



QUEENSLAND HEALTH PAYROLL SYSTEM

COMMISSION OF INQUIRY


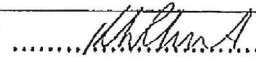
Statement of Witness

<i>Name of Witness</i>	Philip James Hood
<i>Date of Birth</i>	
<i>Address and contact details</i>	Known to Crown Law
<i>Occupation</i>	Executive Director , Payroll Portfolio, Qld Health
<i>Officer conducting interview</i>	Toby Corsbie
<i>Date of interview</i>	16 April 2013

I, **PHILIP JAMES HOOD** of an address known to Crown Law, state as follows:-

**BACKGROUND**



I have previously provided a statement to the Health Payroll System Commission of Inquiry (the Commission) on 4 March 2013. I have been further asked by the Commission to clarify my role in relation to the support of LATTICE in Queensland Government, management of the IBM contract, change requests, User Acceptance Testing and the implementation and 'go live' phase of the Queensland Health Implementation of Continuity (QHIC) QH Payroll project.

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- 2 I am currently the Executive Director, Payroll Portfolio, Queensland Health. I was appointed to that role on 1 July 2012.
- 3 Prior to commencing in my current role I was employed with CorpTech and Queensland Shared Services (QSS) in various roles between 1 July 2003 and 30 June 2012.
- 4 After being appointed Deputy Executive Director of CorpTech in September 2005 and until 30 June 2012 my roles in CorpTech and QSS involved leading the "business as usual" operation of the finance and payroll solutions used across the sector.
- 5 During that time my position title changed; however my duties remained largely consistent.
- 6 During 2007 and 2008 I acted in the role of Executive Director, CorpTech three times. These periods were: 19 November 2007 to 18 January 2008, 30 June 2008 to 4 July 2008 and 8 December 2008 to 2 January 2009.

**LATTICE**

- 7 I have previously given evidence about my negotiations and correspondence with Talent2, the LATTICE vendor. My statement to the Commission dated 4 March 2013 contains annexures relevant to this matter.
- 8 I have been asked about support and operation of the LATTICE payroll solution in the Queensland Government. LATTICE was the payroll solution used by Queensland Health progressively from 1996 until its replacement in March 2010. The software is currently used as the payroll solution for the Department of Community Safety. Two instances of LATTICE are operated by QSS supporting the former Department of

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Corrective Services (DCS) and the Department of Emergency Services (DES) now part of the Department of Community Safety.

- 9 With the establishment of CorpTech on 1 July 2003, responsibility for the technical operation of the DCS and DES LATTICE solutions transferred from those agencies to CorpTech. I am advised that five (5) staff transitioned from those agencies to CorpTech at that time to support the two LATTICE environments.
- 10 In March 2006 responsibility for the technical operation of Queensland Health's rostering and payroll solutions, ESP and LATTICE transferred from Queensland Health to CorpTech, Queensland Treasury. Approximately 31 staff transitioned from the Queensland Health, Human Resources Management Information Systems Unit (HRMISU) to CorpTech to support ESP and LATTICE.
- 11 The technical environment and related infrastructure for the Queensland Health LATTICE environment was located at and managed by Mincom under a services contract.
- 12 During the period 2005-2007 the Shared Services Solutions (SSS) program was implementing the whole-of-Government 'standard offering' of SAP Finance and Human Resources solutions on SAP ECC5. That solution (ECC5) is still in use for a number of agencies.
- 13 Queensland Health's finance and materials management solution (FAMMIS) is SAP version 4.6B. That was the version transitioned to CorpTech in 2003 and is still currently in use.

