



Digital.NSW Cloud Framework

Customer Contract

Customer Contract Details

Head Agreement Details	Name of Head Agreement	[Insert name of Head Agreement]
	Relevant Contract Authority	Department of Customer Service.
Date of this Customer Contract	Date	[Insert execution date]
Customer Contract number	Number	[Insert]
Parties	Customer	[Insert] (ABN [Insert])
	Address of Customer	[Insert]
	Supplier	[Supplier name] (ABN [Insert])
	Address of Supplier	[Insert]
1. Term (cl. 2.3)	Commencement Date	[Insert]
	Initial Term	[Insert]
	Renewal Period	[Insert duration and number of Renewal Periods]
2. Authorised Representatives (cl. 4.5)	Authorised Customer Representative	[Insert the details of the Customer's representative(s) who are authorised to order products and services]
	Names, roles, and contact details and/or email addresses	

	<p>Authorised Supplier Representative [Insert the details of the Supplier's representative(s)]</p> <p>Names, roles, and contact details and/or email addresses</p>										
<p>3. Additional requirements (cl. 4.7)</p>	<p>[Insert any additional requirements which the Supplier are required to meet, including in respect of any Products or Services]</p>										
<p>4. Governance (cl. 7.2)</p>	<p>[Insert details of governance framework (eg for any steering / management / operational committee – specify committee, membership and frequency of meetings)]</p>										
<p>5. Background checks (cl. 9.3)</p>	<p>[Insert any criminal history background checks, “Working with Children” checks, security checks and clearances and any other background checks required to be performed by the Supplier]</p>										
<p>6. Additional Security Requirements (cl. 11.2)</p>	<p>[Note: the Customer should consult with its CISO in relation to which requirements should be included here]</p> <p>Standards which the Supplier must comply with</p> <table border="1" data-bbox="564 947 1426 1966"> <thead> <tr> <th data-bbox="564 947 1018 1099">Standard (check box if applicable)</th> <th data-bbox="1018 947 1426 1099">Is the Supplier required to provide certification for this standard (cl. 11.2(d)) (check box if applicable)</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 1099 1018 1305"> <input type="checkbox"/> ISA/IEC 62443 series of standards on the cyber security of industrial automation and control systems </td> <td data-bbox="1018 1099 1426 1305"> <input type="checkbox"/> </td> </tr> <tr> <td data-bbox="564 1305 1018 1659"> <input checked="" type="checkbox"/> ISO/IEC 27001 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services <i>(See NSW Government Cyber Security Policy Mandatory Requirement cl.3.1)</i> </td> <td data-bbox="1018 1305 1426 1659"> <input checked="" type="checkbox"/> </td> </tr> <tr> <td data-bbox="564 1659 1018 1901"> <input type="checkbox"/> ISO/IEC 27017 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services </td> <td data-bbox="1018 1659 1426 1901"> <input type="checkbox"/> </td> </tr> <tr> <td data-bbox="564 1901 1018 1966"> <input type="checkbox"/> ISO/IEC 27018 </td> <td data-bbox="1018 1901 1426 1966"> <input type="checkbox"/> </td> </tr> </tbody> </table>	Standard (check box if applicable)	Is the Supplier required to provide certification for this standard (cl. 11.2(d)) (check box if applicable)	<input type="checkbox"/> ISA/IEC 62443 series of standards on the cyber security of industrial automation and control systems	<input type="checkbox"/>	<input checked="" type="checkbox"/> ISO/IEC 27001 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services <i>(See NSW Government Cyber Security Policy Mandatory Requirement cl.3.1)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/> ISO/IEC 27017 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services	<input type="checkbox"/>	<input type="checkbox"/> ISO/IEC 27018	<input type="checkbox"/>
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<input type="checkbox"/> ISO/IEC 27018	<input type="checkbox"/>										

	Information technology – Security techniques – Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors	
	<input type="checkbox"/> ISO/IEC 27032 Information technology – Security techniques – Guidelines for cybersecurity	<input type="checkbox"/>
	<input type="checkbox"/> American Institute of Certified Public Accountants (AICPA) SOC 2 – System and Organization Controls (SOC) for Service Organizations: Trust Services Criteria	<input type="checkbox"/>
	<input type="checkbox"/> National Institute of Standards and Technology (NIST) SP 800-53 Rev.4 Security and Privacy Controls for Federal Information Systems and Organisations	<input type="checkbox"/>
	<input type="checkbox"/> Information Security Registered Assessors Program (IRAP) Security Assessment [<i>specify Protected or Unclassified DLM Certification requirement</i>]	<input type="checkbox"/>
	<input type="checkbox"/> Payment Card Industry Data Security Standards published by the PCI Security Standards Council, present or future (PCI DSS)	<input type="checkbox"/>
	[Insert additional rows as necessary]	
<p>Other Security Requirements</p> <p>[Insert any other of the Customer’s IT security and cybersecurity requirements, including specific business continuity or disaster recovery requirements here – noting that these may already be covered under the Supplier’s Security Program.]</p>		
7. Location of Customer Data (cl. 9.4)	Location of primary data centre	[Insert location]
	Location of secondary data centre	[Insert location]
	Locations outside of NSW where	[Insert location(s) and any conditions]

	Customer Data may be stored, processed, accessed, disclosed or viewed by the Supplier, and any conditions for such	[The Customer should not consent to any Customer Data being stored, processed, accessed, disclosed or viewed by the Supplier outside of NSW, without appropriate assessment by the Customer of privacy, State Records (see <i>General authority for transferring records out of NSW for storage with or maintenance by service providers based outside of the State GA 35</i>) and security risks and prior CISO approval.]
	Excluded locations	[insert any locations from which the Supplier is prohibited from accessing and / or viewing the Customer Data.]
8. Media decommissioning process (cl. 11.7)	[Insert any additional requirements beyond those in clause 11.7(a), in respect of media decommissioning.]	
9. Government policies, applicable standards and Laws (cl. 16.1(a)(i)(H))	[Insert any additional specific Laws, NSW Government policies, codes, guidelines and standards.]	
10. Insurances (cl. 17(a))	[Insert alternate insurance amounts if these should be different to the amounts set out in clause 17(a) of this Customer Contract.]	
11. Liability cap (cl. 18.3(a)(i))	[Insert AUD10,000,000 or such higher amount required by the Customer] If no amount is specified here in this Item 11, the amount in clause 18.3(a)(i) will be AUD10,000,000.	
12. Notices (cl. 23.11)	Customer	Attention: [Insert] Address: [Insert] Email: [Insert]
	Supplier	Attention: [Insert] Address: [Insert] Email: [Insert]

Customer Contract Terms

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Customer Contract Terms

Background

- A. The Contract Authority is responsible for the administration of the Digital.NSW Cloud Framework on behalf of Eligible Customers.
- B. The Digital.NSW Cloud Framework sets out a framework under which suppliers may supply products and services to Eligible Customers.
- C. The Supplier is a supplier of the Products and Services, and has represented to the Contract Authority that it is capable of supplying the Products and Services to Eligible Customers.
- D. The Contract Authority and the Supplier have entered into a Head Agreement (as described in the Customer Contract Details) for the supply of Products and Services to Eligible Customers.
- E. The Customer is an Eligible Customer. The Customer and the Supplier have agreed to enter into this Customer Contract under the Head Agreement.

Part A Overview

1 Defined terms, interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in the Dictionary has the meaning given to it in the Dictionary.

1.2 Interpretation

The interpretation clause in the Dictionary sets out rules of interpretation for this Customer Contract.

2 About this Customer Contract

2.1 Overview

- (a) This Customer Contract comprises the following documents:
 - (i) the Customer Contract Terms;
 - (ii) the Customer Contract Details;
 - (iii) each Executed Order; and
 - (iv) the Supplier Terms, subject to clause 3.
- (b) In the event of any conflict or inconsistency between any of these documents, the document listed higher in the list will prevail over the document listed lower regardless of anything to the contrary in those documents.

2.2 Master-style agreement

The Customer may enter into Executed Orders under this Customer Contract to procure Products and Services from the Supplier. An Executed Order may only be entered into after this Customer Contract has been executed by the parties.

2.3 Term

- (a) This Customer Contract begins on the Commencement Date and continues for the Initial Term, unless extended by the Customer under paragraph (b) or terminated earlier in accordance with its terms.
- (b) The Customer may exercise one or more options to extend the Term of this Customer Contract on the same terms and conditions, for the period not exceeding the relevant Renewal Period, by giving the Supplier a notice in writing at least 30 days prior to the end of the then-current Term.
- (c) The term of an Executed Order begins on the date specified in the Executed Order and continues for the initial term specified in the Executed Order, unless extended by the Customer under paragraph (d) or terminated earlier in accordance with the terms of this Customer Contract.
- (d) If the Executed Order specifies a renewal term, then the Customer may extend the term of the Executed Order by the relevant renewal term, by giving the Supplier a notice in writing at least 30 days prior to the end of the then-current term of the Executed Order. Unless otherwise agreed in writing by the parties, the same terms and will continue to apply during any renewal term of the Executed Order.

2.4 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

- (a) entry into this Customer Contract does not guarantee that the Customer will enter into any Executed Order with the Supplier;
- (b) the Customer is under no obligation to acquire any minimum volumes of Products or Services or meet any minimum spend level under this Customer Contract, unless otherwise agreed; and
- (c) the Supplier is not an exclusive provider of the Products and Services to the Customer.

