

Escrow Deed of Agreement

ATTACHMENT 3

Supporting materials

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

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


ATTACHMENT 2

Details of licensed software to be held in Escrow

Source Code:

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Flow Charts:

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Diagrams:

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Listings:

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- operational manuals, listings, flow charts etc.
- details of machine/processor/system configuration.


## Schedule 6: Not Used

### Schedule 7: Statutory Declaration – Subcontractor

Oaths Act (NSW), 1900 Ninth Schedule

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

1. *[insert full Subcontractor company name and its ACN/ABN]* (**Subcontractor**) has been selected as subcontractor to, *[insert name of the Contractor and its ACN/ABN]* (**Contractor**) under an agreement between the *[insert name of Customer]* (**Customer**) and the Contractor dated *[insert date of Customer Contract]*.
2. The Subcontractor will offer to enter into an agreement with the Contractor in connection with the Customer Contract on terms that are not inconsistent with the terms of the Customer Contract in so far as those terms are relevant to the Subcontractor.
3. As at the date of this Statutory Declaration there are no reasons of which I am aware that would prevent the Subcontractor's agreement with the Contractor from being performed in a manner that would allow the satisfactory and timely performance of that subcontract.

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

Declared at

the  day of  20

Before me,

## Schedule 8: Deed of Confidentiality

Deed of Agreement dated the  day of  20

**Between** [insert name of the Customer (**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)

**And** [insert name and address of Subcontractor] (**Subcontractor**)

### RECITALS

- (A) In the course of the Subcontractor assisting in the supply by the Contractor of certain Deliverables for the Customer under a subcontract agreement between the Subcontractor and the Contractor, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, the Customer.
- (B) Improper use or disclosure of the Confidential Information would severely damage the Customer's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Customer.
- (C) The Customer requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential.
- (D) This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information.

### WHAT IS AGREED

## 1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

## 2. Interpretation

### DEFINITIONS

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

**Agreement** means the Customer Contract entered into under the *Procure IT Framework* between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated [insert date].

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in New South Wales.

**Confidential Information** means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the Customer to the Subcontractor as confidential; or
- (c) the Subcontractor knows or ought to know is confidential; or
- (d) relates to:
  - (i) the Products and Services;
  - (ii) the financial, the corporate and the commercial information of the Customer;
  - (iii) the affairs of a third party (provided the information is non-public); and
  - (iv) the strategies, practices and procedures of the State and any information in the Subcontractor's possession relating to the State public service,

but excludes any information which the Subcontractor can establish was:

- (v) in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
- (vi) independently developed by the Subcontractor; or
- (vii) in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

**Contractor** means [insert name of Contractor].

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

**Express Purpose** means the Subcontractor performing the obligations under its subcontract agreement with the Contractor.

**Intellectual Property Rights** means all intellectual property rights including:

- (b) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (c) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

**Notice** means notice in writing given in accordance with this Deed.

**State** means the State of New South Wales.

## GENERAL

- 2.2** Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply
- 2.3** A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
  - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.4** If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.5** A singular word includes the plural, and vice versa.
- 2.6** A word which suggests one gender includes the other gender.
- 2.7** The words "include(s)" and "including" are not words of limitation.
- 2.8** If a word is defined, another part of speech of that word has a corresponding meaning.

## 3. Non disclosure

- 3.1** The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2** The Customer may grant or withhold its consent in its discretion.
- 3.3** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
- 3.5** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
  - (b) to the Contractor and its directors, officers, employees and the Contractor's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

- 3.6** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
  - (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 3.7** Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8** The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9** If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

## **4. Restriction on use**

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

## **5. Survival**

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



## 6. Rights of the Customer

### PRODUCTION OF DOCUMENTS

- 6.1 The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 6.2 The Subcontractor must immediately comply with a demand under this clause 6.
- 6.3 If the Customer makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 6.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

### LEGAL PROCEEDINGS

- 6.5 The Customer may take legal proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

## 7. Indemnity and release

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

## 8. No exclusion of law or equity

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

## 9. Waiver

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

## 10. Remedies cumulative

#### CUMULATIVE

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

#### OTHER INSTRUMENTS

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

### **11. Variations and amendments**

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

### **12. Applicable law**

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

### **13. Notices**

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

**EXECUTED AS A DEED**

Signed, sealed and delivered by [insert name of Customer]

