

SCHEDULE S17
NOTICE TO REMEDY

TO: IBM Australia Ltd ABN 79 000 024 733, GPO Box 435 Brisbane QLD 4001 ("the Contractor")
FROM: the State of Queensland, SSRO Santos House, Level 8, 60 Edward Street, Brisbane QLD 4000 ("the Customer")
DATE:
[Insert date of Notice]

The Customer hereby gives Notice that the Contractor is in breach of the Customer Contract between the Customer and the Contractor dated 5 December 2007 for the appointment of a prime contractor for the Shared Service Solutions Program for the Queensland Government, the particulars of which breach or breaches are set out in the Schedule attached to this Notice.

This Notice to Remedy is issued to the Contractor in accordance with sub-clause 16.3 of Part 2 of the GITC Framework.

The Contractor is required to remedy the breach or breaches specified in the attached Schedule within 10 days.

Without prejudice to any other rights or remedies which the Customer may have, if the Contractor does not remedy the breach or breaches within the specified period, the Customer has the right under sub-clause 16.6 of Part 2 of the GITC Framework, to issue to the Contractor a Notice to Show Cause.

EXECUTION BY CUSTOMER

Signed for and on behalf of the State of Queensland)
.....)
(inset name of Customer))
by)
.....)
(inset name of Customer's representative)) (signature of Customer's representative)
this day of March 2009)
In the presence of:)
.....)
(inset name of witness)) (signature of witness)

DETAILS OF BREACHES

1. Delay in delivering and deploying Solution

Under SOW-8 agreed under the Customer Contract, the Contractor was required to deliver a Solution for Go-Live on 18 November 2008. The Contractor failed to deliver a Solution that meets the requirements of SOW-8 by that date. Time is of the essence for delivery under the Customer Contract (see GITC Part 2 clause 1.3, General Order C1.19). While the Customer has been working with the Contractor on a *without prejudice* basis to give the Contractor a reasonable opportunity to rectify this delay, the Contractor has still failed to deliver the Solution under SOW-8. The Customer now requires the Contractor to deliver a Solution that meets the Customer's requirements within a further [] days of this Notice. Time will be of the essence in any failure by the Contractor to meet this timeframe for rectification.

Background

SOW-8 (Lattice replacement Design, Implement and Deploy) requires the Contractor to develop and implement a Lattice interim solution for Queensland Health ("**Solution**").

According to SOW-8 of the Customer Contract, the original Go-Live date for the Solution was 30 August 2008.

On 27 June 2008, SOW-8 and in particular the Go-Live date was varied to 18 November 2008 (pursuant to Change Request CR 0060). At this time, the Customer agreed to pay the Contractor an additional \$1,887,940.

On 8 August 2008, the Contractor indicated in a Notice of Delay (issued to the Customer pursuant to "step 1" of Schedule 24 of the Customer Contract) that the Go-Live date would be delayed until March or April 2009. In response, in a letter dated 2 September 2009, the Customer refuted a number of assertions made by the Contractor in that notice, including any responsibility of the Customer for the delay. The Contractor did not continue with any additional steps as specified in Schedule 24 of the Customer Contract, in relation to that Notice of Delay. No other Notice of Delay has been issued by the Contractor pursuant to Schedule 24 of the Customer Contract.

The Customer had discussions with the Contractor on a *without prejudice* basis to seek to obtain comfort that the Contractor could deliver a Solution as required by SOW-8 and the Customer Contract, within an agreed period. On 18 August 2008, the Contractor proposed a Go-Live date of late June 2009.

The Customer and Contractor agreed to vary the Go-Live date to 17 June 2009 upon certain conditions precedent being met by the Contractor by 30 November 2008. This agreement was contained in Change Request CR 129, which was signed on 12 November 2008. However CR 129 would only come into effect upon the Contractor meeting the condition precedent (to demonstrate its achievement of certain test criteria) by 30 November 2008. The Contractor sought to extend the condition precedent date to 5 December 2008 (pursuant to CR 174), and this extension request was permitted by the Customer. The

Contractor again sought to extend the condition precedent date to 11 December 2008 (pursuant to CR 177), and this extension request was permitted by the Customer. The Contractor again sought to extend the condition precedent date to 23 December 2008 (pursuant to CR 179), and this extension request was again permitted by the Customer. Ultimately, the Contractor failed to meet the condition precedent by 23 December 2008 despite these numerous extensions, and CR 129, CR 174, CR 177 and CR 179 (and the proposed Go-Live date of 17 June 2009) did not come into effect.

