

Date: 29 APR 2013

# Master Supply Agreement (Short Form)

for ITS 2573

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A master agreement for the supply of various telecommunications equipment, infrastructure and services.

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NSW Government Department of Finance and Services  
**(Purchasing Authority)**

[], ABN [] **(Supplier)**

# Details

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## Date

## Parties

|                 |   |
|-----------------|---|
| Name            | NSW Government Department of Finance and Services                                   |
| ABN             | N/A   |
| Short form name | <b>Purchasing Authority</b>   |
| Notice details  | Attention: <b>Daniel Gallacher</b>  |
|                 | Address: <b>McKell Building</b>   |
|                 | <b>2-24 Rawson Place Sydney 2000</b>  |
|                 | Facsimile: <b>(02) 9372 7954</b>  |
|                 | Email: <a href="mailto:ITS2573@services.nsw.gov.au">ITS2573@services.nsw.gov.au</a> |

|                 |                            |
|-----------------|----------------------------|
| Name            | []                         |
| ABN/ACN         | []                         |
| Short form name | <b>Supplier</b>            |
| Notice details  | Attention: <b>[insert]</b> |
|                 | Address: <b>[Insert]</b>   |
|                 | Facsimile: <b>[Insert]</b> |
|                 | Email: <b>[Insert]</b>     |

## Background

- A The NSW Government, represented by the Purchasing Authority, has authorised this Agreement to be used by Eligible Customers for the acquisition of telecommunications related equipment, infrastructure and services.
- B The Purchasing Authority wishes to enable Eligible Customers to procure various items of equipment, infrastructure and services from the Supplier from time to time for use in, or in connection with, the business, operations and services of the relevant agency or NSW Government entity or body.
- C The Purchasing Authority and the Supplier agree that from time to time, Eligible Customers may purchase equipment, infrastructure and services from the Supplier, and the Supplier will supply that equipment, infrastructure and services on the terms of Purchase Orders entered into under this Agreement.
- D The Purchasing Authority is responsible for the administration of this Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.

# Agreed terms

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## 1. GENERAL

### DICTIONARY

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Conditions of Contract** means the terms and conditions set out in Schedule 1;
- (b) **Conflict of Interest** means the Supplier engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Supplier from performing its obligations under this Agreement or a Contract in an objective manner.
- (c) **Contract** means a contract formed in accordance with clause 3.4 incorporating the terms and documents referred to in clause 3.5.
- (d) **Effective Date** means the date on which both parties execute this Agreement.
- (e) **Eligible Customer** means any NSW Government Body or Eligible non-Government Body.
- (f) **Eligible non-Government Body** means a public body which is registered with NSW Procurement and is listed on NSW State's publicly available website at <http://nswbuy.com.au/PDF/nswbuy-customer-listing.aspx> as being eligible to buy under this Agreement, including the following bodies (as identified under the *Public Sector Employment and Management (Goods and Services) Regulation 9(5)*):
  - (i) a private hospital;
  - (ii) a charity or other community non-profit organisation;
  - (iii) a private school or a college or university;
  - (iv) a public authority of this State, other than a NSW Government Body;
  - (v) a public authority or government trading enterprise of the Commonwealth or any other State or Territory;
  - (vi) a public authority or government trading enterprise of any other jurisdiction (but only if it carries on activities in this State);
  - (vii) any contractor to a public authority (but only in respect of things done as such a contractor);
  - (viii) such other public bodies under that Regulation, for which the Purchasing Authority is entitled to act from time to time in its discretion.
- (g) **End Date** means the date which is 3 years from the Effective Date of this Agreement.
- (h) **ITS 2573 Panel** means the panel arrangement for the supply of two way radio telecommunications equipment, infrastructure and services.
- (i) **Panel Rules** means the Purchasing Authority document "ITS 2573 Operational Telecommunications Equipment, Infrastructure and Services Panel Part B – Supplier Panel Rules and Conditions December 2012" which governs the operation of, and the Supplier's admission to, the ITS 2573 Panel, available on [www.telco.nsw.gov.au](http://www.telco.nsw.gov.au) and as may be updated or amended from time to time.
- (j) **Purchase Order** means a completed version of the Purchase Order Form that includes or incorporates all details that are relevant to that Contract, executed by the Supplier and an Eligible Customer.
- (k) **Purchase Order Form** means the template purchase order set out at Schedule 3.
- (l) **Term** means the term of this Agreement as determined in accordance with clause 2.1.

## **PROCURING EQUIPMENT, INFRASTRUCTURE AND SERVICES**

- 1.2 This Agreement requires that all Eligible Customers who acquire Equipment, Infrastructure and/or Services (as applicable) (**Contracted Items**) from the Supplier do so using the Purchase Order Form (or as otherwise permitted under this Agreement).
- 1.3 This Agreement describes the relationship between the Purchasing Authority and the Supplier for the administration of the arrangement, including the means by which Contracted Items can be acquired under this Agreement, how those items can be updated during the Term, and which entities are entitled to acquire Contracted Items under this Agreement and the Term.
- 1.4 The Parties agree to perform their obligations in accordance with the terms and conditions of this Agreement.
- 1.5 The Supplier must comply with the Panel Rules at all times during the Term of this Agreement.

## **2. TERM**

### **TERM OF AGREEMENT AND CONTRACT**

- 2.1 This Agreement commences on the Effective Date of this Agreement and, unless it is validly terminated earlier in accordance with the terms of this Agreement or pursuant to a common law right, and subject to clause 2.2, continues until the End Date.
- 2.2 The Purchasing Authority may extend the term of this Agreement beyond the:
  - (a) End Date for a further period of one year (**First Renewal Term**); and
  - (b) First Renewal Term for a further period of one year,on the same terms and conditions by giving the Supplier notice at least 30 days prior to End Date, and/or the end of the First Renewal Term (as applicable).
- 2.3 Each Contract commences on the date the Purchase Order for that Contract is executed by both the Supplier and the relevant Eligible Customer and continues for the term of that Contract (as determined under clause 3 of the Conditions of Contract) unless earlier terminated in accordance with its terms.

## **3. ORDERING AND CONTRACTS**

### **PURCHASE ORDERS**

- 3.1 Any Eligible Customer may order Contracted Items by agreeing with the Supplier and executing a Purchase Order during the Term.
- 3.2 No equipment, deliverables, services or combination of deliverables and services are to be supplied under this Agreement, only under Contracts formed in accordance with this clause 3.

### **PURCHASE ORDER REQUIREMENTS**

- 3.3 Each Purchase Order must:
  - (a) be signed by the Eligible Customer;
  - (b) specify the Contracted Items to be supplied;
  - (c) specify the price of the Contracted Items ordered; and
  - (d) specify the site(s) or locations to which, and at which, the Contracted Items must be supplied.

### **FORMATION OF CONTRACTS**

- 3.4 A binding Contract between the Supplier and an Eligible Customer is created upon the Supplier and an Eligible Customer signing the Purchase Order.

- 3.5 Each Contract incorporates:
- (a) the Conditions of Contract; and
  - (b) the Contract Documents (as defined in the Conditions of Contract).
- 3.6 No confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Supplier or the Customer (including the terms on any pre-printed purchase order form, any warranty or maintenance terms or licence terms) in relation to Contracted Items will vary or form part of the Contract.

