



**PART 3-GENERAL CONDITIONS OF CONTRACT**

**MANAGED INFORMATION TECHNOLOGY SERVICES**  
**CONTRACT**

**Shire of Wongan-Ballidu**  
**and**

**[insert Contractor] [insert ABN]**

**Date of Contract:**

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## BACKGROUND

- (a) The Principal has engaged the Contractor to provide the Goods and/or Services.
- (b) This Contract sets out the terms and conditions upon which the Contractor shall provide the Goods and/or Services to the Principal.

## OPERATIVE PART

### PART A – DEFINITIONS AND INTERPRETATION

#### 1 DEFINITIONS

In this Contract, except where the context indicates otherwise:

**aaS** means the delivery of an element of ICT operations by an external contractor.

*{Explanatory note: 'aaS' is commonly referred to as "as a Service" and may be BaaS, IaaS, PaaS or SaaS. The element of ICT operations may have been traditionally managed or maintained locally. Such services are usually provided as a rental agreement using monthly or annual charges.}*

**Acceptance** means acceptance of the Goods and/or Services which occurs on the earlier of:

- (a) the Principal notifying the Contractor in writing that the Goods and/or Services are accepted; or
- (b) the expiry of the day 14 days after delivery of the Goods to the Delivery Point or completion of the Services where the Principal has not, during that 14 day period, notified the Contractor in writing that the Goods and/or Services, as the case may be, are rejected.

**Additional Charges** means the charges additional to the Contract Price specified in the General ICT Specifics or elsewhere in this Contract as 'Additional Charges'.

**Affected Obligation** has the meaning given in clause 34.1(a).

**Alternative Software Product** has the meaning given in item of Schedule 5

**Ancillary Data** means metadata and other statistical information generated as a result of the Principal's use of an Externally Delivered Service.

**Approval** means any certificate, licence, consent, permit, approval, authority or requirement necessary for the provision of the Goods and/or Services.

**Assessment Notice** means an assessment notice under section 12 of the Working With Children Act.

**Authority** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

**Background Intellectual Property Rights** means any Intellectual Property Rights owned by a Party prior to the commencement of this Contract or which did not come into existence by reason of this Contract, and which a Party is entitled to exercise and sub-license, which are embodied in, attached to or otherwise relate to this Contract.

**Backup** means a full or part copy of Software and data required for service functionality. To '**Back-up**' means the process of creating a Backup.

*{Explanatory note: the viability of Backup resources is conventionally tested periodically as part of a Back-up regime. Most Backups are useless without access to the specific back-up application that was used to create them.}*

**Backup as a Service** or **BaaS** means a service relating to the creation of a Backup, delivered aaS.

**Business Days** means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

**Child-Related Site** means a location at which Goods are to be delivered and/or Services are to be performed where children are likely to be present.

**Child-Related Work** has the meaning given in section 6 of the Working With Children Act.

**Completion Date** means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in an Order or agreed by the Parties in writing. To avoid doubt, there may be multiple Completion Dates where this Contract applies to multiple Orders of Goods and/or Services.

**Confidential Information** means:

- (a) this Contract;
- (b) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;
- (c) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;
- (d) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and
- (e) any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person.

**Conflict of Interest** means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under this Contract fairly and objectively.

**Consequential Loss** means any:

- (a) loss of production, revenue, profit, business reputation, opportunities or anticipated savings; and
- (b) loss arising from wasted overheads or business interruptions.

**Contract** means this agreement between the Parties for the supply of the Goods and/or Services.

**Contract Price** means the prices or rates:

- (a) specified in an Order as the amount to be paid by the Principal for the provision of the Goods and/or Services the subject of that Order; or
- (b) set out in the General ICT Specifics.

To avoid doubt, there may be multiple Contract Prices where this Contract applies to multiple Orders of Goods and/or Services.

**Contractor** means the party who is engaged by the other party to provide the Goods and/or Services under this Contract and whose details are set out on the front page of this Contract.

**Contractor's Contract Representative** means the person(s) specified as such in the General ICT Specifics.

**Contractor's Support Representative** has the meaning given in clause 25.1.

**Contractor's Vehicles and Equipment** has the meaning given in clause 33.4.

**Cyber Incident** means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Principal Data residing on that system.

**Data Centre** means a physical Environment specifically allocated to ICT infrastructure requirements.

*{Explanatory note: a Data Centre will usually have uninterruptable power supplies, ICT-grade air-conditioning and high levels of physical and logical security. A Data Centre may be owned and managed by the Principal or by a Contractor and may include multiple physical locations and be located on premises or off premises, including on shore or off shore. It may include a hosting Data Centre which may range from physical space only, where devices owned by the Principal are installed, through to a full solution where a Virtual Environment is rented by the Principal.}*

**Defective** means defective, of an inferior quality or inconsistent with the requirements of this Contract.

**Defects Liability Period** means the period of 12 months beginning on the Completion Date.

**Delivery Point** means the place for the delivery of Goods specified in the Order or agreed in writing by the Parties or directed by the Principal to the Contractor in writing.

**Design Specification** has the meaning given in item **Error! Reference source not found.** in Schedule 3.

**Development Services** means services involving the creation of Primary Code or Secondary Code for the specific requirements of the Principal and includes Software design, enterprise application development or platform development and configuration.

**Development Services Specifics** means the contract information in Part B of Schedule 3 under the heading 'Development Services Specifics'.

**Digital Communication Services** means services involving the transportation of digital data via externally owned infrastructure, including voice data, raw data, video data, control and monitoring data.

**Digital Communication Services Plan** means, in relation to Digital Communication Services, the plan or scheme that is agreed by the Parties relating to matters including pricing, devices, connection, speed and volume.

**Digital Communication Services Specifics** means the contract information in Part B of Schedule 6 under the heading 'Digital Communication Services Specifics'.

**Disbursement** means reasonable out-of-pocket costs and expenses incurred by a Contractor in providing the Services which are:

- (a) charged to the Principal at cost;
- (b) incidental to the provision of the Services.

**Dispute** means any dispute or difference between the Parties in connection with this Contract.

**Dispute Notice** has the meaning given in clause 35.1.

**Early Termination Charges** means the charges additional to the Additional Charges and the Excess Charges that the Contractor may impose on the Principal for terminating this Contract or a Digital Communication Services Plan or varying a Digital Communication Services Plan before this Contract terminates, as set out in the General ICT Specifics or elsewhere in this Contract as 'Early Termination Charges'.

**Environment** means the elements which make up the setting or structure in which an ICT system operates or an ICT activity is performed, which may, depending on the context, include hardware, operating Software, enterprise applications, local applications, network hardware, network protocol, perimeter security, local security and directory services, and in the context of Development Services, may also include programming language and ancillary tools.

**Equipment** means the equipment specified in the Equipment and Related Services Specifics.

**Equipment and Related Services** means services involving the leasing of ICT equipment owned by the Contractor to the Principal for use by the Principal.

