



Australian Government

SourceIT

Licence Contract – Commercial off-the-shelf Software

Release version 2.2

[Insert name of Customer] (**Customer**)

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

Licence Contract – Commercial off-the-shelf Software

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Contract Information

Date *[insert date]*

Parties

Name *[insert name of Customer]*
Short form name **Customer**

Name *[insert name of Contractor]*
Short form name **Contractor**

Background

- A The Customer requires the provision of certain software.
- B The Customer has agreed to engage the Contractor to provide the software on the terms and conditions contained in this Contract.

Agreed Terms

Part 1 - Software supply

1. Definitions and interpretation

1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Administrative Arrangements Order	A ministerial order that administrative functions be allocated or reallocated between various Agencies as specified in the order.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agency	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
Agency Order Form	the form set out in Schedule 5.
Agreed Terms	clauses 1 to 19 of the Contract which set out terms and conditions agreed by the parties.
Business Day	(a) for receiving a notice under clause 18, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and (b) for all other purposes, any day that is not a Saturday or Sunday or a national public holiday, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Business Hours	from 8.00am to 6.00pm on a Business Day.
Commencement Date	the date on which this Contract commences, as specified in item 3 of the Contract Details.
Commonwealth	the Commonwealth of Australia.
Commonwealth Protective Security Manual	the <i>Commonwealth Protective Security Manual 2005</i> , as amended or replaced from time to time.

Confidential Information	<p>information that is by its nature confidential; and</p> <p>(a) is designated by a party as confidential and is described in Item 4 of the Contract Details; or</p> <p>(b) a party knows or ought to know is confidential, but does not include:</p> <p>(c) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.</p>
Contract	this agreement between the Customer and the Contractor, as amended from time to time in accordance with clause 19.2, and includes its schedules and any attachments.
Contract Details	the details set out in Schedule 1.
Contract Period	the Initial Contract Period plus any extension in accordance with clause 3.2.
Contractor	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Customer	the party specified in item 1 of the Contract Details.
Customer's Existing System	the Customer's existing hardware and software configurations, specified in item 3 of the Scope of Licence and as modified from time to time, with which the Software must operate.
Deliverable	any item to be supplied by the Contractor under this Contract and includes the Software and Documentation.
Delivery Date	the date specified in Item 6 of the Contract Details.
Documentation	the documentation to be provided by the Contractor under clause 9 and specified in item 2 of the Scope of Licence.
Fair Work Principles	the Australian Government Fair Work Principles released by the Minister for Employment and Workplace Relations on 31 July 2009 http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_090731_094936.aspx .
Fair Work Principles User Guide	the Fair Work Principles User Guide (January 2010) released by the Department of Education, Employment and Workplace Relations (available at www.deewr.gov.au/fairworkprinciples).
Harmful Code	any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
Initial Contract Period	the period of time for which the Licence is intended to continue, as specified in item 8 of the Scope of Licence.
Intellectual Property Rights	all intellectual property rights, including but not limited to, the following rights:

	<p>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance 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 rules of equity as applicable from time to time.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
Licence	the licence of the Software granted by the Contractor to the Customer under clause 5.1.
Licence Fees	the fees payable to the Contractor relating to the Licence, as specified in item 1 of Schedule 4.
Losses	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).
Nominated Agency	an Agency, listed in item 5 of the Contract Details, which may require the provision of Deliverables under this Contract.
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Open Source Licence	the open source licence agreement set out in Schedule 6.
Personnel	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Contractor, of a subcontractor.
Schedules	the schedules to this Contract.
Scope of Licence	the scope of the licence specified in Schedule 2.
Software	<p>the software provided by the Contractor under this Contract, as specified in:</p> <p>(a) item 1 of the Scope of Licence including the number of copies of that software; and</p> <p>(b) the Specifications.</p>
Specifications	<p>in order of priority:</p> <p>(a) the Customer's functional and technical requirements for the Software as described in Schedule 3, as amended from time to</p>

time; and

- (b) all applicable manufacturers' specifications and applicable standards.

