

**Digital.NSW ICT Purchasing Framework**

**Master ICT Agreement**

**(MICTA)**

**For the Professional Services Purchasing Arrangement**

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Master ICT Agreement (MICTA)

**MICTA** made on the MICTA Date

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

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

|  |  |
| --- | --- |
| Information | **Guidance note:** The parties' names and (where applicable, ABNs) should be clearly described in the Key Details, Annexures and execution clauses. |

Background

1. The New South Wales Government's Digital.NSW ICT Purchasing Framework (**ICT Purchasing** **Framework**)is a suite of template documents which sets out standard terms and conditions to be used by Government Agencies and Eligible Non-Government Bodies for the procurement of ICT-related goods and/or services.
2. The Supplier acknowledges that the New South Wales Procurement Board has directed that Government Agencies must, subject to applicable New South Wales Procurement Board Directions, use the ICT Purchasing Framework for the procurement of ICT-related goods and/or services.
3. This MICTA forms part of the ICT Purchasing Framework and contains the terms and conditions on which the Supplier agrees to supply ICT-related goods and/or services that it is enrolled to provide pursuant to this MICTA to Eligible Customers, on a standing offer basis.
4. The MICTA may be used by:

### the Contract Authority, to procure ICT-related goods and/or services that the Supplier is enrolled to provide pursuant to this MICTA on a standing offer basis, on its own behalf and on behalf of Eligible Customers; and

### Eligible Customers, to procure ICT-related goods and/or services that the Supplier is enrolled to provide pursuant to this MICTA on a standing offer basis, by entering into a Contract with the Supplier, on the terms and conditions of the relevant ICTA, in accordance with this MICTA.

Agreement

# Operation

## Term

1. This MICTA commences on the Effective Date and expires on the Expiry Date, unless it is extended in accordance with clause 1.2 or terminated earlier in accordance with this MICTA (**Term**).

## Extension

### The Contract Authority may in its absolute discretion extend the Term:

#### by the number of additional periods set out in the Key Details (**Additional Period(s)**); and

#### for a period up to the length of each Additional Period specified in the Key Details,

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

### Any extension exercised in accordance with this clause 1.2 will be on the same terms and conditions of this MICTA in effect at the end of the then current Term, unless the parties agree to amend this MICTA in accordance with clause 15.4.

## No guarantee of work or exclusivity

The Contract Authority is not, by executing this MICTA:

### bound to issue any Order Proposal to the Supplier;

### bound to engage the Supplier to supply any goods, services and/or other activities or to enter into any Contract; or

### restricted in any way from engaging any other person to supply any goods, services and/or other activities:

#### of any type, including goods, services and/or other activities that are the same as or similar to any Supplier's Activities or ICT Activities; or

#### at any location where, or in respect of any project that, the Supplier may be required to supply goods, services and/or other activities.

## No representation

1. Clause 1.3 applies even though the Contract Authority may have provided the Supplier 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 Supplier 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.

## Contract Authority's Representative

The Contract Authority may by written notice:

### 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 Supplier of that appointment; and

### appoint persons to exercise any of the Contract Authority's Representative's functions under this MICTA, and revoke any such appointment.

## Supplier's Representative and Personnel

### The Supplier must ensure that the Supplier's Representative and any other Supplier Personnel who perform activities under or in connection with the MICTA are appropriate persons.

### The Contract Authority's Representative may, by notice in writing to the Supplier, direct the Supplier to remove the Supplier's Representative or any other Personnel from performing any obligations under or in connection with the MICTA or who, in the reasonable opinion of the Contract Authority's Representative:

#### are guilty of misconduct;

#### are not appropriate persons to carry out those obligations; or

#### may bring the Contract Authority or any Eligible Customer into disrepute.

## Role

The Supplier acknowledges and agrees that the Contract Authority is responsible for administering this MICTA.

## Additional Conditions

### The parties agree to comply with any Additional Conditions.

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| Information | **Guidance note:** Any applicable directions of the New South Wales Procurement Board should be checked and complied with when agreeing Additional Conditions. Any Additional Conditions must be consistent with all applicable New South Wales procurement Laws and policies and New South Wales Procurement Board Directions. |

## Consideration

Each party enters into this MICTA in consideration of the valuable promises and benefits contained in it, including, in the case of the Supplier, the opportunity (subject to the terms of this MICTA) to participate in the arrangements established under the ICT Purchasing Framework and to enter into one or more Contracts with Eligible Customers in relation to the supply of ICT-related goods and/or services.

# Warranties and acknowledgements

## Mutual warranty

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

### as at the MICTA Date, it is properly constituted and has sufficient power, capacity and authority to enter into this MICTA and perform the activities required under it;

### in so far as it uses Personnel to perform activities on its behalf under this MICTA, those Personnel are duly authorised by it; and

### it will reasonably co-operate with the other party and its respective Personnel to promote timely progress and fulfilment of this MICTA.

## Supplier warranties and acknowledgments

Without limiting any other warranty under this MICTA or any Contract, the Supplier represents, warrants, acknowledges and undertakes to the Contract Authority that:

### to the best of its knowledge and belief after making due and reasonable enquiries, there is no Conflict of Interest, in respect of itself and its Personnel, which relates to the Supplier’s ability to perform its obligations under this MICTA;

### the information that is provided to the Contract Authority by the Supplier in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Personnel is, to the best of the Supplier’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;

### it is not aware of any information which, if it had provided that information to the Contract Authority or Eligible Customer, may reasonably be expected to have had a material effect on the decision made by the Contract Authority or Eligible Customer to enter into this MICTA or to enter into any Contract (as applicable);

### the office holders of the Supplier and any associate of the Supplier (as defined under section 11 of the Corporations Act) or its Related Body Corporate are of good fame and character;

### the Supplier has all the Authorisations necessary to perform its obligations under this MICTA;

### it has the expertise to carry out the activities within the MICTA Scope;

### it has satisfied itself about, and has obtained all information necessary to enable it to understand, the Contract Authority's requirements under this MICTA in so far as they relate to the Supplier’s obligations under this MICTA;

### it did not in any way rely on:

#### any information, data, representation, statement or document made by the Contract Authority, any Eligible Customer or its Personnel, or provided to the Supplier by the Contract Authority or any Eligible Customer (or their respective Personnel); or

#### the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

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

### it entered into the MICTA based on its own investigations, interpretations, deductions, information and determinations;

### it is aware that the Contract Authority has entered into the MICTA and that Eligible Customers will enter into any Contract relying upon the warranties, representations, undertakings and acknowledgments in this clause 2.2; and

### subject to clauses 10.3 and 9.1(f), it is not entitled to any payment under or in connection with this MICTA, including in respect of discharging its obligations under the MICTA.

## Implied warranties

The express warranties given by the Supplier under this MICTA are provided by the Supplier to the exclusion of any implied representations or warranties not set out in this MICTA, provided that this clause 2.3 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 Supplier limits its liability for their breach to the maximum amount permitted by Law.

# Compliance

## Compliance with Laws and directions

While carrying out its obligations under this MICTA, the Supplier must:

### acquire and maintain all Authorisations necessary for the performance of its obligations under this MICTA;

### ensure that, in performing its obligations under this MICTA, it complies with all applicable Laws (including all applicable Australian Laws, even if the Supplier is not domiciled in Australia); and

### comply with any reasonable directions made by the Contract Authority under this MICTA.

## Policies, Codes and Standards

Without limiting the generality of clause 3.1, the Supplier must, in performing its obligations under this MICTA, comply with the Policies, Codes and Standards.

## Conflicts of Interest

The Supplier must:

### 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 MICTA; and

### take all necessary action as may be reasonably required by the Contract Authority to avoid or minimise such a Conflict of Interest.

# MICTA Mechanism

## Eligible Customer may issue Order Proposal

### If an Eligible Customer is considering procuring ICT Activities from the Supplier under this MICTA, the Eligible Customer may issue to the Supplier an Order Proposal.

### Each Order Proposal issued by the Eligible Customer under clause 4.1(a) must specify the details required by Parts 1 and 2 of the Order Proposal and must attach:

#### Attachment 1 of the Order Proposal, that sets out the relevant ICTA Order Form; and

#### Attachment 2 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 ICTA.

### The Eligible Customer may withdraw an Order Proposal at any time prior to entering into a Contract.

## Supplier may submit Draft Order

### Where the Eligible Customer has issued an Order Proposal to the Supplier, the Supplier must:

#### prepare and submit a Draft Order in accordance with clause 4.2(b); or

#### notify the Eligible Customer that issued an Order Proposal under clause 4.1(a) that the Supplier will not submit a Draft Order,

#### within the time specified in the Order Proposal or within the time otherwise agreed by the parties (or if no time is specified or agreed, within 25 Business Days of being issued the Order Proposal).

### Where the Supplier submits a Draft Order in accordance with clause 4.2(a)(i), the Supplier must do so by returning to the Eligible Customer that issued an Order Proposal under clause 4.1(a), a Draft Order by:

#### setting out the proposed Price in Attachment 1 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 Prices; and

#### duly completing any remaining relevant particulars in Attachment 1 and Attachment 2 of the Order Proposal,

(**Draft Order**).

## Review of Draft Order

### After receiving a Draft Order from the Supplier under clauses 4.2(a)(i) or 4.3(c)(i), the Eligible Customer that issued an Order Proposal under clause 4.1(a) may:

#### prepare and issue to the Supplier a document titled "Order" in draft form, substantially in the form of Annexure E (or in any other form chosen by the Eligible Customer); or

#### by notice in writing to the Supplier, within 20 Business Days (or such other longer period agreed by the parties):

##### request the Supplier to submit an amended Draft Order, in which case the Customer's notice must set out the aspects of the Draft Order which require amendment; or

##### reject the Draft Order.

### If the Eligible Customer that issued an Order Proposal under clause 4.1(a) does not issue:

#### an Order in draft form, under clause 4.3(a)(i); or

#### a notice under clause 4.3(a)(ii), within the timeframe required by clause 4.3(a)(ii),

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

### If the Eligible Customer that issued an Order Proposal under clause 4.1(a) requests the Supplier to submit an amended Draft Order under clause 4.3(a)(ii)A, the Supplier must, within 5 Business Days (or such other period agreed by the parties):

#### submit an amended Draft Order that addresses the issues identified in the Eligible Customer's notice under clause 4.3(a)(ii)A; or

#### notify the Eligible Customer that the Supplier will not submit an amended Draft Order, in which case the Supplier's original Draft Order is deemed to be rejected.

### Where the Supplier submits an amended Draft Order under clause 4.3(c)(i), this clause 4.3 will reapply.

## Refusal by Supplier to provide or amend a Draft Order

If the Supplier notifies the Eligible Customer that issued an Order Proposal under clause 4.1(a) that:

### under clause 4.2(a)(ii), the Supplier will not submit a Draft Order; or

### under clause 4.3(c)(ii), the Supplier will not submit an amended Draft Order,

### then:

### the Supplier must provide the Eligible Customer with detailed reasons why the Supplier will not submit the Draft Order or the amended Draft Order (as the case may be); and

### the Supplier must provide the Eligible Customer with any further information reasonably requested by the Eligible Customer regarding the reasons why the Supplier will not submit the Draft Order or the amended Draft Order (as the case may be).

