

Head Agreement

The Crown in the right of the State of New South Wales as represented by the Department of Customer Services

Contract Authority

[Insert name]

Contractor

Panel Agreement for the Provision of Data Centre Services

No. [Insert agreement number]

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**Head Agreement**

**Agreement** made on the [insert date]

**Parties** The party identified as the "Contract Authority" in the Key Details(**Contract Authority**)

The party identified as the "Contractor" in the Key Details **(Contractor)**

**Background**

1. This Agreement contains the terms and conditions on which the Contractor agrees to supply data centre services and related goods that are within the scope of this Agreement, to Eligible Customers, on a standing offer basis.
2. Eligible Customers wishing to procure the ICT related goods and services within the scope of this Agreement must do so by entering into a Contract with the Contractor, on the terms and conditions of the Customer Agreement.
3. The Contractor has represented to the Contract Authority in respect of this Agreement that it has the ability to provide the Deliverables for each Module to which it has been enrolled under this Agreement.
4. The Contract Authority is accredited or authorised by the NSW Procurement Board to procure ICT related goods and services on its own behalf and on behalf of Eligible Customers.

**Agreement**

1. Operation
	1. Term of the Agreement

This Agreement commences on the Commencement Date and expires on the Expiry Date unless it is extended in accordance with clause 1.2 or terminated earlier in accordance with this Agreement or until the last Contract expires (**Term**).

* 1. Extension
		+ 1. The Contract Authority may, in its absolute discretion, extend the Term:
				1. by the number of additional periods set out in the Key Details (each, an **Additional Period**); and
				2. for a period up to the length of each Additional Period specified in the Key Details,

by giving written notice to the Contractor at least 15 Business Days before the end of the then current Term.

* + - 1. Any extension exercised in accordance with this clause 1.2 will be on the same terms and conditions of this Agreement in effect at the end of the then current Term, unless the parties agree to amend this Agreement in accordance with clause 16.
	1. No guarantee of work or exclusivity

The Contract Authority is not, by executing this Agreement:

* + - 1. bound to issue any Order Proposal to the Contractor;
			2. bound to engage the Contractor to supply any goods, services and/or other activities or to enter into any Contract; or
			3. restricted in any way from engaging any other person to supply any goods, services and/or other activities:
				1. of any type, including goods, services and/or other activities that are similar to any Contractor's Activities or ICT Activities; or
				2. at any location where, or in respect of any project that, the Contractor may be required to supply goods, services and/or other activities.
	1. No representation

Clause [1.2](#bookmark6) applies even though the Contract Authority may have provided the Contractor with a forecast or estimate of the goods, services, ICT Activities and/or other activities that the Contract Authority or any Eligible Customer may require at any time. The Contractor acknowledges that any forecasts or estimates do not constitute a representation of the goods, services and/or other activities the Contract Authority or any Eligible Customer may require in any period.

* 1. Contract Authority's Representative

The Contract Authority may by written notice:

* + - 1. replace the Contract Authority's Representative, in which case the Contract Authority will appoint another person as the Contract Authority's Representative and notify the Contractor of that appointment; and
			2. appoint persons to exercise any of the Contract Authority's Representative's functions under this Agreement, and revoke any such appointment.
	1. Contractor's Representative and Personnel
		+ 1. The Contractor must ensure that the Contractor's Representative and any other Personnel who perform activities under or in connection with the Agreement are fit and proper persons.
			2. The Contract Authority's Representative may, by notice in writing to the Contractor, direct the Contractor to remove the Contractor's Representative or any other Personnel from performing any obligations under or in connection with the Agreement or who, in the reasonable opinion of the Contract Authority's Representative:
				1. are guilty of misconduct;
				2. are not fit and proper persons to carry out those obligations; or
				3. may bring the Contract Authority or any Eligible Customer into disrepute.
	2. Use of this Agreement
		+ 1. This clause applies if specified in the Key Details.
			2. The Contractor must not supply any ICT Activities to an Eligible Customer that is an Agency other than under this Agreement, unless such supply:
				1. is expressly authorised in writing by the Contract Authority; or
				2. occurs under a binding and current agreement between the Contractor and the Contract Authority under which those ICT Activities may lawfully be contracted and performed by the Contractor for that Eligible Customer.
	3. Role

The Contractor acknowledges and agrees that the Contract Authority is responsible for administering this Agreement.

* 1. Additional Conditions
		+ 1. The parties agree to comply with any Additional Conditions.
			2. Any Additional Conditions must be consistent with all applicable New South Wales procurement Laws and policies and any directions of the NSW Procurement Board.
1. Warranties
	1. Mutual warranty

Each party represents, warrants and undertakes to the other party that:

* + - 1. as at the Commencement Date, it is properly constituted and has sufficient power, capacity and authority to enter into this Agreement and perform the activities required under it;
			2. in so far as it uses Personnel to perform activities on its behalf under this Agreement, those Personnel are duly authorised by it; and
			3. it will reasonably co-operate with the other party and its respective Personnel to promote timely progress and fulfilment of this Agreement.
	1. General Contractor warranties

Without limiting any other warranty under this Agreement, any Contract or at Law, the Contractor represents and warrants to the Contract Authority that:

* + - 1. to the best of its knowledge and belief, there is no Conflict of Interest, in respect of itself and its Personnel, which relates to the Contractor’s ability to perform its obligations under this Agreement;
			2. the information that is provided to the Contract Authority by the Contractor, in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel is, to the best of the Contractor’s knowledge and belief, correct and not misleading as at the date it was (or is to be) supplied to the Contract Authority or Eligible Customer;
			3. it is not aware of any information which, if it had provided that information to the Contract Authority or Eligible Customer, may reasonable expected to have had a material effect on the decision made by the Contract Authority or Eligible Customer to enter into this Agreement or to enter into any Contract (as applicable);
			4. the office holders of the Contractor and any associate of the Contractor (as defined under section 11 of the Corporations Act) or its Related Body Corporate are of good fame and character; and
			5. the Contractor has all the Authorisations necessary to perform its obligations under this Agreement.
	1. Contractor acknowledgments

The Contractor warrants, represents, acknowledges and agrees that it:

* + - 1. has the expertise to carry out the activities within Annexure F;
			2. has satisfied itself about, and has obtained all information necessary to enable it to understand, the Contract Authority's requirements under this Agreement in so far as they relate to the Contractor's obligations under this Agreement;
			3. did not in any way rely on:
				1. any information, data, representation, statement or document made by the Contract Authority, any Eligible Customer, or their respective Personnel, or provided to the Contractor by the Contract Authority or any Eligible Customer (or their respective Personnel); or
				2. the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into the Agreement or into any Contract, except to the extent that any such information, data, representation, statement or document forms part of the Agreement or Contract;

* + - 1. entered into the Agreement based on its own investigations, interpretations, deductions, information and determinations; and
			2. is aware that the Contract Authority has entered into the Agreement and that Eligible Customers will enter into any Contract relying upon the warranties in clauses [2.1, 2.2](#bookmark16) and this clause [2.3.](#bookmark17)
	1. Implied warranties

The express warranties given by the Contractor under this Agreement are provided by the Contractor to the exclusion of any implied representations or warranties not set out in this Agreement, provided that this clause 2.4 does not operate to exclude any statutorily implied representations, warranties, conditions or guarantees which cannot legally be excluded. To the extent that any such statutorily non-excludable representations, warranties, conditions or guarantees apply, the Contractor limits its liability for their breach to the maximum amount permitted by Law.

1. Compliance
	1. Compliance with Laws and directions

While carrying out its obligations under this Agreement, the Contractor must:

* + - 1. acquire and maintain all Authorisations necessary for the performance of its obligations under this Agreement;
			2. ensure that, in performing its obligations under this Agreement, it complies with all applicable Laws;
			3. comply with all applicable Australian Laws in performing its obligations under this Agreement, even if the Contractor is not domiciled in Australia; and
			4. comply with any reasonable directions made by the Contract Authority under this Agreement.
	1. Policies, Codes and Standards

Without limiting the generality of clause [3.1,](#bookmark19) the Contractor must, in performing its obligations under this Agreement, comply with all relevant Policies, Codes and Standards.

* 1. Conflicts of Interest

The Contractor must:

* + - 1. promptly notify the Contract Authority in writing if a Conflict of Interest arises or is likely to arise during the performance of its obligations under this Agreement; and
			2. take all necessary action as may be reasonably required by the Contract Authority to avoid or minimise such a Conflict of Interest.
1. Head Agreement Mechanism
	1. Eligible Customer may issue Order Proposal
		* 1. If an Eligible Customer is considering procuring ICT Activities from the Contractor under this Agreement, the Eligible Customer may issue to the Contractor an Order Proposal.
			2. Each Order Proposal issued by the Eligible Customer under clause [4.1(a)](#bookmark24) must specify the details required by Parts 1 and 2 of the Order Proposal (other than the Charges), including Attachment 1 of the Order Proposal that sets out any Service Levels that will apply to the particular Contract that the Contract Authority is considering (if any), in addition to those set out in the Customer Agreement.
			3. The Eligible Customer may withdraw an Order Proposal at any time prior to entering into a Contract.
	2. Contractor may submit Draft Order
		* 1. Where the Eligible Customer has issued an Order Proposal to the Contractor, within the time specified in the Order Proposal or as otherwise agreed by the parties (or if no time is specified or so agreed, within 25 Business Days of being issued an Order Proposal), the Contractor must:
				1. prepare and submit a Draft Order in accordance with clause [4.2(b);](#bookmark28) or
				2. notify the Eligible Customer that issued an Order Proposal under clause [4.1(a)](#bookmark24) that the Contractor will not submit a Draft Order.
			2. Where the Contractor wishes to submit a Draft Order in accordance with clause [4.2(a)(i),](#bookmark26) the Contractor must return to the Eligible Customer that issued an Order Proposal under clause [4.1(a),](#bookmark24) a Draft Order by:
				1. setting out the proposed Charge in Part 2 of the Order Proposal, which must be determined using rates and prices calculated in accordance with, and not exceeding, the rates and prices in the Schedule of Charges; and
				2. duly completing any remaining relevant particulars in Part 2 of the Order Proposal,

(**Draft Order**).

* 1. Review of Draft Order
		+ 1. After receiving a Draft Order from the Contractor under clauses [4.2](#bookmark25) or [4.3(c)(i),](#bookmark33) the Eligible Customer that issued an Order Proposal under clause [4.1(a)](#bookmark24) may:
				1. prepare and issue to the Contractor a document titled "Order" in draft form, substantially in the form of [Annexure E](#bookmark125) (or in any other form chosen by the Eligible Customer); or
				2. by notice in writing to the Contractor, within 20 Business Days (or such other longer period as determined by the Eligible Customer):

request the Contractor to submit an amended Draft Order by providing a notice setting out the aspects of the Draft Order which require amendment; or

reject the Draft Order.

* + - 1. If the Eligible Customer that issued an Order Proposal under clause [4.1(a)](#bookmark24) does not issue:
				1. an Order in draft for under clause 4.3(a)(i); or
				2. any notice under clause [4.3(a)(ii)](#bookmark31) to the Contractor within the timeframes required by clause [4.3(a)(ii),](#bookmark31)

the Eligible Customer will be deemed to have rejected the Draft Order.

* + - 1. If the Eligible Customer that issued an Order Proposal under clause [4.1(a)](#bookmark24) requests the Contractor to submit an amended Draft Order under clause [4.3(a)(ii)A,](#bookmark32) the Contractor must, within 5 Business Days (or such other period agreed by the parties):
				1. submit an amended Draft Order that addresses the issues identified in the Eligible Customer's notice under clause [4.3(a)(ii)A;](#bookmark32) or
				2. notify the Eligible Customer that the Contractor will not submit an amended Draft Order, in which case the Contractor's original Draft Order is deemed to be rejected.
			2. Where the Contractor submits an amended Draft Order under clause [4.3(c)(i),](#bookmark33) this clause [4.3](#bookmark29) will reapply.
	1. Refusal by Contractor to provide or amend a Draft Order

If:

* + - 1. the Contractor notifies the Eligible Customer that issued an Order Proposal under clause [4.1(a)](#bookmark24) that:
				1. under clause [4.2(a)(ii),](#bookmark27) the Contractor will not submit a Draft Order; or
				2. under clause [4.3(c)(ii),](#bookmark34) the Contractor will not submit an amended Draft Order,

then:

* + - * 1. the Contractor must provide the Eligible Customer with detailed reasons why the Contractor will not submit the Draft Order or the amended Draft Order (as the case may be); and
				2. the Contractor must provide the Eligible Customer with any further information reasonably requested by the Eligible Customer regarding the reasons why the Contractor will not submit the Draft Order or the amended Draft Order (as the case may be); or
			1. the Contractor submits a Draft Order or amended Draft Order under clauses [4.2(a)(i)](#bookmark26) or [4.3(c)(i)](#bookmark33) (as applicable) which, in the opinion of the Eligible Customer, is not of a reasonably acceptable quality,

then:

* + - 1. the Eligible Customer and the Contract Authority may exclude the Contractor from any other arrangements that the Contract Authority and/or Eligible Customer make to engage a person to supply goods, services and/or other activities that are similar to those proposed under the relevant Order Proposal; and
			2. the Contractor will not be entitled to make, and the Eligible Customer and/or the Contract Authority will not be liable upon, any Claim arising out of, or in connection with, the Contractor's exclusion from the arrangements contemplated by clause [4.4(c)](#bookmark36).
	1. Costs

The Contractor is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause [4](#bookmark22) and the Contractor is not entitled to make, and the Contract Authority and any Eligible Customer will not be liable upon, any Claim in respect of such costs.

1. Formation of individual Contracts
	* + 1. If the Eligible Customer issues a document titled "Order" in accordance with clause [4.3(a)(i),](#bookmark30) the Contractor must:
				1. co-operate and work with the Eligible Customer to finalise and execute the relevant Order; and
				2. provide to the Eligible Customer, on the date that the Contractor executes the relevant Order, a copy of the executed relevant Order.
			2. The Eligible Customer and the Contractor will be deemed to have entered into a separate binding Contract on the date that the Order is signed by the last party to sign it.
			3. Without limiting the methods by which a party may sign an Order, a party may execute an Order physically, electronically, digitally or by any other legally effective means.
			4. The Eligible Customer and the Contractor must carry out their respective obligations under each Contract formed in accordance with clause [5(b)](#bookmark39) from the date on which the Contract is deemed to be formed under that clause.
			5. The Contractor must not provide any ICT Activities to an Eligible Customer pursuant to this Agreement, unless it has entered into a Contract.
2. Indexation and review of rates

If specified in the Key Details, the rates and prices in the Schedule of Charges will be reviewed and indexed in accordance with Part 2 of [Annexure C.](#bookmark119)

1. Service Levels

The Contractor, in performing its obligations under this Agreement and under any Contract (including in performing the Contractor's Activities), must comply with the Service Levels as may be amended in accordance with this Agreement.

* 1. Service Level Performance Report
		+ 1. The Contractor must report to the Contract Authority's Representative at the frequency specified in the Key Details in the form of a written or electronic report (**Service Level Performance Report**) which:
				1. provides an analysis of the performance of the Contractor in meeting the Service Levels in respect of each Contract;
				2. identifies any non-compliances;
				3. proposes an action plan to remedy non-compliances and implement continuous improvements; and
				4. reports on whether the Contractor has implemented any previous action plan and, if not, the extent of the non-compliance.
			2. The Contractor acknowledges and agrees that the Contract Authority may review each Service Level Performance Report to assess the level of compliance by the Contractor with the Service Levels.
			3. The Contractor acknowledges and agrees that the Contract Authority may make available any Service Level Performance Report to any Eligible Customer (including the head of any Eligible Customer and any responsible Minister of an Eligible Customer) where the Contract Authority has reasonable grounds for believing that the Eligible Customer has a legitimate interest in receiving the Service Level Performance Report.
	2. Action Plan
		+ 1. The Contractor acknowledges and agrees that the Contract Authority may:
				1. direct the Contractor to submit an action plan to remedy any non- compliances of the Contractor with the Service Levels under this Agreement or under any Contract, within the time required by the Contract Authority and addressing the matters identified by the Contract Authority (**Action Plan**); and
				2. review any Action Plan submitted by the Contractor and, within 15 Business Days of the submission (or resubmission as the case may be) by the Contractor of the Action Plan (or such longer period as reasonably required by the Contract Authority in the circumstances):

approve the Action Plan; or

reject the Action Plan.