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- 14 In January 2007 all support for the three LATTICE environments was centralised in one group, HRMISU, CorpTech. There was one team supporting LATTICE until April 2011 when the DCS/DES component was moved to another group within CorpTech in preparation for the transfer of Queensland Health's finance and payroll solutions back to Queensland Health. Although under separate management structures, the two groups worked closely together.
- 15 In January 2007 Talent2 formally advised CorpTech that it would not support LATTICE after 30 June 2008. CorpTech unsuccessfully sought to have support for LATTICE extended on a number of occasions.
- 16 I was involved in negotiations with Talent2 to have support extended.
- 17 I facilitated a meeting between CorpTech and Talent2 on 8 March 2007 to discuss extended support. (Annexure A – Talent2 Meeting – Outcomes Statements)
- 18 I did travel to Melbourne to meet with Mr John Rawlinson, CEO of Talent2 on 27 July 2007. The purpose of that meeting was to negotiate extended vendor support for LATTICE for the period 1 July 2008 to 30 June 2011. No agreement was reached at that meeting. However, I left Melbourne with a handshake which gave me the impression that Talent2 would make an offer extending vendor support for LATTICE.
- 19 In a letter Mr Rawlinson sent on 6 August 2007 Talent2 advised that they would not be extending support. In that letter Mr Rawlinson states "since our meeting on Friday 27 July 2007, we have revisited this matter and reviewed the risk to determine if we can provide further Consisto HRIS support for the period 1 July to 30 June 2011. Regretfully, I need to advise that we will not be proceeding further with this option."


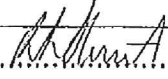
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20 Talent2 did subsequently extend support until 30 September 2008.

**LATTICE Support Post June 2008 (PJ30) project**



- 21 To mitigate the risks associated with the cessation of vendor support, CorpTech commenced the LATTICE Support Post June 2008 (PJ30) project in June 2007 to establish the capability to support in-house the three LATTICE environments, including the Queensland Health instance following cessation of vendor support.
- 22 The scope of the PJ30 project included development of a support model, support procedures, hardware development environment, software development environment, recruitment of resources, knowledge transfer and related training.
- 23 A Project Steering Committee was established of which I was the chair. Comprising representatives from CorpTech, Queensland Health, DCS, DES and PartnerOne (the shared service provider to DCS and DES) the steering committee governed the project. The role of the steering committee was to oversee the effective integration of the LATTICE support and maintenance functions into CorpTech Service Management to ensure the payroll and related services to Queensland Health, the Department of Emergency Services and Queensland Corrective Services were not compromised. (Annexure B – LATTICE Support post June 30 (PJ30) Steering Committee Operating Charter v1.1)
- 24 The project established a technical environment to host the LATTICE development software and purchased additional Progress database licences for the development environment.

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- 25 The source code for the LATTICE application was obtained from Escrow as had been agreed with Talent2 and installed into the development environment.
- 26 The software used to manage version control for the LATTICE solutions was purchased from Talent2 and installed.
- 27 Knowledge transfer and training sessions were provided by Talent2 to CorpTech staff. I do not recall who from Talent2 provided the training.
- 28 CorpTech did recruit two experienced LATTICE resources, one from Talent2 through an open merit process in February 2009 and one seconded in August 2007 from another government agency who I am advised was also a former Talent2 employee.
- 29 The project successfully established the technical capability within CorpTech to enable CorpTech to support the LATTICE development environment.
- 30 CorpTech already had the skills to support the three LATTICE production environments.
- 31 CorpTech assumed full responsibility for the development and production support of the three LATTICE instances on 1 October 2008.
- 32 The DCS and QCS LATTICE instances continue to be supported by QSS.

**LATTICE at the time of go live of the new Queensland Health payroll solution**

- 33 I have been asked what I would have thought if at 'go live' of the new Queensland Health payroll solution someone asked me what the issues would have been for continued support of LATTICE for a 3 month, 6 month and 12 month period after 'go live'.