## Costs

1. The Supplier is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause 4 and the Supplier 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.

# Formation of individual Contracts

### If the Eligible Customer issues a document titled "Order" in accordance with clause 4.3(a)(i), the Supplier must:

#### co-operate and work with the Eligible Customer to finalise and execute the relevant Order; and

#### provide to the Eligible Customer, on the date that the Supplier executes the relevant Order, a copy of the executed relevant Order.

### The Eligible Customer and the Supplier will be deemed to have entered into a separate binding Contract on the date that the Order is executed by the last party to execute.

### Without limiting the methods by which a party may execute an Order, a party may execute an Order physically, electronically, digitally or by any other legally effective means.

### The Eligible Customer and the Supplier must carry out their respective obligations under each Contract formed in accordance with clause 5(b) from the date on which the Contract is deemed to be formed under that clause.

### The Supplier must not provide any ICT Activities to an Eligible Customer pursuant to this MICTA, unless it has entered into a Contract.

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| Information | **Guidance note:** Please note it is not necessary to separately execute an ICTA under this MICTA. Once the parties have executed an Order in accordance with this MICTA, a Contract is formed on the terms of the relevant ICTA (which are attached to this MICTA in Annexure I). The ICTA will either be the Mini-ICTA or the Long Form ICTA (as the case may be). |

# Indexation and review of rates

If specified in the Key Details, the rates and prices in the Schedule of Prices will be reviewed and indexed in accordance with Part 2 of Annexure C.

# KPIs

The Supplier, in performing its obligations under this MICTA, must comply with the KPIs as may be amended in accordance with this MICTA.

## KPI Performance Report

### The Supplier 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 (**KPI Performance Report**) which:

#### provides an analysis of the performance of the Supplier in meeting the KPIs in respect of each Contract;

#### identifies any non-compliances;

#### proposes an action plan to remedy non-compliances and implement continuous improvements; and

#### reports on whether the Supplier has implemented any previous action plan and, if not, the extent of the non-compliance.

### The Supplier acknowledges and agrees that the Contract Authority may review each KPI Performance Report to assess the level of compliance by the Supplier with the KPIs.

### The Supplier acknowledges and agrees that the Contract Authority may make available any KPI Performance Report to any Eligible Customer (including the head of any Eligible Customer and any responsible Minister of an Eligible Customer).

## Action plan

### The Supplier acknowledges and agrees that the Contract Authority may:

#### direct the Supplier to submit an action plan to remedy any non-compliances of the Supplier with the KPIs, within the time required by the Contract Authority and addressing the matters identified by the Contract Authority; and

#### review any action plan submitted by the Supplier and, within 15 Business Days of the submission (or resubmission as the case may be) by the Supplier 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.

### The Supplier must implement and comply with any action plan approved by the Contract Authority in accordance with this clause 7.2.

### If the Contract Authority gives the Supplier a notice rejecting an action plan under clause 7.2(a)(ii)B, the Supplier must, within 5 Business Days (or any longer period agreed 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.

### The parties must repeat the process in this clause 7.2 until the Contract Authority approves the action plan or terminates the MICTA.

### Where the period referred to in clause 7.2(a)(ii) elapses without the Contract Authority approving or rejecting the action plan, the Supplier 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 communicates with the Supplier 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.

## Meetings

### Unless otherwise required by the Contract Authority, the Contract Authority and the Supplier must meet at the times specified in the Key Details, to monitor and review the Supplier's performance under each Contract and, if required by the Contract Authority, monitor and review the Supplier's compliance with any action plan issued or submitted under this clause 7. The parties agree that meetings may be held by video or teleconference if required by the Contract Authority.

# Reporting requirements

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

### the KPI Performance Report;

### 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:

#### 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;

#### to the extent that any Eligible Customer has procured software licences under any given Contract, specifying the number of licenses that have been utilised by the relevant Eligible Customer;

#### reporting on:

##### the Supplier's compliance with the:

###### SME Policies, including (to the extent that the SME Policies apply):

the SMEs (as defined in the SME Policies) engaged in all Supplier's Activities under all the Contracts;

the amounts paid to such SMEs;

the Supplier's compliance with any plans developed or updated in accordance with the SME Policies; and

such other matters as required under the SME Policies; and

###### Aboriginal Procurement Policy, including identifying (to the extent that the Aboriginal Procurement Policy applies), the:

Aboriginal-owned businesses engaged to perform Supplier's Activities under each Contract;

Supplier's compliance with each Aboriginal Participation Plan; and

###### amounts paid to any Aboriginal-owned businesses under each Contract; and

##### any additional matters specified in the Key Details;

#### providing:

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

###### issues or disputes between the Supplier and the Eligible Customer under each Contract, regardless of whether or not a Dispute Notice has been issued;

###### any material breaches by the Supplier under each Contract, including references to the clauses of the Contract that were breached (or allegedly breached) and the status of each such matter; and

###### any breach (or alleged breach) by the Supplier of its security obligations under any Contract and any actual, alleged or suspected Security Incident or relevant security or data breaches experienced by the Supplier under a Contract (regardless of whether that breach is material or not); and

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

#### listing:

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

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

### reports containing such other information as the Contract Authority may reasonably require from time to time in performing its role as the administrator of the MICTA and in monitoring the Supplier's performance under the MICTA or under any Contract (including any Supplier's Activities).

# Benchmarking

This clause 9 applies if specified in the Key Details.

## Benchmarking process

### No more than once per annum during the Term and commencing on the first anniversary of the Effective Date, the Contract Authority may, in its sole discretion, notify the Supplier in writing (**Benchmarking Notice**) that the Contract Authority is seeking to implement a formal independent benchmarking of the cost of the Supplier's Activities (under one or more Contracts) in order to consider whether the rates and prices in the Schedule of Prices are competitive with the current Australian market for like deliverables and services (**Benchmarking Activities**).

### An independent benchmarker may be agreed between the parties. If the parties cannot agree upon an independent benchmarker within 10 Business Days of the Benchmarking Notice, the Contract Authority may appoint an independent third party benchmarker which the Contract Authority reasonably considers to possess the adequate expertise to carry out the Benchmarking Activities, subject to such third party not being a direct competitor of the Supplier.

### The parties will work together in good faith to expeditiously develop terms of reference which will form the basis of joint instructions for the benchmarker to follow in conducting the Benchmarking Activities. Those terms of reference must, unless otherwise agreed by the parties, be based on the following principles:

#### a "like-for-like" comparison in respect of the Supplier’s Activities, conducted by reference to one or both of:

##### a "whole of offering" basis in relation to all Services and Deliverables; and

##### a product and service category basis; and

#### appropriate normalisation, including with respect to volumes, method of delivery, quality of service and, in respect of clause 9.1(c)(i)B, taking into account any cross-subsidies offered between different product and service categories.

### The parties will instruct the benchmarker to:

#### conduct the Benchmarking Activities on an objective and independent basis; and

#### use reasonable efforts to access and rely on recent, accurate and verifiable data in respect of its Benchmarking Activities.

### The parties must ensure that the benchmarker signs a confidentiality deed in favour of the Supplier and the Contract Authority (in a form acceptable to the Contract Authority) prior to undertaking any Benchmarking Activities pursuant to this MICTA.

### Unless otherwise agreed by the parties in writing, the Contract Authority will bear the cost of engaging a benchmarker to undertake the Benchmarking Activities under this clause.

### The parties must each appoint a reasonable number of Personnel to work under the direction of the benchmarker in collecting data necessary for the purposes of the benchmarking exercise.

### The parties agree that the benchmarker may, in its own discretion, determine the information required to carry out the Benchmarking Activities and may carry out the benchmark as he or she sees fit (including by determining the benchmarking methodology).

### The parties must reasonably co-operate with the benchmarker in connection with the Benchmarking Activities carried out under this MICTA.

## Outcome of benchmarking

### The benchmarker will be required to deliver a benchmarking report (**Benchmarking Report**) to the parties within 60 days of the benchmarker's appointment, or within such other period as agreed by the parties in writing.

### If the Benchmarking Report concludes that the rates and prices (or certain rates and prices) in the Schedule of Prices exceed the rates and prices offered by the current Australian market for comparable goods, services and activities, then the parties must use all reasonable endeavours to agree on an adjustment to the Schedule of Prices to reduce the relevant rates and/or prices to align with the conclusions of the Benchmarking Report.

### If the parties are unable to agree on adjustments to the rates and prices in the Schedule of Prices in accordance with clause 9.2(b) within 20 Business Days of the issue of the Benchmarking Report, then, subject to the Supplier’s rights under clause 9.2(h), the Contract Authority may, acting reasonably, determine the adjustments required to reduce the rates and prices in the Schedule of Prices to reflect the conclusions contained in the Benchmarking Report.

### If the Contract Authority determines that an adjustment to the rates and prices in the Schedule of Prices is required in accordance with clause 9.2(c), the Contract Authority mayissue a notice in writing to the Supplier notifying it of the adjustment (**Adjustment Notice**).

### The parties acknowledge and agree that if an adjustment to the rates and prices in the Schedule of Prices is determined under clauses 9.2(b) or 9.2(c), the Schedule of Prices will be deemed to have been amended to reflect the relevant adjustment, on and from the date:

#### on which the parties reach an agreement in respect of the adjustment to the rates and prices under clause 9.2(b); or

#### specified in an Adjustment Notice issued by the Contract Authority under clause 9.2(d), provided that the Contract Authority will not specify a retrospective date in the Adjustment Notice.

### An adjustment taking effect under an Adjustment Notice will apply in respect of:

#### all existing and then current Contracts that have been entered into under this MICTA; and

#### all new Contracts entered into under this MICTA after the date on which such adjustment takes effect.

### A party may dispute the results of the Benchmarking Report if it reasonably considers that the findings in, and/or the conclusions of, the Benchmarking Report are based on incorrect facts, assumptions or comparisons. Any such dispute must be notified within 20 Business Days of the issue of the Benchmarking Report and must be resolved in accordance with clause 14.

### The Supplier may dispute an Adjustment Notice if it reasonably considers that the adjustment to the rates and prices proposed in that notice are materially inconsistent with the conclusions contained in the Benchmarking Report. Any such dispute must be notified within 20 Business Days of the issue of the relevant Adjustment Notice and must be resolved in accordance with clause 14.

# Performance Guarantee and Financial Security

## Performance Guarantee

### This clause 10.1 applies if specified in the Key Details.

### The Contract Authority may, in its absolute discretion at any time during the Term, by issuing a notice in writing to the Supplier, direct the Supplier to arrange for a guarantor approved in writing by the Contract Authority, to enter into a performance guarantee:

#### in respect of the Contract identified in the Contract Authority's notice;

#### in favour of the Eligible Customer that is the counterparty to the Contract identified in clause 10.1(b)(i); and

#### in substantially the same form as the document in Schedule 8 of the Long Form ICTA, or such other document reasonably acceptable to the Contract Authority (**Performance Guarantee**).