### **SEPARATE SUPPLY CONTRACT**

- 3.7 Each Contract is an independent Contract that will continue in accordance with its terms until that Contract has been terminated or fully discharged.
- 3.8 Contracts and this Agreement may run concurrently, and Contracts may continue after termination or expiration of this Agreement.

### **NO COMMITMENT**

- 3.9 Neither the Purchasing Authority nor any Eligible Customer is obliged:
- (a) to issue any Purchase Orders to the Supplier; or
  - (b) to issue Purchase Orders for any minimum quantity of Contracted Items.

### **NO EXCLUSIVITY**

- 3.10 The Supplier acknowledges that neither this Agreement nor any Contract creates an exclusive supply arrangement between the Supplier and the Purchasing Authority or any Eligible Customer.
- 3.11 The Purchasing Authority and each Eligible Customer may, at any time, select another supplier to supply items that are the same as, or substantially similar to, any or all Contracted Items.

### **ENFORCEMENT**

- 3.12 The Supplier acknowledges and agrees that the Purchasing Authority may enforce a Contract as agent for an Eligible Customer, even though the Purchasing Authority is not a party to the Contract in its own right.

## **4. WARRANTIES**

### **SUPPLIER WARRANTIES**

- 4.1 The Supplier warrants to the Purchasing Authority that:
- (a) as at the Effective Date, the Supplier is properly constituted and has the right and authority to enter into this Agreement;
  - (b) to the best of its knowledge and belief there is no Conflict of Interest of the Supplier or its Personnel as at the Effective Date of this Agreement, and during the Term, the Supplier will use its reasonable efforts not to permit a Conflict of Interest of the Supplier or its Personnel to arise in the performance of its obligations;
  - (c) the information provided to the Purchasing Authority in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its personnel prior to entering into this Agreement, was to the best of the Supplier's knowledge and belief correct when it was provided to the Purchasing Authority;
  - (d) as at the Effective Date, to the best of its knowledge and belief the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under this Agreement and any Supply Contract to be entered into under it; and
  - (e) it will comply with the Panel Rules at all times during the Term.

## MUTUAL WARRANTIES

- 4.2 The Purchasing Authority warrants to the Supplier, and the Supplier warrants to the Purchasing Authority, that during the Term it will:
- (a) co-operate with the other party to this Agreement to ensure timely progress and fulfilment of its objectives;
  - (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, this Agreement;
  - (c) work together in a collaborative manner; and
  - (d) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other party on a regular basis to ensure the other party is fully informed of the progress of work required under the Contract.

## 5. CONFLICT OF INTEREST

The Supplier must:

- (a) provide the Purchasing Authority with notice upon becoming aware of the existence or possibility of a Conflict of Interest that arises in the performance of its obligations under any Contract; and
- (b) comply with any reasonable direction given by the Purchasing Authority in relation to managing that Conflict of Interest.

## 6. TERMINATION

- 6.1 The Purchasing Authority may terminate this Agreement by providing the Supplier with notice if the Supplier:
- (a) suffers an Insolvency Event (as defined in the Conditions of Contract);
  - (b) has materially failed to comply with the Panel Rules and the Supplier has not rectified that failure to comply (if capable of rectification) within 14 days (or such longer period as stated in the notice) of receipt of a notice specifying the details of the material failure to comply;
  - (c) otherwise ceases to be a supplier admitted to the ITS 2573 Panel; or
  - (d) is in breach of this Agreement and the Supplier has not rectified that breach within 14 days (or such longer period as stated in the notice) of receipt of a notice from the Purchasing Authority specifying the details of the breach.
- 6.2 Termination of this Agreement is without prejudice to any right of action or remedy that has accrued or may accrue to either party prior to termination.

## 7. GENERAL

### RELATIONSHIP

- 7.1 The Supplier agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of the Purchasing Authority or any Eligible Customer.

### VARIATION

- 7.2 No change or variation to this Agreement shall be valid unless agreed in writing and signed by both the Purchasing Authority and the Supplier.

### ASSIGNMENT AND NOVATION

- 7.3 The Purchasing Authority may, by notice to the Supplier, assign or novate this Agreement to any other NSW Government entity or department which takes over the functions of the Purchasing Authority in relation to the administration of this Agreement or the 2020 ICT Services Scheme administered by NSW Procurement (a business unit of the Purchasing Authority).

- 7.4 The Supplier must not assign in whole or in part or this Agreement without obtaining the prior written consent of the Purchasing Authority, which consent may be withheld in its discretion.

## **WAIVER**

- 7.5 A waiver in respect of a breach of a provision of this Agreement by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either party to enforce any provision of this Agreement will not be interpreted as a waiver of that provision.

## **SEVERABILITY**

- 7.6 If any part of this Agreement is void or voidable, then that part is severed from this Agreement without affecting the continued operation of the remainder of this Agreement.

## **NOTICES**

- 7.7 Any notice required to or which may be given under this Agreement must be in writing. A notice may be given by facsimile, ordinary or other post, in person or left at the address of the relevant party described in the Details section of this Agreement.

## **ENTIRE AGREEMENT**

- 7.8 This Agreement constitutes the entire agreement between the Customer and the Purchasing Authority as to its subject matter and supersedes any prior understanding or agreement between the parties.

## **COUNTERPARTS**

- 7.9 If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

## **APPLICABLE LAW**

- 7.10 The laws of the New South Wales govern this Agreement and the parties submit to the exclusive jurisdiction of the courts of New South Wales and to courts that have jurisdiction to hear appeals from those courts.

# Schedule 1- Conditions of Contract

## 1. BACKGROUND

- 1.1 The Purchasing Authority has established the ITS 2573 Panel.
- 1.2 The Supplier is a supplier on the Registration Supplier List (as defined in the ITS 2573 panel "2020 Scheme Conditions of Membership for Suppliers" document), and has entered into the Agreement with the Purchasing Authority.
- 1.3 The Customer requires certain goods and services that are available under the panel arrangements and the Supplier has agreed to supply them on the terms of the Contract, which is made pursuant to the Agreement.

## 2. SUPPLIER'S PRIMARY OBLIGATIONS

- 2.1 To the extent that the Supplier is providing only:
- (a) Goods under the Contract, the provisions of the Contract relating to Services will not apply; and
  - (b) Services under the Contract, the provisions of the Contract relating to Goods will not apply.
- 2.2 The Supplier must provide the Goods and perform the Services in accordance with:
- (a) the Contract Documents;
  - (b) all Statutory Requirements; and
  - (c) the Procedures and Policies.
- 2.3 The Supplier must provide the Documentation as specified in the Contract Documents to the Customer in either hard copy or electronic format, and must ensure that the Documentation is in English, and is of a reasonable standard in terms of its presentation, accuracy and scope.
- 2.4 For the purposes of each Contract made pursuant to the Agreement, the Contract Documents are, in order of precedence:
- (a) the Purchase Order;
  - (b) these Conditions of Contract;
  - (c) the attachments or annexures to the Purchase Order (if any) which may include specifications, a statement of work, support agreement, service level agreement, project plan or Customer requirements document.