**Equipment and Related Services Specifics** means the contract information in Part B of

Schedule 4 under the heading 'Equipment and Related Services Specifics'.

**Excess Charges** means the charges additional to the Contract Price and Additional Charges that the Contractor may impose on the Principal for use of the Services beyond agreed thresholds, as set out in the General ICT Specifics or elsewhere in this Contract as 'Excess Charges'.

**Extension Request** has the meaning given in clause 13.4.

**Externally Delivered Services** means services provided to the Principal by the Contractor using ICT infrastructure or Software owned and managed by the Contractor.

*{Explanatory note: Externally Delivered Services are commonly described as 'cloud delivered services' or a generic name for the type of service followed by the aaS suffix. For example, "Backup as a Service" becomes BaaS.}*

**Externally Delivered Services Specifics** means the contract information in Part B of Schedule 2 under the heading 'Externally Delivered Services Specifics'.

**Final Product** means a Software product or bespoke Software configuration or enhancement to be developed as a result of the Development Services, as set out in the Specification, and includes ancillary items such as source code, fonts, logos, images and designs.

**Force Majeure Event** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or
- (d) a change in any Law or any authority exercised by an Authority or official by Law.

**Force Majeure Event Termination Period** means 120 consecutive days.

**General ICT Specifics** means the contract information in Schedule 1 under the heading 'General ICT Specifics'.

**Goods** means the goods specified in an Order or otherwise specified in this Contract.

**GST** means goods and services tax applicable to any taxable supplies as determined under the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax.

**ICT** means information and communications technology.

**Infrastructure as a Service** or **IaaS** means a service involving the provision of an externally owned and managed Environment, where the Principal rents one or more Virtual instances of a server and associated network equipment, delivered aaS.

**Insolvency Event** means:

- (a) in relation to a corporation, where that corporation:
  - (i) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
  - (ii) is otherwise dissolved;
  - (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
  - (iv) enters into any composition or scheme of arrangement with its creditors;



- (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
  - (vi) is otherwise unable to pay all its debts as and when they fall due; and
- (b) in relation to a natural person, where that natural person:
- (i) commits an act of bankruptcy;
  - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
  - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
  - (iv) is otherwise unable to pay all its debts as and when they fall due.

**Insurances** means the insurances which the Contractor is required to obtain under clause 33.

**Intellectual Property Right** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, semi-conductor, circuit and other eligible layouts, copyright (including future copyright), database rights and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time including any application or right to apply for any of these rights.

**Invoice** means a valid tax invoice under the GST Law.

**Law** means statute, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or law of the Principal.

**Legal Requirement** means a requirement under any Law or Approval including a requirement to pay any fees and charges in connection with any Law or Approval.

**Letter of Award** means an Order or Long-Term Award issued by the Principal to the Contractor accepting the Request Response.

**Licensed Products and Related Services** means services involving the sale and/or installation of commercial Software which is to be used either without modification or with only minor modification to suit the Principal's requirements.

**Licensed Products and Related Services Specifics** means the contract information in Part B of

Schedule 5 under the heading 'Licensed Products and Related Services Specifics'.

**Licensed Software** means the Software specified in the Licensed Products and Related Services Specifics.

**Lock-In Period** means the period specified as such in the General ICT Specifics.

**Long-Term Award** means the acceptance of a Request Response relating to the provision of goods and/or services in the future where the nature of the goods and/or services to be provided are not stated or known at the time of formation of this Contract and will be the subject of future Orders.

**Loss** means any liability, loss, damage, cost (including litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, demand, expense or proceeding whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising.

**Multi-Tenanted Environment** means a PaaS Environment where a specific underlying system is developed and used as a common platform but has logically separated instances for individual users.

**New Releases** means major amendments which have been produced primarily to extend, alter or improve the Licensed Software, or the Software used to provide an Externally Delivered Service or used on the Equipment, as the case may be.

**New Software Product** has the meaning given in item in

Schedule 5.

**Order** means a purchase order or other written direction from the Principal to the Contractor which requires the supply of specified Goods and/or Services.

**OSH Laws** means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under this Contract are being performed. This includes the *Occupational Health and Safety Act 1984 (WA)*, in addition to any other relevant legislation or regulations.

**Parties** means the Principal and the Contractor.

**Personal Information** means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Personnel** means the personnel engaged by the Principal, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, contractors and Sub-contractors and any director, officer, employee or agent of any contractor or Sub-contractor, but when used in the context of the Principal's Personnel, does not include the Contractor or the Contractor's Personnel.

**Platform as a Service or PaaS** means an externally owned and managed Environment, where the Principal rents one or more Virtual instances of a server with specific Software pre-installed and generically configured, delivered aaS.

**Plant and Equipment** means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under this Contract.

**Primary Code** means the programming code and any related digital assets required to deliver a functional Software application.

*{Explanatory note: while a Software development Environment may include specific tools, the resultant application will be independent and transportable.}*

**Principal** means the party engaging the other Party to provide Goods and/or Services under this Contract and whose details are set out on the front page of this Contract.

**Principal Data** means information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Goods and/or Services or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract. 'Principal Data' includes digital material stored, manipulated or created by, for, or related to the Principal, and non-generic configuration data that is integral to the integrity of the Principal's Environment.

**Principal Request** means the written request provided by the Principal to the Contractor to submit an offer and price to provide the Goods and/or Services.

**Principal's Documents** means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, the Principal.

**Principal's Premises** means any property under the control, care and management of the Principal.

**Principal's Representative** means the person identified as such in the General ICT Specifics.

**Request Response** means the offer submitted by the Contractor to supply the Goods and/or Services made in response to a Principal Request.

**Sale of Goods Act** means the *Sale of Goods Act 1895 (WA)*.

**Secondary Code** means code that is written within or for an existing application Environment, including configuration elements, ancillary functions or capabilities and script-based operational enhancements.

*{Explanatory note: Secondary Code is dependent on a specific application and is not independent. Secondary code may also not be transportable.}*

**Service Levels** means the standards for performance by the Contractor set out in Schedule 8.

**Service Product** means any item, product, program, tool or other thing provided or created by the Contractor for the purpose of providing the Services to the Principal.

**Services** means the services identified in the Order or otherwise specified in this Contract, and services that are ancillary to such services.

**Software** means all programs, applications and generic configurations, whether physical or Virtual.

**Software as a Service** or **SaaS** means the provision of an externally owned and managed Environment, where the Principal rents fully operational Software solutions, delivered aaS.

**Software Licence** means the licence for the Licensed Software prepared by the Contractor.

**Specification** means the specification comprising

Schedule 7.

**Specified Personnel** means Personnel of the Contractor proposed in a Request Response to perform functions in relation to the provision of the Goods and/or Services.

**Standards and Procedures** means any guidelines, rules, requirements or information regarding site-specific conditions or the Principal's operations made available to the Contractor by the Principal from time to time.

**Start Date** means the date specified as such in the Principal Request or, where no such date is specified in the Principal Request, means the date that the Parties agree in writing that the Contractor must commence the Services.

