

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

**(NON-SPIRIT VERSION)**

**CONTRACT DETAILS & APPENDICIES**

**DEPARTMENT OF [INSERT NAME OF AGENCY]**

**[INSERT NAME OF CONTRACTOR]**

## **APPENDIX 1 - Contract Details**

### **Title of Contract**

Description of Contract

Contract number

Date of approach to the market (eg RFT)

Description or title of approach to the market

### **Contractor (Clause 1.1)**

Name of Contractor

ACN/ABN of Contractor

Name of Contractor's Representative

### **Customer (Clause 1.1)**

Name of department, agency or instrumentality entering into this Contract

Is the contracting entity entering this Contract as a Contract Authority?

If the contracting entity is a Contract Authority, which other departments, agencies or instrumentalities are entitled to utilise this Contract as Customers?

### **Defined Terms (Clause 1.3)**

Terms with defined meanings for the purposes of the Appendices to this Contract (Clause 1.4)

### **Commencement Date and Period of Contract (Clause 3)**

Commencement date (clause 3.1)

Duration of Contract (clause 3.2)

Extension procedure (clause 3.2)

### **Consultancy Services (Clause 5)**

Description of Consultancy Services (clause 5.1)

Resources required (clause 5.1)

Methodology requirements (clause 5.2)

Performance Measures (clause 5.3)

### **Managed Services (Clause 6)**

General Obligations of Contractor  
(clause 6.1)

Service commencement date  
(clause 6.1)

Assets to be acquired from  
Customer (clause 6.2 )

Content of procedures manual  
(clause 6.2)

Service delivery requirements  
(clause 6.3)

Reporting intervals (if not monthly)  
(clause 6.3)

Qualifications on transition-out  
obligations (clause 6.4)

### **Supply of Hardware (Clause 7)**

See also Schedule 1 to this Appendix 1 for Specifications/Statement of Work and Schedule 2 for the Project Plan

Details of Hardware required  
(clause 7.1)

Time for transfer of title (clause 7.2)

Overview of implementation and  
training services (clause 7.3)

Whether Hardware warranted to be  
free of defects (clause 7.4)

Whether Hardware warranted to be  
in compliance with the  
Specifications (clause 7.4)

Period for which warranty applies  
(clause 7.4)

### **Hardware Maintenance Services (Clause 8)**

See also Schedule 5 to this Appendix 1 for Hardware Maintenance Services

Overview of Hardware Maintenance  
requirements (clause 8.1)

Commencement date (clause 8.2)

Renewal arrangements (clause 8.2)

Whether maintenance is to  
commence prior to the expiry of a  
warranty (clause 8.2)

Whether preventative maintenance  
is required (clause 8.3)

Whether remedial maintenance is  
required (clause 8.4)

## **Software Development (Clause 1.1 and 9)**

Overview of the Software to be developed (clause 9.1)

Resources required (clause 9.1)

Date for submission of project plan (clause 9.2)

Date for approval of project plan (clause 9.3)

Extended period for approval of project plan (clause 9.3)

Date for submission of Design Specification (clause 9.4)

Date for approval of Design Specification (clause 9.5)

Extended period for approval of Design Specification (clause 9.5)

Documentation requirements (clause 9.6)

Whether the source code is to be placed in escrow (clause 9.7)

Whether Developed Software can be used prior to Acceptance (clause 9.8)

## **Licensing of Software (Clause 10)**

See also Schedule 1 to this Appendix for Specifications/Statement of Work and Schedule 2 for the Project Plan

Description of Licensed Software (clause 1.1, 10.1)

Special or alternative licence conditions (attach if necessary) (clause 10.1)

Number of copies of Licensed Software (clause 10.1)

Whether the licence can be transferred to another government entity (clause 10.1)

Whether the licence is transferable (clause 10.1)

Period of licence (clause 10.2)

Customer's record keeping requirements (clause 10.3)

Implementation and training services (clause 10.4)

Requirements for updates and new releases (clause 10.5)

Period during which Contractor must maintain superseded version (if not 18 months) (clause 10.5)

Designated equipment for the  
Licensed Software (clause 10.6)

Whether the Customer requires an  
archival copy (clause 10.8)

Restrictions on archival use (clause  
10.8)

Post-licence period for return or  
destruction of Licensed Software  
(clause 10.8))

Whether escrow is required (clause  
10.9)

Name of escrow agent if one is  
required (clause 10.9)

Special conditions governing  
application of third party contracts  
(clause 10.11).

