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**Software and Services Agreement  
Cover Page**

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| **Agreement number** | [insert] | |
| **Parties** | **QUT** | Queensland University of Technology (ABN 83 791 724 622)  2 George Street, Brisbane QLD 4000 |
| **Supplier** | [insert name] ([insert ACN/ABN])  [insert address] |
| **Term** | **Commencement Date**: [insert particular date the Agreement is to commence **OR** insert the date on which this Agreement is executed by both parties]  **Term**: [insert]  **QUT options to extend**: QUT may extend the Term by [insert] on up to [insert] separate occasions. | |
| **Description** | [insert short description of the background to the Agreement and what it is about] | |
| **Software and Services** | The following Software and Services are to be provided under this Agreement: [check boxes for those services which apply]  Licensed Software  Developed Software  Hosted Software  Software Support Services [note: if Hosted Software will be provided by Supplier, Software Support Services should apply]  Software Installation Services  ICT Consultancy Services  as more fully described in Schedule 1 and in the relevant clauses of this Agreement. | |
| **QUT’s contract representative** | **Name:** [insert]  **Title:** [insert]  **Address:** [insert address for delivery of Notices]  **Email address:** [insert]  **Phone number:** [insert]  **Fax number:** [insert] | |
| **Supplier’s contract representative** | **Name:** [insert]  **Title:** [insert]  **Address:** [insert address for delivery of Notices]  **Email address:** [insert]  **Phone number:** [insert]  **Fax number:** [insert] | |

**Standard Terms**

## Definitions and interpretation

### In this Agreement:

**Acceptance Date** means, in respect of Software, Services and Deliverables, the date QUT issues a notice to the Supplier under clause 12.4 for such Software, Services and Deliverables.

**Agreement** means the attached Cover Page, these Standard Terms, the special conditions specified in Schedule 1 (if any), the Schedules and any attachments.

**APRA** means the Australian Prudential Regulation Authority.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Change in Control** means a change in more than 50% of the shareholding or underlying control or the composition of the board of directors of a person.

**Claim** means a claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment.

**Commencement Date** means the date specified on the Cover Page as being the date from which this Agreement takes effect, or if no such date is specified, the date on which this Agreement is executed by both parties.

**Confidential Information** in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

**Cover Page** means the cover page attached to these Standard Terms.

**Defects** means any failure of the Software, Service or Deliverable to comply with its Specifications.

**Deliverables** means all things, materials, documents, information and items developed by or on behalf of the Supplier or its Personnel in the course of or in connection with the supply of the Software and Services in any form whatsoever (including electronic form) and includes all inventions, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records, including all things described as Deliverables in Schedule 1.

**Delivery Date** means any date and time for delivery of the Software, Services or Deliverables as stated in Schedule 1 or as otherwise advised by QUT from time to time.

**Develop** means, in connection with a thing, to develop, create, add, enhance, reduce, adapt or prepare derivative works based on that thing.

**Developed Software** means any Software and related Documentation which is Developed by the Supplier, as indicated on the Cover Page and further described in Schedule 1, and includes any customisations, configurations or other modifications of any Licensed Software and any related Documentation.

**Discloser** has the meaning given in clause 20.1.

**Dispute** has the meaning given in clause 28.1.

**Documentation** means any training manuals, user manuals, operating manuals, technical manuals, reports or other documentation specified in Schedule 1 or provided by the Supplier to QUT as part of the Services and any other documentation which is necessary for the effective installation, operation, Use, modification, Development and maintenance of any Software supplied by the Supplier.

**Encumbrance** means any interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property including a Security Interest.

**Fees** mean the amounts payable by QUT under this Agreement for the Software, Services or Deliverables (as applicable), calculated in accordance with Schedule 1.

**Fix** means the permanent correction of a Defect and includes the provision to QUT of any amendments to, or replacements of, any Documentation that are required as a result of such correction.

**Force Majeure** means an unforeseeable event or circumstance beyond the reasonable control of a party including:

#### an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;

#### strikes or other industrial action, other than strikes or other industrial action of some or all of the Supplier’s Personnel; and

#### war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic,

but excludes any act or omission of a subcontractor (except where that act or omission was caused by a Force Majeure).

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Harmful Code** means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorised access to, or disclosure, destruction or corruption of, information or data.

**Hosted Software** means any software and related Documentation owned by the Supplier or licensed to the Supplier by a third party which is:

#### in existence prior to the date of this Agreement; or

#### Developed or comes into existence otherwise than pursuant to this Agreement,

as indicated on the Cover Page, and further described in clause 4 and Schedule 1, and includes any New Release, Fix or Work-Around of that software.

**Hosting Infrastructure** means the hardware, software, communications services and other resources, services and facilities (whether of the Supplier or a third party provider to the Supplier) necessary or desirable for the Supplier’s provision of the Hosted Software in accordance with clause 4.

**ICT Consultancy Services** means the ICT consultancy services as indicated on the Cover Page and further described in Schedule 1.

**Insolvency Event** means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

**Intellectual Property Rights** means all present and future rights in relation to copyright, trade marks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise.

**Key Personnel** means the Supplier’s Personnel specified in Schedule 1.

**Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Licence Term** means, with respect to any particular Software, the licence term specified in Schedule 1.

**Licensed Software** means any software and related Documentation owned by the Supplier or licensed to the Supplier by a third party which is:

#### in existence prior to the date of this Agreement; or

#### Developed or comes into existence otherwise than pursuant to this Agreement,

#### as indicated on the Cover Page and further described in Schedule 1, and includes any New Release, Fix or Work-Around of that software.

**Moral Rights** means the moral rights granted under the *Copyright Act 1968* (Cth), including the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, and any similar rights existing under foreign laws.

**Moral Rights Consent** means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Deliverables and Developed Software (if any) by or on behalf of the Supplier, or any licensee or subsequent owner of copyright in the Deliverables and Developed Software (if any).

**New Release** means any new release or version of any Software issued from time to time, including any update, enhancement, extension or replacement of the functionality of such Software (other than a Fix).

**Notice** has the meaning given in clause 35.1.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means a party’s officers, employees, secondees, agents, consultants, contractors and subcontractors, and, in the case of the Supplier, includes Key Personnel.

**Pre-Existing Materials** means all things, materials, documents, information and items developed by or on behalf of the Supplier or QUT independently of this Agreement but excludes the Software.

**Premises** means premises owned, leased or otherwise occupied by QUT.

**Priority Levels** means the priority levels for the Software Support Services agreed in section 1.2 of Schedule 3.

**Recipient** has the meaning given in clause 20.1.

**Requirements** has the meaning given in clause 12.2.

**QUT Data** means:

#### data owned or supplied by QUT to which the Supplier is provided access under this Agreement; or

#### data generated, compiled, arranged or developed by either party in the course of providing or receiving the Software, Services or Deliverables under this Agreement.

**Security Interest** means any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation including any retention of title to any property and any right to set off or withhold payment of any deposit or other money.

**Service Credits** means:

#### in respect of the Software Support Services, the service credits payable by the Supplier to QUT as a consequence of any failure by the Supplier to meet the Service Levels for the Software Support Services, as calculated in accordance with Schedule 3; and

#### in respect of all other Services, the service credits payable by the Supplier to QUT as a consequence of any failure by the Supplier to meet the Service Levels for those Services, as calculated in accordance with Schedule 1.

**Service Levels** means:

#### in respect of the Software Support Services, the service levels set out in Schedule 3; and

#### in respect of the Services (other than the Software Support Services), the service levels specified in Schedule 1.

**Services** means the services to be provided by the Supplier under this Agreement and may include (as applicable) the Software Support Services, Software Installation Services and ICT Consultancy Services.

**Site** means any site or Premises for delivery of the Software, Services and Deliverables as specified in Schedule 1 or as advised by QUT from time to time.

**Software** means:

#### each item of Licensed Software to be supplied by the Supplier to QUT; and

#### each item of Developed Software to be developed by the Supplier and supplied to QUT;

#### each item of Hosted Software,

as indicated on the Cover Page and further described in Schedule 1.

**Software Defect** means any Defect or error in any Software.

**Software Installation Services** means the software installation services as indicated on the Cover Page and further described in Schedule 1.

**Software Support Services** means the support services as indicated on the Cover Page and further described in Schedule 2.

**Source Code** means computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands and all documentation and tools reasonably required to enable a person having commercially available computer programming skills to read, understand and modify such computer programs.