[Redacted signature line]

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

[Redacted signature line]

In the presence of: [insert name of witness]

[Redacted signature line]

[Redacted signature line]

Signature of Customer

[Redacted signature line]

Signature of Witness

[Redacted signature line]

Print name

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Date

Signed, sealed and delivered by [insert Subcontractor's name 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 signature line]

Print name

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Date

## Schedule 9: Performance Guarantee

Deed dated the

day of

20

Between *[insert full legal name of the Customer]* (Customer)

And *[insert full legal name and any ACN/ABN of the Guarantor]* (Guarantor)

Purpose *[insert full legal name and ACN/ABN of the Contractor]* (Contractor) has agreed to offer to supply Products and Services to the Customer under a contract dated *[insert date of Customer Contract]* (Customer Contract).

### DEFINITIONS

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

**Contract Authority** means *[insert legal name of Contract Authority]*.

**Head Agreement** means *[insert date and parties to the Head Agreement]*.

**Insolvency Event** means where the Contractor:

- (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 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.

**Notice in Writing** means a notice signed by a party's authorised representative or his/her delegate or agent.

**BY THIS DEED**

By this Deed, the Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Customer Contract on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Customer 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 Customer Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Customer Contract.
2. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee, and:
  - (a) where the Customer Contract is made under a Head Agreement, the Contract Authority (acting as agent of the Customer); or
  - (b) in all other cases, the Customer,

may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor. [*amend this clause as applicable*]
3. 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.
4. 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.
5. Not Used
6. Where the Contractor has failed to perform under the Customer Contract, the obligations of the Guarantor will continue even though the Contractor has been the subject of an Insolvency Event.
7. The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Customer Contract have been performed, observed and discharged.
8. A notice under this Deed of Guarantee must be a Notice in Writing.
9. The address for services of Notices in Writing under this Deed of Guarantee for a party is, in the case of the:

**Guarantor**

Physical address

Postal address

Fax number

**Contractor**

Physical address

Postal address

Fax number

Customer

Physical address

Postal address

Fax number

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

10. A Notice in Writing 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 3 Business Days;
  - (c) sent by post from or to an address outside Australia, after 10 Business Days;
  - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at 9.00 am the next Business Day).
11. The laws of the New South Wales govern this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

**EXECUTED BY THE PARTIES AS A DEED AT THE DATE STATED BELOW**

Signed, sealed and delivered by *[insert name of the Customer]*.



By *[insert name of Customer representative]*

[Redacted signature line]

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

[Redacted signature line]

[Redacted signature line]

Signature of Customer representative

[Redacted signature line]

Print Name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Customer's Witness

[Redacted signature line]

Print Name

[Redacted signature line]

Date

Signed, sealed and delivered by *[insert Contractor's name 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]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Director/Secretary

[Redacted signature line]

Print name

[Redacted signature line]

Date

**Schedule 10: Not Used**



## Schedule 11: Dispute Resolution Procedures

### 1. Expert Determination

- 1.1 If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre of NSW.
- 1.2 The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
  - (c) a person who the Parties have not been able to agree on.
- 1.3 The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
  - (b) the expert's fees;
  - (c) the procedure for the determination set out in this Schedule; and
  - (d) any other matter which is relevant to the engagement.

### 2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
  - (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
  - (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
  - (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.
  - (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.

- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

### **3. Conference**

- 3.1** The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 3.2** Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 3.3** The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 3.4** The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.
- 3.5** In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

### **4. Questions to be determined by the Expert**

- 4.1** The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
  - (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
    - (i) for damages for breach of the Customer Contract, or
    - (ii) otherwise in law?
  - (b) if so:
    - (i) what is the event, act or omission?
    - (ii) on what date did the event, act or omission occur?
    - (iii) what is the legal right which gives rise to the liability to compensation?
    - (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
  - (c) in the light of the answers to clause 4.1:

- (i) What compensation, if any, is due from one Party to the other and when did it fall due?
  - (ii) What interest, if any, is due when the expert determines that compensation?
- 4.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 4.3 The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.
- 4.4 If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 4.5 Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:
  - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

## 5. Role of Expert

- 5.1 The expert must:
  - (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
  - (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
  - (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
  - (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
  - (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).
- 5.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

## 6. Confidentiality

- 6.1 Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process,

the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:

- (a) the Parties have otherwise agreed in writing;
- (b) the information is already in the public domain;
- (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
- (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
- (e) disclosure is otherwise required by law.