### **Software Support Services (Clause 11)**

See Schedule 6 to this Appendix 1 for Software Support Services

Overview of Software Support  
Services (clause 11.1)

Commencement date for Software  
Support Services (clause 11.2)

Renewal arrangements (clause  
11.2)

### **Systems Integration (Clause 12)**

See Schedule 1 to Appendix 1 for Specifications/Statement of Work and Schedule 2 for Project Plan

Overview of Systems Integration  
Services (clause 1.1, 12)

### **Telecommunications Services (Clause 13)**

See Schedule 1 to Appendix 1 for Specifications/Statement of Work and Schedule 2 for Project Plan

Overview of Telecommunications  
Services (clause 13)

Authorities which Contractor is to  
obtain (clause 13.1)

Special terms and conditions  
applicable to Telecommunications  
Services (clause 13.1)

Interoperability Requirements  
(Clause 13.2)

### **Joint Responsibilities (Clause 14)**

Meeting and reporting  
arrangements (clause 14)

### **Specific Responsibilities of the Contractor (Clause 15)**

Contractor's obligations to establish  
and maintain facilities (clause 15.2)

Requirement to make available the Contractor's records (clause 15.2)

Extent that the Contractor is to act as the Customer's agent (clause 15.3)

Requirement to provide training (clause 15.5)

Extent to which Contractor not responsible for taxes (clause 15.6)

Extent to which the Contractor has to provide details for site preparation (clause 15.8)

Varied insurance requirements (clause 15.9)

Performance guarantee or similar requirements (clause 15.10)

Financial undertaking or similar requirements (clause 15.10)

Applicable security legislation (clause 15.11)

Specific Internet security requirements (clause 15.11)

Additional security requirements (clause 15.11)

Specific privacy procedures (clause 15.12)

Specific anti-discrimination requirements (Clause 15.13)

Whether Contractor is to maintain records (clause 15.16)

Data security arrangements in respect of data access and use (clause 15.18)

### **Specific Responsibilities of Customer (Clause 16)**

See Schedule 7 to Appendix 1 for more details as to Charges and invoicing procedures

Resources to be provided by Customer (clause 16.2)

Customer's obligations to maintain facilities (clause 16.3)

Site preparation requirements (clause 16.4)

Details of the Contractor's access rights to the Customer's premises (clause 16.5)

### **Acceptance Testing Requirements (Clause 17)**

See Appendix 2 for Acceptance Testing Requirements

Whether Acceptance testing is required (clause 17)

## **Warranties - Contractor (Clause 18)**

Applicable third party warranties  
(clause 18.1)

Licences to be granted to the  
Customer (clause 18.1)

Warranty period (clause 18.2)

Alternative standards for the  
Service or Product (clause 18.3)

Whether (and extent to which)  
implied terms are excluded (clause  
18.5)

Audit (Clause 19)

Amended audit obligations (clause  
19.4)

Personnel (Clause 20)

Names of key personnel required  
(clause 20.3)

## **Non-disclosure of information (Clause 21)**

Prevailing government policies  
relating to confidentiality (clause  
21.1)

Time limit on retention of  
confidence (clause 21.1)

Prohibitions on certain factual  
disclosures (clause 21.3)

## **Intellectual Property Rights (Clause 22)**

Ownership of Intellectual Property  
Rights (clause 22.1)

Specific licence rights in relation to  
Contractor's pre-existing materials  
(clause 22.3)

Conditions for licensing back of  
Customer's pre-existing materials to  
the Contractor (clause 22.4)

Conditions for licensing back of  
Developed Materials to the  
Contractor (clause 22.5)

## **Indemnities (Clause 23)**

Variation to Contractor's indemnity  
obligations (clause 23.1)

Whether the Customer will  
indemnify the Contractor against  
third party claims (clause 23.4)

Whether specific indemnities are  
offered by Contractor (clause 23.6)

### **Problem Resolution (Clause 24)**

Selection of a mediator (clause 24.3)

Selection of an expert for determination (clause 24.4)

### **Liability (Clause 25)**

Whether liability will be limited and if so, the amount to which it is limited (clause 25.2)

Whether any limitation on liability is for each single occurrence or for a series of related occurrences (clause 25.2)

Whether Right of Offset included (Clause 25.6)

Liquidated Damages Details (if applicable) (Clause 25.7)

### **Communication (Clause 27)**

Extent to which the contracting process can be conducted electronically (clause 27.1)

### **Address for service of notices to Contractor (Clause 27.2)**

Street address

Postal address

Phone number

Fax number

Email address

### **Address for service of notices to Customer (Clause 27.2)**

Street address

Postal address

Phone number

Fax number

Email address

### **Deemed service of notices (Clause 27.4)**

Any special provisions regarding deemed service of notices (clause 27.4)

