

**PROCURE IT AGREEMENT
VERSION 2.1.3**

[THREE]

SCHEDULES
Version 2.1.3

Schedule 1 – Agreement Details

Item 1	Agreement Number	<input type="text"/>
Item 2	(a) Contract Authority's Name / Address	<input type="text"/> <input type="text"/>
	(b) Authorised Representative	<input type="text"/>
	(c) Authorised Representative	Contract Authority's nominee for receipt of notices (clause 1.3.2):
	<i>Position:</i>	<input type="text"/>
	<i>Address:</i>	<input type="text"/> <input type="text"/>
	<i>Telephone:</i>	<input type="text"/>
	<i>Facsimile:</i>	<input type="text"/>
Item 3	(a) Contractor's Name/Address and ABN/ACN	<input type="text"/>
	(b) Authorised Representative	<input type="text"/>
	(c) Authorised Representative	Contractor's nominee for receipt of notices (clause 1.3.2):
	<i>Position:</i>	<input type="text"/>
	<i>Address:</i>	<input type="text"/> <input type="text"/>
	<i>Telephone:</i>	<input type="text"/>
	<i>Facsimile:</i>	<input type="text"/>

Item 4 Modules agreed between the Parties
Indicate, by marking with an X, the modules that apply

Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 10 – Web Services	<input type="checkbox"/>
Module 2 – Hardware Maintenance Services	<input type="checkbox"/>	Module 11 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input type="checkbox"/>	Module 11A – GTA ISM	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 12 – Systems Integration Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input type="checkbox"/>	Module 13 - Major Project Systems Integration Services	<input type="checkbox"/>
Module 6 – IT Personnel	<input type="checkbox"/>	Module 14 - Project Management Services	<input type="checkbox"/>
Module 7 – Professional Services	<input type="checkbox"/>	Module 15 - Change Management Services	<input type="checkbox"/>
Module 8 – Data Management	<input type="checkbox"/>	Module 16 - Knowledge Transfer Services	<input type="checkbox"/>
Module 9 – Telecommunications	<input type="checkbox"/>	Module 17 - Major Project Software Maintenance and Support.	<input type="checkbox"/>
Module 9A – GTA Broadband Local Access	<input type="checkbox"/>	Module 18 - Whole of Government Requirements	<input type="checkbox"/>

Item 5 Exchange of Contractor Information between Government Agencies

(a) Contractor Information exclusions:

(b) Defamation Legislation (clause 3.3)

Item 6 Applicable Law (clause 19.7):

Insert the name of the State or Territory (the laws of which govern this Agreement).

Item 7 Term: (clause 2.1)

(a) Commencement Date of the Agreement Period:

(b) Expiry Date of the Agreement Period:

(c) Period of extended term (if any):
(clause 2.1)

Item 8 Insurance Policy Amount (clause 8.1.1)

(a) Public Liability Insurance Limit of Indemnity: \$AUS M:

(b) Product Liability Insurance Limit of Indemnity: \$AUS M:

(c) (if requested in 8.1.1) Professional Indemnity Insurance Limit of Indemnity: \$AUS M:

The Contract Authority is to state the period that the Contractor must maintain their Professional Indemnity Insurance

If the Contractor is a member of occupational association with an approved scheme under The Professional Standards Act (NSW) 1994 or similar State or Territory legislation, then the insurance amount may be limited by the Contract Authority, accordingly.

(d) (if requested in 8.1.1) Insert other insurances required:

Item 9 Standards and Codes (clause 11.7)

Item 10 Credit/Debit Card and Electronic Facility (clause 16.1.3)
Credit/Debit Card Facility (insert details)

Electronic Facility (insert details)

Item 11 Management Fee (clause 3.1)
(a) Is the Management Fee payable? (Yes / No)
(b) Management Fee rate (clause 3.1)
(c) Management Fee payable to (clause 3.1.6)
(d) Address Management Fee forwarded to (clause 3.1.6)
(e) Interest Rate (clause 3.1.3 and 3.1.5)

Item 12 Expert Determination Amount (clause 7.3, 7.4, 7.5 and Schedule 5):\$A:
\$A:

Item 13 Financial Security (clause 8.2 and Schedule 7)
Specify here if Financial Security is required: (Yes / No)
Amount:

Item 14 Performance Guarantee (clause 8.3 and Schedule 8)
Specify here if Performance Guarantee is required: (Yes / No)

Item 15 List of Approved Parties (Clause 6.5)

Item 16 Liability (clause 8.5)
Liability is capped at \$

Item 17 List of Subcontractors (clause 13.5)

Schedule 4 – Statutory Declaration by Approved Party or Subcontractor

Oaths Act (NSW), 1900 Ninth Schedule

I, do solemnly and sincerely declare that to the best of my knowledge and belief:

1. [insert full Approved Party/subcontractor company name and its ACN/ABN] (“the Declarant”) has been selected as an Approved Party, or subcontractor to, [insert name of the Contractor] (“the Contractor”) under an agreement between the State Contracts Control Board for and on behalf of the Crown in right of the State (“the Contract Authority”) and the Contractor for the supply of the Deliverables to certain Customers (“the Agreement”)
2. The Declarant is aware of:
 - (a) where relevant, the responsibilities imposed on Contractors under clause 6.5 of the Agreement in relation to use of Approved Parties including obligations to ensure that these persons supply relevant sales information to the Contractor and permit independent audit of that information by the Contract Authority; and
 - (b) the standard terms and conditions of Contracts as set out in the Agreement.
3. The Declarant, if an Approved Party of the Contractor, offers to supply:
 - (a) under the standard terms and conditions of the Agreement and any Contract;
 - (b) on terms that enable compliance by the Contractor with clause 6.5 of the Agreement.
4. The Declarant, if a subcontractor to the Contractor, will offer to sub-contract on terms that will:
 - (a) be consistent with the standard terms and conditions of the Agreement and any Contract; and
 - (b) enable compliance by the Contractor with clause 13.5 of the Agreement.
5. There are no reasons of which I am aware that would prevent a Contract or subcontract (as relevant) from being signed and performed in a manner that would allow the satisfactory and timely performance of:
 - (a) a Contract; and
 - (b) any relevant Contractor responsibilities under the Agreement.

And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any willfully false statement in any such declaration.

Declared at

the day of 20

Before me,

Schedule 5 – Expert Determination Procedure

EXPERT DETERMINATION

- 1 If a Referral Notice is submitted under clause 7.5.2 of the Agreement, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre, of the State.
- 2 The expert nominated must be a lawyer and an information technology expert unless otherwise agreed. The expert must not be:
 - (a) an employee of the Parties;
 - (b) a person who has been connected with this Agreement or a Contract or has a Conflict of Interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 3 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.

3 Submissions

4.1 The procedure for submissions to the expert is as follows:

- (a) The Party to the Agreement or Contract that has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 3.
- (b) The other Party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- (c) The Party referred to in clause 4.1 (a) may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- (d) The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 4.1 of this Expert Determination Procedure, unless the Contract Authority or Customer as applicable and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement or Contract gives information to the expert, it must at the same time give a copy to the other Party.

5 Conference

- 5.1 The expert may request a conference with both Parties to the Agreement or Contract. The request must be in writing, setting out the matters to be discussed.
- 5.2 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Expert Determination Procedure the character of arbitration.
- 6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.

7 Questions to be determined by the Expert

7.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

- (a) Is there an event, act or omission that gives the claimant a right to compensation under the Agreement or a Contract:
 - (i) for damages for breach of the Agreement or a Contract, or
 - (ii) otherwise in law?
- (b) If so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?
 - (iv) is that right extinguished, barred or reduced by any provision of the Agreement or Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) In the light of the answers to clause 7.1(a) and (b) of this Expert Determination procedure:
 - (i) What compensation, if any, is due from one party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?

7.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.

8 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.

9 The Contract Authority may act for the Customer during the course of the Expert Determination upon the Customer's request.

10 If the expert determines that one Party must pay the other an amount exceeding the amount specified in Agreement Details (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.

11 Unless a Party has a right to commence litigation under clause 10 of this Schedule:

- (a) In the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) If the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

12 Role of Expert

12.1 The Expert:

- (a) acts as an expert and not as an arbitrator
- (b) must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the Expert's own expertise; and
- (c) must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 3.

12.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 6 – Confirmation of Insurances

Insurer:

Contractor: (The Insured)

Re: Agreement for the provision of [insert Contract title]

between the Insured and the “Contract Authority” [insert Contract Authority/Customer title]

It is confirmed that:

1. The Insured has obtained the following policies (the Insurance Policies)

- (a) A public liability policy to the value of \$AUD
(the Limit of Indemnity) in respect of each claim;
- (b) A products liability policy to the value of \$AUD
for the total aggregate liability for all claims arising out of the Insured's products
for the period of cover.
- (c) Professional Indemnity Insurance to the value of \$AUD

Expiry / 20

(d) Workers Compensation Insurance

2. The respective rights and interests of the Contract Authority, and any sub-contractors of the Insured are noted on the Insurance Policy(ies) 1(a) and 1(b).
3. The Insurer will accept a notice of claim given by the Insured, the Contract Authority or any sub-contractor as being a claim given by all of the insured under insurance policies 1(a) and 1(b).
4. The insurance policies conform with the requirements of clause 8.1 of the Agreement between the Contract Authority and the Insured.

Attach a Certificate of Currency for the policy/ies above.

Specify below any exclusions for the Insurance Policies.

Signature of authorised representative of Insurer/Broker

Print name

Position

Date

Schedule 7 – Financial Security

Deed of Agreement dated the day of 20

Between [insert name of the 'Contract Authority/Customer'] ('the Customer')

And [insert name and ACN/ABN] ('the Guarantor')

What is agreed:

1. The [insert name of the Contractor and the ACN/ABN] ('Contractor') has agreed to supply Deliverables to the Customer pursuant to a contract ('Contract'). The following undertakings are given in respect of the Contract:
 - (a) The Guarantor unconditionally agrees to pay to the Customer on demand without reference to the Contractor and separate from any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of \$ [insert dollar amount]
2. The Guarantor's liability under this Financial Security will be a continuing liability until payment is made up to the maximum aggregate sum or the Customer notifies the Guarantor that this Financial Security is no longer required.
3. This Financial Security shall be governed by and construed in accordance with the laws in force in the State or Territory of the Customer's registered address.
4. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by any other means.
5. The address for services of notice for a party is, in the case of the:

Guarantor

Physical address

Postal address

Phone number

Fax number

Email address

Contractor

Postal address

Phone number

Fax number

Email address

Customer

Postal address

Phone number

Fax number

Email address

or such other address as a party may notify to the other party in writing from time to time.