Warranty Period	90 days from the Delivery Date, unless otherwise specified in item 7 of the Contract Details.
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1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
 - (f) a reference to time is to the time in the place where the obligation is to be performed;
 - (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
 - (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (i) if the Contractor is a trustee, the Contractor enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Contract;
 - (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
 - (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
 - (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
 - (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
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- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Open Source Licence;
- (b) Agreed Terms;
- (c) Schedules (other than the Open Source Licence);
- (d) any attachments to the Schedules; and
- (e) documents incorporated by reference in this Contract.

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Period unless terminated in accordance with clause 17.

3.2 Option to extend Contract Period

- (a) The Initial Contract Period may be extended by the Customer for further period(s), specified in item 9 of the Scope of Licence (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must:
 - (i) be at least 30 days; or
 - (ii) such other period as specified in item 10 of the Scope of Licence (**Option Notice Period**),before the end of the current Contract Period.
- (b) Any extension exercised in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. Deliverables to other Agencies

4.1 Obligation to provide Deliverables

The Contractor offers to provide the Deliverables to any Nominated Agency in accordance with the requirements set out in this clause 4.

4.2 Request

A Nominated Agency may request the supply of Deliverables in accordance with clause 4.1, by giving the Contractor a completed Agency Order Form.

4.3 Separate contracts

Each Agency Order Form agreed with the Contractor in accordance with this Contract will create a separate contract between the Contractor and:

- (a) the Commonwealth represented by the Nominated Agency (where that agency is subject to the *Financial Management and Accountability Act 1997* (Cth)); or
- (b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Deliverables to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

5. Software licence

5.1 Grant of Licence

Subject to this clause 5, the Contractor:

- (a) grants to the Customer for the Contract Period an irrevocable, world-wide, non-exclusive and (subject to clause 5.1(b) and the Scope of Licence) non-transferable licence to:
 - (i) at the Customer's discretion, install the Software on the Customer's Existing System;
 - (ii) use and copy the Software:
 - (A) on the Customer's Existing System;
 - (B) by the specified users;
 - (C) at the sites; and
 - (D) in accordance with such other requirements,
as specified in the applicable Scope of Licence;
 - (iii) adapt and modify the Software to the extent necessary to enable it to be used on the Customer's Existing System;
 - (iv) use the Documentation, in either hardcopy or softcopy (including online) in accordance with clause 9; and
 - (v) make necessary copies of the Software and the Documentation for backup and security purposes; and
- (b) authorises the Customer to assign the rights in clause 5.1(a) to other Agencies where those Agencies require the Software as a result of an Administrative Arrangements Order.

5.2 Use by Customer's contractors

If specified in the Scope of Licence, the Customer may permit its contractors to use the Software and Documentation but only if:

- (a) the contractor is treated as if it were an employee of the Customer;
 - (b) the contractor uses the Software and Documentation in accordance with clause 5.1 and other applicable terms of this Contract; and
 - (c) the Customer retains responsibility for the use of the Software and Documentation in accordance with the terms of this Contract.
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5.3 Outsource supplier

Where the Customer outsources from time to time some or all of its information technology services, the Customer may:

- (a) if the Software is licensed to the Customer under clause 5.1, sublicense to any outsource supplier the right to use the Software in accordance with clause 5.2; or
- (b) assign this Contract to any outsource supplier during the term of its appointment,

without the Contractor's consent and without any financial consequence for the Customer or the outsource supplier. The Customer must advise the Contractor of the exercise of its rights under this clause 5.3.

5.4 Restrictions on use

- (a) The Customer agrees, except to the extent permitted by this Contract or applicable Law:
 - (i) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code;
 - (ii) not to sell, rent, lease, license, sublicense, display, time share or otherwise transfer the Software to, or permit the use of the Software by, any third party;
 - (iii) not to remove any copyright or proprietary notice from the Software; and
 - (iv) to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software,and to require its subcontractors and Personnel to whom the Software is made available by the Customer to also comply with the requirements of this clause.
- (b) The Customer agrees to maintain a log of the number and location of all originals and copies of the Software.