### **Subcontracting (Clause 28.1)**

Subcontractors (or categories of subcontractors) deemed approved (clause 28.1)



**Unforeseen Events (Clause 28.4)**

Permissible period for non-performance (clause 28.4)

**Applicable Law (Clause 28.6)**

Law which governs the Contract (clause 28.6)

**Time of the Essence (Clause 28.9)**

Whether time is of the essence (clause 28.9)

**Service Arranger to Act as Customer's Agent (Clause 28.12)**

Specific powers of Service Arranger as Interim Manager

**Limitations on Role of Service Arranger (Clause 28.13)**

Limitations and rights of Service Arranger

**Risk of Loss (Clause 28.15)**

Time for transfer of risk (clause 28.15)

**Government Policies (Clause 28.16)**

Specific government policies, or obligations under government policies, applicable to this Contract (clause 28.16)

**Non-Exclusivity (Clause 28.16)**

Whether Contractor has exclusive rights to provide Products or Services (clause 28.16)

**Termination for Convenience (Clause 29.2)**

Whether Customer has right of termination for convenience (clause 29.2)

Whether compensation is payable in the event of termination for convenience (clause 29.2)

**Counterparts (Clause 30)**

Whether the Contract can be executed in counterparts (clause 30)

**Execution of the Contract -  
Signed for and on behalf of the:**

**Customer's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Customer's witness**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Contractor's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Contractor's witness**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

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**Appendix 1 - Schedule 1 (Specifications/Statement of work)**

**(Clauses 1.1, 5, 6, 7, 9, 10, 12, 13)**

[Insert particulars of relevant functional, operational, performance or other characteristic required of the Service or Product. In the case of a systems integration arrangement, insert details of system specifications].

*Superseded*

**Appendix 1 - Schedule 2 (Project Plan)**

**(Clauses 5, 7, 9, 10, 12, 13)**

[Insert timeframes and key milestones for the completion of Services and/or delivery of Products]

Superseded

## Appendix 1 - Schedule 3 (Transition-in-Plan)

### (Clause 6.2)

[Insert details of the Contractor's transition-in obligations including, but not necessarily limited to:

1. *third party contracts to be assigned or novated;*
2. *third party contracts to be managed by Contractor;*
3. *arrangements for the transfer of the Customer's personnel;*
4. *arrangements for the secondment of the Customer's personnel;*
5. *timeframe for preparation of a procedures manual; and*
6. *particulars of interim service levels]*

*Superseded*

**Appendix 1 - Schedule 4 (Service Level Agreement)**

**(Consultancy and Managed Services)**

**(Clauses 5.3, 6)**

[Insert details of performance levels for Consultancy Services and/or Managed Services, including, where practicable, details of proposed transition out arrangements]

Superseded

## **Appendix 1 - Schedule 5 (Hardware Maintenance)**

### **Specific Requirements for Hardware Maintenance Services**

#### **(Clause 8)**

[Insert requirements for Hardware Maintenance Services including requisite service levels, preventative maintenance schedules, remedial maintenance response times and any special storage or record keeping requirements. Also include a list of specifically excluded services.]

Superseded

## **Appendix 1 - Schedule 6 (Software Support)**

### **Specific Requirements for Software Support Services**

#### **(Clause 11)**

[Insert requirements for Software Support Services including service levels, response times and particulars of specific services which are to be included or excluded.]

Additional terms relating to Software Support Services *[delete if or to the extent inapplicable]*

#### **1. THE SERVICES**

The services will comprise:

- (a) provision of new releases of the Software by the Contractor to the Customer;
- (b) help desk support; and
- (c) defect correction.

#### **2. RELEASES**

- (a) The Contractor will deliver to the Customer any improved version of the Licensed Software (Release) which the Contractor makes available and the Customer will be responsible for using such version subject to the conditions set out below
- (b) Upon delivery of a new Release, the Contractor will make available to the Customer details of such amendments which will be necessary to properly describe the facilities and functions of the new Release and to distinguish it from the previous release
- (c) The Customer will not be obliged to accept or use the new Release if its use would result in any of the facilities and functions set out in the Documentation being diminished or curtailed
- (d) The Contractor will deliver to the Customer the object code of the new Release in machine-readable form together with amended Documentation
- (e) If required by the Customer, the Contractor will provide training for the Customer's staff in the use of the new Release as soon as reasonably practicable after the delivery of the new Release. Such training will be deemed part of the help desk service described at 2 below in this schedule
- (f) Within 3 months of the Customer receiving the new Release the Customer will have tested such Release and will have notified the Contractor of any failure or error of that Release
- (g) If within 3 months after such delivery no such notification is made, the Customer will be deemed to have accepted the new Release
- (h) If the Customer notifies the Contractor of any fault in the new Release then the Contractor will correct the fault in accordance with the defect correction procedures as set out in 3 below

