

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

### Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Agents and Subcontractors (clause 8.17)</b>	
Specify which subcontractors are required to provide a Statutory Declaration by Subcontractor, substantially in the form of Schedule 7:	A Statutory Declaration by Subcontractor, substantially in the form of Schedule 7 is required from all subcontractors including from [REDACTED]

### Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(h))</b>	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	

### Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(g))</b>	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	In respect of the Contractor's capacity as a provider of the Deliverables the Contractor will perform its obligations in accordance with all relevant Statutory Requirements.
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	NSW Government Standard Business Processes as updated from time to time by the Department of Finance, Services and Innovation; NSW Government Procurement Policy Framework October 2014 Version 3 as amended from time to time and as further described in Attachment 3-5 (Security Services) to Schedule 3 (Service

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Level Agreement).

### Item 31 Customer's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Warranties (clause 9.3(h))</b>	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Nil
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Nil

### Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Part 3 Dictionary (clauses 1.2 to 1.4)</b>	
<b>Acceptance Test Notification Period</b> is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	3 Business Days
<b>Acceptance Test Data</b> is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	As detailed in the PIPP (Schedule 12)
<b>Acceptance Test Period</b> is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.	20 Business Days
<b>Acceptance (clause 10.1)</b>	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a).	Yes – as outlined in Section 11 PIPP – Acceptance Testing
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date (AAD) for a Deliverable occurs: If no period is specified, then the period is	The periods set out in the PIPP in the Summary Table of Deliverables

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
2 Business Days.	
<b>Conducting Acceptance Tests (clause 10.3)</b>	
For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:	As detailed in the PIPP
Specify the identification of the Deliverables or part of the Deliverables to be tested:	As detailed in the PIPP
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	As detailed in the PIPP
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:	Contractor to provide the test environment.
Specify the methodology and process for conducting Acceptance Tests:	As detailed in the PIPP
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	As detailed in the PIPP
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	As detailed in the PIPP
Specify the Acceptance Test Data required:	As detailed in the PIPP
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	Not applicable

### Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clause 11.3)</b>	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Not applicable.
Specify any fee that is applicable for payment by credit/debit card	Not applicable.

### Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
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Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Existing Material (clauses 13.7 and 13.9)</b>	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	
Specify any fees to be charged for any license to use any of Contractor's Existing Materials:	No fees are payable.
<b>Customer Owned New Material (clause 13.10)</b>	
Specify if clause 13.10 applies, and if so, to which items of New Material:	Clause 13.10 does not apply.

### Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Confidentiality (clause 14.1)</b>	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 – Deed of Confidentiality:	Yes. The Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8.

### Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Insurance (clause 16.7)</b>	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	The default requirement in the Customer Contract of [REDACTED] public liability insurance cover in respect of each claim for the period of cover.
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	The default requirement in the Customer Contract of [REDACTED] product liability insurance cover for the total aggregate liability for all claims for the period of cover.
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify if a higher limit that is required by the Customer Contract:]	[REDACTED] in respect of the total aggregate liability for all claims for the period of cover.
Specify any additional insurance that the Contractor is to hold, including the type of	Worker's compensation insurance in accordance with applicable legislation.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
insurance, the term of the insurance and the amount of the insurance:	

### Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Performance Guarantee (clause 17.2)</b>	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Yes
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	Within 30 days of the Commencement Date

### Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Financial Security (clause 17.4)</b>	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	No
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	Not Applicable

**Item 39 Limitation of Liability**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Limitation of Liability (clause 18)</b></p> <p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> <li>• Non-Recurring Service or Product; and/or</li> <li>• Short Term Recurring Service</li> </ul> <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p><b>(See the definition of Contract Value in Part 3)</b></p>	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

<p>If Services are being provided under any of the following Modules:</p> <p>Module 6 – IT Personnel; Module 7 – Professional Services; Module 8 – Data Management; Module 11 – Web Services; Module 16 - Project Management Services; Module 17 - Change Management Services; Module 18 - Knowledge Transfer Services; or Module 20 - Whole of Government Requirements</p> <p>specify whether the Parties regard the relevant Services as being:</p> <ul style="list-style-type: none"> <li>• the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or</li> <li>• provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability.</li> </ul> <p><b>(See definition of Non-Recurring Services and Recurring Services in Part 3)</b></p>	
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Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the alternative cap of liability (clause 18.3):	██████████

#### Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Reporting (clause 21.1)</b>	
Specify the reports required, (if any), the time for provision and the agreed format:	As set out in Schedule 3 (Service Level Agreement)

#### Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Dispute Resolution (clause 24.11)</b>	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	████████████████████

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Not applicable

### Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Termination for Convenience by the Customer (clause 25.4)</b>	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3:	<p>_____</p> <p>_____</p> <p>_____</p>

### Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify any Additional Conditions:</p> <p>Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the Contract Authority's and the Director General's NSW Department of Finance and Services consent where an Additional Condition varies a Protected Clause.</p>	<p><b>Binding Letter of Intent</b></p> <p>1. The Contractor's letter of intent dated 21 April 2016 forms part of this Customer Contract. To the extent of any inconsistency between the terms of the Binding Letter of Intent and the terms of this Customer Contract, this Customer Contract prevails.</p> <p><b>Documentation</b></p> <p>2. Nothing in clause 5.6 of the Customer Contract shall require the Contractor to correct Defects in the User Documentation if such Defects relate to a reference in the User Documentation to the Customer's operating environment.</p> <p><b>Security Requirements</b></p> <p>3. During the Contract Period the Contractor must ensure that before any of its Personnel commence any work in relation to this Contract, whether on-Site or off-Site, the following procedures are complied with:</p> <p>a) Prior Notice in Writing is provided to the Customer's Representative;</p> <p>b) such Personnel (including Personnel listed in Schedule 12 (Project Implementation and Payment Plan) and Schedule 3 (Service Level Agreement) and any additional Personnel, as advised by the Contractor in writing from time to time, must submit to a security check. Approval of the Contractor's Personnel is at the sole discretion of the Customer's Authorised Representative.</p> <p><b>Transition Out</b></p> <p>4. During the Contract Period the Customer may transition out in accordance to the Transition Out scenarios as set out in Schedule 3 (Service Level Agreement), Attachment 3-7 – Transition Out</p>



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>Services. This includes an option to transition out of the hosted SaaS service and re-licence the software if required.</p> <p><b>Piggyback</b></p> <p>5. Both Parties acknowledge and agree that:</p> <ul style="list-style-type: none"><li>a) if an Eligible Customer requests the Contractor to provide services to it similar to the Services, then the Contractor agrees that it will enter into a separate agreement with that Eligible Customer on terms no less favourable than the terms of this Customer Contract having regard to any necessary changes (including scope and Service Levels); and</li><li>b) other Eligible Customers will be entitled to the benefit of the prices and terms under this Customer Contract .</li></ul> <p>[Redacted text]</p> <ul style="list-style-type: none"><li>• [Redacted text]</li></ul> <p>[Redacted text]</p> <ul style="list-style-type: none"><li>• [Redacted text]</li></ul>

**This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.**

# EXECUTED AS A DEED

Signed for and on behalf of *[insert name of Customer]*

The Crown in Right of the State of New South Wales acting through the Department of Justice,  
Corrective Services NSW (ABN 32 980 170 687)

By *[insert name of Customer's Representative]* but not so as to incur personal liability

[Redacted signature area]

Signature of Customer Representative

[Redacted name area]

Print name

[Redacted name area]

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

[Redacted signature area]

[Redacted signature area]

Signature of Authorised Signatory

[Redacted name area]

Print name

[Redacted name area]

Date

### Schedule 2 : Agreement Documents

Itemise all documentation (including any supplemental terms and conditions agreed to by the Customer, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Customer) between the Customer and the Contractor. All such documentation must be itemised in this Schedule 2 and listed below in descending date order (i.e. the latest document is listed first.)

Document	Date of Document
1. Binding Letter of Intent	21/4/2016
2. The following items from the Contractor's response to the RFT 1211-05-02	
Annexure 1 CSNSW Workforce Scheduling Requirements	
Annexure 2 Tender Response to Functional and Non-Functional Requirements	
3. Customer's Statement of Requirements (Annexure 1 of RFT 1211-15-02)	25 February 2013

### Schedule 3: Service Level Agreement

See separate document

## Schedule 4: Variation Procedures

### 1. Procedures

- 1.1 Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
- 1.2 For each draft Change Request submitted:
- (a) the Customer must allocate it with a sequential number;
  - (b) the draft Change Request 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 The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
- (a) request further information;
  - (b) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4 If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.

- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Director General, NSW Department of Finance and Services, for approval immediately after it has notified the Contractor that it approves the Change Request.

## **2. Status**

- 2.1** A Change Request is binding on the Parties only when both Parties have signed it. Once signed by both parties the Change Request updates the Customer Contract in accordance with the terms of the Change Request. The Contractor must not implement any draft Change Request until the Customer has signed the Change Request form.

### 3. Change Request Form

#### CHANGE REQUEST BRIEF DETAILS

<b>Change Request Number</b>		<i>Insert Change Request Number (supplied by the Customer)</i>
<b>Date of Change Request</b>		<i>Insert date of draft Change Request</i>
<b>Originator of need for Change Request</b>		<i>Customer or Contractor</i>
<b>Proposed Implementation Date of Change</b>		<i>Insert proposed date of implementation</i>
<b>Date of expiry of validity of Change Request</b>		<i>Insert validity expiry date. The Change Request is invalid after this date.</i>
<b>Contractor's estimated time and cost of evaluation</b>		<i>Insert estimated time and cost of evaluation</i>
<b>Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any</b>		<i>Insert amount to be paid to the Contractor for evaluating the draft Change Request</i>
<b>(This applies only if the Customer is the Party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days)</b>		

#### CHANGE REQUEST HISTORY LOG

Change Request Version History			
Date	Issue Version	Status/Reason for New Issue	Author
<i>Insert date</i>	<i>Insert version</i>	<i>Insert status/reason</i>	<i>Insert author</i>

#### DETAILS OF CHANGE REQUEST

##### Summary

[Insert a summary of the changes, if required]

##### SCOPE

[Insert changes to the scope of Products to be provided and/or any Services, including any extensions to the Contract Period.]

#### EFFECT OF CHANGE ON CONTRACT SPECIFICATION

[Insert any changes to the Contract Specification]

#### EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert changes to the project timetable]

#### New PIPP (annexed)

[Annex new PIPP if required]

#### EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

[Insert new charges and the timing of payment into the new PIPP]

#### CHANGES TO CSI

[Insert any changes to the CSI]

#### CHANGES TO CUSTOMER PERSONNEL

[Insert any changes to the Customer's Personnel]

#### CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

#### PLAN FOR IMPLEMENTING THE CHANGE

[insert the plan for implementing the change – if any.]

#### THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

[Insert the responsibilities of the respective Parties for implementing the change – if any.]

#### Responsibilities of the Contractor

[Insert the responsibilities of the Contractor for implementing the change – if any.]

#### Responsibilities of the Customer

[insert the responsibilities of the Customer for implementing the change – if any.]

#### EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

[Insert if there will be any effect on the Acceptance Testing of any Deliverable – or alternatively insert None.]

#### EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

[Insert if there will be any effect on performance of any Deliverable – or alternatively insert None.]

#### EFFECT ON USERS OF THE SYSTEM/SOLUTION

[Insert if there will be any effect on users of the system/solution – or alternatively insert None.]



#### EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

#### EFFECT ON TRAINING

Insert if there will an effect on training or alternatively insert None.]

#### ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

#### ASSUMPTIONS

The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

[Insert any assumptions. If none then this section will be deleted].

If the assumptions are or become untrue, the Parties will address the effect of this through a subsequent Change Request.

#### LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

[Insert a list of the documents that form part of this Change Request]

#### CUSTOMER CONTRACT CLAUSES, SCHEDULES AFFECTED BY THE PROPOSAL ARE AS FOLLOWS:

[Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

Note that variations to any of the Protected Clauses require the Customer to obtain the Contract Authority's and the Director General, NSW Department of Finance and Services approval (clause 26.2))

#### AUTHORISATION

The Contractor must not commence work on the Change Request until is signed by both Parties. Once signed by both Parties, the Customer Contract is updated by this Change Request and any provisions of the Customer Contract that conflict with this Change Request are superseded.