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- 34 The original QHIC project was to see the Queensland Health LATTICE payroll replaced by a new payroll solution by July 2008. This did not eventuate. At the time of go live in March 2010, the Queensland Health LATTICE payroll solution had been out of vendor support for 18 months. By necessity, CorpTech would have continued to support the Queensland Health instance of LATTICE had the new solution not gone live in March 2010. There would have been no option but to continue that support as LATTICE would have remained as the Queensland Health payroll solution.
- 35 My primary concern regarding continued operation of the Queensland Health LATTICE payroll solution would have remained – that CorpTech was operating a very complex and non-vendor supported payroll solution. While CorpTech had significant capability to support LATTICE, it did not build the system and did not have the same level of experience as the vendor. There was always a risk that a problem might arise that would significantly impact LATTICE and that CorpTech might not be able to resolve the issue. Depending on the type of issue, the impact could have impacted the employees of the agencies using LATTICE.
- 36 CorpTech had with Queensland Health's agreement implemented a minimal change policy whereby only critical changes could be made to the Queensland Health LATTICE solution. The rationale for this was that the more changes that were introduced to the solution the greater the risk to the stability of the solution. Talent2 also sought to define client Escrow entitlements and restrictions in its 'Right to Use Source Code' position paper. (Annexure C – Talent 2 'Right to Use Source Code' Position Paper)
- 37 The longer LATTICE was supported after the cessation of vendor support, the more difficult it would become to support, and the greater the risk to those agencies being

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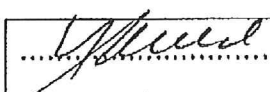
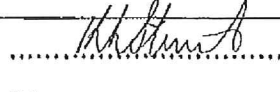


paid from the LATTICE solutions. Each year changes are made by the Australian Taxation Office which by necessity must be applied to payroll solutions. These legislative changes would normally be made by the vendor as part of support and maintenance provisions. However as the LATTICE solutions were not vendor supported this became the responsibility of CorpTech on 1 October 2008. My concerns would have been that CorpTech needed to develop and apply those changes in house and manage the associated risks.

- 38 Although QSS continues to support the DCS and QCS LATTICE instances, these are in my view considerably smaller, less complicated and are used differently to the Queensland Health LATTICE instance.
- 39 I do not recall being asked at the time of go live of the Queensland Health payroll solution what the status of vendor support was.


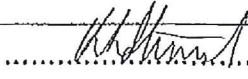
#### CONTRACT MANAGEMENT

- 40 I have been asked about my involvement in the management of the IBM contract.
- 41 My role in CorpTech did not specifically include responsibility for the management of the IBM contract or the contracts group that managed the IBM and other contracts.
- 42 I have been asked if there was a tense environment between IBM and CorpTech. My response is that at times there was a degree of tension between the parties, CorpTech, Queensland Health, the Department of Education, Training and the Arts and IBM.
- 43 I was aware of ongoing debate between Queensland Health and IBM around what constituted a defect and what constituted a new requirement. The parties often had

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widely differing views, and I am aware that such issues resulted in animated discussions.

- 44 I have been shown what appears to be a draft email (Commission contract management bundle, Vol 11, pp 234-266 ) to Mr Bill Doak of IBM from myself regarding my recollection of a meeting I had attended on 23 October 2009. I have been asked if this represents the general tenor of the relationship between CorpTech and IBM. I am not in a position to respond on the overall CorpTech relationship with IBM; however at times I personally found dealing with IBM to be frustrating, particularly after go live in March 2010 when CorpTech was responsible for operating the new solution. Regarding the email, I do not think I ever sent this email as there is no-one in the 'to' box, a sentence is incomplete and it is not signed with a salutation. It would appear that at the time of preparing this draft I did not agree with IBM's view of the discussions that had occurred at that meeting. I cannot specifically recall the meeting that is referred to in the email.
- 45 I have been asked if there was a desire to breach IBM with respect to the contract.
- 46 There is no doubt that there was frustration and tension regarding the implementation and execution of the Prime Contractor model and IBM's performance. I am aware that legal advice was sought regarding IBM's performance.
- 47 I have been asked whether I ever got instructions from upstairs saying, "Tone it down, back off." I do not recall being instructed to tone down my communications or actions towards IBM.

