



Conditions: Provision of IT and Related Services

Based on GITC v3

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CONDITIONS OF CONTRACT PROVISION OF IT AND RELATED SERVICES

TABLE OF CONTENTS

| | |
|---|----|
| 1. DEFINITIONS | 5 |
| 2. HOW TO MAKE A CONTRACT – CONTRACT DETAILS..... | 6 |
| 3. COMMENCEMENT DATE AND PERIOD..... | 6 |
| 4. PRIORITY | 6 |
| 5. SERVICES | 6 |
| 6. TELECOMMUNICATIONS SERVICES..... | 7 |
| 7. MANAGED SERVICES INCLUDING OUTSOURCING | 7 |
| 8. SOFTWARE DEVELOPMENT | 8 |
| 9. HARDWARE MAINTENANCE | 9 |
| 10. HARDWARE | 10 |
| 11. LICENSED SOFTWARE | 10 |
| 12. LEASING AND FINCING | 12 |
| 13. GENERAL RESPONSIBILITIES OF THE CONTRACTOR AND CUSTOMER | 12 |
| 14. SPECIFIC RESPONSIBILITIES OF CONTRACTOR | 13 |
| 15. SPECIFIC RESPONSIBILITIES OF CUSTOMER | 14 |
| 16. ACCEPTANCE | 15 |
| 17. WARRANTIES - CONTRACTOR | 16 |
| 18. WARRANTIES - CUSTOMER | 17 |
| 19. PERSONNEL | 17 |
| 20. NON-DISCLOSURE AND USE OF INFORMATION | 17 |
| 21. INTELLECTUAL PROPERTY | 18 |
| 22. INDEMITY | 19 |
| 23. PROBLEM RESOLUTION | 19 |
| 24. LIABILITY | 20 |
| 25. APPROVAL, CONSENT OR AGREEMENT | 20 |
| 26. COMMUNICATION | 21 |
| 27. GENERAL | 21 |
| 28. TERMINATION | 22 |

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1. DEFINITIONS

In these Conditions, unless the context otherwise requires:

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|---------------------------------------|---|
| 'Acceptance' | means sign off by the Customer in respect of a Service or Product. |
| 'Contract' | means the agreement between the Customer and the Contractor as set out in the Head Agreement (if any), the Contract Details, these terms and conditions, the schedules to these terms and conditions and any other document expressly incorporated as part of the Contract. |
| 'Contract Details' | means the document so headed, which contains details agreed between the Customer and the Contractor regarding specific requirements of the Customer in respect of Services and/or Products to be delivered by the Contractor. |
| 'Contractor' | means the party to the Contract stated as the Contractor in the Contract Details. |
| 'Customer' | means the party to the Contract specified as the Customer in the Contract Details and includes heirs at law of the Customer. |
| 'Developed Software' | means Software (including object code and source code) specifically created for the Customer under the Contract. |
| 'Hardware' | means hardware to be supplied by the Contractor, as specified in the Contract Details. |
| 'Head Agreement' | means an agreement (if any) between the Contractor and a contract authority relevant to the provision of Services or Products under the Contract. |
| 'Intellectual Property Rights' | includes rights, to trade marks, patents, copyright and circuit layouts rights. |
| 'Licensed Software' | means Software, to be supplied by the Contractor or a third party, in respect of which ownership does not pass the Customer and in respect of which the Customer's rights of use are subject to stated conditions. |
| 'Personnel' | includes agents and subcontractors of either party. |
| 'Product' | includes Software, Hardware, telecommunications equipment, plans and any supporting documentation to be supplied by the Contractor or a third party, as stated in the Contract Details. |
| 'Service' | means a service to be supplied by the Contractor, as stated in the Contract Details. |
| 'Software' | means software to be supplied by the Contractor, as stated in the Contract Details. |
| 'Specifications' | means specifications of functional, operational, performance or other characteristics required of a Product or Service. |

2. HOW TO MAKE A CONTRACT – CONTRACT DETAILS

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

3. COMMENCEMENT DATE AND PERIOD

- 3.1 The Contract commences on the commencement date stated in the Contract Details.
- 3.2 The Contract is in force during the period stated in the Contract Details.