3 The role of the Supplier Terms

3.1 Overview

The Supplier represents that the Supplier Terms:

- (a) set out terms which provide specific details around how a Customer may access, use and interact with, particular Products or Services;
- (b) describe the Products or Services which the Supplier offers to provide to the Customer, including Service Levels and other performance standards; and
- (c) are no more onerous on the Customer than any other customer of the Supplier who purchases the relevant Products or Services.

3.2 Application of the Supplier Terms

- (a) If specified in an Executed Order, the Supplier Terms will apply to the particular Product or Service purchased under that Executed Order.
- (b) The Supplier Terms are set out at Schedule 1 of this Customer Contract, and a copy of any applicable Supplier Terms must be attached to the Executed Order. If an Executed Order specifies that particular Supplier Terms will apply to the particular Product or Service purchased under that Executed Order, but no copy of the Supplier Terms is attached to the Executed Order, then the relevant Supplier Terms at Schedule 1 of this Customer Contract (or in the absence of relevant Supplier Terms in the Customer Contract, Schedule 1.3 (Supplier Terms) of the Head Agreement) will apply to that Executed Order.
- (c) The Supplier Terms do not apply to the extent that:
 - (i) they deal with the same or similar subject matter as a provision of the Customer Contract Terms (for example, provisions in the Supplier Terms that deal with limitations of liability will not apply, in whole, as the Customer Contract Terms also deal with this subject matter);
 - (ii) they are inconsistent or in conflict with the Customer Contract Terms;
 - (iii) they alter, or seek to alter, the legal obligations of, or relationship between the Customer and the Supplier, as set out in the Customer Contract Terms;
 - (iv) they impose additional obligations or requirements on the Customer, other than as set out in the Customer Contract Terms; and
 - (v) they limit any rights or remedies of the Customer under the Customer Contract Terms.
- (d) Where:
 - (i) the Supplier Terms purport to override or otherwise vary the Customer Contract Terms; or
 - (ii) any other terms (whether included in the Customer Contract, an Executed Order or otherwise) purport to override or otherwise vary the Customer Contract Terms,those terms will have no legal effect, except where both:
 - (iii) agreed by the parties and specified in Schedule 2 of the Customer Contract Terms; and
 - (iv) the Contract Authority has provided its written approval for such terms overriding or otherwise varying the Customer Contract Terms, in accordance with any process specified by the Contract Authority from time to time.
- (e) Where an Executed Order amends the Supplier Terms:
 - (i) that amendment may not be superseded by or derogated from by any other Supplier Terms or any subsequent amendment of those Supplier Terms (**Amendment**), unless otherwise agreed by the Customer and the Supplier in writing; and

- (ii) if, in the Customer's reasonable opinion, the Amendment will be non-beneficial to the Customer, the Amendment will have no legal effect except and until it has been approved in writing by the Contract Authority, in accordance with any process specified by the Contract Authority from time to time.

3.3 Variations to Supplier Terms

- (a) If under the Supplier Terms, the Supplier is entitled to unilaterally amend any part of the Supplier Terms (**Unilateral Amendment**), then this clause 3.3 will apply.
- (b) The Supplier must notify the Contract Authority and the Customer of each Unilateral Amendment at least 6 months in advance of such Unilateral Amendment taking effect.
- (c) The Supplier must provide the Contract Authority and the Customer with all information that may be reasonably requested by the Contract Authority or the Customer to understand the purpose, scope or effect of the Unilateral Amendment.
- (d) If, in the Customer's and/or Contract Authority's reasonable opinion, the result of a Unilateral Amendment will be non-beneficial to the Customer, and:
 - (i) the Products and Services have been procured for a Fixed Service Term, then the Customer may terminate any affected Executed Orders on at least 1 months' notice to the Supplier without penalty. The Customer may provide such notice to the Supplier any time before the Unilateral Amendment takes effect, or within 3 months after the Unilateral Amendment takes effect; or
 - (ii) the Products and Services have not been procured for a Fixed Service Term, then the Customer may cease to procure the Services on 1 months' notice,and nothing in this paragraph (d) limits any rights or remedies which the Customer may have in respect of a Unilateral Amendment.
- (e) If the Customer gives a notice under paragraph (d) and:
 - (i) the Customer has paid upfront fees for Products or Services not yet delivered, the Supplier must reimburse all such fees; and
 - (ii) in the Customer's reasonable opinion, a Unilateral Amendment would also have a material adverse effect on the ability of the Supplier to comply with its obligations in respect of any Customer Data, then, in addition to its rights under paragraph (d), the Supplier agrees that it will pay to the Customer an amount equivalent to the reasonable costs incurred by the Customer in extracting its Customer Data from the relevant Product or Service, and migrating to an alternative system.

Part B Products and Services

4 Provision of Products and Services

4.1 Purchasing Products and Services

- (a) The Supplier acknowledges that its Head Agreement with the Contract Authority constitutes a standing offer under which it offers to provide the Products and

Services to Eligible Customers, including the Customer, at a Price which is the same or less than as set out in the Price List.

- (b) The Customer may purchase Products and Services from the Supplier by entering into an Executed Order with the Supplier. An Executed Order may only be entered into after this Customer Contract has been executed by the parties. The Executed Order sets out the quantity, Price and other details of the Products and Services which the Customer purchases from the Supplier.

4.2 Executed Orders

- (a) An Executed Order is formed once the parties execute an Order Form. The parties acknowledge that any digital version of the Order Form may be executed by the parties electronically.
- (b) The Customer may update the Order Form (including by creating more than one version of the Order Form, and creating a digital version of the Order Form), from time to time, by notice in writing to the Supplier.
- (c) The Order Form must specify:
 - (i) the Products and/or Services to be provided by the Supplier; and
 - (ii) the Price for those Products and Services, which must not exceed the maximum Prices set out in the Price List,

however, nothing in this paragraph (c) limits the ability of the Supplier and Customer to agree Prices that are less than those set out in the Price List.

- (d) Where the Customer intends to procure a product or service that is not in the Product and Service Menu (**New Offering**), the Supplier must first seek the Contract Authority's written approval:
 - (i) to add the New Offering to the Product and Service Menu; or
 - (ii) to supply the New Offering to the Customer under the Head Agreement.

On confirmation by the Contract Authority that the New Offering has been added to the Product and Service Menu or that the Contract Authority has otherwise approved supply of the New Offering under the Head Agreement, the Customer may then procure the New Offering under an Executed Order in accordance with clause 4.2(c).

- (e) The Supplier has no obligation to supply any Product or Service to a Customer, and a Customer has no obligation or liability in respect of any Product or Service, unless and until an Executed Order for that Product or Service has been entered into under this Customer Contract.

4.3 Provision of Products and Services

- (a) The Supplier must provide the Products and Services described in the Executed Order to the Customer, by the relevant Date for Delivery for the relevant service term, in accordance with that Executed Order and the Customer Contract Terms.
- (b) If the Executed Order specifies that the Supplier must provide transition-in services, then the Supplier must provide those transition-in services in accordance with the Executed Order.

- (c) If the Executed Order specifies that a Product or Service has been purchased by the Customer, and will be provided by the Supplier:
 - (i) for a Fixed Service Term, then the Supplier must provide that Product or Service for the relevant Fixed Service Term;
 - (ii) not for a Fixed Service Term, then the parties agree that the Products and Services will be provided on a month-by-month basis during the term of the Executed Order and that:
 - (A) the Customer may terminate the relevant Product or Service on 1 months' notice; and
 - (B) if the Supplier withdraws the Product or Service in accordance with clause 4.6, then the Supplier is not obliged to provide that Product or Service at the end of the relevant notice period under clause 4.6.

4.4 Prices and the Head Agreement

- (a) The parties agree that the prices set out in the Price List represent the maximum Price payable by the Customer for the relevant Product or Service.
- (b) The Supplier may not charge or seek to charge the Customer an amount greater than that set out in the Price List, including any discount, credit, rebate or other similar benefit specified in the Price List.
- (c) The Executed Order may specify any further discount, credit, rebate or other similar benefit which will apply to that Executed Order in addition to that set out under the Price List.
- (d) If the Price List or an Executed Order specifies that an Eligible Customer is eligible for a discount, credit, rebate or other similar benefit once particular conditions are met, then the Supplier must provide that discount, credit, rebate or other similar benefit to the Customer once those conditions are met. For clarity, if those conditions are met after an Executed Order has been formed, then the Supplier must apply that discount, credit, rebate or other similar benefit on all invoices after the date that the conditions are met (and is not required to make the application of any discount retrospective, unless otherwise agreed in the Price List or the Executed Order).
- (e) If, at the end of the term of an Executed Order or this Customer Contract, the Customer has accrued a discount, credit, rebate or other similar benefit that has not been credited or otherwise provided to the Customer, then, if requested by the Customer, the Supplier must pay to the Customer an amount equivalent to the value of the accrued discount, credit, rebate or other similar benefit.

4.5 Unauthorised orders or requests

- (a) If the Supplier receives an order or request to procure any Products and Services from any person who is not an Authorised Customer Representative, the Supplier must not process the Order unless and until that person provides evidence that they are authorised to procure Products and Services for the Customer.
- (b) The Supplier must report to the Customer any orders or requests to supply Products or Services to the Customer received other than from an Authorised Customer Representative as soon as possible following receipt.