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**CHANGE REQUESTS**

- 48 I have been asked about my recollection of how Change Requests were submitted for signature and approval.
- 49 As Acting Executive Director I did on occasion sign Change Requests related to the IBM contract. I believe I may have signed four (4) or five (5) change requests while acting as Executive Director during the periods detailed in paragraph 6.
- 50 I have been shown a copy of Change Request (CR) number 179 (CR179) as part of a bundle of documents provided at the commencement of the interview. (Commission contract management bundle, Vol 7, pp 284-298) I have used that document to describe how I believe change requests were managed.
- 51 It is my recollection that a CR would be progressed to the office of the Executive Director from the contracts/Strategic Procurement Office. The change request would have been reviewed by a number of parties prior to submission for signature.
- 52 Change requests would clearly describe the nature of the change being requested, related costs and related conditions. Due to the nature of these documents I believe the documents would have been discussed with me (as Acting Executive Director) prior to signing.
- 53 CR179 was submitted by IBM to request an extension of time to complete a range of deliverables as specified in CR129. Two previous change requests (CR174 and CR177) had lapsed as the timeframes specified in those documents had not been met.
- 54 Following the interview with the Commission I have accessed a copy of the minutes of the QHIC Release Steering Committee meeting held on 10 December 2008.

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(Commission contract management bundle, Vol 7, pp 280-283) At that meeting IBM sought an extension of time to complete payroll performance testing. The minutes reflect that the committee granted IBM's request for an extension.

55 CR179 was signed on 11 December 2008 and gave effect to the QHIC Release Steering Committee decision to grant IBM's request for an extension.

56 In the bundle of documents provided at the interview there is a copy of an email from Terry Burns at Queensland Health referencing a change request extension to 23 December (2008). (Commission contract management bundle, Vol 7, pp 300-303) Following my interview with the Commission I have reviewed that document and have sourced from my own email a copy of the Briefing Paper referenced in that email. I believe the email refers to CR179. (Annexure D – Briefing Paper – Statement of Work 8: Condition Precedent in CRs 129, 174, 177 & 179) That briefing paper describes the relationship between change requests CR129, 174, 177 and 179.

57 On 24 December 2008 I signed a letter to Mr Bill Doak, which provided formal notice to IBM "that the Customer does not accept that IBM has met the condition precedent set out in CR179 and consequently neither CR179 nor any of its three predecessors noted above are incorporated into the Customer Contract". (Commission contract management bundle, Vol 7, pp 356-357)

**USER ACCEPTANCE TESTING**



58 I have been asked about the User Acceptance Testing (UAT) component of the Queensland Health Implementation of Continuity (QHIC) project.

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- 59 I would have been aware of the conduct and progress of UAT during the project. Any failure to exit UAT would likely impact on the go live date which would impact Service Management.
- 60 I have been asked if I was aware of the reclassification of defects. While I have no specific recollection of being involved in the review of defect definitions; that is what constituted a Severity 2 defect, I have been advised that clarification of defection definition categories did occur.
- 61 I have been shown an email from Nick Kwiatkowski from IBM to myself dated 7 January 2010 (Commission contract management bundle, Vol 13, pp 28-29). The email refers to the reclassification of an individual defect based on an assessment of that defect rather than a reclassification of the definition classification of a specific defect category for example a Severity 2.

**GO-LIVE**

- 62 I have been shown an email between myself and Nichola Stubbings dated 6 January 2010 (Commission contract management bundle, Vol 13, pp 9-12) and asked to comment on its content. CorpTech were responsible for stress and volume (performance assurance) testing. The email reflects a concern that the testing being performed at that time was being done on an incremental build of the solution and not the closest build to the one being delivered. Concern was being expressed that there would not be testing done on the final version. A timeline was set out for the Workbrain stress and volume environment. The final stress and volume performance testing was not completed. I infer from the email that I was to attend the directorate the next day. I am not sure whether I was chairing the directorate (as a proxy for James Brown) or was attending the meeting to apprise the group on progress of the testing.

