Deed of Certification

between

The **Commonwealth of Australia** as represented by the **Digital Transformation Agency** (ABN: 96 257 979 159)

and

Insert Service Provider Name ABN:

Contents

Deed of Certification

Dated

Parties

Name	**Digital Transformation Agency**
Address	**PO Box 457, Canberra City, ACT 2601**
Email	
Contact	
Short name	**Certifying Authority**

Name	
Address	
Email	
Contact	
Short name	**Service Provider**

Recitals

A. In March 2021, the Digital Transformation Agency (**DTA**) released the Whole of Australian Government Hosting Strategy: Hosting Certification Framework (**Certification Framework**). The Certification Framework is intended to assist Commonwealth Entities to mitigate against supply chain and Service Provider ownership and control risks.

B. This Deed sets out the contractual terms and conditions for a Service Provider to obtain Certification from the Certifying Authority if it wishes to obtain Certification for Services (including data centre facilities, hosting services and data management processes) it wishes to offer to Commonwealth Entities.

C. This Deed also sets out the obligations that the Service Provider must comply with to maintain Certification at the Certified Strategic level or Certified Assured level.

D. The Service Provider has agreed to obtain and maintain any Provisional Certification and Full Certification (as the context requires) it seeks for its Services on the terms of this Deed.

E. The Service Provider has also agreed that the terms of this Deed are enforceable by the Certifying Authority and by Commonwealth Entities, in the manner provided for in this Deed.

PART A – GENERAL PROVISIONS

This Deed Witnesses

1. Definitions

1.1 In this Deed:

Agency Data means any Commonwealth Entity data or any other data relating to the Commonwealth or its operations, facilities, Commonwealth Entities, clients, personnel, assets and programs that may be provided to, or obtained by, the Service Provider or its personnel which is processed, stored or handled within a Service provided by the Service Provider. Agency Data includes data in whatever form it may exist.

Another Relevant Framework means the *Foreign Acquisitions and Takeovers Act 1975* (Cth), *Foreign Acquisitions and Takeovers Regulation 2015* (Cth), or (once legislated) the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (Cth) or any related regulations, or any successor legislation or regulations.

Approved Purpose means any purpose in connection with:

a. evaluation, assessment and review of the Service Provider's and its personnel's capacity to effectively and securely provide a Service and to protect the Commonwealth's security interests and Agency Data;

b. evaluation, review, assessment or maintenance of the Service Provider's Provisional Certification or Full Certification under the Certification Framework and this Deed; or

c. the Service Provider's compliance with Contracts with Commonwealth Entities.

Assessment means the process the Service Provider must comply with to achieve Certification for the purposes of the Certification Framework, as notified by the Certifying Authority from time to time. The Assessment may be included in an Information Security Registered Assessors Program assessment or may be a different process. Assessment includes the assessment of the Services for:

a. Provisional Certification (Hosting Certification Self-Assessment); and

b. Full Certification (assessment of Services).

Assessor means a person, position or entity authorised by the Certifying Authority to conduct an Assessment.

Authorised vetting agency has the same meaning given in the Australian Government Protective Security Policy Framework.

Certified Assured has the meaning given in the Certification Framework.

Certified Strategic has the meaning given in the Certification Framework.

Certification has the meaning given in Part B of this Deed and may be certification for 'Certified Assured' or 'Certified Strategic', as the context requires. 'Certification' includes Provisional Certification and Full Certification, as the context requires.

Certification Framework means the 'Whole of Government Hosting Strategy: Hosting Certification Framework', as updated from time to time, developed by the Certifying Authority to operationalise the hosting principles outlined in the Whole of Government Hosting Strategy and to support the secure management of government systems and data.

Certification ID means the ID number allocated to a Service for a Service Provider Type(s) by the Certifying Authority when the relevant Certification is granted.

Certifying Authority for the purpose of this Deed means the DTA, or any Commonwealth Entity with responsibility for determining the eligibility and suitability of a Service Provider to be certified in accordance with the Certification Framework, as notified to the Service Provider from time to time.

Commonwealth Entity means any entity that is a non-corporate Commonwealth entity (**NCCE**) or a corporate Commonwealth Entity (**CCE**), under the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**). 'Commonwealth Entity' may be referred to as the Commonwealth, Customer, Buyer or other similar term in a Contract.

Conditions of Certification means the list of ongoing conditions issued by the Certifying Authority to the Service Provider, detailing ongoing compliance requirements and reporting timelines that the Service Provider must comply with in order to maintain Certification for a particular Service.

