**Mini-ICT Agreement (Mini-ICTA)**

**For the Professional Services Purchasing Arrangement**

**Parties** The party identified at Item 1 of the Order Form (**Customer**)

The party identified at Item 3 of the Order Form (**Supplier**)

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| Information | **Guidance note:** The parties' names and (where applicable) ABNs should be clearly described in the relevant parts of the Order Form, relevant Schedules and the execution clause. |

BACKGROUND

1. The Supplier has represented to the Customer that it has the relevant skills and experience to provide the Supplier's Activities.
2. The Customer has agreed to appoint the Supplier, on a non-exclusive basis, to carry out the Supplier's Activities, subject to the Supplier's ongoing compliance with the terms and conditions of this Agreement, and the Supplier has agreed to accept that appointment.

PART A: PRELIMINARIES

# Definitions and Agreement documents

## Defined terms and interpretation

1. In this Agreement the definitions and interpretation provisions set out in Schedule 1 apply.

## Agreement documents

1. This Agreement is made up of the following documents:

### any Additional Conditions;

### these Core Terms and Schedule 1 (Definitions and Interpretation);

### the Module Terms;

### the Order Form (excluding any Additional Conditions or Supplier's Documents);

### any other document expressly incorporated into this Agreement as set out in the Order Form; and

### any Supplier's Documents annexed to the Order Form.

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| Information | **Guidance note:** Where the parties agree to incorporate certain terms proposed by the Supplier into this Agreement, these should be clearly identified and introduced as Supplier's Documents pursuant to the process set out in clause 1.5 and not characterised as "Additional Conditions". |

## Order of precedence

1. In the event of any conflict or inconsistency between the documents set out in clause 1.2, the document listed higher in the list takes priority over the document listed lower in the list to the extent of such conflict or inconsistency, regardless of anything to the contrary in those documents.

## Role of the Master ICT Agreement

1. Where this Agreement is made under a MICTA, the Supplier acknowledges that its MICTA with the Contract Authority constitutes a standing offer under which it offers to supply the deliverables, services and/or activities specified in the MICTA to Eligible Customers, including the Customer:

### pursuant to the terms of the MICTA and this Agreement; and

### at rates and prices which are the same as or less than those set out in the MICTA (and, upon the commencement of any Renewal Period, at rates and prices which are the same as or less than any reduced rates and prices then applying under the MICTA at the time of such renewal).

## Supplier's Documents

### If any Supplier's Documents are attached to the Order Form, they form part of this Agreement (subject to clause (b)).

### Supplier's Documents do not apply to the extent that they:

#### deal with the same or similar subject matter as a provision of the Core Terms, Module Terms or any Additional Conditions (for example, provisions in the Supplier's Documents that deal with limitations of liability will not apply, in whole, as the Core Terms also deal with this subject matter);

#### are inconsistent, or in conflict, with the Core Terms, Module Terms or any Additional Conditions;

#### alter, or seek to alter, the legal obligations of, or relationship between, the Customer and the Supplier, as set out in the Core Terms, Module Terms or any Additional Conditions;

#### impose additional obligations or requirements on the Customer, beyond those set out in the Core Terms, Module Terms or any Additional Conditions;

#### limit any rights or remedies of the Customer or relieve the Supplier from any of its obligations or responsibilities under the Core Terms, Module Terms or any Additional Conditions; or

#### include any click-wrap, "pop-up" or similar terms and conditions.

## Additional orders

### If, at any time during the Term, the Customer wishes to increase the volume or quantum of Services and/or Deliverables, the Customer may, in its sole discretion, do so by submitting a written notice to the Supplier. The written notice will be in the form required by the Customer and will include information relating to the additional order, including the number of additional Services and/or Deliverables required.

### Any increased Deliverables and/or Services:

#### will be supplied for the same rates and charges specified in the Order Form (or such other rates or charges agreed between the parties in writing): and

#### must not, when combined with other prices paid or payable under this Agreement, total or exceed $1,000,000 (excluding GST).

### The parties agree that each time the Customer submits an additional order to the Supplier:

#### that additional order forms part of this Agreement, and will not constitute a separate contractual relationship between the parties; and

#### the Supplier must increase the supply of the Deliverables and/or Services in accordance with the additional order and this clause 1.6.

## No exclusivity or minimum commitment

1. The Supplier acknowledges and agrees that:

### except to the extent expressly agreed between the parties in writing, the Customer is under no obligation to acquire any minimum volumes of Services or Deliverables or to meet any minimum spend level under this Agreement; and

### the Customer is not, by executing this Agreement, restricted in any way from engaging any other person to provide activities which are the same as, or similar to, the Supplier's Activities.

## Additional Conditions

1. Where specified in the Order Form, the parties agree to comply with any Additional Conditions.

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| Information | **Guidance note:** Any Additional Conditions must be consistent with all applicable New South Wales procurement Laws and policies and New South Wales Procurement Board Directions. |

# Term

### This Agreement begins on the Commencement Date and continues for the Initial Term, unless terminated earlier by agreement in writing between the parties or in accordance with the terms of this Agreement.

### The Customer may, at its sole discretion, renew the Agreement for any Renewal Period by providing at least 15 Business Days' notice in writing to the Supplier before the expiry of the Initial Term.

PART B: SUPPLIER'S ACTIVITIES

# Performance of the Supplier's Activities

## Performance obligations

### The Supplier must carry out the Supplier's Activities:

#### to meet the timeframes and all other obligations under this Agreement, including the Order Documents;

#### with due skill, care and diligence and in a proper and timely manner;

#### in a manner that is safe to both people and the environment and minimises any disruption, interference or inconvenience to the Customer or its operations, Personnel or Other Suppliers; and

#### in a manner that meets or exceeds any Service Levels as specified in the Statement of Work or, where none are specified, in accordance with Best Industry Practice.

### The Supplier must provide Deliverables which are fit for purpose and meet the other requirements of this Agreement.

### The Supplier must carry out the Supplier's Activities in accordance with any stages or other project delivery methodologies described in the Statement of Work. Where the Statement of Work specifies that the Supplier’s Activities need to be performed in stages, the Supplier must not proceed to the next stage without the Customer’s prior written consent. Except where otherwise specified in the Order Documents, the signing of this Agreement is deemed to be the Customer’s consent to proceed with work in stage one.

## Governance, meetings, reports

### The parties must perform their respective roles and responsibilities in accordance with any governance arrangements specified in the Statement of Work.

### The Supplier's Representative must meet with the Customer's nominated Personnel for performance reviews and other meetings at the times and locations specified in the Statement of Work or as otherwise agreed between the parties in writing.

### The Supplier must provide to the Customer’s Representative the performance and other reports specified in the Statement of Work at the frequency, and in accordance with the requirements, set out in the Statement of Work.

## Customer Supplied Items

### If applicable, the Customer will provide any CSI specified in the Statement of Work.

### The Supplier acknowledges and agrees that:

#### CSI must be used in accordance with the requirements specified in the Statement of Work and this clause 3.3;

#### the Supplier must take reasonable steps to protect the CSI from any loss, destruction or damage and must promptly report such loss, destruction or damage to the Customer;

#### the Supplier will obtain no title or interest to any CSI and must not part with possession of any CSI or allow the creation of any encumbrance or security interest over CSI;

#### it is the Supplier's responsibility to inspect and assess any CSI before the Supplier or its Personnel use it to ensure the CSI is suitable and contains no defects; and

#### the Customer provides no warranty or representation about the suitability or fitness of any CSI for the Supplier's Activities or any other use (except to the extent expressly specified in the Statement of Work).

### Unless other arrangements have been agreed by the Customer in writing, the Supplier must, at its cost, return any CSI to the Customer (or otherwise deal with CSI as directed by the Customer's Representative in writing) once it is no longer required for the purposes of this Agreement.

### The Supplier is liable to the Customer for any loss, destruction or damage to CSI to the extent that any such loss, destruction or damage is caused or contributed to by the Supplier or its Personnel or resulted from the failure of the Supplier to comply with its obligations under this clause 3.3.

## ICT Accessibility

### The Supplier acknowledges that the Customer is committed to:

#### meeting Accessibility Standard AS EN 301 549 (**Accessibility Standard**); and

#### ensuring that the Services and Deliverables support access to information and communications technology for all Customer Users, regardless of disability.

### Without limiting any other obligation under this Agreement, the Supplier must ensure that, to the extent reasonably practicable, all Services and Deliverables:

#### are available to Customer Users on a non-discriminatory accessible basis and do not infringe anti-discrimination Laws; and

#### meet the Accessibility Standard and any other accessibility requirements to the extent specified in the Statement of Work.

## Co-operation with the Customer and Other Suppliers

### Each party agrees to reasonably co-operate with the other party and its Personnel to promote the timely progress of the activities contemplated by this Agreement.

### The Supplier must co-operate and work collaboratively with any Other Suppliers in connection with the provision of the Supplier's Activities as specified in the Statement of Work or where reasonably required by the Customer.

## Delays

### The parties must keep each other informed of anything that they become aware of which is likely to cause a Delay.

### The Supplier must manage the Supplier's Activities to anticipate, avoid and mitigate potential Delays.

### If a Delay occurs and that Delay was beyond the reasonable control of the Supplier, the Supplier may request an extension of time by submitting a request to the Customer with the particulars of the Delay (including its cause). In this event, the Customer will reasonably consider the request and grant an extension of time, of a duration reasonably determined by the Customer having regard to the extent to which the Delay was beyond the reasonable control of the Supplier and could not be avoided or mitigated by the Supplier.