* + - 1. The Contractor must implement and comply with any Action Plan approved by the Contract Authority in accordance with this clause [7.2.](#bookmark44)
			2. If the Contract Authority gives the Contractor a notice rejecting an Action Plan under clause [7.2(a)(ii)B,](#bookmark46) the Contractor must, within 5 Business Days (or any longer period required by the Contract Authority in writing), prepare a revised version of the Action Plan which addresses all of the amendments and issues required by the Contract Authority.
			3. The parties must repeat the process in this clause [7.2](#bookmark44) until the Contract Authority approves the Action Plan or terminates the Agreement.
			4. Where the period referred to in clause [7.2(a)(ii)](#bookmark45) elapses without the Contract Authority approving or rejecting the Action Plan, the Contractor must submit to the Contract Authority a written reminder notice identifying the Action Plan in respect of which it requires a decision by the Contract Authority. If the Contract Authority does not approve or reject the relevant Action Plan or otherwise communicate with the Contractor in relation to that reminder notice within 10 Business Days of its receipt,

then the relevant Action Plan will be deemed to have been approved by the Contract Authority.

* 1. Meetings

Unless otherwise required by the Contract Authority, the Contract Authority and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under each Contract and, if required by the Contract Authority, monitor and review the Contractor's compliance with any Action Plan. The parties agree that meetings may be held by video or teleconference if required by the Contract Authority.

1. Reporting requirements

Unless otherwise specified in the Key Details, the Contractor must provide the following reports (**Contractor's Reports**) to the Contract Authority:

* + - 1. the Service Level Performance Reports required under clause [7.1;](#bookmark42)
			2. within 14 days of the end of each calendar quarter (or as otherwise reasonably required by the Contract Authority), a written or electronic report relating to the relevant quarter:
				1. detailing the expenditure of each Contract (together with a breakdown of the number of units, quantity and cost of the goods, services and/or activities procured under each Contract), that tracks the information over time and usage, and that identifies any applicable discounts, credits, rebates and any other benefits;
				2. to the extent that any Eligible Customer has procured software licenses under any given Contract, specifying the number of licenses that have been utilised by the relevant Eligible Customer;
				3. reporting on:

the Contractor's compliance with the:

* + - 1. Small and Medium Enterprises and Regional Procurement Policy (**SME Policy**), including:
				1. the SMEs (as defined in the SME Policy) engaged in all Contractor's Activities under all Contracts; and
				2. the amounts paid to such SMEs;
			2. Aboriginal Procurement Policy and identifying the:
				1. Aboriginal-owned businesses engaged to perform Contractor's Activities under each Contract and identifying which of those Contracts have a value exceeding $50,000 (excluding GST); and
				2. amounts paid to any Aboriginal-owned businesses under each Contract; and

any additional matters specified in the Key Details;

* + - * 1. providing:

details of the following events or circumstances, in so far as they have arisen in the relevant reporting calendar quarter:

* + - 1. issues or disputes between the Contractor and each Eligible Customer under each Contract, regardless of whether a dispute under the Contract has been initiated; and
			2. any material breaches by the Contractor under each Contract, including details of which clauses of the Contract were breached (or allegedly breached) and the status of each such matter;
			3. any breach (or alleged breach) by the Contractor of its security obligations under any Contract and any actual, alleged or suspected security incident or relevant security or data breaches experienced by the Contractor under a Contract (regardless of whether that breach is material or not); and

any data the Contractor has available in respect of each Eligible Customer's usage of products, services, goods and other activities under any Other Arrangements; and

* + - * 1. listing:

each Contract formed under the Agreement and providing (at a high level), details of the Contractor's Activities under each Contract, accompanied by a full copy (in electronic format) of each Contract;

all current agreements, orders or other arrangements (other than those procured under a Contract formed under this Agreement) entered into by the Contractor with any Eligible Customer that is an Agency for the supply of any goods, products, services and/or other activities that are similar to the ICT Activities, whether entered into before or after the Commencement Date (**Other Arrangements**), with the relevant contract titles and numbers clearly identified;

* + - 1. such other information as the Contract Authority may reasonably require from time to time in performing its role as the administrator of the Agreement and in monitoring the Contractor's performance under the Agreement or under any Contract (including the Contractor's Activities).
1. Annual Review
	1. Conducting Annual Reviews
		* 1. The parties will, following each anniversary of the Commencement Date of this Agreement, conduct an Annual Review to comprehensively review the operation of this Agreement and all Contracts (if any).
			2. The Contractor must participate in the Annual Review as required by the Contract Authority. This may include provision of data and participation in meetings. At the Contract Authority's request, the Annual Review may be conducted remotely via videoconference.
	2. Cost of Annual Reviews

Each party must bear its own costs of any Annual Review conducted under this clause 9.

1. Benchmarking
	1. Benchmarking process
		* 1. From time to time during the Term, the Contract Authority may:
				1. test the market for any or all of the Deliverables;
				2. undertake benchmarking of some or all of the Deliverables where the Contract Authority intends to refresh the Data Centre Services Panel; or
				3. utilise the services of a Benchmarker to undertake benchmarking to measure the standards of delivery and cost of the Deliverables in part or in the aggregate to determine if the performance of the Contractor matches and the Charges are competitive with, then current market prices and standards of delivery for Similar Deliverables.
			2. Subject to clause 10.1(c), benchmarking will be conducted in accordance with the timing and procedures as determined by the Contract Authority. The Contract Authority will consult the Contractor on these matters and benchmarking will not occur more than once every twelve months.
			3. The benchmarking will be based on comparative data from a minimum of three Contractor peers (excluding outliers) for comparable Deliverables, selected by the Benchmarker based upon key operational considerations, including:
				1. scope;
				2. location;
				3. volumes;
				4. service levels;
				5. the level of security;
				6. termination charges; and
				7. other characteristics that, in the Benchmarker’s expert opinion, warrant consideration in undertaking the benchmarking.
			4. Without limiting the rights of the Contract Authority, the Contract Authority may release benchmarking results to:
				1. Eligible Customers and other Agencies;
				2. Ministers and their advisors;
				3. Parliament or Parliamentary Committees; and
				4. advisers to the Contract Authority.
			5. If the benchmarking shows that the Charges are not priced competitively for Similar Deliverables, unless the Contractor satisfies the Contract Authority that the difference in price is due to the relevant contract's unique requirements and not due to the Contractor's performance:
				1. the Contractor agrees to assist the Contract Authority for a three-month period to determine the causes of the Benchmarker's findings and proactively seek resolution within 60 Business Days;
				2. if no resolution is reached within 60 Business Days, the Charges (including the Charges payable under any Contract) will be deemed to be reduced by the amount of the excess determined in the manner described in this clause 10.1 from the end of that period;
				3. Annexure C (Schedule of Charges) must be updated to reflect the reduced Charges; and
				4. the reduced Charges must be reflected in subsequent invoices or may be set off by the Eligible Customer against any invoice received under Contract.
			6. A dispute in relation to benchmarking will be resolved in accordance with clause 15.
	2. Cost of Benchmarking

Each party must bear its own costs of any benchmarking conducted under this clause 9.

1. Performance Guarantee and Financial Security
	1. Performance Guarantee
		* 1. This clause [11.1](#bookmark58) applies if specified in the Key Details.
			2. The Contract Authority may, in its absolute discretion at any time during the Term, by issuing a notice in writing to the Contractor, direct the Contractor to arrange for the guarantor approved in writing by the Contract Authority, to enter into a performance guarantee:
				1. in respect of the Contract identified in the Contract Authority's notice;
				2. in favour of the Eligible Customer that is the counterparty to the Contract identified in clause [11.1(b)(i);](#bookmark60) and
				3. in substantially the same form as the document in Schedule 6 of the Customer Agreement, or such other document reasonably required by the Contract Authority or the Eligible Customer that is the counterparty to the relevant Contract (as applicable) (**Performance Guarantee**).
			3. The Contractor must comply with a direction under clause [11.1(b)](#bookmark59) within 15 Business Days of the date of the Contract Authority's notice.
	2. Financial Security
		* 1. This clause [11.2](#bookmark61) applies if specified in the Key Details.
			2. The Contractor must provide a financial security in the amount stated in the Key Details and substantially the same form as the document in [Annexure G,](#bookmark127) or such other document reasonably acceptable to the Contract Authority (**Financial Security**). The Contractor must provide the Financial Security to the Contract Authority within 15 Business Days following the Commencement Date, or within such other reasonable time notified in writing by the Contract Authority to the Contractor.
			3. The Contract Authority will hold the Financial Security for its own benefit and on trust for the benefit of each Eligible Customer that is a counterparty to a Contract formed under the Agreement.
			4. Subject to its rights to have recourse to the Financial Security, the Contract Authority must release the Financial Security on the first to occur of:
				1. one year following the later of the termination or expiry of:

this Agreement; and

the last Contract formed under this Agreement;

* + - * 1. the date the Contract Authority and the Contractor agree in writing to release the issuer of the Financial Security; and
				2. the date the Contract Authority notifies the issuer of the Financial Security in writing that the Financial Security is no longer required.
	1. Costs

Unless otherwise specified in the Key Details, the Contractor will be responsible for the costs that it incurs in complying with its obligations under this clause [11.](#bookmark57)

1. Other requirements
	1. Confidentiality
		* 1. Except to the extent necessary to comply with any requirement of a Statute, the Parliament, or government policy relating to the public disclosure of Confidential Information, neither party will make public, disclose or use any Confidential Information of the other party except in accordance with this Agreement, or a Contract, unless the other party gives its prior written consent.
			2. Each party may disclose the Confidential Information of the other party:
				1. to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with this Agreement;
				2. to its Personnel, Related Bodies Corporate and their 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 performance under, this Agreement or an Order in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms no inconsistent with this Agreement);
				3. where required by the *Government Information (Public Access) Act 2009* (NSW) (or any other similar Laws) which may require the Contract Authority or any Eligible Customer to publish or disclose certain information concerning this Agreement;
				4. if the receiving party is required to disclose such Confidential Information by law, order of a court or tribunal of competent jurisdiction, the listing rules of an applicable securities exchange or requirement of Parliament, provided that the disclosing party provides the other party reasonable notice (to the extent reasonably practicable or permitted) of any such legal requirement in order to enable the other party to seek a protective order or other appropriate remedy; or
				5. in the case of the Contract Authority, to any Agency or Eligible Customer, including the head of agency and responsible Minister of the Contract Authority or any Eligible Customer.
			3. Each party must ensure that any Confidential Information of the other party is used solely for the purposes permitted under clause 12.1(b).
			4. The Contract Authority may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Contract Authority and the Subcontractor substantially in the form of Annexure J (Deed of Confidentiality).
			5. Nothing in this clause 12.1, limits any obligation which either party may have under Statute including the Privacy Act, Part 13 of the *Telecommunications Act 1997* (Cth), any applicable State or Territory privacy legislation, or under an Order, in relation to the protection of Personal Information.
	2. Public announcements
		* 1. Subject to clause 12.2(b), the Contractor must not make a Public Announcement unless it has the Contract Authority's written agreement.
			2. The Contractor is not required to obtain the Contract Authority's written consent to make a Public Announcement if the Public Announcement is required by Law or a regulatory body (including a relevant stock exchange).
			3. If the Contractor is required by Law or a regulatory body to make a Public Announcement, the Contractor must:
				1. limit the Public Announcement to the extent required by the relevant Law or regulatory body; and
				2. to the extent practicable, first consult with and take into account the reasonable requirements of the Contract Authority.
	3. Return or destruction of Contract Authority Data, Confidential Information and intellectual property

Subject to any requirements at Law applicable to the parties, on the expiry or termination of this Agreement, the Contractor and its Personnel must cease to access and, at the Contract Authority's election securely:

* + - 1. return; or
			2. destroy,

the:

* + - 1. Contract Authority Data; and
			2. Contract Authority's Confidential Information and any other Materials that comprise the Contract Authority's Intellectual Property Rights.
	1. Insurance

Without limiting the requirements of any Contract, the Contractor must:

* + - 1. effect and maintain the insurances set out in the Key Details as well as comply with the specific insurance requirements of each Contract; and
			2. within 10 Business Days of a request from the Contract Authority, provide the Contract Authority with:
				1. a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Contract Authority) confirming that all required insurance policies required by this Agreement are current and that the insurance has the required limits of cover; and
				2. any information reasonably requested by the Contract Authority regarding the policies for each of the insurances required to be held and maintained by the Contractor under this Agreement (which may include reasonably redacted policy provisions or summarised policy terms where disclosure of the full policy terms is restricted by confidentiality obligations owed by the Contractor to third parties).
	1. Audits and inspections
		+ 1. This clause 12.5 applies unless an alternative audit mechanism is specified in the Key Details (**Alternative Audit Mechanism**), in which case the Alternative Audit Mechanism will apply under this Agreement instead of clauses 12.5(b) to 12.5(i). Any Alternative Audit Mechanism must enable the Contract Authority to audit the Contractor's compliance with the Agreement.
			2. The Contract Authority or its nominee (which may be an advisor, consultant or other third party engaged by the Contract Authority) may conduct audits and inspections:
				1. of the Contractor's and its Personnel's performance of its obligations under this Agreement, including the:

Contractor's and any Subcontractor's operational practices and procedures as they relate to this Agreement;

accuracy of the Contractor's Reports; and

Contractor's and its Personnel's compliance with its other obligations under this Agreement, and

* + - * 1. for the purpose of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its legislative powers to assess the expenditure of public money related to this Agreement.
			1. For the purpose of conducting an audit or inspection under this clause 12.5, the Contract Authority, the Auditor-General or their respective nominees may, on giving reasonable advance notice to the Contractor (at reasonable times and during business hours where practicable):
				1. access the premises and facilities of the Contractor to the extent reasonably required to carry out the audit or inspection;
				2. to the extent relating to the Contractor's activities or obligations under this Agreement or to any Contractor's Activities, access, inspect and copy documents (including the Contractor's Reports), resources and books and records, however stored, in the possession or control of the Contractor or its Personnel; and
				3. require assistance in respect of any inquiry into or concerning the Contractor's obligations under this Agreement, including any parliamentary or statutory review or inquiry.
			2. If an audit will involve the Contractor being required to produce documents, resources or books and records, the Contract Authority will accompany its notice under clause 12.5(c) with a general description of the scope and purpose of the audit to facilitate proper preparation by the Contractor.
			3. To the extent an audit involves physical access to the premises or facilities of the Contractor, the Contract Authority:
				1. will limit the exercise of its audit or inspection rights to no more than once per calendar year, unless the audit arises from the Contractor's breach of this Agreement or any Contract, or the Contract Authority forming, on a reasonable basis, a view that such breach may have occurred; and
				2. or its nominee must comply with the Contractor's reasonable security requirements during such physical access.
			4. The Contractor and its Personnel must provide all reasonable access, assistance and co-operation required by the Contract Authority or its nominee in carrying out an audit under this clause 12.5[.](#bookmark68)
			5. Each party must bear its own costs of executing its rights under, or complying with, this clause 12.5[.](#bookmark68)
			6. Without limiting any rights or remedies of the Contract Authority, if an audit shows that the Contractor has breached, or is in breach of, this Agreement, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Contract Authority.
			7. This clause 12.5[12.4(b)(ii)](#bookmark68) survives for the Term and a period of seven years following the termination or expiry of this Agreement.
	1. Governance

Each party agrees to comply with the governance framework set out in Annexure B, including to make available suitably qualified Personnel to attend governance meetings. The parties agree that meetings may be held by video or teleconference if required by the Contract Authority.

