

TERMS OF ASSIGNMENT

1 DEFINITIONS AND INTERPRETATION

1.1 Unless expressed to the contrary, in this Deed:

‘Confidential Information’ means any ideas, concepts, drawings, technical information, financial information, trade secrets, know-how, computer source code, integrated circuit layout designs and any other information of any kind and in any form whatsoever, disclosed to the Contributor in the course of the Contributor’s participation in the creation or development of YAWL, but excludes information that is or becomes part of the public domain other than by reason of a breach of an obligation of confidence.

‘Contributions’ means all source code, object code, executable code and documentation (whether in hard copy or electronic form) made available by the Contributor for inclusion in YAWL.

‘Deed’ means these Terms of Assignment, as varied from time to time, and the covering execution page signed by the parties;

‘Intellectual Property’ means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, Confidential Information.

Moral Rights means moral rights as described in Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world.

‘YAWL’ means the open source workflow language computer program known as “Yet Another Workflow Language”, including its core components, editors, add-ins, custom services and other ancillary constituents comprising the YAWL package as released, and as further modified, developed or improved from time to time.

1.2 Unless expressed to the contrary, in this Deed:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 any gender includes the other genders;

1.2.3 if a word or phrase is defined its other grammatical forms have corresponding meanings;

1.2.4 “includes” means includes without limitation;

1.2.5 no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

1.2.6 a reference to:

(a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(b) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation.

1.2.7 any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

1.2.8 this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and

1.2.9 a clause or subclause is a reference to a clause or subclause of this deed.

2 ASSIGNMENT

- 2.1 Each Contributor assigns to the Foundation all of the right, title and interest the Contributor may have in the Contributions. The Contributor further agrees that any Intellectual Property in Contributions created or developed by the Contributor after this Deed has been executed will vest in the Foundation on their creation.
- 2.2 Each Contributor will execute all documents and do all things necessary to give effect to the assignment in **clause 2.1**, including executing further assignments if necessary.

3 ATTORNEY

- 3.1 Each Contributor irrevocably appoints the Foundation as its attorney with the power at any time to:
 - 3.1.1 do everything which in the attorney's reasonable opinion is necessary to enable the exercise of any right of the Foundation in relation to this document (including performing any act to be done, and signing any document that would otherwise be signed by the Contributor including any patent application document, in order for the Foundation to obtain, enforce or otherwise deal with the Intellectual Property in YAWL); and
 - 3.1.2 if the Contributor fails to comply with an obligation under this document, to do all acts and things that the Contributor is obliged to under this document.

4 MORAL RIGHTS

- 4.1 To the extent that a Contributor has Moral Rights in the Contributions, that Contributor gives a Moral Rights Consent. To the extent that any employee or contractor of a Contributor has Moral Rights in the Contributions, that Contributor will obtain a Moral Rights Consent from that person and provide it on request by and in a form acceptable to the Foundation.
- 4.2 **'Moral Rights Consent'** means a waiver of Moral Rights to the extent permitted by law, and an unconditional consent to any act or omission, in relation to Contributions by or on behalf of the Foundation, a licensee or subsequent owner of copyright in YAWL or the Contributions, which might otherwise infringe the consenting person's Moral Rights..

5 WARRANTIES AND INDEMNITY

- 5.1 Each Contributor warrants that:
 - 5.1.1 the Intellectual Property assigned to the Foundation by the Contributor under **clause 2** comprises original works only, which have not been, and will not be, copied wholly or substantially from any other works,
 - 5.1.2 the Foundation's and any licensee's use of the Intellectual Property assigned to the Foundation by the Contributor under **clause 2** will not infringe the copyright or other Intellectual Property rights of any third party; and
 - 5.1.3 it has the right to assign and grant the rights under **clause 2**.
- 5.2 Each Contributor indemnifies and will defend the Foundation against any claim, liability, loss, damages, cost and expense suffered or incurred by the Foundation as a result of any breach of the warranties given by the Contributor under **clause 5.1**.

6 INTELLECTUAL PROPERTY PROTECTION

- 6.1 The Foundation agrees to undertake the prosecution, defence and enforcement of the Intellectual Property in YAWL taking into account any recommendations made by the YAWL Foundation Board and the interests of all those who have contributed to the development of YAWL, but otherwise at its discretion.
- 6.2 The Contributor must provide the Foundation with all reasonable non-monetary assistance, including the provision of, and access to documents, and information, to enable the Foundation to prosecute, defend and enforce the Intellectual Property in YAWL.

7 CONFIDENTIAL INFORMATION

- 7.1 The Contributor must not use or allowed to be used, or disclose, or allow to be disclosed, any Confidential Information relating to YAWL, or the terms of this document, to any person except:
- 7.1.1 for a purpose directly related to the Contributor's involvement in the further development and use of YAWL;
 - 7.1.2 as required by law; or
 - 7.1.3 with the prior written consent of the YAWL Foundation Board.
- 7.2 The Contributor agrees that it will comply with any terms imposed on the Foundation by a third party in connection with the commercial exploitation of YAWL, in relation to the use and confidentiality of any Confidential Information or Intellectual Property in YAWL, as if the Contributor was bound by those terms.
- 7.3 If a Contributor ceases to be involved in the further development and use of YAWL for any reason, and upon request by the Foundation, the Contributor will deliver to the Foundation's nominated representative all documents and data of any nature relating to the development of YAWL, including any Confidential Information, and the Contributor must not take nor retain any documents, disks or data in any form containing or relating to any such Confidential Information.

8 DISPUTE RESOLUTION

- 8.1 A party must not commence legal proceedings against the other party unless that party has complied with this **clause 8**.
- 8.2 When a party claims that a dispute has arisen under this Deed (**Dispute**), the party must serve written notice of that Dispute on the other party (**Dispute Notice**).
- 8.3 The parties must negotiate in good faith and use their best endeavours to resolve the Dispute.
- 8.4 If the parties cannot resolve the Dispute within 30 days after the date on which the Dispute Notice was served (**Notice Date**), the parties agree to settle the Dispute by expert determination administered by the Australian Commercial Dispute Centre (**ACDC**).
- 8.5 The expert determination will be conducted in accordance with ACDC Expert Determination Guidelines which set out the procedures to be adopted, the process of selecting the expert and the costs involved, and the terms of those Guidelines are incorporated in this Deed.
- 8.6 The expert determination is final and binding on the parties.

9 NOTICES

- 9.1 In addition to any other lawful means, a notice or other communication relating to this document must be in English and may be given by being:
- 9.1.1 personally delivered or left at the party's current address for notices;
 - 9.1.2 sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
 - 9.1.3 sent by fax to the party's current fax number for notices.
- 9.2 The particulars for delivery of notices are initially:

QUT

Address: 2 George Street
Brisbane QLD 4000
Fax: +61 7 3138 9390
Attention: Arthur ter Hofstede

Contributor

The particulars specified on the front page of this Deed.

- 9.3 A party may change its particulars for delivery of notices by notice to the other party.
- 9.4 A communication is given if posted:
- 9.4.1 within Australia to an Australian address, 3 Business Days after posting; or
 - 9.4.2 in any other case, 10 Business Days after posting.
- 9.5 A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

10 GENERAL

Amendment

- 10.1 This Deed may only be varied or replaced by a deed of variation executed by the parties.

Further steps

- 10.2 Each party must promptly do whatever the other party reasonably requires of it to give effect to this Deed and to perform its obligations under it.

Governing law and jurisdiction

- 10.3 This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland.
- 10.4 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

Counterparts

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

Entire understanding

- 10.6 This Deed contains the entire understanding between the parties as to the subject matter of this Deed.
- 10.7 All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Deed are merged in and superseded by this Deed and are of no effect. Neither party is liable to the other party in respect of those matters.