4.6 Withdrawing Products or Services

- (a) The Customer acknowledges that, under the Head Agreement, the Supplier may withdraw a Product or Service (**Withdrawing Product or Service**) from the Product and Service Menu by providing 12 months' advance notice to the Contract Authority.
- (b) If the Supplier is providing a Withdrawing Product or Service to the Customer, then the Supplier must also provide 12 months' advance notice of that Withdrawing Product or Service to the Customer.
- (c) The provision of a notice, as described in paragraphs (a) and (b), does not relieve the Supplier of its obligation to provide a Withdrawing Product or Service under any Executed Order, where that Withdrawing Product or Service has been purchased by the Customer for a Fixed Service Term.

4.7 Additional requirements

The Supplier must meet, and ensure that the Products and Services meet, any specific requirements agreed by the parties as specified in Item 3 of the Customer Contract Details or any Executed Order.

5 Performance standards

5.1 Supplier Performance

- (a) The Supplier must supply the Products and Services specified in the Executed Order:
 - (i) in accordance with the Customer Contract Terms, including the relevant Executed Order;
 - (ii) in a manner that meets or exceeds the Service Levels (if any). The parties agree that the Service Levels, their method of calculation and interpretation and relevant reporting requirements will be set out in the relevant Supplier Terms;
 - (iii) with due care and skill, consistent with relevant industry practice and standards; and
 - (iv) in accordance with all Laws applicable to the performance of the Supplier's obligations under the Executed Order and the supply of the Products and Services.
- (b) The Supplier must notify the Customer if it becomes aware that it is not able to, or reasonably anticipates that it is not able to, supply the Products and Services in accordance with this Customer Contract.

5.2 Consequences for failing to meet a Service Level

Without limiting any right or remedy available to the Customer under the Customer Contract Terms (including under clause 20.1(a)) or at Law:

- (a) if the Supplier does not meet a Service Level, then the consequences for failing to meet a Service Level as set out in the Supplier Terms or the Executed Order will apply in accordance with their terms; and

- (b) if the Supplier fails to meet the same Service Level 3 times in any consecutive 6 month period during the Term, then the Customer may terminate this Customer Contract under clause 20.1(d).

5.3 Documentation

The Supplier agrees to make available to the Customer and keep updated all materials needed for the Customer to be able to use the Products and Services in an efficient and effective manner.

6 Subcontracting

6.1 No subcontracting without consent

- (a) The Supplier must not subcontract any of its obligations to any third party, without the Customer's prior written consent, subject to paragraph (b).
- (b) If the Customer consents to any subcontractor on a conditional basis, then the Supplier must comply with those conditions if it engages that subcontractor.
- (c) A permitted subcontractor may not further subcontract the relevant obligations to another person without the Customer's prior written consent.
- (d) The Customer may, by written notice to the Supplier, revoke its consent to any permitted subcontractor if the Customer, acting reasonably, has concerns about that permitted subcontractor's:
 - (i) performance of services in connection with this Customer Contract; or
 - (ii) compliance with (or ability to comply with) the terms of this Customer Contract.

6.2 Supplier remains responsible

- (a) The Supplier is solely responsible for managing its supply chain and any risks in its supply chain.
- (b) Any subcontracting by the Supplier does not relieve the Supplier of any of its obligations under this Customer Contract.
- (c) The Supplier must ensure that each of its subcontractors comply with all of the terms of this Customer Contract to the extent they are relevant to that subcontractor.
- (d) The Supplier is responsible for its subcontractors, and liable for their acts and omissions as though they were the acts and omissions of the Supplier.

7 Performance Management and Governance

7.1 Reporting

- (a) The Supplier must provide to the Customer the following reports and reporting tools:

- (i) a real-time or near real-time personalised view of the performance and availability of the Products and Services, including:
 - (A) data on the Customer's consumption of Products and Services, including utilisation and volumes;
 - (B) the Prices incurred by the Customer, tracked over time and usage, including any applicable discounts, credits, rebates and other benefits;
 - (C) a dashboard of events in progress and affected resources;
 - (D) proactive notification of scheduled activities (including as required under clause 11.2); and
 - (E) alerting of the status and performance of the Supplier's resources deployed in the performance of this Customer Contract;
 - (ii) the Supplier's performance against the Service Levels, on a monthly basis, including any accrued service credits; and
 - (iii) any reporting as requested by the Customer from time to time, including as may be required by the Customer to enable the Customer to meet its internal and NSW Government compliance, regulatory and operational reporting obligations.
- (b) The Customer may share the details of a report with the Contract Authority or any other Eligible Customers, for the purposes of such recipient assessing the terms of its own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes, or for any other reasonable business purposes.

7.2 Governance

Each party agrees to comply with the governance framework specified in the Customer Contract Details, including to make available suitably qualified personnel to attend governance meetings.

8 Intellectual property

8.1 Products and Services

- (a) The Supplier owns all rights, title, and interest in and to the Products and Services, including in all materials provided or made available by the Supplier to the Customer in connection with the Products and Services which the Supplier provides or makes available to its customers generally.
- (b) The Supplier grants to the Customer a royalty-free licence to access and use the Products and Services until the expiry or termination of the Executed Order, including the Disengagement Period (if any) for the purposes of enjoying the full benefit of the Products and Services and exercising the Customer's rights under this Customer Contract.
- (c) The licence granted in clause 8.1(b) permits the Customer to sublicense any of the rights in this clause 8.1, without additional charge, to any other Eligible Customers.

- (d) The Customer may authorise any of its Customer Users to exercise any of the Customer's rights under paragraph (b). The Customer is responsible for the acts and omissions of its Customer Users, in respect of the Products and Services, as though they were the acts and omissions of the Customer.

8.2 New Materials

- (a) Unless agreed otherwise in an Executed Order, where the Supplier creates New Materials in providing the Products and Services to the Customer the Intellectual Property Rights in those New Materials are owned by the Supplier.
- (b) The Supplier grants to the Customer a perpetual, irrevocable licence to use the New Materials, in connection with the Customer's access and use of the Products and Services. The Customer may sublicense or transfer its right to use the New Materials to any other Eligible Customer, and the Eligible Customer may use such New Materials in connection with its access, use and interaction with, the Products and Services.
- (c) If the parties agree in an Executed Order that any New Materials are owned by the Customer, then:
 - (i) ownership of all rights, title and interest in that New Material vests in the Customer on creation or is assigned by the Supplier to the Customer on creation. The Supplier agrees to do all things necessary to assign ownership in the New Material to the Customer; and
 - (ii) the Customer grants to the Supplier a license to use the New Material for the sole purpose of providing the Products and Services to the Customer.

8.3 Intellectual property warranties

The Supplier represents, warrants and undertakes that:

- (a) the Supplier has all the Intellectual Property Rights required to:
 - (i) supply the Products and Services to the Customer; and
 - (ii) enable the Customer and each Customer User to use the Products and Services in the manner envisaged by this Customer Contract; and
- (b) the Supplier's supply of the Products and Services to the Customer, and the Customer and each Customer User's use of the Products and Services in the manner envisaged by this Customer Contract will not infringe any other person's Intellectual Property Rights.

Part C Data and security

9 Customer Data

9.1 Ownership of Customer Data

- (a) The Supplier agrees that:
 - (i) all Customer Data is owned by the Customer; and

- (ii) Customer Data is the Customer's Confidential Information.
- (b) The Supplier acknowledges that the Customer's ability to access the Customer Data is fundamental to the business and operations of the Customer.
- (c) The Supplier must not:
 - (i) use any Customer Data to perform data analytics;
 - (ii) perform any data analytics on Customer Data; or
 - (iii) otherwise seek to manipulate or derive any data from any Customer Data.
- (d) Nothing in this clause 9.1 limits the Supplier's ability to use performance related data that is derived from the Customer's use of the Products and Services, provided that such data does not:
 - (i) identify the Customer or any Customer User, and it is not possible for any Customer or Customer User to be re-identified from such data; or
 - (ii) contain any Customer Data or Confidential Information of the Contract Authority or Customer, and it is not possible for the content of any Customer Data or such Confidential Information to be deduced or inferred from such data,

(Performance Data).
- (e) The Supplier owns the Performance Data.
- (f) If any Customer Data is created by the Supplier, then ownership of all rights, title and interest in that Customer Data vests in the Contract Authority on creation and the Supplier hereby assigns all rights, title and interest in the Customer Data to the Customer on creation. The Supplier agrees to do all things necessary to assign or vest ownership of all rights in that Customer Data to the Customer, on creation.

9.2 Licence to use Customer Data

- (a) The Customer grants the Supplier a licence to use the Customer Data for the sole purpose of providing the Products and Services to the Customer.
- (b) The licence in 9.2(a) is non-exclusive, non-transferable, non-sublicensable (except to permitted subcontractors) and royalty free and continues until the expiry or termination of the relevant Executed Order.
- (c) Except as set out in this clause 9.2, the Supplier does not gain any other rights or permissions to the Customer Data.

9.3 Supplier's Personnel who have access to Customer Data

The Supplier must:

- (a) complete criminal history background checks, "Working with Children" checks, security checks and clearances and any other background checks as set out in Item 5 of the Customer Contract Details or any Executed Order or as required by the Customer from time to time, for the Supplier's Personnel who are able to view or access Customer Data; and

- (b) not use any Personnel who have failed any check specified in paragraph (a) in the performance of any Executed Orders under this Customer Contract.