## Schedule 12: PIPP

See separate document



## Schedule 3: Service Level Agreement

### 1. Definitions and Interpretation

**Availability** has the meaning given in section 8.2 of the Service Level Agreement.

**BCP** means Business Contingency Plan.

**Critical Service Level** means a Service Level measuring the Contractor's performance of the Services that may result in Rebates and noted as such in the Service Level Table.

**Development (DEV) Environment** means an instance of the WFM aaS solution used for development purposes (i.e. not in a "live" / production environment).

**DR Event** means a failure of or disruption to the Services being provided from the primary data centre.

**Expected Service Level** means, with respect to any Service Level the value specified in the Service Level Table as the "Expected Service Level".

**Hosting Provider** means the Contractor and any third party services engaged by the Contractor for the provision of infrastructure as a service to Contractor from which the WFM aaS solution is hosted.

**Incident** means a Defect in the Services.

**Infor Workforce Management System as a Service solution (WFM aaS solution)** - includes all components required to deliver the full WFM aaS solution as described in section 3 of this SLA. This includes all necessary Infor Workforce Scheduling Software including interfaces, all technical infrastructure and hosting required and service and support components of the solution required to meet the Customer requirements as specified in Schedule 12 (PIPP) and Schedule 1 General Order Form.

**Measurement Period** means the period over which a Service Level is measured, calculated, and/or reported, as set out in the Service Level Table or if no such period is specified, on a monthly basis.

**Minimum Service Level** means, with respect to any Service Level, the value specified in the Service Level Table as the "Minimum Service Level".

**Problem** means the unknown root cause of one or more existing or potential Incidents.

**Production or PROD** means production environment of the WFM aaS solution.

**Perpetual Licensing Solution** means a Customer in-house implementation of the WFM aaS solution.

**RACI** means the RACI set out in section 3 of Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement). For the purposes of this chart:

- R = Responsibility;
- A = Accountable;
- C = Must be consulted; and
- I = Must be kept informed.

**Rate Card** means the schedule of rates for the calculation of Contractor fees where the pricing method is time and materials included in Section 13 of Schedule 12 (PIPP).

**Recovery Point Objective (RPO)** means the maximum acceptable amount of data loss after an unplanned data-loss incident, expressed as an amount of time.

**Recovery Time Objective (RTO)** means the maximum acceptable amount of time for restoring a network or application and regaining access to data after an unplanned disruption.

**Risk** means any reasonably foreseeable internal or external event or issue (whether relating to Personnel, process, technology or otherwise) that is likely to or could adversely affect the delivery or performance of the Services.

**Risk Control** means any processes, policies, activities, actions or things used to mitigate Risks (and which may specify relevant individuals who are responsible for such processes, policies, activities, actions or things).

**Risk Register** a register of Risks that enables shared Risks that are common to the Contract and the Customer to be categorised and reported to the Customer.

**Scheduled Maintenance** has the meaning given in the Service Level Table.

**Security Incident** means any security event that has a material impact on the confidentiality, integrity, availability of the service, system or information.

**Service Desk** means the single point of contact between users and IT support. Tasks include handling incidents and requests, and providing an interface for other IT processes.

**Service Level Table** means the table in Attachment 3-1 (Service Level Requirements and Targets) to Schedule 3 (Service Level Agreement).

**Service Request** means a request from the Customer for information, advice, or Additional Services as further detailed in section 3 of Attachment 3-4 (Support Services) of Schedule 3 (Service Level Agreement).

**Severity** means the levels of severity for an Incident as defined in the Service Level Table.

**Subscription Service Ready Date** will mean the date Infor informs the Customer that the WFM aaS solution is accessible, and ready to be used for configuration, development and testing activities but not ready for implementation use, by the Customer. This date is not synonymous with the Customer's go-live date (ie the date the software is ready for use). There will be a Subscription Service Ready Date for Stage 1 and a Subscription Service Ready Date for Stage 2.

