

## Dictionary

### 1 Definitions

In the Digital.NSW Cloud Framework:

**Additional Security Requirements:**

- (a) in respect of the Head Agreement, has the meaning given in clause 11.2(b) of the Head Agreement Terms; and
- (b) in respect of each Customer Contract, has the meaning given in clause 11.2(b) of the Customer Contract Terms.

**Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

**Associate** has the meaning given in section 11 of the *Corporations Act 2001* (Cth).

**Australian Standards** means the standards published by Standards Australia and which can be found at <https://www.standards.org.au/>.

**Authorised Contract Authority Representative** means the person(s) identified as an “Authorised Contract Authority Representative” at Item 2 in the Head Agreement Details and any other person(s) notified by the Contract Authority as an “Authorised Contract Authority Representative”, from time to time.

**Authorised Customer Representative** means, in respect of each Customer Contract, the person(s) identified as an “Authorised Customer Representative” at Item 2 in the relevant Customer Contract Details and any other person(s) notified by the Customer as an “Authorised Customer Representative”, from time to time.

**Authorised Supplier Representative** means:

- (a) in respect of the Head Agreement, the person(s) identified at Item 2 of the Head Agreement Details as an “Authorised Supplier Representative” and any other person(s) notified by the Supplier as an “Authorised Supplier Representative”, from time to time; and
- (b) in respect of each Customer Contract, the person(s) identified at Item 2 of the Customer Contract Details as an “Authorised Supplier Representative” and any other person(s) notified by the Supplier as an “Authorised Supplier Representative”, from time to time.

**Business Day** means any day that is not a Saturday, Sunday or public holiday in New South Wales.

**Certification Security Standards:**

- (a) in respect of the Head Agreement, has the meaning given in clause 11.2(d) of the Head Agreement Terms; and
- (b) in respect of each Customer Contract, has the meaning given in clause 11.2(d) of the Customer Contract Terms.

**Change in Control** means, in respect of an entity, the occurrence of any circumstances or events following which the entity, who was not so controlled before, is controlled by another person, alone or together with any Related Body Corporate, and includes, in respect of the entity a change of a direct holding of at least fifteen percent of the voting shares in that entity or a holding company of that entity.

**Commencement Date** means:

- (a) in respect of the Head Agreement, the relevant date specified in Item 1 of the Head Agreement Details.
- (b) in respect of each Customer Contract, the relevant date specified in Item 1 of the relevant Customer Contract Details.

**Commercial Mediation Guidelines** means those guidelines with the same name published by the Australian Disputes Centre and which can be downloaded at <https://www.disputescentre.com.au/commercial-mediation-guidelines-download-form/>.

**Compliance Record:**

- (a) in respect of the Head Agreement, has the meaning given in clause 5.4 of the Head Agreement Terms; and
- (b) in respect of each Customer Contract, has the meaning given in clause 16.3 of the Customer Contract Terms.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is communicated by the Discloser to the Recipient as confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises:
  - (i) Contract Authority Data;
  - (ii) Customer Data;
  - (iii) the Products or Services;
  - (iv) the financial, corporate and commercial information of any party;
  - (v) the affairs of a third party (provided the information is non-public); or
  - (vi) the strategies, practices and procedures of the State and any information in the Supplier's possession relating to a Government Agency,

but excludes information:

- (e) in the public domain, unless it came into the public domain due to a breach of confidentiality;
- (f) independently developed by the Recipient; or

- (g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

**Conflict of Interest** means the Supplier:

- (a) engaging in any activity;
- (b) obtaining any interest, whether pecuniary or non-pecuniary; or
- (c) being involved in any actual or threatened litigation or investigation,

whether proven or alleged, which is likely to, has the potential to, or could be perceived to, restrict the Supplier from performing its obligations under the Digital.NSW Cloud Framework.

**Contract Authority** means the Government Agency or other body described as such in the Head Agreement Details and, in respect of each Customer Contract, in the relevant Customer Contract Details.

**Contract Authority Data** means any data or information in any form which is:

- (a) provided or made available by the Contract Authority to the Supplier under the Head Agreement; or
- (b) stored, created, generated, captured, collected, controlled, managed, processed, transferred or transmitted by the Supplier in the course of performing its obligations under the Head Agreement. For clarity this excludes any Customer Data under any Customer Contract.