9.4 Storage and transfer of Customer Data

- (a) The Supplier must ensure that it provides the Products and Services from the primary data centre and secondary data centre(s) as specified in Item 7 of the Customer Contract Details, and only from those data centres.
- (b) The Supplier must not:
 - (i) store, process, access, disclose or view Customer Data; or
 - (ii) perform any of its obligations under this Customer Contract which could involve Customer Data being stored, processed, accessed, disclosed or viewed,

outside of New South Wales, except as permitted under paragraph (c).
- (c) The Supplier may store, process, access, disclose or view Customer Data, outside of New South Wales:
 - (i) at the locations specified in Item 7 of the Customer Contract Details and in compliance at all times with any conditions specified at Item 7;
 - (ii) where necessary to comply with Law or a binding order of a Governmental body (such as a subpoena or court order) imposed on the Supplier, provided that the Supplier gives the Customer reasonable notice of any such legal requirement or order to enable the Customer to seek a protective order or other appropriate remedy; and
 - (iii) the Supplier may access or view Customer Data from outside the locations specified in Item 7 of the Customer Contract Details via remote access for the sole purpose of performing support and maintenance services, to the extent permitted in the Executed Order, and in any event, subject to and in compliance with clause 9.3 and 11.4,

however, the Supplier must not store, process, access, disclose or view any Customer Data from a location that is:
 - (iv) in a jurisdiction that is the subject of sanction, embargo, export control or similar Laws in Australia, New Zealand, the United States of America, the United Kingdom or the European Union; or
 - (v) specified as an “excluded location” in the Item 7 of the Customer Contract Details or in the Executed Order.
- (d) The Supplier must ensure:
 - (i) the handling of any other Customer Data complies with the terms of this Customer Contract and any other security requirements of the Customer; and
 - (ii) the Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW).

- (e) For clarity, nothing in this clause 9.4 relieves the Supplier of its obligations under clause 10.
- (f) If requested by the Customer, the Supplier must provide the Customer with a report setting out how it will comply with its obligations under this clause 9.4.

9.5 Change to location of Customer Data

- (a) If the Supplier wishes to change:
 - (i) the location of the primary data centre or secondary data centre(s) as specified in Item 7 of the Customer Contract Details; or
 - (ii) the locations specified in Item 7 of the Customer Contract Details, or any of the conditions specified in Item 7,

then the Supplier must provide the Customer with written notice of such change, at least 6 months in advance of when the Supplier wishes that change to take effect.

- (b) The Supplier must not propose changing the location of any primary data centre, secondary data centre(s) or other location specified in Item 7 of the Customer Contract Details to any location that is:
 - (i) in a jurisdiction that is the subject of sanction, embargo, export control or similar Laws in Australia, New Zealand, the United States of America, the United Kingdom or the European Union; or
 - (ii) specified as an “excluded location” in the Item 7 of the Customer Contract Details or in the Executed Order.
- (c) The Supplier must ensure that the notice it provides under paragraph (a) sets out:
 - (i) the proposed change to location or conditions;
 - (ii) the date on which the Supplier proposes the change will occur;
 - (iii) the reason for the proposed change; and
 - (iv) the impact of such changes on the Customer’s ability to access, use and interact with, the Products or Services,

and the Supplier agrees to provide all assistance reasonably requested by the Customer to assess the proposed change to location or conditions.

- (d) If the Customer notifies the Supplier that it:
 - (i) consents to the proposed change to location or conditions, then the parties must execute a variation to Item 7 of the Customer Contract Details that reflects such change; or
 - (ii) does not consent to the proposed change, then the parties must promptly meet to discuss the concerns that the Customer has in respect of the proposed change, and how those concerns may be addressed.
- (e) If the parties are unable to reach an agreement on how the Customer’s concerns may be addressed under paragraph (d)(ii) by the earlier of:

- (i) one month after the Customer provides its notice to the Supplier under paragraph (d)(ii)
- (ii) the date specified in the Supplier's notice under paragraph (c)(ii),

then, the Customer may:

- (iii) terminate any relevant Products and Services that have been procured for a Fixed Service Term, on at least 1 months' notice to the Supplier without penalty; and
- (iv) cease to procure any relevant Products and Services that have not been procured for a Fixed Service Term, on 1 months' notice,

and nothing in this paragraph (e) limits any rights or remedies which the Customer may have in respect of the Supplier's breach or anticipated breach of clause 9.4.

- (f) If the Customer gives a notice under paragraph (e) and:
 - (i) the Customer has paid upfront fees for Products or Services not yet delivered, the Supplier must reimburse all such fees; and
 - (ii) in the Customer's reasonable opinion, the Supplier's proposed change would also have a material adverse effect on the ability of the Supplier to comply with its obligations in respect of any Customer Data, then, in addition to its rights under paragraph (e), the Supplier agrees that it will pay to the Customer an amount equivalent to the reasonable costs incurred by the Customer in extracting its Customer Data from the relevant Product or Service, and migrating to an alternative system.

9.6 Rights to access, use, extract and retrieve Customer Data

Where Customer Data is in the Supplier's possession or control, the Supplier must:

- (a) enable the Customer to access, use and interact with, the Customer Data at any time (which may be through access controls identified in the Supplier Terms or an Executed Order); and
- (b) enable the Customer to extract, retrieve and/or permanently and irreversibly delete the Customer Data (which may be performed by self-service tools), or otherwise provide the Customer Data to the Customer:
 - (i) at any time during the relevant term of the Executed Order;
 - (ii) at no additional charge to the Customer;
 - (iii) in a human readable, commonly accepted format which does not require the Customer to purchase additional licences it does not already hold, or in the same format as the Customer Data was uploaded (for example, a semi-structured format); and
 - (iv) maintaining the relationships and integrity of the Customer Data (including extraction of data keys, reference data and data codes and labels).

9.7 Additional obligations relating to Customer Data

Where applicable, the Supplier must comply with any additional obligations relating to Customer Data as may be specified in the Executed Order.

10 Privacy

If the Supplier collects, uses, discloses, holds or otherwise processes any Personal Information in connection with this Customer Contract (regardless of whether or not that Personal Information forms part of the Customer Data), the Supplier must:

- (a) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
- (b) only use that Personal Information for the sole purpose of supplying the Products and Services to the Customer;
- (c) not disclose the Personal Information to any other person without the Customer's prior written consent;
- (d) not transfer it outside Australia or access it, or allow it to be accessed, from outside Australia without the Customer's prior written consent;
- (e) immediately notify the Customer, upon becoming aware of a breach, alleged breach, or suspecting that a breach of this clause 10 has occurred (or may have occurred) and:
 - (i) take all reasonable steps to manage, contain and remedy such breach;
 - (ii) comply with any reasonable direction from the Customer with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy); and
 - (iii) take all reasonable steps to prevent such breach from recurring; and
- (f) notify the Customer as soon as reasonably possible:
 - (i) if the Supplier is required to disclose that Personal Information under Privacy Laws or other Laws, provided the Supplier gives the Customer reasonable notice of any such legal requirement or order to enable the Supplier to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement); and/or
 - (ii) if the Supplier is approached by any privacy commissioner or other regulator concerning any Personal Information.

11 Security

11.1 Scope of Supplier's security obligations

Without limiting clause 11.4, the Supplier's security obligations under this clause 11:

- (a) apply to the Products and Services provided by the Supplier; and

- (b) apply to Customer Data, where and to the extent that the Supplier controls or is able to control the Customer Data.

For the purposes of this clause 11.1, “**control**” includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

11.2 Supplier’s security obligations

- (a) The Supplier must implement, maintain and enforce a formal program of technical and organisational security measures (including an audit and compliance program) relating to IT security and cybersecurity in accordance with this clause 11, the Customer Contract Details and each Executed Order (**Security Program**). The Security Program must at all times comply with the International Standards for Information Security (available from the Australian Standards website (www.standards.org.au)) and be designed to:
 - (i) monitor, audit, detect, report and protect against Security Incidents and any other threats or hazards to the security or integrity of the Products or Services;
 - (ii) ensure the security (including the confidentiality, availability and integrity) of the Products and Services;
 - (iii) ensure the continuity of the Customer’s access and use of the Products and Services, in a manner that achieves the Service Levels. This include continuity of access and use during any business continuity event, disaster recovery event, scheduled or unscheduled maintenance, and similar events;
 - (iv) monitor, detect and protect against fraud and corruption by the Supplier’s organisation and the Supplier’s Personnel; and
 - (v) ensure that the Security Program is comprehensive in covering all components of the Products and Services.
- (b) Without limiting its obligations under paragraph (a), the Supplier must ensure its Security Program complies with:
 - (i) the NSW Government’s NSW Cyber Security Policy (**CSP**), the NSW Government Cloud Policy and their mandatory requirements, to the extent applicable to or relevant for the supply of the Products and Services to the Customer under this Customer Contract; and
 - (ii) the IT security and cybersecurity standards and requirements set out in Item 6 of the Customer Contract Details and any Executed Order (**Additional Security Requirements**). The Customer may update the Additional Security Requirements from time to time, by notice to the Supplier. The Supplier must ensure its Security Program complies with any updated Additional Security Requirements.
- (c) The Supplier must implement, maintain and execute business continuity and disaster recovery policies and procures as part of its Security Program that comply with the standards and certifications referred to in this clause 11.
- (d) The Supplier must have, obtain and maintain certification from Commencement Date for the duration of the Term from an accredited, independent, third party

registrar or accredited, independent, third party certification body in relation to those security standards:

- (i) indicated at Item 6 of the Customer Contract Details as requiring certification;
- (ii) specified in the Executed Order as requiring certification,

(Certification Security Standards), and those certifications must:

- (iii) be updated at least once annually;
- (iv) confirm the Supplier and its Products and Services comply with the relevant Certification Security Standards; and
- (v) be comprehensive in covering all components of the Products and Services, except where any particular component of the Products and Services is permitted to be excluded from certification (as specified in an Executed Order).