On 7 January 2009, the Contractor indicated that there was an issue with the Contractor's currently-built HR-Finance integration solution, which could cause a further delay to the Solution of 10 to 12 weeks.

Prime Contractor

The Contractor is the Prime Contractor under the Customer Contract. The Contractor conducted a due diligence process as part of the competitive tender process prior to the awarding of the Customer Contract. The Contractor recommended the solution, the architecture for the solution and the project methodology. The Contractor agreed to be pro-active, and raise issues with the Customer where it was necessary to do so, and manage the overall project. The Contractor was responsible for all resourcing, and the Customer is not required to provide any personnel resources unless the Customer Contract explicitly stated that the Customer was required to do so.

The Contractor was required under SOW-8 to specify the business requirements for the Solution, and to prepare the functional specification and technical specification to deliver a Solution which meets those business requirements. The Customer's sign off of the QHIC Solution Design Document version 0.8, the QHIC SAP to DSS Functional Specification and CorpTech HR-FI Solution Design Documents for QHIC Baseline provided on 3 October 2008 (and the revision to QHIC Solution Design Document version 0.9 provided on 6 October 2008) clearly identified that there were outstanding issues and that sign off was given on the basis that these issues will be resolved and the product delivered would be tested to ensure it meets Queensland Health's business requirements. The Contractor cannot rely on its failure to resolve these issues, or to adequately detail the Solution requirements, as a reason for its failure to deliver a Solution to meet the Customer's requirements in accordance with SOW-8.

Notice of Breach

The Go-Live date for the Solution is as set out in SOW-8, as varied by any valid Change Request. The only valid Change Request affecting the Go-Live Date is CR 0060.

Under the Customer Contract (as varied) there is an obligation on the Contractor to develop and implement the Solution so that it would "Go-Live" by 18 November 2008. As the Solution is yet to "Go-Live", the Contractor has clearly failed to meet this obligation and is therefore in breach of the Customer Contract. Given the time that has elapsed since the proposed Go-Live date, this constitutes a serious breach.

In addition, the Contractor has not complied with the delay notification procedure set out in Schedule 24 of the Customer Contract. The Contractor has not issued any notices as specified in clause 1.3 of Schedule 24. Accordingly, as set out in clause 1.10 of Schedule 24, the Contractor must perform its obligations as required by the Timeline in Schedule 23.

Action to remedy

The Customer requires the Contractor to remedy the breach in respect of delay of the "Go-Live" date for the Solution, within 30 days from the date of this notice.

2. Failure to provide other Deliverables on time

Under paragraph 4 and 5 of SOW-8, the Contractor is required to provide Deliverables by certain dates, and have those Deliverables accepted by the Customer. The cost of providing these Deliverables are included in the cost of SOW-8.

The Contractor has failed to provide complete and finalised Deliverables in accordance with the timeframes specified in paragraph 5 of SOW-8 for the following:

- functional specifications for reports, forms, enhancements and interfaces (originally due 14 April 2008)
- Solution Blueprint (originally due 19 August 2008)
- as built solution configuration specification (originally due 25 July 2008)
- test scripts, technical specifications for reports, forms, enhancements and interfaces (originally due 20 August 2008)

While the Customer has been working with the Contractor on a *without prejudice* basis to rectify the breach so that the Contractor can provide these Deliverables in final form, the Contractor has consistently failed to provide Deliverables by the required delivery date under SOW-8, or any other extended timeframe granted by the Customer.