#### **2. HELP DESK**

- (a) Help desk support will include technical advice in relation to the Software, system advice, problem resolution, training and other general support in respect of the Contract to resolve Customer queries or difficulties in using the Software
- (b) The Contractor will supply up to 150 hours of help desk support in each 12-month maintenance period in respect of all Software supplied under the Contract



- (c) The Contractor will provide help desk services primarily by telephone, facsimile, e-mail and where consistent with the Customer's internal policies, dial-in support
- (d) Support will be accounted for in 15 minute increments and includes travel time where on-site support is required
- (e) Where on-site support is required the Customer will be liable to additional charges for travel, accommodation and out-of-pocket expenses
- (f) Help desk support may include support for the manipulation of data for input to the system and include amendments to parameter, control files and scripts required to upload data
- (g) Where in the opinion of the Contractor the support for manipulation of data for input requires material Customer specific amendments to the Software, the Contractor will advise the Customer of that opinion and will be excused from providing such support under this agreement
- (h) Where additional support is required, it will be charged at the Contractor's current casual consulting rates.
- (i) No additional charges will be made for work which has not been duly authorised by the Customer.

### **3 DEFECT CORRECTION**

- (a) If the Customer discovers that the Software fails to operate correctly by reference to the Documentation then the Customer will within 14 days notify the Contractor in writing of the defect or error in question and provide the Contractor (so far as the Customer is able) with a documented example of such defect or error
- (b) The Contractor will use its reasonable endeavours to promptly correct such defect or error. When corrections are completed the Contractor will deliver to the Customer the corrected Software along with appropriate amendments to the documentation. The Contractor will provide the Customer with such assistance as is reasonably required by the Customer to enable the Customer to implement the use of the corrected version of the Software
- (c) In addition to the exclusions of clause 11.6, defect correction service will not include service in respect of:
  - (i) any modification of the Software if such modification would result in a departure from the Specification
  - (ii) defects that are trivial or that do not have a material effect on the operation or outcomes produced
- (d) The Contractor will make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by the Contractor:
  - (i) at the request of the Customer but which do not qualify under the error correction service by virtue of any of the exclusions referred to in clause 11.6 paragraph (c) above; or
  - (ii) at the request of the Customer but which the Contractor finds are not necessary
- (e) If the Customer discovers any material fault in the documentation then the Customer will notify the Contractor in writing of the fault in question within 14 days. The Contractor will promptly correct the fault and provide the Customer with appropriate amendments to the documentation

#### **4 CUSTOMER OBLIGATIONS**

- (a) The Customer will ensure that the Software is used in a proper manner by competent *and* trained employees only or by persons under their supervision
- (b) The Customer will not alter or modify the Software or the documentation in any way except with the express approval of the Contractor, nor permit the Software to be combined with any other programs to form a combined work
- (c) The Customer will not request, permit or authorise anyone other than the Contractor to provide any Software Support Services in respect of the Software or the documentation except where the Contractor advises that it is unable or unwilling to provide such services

#### **5 PROPRIETARY RIGHTS AND LICENCE**

The intellectual property rights and the copyright for any Release (and all corrected versions), the documentation and all related parts will remain the property of the Contractor, or where provided under sub-licence, the property of the head licensor

*Supercceeded*

## **Appendix 1 - Schedule 7 (Charges)**

**(Clauses 11.2, 15.6, 15.7, 16.1)**

[Insert details of all relevant charges, costs or fees for the delivery of Products or performance of Services and the period and procedure for payment for each item. Also include the Customer's invoicing requirements.]

### **Agreed Contract Price**

*[Insert details]*

### **Payment Schedule**

*[Insert details]*

### **Invoicing Requirements**

All charges will only be payable upon delivery to the Customer of a properly rendered tax invoice.