- (e) The Customer may update the Certification Security Standards from time to time, by notice to the Supplier. The Supplier must perform its obligations under this Customer Contract in respect of any updated Certification Security Standards, at no additional cost to the Customer, unless otherwise agreed in writing.
- (f) If there is any conflict or inconsistency between any standards, protocols, requirements and specifications (or similar), the most stringent or higher level of security will apply.
- (g) The Supplier must provide the Customer, at the Customer's request, with electronic copies of:
 - (i) all certifications obtained in connection with any of the Certification Security Standards on or before the Commencement Date, and where certifications are updated, a copy of each renewal;
 - (ii) all reports relating to external audits required in connection with any of the Certification Security Standards (to be provided for the most recent period available);
 - (iii) copies of reports relating to internal audits undertaken by the Supplier in connection with any of the Certification Security Standards (to be provided for the most recent period available);
 - (iv) evidence that a vulnerability management process is in place within their organisation that includes ongoing and routine vulnerability scanning. This can include copies of relevant policies;
 - (v) evidence that penetration testing is carried out prior to and directly after new systems are moved into production or in the event of a significant change to the configuration of any existing system; and
 - (vi) evidence that high and extreme risks identified in audits, vulnerability scans and penetration testing have been remediated,

which must contain (at a minimum) full and complete details of such reports insofar as they relate to the Products and Services. Where the Supplier is not permitted

to provide the Customer with copies of any of the foregoing (due to confidentiality obligations to third parties), the Supplier must provide access to copies of the same in a 'read room' environment.

- (h) The Supplier must run initial and ongoing mandatory security awareness training for all Supplier's Personnel and ensure that all the Supplier's Personnel have completed this training prior to working on Products and Services used by the Customer.

11.3 Change to the Supplier's Security Program

- (a) If the Supplier wishes to change any aspect of its Security Program, where such change would result in:
 - (i) the Security Program no longer complying with any part of this clause 11; or
 - (ii) a reduction the level of security provided by the Supplier in respect of the relevant Product or Services,

then the Supplier must provide the Customer with written notice of such change, at least 6 months in advance of when the Supplier wishes that change to take effect.

- (b) The Supplier must ensure that the notice it provides under paragraph (a) sets out:
 - (i) the proposed change to its Security Program;
 - (ii) the provisions of this clause 11 which the Supplier will not comply with as a result of the proposed change;
 - (iii) the date on which the Supplier proposes the change will occur; and
 - (iv) the impact of such changes on the Customer's access, use and interaction with, the Products or Services, or any Customer Data,

and the Supplier agrees to provide all assistance reasonably requested by the Customer to assess the proposed change.

- (c) If the Customer notifies the Supplier that it:
 - (i) consents to the proposed change, then the parties must execute a variation to this Customer Contract (which may include the "Supplier's Security Program" section of Schedule 1) that reflects such change; or
 - (ii) does not consent to the proposed change, then the parties must promptly meet to discuss the concerns that the Customer has in respect of the proposed change, and how those concerns may be addressed.
- (d) If the parties are unable to reach an agreement on how the Customer's concerns may be addressed under paragraph 9.5(d)(ii) by the earlier of:
 - (i) one month after the Customer provides its notice to the Supplier under paragraph 9.5(d)(ii); or
 - (ii) the date specified in the Supplier's notice under paragraph 9.5(c)(ii),

then, the Customer may:

(iii) terminate any relevant Products and Services that have been procured for a Fixed Service Term, on at least 1 months' notice to the Supplier without penalty; and

(iv) cease to procure any relevant Products and Services that have not been procured for a Fixed Service Term, on 1 months' notice,

and nothing in this paragraph (d) limits any rights or remedies which the Customer may have in respect of the Supplier's breach or anticipated breach of clause 11.

(e) If the Customer gives a notice under paragraph (d) and:

(i) the Customer has paid upfront fees for Products or Services not yet delivered, the Supplier must reimburse all such fees; and

(ii) in the Customer's reasonable opinion, the Supplier's proposed change would also have a material adverse effect on the ability of the Supplier to comply with its obligations in respect of any Customer Data, then, in addition to its rights under paragraph (d), the Supplier agrees that it will pay to the Customer an amount equivalent to the reasonable costs incurred by the Customer in extracting its Customer Data from the relevant Product or Service, and migrating to an alternative system.

11.4 Supplier's security controls for viewing and accessing Customer Data

Where the Supplier is able to view or access Customer Data in the course of providing the Products and Services but does not or is not able to "control" the Customer Data (as control is defined in clause 11.1), then the Supplier must ensure that:

(a) such access is via a secure virtual private network;

(b) only the Supplier's Personnel who satisfy all background checks in accordance with clause 9.3 are able to view or access Customer Data;

(c) all access is logged in such a manner that the access by each of the Supplier's Personnel is auditable and traceable. The Supplier must keep such access logs for at least 7 years, and provide the Customer with a copy of such access logs on request;

(d) all access is monitored by the Supplier and under its control and supervision at all times;

(e) the Supplier's Personnel are not able to download, extract, edit, store, copy (whether electronic or hardcopy), print or otherwise retain any Customer Data;

(f) the Security Program sets out the security measures that apply to such viewing or access of Customer Data, such security measures to be no less protective than those security measures that apply to any Customer Data under the Supplier's control (as control is defined in clause 11.1); and

(g) it notifies the Customer of how it will comply with its obligations under this clause 11.4 in advance of accessing or viewing any Customer Data.

11.5 Supplier's own policies

The Supplier represents, warrants and undertakes that its own information security and cyber security policies that apply to the Products and Services:

- (a) without limiting this clause 11, are as set out in the “Supplier’s Security Program” section of Schedule 1; and
- (b) comply with, or are aligned to, the requirements set out in this clause 11 and each Executed Order.

11.6 Responding to the Customer’s requests

The Supplier must:

- (a) promptly respond to any security related questions received from the Customer and provide related information and materials upon request, including in relation to any information and materials held by the Supplier’s subcontractors; and
- (b) if requested by the Customer, provide reasonable assistance to the Customer to enable the Customer to prepare any reports (including audit reports) that the Customer is required to prepare (whether or not required by Law or NSW Government policy).

11.7 Media decommissioning process

- (a) The Supplier must conduct a media decommissioning process prior to final disposal of storage media used to store Customer Data. The Supplier must ensure that:
 - (i) prior to final disposal, any storage media used to store Customer Data will be degaussed, erased, purged, physically destroyed, or otherwise sanitised in accordance with the requirements of the Australian Government Information Security Manual (**ISM**) and the Customer’s IT Security Policy; and
 - (ii) it complies with any additional requirements in respect of decommissioning that may be set out in Item 8 of the Customer Contract Details.
- (b) If requested by the Customer, the Supplier must provide it with a report or certification showing that paragraph (a) has been complied with.

12 Security Incident notification

12.1 Notification of Security Incidents

If the Supplier becomes aware that there has been an actual, alleged or suspected Security Incident, the Supplier must immediately notify the Contract Authority and the Customer.

12.2 Actions required in relation to a Security Incident:

- (a) As soon as reasonably possible after:
 - (i) the Supplier becomes aware of any actual, alleged or suspected Security Incident; or
 - (ii) the Customer advises the Supplier that the Customer reasonably believes an actual, alleged or suspected Security Incident has occurred or is about to occur,

the Supplier must investigate and diagnose the Security Incident.

- (b) Regardless of whether the Security Incident falls within the scope of the Supplier's Products and Services, the Supplier must:
 - (i) promptly take reasonable steps (including complying with any reasonable directions from the Customer) to mitigate the effects and to minimise any damage resulting from the Security Incident (working on a 24 x 7 basis if required);
 - (ii) retain copies of any logs or other documents relevant to an investigation of the Security Incident, and make them available to the Customer on request;
 - (iii) comply with any reasonable direction given by the Customer in respect of the Security Incident; and
 - (iv) take any steps required by Laws applicable to the Supplier.
- (c) Where the Security Incident falls within, or is reasonably suspected by the Customer to fall within, the scope of the Supplier's Products and Services, the Supplier must:
 - (i) take immediate action to contain the Security Incident and mitigate the impact of the Security Incident (working on a 24 x 7 basis if required);
 - (ii) conduct a root cause analysis as soon as practicable to identify the root cause, understand the risks posed by the Security Incident and identify how these risks can be addressed;
 - (iii) share the results of the Supplier's analysis and the Supplier's remediation plan with the Customer on request, provided that such information is to be treated as the Supplier's Confidential Information under the Executed Order (except where it is already the Customer's Confidential Information);
 - (iv) provide to the Customer, to the extent known at the time:
 - (A) the date of the Security Incident;
 - (B) a description of the Security Incident;
 - (C) a list of actions taken by the Supplier to mitigate the impact of the Security Incident; and
 - (D) a summary of the records impacted or which may be impacted, and Customer Data and/or other information that has been or may have been lost, accessed or disclosed, as a result of the Security Incident;
 - (v) provide any assistance reasonably required in relation to any criminal, regulatory or other investigation relating to the Security Incident;
 - (vi) update the Supplier's remediation plan to address any concerns reasonably raised by the Customer, following which the Supplier must implement the remediation plan in accordance with agreed timeframes;
 - (vii) following implementation of the remediation plan, provide evidence to the Customer verifying that the remediation activities have successfully resolved

the underlying cause of the Security Incident (for example, by sharing the results of relevant penetration tests or vulnerability scans); and

- (viii) review and learn from the Security Incident to improve data handling practices.
- (d) By exception, this does not require the Supplier to provide the Customer with specific details that relate to the Supplier's other customers or would breach Laws.

