEDURES

The parties will conduct the Acceptance tests, and discharge their respective responsibilities, in the manner specified in Appendix 2.

17.6. CERTIFICATE OF ACCEPTANCE

Where this Contract provides for Acceptance testing as a condition of payment, the Customer will issue a certificate of Acceptance within five (5) working days of the date of Acceptance or within any other period specified in Appendix 2. The certificate of Acceptance will indicate the actual date of Acceptance and will be in the form specified in Appendix 2. 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.

17.7. 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 17.7, reject the Service or Product concerned, whereupon the Contractor will be in breach of this 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.

17.8. SUPPLEMENTARY TESTS

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.

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.

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.

18. WARRANTIES – CONTRACTOR

18.1. GENERAL

The Contractor warrants that:

- (a) during the warranty period, each Service and Product will conform with the Specifications or, where relevant and subject to clause 18.4, any third party warranties specified in the Contract Details;
- (b) if and to the extent ownership of a Product is to pass to the Customer, the Product will be free from any charge or encumbrance;
- (c) it has the right to grant all licences specified in the Contract Details; and
- (d) no virus will be introduced into the Customer's systems as a result of the supply by the Contractor of a Product which contains a virus or as a result of any negligent or wilfully wrong act or omission by the Contractor in providing a Service.

18.2. WARRANTY PERIOD

Without limiting any other rights of the Customer, the Contractor will promptly rectify any defect in a Product at no charge if it becomes aware of the defect.

- (a) during the warranty period specified in the Contract Details; or
- (b) where no warranty period is specified in the Contract Details, during the first 90 days after Acceptance (or, where Acceptance is inapplicable, 90 days after the date of supply).

18.3. COMPLIANCE WITH STANDARDS

Subject to any contrary provision in the Contract Details, a Service or Product supplied by the Contractor must comply with the applicable Australian or New Zealand standards or, if there are no applicable Australian or New Zealand standards, any applicable international standards.

18.4. THIRD PARTY WARRANTIES

Where the Contractor supplies Products that have been procured from a third party, the Contractor assigns to the Customer, to the extent practicable and 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 of the obligation to comply with warranties offered directly by the Contractor under this Contract.

18.5. IMPLIED TERMS

If and to the extent specified in the Contract Details, implied terms are excluded from this Contract.

18.6. SURVIVAL OF CLAUSE 18

Clause 18 will survive the termination or expiry of this Contract.

19. AUDIT AND ACCESS REQUIREMENTS

19.1. SCOPE OF AUDITS

Audits may be conducted under clause 19.2 in respect of:

- (a) the Contractor's compliance with all its obligations under the Contract; and
- (b) any other matters reasonably determined by the Customer to be relevant to the performance of the Contractor's obligations under the Contract.

19.2. CONDUCT OF AUDITS

- (a) The Contractor must participate promptly and cooperatively in any audits conducted by the Customer or its nominee, save that the Contractor will not be required to submit to an audit conducted by a nominee that is in material and relevant respects a business competitor of the Contractor.
- (b) Except in those circumstances in which notice is not practicable or appropriate, the Customer must give the Contractor reasonable notice of an audit and, where reasonably practicable, an indication of which documents and/or class of documents the auditor may require.
- (c) Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.
- (d) Subject to clauses 19.2 (e) and 19.3 (e), the requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- (e) The Customer must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt any material with respect to the Contractor's performance of its obligations under this Contract or the delivery of services to any other customer of the Contractor.
- (f) The Contractor must promptly take, at no additional cost to the Customer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has acted under this Contract:
 - i. supplied any services or Products or
 - ii. calculated charges, or any other amounts or fees billed to the Customer.
- (g) The Contractor may require the auditor (other than the Auditor General or the Privacy Commissioner or their delegates in the performance of statutory obligations) to enter into a confidentiality undertaking on terms reasonably acceptable to the Contractor but nevertheless consistent with the objectives of the audit.