### **General Pricing Principles** *[delete to extent inapplicable]*

1. The Contractor represents that the price it charges to the Customer for a Product or Service will be no less favourable than the price paid by any other purchaser of a substantially similar product or service from the Contractor in similar circumstances.
2. The Contractor will ensure that all its Associates will provide or allow the same discounts under this Contract. For the avoidance of doubt, nothing in this clause prevents the Associates from allowing greater discounts than those allowed under this Contract.
3. All prices will be inclusive of all delivery and other related charges.
4. The Contractor will provide delivery to any location within the state as required the Customer. The Contractor will show the cost for country delivery separately on any quotation. The Customer will have the right to nominate a particular haulier when Products are to be freighted to a country location and the Contractor must use that haulier to deliver the Products. The Customer will also have the option to arrange its own freight of the Products. The Contractor will cooperate with the Customer's nominated haulier in this regard.

## **Appendix 2 - Acceptance Testing**

### **Part A: Tests required**

#### **(Clause 17)**

[Insert a description of the tests on Products and/or Services that need to be performed before the Customer accepts them.]

Superseded

**Part B: Certificate of Acceptance**  
**(Clause 17)**

**Issued by the Customer's representative to the Contractor**

Name of Customer's  
representative

The following items (Service  
and/or Product) have been  
accepted

Conditions attached to the  
Certificate of Acceptance

**Execution – Signed for and on behalf of the**

**Customer's representative**

Name (print)

Position

Signature and date \_\_\_\_\_

**Contractor's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

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## Appendix 3 – Change Order

### Change Order

#### (Clause 28.8)

[If the proposed changes will vary the Specifications, the Contract Details or any other technical requirements of the Customer, the following form must be completed]

#### **The Contract is changed in accordance with the terms of this Change Order and its attachments**

Change order number

Date proposed

Name of party instigating the change

Implementation date of change

Details of change proposal

Clauses affected by the proposal are as follows

New charges payable to the Contractor or Customer affected by this change proposal

Plan for implementing the change

The responsibilities of the parties for implementing the change

The new date for the acceptance testing of the system

Effect of change on performance

Effect on documentation

Effect on training

Effect on the users of the system

Any other matters which the parties consider are important

#### **Execution – Signed for and on behalf of the**

##### **Customer's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

##### **Contractor's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_

## **Appendix 4 – Deed of Confidentiality**

### **Deed of Confidentiality (Clause 21.2)**

Deed of Agreement (the "Contract") dated this                      day of    200\_

#### **Between**

[insert name of Customer] ('the Customer')

#### **And**

The party specified in the Schedule ('the Confidant')

The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with [describe Contract].

### **1. Interpretation**

#### **1.1 Definition**

'Information' means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Customer and includes information relating to:

- (a) any intellectual property rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer;
- (e) the Customer's clients or suppliers;

and information of the Customer that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information.

### **2. Non-disclosure**

2.1 The Confidant will treat as secret and confidential all Information to which the Confidant has access or which is disclosed to the Confidant.

2.2 If the Customer grants its consent for the Confidant to disclose information, it may impose conditions on that consent. In particular, the Customer may require that the Confidant obtain the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Information.

2.3 The Confidant's obligations under this Deed will not be taken to have been breached where the Confidant is legally required to disclose the Information.

2.4 The Confidant's obligations under this clause are to be interpreted subject to clause 21.1.

### **3. Restriction on use**

3.1 The Confidant will use the Information only for the purpose of the Confidant's dealings with the Customer (whether directly or indirectly).

3.2 The Confidant will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in the Confidant's control.

3.3 Nothing in this Deed will be interpreted as preventing the Confidant from utilising the Information in a manner consistent with the Confidant's work in connection with the Contract, except to the extent expressly prohibited in the Schedule

#### **4. Survival**

This Deed will survive the termination or expiry of any contract between the Customer and the Confidant providing for the performance of services or the provision of goods by the Confidant (whether directly or indirectly).

#### **5. Powers of the Customer**

Immediately upon request by the Customer, the Confidant must deliver to the Customer all documents in the Confidant's possession or control containing Information.

If at the time of such a request the Confidant is aware that documents containing Information are beyond the Confidant's possession or control, then the Confidant must provide full details of where the documents containing the Information are, and the identity of the person who has control of them.

#### **6. Applicable law**

This Deed will be governed in accordance with the law in the State of Western Australia.

#### **Execution – Signed for and on behalf of**

##### **Customer's representative**

Name (print)

Position

Signature

Date

##### **Confidant**

Name (print)

Position

Signature

Date



## Appendix 4 – Schedule 1

### Confidant details

Name of the Confidant

Residential address of the  
Confidant

Specific restrictions on use

Superseded

## Appendix 5 – Escrow (Clauses 9.7 and 10.9)

Deed of Agreement dated *[insert date]*

### Between

*[insert name of the Customer]* (the 'Customer')

### And

*[Insert the name of the Contractor]* (the 'Contractor')

### And

*[Insert the name of the Escrow Agent]* (the 'Escrow Agent')

### Purpose:

By contract made on *[insert date of Contract]* ('the Contract') the Contractor has agreed to grant or procure a licence to the Customer to use certain software (the 'Licensed Software').