4. PRIORITY

- 4.1 In the event of inconsistency between two or more documents which form part of the Contract, they shall be interpreted in the following order of priority:
 - 4.1.1 the Head Agreement (if any);
 - 4.1.2 the Contract Details;
 - 4.1.3 these terms and conditions;
 - 4.1.4 the Specification;
 - 4.1.5 the remainder of the schedules to these terms and conditions.
- 4.2 In the event that documents not described in clause 4.1 are incorporated into the Specification, the principal Specification as set out in the Contract Details will take priority over those documents and, to the extent of any inconsistency between those documents themselves, they will be interpreted in the following order of priority:
 - 4.2.1 the Contractor's best and final offer ;
 - 4.2.2 the Customer's request for best and final offer ;
 - 4.2.3 the Contractor's tender;
 - 4.2.4 the Customer's request for tender;
 - 4.2.5 the Contractor's expression of interest;
 - 4.2.6 the Customer's request for expressions of interest.

5. SERVICES

- 5.1 The Contract Details will set out:
 - 5.1.1 the Service required, including any functional and performance requirements for the Service, and the times and locations at which the work must be done;
 - 5.1.2 the resources required (including any services and products to be made available by the Customer) in support of the delivery of the Service, identifying the party which is to provide them; and
 - 5.1.3 a project plan as required, setting out how and when the Contractor will supply the Service.
- 5.2 The Customer may change the functional and performance requirements subject to providing the Contractor with the period of notice set out in the Contract Details and meeting any other agreed Contract change requirements.
- 5.3 The Contractor will:
 - 5.3.1 manage all stages of the supply of the Service;

- 5.3.2 take timely and corrective action where the Service is not being performed in accordance with the Specifications;
 - 5.3.3 record action taken to correct any deficiencies in the Service; and
 - 5.3.4 ensure the timely development and provision of corresponding documentation.
- 5.4 The Service will comply with the performance measures stated in the Contract Details.
- 5.5 The Contractor will not be liable for failing to comply with the performance measures to the extent that failure results from the Customer not performing its obligations as stated in the Contract.

6. TELECOMMUNICATIONS SERVICES

- 6.1 Where the Contract Details provide that the Contractor is to supply a telecommunications Service, the Contractor will provide the Service (including any Products needed to perform the Service) in accordance with the pricing stated in the Contract Details.

7. MANAGED SERVICES INCLUDING OUTSOURCING

- 7.1 Where the Contract Details state that the Contractor is to provide a managed Service including facilities management or outsourcing, the Contractor agrees to meet the Specifications for the Service during the term of the Contract.
- 7.1.1 The Specifications will be deemed to include, and the Contractor will be deemed to have knowledge of information that the Contractor could reasonably have obtained during the due diligence (if any) conducted prior to the date of the Contract.
 - 7.1.2 The Contractor will be deemed to have made full use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the date of the Contract.
 - 7.1.3 Unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Service remain consistent with, and reflect, those used by the Contractor in delivering similar services to other customers.
- 7.2 The Service will be delivered within the following management framework.
- 7.2.1 Transition in:
 - (a) The Contractor will, as necessary:
 - (i) acquire from the Customer any Products or other resources as set out in the transition plan attached to the Contract Details;
 - (ii) comply with obligations set out in the Contract Details regarding the transfer of third party contracts;
 - (iii) comply with the requirements of the transition plan concerning the future role of the Customer's existing Personnel, including the transfer of such Personnel to the Contractor;
 - (iv) ensure it is able to deliver the Service from the date stated in the transition plan;
 - (v) use its best endeavours to ensure that all new software licences incorporate a term requiring that the licensor will consent to novation of the licence to a new service provider or to the Customer itself upon termination of the Service;
 - (vi) prepare a procedures manual that describes how the Contractor will manage the delivery of the Service including:
 - how the performance factors will be measured and met;
 - procedures to identify and rectify failures in the quality of the Service;
 - how changes to the Service or method of delivery will be identified and met;
 - proposed audit requirements; and
 - staffing, reporting, planning, and supervisory activities normally undertaken in respect of similar services in comparable circumstances.

- (b) To the extent necessary, the Customer will use its best endeavours to facilitate the transfer of licences and other relevant third party contracts to the Contractor.

7.2.2 Service Delivery and Service Level Agreement

- (a) Unless the Customer agrees otherwise in writing, the Service will be performed in Australia and in accordance with the following requirements:
 - (i) the Contractor agrees to provide the Service in accordance with the service level agreement attached to the Contract Details;
 - (ii) the Contractor agrees to report to the Customer at regular intervals as to the effectiveness of service delivery, including the extent to which the Service is being adapted to meet the Customer's changing business needs;
 - (iii) the Contractor will advise the Customer if it considers the Specification should be revised to take account of new functions performed by the Customer that are outside the scope of the Contract;
 - (iv) none of the Customer's data will be transferred outside Australia.