## Site

### Where specified in the Statement of Work, the Supplier must carry out the Supplier's Activities at the locations or sites specified in the Statement of Work (**Site**).

### The Supplier must ensure that when entering any Site, its Personnel comply with any conditions of entry or other Site specific requirements as specified in the Statement of Work or notified by the Customer to the Supplier from time to time.

# Document Deliverables

## General

### The process in this clause 4.1 applies to all Deliverables that comprise written, printed, digital or electronic Materials on which there is writing or other text or symbols, including all Plans (**Documents**).

### The Supplier must submit all Document Deliverables to the Customer for approval in accordance with this clause 4 and by the dates specified in the Statement of Work.

### The Document Deliverables must:

#### be in English;

#### be fit for their intended purpose;

#### be free of Defects; and

#### comply with any applicable Specifications and any other requirements in the Order Documents.

### A Document Deliverable will not be deemed approved by the Customer until the Customer notifies the Supplier in writing that it approves the relevant Document Deliverable, except where otherwise agreed in writing between the parties.

## No obligation

1. The Customer does not assume or owe any duty of care to the Supplier to review any Document Deliverable for errors, omissions or compliance with this Agreement and the failure of the Customer to do so will not prejudice the Customer's rights against the Supplier whether under this Agreement or otherwise at Law.

# Defects

### If the Supplier identifies any Defects during the Warranty Period, it must immediately notify the Customer's Representative of the nature and extent of those Defects.

### If, before the expiry of the Warranty Period, the Customer informs the Supplier of, or the Supplier identifies, a Defect, the Supplier must, where requested by the Customer and at no cost to the Customer, supply the Services and Deliverables again in a prompt and timely manner (or carry out such other remedial action as agreed between the parties in writing).

### For clarity, this clause and the Warranty Period do not exclude or restrict any guarantees or remedial obligations that are provided under other provisions of this Agreement or at Law with respect to the Services and Deliverables.

# Personnel

## General

### The Supplier must ensure that its Personnel do not cause a breach of the Agreement.

### The Supplier must not involve any of its Personnel in connection with the Supplier's Activities unless they:

#### have the requisite competencies, skills, qualifications and experience to carry out the Supplier's Activities;

#### have received training in relation to the Supplier's and its Personnel’s obligations under this Agreement. This training must include initial and annual security awareness training of the Supplier's cyber and other security obligations; and

#### meet all other Personnel requirements under this Agreement.

### The Customer may request that any Personnel (including Nominated Personnel and subcontractors) are replaced if the Customer has reasonable concerns that such Personnel are not appropriate persons to carry out the Supplier's Activities or if such Personnel cause the Supplier to breach this Agreement. In this event, the Supplier must promptly replace any such Personnel with persons who meet the requirements of this Agreement and, in relation to any replacement Nominated Personnel or subcontractors, are approved by the Customer (acting reasonably).

### To protect the legitimate interests of the parties, for the Term and six months after the end of the Term, neither party may, without the prior written consent of the other party, induce or cause a third party to induce the other party's Personnel engaged in the performance of this Agreement to enter into a contract for service or a contract of employment with it.

### General solicitation for employment which is placed in good faith, such as on a jobs website or in a newspaper advertisement, will not constitute a breach of clause 6.1(d).

## Nominated Personnel

1. The Supplier must:

### ensure that each of its Nominated Personnel is made available to perform their role/responsibilities as set out in the Order Form; and

### not remove or replace any of the Nominated Personnel unless the:

#### Customer requests that the Nominated Personnel are replaced; or

#### Nominated Personnel are no longer available to carry out the Supplier's Activities due to a substantial change in the relevant Nominated Personnel's personal circumstances.

## Subcontracting

### The Supplier must not subcontract any of its obligations under this Agreement unless pre-approved by the Customer in writing and subject to compliance with this Agreement and any conditions of approval specified in the Order Form or notified by the Customer to the Supplier. The subcontractors specified in Item 11 of the Order Form are approved as at the Commencement Date.

### If any subcontractors will have access to any Customer Data, Personal Information or Confidential Information, the relevant subcontract must include provisions which comply with the Customer Data, privacy, and security and confidentiality requirements under this Agreement.

### The Supplier is responsible for its subcontractors, and liable for their acts and omissions, as though they were the acts and omissions of the Supplier.

## Background checks

### Before involving any Personnel in connection with this Agreement (including providing Personnel with access to any Customer Data, Personal Information or Confidential Information under this Agreement), the Supplier must, in accordance with all relevant Laws, carry out background checks of those Personnel to ensure that they are fit and proper persons to be involved in connection with this Agreement. At a minimum, these background checks will consist of a national police check or equivalent State criminal check. The Supplier must also comply with any additional background check requirements where specified in the Additional Conditions or the Order Form.

### At the Customer's request, the Supplier must promptly provide, or make available, to the Customer the results of background checks undertaken under this Agreement. In providing any results to the Customer, the Supplier warrants that it has obtained the necessary consents to do so.

# Compliance

## General

1. The Supplier must:

### acquire and maintain all Authorisations necessary for the performance of the Supplier's Activities;

### comply with all Policies, Codes and Standards and Laws, such as all relevant environmental, workplace and health and safety Laws (including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW));

### comply with all employment-related Laws in relation to it and its Personnel, including in relation to workers’ compensation, leave entitlements, payroll tax, income tax, PAYG tax, superannuation contributions and all other employment entitlements; and

### ensure that it and its Personnel comply with any reasonable directions made by the Customer in relation to the Supplier's Activities.

## Conflicts of Interest

### The Supplier must:

#### promptly notify the Customer in writing if a Conflict of Interest arises or is likely to arise during its performance of the Supplier's Activities; and

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

### If such a Conflict of Interest, in the Customer's view, significantly affects the interests of the Customer, and the Supplier is unable to resolve the Conflict of Interest to the satisfaction of the Customer within 14 days of receipt of a notice from the Customer, then the Customer will be entitled to terminate this Agreement under clause 18.1(c).

# Modern Slavery

## Modern Slavery warranties

1. The Supplier warrants and represents that:

### it has undertaken thorough investigations to confirm it has not been convicted of a “modern slavery offence” as defined under the *Modern Slavery Act 2018* (NSW);

### it complies with, and will continue to comply with, as applicable, the Modern Slavery Lawsand will take reasonable steps to ensure that Modern Slavery is not occurring in its supply chains and operations and those of any subcontractor or entity that the Supplier owns or controls; and

### it has taken, and will take in the future, all necessary actions to confirm the above warranties and representations.

## Obligations

### If the Supplier becomes aware of any actual or suspected Modern Slavery risks in, or practices being carried out in, the Supplier’s supply chains or operations, the Supplier must:

#### immediately notify the Customer of those risks or practices and of the remediation action that the Supplier proposes to take to eliminate or minimise those risks or practices; and

#### take any such additional remediation action reasonably required by the Customer.

### If the Supplier is a "reporting entity" for the purposes of the Modern Slavery Laws, it must provide the Customer with a copy of any modern slavery statement as required or volunteered under the Modern Slavery Laws at the Customer's request.

### The Supplier must provide the Customer with any information or assistance reasonably requested by the Customer to enable the Customer to meet its obligations under the Modern Slavery Laws.

# Acceptance Testing

## General

### Where it is specified in the Statement of Work that Acceptance Tests will be carried out with respect to any Services or Deliverables:

#### the parties agree to carry out such Acceptance Testing in accordance with the procedure specified in the Statement of Work and to test whether the Services and Deliverables meet the acceptance criteria specified in the Statement of Work; and

#### if the Services and Deliverables pass Acceptance Testing and meet the acceptance criteria specified in the Statement of Work, the Customer will issue an Acceptance Certificate.

### If a Service or Deliverable fails to pass any Acceptance Tests, the Supplier must (unless otherwise directed by the Customer) supply at its cost the Service or Deliverable again until it meets the acceptance criteria specified in the Statement of Work.

### If a Deliverable or Service fails to pass Acceptance Test after two or more rounds of Acceptance Tests, the Customer may, without limiting its other rights and remedies, immediately terminate this Agreement or reduce its scope or accept the Deliverable or Service subject to a reasonable reduction to the price payable for those Deliverables or Services as reasonably agreed between the parties.

## Effect of Acceptance Certificate

1. An Acceptance Certificate will not be taken as an admission or evidence that the Deliverables or Services comply with, or that the Supplier has performed its obligations under, this Agreement.

# Intellectual Property

## Existing Materials

### Either party may provide Existing Materials to the other party. The Intellectual Property Rights in those Existing Materials remain with the party making them available or their licensors.

### The Customer grants to the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Customer's Existing Materials for the Term and to the extent necessary to carry out the Supplier's Activities.

### The Supplier grants to the Customer a non-exclusive, transferable, royalty-free and perpetual licence to use the Supplier's Existing Material for any of the following purposes:

#### to exercise the Customer's rights under this Agreement;

#### to exercise the Customer's or Crown's functions and powers; and

#### to obtain full use of the Services and the Deliverables.

## New Materials

### Where the Supplier creates New Materials:

#### the Intellectual Property Rights in those New Materials are owned by the Supplier; and

#### the Supplier grants to the Customer a non-exclusive, transferable, royalty-free and perpetual licence to use the New Materials for any of the following purposes:

##### to exercise the Customer's rights under this Agreement;

##### to exercise the Customer's or Crown's functions and powers; and

##### to obtain full use of the Services and the Deliverables.

### By exception:

#### where the Supplier's Existing Material or any of the New Materials form part of a subscription service, the Customer's licence will end on termination or expiry of this Agreement; and

#### alternative arrangement for particular items of Existing Materials or New Materials may be set out in the Additional Conditions (this may include the Customer's ownership of the Intellectual Property Rights in New Materials).

## Third party Intellectual Property Rights

### If any aspect of the Services or Deliverables comprise third party Intellectual Property Rights, the Supplier must:

### ensure that it procures for the Customer a licence on terms no less favourable than the terms set out in this clause 10;

### ensure that the use of such third party Intellectual Property Rights does not constrain the Customer's use of the Services or any Deliverables; and

### otherwise, not use any third party Intellectual Property Rights in the provision of the Services or the production of any Deliverables.

## Consents and Moral Rights

### Before provision to the Customer or use in connection with this Agreement, the Supplier must ensure that it obtains all necessary consents from all authors of all Materials and Deliverables provided or licenced to the Customer under this Agreement to any use, modification or adaptation of such Materials and Deliverables to enable the Customer to fully exercise its Intellectual Property Rights under this Agreement, including:

### the use, modification or adaptation of the Materials or Deliverables; or

### any other dealing which might otherwise constitute an infringement of the author's Moral Rights.

## Scope

1. The parties understand and agree that the Intellectual Property Rights granted to the Customer under this Agreement:

### extend on the same terms to the Customer's Personnel and to any other categories of Customer Users as specified in the Statement of Work; and

### do not limit or reduce the Supplier's or its Personnel's obligations under this Agreement with respect to the Customer's Confidential Information, Personal Information and Customer Data.

## Additional obligations

1. The Supplier must, at its cost, do all acts (and procure that all relevant persons do all acts) as may be necessary to give effect to the intellectual property provisions in this Agreement including by executing (or procuring the execution of) any required documents or effecting any required registrations.

PART C: DATA AND SECURITY

# Customer Data

## Obligations in relation to Customer Data

### This clause 11 applies where the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Customer Data in connection with this Agreement.

### The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to any Customer Data, other than a right to use Customer Data for the sole purpose of, and only to the extent required for, the carrying out of the Supplier's Activities in accordance with this Agreement or such other purposes as may be approved by the Customer in writing (**Permitted** **Purpose**).

### The Supplier must:

#### seek the Customer's prior consent to the use of any Customer Data for any purposes other than the Permitted Purpose, which consent may be given or withheld in the Customer's sole discretion;

#### not sell, assign, lease or commercially transfer or exploit any Customer Data, including using any Customer Data to target advertising to the Customer or any Customer User;

#### ensure that all of its Personnel who access, or have the ability to access, Customer Data are appropriate people to do so;

#### ensure that appropriate security controls are in place to monitor Customer Data;

#### apply the security, technical and organisational controls which are appropriate to ensure that all Customer Data is at all times protected from any unauthorised access, modification or disclosure and only handled and processed in accordance with this Agreement;

#### ensure that Customer Data is at all times managed in accordance with the *State Records Act 1998* (NSW) (to the extent applicable);

#### where applicable, ensure continuity of access to, and use of, Customer Data (including as a result of any disaster, outage, maintenance activity or other event that has the potential to impact business continuity);

#### ensure that its Personnel (including subcontractors) comply with this clause 11.1(c) and manage and safeguard Customer Data in accordance with all other requirements of this Agreement; and

#### promptly notify the Customer when it is, or may be required by Law, to disclose any Customer Data to any third party.

## Location of Customer Data

### The Supplier must not:

#### transfer, store, process, access, disclose or view Customer Data; or

#### perform any of its obligations under this Agreement which could involve Customer Data being stored, processed, accessed, disclosed or viewed,

#### outside of New South Wales, Australia, except in accordance with clause 11.2(b).

### Notwithstanding clause 11.2(a), the Supplier may transfer, store, process, access, disclose or view Customer Data outside of New South Wales if permitted to do so under Item 13 of the Order Form and subject to compliance with the Data Location Conditions.

## General

### If requested by the Customer, the Supplier must provide the Customer with a report setting out how it will comply, and has complied, with its obligations under this clause 11.

### Where applicable, the Supplier must comply with any additional obligations relating to Customer Data as may be specified in the Order Documents or reasonably notified by the Customer to the Supplier.

# Privacy

### If the Supplier or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Personal Information in connection with this Agreement (regardless of whether or not that Personal Information forms part of the Customer Data), the Supplier must (and must ensure that its Personnel):

#### comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;

#### only use that Personal Information for the sole purpose of carrying out the Supplier's Activities;

#### not disclose the Personal Information to any other person without the Customer’s prior written consent, which may be made subject to any applicable conditions;

#### not transfer the Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia unless permitted in the Statement of Work and subject to the Supplier's and its Personnel's compliance with the Data Location Conditions;

#### protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;

#### not use Personal Information within any development or testing environments;

#### comply with any other requirements with respect to privacy as specified in the Order Form;

#### immediately notify the Customer if it becomes aware that there has been an actual, alleged or suspected Security Incident involving Personal Information; and

#### notify the Customer as soon as reasonably possible if the Supplier is:

##### approached by any privacy commissioner or other Authority concerning any Personal Information; or

##### required by Law to produce or disclose any information in relation to any incident involving Personal Information (including any privacy breach) and engage in reasonable consultation with the Customer regarding its proposed response.

### Nothing in this clause 12 is intended to limit any obligations that the Supplier has at Law with respect to privacy and the protection of Personal Information.

# Security

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| Information | **Guidance note:** Additional security requirements or standards may be specified in the Order Form. |

## General

### The Supplier must carry out the Supplier's Activities in accordance with Best Industry Practices for security and all relevant security Policies, Codes and Standards.

### The Supplier must have and maintain a formal security program in accordance with Best Industry Practices for security and which is comprehensive in enabling the Supplier to meet its security and privacy obligations under this Agreement. The security program must be designed to:

#### ensure the security and integrity of the Services, Deliverables, the Customer Environment and Customer Data;

#### protect against threats or hazards to the security and integrity of the Services, Deliverables, the Customer Environment and Customer Data; and

#### prevent any Security Incident.

### The Supplier must promptly provide, or make available, its security program to the Customer on request.

### The Supplier must notify the Customer immediately of it becoming aware of a Security Incident.

### As soon as possible after becoming aware of any Security Incident, or where the Customer advises the Supplier that it has reasonable cause to believe there has been a Security Incident, the Supplier must:

#### contain and mitigate the Security Incident;

#### investigate the Security Incident (including by conducting a root cause analysis of the Security Incident) and share the results of its analysis and its remediation Plan with the Customer on request;

#### take a snapshot of impacted systems (where available) for use in forensic activity as required by the Customer; and

#### provide to the Customer, to the extent known at the time:

##### the date of the Security Incident;

##### a description of the Security Incident;

##### a list of corrective actions taken by the Supplier to contain and mitigate the impact of the Security Incident; and

* + 1. a summary of any information (including any Customer Data or Personal Information) lost, accessed or disclosed in the Security Incident.

### The Supplier must take all reasonable steps to prevent a Security Incident from recurring.

### In addition to the above security obligations, the Supplier must comply with any additional security obligations or standards specified in the Order Form.

### In the event of any conflict or inconsistency between any of the security obligations specified in this Agreement, the higher or more onerous standard applies to the extent of the conflict or inconsistency.

## Audits and compliance

1. The Supplier must audit its compliance with its security obligations under this Agreement in accordance with any timeframes specified in Item 15 of the Order Form and, where no such timeframes are specified, on an annual basis.

## 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 Agreement; 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 Agreement;

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

##### where required by any other Laws, provided that the Recipient gives the Discloser reasonable notice of any such legal requirement 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 Customer, to:

###### the Contract Authority or responsible Minister (where this Agreement is made under a MICTA); or

###### any Government Agency or Eligible Customer or responsible Minister for a Government Agency or an 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 Agreement.

### This clause 13.3 does not prevent the Customer from disclosing any information (including Confidential Information) of the Supplier to the extent that this Agreement otherwise permits the disclosure of such information.

PART D: FEES AND PAYMENT

# Payment and invoicing

### Subject to the Supplier's provision of the Supplier's Activities in accordance with this Agreement, the Customer agrees to pay the fees set out in the Order Form:

#### by electronic funds transfer to the bank account specified in the Order Form;

#### in accordance with the payment requirements and timeframes set out in the Order Form and this clause 14; and

#### within 30 days following receipt of a Correctly Rendered Invoice (or such earlier time as specified in the Order Form).

### If the Customer disputes any invoiced amount, the Customer may withhold that disputed amount until the dispute is resolved.

### The making of a payment is not an acknowledgment that the Supplier's Activities have been provided in accordance with this Agreement.

## Payment disputes

1. If the Customer disputes any part of an Invoice, the Customer may withhold payment for the amount in dispute until such dispute is resolved. In such case, the Customer must promptly notify the Supplier of the amount in dispute and the reasons for disputing it.

## Set off

### The Customer may, on notice to the Supplier, deduct from any amount otherwise due to the Supplier:

#### any debt due from the Supplier to the Customer; or

#### any Claim to money which the Customer may have against the Supplier,

1. under or in connection with this Agreement.

### The rights given to the Customer under this clause 14.3 are in addition to and do not limit or affect any other rights of the Customer under this Agreement or at Law. Nothing in this clause 14.3 affects the right of the Customer to recover from the Supplier the whole of the debt or Claim in question or any balance that remains owing.