The Contractor and Customer have agreed to the appointment of an Escrow Agent as an independent person to hold the source code for the Licensed Software for the purposes of this Agreement.

The Escrow Agent has agreed to hold the source code for the Licensed Software, including the software expressed in human-readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of the Licensed Software and the supporting material being 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 Schedule 3 of this Agreement on the following terms and conditions.

### What is agreed:

#### 1. Interpretation

Where an obligation is imposed on a party under this Agreement, that obligation will include an obligation to ensure no act, error or omission on the part of that party's employees, Agents or subcontractors occurs which will prevent discharge of the Escrow Agent's obligation.

#### 2. Duration

This Agreement is in force until the source code is released in accordance with the terms of this Agreement.

#### 3. Appointment of Escrow Agent

The Escrow Agent is appointed jointly by the Customer and the Contractor and, subject to the terms and conditions of this Agreement, is granted full power and authority to act on behalf of each party to this Agreement.

#### 4. Contractor's obligations

4.1 The Contractor will deliver to, and deposit with the Escrow Agent, one copy of the source code and supporting material within seven (7) days of the date of this Contract.

4.2 The Contractor agrees to:

- (a) maintain the source code and supporting material on a quarterly basis following the initial deposit; and
- (b) subject to clause 4.2(a), ensure the source code and supporting material deposited with the Escrow Agent 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 that the source code is, to the best of Contractor's knowledge, free from any virus or program device, which would:

- (a) prevent the Licensed Software from performing its desired function; or
- (b) prevent or impede a thorough and effective checking of the Licensed Software.

### **5. Escrow Agent's Obligations**

5.1 The Escrow Agent must accept custody of the source code on the date of delivery in accordance with clause 4.1 of this Agreement and, subject to the terms of this Agreement, will hold the source code on behalf of the Customer and the Contractor.

5.2 The Escrow Agent agrees to take all reasonable steps to ensure the preservation, care, maintenance, safe custody and security of the source code while it is in its possession, custody or control, including storage in a secure receptacle and in an atmosphere which does not harm the source code and supporting material.

5.3 The Escrow Agent will bear all risks of loss, theft, destruction of or damage to the source code while it is in Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by the negligence, default, wilful or damage or recklessness of the Escrow Agent or its employees or agents, or the failure of the Escrow Agent or its employees or agents to otherwise comply with any specific obligations set out in this Agreement.

5.4 If the source code is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent must, obtain from Contractor a further copy of the source code. If the loss, theft, destruction or damage to the source code is the result of a breach by the Escrow Agent of its obligations under this Agreement, or is in any event embraced by clause 5.3, the Escrow Agent must bear the costs of paying for a further copy of the source code pursuant to this clause 5.4.

5.5 The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the source code lodged with it.

### **6. Escrow fee and expenses**

6.1 The escrow fee will be paid as set out in Schedule 1 to the Escrow Agreement.

6.2 All expenses and disbursements incurred by the Escrow Agent in connection with this Agreement will be borne by the Escrow Agent.

6.3 All expenses and disbursements incurred by the Contractor in connection with this Contract will be borne by the Contractor.

### **7. Testing and verification**

7.1 The Customer 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 to verify that the source code and supporting material consists of the material specified in Schedule 2 and Schedule 3 of this Escrow Agreement.

7.2 The Customer may engage an independent assessor who, upon proof of their engagement, will have the same rights of access to the source code and supporting material as the Escrow Agent to undertake analysis and tests of the source code and supporting material for verification purposes, on its behalf.

7.3 The Escrow Agent agrees to release the source code and supporting material to an independent assessor, upon presentation of a release form signed by the Customer and the Contractor stating the material to be released and identifying the person to whom that material may be released.

7.4 At the completion of the testing and clarification process, the Customer or the independent assessor (as the case may be) must return the source code and supporting material to the Escrow Agent. The Escrow Agent will advise all parties in writing that the source code has been returned to its custody.

7.5 The cost of verification pursuant to this clause will be borne by the Customer unless the verification process reveals a discrepancy, in which case the cost will be borne by the Contractor without prejudice to any other rights or remedies of the Customer arising in such circumstances.