Contract means any contract entered into between a Commonwealth Entity and the Service Provider which includes an obligation for Certification of a Service that is to be provided under, or used for the purpose of, that contract.

Deed means this Deed of Certification (and includes all Annexures to this Deed).

Deed Effective Date has the meaning given in clause 2.3.

Full Certification means the Certification granted after Provisional Certification or after an Assessment by the Certifying Authority for Full Certification.

Hosting Certification Self-Assessment means a self-assessment toolkit made available by the Certifying Authority (as updated from time to time) that the Service Provider must use to assess its Services to achieve Provisional Certification for the purposes of the Certification Framework.

Key Roles means personnel who have management or operational control rights over the capabilities used to deliver the Service and includes the Chief Information Security Officer and the System Owner, as defined in the Australian Government Information Security Manual.

Provisional Certification means an interim certification that allows eligible Service Providers to enter into new contracts with Commonwealth Entities that have specified Certification as a requirement. All Provision Certification holders must undertake a formal Assessment for Full Certification once eligible.

Relevant Change means:

a. a change in the Service Provider's Board or management team, the security manager or other personnel or subcontractors involved in the provision of the Service that has the potential to affect the Commonwealth, the Commonwealth's security interests, or the delivery of the Service Provider's services to Commonwealth Entities;

b. a significant change in strategic direction or ownership of the Service Provider that has the potential to adversely affect the reputation of the Commonwealth, the

Commonwealth's security interests, or the delivery of the Service Provider's Services to Commonwealth Entities;

c. a sale, transfer or disposal of land, or any interests in land, which houses a Service facility or any transfer, assignment, disposal or other dealing of any lease or real estate, whether voluntary or caused by the Service Provider's default, related to the Service facilities that has the potential to adversely affect the reputation of the Commonwealth, the Commonwealth's security interests, or the delivery of the Service Provider's Services to Commonwealth Entities;

d. a change to the security measures and procedures, including the security measures and procedures at, or otherwise in relation to, a Service (including a Service facility) that decreases the level of security at the Service or poses a security threat to the Commonwealth or any data hosted, held or stored within the Service; or

e. any other event or circumstance relating to the security or operations of a Service as set out in a Contract.

Relevant Laws means any relevant common law, statute, regulation, by-law, ordinance or subordinate legislation (whether made by a State, Territory or the Commonwealth) in force from time to time.

Risk Management Plan means a risk management plan developed by the Service Provider that meets the requirements of clauses 14.3 and 14.5, and which includes a Supply Chain Risk Management Plan.

Service Provider means one or more of the Service Provider Types (as the context requires). 'Service Provider' may be referred to as a 'Contractor', 'Seller', 'Vendor' or other similar term in a Contract.

Service Provider Type means:

a. providers of data centre facilities;

b. cloud Service providers;

c. managed service providers;

d. system integrators; and/or

e. software-as-a-service providers.

For clarity, the Service Provider's Services may be Certified for one or more Service Provider Types. The Certification ID(s) will identify the Service Provider Type for the Service Provider.

Service means a specific service made available to a Commonwealth Entity(s) by the Service Provider within the scope of the Service Provider Type.

Supply Chain Risk Management Plan means the plan, which forms part of the Risk Management Plan, that is developed by the Service Provider that meets the requirements of clause 14, as updated from time to time.

Whole of Government Hosting Strategy means the strategy which provides a defined approach to hosting arrangements available at: https://www.dta.gov.au/our-projects/whole-government-hosting-strategy.

2. Effect and benefits of this Deed

2.1 This Deed is executed for the benefit of the Service Provider and the Certifying Authority.

2.2 The Service Provider acknowledges that, as a result of the implementation of the Certification Framework, Commonwealth Entities require their vendors to provide Services that are certified in accordance with the Certification Framework. The Service Provider therefore acknowledges the benefit to it of being able to obtain Certification for its Services on the terms of this Deed, and without payment of a fee to the Certifying Authority, and agrees to comply with the terms of the Deed for the benefit of Commonwealth Entities as well as for the benefit of the Certifying Authority.

2.3 This Deed takes effect on the date it is signed by both parties (**Deed Effective Date**).

2.4 Where this Deed specifies that the rights and obligations in it apply to a Contract for a Service, then those rights and obligations are deemed to be included in the Contract and may be enforced by the Commonwealth Entity, or by the Certifying Authority on behalf of the Commonwealth Entity.