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

EXECUTED AS A DEED

Signed for and on behalf of [insert name of Contract Authority/Customer]

By [insert name of Contract Authority/Customer representative]

In the presence of: [insert name of witness not a party to this Deed]

Signature of Contract Authority/Customer representative

Signature of Contract Witness

Print name

Print name

The Common Seal of [insert Guarantor's name & ACN/ABN]

was affixed by [authority of the Board of Directors]

in the presence of [insert name of Director/Secretary or other permanent officer]

in the presence of [insert name of Director/Secretary or other permanent officer]

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Schedule 8 – Performance Guarantee

Deed of Agreement dated the day of 20

Between [insert name of the 'Contract Authority/Customer'] ('the Customer')

And [insert name and ACN/ABN of the Guarantor] ('the Guarantor')

Purpose [insert name and ACN/ABN of the Contractor] ("the Contractor") has agreed to supply Deliverables to the Customer pursuant to the contract ("the Contract").

The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Contract.

What is agreed:

The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Contract.
2. If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by clause 1 and the Contract is then terminated for default, the Guarantor will indemnify the Customer against costs and expenses directly incurred by reason of such default.
3. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and the Customer may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
4. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
5. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
6. The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed:
 - (a) the obligations and liabilities of the Contractor under the Contract; and
 - (b) \$ [insert dollar amount]
7. This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State or Territory of the Customer's registered address.
8. Where the Contractor has failed to perform under the Contract, the obligations of the Guarantor will continue even though the Contractor has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Law or any other law.
9. The rights and obligations under this Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.
10. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means.

11. The address for services of notice under this schedule for a party is, in the case of the:

Guarantor

Physical address

Postal address

Phone number

Fax number

Email address

Contractor

Physical address

Postal address

Phone number

Fax number

Email address

Customer

Physical address

Postal address

Phone number

Fax number

Email address

Or such other address as a party may notify to the other party in writing from time to time.

12. A notice or other communication is deemed to be received if:

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

EXECUTED AS A DEED

Signed for and on behalf of [insert name of Contract Authority/Customer]

By [insert name of Contract Authority/Customer representative]

In the presence of: [insert name of witness not a party to this Deed]

Signature of Contract Authority/Customer representative

Signature of Contract Witness

Print name

Print name

The Common Seal of [insert Guarantor's name & ACN/ABN]

was affixed by [authority of the Board of Directors]

in the presence of [insert name of Director/Secretary or other permanent officer]

in the presence of [insert name of Director/Secretary or other permanent officer]

Signature of Director/Secretary

Signature of Director/Secretary

Print name

Print name

Schedule 9 – Deed of Confidentiality

Deed of Agreement dated the day of 20

Between [insert name of the Government Party ('the Disclosing Party')]

And [insert name and address of Confidant] ('the Confidant')

RECITALS:

- a. In the course of the Confidant supplying certain Deliverables for the Disclosing Party (whether directly or indirectly) pursuant to the Contract and/or Agreement, the Confidant will have access to and may become aware of Confidential Information belonging to or in the possession of the Disclosing Party.
- b. Improper use or disclosure of the Confidential Information would severely damage the Disclosing Party's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Disclosing Party.
- c. The Disclosing Party requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Disclosing Party's Confidential Information is kept confidential and that the Confidant provides the Deliverables faithfully and without any conflicting interest.
- d. This Deed sets out the terms on which the Confidant will have access to the Confidential Information.

What is agreed:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

"Agreement" means the agreement between the Contract Authority and the Contractor for the supply of the Deliverables dated [insert date]

"Confidential Information" means information that

- (a) is by its nature confidential; or
- (b) is communicated by the Disclosing Party to the Confidant as confidential; or
- (b) the Confidant knows or ought to know is confidential; and
- (c) includes but is in no way limited to:
 - (i) the Deliverable;
 - (ii) materials including the financial, the corporate and the commercial information of the Disclosing Party;
 - (iii) any material which relates to the affairs of a third party;
 - (iv) information relating to the strategies, practices and procedures of the State and any information in the Contractor's possession relating to the State public service.

But does not include anything which the Confidant establishes:

- (i) was in the public domain at the time it was received by the Confidant;
- (ii) entered the public domain after being received by the Confidant; or
- (iii) that the Confidential Information was disclosed pursuant to the terms of this Agreement,

unless it entered the public domain due to a breach of confidentiality by the Confidant; or which the Confidant establishes was received by it from another person before or after it was received from the Customer, if the other person did not breach any law or agreement by giving it to the Confidant.

"Contractor" means [insert name of Contractor]

“**Customer**” has the same meaning as in the Contract.

“**Contract**” means the contract between the Customer and the Contractor for the supply of the Deliverables dated [insert date].

“**Customer’s Materials**” means any documentation, information or material supplied by or on behalf of the Customer, or a Customer to the Confidant;

“**Deliverables**” means any product or service and any associated material offered for supply or provided by the Contractor in accordance in the Agreement and / or Contract.

“**Express Purpose**” means the Confidant performing the obligations under the Contract and/or Agreement.