13 Confidentiality

- (a) Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:
 - (i) keep it confidential;
 - (ii) only use it where required to exercise its rights or perform its obligations under this Customer Contract; and
 - (iii) not disclose it to anyone other than:
 - (A) with the prior consent of the Discloser on condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements; or
 - (B) where required by the *Government Information (Public Access) Act 2009* (NSW) (or any other similar Laws) which may require the Customer to publish or disclose certain information concerning this Customer Contract;
 - (C) where required by any other Laws, provided that the Recipient gives the Discloser reasonable notice of any such legal requirement or order to enable the Discloser to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement);
 - (D) in the case of the Customer, to:
 - (1) the Contract Authority; or
 - (2) any other Eligible Customer, including the head of agency and responsible Minister of any Eligible Customer; or
 - (E) to its Personnel and directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the party's exercise its rights or perform its obligations under this Customer Contract.
- (b) Neither party will issue any press release or make any other public statement regarding this Customer Contract or the Customer's use of the Products and Services without the prior consent of the other party, except as required by Law.
- (c) If requested by the Customer, the Supplier must sign a deed of confidentiality in the form reasonably provided by the Customer from time to time.

Part D Fees and payment

14 Payment and invoicing

14.1 General

- (a) In consideration for the supply of the Products and Services in accordance with this Agreement, the Customer agrees to pay to the Supplier the amounts set out in the Executed Order, subject to any additional discounts, rebates, credits or other similar benefits specified in the Head Agreement or Executed Order. Other than as expressly set out in this Customer Contract, such amounts are the only amounts payable by the Customer in respect of the Supplier's performance of its obligations under this Customer Contract.
- (b) The Supplier must invoice the Customer at the end of each month for use of the Products and Services during that month, unless expressly agreed otherwise in the Executed Order. The Supplier must ensure that its invoice is a valid Tax Invoice, for the purposes of GST Law.
- (c) The Customer will pay any properly rendered invoice:
 - (i) by electronic funds transfer in Australian dollars to a bank account nominated by the Supplier, unless expressly agreed otherwise in the Executed Order;
 - (ii) within 30 days following receipt of the Supplier's valid Tax Invoice (except in the case of a valid dispute); and
 - (iii) in accordance with such other payment terms set out in the Executed Order.
- (d) The Supplier must provide any information reasonably requested by the Customer in respect of an invoice.
- (e) The Customer is not required to pay any part of an invoice if the Customer disputes that amount. In this case, the Customer may withhold the disputed amount until the dispute is resolved.
- (f) If the Supplier has overcharged the Customer in any invoice, the Supplier must promptly refund any amounts that the Supplier has overcharged the Customer, and adjust current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.

14.2 Taxes

- (a) The Supplier is responsible for all Taxes levied or imposed in connection with the supply of Products and Services under this Customer Contract.
- (b) Unless otherwise specified, all amounts specified in this Customer Contract are exclusive of GST.
- (c) The Customer must pay any GST that is payable in respect of any Taxable Supply made under this Customer Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.

Part E Risk allocation and compliance

15 Supplier Warranties

The Supplier warrants that:

- (a) as at the date every Customer Contract and Executed Order is entered into, the Supplier is properly constituted and has the right and authority to enter into that Customer Contract or Executed Order;
- (b) to the best of its knowledge and belief, there is no Conflict of Interest, in respect of itself and its Personnel, which relate to the Supplier's ability to perform its obligations under this Customer Contract;
- (c) the information that it provided to the Customer, in connection with the Customer's decision to enter into this Customer Contract or any Executed Order, was to the best of the Supplier's knowledge and belief, correct and not misleading as at the date of this Customer Contract or Executed Order (as applicable);
- (d) it is not aware of any information which, if it had provided that information to the Customer, may have had a material effect on the decision made by the Customer to enter into this Customer Contract or any Executed Order (as applicable);
- (e) that the office holders of the Supplier and any Associate of the Supplier are of good fame and character; and
- (f) the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under this Customer Contract.

16 Compliance

16.1 Government policies, applicable standards and Laws

- (a) The Supplier must, in performing its obligations under the Executed Order:
 - (i) comply with all Australian Laws as though the Supplier is domiciled in Australia, all other Laws, NSW Government policies, codes, guidelines and standards including but not limited to:
 - (A) the NSW Procurement Policy Framework published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-government-procurement-policy-framework>;
 - (B) the NSW Code of Practice of Procurement published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-government-procurement-information#conduct>;
 - (C) the NSW Government Small and Medium Enterprise and Regional Procurement Policy published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/nsw-government-small-and-medium-enterprise>;

- (D) the NSW Government Cyber Security Policy published at <https://www.digital.nsw.gov.au/sites/default/files/NSW%20Government%20Cyber%20Security%20Policy.pdf>;
 - (E) the NSW Government's cloud policies, including the NSW Government Cloud Policy published at <https://arp.nsw.gov.au/sites/default/files/NSW%20Government%20Cloud%20Policy.pdf>;
 - (F) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Products and Services have not been produced using "worst forms of child labour" as defined;
 - (G) modern slavery Laws in the jurisdictions applicable to the Service Provider's supply of the Products and Services; and
 - (H) any specific Laws, NSW Government policies, codes, guidelines and standards set out in Item 9 of the Customer Contract Details, an Executed Order, or otherwise agreed with the Customer;
- (ii) at no additional cost to the Customer, comply with any modifications, updates, amendments and replacements to those items referred to in paragraphs (i), which are either:
- (A) notified by the Customer to the Supplier, and the Supplier must comply within a reasonable time as specified by the Customer in its notice; or
 - (B) which the Supplier ought reasonably to be aware of, and the Supplier must comply within a reasonable time of when it ought reasonably to have been aware.
- (b) The Supplier may seek the written guidance of the Customer on how the Supplier may comply with an applicable NSW Government policy. The Supplier will not be in breach of paragraph (a) if it complies with the then-current written guidance provided by the Customer in respect of an applicable NSW Government policy. The Customer may amend or revoke any written guidance it has provided to the Supplier under this paragraph (b), by written notice to the Supplier.

16.2 Modern Slavery

[Drafting note: This clause 16.2 is drafted on the basis of the Modern Slavery Act 2018 (NSW) as enacted at the time of drafting. Clause 16.2 is not intended to limit the Supplier's obligations under cl. 16.1(a)(i)(G).]

Compliance

- (a) The Supplier warrants that, as at the date of its execution of this Customer Contract, neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence.

Information

- (b) The Supplier must:

- (i) provide to the Customer any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet its obligations under the Modern Slavery Act 2018 (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Customer or the NSW Audit Office and providing reasonable access to the Customer's/Audit Office's auditors to interview the Supplier's staff; and
- (ii) notify the Customer in writing as soon as it becomes aware of:
 - (A) a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and
 - (B) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (c) The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer.
- (d) The Supplier must, during the term of this Contract and for a period of seven (7) years thereafter:
 - (i) maintain; and
 - (ii) upon the Customer's reasonable request, give the Customer access to, and/or copies of,

a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Customer to assess the Supplier's compliance with this clause 16.2.

Modern Slavery due diligence

- (e) The Supplier must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls.

Response to Modern Slavery incident

- (f) If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Customer notifies the Supplier that it requires the Supplier to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
- (g) Any action taken by the Supplier under paragraph (f) will not affect any rights of the Customer under this Customer Contract, including its rights under paragraph (h).

Termination on ground of Modern Slavery

- (h) Without limiting any right or remedy of the Customer under this Customer Contract or at Law, the Customer may terminate this Customer Contract, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination, on any one or more of the following grounds:
 - (i) the Supplier has failed to disclose to the Customer, prior to execution of this Customer Contract, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;
 - (ii) the Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Customer Contract;
 - (iii) in the Customer's reasonable view, the Supplier has failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
 - (iv) in the Customer's reasonable view, the Supplier has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); and
 - (v) in the Customer's reasonable view, the Supplier has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of any of paragraphs (a) to (d).

16.3 Compliance Records and access

- (a) The Supplier must create and maintain records of the Supplier's compliance with this Customer Contract, in accordance with all Laws and relevant industry practice and standards and which are reasonably detailed to demonstrate Supplier's compliance with this Customer Contract and the accuracy of its invoices (**Compliance Records**).
- (b) The Supplier must provide to the Customer, all Compliance Records in its possession and control:
 - (i) once per Contract Year, on request by the Customer; and
 - (ii) at such other times on request by the Customer, including where there has been an actual, alleged or suspected breach of this Customer Contract.