2.5 The terms of this Deed override the terms of a Contract, to the extent of any inconsistency, in respect of the matters dealt with in this Deed.

3. Machinery of Government Changes

3.1 The Certifying Authority may transfer some or all of its responsibility for administration of the Certification Framework (including this Deed) to another Commonwealth Entity (as described in the PGPA Act) from time to time, including as part of a machinery of government change. If this happens, the Certifying Authority may require the Service Provider to comply with one or both of the following requirements:

3.1.1 comply with any notice from the Certifying Authority relating to a machinery of government change; or

3.1.2 enter into a deed of variation or a new deed on substantially the same terms as this Deed.

PART B - HOW TO APPLY FOR CERTIFICATION

4. Certification

4.1 The Service Provider must participate in and complete the Assessment to obtain Certification of a Service.

4.2 Certification for a Service will be granted in respect of the Service Provider Type applicable to the Service.

4.3 The Certifying Authority will grant Certification for a Service if it meets the requirements of the Assessment and the requirements set out or referred to in this Deed.

4.4 Certification may be issued for one or more Services made available by the Service Provider.

4.5 The Certifying Authority will issue a Certification ID for each Service for which the Service Provider has been granted Certification (including any Service for which Provisional

Certification is granted). The Certification ID will also identify the Service Provider Type applicable to the Service.

5. Certification Process

5.1 For the purpose of clause 4.1, the Service Provider must comply with the requirements for Assessment published by the Certifying Authority from time to time, which are developed to implement the Certification Framework.

5.2 The Service Provider must provide any information and access to systems or premises or personnel reasonably required by the Certifying Authority for the purpose of an Assessment or for management of this Deed.

6. Granting of Provisional Certification

6.1 A Service Provider's Service may be granted Full Certification by the Certifying Authority without a prior grant of Provisional Certification.

6.2 Provisional Certification for a Service will be deemed to be granted on completion by the Service Provider of a Hosting Certification Self-Assessment made available by the Certifying Authority, and before completing the Assessment required for Full Certification.

6.3 The Certifying Authority may notify the Service Provider when the Service is eligible to be assessed for Full Certification.

6.4 If the Certifying Authority issues a notice under clause 6.3 that a Service is eligible to be assessed for Full Certification, the Service Provider must commence the Assessment of the Service within sixty (60) Business Days of the notice issued under clause 6.3, unless a longer period is agreed in accordance with clause 6.5.

6.5 The Certifying Authority may approve a longer period but only if, in the Certifying Authority's reasonable opinion, the Service Provider has not been able to commence the Assessment of the Service within sixty (60) Business Days.

6.6 Provisional Certification for a Service will cease on the earlier of:

6.6.1 the date an application for Full Certification is rejected, as notified by the Certifying Authority, after completion of an Assessment of that Service; or

6.6.2 the date Full Certification for a Service is granted (and a Certification ID is updated) after completion of an Assessment of that Service.

7. Granting of Full Certification

7.1 Certification of a Service will be granted when the Certifying Authority issues a Certification ID for that Service (or an updated Certification ID for a Service that was previously granted Provisional Certification), and will continue unless and until:

7.1.1 Provisional Certification is replaced with Full Certification;

7.1.2 Full Certification is rejected; or

7.1.3 any Certification is revoked or terminated as provided for in this Deed.

PART C - ONGOING REQUIREMENTS THE SERVICE PROVIDER MUST COMPLY WITH

8. Effect of PART C

8.1 The Service Provider must comply with this Part for a Service if the Certifying Authority has granted Provisional Certification or Full Certification (as the case may be) for that Service.

8.2 Part C is deemed to be included in any Contract for a Service that specifies a requirement for Certification, and is enforceable by the Commonwealth Entity on the terms of that Contract, as well as being enforceable by the Certifying Authority on the terms of this Deed.

8.3 A Commonwealth Entity may request information from the Service Provider about the matters in this Part, and the Service Provider must comply with any such request in addition to any obligations to provide information to the Certifying Authority.

8.4 The Service Provider must ensure it provides accurate information to Commonwealth Entities about the contents and scope of any Certification granted for its Services. This includes information about the contents and scope of the Certification that has been granted by the Certifying Authority for a Service in each Certification ID (e.g. if Certification has been granted by the Certifying Authority for only part of a Service, the Service Provider must not represent that the Certification ID applies to all components of the Service).

9. Ongoing Assessment Requirements

9.1 The Service Provider must, for each Service that has a Certification ID issued for it, comply with any ongoing requirements included in the Conditions of Certification issued by the Certifying Authority, as a result of the Assessment.