Notice of Breach

Under the Customer Contract, there is an obligation on the Contractor to provide the Deliverables set out in paragraph 5 of SOW-8 by the dates which have now passed. As a number of Deliverables are yet to be provided in final form so as to be able to be signed-off by the Customer in accordance with the Acceptance Criteria, the Contractor has clearly failed to meet this obligation and is therefore in breach of the Customer Contract. Given the number of Deliverables that are outstanding, and the significant period of time which has elapsed since these Deliverables were originally due, such failure constitutes a serious breach.

Action to remedy

The Customer now requires the Contractor to deliver the following outstanding Deliverables which conform to the Acceptance Criteria, within a further 5 days of this Notice:

- final and complete functional specifications for the full Solution
- final and complete Solution Blueprint
- test scripts and technical specifications

[insert any other Deliverables required]

Time will be of the essence in any failure by the Contractor to meet this timeframe for rectification.

3. Documentation does not comply with Contract Specifications

Under the Customer Contract, the Contractor as prime contractor has primary responsibility for managing the Solution project. As part of this overall responsibility, the Contractor has specific accountabilities under clauses 3.5.3 and 3.5.4 of the Scope Definition document (in relation to providing scope documentation and detailed design) and also under clause 2.3 of SOW-8.

The Contractor's accountabilities include scoping the Solution, documenting the Solution Blueprint, and documenting the Customer's business requirements. The functional and technical specifications to be developed by the Contractor need to address the Customer's business requirements and ensure they are met. Clause 7.1 of SOW-8 also states that the "Scope" phase to be performed by the Contractor will deliver "a detailed scope", "a detailed statement of scope" and "a comprehensive solution blueprint". This wording clearly shows that the Contractor is required to include a significant level of detail in these documents.

A key purpose behind the Contractor scoping and documenting the Customer's business requirements is so that the Customer can confirm that the Solution to be delivered has sufficient functionality to replace the existing Lattice system. These documents are needed prior to the Contractor commencing detailed implementation work. By failing to accurately document the Customer's business requirements in sufficient detail, the scope and accuracy of the functionality and technical specifications of the Solution have been adversely effected. This will mean that the Solution to be delivered will likely not meet the Customer's business requirements as required by the Customer Contract, causing further breaches.

Under GITC, Documentation must be of a reasonable standard in terms of its presentation, accuracy and scope. By failing to provide sufficient detail in the documentation referred to above in relation to the scope of the Solution and Customer's business requirements, the Contractor fails to meet this requirement.

Notice of Breach

The Contractor has clearly failed to provide documentation relating to the Solution scope and specifications which is accurate and detailed, and which would allow the Contractor to deliver a Solution which met the Customer's business requirements. This constitutes a breach of the Customer Contract, and in particular a breach of the Contractor's obligations under SOW-8.

Action to remedy

The Customer now requires the Contractor to redeliver the following documentation for the Customer's approval and sign-off. The documentation must provide sufficient detail in terms of scope of the design, implementation and deployment of the full Solution.

- Customer's business requirements
- functional specifications
- technical specifications

These documents must be delivered within 5 days of this Notice, at no further cost to the Customer.

4. Failure to follow proper processes

Under paragraph 2.2.3 of SOW-8 issued under the Customer Contract, the Contractor was required to deliver a Solution which reflects the Customer's minimum requirements. Under clause 7.1 of SOW-8, the Contractor has agreed to deliver Services using the Contractor's Ascendant SAP Methodology ("Methodology"). Under clause 9.4.1(e) of Part 2 of GITC and clause C1.37 of the General Order, the Contractor is required to have in place and comply with quality management systems (conforming to ISO 9000:2000 or equivalent) in the course of implementing the Solution and performing the Services. Under clause 7.2 of the Customer Contract, the Customer is required to comply with good industry practice.

