



Following are the general terms and conditions which must be agreed to for any development project. The agreement is made...

Between: WebMark Designs (“the Supplier”)
(ABN 344 965 35583)

And: A client (“the Customer”)

Whereas:

- A. the Customer requires the development and maintenance of a web site on the Internet;
- B. the Supplier has offered to develop and maintain a web site for the Customer, subject to the terms and conditions set out below;

It is hereby agreed as follows:

1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

“Acceptance Criteria” means that which The Supplier has agreed in writing to deliver to The Customer;

“Acceptance Tests” means objective tests which demonstrate that the Acceptance Criteria have been met;

“Additional Charge” means a charge in accordance with the Supplier's standard rates in effect from time to time;

“Agreement” means this agreement for the development and maintenance of the Web Site;

“Charges” means the charges payable by the Customer to the Supplier for the Services;

“Commencement Date” means the date on which the project will commence as specified in writing, if applicable;

“Confidential Information” means the confidential information of a Party which relates to the subject matter of this Agreement and includes:

- (a) confidential information relating to the design of the Web Site;
- (b) information relating to the personnel, policies or business strategies of the Supplier;
- (c) information relating to the terms upon which the Web Site has been developed pursuant to this Agreement;

“Development Specifications” means the specifications agreed to in writing between The Customer and The Supplier;

“Development Stages” means the stages specified in the Development Specifications for the interim and final completion of the Web Site;

“Documentation” means manuals and other printed materials which are designed to:

- (a) assist the Customer in interpreting information received from Users; and
- (b) enable the Customer to collate data and prepare materials in connection with the Maintenance Services;

“Force Majeure” means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;

“Intellectual Property Rights” means copyright, trade mark, design, patent, semiconductor or circuit layout rights relevant to, inter alia:

- (a) textual, graphical, audio and other material displayed on the Web Site;
- (b) the User interface of the Web Site including but not limited to screens, organisation, patents and operation or control features; and
- (c) all software associated with the Web Site;

“Internet” means the world wide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol;

“Link” means a hypertext link connecting the Web Site to other web sites;

“Maintenance Services” means all services relevant, inter alia, to:

- (a) updating the content of the Web Site as directed by the Customer;
- (b) maintaining and updating Links; and
- (c) advising the Customer from time to time as to the extent to which the Web Site has become incompatible with software generally used to access the Internet;

“Party” means either the Supplier or the Customer as the context dictates;

“Services” means the Development Services and/or the Maintenance Services as the context dictates;

“Third Party Materials” means textual, graphical, audio or like materials, together with any software, which is incorporated into the Web Site;



“User” means a person other than the Parties who seeks access to the Web Site over the Internet;

“Web Site” means a location accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical user interface;

“World Wide Web” means a method of representing and obtaining graphical data and linking data items used by Internet users.

2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause is a reference to a clause or subclause of this Agreement;
- (g) a reference to a subclause is a reference to a subclause of the clause in which that reference is made
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) the recitals to this Agreement do not form part of the Agreement;
- (j) monetary references are references to Australian currency.

3. Development Specifications

3.1 The Supplier shall develop and test the Web Site using the methodology and development tools described in the Development Specifications.

3.2 The Supplier may also supply the Customer with products (as ordered by the Customer and agreed by the Supplier) from time to time. For purposes of clarity, “products” means any hardware and/or third party software provided to the Customer by or on behalf of the Supplier pursuant to this agreement.

3.3 Unless specified to the contrary in writing, the Supplier shall not be responsible for installing the Web Site on the Internet.

4. Development Stages

4.1 The Supplier shall use reasonable endeavours to adhere to the Development Stages.

4.2 The Customer shall have no remedy against the Supplier in relation to delayed completion of a Development Stage, or failure to complete a Development Stage, where such delay or failure is the direct or indirect result of any act or omission of the Customer or a breach by the Customer of this Agreement.

4.3 If the Supplier is unable to adhere to any Development Stage as a direct or indirect result of an act or omission of the Customer or as a direct or indirect result of a breach by the Customer of this Agreement, the Supplier may:

- (a) make an Additional Charge for time, overtime, travel, materials, extra computer time or resource rationalisation resulting directly or indirectly from such act or omission of the Customer; and
- (b) if such act or omission or breach causes delay exceeding thirty (30) days beyond the date of the final Development Stage, terminate this Agreement, whereupon it may pursue such remedies as may be available under this Agreement or at law.