19.3. ACCESS TO THE CONTRACTOR'S PREMISES AND RECORDS

- (a) The Contractor's obligations under this clause 19.3(a) are subject to the auditor agreeing to comply with reasonable security procedures stipulated by the Contractor. For the purposes of clause 19.2 and this clause 19.3, the Contractor must grant, and where relevant must ensure that its Approved Subcontractors grant, the Customer and its nominees or the Auditor General access as required by the Customer, to the Contractor's premises and data, records, accounts and other financial material or material relevant to the performance of this Contract.
- (b) In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request at no additional cost to the Customer such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (c) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 19.3 and in clause 19.1 with respect to the Approved Subcontractor's premises, data, records, accounts, financial material and information of its Personnel.
- (d) This clause 19.3 applies for the term of this Contract and for a period of seven (7) years from the date of its expiry or termination.
- (e) In the exercise of the general rights granted by clause 19.3, the Customer must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under this Contract or in the delivery of services to any of its other customers in any material respect.
- (f) Without limiting any of its other obligations under this Contract, the Contractor must, at its own cost, ensure that it keeps full and complete records in accordance with all applicable

Australian Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause.

- (g) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor General or a delegate of the Auditor General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor General or a delegate of the Auditor General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

19.4. INTERPRETATION OF THIS CLAUSE

In this clause:

- (a) a reference to the 'Auditor General' is a reference to the Auditor General or equivalent office holder with jurisdiction over the Customer;
- (b) a reference to the 'Privacy Commissioner' is a reference to the Privacy Commissioner or equivalent office holder (if any) with jurisdiction over the Customer; and
- (c) the obligations of the Contractor are subject to any amendment as set out in the Contract Details.

20. PERSONNEL

20.1. PROVISION OF PERSONNEL

The parties will each utilise such Personnel as are necessary to enable them to fulfil their respective obligations under this Contract. Each party will ensure that the Personnel, which it utilises have the requisite skills and experience.

20.2. ENTRY ONTO CUSTOMER'S PREMISES

The Contractor will:

- (a) provide or procure the provision of such information as can be lawfully provided and which is reasonably requested by the Customer concerning the Personnel it proposes to bring onto the Customer's premises for the purposes of the Contract;
- (b) provide suitable replacement Personnel should the Customer, on reasonable grounds, deny access to or request removal of any Personnel; and
- (c) ensure 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 and complying with any obligation imposed on the Customer by law).

20.3. KEY PERSONNEL

Where Personnel are specified in the Contract Details as being responsible for the performance of key roles or tasks under this Contract, the Contractor will provide those individuals to fulfil those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of these key roles or tasks, the Contractor will promptly advise the Customer and propose a substitute. Any substitute Personnel must be approved by the Customer. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under this Contract.

21. NON-DISCLOSURE AND USE OF INFORMATION

21.1. EXTENT OF OBLIGATION

- (a) Except to the extent necessary to comply with any government policy relating to the public disclosure of confidential information (which policy is in place at the commencement of this Contract and specified in the Contract Details), neither the Contractor nor the Customer will make public, disclose or use for purposes other than

for the purposes of this Contract the confidential information of the other, unless the other gives its written approval. Confidential information includes:

- i. information marked as confidential;
 - ii. information which by its nature is confidential.
 - iii. information which is known to be confidential; or
 - iv. information which a party ought to know is confidential.
- (b) The restrictions in this clause 21 on disclosing confidential information do not apply to information which:
- i. was already lawfully in the disclosing party's possession prior to disclosure to it by the other party;
 - ii. is rightfully received from a third party which is not bound by a duty of confidentiality;
 - iii. has become public knowledge (other than through a breach of an obligation of confidence imposed under this Contract);
 - iv. was independently developed by the receiving party without reference to the confidential information of the furnishing party;
 - v. is required by law to be disclosed or is required to be disclosed by order or rules of a stock exchange or government agency (including but not limited to the Australian Competition and Consumer Commission and the Australian Communications Authority); or
 - vi. the Customer is entitled to disclose in accordance with prevailing government policy at any time.
- (c) The Contractor's confidential information may be disclosed by the Customer whenever required by law, court order, Parliament, Parliamentary Committee or by Ministerial direction.
- (d) Without limiting any other provision of this clause, the Contractor acknowledges that the Customer may publish or cause to be published a summary of details of this Contract (including the names of the parties, a description of the Products or Services provided, the commencement date and term and the total value of this Contract) on the Western Australian Government Contracting Information Bulletin Board.
- (e) The Contractor waives any right to preserve the confidentiality of information that falls within the categories described in Clauses 21.1(i) and (ii).
- (f) Nothing contained in this Contract will restrict a party from the use of any ideas, concepts, know how or techniques which it independently develops or acquires under this Contract, except to the extent such use infringes the other party's Intellectual Property Rights.
- (g) Nothing in this clause 21 will prevent the disclosure by the Contractor of confidential information to:
- i. its Personnel, Associates and subcontractors for the purpose of performing the Contract; or
 - ii. its related companies which need to use the confidential information in order to ensure the provision of the Products and Services (subject, if so requested by the Customer, to appropriate confidentiality agreements being executed by the relevant Personnel of those related companies).