**Sub-contractor** means any person or entity engaged by the Contractor in connection with the provision of the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors, but does not include the Contractor's employees.

**Sustainability Objectives** has the meaning given in clause 11.1.

**Term** means the term of this Contract as specified in the General ICT Specifics.

**Transition Plan** means a written plan to facilitate the transition of the supply of the Goods and/or Services from the Contractor to another supplier or from another supplier to the Contractor, including any plan comprising Schedule 9.

**Update** means Software which has been produced primarily to overcome defects in, or to improve the operation of, the Licensed Software, the Software used on the Equipment or the delivery of Externally Delivered Services, as the case may be, without significantly altering the operation or nature of the Licensed Software, the Software used on the Equipment or the relevant part of the Externally Delivered Service. To avoid doubt, 'Update' includes a patch.

**Virtual** means a representation of a physical device within a Software-defined Environment.

*{Explanatory note: most PaaS and IaaS Environments consist of multiple Virtual Environments with modifiable Virtual Machines (often shortened to VMs) providing computing resources.}*

**Wilful Misconduct** means any wrongful act or omission that was intentionally done or involved reckless disregard to the likely consequences, including an intentional breach of this Contract.

**Working With Children Act** means the *Working With Children (Criminal Record Checking) Act 2004 (WA)*.

## 2 INTERPRETATION

2.1 In this Contract, unless the context suggests otherwise:

- (a) a reference to this Contract means this Contract as novated or varied from time to time;
- (b) a reference to 'including' must be read as if it is followed by '(without limitation)';
- (c) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) words in the singular include the plural and vice-versa;
- (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a clause is a reference to a clause of this Contract;
- (h) a reference to a Schedule is a reference to a schedule of this Contract;

- (i) a reference to an item is a reference to an item of a Schedule;
- (j) a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;
- (k) headings are for convenience only and do not affect interpretation of this Contract; and
- (l) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

2.2 The explanatory notes in italics in clause 1 do not form part of the operative provisions of this Contract and are included for explanatory purposes only.

## **PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY-NOT USED**

## **PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY**

### **3 QUALITY OF SERVICES**

3.1 The Contractor must provide the Services set out in the General ICT Specifics in accordance with this Contract, including the Schedules, and ensure that the Services provided by the Contractor:

- (a) match the description of the Services set out in the Order or otherwise in this Contract;
- (b) are fit for their intended purpose;
- (c) where they relate to design, the works or goods being designed are fit for their intended purpose;
- (d) are performed with the professional skill, care and diligence expected of a person with the skills, experience, expertise and resources necessary to competently provide the Services; and
- (e) are provided in accordance with any Specification.

3.2 The Contractor warrants, and agrees to ensure, that its Personnel engaged to perform the Services have the necessary skills, experience, expertise, licences, training, qualifications, approvals and resources available to it to competently and lawfully perform the Services.

3.3 The Contractor must regularly consult with the Principal about the progress of the Services and attend meetings where reasonably requested by the Principal.

### **4 QUANTITY AND VALUE OF SERVICES**

The Principal shall only be required to take or accept, and pay for, the quantity of the Services set out in the relevant Order, any Specification, or otherwise in this Contract, unless otherwise agreed by the Parties.

### **5 SERVICE LEVELS AND LIQUIDATED DAMAGES**

5.1 When providing the Services, the Contractor must comply with the Service Levels.

5.2 The Parties agree that any failure to comply with a Service Level:

- (a) is a breach of this Contract;
- (b) may attract liquidated damages in accordance with clause 5.3; and

(c) shall have any additional consequences set out in Schedule 8.

5.3 If the Service Provider does not satisfy a Service Level in respect of which the General ICT Specifics state that failure to satisfy attracts liquidated damages:

- (a) the Contractor must pay the Principal liquidated damages in accordance with this clause 5.3 and the calculations set out in the General ICT Specifics;
- (b) liquidated damages shall become due upon the issue of a notice by the Principal to the Contractor setting out the amount of liquidated damages payable by the Contractor to the Principal;
- (c) the Principal may recover the amount of liquidated damages on demand from the Contractor by deducting such amount from any amount owed by the Principal to the Contractor under this Contract;
- (d) the Contractor acknowledges that all sums payable by the Contractor to the Principal under this clause as liquidated damages represent the Principal's genuine pre-estimate of the damages likely to be suffered by it as a result of the Contractor's failure to satisfy the relevant Service Level and such sums shall not be construed as a penalty; and
- (e) to avoid doubt, the payment of liquidated damages will not relieve the Contractor from its obligations to provide the Services or from any of its other obligations and liabilities under this Contract.

## **6 LOCK-IN-PERIOD**

The Principal must pay the Contractor the Contract Price to provide the Services for the Lock-In Period notwithstanding any termination of this Contract or the cessation of the provision of the Services by the Contractor to the Principal.

## **7 RESTRICTIONS**

When using or dealing with any Service Product provided to the Principal, the Principal must not:

- (a) remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in or on the Service Product or on a screen or any print out from the Service Product without authorisation in writing from the Contractor;
- (b) allow access to or use of the Service Product for any purpose other than the purpose for which the relevant Service is provided;
- (c) copy, adapt, translate, publish, communicate to the public or create any adaptation, translation or derivative of the Service Product, unless agreed otherwise in writing by the Parties or permitted by Law;
- (d) reverse engineer, reverse compile, decompile or disassemble the Service Product or the object code of any service Product or otherwise attempt to derive the source code of the Service Product, unless agreed otherwise in writing by the Parties or permitted by Law;
- (e) seek to change or modify the structure or operating method of the Service Product in any other way; or
- (f) use or permit the use of the Service Product for any purpose that may cause damage or injury to any person or property or breach any Law.

## **8 AUDIT**

- 8.1 The Contractor must maintain records and supporting documents sufficient to permit the Principal to undertake an audit of the provision of the Services by the Contractor to the Principal.
- 8.2 The Contractor must provide the Principal with all information, co-operation and assistance reasonably necessary for the Principal to undertake an audit under this clause 8.
- 8.3 If an audit undertaken in accordance with clause 8.1 identifies that:
- (a) the Contractor has charged the Principal for an amount in excess of the Contract Price, any Additional Charges, any Excess Charges or Early Termination Charges;
  - (b) the Contractor has done an act or omission which constitutes a failure to provide the Services in accordance with this Contract;
  - (c) the Contractor is providing Services to the Principal which exceed the reasonable requirements of the Principal; or
  - (d) the Principal is using a Service Product otherwise than in compliance with this Contract,
- then:
- (e) where clause 8.3(a) applies, the Principal is entitled to a refund of the amount overcharged;
  - (f) where clause 8.3(b) applies, the Principal may provide to the Contractor notice under clause 36.1;
  - (g) where either clauses 8.3(a) or 8.3(b) applies, the Contractor must pay to the Principal the Principal's reasonably incurred costs in undertaking the audit;
  - (h) where clause 8.3(c) applies, the Contractor must not unreasonably withhold its agreement to a variation to the scope of Services consistent with the reasonable requirements of the Principal based on matters identified in the audit; and
  - (i) where clause 8.3(d) applies, the Principal must rectify the non-compliance as soon as practicable but shall not be liable to the Contractor for any damages or penalties arising out of such non-compliances before it received written notice of the results of the audit.