5. Completion

5.1 Completion of the Web Site shall be effected in accordance with the time frame stipulated in writing.

6. Acceptance Tests

6.1 The Customer shall be responsible for providing an appropriate environment in which to conduct the Acceptance Tests.

6.2 Unless specified otherwise in writing, the Customer shall, within seven (7) days of completion of the Web Site, test the Web Site in accordance with the Acceptance Criteria. The Supplier shall provide all reasonable assistance to the Customer to enable it to complete the Acceptance Tests.

6.3 The Supplier shall be entitled to observe and, to the extent considered reasonable by the Supplier, participate in the Acceptance Tests.

6.4 The Customer shall be deemed to have accepted the Web Site when either:

- (a) the Customer has satisfactorily completed the Acceptance Tests; or
- (b) a period of fourteen (14) days has elapsed since delivery to the Customer and the Customer has either failed to complete the Acceptance Tests or has failed to notify the Supplier in writing of any deficiencies detected in the course of conducting the Acceptance Tests.

7. Customer’s Obligations

7.1 Unless specifically agreed otherwise in writing, the Customer shall, in addition to any other obligations expressed in this Agreement, have the following responsibilities:

- (a) provision of all data to be incorporated into the Web



Site;

- (b) provision of all logos, designs, graphic and related materials to be incorporated into the Web Site;
- (c) provision of any other information, ideas or suggestions which are to be expressly considered by the Supplier in creating the Web Site.

7.2 The Customer shall ensure the Supplier is given free of charge such information, facilities, services and accessories as the Supplier requires to enable it to comply with its obligations under this Agreement.

7.3 The Customer shall ensure that a specified employee of the Customer (as nominated in writing by The Customer) shall be available to meet with the Supplier, on a regular basis and by remote communication facility if necessary, at such times as are reasonably required by the Supplier for the purposes of discussing any matter relevant to the provision of the services by the Supplier.

7.4 The Customer authorises the Supplier to obtain access to the Customer's computing facilities using a remote means of access, subject to any reasonable restrictions advised by the Customer in writing, for the purpose of the provision by the Supplier of the services.

7.5 The Supplier will be entitled to utilise such remote means of access subject to any reasonable restrictions advised by the Customer in writing and solely for the purposes of provision of the services; provided, however, that nothing contained in this agreement shall restrict the Supplier from gaining remote access to the Customer's computing facilities for lawful purposes using any publicly available means and which do not require special authorization.

7.6 In order to ensure the security of the Customer's computing facilities in relation to the remote means of access utilised by the Supplier, the Supplier shall:

- (a) ensure that no passwords are stored in easily recognizable form on the Supplier's own systems in circumstances where a breach of the Supplier's own internal security may reveal them;
- (b) ensure that only those employees and contractors of the Supplier who are required to access the computing facilities using the Supplier's systems and the remote means of access are able to do so;
- (c) ensure that the computing facilities are not capable of being accessed by a system or user, which transmits the Supplier's own systems, except as permitted by this agreement.

7.7 The Customer shall be solely responsible for the proper backup and protection of all its software and data, as well as the implementation and maintenance of firewalls and security measures (including proper virus control) in relation to its computing facilities.

7.8 Supplier shall not be responsible for any deficiency or alleged deficiency in the Web Site which is attributable to:

- (a) incorrect information provided by the Customer,

either pursuant to this clause or otherwise; or

- (b) failure by the Customer to provide relevant information, either pursuant to this clause or otherwise.

7.9 The Customer undertakes to ensure that any material provided to the Supplier for inclusion on the Web Site:

- (a) does not infringe the Intellectual Property Rights of any person;
- (b) is not obscene, offensive, upsetting, defamatory, personally offensive or in any way unsuitable for people under the age of eighteen (18) years; and
- (c) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.

7.10 Nothing in this clause shall affect the Supplier's right to exercise its own judgment and utilise its creative skills as it considers most appropriate in order to develop the Web Site in accordance with the Development Specifications. Without limiting the foregoing, the Supplier may exercise its total creative discretion in developing the Web Site to the extent that the exercise of such discretion is not inconsistent with the Development Specifications.