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Queensland Health Payroll System  
Commission of Inquiry

63 I voluntarily make this statement to the Commission of Inquiry. The contents of this statement are true and correct to the best of my knowledge. I acknowledge that any false or misleading statement could be an offence against the *Commissions of Inquiry Act 1950* or contempt of the Commission.

Dated *19th* day of *April*.....2013 at *Brisbane*.....in the State of Queensland.

*[Signature]*  
.....

*[Signature]*  
.....

<i>[Signature]</i> ..... Philip Hood	<i>[Signature]</i> ..... Witness
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QUEENSLAND HEALTH PAYROLL SYSTEM  
COMMISSION OF INQUIRY

Annexure to PHILIP HOOD

Items to be annexed to the statement of Philip Hood dated 19 April 2013:

- A. Talent2 Meeting – Outcome Statements
- B. LATTICE Support post June 30 (PJ30) Steering Committee Operating Charter v1.1
- C. Talent2 Right to Use Source Code Position Paper
- D. Briefing Paper – Statement of Work 8: Condition Precedent in CRs 129, 174, 177 & 179

Witness signature:

Philip Hood:

" A "



## TALENT2 MEETING

Thursday 8<sup>th</sup> March 2007

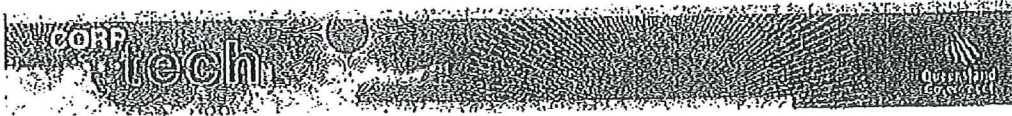
11am - 12pm

PHILIP HOOD'S OFFICE

### Outcome Statements

Date	Attendee's
08.03.07	
	Eileen Aiken, Simon Pang, Geoff Waite, Phillip Hood, Jane Stewart, Roland Smith
	<b>Outcome Statements</b>
	Eileen confirmed that Talent2 were not prepared to continue the existing LATTICE support beyond the already extended support period of 30 June 2008.
	Geoff advised Talent2 of CorpTech's position within new solution environment and that CorpTech sought some level of extended support to mitigate any risk of implementation not being complete by 30 June 2008.
	Jane confirmed that the majority of work performed by Talent2 was in relation to custom work and that CorpTech would be prepared to accept a 'no further development' arrangement for extended support.
	Eileen confirmed that Talent2 were not prepared to accept any extension of a limited support arrangement such as Priority 1 issues only in consideration of the risk and response times required for such support.
	Eileen confirmed that Talent2 would offer CorpTech full access to the source code and version control software required to support LATTICE.
	Roland requested consideration be given to an offer of resources to be trained to enable continued support and release of experienced staff to other Talent2 work.
	Eileen confirmed that Talent2 would offer Training and Development for resources identified by CorpTech to support LATTICE beyond 30 June 2008 through a standard Consultancy Service Agreement arrangement but would not accept those resources as a provision for continued support with Talent2.
	Eileen advised that any such training would be undertaken offsite and not within the Talent2 support environment.
	Eileen confirmed that any offer of increased support payments by CorpTech would not change Talent2's position on cessation of support.

" B "



**LATTICE Support post  
June 30 (PJ30)  
Steering Committee**

**Operating Charter**

**V1.1**



## 1. Steering Committee Governance Framework

Talent2 Works Pty Ltd (Talent2) currently provides application support and maintenance functions to CorpTech for three separate LATTICE environments utilised by Queensland Health (QH), Queensland Corrective Services (QCS) and Department of Emergency Services (DES). This current agreement secures a help desk function and support for all priority one issues, legislative changes and purchased custom work until 30 June 2008. Within CorpTech Service Management, support for all three environments is the responsibility of the Human Resource Management Information Systems Unit (HRMISU).

CorpTech Service Management are responsible for ensuring that all legacy systems are capable of sustaining service delivery requirements for its clients (as specified in the Operating Level Agreements) until they are replaced by the new solutions.

Whilst the new solution rollout timeframes are currently under review, it is anticipated that the rollout to the three agencies before the cessation of support and maintenance by Talent2 will not occur. CorpTech must therefore make alternate support arrangements for LATTICE for a currently unknown timeframe beyond 30 June 2008.

Access to the source code (via an Escrow Arrangement) enables CorpTech to bring the support and maintenance functions in-house, thus providing on-going support for LATTICE beyond 30 June 2008. This option will allow CorpTech to modify LATTICE to support any legislative (or other) software modifications. However, bringing support in-house will require the implementation and resourcing of a full LATTICE software development environment.

Therefore the establishment of a LATTICE software development and support environment within CorpTech Service Management's HRMISU is the basis of the LATTICE Support post June 30 (PJ30) Project.

This Steering Committee provides the mechanism by which CorpTech, the Queensland Health Shared Service Provider (QHSSP), PartnerOne and the Agencies currently using LATTICE can ensure appropriate strategic decisions are made on all aspects related to the successful establishment of ongoing support of LATTICE post 30 June 2008.

## 2. Role of the Steering Committee

The role of the Steering Committee is to oversee the effective integration of the LATTICE Support and Maintenance functions into CorpTech Service Management to ensure that payroll and related services to Queensland Health, The Department of Emergency Services and Queensland Corrective Services are not compromised.

### Accountability of the Committee

The Deputy Executive Director of CorpTech, as Chair of the Committee, will report to the CorpTech Senior Leadership Team (SLT). A monthly report on the progress of the implementation of this project will be provided.

### 3. Terms of Reference

The specific terms of reference for the Steering Committee are as follows:

- o Provide a forum where key stakeholders can discuss and endorse the strategic direction for LATTICE Support post 30 June 2008;
- o Provide overall direction for the project;
- o Approve the high level establishment arrangements, including strategic advice and high level decision-making on scope, resourcing, risk management and communications/consultation;
- o Consider whole-of-Government Implications of the project and make recommendations to the CorpTech Senior Leadership Team as appropriate;
- o Provide timely review and approval of the Project deliverables to ensure overall schedule dates can be maintained;
- o Approve significant modifications to project plans and project timelines;
- o Ensure the resolution of issues in a prompt manner;
- o Resolves issues which have been escalated from the Project Director;
- o Ensure that the decisions of this Steering Committee are informed by relevant decisions of other whole-of-Government bodies;
- o Report to the CorpTech Senior Leadership Team on the progress of the projects programs of work;
- o Monitor and approve mitigation strategies for all "High" level risks;
- o Prioritise LATTICE software development requests when Agency business requirements conflict.

### 4. Committee Membership

#### Steering Committee Members

- o Phillip Hood Deputy Executive Director, CorpTech (Chair)
- o Paul Monaghan Executive Director, QHSSP
- o Rod Newton Executive Director, PartnerOne
- o Terry Burns Director, Rebuild Project, CorpTech
- o Jane Stewart Director, HRMISU, CorpTech
- o Janette Jones A/Director of Payroll Establishment, QHSSP
- o Theresa Hodges Director HRMPS, HR Branch, Queensland Health
- o Phillip Sharp Business Manager, Department of Emergency Services
- o Robyn Gregory A/Director, Information Management, Queensland Corrective Services

#### Observer

- o Roland Smith Project Manager, HRMISU, CorpTech

## **5. Committee Meetings**

### **Agenda and papers**

The Chair of the Steering Committee will be responsible for the inclusion of items on the Committee agenda and the Secretariat will be responsible for the preparation and distribution of the agenda and papers to Committee members.

Steering Committee members may propose items for inclusion on the agenda through the Chair.

### **Frequency of meetings**

Committee meetings will be held monthly. Meeting frequency will be reviewed as appropriate.

Additional meetings may be scheduled as required.

### **Secretariat arrangements**

CorpTech is the secretariat for the Steering Committee.

All papers for the Steering Committee should be forwarded to the secretariat at least five working days prior to each Steering Committee meeting and distributed three working days prior to each meeting.

The address for meeting papers is as follows;

LATTICE Support post June 30 Steering Committee Secretariat  
CorpTech  
Lelchhardt Court -- Level1  
55 Little Edward Street  
SPRING HILL QLD 4000

Minutes will be prepared and circulated to the members within five working days of each Steering Committee meeting.

### **Proxies**

Members should endeavour to attend all meetings of the Steering Committee. Where necessary, proxy arrangements must have the approval of the Chair. Proxies receive the full authority of the Steering Committee members that they are replacing.

### **Quorum**

Greater than one half of members constitute a quorum for the Steering Committee.

### **Confidentiality**

Committee members, staff and other individuals present at meetings may be privy to discussions on the basis of complete confidentiality. Where this is the case the Chair is



to remind Steering Committee members of the need for confidentiality e.g. commercial-in-confidence arrangements.

**6. Review arrangements for the Steering Committee**

The Operating Charter for the Steering Committee will be reviewed as deemed appropriate by the Steering Committee or the CorpTech Senior Leadership Team.

**7. LATTICE PJ30 Project - Issue Escalation Process**

All persons involved in the LATTICE Support Post June 30 project are responsible for promptly notifying the relevant party of any issues, concerns or complaints regarding any matters related to the project.

All LATTICE Support Post June 30 Project Issues that require resolution must be forwarded to the Project Manager for recording in the Issues Register. The Project Manager will include an assigned target resolution date against the Issue when updating the Issue Register. It is the responsibility of the Project Manager to ensure the register is maintained, Issues are actioned and target resolution dates are monitored.

The parties will use every endeavour to resolve, by a process of consultation, any differences or issues arising between them. However in order to provide a formal mechanism for the resolution of issues, the following escalation procedure will be used when the assigned target resolution date is at risk of not being met.

If the issue is not resolved at the Initiating level, it will proceed to the next level. This escalation process will continue until the issue is resolved.

Level	Client (Agency/SSP)	Provider (CorpTech)	Timeframe
Level 1		Project Manager	Target Resolution date at Risk
Level 2	Agency/SSP Director	Director, HRMISU (Project Director)	5 working days from date of referral
Level 3	Agency/SSP Executive	Deputy Executive Director	5 working days from date of referral
Level 4	LATTICE PJ30 Steering Committee		As appropriate

Issues that cannot be resolved through this process should be escalated to the relevant Senior Officer within the Agency, SSP and CorpTech by the appropriate Steering Committee member.

" C "

**Talent2 'Right to Use Source Code'  
Position Paper**



**Pre Conditions**

The following conditions may apply subject to Consisto Clients completing the provisions of their right to exercise Escrow entitlements prior to 30 June 2006.

**1.0 Consisto Escrow Client Provisions**

- > Escrow relates to when a vendor is "unable or unwilling" to support.
- > This is effective 1 July 2006 (or any subsequent desupport date as contracted)
- > Talent2 will continue to own the Intellectual Property even though escrow clients have access to Source
- > Using escrow, clients may continue to run their existing applications for the purposes intended
- > Using escrow, clients may not modify, enhance or port the application because the Intellectual Property is retained by Talent2
- > Any modification to the software is subject to the customer having appropriate database or development license for the underlying Progress technology.

**2.0 Consisto Escrow Client Entitlements Post 30 June 2006**

Clients may: -

- > Fix code to resolve bugs
- > Adjust tax tables and the like to keep the software current
  - o Undertake critical code changes required to achieve the correct business outcome from an industrial or legislative perspective
  - o However, such code changes cannot be undertaken if the correct business outcome from an industrial or legislative could have been undertaken via a reasonable work around, the development of a report or through the use of soft coded business rule configuration
- > Build new reports from existing data structures
- > Build interfaces to other licenced systems

**3.0 Consisto Escrow Client Restrictions Post 30 June 2006**

Clients may not: -

- > Enhance the source code with new tables, field, screens, processes
- > Port the source code to new operating systems (even point releases)
- > Expand the source code to perform new tasks (eg: new workflows or new security)

**4.0 Talent2 Rights Post 30 June 2006**

Talent2 retains the right to audit clients who have elected to proceed with the escrow provisions post 30 June 2006. As a minimum only, Talent2 will seek written confirmation of compliance post the release of new operating systems, including point releases.