**Contract Year** means the 12 month period commencing on the Commencement Date, and each anniversary of the Commencement Date, during the Term.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Customer** means each Eligible Customer that is a party to a Customer Contract with the Supplier, and named as such in the “Parties” section of the relevant Customer Contract Details.

**Customer Contract** means an agreement between the Supplier and a Customer, entered into pursuant to the Head Agreement, incorporating the Customer Contract Terms, Customer Contract Details, each Executed Order and the Schedules, as described in clause 3 of the Head Agreement and clause 2.1 of the Customer Contract Terms.

**Customer Contract Details** means the section of the Customer Contract titled “Customer Contract Details”.

**Customer Contract Terms** means the section of the Customer Contract titled Customer Contract Terms, in the form agreed by the Contract Authority and the Supplier and set out at Schedule 2 (Form of Customer Contract Terms) of the Head Agreement.

**Customer Data** means all data and information including any Personal Information, in any form:

- (a) provided by the Customer or any Customer User to the Supplier in connection with a Customer Contract; and

- (b) stored, created, generated, captured, collected, controlled, managed, processed, transferred or transmitted by the Eligible Customer, Contract Authority or any of their Personnel, or by the Supplier or its Personnel on the Eligible Customer's behalf, in the course of performing an Executed Order or using the Products or Services.

**Customer User** means an employee, agent or contractor of the Customer or any other person that the Customer authorises to use the Products or Services.

**Date for Delivery** means the date by which the Supplier must provide the relevant Products and/or Services to the Customer, as stated in an Executed Order.

**Denial of Service (DoS) Attack** means an attack that shuts down or substantially degrades the Products and/or Services, resulting in the Products and/or Services (or any functionality forming part of the Products and/or Services) being unable to be used by the Customer.

**Digital.NSW Cloud Framework** means the suite of template documents issued by the NSW Department of Customer Service that provide a framework for the procurement of in scope cloud products and services by Eligible Customers. The Head Agreement, Customer Contract and this Dictionary form part of the Digital.NSW Cloud Framework for Cloud Purchasing Arrangements for the Products and Services.

**Discloser:**

- (a) in respect of the Head Agreement, has the meaning given in clause 7 of the Head Agreement Terms; and
- (b) in respect of each Customer Contract, has the meaning given in clause 13(a) of the Customer Contract Terms.

**Disengagement Period**, in respect of an Executed Order, means the period:

- (a) commencing on the expiry or termination of the term of an Executed Order; and
- (b) continuing for 6 months or until such earlier date as notified by the Customer to the Supplier in writing.

**Eligible Customer** means any Government Agency or Eligible non-Government Body that is eligible to purchase the Products and Services under the Head Agreement.

**Eligible non-Government Body** includes the following public bodies that are not Government Agencies (as identified under the *Public Works and Procurement Regulation 2014*, clause 6):

- (a) a private hospital;
- (b) a local council or other local authority;
- (c) a charity or other community non-profit organisation;
- (d) a private school or a college;
- (e) a university;
- (f) a public authority of the Commonwealth, any other State or Territory;

- (g) a public authority or of any other jurisdiction (but only if it carries on activities in this State); or
- (h) any contractor to a public authority (but only in respect of things done as such a contractor,

but does not include those non-Government Bodies listed in Item 10 of the Head Agreement Details.

**Emergency** means:

- (a) an emergency situation which poses an imminent threat to life or property, or to the security of a Product or Service; or
- (b) such other circumstances which require the Supplier to exercise the suspension rights set out in clause 19 of the Customer Contract Terms:
  - (i) to comply with Law or requests of a Government entity; or
  - (ii) to respond to a Court order.

**Executed Order** means an Order Form that has been executed by the Supplier and Customer, in the form agreed by the Contract Authority and the Supplier and set out at Schedule 2 (Form of Customer Contract Terms) of the Head Agreement.