**Specifications** means:

#### in respect of Software, Services and Deliverables, the requirements set out or referred to in Schedule 1, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters;

#### in respect of the Software, includes:

##### all Documentation relating to the Software; and

##### any published specifications of the Supplier or a third party manufacturer or supplier relating to the Software.

**Standard Terms** means these standard terms.

**Taxes** means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

**Tax Invoice** has the meaning given in the GST Law.

**Taxable Supply** has the meaning given in the GST Law.

**Term** means the term of this Agreement specified on the Cover Page, as extended by QUT under clause 2.2.

**Tested Items** has the meaning given in clause 12.2.

**Training** means the training required to be provided by the Supplier in accordance with Schedule 1, the costs of which is included in the Fees.

**Use** includes install, run, copy, distribute, support, maintain and anything reasonably incidental to such activities.

**Variation Notice** has the meaning given in clause 26.1.

**Variation Quotation** has the meaning given in clause 26.2.

**Warranty Period** means, with respect to any particular Software, the period set out in Schedule 1, commencing on the Acceptance Date.

**Work-Around** means a work-around or temporary Fix of a Defect which is acceptable to QUT and which permits QUT to Use the relevant Software without any material degradation in functionality or performance.

### In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

#### headings are for convenience only and do not affect the interpretation of this Agreement;

#### the singular includes the plural and vice versa;

#### words that are gender neutral or gender specific include each gender;

#### 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;

#### “includes” means without limitation;

#### a reference to:

##### a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

##### a party includes its successors and permitted assigns;

##### a document includes all amendments or supplements to that document;

##### a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;

##### this Agreement includes all schedules and attachments to it;

##### an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and

##### a monetary amount is in Australian dollars;

#### an agreement on the part of two or more persons binds them jointly and severally;

#### when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and

#### no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## Term

### This Agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with this Agreement.

### QUT may extend the Term for the period specified on the Cover Page by giving written notice of the extension to the Supplier prior to the expiry of the then current term.

## Supply of Software, Services and Deliverables

### The Supplier must supply (and if required, install) the Software, Services and Deliverables:

#### at the Site(s) identified;

#### on or before the Delivery Date;

#### in accordance with their Specifications;

#### in accordance with all applicable Laws and standards; and

#### using any identified Key Personnel.

### The Supplier must supply the Documentation or information required to enable QUT to Use the Software and Services.

## **Hosted Software**

### This clause 4 applies if the Cover Page indicates that the Supplier will provide Hosted Software.

### The Supplier will:

#### provide QUT with access to the Hosted Software in the manner specified in Schedule 1;

#### provide and maintain the Hosting Infrastructure within Australia unless otherwise agreed by QUT;

#### ensure that the Hosting Infrastructure is properly installed and configured, and otherwise complies with the requirements of this Agreement;

#### notify QUT if it is changing the provider of any aspect of its Hosting Infrastructure; and

#### provide the environments within the Hosting Infrastructure as specified in Schedule 1, unless otherwise agreed by QUT.

### The Supplier will ensure that no unauthorised party:

#### is allowed physical or electronic access to the Hosted Software, the Hosting Infrastructure or QUT Data; or

#### prevents the Hosted Software from being available,

and will implement reasonable steps to meet these obligations, including installing and maintaining adequate security features within the Hosted Software and on the Hosting Infrastructure.

### The Supplier must:

#### provide to QUT at the frequency specified in Schedule 1 an up-to-date copy of all QUT Data which is held or used in or by the Hosted Software in an electronic format reasonably required by QUT;

#### subject to the Supplier’s obligations to provide assistance to QUT under clause 30.1(d), deliver up QUT Data to QUT or a third party nominated by QUT in the format and on media as reasonably requested by QUT, within five Business Days after the effective date of termination or expiry of this Agreement; and

#### after it has complied with a request of QUT under clause 4.4(b), permanently delete any QUT Data remaining on the Hosting Infrastructure, and on request certify in writing to QUT its compliance with this clause 4.4(c).

### The Supplier must:

#### implement and maintain throughout the Term appropriate and effective disaster recovery procedures, including appropriate back-up procedures and facilities, to ensure the Supplier’s provision of the Hosted Software through the Hosting Infrastructure continues without interruption if a disaster occurs or affecting any Hosting Infrastructure (**Disaster Recovery Procedures**);

#### on request by QUT from time to time:

##### provide QUT with a copy of the Disaster Recovery Procedures;

##### promptly make changes to the Disaster Recovery Procedures that are reasonably required by QUT; and

##### conduct annual testing of the Disaster Recovery Procedures and provide the results of those tests to QUT.

## Harmful Code

### The Supplier must ensure that no Harmful Code or similar programming effects are coded or introduced into QUT’s systems or systems within the control of the Supplier on which QUT Data is stored (**System**) as a direct result of:

#### the provision of the Software;

#### the provision of any Services; or

#### an act or omission of the Supplier's Personnel.

### If Harmful Code is found to have been introduced into the System, whether or not in contravention of clause 5.1, the Supplier must use its reasonable endeavours to assist QUT in minimising the effects of the Harmful Code and, if the Harmful Code causes a loss of operational efficiency or loss of data, to assist QUT to restore any such losses.

### To the extent that the introduction of the Harmful Code is the result of a breach by the Supplier of its obligations under clause 5.1, the remedial efforts described in clause 5.2 will be at the Supplier's cost.

## Warranties

### The Supplier warrants, and it is a condition of this Agreement, that:

#### the Software and Deliverables will:

##### be free from Defects, and errors or omissions in design, materials and workmanship;

##### comply with their Specifications and meet the requirements of this Agreement;

##### be of good and merchantable quality; and

##### be fit for the purpose for which they are supplied;

#### the Software will:

##### be compatible with and inter-operate with any system, network, hardware, software or service with which it is to be Used by QUT and will not detrimentally affect the operation or performance of any such system, network, hardware, software or service;

##### be free from any back door, time bomb, drop dead device or any other code designed to disable or reduce the functionality of the Software; and

##### when delivered to QUT, be free from any Harmful Code; and

#### the Use of any New Release, Fix or Work-Around will not degrade the functionality or performance of any Software in any way;

#### all Services will:

##### be performed with due care and skill, in a professional, efficient and safe manner, and to best industry standards;

##### be performed by suitably qualified and experienced Personnel;

##### be fit for the purpose for which they are supplied;

##### comply with their Specifications and meet the requirements of this Agreement; and

##### meet or exceed the Service Levels;

#### all Documentation will:

##### contain sufficient information to enable QUT to make full and proper Use of the relevant Software and Services;

##### be reasonably acceptable to QUT in terms of its presentation, accuracy and scope; and

##### include the most current and up-to-date versions of documentation available;

#### it has the right to supply the Software and Deliverables to QUT;

#### it will do all acts, matters and things that may be necessary for and incidental to the proper and efficient supply of the Software, Services and Deliverables;

#### it will ensure that the supply of the Software, Deliverables and Services at the Site causes as little disruption as possible to the business activities of QUT;

#### it will ensure that QUT will obtain the benefit of all warranties given by all manufacturers, subcontractors, suppliers and other relevant third parties in relation to the Software and Deliverables;

#### the supply of any Software, Deliverables and Services, and the use of the Software, Deliverables and Services, does not and will not:

##### contravene any Laws; and

##### infringe the rights of a third party (including any Intellectual Property Rights and Moral Rights);

#### it and its Personnel will supply the Software, Services and Deliverables in a good, proper and workmanlike manner and will exercise the standard of care, skill, judgment and diligence reasonably expected of a contractor experienced in the supply of the same or similar Software, Services and Deliverables;

#### it will comply, and will ensure that its Personnel comply, with all Laws and standards relating to the supply of the Software, Services and Deliverables, including QUT’s standards, policies, procedures and directions, and obtain all necessary consents and approvals to supply the Software, Deliverables and Services;

#### it and its Personnel have not engaged in, and will not engage in, any collusive, anti-competitive or similar conduct in connection with this Agreement or any actual or potential contract with any entity for goods and services similar to the Software, Services and Deliverables; and

#### it and its Personnel:

##### have not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the *Criminal Code*; or

##### are not subject to an order under, or have not been convicted of an offence under the *Criminal Organisation Act 2009* (Qld).

### During any applicable Warranty Period, the Supplier must, at no additional charge and without prejudice to any other rights or remedies of QUT, repair or replace any Software that does not comply with any of the applicable warranties within the timeframe reasonably required by QUT.

## Service Levels and Service Credits

### The Supplier must perform the Services and, if applicable, provide the Hosted Software, to meet or exceed any applicable Service Levels.

### If the Supplier fails to perform the Services to meet any Service Levels, QUT is entitled to recover the applicable Service Credits from the Supplier (which QUT may require be paid to it in cash or as a credit against the next invoice issued under clause 15).

### Any Service Credits payable to QUT are in addition to and do not limit any rights or remedies available to QUT at law or in equity for the Supplier’s failure to meet the Service Levels or otherwise perform its obligations under this Agreement (including any right of QUT to recover damages and to terminate this Agreement).

## Other Supplier obligations

### The Supplier must, where the Supplier is required to provide or utilise tools, equipment and vehicles, ensure such tools, equipment and vehicles are suitable for the supply of the Software, Services and Deliverables and are maintained in good and safe working condition.

## Supplier’s Personnel

### The Supplier must ensure that its Personnel:

#### are competent and have all necessary and appropriate skills, training, background and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them;

#### behave in a professional and responsible manner at all times and perform the Services with due care and skill and in accordance with best industry practice;

#### understand and agree to the requirements of this Agreement which are relevant to them; and

#### when accessing the Site(s), comply with any security, occupational health and safety and other policies and procedures specified by QUT from time to time.

### The Supplier’s Personnel are employees or contractors of the Supplier and are not employees or contractors of QUT. The Supplier is solely responsible for all of its Personnel and must comply with any Laws relating to the employment of its Personnel, including superannuation requirements, payment of tax instalment deductions and all Taxes including fringe benefits and payroll tax registration requirements, conditions on payment of wages, requirements to maintain records and payment of all remuneration (including salaries, wages, leave entitlements, superannuation and all other benefits).

### If QUT becomes liable for any of the payments in clause 9.2, the Supplier indemnifies QUT from and against any Claims QUT suffers, incurs or is liable for arising out of or in connection with such payments.

### The Supplier and its Personnel have no claim upon QUT in respect of:

#### remuneration to the Supplier’s Personnel including superannuation, leave, other entitlements, Taxes or duties;

#### claims under workers' compensation; and

#### claims under any other law affecting or relating to the relationship between an employer and employee.

### The Supplier remains liable to QUT for all acts and omissions of the Supplier’s Personnel as if they were the acts and omissions of the Supplier.

## Key Personnel

### Subject to clause 10.2, the Supplier must engage the Key Personnel to perform the roles allocated to them in Schedule 1.

### The Supplier must not remove or replace any Key Personnel without QUT’s prior written consent, except as a consequence of resignation, death, illness or incapacity of the relevant Key Personnel.

### QUT may, while acting in good faith and reasonably, at its discretion and without giving a reason, direct the Supplier to remove its Personnel (including Key Personnel) from providing the Services. The Supplier must promptly arrange for replacement of the Personnel with personnel of equivalent or superior qualifications, competence and experience to the Personnel being replaced.

* + 1. Where the Key Personnel are removed or replaced as a requirement of either party, the Supplier:

#### must not charge QUT for any costs involved, including travel expenses such as flight costs, in providing the replacement Personnel or removing the unsatisfactory Personnel;

#### must repay QUT the full cost incurred by QUT in any training undertaken by the removed Key Personnel; and

#### must ensure the removed Key Personnel conduct a handover to the replacement Personnel and the Supplier must not charge QUT for the time cost of the removed personnel for the duration of such handover.

## Non-solicitation

* + 1. The Supplier must not, without the prior written consent of QUT, during and for 12 months after the expiry or termination of this Agreement, directly or indirectly engage, employ or seek to engage or employ any person who was an employee of or engaged by QUT and who was involved in the provision of the Services under this Agreement.
    2. Clause 11.1 does not prevent either party from employing or engaging a person that responds to a genuine public advertisement placed by that party in good faith.

## Review and testing

### Prior to the delivery of any Software, Services and Deliverables, the Supplier must conduct pre-installation testing to verify that the Software, Services and Deliverables have no apparent Defects.

### QUT reserves the right to review or conduct testing of the Software, Services and Deliverables (**Tested Items**) to satisfy itself that those Tested Items have no apparent Defects and otherwise meet the requirements of this Agreement (**Requirements**). Where specified in Schedule 1, the Supplier must conduct, or assist in the conduct of, testing.

### If, after testing under clause 12.2, QUT is not satisfied that a Tested Item meets the Requirements, then QUT may, at its discretion, do one or more of the following:

#### require the Supplier to modify the Tested Items, or supply replacement Tested Items, so that they meet the Requirements, in which case QUT may further review or conduct further testing under this clause 12.3;

#### withhold payment under this Agreement until the Tested Items meet the Requirements;

#### where a Tested Item has failed review or testing more than once, reject the Tested Item. If QUT exercises its rights under this clause 12.3(c), then without prejudice to QUT’s other rights and remedies, the Supplier must refund all Fees and other amounts paid by QUT under this Agreement in respect of the rejected Tested Item; and/or

#### conditionally accept the Tested Item on such terms and conditions as QUT considers appropriate including a reduction in the Fees, provided that if the Supplier considers that any terms and conditions, or reduction in Fees, is not reasonable then it may refer the matter to the dispute resolution process in accordance with clause 28.

### Where QUT is satisfied after reviewing or testing a Tested Item that it meets the Requirements, QUT will promptly notify the Supplier that the Tested Item has passed the review or tests. Any review, testing or notification by QUT does not constitute any waiver of rights, or give rise to any estoppel, if the Tested Item is later found not to comply with the Requirements.

## Training

### Where specified in Schedule 1, the Supplier must provide Training to QUT and the cost of that Training will form part of the Fees.

## Title and risk

### Title to:

#### any Deliverable; and

#### the physical medium on which the Software is provided,

#### passes to QUT upon the earlier of delivery or the payment of the Fees by QUT to the Supplier for the relevant Software or Deliverables.

### Risk in any Deliverables passes from the Supplier to QUT upon:

#### QUT notifying the Supplier that the Deliverables have passed any required testing in accordance with clause 12.4; or

#### if no testing is required, at the time that QUT accepts delivery of the Deliverables.

### The passing of ownership, or the delivery of:

#### the Deliverables; and

#### the physical medium on which the Software is provided,

#### to QUT does not constitute acceptance and does not affect QUT’s rights to reject the Software, Services or Deliverables under clause 12.3(c).

## Invoicing and payment

### The Supplier may invoice QUT for the Fees:

#### at the times, and upon achievement of the milestones (if applicable), set out in Schedule 1; or

#### if no times or relevant payment milestones are set out in Schedule 1:

##### upon QUT notifying the Supplier that the Software, Services or Deliverables have passed any required testing in accordance with clause 12.4; or

##### if no testing is required, at the time QUT accepts delivery of the Software, Services or Deliverables.

### The Fees are inclusive of all costs and expenses incurred by the Supplier and no further amounts are payable by QUT unless otherwise agreed in writing by QUT.

### Subject to clauses 15.4 and 16, QUT will pay any correctly rendered undisputed invoice issued by the Supplier within 30 days from the date of receipt of that invoice.

### An invoice is correctly rendered if:

#### the amount claimed in the invoice is due for payment in accordance with Schedule 1;

#### it is accompanied by verifying documentation, if required by QUT;

#### the Supplier has complied with its obligations under this Agreement as at the date of the invoice; and

#### the invoice is a Tax Invoice in the proper form for the purposes of GST.

### If any part of any invoice is found to have been rendered incorrectly after payment has been made by QUT, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be.

### Without limiting recourse to other available means, any overpayments by QUT may be offset against any amount subsequently due by QUT to the Supplier.

## Disputed invoices

### If QUT disputes the amount of any invoice, QUT may, on written notice to the Supplier, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.

### The Supplier must continue to perform the Supplier’s obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.

### QUT must:

#### pay any non-disputed amounts in accordance with clause 15; and

#### promptly pay any disputed amounts that are subsequently found to be correctly payable.

## GST

### The Fees are inclusive of all Taxes other than GST. If any supply under this Agreement is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

## Intellectual Property

### *Licence to Use Licensed Software and Hosted Software*

#### Except as otherwise set out in this Agreement, all Intellectual Property Rights in the Licensed Software and Hosted Software remain vested in the Supplier or its licensors.

#### Where the Supplier supplies QUT with any Licensed Software or Hosted Software, the Supplier grants (and/or must procure the grant) to QUT, at no additional cost to QUT, a non-exclusive, perpetual, irrevocable, royalty free licence to:

##### Use the Licensed Software or Hosted Software (as applicable) during the Licence Term for the business purposes of QUT in accordance with the class of licence set out in Schedule 1; and

##### make as many copies of the Licensed Software as QUT considers necessary to make full Use of the Licensed Software or for backup and security purposes.

#### QUT acknowledges that it has no right, title or interest in the Licensed Software or Hosted Software except as set out in this clause 18.1.

### *Restrictions on Use*

#### QUT must comply with any restrictions on the Use of the Licensed Software or Hosted Software or any additional licence terms specified in Schedule 1.

#### Except as otherwise permitted under this Agreement, QUT must not:

##### sell, lease, transfer, assign, sub-license, licence or otherwise part with possession of any Licensed Software;

##### attempt to disassemble, decompile or otherwise reverse engineer any Licensed Software or Hosted Software, except as permitted under the *Copyright Act 1968* (Cth); or

##### remove, obliterate or alter any proprietary notice on any Licensed Software or Hosted Software.

### *Escrow*

#### If specified in Schedule 1 or as otherwise requested by QUT during the Term, the Supplier will deposit in escrow with an escrow agent and under an escrow agreement acceptable to QUT, an up-to-date copy of the Source Code of the Licensed Software.

#### Without limiting clause 18.3(a), the escrow agreement will allow the Source Code to be released to QUT if:

##### the Supplier becomes subject to an Insolvency Event;

##### the Supplier ceases, or is unable or unwilling, to support and maintain the relevant Licensed Software as required under this Agreement; or

##### QUT becomes entitled to terminate this Agreement other than for convenience.

#### Under the escrow agreement the Supplier will grant to QUT a perpetual, non-exclusive, royalty-free licence to exercise the Intellectual Property Rights in the Source Code accessed from escrow which are necessary for QUT (or its nominated third party contractor) to Use and Develop the Licensed Software and to correct Defects.

### *Developed Software*

#### All Intellectual Property Rights in any Developed Software will, upon creation, automatically vest in QUT and the Supplier absolutely and unconditionally assigns, and must procure that Supplier’s Personnel assign, to QUT all Intellectual Property Rights in any Developed Software immediately upon creation, free of all Encumbrances and third party rights.

#### The Supplier must, at its own cost, do all things necessary to give effect to the assignment in clause 18.4(a), including executing any required documents or effecting any required registrations.

#### QUT grants to the Supplier a personal, royalty free, non-exclusive, non-transferable licence for the Term to Use the Developed Software only to the extent required to provide the Developed Software and Services, without the right to grant a further sub-licence.

#### The Supplier must promptly provide the Source Code for any Developed Software to QUT upon request by QUT.

### *Pre-Existing Material*

#### No change in ownership of the Intellectual Property Rights in any Pre-Existing Materials is effected by this Agreement.

#### The Supplier grants to QUT a world-wide, non-exclusive, royalty free, perpetual, irrevocable and transferable licence (including a right of sub-licence) to use and exploit the Intellectual Property Rights in the Supplier’s Pre-Existing Materials to the extent required to exercise the Intellectual Property Rights in the Deliverables.

#### QUT grants to the Supplier a non-exclusive, non-transferrable, royalty free licence for the Term to use QUT’s Pre-Existing Materials only to the extent required to provide the Software and Services to QUT, without the right to grant a further sub-licence.

### *Deliverables*

#### The Supplier absolutely and unconditionally assigns, and must procure that Supplier’s Personnel assign, to QUT all Intellectual Property Rights in any Deliverables (excluding Software) immediately upon creation, free of all Encumbrances and third party rights.

#### The Supplier must, at its own cost, do all things necessary to give effect to the assignment in clause 18.6(a), including executing any required documents or effecting any required registrations.

#### QUT grants to the Supplier a non-exclusive, non-transferable, royalty free licence for the Term to use the Deliverables (excluding the Software) only to the extent required to perform its obligations under this Agreement, without the right to grant a further sub-licence.

### *QUT Data*

### Title to and all Intellectual Property Rights associated with the QUT Data vests in QUT.

## Moral Rights Consent

### To the extent that a person, other than the Supplier, has Moral Rights in the Deliverables, Software or Pre-Existing Material, the Supplier must obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to QUT.

## Confidentiality

### Each party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other party (**Discloser**)except:

#### as permitted under this Agreement;

#### with the prior written consent of the Discloser;

#### on a confidential, “needs to know” basis, to the Recipient’s officers, agents, professional advisers, auditors, employees, contractors, sub-contractors and insurers; or

#### where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.

### The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

### The Recipient must:

#### maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;

#### notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient’s expense; and

#### reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

### Upon request from QUT, the Supplier must procure its Personnel that are engaged in the performance of this Agreement to execute a confidentiality undertaking, agreement or deed in the form acceptable to QUT.

## Privacy

### The Supplier acknowledges that it is a bound contracted service provider for the purposes of the *Information Privacy Act 2009* (Qld).

### The Supplier must:

### in relation to the discharge of its obligations under this Agreement, comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) as if the Supplier was QUT;

### ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;

### not use Personal Information other than for the purpose of performing its obligations under this Agreement, unless required or authorised by Law;

### not disclose Personal Information without the prior written consent of QUT, unless required or authorised by Law;

### not transfer any Personal Information outside of Australia without the prior written consent of QUT;

### ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;

### ensure that its officers and Personnel are aware of the Supplier’s obligations under this clause 21 and comply with the same obligations imposed on the Supplier under this clause;

### fully cooperate with QUT to enable QUT to respond to applications for access to, or amendment of, a document containing a person’s Personal Information and to privacy complaints;

### immediately notify QUT if the Supplier becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and

### comply with such other privacy and security measures as QUT reasonably advises the Supplier in writing from time to time.

### The Supplier must immediately notify QUT upon becoming aware of a breach of this clause 21.

### Nothing in this clause 21 is intended to limit any obligation of the Supplier under the *Privacy Act 1988* (Cth) or the *Information Privacy Act 2009* (Qld) (as applicable), that the Supplier may have as an organisation with respect to Personal Information.

## Right to information and disclosure

### The *Right to Information Act 2009* (Qld) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

### Information contained in this Agreement is potentially subject to disclosure to third parties.

### If disclosure under the *Right to Information Act 2009* (Qld), and/or general disclosure of this Agreement, in whole or in part, would be of concern to the Supplier, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, the Supplier should indicate this to QUT. However, the Supplier acknowledges that QUT cannot guarantee that any information provided by the Supplier including information that is identified by the Supplier will be protected from disclosure under the *Right to Information Act 2009* (Qld).

### Despite any other provision in this Agreement, if the total value of the goods and/or services is $10,000 or more QUT may publish information about this Agreement on the Queensland Government’s contract directory at: <http://qcd.hpw.qld.gov.au/Pages/home.aspx> (as amended from time to time) where required or recommended by the Queensland Government procurement policy including the following details for any contracts:

#### the name and address of the Supplier;

#### a description of the goods or services tendered or contracted for;

#### the contract commencement date or award date;

#### the value of the contract;

#### if the total value of the goods and/or services is $500,000 or more, the procurement method used; and

#### if the total value of the goods and/or services is $10 million or more, QUT is entitled to publish the following additional information:

##### invitation details (including reference information for the offer and contract, number of offers sought, evaluation criteria and weightings); and

##### contract overview (including form of contract, deliverables, contract milestones and contract performance management).

## Indemnity

### *Supplier indemnities*

### The Supplier indemnifies QUT and its officers, employees and agents (**Indemnified Parties**) from and against any Claim which any of the Indemnified Parties pays, suffers, incurs or is liable for arising out of or in connection with:

#### any breach of this Agreement by the Supplier;

#### the death or personal injury of any person;

#### loss of, or damage to, any property;

#### any breach of Law;

#### any infringement, or alleged infringement, of a third party’s rights (including Intellectual Property Rights and Moral Rights); and

#### any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation,

#### to the extent caused or contributed to by any act or omission of the Supplier or its Personnel.

### *Obligations regarding Intellectual Property Claims*

#### If any third party makes a Claim that its Intellectual Property Rights have been breached (**Intellectual Property Claim**), if required by QUT, the Supplier must, at no cost to QUT:

#### procure for QUT the right to continue to:

##### Use any Software that is affected by the Intellectual Property Claim; and

##### Use, copy (and, where applicable, modify and Develop) any Software or Documentation that is affected by the Intellectual Property Claim,

###### in accordance with the terms of this Agreement; or

#### replace or modify any Software that is affected by the Intellectual Property Claim in a manner acceptable to QUT and ensuring that:

##### there is no adverse effect on the functionality or performance of the relevant Software;

##### the modified or replaced Software does not have an adverse effect on QUT’s information systems or networks; and

##### the modified or replaced Software complies with the requirements of this Agreement.

## Liability

### Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.

### Clause 24.1 does not apply to the Supplier’s liability under the indemnities in clauses 23.1(b) to 23.1(f).

### To the maximum extent permitted by Law, QUT’s maximum aggregate liability to the Supplier (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid and payable under this Agreement.

## Insurance

### The Supplier must effect and maintain in a form appropriate to the Supplier’s activities and with an APRA approved insurer, the insurances specified in Schedule 1.

### The Supplier must provide, on QUT’s request, certificates of currency and such other evidence satisfactory to QUT of insurance coverage specified in this clause 25.

### The Supplier must:

#### effect the workers’ compensation and public liability insurance before commencing the supply of any Software, Services and Deliverables and maintain them until this Agreement is terminated or expired; and

#### effect the professional indemnity insurance before commencing the supply of any Software or Services and maintain it for not less than 3 years after this Agreement is terminated or expired.

## Variations

### QUT may by written notice to the Supplier request the Supplier to vary the scope of the Software, Services or Deliverables to be supplied under this Agreement (**Variation Notice**).

### Within 5 Business Days of receiving a Variation Notice, the Supplier will provide to QUT a reasonable written quotation (**Variation Quotation**) which details:

#### the variation as requested by the Variation Notice;

#### a reasonable variation (if any) to the Fees including evidence justifying the variation; and

#### all relevant Specifications, time frames and operational requirements relating to the varied Software, Services and Deliverables additional to but not inconsistent with those in the Variation Notice.

### QUT may by written notice to the Supplier:

#### accept the Variation Quotation within 10 Business Days of receiving it;

#### reject the Variation Quotation at any time if that Variation Quotation has not already been accepted; or

#### require the Supplier to do the work as set out in the Variation Notice in a reasonable time as agreed by the parties for:

##### fees based on the Fees specified in Schedule 1;

##### if clause 26.3(c)(i) is not applicable, fees based on the rates usually charged by the Supplier in the ordinary course of its business; or

##### if neither clause 26.3(c)(i) nor 26.3(c)(ii) is applicable, reasonable fees having regard to the reasonable cost to the Supplier of effecting the variation.

### QUT is not required to pay any additional fees unless and until:

#### QUT accepts the Variation Quotation under clause 26.3(a);

#### QUT requires the Supplier to effect the variation under clause 26.3(c); or

#### the parties otherwise agree in writing to the varied terms and fees.

## Force Majeure

### Delay in or failure of performance by a party does not constitute a breach of this Agreement by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:

#### gives notice to the other party within [7] days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect;

#### continues to perform all unaffected obligations in accordance with this Agreement;

#### uses its best endeavours to perform the affected obligations, whether by way of a Work-Around or other methods agreed with the other party;

#### use reasonable endeavours to overcome the effects of the Force Majeure as promptly as possible and gives written notice to the other party within [7] days of the cessation of the Force Majeure.

### The Supplier will not be relieved from the performance of the its obligations under this Agreement following the occurrence of a Force Majeure Event if such obligations could have been performed by invoking disaster recovery procedures reasonably expected of a supplier of goods and services similar to the Software or Services.

### If a delay caused by Force Majeure continues for more than [30] days, QUT may terminate this Agreement by giving [14] days written notice to the Supplier.

## Dispute resolution

### Neither party will commence court proceedings or action against the other party under or in connection with this Agreement (**Dispute**) (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute in accordance with this clause 28.

### The parties will attempt to resolve any Dispute as follows:

#### either party may notify the other party in writing of the occurrence of a Dispute and the parties must meet within 5 Business Days or such other time as agreed to discuss and attempt to resolve the Dispute;

#### failing resolution of the Dispute within 10 Business Days after the first meeting between the parties in accordance with clause 28.2(a), the parties may agree to refer the Dispute for mediation to be conducted in accordance with the Australian Commercial Disputes Centre (**ACDC**) Mediation Guidelines and with a mediator as agreed by the parties or, failing agreement, as appointed by the CEO of the ACDC. If the parties do not agree to do so, either party may commence legal proceedings.

### The parties must continue to perform their obligations under this Agreement while any Dispute is being resolved in accordance with this clause 28, except that where the Dispute relates to an invoice, QUT may withhold payment of the disputed portion of the invoice until the Dispute is resolved.

## Termination

### QUT may terminate this Agreement immediately upon written notice to the Supplier, if:

#### the Supplier breaches any obligation under this Agreement which is capable of remedy, and does not remedy that breach within 14 days of receipt of a notice from QUT specifying the breach and requiring it to be remedied;

#### the Supplier commits a breach of this Agreement which is incapable of remedy;

#### the Supplier does anything that materially damages or is likely to materially damage the brand or reputation of QUT;

#### the Supplier or any of its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or

#### an Insolvency Event occurs in relation to the Supplier.

### QUT may at any time on at least 30 days’ written notice to the Supplier terminate this Agreement without cause, in which case QUT’s sole liability will be to pay the Supplier for all Software, Services and Deliverables provided up to the effective date of termination.

### The Supplier may terminate this Agreement immediately upon written notice to QUT if:

#### QUT commits a material breach of an obligation of this Agreement and does not remedy that breach within 30 days of receipt of a notice from the Supplier specifying the breach and requiring the breach to be remedied; or

#### an Insolvency Event occurs in relation to QUT.

## Consequences of termination

### As soon as practicable after expiry or termination of this Agreement, the Supplier must:

#### provide to QUT a copy of all Deliverables and Developed Software (and the Source Code for that Developed Software) produced under this Agreement;

#### return to QUT all equipment, records, documents and materials provided by QUT for the purposes of this Agreement, including any security passes and keys;

#### return to QUT all copies of all Confidential Information and Personal Information of QUT in its possession or control;

#### provide such servicesas QUT reasonably requests to achieve an orderly, uninterrupted transition of the supply of the relevant Software, Services or Deliverables to QUT or a new supplier of similar Software, Services or Deliverables appointed by QUT; and

#### where the Supplier has provided Hosted Software under this Agreement and hosts any QUT Data, the Supplier must:

##### retain all QUT Data for a period of [60] days in the same format as prior to expiry or termination; and

##### promptly return all QUT Data to QUT (or its nominee) in the format specified by QUT, or assist QUT to extract the QUT Data (at QUT’s option); and

##### after returning QUT Data, permanently and irretrievably delete all QUT Data from the Hosting Infrastructure in accordance with the Supplier’s usual practices or industry standards (whichever is higher).

### Clauses 18, 20, 21, 23, 24, 25.3(b), 28, 30 and 32 continue after termination or expiry of this Agreement.

## Reporting and contract management

### Each party appoints the contract representative specified on the Cover Page to manage the relationship between the parties under this Agreement.

### The parties will ensure that the contract representatives meet at the times and places as required by QUT to discuss the Supplier’s performance of, and any issues arising under, this Agreement.

### The Supplier must at no additional cost to QUT provide QUT with written reports at the intervals and containing the information specified in Schedule 1, or otherwise as required by QUT, regarding the Supplier’s performance under this Agreement, including its performance against any Service Levels.

## Audit and records

### The Supplier must permit QUT and its auditors access, on reasonable notice and during business hours on Business Days, to all records, books, staff, premises and other facilities of the Supplier and its subcontractors in connection with any audit of the Supplier’s performance of this Agreement, including for the purpose of verifying any Fees and other amounts paid or payable under this Agreement.

### QUT will bear the costs of any audit under clause 32.1 unless the audit reveals that the Supplier has overcharged QUT by 5% or more in relation to any particular Software, Services or Deliverables, in which case the Supplier will reimburse QUT its reasonable costs and expenses of the audit and must promptly reimburse QUT for the amount of any overcharges.

### If an audit reveals that the Supplier is not complying with its obligations under this Agreement, then the Supplier must take, and must ensure that any relevant Supplier subcontractor takes, such actions as are necessary promptly to remedy the non-compliance.

### The Supplier must comply, and ensure that any relevant Supplier subcontractor complies, with any reasonable directions or instructions from QUT as to the manner (including timing) in which such non-compliance referred to in clause 32.3 must be remedied.

### The Supplier must retain, and ensure each of its subcontractors retain, all financial and operational records relevant to this Agreement in an auditable and accessible format and otherwise as required by Law during the Term and for a period of at least 7 years after this Agreement has been terminated or expired.

## Conflict of interest

The Supplier must declare any conflict of interest prior to providing any Software, Services or Deliverables to QUT or, where Software, Services or Deliverables are already being provided, as soon as such a conflict comes to the attention of the Supplier.

## Subcontracting

### The Supplier must not subcontract any of its rights or obligations under this Agreement without QUT’s prior written consent.

### The Supplier must ensure that its subcontractors comply with all Laws and all standards applicable to the performance of the Supplier’s obligations under this Agreement.

### To the extent that the Supplier subcontracts any of its obligations under this Agreement to a third party, the Supplier will remain liable to QUT for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of the Supplier.

## Notices

### Any notice, demand, invoice, process or other communication relating to this Agreement (**Notice**) must be in writing in English and must be given to the other party’s contact representative as specified on the Cover Page or as notified to it by the other party from time to time.

### A Notice may be given by being:

#### personally delivered to a party;

#### left at the party’s current delivery address for service;

#### sent to the party’s current postal address for service by pre-paid ordinary mail; or

#### sent by facsimile transmission to the party’s current facsimile number for service;

#### sent by email to the party’s current email address for Notices.

### Subject to clause 35.4, a Notice is given:

#### if posted:

##### within Australia to an Australian postal address, 3 Business Days after posting; or

##### outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;

#### if sent by fax, when the sender’s fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report; or

#### if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered. A Notice given under **clauses 28** or **29**, must not be given only by email.

### If a Notice is given:

#### after 5:00pm in the place of receipt; or

#### on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

### it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## General

### *Assignment*

#### The Supplier must not assign or novate any of its rights or obligations under this Agreement without QUT’s prior written consent.

#### To avoid doubt, a Change in Control of the Supplier without QUT’s prior written consent will amount to an assignment of the Supplier’s rights in breach of this clause 36.1.

#### QUT may, on reasonable notice to the Supplier, assign or novate this Agreement to another party without the approval of the Supplier.

### *Relationship*

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

### *Set-off*

QUT may by notice in writing to the Supplier reduce any Fees or other charges or costs payable to the Supplier under this Agreement by any fee, credit, rebate or other amount which is payable to QUT under or in connection with this Agreement.

### *Entire agreement*

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

### *Further assurance*

### Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

### *Inconsistency*

#### In the event of any inconsistency between:

#### the special conditions specified in Schedule 1 (if any);

#### the Cover Page;

#### these Standard Terms;

#### the Schedules; and

#### any attachments,

#### the document listed first in this clause 36.6 will prevail to the extent of the inconsistency.

### *Waiver*

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

### *Variation*

No variation of this Agreement is effective unless made in writing and signed by each party.

### *Governing law*

This Agreement is governed by the laws of Queensland and each party submits to the exclusive jurisdiction of the courts of Queensland.

### *Counterparts*

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**Schedule 1  
Agreement Particulars**

| **PARTICULARS** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Licensed Software**  (clause 1.1) | **Description of Licensed Software** | **Class of Licence** | | **Licence Term** | **Additional licence terms** |
| [insert] | [insert a short description of the class of the licence for the software such as whether the licence is for concurrent or single-users/devices, a specified number of users, or is an enterprise/site licence] | | [insert licence period – this may be the Term of this Agreement. If no specified period but perpetual, insert “Perpetual”] | [insert if there are any applicable restrictions on QUT’s Use of the Licensed Software – eg internal use only, use for a specific purpose. If none, insert “Not applicable”] |
| [insert additional rows as required for each item of Licensed Software] |  | |  |  |
| **Developed Software**  (clause 1.1) | [insert a short description of the software to be developed/modified] | | | | |
| **Hosted Software**  (clause 1.1, 4.2(a), 4.2(e) and 4.4(a)) | **Access to Software**  [insert description of how QUT will access the Software that it hosted by the Supplier. For example, “Access to the Software is from [INSERT WEBSITE] via username and password ”]  **Environments**  [insert description of the environments QUT requires within the Hosting Infrastructure such as a development, testing and production environment]  **Licence Term**  [insert licence period – this may be the Term of this Agreement]  **Additional licence terms**  [insert if there are any applicable restrictions on QUT’s Use of the Hosted Software – eg internal use only, use for a specific purpose. If none, insert “Not applicable”]  **Frequency of providing copies of QUT Data**  [Insert the frequency that the Supplier must provide QUT with copies of the QUT Data stored in the Hosted Software (such as quarterly or monthly).] | | | | |
| **Escrow**  (clause 18.3) | Is escrow of Licensed Software required?YesNo | | | | |
| **Services**  (clause 1.1) | **Software Support Services**The Software Support Services are described in Schedule 2.**Software Installation Services**[insert description of installation services to be provided (if any). If installation services are not required insert “not applicable”]**ICT Consultancy Services**[insert description of consultancy services to be provided (if any). If consultancy services are not required insert “not applicable”] | | | | |
| **Fees**  (clause 1.1) | [insert Fees for each of the items below (as applicable). If not applicable, insert “Nil” or delete row.]  **Licensed Software Fees** | | $[insert] | | |
| **Developed Software Fees** | | $[insert] | | |
| **Hosted Software Fees** | | $[insert] | | |
| **Software Support Services Fees** | | $[insert] | | |
| **Software Installation Services Fees** | | $[insert] | | |
| **ICT Consultancy Services Fees** | | $[insert] | | |
| **Total price (excluding GST)** | | $[insert] | | |
| **Payment of invoices**  (clause 15) | Address for invoices: [insert] | | | | |
| Payment milestones: [insert any relevant payment milestones **OR** N/A] | | | | |
| Invoices to be paid by [insert – eg, electronic transfer] | | | | |
| **Delivery Date**  (clause 1.1) | [insert date and time for delivery of the Software, Services and/or Deliverables] | | | | |
| **Site**  (clause 1.1) | [insert Site for delivery of the Software, Services and/or Deliverables] | | | | |
| **Key Personnel**  (clauses 1.1 and 10) | [insert list of Supplier’s Key Personnel and their roles in relation to the Services if the identity of the individuals carrying out the work is crucial] | | | | |
| **Deliverables**  (clause 1.1) | [insert description of any particular Deliverables required to be supplied] | | | | |
| **Documentation**  (clause 1.1) | [Supplier to list standard documentation available for the Software and Services]**Software Documentation**  * [insert]  **Services Documentation**[insert] | | | | |
| **Specifications**  (clause 1.1) | **Software** Licensed Software Specifications[Supplier to list specifications for the Licensed Software listed above]Developed Software Specifications[Supplier to list specifications for the Developed Software (if applicable) listed above]Hosted Software Specifications [Supplier to list specifications for the Hosted Software (if applicable) listed above]  **Deliverables**  [insert details of Specifications required for any particular Deliverables] | | | | |
| **Tests**  (clause 12.2) | [insert details of any required tests to be performed by the Supplier and the relevant testing process.] | | | | |
| **Warranty Period for Software**  (clause 1.1) | [insert the warranty period for the Software (eg – 12 months)] | | | | |
| **Service Levels**  (clauses 1.1 and 7) | [insert details of any required Service Levels for the Services (other than the Software Support Services)] | | | | |
| **Service Credits**  (clauses 1.1 and 7) | [insert details of how Service Credits (if applicable) for the Services (other than the Software Support Services) will be calculated] | | | | |
| **Training**  (clause 13) | [insert description of any training the Supplier must provide QUT relating to the Software, Services and/or Deliverables.] | | | | |
| **Reports**  (clause 31) | [insert details of any required reports, the information required to be contained in the reports and the intervals at which the reports are required to be provided to QUT] | | | | |
| **Required insurances**  (clause 25) | **Public and product liability**: [$10 million any one occurrence, and in the annual aggregate in respect of product liability only]  **Professional indemnity**: [$5 million any one claim and in the annual aggregate]  **Workers’ compensation**: As required by Law. | | | | |
| **Special conditions**  (clauses 1.1 and 36.6) | [insert any additional terms and conditions in relation to this Agreement] | | | | |

**Schedule 2  
Software Support Services**

[***Note: QUT to review the description of the Software Support Services set out below to determine whether these standard support terms are acceptable and consider inserting a note to the Supplier requiring “Supplier to mark up any required changes to this schedule to align the terms with the Supplier’s support model”.***]

## Scope of Software Support Services

* + - 1. The Supplier offers to provide Software Support Services in relation to the Software for a period of at least [insert] [***Note: Supplier to advise minimum support commitment***] years after the Acceptance Date of the relevant Software. In the case of Hosted Software, the Supplier will provide Software Support Services throughout the Licence Term.
      2. The following Software Support Services are available from the Supplier:

##### the correction of Software Defects (as further described in section 3 of this Schedule 2);

##### the operation of a Help Desk (as further described in section 4 of this Schedule 2); and

##### the provision of New Releases (as further described in section 5 of this Schedule 2).

## Definitions

In this schedule:

**QUT Support Staff** is defined in section 3.1(a).

**Help Desk** means a telephone and email help desk facility, as further described in section 4 of this Schedule 2.

**Scheduled Maintenance Window** means [insert window for scheduled maintenance (usually outside of QUT’s business hours such as 2am – 4am)].

**Support Hours** means [insert]. [***Note: QUT to consider what support hours are required.***]

## Software Defects

### First Line Support

[***Note: Section 3.1 should only be included where level 1 support is provided by QUT.***]

* + - 1. QUT will provide a reasonable number of suitably experienced Personnel (**QUT Support Staff**) to be the first point of contact for QUT’s Personnel who are experiencing problems Using the Software.
      2. QUT Support Staff will:

##### use their reasonable endeavours to determine whether the problems being experienced by QUT’s Personnel are caused by a Software Defect;

##### if QUT Support Staff consider that such problems are caused by a Software Defect:

###### take such initial steps to rectify the Software Defect as may be recommended by the Supplier in the relevant Documentation; and

###### if such steps fail to correct the Software Defect, report the Software Defect to the Supplier in accordance with section 3.2 of this Schedule 2.

* + - 1. The Supplier must provide all training and diagnostic tools required by QUT to enable QUT Support Staff to perform the functions described in this section 3.1.

### Reporting Software Defects

QUT’s Personnel may report any Software Defect of which QUT becomes aware to the Supplier by contacting the Help Desk.

### Correction of Software Defects

* + - 1. If QUT reports a Software Defect to the Supplier, the Supplier must:

##### log the report and issue a reference number to QUT;

##### agree a Priority Level for the Software Defect with QUT in accordance with section 1 of Schedule 3;

##### respond to, provide a Work-Around (if available) for, and Fix, the Software Defect in accordance with section 1 of Schedule 3;

##### keep QUT updated in relation to the status of the Software Defect in accordance with section 1 of Schedule 3;

##### notify QUT immediately after the Software Defect is Fixed and provide QUT with a root-cause analysis for the Software Defect and details of the measures taken to Fix it; and

##### provide any assistance required by QUT to recover any data loss caused by the Software Defect.

* + - 1. The Supplier may respond to, provide a Work-Around for, and Fix, Software Defects by remote electronic access, but if it is necessary for the Supplier to attend the premises where the relevant Software is Used by QUT to respond to, provide a Work-Around for, or Fix, a Software Defect, the Supplier must do so at no additional cost to QUT.

### QUT obligations

* + - 1. QUT must permit the Supplier’s Personnel approved by QUT:

##### to have remote electronic access to the relevant Software; and

##### to have access to any premises where the relevant Software is being Used by QUT,

at times approved by QUT to enable the Supplier to perform its obligations under this section 3.

* + - 1. Remote electronic access to the relevant Software provided to the Supplier will, unless otherwise agreed by QUT, be provided through a structured authorisation process (user identification and password). [***Note: QUT will need to consider the type of access which will be provided to the Supplier for these purposes.***]

## **Help Desk**

* + - 1. The Supplier must, during the Support Hours, make a Help Desk available to QUT to enable QUT to:

##### report Software Defects to the Supplier; and

##### seek answers to technical and user questions relating to any Software provided by the Supplier.

* + - 1. The Supplier must ensure that, during Support Hours, the Help Desk is staffed with a reasonable number of the Supplier’s Personnel who are adequately trained to respond to technical and user questions relating to the Software.
      2. The Supplier must:

##### answer calls and respond to emails from QUT’s Personnel to the Help Desk during Support Hours; and

##### answer technical and user questions relating to any Software,

#### as soon as practicable, and in any event within the timeframes specified in section 2 of Schedule 3.

* + - 1. The telephone numbers and email addresses for the Help Desk, which must be dedicated to QUT, are:

##### Telephone number(s): [insert].

##### Email address(es): [insert].

* + - 1. The Help Desk must have a voicemail facility that enables QUT Personnel to leave messages for Supplier Personnel outside the Support Hours.

## **New Releases**

### Development and offer of New Releases

* + - 1. The Supplier must offer to QUT any New Release of any Software which the Supplier offers to any of its licensees.
      2. The Supplier must Develop and offer to QUT such New Releases of the relevant Software as are necessary to ensure that:

##### the Software remains compatible with the latest releases of QUT’s operating environment for the Software; and

##### the Software, and its Use by QUT, complies with all applicable Laws.

* + - 1. The Supplier must:

##### keep QUT fully informed of the New Releases the Supplier intends to Develop; and

##### if required by QUT, meet and consult with QUT in relation to any such New Release, including in relation to functionality or other requirements QUT may have in relation to any such New Release.

* + - 1. The Supplier must immediately notify QUT when a New Release becomes available and provide to QUT:

##### any information relating to the New Release requested by QUT; and

##### any assistance requested by QUT to enable QUT to evaluate the New Release.

### Use of New Releases by QUT

* + - 1. If QUT wishes to Use a New Release offered by the Supplier:

##### QUT must notify the Supplier accordingly;

##### the Supplier must, within [insert] Business Days of receipt of QUT’s notice:

###### provide the New Release to QUT together with any amendments to the relevant Documentation used by QUT that are necessary to enable QUT to make full and proper Use of the New Release;

###### if required by QUT, install a copy of the New Release at any premises where the relevant Software is Used by QUT; and

###### provide to QUT’s Personnel, at the times and locations required by QUT, such training as is necessary in order to enable QUT to make full and proper Use of the New Release; and

##### the New Release will be deemed to be part of the relevant Software for the purposes of this Agreement.

* + - 1. If QUT does not wish to Use a New Release, it must notify the Supplier accordingly.
      2. If QUT does not wish to Use a New Release, the Supplier must continue to provide any relevant Software Support Services in respect of the version of the relevant Software Used by QUT for a period of [insert] years from the date the New Release is offered to QUT.

## **Hosted Software Scheduled Maintenance Window**

The Supplier must ensure that scheduled maintenance of the Hosted Software only occurs during the Scheduled Maintenance Window.

**Schedule 3  
Service Levels – Standard Software Support Services**

[***Note: QUT to review to determine whether these standard support terms are acceptable and consider inserting a note to the Supplier requiring “Supplier to mark up any required changes to this schedule to align the terms with the Supplier’s support model. Supplier to also specify response times, service levels (including availability in respect of Hosted Software) and any service credits it is willing to offer”.***]

## Correction of Software Defects

### Definitions

In this schedule:

**Available** means:

#### the Hosted Software is available to QUT’s users in a live production environment; or

#### the Hosted Software is not available to QUT’s users in a live production environment and the Supplier can demonstrate to QUT's reasonable satisfaction that the reason for the non-availability is a failure of QUT’s ICT environments or networks.

**Defect Update Frequency** means the frequency with which the Supplier must update the QUT contract manager (or such other person notified to the Supplier by QUT from time to time) on the status of the Software Defect.

**Fix Time** means the elapsed time between the time QUT reports the Software Defect to the Help Desk and the time the Supplier provides a Fix for the Software Defect.

