



# Digital.NSW Cloud Framework

## Head Agreement

### Head Agreement Details

<b>Date of this Head Agreement</b>	Date	[Insert]
<b>Parties</b>	Contract Authority	The Department of Customer Service (ABN [insert]), for and on behalf of the Crown in Right of the State of New South Wales
	Address of Contract Authority	2 – 24 Rawson Place, Sydney NSW 2000
	Supplier	[Supplier name] (ABN [insert])
	Address of Supplier	[insert]
<b>1. Term (cl. 2.3)</b>	Commencement Date	[insert]
	Initial Term	[insert]
	Renewal Term	[insert duration and number of Renewal Periods]
<b>2. Authorised Representatives</b>	<b>Authorised Contract Authority Representative</b> Names, roles, and contact details and/or email addresses	[Insert the details of the Contract Authority's representative(s)]
	<b>Authorised Supplier Representative</b>	[Insert the details of the Supplier's representative(s)]

	Names, roles, and contact details and/or email addresses				
	Renewal Term	[insert duration and number of Renewal Periods]			
<b>3. Governance</b> (cl. 5.5)	[Insert details of governance framework (eg for any steering / management / operational committee – specify committee, membership and frequency of meetings)]				
<b>4. Background checks</b> (cl. 8.3)	[Insert any criminal history background checks, “Working with Children” checks, security checks and clearances and any other background checks required to be performed by the Supplier]				
<b>5. Location of Contract Authority Data</b> (cl. 8.4)	Location of primary data centre	[Insert location]			
	Location of secondary data centre	[Insert location]			
	Locations outside of NSW where Contract Authority Data may be stored, processed, accessed, disclosed or viewed by the Supplier, and any conditions for such	[Insert location(s) and any conditions] [The Contract Authority will not consent to any Contract Authority Data being stored, processed, accessed, disclosed or viewed by the Supplier outside of NSW, without appropriate assessment by the Contract Authority of privacy, State Records (see <i>General authority for transferring records out of NSW for storage with or maintenance by service providers based outside of the State GA 35</i> ) and security risks and prior NSW Chief Cyber Security Officer approval.]			
	Excluded locations	[Insert any locations from which the Supplier is prohibited from accessing and / or viewing the Contract Authority Data.]			
<b>6. Compliance</b> (cl. 10.1(a)(i)(H))	Specific Laws, NSW Government policies, codes, guidelines and standards	[Insert]			
<b>7. Additional Security Requirements</b> (cl. 11.2)	<b>Standards which the Supplier must comply with</b>				
	<table border="1"> <thead> <tr> <th>Standard (check box if applicable)</th> <th>Is the Supplier required to provide certification for this standard (cl. 11.2(d)) (check box if applicable)</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> ISA/IEC 62443 Series of standards on the cyber security of industrial automation and control systems</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	Standard (check box if applicable)	Is the Supplier required to provide certification for this standard (cl. 11.2(d)) (check box if applicable)	<input type="checkbox"/> ISA/IEC 62443 Series of standards on the cyber security of industrial automation and control systems	<input type="checkbox"/>
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<input type="checkbox"/> ISA/IEC 62443 Series of standards on the cyber security of industrial automation and control systems	<input type="checkbox"/>				

	<input checked="" type="checkbox"/> ISO/IEC 27001 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services <i>(See NSW Government Cyber Security Policy Mandatory Requirement cl.3.1)</i>	<input checked="" type="checkbox"/>
	<input type="checkbox"/> ISO/IEC 27017 Information technology – Security techniques – Code of practice for information security controls based on ISO/IEC 27002 for cloud services	<input type="checkbox"/>
	<input type="checkbox"/> ISO/IEC 27018 Information technology – Security techniques – Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors	<input type="checkbox"/>
	<input type="checkbox"/> ISO/IEC 27032 Information technology – Security techniques – Guidelines for cybersecurity	<input type="checkbox"/>
	<input type="checkbox"/> American Institute of Certified Public Accountants ( <b>AICPA</b> ) SOC 2 – System and Organization Controls ( <b>SOC</b> ) for Service Organizations: Trust Services Criteria	<input type="checkbox"/>
	<input type="checkbox"/> National Institute of Standards and Technology ( <b>NIST</b> ) SP 800-53 Rev.4 Security and Privacy Controls for Federal Information Systems and Organisations	<input type="checkbox"/>
	<input type="checkbox"/> Information Security Registered Assessors Program ( <b>IRAP</b> ) Security Assessment ( <i>specify Protected or Unclassified DLM Certification requirement</i> )	<input type="checkbox"/>
	<input type="checkbox"/> Payment Card Industry Data Security Standards published by the PCI Security Standards	<input type="checkbox"/>

	Council, present or future ( <b>PCI DSS</b> )	
	[Insert additional rows as necessary]	
<p><b>Other Security Requirements</b></p> <p>[Insert any other of the Contract Authority’s IT security and cybersecurity requirements, including specific business continuity or disaster recovery requirements here – noting that these may already be covered under the Supplier’s Security Program.]</p>		
<b>8. Insurances</b> (cl.13(a))	[Insert alternate insurance amounts if these should be different to the amounts set out in clause 13(a) of this Head Agreement.]	
<b>9. Notices</b> (cl.17.12)	Contract Authority	Attention: [Insert] Address: [Insert] Email address: [Insert]
	Supplier	Attention: [Insert] Address: [Insert] Email address: [Insert]
<b>10. Excluded non-Government Bodies</b>	[Insert any non-Government Bodies that are not Eligible Customers for the purposes of this agreement.]	

## Head Agreement Terms

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## Background

- A. The Contract Authority is responsible for the administration of the Digital.NSW Cloud Framework on behalf of Eligible Customers.
- B. The Digital.NSW Cloud Framework sets out a framework under which suppliers may supply products and services to Eligible Customers.
- C. The Supplier is a supplier of the Products and Services and has represented to the Contract Authority that it is capable of supplying the Products and Services to Eligible Customers.
- D. The Contract Authority and the Supplier have agreed to enter into this Head Agreement under the Digital.NSW Cloud Framework, so that Eligible Customers may procure the Products and Services from the Supplier under individual Customer Contracts.

## Part A Relationship between the Supplier and the Contract Authority

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### 1 Defined terms and interpretation

#### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in the Dictionary has the meaning given to it in the Dictionary.

#### 1.2 Interpretation

The interpretation clause in the Dictionary sets out rules of interpretation for this Head Agreement.

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### 2 About this Head Agreement

#### 2.1 Overview

This Head Agreement comprises the following documents:

- (a) these Head Agreement Terms;
- (b) the Head Agreement Details;
- (c) Schedule 1 (Service Specific Terms) comprising Schedule 1.1 (Product and Service Menu), Schedule 1.2 (Price List (AUD)), Schedule 1.3 (Supplier Terms) and Schedule 1.4 (Supplier's Security Program); and
- (d) Schedule 2 (Agreed Form of Customer Contract).

#### 2.2 Purpose of this Head Agreement

This Head Agreement is a standing offer from the Supplier, under which Eligible Customers may enter into a Customer Contract. Once a Customer Contract has been entered into by an Eligible Customer, the Eligible Customer may enter into Executed Orders with the Supplier under that Customer Contract to procure Products and Services.

### 2.3 Term

- (a) This Head Agreement commences on the Commencement Date and will continue until the end of the Term, unless extended by the Contract Authority under paragraph (b) or terminated earlier in accordance with these Head Agreement Terms.
- (b) The Contract Authority may exercise one or more options to extend the Term of this Head Agreement on the same terms and conditions, for the period not exceeding the relevant Renewal Period, by giving the Supplier a notice in writing at least 30 days prior to the end of the then-current Term.

### 2.4 Use of this Head Agreement

The Supplier must use this Head Agreement to supply all Products and Services to Eligible Customers who wish to procure Products or Services from the Supplier, in accordance with NSW Government Procurement Board Directions.

## Part B How Products and Services are ordered

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### 3 Customer Contracts and Executed Orders

#### 3.1 Overview

An Eligible Customer may purchase Products and Services from the Supplier by:

- (a) entering into a Customer Contract with the Supplier. The Customer Contract sets out the terms on which the Supplier will supply Products and Services to the Customer and must be in the form of the template Customer Contract agreed by the Contract Authority and the Supplier, attached at Schedule 2 (Agreed Form of Customer Contract) to this Head Agreement; and
- (b) once a Customer Contract has been executed, entering into an Executed Order with the Supplier. The Executed Order sets out the quantity, price and other details of the Products and Services which the Customer purchases from the Supplier under the Customer Contract and must be in the form of the Order Form Template agreed by the Contract Authority and the Supplier, included in Schedule 2 (Agreed Form of Customer Contract) to this Head Agreement.

#### 3.2 No exclusivity or minimum commitment

The Supplier acknowledges and agrees that:

- (a) entry into this Head Agreement does not guarantee that any Customer will enter into a Customer Contract or Executed Order with the Supplier;
- (b) a Customer is under no obligation to purchase any minimum volumes of Products or Services or meet any minimum spend level under a Customer Contract, unless otherwise agreed under that Customer Contract; and
- (c) the Supplier is not an exclusive provider of the Products and Services to a Customer.

#### 3.3 Form of Customer Contract

A Customer Contract comprises:

- (a) the Customer Contract Terms, in the form set out at Schedule 2 (Agreed Form of Customer Contract);
- (b) the Customer Contract Details, completed in the form set out at Schedule 2 (Agreed Form of Customer Contract);
- (c) the Supplier Terms attached to the Customer Contract or an Executed Order, subject to clause 3.4; and
- (d) each Executed Order.

### 3.4 Role of Supplier Terms

- (a) A Customer Contract may incorporate the Supplier Terms, in accordance with the Customer Contract Terms and this clause 3.4.
- (b) The Supplier represents that the Supplier Terms:
  - (i) set out terms which provide specific details around how a Customer may access, use and interact with, particular Products or Services;
  - (ii) describe the Products or Services which the Supplier offers to provide to the Customer, including Service Levels and other performance standards; and
  - (iii) are no more onerous on the Customer than any other customer of the Supplier who purchases the relevant Products or Services.
- (c) The Supplier acknowledges and agrees that:
  - (i) the Supplier Terms do not apply to the extent that:
    - (A) they deal with the same or similar subject matter as a provision of the Customer Contract Terms (for example, provisions in the Supplier Terms that deal with limitations of liability will not apply, in whole, as the Customer Contract Terms also deal with this subject matter);
    - (B) they are inconsistent or in conflict with the Customer Contract Terms;
    - (C) they alter, or seek to alter, the legal obligations of, or relationship between the Customer and the Supplier, as set out in the Customer Contract Terms;
    - (D) they impose additional obligations or requirements on the Customer, other than as set out in the Customer Contract Terms; and
    - (E) they limit any rights or remedies of the Customer under the Customer Contract Terms.
  - (ii) where:
    - (A) the Supplier Terms purport to override or otherwise vary the Customer Contract Terms; or
    - (B) any other terms (whether included in an Executed Order or otherwise) purport to override or otherwise vary the Customer Contract Terms,those terms will have no legal effect, except where both:



- (C) specified in Schedule 2 of the Customer Contract Terms; and
  - (D) the Contract Authority has provided its written approval for such terms overriding or otherwise varying the Customer Contract Terms, in accordance with any process specified by the Contract Authority from time to time.
- (iii) without limiting the Contract Authority's discretion under paragraph (ii)(D), the Contract Authority will not approve any terms that have the effect of:
- (A) altering the priority of documents that comprise the Customer Contract (as set out in clause 2.1 of the Customer Contract Terms); or
  - (B) overriding or varying a substantial portion of the Customer Contract, or that are not otherwise business critical for the Supplier.
- (d) The Supplier may amend or replace any Supplier Terms in Schedule 1.3 from time to time, by notice to the Contract Authority. However, any amended or replaced Supplier Terms will only take effect for any Customer Contract in accordance with this clause 3.4 and the terms of the Customer Contract.
- (e) If the Contract Authority is reasonably of the view that any amendment or replacement of Supplier Terms is non-beneficial to Eligible Customers, it may, following consultation with the Supplier, remove the relevant Product or Service from the Product and Service Menu on written notice to the Supplier. However, this will not affect any then-current Executed Orders.

### **3.5 Creation of Executed Order**

Once the parties execute both a Customer Contract under this Head Agreement and an Order Form:

- (a) an Executed Order is formed and is incorporated in the relevant Customer Contract; and
- (b) the Supplier must provide the Products and Services described in the Executed Order in accordance with that Executed Order and the Customer Contract.

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## **4 Products and Services**

### **4.1 Scope of Products and Services**

- (a) The Supplier must supply the Products or Services to each Customer, in accordance with this Head Agreement and the relevant Customer Contract, at Prices that do not exceed the amounts set out in the Price List.
- (b) If the Supplier receives an Order Form or request to supply any products or services that are not described in the Product and Service Menu, it will:
  - (i) refer the individual to the Contract Authority (or such other NSW Government channel, as notified by the Contract Authority from time to time); and
  - (ii) not supply or agree to supply the products or services falling outside the Product and Service Menu until such time as the Contract Authority has approved such supply under this Head Agreement.

- (c) The Supplier must obtain the Contract Authority's approval to amend the Product and Service Menu.
- (d) Subject to paragraph (e), the Contract Authority may, at its discretion, approve, approve on condition or reject:
  - (i) any proposed variation to the Product and Service Menu, such variation to be made in accordance with clause 17.4, or
  - (ii) on an interim basis, the supply to one or more Eligible Customers any products and services not described in the Product and Service Menu under this Head Agreement at a Price to be agreed by the parties.
- (e) The Supplier may withdraw a Product or Service from the Product and Service Menu by providing to the Contract Authority at least 12 months' advance notice. The Supplier's withdrawal of a Product or Service does not affect its obligation to provide such Product or Service to a Customer under a then-existing Customer Contract.

#### **4.2 Maximum prices are set out in this Head Agreement**

- (a) The maximum prices which the Supplier may charge a Customer are set out in Australian dollars in the Price List. The Price List may also set out any discounts, credits, rebates or other similar benefits which the Supplier agrees to provide each Customer.
- (b) Nothing in this Head Agreement restricts or prevents the Supplier and a Customer agreeing prices which are lower than the amounts stated in the Price List for any Product or Service.
- (c) The Supplier may reduce any price, or increase any discounts, credits, rebates or other similar benefits:
  - (i) where the price, discounts, credits, rebates or other similar benefits are published on the Supplier's website, by notifying the Contract Authority of the reduction and its effective date; or
  - (ii) where the price, discounts, credits, rebates or other similar benefits are set out in the Price List (and not published on the Supplier's website), by documenting such change in a contract variation in accordance with clause 17.4.

## **Part C Governance under this Head Agreement**

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### **5 Reporting and Service Levels**

#### **5.1 Reporting**

- (a) Within 14 days of the end of each calendar quarter the Supplier must provide to the Contract Authority a report for that quarter which includes the following information:
  - (i) a list of all new Customer Contracts and Executed Orders entered into over the preceding quarter (including as a result of a competitive procurement process), accompanied by a full copy (in electronic format) of each Customer Contract and Executed Order;

- (ii) a list of all current agreements, orders or other arrangements entered into by the Supplier with any Eligible Customer for the supply of any Products or Services (or similar products or services) which are outside this Head Agreement, whether entered into before or after the Commencement Date identifying their contract name and number;
  - (iii) total number and details of any prospective Customer Contracts and Executed Orders that the Supplier is currently negotiating or otherwise participating in a procurement process;
  - (iv) data on each Eligible Customer's usage of Products and Services, including utilisation and volumes;
  - (v) the Prices and total amounts paid by each Eligible Customer to the Supplier for the Products and Services under Customer Contracts, tracked over time and usage, including any applicable discounts, credits, rebates and other benefits;
  - (vi) the details of any Products and Services provided by the Supplier to any Eligible Customer under this Head Agreement;
  - (vii) the achievement and failure of any Service Levels under each Customer Contract including any accrued service credits under each Customer Contract;
  - (viii) details of any issues or disputes between the Supplier and an Eligible Customer, regardless of whether the dispute resolution process under the Customer Contract has been initiated;
  - (ix) details of any material breaches by the Supplier under any Customer Contract,
  - (x) details of any breach of its security obligations under any Customer Contract and any actual, alleged or suspected Security Incident or relevant security or data breaches experienced by the Supplier; and
  - (xi) such other information as the Contract Authority may reasonably require in its role administrating the Digital.NSW Cloud Framework in connection with the Supplier's provision of Products and Services under this Head Agreement.
- (b) The Contract Authority may share the details of this report with any Eligible Customer, for the purposes of the recipient of such details:
- (i) to assess the terms of and manage its own contracts (or proposed contracts) with the Supplier or any other third party;
  - (ii) for governance or reporting purposes; or
  - (iii) for any other reasonable business purposes.

## **5.2 Contract Management Meetings**

### **Service optimisation**

- (a) The Supplier will meet with the Contract Authority at least every calendar quarter on request by the Contract Authority to:

- (i) discuss the Supplier's quarterly reports and any issues arising;
  - (ii) present on any opportunities for Eligible Customers to improve or optimise the way that they are procuring or using any Products and Services; and
  - (iii) discuss any other items requested by the Contract Authority.
- (b) The Contract Authority may disclose any information provided by the Supplier during such meetings to any Eligible Customer. As part of such presentation, the Supplier may provide details of any new products or services that it wishes to make available to Eligible Customers under this Head Agreement.

#### **Cyber security review**

- (c) The Supplier will meet with the Contract Authority at least once every 6 months to discuss cyber security and data protection issues (which may include discussion around cyber risk, security scanning of services, levels of systems administration patching).

### **5.3 Service Levels**

If:

- (a) the Supplier materially fails to comply with its obligations under clause 5.1; or
- (b) in the Contract Authority's reasonable opinion, the Supplier has repeatedly failed to comply with any Service Levels under one or more Customer Contracts,

and the Supplier is unable to satisfy the Contract Authority, acting reasonably, that such failures have been remedied and will not re-occur, then the Contract Authority may direct:

- (c) the Supplier to cease entering into any new Customer Contracts or Executed Orders, without the prior written approval of the Contract Authority; and
- (d) Eligible Customers to refrain from entering into any new Customer Contracts or Executed Orders with the Supplier, without the prior written approval of the Contract Authority.

### **5.4 Compliance Records and access**

- (a) The Supplier must create and maintain records of the Supplier's compliance with this Head Agreement, in accordance with all Laws and relevant industry practice and standards (including applicable Australian accounting standards) and which are reasonably detailed to demonstrate Supplier's compliance with the Head Agreement (**Compliance Records**).
- (b) The Supplier must provide to the Contract Authority, copies of all Compliance Records in its possession and control:
  - (i) once per year, on request by the Contract Authority; and
  - (ii) at such other times on request by the Head Agreement, including where there is an actual, alleged or suspected breach of this Head Agreement or any Customer Contract.

## 5.5 Governance

Each party agrees to comply with any governance framework specified in Item 3 of the Head Agreement Details, including to make available suitably qualified personnel to attend governance meetings.

## Part D Risk allocation under this Head Agreement

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### 6 Supplier Warranties

The Supplier warrants that:

- (a) as at the date of this Head Agreement, the Supplier is properly constituted, and has the right and authority to enter into this Head Agreement;
- (b) as at the date every Customer Contract and Executed Order is entered into, the Supplier is properly constituted and has the right and authority to enter into that Customer Contract or Executed Order;
- (c) to the best of its knowledge and belief, there is no Conflict of Interest, in respect of itself and its Personnel, which relate to the Supplier's ability to perform its obligations under this Head Agreement;
- (d) the information that it provided to the Contract Authority, in connection with the Contract Authority's decision to enter into this Head Agreement with the Supplier, was to the best of the Contactor's knowledge and belief, correct and not misleading as at the date of this Head Agreement;
- (e) it is not aware of any information which, if it had provided that information to the Contract Authority, may have had a material effect on the decision made by the Contract Authority to enter into this Head Agreement with the Supplier;
- (f) that the office holders of the Supplier and any Associate of the Supplier are of good fame and character; and
- (g) the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under this Head Agreement.

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### 7 Confidentiality

- (a) Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:
  - (i) keep it confidential;
  - (ii) only use it where required to exercise its rights or perform its obligations under this Head Agreement; and
  - (iii) not disclose it to anyone other than:
    - (A) with the prior consent of the Discloser on condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements; or
    - (B) where required by the *Government Information (Public Access) Act 2009* (NSW) (or any other similar Laws) which may require the

Contract Authority to publish or disclose certain information concerning this Head Agreement;

- (C) 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);
  - (D) in the case of the Contract Authority, to:
    - (1) an Eligible Customer, including the head of agency and responsible Minister of any Eligible Customer; or
    - (2) without limiting (1), any Eligible non-Government Body, for the purposes of such recipient assessing the terms of or managing its own contracts (or proposed contracts) with the Supplier or any other third party; or
    - (3) a third party that purchases products or services similar to the Products and Services on behalf of a Government Agency; and
  - (E) to its Personnel, directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the party's exercise its rights or perform its obligations under this Head Agreement.
- (b) Neither party will issue any press release or make any other public statement regarding this Head Agreement or the Products and Services without the prior consent of the other party, except as required by Law.

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## 8 Contract Authority Data and Security

### 8.1 Contract Authority Data

- (a) The Supplier agrees that:
  - (i) all Contract Authority Data is owned by the Contract Authority; and
  - (ii) Contract Authority Data is the Contract Authority's Confidential Information.
- (b) The Supplier must not:
  - (i) use any Contract Authority Data to perform data analytics;
  - (ii) perform any data analytics on Contract Authority Data; or
  - (iii) otherwise seek to manipulate or derive any data from any Contract Authority Data.
- (c) If any Contract Authority Data is created by the Supplier, then ownership of all rights, title and interest in that Contract Authority Data vests in the Contract Authority on creation and the Supplier hereby assigns all rights, title and interest in the Contract Authority Data to the Contract Authority on creation. The Supplier

agrees to do all things necessary to assign or vest ownership of the Contract Authority Data to the Contract Authority, on creation.

## 8.2 Licence to use Contract Authority Data

- (a) The Contract Authority grants the Supplier a licence to use the Contract Authority Data for the sole purpose of:
  - (i) entering into Customer Contracts and Executed Orders with Eligible Customers; and
  - (ii) providing the Products and Services to Customers.
- (b) The licence in 8.2(a) is non-exclusive, non-transferable, non-sublicensable (except to permitted subcontractors under a Customer Contract) and royalty free and continues until the expiry or termination of the Term.
- (c) Except as set out in this clause 8.2, the Supplier does not gain any other rights or permissions to the Contract Authority Data.

## 8.3 Supplier's Personnel who have access to Contract Authority Data

The Supplier must:

- (a) complete criminal history background checks, "Working with Children" checks, security checks and clearances and any other background checks as set out in Item 4 of the Head Agreement Details or as may be specified by the Contract Authority from time to time, for the Supplier's Personnel who are able to access or view any Contract Authority Data; and
- (b) not allow any Personnel who have failed any check specified in paragraph (a) to access or view any Contract Authority Data.

## 8.4 Storage and transfer of Contract Authority Data

- (a) The Supplier must ensure that it stores and hosts the Contract Authority Data at the primary data centre and secondary data centre(s) specified in Item 5 of the Head Agreement Details, and only at those data centres.
- (b) The Supplier must not:
  - (i) store, process, access, disclose or view Contract Authority Data; or
  - (ii) perform any of its obligations under this Head Agreement which could involve Contract Authority Data being stored, processed, accessed, disclosed or viewed,  
  
outside of New South Wales, except as permitted under paragraph (c).
- (c) The Supplier may store, process, access, disclose or view Contract Authority Data, outside of New South Wales:
  - (i) at the locations specified in Item 5 of the Head Agreement Details and in compliance at all times with any conditions specified at Item 5; or
  - (ii) where necessary to comply with the Law or a binding order of a Governmental body (such as a subpoena or court order) imposed on the Supplier, provided that the Supplier gives the Contract Authority reasonable

notice of any such legal requirement or order to enable the Contract Authority to seek a protective order or other appropriate remedy,

however, the Supplier must not store, process, access, disclose or view any Contract Authority Data from a location that is:

- (iii) in a jurisdiction that is the subject of sanction, embargo, export control or similar Laws in Australia, New Zealand, the United States of America, the United Kingdom or the European Union; or
  - (iv) specified as an “excluded location” in the Item 5 of the Head Agreement Details.
- (d) The Supplier must ensure:
- (i) the handling of Contract Authority Data complies with the terms of this Head Agreement and any other security requirements of the Contract Authority; and
  - (ii) the Contract Authority Data is at all times managed in accordance with the *State Records Act 1998* (NSW).
- (e) For clarity, nothing in this clause 8.4 relieves the Supplier of its obligations under clause 9.
- (f) If requested by the Contract Authority, the Supplier must provide the Contract Authority with a report setting out how it will comply with its obligations under this clause 8.4.

#### **8.5 Change to location of Contract Authority Data**

- (a) If the Supplier wishes to change the locations specified in Item 5 of the Head Agreement Details, or any of the conditions specified in Item 5, then the Supplier must provide the Contract Authority with written notice of such change, at least 6 months in advance of when the Supplier wishes that change to take effect.
- (b) The Supplier must not propose changing a location specified in Item 5 of the Head Agreement Details to any location that is:
- (i) in a jurisdiction that is the subject of sanction, embargo, export control or similar Laws in Australia, New Zealand, the United States of America, the United Kingdom or the European Union; or
  - (ii) specified as an “excluded location” in the Item 5 of the Head Agreement Details.
- (c) The Supplier must ensure that the notice it provides under paragraph (a) sets out:
- (i) the proposed change to location or conditions;
  - (ii) the date on which the Supplier proposes the change will occur;
  - (iii) the reason for the proposed change; and
  - (iv) the impact of such changes on the Contract Authority’s ability to exercise its rights under this Head Agreement,



and the Supplier agrees to provide all assistance reasonably requested by the Contract Authority to assess the proposed change to location or conditions.

- (d) If the Contract Authority notifies the Supplier that it:
  - (i) consents to the proposed change to location or conditions, then the parties must execute a variation to Item 5 of the Head Agreement Details that reflects such change;
  - (ii) does not consent to the proposed change, then the parties must promptly meet to discuss the concerns that the Contract Authority has in respect of the proposed change, and how those concerns may be addressed.
- (e) If the parties are unable to reach an agreement on how the Contract Authority concerns may be addressed under paragraph (d)(ii) by the earlier of:
  - (i) one month after the Contract Authority provides its notice to the Supplier under paragraph (d)(ii); or
  - (ii) the date specified in the Supplier's notice under paragraph (c)(ii),

then, the Contract Authority may terminate this Head Agreement, by notice to the Supplier, with immediate effect, and nothing in this paragraph (e) limits any rights or remedies which the Contract Authority may have in respect of the Supplier's breach or anticipated breach of clause 8.4.

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## 9 Privacy

If the Supplier collects, uses, discloses, holds or otherwise processes any Personal Information in connection with this Head Agreement (regardless of whether or not that Personal Information forms part of the Contract Authority Data), the Supplier must:

- (a) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
- (b) only use that Personal Information for the sole purpose of performing its obligations under this Head Agreement;
- (c) not disclose the Personal Information to any other person without the Contract Authority's prior written consent;
- (d) not transfer it outside Australia or access it, or allow it to be accessed, from outside Australia without the Contract Authority's prior written consent;
- (e) notify the Contract Authority immediately, upon becoming aware of a breach, alleged breach, or suspecting that a breach of this clause 9 has occurred (or may have occurred) and:
  - (i) take all reasonable steps to manage, contain and remedy such breach;
  - (ii) comply with any reasonable direction from the Contract Authority with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy); and
  - (iii) take all reasonable steps to prevent such breach from recurring; and
- (f) notify the Contract Authority as soon as reasonably possible:

- (i) if the Supplier is required to disclose that Personal Information under Privacy Laws or other Laws, provided the Supplier gives the Contract Authority reasonable notice of any such legal requirement or order to enable the Supplier to seek a protective order or other appropriate remedy (unless it would be in violation of a court order or other legal requirement); and/or
- (ii) if the Supplier is approached by any privacy commissioner or other regulator concerning any Personal Information.

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## 10 Compliance

### 10.1 Government policies, applicable standards and Laws

- (a) The Supplier must, in performing its obligations under the Head Agreement:
  - (i) comply with all Australian Laws as though the Supplier is domiciled in Australia, all other applicable Laws, NSW Government policies, codes, guidelines and standards including but not limited to:
    - (A) the NSW Procurement Policy Framework published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-government-procurement-policy-framework>;
    - (B) the NSW Code of Practice of Procurement published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-government-procurement-information#conduct>;
    - (C) the NSW Government Small and Medium Enterprise and Regional Procurement Policy published at <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/nsw-government-small-and-medium-enterprise>;
    - (D) the NSW Government Cyber Security Policy published at <https://www.digital.nsw.gov.au/sites/default/files/NSW%20Government%20Cyber%20Security%20Policy.pdf>;
    - (E) the Statement of Business Ethics published by the Contract Authority at <https://www.finance.nsw.gov.au/about-us/business-ethics>;
    - (F) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Products and Services have not been produced using “worst forms of child labour” as defined;
    - (G) modern slavery Laws in the jurisdictions applicable to the Supplier’s supply of the Products and Services; and
    - (H) any specific Laws, NSW Government policies, codes, guidelines and standards set out in the Head Agreement Details, or otherwise agreed with the Contract Authority; and
  - (ii) comply with any modifications, updates, amendments and replacements to those items referred to in paragraphs (i), which are either:
    - (A) notified by the Contract Authority to the Supplier, and the Supplier must comply within a reasonable time as specified by the Contract Authority in its notice; or

- (B) which the Supplier ought reasonably to be aware of, and the Supplier must comply within a reasonable time of when it ought reasonably to have been aware.
- (b) The Supplier may seek the written guidance of the Contract Authority on how the Supplier may comply with an applicable NSW Government policy. The Supplier will not be in breach of paragraph (a) if it complies with the then-current written guidance provided by the Contract Authority in respect of an applicable NSW Government policy. The Contract Authority may amend or revoke any written guidance it has provided to the Supplier under this paragraph (b), by written notice to the Supplier.

## 10.2 Modern Slavery

**[Drafting note: This clause 10.2 is drafted on the basis of the Modern Slavery Act 2018 (NSW) as enacted at the time of drafting. Clause 10.2 is not intended to limit the Supplier's obligations under cl. 10.1(a)(i)(G).]**

### **Compliance**

- (a) The Supplier warrants that, as at the date of its execution of this Head Agreement, neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence.

### **Information**

- (b) The Supplier must:
  - (i) provide to the Contract Authority any Information and other assistance, as reasonably requested by the Contract Authority, to enable the Contract Authority to meet its obligations under the Modern Slavery Act 2018 (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Contract Authority or the NSW Audit Office and providing reasonable access to the Contract Authority's/Audit Office's auditors to interview the Supplier's staff.
  - (ii) notify the Contract Authority in writing as soon as it becomes aware of:
    - (A) a material change to any of the Information it has provided to the Contract Authority in relation to Modern Slavery; and
    - (B) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (c) The Supplier may provide any Information or report requested by the Contract Authority in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Contract Authority to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Contract Authority.
- (d) The Supplier must, during the term of this Contract Authority and for a period of seven (7) years thereafter:

- (i) maintain; and
- (ii) upon the Contract Authority's reasonable request, give the Contract Authority access to, and/or copies of,

a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Contract Authority to assess the Supplier's compliance with this clause 10.2.

***Modern Slavery due diligence***

- (e) The Supplier must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls.

***Response to Modern Slavery incident***

- (f) If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Contract Authority notifies the Supplier that it requires the Supplier to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
- (g) Any action taken by the Supplier under paragraph (f) will not affect any rights of the Contract Authority under this Head Agreement, including its rights under paragraph (h).

***Termination on ground of Modern Slavery***

- (h) Without limiting any right or remedy of the Contract Authority under this Head Agreement or at Law, the Contract Authority may terminate this Head Agreement, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination, on any one or more of the following grounds:
  - (i) the Supplier has failed to disclose to the Contract Authority, prior to execution of this Head Agreement, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;
  - (ii) the Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Head Agreement;
  - (iii) in the Contract Authority's reasonable view, the Supplier has failed to notify the Contract Authority as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
  - (iv) in the Contract Authority's reasonable view, the Supplier has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); and

- (v) in the Contract Authority's reasonable view, the Supplier has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of any of paragraphs (a) to (d).

### 10.3 Conflicts of Interest

- (a) The Supplier will promptly notify the Contract Authority in writing if a Conflict of Interest arises or is likely to arise during the Term, and will take action as may be reasonably required by the Contract Authority to avoid or minimise such conflict.
- (b) If such Conflict of Interest significantly affects the interests of the Contract Authority, and the Supplier is unable to satisfactorily resolve the matter within 14 days of receipt of the notice by the Contract Authority, then the existence of that Conflict of Interest will be a breach of the Head Agreement for the purposes of clause 15.1.

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## 11 Security

### 11.1 Scope of Supplier's security obligations

The Supplier's security obligations under this clause 11 apply to Contract Authority Data, where and to the extent that the Supplier controls or is able to control the Contract Authority Data. For the purposes of this clause 11.1, "**control**" includes controlling, managing, processing, generating, capturing, collecting, transferring, transmitting, deleting and destroying.

### 11.2 Supplier's security obligations

- (a) The Supplier must implement, maintain and enforce a formal program of technical and organisational security measures (including an audit and compliance program) relating to IT security and cybersecurity in accordance with this clause 11 and the Head Agreement Details (**Security Program**). The Security Program must at all times comply with the International Standards for Information Security (available from the Australian Standards website ([www.standards.org.au](http://www.standards.org.au))) and be designed to:
  - (i) monitor, audit, detect, report and protect against Security Incidents and any other threats or hazards to the security or integrity of the Contract Authority Data;
  - (ii) ensure the security (including the confidentiality, availability and integrity) of the Contract Authority Data;
  - (iii) monitor, detect and protect against fraud and corruption by the Supplier's organisation and the Supplier's Personnel; and
  - (iv) ensure that the Security Program is comprehensive in covering all Contract Authority Data.
- (b) Without limiting its obligations under paragraph (a), the Supplier must ensure its Security Program complies with:
  - (i) the NSW Government's NSW Cyber Security Policy (**CSP**), the NSW Government Cloud Policy and their mandatory requirements, to the extent applicable to or relevant for the performance of the Supplier's obligations under this Head Agreement; and

- (ii) any additional IT security and cybersecurity standards and requirements set out in Item 7 of the Head Agreement Details (**Additional Security Requirements**). The Contract Authority may update the Additional Security Requirements from time to time, by notice to the Supplier. The Supplier must ensure its Security Program complies with any updated Additional Security Requirements.
- (c) The Supplier must implement, maintain and execute business continuity and disaster recovery policies and procedures as part of its Security Program that comply with the standards and certifications referred to in this clause 11.
- (d) The Supplier must have, obtain and maintain certification from Commencement Date for the duration of the Term from an accredited, independent, third party registrar or accredited, independent, third party certification body in relation to those security standards indicated at Item 7 of the Head Agreement Details as requiring certification, (**Certification Security Standards**), and those certifications must:
  - (i) be updated at least once annually;
  - (ii) confirm the Supplier complies with the relevant Certification Security Standards; and
  - (iii) be comprehensive in covering all components of the Supplier's operations in which any Contract Authority Data is controlled.
- (e) The Contract Authority may update the Certification Security Standards from time to time, by notice to the Supplier. The Supplier must perform its obligations under this Head Agreement in respect of any updated Certification Security Standards, at no additional cost to the Contract Authority, unless otherwise agreed in writing.
- (f) If there is any conflict or inconsistency between any standards, protocols, requirements and specifications (or similar), the most stringent or higher level of security will apply.
- (g) The Supplier must provide the Contract Authority, at the Contract Authority's request, with electronic copies of:
  - (i) all certifications obtained in connection with any of the Certification Security Standards on or before the Commencement Date, and where certifications are updated, a copy of each renewal;
  - (ii) all reports relating to external audits required in connection with any of the Certification Security Standards (to be provided for the most recent period available);
  - (iii) copies of reports relating to internal audits undertaken by the Supplier in connection with any of the Certification Security Standards (to be provided for the most recent period available);
  - (iv) evidence that a vulnerability management process is in place within their organisation that includes ongoing and routine vulnerability scanning. This can include copies of relevant policies;
  - (v) evidence that penetration testing is carried out prior to and directly after new systems are moved into production or in the event of a significant change to the configuration of any existing system; and

- (vi) evidence that high and extreme risks identified in audits, vulnerability scans and penetration testing have been remediated,

which must contain (at a minimum) full and complete details of such reports insofar as they relate to the Supplier's operations in which any Contract Authority Data is controlled. Where the Supplier is not permitted to provide the Contract Authority with copies of any of the foregoing (due to confidentiality obligations to third parties), the Supplier must provide access to copies of the same in a 'read room' environment.

### 11.3 Change to the Supplier's Security Program

- (a) If the Supplier wishes to change any aspect of its Security Program, where such change would result in:
  - (i) the Security Program no longer complying with any part of this clause 11; or
  - (ii) a reduction the level of security provided by the Supplier in respect of the relevant Product or Services,

then the Supplier must provide the Contract Authority with written notice of such change, at least 6 months in advance of when the Supplier wishes that change to take effect.

- (b) The Supplier must ensure that the notice it provides under paragraph (a) sets out:
  - (i) the proposed change to its Security Program;
  - (ii) the provisions of this clause 11 which the Supplier will not comply with as a result of the proposed change;
  - (iii) the date on which the Supplier proposes the change will occur; and
  - (iv) the impact of such changes on the Contract Authority's access, use and interaction with any Contract Authority Data,

and the Supplier agrees to provide all assistance reasonably requested by the Contract Authority to assess the proposed change.

- (c) If the Contract Authority notifies the Supplier that it:
  - (i) consents to the proposed change, then the parties must execute a variation to this Head Agreement (which may include the "Supplier's Security Program" section of Schedule 1.4) that reflects such change;
  - (ii) does not consent to the proposed change, then the parties must promptly meet to discuss the concerns that the Contract Authority has in respect of the proposed change, and how those concerns may be addressed.
- (d) If the parties are unable to reach an agreement on how the Contract Authority's concerns may be addressed under paragraph (c)(ii) by the earlier of:
  - (i) one month after the Contract Authority provides its notice to the Supplier under paragraph (c)(ii); and
  - (ii) the date specified in the Supplier's notice under paragraph (b)(iii),

then, the Contract Authority may terminate this Head Agreement, by notice to the Supplier, with immediate effect, and nothing in this paragraph (d) limits any rights or remedies which the Contract Authority may have in respect of the Supplier's breach or anticipated breach of clause 11.2.

#### 11.4 Supplier's own policies

The Supplier represents, warrants and undertakes that its own information security and cyber security policies that apply to the Products and Services:

- (a) without limiting this clause 11, are as set out in the "Supplier's Security Program" section of Schedule 1.4; and
- (b) comply with, or are aligned to, the requirements set out in this clause 11.

#### 11.5 Responding to the Contract Authority's requests

The Supplier must:

- (a) promptly respond to any security related questions received from the Contract Authority and provide related information and materials upon request, including in relation to any information and materials held by the Supplier's subcontractors; and
- (b) if requested by the Contract Authority, provide reasonable assistance to the Contract Authority to enable the Contract Authority to prepare any reports (including audit reports) that the Contract Authority is required to prepare (whether or not required by Law or NSW Government policy).

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## 12 Security Incident notification

### 12.1 Notification of Security Incidents

If the Supplier becomes aware that there has been an actual, alleged or suspected Security Incident, the Supplier must immediately notify the Contract Authority.

### 12.2 Actions required in relation to a Security Incident:

- (a) As soon as reasonably possible after:
  - (i) the Supplier becomes aware of any actual, alleged or suspected Security Incident; or
  - (ii) the Contract Authority advises the Supplier that the Contract Authority reasonably believes an actual, alleged or suspected Security Incident has occurred or is about to occur,

the Supplier must investigate and diagnose the Security Incident.

- (b) The Supplier must:
  - (i) take immediate action to contain the Security Incident and mitigate the impact of the Security Incident (working on a 24 x 7 basis if required);
  - (ii) conduct a root cause analysis as soon as practicable to identify the root cause, understand the risks posed by the Security Incident and identify how these risks can be addressed;



- (iii) share the results of the Supplier's analysis and the Supplier's remediation plan with the Contract Authority on request, provided that such information is to be treated as the Supplier's Confidential Information (except where it is already the Contract Authority's Confidential Information);
  - (iv) provide to the Contract Authority, to the extent known at the time:
    - (A) the date of the Security Incident;
    - (B) a description of the Security Incident;
    - (C) a list of actions taken by the Supplier to mitigate the impact of the Security Incident; and
    - (D) a summary of the records impacted or which may be impacted, and Contract Authority Data and/or other information that has been or may have been lost, accessed or disclosed, as a result of the Security Incident;
  - (v) provide any assistance reasonably required in relation to any criminal, regulatory or other investigation relating to the Security Incident;
  - (vi) update the Supplier's remediation plan to address any concerns reasonably raised by the Contract Authority, following which the Supplier must implement the remediation plan in accordance with agreed timeframes;
  - (vii) following implementation of the remediation plan, provide evidence to the Contract Authority verifying that the remediation activities have successfully resolved the underlying cause of the Security Incident (for example, by sharing the results of relevant penetration tests or vulnerability scans); and
  - (viii) review and learn from the Security Incident to improve data handling practices.
- (c) By exception, this does not require the Supplier to provide the Contract Authority with specific details that relate to the Supplier's other customers or would breach applicable Laws.

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## 13 Insurances

- (a) Unless otherwise agreed in the Head Agreement Details, the Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:
  - (i) public liability insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term;
  - (ii) product liability insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term;
  - (iii) workers' compensation insurance in accordance with Law;
  - (iv) cyber security insurance with an indemnity of at least AUD 20 million in respect of each claim, to be held for the Term; and

- (v) professional indemnity insurance of at least AUD 20 million in respect of the total aggregate liability for all claims for the period of cover, to be held for the Term and for at least 7 years after the end of this Head Agreement,
- (b) Without limiting paragraph (a), the Supplier must hold and maintain insurance that covers loss that may be suffered as a result of a data security breach and the wrongful disclosure of Personal Information.
- (c) Within 30 days following a request from the Contract Authority, the Supplier must provide the Contract Authority with:
  - (i) a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Contract Authority) confirming that all required insurance policies are current and that the insurance has the required limits of cover; and
  - (ii) the ability to inspect the policy wording for each of the insurances required to be held and maintained by the Supplier under paragraph (a).

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## 14 Indemnities and liability

### 14.1 Supplier's indemnity

The Supplier indemnifies the Contract Authority, the State of New South Wales, the Contract Authority's Personnel and each Government Agency including the heads of agency and responsible Ministers against any loss or damage arising out of, or connected with:

- (a) the personal injury or death to any person or damage to, or loss of any property caused or contributed to by an act or omission of the Supplier or any of the Supplier's Personnel;
- (b) a claim brought by a third party in respect of the infringement of that third party's intellectual property rights
- (c) a breach of any of clauses 7, 8 or 9; and
- (d) the Supplier's or any of the Supplier's Personnel's fraud, negligence, wilful misconduct or other wrongful acts or omissions.

### 14.2 Uncapped and unlimited liability

The liability of each party under this Head Agreement is uncapped, and the exclusions of liability set out in clause 14.4 do not apply, in relation to each of the following:

- (a) any of the indemnities provided under clause 14.1 (excluding the indemnity given by the Supplier under clause 14.1(d) in respect of negligence);
- (b) the personal injury or death to any person or damage to, or loss of any property caused or contributed to by an act or omission of the party or its Personnel; and
- (c) loss or damage caused by the party's fraud, wilful misconduct or other wrongful acts or omissions.

### 14.3 General Liability Cap

Except where clause 14.2 applies, the liability of each party under this Head Agreement for all causes of action arising out of or in connection with this Head Agreement (but excluding liability arising under a Customer Contract) will not exceed AUD 500,000 in aggregate.

### 14.4 Exclusions of liability

Except where clause 14.2 applies, a party is not liable under this Head Agreement for any indirect or consequential loss including for loss of revenue, loss of profit or loss of anticipated savings. However, the exclusion of indirect or consequential loss does not preclude the recovery by a party of loss or damage which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other relevant act or omission giving rise to liability.

### 14.5 Application

The limitations and exclusions of liability in this clause 13 only apply to the extent permitted by Law.

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## 15 Termination

### 15.1 Termination for cause

- (a) The Contract Authority may terminate all or part of this Head Agreement, immediately by written notice to the Supplier if:
  - (i) the Supplier materially breaches a term of the Head Agreement:
    - (A) which is not capable of remedy; or
    - (B) which is capable of remedy, but the Supplier fails to remedy it within 30 days of receiving a notice to do so;
  - (ii) an Insolvency Event occurs in respect of the Supplier; or
  - (iii) the Supplier or any parent company of the Supplier undergoes a Change in Control, without the Contract Authority's prior written consent.

### 15.2 Termination without cause

The Contract Authority may terminate this Head Agreement for convenience, without penalty, by giving the Supplier at least 60 days' written notice.

### 15.3 Consequences of termination

- (a) On termination of this Head Agreement in whole or part, the Supplier must:
  - (i) comply with any reasonable directions from the Contract Authority; and
  - (ii) return to the Contract Authority all of the Contract Authority's Confidential Information or the Confidential Information relating to the terminated parts of the Head Agreement.
- (b) Termination of the Head Agreement in whole or part does not automatically terminate any Customer Contracts current at that time (**Existing Customer**

**Contracts).** An Existing Customer Contract will continue for the duration of its term (which may extend beyond the Term of the Head Agreement) until it expires or is terminated earlier in accordance with its terms. However, no new Customer Contracts or Executed Orders may be formed after termination of the Head Agreement.

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## 16 Dispute resolution

### 16.1 General

Either party may give written notice of a dispute to the other, setting out particulars of the dispute and indicating whether the Contract Authority is to be involved in the dispute resolution process (“**Dispute Notice**”). Nothing in this clause 16 limits the ability of either party to commence legal action against the other party.

### 16.2 Escalation

- (a) Within 10 Business Days of a party receiving a Dispute Notice, the parties must meet and try to resolve the dispute in good faith.
- (b) If the parties are unable to resolve the dispute within that period, a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other agreed period of the meeting referred to in paragraph (a).

### 16.3 Alternative dispute resolution

If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines.

### 16.4 Continue to perform

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

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## 17 General

### 17.1 No use of the Contract Authority’s name, logo etc

The Supplier must not use any of the Contract Authority’s logo, trade mark or branding, without the prior written consent of the Contract Authority.

### 17.2 Assignment, novation and other dealings

- (a) The Supplier must not assign or novate this Head Agreement or any Customer Contract that is made under this Head Agreement without obtaining the prior written consent of the Contract Authority (and for each Customer Contract, the relevant Customer’s prior written consent, in addition to the Contract Authority’s consent), which consent may be withheld at the Contract Authority’s discretion.
- (b) The Supplier acknowledges that the Contract Authority may conduct financial and other inquiries or checks on the entity proposing to take over this Head Agreement before determining whether or not to give consent to an assignment or novation.

- (c) The Contract Authority, at its own cost and at its own discretion, may assign or novate, this Head Agreement 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 Head Agreement or the administration of the Digital.NSW Cloud Framework, are transferred to a different body or legal entity. The Supplier agrees to co-operate in good faith and provide all reasonable assistance to the Customer in respect of any such assignment or novation.
- (d) Without limiting clause 15.1(a)(iii), the Supplier must notify the Contract Authority if the Supplier or any parent company of the Supplier is about to undergo a Change in Control, at least 90 days in advance of the Change in Control occurring. If requested by the Contract Authority, the Supplier must provide the Contract Authority with all information reasonably requested by the Contract Authority in respect of the Change in Control, including in respect of any incoming owner or other person who is to obtain control over the Supplier or any parent company.

### **17.3 Entire Agreement**

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

### **17.4 Variation**

Except where expressly permitted by Head Agreement Terms, any change to this Head Agreement must be in writing and signed by the parties in the form of a deed.

### **17.5 Relationship of the parties**

Nothing in this Head Agreement creates or is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party.

### **17.6 Survival and merger**

- (a) No term of this Head Agreement merges on completion of any transaction contemplated by this Head Agreement.
- (b) The following clauses survive the termination and expiry of this Head Agreement: 7, 8, 9, 13, 15.3 and 17 and any clauses that are expressed to or which by their nature survive termination or expiry.

### **17.7 Severability**

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

### **17.8 Waiver**

- (a) No waiver of a right or remedy under this Head Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Head Agreement does not prevent a further exercise of that or any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Head Agreement does

not operate as a waiver or prevent further exercise of that or any other right or remedy.

### 17.9 Cumulative rights

Except as expressly provided in this Head Agreement, the rights of a party under this Head Agreement are in addition to and do not exclude or limit any other rights or remedies provided by Law.

### 17.10 Further assurances

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

### 17.11 Costs

Other than as expressly set out in this Head Agreement, each party must bear its own cost in complying with its obligations under this Head Agreement.

### 17.12 Notices

- (a) A notice, consent or other communication under this Head Agreement is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address.
- (b) For the purposes of this clause 17.12, a party's address and email address is that set out in the Head Agreement Details, unless the party has notified a changed address, then the notice, consent, approval or other communication must be to that address.
- (c) A notice, consent or other communication 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 5.00 pm on a Business Day it is regarded as received at 9.00 am on the following Business Day.
- (d) Unless there is evidence to the contrary:
  - (i) a letter sent by post will be taken to be received on the third Business Day after posting (or seventh, if posted to or from a place outside of Australia);
  - (ii) in the case of email:
    - (A) 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;
    - (B) 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
    - (C) where an "out of office", 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 17.12.

**17.13 Construction**

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

**17.14 Governing Law**

This Head Agreement is governed by the Laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the courts of New South Wales, Australia.

## Execution page

### Executed as a deed:

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Signed, sealed and delivered by the Crown in right of the State of New South Wales acting through the **Department of Customer Service** by its authorised signatory, but not so as to incur personal liability, in the presence of:

---

Signature of witness

---

Signature of authorised signatory

---

Name of witness (print)

---

Name of authorised signatory (print)

---

Date

---

Date

---

Signed, sealed and delivered by **[insert Supplier's name and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth) by:

---

Signature of witness

---

Signature of authorised signatory

---

Name of witness (print)

---

Name of authorised signatory (print)

---

Date

---

Date



**[Note: If the Supplier requires execution by Power of Attorney]**

**Executed as a deed:**

---

Signed, sealed and delivered by the Crown in right of the State of New South Wales acting through the **Department of Customer Service** by its authorised signatory, but not so as to incur personal liability, in the presence of:

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Signature of witness

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Signature of authorised signatory

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Name of witness (print)

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Name of authorised signatory (print)

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Date

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Date

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Signed, sealed and delivered for **[insert Supplier's name and ABN]** by its attorney who has no notice of revocation of that power of attorney in the presence of:

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Signature of witness

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Signature of attorney

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Name of witness (print)

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Name of attorney (print)

## **Schedule 1    Service Specific Terms**

This Schedule 1 comprises the following parts:

- Schedule 1.1: Product and Service Menu
- Schedule 1.2: Price List
- Schedule 1.3: Supplier Terms
- Schedule 1.4: Supplier's Security Program

## Schedule 1.1 Product and Service Menu

(Clause 4.1)

**[DRAFTING NOTE: This template is designed for use primarily for IaaS and PaaS and related services, and not for SaaS and other As a Service offerings.]**

## Schedule 1.2 Price List (AUD)

(Clause 4.2)

### 1. Australian dollars

All monetary amounts set out in this Schedule 1.2 must be in Australian dollars.

### 2. Whole of Government discount

**[DRAFTING NOTE: example only]** If, in any 12 month period commencing on the date of this Head Agreement and each anniversary of this date, the total undiscounted fees accrued by Customers under all Customer Contracts entered into under this Head Agreement falls within the range specified in the table immediately below, then the Supplier must discount the fees otherwise payable by each Customer under their respective Customer Contract by the relevant percentage amount specified in the table immediately below:

Total \$AUD fees paid or payable by all Customers	Percentage discount
Less than [insert]	[insert]%
Between [insert] and [insert]	[insert]%
More than [insert]	[insert]%

### 3. Whole of Government credits, rebates or other similar benefits

**[Set out any agreed credits, rebates or other similar benefits here. Where it is agreed that credits, rebates or similar benefits are as published on the Supplier's website, include full details here.]**

**Schedule 1.3    Supplier Terms**

## **Schedule 1.4    Supplier's Security Program**

## **Schedule 2    Agreed Form of Customer Contract**