### The Supplier must comply with a direction under clause 10.1(b) within 15 Business Days of the date of the Contract Authority's notice.

## Financial Security

### This clause 10.2 applies if specified in the Key Details.

### The Supplier must provide a financial security in the amount stated in the Key Details and in substantially the same form as the document in Annexure G, or such other document reasonably acceptable to the Contract Authority (**Financial Security**). The Supplier must provide the Financial Security to the Contract Authority within 15 Business Days following the Effective Date or within such other reasonable time notified in writing by the Contract Authority to the Supplier.

### 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 MICTA.

### 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:

#### one year following the later of the termination or expiry of:

##### this MICTA; and

##### the last Contract formed under this MICTA;

#### the date the Contract Authority and the Supplier agree in writing to release the issuer of the Financial Security; and

#### the date the Contract Authority notifies the issuer of the Financial Security in writing that the Financial Security is no longer required.

## Costs

Unless otherwise specified in the Key Details, the Supplier will be responsible for the costs that it incurs in complying with its obligations under this clause 10.

# Other requirements

## Confidentiality

### Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:

#### keep it confidential;

#### in the case of the Supplier or its Personnel, only use it where required to exercise its rights or perform its obligations under this MICTA (and, where Confidential Information has been received or come into possession in relation to the subject matter of a Contract, to exercise its rights or perform its obligations in respect of that Contract); and

#### not disclose it to anyone other than:

##### with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in this MICTA;

##### where required by the GIPA Act (or any other similar Laws) which may require the Contract Authority or any Eligible Customer to publish or disclose certain information concerning this MICTA;

##### where required by any other Laws, provided that the Recipient gives the Discloser reasonable notice of any such legal requirement or order to enable the Discloser to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement);

##### in the case of the Contract Authority, to any Government Agency or Eligible Customer, including the head of agency and responsible Minister of the Contract Authority or any Eligible Customer; or

##### to its Personnel and directors, officers, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the party’s exercise of its rights or performance of its obligations under this MICTA.

### The Supplier must not issue any press release or make any other public statement in connection with any Order Proposal, Draft Order, Order, Contract, the Supplier's Activities under any Contract or this MICTA without the prior written consent of the Contract Authority, except as required by Law.

### This clause does not preclude the Contract Authority from disclosing any information (including Confidential Information) of the Supplier to the extent that this MICTA otherwise permits the disclosure of such information.

## Intellectual Property

### Each party will retain its Intellectual Property Rights pre-existing as at the MICTA Date (**Existing Material**) and nothing in this MICTA assigns or transfers the Existing Material of one party to another. Neither party may assert or bring any Claim for ownership of any or all of the other party’s Existing Material.

### Title and ownership of Intellectual Property Rights in all material developed or created or required to be developed or created by either party under this MICTA (other than any Intellectual Property Rights of the Supplier's Existing Material) (**New Material**) will vest immediately upon its creation in the Contract Authority.

### The Supplier grants to the Contract Authority and any Eligible Customer a perpetual, irrevocable, non-exclusive, worldwide, transferrable, royalty-free licence to use, copy, adapt, translate, reproduce, modify, communicate and distribute any of the Supplier’s Existing Material, for any purpose in connection with the Contract Authority and any Eligible Customer performing their obligations, and exercising their rights, under the ICT Purchasing Framework (including under this MICTA and under any Contract), and carrying out their functions and activities or those of any Authority, including any statutory requirements concerning State records or audits.

### The rights and licences granted by the Supplier under clause 11.2(c):

#### do not permit the Contract Authority or Eligible Customer to sell, monetise or commercialise the Supplier’s Existing Materials, except as otherwise stated in clause 11.2(d)(ii); and

#### are sub-licensable by the Contract Authority or Eligible Customer (on the same terms, for the same period and for the same purposes as set out in clause 11.2(c)), without charge to any:

##### contractor, subcontractor or outsourced service provider (subject to such persons being under reasonable obligations of confidentiality owed to the Contract Authority, Eligible Customer or another Government Agency) acting on behalf of, or providing products and/or services for the benefit of, the Contract Authority, Eligible Customer or other Government Agency; or

##### Government Agency.

### The Contract Authority grants to the Supplier, a non-exclusive, non-transferable, revocable, worldwide, royalty-free licence to use the New Material, to the extent required for the Supplier to perform, and solely for the purposes of the Supplier performing, its obligations under this MICTA or under any Contract.

### The Supplier represents, warrants and undertakes that:

#### it has all necessary Intellectual Property Rights required to carry out its obligations under the MICTA; and

#### the Supplier’s performance of its obligations under the MICTA will not infringe any Intellectual Property Rights or Moral Rights.

## 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 MICTA, the Supplier and its Personnel must cease to access and, at the Contract Authority's election, securely:

### return; or

### destroy,

### the:

### Contract Authority Data; and

### Contract Authority's Confidential Information, Existing Material, New Material and other Materials that comprise the Contract Authority's Intellectual Property Rights.

## Insurance

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

### effect and maintain the insurances set out in the Key Details as well as comply with the specific insurance requirements of each Contract; and

### within 10 Business Days of a request from the Contract Authority, provide the Contract Authority with:

#### a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Contract Authority) confirming that all insurance policies required by this MICTA are current and that the insurance has the required limits of cover; and

#### any information reasonably requested by the Customer regarding the policies for each of the insurances required to be held and maintained by the Supplier under this MICTA (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 Supplier to third parties).

## Audits and inspections

### This clause 11.5 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 MICTA instead of clauses 11.5(b) to 11.5(i). Any Alternative Audit Mechanism must enable the Contract Authority to audit the Supplier's compliance with the MICTA.

### 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:

#### of the Supplier's and its Personnel's performance of its obligations under this MICTA, including the:

##### Supplier's and any subcontractor's operational practices and procedures as they relate to this MICTA;

##### accuracy of the Supplier's Reports; and

##### Supplier's and its Personnel's compliance with its other obligations under this MICTA; and

#### 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 MICTA.

### For the purpose of conducting an audit or inspection under this clause 11.5, the Contract Authority, the Auditor-General or their nominees may, on giving reasonable advance notice to the Supplier (at reasonable times and during Business Hours where practicable):

#### access the premises and facilities of the Supplier to the extent reasonably required to carry out the audit or inspection;

#### to the extent relating to the Supplier's activities or obligations under this MICTA or to any Supplier's Activities, access, inspect and copy documents (including the Supplier's Reports), resources and books and records, however stored, in the possession or control of the Supplier or its Personnel; and

#### require assistance in respect of any inquiry into or concerning the Supplier's obligations under this MICTA, including any parliamentary or statutory review or inquiry.

### If an audit will involve the Supplier being required to produce documents, resources or books and records, the Contract Authority will accompany its notice under clause 11.5(c) with a general description of the scope and purpose of the audit.

### To the extent an audit involves physical access to the premises or facilities of the Supplier, the:

#### Contract Authority will limit the exercise of its audit or inspection rights to no more than once per calendar year, unless the audit arises from the Supplier's breach of this MICTA or any Contract, or the Contract Authority forming, on a reasonable basis, a view that such breach may have occurred; and

#### Contract Authority or its nominee must comply with the Supplier's reasonable security requirements during such physical access.

### The Supplier 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 11.5.

### Each party must bear its own costs of executing its rights under, or complying with, this clause 11.5.

### The Contract Authority and its nominee must, in conducting an audit or inspection under this clause 11.5:

#### to the extent it obtains any Confidential Information of the Supplier as a result of such audit or inspection, treat that information in accordance with clause 11.1; and

#### not delegate the conduct of an audit or inspection under this clause to any person who may reasonably be considered to be a direct competitor of the Supplier in relation to any Supplier's Activities (unless such person is otherwise approved by the Supplier, acting reasonably).

### Without limiting any rights or remedies of the Contract Authority, if an audit shows that the Supplier has breached, or is in breach of, this MICTA, the Supplier must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Contract Authority.

### This clause 11.5 survives for the Term and a period of seven years following the termination or expiry of this MICTA.

## Governance

### Each party agrees to comply with any governance arrangements specified in the Key Details, 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.

## Privacy

The Supplier must comply with all Privacy Laws in performing its obligations under this MICTA.

# Suspension

### The Contract Authority may direct the Supplier in writing to:

#### suspend the performance or carrying out of; and/or

#### after a suspension has been instructed, re-commence the performance or carrying out of,

all or part of the Supplier's activities under this MICTA, at any time. Any such suspension will be effective on and from the date specified in the Contract Authority's direction.

### The Supplier must comply with any direction issued by the Contract Authority under clause 12(a).

### The Supplier will not be entitled to make any Claim against the Contract Authority arising out of or in connection with the suspension under this clause 12.

# Termination or expiry

## Termination or expiry of this MICTA

### 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 Supplier, terminate this MICTA effective from the date stated in the Contract Authority’s notice, or if no such time is stated, at the time the notice is given to the Supplier.

### Subject to clauses 13.1(c) and 13.1(d), the Contract Authority will not be liable for any Claim arising out of or in connection with any termination of this MICTA under clause 13.1.

### The Contract Authority and the Supplier agree that if this MICTA expires or is terminated, the separate Contracts formed in accordance with clause 5 of this MICTA will not be affected and must be fulfilled in accordance with the terms of the relevant Contract, unless the parties otherwise agree in writing.

### Termination of this MICTA will not prevent either party from relying on rights accrued under the MICTA prior to such termination.

## Termination of a Contract

The Contract Authority and the Supplier agree that the expiry or termination of any Contract will not affect the operation of this MICTA or the operation of any other Contract.

# Dispute resolution

## General

### The parties agree to resolve any dispute between them that arises out of, or in connection with, this MICTA in accordance with this clause 14 or such other procedure set out in the Key Details.

### Either party may give written notice of a dispute to the other party setting out particulars of the dispute (**Dispute Notice**).

### Nothing in this clause 14 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

## Escalation

### Within 10 Business Days of a party receiving a Dispute Notice, the Contract Authority's Representative and the Supplier's Representative must meet and try to resolve the dispute in good faith.

### If the parties have not:

#### resolved the dispute; or

#### met,

within the period specified in clause 14.2(a), 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.

## Alternative dispute resolution

### Unless otherwise specified in the Key Details, if the dispute remains unresolved after 20 Business Days of the date of the Dispute Notice (or such longer period as may be agreed by the parties in writing), then either party may 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 any equivalent and replacement rules.

### If the dispute still remains unresolved 20 Business Days after a party becomes entitled to issue a notice in writing under clause 14.3(a) requiring the dispute to be determined by mediation and, by that time:

#### *neither party has referred the dispute to mediation*: then either party may at any time thereafter commence any other form of dispute resolution, including court proceedings, to determine the dispute; or

#### *the dispute has been referred to mediation*: then neither party may commence any other form of dispute resolution to determine the dispute, until a further 10 Business Days has elapsed following the commencement of mediation.