## 3. TERM

This Contract commences on the Contract Effective Date and, unless it is validly terminated earlier in accordance with its terms, continues until:

- (a) in the case of Services to be provided under the Contract, and where the Contract Documents specify a term, the end of that term; and
- (b) in any other case, all obligations under the Contract have been discharged.

## 4. NO EXCLUSIVITY

The Supplier does not have any exclusive right to supply the Customer with goods which are of a similar or identical nature to the Goods, or with services which are of a similar or identical nature to the Services.

## 5. DELIVERY

- 5.1 The Supplier must deliver the Goods by the Delivery Date to the Delivery Location at the time specified in the Contract Documents, or if no such date, time or place is specified, as directed by the Customer. No additional or separate delivery costs are payable by the Customer.
- 5.2 The Customer is not obliged to receive any Goods earlier than the Delivery Date.
- 5.3 The Supplier must promptly inform the Customer of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Goods and/or Services, and must investigate how to avoid or minimise any adverse effect.
- 5.4 If the parties have agreed in the Contract Documents that liquidated damages are applicable, liquidated damages as specified in the Contract Documents will be payable by the Supplier for late delivery of the Goods under the Contract, unless such late delivery is caused by the Customer's failure to perform its obligations under the Contract or by an Event.
- 5.5 Each party acknowledges that the liquidated damages specified in the Contract Documents are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 5.6 as a result of the Supplier not delivering the Goods by the Delivery Date.
- 5.6 The Supplier must pay any liquidated damages that are due from the Delivery Date it failed to meet until the earlier of:
- (a) the date that the Supplier completes delivery of all Deliverables under the Contract to which liquidated damages are applicable; or
  - (b) the Longstop Date.
- 5.7 Liquidated damages paid under clause 5.4:
- (a) are the Customer's sole and exclusive financial remedy for the loss that the Customer suffers during the period in which liquidated damages are payable under clause 5.6 out of or in connection with the late delivery of Goods; but
  - (b) are without prejudice to any other right or remedy of the Customer (including the right to terminate the Contract for breach by the Supplier); and
  - (c) do not relieve the Supplier from any other liability or from meeting any other obligation under the Contract.
- 5.8 The parties agree that where the Supplier has not delivered all Deliverables under the Contract to which liquidated damages are applicable by the Longstop Date, the payment of liquidated damages by the Supplier under clause 5.4 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage and expense that arises after the Longstop Date out of or in connection with the late delivery or non-delivery of Goods by the Supplier.

## 6. SERVICES

- 6.1 The Supplier must perform the Services at the Services Location commencing on the Services Start Date.
- 6.2 The Supplier must complete the performance of the



Services by the Services End Date.

- 6.3 The Supplier must perform its obligations under the Contract in accordance with any Service Levels.
- 6.4 If the Contract Documents specify that the Supplier must perform the Services in accordance with the stages stated in the Contract Documents:
- (a) the Customer must give written notice to the Supplier within 10 Business Days (or such longer period stated in the Contract Documents) of the end of each stage as to whether it wishes the Supplier to commence the following Stage. For the avoidance of doubt, the decision as to whether the Customer wishes the Supplier to perform subsequent stages may be made in the Customer's sole discretion, and any decision that a subsequent stage will not be performed does not constitute a termination for convenience of the Contract;
  - (b) the Supplier must not commence any work on any subsequent stage until it receives written notice from the Customer to proceed with the work in that stage;
  - (c) nothing in the Contract will be construed as obliging the Customer to give the written notice referred to in clause 6.4(a) in respect of subsequent stage; and
  - (d) the Customer's liability to the Supplier for not proceeding to a subsequent stage shall be limited to those costs that have been stated in the Contract Documents.

## 7. QUALITY AND INSPECTION

- 7.1 Within 5 Business Days after receiving a Deliverable, the Customer must inspect that delivery and notify the Supplier of any Defect.
- 7.2 If the Customer notifies the Supplier of a Defect, the Customer may accept the Deliverables at a reduced cost, or reject the Deliverables and:
- (a) require the Supplier, at its cost, to supply further or replacement Deliverables that meet the requirements of the Contract with a timeframe specified by the Customer; or
  - (b) terminate the Contract and obtain a refund of any part of the Contract Sum that the Customer may have paid to the Supplier,
- without limiting any other rights that the Customer may have.

## 8. REPORTING, REVIEWS AND MEETINGS

- 8.1 If required by the Customer, the Supplier must:
- (a) provide reports to the Customer in relation to the provision of Goods and Services and the Supplier's performance of its obligations under the Contract; and
  - (b) attend progress meetings in relation to the performance of the Supplier's obligations under the Contract,
- 8.2 In accordance with the Panel Rules, the Supplier must provide to the Purchasing Authority monthly or quarterly reports (as notified by the Purchasing Authority) detailing the amounts paid by the Customer under the Contract broken down by the category of Goods and/or Services identified in accordance with Schedule 2 to the Agreement.
- 8.3 The parties will conduct performance reviews of the

Services as specified in the Contract Documents.

## 9. SITE ACCESS

- 9.1 The Customer must prepare and maintain the Site to enable the supply of the Deliverables or performance of the Services and allow the Supplier to access the Site for such purposes.
- 9.2 Where the Customer provides the Supplier with access to the Site, the Supplier must, and must ensure its personnel, comply with the requirements and directions of the Customer relating to conduct, behavior, safety and security, and is liable for any damage caused by any negligent act or omission of Supplier personnel on the Site.
- 9.3 The Customer may temporarily deny or suspend access to the Site at its discretion.

## 10. WARRANTIES

- 10.1 General: The Supplier warrants that:
- (a) to the best of its knowledge and belief the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under the Contract; and
  - (b) it will perform all of its obligations under the Contract in accordance with the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that anything the Supplier will produce under the Contract has not been produced using "worst forms of child labour" as defined.
- 10.2 Performance: The Supplier warrants that:
- (a) the Goods will be fit for the purpose specified in the Contract Documents and will comply with all Statutory Requirements;
  - (b) it has the right to transfer title to the Deliverables to the Customer;
  - (c) the Services will be performed in a good and workmanlike manner and in compliance with all Statutory Requirements;
  - (d) it will at all times be suitably qualified and experienced in relation to the provision of the Goods and Services;
  - (e) it will at all times exercise due skill, care and diligence in the provision of the Goods and Services; and
  - (f) it will maintain any quality standard or accreditation stated in the Contract Documents.
- ## 11. WARRANTY AND SPARES AVAILABILITY PERIOD
- 11.1 The Warranty Period will commence at the expiration of 5 Business Days following the delivery of a Deliverable.
- 11.2 Subject to the Customer's rights at law, if a Defect arises during the Warranty Period, the Supplier must, at its own expense, repair or replace any Defective Deliverable within the time stated by the Customer or, if no time is stated, within a reasonable time.
- 11.3 If the Defective Deliverable is not repaired or replaced within the stated time, the Customer may engage others to repair or replace the Defective Deliverables and the reasonable costs incurred by the Customer shall be a debt due from the Supplier to the Customer.
- 11.4 The Supplier warrants that, for the spares availability period specified in the Contract Documents (if any) it will, or it will ensure that its supplier or the manufacturer will,

offer to:

- (a) continue to supply the applicable Goods (including replacements, upgrades or attachments provided by the Supplier); or
- (b) supply appropriate substitutes for the Goods if for any reason it is no longer available.