* 1. Privacy

The Contractor must comply with all Privacy Laws in performing its obligations under this Agreement.

1. Suspension
	* + 1. The Contract Authority may direct the Contractor in writing to:
				1. suspend the performance or carrying out of; and/or
				2. after a suspension has been instructed, re-commence the performance or carrying out of,

all or part of the Contractor's activities under this Agreement (including in respect of any one or more Modules, or part of any one or more Modules), at any time. Any such suspension will be effective on and from the date specified in the Contract Authority's direction.

* + - 1. The Contractor must comply with any direction issued by the Contract Authority under clause [13(a).](#bookmark75)
			2. The Contractor will not be entitled to make any Claim against the Contract Authority arising out of or in connection with the suspension under this clause [13.](#bookmark74)
1. Termination or expiry
	1. Termination or expiry of this Agreement
		* 1. Without prejudice to any of the Contract Authority's other rights, the Contract Authority may, at any time for its sole convenience and for any reason, by written notice to the Contractor terminate this Agreement or remove any Module effective from the time stated in the Contract Authority’s notice, or if no such time is stated, at the time the notice is given to the Contractor.
			2. Subject to clauses [14.1(c)](#bookmark78) and [14.1(d),](#bookmark79) the Contract Authority will not be liable upon any Claim arising out of or in connection with any termination of this Agreement under clause [14.1.](#bookmark77)
			3. The Contract Authority and the Contractor agree that if this Agreement is terminated, discharged (including through expiry of the Term) or becomes frustrated, and/or a Module is removed, the separate Contracts formed in accordance with clause [5](#bookmark38) of this Agreement will not be affected and must be fulfilled in accordance with the terms of the relevant Contract, unless the parties otherwise agree in writing.
			4. Termination of this Agreement will not prevent either party from relying on rights accrued under the Agreement prior to such termination.
	2. Termination of a Contract

The Contract Authority and the Contractor agree that the termination, discharge or frustration of any Contract will not affect the operation of this Agreement or the operation of any other Contract.

1. Dispute resolution
	1. General
		* 1. The parties agree to resolve any dispute between them that arises out of, or in connection with, this Agreement in accordance with this clause [15](#bookmark81) or such other procedure set out in the Key Details.
			2. Either party may give written notice of a dispute to the other party setting out particulars of the dispute (**Dispute Notice**).
			3. Nothing in this clause [14](#bookmark81) limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.
	2. Escalation
		* 1. Within 10 Business Days of a party receiving a Dispute Notice, the Contract Authority's Representative and the Contractor's Representative must meet and try to resolve the dispute in good faith.
			2. If the parties have not:
				1. resolved the dispute; or
				2. met,

within the period specified in clause [15.2(a),](#bookmark86) a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other period as may be agreed by the parties in writing.

* 1. Alternative dispute resolution

Unless otherwise specified in the Key Details, if the dispute remains unresolved after 20 Business Days of receipt of the Dispute Notice (or such longer period as may be agreed by the parties under clause [15.2(b)](#bookmark87)), then either party may:

* + - 1. issue a notice in writing to the other party requiring the dispute to be determined by mediation in accordance with, and subject to, the Resolution Institute Mediation Rules; or
			2. commence any other form of dispute resolution, including court proceedings, to determine the dispute.
	1. Costs

Each party will bear its own costs in respect of complying with this clause [15.](#bookmark81)

* 1. Continue to perform

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

1. Variation
	1. Variation to this Agreement
		* 1. The parties must follow the process outlined in clauses 16.1(b) and 16.1(c) with respect to the variation of the terms and conditions of this Agreement. This Agreement will only be varied where a formal instrument is duly executed by the parties.
			2. The party seeking to vary the terms and conditions of this Agreement must provide the other party a draft variation setting out the proposed variations (a **Draft Variation**).
			3. Within 10 Business Days or such other time period agreed between the parties, after receiving a Draft Variation, or within another period agreed between the parties, the receiving party must approve or reject the response in writing.
			4. If this Agreement is varied, that variation (including any changes to the Deliverables) will apply to all future Contracts, unless agreed in writing between the parties.
	2. Change Request
		* 1. Either party may submit a Change Request in respect of a proposed variation to:
				1. the Charges;
				2. the Deliverables; or
				3. any other operational or service delivery matter as agreed between the parties.
			2. The parties agree to follow the process specified in Annexure K with respect to the proposed Change Request.
			3. Subject to any other rights given under this Agreement to vary its terms, a Change Request shall be valid unless agreed in writing and signed by both the Contract Authority and the Contractor.
2. Notices
	* + 1. Any Notice is regarded as given and received:
				1. if sent by mail; 3 Business Days after it is posted; and
				2. if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
			2. Each party's address for Notices is set out in the Key Details.
			3. Each party must notify the other of any change in its address or any delivery instructions for Notices, or in the identity of its Representative.
3. General provisions
	1. Government information
		* 1. The Contractor acknowledges that the Contract Authority and certain Eligible Customers are subject to the GIPA Act and agrees that the Contract Authority or any Eligible Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Contractor irrevocably consents to the Contract Authority acting in accordance with this clause [18.1.](#bookmark92)
			2. To the extent that section 121 of the GIPA Act applies, the Contractor must, upon receipt of a written request by the Contract Authority, provide the Contract Authority with immediate access to the following information contained in records held by the Contractor:
				1. information that relates directly to the performance of the Contractor's obligations under this Agreement or any Contractor's Activities;
				2. information collected by the Contractor from members of the public to whom it provides, or offers to provide, any aspect of the Contractor's Activities; and
				3. information received by the Contractor from the Contract Authority to enable it to carry out any Contractor's Activities or its obligations under the Agreement.
			3. For the purposes of clause [18.1(b),](#bookmark93) information as referred to in that clause does not include information that:
				1. discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
				2. the Contractor is prohibited from disclosing to the Contract Authority by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
				3. if disclosed to the Contract Authority, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Contract Authority whether at present or in the future.
			4. The Contractor must provide copies of any of the information referred to in clause [18.1(b),](#bookmark93) as requested by the Contract Authority, at the Contractor's own expense and in such medium as the Contract Authority may reasonably require.
			5. Without limiting any other provision of this clause [18.1,](#bookmark92) the Contractor:
				1. authorises the Contract Authority to make information concerning the Contractor (including any Contractor Information and Contractor's Reports) available to other Agencies or Eligible Customers (including to the relevant head of any Agency or Eligible Customer and any responsible Minister of a Agency), for any purpose in connection with facilitating the Contract Authority's exercise of its rights under this Agreement or carrying out, or exercise of, the functions or powers of the Contract Authority, an Eligible Customer, an Agency or the Crown. Such information may include any information provided by the Contractor to the Contract Authority or any Eligible Customer and any information relating to the Contractor's performance under this Agreement or in connection with any Contract;
				2. acknowledges that information about the Contractor (including Contractor Information and Contractor's Reports) from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Contractor or a Related Body Corporate may be taken into account by Agencies considering whether to offer the Contractor future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Contractor or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;
				3. agrees that the communication of such information to any Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
				4. releases and indemnifies the Contract Authority, any Eligible Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.
	2. Approvals and consents

Except where this Agreement states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

* 1. Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

* 1. Further action

Each party must do, at its own expense, everything reasonably necessary (including executing Documents) to give full effect to this Agreement and any transaction contemplated by those Documents.

* 1. Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement (in whole or part) with the prior written consent of the other party, and this consent must not be unreasonably withheld, except that the Contract Authority may assign its rights or novate its rights and obligations under this Agreement to another Agency without obtaining the Contractor's consent if all, or substantially all, of its functions are transferred to another Agency as part of a machinery of government change.

* 1. Waiver
		+ 1. Waiver of any provision of, or right under, this Agreement:
				1. must be by Notice from the party entitled to the benefit of that provision or right; and
				2. is effective only to the extent set out in such Notice.
			2. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the other party.
	2. Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of that Document will continue in force.

* 1. Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

* 1. Rights are cumulative

The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

* 1. No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

* 1. Survival

The following clauses survive the termination and expiry of this Agreement:

* + - 1. clause 2 (Warranties);
			2. clause 8 (Reporting);
			3. clause 12.1 (Confidentiality);
			4. clause 12.4(b)(ii) (Audit and inspections);
			5. clause 12.7 (Privacy);
			6. clause 14 (Termination) in respect of the rights and obligations arising on termination;
			7. any clauses that are expressed to or which by their nature survive termination or expiry; and
			8. all clauses required to give effect to this clause 18.11 including definitions and interpretation.
	1. Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one Document.

* 1. Governing Law and jurisdiction
		+ 1. This Agreement is governed by the Laws of the State of New South Wales.
			2. Each party irrevocably and unconditionally submits to the non–exclusive jurisdiction of the courts of the State of New South Wales.
	2. Compliance with Laws
		+ 1. Each party must in carrying out its obligations under this Agreement comply with all applicable Laws.
			2. The Contractor must, in carrying out its obligations under this Agreement, comply with publicly available policies and standards and other policies and standards as notified by the Contract Authority from time to time.
1. Definitions and interpretation
	1. Definitions

In this Agreement capitalised terms have the same meaning as in the Customer Agreement (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:

**Aboriginal Procurement Policy** means the NSW Government's Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>.

**Action Plan** has the meaning given to that term in clause 7.2(a)(i).

**Additional Conditions** means the terms and conditions (if any) specified in the Key Details.

**Additional Period** has the meaning given to that term in clause 1.2(a)(i).

**Additional Policies, Codes, and Standards** means the policies, codes and standards listed in the Key Details and any Government codes, standards and guidelines relating to the provision of the Contractor's obligations under this Agreement as reasonably notified by the Contract Authority to the Contractor from time to time.

**Agency** means any of the following:

* + - 1. a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW));
			2. a NSW Government agency;
			3. any other public authority that is constituted by or under an Act that exercises public functions (other than a State owned corporation); or
			4. any State owned corporation prescribed under the *Public Works and Procurement Act 1912* (NSW).

**Agency Confidential Information** in relation to an Agency, means information that is:

* + - 1. is by its nature confidential; or
			2. is designated by an Agency as confidential; or
			3. the Contractor knows or ought to know is confidential, including:
				1. information comprised in or relating to any of an Agency's Intellectual Property Rights;
				2. information relating to the policies, strategies, practices and procedures of an Agency and any information in the Contractor's possession relating to an Agency;
				3. information relating to other contractors of an Agency; and
				4. Security Classified Information; or
			4. is Agency Material and data,

but does not include information which:

* + - 1. is or becomes public knowledge other than by breach of any confidentiality obligation; or
			2. has been independently developed or acquired by the Contractor as established by written evidence.

**Agreement** means this document, executed as a deed.

**Alternative Audit Mechanism** has the meaning given to that term in clause 12.5(a).

**Annual Review** means an annual review conducted in accordance with clause 9 of the Agreement.

**Authorisation** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with an Agency.

**Benchmarker** means an independent third party engaged by the Contract Authority to perform benchmarking.

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

**Change Request** means a change request submitted by either party which, if signed by the parties, will result in a variation to any part of the Agreement.

**Charges** means the amount or amounts (excluding GST) payable by an Eligible Customer to the Contractor for the Deliverables in accordance with a Contract, as set out in Annexure C (Schedule of Charges).

**Claim** means any allegation, cause of action, liability, claim, proceeding, suit or demand of any nature, whatsoever arising, and whether present or future, fixed or unascertained, actual or contingent and whether at Law, under statute or otherwise.

**Commencement Date** means the date specified in the Key Details.

**Confidential Information** means information that:

* + - 1. is by its nature confidential;
			2. is communicated by the disclosing party to the confidant as confidential;
			3. the confidant knows or ought to know is confidential; or
			4. relates to:
				1. Agency Confidential Information;
				2. the Deliverables;
				3. Contract Authority Data;
				4. the financial, corporate and commercial information of any party;
				5. Security Classified Information;
				6. the affairs of a third party (provided the information is non-public); or
				7. the strategies, practices and procedures of the State of New South Wales and any information in the Contractor’s possession relating to the Contract Authority, the Eligible Customer, or any Agency.

but excludes information:

* + - 1. in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person;
			2. independently developed by the confidant; or
			3. in the possession of the confidant without breach of confidentiality by the confidant or other person.

**Conflict of Interest** means any known actual, potential or perceived matter which, in the determination of the Contract Authority, constitutes a conflict between:

* + - 1. the duty that the Contractor, Contractor's Personnel and any Related Body Corporate will have to the Contract Authority or any Eligible Customer under the proposed contractual arrangements; and
			2. either:
				1. the personal interests of the Contractor, Contractor Personnel or a Related Body Corporate; or
				2. the duty of the Contractor, Contractor Personnel or a Related Body Corporate to another person or entity.

A Conflict of Interest includes a financial or corporate relationship between a Contractor, Contractor's Personnel or a Related Body Corporate which may influence or appear to influence, a decision made by a Contractor, or their capacity to make independent decisions, in the best interest of the Contract Authority, an Eligible Customer, or the State of New South Wales

**Contract** means the contractual relationship between the parties comprising the terms and conditions set out in:

* + - 1. a relevant Order; and
			2. the Customer Agreement.

**Contract Authority** means the entity specified in the Key Details.

**Contract Authority Data** means all data (including metadata) and information relating to the Contract Authority or any other Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Contract Authority and any other Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced in connection with this Agreement, but excluding any Performance Data.

**Contract Authority's Representative** means the person so nominated in the Key Details or any other person nominated by the Contract Authority from time to time under clause 1.5 to replace that person.

**Contractor** means the entity specified in the Key Details.

**Contractor Information** means information of the Contractor relating to the:

* + - 1. Agreement and any Contract formed under the Agreement;
			2. Contractor’s performance under the Agreement or under a Contract;
			3. financial position or reputation of the Contractor; and/or
			4. shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor,

but excludes information of the Contractor:

* + - 1. excluded in the Key Details; and
			2. that constitutes Confidential Information or Intellectual Property Rights.

**Contractor's Activities** means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under any Contract and includes the supply of Deliverables and Services.

**Contractor's Reports** has the meaning given to that term in clause 8.

**Contractor's Representative** means the person so nominated in the Key Details or as advised in writing by the Contractor, and approved by the Contract Authority, from time to time to act on its behalf in connection with this Agreement.

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

**Customer Agreement** means the terms and conditions set out in [Annexure I.](#bookmark129)

**Data Centre Services Panel** means the panel of Contractors who execute the Agreement.

**Deliverables** the products and services or any part of them described in Annexure F of or a Contract.

**Dispute Notice** has the meaning given to that term in [15.1(b).](#bookmark84)

**Document** includes:

* + - 1. any paper or other Material on which there is words, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
			2. any article or Material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.

**Draft Order** has the meaning given to this term in clause [4.2(b).](#bookmark28)

**Draft Variation** has the meaning given to this term in clause 16.1(c).

**Eligible Customer** means any Agency or the following public bodies that are not Agencies (as identified under clause 6 of the Public Works and Procurement Regulation 2019 (NSW)):

* + - 1. a private hospital;
			2. a local council or other local authority;
			3. a charity or other community non-profit organisation;
			4. a private school or a college;
			5. a university;
			6. a public authority of the Commonwealth, any other State or Territory;
			7. a public authority of any other jurisdiction (but only if it carries on activities in the State of New South Wales); or
			8. any contractor to a public authority (but only in respect of things done as such a contractor),

unless otherwise specified in the Key Details.

**Enrolled Module** means a Module to which the Contractor is enrolled as set out in Attachment 1 (List of Enrolled Modules) of Annexure F.

**Expiry Date** means the date set out in the Key Details.

**Financial Security** has the meaning given to that term in clause [11.2.](#bookmark61)

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

**ICT Activities** means the goods, services and/or other activities described in Annexure F (Agreement Scope).

**Initial Module Period** means the initial period of time for a which a Module is intended to continue as specified in Attachment 1 (List of Enrolled Modules) to Annexure F.

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

* + - 1. 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
			2. 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, business names, company names or domain names.

**Key Details** means the particulars to this Agreement specified in [Annexure A.](#bookmark117)

**Law** means any applicable law, without limitation, including common or customary law, equity, judgment, legislation, orders, regulations, Statutes, by–laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re–enactment of them).

**Material** means any tangible thing in which Intellectual Property Rights can subsist, including without limitation software, firmware, Documents, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material.

**Module** means a module of ICT Deliverables available for provision under this Agreement as set out in Attachment 1 (List of Enrolled Modules) to Annexure F.

**Module Commencement Date** means the date specified in Attachment 1 (List of Enrolled Modules) to Annexure F.

**Module** **Option Period**, if any, for a Module as set out in Attachment 1 (List of Enrolled Modules) to Annexure F.

**Module** **Period** the Initial Module Period for a Module plus any extension in accordance with Annexure F.

**Notice** means a notice under the Agreement that is sent in accordance with clause 17.

**Order** means a document titled "Order", substantially in the form of [Annexure E](#bookmark125) (or in any other form chosen by the Eligible Customer) executed by the Eligible Customer and the Contractor in accordance with clause 5.

**Order Proposal** means a proposal in the form set out in [Annexure D](#bookmark122) (or in a form chosen by the Eligible Customer), issued under clause [4.1.](#bookmark23)

**Other Arrangements** has the meaning given to this term in clause 8(b)(v).

**Parliament** means the parliament of New South Wales.

**Performance Data** means automatically generated metadata, not including any Personal Information or Confidential Information of the Contract Authority or an Agency, that:

* + - 1. is incidentally generated by a computer system in the course of its normal operation;
			2. relates to the performance or operation of that computer system; and
			3. arises in the course of the performance of the Contractor's obligations under this Agreement.

**Performance Guarantee** has the meaning given to this term in clause 11.1(b)(iii).

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personnel** means a party's employees, directors, officers, agents and professional advisors and, in the case of:

* + - 1. the Contractor, includes Subcontractors and any persons performing activities under this Agreement on the Contractor’s behalf: and
			2. the Contract Authority, includes:
				1. the Ministers having responsibility for the Contract Authority, and all staff of such Minister's offices;
				2. officers and employees within the Contract Authority, including public servants at all levels employed on a full–time, part–time, permanent, casual or temporary basis;
				3. contractors (including contractors providing outsourcing services to the Contract Authority) and agents which perform services for or on behalf of the Contract Authority; and
				4. other personnel as agreed between the Contract Authority and the Contractor.

**Policies, Codes and Standards** means the NSW Government policies, codes and standards to be complied by the Contractor under this Agreement and any Additional Policies Codes and Standards.

**Privacy Laws** means:

* + - 1. the *Privacy Act 1988* (Cth);
			2. the *Privacy and Personal Information Protection Act 1988 (NSW)*;
			3. the *Health Records and Information Privacy Act 2002 (NSW)*;
			4. any legislation (to the extent that such legislation applies to the Contract Authority or the Contractor or any other recipient of Personal Information) from time to time in force in:
				1. any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
				2. any other jurisdiction (to the extent that the Contract Authority or any Personal Information or the Contractor is subject to the laws of that jurisdiction),

affecting privacy or Personal Information, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and

* + - 1. 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.

**Public Announcement** means a public announcement in connection with the Agreement or any Contract or any transaction contemplated by those Documents.

**Regulatory Agency** means any government or any public, Statutory, governmental, semi–governmental, local governmental or judicial body, entity, ombudsman or authority that has a regulatory, supervisory or prudential power or function under any Statute, or can issue any licence or permit or authorise or approve or forbid any act or conduct or other matter or impose conditions in respect of any act or conduct or other matter, or that has a power to investigate, review, make any determination or finding, or prosecute, or commence or recommend any civil, criminal or administrative proceeding or process

**Related Body Corporate** means in relation to the Contractor, any person which is a related body corporate of the Contractor (as that term is defined in section 50 of the Corporations Act).

**Schedule of Charges** means the schedule of rates and prices set out in [Annexure C.](#bookmark119)

**Security Classified Information** means information defined as Security Classified Information in accordance with the Australian Government Information Security Manual and the Australian Government Protective Security Policy Framework.

**Service Level Performance Report** has the meaning given to that term in clause [7.1.](#bookmark42)

**Service Levels** means the service levels specified in the terms of a Module and any additional Service Levels specified in an Order.

**Similar Deliverables** means products and services supplied by the Contractor:

* + - 1. having substantially similar functional and performance outcomes as the Deliverables;
			2. having comparable scope and scale; and
			3. being provided by IT service providers.

**SME Policy** has the meaning given to that term in clause [8(b)(iii)A1.](#bookmark49)

**Statute** includes any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia or overseas (whether by a State, Territory, the Commonwealth or local government).

**Subcontractor** means an entity engaged under a subcontract to perform any part of the work under the Agreement and that entity's directors, officers, employees, subcontractors, agents and consultants (as relevant).

**Term** has the meaning given in clause [1.1.](#bookmark1)

* 1. Interpretation

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

* + - 1. headings are for convenience only and do not affect the interpretation of this Agreement;
			2. the singular includes the plural and vice versa;
			3. an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
			4. words that are gender neutral or gender specific include each gender;
			5. 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;
			6. the words "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
			7. a reference to:
				1. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
				2. a thing (including a chose in action or other right) includes a part of that thing;
				3. a party includes its successors and permitted assigns;
				4. a document includes all amendments or supplements to that document;
				5. 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 Agreement in which that reference is located;
				6. a reference to a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced;
				7. a monetary amount is to Australian dollars or such other currency specified in the Schedule of Charges; and
				8. time is to Australian Eastern Standard Time;
			8. when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
			9. a reference to any Authority, institute, association or body is:
				1. if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
				2. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body; and
			10. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of the Agreement.
	1. Discretion
		+ 1. Subject to any express provision in the Agreement to the contrary:
				1. a provision of the Agreement which says that the Contract Authority, the Contract Authority's Representative or an Eligible Customer "may" do or not do something is not to be construed as imposing an obligation on the Contract Authority, the Contract Authority's Representative or an Eligible Customer to do or not do that thing; and
				2. there will be no procedural or substantive limitation upon the manner in which the Contract Authority, the Contract Authority's Representative or any Eligible Customer may exercise any discretion, power or entitlement conferred by the Agreement.
			2. Without limiting clause [19.3(a),](#bookmark116) the Contract Authority, the Contract Authority's Representative or any Eligible Customer will not be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provisions of the Agreement conferring the discretion, power or entitlement.
	2. Order of precedence

To the extent that there is any conflict between the provisions contained in the body of this Agreement, any provisions in the Annexures, or documents incorporated by reference, the following order of precedence will apply (with higher listed documents taking precedence over lower listed documents):

* + - 1. Annexure A; then
			2. the body of this Agreement; then
			3. Annexure F and its Attachments; then
			4. the other Annexures; then
			5. any attachments; and then
			6. documents incorporated by reference.

**Executed** as a deed

|  |  |
| --- | --- |
| **Signed** for and on behalf of **[*Insert name of Contract Authority*] ABN [*Insert ABN*]** by its authorised representatives, but not so as to incur personal liability, in the presence of: |  |
| Signature of witness | Signature of authorised representative |
| Name of witness in full | Name of authorised representative in full |
|  | Date |

|  |
| --- |
| **Executed** by **[*Insert name of Contractor*] ABN [*Insert ABN*]** in accordance with section 127 of the *Corporations Act 2001 (Cth)*: |
| Signature of Secretary / other Director | Signature of Director or Sole Director and Secretary |
| Name of Secretary / other Director in full | Name of Director or Sole Director and Secretary in full |
| Date | Date |

1. - Key Details

|  |
| --- |
| **Parties: Definitions and interpretation** |
|  | **Contract Authority**: (Clause [19.1](#bookmark113)) | The Crown in the right of the State of New South Walesas represented by the Department of Customer Service (ABN 81 913 830 179) ~~of Level 7~~, McKell Building, 2-24 Rawson Place, Sydney NSW 2000  |
|  | **Contract Authority's Representative:** (Clause [[19.1](#bookmark113),](#bookmark113) [1.5](#bookmark8)) | Name: Lisa Asquith Address: McKell Building, 2-24 Rawson Place, Sydney NSW 2000 Telephone: +61 2 9372 8284Email: lisa.asquith@customerservice.nsw.gov.au |
|  | **Contractor:**(Clause [19.1](#bookmark113)) | [*Insert full name*] ABN [*Insert ABN*] of [*Insert registered address*] |
|  | **Contractor's Representative:**(Clause [19.1](#bookmark113)) | Name: [*Insert*] Address: [*Insert*] Telephone: [*Insert*]Email: [*Inse*rt] |
| **Other: Definitions and interpretation** |
| 1.
 | **Additional Policies, Codes and Standards that are applicable to this Agreement:**(Clause [19.1](#bookmark113)) | Additional Policies, Codes and Standards include: 1. Major Applicable Standards listed in Annexure F
2. The following NSW Government policies:
* NSW Procurement Policy Framework published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>;
* Supplier Code of Conduct published at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>;
* NSW Government Cyber Security Policy published at <https://www.digital.nsw.gov.au/policy/cyber-security-policy>;
* Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>;
* NSW Government Small and Medium Enterprises and Regional Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy>;
* NSW Government’s cloud policies, including the NSW Government Cloud Policy published at <https://www.digital.nsw.gov.au/policy/cloud-strategy-and-policy/cloud-policy>;
* Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Products and Services have not been produced using the "worst forms of child labour" as defined;
* NSW Government Internet of Things (IoT) Policy published at <https://www.digital.nsw.gov.au/policy/internet-things-iot>; and
* Department of Customer Service Cloud Circular DCS-2021-01 published at https://arp.nsw.gov.au/dcs-2021-01-cloud-circular/.
 |
|  | **Commencement Date:**(Clause [19.1](#bookmark113)) | Date this Agreement is countersigned |
|  | **Expiry Date:**(Clause [19.1](#bookmark113)) | *[Insert the date on which the Term of this Agreement will expire.]* |
|  | **Government Agencies and/or Non-Government Bodies that are not Eligible Customers under this Agreement**(Clause [19.1](#bookmark113)) | Not applicable |
|  | **Contractor Information: Excluded information:**(Clause [19.1](#bookmark113)) | Information excluded from definition of 'Contractor Information': [*Applicable/Not applicable*]If nothing is stated: 'Not applicable' If 'Applicable': [*Insert*] |
| **Extension** |
|  | **Number of Additional Period(s):** (Clause 1.2(a)(i)) | *[Insert number of Additional Periods, e.g. '2 '. If there is to be no Additional Period, insert 'N/A']* |
|  | **Length of Additional Period(s):** (Clause 1.2(a)(ii)) | *[Insert length of each Additional Period, e.g. '2 years'. If there is to be no Additional Period, insert 'N/A']* |
| **Use of this Agreement** |
|  | **Can the Contractor supply ICT Activities to an Eligible Customer other than under this Agreement:**(Clause [1.7](#bookmark10)) | No |
| **Additional Conditions** |
|  | **Additional Conditions:**(Clause [1.9(a)](#bookmark13)) | Do any Additional Conditions apply to this Agreement: [*Yes/No*]If yes, the Additional Conditions specified in [Annexure H](#bookmark128) apply to this Agreement.If nothing is stated: 'No' |
| **Indexation and review of rates** |
|  | **Indexation and review of rates:**(Clause [6](#bookmark40)) | Indexation and review of rates: *Applicable*The General review of prices in accordance with Part 2 section 1 of Annexure C (General Review of Charges) does apply except that the formula in clause 1(e) is replaced with A (CPI Indexed) = A × 2.5%.The foreign currency adjustment in Part 2 section 2 of Annexure C does notapply. |
| **Service Levels** |
|  | **Frequency of Service Level reporting and times at which Contract Authority and Contractor to meet:** (Clause [7.1(a)](#bookmark43) and [7.3](#bookmark47)) | Contractor to provide the Service Level Performance Report on a monthly basis and by the 10th day of each month. In addition, the Contractor must provide incident reports as described in Part D of Module 1 as set out in Annexure F. Meetings to review the Contractor’s performance under each Contract will be held in accordance with the governance framework set out in Item 24 of this Annexure.Reporting in this item is not required prior to the establishment of the first Customer Agreement between the Contractor and any Eligible Customer under this Agreement. |
| **Reporting requirements** |
|  | **Alternative reporting requirements:**(Clause [8](#bookmark48)) | Not applicable. Contractor to provide monthly reporting as set out in Clause 8.Reporting in this item is not required prior to the establishment of the first Customer Agreement between the Contractor and any Eligible Customer under this Agreement. |
|  | **Reporting on additional matters:**(Clause [8(b)(iii)B](#bookmark50)) | The Contractor must also provide Monthly Reports to the Customer as described in Part D of Module 1 as set out in Annexure F.Reporting in this item is not required prior to the establishment of the first Customer Agreement between the Contractor and any Eligible Customer under this Agreement. |
| **Benchmarking** |
|  | **Benchmarking:**(Clause [9](#bookmark51)) | Applicable |
| **Guarantees** |
|  | **Performance Guarantee:**(Clause [11.1](#bookmark58)) | Clause [[11.1](#bookmark58)](#bookmark58) applicable: Yes[For discussion with preferred respondents] |
|  | **Financial Security:**(Clause [11.2](#bookmark61)) | Clause [[11.2](#bookmark61):](#bookmark61) [*Yes/No*]If 'yes', amount of Financial Security required: $[*Insert*] If nothing is stated: 'No'[For discussion with preferred respondents] |
|  | **Costs:**(Clause 11.3) | No |
| **Other requirements** |
|  | **Insurance policies required to be effected by the Contractor:**(Clause [12.4](#bookmark67)) | [***Note to Contractor: Contractor to complete.***]**Product liability insurance**Amount of cover: $[*Insert*] in respect of any one claim and in the aggregate for all occurrences in any 12 month period, to be held for the Term.If nothing is stated: $20 million in respect of any one claim and in the aggregate for all occurrences in any 12 month period, to be held for the Term.**Public liability insurance**Amount of cover: *$*[*Insert*] in respect of any one occurrence, to be held for the Term.If nothing is stated: $20 million in respect of any one occurrence, to be held for the Term.**Professional indemnity insurance**Required: YesAmount of cover if 'yes': $[*Insert*] to be held for at least seven years after the end of the Term.If 'yes' and nothing is stated: $20 million, to be held for at least seven years after the end of the Term.**Workers' compensation insurance**Amount of cover: The maximum amount required by Law. Maximum deductible: Not applicable.**Cyber security insurance**Required: YesAmount of cover if 'yes': $[*Insert*] in respect of each claim, to be held for the Term.If applicable and nothing is stated: $20 million in respect of each claim, to be held for the Term.**Other insurances**Other Insurance(s) required: No |
|  | **Alternative Audit Mechanism:**(Clause [12.5(a)](#bookmark71)) | Applicable: No |
| 1.
 | **Governance:**(Clause 12.6) | Applicable governance framework: Annexure B. |
| **Dispute resolution** |
|  | **Alternate dispute resolution procedure**(Clause [15.1(a)](#bookmark83)) | Alternate dispute resolution procedure applies to this Agreement: No |
|  | **Time for dispute resolution**(Clause [15.2(a)](#bookmark86)) | Alternative time for resolution of dispute applies: No |
| **Notices** |
|  | **Contract Authority address and email address for the purpose of Notices:**(Clause [17(b)](#bookmark104)) | Address: Attn: Peter McMillan2-24 Rawson Place, McKell BuildingSydney NSW 2000 Email address: govdc@customerservice.nsw.gov.au |
|  | **Contractor address and email address for the purpose Notices:**(Clause [17(b)](#bookmark104)) | Address: [*Insert*] Email address: [*Insert*]If nothing is stated: the address and email address is those of the Contractor Representative, as specified in these Key Details. |

1. – Governance
2. This Annexure B (**Governance Schedule**) sets out governance requirements of the Contract Authority and the Contractor in connection with the Agreement, in addition to the existing governance already in place between the Contract Authority and Contractor.
3. The parties will carry out the activities at the frequency prescribed in this Governance Schedule.
If the parties fail to undertake an activity specified in this Governance Schedule prior to or on the specified due date, the parties will use reasonable endeavours to complete the activity at the earliest availability and no greater than one month following the specified due date.
4. The Contract Authority will notify the Contractor which of the following contract governance activities (if any) are required to be completed in accordance with the below Table 1.0.