## **8. Release of the source code and supporting material**

8.1 The Escrow Agent agrees to not release, or allow access to, the source code and supporting material except in accordance with this Agreement.

8.2 Subject to Clause 8.3, the Escrow Agent agrees to release the source code to the Customer upon receipt of written notice from the Customer that:

- (a) the Contractor has become subject to any form of insolvency administration;
- (b) the Contractor has ceased for any reason to maintain or support the Licensed Software;
- (c) (the license agreement has been terminated by the Customer for breach of Contract by the Contractor; or
- (d) this Contract is terminated following the default of the Contractor.

8.3 The Escrow Agent will not release the source code to the Customer pursuant to Clause 8.2 if, and to the extent that, the Contract Details stipulates an alternative procedure to be adopted upon the occurrence of one or more of the events described in Clause 8.2.

8.4 Where the Contract has been terminated by the Contractor or where the Customer has agreed to the release of the source code and so advises the Escrow Agent in writing, the Escrow Agent will, upon written request from the Contractor release the source code and supporting material to the Contractor.

## **9. Termination**

9.1 The Escrow Agent may, by giving 3 months prior written notice to the Customer and Contractor, terminate this Agreement subject to a pro-rata refund of any advance payment of the escrow fee.

9.2 The Customer and Contractor may jointly terminate this Agreement 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 Agreement so that there is a substantial failure by the Escrow Agent to perform or observe this Agreement.

9.3 If this Agreement is terminated in accordance with this clause 9 while the licence of the Licensed Software remains in force, the Customer and Contractor will enter into a new escrow agreement on the same terms and conditions as are set out in this Agreement, with an alternative escrow agent who is acceptable to both the Customer and the Contractor.

9.4 The Customer and Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Agreement but no refund of advance payment of the escrow fee will be payable in such circumstances.

## **10. Confidentiality**

10.1 The Escrow Agent must not, except as permitted by this Contract, make public or disclose to any person any information about this Agreement, the Contract or the source code.

10.2 The Escrow Agent must not reproduce a copy of the source code or any part thereof.

10.3 The obligations under this clause 10 will survive termination of this Agreement.

**11. Compliance with laws**

In carrying out this Agreement, the Escrow Agent, must, comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State or local authority.

**12. Applicable law**

This Agreement will be governed by and construed in accordance with the laws from time to time in force in the State of Western Australia.

**13. Variation and waiver**

13.1 This Agreement will not be varied except by agreement in writing signed by each of the parties.

13.2 A waiver by one party of a breach of a provision of this Agreement by another party will not constitute a waiver in respect of any other breach, or of any subsequent breach of this Agreement.

13.3 Failure of a party to enforce a provision of this Agreement will not be interpreted to mean that the party no longer regards that provision as binding.

**14. Assignment**

Neither the Contractor nor the Escrow Agent may assign in whole or in part any responsibilities or benefits under this Agreement without the written consent of the Customer.

**15. Notices**

15.1 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 by facsimile) to the address last advised by one of them to the other.

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

- (a) sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent; or
- (b) 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);
- (c) sent by electronic mail, only in the event that the other party acknowledges receipt by any means;
- (d) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
- (e) delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

**Address of the Customer**

- Physical address
- Postal address
- Phone number
- Fax number
- Email address

**Address of the Contractor**

- Physical address
- Postal address
- Phone number
- Fax number
- Email address

**Address of the Escrow Agent**

Physical address

Postal address

Phone number

Fax number

Email address

- (f) This Agreement has been properly executed if the section below has been completed.

**Execution – Signed for and on behalf of**

**Customer’s representative**

Name (print)

Position

Signature

Date

**Contractor’s representative**

Name (print)

Position

Signature

Date

**Escrow Agent’s representative**

Name (print)

Position

Signature

Date

*Superseded*

## **Appendix 5 - Schedule 1**

### **Details of escrow fees**

#### **(Clause 6)**

[Insert the following details:

1. *Party responsible for payment*
2. *Deposit fee*
3. *Storage fee*
4. *Retrieval fee*
5. *Release fee*
6. *Collection fee]*

## **Appendix 5 - Schedule 2**

### **Details of the licences for the Licensed Software covered by this Escrow Agreement**

#### **(Clause 7)**

[Insert details of the licenses covered by this Agreement]

## **Appendix 5 - Schedule 3**

### **Supporting material**

#### **(Clause 7)**

[Insert details of any supporting material for the Licensed Software held in escrow]

*Supercleared*

## Appendix 6A – Unconditional Performance Guarantee (Clause 15.10)

Deed of Agreement dated [insert date]

### Between

[insert name of the Customer] (the 'Customer')

### And

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

### Purpose

[Insert name and ACN/ABN of Contractor] (the 'Contractor') has agreed to supply Services and/or Products to the Customer pursuant to [describe contract] ('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:

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.