11.5 If the Supplier replaces the Goods or parts of the Goods, the Supplier warrants that:

- (a) the replacement Goods or parts become the property of the Customer on installation;
- (b) the parts will be newly manufactured (or will be warranted as if they are new); and
- (c) the replacement Goods or parts are provided with same warranties that apply to the Goods for the remainder of the Warranty Period of the Goods.

## 12. WARRANTY EXCLUSIONS

12.1 The Supplier is not liable for any breach of the warranties provided under the Contract which arises as a result of:

- (a) a circumstance beyond the reasonable control of the Supplier that results in it being unable to perform an obligation and includes:
  - (i) natural events like fire, flood, or earthquake;
  - (ii) national emergency;
  - (iii) terrorist acts (including Cyberterrorism) and acts of vandalism; or
  - (iv) war(each an **Event**);
- (b) fair, wear and tear;
- (c) damage arising from the re-installation, moving, relocation or decommissioning or recommissioning of a Deliverable by a person other than the Supplier or its Authorised Representative; or
- (d) damage arising from the act, error, fault, neglect, misuse or omission of the Customer.

## 13. INTELLECTUAL PROPERTY RIGHTS

13.1 This clause does not affect the ownership of the IPR in any Existing Material.

13.2 All IPR in New Material vest in the Supplier.

13.3 The Supplier grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable (in accordance with this clause 13.3) licence to use, copy, translate and reproduce the New Material and Existing Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated. This licence granted under this clause:

- (a) permits the Customer to sub-licence or transfer any of its rights to a third party (at no additional charge to the Customer) for the purposes of that third party providing services to the Customer (but does not allow the third party to otherwise commercialise that New Material or Existing Material); and
- (b) permits the Customer to sublicense or transfer any of its rights (at no additional charge to the Customer) to any Division of the Government Service as defined under the *Public Sector*

*Employment and Management Act 2002* (NSW), a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW), a NSW Government Agency (as defined in the *Interpretation Act 1987* (NSW), and any Public Health Organisation as defined under the *Health Services Act 1997* (NSW), where the Customer is a Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002* (NSW), a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW), a NSW Government Agency (as defined in the *Interpretation Act 1987* (NSW), or a Public Health Organisation as defined under the *Health Services Act 1997* (NSW).

## 14. INDEMNITY

14.1 The Supplier must indemnify and hold harmless the Customer, and its officers and employees (**Indemnified Party**) against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:

- (a) arises out of or in connection with the Supplier's breach of any Statutory Requirements;
- (b) is the result of a claim against an Indemnified Party made by a third party arising out of or in connection with a malicious or negligent act or omission of the Supplier, its directors, officers, employees, agents and subcontractors in the performance of the Supplier's obligations under the Contract; or
- (c) is the result of a claim against an Indemnified Party made by a third party that the use of a Deliverable in accordance with the Contract infringes any Intellectual Property Rights, including the moral rights, of the third party claimant.

## 15. INSURANCE

15.1 The Supplier must, before delivering the Goods or performing the Services under the Contract, take out and maintain workers' compensation insurance in accordance with application legislation, and those insurance policies which are relevant to the provision of the Goods and Services, and (if applicable) with limits of cover as follows:

- (a) Public Liability: \$10 million per occurrence;
- (b) Product Liability: \$5 million per claim; and
- (c) Professional Indemnity: \$5 million per claim.

15.2 The insurance policies required to be held by the Supplier under the Contract must:

- (a) include cover for the Supplier's liability for the acts and omissions of the Supplier's subcontractors (if any) to the same extent as if they were the acts and omissions of the Supplier, or where the Supplier is unable or unwilling to obtain insurance with such cover, the Supplier must procure that its subcontractors obtain insurance policies which are consistent with the requirements of this clause 15. In such circumstances, the Supplier must provide evidence to the Customer that the relevant insurance has been obtained by its

subcontractors before the Customer will grant approval of the relevant subcontractor under clause 23.1;

- (b) be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation (or such other insurer as the Purchasing Authority approves by giving notice to the Supplier) at the date when cover is commenced, or for workers' compensation insurance, the insurer (including any self-insurance) must be authorised by law.

15.3 The Supplier must provide, within 30 days of a request by the Customer, evidence satisfactory to the Customer that it is meeting its obligations as to insurance under this clause 15.

## 16. RISK AND TITLE

16.1 Title to, and risk in, Deliverables supplied to the Customer (except to the extent that the IPR in those Deliverables are licensed under clause 13) passes to the Customer when the Supplier delivers those Deliverables to the Customer.

## 17. PRICE, INVOICING AND PAYMENT

17.1 The Customer must pay the Contract Sum in accordance the Contract.

17.2 If the Purchase Order or any other Contract Document specifies that the Contract Sum or part of it, is payable upon the satisfactory completion of a corresponding milestone, then the Customer will only be required to pay that amount on completion of the milestone to the Customer's satisfaction.

17.3 The Customer may retain a proportion of the payment for any milestones in the amount and for the period stated in the Purchase Order or any other Contract Document for the due and proper performance and completion of the Supplier's delivery obligations under the Contract

17.4 The Supplier acknowledges that prior to signing the Purchase Order in respect of the Contract it has had the opportunity to satisfy itself as to the scope of its obligations under the Contract and the adequacy of its pricing. The Supplier will not be entitled to charge Customer for any fees, charges, expenses (including sums payable for travel, lodging, document reproduction, transportation and courier charges or any additional or unforeseen costs such as those related to Site conditions incurred by Supplier) in addition to the Contract Sum.

17.5 The Customer must pay any amounts due under the Contract within 30 days (or such other period agreed in the Contract Documents) of receipt of a correctly rendered Tax Invoice. For the avoidance of doubt, no amount is payable by the Customer under the Contract until a Tax Invoice is received.

17.6 The Supplier must, on all Tax Invoices, include the Purchase Order number, the location and description of the Goods delivered and the Services performed and any other information reasonably required by the Customer and notified to the Supplier, which may include, the hours of labour, rates charged and an itemised list of materials and costs.

17.7 The Customer must pay simple interest at a rate calculated in accordance with Section 22 of the *Taxation Administration Act* 1996 (NSW) on any unpaid amount which is not in dispute, calculated daily from the day after payment was due up to the day that payment is made, where:

- (a) the Customer is a NSW Government Body
- (b) the Customer fails to pay when payment was due, that is, within 30 days of receipt of a correctly rendered Tax Invoice;
- (c) the Supplier is a Small Business identified as such on the correctly rendered Tax Invoice or statement and provided any verifying documentation requested; and
- (d) the amount of interest payable exceeds \$20.00,

provided that payment is payment on account only and is not an admission of liability or evidence that the obligations under the Contract have been completed satisfactorily.

## 18. TAXES

18.1 Subject to clause 18.2, the Supplier is liable for all Taxes imposed or levied in connection with the Supplier's performance of its obligations under the Contract.

18.2 The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.

18.3 Any reference in the Contract to a cost or expense to be reimbursed by one party to another party includes any GST payable in connection with a Taxable Supply to which that cost or expense relates, less the amount of any input tax credit that the party requiring the reimbursement is entitled to claim.

## 19. DISPUTES AND ENFORCEMENT

19.1 Where any dispute arises between the parties which is in any way connected with the Contract, or the provision of the Goods or the performance of the Services under it, a senior manager of the Supplier and the Customer must meet to attempt to resolve the dispute.

19.2 No such dispute or difference may be referred to litigation before a meeting in accordance with this clause.

## 20. CANCELLATION

20.1 The Customer may terminate all or any part of the Contract for convenience by giving notice to the Supplier at any time prior to final delivery of the Goods or performance of the Services.

20.2 If the Contract is terminated under clause 20.1, the Supplier must cease performance of the Contract and the Customer will reimburse the Supplier its reasonable costs up to the date of termination, provided that the Supplier is not paid in total, in connection with the Contract, more than the Contract Sum. The Customer will have no liability to the Supplier in the event of termination under clause 20.1 other than the liability to pay the amounts described in this clause.

20.3 The Customer may terminate the Contract, without liability to the Supplier, by giving notice to the Supplier at any time if the Supplier:

- (a) suffers an Insolvency Event; or
- (b) is in breach of the Contract and the Supplier has not rectified that breach within 14 days (or such longer period as stated in the notice) of receipt of notice specifying the details of the breach.

20.4 The Supplier may terminate the Contract immediately by

- giving notice to the Customer at any time if the Customer has not paid any amount (other than amounts disputed in good faith by the Customer) by the date that payment of the amount was to be made under the Contract, and:
- (a) the Supplier has given notice to the Customer of such failure; and
  - (b) the Customer has failed to pay that undisputed amount within 28 days of receipt of the notice of failure from the Supplier.
- 20.5 Termination of the Contract is without prejudice to any right of action or remedy that has accrued or may accrue to either party prior to termination.
- 21. PAYMENT PROCESS AND SECURITY OF PAYMENT**
- 21.1 To the extent that the Supplier provides Construction Services under the Contract, this clause 21 will apply in place of the relevant provisions of clause 17.
- 21.2 The Supplier may submit a claim for payment to the Customer's Authorised Representative on the dates set out in the Purchase Order (or any documents referred to in that Item) (**Reference Date**).
- 22.2 Where the Purchase Order nominates that there is a single payment to be made for the Construction Services, the Payment Claim shall be for the Contract Price (or, where other Contracted Items are provided under the Contract, for the proportion of the Contract Price attributable to the Construction Services). Where the Purchase Order nominates that multiple progress payments are to be made for the Construction Services, the Payment Claim shall be for the value of the Construction Services work carried out under the Contract since the last Payment Claim.
- 22.3 Within 10 Business Days of receipt of a Payment Claim that was provided on or after its Reference Date, the Customer's Authorised Representative must assess the Payment Claim and issue a payment schedule to the Supplier identifying the Payment Claim to which it relates and stating the amount (if any) which is to be paid by the Customer to the Supplier or by the Supplier to the Customer (**Payment Schedule**).
- 22.4 If the amount in the Payment Schedule is different from the amount claimed by the Supplier, the Customer's Authorised Representative shall set out the reasons for the difference including any reasons for withholding payment.
- 22.5 On the Due Date For Payment (as defined in clause 22.6 and 22.7), the Customer must pay to the Supplier or the Supplier must pay to the Customer (as the case may be) the amount set out in the Payment Schedule.
- 22.6 Notwithstanding clause 17.5, the Due Date For Payment is, if the Customer is to pay, the date on which the last of the following occurs:
- (a) the later of the expiry of the period of 20 Business Days after receipt by the Customer's Authorised Representative of a Payment Claim or the expiry of the period of 10 Business Days after the issue by the Customer's Authorised Representative of the Payment Schedule; and
  - (b) the Supplier has:
    - (i) submitted a declaration (together with any other evidence or certification) that all employees' wages, allowances and statutory levies in respect of the Services have been paid. The declaration must be in the form of Schedule 4;
    - (ii) submitted a correctly rendered Tax Invoice in the amount identified in the Payment Schedule; and
    - (iii) complied with clause 15.
- 22.7 Notwithstanding clause 17.5, the Due Date For Payment is, if the Supplier is to pay, the date on which the last of the following occurs:
- (a) the Customer has submitted a tax invoice for the supply to which the Payment Claim relates; and
  - (b) the expiry of the period of 20 Business Days after receipt by the Customer's Authorised Representative of a Payment Claim or the expiry of the period of 10 Business Days after the issue by the Customer's Authorised Representative of the Payment Schedule.
- 22.8 The Supplier agrees that:
- (a) payment of moneys for which the Customer has become liable to pay to the Supplier by reason of the Security of Payment Act (including amounts which have been determined by an adjudicator or which are the subject of an adjudication under the Security of Payment Act) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily, but shall be a payment on account only;
  - (b) in determining the value of the work carried out by the Supplier in the performance of the Agreement pursuant to clauses 22.2 to 22.7, the Customer's Authorised Representative may determine a value which is less than the amount previously paid or payable to the Supplier;
  - (c) notwithstanding the mechanism set out in clauses 22.2 to 22.7:
    - (i) in issuing any documents under the Security of Payment Act (including Payment Schedules), the Customer's Authorised Representative acts as the Customer's agent;
    - (ii) the Customer's Authorised Representative is not the Customer's agent and is not authorised to receive any documents under the Security of Payment Act on the Customer's behalf (including Payment Claims); and
    - (iii) if the Supplier makes a claim under the Security of Payment Act it must serve all relevant documents on the Customer and the Customer's Authorised Representative at the same time;
  - (d) for the purpose of section 17(3)(b) of the Security of Payment Act, the Supplier chooses the Institute of Arbitrators and Mediators Australia as the authorised nominating authority for receiving adjudication applications;

- (e) the Supplier must, promptly and without delay, give the Customer's Authorised Representative a copy of any written communication of whatever nature that the Supplier:
- (i) receives from a subcontractor under the Security of Payment Act or any other similar legislation in operation in Australia which relates to the Services (other than payment claims);
  - (ii) gives under the Security of Payment Act or any other similar legislation in operation in Australia which relates to the Services (other than payment schedules);
  - (iii) has been required to supply to a Subcontractor under the *Contractors Debts Act 1997* (NSW) setting out the Customer's name; or
  - (iv) gives or receives that shows an intention to suspend any Services or Subcontractor Work;
- (f) the Supplier must ensure that each subcontractor promptly gives the Customer and the Customer's Authorised Representative a copy of any notice that the subcontractor receives from another person under the Security of Payment Act which relates to the Construction Services (other than payment claims);
- (g) the Supplier must promptly notify the Customer and the Customer's Authorised Representative if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out Subcontractor Work;
- (h) if the Customer becomes aware that a subcontractor is entitled to suspend Subcontractor Work pursuant to the Security of Payment Act or any other similar legislation in operation in Australia, the Customer may (in its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of that work, and any amount paid by the Customer is a debt due from the Supplier to the Customer;
- (i) if the Customer receives a payment withholding request from a subcontractor under section 26A of the Security of Payment Act, the Customer will be entitled to withhold the amount in the request from any payment due to the Supplier without any obligation on the Customer to consider whether the notice is valid and whether section 26B(2) of the Security of Payment Act applies;
- (j) the Supplier must indemnify the Customer against all damage, loss or liability suffered or incurred by the Customer (including legal costs
- incurred by the Customer on an indemnity basis) arising out of or in connection with:
- (i) a suspension pursuant to the Security of Payment Act by a subcontractor of Subcontractor Work;
  - (ii) a failure by the Supplier to comply with this clause 22.8;
  - (iii) any lien or charge claimed over unfixed plant or equipment forming part of the Construction Services under section 11(3) of the Security of Payment Act by a subcontractor;
  - (iv) any claim made by a subcontractor under the *Contractors Debts Act 1997* (NSW); and
  - (v) a payment withholding request being served on the Customer under section 26A of the Security of Payment Act in respect of money that is or may become payable by the Customer to the Supplier for the Construction Services;
- (k) personal delivery as referred to in section 31(1)(a) of the Security of Payment Act can only be effected by delivery to the Customer;
- (l) the Customer's ordinary place of business as referred to in section 31(1)(b) and 31(1)(c) of the Security of Payment Act is as set out in the Purchase Order;
- (m) the facsimile number of Customer's ordinary place of business as referred to in section 31(1)(c) of the Security of Payment Act is as set out in the Purchase Order; and
- (n) it is not possible for a payment claim as defined in the Security of Payment Act to be served by email.
- 22.9 For the purpose of clause 22.8, 'Subcontractor Work' means any work performed, or to be performed, by a Subcontractor which forms part of the Construction Services.
- 22. CONFIDENTIALITY**
- 22.1 Confidential Information disclosed to the Supplier may be used by the Supplier and its personnel solely for the purposes of the Contract and the Supplier must safeguard the Confidential Information against unauthorised use or disclosure.
- 22.2 At the Customer's option, the Supplier must destroy or return the Confidential Information or otherwise cause the Confidential Information to be destroyed or returned to the Customer, immediately on the expiry or earlier termination of the Contract or on request by the Customer.
- 23. GENERAL**
- 23.1 The Supplier must not subcontract the performance of any of its obligations under the Contract without the prior written consent of the Customer.

- 23.2 The Supplier must provide the Customer with notice upon becoming aware of the existence or possibility of a Conflict of Interest that arises in the performance of its obligations under the Contract. The Supplier must comply with any direction given by Customer in relation to managing that Conflict of Interest
- 23.3 No Variation to the Contract will be valid unless agreed in writing and signed by both the Customer and the Supplier.
- 23.4 No waiver by the Customer of any breach of the Contract by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision.
- 23.5 If any provision of the Contract is held to be invalid or unenforceable in whole or in part the validity of other provisions of the Contract and the remainder of the provision in question will not be affected.
- 23.6 The laws of the New South Wales govern the Contract and the parties submit to the exclusive jurisdiction of the courts of New South Wales and to courts that have jurisdiction to hear appeals from those courts.
- 23.7 Any notice required to or which may be given under the Contract must be in writing. A notice may be given by facsimile, ordinary or other post, in person or left at the address of the relevant party described on the Purchase Order.
- 23.8 The Contract constitutes the entire agreement between the Customer and the Supplier as to its subject matter and supersedes any prior understanding or agreement between the parties.
- 23.9 The Supplier acknowledges and agrees that:
- (a) it must comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement; and
- (b) neither it, nor its personnel have, pursuant to the Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

## 24. DEFINITIONS

In these Conditions of Contract, defined terms not defined in this clause 24 have the meaning given in clause 1.1 of the Agreement, and except where the context otherwise requires:

**Agreement** means the Master Supply Agreement (Short Form) entered into by the Supplier and the Purchasing Authority;

**Authorised Representative** means a person who has authority to act on behalf of a party in accordance with the Contract;

**Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales;

**Confidential Information** means any information in respect of the Customer (including its business plans, processes and operations):

- (a) received or obtained by the Supplier from or on behalf of the Customer, its employees, agents, consultants or contractors;
- (b) created or produced by or on behalf of the Supplier for or on behalf of the Customer, its employees, agents, consultants or its contractors,
- (c) regardless of whether the information was disclosed;
- (d) orally, in writing or in electronic or readable form; or
- (e) before, on, or after, the date of the Contract;

**Conflict of Interest** means the Supplier engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Supplier from performing its obligations under the Contract in an objective manner;

**Construction Services** means to design, build, construct, modify, repair and/or remove any physical structure or amenity and includes:

- (a) all work defined as 'construction work'; and
- (b) the supply of any goods or services defined as 'related goods and services',

in the Security of Payment Act.

**Contract** means the agreement between the Customer and the Supplier and comprises the Contract Documents;

**Contract Documents** means the documents specified in clause 2.4;

**Contract Effective Date** means the date the Purchase Order is signed by the Customer and the Supplier;

**Contract Sum** means the amounts specified in the Purchase Order payable in respect of the Contracted Items to be provided under the Contract, excluding any additions or deductions which may be required to be made under the Contract;

**Customer** means the customer identified in the Purchase Order, being an "Eligible Customer" for the purposes of the Agreement;

**Cyberterrorism** means an assault on any electronic communications network;

**Defect** means:

- (a) any Deliverable that fails to meet the requirements of the Contract Documents;
- (b) any Deliverable which should have been delivered that has not been delivered;
- (c) any Deliverable which should not have been delivered that was delivered;
- (d) any damage to a Deliverable for which the Supplier is responsible under the Contract; or
- (e) the supply of more or less quantity of a Deliverable than is required by the Contract,

and **Defective** has a corresponding meaning;

**Deliverable** means any item that is to be provided or supplied under the Contract including the Goods and any output from any Services;

**Delivery Date** means the date or dates stated in the Purchase Order for delivery of Goods;

**Delivery Location** means the place stated in the Purchase Order for delivery of Goods;

**Documentation** means either the Supplier's standard off the shelf documents that describe the features and functions of Deliverables, or any similar documents which are to be created specifically for the Customer under the Contract;

**Equipment** means radio communications and link equipment used for the provision of voice and data services as described in Category A of the table in Schedule 2 to the Agreement;

**Event** is defined in clause 12.1(a);

**Existing Material** means any Material that is developed:

- (a) prior to the Contract Effective Date of the Contract; or
- (b) independently of the Contract,

and that is incorporated into a Deliverable under the Contract;

**Goods** means the goods to be supplied by the Supplier under the Contract, as described in the Purchase Order, which may be Infrastructure and/or Equipment (as applicable);

**GST** has the same meaning as in the GST Law.

**GST Law** means any law imposing or relating to a GST and includes *A New Tax System (Goods & Service Tax) Act* (Cth), *A New Tax System (Pay As You Go) Act 1999* and any regulation based on those Acts.