17 Insurances

- (a) Unless otherwise agreed in the Customer Contract Details, the Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:
 - (i) public liability insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term;
 - (ii) product liability insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term;

- (iii) workers' compensation insurance in accordance with Law;
 - (iv) cyber security insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term; and
 - (v) professional indemnity insurance of at least AUD 20 million in respect of the total aggregate liability for all claims for the period of cover, to be held for the Term and for at least 7 years after the end of this Customer Contract,
- (b) Without limiting paragraph (a), the Supplier must hold and maintain insurance that covers loss that may be suffered as a result of a data security breach and the wrongful disclosure of Personal Information.
- (c) Within 30 days following a request from the Customer, the Supplier must provide the Customer with:
- (i) a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all required insurance policies are current and that the insurance has the required limits of cover; and
 - (ii) the ability to inspect the policy wording for each of the insurances required to be held and maintained by the Supplier under paragraph (a).

18 Indemnities and liability

18.1 Supplier's indemnity

The Supplier indemnifies the Customer, the State of New South Wales, the Customer's Personnel, head of agency and responsible Minister against any loss or damage arising out of, or connected with:

- (a) the personal injury or death to any person or damage to, or loss of any property caused or contributed to by an act or omission of the Supplier or any of the Supplier's Personnel;
- (b) a claim, demand or proceeding brought by a third party, which if true, would mean that the Supplier is in breach of clause 8.3;
- (c) a breach of any of clauses 9, 10, 11, 12 or 13; or
- (d) the Supplier's or any of the Supplier's Personnel's fraud, negligence, wilful misconduct or other wrongful acts or omissions.

18.2 Uncapped and unlimited liability

The liability of each party under this Customer Contract is uncapped, and the exclusions of liability set out in clause 18.4 do not apply, in relation to each of the following:

- (a) any of the indemnities provided under clause 18.1 (excluding the indemnity given by the Supplier under clause 18.1(d) in respect of negligence);
- (b) the personal injury or death to any person or damage to, or loss of any property caused or contributed to by an act or omission of the party or its Personnel; and

- (c) loss or damage caused by the party's fraud, wilful misconduct or other wrongful acts or omissions.

18.3 General Liability Cap

- (a) Except where clause 18.2 applies, the liability of each party under this Customer Contract for all causes of action that arise in a particular Contract Year will not exceed the greater of:
 - (i) AUD10,000,000 or such greater amount specified in Item 11 of the Customer Contract Details; and
 - (ii) 2 times the amounts paid or payable by the Customer to the Supplier under this Customer Contract in that Contract Year.
- (b) In this clause 18.3, "**paid or payable**" includes amounts that at the relevant time have not been paid but which would become payable over the relevant Contract Year if the parties performed all of their obligations under this Customer Contract in that Contract Year. It is not limited to amounts that at the relevant time have become due and payable.

18.4 Exclusions of liability

Except where clause 18.2 applies, a party is not liable under an Executed Order for any indirect or consequential loss including for loss of revenue, loss of profit or loss of anticipated savings. However, the exclusion of indirect or consequential loss does not preclude the recovery by a party of loss or damage which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other relevant act or omission giving rise to liability.

18.5 Application

The limitations and exclusions of liability in this clause 18 only apply to the extent permitted by Law.

19 Suspension

- (a) The Supplier may suspend the Customer's or a Customer User's ability to access or use the Products and Services in the event of an Emergency, provided that:
 - (i) the Supplier provides the Customer with as much advance notice of its intention to suspend as is reasonably practicable in the circumstances; and
 - (ii) the Supplier suspends only those parts of the Products and Services, or those Customer Users, as is reasonably necessary to respond to the Emergency.
- (b) The Supplier must restore the Customer's access and use rights as soon as possible after the issue giving rise to the Emergency is resolved, at the Supplier's cost.
- (c) The Customer is not required to pay any fees for the relevant Product or Service during the suspension period. The Supplier must credit or reimburse to the Customer (at the Customer's option) any upfront fees paid by the Customer for the relevant Product or Service, on a pro-rata basis for the suspension period.

- (d) Where the Supplier exercises its rights of suspension under this clause 19 for 72 hours or more, the Customer may immediately terminate the affected Executed Order by written notice and clause 21 will apply.

20 Termination

20.1 Termination for cause by the Customer

The Customer may terminate all or part of this Customer Contract immediately by written notice if:

- (a) the Supplier breaches a term of this Customer Contract, other than a trivial or inconsequential breach:
 - (i) which is not capable of remedy; or
 - (ii) which is capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
- (b) an Insolvency Event occurs in respect of the Supplier;
- (c) the Supplier or any parent company undergoes a Change in Control, without the Customer's prior written consent; or
- (d) in those circumstances otherwise specified in this Customer Contract.

20.2 Termination for convenience by the Customer

- (a) If a Product or Service is not subject to a Fixed Service Term, then the Customer may terminate the relevant Product or Service, for convenience, on 14 days' notice.
- (b) If the Product or Service is subject to a Fixed Service Term, then the Customer may terminate the relevant Product or Service on notice to the Supplier, subject to paying any early termination fees specified in the Executed Order.

20.3 Termination for cause by Supplier

- (a) The Supplier may immediately terminate an Executed Order, in whole, by written notice to the Customer if:
 - (i) the Customer has not paid an amount due and payable by it under an Executed Order and:
 - (A) the amount has been properly invoiced and is not the subject of any unresolved dispute;
 - (B) the Supplier has issued a notice to the Customer, stating that the amount is overdue and that the Supplier intends to terminate unless the amount is paid;
 - (C) the Customer does not pay the amount within 90 days of the date it receives the Supplier's notice under paragraph (B); or
 - (ii) the Customer has breached the relevant Executed Order which results in the Supplier being in breach of a Law or other regulatory requirement and the

Customer does not cease the relevant conduct within 90 days of receiving a written notice from the Supplier requesting it to do so,

and the Supplier has raised the matter as a dispute under the dispute resolution process in clause 22 and the parties have not been able to resolve the dispute via that process.

- (b) This clause 20.3 exhaustively sets out the Supplier's rights to terminate this Customer Contract.

21 Consequences of expiry or termination

21.1 Transition-Out Plan

- (a) If an Executed Order specifies that a Transition-Out Plan applies with respect to the Products and Services under that Executed Order, the Supplier must prepare, and submit to the Customer for its approval, a plan setting out how the Supplier will effect:
 - (i) the orderly disablement of the Products and Services by the Customer (except where the Supplier provides the Customer with self-service tools for disabling the Services); or
 - (ii) transfer of the performance of the Supplier's obligations under the Executed Order to a third party, including complying with the obligations set out in this clause 21,
(Transition-Out Plan).
- (b) The Supplier must ensure that the Transition-Out Plan sets out:
 - (i) the timeframes within which the Supplier will perform its obligations under the Transition-Out Plan; and
 - (ii) the basis on which the Customer will pay the Supplier to perform the services described in the Transition-Out Plan. If no such fees are specified, then no amount is payable by the Customer for such services.
- (c) The Supplier must make any updates to the Transition-Out Plan that are reasonably requested by the Customer.

21.2 General

On termination or expiry of an Executed Order (in whole or in part), the Supplier must:

- (a) if a Transition-Out Plan has been approved by the Customer, perform its obligations as set out in the Transition-Out Plan; or
- (b) if no Transition-Out Plan has been approved by the Customer, or the Executed Order specifies that a Transition-Out Plan does not apply to that Executed Order, render reasonable assistance to the Customer, as requested by the Customer and at no additional charge unless otherwise agreed in an Executed Order, to give effect to the matters referred to in clause 21.1(a)(i) and 21.1(a)(ii),

during the Disengagement Period.

21.3 Extracting or retrieving Customer Data

The Supplier must enable the Customer to extract or retrieve Customer Data, or otherwise provide the Customer Data to the Customer, in accordance with the requirements of clause 9.6, for a minimum period of up to 6 months after the end of the relevant Executed Order.

21.4 Disengagement services

If requested by the Customer, the Supplier must, during the Disengagement Period continue to provide the Products and Services to the Customer on the same terms with applicable fees and charges calculated on a pro rata basis (based on the length of the Disengagement Period).

21.5 Destroying Confidential Information

After expiry or termination of the Executed Order, each of the Supplier and Customer must, on request, hand over or destroy any Confidential Information and intellectual property of the other party in accordance with any agreed decommissioning requirements and in the case of the Supplier, the media decommissioning process in clause 11.7.

22 Dispute resolution

22.1 General

Either party may give written notice of a dispute to the other party, setting out particulars of the dispute and indicating whether the Contract Authority is to be involved in the dispute resolution process (“**Dispute Notice**”). Nothing in this clause 22 limits the ability of either party to commence legal action against the other party.

22.2 Escalation

- (a) Within 10 Business Days of a party receiving a Dispute Notice, the parties must meet and try to resolve the dispute in good faith.
- (b) If the parties are unable to resolve the dispute within that period, a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other agreed period of the meeting referred to in paragraph (a).

22.3 Alternative dispute resolution

If the dispute remains unresolved, the parties may agree to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines.

22.4 Continue to perform

Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under this Customer Contract.

23 General

23.1 No use of the Customer's name, logo etc

The Supplier must not use any of the Customer's name, logo, trade mark or branding, without the prior written consent of the Customer.

23.2 Entire agreement

This Customer Contract is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

23.3 Variation

No variation of this Customer Contract is effective unless made in writing and signed by each party, subject to clause 3.3.