**Key Performance Indicators** is defined in section 4(a) of this Schedule 3.

**Response Time** means the elapsed time between the time QUT reports the Software Defect to the Help Desk and the time Supplier provides a Software Support Services reference number for the Software Defect to QUT, together with an estimate of when a Work-Around (if available) and a Fix will be provided.

**Total Monthly Fee** is defined in section 4(c) of this Schedule 3.

**Work-Around Time** means the elapsed time between the time QUT reports the Software Defect to the Help Desk and the time the Supplier provides a Work-Around for the Software Defect.

### Priority Levels

#### The following table defines priority levels (**Priority Levels**) for Software Defects reported by QUT to the Supplier:

| **Priority Level** | **Description** |
| --- | --- |
| Critical | A Software Defect that has critical impact on the ability of QUT to conduct business, including any loss of revenue or significant corruption of data, and includes any of the following:   * complete outage of the relevant Software; * users cannot access the relevant Software; * the security measures or controls utilised for the relevant Software have been compromised; and * the relevant Software needs to be restored from backup. |
| Urgent | A Software Defect which substantially and adversely affects the ability of: (a) QUT to conduct business; or (b) an essential feature of the relevant Software to perform in accordance with the Specifications, resulting in substantial performance degradation; or (c) an inability to use an essential feature of the relevant Software, and includes any of the following:   * the relevant Software experiencing a service-affecting interruption and there is a risk of the interruption continuing or reoccurring; * the relevant Software being available to users, but where one or more essential functions are not available; and * the relevant Software is available, but with substantially degraded performance. |
| High | A Software Defect which does not substantially and adversely affect the ability of QUT to conduct business, but which results in the inability of non-essential aspects of the relevant Software to perform in accordance with the Specifications (including a Software Defect which has minor impact on the ability of QUT to conduct business, but has the potential to cause an adverse impact to QUT’s business if the Software Defect is not rectified). |
| Low | A Software Defect that has no immediate impact on the functionality of the relevant Software or the ability of QUT to conduct business, and includes any of the following:   * a Software Defect which could have a minor impact on the ability of QUT to conduct business if the Software Defect is not rectified; * QUT requires technical assistance in relation to the relevant Software; and * cosmetic deficiencies in the relevant Software. |

#### QUT will attempt to agree on the Priority Level for a Software Defect with the Supplier when QUT reports the Software Defect to the Help Desk.

#### If QUT and the Supplier are unable to agree on the Priority Level for a Software Defect when QUT reports the Software Defect to the Help Desk, QUT may determine the Priority Level for the Software Defect.

### Response, Work-Around and Fix Times

[***Note: QUT should consider nominating appropriate response times or insert “Supplier to insert”. Work-Around time are to be completed if required.***]

#### The Supplier must respond to, provide a Work-Around (if available), and Fix, Software Defects reported by QUT to the Supplier within the timeframes specified in the following table:

| **Priority Level** | **Response Time** | **Work-Around Time** | **Fix Time** | **Defect Update Frequency** |
| --- | --- | --- | --- | --- |
| Critical | [insert] | [insert] | [insert] | [insert] |
| Urgent | [insert] | [insert] | [insert] | [insert] |
| High Priority | [insert] | [insert] | [insert] | [insert] |
| Low Priority – except for cosmetic deficiencies | [insert] | [insert] | [insert] | [insert] |
| Low Priority – cosmetic deficiencies | [insert] | [insert] | [insert] | [insert] |

#### For the purposes of this section 1, if QUT leaves a message relating to a Software Defect on the Help Desk voicemail facility or by email outside Support Hours, QUT will be deemed to have reported the Software Defect to the Supplier on the next commencement of Support Hours.

### Resource reallocation

QUT may direct the Supplier to reallocate the Supplier’s Personnel from the provision of a Work-Around or Fix for a particular Software Defect to the provision of a Work-Around or Fix for another Software Defect or the provision of any other Software Support Services.

## Help Desk

The Supplier must:

#### answer calls and respond to emails from QUT’s Personnel to the Help Desk during Support Hours; and

#### answer technical and user questions relating to any Software,

as soon as practicable, and in any event within the timeframes specified in the following table:

[***Note: QUT should consider appropriate timeframes.***]

| **Time to answer calls or respond to emails** | **Time to Answer Questions** |
| --- | --- |
| 90% of calls to be answered in [insert] seconds | [insert] Business Days |
| 95% of remaining calls to be answered in [insert] seconds | [insert] Business Days |
| 90% of emails to be responded to in [insert] minutes | [insert] Business Days |
| 95% of remaining emails to be responded to in [insert] minutes | [insert] Business Days |

## Hosted Software

#### The Supplier must ensure the Hosted Software is available for at least the following minimum Availability percentage:

| **Hosted Software** | **Availability** | **Measurement Period** |
| --- | --- | --- |
| [Insert description of Hosted Software] | [**Note**: QUT should consider appropriate availability percentage (such as 99.9%).] | [Insert measurement period such as “monthly”] |

#### The Availability of the Hosted Software will be calculated as the number of Available hours during the measurement period, divided by the total number of hours during the measurement period.

## Service Credits

[***Note: QUT will need to consider how service credits should be calculated. Importantly, QUT will need to ensure that any service credit regime agreed with the Supplier operates consistently with the agreed fee structure and invoicing structure for the relevant Software Support Services. For example, if there are separate fees for individual Software Support Services, QUT will need to consider whether service credits should only be levied against the fees for the particular service which has failed to meet the relevant KPI.***]

#### If the Supplier fails to meet any of the key performance indicators specified in any of the following tables (**Key Performance Indicators**) in any particular month, the Supplier must pay QUT the corresponding Service Credit in accordance with clause 7.2:

##### Software Defects

| **Priority Level** | **Key Performance Indicator (Fix Time for Software Defects)** | **Service Credit** (**% of monthly Fees)** |
| --- | --- | --- |
| Critical | [insert]% of Software Defects reported have a Fix Time of [insert] hours or less. | [insert]% |
| Urgent | [insert]% of Software Defects reported have a Fix Time of [insert] hours or less. | [insert]% |
| High | [insert]% of Software Defects reported have Fix Time of [insert] days or less. | [insert]% |
| Low | [insert]% of Software Defects reported have a Fix Time of [insert] calendar days or less. | [insert]% |

##### Help desk

| **Key Performance Indicator (Time to answer calls or emails)** | **Service Credit** (**% of monthly Fees)** |
| --- | --- |
| [insert]% of calls to be answered in [insert] seconds | [insert]% |
| [insert]% of remaining calls to be answered in [insert] seconds | [insert]% |
| [insert]% of emails to be responded to in [insert] minutes | [insert]% |
| [insert]% of remaining emails to be responded to in [insert] minutes | [insert]% |

##### Hosted Software

| **Key Performance Indicator (Availability)** | **Service Credit** (**% of monthly Fees)** |
| --- | --- |
| Availability of the Hosted Software is less than [Insert] % per [Insert measurement period] | [insert]% |

#### The total amount of Service Credits payable by the Supplier to QUT in respect of any month will not exceed [**20**]% of the Total Monthly Fee.

#### In this section 3, **Total Monthly Fee** means the Fee payable by QUT for the Software Support Services this Agreement in respect of the month in which the Service Level breach occurred.

## Reporting requirements

[***Note: QUT will need to consider its reporting requirements in the context of this agreement.***]

Within [insert] Business Days after the end of each month, the Supplier must provide to QUT (in the format specified by QUT from time to time) a report detailing the Software Support Services provided during that month, including:

#### the number of Software Defects of each Priority Level reported by QUT;

#### details of any Software Defects reported that have not been Fixed;

#### the performance of the Supplier against each of the Key Performance Indicators set out in section 3;

#### the number of the Service Credits payable by the Supplier to QUT;

#### any other information requested by QUT from time to time.

**Execution Page**

**Signed for and on behalf of QUT (ABN 83 791 724 622) by its duly authorised representative in the presence of:**

|  |  |  |
| --- | --- | --- |
| ..............................................................  Witness  ...............................................................  Name of Witness (print) |  | .............................................................  Authorised representative  ...............................................................  Name of authorised representative (print)  ...............................................................  Date |

**Signed for and on behalf of the Supplier by its duly authorised representative in the presence of:**

|  |  |  |
| --- | --- | --- |
| ..............................................................  Witness  ...............................................................  Name of Witness (print) |  | .............................................................  Authorised representative  ...............................................................  Name of authorised representative (print)  ...............................................................  Date |