“**Intellectual Property Rights**” includes copyright, moral rights, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia.

“**Notice**” means notice in writing given in accordance with this Deed; and

“**Records**” includes any information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Contract and/or Agreement;

“**State**” means the State of [insert jurisdiction].

2.2 General

2.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

2.2.3 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2.2.4 A singular word includes the plural, and vice versa.

2.2.5 A word which suggests one gender includes the other gender.

2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Disclosing Party.

3.2 The Disclosing Party may grant or withhold its consent in its discretion.

3.3 If the Disclosing Party grants its consent, it may impose conditions on that consent, including a condition that the Confidant procures the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 If the Disclosing Party grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 Despite clause 3.1, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors (“permitted recipients”) where such disclosure is essential to carrying out their duties owed to the Disclosing Party or in accordance with this Deed.

- 3.6** Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.7** The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.8** The Disclosing Party may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.9** If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 3.10** The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

- 4.1** The Confidant must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Disclosing Party use the Confidential Information for any purpose other than the Express Purpose.
- 4.2** The Confidant must, unless otherwise authorised by the prior written consent of the Disclosing Party:
- (a) treat as confidential and secret all of the Confidential Information which the Confidant has already acquired or will acquire from the Disclosing Party;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

- 5.1** This Deed will survive the termination or expiry of the Contract / Agreement for a period of 6 years.

6. Rights of the Disclosing Party

6.1 Production of Documents

- 6.1.1** The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.1.2** The Confidant must immediately comply with a demand under this clause 6.
- 6.1.3** If the Disclosing Party makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Disclosing Party or control they lie.
- 6.1.4** In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Disclosing Party may take legal proceeding against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

- 7.1** The Confidant is liable for and agrees to indemnify and keep indemnified the Disclosing Party in respect of any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:
- 7.1.1** a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- 7.1.2** the disclosure or use of the Confidential Information by the Confidant or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. Waiver

- 9.1** No waiver by the Disclosing Party of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2** None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Disclosing Party unless by its express consent in writing.

10. Remedies cumulative

- 10.1** Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

10.2 Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

11. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the laws of the State and the Commonwealth of Australia.

13. Notices

- 13.1** Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Confidant, at the Confidant's registered office.
- 13.2** All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3** If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

EXECUTED AS A DEED

Signed, sealed and delivered by [name and position of person signing]

for and on behalf of the [insert name of Disclosing Party]

for and on behalf of the Crown in right of the State of [insert name of State]

but not so as to incur any personal liability.

Signature of Disclosing Party

Signature of Witness

Print name

Print name

Schedule 10 – Privacy

CONTRACTOR'S PRIVACY OBLIGATIONS

Pursuant to clause 10.2 of the contract, the Contractor agrees:

- 1 to use, access, retain or disclose Personal Information obtained during the course of providing the Deliverables under the Contract only for the purpose for which the Personal Information was acquired;
- 2 not to do any act or engage in any practice that would breach an Information Privacy Principle, or which if done or engaged in by the Customer, would be a breach of that IPP;
- 3 to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPP's as if it were the Customer carrying out and discharging those obligations;
- 4 to notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this Schedule, whether by the Contractor or its Personnel;
- 5 to notify the individuals affected, that complaints about acts or practices in relation to such individuals' Personal Information may be investigated by the Privacy Commissioner;
- 6 to comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Contract and in addition thereto, take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
- 7 to ensure that any Personnel of the Contractor who is required to deal with the Personal Information for the purposes of the Contract is made aware of the obligations of the Contractor under this Schedule; and
- 8 to ensure that any other agreement with any Personnel who may be fulfilling a requirement in relation to the Contract which includes the handling of Personal Information, contains the same or equivalent obligations to this Schedule which are enforceable by the Contractor against the Approved Party or the subcontractor, as applicable.

Schedule 11 – Escrow Deed of Agreement

Deed of Agreement dated the day of 20

Between [insert name, and ACN/ABN, if applicable] (in this Deed called the “Escrow Agent”) of the first part

And [insert name, and ACN/ABN if applicable]
(in this Deed called “the Contractor”) of the second part

And [insert name of Government Party] (in this Deed referred to as “the Principal”) of the third part

RECITALS:

- a. By Agreement made on the day of 200 , the Contractor has agreed to grant a licence to the Principal to use the Licensed Software.
- b. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as Escrow Agent and to hold the Source Code and Supporting Material for the Licensed Software on the following terms and conditions.

NOW THIS CONTRACT WITNESS:

1. Interpretation

In this Deed the following words have the following meaning:

“**Agreement**” means the agreement pursuant to which the Contractor has granted a license to the Principal to use the Licensed Software and referred to in Recital (a);

“**Contract Specifications**” has the same meaning as in the Agreement;

“**Deed**” means this Escrow Deed of Agreement;

“**Defect**” means a defect, error or malfunction in that software such that the Licensed Software does not comply with and cannot be used in accordance with the Contract Specifications;

“**Escrow Fee**” means the fees set out in Attachment 1 of this Deed;

“**Insolvency Event**” means that a Party to this Deed:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer or appointed to all or any of its property; or
- (g) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up,

deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

“License Agreement” means the agreement pursuant to which the Contractor has granted a licence to the Principal to use the Licensed Software;