**Infrastructure** means infrastructure and equipment required to support radio communications and linking equipment used in the provision of voice and data services as described in Category B of the table in Schedule 2 to the Agreement;

**Insolvency Event** means where the Supplier:

- (a) is an individual (including a partner or sole trader) and:
  - (i) commits an act of bankruptcy within the meaning of the *Bankruptcy Act 1966* (Cth);
  - (ii) has a bankruptcy notice issued against them;
  - (iii) becomes a bankrupt; or
  - (iv) has a trustee for creditors or in bankruptcy appointed against them;
- (b) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
- (d) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
- (e) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
- (f) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (g) has a mortgagee enter into possession of any property of that Party;
- (h) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
- (i) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

**IPR** means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a), but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

**Longstop Date** means the date (if any) on which the maximum number of days for which liquidated damages are payable as stated in the Contract Documents have elapsed;

**Material** means any document or other thing in which IPR subsists;

**New Material** means any Material that is:

- (a) newly created by or on behalf of the Supplier during the performance of its obligations under the Contract;
- (b) incorporated into a Deliverable; and

- (c) delivered to the Customer in accordance with the requirements of the Contract, except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material;

**Payment Claim** means a claim for payment under clause 21.2.

**Purchase Order** means a completed version of the template purchase order set out at Schedule 3 to the Agreement that includes or incorporates all details that are relevant to the Contract, executed by the Supplier and the Customer.

**Procedures and Policies** means:

- (a) the codes, policies, guidelines and standards referenced on [www.telco.nsw.gov.au](http://www.telco.nsw.gov.au); and
- (b) any other document described as such in the Contract;

**Purchasing Authority** means the NSW Government Department of Finance and Services on behalf of NSW Government Agencies;

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW);

**Service Levels** means any performance expectations of the Customer in relation to, and defines the benchmarks for measuring the performance of, the Services that are specified in the Contract Documents;

**Services** means the services to be supplied by the Supplier under the Contract, as described in the Purchase Order, which may be of the type described in Category C of the table in Schedule 2 to the Agreement;

**Services End Date** means the date or dates specified as such in the Purchase Order;

**Services Location** means the place specified as such in the Purchase Order at which Services must be performed;

**Services Start Date** means the date or dates specified as such in the Purchase Order;

**Site** means the Delivery Location and/or Services Location (as applicable);

**Small Business** means an enterprise that employs, or contracts with an enterprise that employs, less than the full time equivalent of 20 persons as at the Contract Effective Date and, where the enterprise forms part of a group, the group as a whole employs, or contracts with an enterprise that employs, less than the full time equivalent of 20 persons as at the Contract Effective Date.

**Statutory Requirements** means the Australian laws, regulation or by-laws relating to the performance of the Supplier's obligations under the Contract;

**Supplier** means the Supplier identified in the Purchase Order;

**Tax Invoice** has the same meaning as provided for in the GST Law;

**Taxable Supply** means has the same meaning as provided for in the GST Law;

**Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Supplier's performance of its obligations under the Contract, but excludes GST and any Tax based on the net income of the Supplier;

**Variation** means any change to the Goods or Services, including:

- (a) an addition, increase, decrease, omission or deletion to or from the Goods or Services;
- (b) a change to Delivery Date or Delivery Location; and
- (c) a change related to delivery (eg. method or means);

**Warranty Period** means the period commencing in accordance with clause 11.1 and ending at the expiration after the period described as such in the Purchase Order.

# Schedule 2 - List of Equipment, Infrastructure and Services

| Item Ref | Category              | Sub-Category                                | Description  |
|----------|-----------------------|---|--|
| <b>A</b> | <b>Equipment</b>      | <b>Overall</b>                              | <b>Radio communications and link equipment used for the provision of voice and data services.</b>  |
| 1        |                       | Network Equipment                           | Radio and data base stations, including; multicoupling and combiners, related IP equipment and controlling equipment.  |
| 2        |                       | Link Equipment                              | Backhaul link equipment, including: Antennas, feeders, protection (e.g. vermin proofing, earthing), cable management (but not cable trays) equipment. NTU & network multiplexing, routers, switching and IT Infrastructure equipment.  |
| 3        |                       | Power Equipment                             | Batteries, rectifiers, inverters, power management systems which support Category A & B equipment.   |
| 4        |                       | Terminal Equipment                          | Handheld, vehicle mounted and desk mounted radios, pagers, data devices, modems, data collection equipment, smartphones, and dispatch equipment. Equipment used to support terminal equipment such as in-car mounts, handheld microphones, device coding keys, power connection cables, device battery charging units and spare batteries.   |
| <b>B</b> | <b>Infrastructure</b> | <b>Overall</b>                              | <b>Infrastructure &amp; equipment required to support radio communications and linking network equipment for Category A.</b>   |
| 5        |                       | Poles/Towers                                | Radio antenna supporting structures, including; Towers, guyed masts, poles, roof top structures (e.g. Jumbo Rails)   |
| 6        |                       | Ancillary Tower infrastructure              | Mounting hardware (face mount, offset, antenna support), cable trays, straps, antenna head frames, tower lighting and lightning protection and tower footings  |
| 7        |                       | Security/Safety Systems and devices         | Alarm systems, security coded and keyed entry systems, DC ventilation systems, fire protection system and extinguishers, first aid kits and fire blankets.   |
| 8        |                       | Fibre Infrastructure                        | All fibre components up to the site termination point, including; Fibre cabling, WDM equipment, splicing, termination and interconnection equipment, fibre testing and monitoring equipment. Specialised fibre network multiplexing, routers and switching equipment not included in Category A. 9   |
| 9        |                       | Communications Buildings                    | On and off site constructed cabins, huts, shelters and outdoor cabinets. Portable and temporary structures including trailers, specialised vehicles and drop down and pick up cabins. Please note that in supplying this infrastructure respondents should be capable of providing ancillary equipment such as Alarm monitoring & management, miscellaneous cabling, air conditioning, ventilation, miscellaneous electrical, fire extinguishers, WHS/OHS, portable generators |
| <b>C</b> | <b>Services</b>       | <b>Overall</b>                              | <b>All services required to develop, plan, design and install, manage and maintain network Equipment (A) and Infrastructure (B).</b>   |
| 10       |                       | Construction Services                       | Equipment (A) and Infrastructure (B) construction services, including; Rigging, installation, welding, cranes, concreting, fibre ploughing, transportation, deconstruction and disposal services   |
| 11       |                       | Design Services (Including IT architecture) | Permits, DAs, Environmental Impact Assessment, documentation, site surveys, structural and geotech assessments, surveyor, spectrum design, radio coverage plot/verification and prediction services.   |
| 12       |                       | Project Management Services                 | Project management, capacity management, asset management and capitalisation, site acceptance and network deployment.  |
| 13       |                       | Maintenance Services                        | Equipment and Infrastructure maintenance (regular and emergency/restoration), deployment of temporary sites; including RF and structural rectification works.  |
| 14       |                       | Strategic Telco Services                    | Strategic, technical, commercial planning and advice services which will also include all of the Equipment (A), Infrastructure (B) and Services (C ) categories; Provision of connectivity services (eg fibre, microwave).   |