**Super User** means a member of the Customer's Personnel with more detailed skills relating to the system being supported, who has been designated to provide first level support, guidance, and training to other members of the Customer's Personnel.

**Super User Group** means, collectively, all Super Users of the Customer.

**Test (TEST) Environment** means an instance of the WFM aaS solution used for testing purposes (i.e. not in a "live" / production environment and separate to the DEV environment).

**Transition Out** means where any part of the Services expire or are terminated in whole or in part.

**User Acceptance Test (UAT)** means the Customer's acceptance testing activities described under Testing Scope and section 11 Acceptance Testing in Schedule 12 (PIPP) to evaluate the system's compliance with its specified requirements.

## 2. General

### PURPOSE OF SLA

- 2.1 This SLA provides a mutual understanding of the expectations of the Parties with respect to the performance of the Service and shall be used to measure the Contractor's performance of the Services in accordance with this Schedule.

### DURATION OF SLA

- 2.2 This SLA will commence at the Stage 2 Subscription Service Ready Date and will continue until the end of the Contract Period.
- 2.3 During the Stage 1 IPS, the Contractor will provide standard support.



Descriptions of the Contractors available Support levels can be found at  
<http://www.infor.com/content/brochures/inforxtremesupportplanfeatures.pdf/>

#### REVIEW

- 2.4 This SLA will be reviewed every 12 months from the Subscription Service Ready Date. The purpose of the review will be to consider the previous 12 months of Service Level reports and the overall performance of the Services with respect to the Service Levels. Each Party may provide feedback with respect to Service Levels for consideration at the appropriate Management Committee.
- 2.5 The Contractor has scoped the requirements of the Customer as per Schedule 12 (PIPP). The Support Services within the Infor WFM aaS solution are defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement). The Customer and Contractor also agree to review the SLA in the event of any changes to the scope of Services that may impact Service Levels eg additional services provided during the term of the Contract.

#### NOTIFICATION PROCEDURE

- 2.6 Incidents in relation to performance of the WFM aaS solution may be notified by the Customer to the Contractor through the Infor Xtreme Portal in line with the Xtreme Elite Support Service level support subscribed to by the Customer. The Contractor will also log any incidents which it discovers in the ordinary course of operation of the Services.

#### ESCALATION PROCEDURE

- 2.7 In the case of Incident resolution, the following will apply.
- (a) most Incidents are best resolved through Contractor's standard operating procedures. If the Customer believes that a particular Incident requires a higher level of attention, the Customer should contact the regional Infor Xtreme Support Center and request that a support manager become involved. Escalation or routing of Incidents outside of standard procedures is reserved for Incidents that warrant a higher degree of attention, and such escalation is not appropriate for all Incidents. If escalation is requested, merited, Contractor will notify the appropriate support manager. The support manager will act promptly to assess the situation, contact the Customer to discuss a resolution plan, identify required resources, and implement the agreed upon resolution plan.

#### SITE INFORMATION

- 2.8 The Support Services will be mainly provided from Sydney (Australia). As and when needed Infor's global team will work on the incidents.

#### HOURS OF OPERATION

- 2.9 The Customer's rostered staff work, who will be using the Infor Workforce Management as a Service solution, work on the basis of three shifts in every 24 hour period 7 days per week. Outages to the service are therefore required to be resolved in line with the support pack subscribed to as part of this Contract. Infor Xtreme Support Portal - secured support website is available 24x7 and 365 days a year. Infor Xtreme Elite Support has extended Critical Incident Support - Critical incident support for severity 1 incidents 365 days a year and 24 hours per day. This service will also be available during holidays observed by Infor.

#### CONTRACT VARIATIONS

- 2.10 Where there is a change to the Services as defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement), then any such change will be subject to Schedule 4 (Variation Procedures) and where required a Contract Variation must be affected in accordance with clause 26.2 of the Customer Contract.

#### REFERENCED DOCUMENTS

- 2.11 Attachments to this SLA that are relevant to the performance of the Services are:
- (a) Attachment 3-1 (Service Level Requirements and Targets);

- (b) Attachment 3-2 (Management Committees);
- (c) Attachment 3-3 (Service Definition);
- (d) Attachment 3-4 (Support Services);
- (e) Attachment 3-5 (Security Services);
- (f) Attachment 3-6 (Request Handling for High Priority Additional Service Requests and Incidents).
- (g) Attachment 3-7 (Transition Out Services).