10. Governance Requirements

10.1 The Service Provider must:

10.1.1 provide half-yearly reports on Contracts with Commonwealth Entities (in a form specified by the Certifying Authority);

10.1.2 provide other reports as reasonably requested by the Certifying Authority (in a form specified by the Certifying Authority); and

10.1.3 comply with other governance, communication or dispute resolution requirements as notified by the Certifying Authority from time to time.

11. Certified Assured Certification Requirements

11.1 When Certified to Certified Assured level, the Service Provider must comply with the obligations in this Deed that apply after Certification to Certified Assured level (including the obligations in this clause 11 and clause 12).

Relevant Change for Certified Assured

11.2 The Service Provider must not cause any Relevant Change to occur without the Certifying Authority's prior written consent (which consent may be withheld by the Certifying Authority in its absolute discretion, and which if given, may be subject to conditions, including a requirement that the Service Provider implements measures that the Certifying Authority

determines are necessary to mitigate or lessen the risks or adverse impacts that may arise from the Relevant Change).

11.3 If requested by the Certifying Authority, the Service Provider must provide the Certifying Authority with information in relation to the Relevant Change within ten (10) Business Days of the Certifying Authority's request or at such other time as agreed by the Certifying Authority in writing.

11.4 The Service Provider is not required to disclose information pursuant to clause 11.3 to the extent, and only for the period of time, that it would cause the Service Provider to breach any Relevant Laws restricting disclosure of the information.

11.5 The Service Provider must at its sole cost:

11.5.1 promptly cooperate with the Certifying Authority to assess and mitigate any adverse impacts of the Relevant Change on the Commonwealth, including facilitating and cooperating with any review, audit, investigation or other action that the Certifying Authority reasonably elects to take to assess the possible impacts of the Relevant Change; and

11.5.2 implement any measures as reasonably directed by the Certifying Authority to mitigate or lessen the risks or adverse impacts that may arise from the Relevant Change (**Mitigation Measures**). The implementation and ongoing costs of performing the Mitigation Measures will be relevant to determining reasonableness.

11.6 The Service Provider must implement the Mitigation Measures in a timely and prompt manner having regard to the impact of the Relevant Change.

12. Exit rights and reimbursement for Certified Assured

12.1 Without limiting any other rights or remedies available to the Certifying Authority under this Deed or any contract, if the Service Provider fails to meet the requirements set out in clauses 11.2 to 11.6 above, the Commonwealth Entity may, at its sole discretion, exit the Service. In this event, the Service Provider must reimburse the Commonwealth Entity its reasonable costs associated with exiting Agency Data from the Service. These costs may include, without limitation:

12.1.1 activities associated with the procurement of an alternate service provider;

12.1.2 activities associated with the planning and preparation of migration activities;

12.1.3 the engagement of third party service providers to assist with migration activities; and/or

12.1.4 the lease or procurement of hardware, deliverables and services to support the Commonwealth Entity's continuity of Service needs throughout the mitigation activities.

12.2 Without limiting clause 12.1 above, if the Commonwealth Entity is required to put in place measures to mitigate or reduce the impact of a Relevant Change, the Service Provider must reimburse the Commonwealth Entity:

12.2.1 the Commonwealth Entity's total reasonable transition costs incurred with third parties directly associated with exiting the Agency Data; and

12.2.2 such other amounts associated with exiting the Agency Data from the Service which are agreed by the parties to apply in relation to a Contract for purposes of

clause 12.2, as specified in that Contract (or any other Contract that may be agreed by the parties),

if the transition is required as a result of the Service Provider's failure to meet the requirements of this Deed.

12.3 Without limiting any other rights or remedies available to Commonwealth Entities under their Contracts with the Service Provider, if the Service Provider fails to meet the Certification requirements, the Service Provider must also comply with any exit rights and reimbursement provisions, and any other remedies, in its Contracts.

12.4 A Commonwealth Entity may include in a Contract remedies that are in addition to, or which are an improvement on, the remedies available in this Deed, but any provisions in a Contract that reduce, limit or remove the rights and obligations in this Deed are of no effect.

13. Certified Strategic Certification Requirements

13.1 When Certified to Certified Strategic level, the Service Provider must comply with the obligations in this Deed that apply after Certification to Certified Strategic level (including the obligations in this clause 13 and clauses 14 and 15).