The Contractor has repeatedly failed to comply with all of these obligations, as evidenced through the following behaviours:

- The Contractor has not complied with the Ascendant SAP Methodology.
- The Contractor was to document the Customer's business requirements, to be finalised by the Contractor and signed off by the Customer, prior to the Solution being built. As at the date of this Notice, the Contractor has failed to provide a final version of business requirements in sufficient detail and covering the full scope of the Solution. Failure to provide this document has contributed to further delays under SOW-8, affecting delivery of other Deliverables and the overall Solution.
- Under the Methodology and SOW-8, the Contractor agreed to provide the Customer with the following documentation:
 - a Business Blueprint
 - functional specifications
 - technical specifications (including the As Built Solution Configuration specification); and
 - training materials.These documents were to be provided to the Customer for acceptance and sign-off in accordance with the timetable in SOW-8. While some of these documents have been provided to the Customer in draft, the Customer has not yet received a complete and finalised version of these documents reflecting the full scope of the Solution. To the extent the Solution has been built, it is has been built based on incomplete specifications.
- Good industry practice and compliance with quality management systems requires the Contractor, at a minimum, to comply with the terms of the Customer Contract, attempt to limit the Customer's costs where possible, and to avoid delays. Significant delays have been caused to deployment of the Solution and delivery of the Deliverables. These delays have primarily been caused by the Contractor. The Contractor has also attempted to increase the Customer's costs by claiming that certain issues are out of scope of SOW-8. However, the deficiency or uncertainty regarding scope only arises due to a further failure of the Contractor to comply with the Customer Contract, as the Contractor has failed to provide critical design documents in accordance with set timeframes and in accordance with the level of detail required to effectively deliver the Solution which complies with SOW-8. The proposed seven month delay to deployment of the Solution, the inadequate documentation relating to the Solution and the increasing costs to the Customer, whether considered alone or cumulatively, demonstrate that the Contractor has failed to follow a quality

management system as specified in the General Order, and has failed to meet the level of good industry practice in performing the Services.

- As the Customer Contract requires the development of business requirements and functional specifications, the Contractor must document those business requirements and functional specifications in sufficient detail to comply with quality management systems, and enable a Solution to be delivered that meets the Customer's business requirements (clause 2.2.3 of SOW-8). Issues now being raised by the Contractor as "out of scope", are business requirements that are either consistent with, or identified as issues requiring further more detailed analysis in, the draft Blueprint and functional design documentation. Had the Contractor followed good industry practice and appropriate quality management systems, there would not be any argument or uncertainty as to what is within and outside of scope. The fact that issues are arising now, and being claimed by the Contractor to be "out of scope" clearly indicates that the business requirements and functional specifications developed by the Contractor were not sufficiently detailed to fully describe the Customer's requirements.
- Good industry practice would also require the Contractor to finalise a design with sufficient accuracy prior to building the Solution. The Contractor has not provided to the Customer business requirements or technical or functional specifications which accurately reflect the Solution that the Customer requires, and is aware that the Customer has not signed off on these specifications, yet the Contractor has proceeded to build the Solution based on these incomplete documents. It is standard industry practice to prepare design documentation first, and to only commence building work once it has been confirmed in writing that all relevant parties are satisfied with the design documentation, and it accurately reflects the desired Solution.
- The Contractor is now claiming that certain items required by the Customer are "out of scope" business requirements, and therefore must be addressed by a Change Request, at the Customer's additional cost. Such claims cannot be substantiated, as the relevant issues are either consistent with the Blueprint and functional design documentation, or are identified as issues requiring further more detailed analysis in these documents (as discussed above). Where the issues are consistent with the Blueprint and functional design documentation, they are clearly not "out of scope", as they are expressly contemplated by the documentation to be "within scope".

Notice of Breach

The Contractor has on numerous occasions failed to follow the Methodology and is in breach of clause 7.1 of SOW-8. In particular the Contractor has failed to provide a Business Blueprint, functional specifications, technical specifications or training materials to the Customer (as well as other documents referred to the Methodology) The Contractor has also failed to follow and comply with a quality management system in performing the Services, and is in breach of clause 9.4.1(e) of Part 2 of GITC. The standards of the Contractor's performance are not equivalent to good industry practice, in breach of clause 7.2 of the Customer Contract. These breaches have caused significant delay to the project and have increased the Customer's exposure to additional costs.