7.2.3 If the Contractor fails to meet performance factors for the Service as set out in the service level agreement, the Contractor will:

- (a) promptly investigate the underlying causes of the problem and use all commercially reasonable efforts to preserve any data indicating the cause of the problem; and
- (b) advise the Customer of the status of remedial efforts being undertaken with respect to the underlying cause of the problem; but such action will not deprive the Customer of a right to pursue any other remedy under the Contract arising from the failure to meet the performance factors.

7.2.4 Reversion/Transition Out

- (a) On termination of the Services, the Contractor will, if requested assist the Customer in transferring responsibility for providing the service either to an alternative service provider or to the Customer itself and this will include making arrangements for:
 - (i) the novation or assignment of Software licenses and any other relevant third party agreements from the Contractor to the alternative service provider or to the Customer itself;
 - (ii) offering to sell value to the alternative service provider or the Customer itself at market any equipment used by the Contractor in conjunction with the delivery of the Service;
 - (iii) the transfer of the Customer's data to the alternative service provider or to the Customer itself; and
 - (iv) access to all material, regardless of the manner of storage, held by the Contractor and produced using the Service.

8. SOFTWARE DEVELOPMENT

8.1 Where the Customer requires the Contractor to create Developed Software (including the creation of any modifications to Licensed Software), the Contract Details will contain:

- 8.1.1 the Specifications for the Developed Software;
- 8.1.2 the resources required (including any services or products to be made available by the Customer); and
- 8.1.3 an outline of the project plan for development of the Software, including a date for completion of Acceptance.

8.2 Methodology

8.2.1 The Contractor will fully document the development process and will:

- (a) manage the development of the Developed Software;

- (b) take timely corrective action where the Developed Software is not performing in accordance with the Specifications prior to Acceptance;
- (c) ensure concurrent development and provision of user documentation; and
- (d) ensure that the Developed Software is programmed and documented in a way which would enable future modification by a competent developer without further reference to the Contractor.

8.2.2 Design Specification

- (a) The Contractor will prepare a design specification and submit it to the Customer for approval by the date set out in the Contract Details. The design specification will give a detailed technical explanation of how the functions in the Specification will be met.

8.2.3 Approval of Design Specification

- (a) The Customer will promptly review the design specification when it is submitted by the Contractor. The Contractor will accommodate any requests for alteration made by the Customer in order to satisfy the Specification.
- (b) The Customer will approve the design specification when satisfied that either it conforms to the Specification, or alternatively that any departures from the Specification are reasonable in the circumstances.
- (c) The design specification will, when approved by both parties, become part of the Specifications in the Contract.

8.2.4 Project Plan

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

8.2.5 Approval of Project Plan

- (a) The Customer will promptly review the project plan when it is submitted by the Contractor. The Contractor will accommodate any requests for alteration made by the Customer in order to satisfy the requirements of the Contract.
- (b) The Customer will approve the project plan when satisfied that it is consistent with the requirements of the Contract.
- (c) The project plan will, when approved by both parties, become part of the Specifications.

8.2.6 Support Services

- (a) The Contractor will provide support Services with respect to the Developed Software in the manner and for the period set out in the Contract Details.

8.2.7 Source Code

- (a) Where the Contract Details state the ownership of the Developed Software is to be retained by the Contractor, the Contractor agrees to enter into an escrow arrangement in the form appended to this Contract if so requested by the Customer.
- (b) Where the Contract Details state the 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.

9. HARDWARE MAINTENANCE

- 9.1 The Contract Details will contain a list of the Hardware to be maintained, describe the type and standard of maintenance to be provided and state the maintenance period.
- 9.2 The Customer may vary the Contractor's Hardware maintenance obligations on giving the Contractor the period of notice set out in the Contract Details and, in the event that this increases or decreases the costs to the Contractor of providing maintenance, the parties agree to adjust the fee set out in the Contract Details.

9.3 Preventative Maintenance

9.3.1 The Contractor may require preventative maintenance to ensure the Hardware continues to conform to the performance requirements set out in the Specifications. This maintenance may include all the functions listed in clause 9.4.

9.4 Fault Repair

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

- (a) replacing parts if necessary;
- (b) implementing measures to minimise disruption to the Customer's operations during maintenance work as set out in the Contract Details;
- (c) keeping maintenance records and making them available to the Customer within 2 days of a request; and
- (d) complying with any response times and completion times set out in the Contract Details.

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

9.5 Storage

9.5.1 The Customer consents to the Contractor storing manuals, tools and test equipment on site as reasonably required for the purposes of this Contract, and agrees not to use any such manuals, tools or test equipment without the Contractor's consent.