# Schedule 3- Purchase Order Template

| Purchase Order for the supply of Goods and/or Services |   |  |
|--|---|--|
| <b>Master Supply Agreement</b>                         | Purchase Order Number:  |  |
|  | Date:   |  |
|  | This is a Purchase Order made under the Master Supply Agreement (Short Form) with the Supplier and the NSW Government Department of Finance and Services ( <b>MSA</b> ). Once signed by both parties, this Purchase Order forms a 'Contract' for the purposes of the MSA. |  |
| <b>Customer</b>  | Name:   | [insert name of Customer]                            |
|  | Address and contact details:  | [insert address of Customer and phone & fax numbers] |
|  | ACN/ABN:  | [insert Customer ACN/ABN]                            |
| <b>Supplier</b>  | Name:   | [insert name of Supplier]                            |
|  | Address and contact details:  | [insert address of Supplier and phone & fax numbers] |
|  | ACN/ABN:  | [insert Supplier ACN/ABN]                            |
| <b>Goods (Equipment or Infrastructure)</b>             | [Describe, including referring to Category/Sub-Category in Sch.1 (e.g. A1, B5) or state "Not applicable"]   |  |
| <b>Services</b>  | [Describe, including referring to Category/Sub-Category in Sch.1 (e.g. C11) or state "Not applicable"]  |  |
| <b>Dates</b>   | Services Start Date   |  |
|  | Services End Date   |  |
| <b>Contract Meeting Cycle</b>                          | <input type="checkbox"/> Monthly<br><input type="checkbox"/> Weekly<br><input type="checkbox"/> As Required   |  |
| <b>Small Business</b>                                  | <input type="checkbox"/><br>[Tick box if the Supplier is a Small Business]  |  |
| <b>Contract Sum</b>                                    | \$[insert] or as per the attached [insert name of Contract Document]  |  |
| <b>Payment Terms</b>                                   | <input type="checkbox"/> As per the attached Payment Schedule<br><input type="checkbox"/> Monthly in arrears<br><input type="checkbox"/> As per the letter dated [insert date]<br><input type="checkbox"/> Upon acceptance of the Goods                                   |  |
| <b>Delivery Date</b>                                   | Deliverable   | Date   |

| Purchase Order for the supply of Goods and/or Services |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
| <b>Delivery Location</b>                               |  |  |
| <b>Services Location</b>                               |  |  |
| <b>Warranty Period</b>                                 | [insert] months/years  |  |
| <b>Spares Availability Period</b>                      | [insert] months/years  |  |
| <b>Liquidated Damages</b>                              | [specify Liquidated Damages payable and over what period, or state "Not applicable"] |  |
|  |  |  |
|  |  |  |

**EXECUTED** as an agreement.

**Signed for and on behalf of [insert name of Customer]** by [insert name of Customer's Authorised Representative] but not so as to incur personal liability

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Customer Representative

\_\_\_\_\_  
Date

**Signed for and on behalf of [insert Supplier's name and ACN/ABN]** by [insert name of Supplier's Authorised Representative] but not so as to incur personal liability

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Date

# Schedule 4- Statutory declaration and Subcontractor statement

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## STATUTORY DECLARATION

Statutory declaration in the matter of Contract dated [*insert*] (**Contract**)

between

[*insert name of Customer*] (**Customer**)

and

[*name of Supplier*] (ABN [*insert*]) (**Supplier**)

I, [*full name*] of [*address*], in the State of [*name of state*], [*occupation*] do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Supplier to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 22.6(b)(ii) of the Contract in relation to payment claim number [*insert*] submitted by the Supplier on [*insert date*] under and in accordance with the Contract.
3. The Supplier declares that the Supplier, its subcontractors and suppliers:
  - are **not** subject to the provisions of section 175B of the *Workers Compensation Act 1987* (NSW) (**WC Act**), Schedule 2, Part 5 of the *Pay-roll Tax Act 2007* (NSW) (**NSW PT Act**) and section 127 of the *Industrial Relations Act 1996* (NSW) (**IR Act**);
  - are subject to the provisions of the WC Act, NSW PT Act or the IR Act. Accordingly, the Supplier declares to the matters set out in paragraphs 4 to 6 below.
4. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Supplier in its capacity as 'Subcontractor' (as that term is defined in the WC Act, NSW PT Act and IR Act) which is a written statement:
  - (a) under the WC Act, section 175B, in the form and providing the detail required by that legislation;
  - (b) under the NSW PT Act, Schedule 2, Part 5, in the form and providing the detail required by that legislation; and
  - (c) under the IR Act, section 127, in the form and providing the detail required by that legislation.

5. The Supplier has received, in its capacity as a 'principal contractor' (as that term is defined in section 175B of the WC Act) in connection with the Services under the Contract, a written statement from each of its subcontractors for the purposes of section 175B of the WC Act.
6. The Supplier has received, in its capacity as a 'principal contractor' in connection with the Services under the Contract, a written statement from each of its subcontractors for the purposes of Schedule 2, Part 5 of the PT Act.
7. All remuneration payable by the Supplier to employees of the Supplier for Services under the Contract during the period from the date of commencement of any Services under the Contract to the date of this statutory declaration has been paid.
8. The Supplier has paid all amounts owing to its employees in accordance with any relevant state or federal industrial agreement, state or federal industrial award and/or contract of employment.
9. The Supplier has paid all amounts due and payable to its sub-suppliers and subcontractors up to the date of the payment claim in respect of their part of the Services under the Contract.
10. The following sub-suppliers and subcontractors have invoked the dispute resolution procedure under their subcontract or services agreement:  
  
***[\*insert list of sub-suppliers and subcontractors that have invoked the dispute resolution procedure under their subcontract or services agreement]/\*none]***
11. The period of the Contract covered by this declaration is from ***[insert]*** to ***[insert]***
12. I am not aware of anything which would contradict the statements made in the statutory declarations and written statements provided to the Supplier by its subcontractors, as referred to in this declaration.
13. 'Services' has the same meaning as in the Contract.
14. The Supplier has completed all obligations in accordance with the Contract.
15. I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at [insert] on [insert] before me

←

\_\_\_\_\_  
Justice of the peace/notary public/legal practitioner

\_\_\_\_\_  
Signature of declarant

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Full name of declarant (print)

\_\_\_\_\_  
Address of witness

**Certificate under section 34 (1)(c) of Oaths Act 1900**

*\*Please cross out any text that does not apply*

I \_\_\_\_\_, a \_\_\_\_\_,  
*insert name of authorised witness* *insert qualification to be authorised witness*

certify the following matters concerning the making of this statutory declaration by the person who made it:

1. \*I saw the face of the person *or* \*I did not see the face of the person because the person's face was covered, but I am satisfied that the person had a special justification for not removing the covering.
2. \*I have known the person for at least 12 months *or* \*I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was .....

*describe identification document relied on*

\_\_\_\_\_  
Signature of authorised witness (print)

\_\_\_\_\_  
Date



## SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT** (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ..... ABN: .....  
*(Business name)*

of .....  
*(Address of subcontractor)*

has entered into a contract with ..... ABN: .....  
*(Business name of principal contractor)* **(Note 2)**

Contract number/identifier ..... **(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(Note 5)**

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature ..... Full name.....

(g) Position/Title ..... Date ...../...../.....

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

# Signing page

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**EXECUTED** as an agreement.

**Signed for and on behalf of NSW  
Department of Finance and Services** by  
SHAUN SMITH but not so as to incur  
personal liability

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Print Name

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Signature of Customer Representative

---

Date

**Signed for and on behalf of []** by [] but not  
so as to incur personal liability

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Print Name

---

Signature of Authorised Signatory

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Date