Superceded

21.2. OBLIGATIONS OF PERSONNEL

- (a) Each party will take all reasonable steps to ensure its Personnel engaged to perform work under this Contract do not disclose confidential information of the other party obtained during the course of performing such work.
- (b) Unless the Contractor can demonstrate that it has internal procedures in place to ensure employees will adequately protect confidential information, the Customer may at any time require the Contractor to arrange for its employees engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Appendix 4.
- (c) The Customer may at any time require the Contractor to arrange for its Associates or subcontractors engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Appendix 4.

21.3. DISCLOSURE TO MEDIA AND OTHERS

Neither party will disclose to the media any information regarding this Contract or work performed under this Contract without the written consent of the other party. Unless expressly prohibited in the Contract Details the Contractor may include the Customer's name and a factual description of

the work performed under this Contract:

- (a) in a list of references;
- (b) in proposals to third parties; and
- (c) in its annual report.

21.4. SURVIVAL OF CLAUSE 21

Clause 21 will survive the termination or expiry of this Contract.

22. INTELLECTUAL PROPERTY

22.1. MATERIALS CREATED UNDER THE CONTRACT

- (a) Subject to subclauses 22.1 (b) and (c), all Intellectual Property Rights in Developed Software or other items that have been developed for the Customer under this Contract ('Developed Materials') are assigned to the Customer. Nothing in this sub-clause will affect the ownership of any pre-existing Intellectual Property Rights in any tools, object libraries, methodologies and materials used to produce the Developed Materials or other items.
- (b) Only if and to the extent specified in the Contract Details, Intellectual Property Rights in the Developed Materials will remain the property of the Contractor.
- (c) Only if and to the extent specified in the Contract Details, the parties will co-own the Intellectual Property Rights in the Developed Materials and each party will be entitled to use or exploit these materials in the manner specified in the Contract Details.

22.2. LICENSING OF DEVELOPED MATERIALS

To the extent the Contractor retains ownership of the Developed Materials, the Contractor will license the Customer to use the Developed Materials for the purpose of receiving the benefit of the Products and Services. Where the Developed Materials comprise Developed Software, the Developed Materials will be licensed to the Customer in accordance with clause 10 and the Software will be treated as licensed Software for the purposes of this Contract.

22.3. LICENSING OF CONTRACTOR'S PRE-EXISTING MATERIALS

Except where expressly stated to the contrary, this Contract does not affect the Intellectual Property Rights in items that existed prior to the date of the Contract but the Contractor grants and will ensure that relevant third parties grant to the Customer, at no additional cost, a non-exclusive, non-transferable licence:

- (a) to use such items for the purpose of receiving the benefit of the Products or Services; and
- (b) where and to the extent specified in the Contract Details, to perform any other act with respect to copyright or to manufacture, sell, hire or otherwise exploit the items or to license any third party to do any of those things in respect of the items,

but only as part of the Developed Materials.

22.4. LICENSING OF CUSTOMER'S PRE-EXISTING MATERIALS

To the extent that the provision of Services by the Contractor necessitates access by the Contractor to the Customer's materials, the Customer grants the Contractor a non-exclusive, non-transferable licence to use such materials for purposes solely related to the Services, subject to any additional stipulations in the Contract Details.

22.5. LICENCE BACK TO CONTRACTOR

Where ownership of Intellectual Property Rights in Developed Materials vests in the Customer, the Customer will, to the extent specified in the Contract Details, grant a licence back to the Contractor to use and exploit the Developed Materials.