“Licensed Software” means the software specified in Attachment 2 of this Deed and includes any Update or New Release of that software provided to the Principal under the Licence Agreement and any material related to the Licensed Software such as, but not limited to, flow charts, logic diagrams and listings that the Contractor makes generally commercially available from time to time;

“New Release” means software which has been produced primarily to extend, alter or improve the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in the software are also corrected) while still retaining the original designated purpose of the Licensed Software;

“Software Support Services” means the services to be provided by the Contractor under Module 5 of the Agreement;

“Source Code” means the Licensed Software expressed in human-readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of the Licensed Software and that is deposited with the Escrow Agent in accordance with this Deed;

“Supporting Material” means all of the material and data developed and used in and for the purpose of creating the software including (but not limited to) compiled object code, tapes, operating manuals and other items listed in Attachment 3;

“Update” means software which has been produced primarily to overcome Defects in, or to improve the operation of, the Licensed Software without significantly altering the Contract Specifications whether or not the Licensed Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

1.2 In this Deed, unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and sub clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub clauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or sub clause is a reference to a clause or sub clause of this Deed;
- (h) a reference to an Attachment is a reference to an Attachment to this Deed;
- (i) 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.

1.3 Where an obligation is imposed on a party under this Deed, that obligation shall include an obligation to ensure that no act, error or omission on the part of that party’s employees, agents or subcontractors or their employees or agents occurs which will prevent the discharge of that party’s obligation.

2 Duration

Subject to Clause 9 and to all applicable fees under this Deed being paid by the Principal in accordance with this Deed, this Deed remains in force until the Source Code and Supporting Material is released in accordance with this Deed or this Deed is terminated or expires in accordance with its terms.

3 Appointment of Escrow Agent

The Escrow Agent is hereby appointed jointly by the Principal and the Contractor to hold the Source Code and Supporting Material and, if the conditions for release under Clause 8 are met, to release the Source Code and Supporting Material in accordance with this Deed.

4. Contractor's Obligations

- 4.1** The Contractor shall deliver to, and deposit with, the Escrow Agent one copy of the Source Code and the Supporting Material within 7 days of the date of this Deed (or such other time as otherwise agreed).
- 4.2** The Contractor shall maintain, amend, modify, up-date and enhance the Source Code and Supporting Material quarterly and shall ensure on a quarterly basis that the Source Code and Supporting Material deposited with the Escrow Agent is kept fully up-to date and accurately reflects the Licensed Software including all modifications, amendments, Updates and New Releases made to, or in respect of, the Licensed Software.
- 4.3** The Contractor warrants to the Principal that the Source Code and Supporting Material is, to the best of the knowledge of the Contractor, free from any virus or program device which would prevent the Licensed Software from conforming with the Contract Specifications or which would prevent or impede a thorough and effective verification thereof.

5. Escrow Agent's Obligations

- 5.1** The Escrow Agent shall accept custody of the Source Code and Supporting Material on the date of delivery in accordance with sub clause 4.1 of this Deed and, subject to the terms and conditions of this Deed, shall hold the Source Code and Supporting Material on behalf of the Principal and the Contractor.
- 5.2** The Escrow Agent shall take all reasonable necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Source Code and Supporting Material while it is in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Source Code and the Supporting Material.
- 5.3** The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Source Code and Supporting Material while it is in the Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by negligence default, willful damage or recklessness of the Escrow Agent or its employees or agents.
- 5.4** If the Source Code and Supporting Material is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify the Principal and the Contractor.
- 5.5** Unless this Deed is terminated in accordance with clause 9.2(b) the Contractor shall, upon receipt of notice from the Escrow Agent under clause 5.4, promptly deposit a replacement copy of the Source Code and Supporting Material with the Escrow Agent.
- 5.6** Without limiting any other rights the Contractor and the Principal may have under this Deed or at law, where the loss, damage or destruction of the Source Code and Supporting Material is caused by the negligent, willful, reckless or unlawful act or omission of the Escrow Agent, the Escrow Agent must reimburse the Contractor for the reasonable cost of depositing a replacement copy of the Source Code and Supporting Material.
- 5.7** The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Source Code and Supporting Material lodged with it.

6. Escrow Fee and Expenses

- 6.1** The Principal shall pay all applicable Escrow Fees plus any applicable GST to the Escrow Agent.
- 6.2** All expenses and disbursements incurred by the Escrow Agent in connection with this Deed shall be borne wholly and completely by the Escrow Agent.
- 6.3** All expenses and disbursements incurred by the Contractor in connection with this Deed shall be borne wholly and completely by the Contractor.

7. Testing and Verification

- 7.1** The Principal may, in the presence of and under the supervision of the Contractor, analyse and conduct tests in relation to the Source Code and Supporting Material for verification purposes.
- 7.2** The Principal may engage an independent assessor to undertake analysis and tests of the Source Code and Supporting Material for verification purposes, on its behalf.

7.3 The Escrow Agent shall release the Source Code and Supporting Material to the independent party upon presentation of a release form signed by the Principal and the Contractor specifying the material to be released and identifying the person to whom that material may be released.

7.4 The Source Code and Supporting Material released pursuant to clause 7.3 must be returned to the Escrow Agent or its employees or agents and the Principal shall ensure that the confidentiality of the Source Code and Supporting Material so released is preserved and that it is not used for any purpose other than the verification that the Contractor has complied with its obligations under this Deed.

