

**Digital.NSW ICT Purchasing Framework**

**Master ICT Agreement**

**(MICTA)**

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Master ICT Agreement (MICTA)

**MICTA** made on the MICTA Date

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

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

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

Background

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

### the Contract Authority, to procure ICT-related goods and/or services on a standing offer basis, on its own behalf and on behalf of Eligible Customers; and

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

Agreement

# Operation

## Term

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

## Extension

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

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

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

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

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

## No guarantee of work or exclusivity

The Contract Authority is not, by executing this MICTA:

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

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

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

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

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

## No representation

1. Clause 1.3 applies even though the Contract Authority may have provided the Supplier with a forecast or estimate of the goods, services, ICT Activities and/or other activities that the Contract Authority or any Eligible Customer may require at any time. The Supplier acknowledges that any forecasts or estimates do not constitute a representation of the goods, services and/or other activities the Contract Authority or any Eligible Customer may require in any period.

## Contract Authority's Representative

The Contract Authority may by written notice:

### replace the Contract Authority's Representative, in which case the Contract Authority will appoint another person as the Contract Authority's Representative and notify the Supplier of that appointment; and

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

## Supplier's Representative and Personnel

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

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

#### are guilty of misconduct;

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

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

## Role

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

## Additional Conditions

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

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

## Consideration

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

# Warranties and acknowledgements

## Mutual warranty

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

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

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

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

## Supplier warranties and acknowledgments

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

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

### the information that is provided to the Contract Authority by the Supplier in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Personnel is, to the best of the Supplier’s knowledge and belief, correct and not misleading as at the date it was (or is to be) supplied to the Contract Authority or Eligible Customer;

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

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

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

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

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

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

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

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

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

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

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

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

## Implied warranties

The express warranties given by the Supplier under this MICTA are provided by the Supplier to the exclusion of any implied representations or warranties not set out in this MICTA, provided that this clause 2.3 does not operate to exclude any statutorily implied representations, warranties, conditions or guarantees which cannot legally be excluded. To the extent that any such statutorily non-excludable representations, warranties, conditions or guarantees apply, the Supplier limits its liability for their breach to the maximum amount permitted by Law.

# Compliance

## Compliance with Laws and directions

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

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

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

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

## Policies, Codes and Standards

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

## Conflicts of Interest

The Supplier must:

### promptly notify the Contract Authority in writing if a Conflict of Interest arises or is likely to arise during the performance of its obligations under this MICTA; and

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

# MICTA Mechanism

## Eligible Customer may issue Order Proposal

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

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

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

#### Attachment 2 of the Order Proposal, that sets out any Service Levels that will apply to the particular Contract that the Contract Authority is considering (if any), in addition to those set out in the ICTA.

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

## Supplier may submit Draft Order

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

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

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

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

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

#### setting out the proposed Price in Attachment 1 of the Order Proposal, which must be determined using rates and prices calculated in accordance with, and not exceeding, the rates and prices in the Schedule of Prices; and

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

(**Draft Order**).

## Review of Draft Order

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

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

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

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

##### reject the Draft Order.

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

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

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

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

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

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

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

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

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

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

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

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

### then:

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

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

## Costs

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

# Formation of individual Contracts

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

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

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

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

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

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

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

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| Information | **Guidance note:** Please note it is not necessary to separately execute an ICTA under this MICTA. Once the parties have executed an Order in accordance with this MICTA, a Contract is formed on the terms of the ICTA (which are attached to this MICTA in Annexure I). |

# Indexation and review of rates

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

# KPIs

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

## KPI Performance Report

### The Supplier must report to the Contract Authority's Representative at the frequency specified in the Key Details in the form of a written or electronic report (**KPI Performance Report**) which:

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

#### identifies any non-compliances;

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

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

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

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

## Action plan

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

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

#### review any action plan submitted by the Supplier and, within 15 Business Days of the submission (or resubmission as the case may be) by the Supplier of the action plan (or such longer period as reasonably required by the Contract Authority in the circumstances):

##### approve the action plan; or

##### reject the action plan.

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

### If the Contract Authority gives the Supplier a notice rejecting an action plan under clause 7.2(a)(ii)B, the Supplier must, within 5 Business Days (or any longer period agreed by the Contract Authority in writing), prepare a revised version of the action plan which addresses all of the amendments and issues required by the Contract Authority.

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

### Where the period referred to in clause 7.2(a)(ii) elapses without the Contract Authority approving or rejecting the action plan, the Supplier must submit to the Contract Authority a written reminder notice identifying the action plan in respect of which it requires a decision by the Contract Authority. If the Contract Authority does not approve or reject the relevant action plan or otherwise communicates with the Supplier in relation to that reminder notice within 10 Business Days of its receipt, then the relevant action plan will be deemed to have been approved by the Contract Authority.

## Meetings

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

# Reporting requirements

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

### the KPI Performance Report;

### within 14 days of the end of each calendar quarter (or as otherwise reasonably required by the Contract Authority), a written or electronic report relating to the relevant quarter:

#### detailing the expenditure of each Contract (together with a breakdown of the number of units, quantity and cost of the goods, services and/or activities procured under each Contract), that tracks the information over time and usage, and that identifies any applicable discounts, credits, rebates and any other benefits;

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

#### reporting on:

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

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

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

the amounts paid to such SMEs;

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

such other matters as required under the SME Policies; and

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

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

Supplier's compliance with each Aboriginal Participation Plan; and

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

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

#### providing:

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

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

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

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

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

#### listing:

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

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

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

# Benchmarking

This clause 9 applies if specified in the Key Details.

## Benchmarking process

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

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

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

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

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

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

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

### The parties will instruct the benchmarker to:

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

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

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

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

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

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

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

## Outcome of benchmarking

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

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

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

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

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

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

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

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

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

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

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

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

# Performance Guarantee and Financial Security

## Performance Guarantee

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

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

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

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

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

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

## Financial Security

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

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

### The Contract Authority will hold the Financial Security for its own benefit and on trust for the benefit of each Eligible Customer that is a counterparty to a Contract formed under the MICTA.

### Subject to its rights to have recourse to the Financial Security, the Contract Authority must release the Financial Security on the first to occur of:

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

##### this MICTA; and

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

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

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

## Costs

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

# Other requirements

## Confidentiality

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

#### keep it confidential;

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

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

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

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

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

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

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

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

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

## Intellectual Property

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

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

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

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

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

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

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

##### Government Agency.

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

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

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

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

## Return or destruction of Contract Authority Data, Confidential Information and intellectual property

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

### return; or

### destroy,

### the:

### Contract Authority Data; and

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

## Insurance

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

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

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

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

#### any information reasonably requested by the Customer regarding the policies for each of the insurances required to be held and maintained by the Supplier under this MICTA (which may include reasonably redacted policy provisions or summarised policy terms where disclosure of the full policy terms is restricted by confidentiality obligations owed by the Supplier to third parties).

## Audits and inspections

### This clause 11.5 applies unless an alternative audit mechanism is specified in the Key Details (**Alternative Audit Mechanism**), in which case the Alternative Audit Mechanism will apply under this MICTA instead of clauses 11.5(b) to 11.5(i). Any Alternative Audit Mechanism must enable the Contract Authority to audit the Supplier's compliance with the MICTA.

### The Contract Authority or its nominee (which may be an advisor, consultant or other third party engaged by the Contract Authority) may conduct audits and inspections:

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

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

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

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

#### for the purpose of an inspection, examination or audit undertaken by or on behalf of the Auditor-General in accordance with its legislative powers to assess the expenditure of public money related to this MICTA.

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

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

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

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

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

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

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

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

### The Supplier must provide all reasonable access, assistance and co-operation required by the Contract Authority or its nominee in carrying out an audit under this clause 11.5.

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

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

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

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

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

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

## Governance

Each party agrees to comply with any governance arrangements specified in the Key Details, including to make available suitably qualified Personnel to attend governance meetings. The parties agree that meetings may be held by video or teleconference if required by the Contract Authority.

## Privacy

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

# Suspension

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

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

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

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

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

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

# Termination or expiry

## Termination or expiry of this MICTA

### Without prejudice to any of the Contract Authority's other rights, the Contract Authority may, at any time for its sole convenience and for any reason, by written notice to the Supplier, terminate this MICTA effective from the date stated in the Contract Authority’s notice, or if no such time is stated, at the time the notice is given to the Supplier.

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

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

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

## Termination of a Contract

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

# Dispute resolution

## General

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

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

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

## Escalation

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

### If the parties have not:

#### resolved the dispute; or

#### met,

within the period specified in clause 14.2(a), a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other period as may be agreed by the parties in writing.

## Alternative dispute resolution

### Unless otherwise specified in the Key Details, if the dispute remains unresolved after 20 Business Days of the date of the Dispute Notice (or such longer period as may be agreed by the parties in writing), then either party may issue a notice in writing to the other party requiring the dispute to be determined by mediation in accordance with, and subject to, the Resolution Institute Mediation Rules or any equivalent and replacement rules.

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

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

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

## Acknowledgment

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

## Costs

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

## Continue to perform

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

# General provisions

## Government information

### The Supplier acknowledges that the Contract Authority and certain Eligible Customers are subject to the GIPA Act and agrees that the Contract Authority or any Eligible Customer may disclose any part or all of this MICTA on its nominated website established for GIPA Act disclosures. The Supplier irrevocably consents to the Contract Authority acting in accordance with this clause 15.1.

### To the extent that section 121 of the GIPA Act applies, the Supplier must, upon receipt of a written request by the Contract Authority, provide the Contract Authority with immediate access to the following information contained in records held by the Supplier:

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

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

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

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

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

#### the Supplier is prohibited from disclosing to the Contract Authority by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or

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

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

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

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

#### acknowledges that information about the Supplier (including Supplier Information and Supplier's Reports) from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of the Supplier or a Related Body Corporate may be taken into account by Government Agencies considering whether to offer the Supplier future opportunities for working with those entities, for assessing the terms of their own contracts (or proposed contracts) with the Supplier or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;

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

#### releases and indemnifies the Contract Authority, any Eligible Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

## No use of Contract Authority name or logo

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

## Entire Agreement

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

## Variation

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

## Survival and merger

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

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

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

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

## Severability

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

## Waiver

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

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

## Cumulative rights

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

## Further assurances

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

## Assignment, novation and other dealings

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

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

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

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

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

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

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

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

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

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

## Notices

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

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

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

### Unless there is evidence to the contrary:

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

#### in the case of email:

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

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

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

## Construction

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

## Expenses

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

## English language

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

## Governing Law

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

## Nature of relationship

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

## Proportionate liability

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

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

# Definitions and interpretation

## Definitions

1. In this MICTA capitalised terms have the same meaning as in the ICTA (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:
2. **Aboriginal Participation Plan** means a plan of that name developed pursuant to the Aboriginal Procurement Policy under a Contract.
3. **Additional Conditions** means the terms and conditions (if any) specified in the Key Details.
4. **Additional Period** has the meaning given to that term in clause 1.2(a)(i).
5. **Additional Policies, Codes and Standards** means the policies, codes and standards:
   1. listed in the Key Details; and
   2. any Government codes, standards and guidelines (or changes to those codes, standards and guidelines) relating to the provision of the Supplier's obligations under this MICTA as reasonably notified by the Contract Authority to the Supplier from time to time.
6. **Adjustment Notice** has the meaning given to that term in clause 9.2(d).
7. **Alternative Audit Mechanism** has the meaning given to that term in clause 11.5(a).
8. **Benchmarking Activities** has the meaning given to that term in clause 9.1(a).
9. **Benchmarking Notice** has the meaning given to that term in clause 9.1(a).
10. **Confidential Information** means information that:
    1. is by its nature confidential;
    2. is communicated by the discloser of the information (**Discloser**) to the recipient of the information (**Recipient**) as confidential;
    3. the Recipient knows or ought to know is confidential; or
    4. relates to or comprises:
       1. Contract Authority Data;
       2. the financial, corporate and commercial information of any party;
       3. the affairs of a third party; or
       4. the strategies, practices and procedures of the State of New South Wales or any information in the Supplier’s possession relating to a Government Agency,

but excludes information:

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

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

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

1. **Contract** means the contractual relationship between the parties comprising the terms and conditions set out in:
   1. a relevant Order; and
   2. the ICTA.
2. **Contract Authority** means the Government Agency or Eligible Non-Government Body specified in the Key Details.
3. **Contract Authority Data** means all data (including metadata) and information relating to the Contract Authority or any Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Contract Authority and any Government Agency, including Personal Information, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed or produced in connection with this MICTA, but excluding any Performance Data.
4. **Contract Authority's Representative** means the person so nominated in the Key Details or any other person nominated by the Contract Authority from time to time under clause 1.5 to replace that person.
5. **Discloser** has the meaning given to that term in the definition of *"Confidential Information"* in this clause 16.1.
6. **Dispute Notice** has the meaning given to that term in clause 14.1(b).
7. **Draft Order** has the meaning given to that term in clause 4.2(b).

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

1. **Eligible Customer** means any Government Agency or Eligible Non-Government Body (including the Contract Authority), unless otherwise specified in the Key Details.
2. **Expiry Date** means the date set out in the Key Details.
3. **Financial Security** has the meaning given to that term in clause 10.2.
4. **ICT Activities** means the goods, services and/or other activities described in the MICTA Scope.
5. **ICTA** means the terms and conditions set out in Annexure I.
6. **Key Details** means the particulars to this MICTA specified in Annexure A.
7. **Key Performance Indicators** or **KPIs** means the key performance indicators specified in Annexure B.
8. **KPI Performance Report** has the meaning given to that term in clause 7.1.
9. **Master ICT Agreement** or **MICTA** means this document, executed as an agreement.
10. **MICTA Date** means the date on which the last party to execute, executes this MICTA.
11. **MICTA Scope** means the document in Annexure F.
12. **Order** means a document titled "Order", substantially in the form of Annexure E (or in any other form chosen by the Eligible Customer), executed by the Eligible Customer and the Supplier in accordance with clause 5.
13. **Order Proposal** means a proposal in the form set out in Annexure D (or in a form chosen by the Eligible Customer), issued under clause 4.1.
14. **Other Arrangements** has the meaning given to that term in clause 8(b)(v)B.
15. **Other Changes** means any actual or proposed change in the Supplier's circumstances, operations or supply chains (including a change to the Supplier's Personnel), that could reasonably be considered to:
    1. create a security risk for the Contract Authority, any Eligible Customer or the State of New South Wales; or
    2. adversely affect the:
       1. Supplier's ability to fulfil its obligations under the MICTA; or
       2. reputation of the Contract Authority, any Eligible Customer or the State of New South Wales.

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

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

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

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

1. **Personnel** means a party's employees, officers, agents and subcontractors and, in the case of the Supplier, includes any persons performing activities under this MICTA on the Supplier’s behalf.
2. **Policies, Codes and Standards** means:
   1. the policies, codes and standards to be complied with by the Supplier under the ICTA, to the extent that these are applicable to the Supplier's performance of its obligations under the MICTA; and
   2. any Additional Policies, Codes and Standards.
3. **Recipient** has the meaning given to that term in the definition of *"Confidential Information"* in this clause 16.1.
4. **Schedule of Prices** means the schedule of rates and prices set out in Annexure C.

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

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

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

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

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

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

### but excludes information of the Supplier:

### excluded in the Key Details; and

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

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

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

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

## Interpretation

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

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

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

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

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

### where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

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

### a reference to:

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

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

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

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

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

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

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

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

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

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

#### if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

#### if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body; and

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

## Discretion

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

#### a provision of the MICTA which says that the Contract Authority, the Contract Authority's Representative or an Eligible Customer "may" do or not do something is not to be construed as imposing an obligation on the Contract Authority, the Contract Authority's Representative or an Eligible Customer to do or not do that thing; and

#### there will be no procedural or substantive limitation upon the manner in which the Contract Authority, the Contract Authority's Representative or any Eligible Customer may exercise any discretion, power or entitlement conferred by the MICTA.

### Without limiting clause 16.3(a), the Contract Authority, the Contract Authority's Representative or any Eligible Customer will not be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Supplier or as required by any other legal doctrine which in any way limits the express words used in the provisions of the MICTA conferring the discretion, power or entitlement.

**Executed** as an agreement

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

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

1. - Key Details

|  |  |  |  |
| --- | --- | --- | --- |
| **Parties: Definitions and interpretation** | | | |
|  | **Contract Authority:**  (Clause 16.1) | [*Insert full name*] ABN [*Insert ABN*]of [*Insert registered address*] | |
|  | **Contract Authority's Representative:**  (Clause 1.5 and 16.1) | Name: [*Insert*]  Address: [*Insert*]  Telephone: [*Insert*]  Email:[*Insert*] | |
|  | **Supplier:**  (Clause 16.1) | [*Insert full name*] ABN [*Insert ABN*]of [*Insert registered address*] | |
|  | **Supplier's Representative:**  (Clause 16.1) | Name: [*Insert*]  Address: [*Insert*]  Telephone: [*Insert*]  Email: [*Insert*] | |
| **Other: Definitions and interpretation** | | | |
|  | **Additional Policies, Codes and Standards that are applicable to this MICTA:**  (Clause 16.1) | [*Insert any additional policies, codes and standards that the Supplier must comply with under this MICTA*]  If nothing is stated: "Not applicable" | |
|  | **Effective Date:**  (Clause 16.1) | [*Insert date from which this MICTA will be effective*]  If nothing is stated, the Effective Date is the MICTA Date | |
|  | **Expiry Date:**  (Clause 16.1) | [*Insert the date on which the Term of this MICTA will expire*] | |
|  | **Government Agencies and/or Non-Government Bodies that are not Eligible Customers under this MICTA:**  (Clause 16.1) | Are there any Government Agencies and/or Non-Government Bodies that are not Eligible Customers under this MICTA: [*Yes/No*]  If "Yes", the following Government Agencies and/or Non-Government Bodies are not Eligible Customers under this MICTA:  [*Insert full names of relevant entities*]  If nothing is stated: "No" | |
|  | **Supplier Information: excluded information:**  (Clause 16.1) | Is there any information excluded from the definition of "Supplier Information": [*Yes/No*]  If "Yes": [*Insert*]  If nothing is stated: "No" | |
| **Extension** | | | |
|  | **Number of Additional Period(s):**  (Clause 1.2(a)(i)) | [*Insert number of Additional Periods, e.g. "two". If there is to be no Additional Period, insert "N/A"*] | |
|  | **Length of Additional Period(s):**  (Clause 1.2(a)(ii)) | [*Insert length of each Additional Period, e.g. "two years". If there is to be no Additional Period, insert "N/A"*] | |
| **Use of this MICTA** | | | |
| **Additional Conditions** | | | |
|  | **Additional Conditions:**  (Clause 1.8) | Do any Additional Conditions apply to this MICTA: [*Yes/No*]If "Yes", the Additional Conditions specified in Annexure H apply to this MICTAIf nothing is stated: "No" | |
| **Indexation and review of rates** | | | |
|  | **Indexation and review of rates:**  (Clause 6) | Indexation and review of rates: [*Applicable/Not applicable*]  If "Applicable": The General review of prices in accordance with Part 2 section 1 of Annexure C (General Review of Prices) [*does/does not*] apply; and[*Select "does apply" if the Supplier's rates and prices will be reviewed and indexed in accordance with Annexure C*]The foreign currency adjustment in Part 2 section 2 of Annexure C [*does/does not*] apply.[*Select "does apply" if the Contract Authority agrees to take foreign currency risk*] If nothing is stated: "Not applicable" | |
| **Key Performance Indicators** | | | |
|  | **Frequency of KPI reporting and times at which Contract Authority and Supplier to meet:**  (Clause 7.1(a) and 7.3) | [*Insert how frequently in months/days the Supplier must produce a KPI Performance Report*]  [*Insert how frequently in months/days the Contract Authority and the Supplier must meet to review the Supplier's performance*]  If nothing is stated: the Supplier must provide a KPI Performance Report at the end of each month and the Contract Authority and the Supplier will meet every 3 months, unless otherwise agreed in writing by the Contract Authority. | |
| **Reporting requirements** | | | |
|  | **Alternative reporting requirements:**  (Clause 8) | Alternative reporting requirements apply: [*Yes/No*]  If nothing is stated: "No"  If "Yes", specify alternative reporting requirements applicable to this MICTA:  [*Insert alternative reporting requirements*] | |
|  | **Reporting on additional matters:**  (Clause 8(b)(iii)B) | Additional matters the Supplier must report on: [*Applicable/Not applicable*]  If "Applicable", the Supplier must report on the following additional matters:  [*Insert list of matters*]  If nothing is stated or if alternative reporting requirements apply to this MICTA: "Not applicable" | |
| **Benchmarking** | | | |
|  | **Benchmarking:**  (Clause 9) | [*Applicable/Not applicable*] | |
| **Guarantees** | | | |
|  | **Performance Guarantee:**  (Clause 10.1) | Clause 10.1 applicable: [*Yes/No*]  If nothing is stated: "No" | |
|  | **Financial Security:**  (Clause 10.2) | Clause 10.2 applicable: [*Yes/No*]  If "Yes", amount of Financial Security required: $[*Insert*]  If nothing is stated: "No" | |
|  | **Costs:**  (Clause 10.3) | State whether all or any portion of the Supplier’s costs of obtaining and maintaining either a Performance Guarantee or the required Financial Security are to be reimbursed: [*Yes/No*] [*If not, state "Not applicable"*]*.*  If nothing is stated: "Not applicable" | |
| **Other requirements** | | | |
|  | **Insurance policies required to be effected by the Supplier:**  (Clause 11.4) | **Product liability insurance**  Limit of cover of at least $[*Insert*]in respect of each occurrence and in the aggregate, to be held for the duration of the Term and for at least seven years thereafter.  If nothing is stated, the limit of cover is at least $20 million in respect of each occurrence and in the aggregate, to be held for the duration of the Term and at least seven years thereafter.  **Public liability insurance**  Limit of cover of at least $[*Insert*] in respect of each occurrence, to be held for the Term.  If nothing is stated, the limit of cover is at least $20 million in respect of each occurrence, to be held for the Term.  **Professional indemnity insurance**  Required: [*Yes/No*]  If "Yes" the limit of cover is at least $[*Insert*] in respect of each occurrence and in the aggregate, to be held for the Term and at least seven years thereafter.  If "Yes" and nothing is stated, the limit of cover is at least $20 million in respect of each occurrence and in the aggregate, to be held for at least seven years after the end of the Term.  **Workers' compensation insurance**  Amount of cover: the maximum amount required by Law.  **Cyber security insurance**  Required: [*Yes/No*]  If "Yes" the limit of cover is at least $[*Insert*] in respect of each claim, to be held for the Term.  If "Yes" and nothing is stated, the limit of cover is at least $20 million in respect of each claim, to be held for the Term.  **Data security breach or wrongful disclosure and use of Personal Information insurance**  Required: [*Yes/No*]  If "Yes", insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Supplier or its Personnel.  **Other insurances**  Other Insurance(s) required:[*Yes/No*]  Type of other insurance(s) required if "Yes": [*Insert*]  Limit of cover is at least $[*Insert*] |
|  | **Alternative Audit Mechanism:**  (Clause 11.5(a)) | Applicable: [*Yes/No*]  If nothing is stated: "No"  If "Yes", the following Alternative Audit Mechanism applies under this MICTA:  [*Insert Alternative Audit Mechanism, which must enable the Contract Authority (and its nominee) to audit the Supplier's compliance with the MICTA*] | |
|  | **Governance:**  (Clause 11.6) | Applicable governance framework: [*Yes/No*]  If nothing is stated: "No"  If "Yes", the following governance framework applies: [*Insert*] | |
| **Dispute resolution** | | | |
|  | **Alternate dispute resolution procedure:**  (Clause 14.1(a)) | Alternate dispute resolution procedure applies to this MICTA: [*Yes/No*]  If "Yes", the following procedure applies:  [*Insert*]  If nothing is specified: "No" | |
|  | **Time for dispute resolution:**  (Clause 14.3(a)) | Alternative time for resolution of dispute applies: [*Yes/No*]  If "Yes", specify alternate time for resolution of dispute: [*Insert*]  If nothing is specified: "No" | |
| **Notices** | | | |
|  | **Contract Authority address and email address for the purpose of clause 15.11 Notices:**  (Clause 15.11) | Address: [*Insert*]  Email address: [*Insert*]  If nothing is stated: the address and email address are those of the Contract Authority's Representative, as specified in these Key Details. | |
|  | **Supplier address and email address for the purpose of clause 15.11 Notices:**  (Clause 15.11) | Address: [*Insert*]  Email address: [*Insert*]  If nothing is stated: the address and email address are those of the Supplier's Representative, as specified in these Key Details. | |

1. - KPIs

**[*Note to user: the following KPIs will apply under this MICTA, unless the parties agree to include alternative KPIs in this annexure*]**

| **Key Performance Indicator (KPIs)** | | **Measure** | **Target (per Contract)** |
| --- | --- | --- | --- |
| **Safety, environment and compliance** | | | |
|  | Minor incidents | Number of minor safety/environmental incidents and near misses | 0 |
|  | Major incidents | Number of major safety/environmental incidents, including Lost Time Injuries (LTIs), Medical Treatment Injuries (MTIs) and safe working incidents | 0 |
|  | Incident reporting | Percentage of safety/environmental incidents (including Security Incidents) reported on within the timeframe and in the format specified by the Contract Authority | 100% |
|  | Corrective actions | Percentage of corrective actions closed out within the timeframe specified by the Contract Authority following inspection/audit/investigation by the Contract Authority | 100% |
|  | Compliance with SME Policies | Number of incidents of non-compliance with SME Policies | 0 |
|  | Compliance with Service Levels under Contracts | Percentage of compliance with Service Levels under all Contracts | ≥ 95% |
| **Delivery** | | | |
|  | Delivery In Full On Time (**DIFOT**) | Percentage of Supplier's Activities commenced and completed in accordance with contractual timeframes | 100% |
|  | Rectification of defects or errors | Percentage of defects or errors in Supplier's Activities rectified or replaced within the timeframe specified by the Contract Authority | ≥ 90% |
|  | Management of subcontractors | Number of complaints received by the Contract Authority in relation to non-payment of subcontractors | ≤ 1 |
| **Quality** | | | |
|  | Quality of work | Number of instances of poor quality work, including any damage to existing infrastructure and tangible property | 0 |
|  | Skills and experience of Personnel | Number of incidents of Supplier’s Personnel who are not competent and/or appropriately accredited, qualified, licensed and/or trained | 0 |
|  | Quality assurance | Number of instances of quality assurance documentation being out of date or incorrect | 0 |
|  | Accuracy of invoices and other claims | Percentage of invoices and other claims under the Contracts that have no errors and contain all required information | ≥ 90% |
|  | Provision of Supplier's Reports | Percentage of Supplier's Reports that have no errors and contain all required information | ≥ 95% |
| **Value** | | | |
|  | Cost saving initiatives | Number of tangible cost saving initiatives identified | ≥ 1 |
| **Innovation and Continuous Improvement** | | | |
|  | Continuous improvement initiatives | Number of value adding initiatives identified to improve process efficiency and maintain best practice | ≥ 1 |
|  | Performance Reports | Percentage of monthly KPI Performance Reports provided to the Contract Authority by the required date and which contain accurate and complete information | ≥ 80% |

1. - Schedule of Prices and Indexation

**Part 1 - Schedule of Prices**

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

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

**Part 2 - Indexation**

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

* 1. General Review of Prices
     + 1. This "General Review of Prices" clause applies where specified in the Key Details that the "General Review of Prices" model applies.
       2. Once each year, within 30 days of the anniversary of the Effective Date, either party may provide a notice in writing to the other requesting that any prices in the Schedule of Prices be reviewed in accordance with this clause.
       3. If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree to a revised Schedule of Prices which reflects the Supplier’s actual, direct, proven and reasonable increases or decreases in costs.
       4. If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date that is 35 Business Days after the date of a notice under paragraph (b) (**Rate** **Adjustment Date**).
       5. If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices will be indexed for movements in the CPI on and from the Rate Adjustment Date, calculated in accordance with the following formula:
  2. A (CPI Indexed) = A × 
  3. Where:
  4. **A** is the monetary amount originally specified in this MICTA;
  5. **** is the last CPI published prior to the Rate Adjustment Date;
  6.  is the last CPI published prior to the Effective Date; and
  7. **CPI** means, unless the parties expressly agree another applicable index, the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (**ABS**), or as otherwise determined in accordance with paragraph (f).
     + 1. If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Contract Authority's Representative and any necessary consequential amendments are to be made.
  8. Foreign Exchange Adjustments
     + 1. This clause applies where specified in the Key Details.
       2. Where this clause applies, the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on each date on which the Schedule of Prices provides that a foreign currency adjustment is to occur (**FX Review Date**).
       3. The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:

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

Where:

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

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

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

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

1. - Order Proposal

|  |
| --- |
| **Part 1 of the Order Proposal - Identification** |
| This Order Proposal is issued by the Eligible Customer under the MICTA between **[*Insert name of Contract Authority*]** and **[*Insert name of Supplier*]**  **MICTA No: [*Insert*]**  **Order Proposal No: [*Insert*]**  **Supplier response required by: [*Insert*]**  **Order Proposal issued by: [*Insert name of Eligible Customer, who will be the Customer under the Contract*]** |
| **Part 2 of the Order Proposal - Attachments** |
| **Attachment 1** - ICTA Order Form (including proposed Statement of Work) |
| **Attachment 2**- Additional Service Levels |

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

***[Note to user: Eligible Customer to insert in this attachment the completed ICTA Order Form (including the proposed Statement of Work), to assist the Contractor in preparing and submitting a Draft Order in accordance with clause 4.2 of the MICTA]***

1. to Order Proposal: Additional Service Levels

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

1. Order

|  |
| --- |
| **Part 1 - Identification** |
| This Order is issued by the Eligible Customer under the MICTA between **[*Insert name and ABN of Contract Authority*]** and **[*Insert name and ABN of Supplier*]**  **MICTA No: [*Insert*]**  **Order No: [*Insert*]**  **Eligible Customer: [*Insert name, ABN and address of Eligible Customer*]**  **Supplier: [*Insert name, ABN and address of Supplier*]** |
| **Part 2 of the Order Proposal - Attachments** |
| **Attachment 1 to Order**- ICTA Order Form (including Statement of Work) |
| **Attachment 2 to Order**- Additional Service Levels |

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

Executed as an agreement:

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

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

1. to Order: ICTA Order Form (including Statement of Work)

**[Note to user: *Insert in this attachment the ICTA Order Form, which has been finalised in accordance with clause 5 of the MICTA*]**

1. to Order: Additional Service Levels

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

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

1. - MICTA Scope

**[*Contract Authority to set out in this annexure the scope of goods, services and/or activities that the Supplier may be requested to supply under the MICTA*]**

1. - Financial Security

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

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

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

Recitals

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

Operative

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

**Executed as a deed poll:**

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

1. - Additional Conditions

**[*Insert any Additional Conditions that apply to this MICTA*]**

If nothing is stated, not applicable.

1. - ICTA

See attached.

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