5.5 Audit of use

- (a) The Contractor may annually, or at such other times as agreed between the parties, audit the Customer's use of the Software, as it relates to this clause 5, by giving the Customer at least 28 days notice.
- (b) An audit under clause 5.5(a) must only be conducted while a representative of the Customer is present, unless agreed otherwise between the parties in writing.
- (c) Each party must bear its own costs of any audit under clause 5.5(a).

5.6 No transfer of ownership in Software

Nothing in this Contract transfers to the Customer title or ownership in the Software by any means without the Contractor's written consent.

6. Open Source Software

6.1 Grant of Licence

To the extent that the Software, or any part of the Software, is licensed under an open source software arrangement:

- (a) the terms of the Open Source Licence will apply to that Software; and
 - (b) the provisions of the Open Source Licence will prevail over the Agreed Terms in the event and to the extent of any inconsistency.
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7. Delivery of Software

7.1 Obligations of Contractor

The Contractor must deliver the Software to the Customer by the Delivery Date.

8. Provision of Deliverables

8.1 General Contractor warranties

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, interests and property necessary to lawfully provide the Deliverables; and
- (c) the media on which the Software is furnished will be, under normal use, free from defects in materials, design and workmanship.

8.2 Software warranties

The Contractor represents and warrants that:

- (a) during the Warranty Period:
 - (i) the Software will comply with the Specifications and Documentation;
 - (ii) the Software will be fit for the purpose as set out in the Specifications; and
 - (iii) the Software and Documentation will be complete, accurate and free from material faults in design;
- (b) the Customer's use of the Deliverables will not infringe the Intellectual Property Rights of any person;
- (c) the media on which the Software is furnished will be, under normal use, free from Harmful Code; and
- (d) if any Harmful Code is introduced into the Customer's systems or any Deliverables, the Contractor will use all reasonable efforts promptly to report that introduction to the Customer and, where that Harmful Code is introduced as a result of a breach of clause 8.2(c), it will:
 - (i) take all necessary action to eliminate the Harmful Code; and
 - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

8.3 Customer obligations

The Customer must regularly backup its data and use appropriate and up-to-date malicious code and virus detection software for preventing and detecting Harmful Code.

8.4 Remedy for breach of warranty

If someone claims, or the Customer reasonably believes that someone is likely to claim, that all or part of the Deliverables infringe their Intellectual Property Rights or breach their Moral Rights, the Contractor must, in addition to the indemnity under clause 12 and to any other rights that the Customer may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Customer to continue to use the affected Deliverables free of any claim or liability for infringement; or
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- (b) replace or modify the affected Deliverables so that the Deliverables or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected Deliverables.

8.5 Contractor not liable

The Contractor will not be liable under clause 8.3 if any defect in the Deliverables is caused by the Customer or third party using the Deliverable other than in accordance with the Specifications or the Documentation.

8.6 Subcontracting

The Contractor must:

- (a) not subcontract any aspect of the provision of the Deliverables without the prior written approval of the Customer, which will not be unreasonably withheld; and
- (b) not in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

8.7 Fair Work Principles

- (a) The Contractor must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles and the Fair Work Principles User Guide, including by:
 - (i) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - (ii) informing the Customer of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (iii) providing the Customer any information the Customer reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and
 - (iv) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
 - (b) Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
 - (c) If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Customer, the Customer shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
 - (d) As far as practicable, the Contractor must:
 - (i) not use a Subcontractor in relation to this Contract where the Subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
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- (ii) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under the sub-clauses contained in clause 9.7.

9. Documentation

9.1 Provision of Documentation

The Contractor must provide the Customer with up to date technical and operator Documentation containing sufficient information to enable the Customer to make full use of the Software at all times. The Documentation must be provided in accordance with the Scope of Licence and Contract Details.

9.2 Documentation requirements

The Documentation must at the time of delivery:

- (a) be current and accurate and consistent with the Specifications;
- (b) adequately explain key terms and symbols; and
- (c) unless specified otherwise in item 8 of the Contract Details, be in English.

Part 2 – General requirements

10. Payment

10.1 Obligation to pay charges

Subject to this clause and delivery of the Software, the Customer must pay to the Contractor the Licence Fees as set out in Schedule 4.

10.2 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Customer for the Licence Fees in accordance with the requirements specified in Schedule 4.