8. Release of the Source Code and Supporting Material

8.1 The Escrow Agent shall not release, or allow access to, the Source Code and Supporting Material except in accordance with the provisions of this Deed.

8.2 The Escrow Agent shall release the Source Code and Supporting Material to the Principal upon written notice from the Principal in the form of a statutory declaration setting out in detail the grounds upon which the release is sought, by an officer of the Principal that:

- (a) an Insolvency Event has occurred in relation to the Contractor and the Contractor materially breaches its obligations in respect of the provision of Software Support Services and the breach has not been substantially rectified by the Contractor within 20 business days of the Principal providing the Contractor with written notice of the breach, particularising the acts or omissions that constitute the breach; or
- (b) the Contractor has ceased for any reason, other than the Principal ceasing to acquire the Contractor's support services, to maintain or support the Licensed Software; or
- (c) the Agreement has been lawfully terminated by the Principal for substantial breach of contract by the Contractor.

8.3 If the Principal wishes the Escrow Agent to release the Source Code and Supporting Material to it, upon the occurrence of any of the events specified in paragraphs (a) to (c) of Clause 8.2, the Principal must provide written notice in the form of a statutory declaration setting out in detail the grounds upon which the release is sought of such event to both the Escrow Agent and the Contractor. If the Contractor does not, within 20 business days of receiving the notice, rectify the event specified in paragraphs (a) to (c) of Clause 8.2, the Principal shall exercise its right in writing to require the Escrow Agent to immediately release the Source Code and Supporting Material to the Principal ("Final Release Notice"). The Escrow Agent shall release the Source Code and Supporting Material to the Principal promptly after receiving the Final Release Notice.

8.4 Where the Agreement has been lawfully terminated by the Contractor, and/or where the Principal has agreed to the release, or where this Deed is lawfully terminated by the Contractor, or the Escrow Agent, for substantial breach of this Deed by the Principal, or in circumstances where the Contractor is not obligated under the Agreement to execute a substantially similar Deed to replace this Deed, the Escrow Agent shall, upon written request from each of the Parties, release the Source Code and Supporting Material to the Contractor.

8.5 In the event that the Source Code or Supporting Materials are released to the Principal under this Deed, the Principal:

(a) has no wider rights to use the Source Code and Supporting Materials that it has in relation to the Licensed Software under the License Agreement and the Source Code and Supporting Materials must be used only to maintain the Licensed Software and the Principal must not do or allow to be done any act which is inconsistent with the Contractor's (or its licensor's) rights in the Source Code and Supporting Materials; and

(b) must keep the Source Code and Supporting Materials strictly confidential and must not use them for any purpose other than that referred to in Clause 8.5 (a).

This Clause 8.5 (b) survives expiry or termination of this Deed.

9. Termination

9.1 The Escrow Agent may, by giving 3 months prior written notice to the Principal and the Contractor, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.

9.2 The Principal or the Contractor may terminate this Deed immediately if the Escrow Agent:

- (a) has become subject to any form of insolvency administration; or

- (b) is in breach of any obligation under this Deed so that there is a substantial failure by the Escrow Agent to perform or observe this Deed.

9.3 If this Deed is terminated in accordance with this clause while the License Agreement remains in force, and the Principal continues to use the Licensed Software, the Principal and the Contractor shall enter into a new Escrow agreement of Agreement on substantially the same terms and conditions as are set out in this Deed, with an alternative escrow agent who is acceptable to both the Principal and the Contractor.

9.4 The Principal and the Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Deed, however no refund of advance payment of the Escrow Fee will be payable.

10. Confidentiality

10.1 The Escrow Agent shall not, except as permitted by this Deed, make public or disclose to any person any information about this Deed or the Source Code and Supporting Material.

10.2 The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Source Code and Supporting Material or any part thereof.

10.3 The obligations under this clause shall survive the termination of this Deed.

11. Compliance with Laws

11.1 The Escrow Agent shall in carrying out this Deed comply with the provisions of any relevant Statutes, Regulations, By-Laws and the requirements of any Commonwealth, State or local authority.

12. Resolution of Disputes

The Parties agree to resolve any conflicts or issues between them in relation to this Deed as follows:

Negotiation

- (a) if there is a disagreement between the Parties arising out of this Deed (a *Dispute*), then within 10 business days of a Party notifying the other party or Parties of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

Mediation

- (b) If the Dispute is not settled within 10 business days of notification under Clause 12 (a), the Parties must submit the Dispute to mediation administered by one of the following bodies as agreed by the Parties:
- (i) the Australian Commercial Disputes Centre Limited (ACDC);
 - (ii) the Institute of Arbitrators and Mediators Australia (IAMA); or
 - (iii) Lawyers Engaged in Alternative Dispute Resolution (LEADR); or
- failing agreement, the ACDC.
- (c) The mediator will be an independent person agreed between the Parties or, failing agreement, a mediator will be appointed by the President of the body determined under Clause 12(b).
- (d) Any mediation meetings and proceedings under this Clause must be held in Sydney, New South Wales.

Court proceedings and other relief

- (e) A Party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this Clause, unless the Party seeks injunctive or other interlocutory relief.