If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by this clause, 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.

The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed the obligations and liabilities of the Contractor under the Contract.

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.

Where the Guarantor is required to perform any obligation under the Contract in accordance with this Deed of Guarantee, the Guarantor agrees to the novation of the Contract from the Contractor to the Guarantor if requested by the Customer.

This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State of Western Australia.

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 Act 2001* (Cwlth) or any other Law.

The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.

A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (by 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 can confirm receipt by any other means.

The address for services of notice for a party is, in the case of the:



**Customer**

Physical address

Postal address

Phone number

Fax number

Email address

**Guarantor**

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.

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, 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.

**In witness whereof the parties to this Deed of Agreement have executed the Deed as at the date first written.**

**Signed for and on behalf of the Customer**

by

[insert name of Customer Representative]

[signature of Customer Representative]

in the presence of

[insert name of witness]

[signature of witness]

**Execution by the Guarantor**

[affix common seal below]

[insert name of Contractor]

[insert ACN, ABN or other identifier]

at

[insert name of city or town]

in the State of

[insert name of state or territory and country]

by

[insert name of director]

[signature of director]

in the presence of

[insert name of secretary or other

permanent officer]

[signature of witness]

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Guarantor, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

Superseded

## Appendix 6B – Conditional Performance Guarantee (Clause 15.10)

Deed of Agreement dated *[insert date]*

### Between

*[insert name of the Customer]* (the 'Customer')

### And

*[insert name of director]* ('the Guarantor')

### Purpose:

*[Insert name and ACN/ABN of the Contractor]* (the 'Contractor') has agreed to supply Services and/or Products to the Customer pursuant to *[describe 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:

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.

If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by this clause, 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.

Where the Guarantor consists of more than one legal person, each of those persons agrees 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.

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.

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:

The obligations and liabilities of the Guarantor under this Deed of Guarantee:

- (a) will not exceed the obligations and liabilities of the Contractor under the Contract; and
- (b) *[insert dollar amount]*

This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State of Western Australia.

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 Act 2001* (Cwth) or any other law.

The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.

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:

**Customer**

Physical address

Postal address

Phone number

Fax number

Email address

**Guarantor**

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).

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, 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.

**In witness whereof the parties to this Deed of Agreement have executed the Deed as at the date first written.**

**Signed for and on behalf of the Customer**

by

[insert name of Customer Representative]

[signature of Customer Representative]

in the presence of

[insert name of witness]

[signature of witness]

**Execution by the Guarantor**

[insert name of Contractor]

[insert ACN/ABN]

at

[insert name of city or town]

in the State of

[insert name of state or territory]

by

[insert name of director]

[signature of director]

in the presence of

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

[signature of witness]

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Guarantor, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

Superseded

## Appendix 7 – Unconditional Financial Undertaking (Clause 15.10 )

Deed of Agreement dated *[insert date]*

Between

*[insert name of the Customer]* (the 'Customer')

And

*[insert name and ACN/ABN of the financial institution ]* ('the Guarantor')

What is agreed:

*[insert name of the Contractor and the ACN/ABN]* ('Contractor') has agreed to supply Services and/or Products to the Customer pursuant to *[describe contract]* ('Contract'). The following undertakings are given in respect of the Contract:

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]*

The Guarantor's liability under this Undertaking will be a continuing liability until payment is made up to the maximum aggregate sum or the Customer notifies the Guarantor that this undertaking is no longer required.

This undertaking will be governed by and construed in accordance with the laws in force in the State of Western Australia.

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.

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

### **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.

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, 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.

**In witness whereof the parties to this Deed of Agreement have executed the Deed as at the date first written.**

**Signed for and on behalf of the Customer**

by  
 [insert name of Customer Representative] [signature of Customer Representative]

in the presence of  
 [insert name of witness] [signature of witness]

**Execution by the Guarantor**

[insert name of Guarantor] [affix common seal below]

[insert ACN/ABN]

at  
 [insert name of city or town]

in the State of  
 [insert name of state or territory and country]

by  
 [insert name of director] [signature of director]

in the presence of  
 [insert name of secretary or other permanent officer] [signature of witness]

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Guarantor, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

## Appendix 8 – Additional Documents

### (Clause 4.3)

[Attach all other relevant documents to this Contract here, such as Request for Tenders and response to Request for Tenders.]

Superseded