**Table 1.0: Head Agreement Governance**

|  |  |  |
| --- | --- | --- |
| **Activity** | **Frequency** | **Due Date** |
| Level 1 Executive Council | Annually | Within 60 Business Days following the end of the calendar year |
| Level 2 Executive Steering Group | Quarterly  | Within 30 Business Days following the end of the preceding quarter. |
| Level 3 Commercial and Operational Meetings | Monthly | Within 7 Business Days following the end of the preceding month. |

1. Head Agreement Governance Activities
2. **Commercial and Operational Forums**

The objective of operational meetings is to provide a governance structure for all agreements to ensure parties are operating in a manner conducive to the achievement of the Agreement requirements. There will be two forums, Commercial and Operational. The structures are as follow;

### Level 3: A. Commercial Forum

|  |  |
| --- | --- |
| Frequency | Monthly |
| Objective        | To guide and track the compliance of the Contractor as against its obligations under the Agreement and to escalate matters not able to be resolved in the Commercial Governance Forum. Provide the forum for the management of any relationship and commercial issues formally escalated to the Commercial Governance Forum and serve as the formal escalation point for all relationship and commercial issues.To guide and monitor improvements in the Services, that may be beneficial to the Contractor and/or NSW Government.   |
| Key Roles and Responsibilities | The peak forum for Commercial governance of this Agreement. This includes the ongoing management, monitoring and reporting of Contractor’s performance of its obligations in relation to this Agreement and commercial matters. The roles and responsibilities of this forum include, but are not limited to:* Monitor the Contractor’s compliance with the Agreement.
* Monitor progress to timely resolution of commercial disputes to minimise impact of service disruptions to NSW Government.
* Resolve issues escalated to this forum.
* Plan and initiate independent audits of the Contractor’s performance and Agreement compliance.
* Monitor and review commercial and financial performance.
* Review items escalated from Cluster / agency procurement forums.
* Review items escalated from Service delivery/operational management forums.
* Contract administration matters (changes, correspondence, issues etc).
* Report and escalate to the Executive Steering Group.
* Review, identify and monitor the implementation of opportunities to improve productivity and reduce costs across NSW Government.
* Review and monitor improvements in procurement processes under each Contract (including any hardware and software procurement models available to the Contractor).
* Monitor and provide input into the Contractor’s technology roadmap and technology evolution plans.
 |
| Membership NSW GOVERNMENT  | Executive Director, GTPDirector Technology Services, GTPFinance Manager (as required).Cluster / agency representatives (as required) |
| Membership Contractor | Contractor equivalent roles as agreed with Executive Director, GTP. |

### Level 3: B. Operational Forum

|  |  |
| --- | --- |
| Frequency | Monthly (if required) |
| Goal        | To guide and monitor the operational performance of the services and ensure continuous improvement. |
| Key Responsibilities | The peak forum for the operational performance of the Contractor’s service delivery under the Agreement.The roles and responsibilities of this forum include, but are not limited to:•         Review & measurement of day to day service performance and manage any issues to resolution.•         Review capability and capacity forecast and trends.•         Analysis of service hot spots and “action” assignment to service providers, monitor Contractor’s performance in response to service issues.•         Reviewing performance against contracted service levels (SLA).•         Monitor NSW Government customer satisfaction.•         Monitoring the progress of operational, SLA or customer satisfaction issues.•         Resolving operational, SLA or customer satisfaction issues escalated to this forum.•         Monitor the environment, and the potential impact on both delivery of services and business as usual operations.•         Monitoring the operational Risk register and mitigation plans.•         Facilitate the development of “real business impact” service reporting.•         Review status of rectification plans developed to overcome Service Level deficiencies.•         Initiate service improvement plans to address delivery performance issues.•         Review items escalated from Relationship/commercial management forums.•         Report and escalate to the Quarterly Executive Steering Group. |
| Membership NSW Government | NSW Government Cluster / Agency Leads & Directors. Director Technology Services.Service Delivery Manager, Technology Services.  |
| Membership Contractor | Contractor equivalent roles as agreed with Director Technology Services |

* 1. **Agenda**Unless as otherwise agreed, the meeting agenda will include but not be limited to:
1. Escalation of unresolved issues or risks related to provision of the data centre services;
2. Alignment with Contractor recommended practices and reference architecture;
3. Review and, management and execution of any agreed contractual changes to the Agreement;
4. Measurement and review of the adoption of the Deliverables and Services; and
5. Administration of this Governance Schedule including the scheduling of future the Management Meetings.
6. **Executive Steering Group**
The objective of the Executive Steering Group is to guide and monitor the health of the NSW Government/contractor relationship and service provision, with a view to ensuring that they are exercised in a manner that achieves mutual benefits and meets the objectives set out in the Agreement. The Quarterly Business Review will be attended by the Executive Steering Group. The structure of the Executive Steering Group is as follows:

### Level 2: Executive Steering Group

|  |  |
| --- | --- |
| Frequency | Quarterly |
| Goal        | To guide and monitor the health of the NSW Government / Contractor relationship and service provision, with a view to ensuring that they are exercised in a manner that achieves mutual benefits and meets the objectives set out in the Agreement.  The Executive Steering Group is responsible for managing the overall relationship with the Contractor and NSW Government. |
| Key Responsibilities | Ongoing performance review includes overall operational performance, commercial & contractual compliance.                             A forum to facilitate decision making and the relationships between NSW Government and the Contractor which results in an effective engagement model between the organisations at all levels. •         To arbitrate and facilitate resolution for issues which cannot be resolved in the normal course of business.•         To ensure that NSW Government engage Contractor (and vice versa) at the appropriate levels in key business functions (e.g. problem management, IT strategic planning, direct and indirect investment in NSW etc).•         Review the level of service provided by Contractor and its general performance of the Services, the extent to which it has complied with Service Levels and its performance with respect to customer satisfaction surveys and any other service metrics.•         Review compliance with the Agreement.•         Review and promote direct and indirect investment by the Contractor in NSW. •         Review, promote and track social procurement initiatives by the Contractor in relation to small & medium enterprises, regional procurement and Aboriginal businesses.•         Report and escalate to the Executive Council. |
| Membership NSW Government | Cluster / Agency CIOs (as required).Cluster / Agency CISOs (as required).Cluster / Agency Executive Directors (as required).Executive Director, GTP, Digital.NSWDirector Technology Services |
| Membership Contractor | Contractor equivalent roles as agreed with Executive Director, GTP. |

* 1. **Agenda**Unless as otherwise agreed, the meeting agenda will include but not be limited to:
1. Regular review of the Department’s strategic roadmap/initiatives as prepared in the Strategic Partnership and Strategy Review meeting to identify actions to achieve these agreed objectives;
2. Regular review of the Agency specific strategic roadmap/initiatives to identify actions to achieve these agreed objectives;
3. Executive escalation of unresolved issues or risks related to provision of the Deliverables and Services; and
4. Review of product roadmap and innovation pipeline.
5. **Executive Council**

The objective of this group is to guide and monitor the health of the NSW Government / Contractor relationship and Service provision, with a view to ensuring that the services are performed, and the relationship between the parties is being managed, in a manner that achieves mutual benefits and meets the objectives. The structure of the Executive Council as follow;

|  |  |
| --- | --- |
| Frequency | Yearly (or as required) |
| Goal        | To guide and monitor the health of the NSW Government / Contractor relationship and Service provision, with a view to ensuring that the services are performed, and the relationship between the parties is being managed, in a manner that achieves mutual benefits and meets the objectives. To achieve, at least, the following outcomes:•         To share each party’s respective views, objectives and strategies.•         To leverage what the Contractor has to offer in support of NSW Government business agenda, Premier’s Priorities and IT Strategy.•         To escalate and endeavour to resolve issues not resolved in other governance forums. |
| Key Roles and Responsibilities | A committee to facilitate the relationships between NSW Government and the Contractor which concern decision making, performance review and strategic direction.  This forum must provide overall direction for the relationship, delivery and a platform for innovation and business improvement focussing on:•         Strategic alignment.•         Sponsorship of the relationship.•         Providing clear direction on NSW Government’s business objectives, Premier’s Priorities and IT Strategy outcomes and timeframes.•         Promoting an effective partnership.•        Maximise relationship value.•         Set guidance to maximise the value of the relationship. |
| Membership NSW Government | Deputy Secretary (as required)Group Chief Information and Digital Officer (GCIDO).Cluster / Agency Chief Information Officer (CIO) (as required).Cluster / Agency Chief Information Security Officer (CISO) (as required). |
| Membership Contractor | Contractor equivalent roles as agreed with GCIDO. |

* 1. **Agenda**

Unless as otherwise agreed, the meeting agenda will include but not be limited to:

1. explore opportunities to support the NSW Premier’s Priorities and the NSW Government’s Beyond Digital Strategy, and other policies and strategies as agreed, including technology roadmap items;
2. update on any strategic initiatives involving Contractor solutions;
3. review previously agreed priorities and establish/confirm any new priorities to be included; and
4. discussion on key issues/risks

**Qualifications:**

* The Contractor acknowledges and agrees that no statement, representation or other conduct by the Contract Authority or an Eligible Customer in any of the fora referred to in this Governance Schedule will have the effect of varying this Agreement, varying any Contract or creating any other legal obligations on the part of the Contract Authority or Eligible Customer. Any variation to this Agreement or a Contract will be affected in accordance with the applicable variation process. Similarly, any decision to enter into a Contract or procure any goods or services will follow the appropriate NSW Government procurement process.
1. - Schedule of Prices and Indexation

**Part** **1 - Schedule of Prices**

**[*Insert Schedule of Prices applying to Contractor's standing offer to the Contract Authority*]**

**[*Note: any schedule of charges containing a daily rate must specify the minimum number of hours included in the daily rate*]**

**Part** **2 - Indexation**

This Part 2 is only applicable where specified in the Key Details.

# General Review of Charges

* 1. This "General Review of Charges" clause applies where specified in the Key Details that the "General Review of Charges" model applies.
	2. Once each year, within 30 days of the anniversary of the Commencement Date, either party may provide a notice to the other requesting that any prices in the Schedule of Prices be reviewed in accordance with this clause.
	3. If either party provides a notice under paragraph [(b),](#bookmark120) the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree to a revised Schedule of Prices which reflects the Contractor’s actual, direct, proven and reasonable increases or decreases in costs.
	4. If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date that is 35 Business Days after the date of a notice under paragraph [(b)](#bookmark120) (**Rate Adjustment Date**).
	5. If the parties cannot agree to a revised Schedule of Charges within 35 Business Days of the notice under paragraph [(b),](#bookmark120) the prices in the Schedule of Prices will be indexed for movements in the CPI on and from the Rate Adjustment Date, calculated in accordance with the following formula:

*CPI q*2
\_\_\_\_\_\_\_\_\_\_

A (CPI Indexed) = A × *CPIBase*

Where:

**A** is the monetary amount originally specified in this Agreement;

*CPIq*2 is the last CPI published prior to the Rate Adjustment Date;

*CPIBase* is the last CPI published prior to the Commencement Date; and

**CPI** means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (**ABS**), or as otherwise determined in accordance with paragraph [(f).](#bookmark121)

* 1. If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Contract Authority's Representative and any necessary consequential amendments are to be made.
1. - Order Proposal

|  |
| --- |
| **Part** **1 of the Order Proposal - Identification** |
| This Order Proposal is issued by the Eligible Customer under the Agreement between The Crown in the right of the State of New South Wales as represented by the Department of Customer Service (ABN 81 913 830 179) and [***Insert name of Contractor***].**Agreement No: [*Insert*]****Order Proposal No: [*Insert*]****Contractor response required by:** [***Insert date***]**Order Proposal issued by: [*Insert name of Eligible Customer, who will be the Customer under the Contract*].****Attachments to Order Proposal:** Attachment 1 (Additional Service Levels) **[*attach completed attachments*]** |
| **Part** **2 of the Order Proposal – Customer Agreement Order Form** |
| **[*Insert completed draft Order Form*]** |

**Attachment** **1 - Additional Service Levels**

**[*Eligible Customer to insert any specific Service Levels that will apply in addition to those in*** [***Annexure F***](#bookmark118) ***of the Agreement in respect of the particular supply of Deliverables and Services under a Contract*.]**

1. - Form of Order

|  |
| --- |
| **Part** **1 - Identification** |
| This Order is issued by the Eligible Customer under the Agreement between The Crown in the right of the State of New South Wales as represented by the Department of Customer Service (ABN 81 913 830 179) and [***Insert name and ABN of Contractor***].**Agreement No: [*Insert*] Order No: *Insert*]****Eligible Customer: [*Insert name, ABN and address of Eligible Customer*]*****Contractor:* [*Insert name, ABN and address of Contractor*]** |
| **Part** **2 of the Order Proposal - Customer Agreement Schedule 5 - Order Form** |
| **[*Attach completed Order Form*]** |

Executed as an agreement:

|  |  |
| --- | --- |
| **Signed** for and on behalf of **[*Insert name of Eligible Customer*] ABN [*Insert ABN*]** by its authorised representative, but not so as to incur personal liability, in the presence of: |  |
| Signature of witness | Signature of authorised representative |
| Name of witness in full | Name of authorised representative in full |

|  |  |
| --- | --- |
| **Executed** by **[*Insert name of Contractor*] ABN [*Insert ABN*]** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |
| Signature of Secretary/other Director | Signature of Director or Sole Director and Secretary |
| Name of Secretary/other Director in full | Name of Director or Sole Director and Secretary in full |

1. - Agreement Scope

# Modules

# The Contractor acknowledges that:

# the Deliverables the Contractor offers to provide are set out in the Module or Modules to which the Contractor is enrolled as set out in Attachment 1 (*List of Enrolled Modules*) of this Annexure F;

# as at the Commencement Date of this Agreement, there may only be one Module;

# the Contractor, through the process specified in clause 3 of this Annexure, may enrol other Modules from time to time under this Agreement; and

# enrolment under one Module does not entitle enrolment under any other Module.

# The Contract Authority reserves the right to enrol any Contractor into one or more Modules at any time.

# Module Period

# Each Module begins on the relevant Module Commencement Date and continues for the Initial Module Period, unless it is terminated earlier in accordance with clause 14 of this Agreement.

# The Contract Authority may extend the Initial Module Period by a further period (Module Option Period) as specified in the relevant Module (if any) on the terms and conditions then in effect (subject to clause 2(c) of this Annexure), by giving written Notice to the Contractor. Such Notice must be provided:

# at least 20 Business Days before the end of the then current Module Period; or

# within another period agreed in writing between the parties.

# Where an extension is exercised in accordance with clause 2(b) of this Annexure, the Charges for the relevant Module in the Module Option Period will be the Charges applicable immediately before the extension of the Initial Module Period unless otherwise agreed in accordance with clause 16 of this Agreement.

# An extension exercised in accordance with clause 2(b) of this Annexure takes effect from the end of the then current Module Period.