Continuation of rights and obligations

- (f) Despite the existence of a Dispute, each party must continue to perform this Deed.

13. Applicable Law

This Deed shall be governed by and construed in accordance with the laws from time to time in force in New South Wales. The Parties shall submit to the exclusive jurisdiction of the courts of New South Wales.

14. Variation and Waiver

- 14.1 This Deed shall not be varied either in law or in equity except by agreement in writing signed by the Escrow Agent, the Principal and the Contractor.
- 14.2 A waiver by one Party of a breach of a provision of this Deed by another Party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of a Party to enforce a provision of this Deed shall not be interpreted to mean that Party no longer regards that provision as binding.

15. Assignment

The Contractor, Principal and the Escrow Agent, or either of these, shall not assign, in whole or in part, its benefits under this Deed without the written consent of the other two Parties, which shall not be unreasonably withheld.

16. Severability

Each provision of this Deed, and each part of it shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable part, so that if any provision, or part of a provision is void or otherwise unenforceable for any reason, then that provision, or part shall be severed and the remainder shall be read and construed as if the severable part had never existed.

17. Notices

- 17.1 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means. The address for services of notice for a party is, in the case of the:

Escrow Agent:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Contractor:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Principal:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

or such other address as a party may notify to the other party in writing from time to time.

- 17.2 A notice or other communication is deemed to be received if:

- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;

- (b) sent by post from and to an address within Australia, after three (3) business days;
- (c) sent by post from or to an address outside Australia, after ten (10) business days;
- (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (e) sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
- (f) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

EXECUTED AS A DEED

The Common Seal of [insert Escrow Agent's name & ACN/ABN]

[Empty box for Common Seal]

was affixed by [authority of the Board of Directors]

[Empty box for authority of the Board of Directors]

in the presence of [insert name of Director/Secretary or other permanent officer]

[Empty box for name of Director/Secretary or other permanent officer]

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Print name]

Print name

[Empty box for Print name]

Print name

The Common Seal of [insert Contractor's name & ACN/ABN]

[Empty box for Common Seal]

was affixed by [authority of the Board of Directors]

[Empty box for authority of the Board of Directors]

in the presence of [insert name of Director/Secretary or other permanent officer]

[Empty box for name of Director/Secretary or other permanent officer]

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Print name]

Print name

[Empty box for Print name]

Print name

Signed for and on behalf of [insert name of Principal]

[Empty box for name of Principal]

By [insert name of Principal's representative]

[Empty box for name of Principal's representative]

in the presence of [insert name of witness not a party to this Deed]

[Empty box for name of witness not a party to this Deed]

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Signature of Director/Secretary]

Signature of Director/Secretary

[Empty box for Print name]

Print name

[Empty box for Print name]

Print name

Escrow Deed of Agreement

ATTACHMENT 1

Details of Escrow fees:

Escrow Deed of Agreement

ATTACHMENT 2

Details of licensed software to be held in Escrow

Source Code:	<input type="text"/>
Flow Charts:	<input type="text"/>
Diagrams:	<input type="text"/>
Listings:	<input type="text"/>

Escrow Deed of Agreement

ATTACHMENT 3

Supporting materials

Insert details of support material relevant to the Licensed Software, for example:

- technical documentation sufficient to allow a competent computer programmer to understand and maintain the version of the software to which the documentation relates.
- relevant maintenance tools and compilers and assemblers (if standard tools, description thereof will suffice) and third party software utilities.
- description of code generation.
- description of third party software required for support and availability thereof.
- identification of key personnel involved with the development of the software.
- operational manuals, listings, flow charts etc.
- details of machine/processor/system configuration.

<input type="text"/>
<input type="text"/>
<input type="text"/>

Schedule 12 – Variation Procedures

1. PROCEDURES

1.1 Each variation request or recommendation must be submitted in a form substantially similar to the form attached to this Schedule.

1.2 For each variation request or recommendation submitted:

- (a) the Parties must evaluate the request or recommendation and, as appropriate:
 - i. request further information;
 - ii. provide a Contract, Price and performance impact summary including amendments to the terms of the Contract;
 - iii. notify approval or rejection to the other Party of the variation;
 - iv. arrange for two copies of an approved variation to be signed by or on behalf of both Parties; and
 - v. if required by the Contract, submit the variation to the Contract Authority for its written approval.
- (b) a sequential number to the variation must be allocated by the Parties;
- (c) the variation must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
 - i. requested;
 - ii. under evaluation;
 - iii. awaiting authorisation;
 - iv. cancelled;
 - v. pending
 - vi. approved/authorised;
 - vii. expired;
 - viii. in progress;
 - ix. applied;
 - x. delivered;
 - xi. accepted.

1.3 Time limits apply for Contract Variation evaluation and authorisation as follows:

- (a) A Party will respond to a Contract Variation request or recommendation by providing an evaluation in accordance with paragraph 1.2 of this Schedule within 10 working days of receipt of the request or recommendation; and
- (b) The Contractor must act on the Contract Variation within 7 days of the Contract Variation being approved and signed by the parties.

1.4 Notwithstanding the foregoing, if after a variation has been approved and signed by both Parties, and the Customer no longer wishes to proceed with the variation, the Customer must:

- (a) notify the Contractor accordingly in writing;
- (b) pay the reasonable costs incurred by the Contractor incidental to implementing the Contract Variation;

and the variation shall thereafter cease to have effect. The Parties shall continue to perform their obligations under the Contract as if the variation request or recommendation had never been made.