# SIGNED AS AN AGREEMENT

Signed for and on behalf of *[insert name of Customer]*

[Redacted signature area]

By *[insert name of Customer's Representative]* but not so as to incur personal liability

[Redacted signature area]

[Redacted signature area]

Signature of Customer Representative

[Redacted signature area]

Print name

[Redacted signature area]

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

[Redacted signature area]

[Redacted signature area]

Signature of Authorised Signatory

[Redacted signature area]

Print name

[Redacted signature area]

Date

## Schedule 5: Escrow Deed

Deed dated the  day of  20

**Between** [insert name, and ACN/ABN, if applicable] ("**Escrow Agent**")

**And** [insert name, and ACN/ABN if applicable] ("the **Contractor**")

**And** [insert name of Government Party] ("the **Principal**")

### RECITALS

- A. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as an escrow agent and to hold the Escrow Material for the Licensed Software on the following terms and conditions.

#### NOW THIS DEED WITNESS:

## 1. Agreed Terms and Interpretation

- 1.1 In this Deed the following words have the following meaning:

**Business Day** means any weekday that is not a public holiday in New South Wales;

**Contract Specifications** has the same meaning as in the Customer Contract;

**Customer Contract** means the contract entered into under the *Procure IT Framework* dated [insert date].

**Deed** means this 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 Fees** means the fees set out in Attachment 1 to this Deed;

**Escrow Materials** means the source code and computer program text listings or commands of the Licensed Software (details are set out in Attachment 2) and such documentation reasonably required to generate an executable version of the Licensed Software;

**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 mortgagee enter into possession of any property of that party;
- (g) 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
- (h) 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.

**Licensed Software** means the standard off-the-shelf software provided by the Contractor to the Customer as part of the Software as a Service and includes any Updates or New Releases of that software that may be provided to the Customer 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;

and

**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) the words "include(s)" and "including" are not words of limitation;
- (f) words importing a gender include any other gender;

- (g) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (h) a reference to a clause or sub clause is a reference to a clause or sub clause of this Deed;
- (i) a reference to an Attachment is a reference to an Attachment to this Deed; and
- (j) 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.

#### COMPLIANCE WITH CONSUMER LAWS

- 1.4** To the extent that the provisions of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) apply to goods or services supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.
- 1.5** To the extent that there is a failure to comply with a guarantee under sections 54 to 59 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:
- (a) the replacement of the goods or the supply of equivalent goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (d) the payment of the cost of having the goods repaired.
- 1.6** To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 of the CCA, then to the extent permitted by law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:
- (a) supplying the services again; or
  - (b) payment of the cost of having the services supplied again.

## 2. Duration

Subject to all applicable fees under this Deed being paid by the Principal in accordance with this Deed, this Deed remains in force until the Escrow 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 Escrow Material and, if the conditions for release under clause 8 below are met, to release the Escrow 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 Escrow Material within 10 Business Days of the date of this Deed (or such other time as otherwise agreed).
- 4.2 The Contractor shall maintain and up-date the Escrow Material deposited with the Escrow Agent so that it reflects the latest version of the Licensed Software.

## 5. Escrow Agent's Obligations

- 5.1 The Escrow Agent shall accept custody of the Escrow Material on the date of delivery in accordance with clause 4.1 above and, subject to the terms and conditions of this Deed, shall hold the Escrow 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 Escrow 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 Escrow Material or in a secure electronic environment.
- 5.3 The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Escrow Material while it is in the Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, its employees or agents.
- 5.4 If the Escrow 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) below, the Contractor shall, upon receipt of notice from the Escrow Agent under clause 5.4 above, promptly deposit a replacement copy of the Escrow 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 Escrow Material is caused by the negligent, malicious, 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 Escrow Material.
- 5.7 The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Escrow Material lodged with it.
- 5.8 To the extent permitted by law, the Escrow Agent's liability, to both the Principal and the Contractor collectively, in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, this Deed shall not exceed in aggregate for all claims that arise out, of or in connection with, this Deed the greater of:

\$100,000; or

two times the Escrow Fees paid, or due and unpaid, in the year that the claim first arises.

## 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 engage the Escrow Agent or an independent assessor to undertake analysis and tests of the Escrow Material for verification purposes on its behalf.
- 7.2 The Escrow Agent shall release the Escrow 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.
- 7.3 The Escrow Material released pursuant to clause 7.2 above must be returned to the Escrow Agent or its employees or agents and the Principal shall ensure that the confidentiality of the Escrow 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.
- 7.4 All costs that Escrow Agent incurs in assisting the assessment shall be borne by the Principal, and must be paid within 7 days of receipt of an invoice from the Escrow Agent.