8. Maintenance

8.1 The Supplier shall provide the Maintenance Services in accordance with the maintenance undertakings agreed to in writing.

8.2 The Maintenance Services shall be provided for the period agreed to in writing, or if no such period is specifically agreed to, then for a period of 1 year after completion of the website. At the request of the Customer and subject to agreement by the Supplier, the Maintenance Services may be renewed for subsequent terms of similar duration to the initial term.

8.3 The Supplier may vary the Charges relevant to the Maintenance Services as a condition of agreeing to renew those services for a further term pursuant to subclause 2.

8.4 The Customer shall be responsible for procuring all necessary authorisations, licences and consents necessary to enable the Supplier to have access to the Web Site in order to provide the Maintenance Services. The Supplier shall be under no obligation to provide the Maintenance Services if the Customer fails, or in the reasonable opinion of the Supplier has failed, to obtain all necessary licences, authorisations and consents pursuant to this subclause.

8.5 Maintenance Services will be available at the times specified in writing.

8.6 If the Customer suspects a software deficiency associated with the Web Site, the Customer must on request from the Supplier give the Supplier a documented example of the defect or error in question.



9. Charges

9.1 The Customer shall pay the Charges at the rate and in the manner specified in writing.

9.2 If the Supplier is required to attend the Customer's premises for any reason pursuant to this agreement the Customer shall reimburse the Supplier for the reasonable transport and/or accommodation expenses incurred by the Supplier in doing so, save where the Customer's premises are located within 25 kilometres of the Supplier's principal place of business.

9.3 The Customer shall furthermore reimburse the Supplier for all expenses reasonably incurred by the Supplier on the Customer's behalf or in carrying out its obligations under this agreement including, but not limited to, the cost of any products purchased on behalf of the Customer, any licence fees paid by the Supplier to obtain a licence for the Customer for any third party software, and any additional charges reasonably levied by the Supplier for handling and/or obtaining such products or licence.

9.4 Unless specifically stated as a fixed price quote, any cost estimates that are given by the Supplier are estimates only, and the actual time spent and materials supplied will be used as the basis for billing.

9.5 If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Customer shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify the Supplier in writing (within seven (7) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Customer shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement.

9.6 In the event that:

- (a) the provision of the Services is delayed;
- (b) the Supplier is required to perform the Services in circumstances other than those expressly or reasonably anticipated in relation to an Agreement of a similar nature; or
- (c) there is a change in the timing or complexity of the Services;

and such circumstances are not the result of a breach of this Agreement by the Supplier, then the Supplier shall be entitled to make an Additional Charge.

9.7 The Charges are exclusive of GST and any other taxes, duties and charges imposed or levied in Australia or overseas in connection with the Development Services. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of this Agreement.

10. Payment

10.1 The Supplier shall invoice the Customer on an interim basis at least once every calendar month in respect of progress payments for any services performed or products supplied together with such expenses as the Customer is required to reimburse the Supplier. Such invoices shall contain such information and detail as the Customer may reasonably require in respect of the services, products and/or expenses.

10.2 All invoices rendered by the Supplier shall be payable within fourteen (14) days from date of invoice.

10.3 Should any invoice rendered by the Supplier not be paid on due date then, with effect from the due date of the invoice, interest on any overdue sum shall be payable by the Customer at the rate stipulated in writing or, if no such rate is stipulated, at the rate of 24% per annum calculated on a daily basis until payment in full has been received.

11. Confidentiality

11.1 A Party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.

11.2 A Party shall not be in breach of subclause 10.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.

11.3 Each Party shall take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.

11.4 Notwithstanding any other provision of this clause, the Supplier may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants.

11.5 This clause shall survive the termination of this Agreement.

12. Intellectual Property Rights

12.1 Intellectual Property Rights in respect of all material created for the Web Site shall vest in the Supplier, and in addition the Customer acknowledges that there is no assignment of Intellectual Property Rights in:

- (a) any pre-existing material (including but not limited to the Supplier's software, documentation, templates and data) which is incorporated into or which has been used in the course of developing the Web Site; or
- (b) the User interface of the Web Site.

12.2 The Customer shall be responsible for:

- (a) obtaining all necessary permissions, authorisations,



licences and consents in relation to the use and incorporation into the Web Site of Third Party Materials supplied by the Customer; and

- (b) payment of all royalties or licence fees associated with the use of a third party's Intellectual Property Rights in connection with the Web Site.