Relevant Change for Certified Strategic

13.2 The Service Provider confirms and warrants that for the term of the Deed (and any Contract) there will be no Relevant Change except as agreed by the Certifying Authority. If a Relevant Change occurs, and the Certifying Authority does not agree to the Relevant Change (with or without conditions), or the Service Provider does not accept any Certifying Authority conditions, then the Commonwealth Entity has the right to pursue the remedies in clauses 15.1 to 16.2.

13.3 On the Deed Effective Date and within 30 days of each anniversary of the Deed Effective Date, the Service Provider must provide a declaration that it:

13.3.1 is aware of, and understands, the requirements in clauses 13.1 to 16.2, and the definition of Relevant Change; and

13.3.2 will ensure that a Relevant Change does not occur, except as agreed by the Certifying Authority.

13.4 The Service Provider may provide a single annual declaration from the Service Provider (and where applicable, its ultimate parent company's directors and relevant officers/Board members) that they are aware of the above requirements and that they will use their best endeavours to ensure that the events and circumstances specified as a Relevant Change do not occur.

Continuous Disclosure for Certified Strategic

13.5 Without limiting any disclosure obligations under this Deed or any Contract, the Service Provider must continuously disclose, as soon as practicable, sufficient information as required by the Certifying Authority to ensure that the Certifying Authority (and, through the Certifying Authority, relevant Commonwealth Entities) remain fully informed of potential Relevant Changes that the Service Provider is aware of. The Service Provider will satisfy its disclosure obligations under this clause 13.5 by:

13.5.1 providing its annual declaration (as set out in clauses 13.3 and 13.4);

13.5.2 referring the Commonwealth Entities to the Certifying Authority or other Australian Government Departments and agencies to which the information has already been provided, or other appropriate sources of information (e.g. an Information Security Registered Assessors Program assessment); or

13.5.3 only for any information that is not available from clauses 13.5.1 or 13.5.2, providing reasonable and relevant information with respect to its Certification or potential Relevant Changes that create security risks, as reasonably requested by the Certifying Authority.

13.6 A Commonwealth Entity may report to the Certifying Authority on any actual or potential Relevant Change it becomes aware of and the Certifying Authority may utilise that information in exercising its rights and obligations under this Deed.

Relevant Change Controls for Certified Strategic

13.7 Without limiting the requirements of this Deed or any Contract, the Service Provider may consult with the Certifying Authority prior to reporting a potential Relevant Change to determine whether that change should be reported. If the Certifying Authority confirms that a change is not considered a Relevant Change, then it will not be a Relevant Change for the purpose of this Deed.

13.8 The Service Provider must provide reasonably necessary information to the Certifying Authority on the measures it proposes to implement to mitigate the risk of Relevant Changes, and the timeframe within which the measures will be implemented.

13.9 If the Certifying Authority objects to a potential Relevant Change, before pursuing other remedies under this Deed, the parties will work together in good faith with the objective of agreeing on measures or a workaround that will resolve the Certifying Authority's concerns, to the satisfaction of the Certifying Authority. The Service Provider may propose measures including movement of a Commonwealth Entity's Agency Data to another Service or implementing additional security and access measures for Agency Data which, for measures that will be implemented by the Service Provider, must be implemented at the Service Provider's cost if approved.

13.10 The Service Provider is not required to disclose information pursuant to this Deed to the extent that it would cause the Service Provider to breach any Relevant Laws or duty of confidentiality restricting disclosure of the information, or if the Service Provider or its officers have already disclosed that information to the Commonwealth or to another Australian Government Department or agency under Another Relevant Framework, or which is available information and documentation through the Commonwealth Entity's use of the Service. If the Service Provider cannot provide information because of a duty of confidentiality, the Service Provider must:

13.10.1 use its best endeavours to obtain consent to disclose the information; or

13.10.2 provide de-identified information about the nature or extent of the security risk.

14. Risk Management and managing supply chain risks for Certified Strategic

General

14.1 The Service Provider must demonstrate its ability to identify, record, manage and mitigate risks (including supply chain risks) that may adversely impact upon the provision of the Service, by:

14.1.1 adhering to a formal, standards-based risk management framework with supporting recording tools, such as matrices, allocation of roles and responsibilities, and the regular review of treatments to mitigate the risks;

14.1.2 completing vetting of personnel in Key Roles by an Authorised vetting agency, or a comparable process acceptable to the Certifying Authority, to a level required by the Certifying Authority; and

14.1.3 providing support from locations (including for remote-in support) that the Service Provider (with the approval of the Certifying Authority), has assessed and determined do not pose a security threat to the Commonwealth, which may include (subject to any security threat) the locations listed in the Service Provider's Assessment report.

14.2 Nothing in this Deed is intended to exclude or restrict the Service Provider's obligations under any Relevant Laws or a Contract with respect to security or risk management.

Risk Management Plan and Supply Chain Risk Management Plan for Certified Strategic

14.3 The Service Provider must:

14.3.1 have in place and comply with, a documented and implemented Risk Management Plan which incorporates a Supply Chain Risk Management Plan for the identification, management, mitigation and reporting of supply chain risks; and

14.3.2 submit the Risk Management Plan (including the Supply Chain Risk Management Plan) to the Certifying Authority on the Deed Effective Date or at such other time as reasonably required by the Certifying Authority.

14.4 The Certifying Authority agrees that the requirements of clause 14.3 will be satisfied if the Risk Management Plan and Supply Chain Risk Management Plan draws on or incorporates independent certifications or reports that address the matters detailed in this clause, without needing to repeat those matters in full.

14.5 The Risk Management Plan must, as a minimum:

14.5.1 comply with risk management standards AS/NZS ISO 31000:2018 and AS/NZS ISO 28001:2007;

14.5.2 detail the Service Provider's risk management plan and processes to identify, prevent, manage, mitigate and report supply chain risks and to ensure business and supply chain continuity;

14.5.3 detail the Service Provider's methods and methodology for risk identification, rating, monitoring and treatment;

14.5.4 detail the requirements for developing and maintaining a risk register to record and review risks; and

14.5.5 detail allocated roles and responsibilities, including who within the Service Provider's organisation will be responsible for the management, treatment and reporting of the relevant risks.

14.6 The Certifying Authority may, by notice to the Service Provider, require amendments to the Risk Management Plan (including the Supply Chain Risk Management Plan).

14.7 Upon receiving a notice under clause 14.6, the Service Provider must make any amendments required and resubmit the revised Risk Management Plan to the Certifying Authority:

14.7.1 within ten (10) Business Days;

14.7.2 or a longer period as reasonably requested by the Service Provider given the complexity of the issues, as agreed by the Certifying Authority acting reasonably (taking into account the severity of the risks and the Service Provider's schedule for refreshing any independent audits, certifications, or assurances referenced in the Risk Management Plan).

14.8 The Certifying Authority agrees that the purpose of this clause is to ensure that the Risk Management Plan (including the Supply Chain Risk Management Plan) continues to comply with the requirements of this clause, and that it will not require any amendments unless they are necessary to address non-compliance of the Risk Management Plan (including the Supply Chain Risk Management Plan) with this clause.

14.9 The Service Provider must:

14.9.1 annually from the Deed Effective Date (or more often if a security risk requires an earlier review) review and test and, if necessary, update its Risk Management Plan and Supply Chain Risk Management Plan and its risk management policies and procedures throughout the term of this Deed and report the results to the Certifying Authority; and

14.9.2 promptly make any amendments required by the Certifying Authority under clauses 14.6 to 14.8, and resubmit the revised Risk Management Plan and Supply Chain Risk Management Plan to the Certifying Authority.

14.10 The Service Provider must comply with the latest version of its Risk Management Plan, as updated from time to time. The Certifying Authority agrees that, where a change to the Risk Management Plan described in clauses 14.6 to 14.8 above requires operational changes, the obligation for the Service Provider to comply with the latest version of its Risk Management Plan will apply following a reasonable transition period having regard to the nature and scale of the operational changes required, as agreed with the Certifying Authority.

15. Exit Rights and Reimbursement for Certified Strategic

15.1 Without limiting any other rights or remedies available to a Commonwealth Entity for breaches of a Contract, if the Service Provider fails to meet the requirements set out in clauses 14.1 to 14.10, above:

15.1.1 the Commonwealth Entity may, at its sole discretion, elect to request information as set out in clauses 14.1 to 14.10, in a timeframe reasonably required by the Commonwealth Entity (taking account of the nature and size of the request, and the effort required to respond); or

15.1.2 any Commonwealth Entity may exit their Agency Data from the Service and cease using the Service, and if this occurs, the Commonwealth Entity will have no more obligations to pay charges in respect of the Service from the date the Commonwealth Entity ceases using the Service.

15.2 The Commonwealth Entity will not exercise its rights in clause 15.1 if the Service Provider has not provided the declaration required under clause 13.3, without the Certifying Authority first requesting the provision of the declaration from the Service Provider.

15.3 Without limiting clause 15.1 above, if the Commonwealth Entity is required to put in place measures to mitigate or reduce the impact of a Relevant Change, the Service Provider must reimburse the Commonwealth Entity:

15.3.1 the Commonwealth Entity's total reasonable transition costs incurred with third parties directly associated with exiting its Agency Data; and

15.3.2 such other amounts associated with exiting the Agency Data from the Service which are agreed by the parties in relation to a Contract for the purposes of clause 15.2, as specified in that Contract (or any other Contract that may be agreed by the parties),

if the transition is required as a result of the Service Provider's failure to meet the requirements of this Deed.

15.4 Without limiting any other rights or remedies available to Commonwealth Entities under their Contracts with the Service Provider, if the Service Provider fails to meet the Certification requirements, the Service Provider must also comply with any exit rights and reimbursement provisions, and any other remedies, in its Contracts.

15.5 A Commonwealth Entity may include in a Contract, remedies that are in addition to, or which are an improvement on, the remedies available in this Deed, but any provisions in a Contract that reduce, limit or remove the rights and obligations in this Deed are of no effect.

16. Termination Rights for Contracts

16.1 In addition to the Commonwealth Entity's rights in a Contract and this Deed, the Commonwealth Entity may terminate its Contract if in the Commonwealth Entity's reasonable assessment, the Service Provider has failed to comply with the requirements set out in this Deed. If this occurs, the Service Provider must provide a post-termination retrieval period no shorter than sixty (60) days for the Commonwealth Entity to remove its Agency Data from the Service.

16.2 The Commonwealth Entity agrees that a reasonable assessment requires the Commonwealth Entity to conduct a fair, objective and reasonable assessment, provide the Service Provider with a reasonable opportunity to make submissions, provide the Service Provider with a reasonable opportunity to remedy the alleged failure (at least thirty (30) days) and to take account of all relevant facts. The Commonwealth Entity is not required to follow the complete process in this clause 16.2 and clause 16.1 if there is a security risk that does not, in the Commonwealth Entity's reasonable opinion (after giving due regard to the degree of imminence, urgency, nature, and severity of the risk) allow for completion of one or more steps.

17. Acknowledgment

17.1 The Service Provider acknowledges and agrees that the Service Provider's failure to comply with the requirements in Part C may affect the Certification of a Service.

Exit Rights and Reimbursement

17.2 Without limiting any other rights or remedies available to Commonwealth Entities under their Contracts with the Service Provider, if the Service Provider fails to meet the Certification requirements, the Service Provider must comply with the exit rights and reimbursement provision in its Contracts with Commonwealth Entities.

18. Consent to obtain and share information

18.1 For any Approved Purpose, the Service Provider consents to the Certifying Authority:

18.1.1 obtaining and using information from other Australian Government departments and agencies including any sources referenced in this Deed; and

18.1.2 sharing information received under this Deed with other Australian Government departments and agencies.

18.2 In addition to clause 18.1, for any Approved Purpose, or in the performance of the Certifying Authority's role as a central government agency and answering questions from Commonwealth Entities, the Service Provider consents to the Certifying Authority sharing the following information with any Commonwealth Entity:

18.2.1 information about security risks and threats, which is provided by the Service Provider under this Deed;

18.2.2 confirmation that the Service Provider has provided a Risk Management Plan under clause 14.3;

18.2.3 confirmation of whether the Service Provider has Certification and the Services for which Certification has been granted;

18.2.4 confirmation of any remedies available to the Commonwealth Entity (including those that may be exercised by Certifying Authority on behalf of the Commonwealth Entity); and

18.2.5 any other information agreed in writing between the Certifying Authority and the Service Provider, which will be subject to additional restrictions if agreed by Certifying Authority and the Service Provider.

18.3 Service Provider restrictions on the consent in clauses 18.1 and 18.2 do not apply to any information the Certifying Authority is able to obtain without confidentiality obligations owed directly to the Service Provider, but nothing in this clause permits any dealing with such information in breach of confidentiality protections that apply to such information.

PART D - REVOCATION OR TERMINATION OF CERTIFICATION

19. Revocation of Certification by the Certifying Authority

19.1 The Certifying Authority, may, by notice issued to the Service Provider, revoke the Certification of a Service from the date specified in the notice, if the Service Provider fails to meet the requirements of this Deed and:

19.1.1 the Certifying Authority has issued a notice setting out the grounds for a proposed revocation and providing a minimum of ten (10) days (or another time agreed with the Service Provider) for the Service Provider to rectify the non-compliance with the Deed; and

19.1.2 the Service Provider has not rectified the non-compliance or has not provided a plan for rectification that is approved by the Certifying Authority.

Termination of Certification by the Service Provider

19.2 The Service Provider may apply for termination of Certification of a Service at any time.

19.3 Termination of Certification will take effect when the Certifying Authority issues a notice to the effect that the Certification ID has been removed from the Service.

Consequences of revocation or termination of Certification

19.4 The Service Provider must comply with the remedies in this Deed for any Commonwealth Entities affected by a revocation or termination of Certification.

PART E - INFORMATION RIGHTS AND LIABILITY

20. Confidentiality

20.1 The Service Provider must not, without the prior consent of the Certifying Authority, disclose information about this Deed or the Assessment, except:

20.1.1 to Commonwealth Entities for the purposes of a Contract, or potential Contract;

20.1.2 to internal management personnel to enable effective administration of this Deed;

20.1.3 as authorised or required by law; or

20.1.4 where the information is in the public domain otherwise than due to a breach of this Deed.

20.2 The Certifying Authority or a Commonwealth Entity may disclose confidential information of the Service Provider as required for public accountability purposes (including to Ministers of the Australian Parliament or to other Commonwealth Entities).

21. Intellectual Property Rights

21.1 The Certifying Authority retains all intellectual property rights in the Deed and any documents or information made available to the Service Provider in connection with this Deed.

21.2 The Service Provider grants a licence to the Certifying Authority and to Commonwealth Entities who are parties to a Contract to use or disclose material developed for the purposes of this Deed, but subject to the restrictions in clause 18.

22. Liability

22.1 Neither the Certifying Authority, nor any Commonwealth Entity, has any liability to the Service Provider in connection with this Deed.

22.2 The Service Provider is responsible for all risks associated with its entry into this Deed, its Services, the Assessment process, Certification of a Service and any Contract relating to a Service.

22.3 The liability of the Service Provider and a Commonwealth Entity under a Contract will be determined on the terms of that Contract.

22.4 The Certifying Authority has no liability in connection with a Contract. If the Certifying Authority enforces any obligations applicable to a Contract under this Deed, the Commonwealth Entity will be liable for the actions of the Certifying Authority on the terms of the liability provisions in the Contract.

PART F - MISCELLANEOUS

23. Miscellaneous

Governing law

23.1 This Deed is governed by the law applying in the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Amendment

23.2 This Deed may only be amended by a document executed by the parties.

Counterparts

23.3 This Deed may be executed in counterparts, all of which taken together constitute one document.

Entire agreement and no reliance

23.4 This Deed constitutes the entire agreement between the parties about the transition of the existing Contracts and supersedes all previous agreements or understandings between the parties in connection with that subject.

23.5 The parties acknowledge and agree that in entering into this Deed each party has not relied on any representations made by the other party (or its agents or employees) other than matters expressly set out in this Deed.

Severability

23.6 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

23.7 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

Waiver

23.8 The failure of a party at any time to insist on performance of any provision of this Deed is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Deed.

Assignment and Novation

23.9 Subject to clause 23.10.1, a party may only assign its rights or novate its rights and obligations under this Deed (in whole or part) with the prior written consent of the other party (which must not be unreasonably withheld).

23.10 For clarity:

23.10.1 the Certifying Authority will only consent to the Service Provider's request to novate its rights and obligations under this Deed if the Service Provider can confirm that all relevant Commonwealth Entities have consented to the novation of its rights under any Contracts; and

23.10.2 the Certifying Authority may assign its rights or novate its rights and obligations under this Deed another Commonwealth Entity without obtaining the Service Provider's consent if its functions in relation to this Deed are transferred to another Commonwealth Entity as part of a machinery of government change in accordance with clause 3.

Further assurance

23.11 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

EXECUTED AS A DEED

Executed as a deed by **[Insert]** (ABN [Insert]) in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

. . . . .	. . . . .
Signature of Director	Signature of Director/Company Secretary
. . . . .	. . . .
Print full name of Director	Print full name of Director/Company Secretary
. . . . .	. . . . .
Date	Date

Executed as a deed for and on behalf of the **Commonwealth of Australia** as represented by the **Digital Transformation Agency** by its duly authorised delegate:

. . . . .	. . . . .
Signature of delegate	Signature of Witness
. . . . .	. . . .
Name of delegate (print)	Name of witness (print)
. . . . .	. . . . .
Date	Date