## 8. Release of the Escrow Material

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

8.2 If

- (a) an Insolvency Event has occurred in relation to the Contractor; or
- (b) the Principal has validly terminated the Customer Contract for cause,

(each of (a) and (b) being a **Trigger Event**),

and the Principal wishes the Escrow Agent to release the Escrow Material to it, the Principal must within 20 Business Days of the Trigger Event provide written notice in the form of a statutory declaration to both the Escrow Agent and the Contractor stating which Trigger Event has occurred. If the Contractor does not, within 20 Business Days of receiving the notice, rectify the Trigger Event or provide another remedy that is satisfactory to the Principal, the Principal may provide the Escrow Agent with a further statutory declaration confirming that the Contractor has not rectified the Trigger Event in the required time or provided another remedy that is satisfactory to the Principal and require the Escrow Agent to immediately release the Escrow Material to the Principal ("**Final Release Notice**"). The Escrow Agent shall release the Escrow Material to the Principal promptly after receiving the Final Release Notice.

8.3 Where:

- (a) the Customer Contract has been lawfully terminated by the Contractor or the period of license has expired;
- (b) the Principal has agreed to the release;
- (c) this Deed is terminated in accordance with clause 9 below; or

- (d) 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 the Contractor, release the Escrow Material to the Contractor.

**8.4** In the event that the Escrow Materials are released to the Principal under this Deed, the Principal:

- (a) is granted a limited right to use the Escrow Materials:
  - (i) for the same usage rights as the Principal has been granted the right to use the Licensed Software under the Customer Contract; and
  - (ii) to correct Defects in the Licensed Software; and
- (b) subject to (c), must use the Escrow Materials subject to all the other terms of the License Agreement, as if the Escrow Material is included in the definition of Licensed Software in that Customer Contract; and
- (c) must keep the Escrow Materials strictly confidential and not disclose them to any person, and must not use them for any purpose other than that referred to in clause 8.5(a) above.

This clause 8.4 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 9 while the 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 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 in this case, no refund of advance payment of the Escrow Fee will be payable by the Escrow Agent.

## **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 Escrow Material.



- 10.2** The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Escrow Material or any part thereof, except as may be necessary to electronically store (and maintain a back up) of the Escrow Material.
- 10.3** Upon release of the Escrow Materials to the Principal, the Principal, and any authorized third parties of the Principal, shall keep the Escrow Materials confidential and will not disclose, reproduce, allow or cause to be reproduced a copy of the Escrow Materials or any part thereof to any person except that disclosure of the Escrow Materials can be made to such of the Principal's employees and third party contractors who have signed confidentiality agreements on similar terms to those set out in the Customer Contract prior to such disclosure.
- 10.4** The obligations under this clause 10 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

- 12.1** 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 12.1(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 12.1(b) above.
- (d) Any mediation meetings and proceedings under this clause 12.1 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 followed the procedures in this clause 12.1 but the parties have not agreed a resolution within 30

Business Days of the appointment of the mediator, 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 a deed duly executed 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 any 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; or
- (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).

EXECUTED AS A DEED

Signed, sealed and delivered by [insert full legal name of Escrow Agent and ACN/ABN]

[Redacted signature line]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

[Redacted signature line]

Signature Director

[Redacted signature line]

Signature of Director/Secretary

[Redacted print name line]

Print name

[Redacted print name line]

Print name

[Redacted date line]

Date

[Redacted date line]

Date

Signed, sealed and delivered by [insert full legal name of Contractor and ACN/ABN]

[Redacted signature line]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

[Redacted signature line]

Signature Director

[Redacted signature line]

Signature of Director/Secretary

[Redacted print name line]

Print name

[Redacted print name line]

Print name

[Redacted date line]

Date

[Redacted date line]

Date

Signed, sealed and delivered by [insert full legal name of Principal and ACN/ABN]

[Redacted signature line]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

[Redacted signature line]

Signature Director

[Redacted signature line]

Signature of Director/Secretary

[Redacted print name line]

Print name

[Redacted print name line]

Print name

[Redacted date line]

Date

[Redacted date line]

Date

Escrow Deed of Agreement

**ATTACHMENT 1**

Details of Escrow fees:

**REVIEW OF FEES**

Escrow Deed of Agreement

ATTACHMENT 2

Details of licensed software to be held in Escrow

Source Code:

Flow Charts:

Diagrams:

Listings: