



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	James Donaldson Brown
<i>Date of Birth</i>	Known to the Commission
<i>Address and contact details</i>	Known to the Commission
<i>Occupation</i>	Executive Director Shared Systems, Queensland Shared Systems

I, JAMES DONALDSON BROWN, state as follows:

BACKGROUND

1. I have previously provided two statements to the Commission regarding my involvement with the contract between the State and IBM for the Queensland Health payroll solution.
2. I have been asked by the Commissioner to prepare a short statement outlining my involvement in the negotiations leading up to the Supplemental Agreement and the use of a list of principles during those negotiations.

NEGOTIATIONS WITH IBM

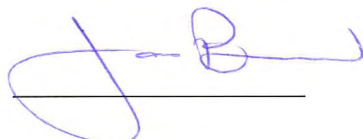
3. I was involved, along with Margaret Berenyi and John Beeston, in the negotiations with IBM leading up to the Supplemental Agreement. These negotiations occurred over a period of about 4 to 5 months and involved operational discussions with IBM about the State's proposal to settle the dispute.
4. Ms Berenyi, Mr Beeston and I would meet with IBM representatives, including Mr Doak and later Mr Killey, regularly to progress negotiations within the parameters approved by Cabinet. The negotiations also included input from Mr Mal Grierson, Director-General Housing and Public Works and Ms Natalie MacDonald, Associate Director-General, Housing and Public Works as required.

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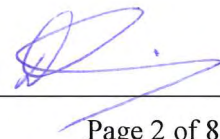
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5. During the meetings with IBM, Ms Berenyi, Mr Beeston and I used the negotiation parameters document (discussed below) to present the State's position relating to the proposed settlement with IBM. At the same time, we would seek to understand IBM's position on each item. We then reported back to Mr Grierson either directly or through Ms MacDonald and, where required, we sought further direction.
6. Mr Beeston acted as an operational liaison with Queensland Health via Ms Jane Stewart for the purpose of the negotiations. Mr Beeston also liaised with the external legal team supporting the State – Clayton Utz (Mr Jeremy Charlston) and Mallesons (Mr John Swinson). He provided updates to, and sought the views of, Queensland Health in relation some of the operational detail pertaining to the negotiations via Ms Stewart. He also contributed to the negotiations and worked with Clayton Utz to develop the proposed contract negotiation principles (discussed below).
7. No one from Queensland Health was directly involved in the direct negotiations with IBM, but Mr Beeston acted as a liaison between Queensland Health and CorpTech via Ms Jane Stewart. It is my recollection that both Mr Grierson and Ms MacDonald kept their counterparts in Queensland Health and the Department of The Premier and Cabinet apprised of the progress of the negotiations with IBM.
8. Ms Berenyi, Mr Beeston and I were not the decision makers in relation to the settlement terms. Our role was to present the State's position and seek to understand IBM's position on each item. We facilitated the negotiations by meeting and discussing the issues with IBM. Ms Berenyi and I kept Mal Grierson informed about the progress of negotiations, either through regular face to face meetings, or email updates. From my recollection, Ms MacDonald attended most of the meetings we had with Mr Grierson. On several occasions Mr Boyd Backhouse, Executive Director Legal Services, Department of Public Works also participated in these meetings.
9. It is my recollection that Ms MacDonald was not directly involved in the negotiations with IBM. However, I believe that Mr Grierson did have conversations

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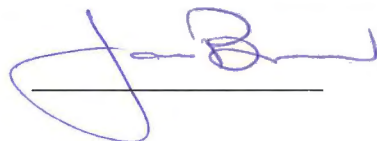
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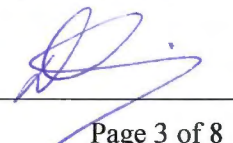
with senior IBM representatives during the negotiations, including Mr Kevin Kille and his superior whose name I cannot recall. I am not aware of the specifics of the conversations that Mr Grierson had with IBM as I was not involved in the meetings or teleconferences.

10. Although I cannot recall specifics, generally, when Mr Grierson had discussions with IBM he would inform Ms Berenyi and me about them immediately afterwards, either the same day or the next day. In this way, Mr Grierson provided commentary to me and Ms Berenyi about the status of his discussions with IBM. He would provide feedback about IBM's position and that would sometimes affect the State's position.
11. Throughout the negotiations, CorpTech was assisted by Mallesons and Clayton Utz. Mr Jeremy Charlston from Clayton Utz was appointed to provide commercial advice and to assist in the negotiations. Mallesons continued to provide advice to the State during the process. Blake Dawson Waldron was acting for IBM during the negotiations.
12. Several negotiation meetings were held over a number of months. I believe we met regularly with IBM, at least fortnightly, but also as required in relation to particular responses from IBM. Meetings with IBM were usually held at CorpTech's office, but also sometimes in Mr Grierson's office.
13. Generally, there were no legal representatives at the meetings Ms Berenyi, Mr Beeston and I had with IBM. That was because IBM's legal team were not involved and the meetings were conducted on a "without prejudice" basis. It is possible that Mr Charlston from Clayton Utz was present at some meetings, but even if he was not, he would still provide commercial advice to us.
14. All the meetings Ms Berenyi and I had with IBM were on a 'without prejudice' basis to present the State's position on a range of matters as well as ascertain and understand IBM's position on the same matters. We would then talk to our lawyers and report back to Mr Grierson and Ms MacDonald. Our lawyers would provide advice about the status of negotiations and, where required, they would deal directly

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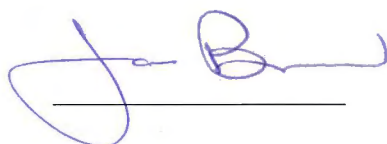
with IBM's lawyers, Blake Dawson Waldron. It is my understanding that our lawyers engaged in further discussions to see if the gap between the parties could be closed. During the negotiations with IBM, it was made clear all times that the final form of the proposed settlement would need to be approved by Government.

15. As negotiations progressed, and the parties' positions became closer together, the services of Clayton Utz as a commercial advisor were gradually used less. I cannot pinpoint a time when Clayton Utz ceased to be involved in the negotiations.
16. Generally, the State's position was eroded following each round of negotiations, but I do not recall any significant event that caused the State's position to change drastically.
17. The prospect of having both Corptech and IBM undertake development work within the Queensland Health Payroll system was a factor in the negotiations with IBM. It was thought that IBM's continued involvement with the system would be problematic and counterproductive, leading to ongoing conflict and delay in the implementation of Queensland Health business requirements. That is because both IBM and CorpTech would have been working on the system together, i.e. both doing development work on the system. That could have led to disputes about who was responsible for certain work or certain defects or issues in the system. The pursuit of warranty claims against IBM under this scenario would have been extremely difficult and strongly defended by IBM.

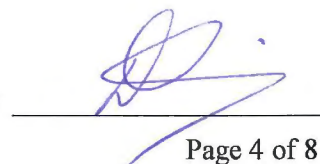
PRINCIPLES DOCUMENT

18. It is my recollection that Clayton Utz provided significant input into the preparation of the Proposed Contract Negotiation Parameters which were endorsed by CBRC in July 2010 ('Negotiation Parameters'). The Negotiation Parameters formed the basis of the subsequent negotiations with IBM.
19. In finalising the CBRC documents legal input was also sought from Crown Law. I believe that Mallesons also had some limited involvement in this process. As part of

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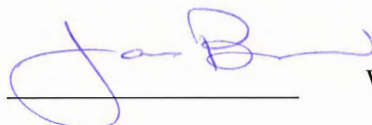
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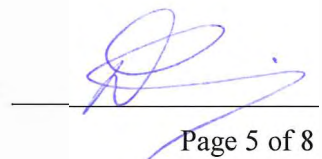
the CBRC process, the Department of the Premier and Cabinet were also consulted prior to finalisation.

20. When approval was granted by CBRC to enter into negotiations with IBM, Mr Beeston worked with Clayton Utz to develop a document to track negotiations that was based on the Negotiation Parameters. An early version of that document is attached in **Annexure A**.
21. Clayton Utz proposed the use of a settlement term sheet to facilitate the negotiations. That document was drafted by Clayton Utz and based upon the Negotiation Parameters and the document referred to in paragraph [20].
22. The settlement term sheet was continually updated, with both parties' positions, usually at the end of each negotiation session and or with information provided by Mr Grierson, through Ms MacDonald, Ms Berenyi, myself or others. It was used to keep track of negotiations. Updated documents were distributed to all, including legal teams, to ensure that the current positions of IBM and the State were accurately reflected.
23. In August 2010, a CBRC submission was made that attached a list of settlement principles. Those settlement principles were based on the earlier Negotiation Parameters, the document referred to in paragraph [20] and the negotiations that had occurred up to that date.
24. Prior to the finalisation of the August 2010 CBRC submission and attached list of settlement principles, full consultation occurred with all relevant parties, including Ms Berenyi, Mr Grierson and Ms MacDonald, the Department of The Premier and Cabinet and Crown Law.
25. After the August 2010 CBRC submission was finalised and awaiting approval, the proposed settlement principles were converted to tabular form to keep track of the negotiations from that point forward, i.e. to facilitate the documentation of a chronological record of each party's position and to reflect negotiation progress.

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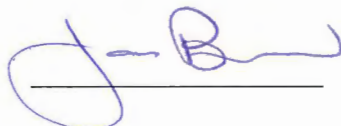
That tabular expression of the principles is attached in **Annexure B** and reflects the continuing negotiations between the parties during that time.

26. A tracking document was necessary to demonstrate that the final agreement reflected the CBRC approved settlement principles and to show what progress had been made since the CBRC submission was made. The document in Annexure B replaced the settlement terms sheet from late August 2010 onwards.
27. I cannot say whether the document in **Annexure B** is the final version of the principles document and, if it is not, where the final version may be. However, the final position would have been outlined in the briefing note attaching the draft agreement for execution by the relevant Ministers.
28. I believe the original negotiation parameters, settlement terms sheet and settlement principles were drafted by Clayton Utz.
29. The final version of the principles document would have been the prime document and source of information used in the preparation of the Supplemental Agreement. It is my recollection that the use of a Supplemental Agreement was recommended by Clayton Utz and drafted by them. It is my recollection that Clayton Utz liaised with Mallesons to ensure the Supplemental Agreement was consistent with the original contract. Crown Law reviewed the Supplemental Agreement as part of the document finalisation and provided advice on it before it was submitted for execution.

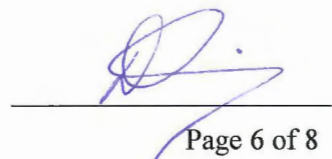
MEETING ON 19 AUGUST 2010

30. I have been told that Mr Grierson's diary suggests that he had a meeting with me, Ms MacDonald, Ms Berenyi and Mr Charlston on 19 August 2010. I cannot recall the specifics of the meeting or the specifics of what was discussed. It is my belief that Mr Boyd Backhouse also attended the meeting but I can not be absolutely sure. However, the fact that it occurred the same day that Mr Grierson had a meeting with Mr Killey from IBM is consistent with my recollection that he briefed Ms Berenyi and I after such discussions.

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31. The draft settlement principles that were proposed to be attached to the August 2010 CBRC submission may have been discussed at that meeting, but I cannot recall and did not keep a file note of the meeting.
32. I have also been shown an email from myself to Mr Charlston regarding the meeting on 19 August 2010 and a file note of Mr Charlston recording that I told him not to attend the meeting to brief Mr Grierson (**Annexure C**). Those documents suggest that it was considered unnecessary for Mr Charlston to attend the meeting to brief Mr Grierson about status because there had been no changes to report. I have no direct recollection of these events. As the meeting was called by Mr Grierson I would have normally checked with Mr Grierson, Ms MacDonald or Ms Berenyi, on who was to attend the meeting before advising Mr Charlston not to attend.
33. I was approached by the Commission of Inquiry to make this statement. I make this statement voluntarily. 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.

DECLARATION

This written statement by me dated 21 MAY 2013 and contained in the pages numbered 1 to 8 is true and correct to the best of my knowledge and belief.

.....signature

Signed at BRISBANE this 21ST day of May 2013.

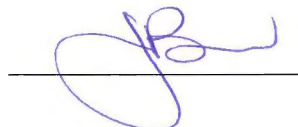
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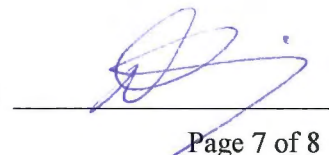
DAVID CRAIG.....name of witness

Witnessed at BRISBANE this 21ST day of May 2013.

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**QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY**

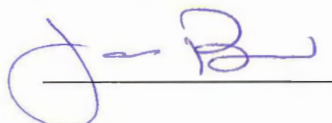
Queensland Health Payroll System
Commission of Inquiry

Annexure(s) to Statement of Witness

Items to be annexed to the statement of James Donaldson Brown taken on May 2013:

- A. Email Clayton Utz to John Beeston regarding proposed contract negotiation parameters 29 July 2010;
- B. Principles document; and
- C. Email James Brown to Jeremy Charlston 19.08.2010 at 7:54am and Clayton Utz file note of 19 August 2010.

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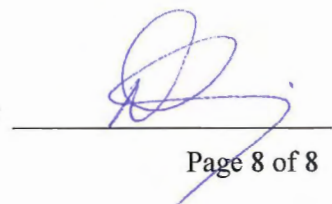


Table 1. Proposed Contract Negotiation Parameters

- **OBJECTIVE** - Negotiate a settlement with IBM without termination of Contract
- **AIM** - put to IBM an initial high offer of demand and reasons supporting the position.
- **PRIORITIES?**

STATE'S OBJECTIVES and BATNA			
Item [what the State needs from a settlement]	Existing Entitlement	Preferred Position	Acceptable Position
3b. Warranty on SoW 3 work or other enhancements Provide warranty/defect fixes on enhancements delivered up to a specific date e.g. 16 July 2010	State entitlement if SOW or CR approved.	???	[trade off?]
1. Outstanding Defects Agreeing a list of outstanding defects with IBM will be problematic due to the high level nature of the State's system requirements and the uncertainty of its original tender requirements. There is an list of defects as detailed in the State's Notice to Show Cause to IBM dated 29 June 2010. The list of outstanding (i.e. not fixed in Prod) Severity 2 defects at 16 July 2010 totalled at least 41 and depending on IBM's assessment of Severity rating, up to 97. SM need to prepare & maintain a list of all current outstanding defects Will need to agree with IBM a cut-of date to "fix" the list of defects IBM must resolve. Option either to: i. list all defects assessed as Sev 2 at that date to be rectified OR ii. to list all defects at that date that are subsequently assessed as Sev 2 OR c. something else?? Refer also to item 10 – what defines the "As-built solution" (e.g. the solution as built at date x, and all defect fixes implemented per i. or ii. above OR the solution at date y. The latter implies	State entitlement	All outstanding severity 2 defects up to 31 July 2010 to be fixed	Defects in the State's Notice to Show Cause of 29 June 2010 to be rectified

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STATE'S OBJECTIVES and BATNA			
Item [what the State needs from a settlement]	Existing Entitlement	Preferred Position	Acceptable Position
that IBM will be given a period of time to complete its "As-built" documentation			
4a. Releases Implementation of 28 July Release plus (August and other ?) releases of fixes described at 4 i. or ii. plus release(s) for enhancements under SoW 3	State entitlement	???	???
2. Support There is a support contract in place under which the State can receive system maintenance and support services from IBM. This contract has been in operation for a number of years and provides licences and third-level support for the following products: SABA, RecruitASP, and Workbrain. This contract is known as the HRBS contract. A disengagement strategy for this contract will be progressed as a separate matter.	Entitlement under HRBS	HRBS contract remains "on-foot" until expiry on 30 Nov 2010	HRBS contract remains "on-foot" until expiry on 30 Nov 2010
8a. Assignment of licences Licences for Workbrain, SABA and RASP are provided via IBM under HRBS. SM preference is for direct licence agreements with product vendors.	State has the necessary licences.	Novation of these licence agreements from IBM to the State.	Enforce licence provisions against IBM. Seek direct licence from licensors.
3. Negotiation timeframe [negotiation protocol] There is a risk that negotiations with IBM may become protracted, thereby diminishing the State's rights to further courses of action.	State entitlement to terminate now.	One month, if negotiations unsuccessful termination of contract	One month, if negotiations unsuccessful termination of contract
4. Completion & handover of Contract Materials Includes documents, designs, charts and other work products updated to reflect the as-built solution, including all defect resolution fixes, at time of hand-over.	State entitlement [where in Contract?]		

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STATE'S OBJECTIVES and BATNA			
Item [what the State needs from a settlement]	Existing Entitlement	Preferred Position	Acceptable Position
Need to set date of As-built solution – refer to 4 and 4a above Need to determine precise meaning of “hand-over” as this may not coincide with closure of the contract. E.g “hand-over” occurs on date x, completion of as-built documentation, etc to occur on date x+, disengagement completed date x++			
10a Contract materials – Workbrain/SAP interface Documentation, KT sessions, etc. to enable CorpTech or 3rd party support of bespoke interface	State entitlement		
5. Licensee & access to tools Includes Workbrain regression test tool, other test tools and scripts, object libraries and methodologies required to allow the State to enable it to enjoy effective use of the payroll system Need to identify all relevant tools, etc – required of IBM to identify?	State entitlement		
6. Disengagement Plan Formal plan to effect an orderly disengagement over two month. Contract requires parties to agree on the plan	State entitlement to Disengagement Plan.		
7. Disengagement Plan Assignment of key subcontractors (Infor, POIT, Thinkstorm, et al)	State entitlement that IBM endeavours to assign these.	Assignment/ novation if IBM terms acceptable	New agreement with third parties.
8. Disengagement Plan Access to relevant data and records e.g. defect logs, in-flight and requested enhancements – related to 4, 10 and 10a	State entitlement		
9. Disengagement Plan Briefings and knowledge transfer, both specific topic & plenary sessions	State entitlement. Project knowledge transfer		

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STATE'S OBJECTIVES and BATNA			
Item [what the State needs from a settlement]	Existing Entitlement	Preferred Position	Acceptable Position
	already provided. Additional KT an entitlement under a disengagement plan.		
10. Disengagement Plan IBM to work as directed during disengagement period			
11. Timing of payments Make payment to IBM conditional upon achievement of certain milestones, e.g. Implementation of a release, Sign-off of Disengagement plan, completion of defect resolution (see 4), completion of as-built documentation, etc (see 10, 10a, 11, etc) etc, etc.			
12. Retention of key staff during Negotiations/Disengagement Key IBM and/or subcontractor staff to be retained on project until negotiation/Disengagement completed (subject to assignment to CorpTech of any key resources/sub-contractors)	State entitlement		
13. Protocol for operational performance during negotiations Agree a "without prejudice" protocol to resolve practical/operational matters during period of negotiations			
14.			

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IBM'S NEEDS and PRIORITIES			
Item [what we assess as IBM's needs & priorities]	Existing Entitlement	Preferred Position	Acceptable Position
<p>15. Payment of remaining milestone payments</p> <p>16. The State retains \$3.34 million in outstanding milestone payments.</p>	<p>State entitlement not to pay.</p> <p>State has no obligation to pay as milestone not achieved.</p>	No Payment to be made	<p>Pay \$1.85 million</p> <p>Retain retention payment of \$1.49 million</p>
<p>17. Payment for legislative compliance work</p> <p>18. IBM undertook work at the request of the State to implement SAP system changes to ensure that year end payment summaries for Queensland Health staff were legislatively compliant. IBM costed this work at \$1.7 million. The cost for CorpTech to undertake the same work was estimated at \$1.4 million.</p>	<p>IBM entitled to seek payment.</p> <p>State entitled to use as offset</p>	Pay \$1.7 million	<p>Pay \$1.7 million</p> <p>[trade off?]</p>
<p>2h Payment for work performed related to SoW 3</p> <p>IBM has undertaken certain work "at-risk" or at the direction of QH estimated originally at c \$10k, shown in the draft SoW 3 at \$45k</p> <p>Some SoW 3 items appear to relate to defects rather than proper CRs. SM assert that at least one items was undertaken by CorpTech staff working in the blended team under IBM's management</p> <p>19. Current plan (25Jul10) is to execute a CR for this work</p>	<p>State has no obligation to pay for services until CR or SOW approved.</p> <p>IBM may be able to claim outside contract – quantum meruit</p>	???	???
<p>20. Warranty</p> <p>21. The system delivered by IBM is covered for defects for a period of 3 months for each occurrence from first use with a maximum period of 13 months after go-live. Pursuing a defect warranty claim against IBM will be problematic due to the high-level nature of the State's system requirements and the uncertainty of its original tender requirements</p>	State entitlement	Relinquish Warranty in return for some other consideration	<p>Relinquish Warranty</p> <p>[trade off?]</p>

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IBM'S NEEDS and PRIORITIES			
Item: [what we assess as IBM's needs & priorities]	Existing Entitlement	Preferred Position	Acceptable Position
<p>22. System Acceptance</p> <p>23. Although contractually related to payments, publicly the system is seen not to be working. Accepting the System contractually will not pass a public interest test and would release IBM from its contractual obligations, effectively ending the contract.</p>	<p>State entitlement.</p> <p>State has no obligation to accept the System as it does not meet the Acceptance Criteria.</p>	System Not Accepted	System Not Accepted
<p>24. Legal Release of Obligations</p> <p>IBM will undoubtedly insist on a full legal release in respect of any its past actions as part of any transition out negotiated settlement. This may include releasing IBM from any damages claims for past and potential future losses suffered by the State.</p> <p>State's rights to Audit, Indemnity, Confidentiality, IP rights and other items survive termination</p> <p>25. Will need to set these out individually</p>	<p>State entitlement.</p> <p>State has rights re IBM's breaches.</p> <p>State has rights re system problems that may not yet be known.</p> <p>State entitlement for certain terms to survive termination</p>	No release	Qualified release, for example retaining rights in case system must be abandoned due to inability to overcome defects
<p>26. Public Statement</p> <p>27. Any Deed of Settlement to remain confidential with no public statements on the settlement be made by either party</p>		No Public Statement	Agreed Public Statement

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ADDITIONAL STATE NEEDS/CLAIMS?

- Inducing misrepresentations pre-Contract and pre-CVs
- Damages - \$ quantum assessment
- Is System "fit for purpose" - technical assessment?
- Release of IBM:
 - contingent on IBM performance from here
 - only release a defined list of specific claims
 - not release unknown breaches or latent defects
- Contract termination?
- Any concessions/terms re IBM sub-contractors position re settlement/release?
- "as built" documentation?
- Confidentiality of terms?
- any agreed (joint?) public statement?
- What else?

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Thank you.

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Need to set date of As-built solution – refer to 4 and 4a above Need to determine precise meaning of “hand-over” as this may not coincide with closure of the contract. E.g “hand-over” occurs on date x, completion of as-built documentation, etc to occur on date x+, disengagement completed date x++			
10a Contract materials – Workbrain/SAP interface Documentation, KT sessions, etc. to enable CorpTech or 3rd party support of bespoke interface	State entitlement		
5. Licence & access to tools Includes Workbrain regression test tool, other test tools and scripts, object libraries and methodologies required to allow the State to enable it to enjoy effective use of the payroll system Need to identify all relevant tools, etc – required of IBM to identify?	State entitlement		
6. Disengagement Plan Formal plan to effect an orderly disengagement over two month. Contract requires parties to agree on the plan	State entitlement to Disengagement Plan.		
7. Disengagement Plan Assignment of key subcontractors (Infor, POIT, Thinkstorm, et al)	State entitlement that IBM endeavours to assign these.	Assignment/ novation if IBM terms acceptable	New agreement with third parties.
8. Disengagement Plan Access to relevant data and records e.g. defect logs, in-flight and requested enhancements – related to 4, 10 and 10a	State entitlement		
9. Disengagement Plan Briefings and knowledge transfer, both specific topic & plenary sessions	State entitlement. Project knowledge transfer		

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STATE'S OBJECTIVES and BATNA			
Item [what the State needs from a settlement]	Existing Entitlement	Preferred Position	Acceptable Position
	already provided. Additional KT an entitlement under a disengagement plan.		
10. Disengagement Plan IBM to work as directed during disengagement period			
11. Timing of payments Make payment to IBM conditional upon achievement of certain milestones, e.g. Implementation of a release, Sign-off of Disengagement plan, completion of defect resolution (see 4), completion of as-built documentation, etc (see 10, 10a, 11, etc) etc, etc.			
12. Retention of key staff during Negotiations/Disengagement Key IBM and/or subcontractor staff to be retained on project until negotiation/Disengagement completed (subject to assignment to CorpTech of any key resources/sub-contractors)	State entitlement		
13. Protocol for operational performance during negotiations Agree a "without prejudice" protocol to resolve practical/operational matters during period of negotiations			
14.			

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IBM'S NEEDS and PRIORITIES			
Item [what we assess as IBM's needs & priorities]	Existing Entitlement	Preferred Position	Acceptable Position
<p>15. Payment of remaining milestone payments</p> <p>16. The State retains \$3.34 million in outstanding milestone payments.</p>	<p>State entitlement not to pay.</p> <p>State has no obligation to pay as milestone not achieved.</p>	No Payment to be made	<p>Pay \$1.85 million</p> <p>Retain retention payment of \$1.49 million</p>
<p>17. Payment for legislative compliance work</p> <p>18. IBM undertook work at the request of the State to implement SAP system changes to ensure that year end payment summaries for Queensland Health staff were legislatively compliant. IBM costed this work at \$1.7 million. The cost for CorpTech to undertake the same work was estimated at \$1.4 million.</p>	<p>IBM entitled to seek payment.</p> <p>State entitled to use as offset</p>	Pay \$1.7 million	Pay \$1.7 million [trade off?]
<p>2b Payment for work performed related to SoW 3</p> <p>IBM has undertaken certain work "at-risk" or at the direction of QH estimated originally at c \$10k, shown in the draft SoW 3 at \$45k</p> <p>Some SoW 3 items appear to relate to defects rather than proper CRs. SM assert that at least one item was undertaken by CorpTech staff working in the blended team under IBM's management</p> <p>19. Current plan (25Jul10) is to execute a CR for this work</p>	<p>State has no obligation to pay for services until CR or SOW approved.</p> <p>IBM may be able to claim outside contract – quantum meruit</p>	???	???
<p>20. Warranty</p> <p>21. The system delivered by IBM is covered for defects for a period of 3 months for each occurrence from first use with a maximum period of 13 months after go-live. Pursuing a defect warranty claim against IBM will be problematic due to the high-level nature of the State's system requirements and the uncertainty of its original tender requirements</p>	State entitlement	Relinquish Warranty in return for some other consideration	Relinquish Warranty [trade off?]

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IBM'S NEEDS and PRIORITIES			
Item [what we assess as IBM's needs & priorities]	Existing Entitlement	Preferred Position	Acceptable Position
<p>22. System Acceptance</p> <p>23. Although contractually related to payments, publicly the system is seen not to be working. Accepting the System contractually will not pass a public interest test and would release IBM from its contractual obligations, effectively ending the contract.</p>	<p>State entitlement.</p> <p>State has no obligation to accept the System as it does not meet the Acceptance Criteria.</p>	System Not Accepted	System Not Accepted
<p>24. Legal Release of Obligations</p> <p>IBM will undoubtedly insist on a full legal release in respect of any its past actions as part of any transition out negotiated settlement. This may include releasing IBM from any damages claims for past and potential future losses suffered by the State.</p> <p>State's rights to Audit, Indemnity, Confidentiality, IP rights and other items survive termination</p> <p>25. Will need to set these out individually</p>	<p>State entitlement.</p> <p>State has rights re IBM's breaches.</p> <p>State has rights re system problems that may not yet be known.</p> <p>State entitlement for certain terms to survive termination</p>	No release	Qualified release, for example retaining rights in case system must be abandoned due to inability to overcome defects
<p>26. Public Statement</p> <p>27. Any Deed of Settlement to remain confidential with no public statements on the settlement be made by either party</p>		No Public Statement	Agreed Public Statement

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ADDITIONAL STATE NEEDS/CLAIMS?

- Inducing misrepresentations pre-Contract and pre-CVs
- Damages - \$ quantum assessment
- Is System "fit for purpose" - technical assessment?
- Release of IBM:
 - contingent on IBM performance from here
 - only release a defined list of specific claims
 - not release unknown breaches or latent defects
- Contract termination?
- Any concessions/terms re IBM sub-contractors position re settlement/release?
- "as built" documentation?
- Confidentiality of terms?
- any agreed (joint?) public statement?
- What else?

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State of Queensland IBM Contract Proposed Settlement Principles

27 August 2010

Annexure B

State's Proposed Settlement Principles	IBM Position
<p>1. Pay IBM outstanding monies amounting to \$1.70 million (excluding GST) for work performed under Statement of Work 50. Payment to be made upon execution of the supplemental agreement.</p>	<p>25/8</p> <p>Agreed re payment of SOW50 amount.</p> <p>Outstanding amounts that IBM expects payment of on execution of the settlement are as follows</p> <ul style="list-style-type: none"> • \$17,787 (GST inclusive) for April travel and expenses under SOW 8, • \$11,979 (GST inclusive) for May travel and expenses under SOW 8 • \$9,438 (GST inclusive) for June travel and expenses under SOW 8, • \$10,164 (GST inclusive) for July travel and expenses. under SOW 8, <p>Future travel and accommodation expenses to be paid as per contract</p>
<p>Tuesday 24 August 2010</p> <p>State to also pay outstanding travel and accommodation expenses upon execution of the supplemental agreement. Future travel and accommodation to be paid as per the current contract</p>	
<p>2. IBM to rectify the attached list of items¹ (which will be prioritised by CorpTech) for no additional contract payment under Statement of Work 8. It is understood that:</p> <p>a. CorpTech will prioritise and determine the order of item rectification.</p> <p>b. IBM will advise the number of items that it can deliver per month following the prioritisation by CorpTech.</p>	<p>25/8</p> <p>In relation to the list provided IBM considers that item 66 on the list is not a defect, nor under IBM's control, and therefore should be removed. IBM suggests that this is replaced by the Optimisation of the Reconciliation report defect.</p> <p>IBM proposes that the definition of the fix of a defect for the purposes of this settlement agreement will be</p>

¹ The item list has been produced as at 18 August 2010. It is acknowledged that IBM may have rectified some of the items on this list since it was produced. Under these circumstances IBM is to advise which items have been resolved.

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>c. New or additional work assigned to IBM to that on the item list may reduce its capacity to deliver the required items. In this eventuality IBM will provide a revised schedule of item implementation taking into consideration the new or additional work whenever it is asked to do new or additional work, for approval by CorpTech. The State will pay IBM on a pro rata unit basis (not on complexity or effort) for each item delivered and implemented against the \$1.85 million (excluding GST) System Acceptance payment amount under Statement of Work 8. The amount of \$1.85 million (excluding GST) will not be exceeded.</p> <p>d. Defects arising from the implementation of the attached item list will be fixed at IBM's cost. Implemented contract warranty provisions will apply for each item.</p> <p>e. Additional agreed defects found after 20 August 2010 that are not on the attached list will be rectified at IBM cost in accordance with the priorities established by CorpTech.</p>	<p>"The Customer has passed the defect fix in UAT"</p> <p>a) IBM requires the list to be prioritised urgently.</p> <p>IBM will then upon agreement with CorpTech produce a release schedule which will be incorporated as part of this settlement agreement.</p> <p>b) incorporated in response to a)</p> <p>25/8</p> <p>c) Qualified Agreement (refer to item 4) Additional Qualification</p> <p>IBM's understanding is that 1.85m is not a payment in relation to System Acceptance criteria as specified in SOW but for the resolution of the agreed defects. State to confirm</p>
<p>25 August 2010</p> <p>IBM to complete by 31 October 2010:</p> <ul style="list-style-type: none"> • list of 67 items • concurrent employment <p>Agreed work to be completed by 31 October 2010 with no extension of time</p> <p>IBM have control of a 'blended team' to undertake the agreed</p>	<p>d) Qualified Agreement (refer item 4) Contract provisions under this supplemental agreement until the 31 March 2011</p> <p>e) Qualified Agreement (refer item 4)</p> <p>26/8</p> <p>IBM clarified its position and stated that replication should be done by CorpTech.</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>work.</p> <p>Blended team under IBM's control to be to be responsible for replication.</p> <p>IBM will have control over the environment it requires to undertake the agreed work.</p> <p>Payment of \$1.85 million to be paid upon completion of the agreed work and will not be exceeded, other than that agreed for new work.</p> <p>IBM will be responsible for rectification of new defects identified between 20 September 2010 and 31 October 2010.</p> <p>CorpTech will determine the priorities of agreed work and may elect to substitute newly identified critical defects to ensure 31 October is met.</p> <p>Concurrent Employment new work to be paid upon successful implementation (i.e. 31 October 2010).</p> <p>If 31 October 2010 is not met, all contract monies (\$1.85 m and \$1.49 m) retained by the State and any amount agreed for new work, will not be paid.</p> <p>IBM to facilitate orderly support transition to CorpTech to be activated on 31 October 2010.</p>	
<p>26 August 2010-08-27</p> <p>IBM delivers through a blended team (includes additional</p>	<p>26 August 2010</p> <p>IBM does not agree to payment at the end i.e. 31 October 2010 and wants to be paid at the end of User Acceptance Testing (UAT) and prior to implementation of each release. IBM does not agree with all</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>CorpTech resources)</p> <ul style="list-style-type: none"> • concurrent employment • part of the 67 QH priority items • some items from the QH second order priority list (number to be verified) <p>IBM would charge an amount for concurrent employment to be independently verified</p> <p>For successful delivery the State pays \$1.85 m and 50% of the \$1.49 m</p> <p>Part delivery of the agreed work – no payment to IBM</p>	<p>monies not being paid for partial delivery.</p>
<p>3. IBM will be afforded the opportunity to undertake new work.</p> <ol style="list-style-type: none"> CorpTech will determine the assignment of new work and be the primary contact with Queensland Health. CorpTech will determine IBM's engagement, if any, with Queensland Health as required. For the supplemental contract period, the customer for IBM is CorpTech. New work undertaken by IBM is to be scoped and costed using the carded rates under the contract. A new Statement of Work will be developed for items of new work. Existing contract warranty provisions will apply for all new work undertaken by IBM except where it implements year-end stacks and or Notes delivered by SAP. 	<p>25/8 Agreed a) to c)</p> <p>IBM will not commence any new work without a signed Change Request.</p> <p>d) IBM Clarification. Contract provisions under this supplemental agreement until the 31 March 2011</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>e. Costing and delivery timeframes for new work to be undertaken by IBM will be assessed by an independent third party. The duration of the independent assessment will need to be factored into IBM's proposed release schedule. Cost of the independent assessments will be borne by the State.</p>	<p>e) IBM will make all reasonable efforts to accommodate the assessment in scheduling work but not be responsible for any delays caused by the State's independent review</p>
<p>25 August 2010</p> <p>The State's requirements for new work is now covered under item 2 25 August 2010. Principals covered under item 3 still apply.</p>	
<p>4. IBM will define a quality process and undertake a review of all items developed by CorpTech or its agents before implementation to ensure that the item(s) conforms to IBM's quality standards and contract requirements.</p> <p>a. IBM will provide CorpTech with its quality standards. The standards will also include documentation and technical standards.</p> <p>b. Contract warranty provisions for items developed by CorpTech or its agents will not apply.</p> <p>c. IBM will be paid to undertake quality review on items developed by CorpTech or its agents. Carded rates under the contract will apply. IBM to provide an upfront fixed cost for each assessment.</p>	<p>25/8 Not Agreed</p> <p>IBM Position</p> <p>IBM must undertake all work (new and defects) as:</p> <ol style="list-style-type: none"> 1. It has a responsibility for rectifying defects and it cannot be held accountable for 3rd party work. IBM believes that it is impossible to determine who would be accountable for any subsequent defect that may arise from code implemented by a 3rd party. Therefore all defects found after 20 August 2010 would not be the responsibility of IBM. <p>IBM does not want to have its resources idle due to 3rd party changes having a higher priority, therefore limiting its ability to rectify defects at 25 per month. An example would be if CorpTech undertook the SAP Year End Notes work in October/November. This would mean that the</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
d. IBM will carry out a quality review of existing work untaken by CorpTech or its agents.	development environment would not be available for IBM to progress rectification of defect/new work.
<p>25 August 2010</p> <p>Item 4 now replaced by State's requirements under item 2.</p>	
5. IBM Program Manager will participate in a weekly operational progress review meeting with the General Manager, CorpTech. Unresolved matters will be escalated to the Natalie MacDonald, Associate Director-General, Public Works, and Ms Sarah Adam-Gedge, IBM.	<p>25/8 Agreed</p> <p>IBM would like to discuss and agree on how the CAB will fit within this proposed structure.</p>
6. IBM will continue to provide "extended support" for no additional contract monies to ensure the successful completion of the Queensland Health payroll each fortnight for the duration of the supplemental contract period or until it is demonstrated that CorpTech can support, without assistance, the Queensland Health payroll, or an alternate support model is implemented.	<p>25/8</p> <p>IBM will continue to assist CorpTech in their support of the QLD Health payroll to the extent provided for recent payruns for the duration of the Supplemental Agreement.</p> <p>IBM is not in a position determine CorpTech's ability to support the system without assistance</p>
<p>7. IBM to agree to participate in discussions to explore options for it to provide a full support and maintenance service under a new GITC contract for the Queensland Health payroll.</p> <p>a. The proposed full support and maintenance contract proposal will be subject to independent review to ensure market competitiveness.</p> <p>b. The contract will only be executed subject to Executive</p>	<p>25/8 Agreed all points</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>Government approval.</p> <p>c. The contract does not diminish IBM's obligations to provide extended support at its own cost during the supplemental contract period.</p>	
<p>8. IBM will not reassign any personnel under its control without consent. Requests for reassignment of personnel will not be unreasonably withheld.</p>	<p>25/8 Agreed</p>
<p>9. The supplemental agreement will run until 31 March 2011. Should the complete list of items not be implemented before 31 March 2011, for whatever reason, the pro rated balance of the \$1.85 million (excluding GST) will be retained by the State.</p>	<p>25/8 Qualified Agreement</p> <p>IBM will agree on the basis of "Should the complete list of agreed defects not be implemented before 31 March 2011,"</p>
<p>25 August 2010</p> <p>Agreement will run to 31 October 2010. Should any part of the agreed implementation items required by the State under item 2 or subsequently modified by CorpTech not be delivered outstanding monies (\$1.85 m and \$1.49 m) will be retained by the State</p>	<p>26 August 2010</p> <p>IBM does not agree to payment at the end i.e. 31 October 2010 and wants to be paid at the end of User Acceptance Testing (UAT) and prior to implementation of each release. IBM does not agree with all monies not being paid for partial delivery.</p>
<p>10. 50% of the system retention amount of \$1.49 million (excluding GST) under Statement of Work 8 will be paid to IBM where IBM has fully completed its obligations under the supplemental agreement and successfully demonstrated that CorpTech is able to support the system and that all documentation and support tools have been provided and reflect the system as transitioned.</p>	<p>25/8 Qualified Agreement</p> <p>IBM can provide updates to existing system documentation or new documentation as a Deliverable via a change request and support tools as agreed. Pls delete "and successfully demonstrated that CorpTech is able to support" as IBM cannot be held accountable in demonstration or otherwise for CorpTech's ability to support the system.</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>25 August 2010</p> <p>50% of the system retention amount of \$1.49 million (excluding GST) under Statement of Work 8 will be paid to IBM where IBM has fully completed its obligations under the supplemental agreement and where IBM have facilitated an orderly transition and that all documentation and support tools have been provided and reflect the system as transitioned. Item 9 takes precedent</p>	
<p>11. The supplementary agreement will be entered into without admission by either party and without waiver of any existing rights, and is made pursuant to the dispute resolution process of the existing contract.</p>	<p>25/8 Agreed</p>
<p>12. In consideration of the above principles and should IBM agree to withdraw its current contract notices, the State will also agree to withdraw its notices upon successful execution of the supplemental agreement provided that the supplemental agreement is executed no later than close of business 31 August 2010. IBM is also to confirm that existing contract warranty provisions have not been voided.</p>	<p>25/8 Agree</p>
<p>12a.</p>	<p>12a Contract Warranty Qualified Agreement</p> <p>IBM will provide confirmation when the full impact of the July and August releases are realised</p>
<p>13. Publicity</p>	<p>IBM and the State will agree to a joint media release. Failing agreement, there will be no publicity.</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
<p>Tuesday 24 August 2010</p> <p>Not Agreed</p> <p>The State's preference is for no media statement, however it can not guarantee that there will be no public comment made in parliament</p>	<p>25/8 IBM position remains unchanged</p> <p>26/8 IBM position clarified to an agreed media statement and an agreed set of questions and answers which will be adhered to by both parties.</p>
14. Release of Obligations	IBM Require a full and final settlement. IBM will have no remaining obligations following 30 September 2010, including warranty obligations, obligations in relation to latent defects, etc.
<p>Tuesday 24 August 2010</p> <p>Not Agreed</p> <p>The State can not provide IBM with a full release of all obligations. The State will consider a partial release, not those that would survive normal contract conclusion.</p>	<p>25/8 Agreed subject to release of those relative to the dispute</p> <p>26/8 IBM's position restated as a release of subject to release of those relative to the dispute and specifically a release of warranty obligations after 31 October 2010.</p>
15. Knowledge Transfer	<p>25/8</p> <p>IBM will provide knowledge transfer, 4 days only (including preparation of relevant documents) to address the topic of SAP, Workbrain, Workbrain-SAP interface at IBM's cost. Any additional requirements will be costed on commercial terms.</p>
<p>Tuesday 24 August 2010</p> <p>Qualified Agreement</p>	<p>25/8 Refer IBM position re Item 10</p>

State of Queensland IBM Contract Proposed Settlement Principals

27 August 2010

State's Proposed Settlement Principles	IBM Position
Refer to item 10. CorpTech's ability to support the system is in part reliant on IBM providing current system documentation and tools as per the current contract of a sufficient standard.	

Annexure C

Charlston, Jeremy

From: james.brown@corptech.qld.gov.au
Sent: Thursday, 19 August 2010 7:54 AM
To: Charlston, Jeremy
Cc: margaret.berenyi@corptech.qld.gov.au;
natalie.imacdonald@publicworks.qld.gov.au
Subject: RE: FW: CONFIDENTIAL: State of Queensland - IBM - Settlement Terms
Sheet - State reply 18/8/10

Importance: High

Jeremy,

Thanks. If you are unable to discuss the Terms Sheet with Bakes today there will be very little are far as a negotiation update, other than no progress, to provide to the D-G.

Let's see how the morning pans out and then I should be in a better position to seek advice from the D-G as to how he would like to proceed with the meeting.

As indicated in my email yesterday we need to ensure that Blakes are aware of the State's expectations on a response from IBM. Can you please formally communicate with Blakes by letter (emailed) indicating that the revised proposed terms for settlement represents a significant movement in its original position in the interest of seeking to reach agreement on finalising the contract by negotiation. You can also advise IBM that it should not rely on the prospect of further concessions from the State. Can you also please inform IBM that the State requires IBM's response on or before CoB Friday 20/8. //

* Can you please formally communicate with IBM this morning. ✓

Many thanks

James

James Brown
Executive Director
Strategy & Planning, CorpTech
Level 6, 61 Mary Street
T: 3721 9233 F: 3227 7752 M: [REDACTED]
Tomorrow's Queensland: strong, green, smart and fair –
<http://www.towardsQ2.qld.gov.au>

"Charlston,
Jeremy"

<jcharlston@clayt
onutz.com>

To

<james.brown@corptech.qld.gov.au>
cc

19/08/2010 07:32

Subject
RE: FW: CONFIDENTIAL: State of
Queensland – IBM – Settlement Terms
Sheet – State reply 18/8/10

CLAYTON UTZ

Memo

Thursday
19 August 2010

[THIS FILE NOTE DICTATED BY JCC 15/5/13 FROM HANDWRITTEN FILE NOTE ON
FILE]

To: File
Attendance:
Time/Units: 11 am
From: Jeremy Charlston
Extension: 7028
Location: B27.13

Matter number: 80108894

QH-IBM Payroll Dispute

TF Mal Grierson

Seeing IBM

- Chat re where at with the process - other business.
- Disappointed to date.

Advice on say/not say.

Per???

Dis???

DG