10.3 Due date for payment

Unless otherwise specified in Schedule 4, the Customer must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

10.3.1 Payment of simple interest

- (a) If the Contractor is a small business (ie. an enterprise that employs less than the full time equivalent of 20 persons) and the Contract is for a value of up to A\$1 million (GST inclusive), it is Commonwealth policy that Contracts for procurement of goods or services with a small business, must also provide that if full payment is not made by the Customer within 30 days [or any shorter period specified in the Contract] of receipt of a correctly rendered invoice, the Customer must pay simple interest on the unpaid amount ('Contract Amount') when the amount of interest exceeds \$10.
 - (b) If the Contractor is a small business, the Contract is for a value of up to A\$1 million (GST inclusive) and the Customer fails to pay to an amount payable by it under this Contract by the day it is due for payment and payable, the Customer agrees to pay simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due up to and including the day that payment is made in accordance with the formula set out in clause 10.3.1 (e). Interest is only payable by the Customer when the amount of interest exceeds \$10 and the Contractor has issued a correctly rendered invoice in relation to the interest.
 - (c) For the purpose of this clause 10.3.1
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- (d) (i) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day
- (ii) 'The day that payment is made' is the day when the Customer's system generates a payment request into the banking system for payment to the Contractor.
- (e) $SI = UA \times GIC \times D$, where:
- SI = simple interest amount;
- UA = the unpaid amount;
- GIC = General Interest Charge daily rate; and
- D = the number of days from the day after payment was due up to and including the day that payment is made.

10.4 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Customer to the Contractor under this Contract.

10.5 Expenses

Unless specified otherwise in Schedule 4, the Contractor must not charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Licence Fees. The Customer is under no obligation to pay any amount in excess of the Licence Fees.

11. GST

11.1 Interpretation

In this clause 11, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

11.2 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**).

11.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 11.2.

11.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

11.5 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 11.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier
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will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 11.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

11.6 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

12. Indemnity

12.1 Indemnity by the Contractor

The Contractor indemnifies the Customer and its subcontractors and Personnel against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with:

- (a) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its subcontractors or Personnel; or
- (b) an allegation that any Deliverable (including the use of any Deliverable by the Customer or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 12.1(b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

12.2 Customer's obligations

Where the Customer wishes to enforce an indemnity under clause 12.1 it must:

- (a) give written notice to the Contractor as soon as practical;
- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Contractor agreeing to comply at all times with clause 12.3, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, under clause 12.2(c), provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

12.3 Contractor's obligations

In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 12.2, the Contractor must:

- (a) comply with government policy and obligations, as if the Contractor were the Customer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
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- (b) keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to the Customer such information and documentation as are reasonably requested by the Customer, to enable the Customer to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

13. Liability

13.1 Relevant Law

The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

13.2 Limitation

- (a) The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 13.2(b), limited to the amount specified in item 9 of the Contract Details.
- (b) Unless specified otherwise in item 10 of the Contract Details, any limit on the liability of each party under clause 13.2(a) does not apply in relation to liability relating to:
 - (i) personal injury (including sickness and death);
 - (ii) loss, or damage to, tangible property;
 - (iii) an infringement of Intellectual Property Rights;
 - (iv) a breach of any obligation of confidentiality, security matter or privacy; or
 - (v) any breach of any statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.
- (c) Unless specified otherwise in item 11 of the Contract Details, the limitation of liability specified in clause 13.2(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

13.3 Review of limitation

The parties acknowledge that the limitation of liability specified in item 9 of the Contract Details will be subject to review in the event that the Contract is varied or extended.

13.4 Contribution

The liability of a party (**Party A**) for any Losses incurred by another party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Contract,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

14. Insurance

14.1 Obligation to maintain insurance

In connection with the provision of the Deliverables, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
 - (i) public liability;
 - (ii) either professional indemnity or errors and omissions;
 - (iii) product liability; and
 - (iv) workers' compensation as required by law; and
- (b) for seven years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions,

in the amounts specified in item 12 of the Contract Details.

14.2 Certificates of currency

The Contractor must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 14.

15. Confidentiality and privacy

15.1 Confidential Information not to be disclosed

- (a) Subject to clause 15.2, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

15.2 Exceptions to obligations

The obligations on the parties under this clause 15 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
 - (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
 - (c) is disclosed by the Customer to the responsible Minister;
 - (d) is disclosed by the Customer, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
 - (e) is shared by the Customer within the Customer's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;
 - (f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
 - (g) is in the public domain otherwise than due to a breach of this clause 15.
-

15.3 No reduction in privacy obligations

Nothing in this clause 15 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of personal information.

16. Dispute resolution

16.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 16 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 16.

16.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

16.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 16.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

16.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 16.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

16.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 16.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

16.6 Confidentiality

Any information or documents disclosed by a party under this clause 16:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

16.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 16. The parties to the Dispute must equally pay the costs of any mediator.

16.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 16.1 to 16.5. Clauses 16.6 and 16.7 survive termination of the dispute resolution process.

16.9 Breach of this clause

If a party to a Dispute breaches clauses 16.1 to 16.8, the other party does not have to comply with those clauses in relation to the Dispute.

17. Termination

17.1 Termination for convenience

- (a) The Customer may, at any time, by notice, terminate this Contract, including for a machinery of government change.
- (b) On receipt of a notice of termination the Contractor must take all available steps to minimise loss resulting from that termination.
- (c) If this Contract is terminated under clause 17.1, the Customer is liable only for:
 - (i) payments under clause 10 for Deliverables rendered before the effective date of termination; and
 - (ii) reasonable costs incurred by the Contractor and directly attributable to the termination.
- (d) The Customer is not liable to pay compensation under clause 17.1(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Licence Fees payable under this Contract.
- (e) The Contractor is not entitled to compensation for loss of prospective profits.

17.2 Termination by the Customer for default

- (a) Without limiting any other rights or remedies the Customer may have against the Contractor arising out of or in connection with this Contract, the Customer may terminate this Contract effective immediately by giving notice to the Contractor if:
 - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
 - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - (iii) an event specified in clause 17.2(c) happens to the Contractor.
 - (b) Without limitation, for the purposes of clause 17.2(a), a breach of each of the following constitutes a breach of a material provision:
 - (i) clause 5.1 (Grant of Licence);
 - (ii) clause 7 (Delivery of Software);
 - (iii) clause 8 (Provision of Deliverables);
 - (iv) clause 14 (Insurance); and
 - (v) clause 15 (Confidentiality and privacy).
 - (c) The Contractor must notify the Customer immediately if:
 - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
 - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Contractor ceases to carry on business;
 - (iv) the Contractor ceases to be able to pay its debts as they become due;
-

- (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

17.3 Termination by the Contractor for default

Without limiting any other rights or remedies the Contractor may have against the Customer arising out of or in connection with this Contract, the Contractor may terminate this Contract by giving at least 5 Business Days notice to the Customer if the Customer:

- (a) has not paid a correctly rendered invoice or has not notified the Contractor that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- (b) the Contractor has given the Customer:
 - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Customer at least 30 days to pay the invoice; and
 - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Customer at least 15 days to pay the invoice.

17.4 After termination

On termination of this Contract:

- (a) the Contractor must return all the Customer's Confidential Information to the Customer; and
- (b) if this Contract is terminated in accordance with clause 17.3, the Customer must:
 - (i) remove the Software from the Customer's system; and
 - (ii) at the Contractor's option, return to the Contractor or destroy, the Software and Documentation.

17.5 Survival

The following clauses survive the termination and expiry of this Contract:

- (a) Clause 12 (Indemnity);
- (b) Clause 13 (Liability);
- (c) Clause 14 (Insurance); and
- (d) Clause 15 (Confidentiality and privacy).

17.6 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

18. Notices and other communications

18.1 Service of notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 13 of the Contract Details, as varied by any Notice given by the recipient to the sender.

18.2 Effective on receipt

A Notice given in accordance with clause 18.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19. Miscellaneous

19.1 Ownership of Contract

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Customer.

19.2 Varying the Contract

This Contract may be varied only in writing signed by each party.

19.3 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

19.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

19.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Contract.

19.6 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

19.7 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

19.8 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

19.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

19.10 Severability

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

19.11 Waiver

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

19.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

19.13 Unforeseen events

A party is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only).

19.14 Governing law and jurisdiction

This Contract is governed by the law specified in item 14 of the Contract Details and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	Customer details	1.1	<i>[insert name of Customer]</i> <i>[insert street address]</i> <i>[insert ABN]</i>
2.	Contractor details	1.1	<i>[insert name of Contractor]</i> <i>[insert street address]</i> <i>[insert ABN]</i>
3.	Commencement Date	1.1 and 3.1	<i>[insert date Contract is to commence eg, dd/mm/yy]</i>
4.	Confidential information	1.1	<i>[insert details of specific Confidential Information]</i>
5.	Nominated Agency	1.1 and 4	<i>[insert name(s) of any Nominated Agencies. Otherwise insert 'not applicable']</i>
6.	Delivery Date	1.1	<i>[insert date by which the Software is to be delivered to the Customer]</i>
7.	Warranty Period	1.1 and 8.2	<i>[if Warranty Period is to differ from that set out in clause 1.1, state alternative period here. Otherwise insert 'not applicable']</i>
8.	Language of Documentation	9.2	<i>[if the Documentation is to be in a language other than English, specify the required language here. Otherwise insert 'not applicable']</i>
9.	Limitation of liability – cap	13.2(a)	<i>[specify the amount to which liability is to be limited]</i>
10.	Limitation of liability – limitation on types of liability	13.2(b)	<i>[if the parties are to have limited liability for any of the types of liability described in clause 13.2(b), those types of liability should be specified here]</i>
11.	Limitation of liability – aggregate or per occurrence	13.2(c)	<i>[if the limitation of liability is not to apply in respect of each single occurrence or a series of related occurrences arising from a single cause then specify the basis on which it is to apply e.g., in aggregate over the Contract Period]</i>
12.	Insurance quantum	14.1	Public liability insurance for an insured amount of [\$ <i>insert amount</i>] per occurrence and not less than [\$ <i>insert amount</i>] in aggregate

Item number	Description	Clause Reference	Details
			<p>Either professional indemnity or errors and omissions insurance for an insured amount of [\$ <i>insert amount</i>] per occurrence and not less than [\$ <i>insert amount</i>] in aggregate.</p> <p>Product liability for an insured amount of [\$ <i>insert amount</i>] per occurrence and not less than [\$ <i>insert amount</i>] in aggregate.</p> <p>Workers compensation as required by law</p>
13.	Address for Notices	18.1	<p>Customer:</p> <p><i>[insert name and/or position of person to receive notices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p><i>[insert facsimile number]</i></p> <p>Contractor:</p> <p><i>[insert name and/or position of person to receive notices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p><i>[insert facsimile number]</i></p>
14.	Governing Law	19.14	<i>[insert the law which is to govern the Contract eg Australian Capital Territory]</i>

Schedule 2 - Scope of Licence (clause 5.1)

Note: If more than one type of software is being acquired in the one transaction, complete this Schedule 2 for each type of software

Note: This schedule is structured on the assumption that items 3 to 10 apply to all software and documents specified in items 1 and 2. If this is not the case then you should complete this Schedule for each Software Product.

Item number	Description	Clause Reference	Details			
			Name of Software	Version	Format	Copies
1.	Software	1.1 and 5.1				
2.	Documentation	1.1, 5.1 and 9				
3.	Customer's Existing System	1.1 and 5.1	<p>Is the use of the Software limited to specific equipment?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If YES:</p> <p>The Software must only be installed and used on:</p> <p><i>specify the equipment upon which the Software is to be installed and/or used</i></p>			
4.	Number of users	5.1	<p>Is the use of the Software limited to specific number of users?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If YES:</p> <p><i>specify the number of users that can use the Software</i></p> <p>Is the Software able to be used by the users concurrently?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p>			
5.	Site	5.1	<p>Is the use of the Software limited to a specific location?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If YES:</p> <p><i>specify the location(s) at which the Software may be used</i></p>			

Item number	Description	Clause Reference	Details
6.	Other Requirements	5.1	<i>[specify any other requirements applicable to the Scope of the Licence – eg. use across network]</i>
7.	Customer's Contractors	5.2	<p>Is the use of the Software and Documentation able to be used by the Customer's contractors?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If YES:</p> <p>In addition to the conditions specified in clause 5.2 the Customer's contractor must:</p> <p><i>[specify the any restrictions on such use in addition to those specified in clause 5.2]</i></p>
8.	Initial Contract Period	1.1, 3.1	<i>[insert the initial period of time for which the Licence will continue eg, 'perpetual' or xx years]</i>
9.	Option Period	3.2	<p><i>[insert Option Period eg 2 periods each being 1 year in duration.</i></p> <p><i>Otherwise, or if the Initial Contract Period is 'perpetual', insert 'not applicable']</i></p>
10.	Option Notice Period	3.2	<p><i>[if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days).</i></p> <p><i>Otherwise, or if the Initial Contract Period is 'perpetual', insert 'not applicable']</i></p>

Schedule 3 - Specifications

1. Software Specifications (clauses 1.1, 8 and 9)

Note: Insert Specifications for the Software (attach additional pages if required)

Schedule 4 – Licence Fees and Payment

Note: Insert details of fees for the Software and when each item is payable. All Licence Fees are GST exclusive. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements

1. Licence Fees (clauses 1.1 and 10)

One Off Fixed Fee

Note: for example if a perpetual licence is being acquired

Software	Fee

Annual Licence Fees

Note: Insert annual fixed fee for Licences

	Licence Fees			Total
Software	Year 1	Year 2	Year 3	
[insert name of software]				
GST component				
Annual Total				
TOTAL				

2. Invoicing requirements (clause 10.2)

Note: Specify invoicing requirements here

3. Payment period (clause 10.3)

Note: Specify an alternative payment period if the 30 day period contemplated in clause 10.3 is not suitable

4. Expenses (clause 10.5)

Note: Specify here details of any expenses which may be charged to the Customer

Schedule 5 – Agency Order Form

The Contractor has offered under clause 4 of the Contract specified at item 1 below to provide the Deliverables to Nominated Agencies. The Nominated Agency specified in item 3 below accepts this offer on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

1.	Contract No. and description	
2.	Names of Parties to the Contract	
3.	Customer	<i>[Insert Nominated Agency name]</i> A reference to <i>[insert name of the contracting Agency]</i> or the Customer in the Contract will be taken as a reference to <i>[the Nominated Agency]</i>
4.	Commencement Date	
5.	Customer's details for Notices	Postal address: Physical address: Facsimile number: Attention: <i>[insert name and title of contact details of person to whom correspondence should be addressed]</i>
6.	Deliverables required (including any changes to the Scope of Licence)	<i>[attach additional pages if required]</i>

Signed for and on behalf of the *[insert name of Customer]* by its duly authorised delegate in the presence of

Signature of witness

Name of witness (print)



Signature of delegate

Name of delegate (print)



Position of delegate (print)

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by *[insert name of company]* in
accordance with Section 127 of the
Corporations Act 2001 in the presence of

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

Signed by *[insert contracting party name]*
in the presence of

Signature of witness



Signature of Contractor



Name of witness (print)

Schedule 6 – Open Source Licence

Note: Insert here the provisions of the Open Source Licence which will govern the use of the Open source software provided under this Contract (if any). Note that the terms set out in this schedule will prevail over the Agreed Terms to the extent of any inconsistency.

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the **[insert name of Customer]** by its duly authorised delegate in the presence of

_____ Signature of witness	←	_____ Signature of delegate	←
_____ Name of witness (print)		_____ Name of delegate (print)	
		_____ Position of delegate (print)	

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by **[insert name of company]** in accordance with Section 127 of the Corporations Act 2001 in the presence of

_____ Signature of director	←	_____ Signature of director/company secretary (Please delete as applicable)	←
_____ Name of director (print)		_____ Name of director/company secretary (print)	

Signed by **[insert contracting party name]** in the presence of

_____ Signature of witness	←	_____ Signature of Contractor	←
_____ Name of witness (print)			