## Taxes

### Except where expressly set out in the Agreement, the fees are inclusive of all taxes, excluding GST.

### The Customer will pay GST in accordance with applicable Laws.

PART E: RISK ALLOCATION AND MANAGEMENT

# Business contingency

### If specified in the Statement of Work, the Supplier must develop the business contingency or continuity Plans specified in the Statement of Work. Any such Plans must be provided to the Customer as Document Deliverables by the dates specified in the Statement of Work.

### While carrying out the Supplier’s Activities, the Supplier must comply with any approved business contingency or continuity Plans and retain measures and procedures in place to ensure business continuity and no disruption to the Customer.

# Insurance

### The Supplier must hold and maintain:

#### workers' compensation insurance as required by Law; and

#### each of the following insurances, for the periods and in the amounts specified below or as otherwise specified in Item 16 of the Order Form:

##### public liability insurance with a limit of cover of at least $20 million per occurrence, to be held for the duration of the Supplier's Activities;

##### if specified in the Order Form, product liability insurance with a limit of cover of at least $20 million per occurrence and in the annual aggregate, to be held for the duration of the Supplier's Activities and for at least seven years afterwards;

##### professional indemnity insurance with a limit of cover of at least $10 million per Claim and in the annual aggregate, to be held for the duration of the Supplier's Activities and for at least seven years afterwards;

##### if specified in the Order Form, cyber security insurance with an annual limit of cover of at least $2 million for all loss or liability covered by the policy, to be held for the duration of the Supplier's Activities; and

##### such other insurances as specified in the Order Form.

### Within 10 Business Days following a request from the Customer, the Supplier must provide the Customer with a certificate of currency or other evidence that the Supplier holds all necessary insurances as required under this Agreement.

# Suspension

### The Customer may direct the Supplier in writing to suspend the performance of the Supplier’s Activities at any time. Any such suspension will be effective on and from the date specified in the Customer’s direction.

### If the suspension is directed by the Customer, other than due to any breach by the Supplier or failure or delay of the Supplier or its Personnel to carry out its obligations under this Agreement, the Supplier will be entitled to invoice the Customer the direct, reasonable and substantiated costs (excluding any profit, profit component or overheads) necessarily incurred by the Supplier as a result of implementing the suspension, to the extent such costs could not have been reasonably mitigated or avoided by the Supplier.

# Termination

## Termination for cause by the Customer

1. The Customer may (in its sole discretion) immediately terminate this Agreement or reduce its scope by written notice to the Supplier:

### if the Supplier breaches a term of this Agreement which is:

#### not capable of remedy; or

#### capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;

### if an Insolvency Event occurs in respect of the Supplier, to the extent there is no prohibition at Law in respect of such termination; or

### in any other circumstances set out in this Agreement, including the Additional Conditions,

1. in which circumstances the Customer’s sole liability will be to pay the Supplier (subject to substantiation by the Supplier and the Supplier submitting a Correctly Rendered Invoice in accordance with this Agreement) for work carried out prior to the date of termination or reduction in scope.

## Termination for convenience by the Customer

### In addition to the Customer's other rights under this Agreement and at Law, the Customer may for its sole convenience, and for any reason, by written notice to the Supplier immediately terminate this Agreement or reduce its scope, effective from the time stated in the Customer's notice, or if no such time is stated, at the time notice is given to the Supplier.

### If the Customer terminates this Agreement or reduces its scope under clause 18.2(a), the Supplier:

#### must take all reasonably practicable steps to mitigate the costs referred to in clause 18.2(b)(ii); and

#### will be entitled to payment of the following amounts, subject to substantiation by the Supplier, being:

##### for:

###### work carried out prior to the time of termination or reduction in scope; and

###### third party costs and disbursements duly incurred, with the authorisation of the Customer, but only to the extent referable to the period prior to the effective time of termination,

* + - 1. which would have been payable if this Agreement had not been terminated or reduced in scope and the Supplier submitted an Invoice for the work carried out prior to this date; and

##### such other specific costs itemised in Item 17 of the Order Form (if any),

* + 1. but in no case will the total amount payable to the Supplier be more than the total fees that would have been payable by the Customer had this Agreement not been terminated.

### The Supplier understands and agrees that the Customer is not liable for, and the Supplier is not entitled to make any Claim against the Customer with respect to, the Customer's termination of this Agreement for convenience, other than for the amounts payable under this clause 18.2.

## Consequences of reduction of scope

1. If the Customer exercises its right to reduce the scope of this Agreement pursuant to this Agreement, the parties agree that the fees for the remaining Supplier's Activities will be reduced proportionately.

## Termination for cause by the Supplier

### The Supplier may immediately terminate this Agreement by at least 10 Business Days' prior written notice to the Customer if the Customer materially breaches the Agreement and does not remedy the breach within 60 days of receiving a written notice from the Supplier requiring it to do so.

### This clause 18.4 exhaustively sets out the Supplier’s rights to terminate this Agreement.

# Consequences of expiry or termination

1. Except where otherwise agreed by the Customer in writing, on the expiry or termination of this Agreement, the Supplier must:

### stop work (subject to any ongoing transition-out obligations); and

### at the Customer's election, securely return or destroy the Customer's Confidential Information, Customer Data and intellectual property (except for any information that the Supplier is required by Law to keep).

# Warranties

## Mutual warranties

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

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

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

## General Supplier warranties

1. Without limiting any other warranty under this Agreement, the Supplier represents, warrants and undertakes to the Customer that:

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

### 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 Agreement;

### to the extent that the *Personal Property Securities Act 2009* (Cth) applies to any Materials or Deliverables supplied in connection with this Agreement, they do not breach any security agreement that the Supplier has with a third party and are within the ordinary course of the Supplier's business;

### the information that is provided to the Customer 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 Customer;

### it is not aware of any information which, if it had provided that information to the Customer, may reasonably be expected to have had a material effect on the decision made by the Customer to enter into this Agreement;

### 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;

### it and its Personnel have the expertise and skills to carry out the Supplier's Activities;

### the Supplier's Activities will meet the Specifications and other requirements of this Agreement;

### it has all the Intellectual Property Rights and has procured the necessary Moral Rights consents required to:

#### carry out the Supplier's Activities; and

#### enable the Customer and each Customer User (or other permitted licensee) to use the requisite Services and/or Deliverables in the manner envisaged by this Agreement;

### the supply of the Supplier's Activities will not infringe any Intellectual Property Rights or Moral Rights;

## the Supplier's Activities will only be carried out by Supplier's Personnel who meet the Personnel requirements under this Implied warranties

### Agreement; and

### it will perform the Supplier's Activities in accordance with all applicable Laws.

## Implied warranties

1. This Agreement (including this clause 20) does not operate to exclude any statutorily implied representations, warranties, conditions or guarantees which cannot legally be excluded.

# Indemnities and liability

## Indemnities

1. The Supplier indemnifies the Indemnified Entities against any Loss arising out of, or connected with any:

### personal injury or death to any person or damage to, or loss of any property to the extent caused or contributed to by an act or omission of the Supplier or any of the Supplier’s Personnel;

### breach of the Supplier's or its Personnel's obligations under clauses 11 (Customer Data), 12 (Privacy), 13 (Security) or 13.3 (Confidentiality);

### Claim brought by a third party arising out of, or in connection with, any actual or alleged infringement of Intellectual Property Rights or Moral Rights in the Deliverables or Services or associated with the Supplier's Activities; or

### fraud, recklessness or Wilful Misconduct of the Supplier or its Personnel.

## Indemnities not affected by insurance

1. For clarity, the Supplier’s obligations and liability to indemnify the Indemnified Entities under this Agreement or otherwise, will not be affected in any way by any terms of insurance or any refusal by the insurer to indemnify the Supplier under the policies of insurance.

## Status of indemnities

1. The Supplier’s obligations to indemnify any Indemnified Entities who are not the Customer, under this Agreement or otherwise, are held on trust by the Customer and may be fully and effectively enforced by the Customer on behalf of those other entities.

## Liability cap

### Subject to clauses 21.4(c) and 21.4(d), the liability of each party under this Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, is limited to two times the amounts paid or payable under this Agreement or such other amount specified in Item 18 of the Order Form (**General Limitation Amount**).

### "Paid or payable" includes amounts that at the relevant time have not been paid but which would have become payable if the parties performed all of their obligations under this Agreement. It is not limited to amounts that at the relevant time have become due and payable.

### The General Limitation Amount does not apply in relation to each of the following:

#### liability for personal injury, death or damage to property, which will be uncapped;

#### a breach of a third party's Intellectual Property Rights or Moral Rights, which will be uncapped;

#### a breach of confidentiality, which will be uncapped; or

#### a breach of privacy or security which will be uncapped or capped at the amounts (if any) specified in Item 18 of the Order Form (provided that any such caps are greater than the General Limitation Amount).

### Where the Supplier is a current member of a relevant scheme approved under the Professional Standards Legislation, and that scheme applies to limit the liability of the Supplier in accordance with that scheme, then the Supplier's liability will not be regulated by clauses 21.4(a) and 21.4(c) but will instead be limited only to the extent specified under that scheme. For clarity, to the extent that any such scheme does not apply, the Supplier's liability will continue to be determined in accordance with the other provisions of this clause 21.

## Exclusions of liability

### In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.

### Nothing in clause 21.5(a) will stop a party from recovering Loss which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability.

## General

### Each party's liability will be reduced proportionately to the extent caused or contributed by the other party.

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

### The Supplier’s obligation to indemnify the Indemnified Entities against Loss under clause 21.1 is reduced to the extent that the relevant Loss arose due to a failure of the relevant Indemnified Entity to take reasonable steps to mitigate that Loss.

# Dispute resolution

## General

### The parties agree to resolve any dispute between them that arises out of, or in connection with, this Agreement in accordance with the procedure set out in clauses 22.2 to 22.3 or such other procedure set out in the Statement of Work.

### Either party may give written notice of a dispute to the other party setting out the particulars of the dispute and, where the notice is issued by the Customer, indicating whether the Contract Authority is to be involved in the dispute resolution process (**Dispute Notice**).

### Nothing in this clause 22 limits the ability of either party to commence legal action against the other party for urgent interlocutory relief.

## Escalation

### Within 10 Business Days of a party receiving a Dispute Notice, the Customer'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,

* 1. within the period specified in clause 22.2(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

### 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 22.3(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 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

1. 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 22.2 to 22.3 (or such other procedure set out in the Statement of Work) has been complied with in relation to the dispute.

## Costs

1. Each party will bear its own costs in respect of complying with this clause 22.

## Continue to perform

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

# Force Majeure

### If a Force Majeure Event occurs which prevents a party from performing any of its obligations under this Agreement, the party affected by the Force Majeure Event must notify the other party as soon as possible of the Force Majeure Event and the means proposed to address the Force Majeure Event.

### The affected party's non-performance will, during the time that such performance is prevented by that Force Majeure Event:

#### be excused; and

#### not give rise to any liability to the other party for any Losses arising out of, or in any way connected with, that non-performance,

### provided that the affected party:

#### notifies the other party of the Force Majeure Event in accordance with clause 23(a);

#### employs all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible (including, in relation to the Supplier, complying with any business continuity or contingency Plans as required under this Agreement); and

#### resumes performance as expeditiously as possible.

# Records and audits

## Records and transparency

### The Supplier must create and maintain true and accurate records and accounts of its performance and discharge of its obligations under this Agreement in accordance with all Laws and relevant industry practices and standards.

### Within seven days of the Customer's request, the Supplier must enable the Customer or its nominee to access or inspect:

#### the records and accounts referenced in clause 24.1(a) or the Module Terms;

#### any security certifications and a copy of each renewal of these certifications;

#### any audit reports carried out on the Supplier's security systems; and

#### evidence of any security training of the Supplier's Personnel involved in providing any part of the Supplier's Activities.

## Audits and inspections

### The Customer or its nominee may on written notice to the Supplier conduct audits and inspections of the Supplier's and its Personnel's performance of its obligations under this Agreement.

### The Supplier must provide all reasonable access, assistance and co-operation required by the Customer or its nominee in carrying out an audit under this clause 24.2 (including, providing access to the Supplier’s premises during Business Hours).

### Each party must bear its own costs of executing its rights under, or complying with, this clause 24.

## Conduct of audits and inspections

### The Customer and its nominee must, in conducting an audit or inspection under this clause 24:

### 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 13.3; 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 the Supplier's Activities (unless such person is otherwise approved by the Supplier, acting reasonably).

## Survival

1. This clause 24 survives for the Term and a period of seven years following the termination or expiry of this Agreement.

# 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 Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

### Without limiting clause 25(a), the rights, obligations and liabilities of the Customer and the Supplier under this Agreement with respect to proportionate liability are as specified in this Agreement and are not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise.

PART F: GENERAL PROVISIONS

# General

## Government information

### The Supplier acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Agreement on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Customer acting in accordance with this clause 26.

### To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Customer, provide the Customer 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 Activities;

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

#### information received by the Supplier from the Customer to enable it to carry out the Supplier's Activities.

### For the purposes of clause 26.1(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 Customer under any relevant State, Territory or Commonwealth Act; or

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

### The Supplier must provide copies of any of the information referred to in clause 26.1(b), as requested by the Customer, at the Supplier's own expense and in such medium as the Customer may reasonably require.

### Without limiting any other provision of this clause 26.1, the Supplier:

#### authorises the Customer to make information concerning the Supplier 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 Customer's exercise of its rights under this Agreement or the carrying out, or exercise, of the functions or powers of the Customer, any Government Agency, Eligible Customer or the Crown. Such information may include any information provided by the Supplier to the Customer and any information relating to the Supplier's performance under this Agreement;

#### acknowledges that information about the Supplier 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 and Eligible Customers 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 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.

## Consent to issue public statements and use Customer’s name and logo

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

### The Supplier must not issue any press release or make any other public statement regarding this Agreement or the Supplier's Activities without the prior written consent of the Customer, except as required by Law.

## Relationship

1. Nothing in this Agreement 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 26.3.

## Prior work

1. Except as otherwise agreed between the parties in writing:

### the terms of this Agreement apply to all of the work performed by the Supplier in connection with the Supplier's Activities even if it was performed prior to entry into this Agreement; and

### any payment made to the Supplier by the Customer in connection with this Agreement or the Supplier's Activities prior to entry into this Agreement will be treated as a payment under this Agreement and will be in part discharge of the Customer's obligation to pay the fees.

## Entire agreement

1. This Agreement 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

1. Any change to this Agreement (including any change in scope) must be in writing and signed by the authorised representatives of each party.
2. The termination or expiry of this Agreement for any reason will not affect or extinguish the terms which expressly or by their nature are intended to survive, including clauses 5, 10, 11, 12, 13, 16(a)(ii)B, 16(a)(ii)C, 19, 20.3, 21, 24, 25 and this clause 26.

## Severability

1. Any term of this Agreement 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 Agreement is not affected.

## Waiver

### No waiver of a right or remedy under this Agreement 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 Agreement 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 Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

## Cumulative rights

1. The rights and remedies of a party under this Agreement (including under an indemnity) are in addition to and do not exclude or limit any other rights or remedies provided by Law.

## Further assurances

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

## Assignment, novation and other dealings

### Neither party may assign or novate its obligations under this Agreement without the prior written consent of the other party.

### Notwithstanding the above, the Customer may, at its sole discretion, assign or novate this Agreement in whole or in part:

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

#### for machinery of government changes, including if, by operation of Law, the Customer is reconstituted into a new body or legal entity or the functions of the Customer, relevant to this Agreement, 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 Customer in respect of any such assignment or novation made by the Customer under this clause 26.12.

### The Supplier must notify the Customer if there is a Change in Control or circumstance or dealing which may:

#### create a security risk for the Customer or the State of New South Wales;

#### adversely affect the Supplier's ability to fulfil its obligations under this Agreement; or

#### adversely affect the reputation of the Customer or the State of New South Wales.

## Notices

### All notices under this Agreement must be in writing and addressed to either the Customer's Representative or the Supplier's Representative (as applicable) as set out in the Order Form.

### 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);

#### a letter delivered by hand, will be taken to be received on delivery; and

#### an email will be taken to be received on delivery, unless the sender receives a delivery error or similar response.

## Construction

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

## Expenses

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

## Electronic execution

1. Subject to applicable Laws, the parties may execute this Agreement electronically (including through an electronic platform) and in one or more counterparts.

## Governing Law

1. This Agreement 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.

Executed as an agreement:

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of **[*Insert name of 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 |
|  |  |  |  |
| Date |  |  |  |
|  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[*Insert name of Supplier*] ABN [*Insert ABN*]** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
| Full name of director |  |  | Full name of company secretary/director |
|  |  |  |  |
| Date |  |  | Date |

|  |  |
| --- | --- |
| Information | **Guidance note:** The execution clause may need to be revised to correctly reflect the legal entity entering into the Agreement and the capacity in which the legal entity is signing the Agreement. The above execution clause is suitable where the Agreement is being executed by two directors or a director and company secretary pursuant to section 127 of the *Corporations Act 2001* (Cth). |

1. - Definitions and interpretation
   * 1. Definitions
2. In this Agreement, unless the contrary intention appears:
3. **Acceptance Certificate** means an acceptance notice or certificate issued by the Customer to confirm that a Deliverable meets any relevant acceptance criteria specified in the Statement of Work.
4. **Acceptance Tests** or **Testing** means acceptance tests carried out in accordance with clause 9 and the Statement of Work to verify whether a Deliverables meets any relevant acceptance criteria in respect of that Deliverable as specified in the Statement of Work.
5. **Accessibility Standard** has the meaning given to that term in clause 3.4(a)(i).
6. **Additional Conditions** means any terms or conditions that vary or are additional to the terms and conditions set out in the Core Terms or Module Terms and which are stated or referenced in Item 6 of the Order Form.
7. **Agreement** means this agreement and includes any schedule and attachment to this agreement.
8. **Authorisations** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency.
9. **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.
10. **Best Industry Practice** means a standard of care, service or deliverable that, when considered collectively, is equal to or better than the commonly accepted best practice being provided at the relevant time by a supplier of like or similar services, deliverables and activities to the Supplier's Activities throughout the world.
11. **Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in New South Wales, Australia.
12. **Business Hours** means the hours between 9:00am and 5:00pm on any Business Day.
13. **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.
14. **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.
15. **Commencement Date** means the date specified as such in Item 7 of the Order Form.
16. **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 the:
       1. financial, corporate or commercial information of any party;
       2. affairs of a third party; or
       3. strategies, practices or procedures of the State of New South Wales or any information in the Supplier’s possession relating to a Government Agency,
17. 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.
18. **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,
19. 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 this Agreement.
20. **Contract Authority** means the entity named as such in Item 5 of the Order Form and who has entered into a MICTA.
21. **Core Terms** means clauses 1 to 26 of this Agreement.
22. **Corporations Act** means the *Corporations Act 2001* (Cth).
23. **Correctly Rendered Invoice** means an Invoice which:
    1. specifies an amount that is due for payment and correctly calculated in accordance with this Agreement;
    2. is itemised and identifies the GST exclusive amount, the GST component and the GST inclusive amount (as applicable) and enables the Customer to ascertain what the Invoice covers and the amount payable;
    3. includes (where available) the relevant purchase order number notified by the Customer to the Supplier and this Agreement reference number;
    4. where relating to an amount that is payable subject to Acceptance, is accompanied by documentary evidence that signifies that Acceptance (where appropriate) has occurred in accordance with this Agreement;
    5. is in the right form (which may be an electronic or digital form where agreed to by the Customer); and
    6. satisfies any additional criteria relating to Invoices specified in the Order Form or Module Terms.
24. **Crown** means the Crown in right of the State of New South Wales.
25. **Customer** means the entity named as such in Item 1 of the Order Form.
26. **Customer Data** means all data (including metadata) and information relating to the Customer or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer 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 as part of carrying out the Supplier's Activities, but excluding any Performance Data.
27. **Customer Environment** means the combination of hardware, software, systems and network infrastructure and services used by the Customer from time to time, including those specified in the Order Documents.
28. **Customer's Representative** means the person nominated in Item 2 of the Order Form or as advised in writing by the Customer to the Supplier from time to time, to act on behalf of the Customer in connection with this Agreement.
29. **Customer Supplied Items** or **CSI** means the Materials, equipment, resources or items specified in the Statement of Work to be provided by the Customer to the Supplier.
30. **Customer User(s)** means any Personnel of the Customer or any other person that the Customer authorises to use the Deliverables or Services.
31. **Data Location Conditions** means:
    1. ensuring that Customer Data and Personal Information is at all times handled and processed in accordance with all applicable Laws, including the Privacy Laws and the *State Records Act 1998* (NSW) (to the extent applicable);
    2. not transferring any Customer Data and Personal Information to a jurisdiction that is the subject of any sanction, embargo, export control or similar Laws;
    3. ensuring that Customer Data and Personal Information is at all times kept secure and protected in accordance with the terms of this Agreement including clauses 11, 12 and 13; and
    4. compliance with any other requirements or conditions with respect to the location of Customer Data and Personal Information as specified in the Order Form.
32. **Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable or Service to not meet the Specifications and the other requirements of this Agreement.
33. **Delay** means any event or circumstance that results in a delay in the provision of the Supplier's Activities (including the achievement of any milestones in the Statement of Work).
34. **Deliverable** means all things or items (including Documents) to be supplied by the Supplier under this Agreement as set out in the Order Documents.
35. **Denial of Service (DoS) Attack** means an attack that shuts down or substantially degrades the Deliverables and/or Services, resulting in the Deliverables and/or Services (or any functionality forming part of the Deliverables and/or Services) being unable to be used by the Customer or Customer Users in the manner intended to be used under this Agreement, including as to any Service Levels.
36. **Dispute Notice** has the meaning given to that term in clause 22.1(b).
37. **Document** has the meaning given to that term in clause 4.1(a).
38. **Document Deliverable** means any Deliverable which is, or is required to be, in the form of a Document.
39. **Eligible Customer** means any Government Agency or Eligible Non-Government Body.
40. **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).
41. **Existing Materials** means any Materials in which Intellectual Property Rights subsist (which, in the case of the Supplier, are incorporated into a Deliverable or Service or to which the Customer otherwise requires a licence in order to enjoy the benefit of this Agreement or any obligations performed for the Customer under it):
    1. belonging to a party that are pre-existing as at the Commencement Date; or
    2. that are brought into existence, by or on behalf of a party, other than in connection with the performance of that party's obligations under this Agreement,
42. and includes any enhancements, modifications and developments to such Materials, to the extent not comprising New Materials.
43. **Force Majeure Event** means any of the following events or circumstances to the extent not within the reasonable control of the party affected by it (**Affected Party**):
    1. acts of God, including storms, cyclones, landslides, epidemics, earthquakes, floods, and other natural disasters;
    2. strikes, stoppages, labour restraints and other industrial disturbances, except for those only affecting the Personnel of the Affected Party;
    3. acts of the public enemy, including wars, blockades and insurrections; and
    4. riots, malicious damage, sabotage, civil disturbance and acts of terrorism,
44. the incidence of which is not (or would not be reasonably expected to be) generally known to the Affected Party as at the Commencement Date and which the Affected Party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable diligence and prudence.
45. **General Limitation Amount** has the meaning given to that term in clause 21.4.
46. **GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).
47. **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).
48. **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
49. **ICT** means information and communication technologies.
50. **Indemnified Entities** means the Customer, Customer Users, the State of New South Wales, the Customer’s Personnel and, in relation to a Government Agency, the relevant head of the Government Agency and its responsible Minister.
51. **Initial Term** means the period specified as such in Item 8(a) of the Order Form.
52. **Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:
    1. an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver, or receiver and manager, be appointed;
    2. a liquidator or provisional liquidator is appointed;
    3. an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
    4. a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
    5. a receiver is appointed to it or any of its assets;
    6. it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
    7. it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
    8. it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under Law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
    9. it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
    10. a notice is issued under sections 601AA or 601AB of the Corporations Act;
    11. a writ of execution is levied against it or a material part of its property;
    12. it ceases to carry on business or threatens to do so; or
    13. anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above clauses of this definition.
53. **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),
54. but does not include the right to keep Confidential Information confidential, Moral Rights, business names, company names or domain names.
55. **Invoice** means a tax invoice issued under the GST Law.
56. **Item** means an item in Parts A and B of the Order Form.
57. **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.
58. **Loss** means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, Claim, outgoing, fine or payment of any nature or kind.
59. **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.
60. **MICTA** means (if any) the master ICT agreement between the Contract Authority and the Supplier under which there is a standing offer to provide particular ICT-related goods, services and/or other activities (including the Deliverables and Services) to Eligible Customers.
61. **Modern Slavery** has the same meaning as in the Modern Slavery Laws.
62. **Modern Slavery Laws** means, as applicable, the *Modern Slavery Act 2018* (NSW), the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.
63. **Module** means the Services Module set out or referenced in Schedule 4 and any other modules which may be added to the Agreement from time to time in accordance with the Agreement variation procedure.
64. **Module Terms** means the terms and conditions which apply to, and are set out in, the Module.
65. **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.
66. **New Materials** means Materials in which Intellectual Property Rights subsist that are created or which arise in the course of performing this Agreement, excludingCustomer Data.
67. **Nominated Personnel** means the key Personnel of the Supplier who are required to undertake the provision of the Supplier's Activities or part of the work constituting the Supplier's Activities, as stated in Item 10 of the Order Form or otherwise agreed by the Customer in writing.
68. **Order Documents** means:
    1. the Order Form;
    2. all applicable Plans; and
    3. the Module Terms.
69. **Order Form** means:
    1. the document set out at Schedule 2;
    2. any Statement of Work or Supplier's Documents incorporated within or attached to an Order Form in accordance with this Agreement; and
    3. any schedules, annexures or attachments expressly incorporated into any of the above documents.
70. **Other Supplier** means any supplier, contractor, consultant or other person engaged to provide services or deliverables to the Customer, other than the Supplier or its subcontractors and suppliers.
71. **Performance Data** means automatically generated metadata, not including any Personal Information or Confidential Information of the Customer or a Government Agency that:
    1. is incidentally generated by a computer system in the course of its normal operation;
    2. relates to the performance or operation of that computer system; and
    3. arises in the course of the performance of the Supplier's Activities.
72. **Permitted Purpose** has the meaning given to that term in clause 11.1(b).
73. **Personal Information** means:
    1. information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is:
       1. true or not; and
       2. recorded in a material form or not; and
    2. information defined as such under applicable Privacy Laws.
74. **Personnel** means a party's employees, officers, agents, volunteers and subcontractors and:
    1. in the case of the Supplier, includes the Supplier’s secondees and any persons carrying out the Supplier's Activities on the Supplier’s behalf; and
    2. in the case of the Customer, includes any Customer Users permitted or enabled by the Customer to use the Deliverables and Services, but excludes the Supplier and its Personnel.
75. **Plans** means any plans required to be delivered, or complied with, under this Agreement
76. **Policies, Codes and Standards** means the policies, codes and standards (as may be updated from time to time) as referenced in this Agreement (including the Order Form).
77. **Privacy Laws** means:
    1. the *Privacy Act 1988* (Cth);
    2. the *Privacy and Personal Information Protection Act 1998* (NSW);
    3. the *Health Records and Information Privacy Act 2002* (NSW);
    4. any legislation (to the extent that such legislation applies to the Customer or the Supplier or any other recipient of Personal Information) from time to time in force in:
       1. any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
       2. any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier is subject to the laws of that jurisdiction),
    5. affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
    6. any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.
78. **Professional Standards Legislation** means the *Professional Standards Act 1994* (NSW) or other equivalent Laws providing for the statutory limitation of liability of certain suppliers.
79. **Related Body Corporate** has the meaning given to that term in the Corporations Act.
80. **Renewal Period** means the renewal period specified in Item 8(b) of the Order Form.
81. **Schedule** means a Schedule to this Agreement.
82. **Security Incident** means in relation to this Agreement:
    1. any unauthorised (whether under this Agreement or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Customer Data or Personal Information within the Supplier's or its Personnel's possession or control (including any data and information stored on the Supplier’s equipment or in the facilities used by the Supplier to carry out the Supplier's Activities, or any unauthorised or unlawful access to such equipment or facilities);
    2. any notifiable data breach under the Privacy Laws;
    3. any Denial of Service Attack;
    4. the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (c) have occurred;
    5. any security breaches, cyber-security incidents or similar events relating to, or affecting, Customer Data, Personal Information or the Customer Environment which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under this Agreement, at Law or under any of the Policies, Codes and Standards; or
    6. any alleged or suspected occurrence of any of the above events or circumstances.
83. **Services** means:
    1. the services that the Supplier is required to perform or provide under this Agreement as described in the Order Documents; and
    2. any related or ancillary services which are required or reasonably incidental for the proper performance of the services, functions, processes and responsibilities referred to in paragraph (a).
84. **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 as specified, included or incorporated by reference (in accordance with this Agreement) in the Order Documents.
85. **Services Module** means the Module and the associated Module Terms set out or referenced at Schedule 4.
86. **Site** has the meaning given to that term in clause 3.7(a).
87. **Specifications** in respect of a Deliverable or Service, means the technical or descriptive specifications of the functional, operational, performance or other characteristics relating to that Deliverable or Service as detailed or referred to in the Order Documents or as otherwise agreed by the parties in writing.
88. **Statement of Work** means a statement of work incorporated within or attached to the Order Form.

**Supplier** means the entity named as such in Item 3 of the Order Form.

**Supplier's Activities** means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under this Agreement and includes the supply of the Deliverables and Services and, where applicable, the carrying out of any transition-in services and transition-out services specified in the Order Documents.

1. **Supplier's Documents** means any product specifications, service-specific detail or other terms and conditions of the Supplier which comply with clause 1.5 and which the parties have expressly agreed to incorporate into this Agreement, as set out in Annexure A to the Order Form.
2. **Supplier’s Representative** means the Supplier’s employee nominated in Item 4 of the Order Form or as advised in writing by the Supplier from time to time to act on its behalf in connection with this Agreement.
3. **Term** means the Initial Term of this Agreement and any Renewal Period, unless this Agreement is terminated earlier, in which case the Term ends on the date of termination of this Agreement.
4. **Warranty Period** means the warranty period specified in the Statement of Work, or where no warranty period is specified:
   1. 90 days from the issue of an Acceptance Certificate for the relevant Deliverable or Service; or
   2. if a Deliverable or Service is not subject to Acceptance Testing, 30 days from the provision of the Deliverable or Service to the Customer in accordance with this Agreement.
5. **Wilful Misconduct** means an act or omission of the Supplier or its Personnel, deliberately performed or engaged in, which the Supplier knew (or ought to have known or predicted on due and reasonable consideration), would have a reasonable possibility of damaging, having a materially adverse effect on, or prejudicing, the Customer.
   * 1. Interpretation
6. In this Agreement, the following rules of interpretation apply unless the contrary intention appears:
   * + 1. headings are for convenience only and do not affect the interpretation of this Agreement;
       2. the singular includes the plural and vice versa;
       3. an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
       4. words that are gender neutral or gender specific include each gender;
       5. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
       6. the words "such as", "including", and similar expressions are not words of limitation;
       7. a reference to:
          1. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
          2. a thing (including a chose in action or other right) includes a part of that thing;
          3. a party includes its successors and permitted assigns;
          4. a document includes all amendments or supplements to that document;
          5. a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to the relevant part of this Agreement in which that reference is located;
          6. a reference to a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced;
          7. a monetary amount is to Australian dollars or such other currency specified in the Order Documents; and
          8. time is to Australian Eastern Standard Time;
       8. a reference to any Authority, institute, association or body is:
          1. if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
          2. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body; and
       9. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of this Agreement.
     1. Discretion
        1. Subject to any express provision in this Agreement to the contrary:
           1. a provision of this Agreement which says that the Customer or the Customer's Representative "may" do or not do something is not to be construed as imposing an obligation on the Customer or the Customer's Representative to do or not do that thing; and
           2. there will be no procedural or substantive limitation upon the manner in which the Customer or the Customer's Representative may exercise any discretion, power or entitlement conferred by this Agreement.
        2. Without limiting clause 1.3(a) of this Schedule, neither the Customer or the Customer's Representative will 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 this Agreement conferring the discretion, power or entitlement.
8. - Order Form

|  |  |
| --- | --- |
| Information | **Guidance note:** Where a particular Item number in the Order Form is not applicable, insert "not applicable".  If a particular Item number is addressed in the Statement of Work or another Order Document, reference the relevant document within the last column; for example, "As stated in section X of the Statement of Work".  If the Agreement is being entered into pursuant to a MICTA, certain Items and components of the Order Form may have been pre-agreed as part of the MICTA. If this is this case, the parties only need to complete the remaining Items and components of the Order Form. |

**PART A: ICTA**

Clause and Schedule references below are references to clauses and Schedules in this Agreement.

| **No** | **Item** | **Ref** | **Description or selection** |
| --- | --- | --- | --- |
| **KEY DETAILS** | | | |
|  | Customer | Generally  Schedule 1 | [Specify the Customer entity's full name and ABN.] |
|  | Customer’s Representative | Generally  Schedule 1 | [Name the Customer’s Representative.]  Address: [insert]  Email: [insert] |
|  | Supplier | Generally Schedule 1 | [Specify the Supplier entity's full name and ABN (where applicable).] |
|  | Supplier’s Representative | Generally  Schedule 1 | [Name the Supplier’s Representative.]  Address: [insert]  Email: [insert] |
|  | MICTA | Generally Schedule 1 | Is this Agreement entered into pursuant to a MICTA?  Yes  No.  [Identify "Yes" or "No" by selecting the relevant box above. If "Yes":   * identify the Contract Authority; and * ensure that you follow the mechanism outlined in clause 4 of the MICTA.] |
|  | Additional Conditions | 1.8 Schedule 1 | [Specify if any Additional Conditions apply. Additional Conditions may be attached to this Order Form (if any). However, ensure that the attachment is clearly labelled "Additional Conditions".]  [Note: Additional Conditions are subject to relevant New South Wales Procurement Board Directions.] |
| **TERM** | | | |
|  | Commencement Date | 2(a)  Schedule 1 | [Specify the Commencement Date.] |
|  | (a) Initial Term | 2(a)  Schedule 1 | [Specify the Initial Term.] |
| (b) Renewal Period | 2(b)  Schedule 1 | [If a Renewal Term applies, specify the Renewal Term or state "Not Applicable".] |
| **POLICIES AND PERSONNEL** | | | |
|  | Policies, Codes and Standards | 7.1 Schedule 1 | [Revise as applicable (including to reflect any updated links and policies) and list any other additional Policies, Codes and Standards which apply.  The Supplier must comply with:   1. the NSW Procurement Policy Framework published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework> in so far that it relates to the Supplier's Activities; 2. the Supplier Code of Conduct published at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>; 3. the NSW Government Cyber Security Policy published at <https://www.digital.nsw.gov.au/policy/cyber-security-policy> in so far as it relates to the Supplier's Activities and the Supplier is directed by the Customer to assist the Customer's compliance with that policy; 4. DCS-2020-05 Cyber Security NSW directive – Practice Requirements for NSW Government; 5. Australian Government Protective Security Policy Framework (to the extent applicable to the Supplier's Activities); 6. the Aboriginal Procurement Policy published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>; 7. the Worst Forms of Child Labour Convention,1999 (ILO Convention 182) ensuring that Service/Deliverables have not been produced using the "worst forms of child labour" as defined; 8. the NSW Government Internet of Things (IoT) Policy published at <https://www.digital.nsw.gov.au/policy/internet-things-iot> in so far as it relates to the Supplier's Activities; 9. NSW Government’s Artificial Intelligence (**AI**) Strategy, Policy and Assurance Framework at <https://www.digital.nsw.gov.au/policy/artificial-intelligence-ai>; and 10. any other relevant NSW Government policies, codes and standards as specified, or referenced, in the other Order Documents or the above documents.] |
|  | Nominated Personnel | 6.2 Schedule 1 | [Specify any Nominated Personnel and their role/responsibility.]   |  |  | | --- | --- | | **Nominated Personnel's name and position** | **Role/responsibility** | |  |  | |  |  | |
|  | Permitted subcontractors | 6.3(a) | [State whether the Supplier is permitted to use any subcontractors, and, if so, specify those subcontractors below.]  Is the Supplier permitted to subcontract? [Insert "Yes"/"No".]  The permitted subcontractors are specified below:   |  |  | | --- | --- | | **Subcontractor's full name and ABN** | **Role/responsibility** | |  |  | |  |  |   [Specify any applicable conditions that apply to such permissions.]  [Note: Alternatively, the names could be specified in the Statement of Work. If so, state "Refer to the Statement of Work".] |
|  | Background checks | 6.4 and Services Module | [Specify any additional background check requirements for Supplier’s Personnel, including for any Secondees.] |
| **DATA MANAGEMENT AND SECURITY** | | | |
|  | Location of Customer Data | 11.2 | [Specify if the Supplier is permitted to transfer, or access, Customer Data and Personal Information from outside NSW, and if so, specify any additional Data Location Conditions below.] |
| Data Location Conditions | 11.2  Schedule 1 | [List any additional obligations relating to Customer Data and Personal Information that the Supplier must comply with, including any additional Data Location Conditions. Note: A default set of Data Location Conditions is specified in the definition of “Data Location Conditions” in Schedule 1.] |
|  | Privacy and security | 12(a)(vii)  13.1(g) | [List any additional: privacy requirements that the Supplier must meet; andsecurity requirements and standards that the Supplier must meet.Note: Additional requirements are those that are in addition to the default provisions under the Agreement; for example, a particular ISO standard that the Supplier must meet. Please note that if privacy and security are a particular risk for the procurement, consider whether it is appropriate to use the Mini-ICTA. The long form ICTA may be more appropriate.] |
|  | Security audit | 13.2 | [Specify the timeframes in which the Supplier must undertake an audit of its compliance with its security obligations under the Agreement. Note: The default period under the Agreement is annually.] |
| **RISK ALLOCATION AND MANAGEMENT** | | | |
|  | Insurance | 16(a) | [If alternative insurance requirements to those in clause 16(a) apply, specify below the types of coverage required, insurance periods and minimum amounts. Note: Product liability insurance and cyber security insurance are op-in and are only required where specified below. If such insurances are required they should be identified below along with their terms.  If any additional insurances not specified in clause 16(a) are required, insert the required insurances below.] |
|  | Termination for convenience | 18.2(b)(ii)B | [Specify if any other costs are payable in the event that the Customer exercises its right to terminate this Agreement or reduce its scope for convenience pursuant to clause 18.2(b)(ii)B. Parties should be as specific as possible in relation to the particularisation of costs, including any maximum recoverable amounts.] |
|  | General Limitation Amount | 21.4(a) | [The default General Limitation Amount is two times the amounts paid or payable under this Agreement. If the parties wish to change the default position under the Agreement, please specify that approach here or otherwise state "Not Applicable".  Note: The alternate General Limitation Amount may be:   * a fixed amount; * a multiple of the total amounts paid or payable by the Customer under the Agreement; or * an amount determined by reference to any other mechanism.] |
| Liability cap(s) for breaches of privacy or security | 21.4(c)(iv) | [Specify whether the Supplier's liability for a breach of privacy or security (or both) will be capped or uncapped. If capped, specify the liability cap(s). The liability cap(s) for breaches of privacy and security should be carefully assessed and considered and must either individually or in the aggregate be greater than the General Limitation Amount.] |
| **FEES AND PAYMENT** | | | |
|  | Fees | 14(a) | [Insert the fees for provision of the Supplier's Activities or state "As specified in the Statement of Work".  If it is a resourced based engagement (for example, Secondee Services) specify the daily or other relevant rate for the role. Note: Unless otherwise specified in the Order Documents, Secondee Services may only be provided on a time and materials basis at the maximum daily rates for the relevant role as specified in the Services Module.] |
|  | Bank account | 14(a)(i) | [Insert the Supplier's bank account details.] |
| Payment requirements and timeframes | 14(a)(ii) and 14(a)(iii) | [Insert any payment requirements and timeframes (including any earlier timeframe to pay a Correctly Rendered Invoice). Note: The default timeframe to pay a Correctly Rendered Invoice is within 30 days.] |

**PART B: Services Module**

Clause and Annexure references below are references to clauses and the Annexure in the Services Module.

| **No** | **Item** | **Mod ref** | **Description or selection** |
| --- | --- | --- | --- |
| **SCOPE** | | | |
|  | Services | 1.1 and 1.4 Annexure A | [Specify the Services and associated Deliverables to be provided by the Supplier, including:   * the details of the specific Services and how they will be provided, including the type of cyber security and professional Services to be provided. For Development Services, Systems Integration Services, Data Services and Secondee Services, also complete (if applicable) all other relevant parts of the Order Documents, including Items 23 to 26 below (as applicable); * the details of any Deliverables (including Document Deliverables) to be provided in connection with the provision of the Services; and * other relevant details, standards and requirements in relation to the provision of the Services and associated Deliverables.  If the above details are specified in the Statement of Work or other Order Documents, refer to that document here.] |
|  | Services Period | 1.3 Annexure A | [For Services, other than Secondee Services, state the period for which the particular Services must be provided (if different from the Term).  If only Secondee Services are being provided, state: “Not Applicable” and complete Item 26 below.] |
|  | Development Services | 2  Annexure A | Are Development Services being provided?  Yes  No.  [Identify "Yes" or "No" by selecting the relevant box above. If "Yes", describe the Development Services and specify the Software/Software Solution that is subject to Development Services or state "Not Applicable".  Note: There are placeholder provisions in the Statement of Work template for additional particulars in relation to Development Services to be added.] |
|  | Systems Integration Services | 3  Annexure A | Are Systems Integration Services being provided?  Yes  No.  [If “Yes”, describe the Systems Integration Services and identify and describe the System (including software, hardware and other ICT infrastructure to be integrated with the Customer Environment) or state “Not Applicable”.  Note: There are placeholder provisions in the Statement of Work template for additional particulars in relation to Systems Integration Services to be added.] |
|  | Data Services | 4  Annexure A | Are Data Services being provided?  Yes  No.  [Identify "Yes" or "No" by selecting the relevant box above. If "Yes", describe the Data Services and specify:   * the type of Data Services (for example, data analytics, data cleansing or data migration Services); * the timeframe for provision of particular Data Services; and * any relevant requirements in relation to the provision of Data Services.   If Data Services are not being provided, state “Not Applicable”.  Note: There are placeholder provisions in the Statement of Work template for additional particulars in relation to Data Services to be added. Data Services are separate from, and do not restrict, the Supplier’s obligations in respect of the protection and use of Customer Data under the Agreement.] |
|  | Secondee Services | Clause 5  Annexure A | Are Secondee Services being provided?  Yes  No.  [If “Yes”, describe the Secondee Services below or state “Not Applicable” for all of this Item.  Note: The default position is that the Supplier’s Secondees must work at the direction of the Customer. If an alternative position applies, specify so here or in another Order Document.] |
| Role and Qualifications | 5.1 and 5.2(a)(iii)  Annexure A | Secondees’ role(s): [insert]  Secondees’ capabilities: [insert]  [Specify the Secondees’ role(s) and any capabilities that the Secondees must meet.]  Secondees’ Qualifications: [insert]  [Specify any licences, qualifications or accreditations for the Secondees’ role(s).] |
| Location | 5.2(a)(ii) | [Specify the premises or locations that Secondees will perform the Secondee Services.] |
| Approved Secondees | 5.2(c) Annexure A | [List the name of the Supplier’s Personnel who the Customer approves to provide the Secondee Services. Such Personnel will be deemed to be Nominated Personnel.]  Note: Secondees must be permanent employees of the Supplier.] |
| Secondee Services Period | 5.3(a) Annexure A | The Secondee Services Period is: [insert]  [Note: Where a period is not specified, the default Secondee Services Period is 12 months from the Commencement Date. Secondee Services are provided as an interim measure. If it is proposed that the Secondee Services will be provided for more than 12 months, seek procurement and legal advice.]  Secondee Services must be provided on the below days and hours: [insert; for example, Business Days from 9:00am to 5:00pm.]  The maximum hours that each Secondee can work per week is [insert] or state “Not Applicable”.  [Note: Daily rates are capped at 8 hours per day.] |
| Limitations | 5.3(b) | [Under clause 5.3(b), the Customer may increase, change or reduce the days or hours that the Supplier’s Personnel perform the Secondee Services or reduce the Secondee Services Period or terminate the Secondee Services in full, subject to any limitations specified here (eg: The Secondee is only available to work Monday to Thursday). If any limitations apply, clearly specify those here or state “Not Applicable”.] |
| **TRAINING SERVICES** | | | |
|  | Training Services | 6 | Are training Services or Deliverables being provided?  Yes  No.  [Identify "Yes" or "No" by selecting the relevant box above. If “Yes”:   * describe the scope of any training Services and Deliverables; * specify the timeframes and requirements for the provision of training Services and Deliverables; and * complete the relevant details below.   Specify whether a training Plan is required. If "Yes", specify:   * the date which the Supplier must prepare and submit to the Customer's Representative for approval a training Plan for carrying out the training Services; and * any details to be included in the training Plan.]   [Specify the locations at which training will occur.]  [If these requirements are specified in the Statement of Work or another Order Document, refer to that document here.]  [If training Services and Deliverables are not being provided, state “Not Applicable”.] |
| **GENERAL** | | | |
|  | Additional/ ancillary Deliverables and Services | 7 | Are additional or related Deliverables or Services to be provided?  Yes  No.  [Identify "Yes" or "No" by selecting the relevant box above. If "Yes", specify the additional or related Deliverables or Services to be provided and any other goods and services that are incidental or ancillary to the provision of the Deliverables and Services.  Specify the requirements that apply to the provision of those Deliverables and Services. If these are specified in the Statement of Work or another Order Document, reference that document here.  If additional/ancillary Deliverables and Services are not being provided, state "Not Applicable".] |
|  | Records | 8 | [Describe any alternative or additional requirements for the contents of records to those set out in clause 8 of the Services Module.]  [Specify the times for provision of copies of records.] |

Annexure A to Order Form – Supplier's Documents

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| Information | **Guidance note:** Any documents which the parties agree to incorporate as Supplier's Documents pursuant to the process set out in clause 1.5 should be set out here. For clarity, they should not be characterised as Additional Conditions. |

Annexure B to Order Form – Statement of Work

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| --- | --- |
| Information | **Guidance note:** A template for the Statement of Work is included in Schedule 3. Parties may evolve it appropriately as required, or adopt their own form (subject to consistency with the other Agreement documents). |

1. - Statement of Work Template

Refer to the separate attachment titled “Statement of Work Template”.

1. – Services Module

Refer to the separate attachment titled “Services Module”.