2.12 See also clause 21.1 of the Customer Contract.

### 3. Services

#### CUSTOMER RESPONSIBILITIES

3.1 Customer responsibilities in relation the performance of this SLA are defined in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement) and associated RACI matrix for the purposes of clause 6.26 of the Customer Contract.

#### CONTRACTOR PROVIDED SERVICES

3.2 The Services consist of the following:

- (a) the Infor Workforce Management System as a Service solution with all components as detailed in the Service Description;
- (b) Transition In Services as described in the Schedule 12 (PIPP);
- (c) Support Services as set out in Attachment 3-4 (Support Services) to Schedule 3 (Service Level Agreement);
- (d) Security Services as set out in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement);
- (e) Professional Services to assist with configuration etc as required; and
- (f) Transition Out Services as set out in Attachment 3-7, including any continuation of the Infor Workforce Management System as a Service solution and the Support Services provided during the period of the Transition Out Services.

3.3 The Contractor must provide the Services outlined in section 3.2 of this Schedule:

- (a) so as to meet or exceed each of the Minimum Service Levels; and
- (b) with the target of achieving the Expected Service Levels.

#### BUILD, CONFIGURATION AND TRANSITION IN SERVICES

3.4 The Contractor will provide build, configuration and Transition In Services for the Infor Workforce Management Software as a Service solution (ie all components as detailed in section 3.2 above) as set out in the Schedule 12 (PIPP), as well as providing on-going service delivery for all implemented Services, including identified integration points and functionality to agreed standards.

3.5 Transition In Services will be scheduled across the Customer's business and will involve several drops to the individual business areas in line with an agreed timetable as set out in the Schedule 12 (PIPP).

3.6 The Supplier will provide training services prior to go-live to ensure that the nominated Customer Super Users can complete configuration functions as required.

#### SCOPE CHANGE MANAGEMENT PROCESS

3.7 Schedule 4 (Variation Procedures) will be used for any changes in scope or variations required.

## MANAGEMENT AND CONSULTING

- 3.8** The Contractor is required to manage all third party external subcontractors engaged by the Contractor to support the Services.

## SERVICE REVIEW AND PLANNING FOR THE FUTURE

- 3.9** The Contractor and Customer will maintain for the duration of the contract appropriate service review and planning governance as defined in Attachment 3-2 (Management Committees) to Schedule 3 (Service Level Agreement) for the purposes of clause 6 of the Customer Contract including but not limited to:

- (a) capture business goals and objectives;
- (b) communicate support process and inform Customer on how to use Infor Xtreme Support Portal;
- (c) work with Infor Cloud Operations during provisioning process;
- (d) proactively resolve Application or Operations Incidents through Xtreme Elite Support and Infor Cloud Operations;
- (e) schedule regular meetings with Customer to understand current concerns;
- (f) setup executive business reviews to revisit Customer's business goals;
- (g) show progress against Customer's business goals derived from technology and service investment;
- (h) perform benchmarking as agreed
- (i) regular review enablement and training plan;
- (j) proactively introduce new functionality to applications and services to customers where business needs goals intersect with Infor WFM aaS solution;
- (k) review major Incidents and outstanding Problems;
- (l) review contract variation or enhancement requests;
- (m) discuss any business developments that will affect the provision of the WFM aaS solution; and.
- (n) review any potential changes required to the SLA.

## REPORTING & ANALYSIS

- 3.10** The Contractor will implement appropriate procedures and automated measurement, monitoring and management tools to enable it to:
- (a) detect and record the metrics in the Service Levels and enable reporting to the Customer; and
  - (b) notify and accurately report to the Customer in accordance with this Service Level Agreement.
- 3.11** The Contractor must provide the Customer with access to data and tools required to validate or measure the Services or the Service Levels. The Contractor will provide:
- (a) online access; and
  - (b) if requested by the Customer, an up to date copy of all Customer Data
- to enable the Customer to access the same data and information that is available to the Contractor.
- 3.12** The Contractor must, upon reasonable request, one time per year, provide the Customer with information concerning, and access to, such data and measurement, monitoring and management tools for audit and inspection purposes. The audit information shall solely involve access to Customer Data, access to relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of all the

Services provided, the Contractor's architecture, systems and procedures, independent certifications or interviews.