## **PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES**

### **9 SUPPLY OF GOODS AND/OR SERVICES**

- 9.1 The Contractor must:
- (a) at its expense, obtain any Approvals necessary for the provision of the Goods and/or Services;
  - (b) at its expense, comply with all reasonable directions of the Principal regarding the provision of the Goods and/or Services, including regarding the transition of the provision of the Goods and/or Services from an alternative supplier to the Contractor;
  - (c) where the Principal provides the Contractor with written notice that an alternative supplier will, in the future, be supplying the Principal with the Goods and/or Services provided under this Contract, at its expense provide reasonably requested assistance to the Principal in transitioning the supply of the Goods and/or Services to the new supplier, including making arrangements for the novation or assignment of relevant contracts with third parties;



- (d) comply with any Transition Plan; and
- (e) co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time, provided that the Contractor will be entitled, by prior written agreement with the Principal, to charge for costs incurred as a direct result of providing such co-operation and assistance.

9.2 The Principal must provide the Contractor with any information reasonably necessary for the Contractor to provide the Goods and/or Services.

9.3 If a Transition Plan is not developed prior to this Contract coming into effect between the Parties, the Principal may:

- (a) make a written request to the Contractor to prepare a draft Transition Plan for the Principal's review within a reasonable period of time specified by the Principal and the Contractor must comply with that request; and
- (b) accept or propose reasonable amendments to the draft Transition Plan prepared by the Contractor in accordance with clause 9.3(a) and provide a final version of the Transition Plan to the Contractor.

## 10 PLANT AND EQUIPMENT

The Contractor must:

- (a) provide all Plant and Equipment and labour necessary for the performance of the Contractor's obligations; and
- (b) ensure that Plant and Equipment and other items which the Contractor uses or supplies in connection with this Contract comply with Legal Requirements and are fit for their usual and intended purpose.

## 11 SUSTAINABLE PROCUREMENT

- 11.1 The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by clause 11.2 (**Sustainability Objectives**) and acknowledges that its support of the Sustainability Objectives assists the Member in meeting its own Sustainability Objectives.
- 11.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply the Goods and/or Services in a manner which seeks to support the Sustainability Objectives, which endeavours may include:
- (a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;
  - (b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:
    - (i) using recycled materials and products;
    - (ii) reducing emissions;
    - (iii) adopting greener energy solutions;
    - (iv) adopting environmentally sustainable design; and
    - (v) reducing wastage;
  - (c) providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);
  - (d) sponsoring and supporting local community groups and local community development initiatives;
  - (e) promoting fair workplace practices;
  - (f) promoting workplace health;
  - (g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and
  - (h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.
- 11.3 The Contractor agrees to provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.
- 11.4 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Goods and/or Services to Members are supplied from sustainable sources.

## 12 ORDERS UNDER A LONG-TERM AWARD

- 12.1 This clause applies where this Contract is a Long-Term Award.
- 12.2 From time to time the Principal may give the Contractor an Order containing the following information:
- (a) a description and/or specification of the Goods and/or Services required, including the required quantity;
  - (b) the Completion Date; and
  - (c) where the Order relates to Goods, the Delivery Point.
- 12.3 Within 5 Business Days of receipt of an Order the Contractor must give notice to the Principal of:
- (a) any aspect of the Order which it does not accept and supporting reasons; and/or
  - (b) any recommended changes to the Order and supporting reasons,
- following which the Parties shall seek to agree on the terms of the Order and a revised Order shall be issued by the Principal to the Contractor.
- 12.4 If the Contractor does not give notice under clause 12.3, the Contractor must fulfil the Order.
- 12.5 To avoid doubt, the Principal is not obliged to issue Orders to, or otherwise purchase Goods and/or Services from, the Contractor.

## 13 TIME FOR PERFORMANCE AND EXTENSIONS OF TIME

- 13.1 The Contractor must commence the provision of the Services on the Start Date.
- 13.2 Subject to this clause 13, the Contractor shall deliver the Goods to the Delivery Point and/or perform the Services, as the case may be, by the Completion Date.
- 13.3 The Contractor is entitled to an extension to the Completion Date if a delay to the provision of the Goods and/or Services is due to:
- (a) a breach by the Principal of this Contract;
  - (b) delay or disruption caused by the Principal, except where such delay or disruption is caused by the Principal acting in accordance with this Contract;
  - (c) a Force Majeure Event occurring before the Completion Date;
  - (d) suspension of this Contract under clause 36.3 where the suspension is the result of a breach by the Principal; or
  - (e) a variation being agreed to the nature of the Goods and/or Services provided.
- 13.4 To obtain an extension, the Contractor must make a written request to the Principal within 10 Business Days after the cause of delay has arisen or within any other period agreed in writing by the Parties, which request must include the facts on which the request is based (**Extension Request**).
- 13.5 The Principal, acting reasonably, must notify the Contractor within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether an extension of time to the Completion Date is granted and any relevant period of extension, which must be reasonable in the circumstances giving rise to the Extension Request.

## **14 RECEIPT AND ACCEPTANCE OF GOODS AND/OR SERVICES**

14.1 The Parties agree that:

- (a) delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal; and
- (b) Acceptance by the Principal is without prejudice to the Principal's rights in respect of the Defects Liability Period applicable to any Goods and/or Services.

14.2 If, following any review, inspection, examination or witnessing of the Goods and/or Services, the Principal is not satisfied that the Goods and/or Services are being, or have been, provided in compliance with this Contract, the Contractor must, after receiving a written request from the Principal, promptly take all steps necessary to ensure compliance.

## **15 REJECTION AND REMOVAL OF DEFECTIVE GOODS AND/OR DEFECTIVE SERVICES**

15.1 During the Defects Liability Period, the Principal may notify the Contractor in writing that any Goods and/or Services provided are Defective.

15.2 Where the Principal notifies the Contractor under clause 15.1, the Principal may direct the Contractor to replace, rectify or re-perform the Goods and/or Services, as the case may be, free of charge to the Principal and within a reasonable time specified by the Principal.

15.3 The Contractor must comply with a direction under clause 15.2 within the time period specified in the notice or otherwise agreed in writing by the Parties.

15.4 Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 15.3, the Principal may give the Contractor written notice of its intention to rectify, replace or have re-performed the Goods and/or Services by a third party, together with the estimated and itemised reasonable costs of the Principal in rectifying, replacing or having re-performed the Goods and/or Services.

15.5 Following receipt of a notice under clause 15.4 from the Principal, the Contractor has 5 Business Days to notify the Principal in writing as to whether the Contractor will replace, rectify or re-perform the Goods and/or Services and to reach agreement with the Principal regarding the timeframe for doing so, otherwise the Principal may rectify, replace or have re-performed the Goods and/or Services and recover its costs in doing so from the Contractor.

15.6 Where the Contractor has made good any Defective Goods and/or Services, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods and/or Services from the date the Contractor completes making good the Defective Goods and/or Services.

15.7 The Principal shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Contractor has been notified in writing by the Principal that they are Defective.

15.8 Without limiting clause 37, any cost or expense reasonably incurred by the Principal in connection with, or as a result of, the Defective Goods and/or Services shall be a debt due from the Contractor to the Principal.

15.9 To avoid doubt, nothing in this clause shall prejudice any other right of the Principal arising out of the failure by the Contractor to provide Goods and/or Services in accordance with this Contract.

## **16 FAILURE TO PROVIDE GOODS AND/OR SERVICES**

- 16.1 The Contractor must provide written notice to the Principal as soon as possible if the Contractor is unable to provide the Goods and/or Services and the period of time for which the Contractor will be so unable.
- 16.2 Where the Contractor provides written notice to the Principal under clause 16.1, the Principal may, acting reasonably, and without being liable in any way to the Contractor, obtain or acquire such goods and/or services as it requires from a third party until the Principal receives a further written notice from the Contractor that the Contractor is able to recommence the provision of Goods and/or Services.

## **17 INFORMATION**

- 17.1 The Contractor must keep the Principal fully informed about:
- (a) any matters that may adversely affect the Contractor's ability to provide the Goods and/or Services; and
  - (b) delivery of the Goods and/or completion of the Services.

## **18 PRICE BASIS AND OTHER CHARGES**

- 18.1 The Contract Price shall be firm and not subject to rise and fall.
- 18.2 To avoid doubt, the Principal's liability to the Contractor for the Contractor's costs in providing the Goods and/or Services is capped at the Contract Price, unless otherwise agreed in writing by the Parties and subject to clause 218.4.
- 18.3 If required by the General ICT Specifics, the Principal must pay all or part of the Contract Price in advance of all or part of the Services being provided, as set out in the General ICT Specifics.
- 18.4 In addition to the Contract Price, the Principal shall be liable to pay the Contractor the Additional Charges, the Excess Charges and the Early Termination Charges if and when incurred.

## **19 FORMATION OF CONTRACT AND TERM**

- 19.1 This Contract shall be formed and commence on the date that the last Party executes this Contract.
- 19.2 This Contract shall terminate at the expiry of the Term, subject to clauses 19.3 and 19.4.
- 19.3 The Parties may agree in writing to extend the Term for an agreed period of time.
- 19.4 This Contract may terminate before the expiry of the Term:
- (a) if the Parties agree in writing; or
  - (b) otherwise in accordance with this Contract.
- 19.5 The termination of this Contract does not affect:
- (a) any rights of the Parties accrued before the date of termination; and
  - (b) the rights and obligations of the Parties which survive termination.
- 19.6 Clauses 1 (definitions), 2 (interpretation), (manufacturer's warranties), (warranty regarding property in goods), 3.2 (warranties regarding personnel), 5.3 (liquidated damages), 6 (Lock-

in Period), 9.1(c) and 9.1(d) (transition out), 14 (Acceptance and Defects Liability Period), 20 (Defective Goods and/or Services), 18.4 (other charges), 19.5 and 19.6 (term and survival), 20 (Contractor to have informed itself), 29 (Confidentiality), 0 (Data security), 31 (Intellectual Property Rights), 32 (Liability and indemnity), 40 (Settlement of disputes), 37.2 to 37.4 (inclusive) (termination), 40 (Notices), 41.1 (relationship of Parties) and 41.7 (Governing law) shall survive termination of this Contract.

- 19.7 Where this Contract relates to Externally Delivered Services, this clause 19.7 and items (regarding rights in Principal Data), (regarding Contractor's use of Principal Data), **Error! Reference source not found.** (regarding Personal Information), (regarding Third Party Provider liabilities), (Data Destruction and Archiving) and (regarding data compromises) of Schedule 2 shall also survive termination of this Contract.
- 19.8 Where this Contract relates to Development Services, this clause 19.8 and items (Ownership of Final Product) and (Maintenance) of Schedule 3 shall also survive termination of this Contract.
- 19.9 Where this Contract relates to Digital Communication Services, this clause 19.9 and items (Charging Basis) and (Service Failure and/or Interruption) of Schedule 6 shall also survive termination of this Contract.

## 20 CONTRACTOR TO HAVE INFORMED ITSELF

By providing the Request Response, the Contractor acknowledges that it has:

- (a) examined carefully, and has acquired actual knowledge of the contents of, its Request Response, this Contract and any other information made available in writing by the Principal to the Contractor for the purposes of the Request Response and this Contract; and
- (b) satisfied itself as to the correctness and sufficiency of the Request Response and that the Contract Price covers the cost of complying with all of its obligations under this Contract and of all matters and things necessary for the proper performance and completion of this Contract.

## 21 CONFLICT OF INTEREST

- 21.1 The Contractor warrants that, to the best of its knowledge, as at the date of providing the Request Response:
- (a) the Contractor has declared in its Request Response any Conflicts of Interest in the performance of its obligations under this Contract that it has, or is likely to have; and
  - (b) the information contained in the Contractor's Request Response as to the existence of any Conflicts of Interest is correct and comprehensive.
- 21.2 If a Conflict of Interest or risk of Conflict of Interest arises, including because of work undertaken by the Contractor for a person other than the Principal, the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Principal.

## 22 LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES

- 22.1 The Contractor shall comply with all Legal Requirements, Standards and Procedures affecting or applicable to the Goods and/or Services and/or the performance of this Contract and ensure that its Personnel also comply with the same, at the Contractor's cost.
- 22.2 The Contractor shall:

- (a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor for the purposes of providing the Goods and/or Services;
- (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;
- (c) to the extent practicable, use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 22.2(a) and 22.2(b) in relation to the Sub-contractors' own employees; and
- (d) ensure that it pays each of its Sub-contractors in accordance with the Contractor's agreement with that Sub-contractor, subject to the Contractor's acceptance of the goods and/or services provided by the Sub-contractor.

## **23 SAFETY OBLIGATIONS**

23.1 The Contractor must:

- (a) do all things reasonably necessary to ensure that the Goods and/or Services are provided in a manner that is safe and not likely to cause injury or illness to any person; and
- (b) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the role of the Contractor under this Contract including notification of incidents as may be required under OSH Laws.

23.2 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:

- (a) as soon as practicable, but in any event within 24 hours, notify the Principal of that injury, property damage, accident or incident; and
- (b) provide the Principal with any further information requested by the Principal.

23.3 The Contractor acknowledges that if, in performing its obligations under this Contract, its Personnel enter premises under the control of the Principal or the Principal's Personnel they must comply with the Principal's occupational health and safety policies and procedures and do so at the Contractor's own risk.