**Existing Customer Contract** has the meaning given in clause 15.3(b) of the Head Agreement Terms.

**Existing Materials** means materials that are:

- (a) developed before the Executed Order commences, together with any adaptation, modification or development of those materials in the course of performing the Executed Order; or
- (b) developed independently of the Executed Order.

**Fixed Service Term** means the period of time, specified in the Executed Order, for which the Customer agrees to purchases and the Supplier agrees to provide, the relevant Product or Service.

**Government Agency** means any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013 (NSW)*);
- (b) a NSW Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or
- (d) any State owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912 (NSW)*.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Head Agreement** means the Head Agreement between the Contract Authority and the Supplier under which there is a standing offer to provide the Products and Services to

Eligible Customers, including Head Agreement Terms, Head Agreement Details, Schedule 1 (Service Specific Terms) and Schedule 2 (Agreed Form of Customer Contract), as described in clause 2 of the Head Agreement and the Customer Contract Details.

**Head Agreement Details** means the section titled “Head Agreement Details” at the beginning of the Head Agreement.

**Head Agreement Terms** means those terms of the Head Agreement as set out in the “Head Agreement Terms”.

**Information** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes “personal information” as defined in the *Privacy and Personal Information Protection Act (NSW) 1998* or information which tends to identify individuals.

**Initial Term** means:

- (a) in respect of the Head Agreement, the initial term specified in Item 1 of the Head Agreement Details; and
- (b) in respect of each Customer Contract, the initial term specified in Item 1 of the relevant Customer Contract Details.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under the Corporations Act ss 436A, 436B or 436C;
- (d) a Controller (as defined in the Corporations Act s 9) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under Law (including under the Corporations Act ss 459C(2) or 585) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of the Corporations Act s 459F(1);
- (j) a notice is issued under the Corporations Act ss 601AA or 601AB;

- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Intellectual Property Rights** means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade names and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a),

but does not include the right to keep confidential information confidential, moral rights as defined in the Copyright Act 1968 (Cth), business names, company names or domain names.

**International Standards for Information Security** means the ISO/IEC 27001 and ISO/IEC 27002 standards published by the International Organisation for Standardisation and the International Electrotechnical Commission.

**IRAP** means the Information Security Registered Assessors Program of the Australian Signals Directorate.

**Laws** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction and includes the common law as applicable from time to time.

**Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

**Modern Slavery Laws** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

**Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth), as applicable.

**Modern Slavery Statement** means a modern slavery statement as required or volunteered under the Modern Slavery Laws.

**New Materials** means materials created in the course of performing an Executed Order, excluding Customer Data and Existing Materials.

**NSW Government Cyber Security Policy** means the policy with the same name published by NSW Government and which can be found at <https://www.digital.nsw.gov.au/policy/cyber-security/cyber-security-policy>.

**Order Form** means a physical or digital document in the form set out in Schedule 3 to the Customer Contract Terms, which is to be used by the Customer and Supplier to document the Products and Services to be provided by the Supplier, and which may be updated by the Customer, from time to time, under clause 4.2(b) of the Customer Contract Terms.

**Performance Data** has the meaning given in clause 9.1(d) of the Customer Contract Terms.

**Personal Information** has the meaning given to it in the Privacy Laws.

**Personnel** means a party's employees and contractors and:

- (a) in the case of the Supplier, any persons performing any part of the Customer Contract on the Supplier's behalf; and
- (b) in the case of the Customer, any Customer Users permitted or enabled by the Customer to use the Products and Services.

**Price List** means the list of maximum Prices for the Products and Services and applicable discounts, credits, rebates and other benefits, set out in Schedule 1.2 (Price List) of the Head Agreement.

**Prices** means the fees and charges payable by Customer under an Executed Order, for the Products and Services.

**Privacy Laws** means:

- (a) the Privacy Act 1988 (Cth);
- (b) the Privacy and Personal Information Protection Act 1998 (NSW);
- (c) the Health Records and Information Privacy Act 2002 (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer or the Supplier or any other recipient of Personal Information) from time to time in force in:
  - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
  - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier is subject to the Laws of that jurisdiction);
- (e) affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (f) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

**Product** means the products listed in the Product and Service Menu, which an Eligible Customer may purchase from the Supplier under a Customer Contract.