- 3.13** The Contractor must conduct periodic Risk assessments in relation to the Service Levels and the Contractor's compliance with the Service Levels and be able to produce that information for audit if required.
- 3.14** Subject to the audit information detailed in Attachment 3-3 (Service Definition) to Schedule 3 (Service Level Agreement), the Contractor may charge the Customer for any services required to complete additional audits in line with pricing detailed in Schedule 12 (PIPP).
- 3.15** Measurement and reporting of Service Levels will start from the beginning of the first full calendar month after the Subscription Service Ready Date and will continue until the end of the Contract Period.
- 3.16** The Contractor must provide access to the Infor Xtreme Portal to enable the Customer to view reports and analytical data.
- 3.17** As part of the Service Level reporting, the Contractor must in relation to the relevant Measurement Period:
- (a) show uptime and Infor Xtreme Elite Support incident response time and provide access through the Infor Xtreme Portal to allow the Customer to analyse data in relation to detail on Service levels provided , as further described in section 7;
  - (b) calculate any applicable Rebates as per section 8.4 of this SLA; and
  - (c) provide any supporting information relating to excused performance.
- 3.18** Unless otherwise agreed, the standard reports must contain a level of detail sufficient to enable the Customer to:
- (a) verify the Contractor's compliance with the Service Levels; and
  - (b) verify the amount of Rebates payable.
- 3.19** The Contractor is not obliged to include in its reports any of the Services which have not passed their applicable Subscription Service Ready Date.
- 3.20** The Customer will use reasonable efforts to consider the Service Level report in a timely manner to enable each Party to raise concerns and enable appropriate discussion at the next scheduled Management Committee meeting, or in any event without unreasonable delay.

#### RISK MANAGEMENT AND PROBLEM PREVENTION

- 3.21** The Contractor must establish and use auditable, repeatable and integrated processes to effectively identify, manage and report Risks in a manner that is consistent with the nature and scope of the software, hardware and Services in line with details outlined in the Info (US), Inc Single Tenant Hosted and Managed Services document of November 30, 2014 (Risk Assessment).
- 3.22** The Contractor must ensure that the Risk Register is kept up-to-date at all times and includes:
- (a) a detailed description of each Risk;
  - (b) a categorisation of each Risk as determined reasonably by the Contractor;
  - (c) the likelihood and impact of each Risk occurring; and
  - (d) the Risk Controls which are agreed with the Customer, must be put in place by the Contractor to mitigate each Risk, and the associated timeframes and implementation status for those Risk Controls.
- 3.23** The Contractor must, on a quarterly basis, or at such other intervals as the Customer may require, report to the Customer on:
- (a) all identified Risks for this Customer Contract;
  - (b) the extent to which such Risks are recorded in the relevant Risk Register;

- (c) the effectiveness of Risk Controls in terms of managing and mitigating such Risks; and
- (d) the treatment plans and timetable for any Risks identified as being insufficiently controlled.

**3.24** The identification of Risks by the Contractor in accordance with this Service Level Agreement (including the identification of Risks that may be affected by the acts or omissions of the Customer) will not limit the Contractor's other obligations under this Customer Contract.

#### QUALITY ASSURANCE

**3.25** The Contractor agrees to maintain, and ensure its Related Companies and Subcontractors, maintain a quality assurance plan for the scope of services being delivered throughout the Contract Period.

**3.26** The Customer may audit the quality assurance plan of the Contractor in accordance with clause 5.4 of Module 10 – As a Service and the Contractor agrees to comply with any reasonable direction of the Customer to improve any aspect of the quality assurance plan.