Action to remedy

The Customer requires the Contractor to remedy such breaches within 30 days of this Notice, at no additional cost to the Customer, by:

- modifying its approach to performance of the Services, so that such new approach complies with the Customer Contract and any representations made by the Contractor to the Customer, and providing satisfactory evidence to the Customer that this has been done;
- rectifying any previous failure to perform the Services in accordance with the Customer Contract by re-performing Services and reissuing Deliverables having followed the required processes, so that they meet the requirements of the Customer Contract; and
- finalising and providing to the Customer any outstanding documents which are crucial to delivery and deployment of the Solution, as required under the Methodology.

Time will be of the essence in any failure by the Contractor to meet this timeframe for rectification.

5. Other breaches

In addition to the breaches outlined above, the Contractor is also in breach of the following obligations under the Customer Contract:

Failure to follow delay schedule

Under Schedule 24 of the Customer Contract, the Contractor must promptly notify the Customer upon anticipating that a delay may occur in achieving Milestones or any other obligation or date specified in the Customer Contract or a SOW. Schedule 24 sets out the procedure which the Contractor must follow in respect of such notification. Under this process, the Contractor must provide certain information in relation to a delay.

The Contractor has failed to meet numerous Milestones and dates set out in SOW-8. While the Contractor has provided one notice to the Customer of expected delays, the Contractor has failed to follow the specific process in Schedule 24, in that the Contractor has not provided additional information required by that Schedule (such as intended courses of action to minimise the delay).

The Contractor has repeatedly failed to comply with its obligations under Schedule 24.

Removal of Specified Personnel

Under GITC Part 2 clause 10.2.4, the Contractor must not remove or prevent Specified Personnel from performing the Customer Contract, unless instructed to do so by the Customer. Under GITC Part 2 clause 10.2.6, the Contractor must immediately advise the Customer in writing as soon as it becomes aware of a member of Specified Personnel being unable to undertake work assigned to them, where the inability to undertake work has an impact on the supply of a Deliverable.

The Contractor has breached at least one of the above obligations in each of the following circumstances:

- 1 The Contractor removed Paul Surprenant (Solution Design Authority - IBM Lead) from performing services under SOW-8. Paul Surprenant is listed in Schedule 29 of the General Order as Key Contractor Personnel (and therefore Specified Personnel). The Contractor did not seek the Customer's consent, or provide the Customer with prior written notice, in relation to Paul Surprenant's removal from performing services under SOW-8.
- 2 The Contractor removed Chris Prebble (Project Manager) from performing services under SOW-8. [Chris Prebble is listed in SOW-8 as Key Contractor Personnel (and therefore Specified Personnel)] [There is no specific reference to Chris being Specified Personnel either in General Order or SOW8. Corp Tech to confirm whether he is actually Specified Personnel?]. The Contractor did not seek the Customer's consent, or provide the Customer with prior written notice, in relation to Chris Prebble's removal from performing Services under SOW-8.
- 3 The Contractor has generally engaged in a course of conduct of allowing Specified Personnel to cease performing Services under SOW-8 without providing prior written notice of the Customer or seeking the Customer's consent (as appropriate). [confirm]

As set out above (in the "Delay" section of this Notice), supply of Deliverables have been delayed, partially due to the inability of Specified Personnel to undertake work. [confirm]

Action to remedy

The Customer now requires the Contractor to deliver a document which details:

- Specified Personnel who are no longer performing Services under SOW-8, and the date they ceased performing such Services;
- reasons why the Specified Personnel referred to above are no longer performing Services under SOW-8; and
- Contractor's key personnel who are currently performing Services under SOW-8 and should be declared Specified Personnel for the purposes of SOW-8,

within 7 days of this Notice.

The Customer requires that all Specified Personnel provide the Services within 3 days of this Notice.

Failure to provide Approved Parties Information and Statutory Declaration

Under GITC Schedule 40, an Approved Party cannot commence work under the Customer Contract unless they have completed an Approved Parties Information and Statutory Declaration in accordance with GITC Part 4 Schedule 9.

The Customer has not received or sighted copies of completed Information and Statutory Declarations in relation to a number of Approved Parties and accordingly the Contractor is in breach of GITC Schedule 40.

The Customer now requires the Contractor to deliver all outstanding Approved Parties Information and Statutory Declarations within 7 days of this Notice.