" D "

## BRIEFING PAPER

A/Executive Director, CorpTech, DPW  
A/Deputy Executive Director, Corporate Service, Queensland Health

**Title: Statement of Work 8: Condition Precedent in CRs 129, 174, 177 & 179**

### BACKGROUND

The parties to the Customer Contract (CorpTech and IBM) executed a contract variation CR 129 to SoW8 which set out a condition precedent requiring IBM to demonstrate successful achievement of its two proposed Go/No-go gates for the QHIC program by 30 Nov 08.

Successful achievement of the gates would bring the terms of CR 129 into permanent effect, including the revised program milestones, etc set out therein.

Failure to pass the gates vitiates the CR 129 ab initio and returns the parties to operating under those terms in effect before CR 129.

IBM failed to achieve the gates by 30 Nov 08 thus voiding CR 129 and consequently a further CR 174 was agreed with identical conditions as CR 129 excepting the effective date was varied from 30 Nov 08 to 5 Dec 08.

IBM failed to achieve the gates by 5 Dec 08 thus voiding CR 174 and consequently a further CR 177 was agreed with identical conditions as CR 174 excepting the effective date was varied from 5 Dec 08 to 11 Dec 08.

IBM failed to achieve the gates by 11 Dec 08 thus voiding CR 177 and consequently a further CR 179 was agreed with identical conditions as CR 177 excepting the effective date was varied from 11 Dec 08 to 23 Dec 08.

It is not anticipated that IBM will successfully achieve the gates by 23 Dec 08 and consequently the parties must revert to operating under those terms in effect before CR 179.

### ISSUES

It has been suggested that IBM be required to forfeit payment of certain monies due under CR 129 – 179, particularly those related to Program Milestone 1 – *Completion of Payroll Processing Performance Test* of \$696,452.99 and Program Milestone 2 – *Completion of Workbrain Functionality Test* of \$541,579.68.

Should IBM fail to demonstrate it has satisfied the condition precedent in CR 179 by 23 Dec 08 such proposed forfeiture will be impractical because the terms of CR 179, including Program Milestones 1 & 2 will have no legal effect. At that point the contract between the parties will revert to the previous terms; i.e. IBM's obligation is to deliver the solution by c. 18 Nov 08 with Customer payments due against the relevant milestones.



There is nothing preventing IBM from continuing its work under the original terms of SoW8 noting, however, that it is clearly in breach of these terms. It is likely that, in the short term, IBM will seek *either* a further extension *or* an unconditional variation enshrining the new proposed program milestones.

The Customer has demonstrated it is operating in good faith by providing all four extensions as requested by IBM. There is consequently no reason why IBM should not reciprocate this behaviour by negotiating the appropriately revised terms for SoW 8 after the time pressures of the Christmas period have passed.

## RECOMMENDATIONS

Given IBM's inability to demonstrate achievement of the Go/No-go gates it proposed to demonstrate the viability of its QHIC solution coupled with concerns held by CorpTech on the practicality of IBM's schedule for QHIC and Risk No. RS 207 raised by IBM highlighting a potential delay in commencement of QHIC UAT, *it is recommended that:*

The terms under which SoW 8 proceeds be carefully considered and drafted, and that this occur in the period immediately after the Christmas break (i.e. from 5 January 2009)

As it is unlikely an appropriate contract variation can be prepared, agreed and executed with IBM before the Christmas break, *it is recommended that:*

IBM be required to continue work under the existing terms of SoW 8 (i.e. pre CRs 129 - 179) until such a contract variation has been agreed and executed.

Submitted by: John Boston  
Date: 16 December 2008  
Business Unit: CorpTech Strategic Program Office  
Telephone: 327 19276