**Product and Service Menu** means Schedule 1.1 (Product and Service Menu) to the Head Agreement Terms.

**Recipient:**

- (a) in respect of the Head Agreement, has the meaning given in clause 7 of the Head Agreement Terms; and



- (b) in respect of each Customer Contract, has the meaning given to it in clause 13 of the relevant Customer Contract.

**Renewal Period** means:

- (a) in respect of the Head Agreement, the period or periods specified as such in Item 1 of the Head Agreement Details; and
- (b) in respect of each Customer Contract, the period or periods specified as such in Item 1 of the relevant Customer Contract Details.

**Security Incident** means in respect of the Head Agreement:

- (a) any breach of clause 11 of the Head Agreement Terms;
- (b) any unauthorised or unlawful use of, loss of, access to, alteration of, or disclosure of Contract Authority Data stored on the Supplier's equipment or in the facilities used by the Supplier, or any unauthorised or unlawful access to such equipment or facilities; or
- (c) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraph (b) have occurred;
- (d) any Denial of Service (DoS) Attack; or
- (e) any similar events relating to Contract Authority Data which triggers, or is likely to trigger, legal reporting obligations to a governmental authority, and

the reference to "unauthorised" extends to circumstances which are unauthorised under the Head Agreement or under applicable security controls.

**Security Incident** means in respect of each Customer Contract:

- (a) any breach of clause 11 of the relevant Customer Contract Terms;
- (b) any unauthorised or unlawful use of, loss of, access to, alteration of, or disclosure of Customer Data stored on the Supplier's equipment or in the facilities used by the Supplier to provide the Products or Services, or any unauthorised or unlawful access to such equipment or facilities; or
- (c) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraph (b) have occurred;
- (d) any Denial of Service (DoS) Attack; or
- (e) any similar events relating to Customer Data which triggers, or is likely to trigger, legal reporting obligations to a governmental authority, and

the reference to "unauthorised" under paragraph (a) extends to circumstances which are unauthorised under the Executed Order or under applicable security controls.

**Security Program**, in respect of the Head Agreement and each Customer Contract, has the meaning given in clause 11.2(a) of the Head Agreement Terms and the Customer Contract Terms, respectively.

**Service** means a service listed in the Product and Service Menu, which an Eligible Customer may purchase from the Supplier under a Customer Contract.

**Services** means:

- (a) the services listed in the Product and Service Menu, which an Eligible Customer may purchase from the Supplier under a Customer Contract or an Executed Order; and
- (b) any other services described in the Customer Contract or an Executed Order which are necessary for, or connected to, the Supplier's performance of services described in paragraph (a), including any transition-in and transition-out services.

**Service Levels** means the minimum performance levels to be achieved by the Supplier, as specified in the relevant Supplier Terms.

**State Records** has the meaning given in section 3 of the *State Records Act 1998* (NSW) and includes all Customer Data.

**Supplier** means the person or body corporate named in the "Parties" section of the Head Agreement Details and in relation to each Customer Contract, the applicable Customer Contract Details.

**Supplier Terms** means the Supplier's terms set out in Schedule 1.3 to the Head Agreement Terms, which will apply to a Customer Contract if agreed by the parties to that Customer Contract (and, if so agreed, as set out in Schedule 1 to that Customer Contract).

**Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Supplier's performance of its obligations, but excludes GST and any tax based on the net income of the Supplier.

**Term** means:

- (a) in respect of the Head Agreement, the period commencing on the Commencement Date and continuing for the Initial Term and any Renewal Periods (if applicable); and
- (b) in respect of each Customer Contract, the period commencing on the Commencement Date and continuing for the Initial Term and any Renewal Periods (if applicable).

---

## 2 Interpretation

In this Digital.NSW Cloud Framework, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Head Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to the relevant part of this Digital.NSW Cloud Framework in which that reference is located;
  - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and
  - (vii) a monetary amount is in Australian dollars;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (h) in determining the time of day, where relevant to this Digital.NSW Cloud Framework, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this Digital.NSW Cloud Framework, the time of day in the place where the party required to perform an obligation is located; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Digital.NSW Cloud Framework.