23.4 Without limiting clauses 36.3 to 36.5 (inclusive), any breach by the Contractor of OSH Laws or this clause which gives rise to circumstances which:

- (a) present actual or potential risk of life or serious injury; or
- (b) are otherwise required to be notified under OSH Laws,

entitles the Principal to suspend the whole or part of the performance of the Contractor's obligations.

## **24 CONTRACTOR'S PERSONNEL**

24.1 The Contractor must, and must ensure its Personnel, when providing the Goods and/or Services:

- (a) comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the Goods and/or Services;
- (b) do not cause any damage, loss or injury to any property or person; and

- (c) act, in all circumstances and at all times, in a fit and proper manner.
- 24.2 If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Specified Personnel, it must obtain the prior written approval of the Principal.
- 24.3 The Contractor must provide the Principal with an Australia-wide police clearance in respect of any of its Personnel within 30 Business Days of such a request being made in writing by the Principal to the Contractor.
- 24.4 If any police clearance obtained under clause 24.3 evidences that any of the Contractor's Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to its other rights under this Contract, request the Contractor to promptly remove that person from involvement in the provision of the Goods and/or Services, and the Contractor must comply with such a request as soon as possible.
- 24.5 If the Goods and/or Services to be provided by the Contractor involve Child-Related Work or involve the delivery of the Goods and/or Services at a Child-Related Site:
- (a) the Contractor must provide to the Principal an Assessment Notice in respect of all Personnel involved in performing the Child-Related Work, or providing the Services or delivering Goods at the Child-Related Site, before they commence such work; and
  - (b) the Principal may require the Contractor to immediately remove any of the Contractor's Personnel who do not have a current Assessment Notice and the Contractor must comply with such a request as soon as possible.

## **25 REPRESENTATIVES AND TECHNICAL SUPPORT**

- 25.1 The Contractor nominates the person specified as the Contractor's Contract Representative in the General ICT Specifics to act on its behalf for the purpose of this Contract within delegation limits advised in writing to the Principal.
- 25.2 In addition to the Contractor's Contract Representative, the Contractor must provide, in writing to the Principal, the details of another person(s) to provide the Principal with technical support and assistance (**Contractor's Support Representative**), as set out in the General ICT Specifics.
- 25.3 The Contractor's Support Representative must be available to provide the Principal with technical support and assistance on the days and at the times specified in the General ICT Specifics. The Principal acknowledges that the Contractor's Support Representative shall not be available on the days and at the times specified in the General ICT Specifics as unavailable days or times.
- 25.4 The Principal nominates the person specified as the Principal's Representative in the General ICT Specifics to act on its behalf for the purpose of this Contract within the delegation limits advised in writing to the Contractor and confirms that person has authority to give instructions in relation to the provision of the Services.

## **26 INVOICING AND PAYMENT**

- 26.1 Subject to the Contractor satisfactorily providing the Goods and/or Services, the Principal must pay the Contractor the Contract Price in accordance with this clause 26 and the Contractor's preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.
- 26.2 As soon as reasonably practicable following the end of each month, or at another time or frequency agreed in writing by the Parties, the Contractor must provide to the Principal an Invoice for the provision of the Goods and/or Services or any delivered or completed part of the Goods and/or Services.



- 26.3 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices issued in accordance with this clause within 20 Business Days of issue to the Principal or such other period as agreed in writing by the Parties, except where the Principal disputes the Invoice, in which case, to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute.
- 26.4 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing. To avoid doubt, the Principal must not unreasonably withhold its consent to any reasonable Disbursements.
- 26.5 A payment made pursuant to this Contract is taken to be payment on account and is not proof or admission of the value of the Goods and/or Services provided or that the Goods delivered and/or the Services performed, or any part thereof, were to the Principal's satisfaction.
- 26.6 The Parties agree that failure by the Principal to pay the amount payable at the due time will not be grounds for the Contractor to terminate, invalidate or avoid this Contract.

## **27 GOODS AND SERVICES TAX**

- 27.1 Words capitalised in this clause 27 and not otherwise defined have the meaning given in the GST Law.
- 27.2 Where an amount of Consideration is payable for a Taxable Supply made under this Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.
- 27.3 The Party making a Taxable Supply under this Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
- 27.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

## **28 ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS**

- 28.1 The Principal agrees to provide the Contractor with access to the Principal's Premises and Principal's Documents as reasonably required to provide the Goods and/or Services.
- 28.2 The Contractor must only use the Principal's Documents for the sole purpose of providing the Goods and/or Services and must take reasonable security measures to protect the Principal's Documents from unauthorised disclosure or use.
- 28.3 The Contractor acknowledges and agrees that:
- (a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;
  - (b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Principal's Premises or Principal's Documents at any time; and
  - (c) where the Principal has suspended or denied the Contractor's access to the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

## 29 CONFIDENTIALITY

29.1 In this clause 29 the following terms have the following meanings:

- (a) **'Disclosing Party'** means the Party which has disclosed Confidential Information that is confidential to that Party; and
- (b) **'Receiving Party'** means the Party to whom Confidential Information is disclosed by the Disclosing Party.

29.2 Subject to clause 29.3, the Parties must not:

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information except to the extent necessary to fulfil their obligations under this Contract.

29.3 Subject to clause 29.4, a Party may disclose Confidential Information to a third party:

- (a) with the prior consent of the Disclosing Party;
- (b) to the extent required by any Law or applicable securities regulation or rule;
- (c) in connection with any dispute or litigation concerning this Contract or its subject matter;
- (d) to the extent required by any Authority having jurisdiction over the Receiving Party; or
- (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under this Contract.

29.4 Before making a disclosure to a person under clause 29.3, the Receiving Party must:

- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Contract, except where clause 29.3(b) applies;
- (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) where clause 29.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this Contract.

## **30 DATA SECURITY**

- 30.1 The Contractor must:
- (a) do all things that a reasonable and prudent person or entity would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
  - (b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and
  - (c) either return to the Principal or destroy any Principal Data immediately following the termination of this Contract.
- 30.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 33 shall apply to this insurance with any necessary modifications.

## **31 INTELLECTUAL PROPERTY RIGHTS**

- 31.1 The Contractor warrants that any supply by it of the Goods and/or Services and any designs, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.
- 31.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the supply of the Goods and/or Services or from any designs, documents or methods of working provided by it to the Principal.
- 31.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.
- 31.4 The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of this Contract.
- 31.5 The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal's Background Intellectual Property Rights to the extent necessary for the Contractor to supply the Goods and/or Services.
- 31.6 All Intellectual Property Rights (other than the Contractor's Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under this Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor's cost or as otherwise agreed by the Parties.
- 31.7 The Contractor must ensure that:
- (a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under this Contract do not vest in any Sub-contractor of the Contractor or any other third party; and
  - (b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Goods and/or Services or this Contract contrary to the interests of the Principal.

- 31.8 A Party must not:
- (i) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or
  - (j) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.
- 31.9 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

## **32 LIABILITY AND INDEMNITY**

- 32.1 Subject to the other provisions of this clause 32, the Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss suffered by the Principal or its Personnel arising directly or indirectly from:
- (a) any breach of this Contract by the Contractor;
  - (b) any Wilful Misconduct, or a negligent act or omission, by the Contractor or its Personnel;
  - (c) any loss or damage to the Principal's premises or property caused by the acts or omissions of the Contractor or its Personnel;
  - (d) any claim made by a third party against the Principal or its Personnel, to the extent that the claim arose out of any act or omission of the Contractor or its Personnel; and
  - (e) any act or omission of the Contractor or its Personnel that causes the Contractor to breach any Legal Requirement,
- except to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or its Personnel.

### ***Consequential Loss***

- 32.2 Notwithstanding any other clause of this Contract, neither Party will be liable to the other Party for any Consequential Loss unless:
- (a) the Law requires otherwise;
  - (b) the Parties agree in writing that a Party will be liable for that Consequential Loss; or
  - (c) the Consequential Loss is specified in or otherwise covered by an Insurance.

### ***Civil Liability Act***

- 32.3 Each Party agrees that Part 1F of the *Civil Liability Act 2002 (WA)*, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with this Contract and any of the Contractor's Sub-contractors or such Sub-contractors' personnel.

## **33 INSURANCE AND RISK MANAGEMENT**

- 33.1 The Contractor must:
- (a) procure and maintain the Insurances with the minimum level of cover set out in this Contract, or otherwise specified by the Principal in the Principal Request, from

insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Principal, which either:

- (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or
  - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;
- (b) ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the provision of the Goods and/or Services to the Principal;
  - (c) upon the Principal's written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;
  - (d) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor;
  - (e) disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the provision of the Goods and/or Services by the Contractor or a claim in connection with the Contract;
  - (f) pay all premiums and deductibles applicable to any of the Insurances when due;
  - (g) promptly reinstate any Insurance required if it lapses or cover is exhausted;
  - (h) give the Principal at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and
  - (i) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

33.2 To the extent possible, at the times of placement or renewal of any Insurances, each Insurance must:

- (a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and
- (b) where the Principal is entitled to cover under the Insurance:
  - (i) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
  - (ii) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
  - (iii) except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);
  - (iv) provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and

- (v) provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

33.3 The Contractor must procure and maintain public liability insurance and product liability insurance which:

- (a) is for an amount not less than \$10 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;
- (b) covers the liability of the Contractor, its Personnel and the Principal in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),arising out of or in connection with the Contractor's performance of the Contract;  
and
- (c) covers the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract and sudden and accidental pollution.

33.4 Where the Contractor shall be using its own vehicles, plant and equipment in providing the Goods and/or Services, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (**Contractor's Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), which must:

- (a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;
- (b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;
- (c) be unlimited in the number of occurrences; and
- (d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Principal.

33.5 Unless otherwise agreed in writing by the Principal, the Contractor must procure and maintain workers' compensation insurance as follows:

- (a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than \$50 million, or such amount as is specified in a Principal Request, in respect of any one event; or
- (b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.

33.6 Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:

- (a) be for not less than \$5 million, or such other amount as is specified in the Principal Request, or otherwise reasonably requested by the Principal in respect of any one claim;

- (b) be for an amount not less than the amount specified in the Principal Request in the aggregate for all claims arising in any one 12 month period of insurance (if an amount is so specified);
- (c) include one full automatic reinstatement of the limit of liability;
- (d) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under this Contract; and
- (e) cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.

33.7 Notwithstanding any other provision of this clause 33, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:

- (a) it is lawful for the Contractor to do so;
- (b) the Contractor identifies in writing to the Principal which of the risks required to be insured are being self-insured; and
- (c) if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Principal's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.

33.8 The Parties acknowledge and agree that:

- (a) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract;
- (b) the Insurances are primary, and not secondary, to the indemnities referred to in this Contract and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
- (c) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
- (d) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances;
- (e) nothing in this clause 33 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and
- (f) where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.

33.9 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2009 Risk Management.

## **34 FORCE MAJEURE EVENT**

34.1 A Party must:

- (a) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under this Contract (**Affected Obligations**); and
- (b) if it gives such a notice, either:

- (i) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
- (ii) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.

34.2 The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

34.3 The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.

34.4 If a Force Majeure Event continues to affect the provision of the Goods and/or Services for the duration of the Force Majeure Event Termination Period, the Principal may terminate this Contract by serving written notice on the Contractor.

## **35 SETTLEMENT OF DISPUTES**

35.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).

35.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.

35.3 In the event that the Dispute remains unresolved after the time period referred to in clause 35.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with clause 35.4.

35.4 A mediation under this clause 40 shall:

- (a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice of intention under clause 35.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
- (b) be conducted according to the rules proposed by the appointed mediator; and
- (c) be conducted during a period of 10 Business Days (or such longer period as the Parties may agree in writing) from the acceptance by the mediator of his or her appointment.

35.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.

35.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 35.4(c), either Party may take whatever other action is available to it under this Contract or the Law, including initiating proceedings in a court of competent jurisdiction.

35.7 Nothing in this clause 40 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.



## **36 DEFAULT, SUSPENSION AND TERMINATION FOR BREACH**

### ***Default***

- 36.1 If a Party breaches a provision of this Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
- (a) identifying the nature of the alleged breach;
  - (b) requiring the Party to comply with the relevant provision of this Contract; and
  - (c) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice.
- 36.2 If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages or exercise any other right under this Contract or under any applicable Legal Requirement.

### ***Suspension***

- 36.3 If a Party breaches a provision of this Contract and fails to comply with a written notice issued under clause 36.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party's reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of this Contract is no longer suspended at which point the Parties must promptly recommence the performance of their obligations.
- 36.4 The Contractor must bear any cost it incurs as a result of a suspension under clauses 23.4 or 36.3 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor under this clause become a debt due to the Principal by the Contractor, where the Contractor is the defaulting Party.
- 36.5 To avoid doubt, if a Party suspends this Contract or any part of it in accordance with clause 36.3, the Completion Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

### ***Termination for breach***

- 36.6 Subject to clause 36.7, without limiting the other circumstances in which this Contract may be terminated, if a Party breaches a provision of this Contract and fails to comply with a notice issued under clause 36.1, then the other Party:
- (a) may give a further notice to the defaulting Party of its intention to terminate this Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and
  - (b) by a further and final notice in writing to the defaulting Party immediately terminate this Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 36.6(a).
- 36.7 If a Party breaches a material provision of this Contract and that default is incapable of remedy or rectification, the non-defaulting Party may terminate this Contract by written notice to the defaulting Party.

## **37 TERMINATION**

- 37.1 Without limiting the other circumstances in which this Contract may be terminated, if a Party:
- (a) commits an Insolvency Event;

- (b) assigns or sub-contracts this Contract or any part thereof without any prior written consent of the other Party required by this Contract;
- (c) or any of its Personnel are found guilty of any criminal act relating to the Goods and/or Services; or
- (d) includes in its Request Response any statement, representation, description of fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Party or not,

then the other Party may by notice in writing to that Party immediately terminate this Contract.

37.2 If this Contract is terminated, the Principal may engage or contract with any person other than the Contractor to provide similar or equivalent goods and/or services to the Goods and/or Services.

37.3 Where the Principal terminates this Contract under clauses 36.6, 36.7 or this clause 37, the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.

37.4 When this Contract is terminated, the Contractor must:

- (a) promptly return to the Principal or destroy any of the Principal's property or Principal's Documents as directed in writing by the Principal; and
- (b) if requested by the Principal, co-operate with and assist the Principal to transition the provision of the Goods and/or Services to the Principal or to another contractor engaged by the Principal, including by complying with the terms of any agreed Transition Plan.

## **38 ASSIGNMENT AND SUBCONTRACTING**

38.1 The Contractor shall not:

- (a) assign all or any part of its rights and obligations under this Contract; or
- (b) sub-contract the whole or any part of this Contract,  
without:
  - (c) the Principal's prior written approval, which must not be unreasonably withheld; and
  - (d) in the case of an assignment under clause 38.1(a) where obligations are to be assigned, the proposed assignee executing a deed in favour of the Principal agreeing to comply with and be bound by the obligations of the Contractor under this Contract.

38.2 To avoid doubt, the Principal's approval to sub-contract does not discharge or release the Contractor from any liability or obligation under this Contract.

## **39 RESTRUCTURE OF THE PRINCIPAL**

If the Principal is restructured by Law, then the rights and obligations of the Principal under this Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure. To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

## 40 NOTICES

- 40.1 Any notice under this Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:
- (a) hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or
  - (b) email to the email address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.
- 40.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:
- (a) if by delivery in person, when delivered to the address of the receiving Party;
  - (b) if by post, 5 Business Days from and including the date of postage; and
  - (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving Party's time), it is regarded as received at 9.00am on the following Business Day.

## 41 GENERAL

### 41.1 Relationship of the Parties

- (a) The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise.
- (b) Nothing in this Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated in this Contract.

### 41.2 Severability

Should any part of this Contract be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; or
- (b) if it cannot be read down, severed from this Contract to the extent of the invalidity or unenforceability,

and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

### 41.3 Variation to Contract terms

The terms of this Contract shall not be varied except by the written agreement of the Parties.

### 41.4 Waiver

- (a) A Party may only waive a right or power it has under this Contract by written notice to the other Party.

- (b) No forbearance, delay or indulgence by a Party in enforcing a provision of this Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

41.5 Entire agreement

This Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this Contract.

41.6 Rights are cumulative

Subject to any express provision in this Contract to the contrary, the rights of a Party under this Contract are cumulative and are in addition to any other rights of that Party.

41.7 Governing Law

- (a) This Contract and any Dispute shall be governed by the Laws of the State of Western Australia unless another governing law:
  - (i) is specified in the General ICT Specifics; or
  - (ii) is otherwise agreed in writing by the Parties at any time; or
  - (iii) is required by Law.
- (b) The Parties agree that the courts of that State will have exclusive jurisdiction to deal with any Dispute.

## SCHEDULE 1 - GENERAL ICT SPECIFICS

**[Guidance note: these 'General ICT Specifics' apply to all ICT related services]**

| Item No   | Contract Specific  | Description  | Clause Reference   |
|---|--|--|--------------------|
| <p><i>Drafting Note: the items of this table must be completed to the extent relevant to the Contract. If an item is not relevant to your Contract, in respect of that item delete the contents of the relevant cell in the "Description" column and insert "Not Used". Refer to any specific 'Guidance Notes' in relation to items below for guidance on how to complete those specific items.</i></p> |  |  |                    |
| 1.  | <b>Services</b>  | <i>Refer to Specification</i>  | 1                  |
| 2.  | <b>Contract Price</b>  | <i>[insert details of Contract Price]</i>  | 1 and 18           |
| 3.  | <b>Additional Charges</b>  | <i>[insert]</i>  | 1 and 18.4         |
| 4.  | <b>Advance payment of Contract Price</b>   | <i>Not Used</i>  | 18.3               |
| 5.  | <b>Contractor's Contract Representative – details</b>  | Name: <i>[insert]</i><br>Title: <i>[insert]</i><br>Postal address: <i>[insert]</i><br>Phone: <i>[insert]</i><br>Email: <i>[insert]</i> | 25.1               |
| 6.  | <b>Contractor's Support Representative - details</b>   | Name: <i>[insert]</i><br>Title: <i>[insert]</i><br>Postal address: <i>[insert]</i><br>Phone: <i>[insert]</i><br>Email: <i>[insert]</i> | 25.2               |
| 7.  | <b>Contractor's Support Representative – available days and times</b>  | <i>[insert times and days of availability]</i>   | 25.3               |
| 8.  | <b>Contractor's Support Representative – unavailable days and times</b>                                      | <i>[insert days and times during which representative is not available, including public holidays]</i>                                 | 25.3               |
| 9.  | <b>Early Termination Charges</b>   | <i>Not Used</i>  | 1 and 18.4         |
| 10.   | <b>Excess Charges</b>  | <i>Not Used</i>  | 1 and 18.4         |
| 11.   | <b>Governing law</b>   |  | 41.7               |
| 12.   | <b>Liquidated damages – Service Levels in respect of which failure to comply attracts liquidated damages</b> | <i>Not Used</i>  | 5.3 and Schedule 8 |
| 13.   | <b>Liquidated damages – formula for liquidated damages</b>   | <i>No Used</i>   | 5.3 and Schedule 8 |
| 14.   | <b>Lock-In Period</b>  | <i>Not Used</i>  | 6                  |

| Item No | Contract Specific                           | Description   | Clause Reference |
|---------|---|---|------------------|
| 15.     | <b>Principal's Representative – details</b> | Name: <b>Shire of Wongan-Ballidu</b><br>Postal address: <b>PO Box 84, Wongan Hills WA 6603</b><br>Phone: 08 9671 1011<br>Email: <b>shire@wongan.wa.gov.au</b> | 25.4             |
| 16.     | <b>Term</b>                                 | 3 Years   | 19               |

**SCHEDULE 2 - EXTERNALLY DELIVERED SERVICES-NOT USED**

**SCHEDULE 3 - DEVELOPMENT SERVICES-NOT USED**



**SCHEDULE 4 - EQUIPMENT AND RELATED SERVICES-NOT USED**

**SCHEDULE 5 - LICENSED PRODUCTS AND RELATED SERVICES-NOT USED**

**SCHEDULE 6 - DIGITAL COMMUNICATION SERVICES-NOT USED**

## **SCHEDULE 7 - SPECIFICATION**

Refer to 2 - Specification in the Tender Document

## **SCHEDULE 8 - SERVICE LEVELS**

Agreed service levels will be negotiated with the approved contractor

**SCHEDULE 9 - TRANSITION PLAN -UNUSED**