# Adding new Modules

* + - * 1. The Contract Authority may, at any time during the Term, enrol the Contractor under a new or additional Module by issuing the Contractor with a draft Change Request that will:
			1. vary the table of Enrolled Modules at Attachment 1 (*List of Enrolled Modules*) of this Annexure by listing the new or additional Module;
			2. include the new or additional Module for inclusion in Attachment 2 (*Modules*) of this Annexure; and
			3. include the Charges for the new or additional Module for inclusion in the relevant Attachment 3 (*Deliverables and Pricing*) of this Annexure.
		1. The Contractor must respond in writing:
			1. with details of any proposed amendments to the draft Change Request issued under clause 1.3(a); or
			2. confirming the draft Change Request as not requiring any amendments,

within 10 Business Days (or such other period as agreed by the parties) after receipt of the draft Change Request.

* + 1. The Contract Authority will approve or reject the Contractor's proposed amendments to the draft Change Request (if any) within 10 Business Days (or such other period as agreed by the parties) after receipt of the response under clause 1.3(b).
		2. If the Contract Authority approves the response, the parties must promptly execute the Change Request.

# Continuous Improvements and Efficiencies

* + 1. The Contractor must provide continuous quality assurance and quality improvement relevant to its Enrolled Module Deliverables during the relevant Module Period, including by:

# identifying and applying proven techniques and tools utilised by the Contractor or industry that would benefit Eligible Customers either operationally or financially; and

# implementing programs, practices and measures designed to improve the Contractor's levels of performance, including any programs, practices and measures as specified in any Contract.

* + 1. Without limiting clauses 4(a) and 5 of this Annexure, the Contractor must:

# proactively and promptly advise the Contract Authority of all new trends in methodology related to the Deliverables; and

# continually plan for the evolution of the Deliverables and modify the manner in which the Deliverables are supplied (subject to any variations to a Contract required to implement any change) to improve the quality, effectiveness and efficiency of the Deliverables and their delivery, without increasing the Charges.

* + 1. Nothing in this clause 4 requires the Contract Authority to:

# request;

# approve; or

# if the modification is approved, to fund,

modifications to the manner in which the Deliverables are provided.

# Reporting

At no cost to the Contract Authority, the Contractor must provide the Contract Authority with the reports for each Module to which it is enrolled, as set out in Attachment 2 (*Modules*) to this Annexure.

**Attachment 1 – List of Enrolled Modules**

The Contractor has been enrolled to provide Deliverables in respect of each of the following Modules:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Module | Module Commencement Date | Initial Module Period | Module Option Period (if any) |
| Module 1: Zone 3 Colocation Services (Data Centre Facilities)  | On execution of Agreement | [***DCS to insert***] | [***DCS to insert***] |

**Attachment 2 – Modules**

This Attachment contains details of Deliverables available under each Module, as well as Module Specific Terms which apply to each Order placed in respect of that Module.

**Module 1 - Zone 3 Colocation Services (Data Centre Facilities)**

**Part A** **- Service Specific Terms**

The definitions in Attachment 1 (Glossary) apply in addition to those set out in clause 19of the Agreement.

* 1. Scope of Deliverables
		1. The Contractor must provide the Zone 3 Colocation Services (**Deliverables**) specified in Part B (Deliverables) of this Annexure, in accordance with the functional, performance and other requirements specified in this Annexure and any Order.
	2. Service Specific Criteria
		1. Proposed Data Centre Facilities must:
			1. be located in New South Wales (NSW) or Australian Capital Territory (ACT);
			2. have an average PUE 1.6 or less;
			3. have a minimum site designed capacity of at least 1 million Voltage Amps (MVA);
			4. meet or exceed the Uptime Institutes standard for a Tier 3 Data Centre; and
			5. be certified to PSPF Zone 3 or above, or be able to demonstrate that areas within the Data Centre Facility can be uplifted to be certified to PSPF Zone 3 of that area.
	3. Right to use Data Centre Facility for providing Deliverables
		1. The Contractor must have for each Data Centre Facility:
			1. legal ownership of, or a leasehold interest in, the Data Centre Facility at which the Contractor is proposing to provide the Deliverables; and
			2. all required development, planning and other approvals necessary to use the Data Centre Facility for providing the Deliverables.
	4. Data Centre Sustainability
		1. The Contractor must have for each Data Centre Facility an environmental management system that is certified as complying with one or more of the following standards:
			1. ISO14001 - Environmental Management Systems;
			2. Eco-Management and Audit Scheme; or
			3. an alternate standard approved in writing by the relevant Customer.
		2. The Contractor must provide written evidence of its environmental management system on the Commencement Date or within 12 months after the Data Centre Facility from the date first used by any customer (irrespective of whether the first use is pursuant to an Order placed under the Agreement or a separate commercial arrangement).
	5. Data Centre Facilities
		1. The Data Centre Facilities from which the Contractor may provide Deliverables under an Order are set out at Part B (Deliverables) and Part C (Standard Offering) of this Module and Annexure C (Schedule of Charges and Indexation) of the Head Agreement.
		2. Prior to any Order being awarded for Deliverables for each proposed Date Centre Facility to be included on the Data Centre Services Panel, the Contractor must provide the relevant Customer with the following Documents:
			1. a copy of the Data Centre Facility’s current Work Health and Safety (WHS) certification;
			2. a copy of the Data Centre Facility’s Certificate of Occupancy;
			3. a copy of the signed Commissioning Report(s) for the Data Centre Facility;
			4. as built diagrams for electrical, mechanical, cabling, cross-connects and telecommunications;
			5. a copy of the Data Centre Facility’s disaster recovery and business continuity plans;
			6. a copy of its Uptime Institute Tier 3 certificate (or equivalent); and
			7. any other supporting Documents required by the Customer.
		3. The Contractor must provide any or all of the Documents listed in clause 5.2 to the Customer, together with any other supporting Documents required by the Customer, within 5 Business Days after a written request for such Documents.
		4. Each Data Centre Facility must comply with the relevant standards, policies and references including the Major Applicable Standards, Policies and References.
		5. The Customer may also require a third party to undertake a site inspection of the Data Centre Facility, noting however that where that third party is not employed under the *Government Sector Employment Act 2013* (NSW) they will be required to enter into a confidentiality agreement in a form acceptable to the Customer in favour of the Contractor.
		6. Where:
			1. a Data Centre Facility will be available for use or offered after the fit-out or development of a new Data Centre Facility or extension of an existing Data Centre Facility completed sometime during the Term of the Data Centre Facilities Supplies Panel;
			2. a Data Centre Facility is undergoing significant upgrades;
			3. there has been significant damage to a Data Centre Facility building infrastructure or the electrical, mechanical or security systems supporting the delivery of the Deliverables within the last five years, where there is insufficient evidence to demonstrate that the damage has been remediated; or
			4. there is existing damage to a Data Centre Facility building infrastructure or the electrical, mechanical or security systems supporting the delivery of the Deliverables which has not been remediated or is undergoing repair,

the Contract Authority may exclude that Data Centre Facility from the Data Centre Services Panel until the Contract Authority is satisfied that the Data Centre Facility is ready for use and demonstrates value for money.

* + 1. If the Contractor is not able to provide the Documents required under clause 5.2 or demonstrate that the Data Centre Facility is ready for use to the Contract Authority's satisfaction at the time that the Agreement is executed, the Contract Authority may invite the Contractor to execute a Change Request to add the Data Centre Facility when the Contractor is able to meet these requirements.
		2. Without limiting clause 12.5 of the Agreement, the Contract Authority may conduct an inspection, no more than once annually, to verify that the Data Centre Facility is or areas of the Data Centre Facility are (as relevant) certified to PSPF Zone 3 or above.
		3. The Contractor will provide prior written notice to the Contract Authority before entering into any contract to provide services which are substantially similar to the Deliverables subject to this Annexure with any other customer which is not an Eligible Customer. The Contractor must comply with any reasonable request by the Contract Authority to provide disclosure over the nature of the proposed services described in this clause 5.9 including the identity of the proposed customer.
	1. Adding a new Data Centre Facility
		1. Subject to clause 5, a Contractor may request in writing that a new Data Centre Facility be added to the Data Centre Services Panel or the Contract Authority may request in writing that a Contractor submit an application to add a Data Centre Facility to the Data Centre Services Panel.
		2. Where a request is made under clause 6.1, the Contractor must respond in writing within 20 Business Days after the date of the Contract Authority's request specifying:
			1. the proposed Data Centre Facility;
			2. the Charges for Deliverables associated with the Data Centre Facility;
			3. any relevant insurances; and
			4. any supporting documents required by the Contract Authority.
		3. Proposed Data Centre Facilities must:
			1. be located in New South Wales (NSW) or Australian Capital Territory (ACT);
			2. have a PUE 1.6 or less;
			3. have a minimum site designed capacity of at least 1 million Voltage Amps (MVA);
			4. meet or exceed the Uptime Institutes standard for a Tier 3 Data Centre; and
			5. be certified to PSPF Zone 3 or above, or be able to demonstrate that areas within the Proposed Data Centre Facility can be uplifted to be certified to PSPF Zone 3 of that area.
		4. Where the Contract Authority makes the request, the Contractor must respond within 20 Business Days after the Contract Authority's request.
		5. Within 30 Business Days after receiving the Contractor's response under clause 6.2, or within another period agreed by the parties, the Contract Authority will approve or reject the response in writing. The Contract Authority may also require a third party to undertake a site inspection of a proposed Data Centre Facility prior to inclusion in the Data Centre Services Panel.
		6. The Contract Authority reserves the right to change the requirements under this Annexure at any time to align with current New South Wales government policies and requirements.
		7. If the Contract Authority approves the inclusion of the proposed Data Centre Facility in the Data Centre Services Panel, the parties must execute a Change Request in accordance with clause 16.2 of the Agreement.
	2. Significant upgrades to the Data Centre Facility
		1. Where there are significant upgrades to a Data Centre Facility, including but not limited to:
			1. structural changes to the building;
			2. upgrades to the electrical or mechanical equipment supporting the Data Centre Facility; or
			3. extension of the Data Centre Facility into previously uncommissioned areas of the building and/or property,

the Contractor must provide to the Contract Authority:

* + - 1. an updated Certificate of Occupancy;
			2. an updated Work Health and Safety (WHS) certificate;
			3. revised building plans (if applicable);
			4. as built diagrams for electrical, mechanical, cabling, cross-connects and telecommunications; and
			5. any other Documents required by the Contract Authority.
		1. The Contract Authority may also require any third party to undertake a site inspection of the Data Centre Facility.
		2. The Contract Authority reserves the right to suspend the Data Centre Facility from the Agreement under clause 13 of the Agreement until the Contractor complies with clauses7.1 and 7.2, and the Contract Authority deems the Data Centre Facility to meet New South Wales government policy and requirements.
	1. Damage to the Data Centre Facility
		1. Where there has been significant damage to a Data Centre Facility building infrastructure or the electrical, mechanical or security systems supporting the delivery of the Deliverables and the Data Centre Facility is no longer fit for purpose, the Contractor must notify the Contract Authority and each affected Customer involving the use of the Data Centre Facilities in question in accordance with Part D (Service Levels).
		2. The Contract Authority may suspend the Data Centre Facility from the Agreement under clause 13 of the Agreement until the Contractor provides evidence that the damage has been repaired. Evidence may include:
			1. an updated Certificate of Occupancy;
			2. an updated Work Health and Safety (WHS) certificate;
			3. revised building plans (if applicable);
			4. as built diagrams for electrical, mechanical, cabling, cross-connects and telecommunications; and
			5. any other documents required by the Contract Authority.
		3. The Contract Authority may also require a third party to undertake a site inspection of the Data Centre Facility, noting however that where that third party is not employed under the *Government Sector Employment Act 2013* (NSW) they will be required to enter into a confidentiality agreement in a form acceptable to the Contract Authority in favour of the Contractor.
		4. For clarity, if a Data Centre Facility had existing structural damage or damage to the electrical, mechanical and security systems supporting the delivery of services before the Contractor applied to add the Data Centre Facility to the Data Centre Services Panel, the Contract Authority reserves the right not to add the Data Centre Facility onto the Data Centre Services Panel until the Contractor provides evidence that the damage has been repaired.
	2. Security of Payments
		1. A building contractor or building industry participant must:
			1. comply with all applicable Laws and other requirements relating to the security of payments that are due to persons;
			2. ensure that payments made by the contractor or building industry participant are made in a timely manner; and
			3. as far as practicable, ensure that disputes about payments are resolved in a reasonable, timely and cooperative way.
	3. Performance Framework
		1. The Service Levels specific to this Annexure are as set out in Part D (Service Levels).
	4. Reports
		1. The Contractor must provide all of the reports set out in Part E (Reporting Requirements) to the Contract Authority or relevant Customer (as applicable).

**Part B - Deliverables**

**Deliverables**

**Data Centre Facilities**

The Data Centre Facilities in respect of which the Contractor has been appointed to the Data Centre Services Panel is as follows:

|  |  |  |
| --- | --- | --- |
| **Site ID** | **Site Name** | **Site Address** |
| [\*] | [\*] | [\*] |
| [\*] | [\*] | [\*] |

**Site Details**

The PSPF Zone 3 Colocation Services are to be provided at [***insert site***] include:

|  |  |
| --- | --- |
| **PSPF Zone 3 certified space** | [\*] |
| **Status** | [\*] |
| **Space available as at Commencement Date** | [\*] |
| **Power available as at Commencement Date** | [\*] |
| **Commissioning Date** | [\*] |
| **Expected working life** | [\*] |
| **Power Usage Effectiveness Rating** | [\*] |
| **NABERS Star Rating** | [\*] |
| **Account Manager** | [\*] |
| **Scheduled outage for maintenance or concurrently maintainable** | [\*] |
| **Power for ICT equipment available** | [\*] |
| **Power Density** | [\*] |
| **Power Density Limitations** | [\*] |
| **Contractor Standard Rack** | [\*] |
| **Floor Load Bearing Capacity** | [\*] |
| **Island Mode Operation** | [\*] |
| **Fire Protection** | [\*] |
| **External Physical Security** | [\*] |
| **Utility Protection** | [\*] |
| **Facility Ownership** | [\*] |

**Part C - Standard Offering**

* 1. Standard Offering

For each Order in respect of Deliverables provided at [***insert site***], the Contractor must achieve or exceed the following minimum requirements:

|  |  |
| --- | --- |
| Data Hall for Agencies only or multi-user including non-government | [\*] |
| Security provisions if multi-use | [\*] |
| Secure Storage Space | [\*] |
| Non-Secure Storage Space | [\*] |
| Office Space | [\*] |
| Logistic Support | [\*] |
| Water | [\*] |
| Telecommunications  | [\*] |
| Lighting | [\*] |
| Cooling  | [\*] |
| Security, Agency Supplied Surveillance and Security Systems | [\*] |
| Parking | [\*] |
| Cable Pathways | [\*] |
| Data Centre Cabling | [\*] |
| Data Centre Technical Services | [\*] |

**Part D – Service Levels**

* 1. Service Levels

| **No.** | **Service** | **Availability** | **Acceptable Range** | **Measurement** | **Frequency of Measurement by Contractor** |
| --- | --- | --- | --- | --- | --- |
| 1 | Security | 99.982% (1.578 hrs per annum unavailability). The Contractor shall ensure that the security systems for the Building are available and monitored continually. | N/A | Unavailability of the alarm system or any other system required by an Agency's Zone requirement. | Monthly  |
| 2 | Power supply | Service hours 24/7 to the power distribution units to the Premises.(The Data Centre Site has both "A" and "B" Deliverables fed by UPS systems and 2 generators giving full redundancy).The Contractor shall ensure that the Power Supply for the Building is available and monitored continually. | Continuous Availability, no brown outs or power spikes are allowed | The Outage of this Service will be measured in seconds from the time the Contractor UPS or electricity services can no longer support the Agency equipment in the Premises. | Per Outage |
| 3 | Cooling | The Contractor shall ensure that the cooling systems for the Building and the Premises are available and monitored continually. | Ambient air temperature is to be in accordance with ASHRAE TC9.9 2011 Thermal Guidelines for Data Processing Environments– Expanded Data Centre Classes and Usage Guidance. | In degrees Celsius by thermostats. | Continuous monitoring |
| 4 | Humidity | The Contractor shall ensure that the humidity systems for the Building and the Premises are available and monitored continually. | Humidity range is to be in accordance with ASHRAE TC9.9 2011 Thermal Guidelines for Data Processing Environments– Expanded Data Centre Classes and Usage Guidance | Via humidity sensors that measure relative humidity (including devices that use , dew point, air velocity, flow, CO2 and temperature or measure the temperature of condensation, changes in electrical resistance, and changes in electrical capacitance to measure humidity changes. | Continuous monitoring |

**Part E - Reporting Requirements**

* 1. Reporting Requirements
		1. The Contractor must provide the following reports and Materials for this Annexure.
		2. The Contract Authority reserves the right to vary these requirements.
		3. The Annexure reporting requirements do not limit the Contractor’s responsibilities under clauses 7 and 8 of the Agreement.

Monthly Reports to the Customer

* + 1. By the 10th day of each month, the Contractor must provide the relevant Contract Authority with a report covering the following details for the previous month:
			1. IT and Mechanical Power Consumption (kW) for each Customer, broken down by each Order, in the Data Centre Protected Colocation Facility;
			2. the PUE at the Data Centre Facility;
			3. average technical space temperatures;
			4. upcoming maintenance activities;
			5. summary of security incidents in the month; and
			6. summary of service catalogue ordered by each Customer.
		2. These reports must be in the form requested by the Contract Authority.

Monthly Service delivery Meeting

* + 1. The Contractor must participate in a monthly service delivery meeting with the Contract Authority at a time, duration and attendance method agreed by both parties.
		2. The Contract Authority will set the meeting agenda and cover matters deemed relevant including change management and maintenance activities under this Agreement.

Incident reports

* + 1. In the event of an unplanned outage or other serious incident at the Data Centre Protected Colocation Facility that compromises the running of a Customer's equipment, the Contractor must inform the Customer in accordance with the Severity Levels detailed below.

**Severity Levels**

| **Severity Level** | **Description** | **Actions** | **Notification requirements** | **Post Incident Reports** | **Initial Response Time** |
| --- | --- | --- | --- | --- | --- |
| **Level 1****(Critical Business Impact – Unplanned Outage)** | Defined as a problem that causes complete loss of service to the Agency production environment and work cannot reasonably continue.  Agency's production use of primary business service, major application(s) or mission-critical system is stopped or so severely impacted that the Agency cannot reasonably continue work.**Severity Level 1 problems could have the following characteristics:*** A large number of users cannot access the system
* Critical functionality is not available
* Multiple data centre system failures leading to significant or total loss of IT functionality across multiple systems.
 | The Contractor will begin work on the problem within 30 minutes of notification from the Agency, the DCS SDM, or from their own internal systems. The Contractor will handle the incident as the highest priority until the Agency is able to resume full use of their production environment. Agency Personnel must be made available in Severity Level 1 situations and reasonably cooperate to help resolve the issue. | * The Agency and the DCS SDM must be notified within 30 minutes of an incident occurring.
* Where the Contractor is notified of an incident by the Agency or the DCS SDM, the Contractor must respond to the incident within 30 minutes of notification.
* Contact is to take place via the following methods (each is a cascading redundancy for the other):
	+ Phone Call
	+ SMS
	+ Email
* Broadcast updates on the outage along with remediation activities is to occur every 30 mins.
* Conference call bridge opened, and updates provided every 15 minutes.
 | Once a Severity Level 1 Incident is resolved, the Contractor will within 24 hours email an Incident Report to the Agency and the DCS SDM. Subsequent Incident Reports after detailed investigation are to continue as they arise. A remediation report is to be emailed within 30 Business Days to the Agency and the DCS SDM. | **Within 30 mins**  |
| **Level 2 (Significant Business Impact)** | This classification applies when the production environment can proceed but performance is significantly reduced and/or operation of the system is considered severely limited.  No workaround is available, however operation can continue in a restricted fashion.  Major applications or mission critical systems are functioning with limited capabilities or are unstable with periodic interruptions. The environment may be operating but is severely restricted.**Severity Level 2 problems could have the following characteristics:*** Severely degraded performance
* IT environment error or failure forcing a restart or recovery
* Functionality unavailable but the system is able to operate in a restricted fashion
* Single data centre system component failure leading to significant or total loss of one IT system
 | The Contractor will begin work on the problem within 1 hour of notification from an Agency, the DCS SDM, or from their own internal systems. The Contractor will handle the incident as the highest priority until the Agency is able to resume full use of their production environment. Agency Personnel must be made available in Severity Level 2 situations and reasonably cooperate to help resolve the issue.   | * The Agency and the DCS SDM must be notified within 1 hour of an incident occurring.
* Where the Contractor is notified of an incident by the Agency or the DCS SDM, the Contractor must respond to the incident within 1 hour of notification.
* Contact is to take place via the following methods, each is a cascading redundancy for the other:
	+ Phone Call
	+ SMS
	+ Email
* Broadcast updates on the outage along with remediation activities is to occur every 30 mins.
* Conference call bridge opened, and updates provided every 30 minutes.
 | Once a Severity Level 2 Incident is resolved, the Contractor will within 48 hours email an Incident Report to both the Agency and the DCS SDMSubsequent Incident Reports after detailed investigation are to continue as they arise. A remediation report is to be emailed within 30 Business Days to the Agency and the DCS SDM. | **Within 1 hour** |
| **Level 3 (Minimal Business Impact)** | A problem that causes minimal loss of service and has a limited adverse effect on Agency business operations.  The impact of the problem is minor or an inconvenience.  **Severity Level 3 problems could have the following characteristics:*** Minimal performance degradation
* Variable IT environment/data centre behaviour with minor impact
* Reduction in IT service.
 | For Severity Level 3 problems, Contractor will begin work on the problem within 2 to 4 hours of notification from the Agency, DCS SDM, or from their own internal systems. The Contractor will handle the incident as a medium priority until the Agency is able to resume full use of their production environment. Agency Personnel may be made available in Severity Level 3 situations and reasonably cooperate to help resolve the issue. | * The Agency and the DCS SDM must be notified within 2 to 4 hours of an incident occurring.
* Where the Contractor is notified of an incident by the Agency or DCS SDM, the Contractor must respond to the incident within 2 to 4 hours of notification.
* Contact is to take place via the following methods, each is a cascading redundancy for the other:
	+ Phone Call
	+ SMS
	+ Email
* Broadcast updates on the outage along with remediation activities is to occur every 1 hour.
 | Once a Severity Level 3 Incident is resolved, the Contractor will within 72 hours email an Incident Report to both the Agency and the DCS SDM.Subsequent Incident Reports after detailed investigation are to continue as they arise. A remediation report is to be emailed within 30 Business Days to the Agency and the DCS SDM. | **Within 2 to 4 hours** |
| **Level 4 (Nominal Business Impact)** | A problem that causes no loss of service and in no way impedes use of the system. Minor problem that does not affect Agency function. There is no impact to IT environment usage or customer's operations. Agency business operations have not been adversely affected. **Severity Level 4 problems could have the following characteristics:*** No loss of IT service
 | For Severity Level 4 problems, the Contractor will begin work on the problem within 1 business day of notification from the Agency, DCS SDM, or from their own internal systems. | * The Agency and DCS SDM must be notified within 1 business day of an incident occurring.
* Where the Contractor is notified of an incident by the Agency or the DCS SDM, the Contractor must respond to the incident within 1 Business Day of notification.
* Contact is to take place via the following methods, each is a cascading redundancy for the other:
	+ Phone Call
	+ SMS
	+ Email
* Broadcast updates to occur every 24 hours.
 | Once a Severity Level 4 Incident is resolved, the Contractor will within 96 hours email an Incident Report to both the Agency and the DCS SDM.Subsequent Incident Reports after detailed investigation are to continue as they arise. A remediation report is to be emailed within 30 Business Days to the Agency and the DCS SDM. | **Within 1 Business Day** |

Other Reports required by the Customer

* + 1. The Contractor must provide to the Customer within 10 Business Days:
			1. a copy of the Contractor’s disaster recovery and business continuity plans when previous versions are updated or replaced;
			2. a copy of each Data Centre Protected Colocation Facility’s NABERS rating should a NABERS rating be undertaken; and
			3. advice on any material changes to the structure, ownership, financing or other material corporate arrangements of the Provider.
		2. Within 12 months after a Data Centre Facility listed in this Annexure being commissioned, the Contractor must provide the Customer with evidence that the Data Centre Facility is certified to the Environmental Management System (EMS) ISO 14001 (or equivalent such as Eco-Management Audit Scheme).
		3. The Contractor must notify the DCS SDM and the Customer of changes/maintenance activities to the that could potentially impact the Customer's data centre environment

As required

* + 1. When requested by the Customer, the Contractor must provide within 10 Business Days after the request:
			1. copies of the Contractor’s Policies and Procedures Manuals which detail all aspects of the Contractor’s provision of Data Centre Protected Colocation Facilities Deliverables; and
			2. any other reports required by the Customer.

**Part F - Policies and Procedures Manuals**

***[Contractor to insert relevant Policies and Procedures manuals as required by the Agency. E.g. Site Operating Procedures or Site Security Plan.]***

Attachment 1 (Glossary)

| **Term** | **Definition** |
| --- | --- |
| ASHRAE | American Society of Heating, Refrigeration and Air-Conditioning Engineers. |
| Building Code of Australia (BCA) | The Building Code of Australia published by the Australian Building Codes Board (or a replacement body performing substantially the same functions) from time to time. |
| Cable Pathways | Cable support and access available for the installation of Agency data cabling internal to the Data Centre Facility. |
| Cage | A physical barrier used to derive a security containment within a Data Centre Facility containing the Agency's equipment and "Caged" and "Caging" will be construed accordingly. |
| Computational Fluid Dynamic Modelling (basic) | CFDM Fluid dynamic modelling provided as a part of Data Centre Facility commissioning and change management services. |
| Computational Fluid Dynamic Modelling (advanced) | Modelling that incorporates room-based deployments undertaken to solve and analyse problems that involve airflows or to optimise airflow efficiency or location selection for specific equipment. |
| Concurrently Maintainable | For a Data Centre Facility to be considered ‘concurrently maintainable’ it would have the capability of remaining operative during any scheduled maintenance activities meaning that all ICT equipment accommodated in the Data Centre Facility will remain active. |
| Data Centre Cabling | Data cabling and cross connect system provided by the Data Centre Facility operator available to support intra Data Centre Facility cabling. |
| Data Centre Facility | A specialised facility designed and built to house computer systems and associated components including large numbers of servers, storage devices, networking equipment and telecommunications links.  |
| Data Centre Technical Services  | 1. Includes but is not limited to:
	1. 24x7x365 technical support from qualified onsite staff available by phone, email or in person;
	2. installation of data and power cables as well as providing building documents;
	3. secure key storage in security booths allowing for access to Cages and cabinets 24x7x365;
	4. changing of tapes for backup systems. Does not include encryption of tapes;
	5. hard reboots performed by technicians;
	6. installation of patch cables by technicians based on Agency direction;
	7. energizing of power rails;
	8. providing screen outputs before and after reboots;
	9. intra-premises backbone and infrastructure cabling;
	10. replacement of hard drives, memory, processors etc with Agency provided replacements;
	11. moves adds and changes;
	12. technical audits; and
	13. preventative maintenance services not requiring a password based on Agency needs.
 |
| Data Hall | An independent room within a Data Centre Facility intended as an operational environment for the accommodation of ICT equipment. |
| Deliverables | means the deliverables detailed inthis Annexure, includingthe Zone 3 Colocation Services or any part of them. Once agreed and included in an Order, Additional Deliverables become Deliverables under the Order. |
| Fire Protection | Fire protection includes the detection, notification and mitigation of the effects of fire on the personnel and equipment using the Data Centre Facility. |
| ICT Enclosure | 1. A standardised frame or enclosure for mounting multiple equipment modules and includes:
	1. the use of the cabinet;
	2. commercial locks on the cabinet; and
	3. power rails.

Each module has a front panel, edges or ears that protrude on each side which allow the module to be fastened to the rack frame with screws. ICT enclosure may be open in construction or may be enclosed by front and/or rear doors, side panels, or tops. |
| ICT Enclosure Cost | The annual cost incurred by an Agency for the use of a commercial grade ICT Enclosure (rack) from the Contractor. |
| ICT Floor Space Cost | The annual cost incurred by an Agency to use ICT Floor Space in a Data Centre Facility including all fees, charges, taxes and other costs incurred by the Contractor in providing the Deliverables to the Agency, other than the ICT Enclosure Cost and the cost of electricity consumed by the Agency's ICT equipment as measured at the ICT Enclosure.1. The following activities and resources are included within the ICT Floor Space cost:
	1. regular cleaning of the Data Centre Facility;
	2. provision and access to Data Centre Facility lifting equipment;
	3. on site security guards 24 X 7;
	4. onsite CCTV and retention of the related data for a period of no less than 12 months;
	5. access for site tours and Site Visits;
	6. provision and maintenance of security access framework for the proposed Data Centre Facility;
	7. contract and account administration activities;
	8. regular reviews of the engagement and the performance of both parties;
	9. monthly performance reporting and service level agreement reports;
	10. secure parking;
	11. use of loading dock and goods services;
	12. use of run up space for ICT equipment;
	13. waste removal and recycling services;
	14. consumables such as diesel, glycol, paper products or fire suppression products;
	15. use of staff amenities;
	16. Data Centre Facilities water; and
	17. Data Centre Facilities cooling and lighting.
 |
| IT Equipment Energy | IT Equipment Energy means the energy consumed by equipment that is used to manage, process, store, or route data within the compute space. It includes the energy associated with all of the IT equipment (e.g. compute, storage, and network equipment) along with supplemental equipment (e.g. KVM switches, monitors, and workstations/laptops used to monitor or otherwise control the Data Centre). |
| Logistic Support | * 1. Delivery receipt and notification, availability of equipment handing equipment including pallet jacks, forklift and equipment hoists;
	2. staff available to un-box, rack and inventory of equipment based on Agency specifications;
	3. secure key storage in security booths allowing for access to Cages and cabinets 24x7x365; and
	4. transport of large pieces of equipment within the Data Centre Facility.
 |
| Major Applicable Standards, Policies and References | 1. For this Annexure, the Major Applicable Standards comprise:
	1. Building Code of Australia (BCA);
	2. National Construction Code (NCC);
	3. AS/NZS 3000:20076 Wiring Rules;
	4. AS 1851-2012, Routine service of fire protection systems and equipment;
	5. Standard on Assurance Engagements ASAE 3402;
	6. ISO27001 or equivalent Information Security Management System;
	7. Environmental Management Systems (EMS) ISO14001 or to an equivalent environmental management standard, such as the Eco-Management and Audit Scheme (EMAS);
	8. ISO9001:2015;
	9. ISO/IEC 27002:2013 (Information technology — Security techniques — Code of practice for information security controls);
	10. AS/NZS 4801:2001 (OH&S Management System);
	11. AS 4811-2006 (Employment Screening);
	12. ANSI/TIA-942-A;
	13. ASAE 3402 (Standard on Assurance Engagements);
	14. European Union Code of Conduct for Data Centres V1.0;
	15. Uptime Institute - Tier 3 – Design;
	16. Uptime Institute - Tier 3 – Facility;
	17. Uptime Institute - Tier 3 – Operations; and
	18. AS 1851-2012 (Routine service of fire protection systems and equipment).
2. For this Annexure, the Major Applicable Policies comprise:
	1. National Australian Built Environment Rating System for Data Centres 2013 (NABERS);
	2. Australian Government *Protective Security Policy Framework* (PSPF) (http://www.protectivesecurity.gov.au/Pages/default.aspx);.
	3. Security Zones and Risk Mitigation Control Document (<http://www.protectivesecurity.gov.au/physicalsecurity/Documents/Security-zones-and-risk-mitigation-control-measures.doc>); and
	4. Information Security Manual (ISM) (<http://www.dsd.gov.au/infosec/ism/>).
	5. NSW Critical Infrastructure Resilience Strategy (<https://www.emergency.nsw.gov.au/criticalinfrastructure>)
	6. NSW Procurement Policy Framework (<https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>)
	7. NSW Cyber Security Policy (<https://www.digital.nsw.gov.au/policy/cyber-security-policy>)
3. For this Annexure, the Major Applicable References comprise:
	1. TIA-942-2012 American Telecommunications Industry Associations standard for Data Centres;
	2. BICSI - Data Centre Reference Manual 002-2011;
	3. American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE); ASHRAE TC9.9 2011 Thermal Guidelines for Data Processing Environments;
	4. European Union Code of Conduct for Data Centres V1.0; and
	5. ASD Essential 8 Maturity Model.
 |
| NABERS | National Australian Built Environment Rating System. |
| National Construction Code (NCC) | The NCC comprises the Building Code of Australia (BCA), Volume One and Two; and the Plumbing Code of Australia (PCA), as Volume Three. |
| Outage | A planned or unplanned cessation of proper functioning of one or more of the mechanical, electrical and other data centre subsystems that together comprise an operational Data Centre Facility. |
| Parking | The provision and available for Agency use of parking facilities within the Data Centre Facility perimeter. |
| Plumbing Code of Australia (PCA) | The Plumbing Code of Australia published by the Australian Building Codes Board (or a replacement body performing substantially the same functions) from time to time. |
| Power | 1. All electrical power that is required to operate ICT equipment in a Data Centre Facility environment including:
	1. single phase Mains voltage alternating current (nominally 230 volts at 10, 16, 20, 25, 32 and 64 ampere);
	2. three phase mains as specified; and
	3. direct current,

as specified in an Order. |
| Power Density | The power consumption of ICT equipment in a Data Centre Facility described in VA per m2 or VA per ICT Enclosure (rack). |
| Power Density Limitations | The limitations relating to Power Density identified by the Contractor. |
| Power Use Efficiency or PUE | PUETM is the ratio of total facilities energy to IT equipment energy calculated by dividing Total Facility Energy by IT Equipment Energy\*.See http://www.thegreengrid.org/ for further information.*\* as defined by the Green Grid.* |
| Security  | For a Data Centre Facility, ensuring the security of equipment and the safety of personnel using a Data Centre Facility, including perimeter, access control, surveillance and personnel selection. |
| Security, Agency Supplied Surveillance and Security Systems | The provision for the installation and support of additional surveillance systems provided or specified by the Agency including the provision of electronic key safes within the Data Hall. |
| Site Visits | The provision of escorted site visits when requested by the Agency. |
| Total Facility Energy | 1. The energy dedicated solely to the Data Centre Facility (e.g. the energy measured at the utility meter of a dedicated Data Centre Facility or at the meter for a data centre or data room in a mixed-use facility). It includes:
	1. power delivery components, including UPS systems, switchgear, generators, power distribution units (PDUs), batteries, and distribution losses external to the IT equipment;
	2. cooling system components, such as chillers, cooling towers, pumps, computer room air handling units (CRAHs), computer room air conditioning units (CRACs), and direct expansion air handler (DX) units; and
	3. other miscellaneous component loads, such as data centre lighting.
 |
| UPS | Uninterruptable Power Supply. |
| VA | Volt-ampere. |
| Zone 3 Colocation Services | Means the data centre facility space built in compliance with the *Protective Security Policy Framework* (PSPF) Zone 3 specification and offered under the Data Centre Services Panel and the Deliverables. |

1. - Financial Security

This deed poll (**Deed**) is made on the date of execution of this Deed

**In favour of: [*Insert full name of Contract Authority*] ABN [*Insert ABN*]** of Level **[*Insert registered address*]** (**Contract Authority**)

### Given by:

**[*Insert full name of Institution*] ABN *[Insert ABN]*** of **[*Insert registered address*]**

(**Institution**)

## Recitals

1. The Contract Authority and [*Insert Contractor name*] ABN [*Insert ABN*] (**Contractor**) entered in an agreement titled "[*Insert title*]" dated [*Insert date*] (**Agreement**).
2. Under the provisions of the Agreement, the Contractor is required to provide this Deed to the Contract Authority.

## Operative

* 1. The Institution unconditionally undertakes and covenants to pay to the Contract Authority on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Contract Authority to a maximum aggregate sum of ($*Insert*).
	2. The Institution's liability under this Deed will be a continuing liability and will continue until payment is made under this Deed of the maximum aggregate sum or until the Contract Authority notifies the Institution that this Deed is no longer required.
	3. The liability of the Institution under this Deed must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Agreement or the activities to be provided by the Contractor under the Agreement or acts or things to be executed, performed and done under the Agreement or by reason of any breach or breaches of the Agreement by the Contractor or the Contract Authority.
	4. The Institution may, at any time, without being required to do so, pay to the Contract Authority the maximum aggregate sum less any amount or amounts it may previously have paid under this Deed, and as a consequence, the liability of the Institution under this Deed will immediately cease.
	5. This Deed will be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.
	6.

**Executed as a deed poll:**

|  |  |
| --- | --- |
| **Signed, sealed and delivered** for and on behalf of **[*Insert*] ABN [*Insert ABN*]** by its attorney...........................................................Name of attorney (print) Under power of attorneyRegistration Number / Book Number(Powers of attorney created in Victoria do not have a number. Insert the date of the power of attorney instead.)...........................................................in the presence of: | )))))))rt |
|  |  |
| ...........................................................Signature of witness...........................................................Name of witness (print) | ...........................................................Signature of attorneyBy executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney........................................................Date |

1. - Additional Conditions
2. – Customer Agreement

See attached.

[***To be inserted.***]

1. - Deed of Confidentiality

|  |
| --- |
| This Deed is made on |
| **Parties** |
|  | **[Name of Customer]** of [\*] (***Customer***). |
|  | **[Name of Subcontractor]** [ (ACN [\*])][ registered in [\*]**|** incorporated in [\*]] of [\*] (the ***Subcontractor***). |
| **Recitals** |
|  | In the course of the Subcontractor assisting in the supply by the Contractor of certain Deliverables for the Customer under a subcontract agreement between the Subcontractor and the Contractor, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, the Customer. |
|  | Improper use or disclosure of the Confidential Information would severely damage the Customer’s ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Customer. |
|  | The Customer requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer’s Confidential Information is kept confidential.  |
|  | This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information. |

**It is agreed** as follows

* + 1. Recitals

The parties acknowledge the truth and accuracy of the Recitals.

* + 1. Interpretation
			1. Definitions

In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

***Agreement*** means the Agreement for the provision of Data Centre Facilities entered into between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated [insert date].

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

***Confidential Information*** means information that:

* + - * 1. is by its nature confidential; or
				2. is communicated by the Customer to the Subcontractor as confidential; or
				3. the Subcontractor knows or ought to know is confidential; or

relates to:

* + - * 1. the Products and Services;
				2. the financial, the corporate and the commercial information of the Customer;
				3. the affairs of a third party (provided the information is non-public); and
				4. the strategies, practices and procedures of the State and any information in the Subcontractor’s possession relating to the State public service,
				5. but excludes any information which the Subcontractor can establish was:
				6. in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
				7. independently developed by the Subcontractor; or
				8. in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

***Contractor*** means [insert name of Contractor].

***Deliverables*** means any product or service and any associated material offered for supply or provided by the Contractor in accordance in the Agreement.

***Express Purpose*** means the Subcontractor performing the obligations under its subcontract agreement with the Contractor.

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

* + - * 1. copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
				2. 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 (a),

but does not include the right to keep Confidential Information confidential, Moral Rights, business names, company names or domain names.

***Notice*** means notice in writing given in accordance with this Deed.

***State*** means the State of New South Wales.

* + - 1. General
		1. Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
			- 1. A reference to:

legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;

a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;

anything (including a right, obligation or concept) includes each part of it.

* + - * 1. If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
				2. A singular word includes the plural, and vice versa.
				3. A word which suggests one gender includes the other gender.
				4. The words “include(s)” and “including” are not words of limitation.
				5. If a word is defined, another part of speech of that word has a corresponding meaning.
		1. Non-disclosure
			- 1. The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
				2. The Customer may grant or withhold its consent in its discretion.
				3. If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
				4. If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
				5. Despite clause 3(a) of this Annexure, the Subcontractor may disclose the Confidential Information:

to its directors, officers, employees and contractors;

to the Contractor and its directors, officers, employees and the Contractor’s other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as permitted recipients, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

* + - * 1. Despite clause 3(a)Annexure J3(a), the Subcontractor may disclose the Confidential Information:

to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or

if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

* + - * 1. Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Deed.
				2. The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
				3. If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause J3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.
		1. Restriction on use
			- 1. The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.
				2. The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:

treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;

take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;

not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;

not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and

ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

* + 1. Survival

This Deed will survive the termination or expiry of the Agreement for a period of 6 years.

* + 1. Rights of the Customer
			1. Production of documents
				1. The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
				2. The Subcontractor must immediately comply with a demand under this clause Annexure J6.
				3. If the Customer makes a demand under this clause Annexure J6, and documents containing the Confidential Information are beyond the Subcontractor’s possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
				4. In this clause Annexure J6, “documents” includes any form of storage of information, whether visible to the eye or not.
			2. Legal Proceedings

The Customer may take legal Proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including Proceedings for an injunction to restrain such breach.

* + 1. Indemnity and release

The Subcontractor is liable for, and agrees to indemnify and keep indemnified the Customer in respect of, any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:

* + - * 1. a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
				2. the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.
		1. No exclusion of Law or equity

This Deed does not exclude the operation of any principle of Law or equity intended to protect and preserve the confidentiality of the Confidential Information.

* + 1. Waiver
			- 1. No waiver by the Customer of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
				2. None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Customer unless by its express consent in writing.
		2. Remedies cumulative
			1. Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

* + - 1. Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

* + - 1. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

* + - 1. Applicable Law

This Deed will be governed and construed in accordance with the Laws of the State.

* + 1. Notices
			- 1. Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor’s registered office.
				2. All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or email.
				3. If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
				4. If delivery of a notice is made by email, the notice will be taken to have been received when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

**Executed** as a deed

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

|  |
| --- |
| **Signed Sealed and Delivered** for and on behalf of the **Department of Customer Service** by [**Name of Contract Authority Representative**] but not so as to incur personal liability in the presence of: |
|  |
| Witness Signature |  | Customer Signature |
|  |  |
| Print Name | Print Name |
|  |  |  |
| Witness Signature |  | Customer Representative Signature |
|  |  |  |
| Print Name |  | Print Name |

|  |
| --- |
| **Signed Sealed and Delivered** by **[Name of Subcontractor]** [**ACN/ABN of Subcontractor**] in accordance with s127 of the *Corporations Act 2001* (Cth) by: |
|  |
| Witness Signature |  | Director Signature |
|  |  |
| Print Name | Print Name |

1. - Change Request Form
	* 1. Procedures
			+ 1. Each request or recommendation for a change to any part of an Order must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
				2. For each draft Change Request submitted:

the Contract Authority must allocate it with a sequential number; and

the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:

requested;

under evaluation;

awaiting authorisation;

cancelled;

pending

approved/authorised;

expired;

in progress;

applied;

delivered;

accepted.

* + - * 1. The party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):

request further information; or

provide written notification to the other party of its approval or rejection of the Change Request.

* + - * 1. If the Contract Authority submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day’s work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Contract Authority pays for the work involved to evaluate the draft Change Request. The Contract Authority may then either revise the draft Change Request to require less than 1 Business Day’s work to evaluate it, or agree to pay for the Contractor’s work to evaluate the Change Request in an amount agreed by the parties, or in absence of agreement, at the Contractor’s then current commercial rates.
		1. Status

A Change Request is binding on the parties only when both parties have signed it. Once signed by both parties the Change Request updates the Agreement or an Order in accordance with the terms of the Change Request. The Contractor must not implement any draft Change Request until the Contract Authority has signed the Change Request form.

* + 1. Change Request Form
			1. Change request brief details

|  |  |  |
| --- | --- | --- |
| Change Request Number |  | *Insert Change Request Number (supplied by the Contract Authority)* |
| Date of Change Request |  | *Insert date of draft Change Request* |
| Originator of need for Change Request |  | *Contract Authority or Contractor* |
| Proposed Implementation Date of Change |  | *Insert proposed date of implementation* |
| Date of expiry of validity of Change Request  |  | *Insert validity expiry date. The Change Request is invalid after this date.* |
| Contractor’s estimated time and cost of evaluation |  | *Insert estimated time and cost of evaluation* |
| Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any(This applies only if the Contract Authority is the party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days) |  | *Insert amount to be paid to the Contractor for evaluating the draft Change Request* |

* + - 1. Change request history log

|  |
| --- |
| Change Request Version History |
| Date | Issue Version | Status/Reason for New Issue | Author |
| *Insert date* | *Insert version* | *Insert status/reason* | *Insert author* |
|  |  |  |  |
|  |  |  |  |

* + - 1. Details of Change Request

Summary

[Insert a summary of the changes, if required]

* + - 1. Scope

[Insert changes to the scope of products to be provided and/or any services, including any extensions to the Term or Order Period.]

* + - 1. Effect of change on contract specification

[Insert any changes to the specifications]

* + - 1. Effect of change on project timetable

[Insert changes to the project timetable]

* + - 1. Effect of change on charges and timing of payment

[Insert new charges and the timing of payment]

* + - 1. Changes to Contract Authority Personnel

[Insert any changes to the Contract Authority’s Personnel]

* + - 1. Changes to Contract Authority assistance

[Insert any changes to the Contract Authority’s Assistance]

* + - 1. Plan for implementing the change

[insert the plan for implementing the change – if any.]

* + - 1. The responsibilities of the parties for implementing the change

[Insert the responsibilities of the respective parties for implementing the change – if any.]

* + - * 1. Responsibilities of the Contractor

[Insert the responsibilities of the Contractor for implementing the change – if any.]

* + - * 1. Responsibilities of the Contract Authority

[insert the responsibilities of the Contract Authority for implementing the change – if any.]

* + - 1. Effect on Acceptance Testing of any deliverable

[Insert if there will be any effect on the Acceptance Testing of any Deliverable – or alternatively insert None.]

* + - 1. Effect of change on performance of any deliverable

[Insert if there will be any effect on performance of any Deliverable – or alternatively insert None.]

* + - 1. Effect on users of the system/solution

[Insert if there will be any effect on users of the system/solution – or alternatively insert None.]

* + - 1. Effect of change on Documentation Deliverables

Changes will be required to the following documents:

[Add any other documents which may be affected.]

* + - 1. Effect on training

[Insert if there will an effect on training or alternatively insert None.]

* + - 1. Any other matters which the parties consider important

[insert if there are any other matters.]

* + - 1. Assumptions

The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

[Insert any assumptions. If none then this section will be deleted].

If the assumptions are or become untrue, the parties will address the effect of this through a subsequent Change Request.

* + - 1. List of documents that form part of this Change Request

[Insert a list of the documents that form part of this Change Request]

* + - 1. Agreement clauses, annexures affected by the proposal are as follows:

[Insert amendments to clauses / annexures in the Agreement]

* + - 1. Authorisation

The Contractor must not commence work on the Change Request until is signed by both parties. Once signed by both parties, the Agreement is updated by this Change Request and any provisions of the Agreement that conflict with this Change Request are superseded.

|  |
| --- |
| **Signed** for and on behalf of the **Department of Customer Service** |
|  |
| Witness Signature |  | Customer Representative Signature (but not so as to incur personal liability) |
|  |  |
| Print Name |

|  |
| --- |
| **Signed** for and on behalf of **[insert Contractor's name and ACN/ABN**] |
|  |
| Witness Signature |  | Contractor Signature |
|  |  |
| Print Name |