12.3 Subject to subclauses 4, 5 and 6, the Supplier shall indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Web Site constitutes an infringement of Australian Intellectual Property Rights.

12.4 The Supplier will not indemnify the Customer as provided in subclause 3 unless the Customer:

- (a) notifies the Supplier in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) gives the Supplier the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
- (c) provides the Supplier with reasonable assistance in conducting the defence of such a claim;
- (d) permits the Supplier to modify, alter or substitute the infringing part of the Web Site, at its own expense, to render the Web Site non- infringing; and
- (e) authorises the Supplier to procure for the Customer the authority to continue the use and possession of the Web Site.

12.5 The Supplier shall not indemnify the Customer if such infringement, suspected infringement or alleged infringement arises from:

- (a) failure by the Customer to comply with its obligations under this Agreement;
- (b) without limiting paragraph (a), the provision by the Customer of infringing materials for inclusion on the Web Site and/or the failure of the Customer to obtain any necessary permission, authorisation, licence or consent of a third party in relation to the use and incorporation into the Web Site of Third Party Materials supplied by the Customer;
- (c) modification or alteration of the Web Site without prior consent in writing of the Supplier; or
- (d) any transaction entered into by the Customer relating to the Web Site without the Supplier's prior consent in writing.

12.6 In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of the Web Site-constitutes an infringement of Intellectual Property Rights, the Supplier may at its option and at its own expense conduct the defence of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to the Supplier in the conduct of the defence of such proceedings.

12.7 The Customer shall indemnify the Supplier against any loss, costs, expenses, demands or liability, whether direct

or indirect, arising out of a claim by a third party alleging such infringement if:

- (a) the claim arises from an event specified in subclause 5; or
- (b) the ability of the Supplier to defend the claim has been prejudiced by the failure of the Customer to comply with the provisions of subclauses 4 or 6.

12.8 Upon payment in full being made for the services provided under this agreement the Supplier shall grant the Customer a non-exclusive and non-transferable perpetual licence to use the Intellectual property for the Customer's own business purposes and, in the case of any third party software, will obtain a sub-licence in favour of the Customer in similar terms.

12.9 The Supplier warrants to the Customer that to the best of its knowledge it has the right to grant the license referred to in this agreement and that the use by the Customer of any software provided by the Supplier will not infringe the rights of any third party.

12.10 The Supplier furthermore grants to the Customer the right to copy the Intellectual property for the purposes of staff and subcontractor education and system backups, but for no other purpose, and on the condition that the Customer shall not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Customer by the Supplier without the Supplier's prior written consent.

12.11 The Customer shall hold any software (in source and/or in object code) and other materials provided to the Customer by the Supplier confidential. The Customer must not disclose any of those materials to any third party without the Supplier's prior written consent. The Customer must furthermore take all reasonable steps to protect the Intellectual property of the Supplier.

13. Implied Terms

13.1 Subject to subclause 2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

13.2 Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of the Supplier for any breach of such condition or warranty shall be limited, at the option of the Supplier, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods



repaired; and

- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

14. Liability of Supplier

14.1 Except in relation to liability for personal injury (including sickness and death), the Supplier shall be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of the Supplier to comply with its obligations under this Agreement.

14.2 Subject to subclause 3, the Customer warrants that it has not relied on any representation made by the Supplier which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Supplier.

14.3 The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

14.4 The Customer shall at all times indemnify and hold harmless the Supplier and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Customer of its obligations under this Agreement; or
- (b) any willful, unlawful or negligent act or omission of the Customer.

15. Termination

15.1 Without limiting the generality of any other clause in this Agreement, the Supplier may terminate this Agreement immediately by notice in writing if:

- (a) the Customer is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of it being notified by the Supplier;
- (b) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (c) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) the Customer, being a natural person, dies; or
- (e) the Customer ceases or threatens to cease conducting its business in the normal manner.

15.2 If notice is given to the Customer pursuant to subclause 1, the Supplier may, in addition to terminating the Agreement:

- (a) repossess any of its property in the possession, custody or control of the Customer;
- (b) retain any moneys paid;
- (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided by law.