9.6 Engineering Changes

9.6.1 The Contractor will inform the Customer of any engineering changes of potential relevance to the Customer and shall inform the Customer whether or not it considers such changes should be implemented.

10. HARDWARE

10.1 Title and Risk of Loss

10.1.1 The Contractor transfers title (except for leased items) and responsibility for each item, unit or module of Hardware to the Customer immediately upon Acceptance.

10.2 Supporting Services

10.2.1 The Contractor will install, integrate and support and provide training, maintenance and parts for the hardware supplied by it during the period set out in the Contract Details.

10.3 Warranty

10.3.1 The Contractor warrants that the Hardware will be supplied new and that it complies with the Specifications.

11. LICENSED SOFTWARE

11.1 Unless otherwise stated in the Contract Details the Contractor grants the Customer a non-exclusive, transferable licence at the fees as set out in the Contract Details to:

- 11.1.1 copy the Licensed Software in machine readable form into a machine for processing, transmit it to a machine for processing and perform processing, and make a back-up copy;
- 11.1.2 where the terms of the licence limit the use of the Licensed Software to a particular processor, use the Software on back-up hardware while the stated hardware is temporarily inoperable;
- 11.1.3 assemble or compile a program on another machine if the stated processor and its associated units cannot assemble or compile the program;
- 11.1.4 use the documentation supplied by the Contractor with the Licensed Software to support the Customer's use of the Licensed Software;

11.1.5 make the number of copies of the Licensed Software set out in the Contract Details; and

11.1.6 transfer the licence to another agency within the same government (Federal, State or Territory) as the Customer, on written notice to the Contractor and on that other agency consenting to the terms of the licence.

11.2 Period of Licence

11.2.1 Unless earlier terminated for default or otherwise stated in the Contract Details, the licence is for the period stated in the Contract Details.

11.3 Protection and Security

11.3.1 The Customer will:

- (a) as stated in the Contract Details, maintain records of the location of the copies of the Licensed Software;
- (b) not alter or remove the copyright statement on any of the copies;
- (c) ensure that, prior to disposing of any media, any Licensed Software contained on it has been erased or destroyed; and
- (d) where required by the Contractor in the Contract Details, ensure the confidentiality of Licensed Software.

11.4 Support Services

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

11.5 Defect Support

11.5.1 Where the Customer identifies and reports a defect in the Licensed Software, the Contractor will as soon as possible provide defect correction information or a work-around:

- (a) during the warranty period set out in the Contract Details at no charge;
- (b) during the period prescribed in clause 17.2 (if longer than the warranty period), at no charge, and
- (c) beyond the warranty period, at the charge and subject to the conditions set out in the Contract Details.

11.6 Updates and New Releases

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

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

11.7 Change of Specified Hardware

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

11.8 Reverse Engineering

11.8.1 The Customer may reverse assemble or reverse compile the Licensed Software to the extent permitted by the *Copyright Act (Cth)*.

11.9 Termination

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

11.10 Escrow

11.10.1 The Contractor agrees to enter into an escrow arrangement in the form appended to this Contract if so requested by the Customer.

12. LEASING AND FINING

12.1 Where the parties agree that a Product will be leased through a third party, the terms of the lease, to the extent that they affect the Contractor and the Customer, will be stated in the Contract Details.

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

12.2.1 The Customer is not responsible for any loss of or damage to the Product so long as it uses reasonable skill and care in its use of the Product.

12.2.2 The Customer can only use the Product for the purpose for which it was provided.

12.2.3 The Contractor will keep the Product well maintained and in a good state of repair but the Customer is responsible for any maintenance or repairs arising out of any failure by it to comply with the obligation of care arising under this clause.

12.2.4 The Contractor is responsible for installing the Product and putting it in good working order.

12.2.5 The Customer will not give or attempt to give a third party an interest in the Product without the consent of the lessor.

12.2.6 The Contractor will ensure that the Customer has quiet possession of the Product.

12.2.7 The Customer will allow the Contractor, at times agreed between the parties, to enter the place where the Product is located in order to:

- (a) inspect its condition;
- (b) check whether all relevant contractual obligations are being complied with; and
- (c) exercise any of the Contractor's rights.

12.3 Leasing Charges

12.3.1 The Customer will pay leasing charges as stated in the Contract Details. If the Product is not returned at the end of the term of the lease, the Customer remains under a continuing obligation to comply with the terms and conditions of the Contract until the Product is returned.