23.4 Relationship of the parties

Nothing in this Customer Contract creates or is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party.

23.5 Survival and merger

- (a) No term of this Customer Contract merges on completion of any transaction contemplated by this Customer Contract.
- (b) The following clauses survive the termination and expiry of this Customer Contract: 8, 9.1, 9.3, 9.4, 9.5, 9.7, 10, 11.7, 13, 16.3(b)(ii), 21, 23 and any clauses that are expressed to or which by their nature survive termination or expiry.

23.6 Severability

Any term of this Customer Contract which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Customer Contract is not affected.

23.7 Waiver

- (a) No waiver of a right or remedy under this Customer Contract is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Customer Contract does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Customer Contract does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

23.8 Cumulative rights

Except as expressly provided in this Customer Contract, the rights of a party under this Customer Contract are in addition to and do not exclude or limit any other rights or remedies provided by Law.

23.9 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Customer Contract.

23.10 Assignment, novation and other dealings

- (a) The Supplier must not assign in whole or in part or novate this Customer Contract without obtaining the prior written consent of the Contract Authority and the Contractor, which consent may be withheld at the Contract Authority's and Contractor's discretion.
- (b) The Supplier acknowledges that the Contract Authority and the Contractor may conduct financial and other inquiries or checks on the entity proposing to take over this Customer Contract before determining whether or not to give consent to an assignment or novation.
- (c) Subject to paragraphs (d) and (e), the Customer may not assign or novate this Customer Contract or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier, which consent may not be unreasonably withheld.
- (d) Where the Customer has procured a particular volume of Products or Services from the Supplier (whether under one or more Executed Orders), then the Customer may assign or novate this Customer Contract in respect of some or all of such volumes to any other Eligible Customer(s), by notice to the Supplier.
- (e) The Customer, at its own cost, may at its discretion assign or novate, this Customer Contract in whole or in part if, by operation of Law, the Customer is reconstituted into a new body or legal entity or the functions of the Customer, relevant to this Customer Contract, are transferred to a different body or legal entity.
- (f) The Supplier agrees to co-operate in good faith and provide all reasonable assistance to the Customer in respect of any such assignment or novation made by the Customer under this clause 23.10.
- (g) Without limiting clause 20.1(c), the Supplier must notify the Customer if the Supplier or any parent company of the Supplier is about to undergo a Change in Control, at least 90 days in advance of the Change in Control occurring. If requested by the Customer, the Supplier must provide the Customer with all information reasonably requested by the Customer in respect of the Change in Control, including in respect of any incoming owner or other person who is to obtain control over the Supplier or any parent company.

23.11 Notices

- (a) A notice, consent or other communication under this Customer Contract is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address.
- (b) For the purposes of this clause 23.11, a party's address and email address is that set out in the Customer Contract Details, unless the party has notified a changed address, then the notice, consent, approval or other communication must be to that address.

- (c) A notice, consent or other communication will be regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5.00 pm on a Business Day it is regarded as received at 9.00 am on the following Business Day.
- (d) Unless there is evidence to the contrary:
 - (i) a letter sent by post will be taken to be received on the third Business Day after posting (or seventh, if posted to or from a place outside of Australia);
 - (ii) in the case of email:
 - (A) production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - (B) where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - (C) where an “out of office”, delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause 23.11.

23.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Customer Contract.

23.13 Governing Law

This Customer Contract is governed by the Laws applicable in the State of New South Wales, Australia. Each party irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia.

Execution page

Signed as an agreement:

Signed, for and behalf of [insert name of Customer], ABN [insert ABN] by its authorised signatory, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Date

Date

Signed, sealed and delivered by [insert Supplier's name], ABN [insert ABN] in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

Signature of director/company secretary

Signature of director

Name of director/company secretary (print)

Name of director (print)

Date

[Note: If the Supplier requires execution by Power of Attorney]

Executed as a deed:

Signed, sealed and delivered by **[insert name of Customer]**, by its authorised signatory, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Date

Date

Signed, sealed and delivered for **[insert Supplier's name and ABN]** by its attorney who has no notice of revocation of that power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Schedule 1 Supplier Terms

1 General

[Insert copies of Supplier Terms relevant to this Customer Contract]

2 Supplier's Security Program

[Insert copies of the Supplier's Security Program relevant to this Customer Contract]

Schedule 2 Agreed Variations to Customer Contract Terms

(Clause 3.2(d))

No.	Relevant provision of Customer Contract	Agreed variation
1	[Insert clause reference]	[Insert drafting of agreed variation and insert references to any relevant Supplier Terms]
2	[Insert additional rows, as agreed]	

Schedule 3 Order Form Template

Executed Order

Customer Contract Details	Date of Customer Contract	[Insert]
	Name of Customer	[Insert]
	Customer Contract number	[Insert]
	Name of Supplier and ABN	[Insert]

Date of this Executed Order	Date of execution of this Order	[Insert]
------------------------------------	---------------------------------	----------

Contact person for this Executed Order	Contact Person for Customer	Name and role: [Insert] Phone number: [Insert] Email address: [Insert]
	Contact Person for Supplier	Name and position: [Insert] Phone number: [Insert] Email address: [Insert]

1. Term of Executed Order (cl. 2.3)	Commencement Date	[insert]
	Initial term	[insert]
	Renewal term	[insert]

2. Products and Services purchased (cl. 4.3(a))	Product / Service	Qty	Date for Delivery	Fixed Service Term (If yes, specify period)	Unit Price	Subtotal (ex GST)
Total (excluding GST)						
GST						
Total (including GST)						

3. Applicable Supplier Terms (cl. 3.2(a))	Product / Service	Applicable Supplier Terms
4. Transition-in services (cl. 4.3(b))	[Insert details of any transition-in services.]	
5. Discount, credit, rebate or other similar benefit (cl. 4.2(c))	[Insert any discount, credit, rebate or other similar benefit, and any qualifying conditions.]	
6. Additional requirements (cl. 4.7)	[Insert any additional requirements which the Supplier are required to meet, including in respect of any Products or Services]	
7. Service Levels – additional consequences (cl. 5.1(a)(ii))	[Insert any additional consequences for failing to meet service levels, in addition to those set out in the Supplier Terms.]	
8. Reporting (cl. 7.1(a))	[Describe the reports required from the Supplier and the time frame and format of those reports.]	
9. New Materials (cl. 8.2(a))	[If the Customer is to own New Materials, please state that position here.]	
10. Background checks (cl. 9.3)	[Insert any criminal history background checks, “Working with Children” checks, security checks and clearances and any other background checks required to be performed by the Supplier which are in addition to those specified in the Customer Contract Details]	
11. Access and viewing of Customer Data outside of NSW (cl. 9.4(c)(iii))	[Insert the extent to which Supplier may store, process, access, disclose or view Customer Data, outside of New South Wales via remote access when performing support and maintenance services.]	
	Excluded locations	[insert any locations from which the Supplier is prohibited from accessing and / or viewing the Customer Data.]
12. Rights to access, use, extract and retrieve Customer Data (cl. 9.6(a))	[Describe the access controls available to the Customer to access, use and interact with, the Customer Data that is in the Supplier’s possession and control. Customer to have regard to its legislative obligations with respect to Customer Data and State Records.]	
13. Customer Data – Additional Supplier obligations (cl. 9.7)	[Insert any additional requirements applicable to the Customer Data which the Supplier must comply with.]	

<p>14. Additional requirements for Supplier's Security Program (cl. 11.2)</p>	<p>[Insert any additional requirements applicable to the Supplier's Security Program]</p>	
<p>15. Additional Certification Security Standards (cl 11.2(d)(ii))</p>	<p>[Insert any additional security standards in respect of which the Supplier must provide certification]</p>	
<p>16. Payment and invoicing</p>	<p>Invoicing and Payment Terms (cl. 14.1(b) and 14.1(c)(iii))</p>	<p>[Default provision is invoicing at end of month, with 30 day payment terms – insert if different timings are to apply.]</p>
	<p>Supplier's account details – see clause 14.1(c)(i)</p>	<p>[Insert the Supplier's bank account details which are to receive payment from Customer.]</p>
<p>17. Government policies, applicable standards and Laws (cl. 16.1(a)(i)(H))</p>	<p>[Insert any additional specific Laws, NSW Government policies, codes, guidelines and standards.]</p>	
<p>18. Termination</p>	<p>Termination fee for Fixed Service Term Products or Services (cl. 20.2(b))</p>	<p>Nil, if no termination fee is specified. [If any Product or Service is subject to a Fixed Service Term, specify the relevant early termination fees that apply if the Customer terminates for convenience]</p>
<p>19. Transition-Out Plan (cl. 21.1)</p>	<p>[Specify whether a Transition Out Plan is required.]</p>	
<p>20. Rates for disengagement services (cl. 21.4)</p>	<p>[Insert the rate card for the provision of disengagement services, to be applied pro rata.]</p>	

Signed as an agreement:

Signed, for and behalf of [insert name of Customer], ABN [insert ABN] by its authorised signatory, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Date

Date

Signed, sealed and delivered by [insert Supplier's name], ABN [insert ABN] in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

Signature of director/company secretary

Signature of director

Name of director/company secretary (print)

Name of director (print)

Date

Annexure to Executed Order – Supplier Terms

[Insert copy of Supplier Terms applicable to this Executed Order, as at the date of execution of the Executed Order]