## Disaster Recovery and Business Contingency Plan

#### DISASTER RECOVERY

- 4.1** The Contractor will provide a 'dual site' disaster recovery approach for all components of the Infor Workforce Management System as a Service solution. The dual site will make use of a primary data centre and backup data centre.
- 4.2** The Availability of the service is set at a minimum of 99.5% availability for all components of the solution. In line with this defined Recovery Point Objective and the Recovery Time Objective are summarised as follows:
  - (a) recovery point objective (RPO) of a maximum time of 2 hours from the last Customer Data replication; and
  - (b) a recovery time objective (RTO) in respect of any or all components of the Infor Workforce Management System as a service solution of 8 hours for DR Events (on a 24x7x365 basis).
- 4.3** The Disaster Recovery environment will be initiated upon the occurrence of a DR Event.
- 4.4** Manual failover of production environment to Disaster Recovery environment will be initiated upon the occurrence of a DR Event. A fail over to the Disaster Recovery environment may occur if a disruption is detected with the platform or any module of the solution.
- 4.5** The Contractor will advise the Customer if an Incident resulting in Disaster Recovery activities occurs.

#### BUSINESS CONTINGENCY PLAN

- 4.6** The Contractor must develop, prior to the Subscription Service Ready Date, a Business Contingency Plan to provide for the continuity of critical business functions at agreed Service Levels in the event of the loss, disablement, impairment or suspension of key facilities, resources, technologies or contractors, and also for normal Service Levels to be fully restored within a timeframe acceptable to the Customer after such an event.
- 4.7** The Contractor will liaise with the Customer in the updating of the Business Contingency Plan from time to time to ensure that the BCP remains relevant for the term of this Contract.
- 4.8** The Business Contingency Plan must:
  - (a) be based upon a formal assessment of the applicable Risks and business impacts;
  - (b) include plans for Disaster Recovery;
  - (c) be reviewed and updated at least annually;
  - (d) be available to be audited by or on behalf of the Customer at least annually;



- (e) be tested at least annually in accordance with the Customer's requirements (including performing the tests contemplated by the Contractor's plan in conjunction with any Customer testing), with an independent or Customer representative present to verify the results of any actions for rectification;
- (f) adequately protect the Customer's interests at all times in relation to this Customer Contract to a level reasonably acceptable to the Customer.

- 4.9 The Contractor will provide the Customer with a copy of the BCP on the Initial Subscription Service Ready Date and thereafter upon request.
- 4.10 Subject to clause 5.4 of Module 10 (As a Service) and where an audit is in progress under that clause, the Contractor will allow the Customer, its authorised representatives and any regulatory authority reasonable site visits, at reasonable times, to the Contractor's premises for the purpose of monitoring, reviewing or auditing business continuity risks for the Customer associated with the Services.
- 4.11 The Contractor will ensure that all of sections relating to BCP will apply equally to any Subcontractor of the Contractor permitted under this Customer Contract.

#### BCP TRAINING

- 4.12 The Contractor and the Customer shall train and have sole responsibility for training its own Personnel on their respective roles and responsibilities under the BCP.

## 5. Security

### SECURITY FUNDAMENTALS

- 5.1 The Contractor will maintain the security standards and data protection protocols outlined in this section and in Attachment 3-5 (Security Services) to Schedule 3 (Service Level Agreement).
- 5.2 The Contractor will implement a standard roll on/roll off process which includes an acknowledgement of the need to protect confidentiality of the Customer's Confidential Information and Customer Data. This acknowledgment will be regarded as an internal Contractor record, but must be made available for audit if required by the Customer.
- 5.3 The Contractor acknowledges that the security of Customer Data is fundamental to the business of the Customer and that, without limitation, any security breach may directly affect the Customer's;
  - (a) duties to its Personnel or to citizens;
  - (b) obligations under the *Privacy and Personal Information Act 1998* (NSW) and other Statutory Requirements as applying to NSW Government.
- 5.4 The Customer Data is to remain in Australia and must be accessed only by staff of the Contractor in Australia unless authority to access the Customer Data remotely for support and maintenance purposes is set out in an agreed protocol between the parties or otherwise agreed in writing by the Customer. Permission may be granted in the agreed protocol or will in the circumstances of another agreement in writing, only be granted for short term interim access required to resolve Incidents or Problems. Agreed protocols will be used in relation to support (including information contained in the incident management system) which would include the ability to resolve Incidents or Problems.
- 5.5 Where appropriate to the Services being performed, the Contractor will ensure that appropriate security frameworks, standards and compliance are in place for the Contractor and any Subcontractors at a standard equivalent to ISO 27001.
- 5.6 The Contractor agrees to incorporate specific emerging cloud security standards where appropriate, and agrees to maintain compliance for the duration of the Customer Contract.