12.4 Loss or Damage

12.4.1 The Customer will inform the Contractor in writing immediately if the Product is stolen, lost, destroyed or damaged. If repair is impractical or uneconomic, the Contractor will arrange for the Product to be replaced with a Product of identical or equivalent functionality and if this is not possible, the Contract will terminate. The Customer incurs no liability to the Contractor under this clause unless the loss or damage of the Product arose out of a failure to comply with its obligation of care under clause 12.2.1.

12.5 Return of the Product

12.5.1 On the date stated in the Contract Details as the end of the term, the Customer will ensure that the Product is in good order (fair wear and tear excepted) and available for return to the Contractor.

13. GENERAL RESPONSIBILITIES OF THE CONTRACTOR AND CUSTOMER

13.1 Each party will:

13.1.1 cooperate fully with each other to ensure timely progress and fulfilment of the Contract;

13.1.2 hold meetings (including meetings relating to planning, review, and issue resolution) as necessary and report to one another on a regular basis so as to keep each other fully informed as to the progress of the Contract; and

13.1.3 perform its obligations and responsibilities by the dates stated.

14. SPECIFIC RESPONSIBILITIES OF CONTRACTOR

14.1 Supply

14.1.1 The Contractor will ensure the Services and/or Products comply with the description, standards and service levels as set out in the Contract Details. Time shall be of the essence in complying with all stated dates and times.

14.2 Facilities and Assistance

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

- (a) establish and maintain all necessary facilities for the effective conduct and management of its responsibilities. The Contractor will record changes in relevant facilities or procedures and make this record available to the Customer on request;
- (b) provide all reasonable assistance required by the Customer; and
- (c) comply with reasonable directions given by the Customer.

14.3 Sourcing from Government Contracts

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

14.4 Documentation

14.4.1 The Contractor will supply the documentation, publications and aids it usually makes available to customers on terms equivalent to the best terms it offers other customers in similar circumstances for the Service and/or Product stated in the Contract Details. The Contractor will ensure such documentation is:

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

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

14.5 Training

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

14.6 Invoices

14.6.1 After Acceptance of the Service and/or Product, or as otherwise stated in 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.

14.7 Preparation of invoices

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

- (a) contains sufficient detail to enable the Customer to identify the Service and/or Product concerned, when it was supplied and/or accepted and the amount payable in respect of it; and
- (b) is addressed in accordance with the Customer's requirements as set out in the Contract Details, or as otherwise advised in writing.

14.8 Site Specification

14.8.1 Where required, the Contractor will provide to the Customer with details of the environmental requirements of a Service and/or Product in order to permit the Customer to prepare the site accordingly.

14.9 Insurance Requirements

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

- (a) a broad form public liability policy of insurance to the value of at least \$10 million in respect of each claim; and
- (b) the additional insurance as stated in the Contract Details.

14.9.2 The Contractor will ensure that all specified insurance policies are maintained fully effective and current for the term of the Contract and will, on request, produce to the Customer satisfactory evidence that the Contractor has effected and renewed a particular insurance policy.

14.10 Performance Guarantee

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

14.11 Financial Undertaking

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

14.12 Administration

14.12.1 Where the Contractor does not comply within 30 days with a request from the Customer in accordance with the Contract Details to lodge a performance guarantee or financial undertaking, the Customer may terminate the Contract.

14.12.2 All charges incurred by the Contractor in obtaining and maintaining the required performance guarantee or financial undertaking will be met by the Contractor.

15. SPECIFIC RESPONSIBILITIES OF CUSTOMER

15.1 Payment

15.1.1 The Customer will pay the amounts properly required to be paid by it within 30 days of the date of Acceptance or invoice, whichever is later, unless stated to the contrary in the Contract Details.

15.1.2 Where the Customer disputes an amount in an invoice, the Customer will pay any undisputed part of the amount pending resolution of the dispute.

15.1.3 Goods and Services Tax

(a) Interpretation

(i) For the purposes of this clause unless the context otherwise requires:

- "GST" means any tax imposed on Supplies by or through the *A New Tax System (Goods and Services Tax) Act 1999* ("the Act") and any related *Tax Imposition Act*. Any other term is used in this clause which is defined in the Act has the meaning it bears in the Act;
- "GST Rate" means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time; and
- "Input Tax Credit", "Recipient", "Entity" and "Supplies" have the meaning they bear in the Act.

(b) Consideration inclusive of GST

(i) The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST Rate at the time of forming this Contract.

(c) Tax invoices

- (i) The Contractor will provide the Customer with a tax invoice and/or adjustment notes in relation to the Supplies prior to an amount being paid by the Customer under this Agreement and will do all things reasonably necessary to assist the Customer to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supplies.

15.2 Resources

- 15.2.1 The Customer will provide the resources it has agreed to provide as set out in the Contract Details.

15.3 Site

- 15.3.1 The Customer will prepare the site to permit installation of the Product and/or performance of the Service, except to the extent stated otherwise in the Contract Details.

15.4 Facilities

- 15.4.1 So far as the Customer is able to determine, any facilities (including items of hardware and software) it makes available to the Contractor will be fit for any intended purpose under the Contract and will not be of a nature which may in any way prevent the Contractor from fulfilling its obligations under the Contract.

15.5 Access

- 15.5.1 The Customer will provide the Contractor with access to the Customer's premises to the extent reasonably necessary to enable the Contractor to fulfil its obligations. Where access is temporarily denied or suspended, the Customer will permit a resumption of access as soon as practicable.

16. ACCEPTANCE

16.1 Date of Acceptance

- 16.1.1 The Customer will accept a Service and/or Product on the date the Customer agrees the tests have been successfully completed in accordance with the requirements for Acceptance testing as set out in the Contract Details.
- 16.1.2 Where the Contract Details state that Acceptance tests are not required, the Service and/or Product will be deemed to have been accepted on the date the Contractor can demonstrate that it has complied with all obligations under the Contract.

16.2 Acceptance testing

- 16.2.1 The Contract Details will state the Services and/or Products which are to be the subject of Acceptance tests, and the nature of those tests.
- 16.2.2 If the nature of the Acceptance tests is not stated in the Contract Details, the Customer may subsequently specify reasonable tests, including details of the content of the tests, the time frame within which they are to be conducted, the method for conducting the tests and the acceptance criteria. In these circumstances, the Customer must specify the Acceptance tests in sufficient time for the tests to be performed before the Service and/or Product is due to be delivered and/or installed.

16.3 Tests Requirements

- 16.3.1 To the extent stated in the Contract Details or otherwise as reasonably requested by the Contractor, the Customer will provide materials and facilities reasonably necessary for the conduct of the tests, including power, environment, consumables and data media.

16.4 Delays

- 16.4.1 Subject to Clause 16.6, if the Product or Service does not pass the Acceptance tests within the time set out in the Contract Details and the Customer has not agreed to an extension of time, then the Contractor will be in breach of this Contract.

16.5 Certificate of Acceptance

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

16.6 Failure

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

- (a) require further tests, at the Contractor's expense;
- (b) accept the Service and/or Product, subject to the Contractor agreeing to deliver a work-around within a set time frame; or
- (c) reject the Service and/or Product and require its removal. The Contractor will then be in breach of the Contract.

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

16.7 Additional Tests

16.7.1 The Customer may at any time during the Acceptance testing period require the Contractor to carry out additional or different tests which are reasonably required to establish whether or not the Service and/or Product complies with the Specifications or acceptance criteria referred to in clause 16.2.

16.7.2 The Contractor will pay the costs of any such additional or different tests which demonstrate the Service or Product did not comply with the Specifications or acceptance criteria. Otherwise, the costs of such tests will be borne by the Customer.

17. WARRANTIES - CONTRACTOR

17.1 General

17.1.1 The Contractor warrants that:

- (a) during the warranty period, each Service and/or Product will conform with the Specifications;
- (b) at the time ownership of a Product passes to the Customer, the Product will be free from any charge or encumbrance;
- (c) the Hardware will, at the time of Acceptance, will be newly manufactured and free from defects in materials and workmanship;
- (d) it has the right to grant all licences stated in the Contract Details; and
- (e) the Service and/or Product does not infringe the Intellectual Property Rights of a third party.

17.2 Warranty Period

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

- (a) during the warranty period set out in Contract Details: or
- (b) during the first 12 months after Acceptance: whichever is longer.

17.3 Standards

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

17.4 Third Party Warranties

17.4.1 Where the Contractor supplies Products which have been procured from a third party, the Contractor assigns to the Customer, to the extent permitted by law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the

Contractor from the obligation to comply with warranties offered directly by the Contractor under this Contract.

17.5 This clause 17 will survive the termination of the Contract.

18. WARRANTIES - CUSTOMER

18.1 General

18.1.1 The Customer warrants that:

- (a) any facilities (including items of hardware and software) it makes available to the Contractor comply with any standards and specifications set out in the Contract Details; and
- (b) when necessary, it will maintain those facilities as stated in the Contract Details.

18.2 Facility to meet required standards

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

19. PERSONNEL

19.1 Provision of Personnel

19.1.1 The parties will each make available such Personnel. as are necessary to enable each other to fulfil their respective obligations under the Contract.

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

19.2 Customer's premises

19.2.1 The Contractor will:

- (a) provide such information as is reasonably requested by the Customer concerning the Personnel it proposes to bring on to the Customer's premises;
- (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).

19.3 Key Personnel

19.3.1 Where the Customer names particular Personnel in the Contract Details as being responsible for the performance of key roles or tasks under the Contract, the Contractor will provide those individuals to fulfil those tasks. If a named individual is unavailable at any time, the Contractor will promptly advise the Customer and propose a substitute. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to conditions. Should the Contractor fail to advise the Customer of the unavailability of an individual or fail to provide an acceptable substitute, the Customer may consider the Contractor to be in default.

20. NON-DISCLOSURE AND USE OF INFORMATION

20.1 Information

20.1.1 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 (which will not be withheld unreasonably). Confidential information

includes information marked as confidential, and information which by its nature is confidential is known to be confidential or which the party ought to have known was confidential.

20.1.2 A party is not obliged by this clause to keep information confidential if it was already in possession of that information prior that information passing to it from the other party. Further, a party is not obliged to keep information confidential once it becomes public knowledge (other than through a breach of confidence), nor is there a restriction on the disclose of information which is legally required to be disclosed.

20.1.3 Where a party receives information of a personal nature from the other party which relates to the other party's Personnel or customers, it must only use that information for purposes directly relevant to the performance of its obligations under this Contract and it must comply with any laws relevant to the privacy of that information.

20.2 Employees

20.2.1 Each party will take all reasonable steps to ensure its employees, agents or subcontractors engaged to perform work under this Contract do not disclose confidential information of the other party obtained during the course of performing such work.

20.2.2 The Customer may at any time require the Contractor to arrange for its employees, agents or sub-contractors engaged in work under this Contract to execute a deed of confidentiality relating to confidential information.

20.3 Media

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

20.4 This clause will survive the termination of the Contract.

21. INTELLECTUAL PROPERTY

21.1 Property in Developed Software and other items produced under the Contract:

21.1.1 Unless the parties provide otherwise in the Contract Details, all Intellectual Property Rights in Developed Software or other items that have been specifically developed for the Customer under the Contract are assigned to the Customer. Nothing in this clause will affect the ownership of any pre existing Intellectual Property Rights in any tools, object libraries and methodologies used to produce the Developed Software or other items; OR

21.1.2 Intellectual Property Rights in the Developed Software and other items produced under the Contract will remain the property of the Contractor. The Contractor grants to the Customer a non-exclusive non-transferable license to use, reproduce and adapt Developed Software and other items for the Customer's own use; OR

21.1.3 The Parties shall co-own the Intellectual Property Rights in the Developed Software and other items developed under the Contract in such proportions and on such terms as are described in the Contract Details.

21.2 The Contract does not affect the Intellectual Property Rights in items that existed prior to the date of the Contract but, unless otherwise agreed in the Contract Details, the Contractor hereby grants and shall ensure that relevant third parties grant to the Customer a non-exclusive, non-transferable licence:

21.2.1 to use, reproduce and adapt such items for its own use; and

21.2.2 where stated 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 a Product developed under the Contract.

21.3 Licensed Software

21.3.1 In the case of Licensed Software, no Intellectual Property Rights pass to the Customer but the Contractor grants to the Customer the rights contained in the licence set out in this Contract.

21.4 This clause will survive the termination of the Contract.

22. INDEMNITY

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

22.1.1 The Contractor will also indemnify the Customer against a loss or liability in circumstances where it is alleged that a Service or Product infringes the Intellectual Property Rights of a third party.

22.1.2 Where Customer wishes to rely on this indemnity, it must:

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

22.2 Continued Use or Replacement

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

- (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 but the Product continues to provide the Customer with the same function and performance.

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

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

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

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

22.4.3 provide all reasonable assistance to the Customer.

22.5 This clause will survive the termination of the Contract.

23. PROBLEM RESOLUTION

23.1 Objective

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

23.2 Notification

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

23.3 Mediation

23.3.1 Should the management representatives fail to reach a solution within 5 working days, the parties may seek to settle the matter by referring the issue to the contract authority (if any) for

mediation. If mediation through the contract authority fails, either party may refer the issue to an external mediator.

23.4 Proceedings

23.4.1 If mediation fails, or either party states it does not wish to attempt settlement through a mediator, the parties may agree to arbitration. If the parties do not so agree, either party may then commence legal proceedings against the other as it sees fit.

23.5 Arbitration

23.5.1 Where the parties agree to proceed by arbitration, or if the Contract Details state that disputes must be submitted to arbitration, the arbitration will be conducted pursuant to any relevant arbitration legislation.

23.6 Continued Performance

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

24. LIABILITY

24.1 Liability

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

24.2 Limitation

24.2.1 The Customer and the Contractor may agree to limit the liability of either party arising under clause 24.1 to an amount stated in the Contract Details, for each single occurrence or a series of related occurrences arising from a single cause.

24.2.2 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; or
- (d) infringement of Intellectual Property Rights.

24.3 In the event the parties negotiate a reduction in the cost of a Product or Service due to a repeated failure of the Product or Service to meet the performance standards, the Customer retains a right to pursue a claim for damages (subject to any limitation imposed pursuant to clause 24.2) in respect of net loss or damage suffered.

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

24.5 This clause will survive the termination of the Contract.

25. APPROVAL, CONSENT OR AGREEMENT

25.1 Where the Contractor has fulfilled its obligations under the Contract and the Customer unreasonably refuses to grant any approval (including but not limited to the issuing a certificate of acceptance) stipulated in the Contract Details, the Contractor may terminate the Contract, subject to clause 23.

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

26. COMMUNICATION

26.1 Electronic Commerce

26.1.1 Where agreed in the Contract Details, the Customer and the Contractor will cooperate fully in doing business by electronic transmission.

26.2 Notices

26.2.1 A notice or other communication is properly given or served if the party:

- (a) delivers it by hand;
- (b) posts it; or
- (c) transmits it by electronic mail/facsimile, to the address of the relevant officer, marked to that person's attention;

26.2.2 Each party shall advise the other of any change in the address or the identity of the relevant officer to whom notices are to be addressed.

26.3 Deemed Receipt

26.3.1 A notice or other communication is deemed to be received:

- (a) if sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;
- (b) if sent electronically, at the time the machine on which it has been sent records that it has been transmitted satisfactorily; or
- (c) if delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

27. GENERAL

27.1 Subcontracting

27.1.1 Subject to the approval of the Customer, which shall not be unreasonably withheld, the Contractor may subcontract the work to be performed under the Contract. The Contractor is responsible for ensuring any obligations it subcontracts are performed. The Contractor will ensure that each subcontractor is aware of the provisions of the Contract relevant to that part of the work which the subcontractor is to perform.

27.1.2 The Customer has the power to reasonably request withdrawal and replacement of any subcontractor.

27.2 Entire Agreement

27.2.1 This Contract constitutes the entire agreement of the parties about its subject, and no written or oral agreement, arrangement or understanding made or entered into prior to the execution of the Contract may in any way be read or incorporated into the Contract, except as set out in clause 4.

27.3 Novation/Assignment

27.3.1 Neither party shall assign the whole or part of the Contract without the prior written consent of the other party.

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

27.4 Circumstances beyond Control

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

reason), such as acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

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

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

27.5 Waiver

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

27.6 Applicable Law

27.6.1 The Contract will be governed by, and construed in accordance with, the laws in the Northern Territory. The parties subject themselves to the jurisdiction of the courts of the Northern Territory.

27.7 Conflict of Interest

27.7.1 Each party warrants that, to the best of its knowledge, at the date of execution of the Contract no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. Each party will promptly notify the other in writing if a likely conflict of interest arises during the course of the Contract. Should a conflict arise which significantly affects the interests of the other party, that conflict may be treated by the other party as a breach of Contract for the purposes of clause 28.

27.8 Variation

27.8.1 The parties agree that the Contract may only be varied in writing and with the agreement of both parties.

28. TERMINATION

28.1 Default

28.1.1 Subject to clause 23, either party may terminate the Contract immediately on written notice to the other, while preserving to itself whatever rights may have accrued to it:

- (a) where the other party commits a material breach of the Contract which is not capable of being remedied and the other party has been so notified in writing;
- (b) where the other party fails to remedy a breach capable of being remedied within the period stated by notice in writing (which period must be reasonable in the circumstances);
- (c) where the other party has repeatedly breached the Contract (and notwithstanding any other remedy available under this Contract which may have been enforced or which may be enforceable against that party);
- (d) where the other party commits an act of insolvency, comes under any form of insolvency administration, or assigns its rights otherwise than in accordance with the Contract.

28.2 Convenience

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

28.2.2 The Contractor will, in each subcontract valued at \$20,000 or more, reserve a right of termination in similar terms to this clause.