VARIATION REQUEST FORM

Guide Note: If the proposed variation will vary the Contract terms, specifications or any other documents forming part of the Contract, draft amendments must be attached.

Variation request no

Date proposed

Date of expiry of validity of variation request

Originator

Variation proposal: *(full details of variation including specifications, document identification, and reason for Variation)*

Clauses affected by variation request: *(Insert amendments to clauses in the Contract, relevant Contract Schedules including Service Level Agreement) (note that variations to the Agreement Clauses require the Contract Authority's approval (clause 7.2))*

Impact of variation *(Contractor to advise)*

Effect on Charges

Manpower required

Effect of variation on performance

Effect on Documentation

Effect on training

Effect on users of system

Any other matters which the parties require to be considered

The means of Implementing the variation: (Contractor to advise)

Implementation plan and timetable:

Personnel:

The responsibilities of the Parties for implementing the variation

The date the variation is to be ready for Acceptance Testing

Charges payable to the Contractor by the Customer or as varied by variation

Payment Profile: (Charges to apply)

**THE CONTRACT IS VARIED IN ACCORDANCE
WITH THE TERMS OF THIS CONTRACT VARIATION REQUEST**

Signed by [name and position of person signing]

for and on behalf of the [insert name of Customer]

in the presence of

Signature of Customer

Signature of Witness

Print name

Print name

Signed by [name and position of person signing]

for and on behalf of the [insert name of Contractor]

in the presence of

Signature of Contractor

Signature of Witness

Print name

Print name

The (Contract Authority) hereby endorses its consent to this Variation.

Request No

Schedule 13 – Risk Management

FORMAT OF A RISK MANAGEMENT PLAN

- 1** **Procurement context**
- 1.1** Description of the procurement
- 1.2** Identify the procurement environment and stakeholders
- 1.3** Identify the risk criteria of the procurement
- 1.4** Plan the key stages of the procurement

- 2** **Risk identification**
- 2.1** Identify and schedule potential risks and their impacts
- 2.2** Risk analysis
- 2.3** Assess risk likelihood and consequences
- 2.4** Determine risk levels

- 3** **Risk assessment**
- 3.1** Undertake risk priority ranking
- 3.2** Determine risks to be accepted and monitored
- 3.3** Identify risks to be treated

- 4** **Risk treatment**
- 4.1** Evaluate and select risk treatment options
- 4.2** Prepare risk treatment plans and implementation strategies

- 5** **Ongoing monitoring**
- 5.1** Develop schedule for ongoing review

Schedule 14 – Management Fee Audit Confidential Disclosure Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Contract is entered into by and between the Contractor ("**Contractor**") ABN and the "Auditor", which has been engaged by the State Contracts Control Board ("**Board**") to carry out a review of the Contractor's records and systems in connection with the Agreement referred to in clause 1 below as notified to the Contractor by the Board on [date] ("**the Audit**").

The Contractor and the Auditor agree in relation to the confidential information disclosed to the Auditor by the Contractor as follows:

1. **Disclosure of Information.** The Audit relates to the following Agreement between the Board and the Contractor "**Contract**", and is to be governed by the terms and conditions contained therein:

Name of Agreement :

In accordance with the clause 3.1.12 of the Agreement the Contractor will disclose to the Auditor all information that the Auditor may reasonably require in connection with the following purposes:

The Contract Authority may take such measures as are reasonable in all the circumstances (including the appointment of an auditor) to verify that the Contractor has paid the correct amount of Management Fee due to the Contract Authority. If the Contract Authority appoints an auditor (being an auditor who must not be a competitor of the Contractor), the Contract Authority will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Contract Authority including providing access within 10 working days of the written notification from the Contract Authority that an audit will take place, to information about all sales of Deliverables made to Eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices between the Contractor and any Eligible Customers.

2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:

On behalf of the Contractor:

Name: _____

Title: _____

The Contractor's address: _____

Other officer: _____

On behalf of Auditor:

Name: _____ and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.

Title: _____

Work Address of Auditor's representative above: _____

3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.

4. **Disclosure Period and Term.** This Agreement controls only Confidential Information which is disclosed between the Effective Date and 3 months thereafter ("Disclosure Period"). The Auditor's duty to protect Confidential Information disclosed under this Agreement expires three (3) years after the end of the Disclosure Period ("the Term").
5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the information was disclosed and where such persons have a need to know. The Auditor shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Auditor uses to protect its own confidential information of a like nature. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
- is or becomes a matter of public knowledge through no fault of the Recipient;
 - is required to be disclosed under operation of law; or
 - is disclosed by the Recipient or the Participant with the Discloser's prior written approval; or
 - is disclosed to a party's legal adviser in connection with the Review or this agreement.
8. **Proprietary Rights.** Neither party to this Agreement acquires any intellectual property rights or any other rights under this Agreement except the limited right to use set out in paragraph 5 above.
9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both parties. This Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

CONTRACTOR: ABN/ACN:
Authorised Signature:
Name:
Title:
Date:

AUDITOR: ABN/ACN:
Authorised Signature:
Name:
Title:
Date: