

ICT Agreement Core Terms

Version: 7 May 2018

1. Role of the Core Terms

Each agreement between us (the **buyer**) and you (the **supplier**) consists of:

1. these **core terms**
2. the relevant **solution requirements**
3. any documents attached to those **solution requirements**

The **core terms** are first in the list, and take priority over all other documents. They govern performance of the **agreement**, including how the solution described in the **solution requirements** will be supplied.

Any terms contained in other parts of the **agreement** that conflict with, or limit the operation of, these core terms have no legal effect.

2. Your dealings with us

You confirm that all information you provide us is true, correct and not misleading whether by omission or otherwise.

You confirm that you have not withheld any information from us you should reasonably know would change our decision to enter into the **agreement**.

A breach of either of the above is a breach of the **agreement**.

3. Performance

You agree to perform the **agreement**:

- with due care and skill, consistent with relevant industry practice and standards
- working co-operatively with our other partners and suppliers
- in accordance with all applicable laws
- in accordance with our reasonable directions

4. User material

You agree to make available and keep updated all user materials needed for optimal use of the solution described in the **solution requirements**.

5. Subcontracting

You must have our prior consent to subcontract any significant part of the **agreement**.

Any rights we grant to you are extended to your subcontractors on the same terms for the purpose of performing the **agreement**.

You are responsible for your subcontractors, and liable for their actions and omissions in performing the **agreement**.

6. Confidential information

Where either party (**recipient**) receives information from the other (**discloser**) that is inherently confidential or is designated by the **discloser** as confidential, the **recipient** must keep it confidential and not disclose it to anyone other than:

- with the prior consent of the **discloser** on the condition that the recipient is bound by the same confidentiality requirements
- where required to perform the **agreement**
- where required by applicable laws — including the *Government Information (Public Access) Act 2009* (NSW) which may require us to publish or disclose certain information concerning the **agreement**
- to relevant advisers, relevant ministers and other NSW government agencies or entities
- where it is already in the public domain for reasons other than a breach of this **agreement**

You must not make any public statement regarding the **agreement** unless you have our prior consent.

7. Buyer data

Buyer data means any data or information in any form:

- which is provided by us to you
- or which is stored, processed or generated by us, or by you on our behalf, in the course of performing the **agreement** or using the solution described in the **solution requirements**

Buyer data excludes any **systems metadata** which is embedded in your systems and unable to be separated and transferred to us, where that data:

- is generated automatically in the course of operating your business and systems
- and does not relate specifically to us or any other NSW government agency or entity – including any of our operations, facilities, customers, clients, personnel, assets or programs

We own or control all **buyer data** from the time it is created, and it is our confidential information.

We grant you a licence to use our **buyer data** for the purpose of performing the **agreement**. This licence is non-exclusive, non-transferable and royalty free, and it continues until the **agreement** terminates or expires.

While **buyer data** is in your possession or is managed by you:

- you must enable us to access or extract the **buyer data** at any time

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- you do not gain any other rights to the **buyer data**

You may use the **buyer data** for the purpose of performing the **agreement**.

You may analyse the **buyer data** in de-identified form, without disclosing it to anyone outside your organisation, in order to improve your products and services.

You must obtain our consent before you use the **buyer data** for any other purposes, whether in identified or de-identified form, including where you wish to:

- commercially exploit **buyer data**
- or use **buyer data** for data analytics or to target advertising to any of us

8. Privacy

Personal information has the meaning given to it in applicable **privacy laws**.

Privacy laws means the laws governing privacy as applicable in New South Wales and the Commonwealth of Australia, and includes any associated rules, codes of practice and guidelines made under those laws.

Where you obtain **personal information** under the **agreement**, you must not:

- use or disclose it for any purpose other than performing the **agreement**
- transfer it outside Australia
- or do anything that would cause us to be in breach of **privacy laws**

You must tell us as soon as reasonably possible:

- if you are required to disclose **personal information** under applicable laws
- if you are approached by any privacy commissioner concerning **personal information** gained under the **agreement**

9. Security

Security breach means:

- any unauthorised use of, loss of, access to or disclosure of **buyer data**
- or any other security breach or data breach that is governed by applicable laws

You must maintain a formal security program in accordance with industry standards which is comprehensive in terms of covering the solution described in the **solution requirements**. The security program must be designed to:

- ensure the security and integrity of **buyer data**
- protect against threats or hazards to the security or integrity of **buyer data**
- and prevent any **security breach**

If you believe there has been a **security breach**, you must notify us within 48 hours, or any shorter period required by law.

As soon as reasonably possible after becoming aware of any **security breach**, or where we advise you that we have reasonable cause to believe there has been a **security breach**, you must:

- conduct a root cause analysis and share the results of your analysis and your remediation plan with us on request
- and provide to us, to the extent known at the time:
 - the date of the **security breach**
 - a description of the **security breach**
 - a list of actions taken by you to mitigate the impact
 - a summary of the information and **buyer data** lost, accessed or disclosed in the **security breach**

10. Intellectual property

You grant us the intellectual property rights set out in the **solution requirements**.

You confirm that:

- you have all the intellectual property rights required to perform the **agreement** and to enable us to use the solution described in the **solution requirements** in accordance with the **agreement**
- the rights you grant to us will not infringe any other person's intellectual property rights

A breach of the above is a breach of the **agreement**.

Existing materials

Either party may provide **existing materials** to the other. **Existing materials** are materials that are developed before the **agreement** commences or developed independently of the **agreement**.

The intellectual property rights in those **existing materials** remain with the party making them available or their licensors.

Similarly, the intellectual property rights in any adaptation of those **existing materials** remain with the party making them available or their licensors.

We license you to use our **existing materials** to perform the **agreement**. This licence is non-exclusive, non-transferable and royalty free.

You license us to use your **existing materials** to exercise our rights under the **agreement**. This licence is non-exclusive, non-transferable and royalty free.

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New materials

New materials are materials created while performing the **agreement**, other than **buyer data** and **existing materials**.

Where you create **new materials**:

- intellectual property rights in those **new materials** are owned by you
- you license us to use them for any purpose other than commercial exploitation
- this licence is non-exclusive, non-transferable, perpetual and royalty free

By exception, alternative arrangements for particular items of **new materials** may be set out in the **solution requirements**.

Logos and branding

We will not use each other's logos or brand without prior consent.

11. Transparency

You agree to create and maintain records of your performance under the **agreement** in accordance with applicable laws and relevant industry practice and standards.

We may inspect those records where we provide you with 7 days' written notice. You agree to give us access and reasonable assistance.

12. Payment and invoicing

We agree to pay the fees set out in the **agreement**, other than disputed amounts:

- by electronic funds transfer in Australian dollars to a bank account nominated by you
- in accordance with the payment terms set out in the **agreement**
- within 30 days following receipt of your valid tax invoice

If we dispute any invoiced amount, we can withhold that disputed amount until the dispute is resolved.

13. Insurance

You must hold and maintain appropriate insurances, and comply with any specific insurance requirements in the **solution requirements**.

If requested, you must provide a certificate of currency or other evidence proving you have appropriate cover for the performance of the **agreement**.

14. Indemnity

You indemnify us and our personnel — including our officers, employees, agents, contractors and subcontractors — against any loss or damage arising out of, or connected with, a claim, demand or proceeding brought by a third party relating to any infringement, or alleged infringement, of a third party's intellectual property rights in connection with our use of the solution provided by you.

15. Liability

Neither party is liable to the other for an amount greater than two times the agreement value, being the total amount paid or payable under the **agreement**.

As an exception, liability is uncapped in relation to each of the following:

- personal injury (including death) or damage to property
- a breach of a third party's intellectual property rights
- a breach of confidentiality or privacy

These limitations on liability apply only to the extent permitted by law. Any limitations on liability that apply to us also apply to the State of New South Wales.

16. Termination for cause

If either party breaches the **agreement**, and it is more than a trivial or inconsequential breach:

- which is not capable of remedy
- or which is not capable of remedy, but the other party fails to remedy it within 14 days of receiving notice asking them to do so

then the other party can immediately give notice of termination.

17. Early termination

We may terminate the **agreement** by giving you 30 days' notice. Our liability is limited to the payments due to you up to the date of termination. No additional termination fees are payable.

You are not entitled to terminate the **agreement** except where our breach entitles you to terminate for cause under clause 16.

18. Consequences of termination or expiry

If we give you notice of termination, you must stop work in accordance with that notice and comply with our directions.

When the **agreement** expires or terminates:

- if we ask, you must provide **disengagement services** to us for up to three months, including:
 - continuity of the solution on the same terms
 - and disengagement assistance on a time and materials basis at agreed government rates
- each of us must, on request, hand over or destroy any confidential information and intellectual property of the other party in accordance with agreed technical arrangements
- you must promptly give us any items we have paid for, and any **buyer data** that is held or managed by you

19. General

19.1 Personnel	We must each ensure our personnel — including our officers, employees, agents, contractors and subcontractors — do not cause a breach of the agreement .
19.2 Scope of our rights	Our rights to use the solution described in the solution requirements extend on the same terms to our contractors, outsourcing providers and other suppliers where they are performing that role for us.
19.3 Assistance	If requested, you agree to provide us with assistance and information in relation to matters relating to the agreement to enable us to respond to regulators and governmental authorities.
19.4 ICT accessibility	NSW Government is committed to meeting Accessibility Standard AS EN 301 549. Your solution must meet those accessibility requirements. By exception, certain items may be excluded from this requirement where alternative arrangements are set out in the solution requirements .
19.5 Assignment	A reference to a party, either buyer or supplier , includes that party's administrators, successors and permitted assigns. You may not assign any of your rights under the agreement without our prior consent.
19.6 Change of control	You must notify us if there is a change in control of your organisation that affects your organisation's ability to determine or control decisions about its legal, financial or operating policies.

19.7 Waiver	A party does not waive any of its rights under the agreement unless it does so in writing.
19.8 Variations	Any change to the agreement must be in writing and signed by authorised representatives of the buyer and the seller .
19.9 Notices, communications and consents	Any notice, communication or consent under the agreement must be in writing, to the nominated recipient specified in the solution requirements .
19.10 Applicable laws	<p>Applicable laws includes all amendments to those laws.</p> <p>The agreement is governed by and construed in accordance with the laws applicable in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.</p>

20. Survival

The termination or expiry of the **agreement** for any reason will not affect or extinguish the terms which are intended to survive termination or expiry, being clauses 1, 2, 5-11, 13-15, 18 and 19.