## Acknowledgment

The parties acknowledge and agree that neither party may commence any other form of dispute resolution to determine the dispute, until the procedure set out in clauses 14.2 to 14.3 (or such other procedure set out in the Key Details) has been complied with in relation to the dispute.

## Costs

Each party will bear its own costs in respect of complying with this clause 14.

## Continue to perform

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

# General provisions

## Government information

### The Supplier 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 MICTA on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Contract Authority acting in accordance with this clause 15.1.

### To the extent that section 121 of the GIPA Act applies, the Supplier 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 Supplier:

#### information that relates directly to the performance of the Supplier's obligations under this MICTA or any Supplier's Activities under a Contract;

#### information collected by the Supplier from members of the public to whom it provides, or offers to provide any aspect of any Supplier's Activities; and

#### information received by the Supplier from the Contract Authority to enable it to carry out any Supplier's Activities or its obligations under the MICTA.

### For the purposes of clause 15.1(b), information does not include information that:

#### discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;

#### the Supplier 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

#### if disclosed to the Contract Authority, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Contract Authority whether at present or in the future.

### The Supplier must provide copies of any of the information referred to in clause 15.1(b), as requested by the Contract Authority, at the Supplier's own expense and in such medium as the Contract Authority may reasonably require.

### Without limiting any other provision of this clause 15.1, the Supplier:

#### authorises the Contract Authority to make information concerning the Supplier (including any Supplier Information and Supplier's Reports) available to other Government Agencies or Eligible Customers (including to the relevant head of any Government Agency or Eligible Customer and any responsible Minister of a Government Agency), for any purpose in connection with facilitating the Contract Authority’s exercise of its rights under this MICTA or the carrying out, or exercise, of the functions or powers of the Contract Authority, an Eligible Customer, a Government Agency or the Crown in right of the State of New South Wales. Such information may include any information provided by the Supplier to the Contract Authority or any Eligible Customer and any information relating to the Supplier's performance under this MICTA or in connection with any Contract;

#### acknowledges that information about the Supplier (including Supplier Information and Supplier'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 Supplier or a Related Body Corporate may be taken into account by Government Agencies considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;

#### agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and

#### 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.

## No use of Contract Authority name or logo

The Supplier must not use the Contract Authority's name or any of the Contract Authority's logos, trade marks or branding without the prior written consent of the Contract Authority.

## Entire Agreement

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

## Variation

No variation to this MICTA (including the MICTA Scope) is effective unless made in writing and executed by each party.

## Survival and merger

### No term of this MICTA merges on completion of any transaction contemplated by this MICTA.

### The following provisions survive the termination and expiry of this MICTA:

#### clauses 2, 8, 11.1, 11.2, 11.3, 11.4 (to the extent that it relates to professional indemnity insurance), 11.5, 11.7, 13.1(d), 14 and this clause 15; and

#### any other provisions that are expressed to or which by their nature survive termination or expiry.

## Severability

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

## Waiver

### No waiver of a right or remedy under this MICTA is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

### A single or partial exercise of a right or remedy under this MICTA does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or a delay in exercising a right or remedy under this MICTA does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

## Cumulative rights

Except as expressly provided in this MICTA, the rights and remedies of a party under this MICTA (including under an indemnity) are in addition to and do not exclude or limit any other rights or remedies provided by Law.

## Further assurances

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

## Assignment, novation and other dealings

### The Supplier must not in whole or in part, assign or novate this MICTA or otherwise deal with the benefit of it or a right under it, or purport to do so without obtaining the prior written consent of the Contract Authority, which consent may be withheld at the Contract Authority's sole discretion.

### The Supplier acknowledges that the Contract Authority may conduct financial and other inquiries or checks on the entity proposing to take an assignment or novation of this MICTA before determining whether or not to give consent to an assignment or novation.

### Subject to clause 15.10(d), the Contract Authority must not, in whole or in part, assign or novate this MICTA or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier, which consent may not be unreasonably withheld.

### Notwithstanding clause 15.10(c), the Contract Authority may, at its sole discretion, assign or novate this MICTA in whole or in part:

#### to any Eligible Customer, by notice in writing to the Supplier; or

#### for machinery of government changes, including if, by operation of Law, the Contract Authority is reconstituted into a new body or legal entity or the functions of the Contract Authority, relevant to this MICTA, are transferred to a different body or legal entity.

### The Supplier agrees to co-operate in good faith and provide all reasonable assistance to the Contract Authority in respect of any such assignment or novation made by the Contract Authority under this clause 15.10.

### The Supplier must (to the extent permitted by Law):

#### notify the Contract Authority if the Supplier or any parent company of the Supplier is about to undergo a Change in Control or Other Changes, as soon as it becomes aware that the Change in Control or Other Changes will or may occur; and

#### provide the Contract Authority with all information reasonably requested by the Contract Authority in respect of the Change in Control or Other Changes, including in respect of any incoming owner or other person who is to obtain control over the Supplier or any parent company.

## Notices

### A notice, consent or other communication under this MICTA (**Notice**) is only effective if it is in writing, signed by, or on behalf of, the party giving it and received in full and legible form at the addressee’s address or email address.

### For the purposes of this clause 15.11, a party’s address and email address is that set out in the Key Details, unless the party has notified a changed address in writing, then the notice, consent, approval or other communication must be sent to that address.

### A Notice will be regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5:00pm on a Business Day it is regarded as received at 9:00am on the following Business Day.

### Unless there is evidence to the contrary:

#### a letter sent by post will be taken to be received on the fifth Business Day after posting (or seventh, if posted to or from a place outside of Australia); and

#### in the case of email:

##### production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;

##### where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and

##### where a delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender must use an alternative method of giving that notice in accordance with this clause 15.11.

## Construction

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

## Expenses

Except as otherwise expressly provided in this MICTA, each party must pay its own costs and expenses in connection with the negotiation, preparation and execution of this MICTA.

## English language

All communications between the parties and all documentation provided in connection with this MICTA or any Contract must be in the English language.

## Governing Law

This MICTA is governed by the Laws applicable in the State of New South Wales, Australia. The Supplier irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia and the courts entitled to hear appeals from those courts.

## Nature of relationship

Nothing in this MICTA creates or is intended to constitute a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers, and neither party has authority to bind the other party. Neither party may hold itself out in any manner which is contrary to this clause 15.16.

## Proportionate liability

### To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this MICTA whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

### Without limiting clause 15.17(a), the rights, obligations and liabilities of the Contract Authority and the Supplier under this MICTA with respect to proportionate liability are as specified in this MICTA and are not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise.

# Definitions and interpretation

## Definitions

1. In this MICTA, unless the contrary intention appears, capitalised terms have the meaning assigned to them below:
2. **Aboriginal Participation Plan** means a plan of that name developed pursuant to the Aboriginal Procurement Policy under a Contract.
3. **Aboriginal Procurement Policy** means the New South Wales Government's Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (or such other link as notified by the Contract Authority).
4. **Additional Conditions** means the terms and conditions (if any) specified in the Key Details.
5. **Additional Period** has the meaning given to that term in clause 1.2(a)(i).
6. **Additional Policies, Codes and Standards** means the policies, codes and standards:
   1. listed in the Key Details; and
   2. any Government codes, standards and guidelines (or changes to those codes, standards and guidelines) relating to the provision of the Supplier's obligations under this MICTA as reasonably notified by the Contract Authority to the Supplier from time to time.
7. **Adjustment Notice** has the meaning given to that term in clause 9.2(d).
8. **Alternative Audit Mechanism** has the meaning given to that term in clause 11.5(a).
9. **Annexure** means an annexure to this MICTA (including any relevant Attachments to that Annexure).
10. **Attachment** means an Attachment to this MICTA.
11. **Authorisations** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency.
12. **Authority** includes any Government Agency, governmental or semi-governmental or local government authority, administrative, regulatory or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.
13. **Benchmarking Activities** has the meaning given to that term in clause 9.1(a).
14. **Benchmarking Notice** has the meaning given to that term in clause 9.1(a).
15. **Benchmarking Report** has the meaning given to that term in clause 9.2(a).
16. **Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in New South Wales, Australia.
17. **Business Hours** means the hours between 9:00am and 5:00pm on any Business Day.

**Change in Control** means, in respect of an entity, the occurrence of any circumstances or events following which the entity, who was not so controlled before, is controlled by another person, alone or together with any Related Body Corporate, and:

* 1. includes, in respect of the entity, a change of a direct holding of at least fifteen percent of the voting shares in that entity or a holding company of that entity; however
  2. excludes an internal solvent corporate reorganisation occurring exclusively within the group of companies comprised of the Supplier and its Related Bodies Corporate.

1. **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.
2. **Confidential Information** means information that:
   1. is by its nature confidential;
   2. is communicated by the discloser of the information (**Discloser**) to the recipient of the information (**Recipient**) as confidential;
   3. the Recipient knows or ought to know is confidential; or
   4. relates to or comprises:
      1. Contract Authority Data;
      2. the financial, corporate and commercial information of any party;
      3. the affairs of a third party; or
      4. the strategies, practices and procedures of the State of New South Wales or any information in the Supplier’s possession relating to a Government Agency,

but excludes information:

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

1. **Conflict of Interest** means the Supplier or its Personnel:
   1. engaging in any activity;
   2. obtaining any interest, whether pecuniary or non-pecuniary; or
   3. being involved in any actual or threatened litigation or investigation,

whether proven or alleged, which is likely to, has the potential to, or could be perceived to, present a conflict of interest in the Supplier or its Personnel performing its obligations under the MICTA.

1. **Contract** means the contractual relationship between the parties comprising the terms and conditions set out in:
   1. a relevant Order; and
   2. the ICTA.
2. **Contract Authority** means the Government Agency or Eligible Non-Government Body specified in the Key Details.
3. **Contract Authority Data** means all data (including metadata) and information relating to the Contract Authority or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Contract Authority and any Government 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 MICTA, 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.

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

**Deliverables** has the meaning given to that term in the ICTA.

**Discloser** has the meaning given to that term in the definition of *"Confidential Information"* in clause 16.1.

1. **Dispute Notice** has the meaning given to that term in clause 14.1(b).
2. **Draft Order** has the meaning given to that term in clause 4.2(b).

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

1. **Eligible Customer** means any Government Agency or Eligible Non-Government Body (including the Contract Authority), unless otherwise specified in the Key Details.
2. **Eligible Non-Government Body** includes the following public bodies that are not Government 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 or 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).

**Existing Material** has the meaning given to that term in clause 11.2(a).

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

1. **Financial Security** has the meaning given to that term in clause 10.2(b)
2. **GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).
3. **Government Agency** means any of the following:
   1. a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW));
   2. a New South Wales Government agency;
   3. any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State owned corporation); or
   4. any State owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912* (NSW).

**ICT** means information and communication technologies.

**ICT Activities** means the goods, services and/or other activities described in the MICTA Scope.

1. **ICTA** means the terms and conditions set out in Annexure I, which, if included in Attachment 1 and Attachment 2 of Annexure I, includes both the Mini-ICTA and the Long Form ICTA (as applicable).
2. **ICTA Order Form** means the “Order Form” as defined under the ICTA (including, as the case may be, the order form and Statement of Work under the Mini-ICTA and the Long Form ICTA).
3. **Intellectual Property Rights** means all intellectual property rights, including:
   1. copyright, patent, design, semi-conductor or circuit layout rights, registered design, trade marks 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 MICTA specified in Annexure A.

1. **Key Performance Indicators** or **KPIs** means the key performance indicators specified in Annexure B.
2. **KPI Performance Report** has the meaning given to that term in clause 7.1.
3. **Laws** means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.
4. **Long Form ICTA** means the agreement included at Annexure I, Attachment 2.
5. **Master ICT Agreement** or **MICTA** means this document, executed as an agreement.
6. **Materials** means all property, materials, documents, information and items in whatever form, and includes equipment, hardware, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, documentation, manuals and anything else which is the subject matter of Intellectual Property Rights.
7. **MICTA Date** means the date on which the last party to execute, executes this MICTA.
8. **MICTA Scope** means the document in Annexure F.
9. **Mini-ICTA** means the agreement included at Annexure I, Attachment 1.
10. **Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968* (Cth) and any other similar rights existing under any other laws.

**New Material** has the meaning given to that term in clause 11.2(b).

**Notice** has the meaning given that term in clause 15.11(a).

1. **Order** means a document titled "Order", substantially in the form of Annexure E (or in any other form chosen by the Eligible Customer), executed by the Eligible Customer and the Supplier in accordance with clause 5.
2. **Order Proposal** means a proposal in the form set out in Annexure D (or in a form chosen by the Eligible Customer), issued under clause 4.1.
3. **Other Arrangements** has the meaning given to that term in clause 8(b)(v)B.
4. **Other Changes** means any actual or proposed change in the Supplier's circumstances, operations or supply chains (including a change to the Supplier's Personnel), that could reasonably be considered to:
   1. create a security risk for the Contract Authority, any Eligible Customer or the State of New South Wales; or
   2. adversely affect the:
      1. Supplier's ability to fulfil its obligations under the MICTA; or
      2. reputation of the Contract Authority, any Eligible Customer or the State of New South Wales.

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

### is incidentally generated by a computer system in the course of its normal operation;

### relates to the performance or operation of that computer system; and

### arises in the course of the performance of the Supplier's obligations under this MICTA.

1. **Personnel** means a party's employees, officers, agents, volunteers and subcontractors and, in the case of the Supplier, includes the Supplier’s secondees and any persons performing activities under this MICTA on the Supplier’s behalf.
2. **Price** means the total amount payable by the Eligible Customer for the Deliverables and/or Services and the carrying out of the other Supplier's Activities.

**Privacy Laws** includes (to the extent applicable) the privacy laws as defined under the ICTA.

1. **Policies, Codes and Standards** means:
   1. the policies, codes and standards to be complied with by the Supplier under the ICTA, to the extent that these are applicable to the Supplier's performance of its obligations under the MICTA; and
   2. any Additional Policies, Codes and Standards.

**Recipient** has the meaning given to that term in the definition of *"Confidential Information"* in clause 16.1.

1. **Related Body Corporate** has the meaning given to that term in the Corporations Act.
2. **Schedule of Prices** means the schedule of rates and prices set out in Annexure C.
3. **Security Incident** includes a “security incident” as defined under the ICTA.

**Service Levels** means any minimum performance levels, key performance indicators and other service standards with respect to the Supplier's Activities to be achieved by the Supplier under a Contract.

**Services** has the meaning given to that term in the ICTA.

**SME Policies** means all applicable NSW government policies in relation to small and medium business enterprises, including any SME Policies defined in the ICTA.

**Statement of Work** means a statement of work incorporated within or attached to an ICTA Order Form.

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

1. **Supplier Information** means information of the Supplier relating to the:

### MICTA and any Contract formed under the MICTA;

### Supplier’s performance under the MICTA or under a Contract;

### financial position or reputation of the Supplier; and/or

### shareholdings in the Supplier, or the corporate structure, directorship or shareholdings of the Supplier,

### but excludes information of the Supplier:

### excluded in the Key Details; and

### that constitutes Confidential Information or Intellectual Property Rights.

**Supplier's Activities** means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under a Contract.

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

1. **Supplier's Representative** means the person so nominated in the Key Details or as advised in writing by the Supplier, and approved by the Contract Authority, from time to time to act on its behalf in connection with this MICTA.
2. **Term** has the meaning given to that term in clause 1.1.

## Interpretation

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

### headings are for convenience only and do not affect the interpretation of this MICTA;

### the singular includes the plural and vice versa;

### an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

### words that are gender neutral or gender specific include each gender;

### 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;

### the words "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

### a reference to:

#### a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

#### a thing (including a chose in action or other right) includes a part of that thing;

#### a party includes its successors and permitted assigns;

#### a document includes all amendments or supplements to that document;

#### a clause, term, party, Annexure or Attachment is a reference to a clause or term of, or party, Annexure or Attachment to the relevant part of this MICTA in which that reference is located;

#### a reference to a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced;

#### a monetary amount is to Australian dollars or such other currency specified in the Schedule of Prices; and

#### time is to Australian Eastern Standard Time;

### when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;

### a reference to any Authority, institute, association or body is:

#### 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

#### 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

### no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of the MICTA.

## Discretion

### Subject to any express provision in the MICTA to the contrary:

#### a provision of the MICTA 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

#### 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 MICTA.

### Without limiting clause 16.3(a), 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 Supplier or as required by any other legal doctrine which in any way limits the express words used in the provisions of the MICTA conferring the discretion, power or entitlement.

**Executed** as an agreement

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the Crown in right of the State of New South Wales acting through the Department of Customer Service (ABN81 913 830 179)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 |
|  |  |  |  |
|  |  |  | Date |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[*Insert name of Supplier*] 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 16.1) | The Crown in the right of the State of New South Walesacting through the Department of Customer Service (ABN 81 913 830 179), McKell Building, 2-24 Rawson Place, Sydney NSW 2000 | |
|  | **Contract Authority's Representative:**  (Clause 1.5 and 16.1) | Name: Dhanya Mathews  Address: McKell Building, 2-24 Rawson Place, Sydney NSW 2000  Telephone: +61 2 9372 8284  Email:[Dhanya.Mathews@customerservice.nsw.gov.au](mailto:Dhanya.Mathews@customerservice.nsw.gov.au) | |
|  | **Supplier:**  (Clause 16.1) | [*Insert full name*] ABN [*Insert ABN*]of [*Insert registered address*] | |
|  | **Supplier's Representative:**  (Clause 1.6 and 16.1) | Name: [*Insert*]  Address: [*Insert*]  Telephone: [*Insert*]  Email: [*Insert*] | |
| **Other: Definitions and interpretation** | | | |
|  | **Additional Policies, Codes and Standards that are applicable to this MICTA:**  (Clause 16.1) | The following NSW Government policies (to the extent applicable):   * 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>; * 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; and * NSW Government’s Artificial Intelligence (**AI**) Strategy, Policy and Assurance Framework at <https://www.digital.nsw.gov.au/policy/artificial-intelligence-ai>.   The ICT Activities must be delivered by the Supplier and its Personnel in accordance with the PSPA Capability Framework as set out in Attachment 2 of Annexure F, to the extent indicated in the PSPA Assurance Criteria as set out at Attachment 3 of Annexure F. | |
|  | **Effective Date:**  (Clause 16.1) | The Effective Date is the MICTA Date (that is, the date that the last party executes this MICTA). | |
|  | **Expiry Date:**  (Clause 16.1) | Three years after the Effective Date. | |
|  | **Government Agencies and/or Eligible Non-Government Bodies that are not Eligible Customers under this MICTA:**  (Clause 16.1) | Are there any Government Agencies and/or Eligible Non-Government Bodies that are not Eligible Customers under this MICTA: No. | |
|  | **Supplier Information: excluded information:**  (Clause 16.1) | Is there any information excluded from the definition of "Supplier Information": No. | |
| **Extension** | | | |
|  | **Number of Additional Period(s):**  (Clause 1.2(a)(i)) | Two. | |
|  | **Length of Additional Period(s):**  (Clause 1.2(a)(ii)) | Each Additional Period will be one year in duration. | |
| **Use of this MICTA** | | | |
| **Additional Conditions** | | | |
|  | **Additional Conditions:**  (Clause 1.8) | Do any Additional Conditions apply to this MICTA: Yes.The Additional Conditions specified in Annexure H apply to this MICTA. | |
| **Indexation and review of rates** | | | |
|  | **Indexation and review of rates:**  (Clause 6) | Unless otherwise agreed between the parties in writing: The general review of prices in accordance with Part 2, section 1 of Annexure C (General Review of Prices) does apply; andThe foreign currency adjustment is governed by Part 2, section 1 of Annexure C. For clarity, Part 2, section 2 of Annexure C does not apply. | |
| **Key Performance Indicators** | | | |
|  | **Frequency of KPI reporting and times at which Contract Authority and Supplier to meet:**  (Clause 7.1(a) and 7.3) | **KPI Performance Report**  A KPI Performance Report is to be provided by the Supplier once a quarter in the form of the report at Part A of Attachment 2, unless the Contract Authority advises otherwise and only following award of at least one Contract to the Supplier by an Eligible Customer in the six months prior to the end of each quarter.  **Performance meetings**  The Supplier must meet with the Contract Authority to discuss performance and KPI compliance and reporting upon the Contract Authority’s request. These meetings will occur no more than once a quarter throughout the Term, unless a meeting is required by the Contract Authority to discuss a matter of emergency or a material breach of the MICTA or a Contract by the Supplier or its Personnel. | |
| **Reporting requirements** | | | |
|  | **Alternative reporting requirements:**  (Clause 8) | Alternative reporting requirements apply: Yes.  Without limiting the reporting requirements under clause 8, the Supplier must provide the reports specified in clause 8(b) and Item 16 below in the form of the template in Part B of Attachment 2 to these Key Details (or such other template as notified by the Contract Authority to the Supplier in writing).  Reports under paragraph 2 of Item 16 below must be provided by the Supplier within 10 Business Days of a request by the Contract Authority and not within the timeframe specified in clause 8(b). | |
|  | **Reporting on additional matters:**  (Clause 8(b)(iii)B) | Additional matters the Supplier must report on: Applicable.   1. At the timeframe specified under clause 8(b), the Supplier must provide a written or electronic report to the Contract Authority in the form of the template in Part B of Attachment 2 to these Key Details (or such other template as notified by the Contract Authority to the Supplier in writing) in relation to the Supplier’s utilisation of Australian disability enterprises, including:    1. Australian disability enterprises engaged to perform the Supplier’s Activities under each Contract; and    2. amounts paid to any Australian disability enterprise under each Contract. 2. The Supplier must, within 10 Business Days of a request by the Contract Authority, prepare and provide a written or electronic report to the Contract Authority in the form of the template in Part B of Attachment 2 to these Key Details (or such other template as notified by the Contract Authority to the Supplier in writing) that lists all active and prior Secondees engaged pursuant to any Contract entered into under this MICTA and the duration of their engagement. This report must include the following details:    1. each Secondee’s name, role, daily or other rates and start and end dates;    2. the cumulative spend for each Secondee; and    3. such other information as reasonably requested by the Contract Authority from time to time. 3. For clarity, the reports specified in this Item 16, together with the reports specified in clause 8 constitute “Supplier’s Reports”. 4. “Secondee” has the meaning given to that term in Annexure F. | |
| **Benchmarking** | | | |
|  | **Benchmarking:**  (Clause 9) | Applicable, however as per the Additional Conditions the outcome of any benchmarking exercise (including as set out in any Adjustment Notice) can only take effect for each Additional Period (if any). | |
| **Guarantees** | | | |
|  | **Performance Guarantee:**  (Clause 10.1) | [*Note to Tenderer: To be confirmed following RFP evaluation.]*  Clause 10.1 applicable: [*Yes/No*]  If nothing is stated: "No" | |
|  | **Financial Security:**  (Clause 10.2) | [*Note to Tenderer: To be confirmed following RFP evaluation.]*  Clause 10.2 applicable: [*Yes/No*]  If "Yes", amount of Financial Security required: $[*Insert*]  If nothing is stated: "No" | |
|  | **Costs:**  (Clause 10.3) | [*Note to Tenderer: To be confirmed following RFP evaluation.]*  State whether all or any portion of the Supplier’s costs of obtaining and maintaining either a Performance Guarantee or the required Financial Security are to be reimbursed: [*Yes/No*] [*If not, state "Not applicable"*]*.*  If nothing is stated: "Not applicable" | |
| **Other requirements** | | | |
|  | **Insurance policies required to be effected by the Supplier:**  (Clause 11.4) | **Product liability insurance**  *[Note to Tenderer: The product liability insurance amount and duration will be confirmed following the outcome of the RFP process – Not Applicable if No Products Offered, If Products Offered then Minimum of $1 Million];*  Limit of cover of at least $[*Insert*]in respect of each occurrence and in the aggregate, to be held for the duration of the Term and for at least seven years thereafter.  **Public liability insurance**  *[Note to Tenderer: The public liability insurance amounts and duration will be confirmed following the outcome of the RFP process- Minimum of $10 Million*]*]*  Limit of cover of at least $[*Insert*] in respect of each occurrence, to be held for the Term.  If nothing is stated, the limit of cover is at least $20 million in respect of each occurrence, to be held for the Term.  **Professional indemnity insurance**  *[Note to Tenderer: The professional indemnity insurance amount and duration will be confirmed following the outcome of the RFP process – Minimum of $1 Million*]*].*  Required: Yes.  If "Yes" the limit of cover is at least $[*Insert*] in respect of each occurrence and in the aggregate, to be held for the Term and at least seven years thereafter.  **Workers' compensation insurance**  Amount of cover: the maximum amount required by Law.  **Cyber security insurance**  *[Note to Tenderer: Please advise whether you hold any form of cyber security insurance and the coverage of that insurance. DCS will confirm the relevance of cyber security insurance as part of the tender process.]*  **Data security breach or wrongful disclosure and use of Personal Information insurance**  Required: No.  **Other insurances**  *[Note to Tenderer: To be determined by DCS following the outcome of the RFP process. The tenderer to advise as part of its RFP response any other relevant insurances that it holds.]*  Required: No. |
|  | **Alternative Audit Mechanism:**  (Clause 11.5(a)) | Not applicable: No. | |
|  | **Governance:**  (Clause 11.6) | Applicable governance framework: Yes. Each party agrees to comply with clause 11.6 and the governance arrangements specified in Attachment 1 (Governance Arrangements) to these Key Details, to the extent required by the Contract Authority (who may, at its discretion, choose to implement the governance arrangements in whole or in part from time to time). In accordance with clause 11.6, the parties agree to make available suitably qualified Personnel to attend governance meetings and forums. | |
| **Dispute resolution** | | | |
|  | **Alternate dispute resolution procedure:**  (Clause 14.1(a)) | Alternate dispute resolution procedure applies to this MICTA: No. | |
|  | **Time for dispute resolution:**  (Clause 14.3(a)) | Alternative time for resolution of dispute applies: No. | |
| **Notices** | | | |
|  | **Contract Authority address and email address for the purpose of clause 15.11 Notices:**  (Clause 15.11) | Notices are to be sent to the Contract Authority's Representative at the email address as specified in Item 2 of these Key Details with a copy to the ICT Category Manager (specified below) or such other person and contact details as notified by the Contract Authority to the Supplier in writing.  The ICT Category Manager’s details are below:  Address: 2-24 Rawson Place, McKell Building  Sydney NSW 2000  Email address: [pspa@customerservice.nsw.gov.au](mailto:pspa@customerservice.nsw.gov.au) | |
|  | **Supplier address and email address for the purpose of clause 15.11 Notices:**  (Clause 15.11) | Address: [*Insert*]  Email address: [*Insert*]  *[Note to Tenderer: To be advised by the tenderer.]* | |

1. – Governance Arrangements
2. This Attachment (**Governance Arrangements**) sets out the governance requirements and arrangements of the Contract Authority and the Supplier in connection with the MICTA.
3. The Supplier acknowledges and agrees that the Contract Authority may, at its discretion, choose to implement the governance arrangements in this Attachment in whole or in part from time to time.
4. Unless otherwise advised by the Contract Authority, the Supplier will participate in the following governance activities in accordance with this Attachment and the below Table 1.0.  
     
   **Table 1.0: MICTA Governance**
5. Unless otherwise advised by the Contract Authority, governance activities will occur at the frequency and timeframes specified below:

|  |  |  |
| --- | --- | --- |
| **Activity** | **Frequency** | **Timeframe** |
| Level 1: Executive Council | Ad-hoc | As necessary, as determined by the Contract Authority and notified to the Supplier. |
| Level 2: Executive Steering Group | Annually or as needed | No more often than within 30 Business Days following the end of the calendar year or at such other times as determined by the Contract Authority and notified to the Supplier. |
| Level 3: Commercial and Operational Forums | Quarterly or as needed | No more often than within 7 Business Days following the end of the preceding quarter or at such other times as determined by the Contract Authority and notified to the Supplier. |

**Governance forums, meetings and groups**

1. The governance forums, meetings and groups are described in more detail below.
   * 1. **Level 3: Commercial and Operational Forums**

There will be two forums: “Commercial Forum” and “Operational Forum” as described in the tables below:

*Level 3: A. Commercial Forum*

|  |  |
| --- | --- |
| Frequency | As specified in Table 1.0. |
| Objectives | The key objectives are to:   * guide and track the compliance of the Supplier as against its obligations under the MICTA and any Contracts; * provide the forum for the management of any relationship and commercial issues formally escalated to the Commercial Forum and serve as the formal escalation point for all relationship and commercial issues; and * guide and monitor improvements in the Supplier’s Activities that may be beneficial to the Supplier and/or the NSW Government. |
| Key Roles and Responsibilities | The peak forum for commercial governance of this MICTA. This includes the ongoing management, monitoring and reporting of the Supplier’s performance of its obligations in relation to this MICTA and any Contracts and all associated commercial matters.  The roles and responsibilities of this forum include, but are not limited to:   * monitoring and reviewing the Supplier’s compliance with the MICTA and any Contracts entered into under it (including commercial and financial performance); * monitoring any disputes raised in respect of the MICTA or any Contracts; * planning and initiating independent audits of the Supplier’s performance and compliance against the MICTA and any Contracts entered into under it; * reviewing and assisting with the resolution of items escalated by the Contract Authority or any Eligible Customers (including as part of any cluster / agency procurement forums or service delivery/operational management forums); * reporting and escalating to the Executive Steering Group as described in paragraph 5(b) (as necessary); * reviewing, identifying and monitoring the implementation of opportunities to improve productivity and reduce costs across NSW Government; * reviewing and monitoring improvements in procurement processes under each Contract (including any hardware and software procurement models available to the Supplier); and * monitoring and providing input into the Supplier’s technology roadmap and technology evolution plans. |
| Membership NSW Government | Category Manager, ICT Services, ICT/Digital Sourcing  Cluster / agency representatives (as required). |
| Membership Supplier | Supplier equivalent roles as agreed with the ICT Category Manager, ICT/Digital Sourcing. |

*Level 3: B. Operational Forum*

|  |  |
| --- | --- |
| Frequency | As specified in Table 1.0. |
| Objectives | The key objective of this forum is to guide and monitor the operational performance of the Supplier’s Activities and to ensure continuous improvement. |
| Key Responsibilities | The peak forum for the operational performance of the Supplier’s service delivery under any Contracts.  The roles and responsibilities of this forum include, but are not limited to:   * reviewing and measurement of day to day service performance and managing any issues to resolution; * reviewing capability and capacity forecast and trends; * analysis of service hot spots and “action” assignment to service providers and monitor the Supplier’s performance in response to service issues; * reviewing performance against any Service Levels; * monitoring Eligible Customers’ satisfaction in relation to Contract performance and monitoring operational issues, Service Level compliance or Eligible Customer satisfaction issues; * assisting with the resolution of Eligible Customer satisfaction issues escalated to this forum; * monitoring the environment, and the potential impact on both the delivery of services and business as usual operations; * facilitating the development of “real business impact” service reporting; * initiating service improvement plans to address delivery performance issues; * reviewing items escalated from relationship/commercial management forums; and * reporting and escalating to the Executive Steering Group as described in paragraph 5(b). |
| Membership NSW Government | Category Manager, ICT Services, ICT/Digital Sourcing  Cluster / agency representatives (as required). |
| Membership Supplier | Supplier equivalent roles as agreed with the ICT Category Manager, ICT/Digital Sourcing. |

* + 1. **Level 2: Executive Steering Group**

There will be an Executive Steering Group as described below:

*Level 2: Executive Steering Group*

|  |  |
| --- | --- |
| Frequency | As specified in Table 1.0. |
| Objectives | The key objectives of this group are to guide and monitor the health of the Eligible Customer and Supplier relationship and service provision, with a view to ensuring that the relationship and service provision achieves mutual benefits and meets the objectives (if any) set out in any Contract.  The Executive Steering Group is responsible for managing the overall relationship with the Supplier and NSW Government. |
| Key Responsibilities | This is principally a group to facilitate effective relationships between Eligible Customers and the Supplier which results in an effective engagement model between the organisations at all levels.  The roles and responsibilities of this forum include, but are not limited to:   * reviewing the level of performance provided by the Supplier (including in respect of the Supplier’s Activities), the extent to which the Supplier has complied with any Service Levels and its performance with respect to Eligible Customer satisfaction surveys and any other service metrics; * reviewing compliance with this MICTA and any Contracts; * reviewing and promoting direct and indirect investment by the Supplier in NSW; * reviewing, promoting and tracking social procurement initiatives by the Supplier in relation to small and medium enterprises, regional procurement and Aboriginal businesses; and * reporting and escalating to the Executive Council. |
| Membership NSW Government | Director Category Management, ICT/Digital Sourcing. |
| Membership Supplier | Supplier equivalent roles as agreed with Director Category Management, ICT/Digital Sourcing. |

* + 1. **Level 1: Executive Council**

There will be an Executive Council as described below:

*Level 1: Executive Council*

|  |  |
| --- | --- |
| Frequency | As specified in Table 1.0. |
| Objectives | The key objective of the Executive Council is to guide and monitor the health of the relationship between the Contract Authority/Eligible Customers and the Supplier, as well as the overall performance of the Supplier, with a view to ensuring that the Supplier’s contractual obligations are performed, and the relationship between all relevant parties is being managed, in a manner that achieves mutual benefits and meets the outcomes specified below:   * to share each party’s respective views, objectives and strategies; * to leverage what the Supplier has to offer in support of the NSW Government’s business agenda, Premier’s priorities and the NSW Government’s ICT and digital strategy; and * to escalate and endeavour to resolve issues not resolved in other governance forums. |
| Key Roles and Responsibilities | A committee to facilitate MICTA performance and the relationships between the Contract Authority/Eligible Customers and the Supplier which may concern decision making, performance review and strategic direction. This forum may provide overall direction for the relationship, delivery and a platform for innovation and business improvement focusing on:   * strategic alignment; * sponsorship of the relationship. * providing clear direction on NSW Government’s business objectives, Premier’s priorities and the NSW Government’s ICT and digital strategies; * promoting a co-operative and effective contractual relationship that achieves value for money for the State of NSW; and * providing guidance to maximise the value of the relationship. |
| Membership NSW Government | Executive Director, ICT/Digital Sourcing. |
| Membership Supplier | Supplier equivalent roles as agreed with the Executive Director, ICT/Digital Sourcing. |

**Qualifications**

1. The Supplier acknowledges and agrees that:
   * 1. no statement, representation or other conduct by the Contract Authority or an Eligible Customer in any of the forums, meetings or groups referred to in this Attachment will have the effect of varying this MICTA or any Contract or creating any other legal obligations on the part of the Contract Authority or an Eligible Customer; and
     2. any variation to this MICTA or a Contract will be effected in accordance with the applicable variation process under those agreements. Similarly, any decision to enter into a Contract or procure any goods or services will follow all applicable Laws and New South Wales government policies.
2. – Reporting Templates

**Part A: PSPA KPI Performance Report Template**

*[Note to Tenderer: PSPS KPI Performance Report Template separately provided.]*

**Part B: PSPA Contracting Reporting Template**

*[Note to Tenderer: DCS to confirm.]*

1. - KPIs

The following KPIs apply under this MICTA. Each KPI is to be measured over the quarterly reporting period.

| **Key Performance Indicator (KPIs)** | | **Measure** | **Target** |
| --- | --- | --- | --- |
| **Safety and compliance** | | | |
|  | Safety | Number of active Contracts with major safety/environmental incidents, including Lost Time Injuries (LTIs), Medical Treatment Injuries (MTIs) and safe working incidents. | 0 |
|  | Compliance with social procurement policies | Number of incidents of non-compliance with the SME Policies and the Aboriginal Procurement Policy under all Contracts. | 0 |
| **Delivery** | | | |
|  | Time | Percentage of Contracts commenced and completed in accordance with contractual timeframes. | ≥ 90% |
|  | Cost | Percentage of Contracts completed for contracted price, or within cost estimate (unless revised estimate agreed with Customer prior to exceeding estimate). | ≥ 90% |
|  | Quality | Number of instances of poor quality work under all Contracts, including failure to complete contracted scope, and any instances where deliverables have been rejected by the Customer 2 or more times. | 0 |
|  | Personnel | Number of incidents of Supplier’s Personnel who are not competent and/or appropriately accredited, qualified, licensed and/or trained, including where they fail to meet the capabilities at the requisite levels as set out in Annexure F. | 0 |
| **Reporting** | | | |
|  | Reporting | Percentage of Supplier’s Reports provided to the Contract Authority by the required date and which contain accurate and complete information. | ≥ 90% |

1. - Schedule of Prices and Indexation

**Part 1 - Schedule of Prices**

**[*Insert Schedule of Prices applying to Supplier's standing offer to the Contract Authority. This will be based on the Pricing Schedule provided as part of each tenderer’s RFP response.*]**

**Part 2 - Indexation**

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

* 1. General Review of Prices
     + 1. This "General Review of Prices" clause applies where specified in the Key Details that the "General Review of Prices" model applies.
       2. Once each year, within 30 days of the anniversary of the Effective Date, either party may provide a notice in writing 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), 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 Supplier’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) (**Rate** **Adjustment Date**).
       5. If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices will be indexed for changes in the price of labour; that is, movements in the wage price index (**WPI**) on and from the Rate Adjustment Date, calculated in accordance with the following formula:

For Supplier’s Activities delivered in Australia:

A (WPI indexed) = A × (*1+WPIAU*).

Where:

**A** is the monetary amount originally specified in the Schedule of Prices;

* + - 1. ***WPIAU*** means, unless the parties expressly agree another applicable index, the WPI, which measures changes in the price of labour in the Australian labour market, for the relevant industry and is published prior to the Rate Adjustment Date over the previous four quarters as maintained and published quarterly by the Australia Bureau of Statistics, or as otherwise determined in accordance with paragraph (f). If the *WPIAU* 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.
      2. The Contract Authority notes that rates for ICT Activities provided from overseas are based on domestic rates multiplied by the relevant overseas rate multiplier defined in the Schedule of Prices. The Contract Authority will consider and will not unreasonably reject proposals to adjust any relevant overseas rate multiplier as part of the General Review of Prices where the Supplier can demonstrate the change to the multiplier is due to overseas wage price indexation and changes to foreign exchange rates.
  1. Foreign Exchange Adjustments
     + 1. This clause applies where specified in the Key Details.
       2. Where this clause applies, the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on each date on which the Schedule of Prices provides that a foreign currency adjustment is to occur (**FX Review Date**).
       3. The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:

**FCA (Adjusted) = FCA × [XR (current) / XR (base)**

Where:

**FCA (Adjusted)** is the relevant Foreign Currency Amount as adjusted;

**FCA** is the relevant Foreign Currency Amount specified in the Schedule of Prices which is to be subject to a foreign currency adjustment;

**XR (current)** is the relevant exchange rate published by the Reserve Bank of Australia as at the relevant FX Review Date; and

**XR (base)** is the relevant exchange rate specified in the Schedule of Prices as at the Effective Date.

1. - Order Proposal

|  |
| --- |
| **Part 1 of the Order Proposal - Identification** |
| This Order Proposal is issued by the Eligible Customer under the MICTA between the Crown in right of the State of New South Wales acting through the Department of Customer Service (ABN81 913 830 179)(**Contract Authority**)and **[*Insert name of Supplier*]**  **MICTA No: [*Insert*]**  **Order Proposal No: [*Insert*]**  **Supplier response required by: [*Insert*]**  **Order Proposal issued by: [*Insert name of Eligible Customer, who will be the Customer under the Contract*]** |
| **Part 2 of the Order Proposal - Attachments** |
| **Attachment 1** - ICTA Order Form (including proposed Statement of Work)  ***[Note to user: The ICTA Order Form will either be the Mini-ICTA order form (including any applicable Statement of Work) or the Long Form order form (including any applicable Statement of Work) as applicable]*** |
| **Attachment 2** - Additional Service Levels |

1. to the Order Proposal - ICTA Order Form (including proposed Statement of Work)

***[Note to user: Eligible Customer to insert in this Attachment the relevant and completed ICTA Order Form (including any proposed Statement of Work), to assist the Supplier in preparing and submitting a Draft Order in accordance with clause 4.2 of the MICTA. The ICTA Order Form will either be the Mini-ICTA order form or the Long Form ICTA order form depending on the value and risk of the procurement]***

1. to Order Proposal: Additional Service Levels

***[Note to user: Eligible Customer to insert in this Attachment any specific Service Levels (if applicable) that will apply under this Contract, in addition to those (if any) specified in the ICTA*]**

1. - Order

|  |
| --- |
| **Part 1 - Identification** |
| This Order is issued by the Eligible Customer under the MICTA between the Crown in right of the State of New South Wales acting through the Department of Customer Service (ABN81 913 830 179) (**Contract Authority**)and **[*Insert name and ABN of Supplier*] (Supplier**)  **MICTA No: [*Insert*]**  **Order No: [*Insert*]**  **Eligible Customer: [*Insert name, ABN and address of Eligible Customer*]**  **Supplier: [*Insert name, ABN and address of Supplier*]** |
| **Part 2 of the Order Proposal - Attachments** |
| **Attachment 1 to Order** - ICTA Order Form (including Statement of Work) |
| **Attachment 2 to Order** - Additional Service Levels |

**[*Note to user: The terms of the relevant ICTA will be incorporated by reference into each Contract*]**

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 Supplier*] 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. to Order: ICTA Order Form (including Statement of Work)

***Note to user: The relevant Order Form will be the Order Form (including any Statement of Work) under either or both the Long Form ICTA or the Mini-ICTA (as applicable). It will be finalised in accordance with clause 5 of the MICTA.]***

1. to Order: Additional Service Levels

***[Note to user: Insert in this Attachment any additional Service Levels that will apply under this Contract, in addition to any Service Levels (if any) specified in the relevant ICTA]***

If nothing is stated, no additional Service Levels apply to this Contract.

1. - MICTA Scope
   1. Definitions

In this Annexure, unless the contrary intention appears, capitalised terms have the meaning given below or as otherwise defined in this MICTA:

* 1. **ICT Professional Services** mean professional services within the scope of the Department of Customer Services’ PSPA, which are used strictly for ICT related projects or activities.
  2. **PSPA** has the meaning given to that term in the Additional Conditions.
  3. **Related Goods and Services** has the meaning given to that term under paragraph 3(b)(iii) of this Annexure.
  4. **Secondee(s)** means a member or members of the Supplier’s Personnel that may be seconded to an Eligible Customer pursuant to the terms of the Contract. A Secondee must be a permanent employee of the Supplier.
  5. Documents

This Annexure describes the MICTA Scope. It comprises the following documents:

* 1. paragraphs 1 to 4; and
  2. the following Attachments:
     1. Attachment 1 - PSPA Service Descriptions;
     2. Attachment 2 - PSPA Capability Framework;
     3. Attachment 3 - PSPA Assurance Criteria; and
     4. Attachment 4 - List of Enrolled Categories.
  3. MICTA Scope
  4. This MICTA has been established to facilitate the provision of ICT services, deliverables and/or other activities to Eligible Customers that are within the MICTA Scope.
  5. The MICTA Scope for this MICTA covers:
     1. ICT Professional Services;
     2. the services, deliverables and other activities described in this Annexure (including as set out in the Attachments to this Annexure); and
     3. software, cloud services and hardware and other ICT deliverables where provided with the aforementioned services, deliverables or activities (**Related Goods and Services**).
  6. The categories/aspects of the MICTA Scope that the Supplier has been approved, and is enrolled, to provide are set out at Attachment 4 - List of Enrolled Categories. The list of enrolled service categories may be varied throughout the Term in accordance with the MICTA (including the Additional Conditions).
  7. The purpose of accommodating Related Goods and Services under the PSPA and the MICTA Scope is to avoid the need for multiple Contracts where Related Goods and Services are to be provided to an Eligible Customer by the Supplier with ICT Professional Services or the other services, deliverables and activities described in this Annexure.
  8. For clarity, Related Goods and Services may be provided on the terms of the Mini-ICTA or Long-Form ICTA (as applicable). In the case of the Long Form ICTA, these terms may (where applicable) include any relevant module terms under the ICT Purchasing Framework.
  9. ICT Professional Services
  10. ICT Professional Services draw on the capabilities defined in Attachment 2 to Annexure F: PSPA Capability Framework.
  11. Capabilities are grouped into categories for administrative purposes. Categories are also defined in Attachment 2 to Annexure F: PSPA Capability Framework.
  12. Example service descriptions are provided at Attachment 1 to Annexure F: PSPA Service Descriptions for illustrative purposes and demonstrate how capabilities may be drawn upon to provide the ICT Activities to Eligible Customers.
  13. ICT Professional Services can be either or both of the following engagement types:
      + - 1. ***Scope-based***: This is where the Supplier may be engaged to complete a scope of work set out in an Order, which may include a Statement of Work. Scope based engagements may be priced on a fixed price fixed scope, time and materials, fixed capacity basis or any other commercial model as set out in the Order.
          2. ***Resource-based***: This is where the Supplier is engaged to provide the Supplier’s Secondees to an Eligible Customer. Supplier’s Secondees are resources which are employed by the Supplier but are used to augment the Customer’s ICT teams and act at the direction of the Customer. Unless otherwise agreed by an Eligible Customer and the Supplier as part of a Contract, resource based engagements may only be provided on a time and materials basis.

1. - PSPA Service Descriptions

[Insert]

1. - PSPA Capability Framework

[insert]

1. - PSPA Assurance Criteria

[insert]

1. - List of Enrolled Categories

The Supplier has been enrolled to provide services, deliverables and activities drawing on capabilities in the following categories:

|  |  |  |  |
| --- | --- | --- | --- |
| Groups | Categories | Description | Enrolled [Y/N] |
| Technology Services | Application and System Engineering | Capabilities and roles that relate to the design, development, build, implementation and support of applications and application integrations. | [Y/N] |
| Network | Capabilities and roles that relate to the design, build, implementation and support of networks and telecommunications. | [Y/N] |
| Infrastructure and Cloud | Capabilities and roles that relate to the design, build, implementation, support and operations of infrastructure for both on-premise and cloud environments. | [Y/N] |
| Data and Analytics | Capabilities and roles that relate to the design, build, implementation and support of data and analytics solutions. | [Y/N] |
| Cyber Security - General | Capabilities and roles that relate to the general design, assessment and operations of cyber security. | [Y/N] |
| Cyber Security – Digital Forensics | Capabilities and roles that relate to cyber security digital forensics. | [Y/N] |
| Cyber Security – Incident Response | Capabilities and roles that relate to cyber security incident response. | [Y/N] |
| Cyber Security – Maturity Assessment | Capabilities and roles that relate to cyber security maturity assessment. | [Y/N] |
| Cyber Security – Penetration Testing | Capabilities and roles that relate to cyber security penetration testing. | [Y/N] |
| Cyber Security – Vulnerability Assessment | Capabilities and roles that relate to cyber security vulnerability assessment. | [Y/N] |
| Common Services | Project | Capabilities and roles that relate to all facets of IT projects. | [Y/N] |
| Service Management | Capabilities and roles that relate ITIL service management processes. | [Y/N] |
| Product Specific Services | Microsoft | Capabilities and roles related to Microsoft technologies. | [Y/N] |
| Salesforce | Capabilities and roles related to Salesforce technologies. | [Y/N] |
| SAP | Capabilities and roles related to SAP technologies. | [Y/N] |
| AWS | Capabilities and roles related to AWS technologies. | [Y/N] |

1. - Financial Security

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

**In favour of:** The Crown in right of the State of New South Wales acting through the Department of Customer Service (ABN81 913 830 179)of McKell Building, 2-24 Rawson Place, Sydney NSW 2000 (**Contract Authority**)

**Given by:** **[*Insert full name of Institution*] ABN** **[*Insert ABN*]** of **[*Insert registered address*]** (**Institution**)

Recitals

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

Operative

1. The Institution unconditionally undertakes and covenants to pay to the Contract Authority on demand without reference to the Supplier and notwithstanding any notice given by the Supplier 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 Poll will be a continuing liability and will continue until payment is made under this Deed Poll of the maximum aggregate sum or until the Contract Authority notifies the Institution that this Deed Poll is no longer required.
3. The liability of the Institution under this Deed Poll 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 Supplier 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 Supplier 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 Poll, and as a consequence, the liability of the Institution under this Deed Poll will immediately cease.
5. This Deed Poll will be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.

**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 attorney  Registration 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: | )  )  )  )  )  )  ) |  |
| ...........................................................  Signature of witness  ...........................................................  Name of witness (print) |  | ...........................................................  Signature of attorney  By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney  ........................................................  Date |

1. - Additional Conditions

The following Additional Conditions apply to this MICTA:

**Scope and operative terms**

1. These Additional Conditions are made pursuant to clause 1.8. To the extent of any conflict or inconsistency between the other terms of this MICTA and these Additional Conditions, these Additional Conditions have priority to the extent of the conflict or inconsistency.
2. The parties agree that:
   1. to deliver the ICT Activities the Supplier must be a registered supplier under the NSW Government’s ICT Services Scheme and must retain that registration for the Term of this MICTA and any Contract entered into under it; and
   2. Annexure F (MICTA Scope) describes the services, deliverables and activities that may be procured under the Department of Customer Services’ Professional Services Purchasing Arrangement (**PSPA**). The categories of services, deliverables and activities that the Supplier is enrolled to provide is set out at Attachment 4 to Annexure F (as may be varied in accordance with the MICTA terms).
3. The Supplier may only supply ICT Activities which, unless otherwise agreed by the Contract Authority in writing, draw on capabilities:
   1. from categories it is enrolled in pursuant to this MICTA; and
   2. to which the Supplier has provided a price for at least one unit (that is, a role) as set out in the Schedule of Prices.
4. In addition to clause 3 of these Additional Conditions, where the price or rate payable under a Contract is referable to the roles set out in the Schedule of Prices (including for all resourced based engagements), the Supplier may only supply:
   1. unless otherwise agreed by the Contract Authority in writing, roles where a unit rate is listed in the Schedule of Prices for that role; and
   2. in the case of resource-based engagements (including those involving a Secondee (as defined in the MICTA Scope)), where a pricing adjustment has been provided in the Schedule of Prices with a rate multiplier of less than 1.
5. Clause 2.2(f) of the MICTA is deleted and replaced with the following warranty and acknowledgement:

“*the Supplier and its Personnel have the expertise and capabilities to carry out the activities that the Supplier is enrolled to provide as specified in Attachment 4 of Annexure F and as may be varied in accordance with the MICTA terms*.”

1. Without limiting its rights under clauses 12 or 13 of the MICTA, the Contract Authority reserves the right to:
   1. at any time, and for any reason, unilaterally withdraw or suspend enrolment of the Supplier from providing one or more categories that it is enrolled to provide under this MICTA; and
   2. enrol the Supplier into one or more existing or new categories of services, deliverables and activities within the scope of the PSPA. Any new enrolment will be completed in accordance with clause 15.4 (Variation) and will be subject to any relevant NSW procurement Laws and policies.

**Form of Contract**

1. The Supplier acknowledges that the Contract will be in the form of the ICTA as set out in Annexure I. If that Annexure includes both the Mini-ICTA and the Long Form ICTA, the Supplier agrees that Eligible Customers may contract (as applicable) under either of those Contracts having regard to whether it is a high-value or high risk engagement.
2. It is agreed that, as at the Effective Date:
   1. the Mini-ICTA may be used for low risk and low-value procurements up to $1 million in value (excluding GST); and
   2. the Long Form ICTA may be used for high risk or high-value procurements over $1 million in value (excluding GST).

**Performance**

1. The written or electronic KPI Performance Report to be provided by the Supplier pursuant to clause 7.1 of the MICTA must be provided in the form of the template in Part A of Attachment 2 of the Key Details (or such other template as notified by the Contract Authority to the Supplier in writing).
2. The Supplier must ensure that its Personnel have all requisite qualifications and meet any capabilities as set out in this MICTA and the Contract. Within 2 Business Days of the Contract Authority’s request (or at such other time as agreed between the parties in writing), the Supplier must (at its sole cost) provide sufficient evidence and details to the Contract Authority of the Supplier Personnel’s experience, qualifications, certifications and any relevant licences. The Supplier acknowledges that such evidence and details may (without limiting any other rights under this MICTA) be used by the Contract Authority, and shared with Eligible Customers, to assess the Supplier’s Personnel capabilities and whether they are appropriate persons to meet the capabilities and requirements under the MICTA and any Contract.
3. The Supplier is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the foregoing and the reporting, sharing and use of the Supplier’s Personnel’s Personal Information as contemplated under this MICTA, including these Additional Conditions. In supplying Personal Information to the Contract Authority, the Supplier warrants and represents that it has all necessary consents to do so.

**Benchmarking**

1. Notwithstanding clause 9, the outcome of any benchmarking exercise (including as set out in any Adjustment Notice) can only take effect for each Additional Period (if any).

**Updating information**

1. Without limiting the obligations under clause 15.10, the Supplier must promptly update and advise the Contract Authority where there is any change to the Supplier’s or the Supplier’s Representative’s contact or Notice details. The onus is on the Supplier to ensure that:
   1. these details are kept up-to-date and current; and
   2. it maintains a current and up-to-date eTendering account and Supplier “hub profile”.
2. The Contract Authority has no liability to the Supplier for any failure of the Supplier to comply with clause 13 of these Additional Conditions.
3. - ICTA

***[Note to Tenderer: The ICTA will be the Long Form ICTA or the Mini-ICTA (or both).]***

See attached at Attachment 1 and Attachment 2 to this Annexure (if applicable).

1. - Mini-ICTA

See attached.

***[Note to user: In this Attachment, please attach the Mini-ICTA. The parties may negotiate certain Mini-ICTA Order Form details when negotiating the MICTA, and those details should be specified in the Mini-ICTA Order Form such that they apply to each Contract.]***

1. – Long Form ICTA

See attached.

***[Note to user: In this Attachment, please attach the Long Form ICTA. The parties may negotiate certain ICTA Order Form details when negotiating the MICTA, and those details should be specified in the ICTA Order Form such that they apply to each Contract.]***