22.6. INTELLECTUAL PROPERTY WARRANTIES

The Contractor warrants that:

- (a) it has the right to grant any licence or to sell any Product described in this Contract;
- (b) it has, and relevant subcontractors and other third parties have, the right to grant any licences of Software owned by third parties which are relevant to this Contract;
- (c) without limiting any other specific provision of this Contract, all Products and Services provided under this Contract do not infringe the Intellectual Property Rights of any third party; and
- (d) the licensing or purchase of any Products by the Customer will not infringe the moral rights of any person.

22.7. ENSURING ASSIGNMENT

The Contractor must, at its own cost, do all things reasonably requested by the Customer, including executing documents, to ensure the Customer receives rights which are purported to be granted under this clause 22.

22.8. SURVIVAL OF CLAUSE 22

Clause 22 will survive the termination or expiry of this Contract.

23. THIRD PARTY INDEMNITY

23.1. INDEMNITY BY CONTRACTOR

Unless specified to the contrary in the Contract Details, the Contractor will indemnify the Customer (including its Personnel) against a loss or liability that has been reasonably incurred by the Customer as the result of a claim made by a third party:

- (a) where that loss or liability was caused or contributed to by an unlawful, negligent or wilfully wrongful act or omission by the Contractor or its Personnel; or
- (b) where and to the extent that loss or liability relates to personal injury, death or property damage; or
- (c) where that loss or liability arises from a claim made or threatened against the Customer in which it is alleged that a Service or Product (including the Customer's use of a Service or Product) infringes the Intellectual Property Rights of a third party. For the purposes of this clause 23.1 (c), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the *Patents Act* 1990 (Cwlth) s.163, the *Designs Act* 1906 (Cwlth) s.40A, the *Copyright Act* 1968 (Cwlth) s.183 and the *Circuits Layout Act* 1989 (Cwlth) s.25, constitute an infringement.

23.2. CUSTOMER'S OBLIGATIONS TO CONTRACTOR

Where the Customer wishes to enforce an indemnity described in clause 23.1, it must:

- (a) not admit liability for the alleged infringement;
- (b) give written notice to the Contractor as soon as practicable;
- (c) subject to the Contractor agreeing to comply at all times with government policy relevant to the conduct of the litigation, 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
- (d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

23.3. CONTINUED USE OR REPLACEMENT OF INFRINGING MATERIAL

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

- (a) obtain for the Customer the right to continued use of the Product; or
- (b) replace or modify the Product so that the alleged infringement ceases so long as the

Product continues to provide the Customer with equivalent functionality and performance as required in the Specifications.

23.4. INDEMNITY BY THE CUSTOMER

Where the Contract Details stipulate that this clause applies, the Customer will indemnify the Contractor including its Personnel against a loss or liability that has been reasonably incurred by the Contractor as the result of a claim made by a third party:

- (a) where that loss or liability was caused or contributed to by a wilful, unlawful or negligent act or omission by the Customer or its Personnel; or
- (b) where and to the extent that loss or liability relates to personal injury, death or property damage.

23.5. CONTRACTOR'S OBLIGATIONS TO CUSTOMER

Where the Contractor wishes to rely on the indemnity set out in clause 23.4, it must:

- (a) give written notice to the Customer as soon as practicable;
- (b) 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
- (c) provide all reasonable assistance to the Customer in the handling of negotiations and litigation.

23.6. RESTRICTED APPLICATION OF INDEMNITY

Unless specified to the contrary in the Contract Details, this clause does not address any obligation of the Contractor to indemnify the Customer against loss or liability that has been incurred by the Customer other than as a result of a claim made by a third party. The obligations of the Contractor in circumstances not addressed by this clause will be determined by reference to clause 25 only.

23.7. SURVIVAL OF CLAUSE 23

Clause 23 will survive the termination and expiry of this Contract.

Superseded

24. PROBLEM RESOLUTION

24.1. OBJECTIVE

The parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Contract. Neither party will resort to legal proceedings, or terminate this Contract, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

24.2. NOTIFICATION

If a problem arises (including a breach or an alleged breach) under this Contract which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. Management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.

24.3. MEDIATION

Should the management representatives fail to reach a solution in accordance with clause 24.2 within 5 (five) Business Days (or such other time frame agreed between the parties), the parties may agree to mediation. The mediator will be selected in the manner specified in the Contract Details.

24.4. EXPERT DETERMINATION

If mediation pursuant to clause 24.3 fails, or either party states it does not wish to attempt settlement through a mediator within 10 (ten) Business Days, the parties may agree to expert

determination. The expert will be selected in the manner specified in the Contact Details. Where the parties agree to proceed by expert determination or both, the determination will be conducted pursuant to any relevant legislation.

24.5. PROCEEDINGS

If mediation and/or expert determination fails, or if either party states that it does not wish to proceed with either mediation or expert determination, then either party may commence legal proceedings against the other.

24.6. CONTINUED PERFORMANCE

Unless prevented by the nature of the dispute, the parties will continue to perform this Contract while attempts are made to resolve the dispute. In circumstances where the dispute relates to payment and the Contractor is required to continue to perform its obligations under this Contract pursuant to this clause, the Customer will continue to pay the Contractor any undisputed amounts.

25. LIABILITY

25.1. LIABILITY

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

25.2. LIMITATION

If so specified in the Contract Details, liability arising under this clause 25 will be limited. Unless expressly stated otherwise in the Contract Details, the limit on liability specified in the Contract Details will apply for the benefit of both parties in respect of each single occurrence or a series of related occurrences arising from a single cause. Except as otherwise provided in the Contract Details, this limitation does not apply to liability for:

- (a) personal injury, including sickness and death;
- (b) loss of, or damage to, tangible property;
- (c) an indemnity in respect of third party claims under clause 23; or
- (d) infringement of Intellectual Property Rights.

25.3. CONTRIBUTORY NEGLIGENCE

The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Contract and/or to the extent that the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.

25.4. CONSEQUENCES OF PROVISION OF FAULTY DATA BY CUSTOMER

The Contractor will not be held accountable for a failure to meet its contractual obligations to the extent that the failure is attributable to the provision by the Customer of inaccurate or incomplete information, which is required by the Contractor for the purposes of the Contract. The Contractor must notify the Customer as soon as practicable if it becomes aware that the provision by the Customer of incomplete or inaccurate information in any instance might prevent the Contractor from complying with its obligations under this Contract.

25.5. EFFECT OF DISCOUNTED PRICE

In the event the parties negotiate a reduction to the cost of a Product or Service due to a repeated failure of the Product or Service to meet performance standards, the Customer retains the right to pursue a claim for damages (to the extent permitted by law and subject to any other provision of

this Contract) in respect of net loss or damage suffered.

25.6. RIGHT OF OFFSET

Unless specified to the contrary in the Contract Details, 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.

25.7. LIQUIDATED DAMAGES

If an amount has been specified in the Contract Details as an amount which is payable as and by way of liquidated damages in respect of specified events, the Contractor must pay such liquidated damages within 5 Business Days of written demand by the Customer in the event that such damages become payable. The payment of liquidated damages by the Contractor will discharge the Contractor's liability arising out of the act or omission giving rise to the payment of such damages but, unless stipulated to the contrary in the Contract Details, will not be taken into account for the purposes of quantifying damages which are subject to any liability cap applicable to this Contract. The operation of this clause may be expressly varied in the Contract Details.

25.8. SURVIVAL OF CLAUSE 25

Clause 25 will survive the termination or expiry of this Contract.

26. APPROVAL, CONSENT OR AGREEMENT

- (a) Where the Contractor has fulfilled its obligations under this Contract and the Customer unreasonably refuses to grant any approval (including but not limited to the issuing of a certificate of Acceptance) specified in the Contract Details, and subject to the Customer invoking at its discretion the dispute resolution procedure set out in clause 24:
- i. the Contractor may terminate the Contract;
 - ii. the Customer will pay for work performed up to the point where the approval should reasonably have been granted and will further be liable in respect of all costs reasonably incurred by the Contractor in seeking that approval; and
 - iii. ownership of any Intellectual Property Rights will be determined in accordance with the provisions of this Contract.
- (b) This clause states the Contractor's sole remedy in the event of termination of this Contract under clause 26.

27. COMMUNICATION

27.1. ELECTRONIC COMMERCE

To the extent specified in the Contract Details, the parties will cooperate in performing their respective obligations under the Contract in an electronic environment. The foregoing does not relieve either party of its specified obligations as set out in the Contract.

27.2. NOTICES

A notice or other communication is properly given or served by a party if that party:

- (a) delivers it by hand;
- (b) posts it;
- (c) delivers it by facsimile;
- (d) transmits it by electronic mail; or
- (e) transmits it by any other electronic means;

to the address of the relevant officer specified in the Contract Details, marked to that person's attention.

27.3. CHANGE OF ADDRESS

Each party will advise the other of any change in the address or identity of the relevant person to

whom notices are to be addressed.

27.4. DEEMED RECEIPT

Unless specified to the contrary in the Contract Details, a notice or other communication is deemed to be received if:

- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
- (b) sent by post from and to an address within Australia, after three (3) Business Days;
- (c) sent by post from or to an address outside Australia, after ten (10) Business Days;
- (d) sent by facsimile, at the time which the facsimile machine from which it was sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (e) sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
- (f) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

28. GENERAL

28.1. SUBCONTRACTING

- (a) The Contractor may subcontract the work to be performed under the Contract. Subcontractors (or categories of subcontractors) specified in the Contract Details will be deemed approved. The Contractor is responsible for ensuring that any obligations, which it subcontracts are performed by the subcontractor concerned. The Contractor will ensure that each Approved Subcontractor is aware of the provisions of this Contract relevant to that part of the work, which the Approved Subcontractor is to perform.
- (b) The Customer may on reasonable grounds require withdrawal and/or replacement of any Approved Subcontractor.
- (c) The Customer may at any time require the Contractor to arrange for its subcontractors engaged in work under this Contract to execute a Deed of Confidentiality in a form, which is reasonably acceptable to the Customer. The Customer may require evidence that such an undertaking has been executed as a condition of granting its consent to the involvement to the Approved Subcontractor.

28.2. ENTIRE AGREEMENT

This Contract constitutes the entire agreement of the parties about its subject matter, and no written or oral agreement, arrangement or understanding made or entered into prior to the execution of this Contract may in any way be read or incorporated into the Contract, except as expressly stated to the contrary.

28.3. ASSIGNMENT AND NOVATION

- (a) Subject to clause 28.3 (c) neither party will assign the whole or part of this Contract without the prior written consent of the other party, which consent will not be unreasonably withheld.
- (b) The Customer will not be obliged to consent to any novation. Where the Contractor proposes to enter into an arrangement which will require novation of this Contract, it will consult with the Customer within a reasonable period prior to the proposed novation.
- (c) Notwithstanding clause 28.3 (a) the Customer may assign this Contract, in whole or in part, to an agency or instrumentality of the State or to any other body created by statute or by authority of ministerial direction or by the Governor of the State for the purpose of administering the functions or discharging the role of the Customer.

28.4. UNFORESEEN EVENTS

- (a) A party (the 'affected party') is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

- (b) When any of the circumstances described in clause 28.4 (a) arise or are reasonably perceived by the affected party as an imminent possibility, the affected party will give notice of those circumstances to the other as soon as possible, identifying the effect they will have on its performance. An affected party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.
- (c) If non-performance or diminished performance by the affected party due to any of the circumstances described in clause 28.4 (a) continues for a period of 30 (thirty) consecutive days or such other period as may be specified in the Contract Details, the other party may terminate the Contract. If this Contract is terminated in these circumstances, each party will bear its own costs and neither party will incur further liability to the other. If the Contractor is the affected party, it will be entitled to payment for work performed prior to the date of intervention of any of the circumstances described in clause 28.4 (a).

28.5. WAIVER

A waiver by a party of a breach will not be regarded as a waiver of any other breach. A failure by a party to enforce a provision will not be interpreted as a waiver (unless the waiving party confirms in writing that a waiver was intended).

28.6. APPLICABLE LAW

This Contract will be governed by, and construed in accordance with, the laws of the jurisdiction specified in the Contract Details.

28.7. CONFLICT OF INTEREST

Each party warrants that at the date of execution of this Contract it is not, to the best of its knowledge, aware of any business or personal relationship which may compromise its ability to discharge its obligations under this Contract in good faith and objectively. Each party will promptly notify the other in writing if a situation arises during the course of this Contract whereby a business or personal relationship may compromise it in this manner.

Superseded

28.8. VARIATION

The parties agree that this Contract may only be varied in writing and with the agreement of both parties. If proposed changes will have the effect of varying the Specifications, the Contract Details or any other technical requirements of the Customer, the parties must first complete and sign a change order in the form specified in Appendix 3.

28.9. TIME

Unless specified to the contrary in the Contract Details, time will be of the essence in complying with all stated dates and times.

28.10. PARTIES' RESPONSIBILITIES

Neither party will be liable to the other for failing to comply with any obligations under this Contract to the extent that such failure results from the other party not performing its obligations as stated in the Contract.

28.11. SEVERABILITY

Each provision of this Contract will be read as separate and severable so that if any provision is void or unenforceable for any reason, that provision will be severed and the remainder will be construed as if the severed provision had never existed.

28.12. SERVICE ARRANGER TO ACT AS CUSTOMER'S AGENT

Where a service arranger has responsibility in respect of this Contract (whether or not such responsibility existed as at the commencement date), the Contractor acknowledges that the service

arranger may act as agent of the Customer for the purposes of exercising any right of termination, extension, renewal and performance management, together with any other rights or obligations of the Customer which are specified in the Contract Details.

28.13. LIMITATIONS ON ROLE OF SERVICE ARRANGERS

Where the Contractor is engaged as a service arranger, the Contractor acknowledges that its role is limited to the coordination and management of third party suppliers and that it is not otherwise authorised to provide the same Services or assist in the provision of the same Services direct to the Customer.

28.14. RISK OF LOSS

Unless stated to the contrary in the Contract Details, the Contractor accepts risk of loss or damage to Products prior to delivery to the Customer and the Customer accepts risk of loss upon delivery.

28.15. GOVERNMENT POLICIES

The Contractor will at all times comply with its obligations under the Priority Access Policy, the Buy Local Policy and the WA-MAID Program. A failure by the Contractor or (where relevant and applicable) its Associates or subcontractors to comply will entitle the Customer to give notice of intention to terminate pursuant to clause 29.1(b). In addition, the Contractor undertakes to comply with such government policies as are specified in the Contract Details.

28.16. NON-EXCLUSIVITY

The Contractor acknowledges that, to the extent relevant and except as stated to the contrary in the Contract Details, the Customer may at any time during the term of this Contract acquire goods or services from other suppliers as an alternative to Products or Services which would otherwise be provided pursuant to this Contract.

29. TERMINATION

Superceded

29.1. DEFAULT

Subject to clause 24, either party may terminate this Contract immediately on written notice to the other, while preserving to itself any rights which may have accrued to it, where the other party:

- (a) commits a material breach of this Contract which is not capable of being remedied;
- (b) fails to remedy a breach capable of being remedied within a period stated by notice in writing (which period must be no less than 30 days and reasonable in the circumstances); or
- (c) commits an act of insolvency, comes under any form of insolvency administration, or assigns or purports to novate its rights otherwise than in accordance with this Contract.

For the purposes of clause 29.1, the parties acknowledge that a series of minor breaches may constitute a 'material breach'.

29.2. CONVENIENCE

- (a) Unless stated to the contrary in the Contract Details, the Customer may terminate this Contract in whole or in part at any time by ninety (90) days (or such other period as may be agreed between the parties) prior 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 compensate the Contractor in respect of any liabilities or expenses (excluding loss of profit, loss of revenue, loss of opportunity or similar losses, liabilities or expenses) which are substantiated and which are properly incurred by the Contractor, to the extent that those liabilities or expenses cannot be mitigated. Unless specified to the contrary in the Contract Details, no further compensation will be payable in the event of termination pursuant to this clause 29.2.
- (b) The Contractor will, in each subcontract valued at \$50,000 or more, reserve a right of

termination in circumstances where this Contract is terminated pursuant to clause 29.2.

30. COUNTERPARTS

Unless stated to the contrary in the Contract Details, this Contract may be executed in counterparts, meaning that execution will be complete when each party holds a copy of this Contract signed by the other party, even though the signatures of both parties do not appear on the same copy.

Superceeded