16. Force Majeure

16.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

16.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

16.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

16.4 If this Agreement is terminated pursuant to subclause 3, the Supplier shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by the Supplier to the Customer.

17. Sub-Contracts

17.1 The Supplier may Sub-Contract for the performance of this Agreement or any part of this Agreement.

17.2 The Supplier may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to this Agreement.

18. Restrictive Covenant

18.1 The Customer agrees and undertakes, in consideration for the services provided by the Supplier, that it will not for a period of 24 months from date of termination of this agreement solicit, engage, or entice away from the Supplier any employee, contractor, director, or associate of the Supplier, or counsel, procure or assist any person to do any of the acts prohibited by this clause.

18.2 The Customer acknowledges that the prohibitions contained in clause 18.1 above are reasonable as to period and to subject matter, and confer a benefit on the Supplier which is no more than that which is reasonable or necessarily



required for the protection of the Supplier.

19. Agreement Non-Exclusive

The Customer acknowledges that the services are provided by the Supplier on a non-exclusive basis and that the Supplier reserves the right to provide services of the same or similar nature to any other party.

20. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

21. Precedence

21.1 The documents comprising this Agreement shall be read in the following order of precedence:

- (a) the clauses of this Agreement;
- (b) Any written correspondence between The Customer and The Supplier.

21.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

22. Assignment and Novation

22.1 The benefit of this Agreement shall not be assigned by the Customer without the Supplier's written consent.

22.2 The Supplier may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.

23. Waiver

23.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.

23.2 A waiver made by the Supplier pursuant by subclause 1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.

23.3 Subject to subclause 1, any failure by the Supplier to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under this Agreement.

24. Variation

24.1 The provisions of this Agreement shall not be varied, except by agreement in writing signed by the Parties.

24.2 A variation shall not be effective unless the Parties agree in writing as to:

- (a) the effect of the variation, if any, upon the Charges; and
- (b) the impact of the variation on the obligations of either Party under this Agreement.

24.3 If either Party wishes to vary the Agreement, the proposing Party shall submit a copy of the proposed variations to the other Party. The receiving Party shall advise the proposing Party within four (4) normal working days, or such other period as is agreed by the other Party ("the receiving Party"), of receipt of the variations either:

- (a) that the receiving Party accepts the variations; or
- (b) that the receiving Party rejects the variations.

24.4 If the receiving Party accepts the variations, the Agreement shall be deemed to incorporate the accepted variations from the date upon which the receiving Party notifies the proposing Party that it accepts the variations.

24.5 If the receiving Party rejects the proposed variations, each Party shall perform the Agreement in accordance with the unvaried terms.

25. Disputes

25.1 Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives shall be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators & Mediators Australia. During such arbitration, both Parties may be legally represented.

25.2 In the event that the Customer is based in or has its principal place of business in a country other than Australia, then any dispute arising in connection with this Agreement which cannot be settled by negotiation shall be submitted to arbitration in accordance with, and subject to, the UNCITRAL Arbitration Rules. The appointing and administering body shall be the Institute of Arbitrators & Mediators Australia. There shall be one arbitrator, the language of the arbitration shall be English, and the place of arbitration shall be Melbourne, Australia.

25.3 Prior to referring a matter to arbitration pursuant to subclauses 1 and 2, the Parties shall:

- (a) formally refer the dispute to their respective contract managers for consideration;
- (b) if the respective contract managers are unable to resolve the dispute after five (5) days (or such other period as is agreed between the Parties) from the date of referral, refer the dispute to the respective chief executive officers of each Party; and
- (c) in good faith explore the prospect of mediation.



25.4 Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

26. Severability

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

27. Supplier's Rights

Any express statement of the right of the Supplier under this agreement is without prejudice to any other right of the Supplier expressly stated in this Agreement or existing at law.

28. Survival of Agreement

28.1 Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their heirs, successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.

28.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall survive the Agreement.

29. Governing Law

This Agreement will be governed by and construed according to the law of Victoria, Australia.

30. Notices

30.1 Notices under this agreement may be delivered by hand, by mail, by electronic mail ("e-mail") or by facsimile to the addresses provided by The Customer in writing.

30.2 Notice will be deemed given:

- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) in the case of posting, three days after dispatch;
- (c) in the case of e-mail or facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

31. Execution

31.1 This Agreement may be executed by written notice between The Customer and The Supplier.