Australian Government
Digital Transformation Agency

dta

PANEL AGREEMENT FOR DIGITAL MARKETPLACE PANEL 2

PART A – PANEL TERMS

CONTENTS

Introduction

A. DTA administers the Digital Marketplace Panel 2 on behalf of the Commonwealth.

B. DTA has conducted a procurement process and Appointed the Seller to the Panel.

C. The Seller offers to provide Products and Services to Buyers, subject to this Panel Agreement.

D. Buyers may procure digital Products and Services from the Seller under this Panel Agreement through the Online Portal.

Note: The Online Portal is currently BuyICT.

SECTION 1 – PANEL OVERVIEW

1. Parties

The parties to this Panel Agreement are set out in Item 2 of Part B – Panel Appointment Details.

The parties to a Contract entered under this Panel Agreement are to be set out in Part D – Contract Details.

2. Interpretation of Panel Agreement

The Panel Agreement uses capitalised terms that are explained in Part E – Definitions and Interpretation.

3. Panel Agreement structure

3.1. Panel Agreement parts

3.1.1. This Panel Agreement is a deed of standing offer and consists of the following parts:

Part	***Purpose***
Part A – Panel Terms	The terms for the operation of the Panel that apply to DTA and the Seller.
Schedules to Part A ***Note***: E.g. Schedule A1 – ICT Labour Hire Module Schedule A2 – Professional and Consulting Services Module Schedule A3 – Software and Cloud Services Module.	Additional terms to Part A that only apply to Products and Services under the relevant Module. Descriptions of the Products and Services in the relevant Module and Module Categories.
Part B – Panel Appointment Details	The Seller's panel appointment details, including the Modules and Categories under which it can sell Products and Services to Buyers.
Part C – Contract Terms	The core terms for Contracts entered between the Seller and a Buyer under the Panel.

Schedules to Part C ***Note***: E.g. Schedule C1 – ICT Labour Hire Module Terms and Schedule C2 – Professional and Consulting Services Module Terms.	Additional terms to Part C – Contract Terms that only apply to Products and Services under the relevant Module.
Attachment to Schedules to Part C ***Note:*** E.g. Attachment A (Government EULA), Schedule C3 – Software and Cloud Services Module.	The Attachments to the Schedules to Part C – Contract Terms, if applicable.
Part D – Contract Details	The form that the Buyer and Seller must agree and complete for each Contract.
Attachments to Part D – Contract Details ***Note:*** E.g. Attachment A (Pricing), Part D – Contract Details.	The Attachments to the Schedules to Part D – Contract Details, that the Buyer and Seller must complete for each Contract, if applicable.
Part E – Definitions and Interpretation	Defines the capitalised terms and states the rules for interpreting the Panel Agreement.
DTA Forms	The standard forms to use under this Panel Agreement that are available on the Online Portal.
Any other documents incorporated by reference into this Panel Agreement	

3.2. Order of precedence

3.2.1. To the extent of any inconsistency between any Parts of this Panel Agreement, the Parts will have priority in the descending order set out in clause 3.1.1. This clause is subject to clause 3.2.2.

3.2.2. Amended terms agreed in accordance with clause 4.5 will have priority over the Parts and Schedules set out in clause 3.1.1 to the extent that they are different.

4. Seller's role

4.1. Appointment to Panel, Modules and Categories

4.1.1. DTA Appoints the Seller to the Panel to offer Products and Services within the scope of the Modules and Categories stated in Item 6 of Part B – Panel Appointment Details.

4.2. DTA may Appoint Seller to additional Modules or Categories

4.2.1. The Seller may apply to be Appointed to additional Modules or Categories. If Appointed, the Seller must complete a Deed of Variation as set out in clause 22.9.

4.3. Offer to sell Products and Services on the Panel

4.3.1. The Seller offers to sell the Appointed Products and Services to Buyers as agreed under this Panel Agreement.

4.3.2. A Buyer may follow the procedure in clause 14 to enter a Contract with the Seller to provide Appointed Products and Services to the Buyer.

4.3.3. Each Contract:

a. is a separate Contract to this Panel Agreement and is subject to Part C – Contract Terms;

b. is between the Seller and a Buyer; and

c. continues for the Contract Period regardless of the Panel Agreement Period.

4.4. Offer is non-exclusive

4.4.1. The Seller acknowledges:

a. it is one of many sellers on the Panel to provide Products and Services to Buyers; and

b. this Panel Agreement does not guarantee the Seller any exclusivity, quantity or value of work.

4.5. Panel Agreement – additional or amended terms

> ***Note:*** DTA may include additional or amended terms in Part B – Panel Appointment Details that will apply to the Panel Agreement for a particular Seller only. These will:
>
> - be included in Item 12 of Part B – Panel Appointment Details; and
> - apply to the Seller's Contracts under the Panel as applicable.
>
> DTA expects to do this on an exceptions basis.

4.5.1. DTA and the Seller agree to any additional or amended terms set out in Item 12 of Part B – Panel Appointment Details.

4.6. Contracts – additional or amended terms

> ***Note:*** The terms of Buyer and Seller Contracts have been set and can only be changed in limited circumstances as set out below.
>
> Methods for amending the set terms of a Contract are set out in clauses 4.3 and 4.4 of Part C – Contract Terms.

4.6.1. The Seller must not add to or amend the terms of a Contract unless the Seller complies with clauses 4.3 and 4.4 of Part C – Contract Terms.

4.6.2. Any addition or amendment to a Contract that is not made in accordance with clause 4.6.1 will have no effect.

4.6.3. Any request to DTA to amend the terms of a Contract under clause 4.4.1.f of Part C – Contract Terms must be sent to the DTA Representative and must state:

a. the clause the Buyer or Seller wishes to amend in a Contract;

b. the requested amendment; and

c. the reasons for the requested amendment.

4.6.4. DTA will notify the Buyer or Seller of whether DTA approves the requested change or not.

5. DTA's role

5.1. DTA

5.1.1. DTA will:

a. manage the Panel;

b. Appoint the Seller to Modules and Categories;

c. administer this Panel Agreement;

d. approve any changes to this Panel Agreement;

e. monitor the Seller's performance under the Performance Management Framework;

f. collect feedback;

g. conduct procurement processes to add sellers to Modules and Categories; and

h. operate the Online Portal.

6. Panel

6.1. Panel structure

6.1.1. The Panel is divided into Modules that are divided into Categories of Products and Services.

> ***Note:*** Examples of Modules are *Professional and Consulting Services* and *ICT Labour Hire*. Over time, DTA may include more Modules such as *Hardware*.

6.2. Panel Agreement Period

6.2.1. The Panel Agreement Period begins on the Panel Agreement Start Date and ends on the Panel Agreement Initial End Date, as stated in Item 5 of Part B – Panel Appointment Details, unless DTA extends the term under clause 6.2.2 or this Panel Agreement is terminated.

6.2.2. DTA may extend the Panel Agreement Period for any period or periods up to the last date of the DTA Panel Option Term stated in Item 5 of Part B – Panel Appointment Details. DTA will notify the Seller with details of an extension at least 30 Business Days before the Panel Agreement End Date.

6.2.3. Any extension will be on the same terms and conditions as this Panel Agreement.

6.3. Modules

6.3.1. The Panel has Modules for different types of Products and Services as described in the Schedules to Part A – Panel Terms.

6.3.2. Each Module has specific terms. These are:

a. *for the Panel Agreement* – in the Schedules to Part A – Panel Terms; and

b. *for a Contract* – in the Schedules to Part C – Contract Terms called Module Terms.

6.4. Module Periods

6.4.1. Each Module Period begins on the Module Start Date for the relevant Module as stated in Item 6 of Part B – Panel Appointment Details.

6.4.2. Each Module Period ends on the Module Initial End Date as stated in Item 6 of Part B – Panel Appointment Details unless DTA:

a. extends the applicable Module Period under clause 6.4.3;

b. suspends or terminates the Seller from the Module;

c. notifies the Seller that it will remove a Module from the Panel under clause 7.1.2; or

d. ends or terminates this Panel Agreement.

6.4.3. DTA may extend the Module Period for any period or periods up to the last date of the DTA Module Option Term stated in Item 6 of Part B – Panel Appointment Details. The DTA will notify the Seller of an extension at least 30 Business Days before the Module Initial End Date.

6.4.4. Any extension will be on the same terms and conditions as this Panel Agreement.

6.5. Categories

6.5.1. Each Module is divided into Categories of Products and Services. The Categories are described in the Category Descriptions in the Schedules to Part A – Panel Terms.

> ***Note:*** For example, the *Professional and Consulting Services Module* includes Categories for Architecture Services and Cybersecurity Services.

6.6. Category Periods

6.6.1. Each Category Period begins on the Category Start Date in Item 6 of Part B – Panel Appointment Details.

6.6.2. Each Category Periods ends on the date:

a. this Panel Agreement expires or is terminated;

b. the applicable Module ends, is terminated or removed; or

c. DTA notifies the Seller as the date that it will remove a Category from this Panel Agreement for all sellers under clause 7.1.2.

7. Panel review and refresh

7.1.1. DTA may amend the Panel to:

a. add, remove or change Modules;

b. add, remove or change Categories in any Module; or

c. approach the market to add sellers to the Panel in one or more Modules or Categories.

7.1.2. If DTA removes a Module or Category, it will give the Seller at least 30 Business Days' notice. The notice will state the date that the Module or Category will end.

> ***Note:*** DTA can change the Products and Services available on the Panel and add sellers to the Panel.
>
> This is to reflect:
>
> - the changing ICT environment which includes evolving and emerging products and services;
> - new suppliers offering new capabilities; and

- existing Sellers changing their capabilities.

7.1.3. The Seller:

a. must remain Appointed to at least one Module at all times; and

b. may apply for DTA to Appoint it to additional Modules or Categories through an open tender process.

7.1.4. The Seller must only sell, or offer to sell, Products and Services within the scope of the Seller's Appointed Modules and Categories.

7.1.5. DTA may require the Seller to agree to a Deed of Variation to change the Panel Agreement, including if DTA:

a. takes any of the steps under clause 7.1.1;

b. Appoints the Seller to a new Module;

c. Appoints the Seller to a new Category; or

d. otherwise wishes to vary any part of this Panel Agreement.

7.2. Recording Seller's Part B – Panel Appointment Details

7.2.1. DTA may hold, record and publish Part B – Panel Appointment Details on the Online Portal, subject to clause 7.2.2.

7.2.2. DTA will only give access to an individual Seller's pricing information to Buyers.

7.2.3. DTA may de-identify and aggregate the Seller's pricing information with other Sellers' pricing information and publish it on the Online Portal.

8. Price

8.1. Price in Schedules to Part A – Panel Terms

Note:

Maximum Price

Please refer to the following provisions in the Schedules to Part A – Panel Terms for how Maximum Price of the Seller's Products and Services under different Modules is calculated:

- Clause 3 of Schedule A1 – ICT Labour Hire Module;
- Clause 3 of Schedule A2 – Professional and Consulting Services Module; and
- Clause 3 of Schedule A3 – Software and Cloud Services Module.

Price under Contracts

Please refer to the following provisions in the Module Terms for information on Price in a Contract between the Buyer and Seller:

- Clause 14 of Schedule C1 – ICT Labour Hire Module;
- Clause 6 of Schedule C2 – Professional and Consulting Services Module; and
- Clause 15 of Schedule C3 – Software and Cloud Services Module.

Buyers and Sellers are able to use Attachment A (Pricing), Part D – Contract Details to set out the Price details for the Seller's Products and Services under Contracts.

8.1.1. The parties will comply with the Maximum Price terms for the Seller's Products and Services, as set out in the relevant Schedule to Part A – Panel Terms.

9. Operation of the Panel

9.1. Panel administered through Online Portal

9.1.1. DTA will administer the Panel through an Online Portal.

Note: The Online Portal is currently BuyICT.

9.1.2. The Online Portal may include functionality related directly or indirectly to:

a. Catalogues;

b. the Seller's Part B – Panel Appointment Details;

c. facilitating Buyers' procurements under the Panel including:

i. contract terms and templates;

ii. RFQ templates;

iii. DTA Forms; and

iv. contract execution tools;

d. reporting tools;

e. monitoring the Seller's performance;

f. guidance for Buyers and Sellers;

g. making changes to this Panel Agreement;

h. sending and receiving notices; and

i. other functionality at DTA's discretion.

9.1.3. The Seller must:

a. agree to comply with and be bound by the Online Portal Terms and Conditions, as amended from time to time;

b. create an account for use of the Online Portal; and

c. comply with requirements for use of the Online Portal as advised by DTA.

> ***Note:*** the current version of the Online Portal Terms and Conditions can be found on the BuyICT Terms of Use page.

9.1.4. The Seller must use the Online Portal when:

a. responding to Requests for Quote; and

b. entering into Contracts,

unless the Buyer has permission from DTA not to use the Online Portal for its procurement process.

9.2. Catalogues

9.2.1. The Seller may request that DTA add, update or remove a Catalogue in the Online Portal. To do this, the Seller must follow the process notified by DTA from time to time.

9.2.2. Seller's Catalogues of Products and Services must:

a. be within the scope of the Seller's Appointed Modules and Categories;

b. meet the requirements for the Seller's Modules and Categories as set out in the relevant Schedule to Part A – Panel Terms and Module Terms; and

c. meet any other requirements which are set out in Part B – Panel Appointment Details.

9.2.3. The Seller must do its best to make sure that all Products and Services listed in the Catalogue are available for Buyers to purchase.

9.2.4. DTA may at any time:

a. add, change or remove a Seller's Catalogue;

b. remove certain Products and Services from a Catalogue; or

c. restrict access to certain Products and Services for particular Buyers.

9.2.5. DTA will identify any Confidential Information of a Seller included in a Catalogue as confidential. DTA will give access to a Seller's Confidential Information in a Catalogue to Buyers.

9.3. Risk management and Supply Chain integrity

9.3.1. DTA may publish Supply Chain information to Buyers in the Catalogue to help them assess value for money.

9.4. Seller information to be compliant

9.4.1. The Seller must ensure all Seller Information:

a. is accurate, clear and complete;

b. is kept up to date;

c. is not false, deceptive or misleading; and

d. complies with this Panel Agreement.

9.4.2. The Seller must review Seller Information before it is published in the Online Portal to ensure it complies with clause 9.4.1.

9.4.3. The Seller must promptly notify DTA if it becomes aware at any time that Seller Information does not comply with clause 9.4.1.

9.4.4. The Seller must promptly follow any reasonable directions given by DTA that relate to Seller Information and compliance with clause 9.4.

9.5. False or misleading information

9.5.1. Giving false or misleading information to DTA or a Buyer is a serious offence.

10. Panel Agreement representatives

10.1. DTA's Representative

10.1.1. The DTA Representative is stated in Item 8 of Part B – Panel Appointment Details.

10.1.2. The DTA Representative will administer this Panel Agreement on behalf of DTA.

10.1.3. The Seller must send all notices and correspondence to the DTA Representative.

10.2. The Seller's Representative

10.2.1. The Seller Representative is stated in Item 9 of Part B – Panel Appointment Details.

10.2.2. The Seller Representative will represent the Seller and is the Seller's primary contact under this Panel Agreement.

10.2.3. The Seller Representative must maintain an active account on the Online Portal.

10.2.4. DTA will send all notices to the Seller Representative.

10.3. Changing Representatives

10.3.1. The parties may change their representatives by following the process notified to the Seller by DTA.

11. Notices

11.1. Format, addressing and delivery

11.1.1. A notice under this Panel Agreement is only effective if it is in writing, in English and dealt with as follows:

a. *if given by the Seller to DTA* – addressed to the DTA Representative in Item 8 of Part B – Panel Appointment Details (or as updated under clause 10.3); or

b. *if given by DTA to the Seller* – addressed to the Seller Representative in Item 9 of Part B – Panel Appointment Details (or as updated under clause 10.3).

11.1.2. DTA and the Seller must give notices:

a. by email;

b. through the Online Portal; or

c. in the case of DTA, by delivery to an address set out in Item 9 of Part B – Panel Appointment Details.

11.2. When effective

11.2.1. A notice will take effect:

a. *if given by email* – when it becomes capable of being retrieved by the addressee;

b. *if given through the Online Portal* – when it is posted or transmitted to the Online Portal; and

c. *if given by DTA to an address of the Seller* – upon delivery to the relevant address.

11.2.2. A notice received after 5.00pm, or on a day that is not a Business Day in the place of receipt, will take effect at 9.00am on the next Business Day in that place.

12. Reporting

12.1. Reporting to DTA

12.1.1. The Seller must give DTA reports or information about this Panel Agreement or a Contract if asked by DTA:

a. within 10 Business Days (or other time stated by DTA) from when DTA asks; and

b. in the form and format requested by DTA.

12.1.2. DTA may require the reports and information to be sent through the Online Portal.

12.1.3. The Seller must not provide Buyer information to DTA that is classified at the level of PROTECTED or above.

12.1.4. The Seller must supply evidence to support the accuracy of any reports or information given, if asked by DTA.

13. Relationship of the parties

13.1. General obligations of the parties

13.1.1. The Seller must:

a. diligently perform its obligations under this Panel Agreement; and

b. work in a collaborative manner, in good faith.

13.1.2. The Seller must comply with any reasonable directions given by DTA under this Panel Agreement.

13.2. Meetings

13.2.1. The Seller must participate in meetings when asked by DTA. Meetings may be by video. Meetings may cover:

a. the operation of this Panel Agreement and the Online Portal;

b. new products or services relevant to the Products and Services; or

c. other topics that DTA reasonably requires.

13.3. Relationship of the parties

13.3.1. This Panel Agreement does not have the effect that the Seller is an officer, employee, partner or agent of DTA.

13.3.2. The Seller does not have any power or authority to bind or represent DTA unless specifically authorised in writing.

13.3.3. The Seller must not:

a. misrepresent its relationship with DTA or any Buyer;

b. imply any endorsement of its products or services by the Australian Government;

c. use the Commonwealth coat of arms, or any DTA branding in connection with this Panel Agreement on its website, in marketing material or any other public facing document without the prior written permission of DTA; or

d. engage in any false, misleading or deceptive conduct in relation to the Products and Services.

13.4. Public announcements

13.4.1. The Seller may announce that DTA has Appointed it to the Panel provided it complies with the requirements in clause 13.3.3.

13.4.2. The Seller must get DTA’s written approval before making any public announcement about this Panel Agreement, other than under clause 13.4.1.

13.4.3. The Seller does not need approval for public announcements if required by law or a regulatory body (including a relevant stock exchange) but must:

a. limit the public announcement to what is required by the relevant law or regulatory body; and

b. where possible, first consult with and consider the reasonable requirements of DTA.

SECTION 2 – BUYER ORDER PROCESS

14. Ordering Products and Services

14.1. How Buyers place Orders

14.1.1. The Seller agrees that Buyers may purchase Products and Services through an RFQ Process.

14.1.2. The Seller must only Quote for Products and Services:

a. from the Seller's Appointed Modules and Categories;

b. during the Panel Agreement Period; and

c. during any applicable Module Period or Category Period.

14.2. Request for Quote (RFQ) process

14.2.1. A Buyer may issue an RFQ to any number of sellers for Products and Services using the Online Portal.

14.2.2. The Buyer will:

a. issue an RFQ seeking Quotes from any number of sellers on the Panel;

b. select a preferred seller (if any);

c. agree Part D – Contract Details, or Purchase Order Contract terms, with the preferred seller; and

d. issue an Order, including the agreed Part D – Contract Details or Purchase Order Contract terms, to the preferred seller.

14.2.3. If the Seller is a party to a WofG Arrangement and clause 15 applies, the Buyer and Seller will comply with clause 15.

> ***Note:*** Guidance on completing an RFQ is provided within the workflow on the Online Portal.
>
> Buyers should specify the Products and Services required in as much detail as possible. This should include relevant technical specifications, all Contract Material required in respect of those Products and Services and any obligations or requirements that the successful Seller must meet.

14.2.4. The Seller must comply with:

a. requirements set out in a Buyer's RFQ when providing a Quote; and

b. any additional requirements of DTA for an RFQ Process.

14.3. Forming a Contract

14.3.1. The Buyer will evaluate Quotes and select a preferred seller (if any). The Buyer will then issue an Order based on the RFQ and Quote subject to agreeing the Part D – Contract Details or Purchase Order Contract terms.

14.3.2. When a Buyer issues an Order, it will form a Contract between the Seller and the Buyer for the provision of Products and Services. The parties will execute the Contract.

14.3.3. The Seller must only accept Orders using the Online Portal unless otherwise permitted by DTA in writing.

> ***Note:*** Buyers may use their own Purchase Order Contract terms where DTA has permitted this on the Online Portal.
>
> Purchase Order Contract terms may be appropriate for low risk, low value procurements. For example, where a Buyer is purchasing low risk, off the shelf products for under $10,000.

14.4. Buyer may use Purchase Order Contract terms

14.4.1. If permitted by DTA on the Online Portal, a Buyer may use its own Purchase Order Contract terms when entering a contract with a Seller.

14.4.2. If a Buyer uses a Purchase Order then the term 'Contract' where it is used in Part A – Panel Terms, will be interpreted to include Purchase Order Contracts unless a contrary intention is clear.

14.4.3. Clause 3.2 of Part A – Panel Terms will not apply to Purchase Order Contracts. Part C – Contract Terms and Module Terms will not apply to Purchase Order Contracts.

14.5. Buyers may purchase from different Modules and Categories

14.5.1. A Contract may be for Products and Services:

a. within one Module or Category; or

b. across a number of Modules or Categories to which the Seller is Appointed.

14.6. Buyers may purchase in groups

14.6.1. A Contract may be for the provision of Products and Services from the Seller to:

a. one Buyer; or

b. a group of Buyers.

14.6.2. The Contract must state whether there will be a single Contract with multiple Buyers as parties, or separate Contracts for each Buyer.

14.7. Pricing in an RFQ

14.7.1. In an RFQ, a Buyer may:

a. seek quotes on a fixed price or other basis;

b. give sellers the opportunity to quote based on the Seller's Maximum Price; or

c. request a Price lower than that set out in the Seller's Maximum Price.

14.8. Seller response to RFQ

14.8.1. If it receives an RFQ, the Seller must prepare and submit a Quote or notify the Buyer as soon as possible (and at least before the RFQ Closing Date), that the Seller is not submitting a Quote.

14.8.2. Any Quote must be given before the RFQ Closing Date using the Quote form in the Online Portal unless the Buyer has permission from DTA not to use the Online Portal for its procurement process.

14.8.3. Quotes must include:

i. a description of how the Seller would provide the requested Products and Services and whether it could do so within the timeframe stated in the RFQ;

ii. an indication of the Personnel, if any, that would provide the requested Products and Services;

iii. a declaration of any Conflict the Seller may have in providing the requested Products and Services;

iv. the Price to provide the Products and Services, which must not exceed the applicable Maximum Price; and

v. any other information requested by the Buyer in the RFQ.

14.8.4. Quotes must remain open for acceptance by the Buyer for 30 Business Days unless otherwise stated in an RFQ.

14.8.5. The Seller must not communicate to any person the amount or approximate amount of a Quote. This does not include the Seller's legal and other professional advisers, relevant Buyer, relevant Publisher or DTA.

14.8.6. The Seller acknowledges that an RFQ does not commit a Buyer to buy products and services from the Seller or any other seller.

14.9. RFQs across more than one Module or Category

14.9.1. If an RFQ relates to Products and Services in more than one Module or Category:

a. the Seller must only respond to the RFQ with Products and Services within the scope of the Seller's Modules and Categories; and

b. if the Seller can provide a part of the Products and Services under more than one Module or Category:

i. the Seller must ensure that the pricing for the Products and Services in its Quote reflects the pricing that will result in the lowest Price to the Buyer; and

ii. the applicable Module Terms will be those that correspond with the Products and Services quoted under clause 14.9.1.b.i.

14.10. Seller request for invitation to an RFQ

14.10.1. If the Seller is not invited to respond to an RFQ, the Seller may ask the Buyer to allow it to respond to the RFQ.

14.10.2. If the Seller makes a request under clause 14.10.1, it must follow the process notified by DTA to the Seller. DTA may set out the circumstances when the Seller cannot make a request under clause 14.10.1.

14.10.3. If the Seller makes a request under clause 14.10.1, the Seller acknowledges:

a. the Buyer does not have to agree to the Seller's request;

b. the Buyer is deemed to have rejected the request if the Buyer does not respond to the request; and

c. if allowed to Quote, it will not assert at any stage (including in any complaint or legal proceedings) that it has been disadvantaged by having less time to respond to the RFQ than another seller.

14.11. Publication of Contracts and Quote information

14.11.1. DTA may publish executed Contracts and details about Contracts on AusTender.

14.11.2. DTA may publish executed Contracts and details about Contracts on the Online Portal, or elsewhere, with Confidential Information removed.

14.12. Other Approaches to Market

> ***Note***: This clause permits other approaches to market such as Request for Information (RFI) through the Panel.

14.12.1. The Seller agrees that Buyers may also conduct an Approach to Market other than an RFQ on the Panel.

14.12.2. When responding to the Approach to Market, the Seller must comply with:

a. requirements set out in a Buyer's Approach to Market; and

b. any other requirements notified by DTA.

15. Whole of Government Arrangements

> ***Note***: DTA and the Commonwealth manage a number of WofG Arrangements. WofG Arrangements include both SSAs and Mandatory Panels.
>
> ***SSAs*** **–** are agreements established with a limited number of sellers who meet strict criteria. Please see the BuyICT single seller arrangements page for further information: [Overview - BuyICT.]

Mandatory Panels – the DTA and other Commonwealth entities establish panels that are mandatory for some Buyers to use instead of this panel. See the whole of Australian government procurement page for more information: Whole of Australian Government Procurement | Department of Finance.

15.1. Application of Whole of Government Arrangements

15.1.1. The Seller acknowledges that:

a. the Commonwealth manages Whole of Government Arrangements (**WofG Arrangements**);

b. some WofG Arrangements are mandatory for certain Buyers under Commonwealth policy;

c. despite any WofG Arrangement entered into by the Seller, the terms of this Panel Agreement continue to apply to the management and operation of the Panel; and

d. the terms set out in the following table apply to a procurement under this Panel if a Buyer is required or chooses to procure products and services under a WofG arrangement.

Seller	Buyer	Applicable terms
	SSAs	
Seller is party to an SSA	Buyer procures products and services within the scope of an SSA.	The SSA contract must be used and priced under the SSA. A Contract based on Part C – Contract Terms must not be used.
	Buyer procures products and services that are partly in scope for the SSA.	The SSA contract must be used for the products and services in scope for the SSA. A Contract based on Part C – Contract Terms must be used for other Products and Services not covered by the SSA (if any). This requires two separate contracts.
Seller enters into an SSA with DTA after the	Buyer enters a Contract with Seller for Products and	*From the date the SSA commences*

commencement of a Contract	Services *before* the SSA is in place. The Products and Services within the scope of the SSA then come under the SSA.	The Seller must supply Products and Services within the scope of the SSA on the terms of the SSA contract and not on the terms of the Contract. The Seller must comply with any transition requirements in the WofG Arrangement. The Seller must continue to supply any Products and Services not within the scope of the SSA under the terms of the Contract. The Seller must agree to resultant changes to a Contract through a Contract Variation. Unless otherwise stated in the SSA, the above requirements do not apply to Products and Services which have already been delivered or invoiced under a Contract before the date the SSA commenced.
Subcontractor is party to an SSA prior to commencement of a Contract	Buyer has a Contract with Seller who uses an SSA subcontractor	The Buyer may require the Subcontracted Products and Services to be provided under the terms of the SSA. The Buyer may: • establish a separate contract with the Subcontractor for this purpose using the SSA terms, or • not require a separate contract with the Subcontractor. The Buyer may amend the terms of the Contract to ensure the Seller provides the Subcontracted Products

		and Services under SSA pricing and terms.
Subcontractor enters into an SSA after the commencement of a Contract	Buyer enters a Contract with Seller for Products and Services *before* the SSA is in place. The Products and Services within the scope of the Subcontractor's SSA then come under the SSA.	The Buyer may: • require the Subcontracted Products and Services be provided under the terms of the SSA. The Buyer may establish a separate contract with the Subcontractor for this purpose using the SSA terms; or • require the Seller to provide the Subcontracted Products and Services on SSA pricing and terms. The Seller must make resultant changes to a Contract through a Contract Variation to give effect to the above.
	Mandatory Panels	
Seller is party to a relevant Mandatory Panel	Buyer procures products and services within the scope of a Mandatory Panel that it is required or permitted to use	The Mandatory Panel contract must be used. The procurement must be conducted through the Mandatory Panel. A Contract based on Part C – Contract Terms must not be used.
	Buyer procures products and services that are partly in the scope of the Panel and partly in the scope of the Mandatory Panel	The Mandatory Panel contract must be used for the products and services in scope for the Mandatory Panel Part C – Contract Terms may be used for Products and Services not covered by the Mandatory Panel (if any).

Seller is not party to a relevant Mandatory Panel	Buyer wishes to procure products and services covered by a Mandatory Panel	The Seller must not offer or provide those products and services to the Buyer.

SECTION 3 – GENERAL TERMS AND CONDITIONS

16. General Warranties

16.1. Representations and Warranties

16.1.1. The Seller warrants that:

a. it has full power and authority to enter into and perform the obligations under this Panel Agreement;

b. its execution and performance of this Panel Agreement will not contravene:

   i. any law;

   ii. its constituent documents; or

   iii. any agreement or instrument to which the Seller is a party, or any obligation that it owes to another party;

c. if Item 4 of Part B – Panel Appointment Details is marked 'not used', then the Seller is not entering into this Panel Agreement as a trustee of any trust or settlement;

d. it is not subject to an Insolvency Event;

e. there is no current or pending judicial action against the Seller that could have an adverse effect on its reputation or capacity to perform its obligations under this Panel Agreement or a Contract;

f. it does not rely on any representation, warranty, condition or other conduct, information, statement or document given by DTA (or any person purporting to act on behalf of DTA) in entering into this Panel Agreement;

g. it has all licences and authorisations required to operate and provide the Products and Services under Contracts;

h. none of its directors or executive management have been convicted of an offence relating to fraud or dishonesty;

i. it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);

j. it is not on the Commonwealth's Consolidated List of individuals and entities to which Australian sanctions apply. None of its Personnel or subcontractors are on, or are a member of an entity on, that list;

k. it and its Personnel have the necessary experience, qualifications, skills, knowledge and competence to provide Products and Services under Contracts;

l. it has not made any false, misleading or deceptive declaration about any current or past dealings with DTA or Buyers; and

m. there has been no significant default in the Seller's performance of any other agreement with DTA or any Buyer.

16.1.2. The Seller acknowledges that DTA has entered into this Panel Agreement in reliance on the warranties and representations contained in this Panel Agreement.

16.1.3. The Seller warrants that it will notify and fully disclose to DTA any breach of any of the warranties in this clause 16.1. The Seller must do so as soon as it becomes aware of:

a. a breach; or

b. any event or occurrence (actual or threatened) during the Panel Agreement Period that would materially affect the Seller's ability to perform its obligations under this Panel Agreement.

17. Subcontractors and Personnel

17.1. The Seller is fully responsible regardless of involvement of Subcontractors or Personnel

17.1.1. The Seller is fully responsible for all of its obligations under this Panel Agreement regardless of any:

a. Subcontracting of the Products and Services; or

b. payment made to the Seller for the Products and Services.

17.1.2. The Seller must not Subcontract the substantial performance of its obligations under Part A – Panel Terms.

17.1.3. The Seller acknowledges, and must inform all Subcontractors, that:

a. it will make available to DTA (if requested), details of all Subcontractors engaged in the performance of the Panel Agreement or any Contract; and

b. DTA may publish the names of any Subcontractors engaged in the performance of the Panel Agreement.

17.2. Extension of provisions to Subcontractors and Personnel

17.2.1. The Seller agrees to ensure that:

a. its Subcontractors and Personnel comply with requirements under this Panel Agreement that are relevant to them (**Requirements**); and

b. any contract entered into in connection with this Panel Agreement imposes relevant Requirements on the other party.

17.2.2. If directed by DTA, the Seller agrees to exercise any rights it may have against any of its:

a. Subcontractors;

b. Personnel; or

c. third parties,

in connection with Requirements.

18. Liability and indemnity

Note: See clause 14 of Part C – Contract Terms for liability under Contracts.

18.1. Exclusion of liability

18.1.1. The liability of DTA and the Seller to each other in connection with this Panel Agreement (including under any indemnity) excludes liability for:

a. loss of good will or damage to reputation;

b. loss of anticipated profit, profit or the opportunity to earn profit;

c. financing costs and funding costs; or

d. aggravated, exemplary or punitive damages.

18.1.2. Any exclusion of liability under clause 18.1.1 does not apply to liability relating to:

a. personal injury (including sickness and death);

b. loss of, or damage to, tangible property;

c. an infringement of Intellectual Property Rights;

d. a breach of any obligation of confidentiality, security matter or privacy; or

e. any breach of any statute or any wrongful act or omission including any act or omission that constitutes repudiation of this Contract.

18.2. Statutory liability scheme

18.2.1. In addition to the exclusions under clause 18.1, if the Seller participates in a Statutory Liability Scheme, then the Seller's liability in relation to this Panel Agreement (including liability under any indemnity) is limited for:

a. any types of liability covered by that Statutory Liability Scheme – in accordance with that Statutory Liability Scheme; and

b. any types of liability not covered by a Statutory Liability Scheme – as described in clause 18.1.

18.3. Indemnity

18.3.1. The Seller indemnity under this clause 18.3 does not cover excluded or limited liability under clauses 18.1 and 18.2.

18.3.2. The Seller indemnifies DTA from and against any:

a. cost or liability incurred by DTA;

b. loss of or damage to property of DTA;

c. loss or expense incurred by DTA in dealing with any claim against it; or

d. legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by DTA, in connection with subclauses a, b or c,

arising from either:

e. a breach by the Seller of an obligation under this Panel Agreement; or

f. an unlawful or negligent act or omission of the Seller in connection with this Panel Agreement.

18.3.3. The Seller's liability to indemnify DTA under clause 18.3.2 will reduce proportionately to the extent that any act or omission involving fault on the part of DTA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

18.3.4. DTA's rights under this clause 18.3 are in addition to, and not exclusive of, any other right, power or remedy provided by law.

18.4. Mitigation

18.4.1. Each party must use reasonable endeavours to mitigate its losses and expenses in connection with a breach of this Panel Agreement.

18.5. Claims under indemnity

> ***Note***: DTA is required to comply with the *Legal Services Directions 2017* when conducting litigation.

18.5.1. Subject to the *Legal Services Directions 2017,* if a third party makes a claim against the DTA that is subject to the indemnity in clause 18.3, DTA will:

a. give written notice to the Seller with relevant details of the claim, as soon as practicable;

b. keep the Seller informed, and consult with the Seller, about the conduct of litigation relating to the claim; and

c. where practicable, seek the consent of the Seller to settlement of the claim.

18.6. Proportionate liability regimes excluded

> ***Note***: Several States have proportionate liability regimes which relate to how liability is allocated between parties. See Part 4 of the *Civil Liability Act 2002* (NSW) and similar regimes in other States.

18.6.1. Both parties agree to exclude any legislative proportionate liability regime that would otherwise apply to a claim against either party in connection with this Panel Agreement, to the extent permitted by law.

19. Intellectual Property

19.1. Licence of Seller Application Material

19.1.1. The Seller grants to (or will procure for) DTA and each Buyer a:

a. perpetual;

b. irrevocable;

c. royalty-free;

d. world-wide; and

e. non-exclusive,

licence (including a right of sub-licence) to:

f. use;

g. reproduce;

h. adapt;

i. modify;

j. perform;

k. distribute;

l. communicate; and

m. exploit,

any Application Material provided by the Seller to DTA or a Buyer for any purpose in connection with the Panel.

19.1.2. If asked by DTA or a Buyer, the Seller must create, sign, execute or otherwise deal with any document necessary to give effect to this clause 19.

19.1.3. The Seller warrants that:

a. it is entitled; or

b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Application Material in the manner provided for in this clause 19.

19.1.4. DTA grants (or will procure) a royalty-free, non-exclusive licence for the Seller to use DTA Material for the purposes of this Panel Agreement.

20. Application Material

20.1.1. The Seller must submit Application Material as required through the Online Portal.

20.1.2. DTA will use Application Material:

a. to evaluate the Seller’s suitability for appointment to the Panel, a Module or a Category; and

b. for government purposes.

20.1.3. The Seller agrees that DTA may publish Application Material on the Online Portal:

a. as agreed under this Panel Agreement; or

b. if, at the point of submitting Application Material, DTA notifies the Seller that it will publish certain Application Material.

20.1.4. Buyers will use Application Material available on the Online Portal, including to:

a. assess Quotes;

b. choose Sellers;

c. enter Contracts;

d. report to DTA; and

e. for government purposes.

21. Audit and access

21.1. Seller to permit audit

21.1.1. Official Resources include any Official Resources to which the Seller has access under this Panel Agreement or any Contract.

21.1.2. The Seller must give the DTA Representative, or any person authorised in writing by DTA, access to:

a. premises where this Panel Agreement and any Contracts are performed or where Official Resources are located; and

b. records and information, in the data format and storage medium required by DTA.

21.1.3. The Seller must permit those persons set out in clause 21.1.2 to inspect and take copies of any Material relevant to this Panel Agreement and any Contract, including:

a. details of the Seller’s compliance with applicable international industry standards, best practice and guidelines;

b. the Seller's operational practices and procedures relevant to this Panel Agreement and any Contract;

c. details of the Seller’s compliance with the Online Portal Terms and Conditions;

d. security procedures;

e. the Performance Management Framework;

f. the Price and the accuracy of the Seller’s invoices and reports in relation to the provision of Products and Services under this Panel Agreement and any Contract;

g. the Seller's compliance with its confidentiality, privacy, security, and other obligations under this Panel Agreement and any Contract;

h. material (including accounts and records) in the possession of the Seller relevant to the Products and Services delivered under this Panel Agreement or any Contract; and

i. any other matters determined by DTA to be relevant to this Panel Agreement or any Contract.

21.1.4. Under clause 21.1.2, the Seller is not required to give DTA access to a Buyer premises.

21.1.5. The rights referred to in clause 21.1.2 are subject to:

a. DTA giving reasonable notice;

b. reasonable security procedures in place at the premises; and

c. if appropriate, the persons given access executing a deed of confidentiality.

21.1.6. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 21.1.

21.1.7. This clause 21.1 does not affect the statutory powers of the Auditor-General or Information Officer (including their delegates).

21.2. Costs

21.2.1. Subject to clause 21.3.2, each party must bear its own costs of all inspections, access and audits.

21.3. Consequences of audit

21.3.1. The Seller must promptly take action to rectify any error, non–compliance or inaccuracy identified in any audit relating to the way the Seller has performed its obligations under this Panel Agreement or a Contract.

21.3.2. If an audit reveals any overcharging, the Seller must:

a. refund any amounts overcharged to the relevant Buyer; and

b. if the audit reveals material overcharging (as reasonably determined by DTA), pay to DTA the cost of any auditor fees that DTA has incurred.

22. General provisions

22.1. Books and Records

22.1.1. The Seller must keep books and records in accordance with Accounting Standards. Books and records must have enough detail to enable the amounts payable by a Buyer under a Contract to be determined.

22.2. Compliance with Panel Agreement

22.2.1. If asked by DTA, the Seller must give DTA evidence of its compliance with the Panel Agreement.

22.3. Insurance

22.3.1. The Seller must hold and maintain workers' compensation insurance as required by law.

22.3.2. Before a Contract Start Date, the Seller must hold the insurances a prudent supplier would hold in accordance with best industry practice to cover the Products and Services and as a minimum the insurances stated in Item 11 of Part B – Panel Appointment Details. The Seller must also hold and maintain any additional insurance required in a Contract.

22.3.3. The Seller must, if asked, provide proof of insurance to DTA.

22.3.4. This clause 22.3 applies for as long as any obligations remain in connection with this Panel Agreement.

22.4. Assignment

22.4.1. The Seller must not assign its rights or obligations under this Panel Agreement without the prior written consent of DTA.

22.4.2. DTA will conduct due diligence on any new entity proposed for an assignment and may treat this as a Change of Control under clause 22.5. The Seller must give all necessary information to DTA for this purpose.

22.5. Change of Control

> ***Note:*** A Change of Control may require a novation of the Seller's rights or obligations under this Panel Agreement e.g. if the legal entity will change following the Change of Control.

22.5.1. The Seller must not undergo a Change of Control without the prior written consent of DTA.

22.5.2. The Seller must notify DTA as soon as possible before any Change of Control is to occur. The notification must not be later than 10 Business Days before the Change of Control.

22.5.3. If the Seller gives DTA a notice of a proposed Change of Control, DTA may:

a. conduct due diligence;

b. consent to the proposed Change of Control;

c. consent to the proposed Change of Control subject to conditions; or

d. terminate this Panel Agreement under clause 23.4.2.g.

22.5.4. The Seller must promptly provide all information asked for by DTA about a Change of Control or proposed Change of Control. This may include details about the Seller's ownership, corporate structure, beneficiaries, and any controlling entities.

22.5.5. If DTA agrees to the Seller undergoing a Change of Control that would require a novation of the Seller's rights and obligations under this Panel Agreement, the Seller must provide the DTA Representative with the proposed deed of novation. DTA will specify the form that must be used for this purpose.

22.6. Change in Seller's country of tax residency

22.6.1. The Seller warrants that its country of tax residency is as stated in Item 3 of Part B – Panel Appointment Details.

22.6.2. The Seller warrants that its ultimate parent entity's country of tax residency is as stated in Item 3 of Part B – Panel Appointment Details if it has an ultimate parent entity.

22.6.3. If there is a change in the Seller's:

a. country of tax residency; or

b. ultimate parent entity's country of tax residency,

the Seller must notify DTA within 10 Business Days of that change occurring.

22.7. Trustee Seller

22.7.1. If the Seller acts as trustee of a trust this must be stated in Item 4 of Part B – Panel Appointment Details. In this case the Seller:

a. is liable both personally, and in its capacity as trustee of that trust;

b. must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but keep and apply such indemnity to meet its obligations under this Panel Agreement;

c. must not retire, resign or change its status as the trustee of that trust; and

d. represents and warrants that:

   i. such trust has been duly established and currently exists;

   ii. it is the duly appointed, current and only trustee of that trust;

   iii. it has the power to enter into and perform its obligations under this Panel Agreement;

   iv. it has a right of indemnity out of the assets of that trust in respect of its obligations;

   v. any Conflict and duty affecting it as trustee (and/or its directors, if any) does not arise or otherwise is overcome by the terms of the relevant trust deed; and

   vi. no breach of the relevant trust deed exists or would arise.

22.8. Waiver

22.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Panel Agreement does not operate as a waiver of that right.

22.8.2. The exercise or partial exercise by a party of any right or remedy it holds under this Panel Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

22.9. Deed of Variation

22.9.1. A variation of this Panel Agreement is binding only if it is:

a. properly executed by the authorised representative of each party; and

b. substantially in the form of the Deed of Variation.

22.9.2. If a party wishes to make changes to this Panel Agreement, it must provide the proposed changes in writing to the other party. It must give all necessary details and justification for the change. The other party must respond to the proposal as soon as practicable (but no later than 10 Business Days unless agreed by the parties).

22.9.3. Any variation to this Panel Agreement does not change any Contracts already in existence, unless otherwise agreed by the parties to the Contract in writing.

22.10. Severability

22.10.1. A term or part of a term of this Panel Agreement that is illegal or unenforceable may be severed from this Panel Agreement and the remaining terms or parts of the terms will continue in force.

22.11. Further action

22.11.1. Each party must do everything reasonably necessary to give full effect to this Panel Agreement.

22.12. Entire Agreement

22.12.1. The parties agree that this Panel Agreement constitutes the entire agreement between the parties in connection with its subject matter. This Panel Agreement supersedes all previous agreements or understandings between the parties in connection with its subject matter.

22.13. Electronic signatures and acceptance

22.13.1. The parties may sign or accept a document electronically under this Panel Agreement unless otherwise notified by the Buyer.

22.14. Counterparts

22.14.1. The parties may execute the Panel Agreement in counterparts. All executed counterparts constitute one document.

22.15. Survival

22.15.1. The expiry or earlier termination of this Panel Agreement or any Contract will not affect the continued operation of any provision relating to:

a. liability;

b. indemnity;

c. warranties;

d. termination (in respect to rights and obligations arising on termination);

e. reporting;

f. licensing of Intellectual Property;

g. confidentiality;

h. the Performance Management Framework;

i. privacy;

j. books and records;

k. audit and access;

l. integrity;

m. security; or

n. any other provision which the parties expressly or by implication intend to continue.

23. Termination and suspension

23.1. Termination or reduction of scope for convenience

23.1.1. DTA may by notice, at any time:

a. immediately terminate; or

b. reduce the scope of,

this Panel Agreement.

23.1.2. If this Panel Agreement is terminated or reduced in scope under clause 23.1.1, the Seller is not entitled to compensation from DTA for any loss.

23.1.3. Termination under clause 23.1.1 will not affect Contracts between Buyers and the Seller entered before termination.

23.2. Seller initiated removal from Panel

23.2.1. The Seller may request termination of this Panel Agreement. When making such a request the Seller must provide reasons. DTA will notify the Seller of its decision within a reasonable period of time. If DTA agrees to the termination, it will be effective from the date stated in the notice. Such termination will have no effect on Contracts executed before that date.

23.3. Seller initiated removal of Products and Services from Panel

23.3.1. The Seller may ask that DTA remove Products and Services from a Catalogue. DTA will remove the Products and Services within 30 Business Days of receiving a request from the Seller.

23.4. Termination for fault

23.4.1. If the Seller fails to satisfy any of its obligations under this Panel Agreement, then DTA – *if DTA considers that the failure is*:

a. *not capable of remedy* – may, by notice, terminate, or reduce the scope of, this Panel Agreement immediately; or

b. *capable of remedy* – may, by notice require that the Seller remedy the failure within the time stated in the notice. If not remedied within that time, DTA may terminate, or reduce the scope of, this Panel Agreement immediately by giving a second notice.

23.4.2. DTA may also, by notice, terminate this Panel Agreement or reduce the scope of this Panel Agreement immediately if the Seller:

a. becomes subject to an Insolvency Event;

b. has a Contract terminated by a Buyer due to a failure by the Seller to satisfy any of its obligations under the Contract;

c. is found to have provided false or misleading information to DTA in connection with the Panel including when joining the Panel or found to have provided false or misleading information when providing Quotes to Buyers;

d. receives an Overall Rating of Not Met under one or more Contracts on three or more occasions under the Performance Management Framework;

e. receives an adverse assessment from a periodic review conducted by DTA under clause 41.4 where DTA determines that the Seller does not have the capacity and capability to provide Products and Services under this Panel Agreement;

f. has received continuous or substantial negative feedback from one or more Buyers with respect to its performance. This feedback may be provided under the Performance Management Framework or otherwise;

g. in relation to a Change of Control:

    i. fails to notify DTA of a Change of Control as provided in clause 22.5;

    ii. undergoes a Change of Control without DTA consent;

    iii. fails to comply with conditions placed on a Change of Control by DTA;

h. fails to implement a Cure Plan where required to do so under clause 42;

i. fails to implement a cyber security plan where required to do so under clause 24.3.4;

j. and DTA cannot agree to a variation to this Panel Agreement;

k. misuses the Online Portal or does not comply with the Online Portal Terms and Conditions;

l. does not comply with clause 25.1 in relation to use of Banned AI Systems;

m. suffers a Force Majeure event entitling DTA to terminate under clause 23.8.5;

n. in DTA's reasonable opinion:

    i. does not have the capacity and capability to perform its obligations under this Panel Agreement;

    ii. is not providing value for money to the Commonwealth through the Seller's appointment to the Panel; or

    iii. has not meaningfully engaged with Buyers and DTA for 12 months so as to be inactive on the Panel;

o. *or any of its Associates* – commits a breach of national security or without written authorisation releases any Official Information to a third party whether under this Panel Agreement, a Contract or otherwise; or

p. *or any of its Associates* – embarrasses or brings DTA or the Commonwealth into disrepute or diminishes the public trust in them whether under this Panel Agreement, a Contract or otherwise.

23.5. Impact of termination

23.5.1. If this Panel Agreement is terminated:

a. no new Contracts may be entered;

b. Contracts entered before termination of this Panel Agreement remain in effect unless a Buyer terminates under the terms of the Contract;

c. subject to this Panel Agreement, the parties are relieved from future performance of the terminated Panel Agreement (or relevant part of it);

d. subject to this Panel Agreement, any licences and authorisations that DTA granted to the Seller for the Panel Agreement terminate immediately except as necessary for the Seller to perform any Contract still in effect;

e. the Seller must take all available steps to protect Intellectual Property Rights, Official Information, DTA Material and Personal Information accessed in connection with this Panel Agreement;

f. the Seller must return to DTA all DTA Material, except in respect of Contracts formed with Buyers before the termination of this Panel Agreement that continue; and

g. the Seller must follow any reasonable direction of DTA and continue to perform any part of this Panel Agreement (and any Contract) not affected by the termination.

23.5.2. Termination does not affect the rights accumulated by either party.

23.6. Suspension

23.6.1. DTA may, by notice (**Suspension Notice**), suspend the Seller from the Panel Agreement if:

a. the Seller does not meet its obligations under this Panel Agreement;

b. the Seller receives an Overall Rating of Not Met under one or more Contracts on one or more occasions under the Performance Management Framework;

c. DTA is investigating whether the Seller has the capacity and capability to perform its obligations under this Panel Agreement; or

d. DTA has a right to terminate this Panel Agreement.

23.6.2. When suspended, the Seller must not accept:

a. any RFQs;

b. any Orders; or

c. any Orders under a particular Module or Category as stated in the Suspension Notice,

until the date stated in the Suspension Notice (**Suspension Period**).

23.6.3. DTA may notify Buyers of a Seller's suspension.

23.6.4. At the end of the Suspension Period, DTA may extend the suspension by issuing a further Suspension Notice under clause 23.6.1.

23.6.5. During any Suspension Period:

a. the Seller must not respond to an RFQ or enter any Contracts under the Modules or Categories stated in the Suspension Notice; and

b. all other provisions of this Panel Agreement and any existing Contracts not affected by the suspension will continue.

23.6.6. Nothing in this clause 23.6 limits any other rights of DTA under this Panel Agreement or at law.

23.7. Impact of termination if Seller applies to re-join Panel

23.7.1. If the Seller:

a. is terminated from the Panel or any Module or Category; and

b. applies to be re-appointed to the Panel or the relevant Module or Category,

then:

c. the Seller must demonstrate to DTA's satisfaction that it has rectified all issues that caused its termination; and

d. DTA may refuse to re-appoint the Seller to the Panel, or relevant Module or Category.

23.7.2. This clause 23.7 survives the termination of this Panel Agreement.

23.8. Force Majeure

23.8.1. If a Force Majeure Event occurs in relation to a party (**affected party**) and the affected party gives the other party (**notified party**) prompt written notice of the Force Majeure Event stating:

a. the nature of the Force Majeure Event, the reasons for it and the estimated duration;

b. how the Force Majeure Event affects the Panel Agreement;

c. each party's obligations affected by the Force Majeure Event and the extent of its effect on those obligations; and

d. the steps required to address the impact of the Force Majeure Event;

the obligations notified are suspended for as long as and to the extent that:

e. the obligations are affected by the Force Majeure Event; and

f. the affected party is meeting its obligations under this clause 23.8 (**Force Majeure Period**).

23.8.2. Any obligation of the notified party to make any payment or perform any obligation that is contingent on a suspended obligation of the affected party, is also suspended.

23.8.3. A failure or omission by either party to perform an obligation that is suspended under this clause 23.8 will not be a breach of this agreement, subject to clause 23.8.4.

23.8.4. The party claiming a Force Majeure Event must:

a. use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible;

b. unless otherwise advised by DTA, give weekly written notice to the notified party on the status of matters referred to in clause 23.8.1; and

c. notify the notified party in writing as soon as the Force Majeure Period ends.

23.8.5. Where an affected party is subject to a Force Majeure event that continues for more than 60 days from a notice issued under clause 23.8.1, or for more than 60 calendar days (whether continuous or not) in any year, the notified party may terminate this Panel Agreement under clause 23.4.2.m.

SECTION 4 – SECURITY AND INTEGRITY REQUIREMENTS

24. Digital Security

24.1. General security obligations

24.1.1. The Seller must comply, and ensure its Personnel comply, with the:

a. Protective Security Policy Framework (PSPF).

b. Protective Security Directions; and

c. Information Security Manual,

to the extent applicable to the Seller's performance of this Panel Agreement.

24.1.2. The Seller must:

a. notify DTA immediately in the event of any requests from a foreign government or foreign agency requesting access to any DTA Data or Buyer Data; and

b. redirect any such request to DTA.

24.2. Harmful code

24.2.1. The Seller must take reasonable precautions, including using best industry practice, to ensure that it and its Personnel do not introduce any Harmful Code into:

a. any Products and Services;

b. the Online Portal;

c. DTA's Digital System; or

d. any Digital System used to facilitate or support performance of this Panel Agreement

(together the **Applicable Systems**).

24.2.2. If requested by DTA, the Seller must promptly provide DTA with full details of all processes and procedures it has in place to prevent Harmful Code from being introduced into the Applicable Systems.

24.2.3. The Seller must immediately notify DTA with full information if it:

a. knows; or

b. reasonably suspects,

that Harmful Code has been or may have been introduced into the Applicable Systems in the course of performance of the Panel Agreement.

24.2.4. If any Harmful Code is found, or is suspected, to have been introduced into the Applicable Systems in the course of performing the Panel Agreement, the Seller must:

a. take all reasonable action requested by DTA to contain and eliminate the Harmful Code;

b. repair any damage caused by the Harmful Code, subject to any directions given by DTA; and

c. ensure any actual or potential loss of, or threat to, DTA's operations and efficiency is minimised.

24.2.5. This clause 24.2 does not limit any other right or remedy DTA has under this Panel Agreement or at law.

24.2.6. The Seller must not:

a. insert; or

b. knowingly permit any third party to insert,

any code into the Applicable Systems that would shut down or disable the Applicable Systems.

24.3. Cyber Attacks

24.3.1. The Seller must take all steps consistent with best industry practice to reduce the risk of Cyber Attack on the Digital Systems of the Seller and any Subcontractor.

24.3.2. If asked by DTA, the Seller must give DTA details of its security measures that are in place to reduce the risk of Cyber Attack on the Digital Systems of DTA, Buyers and the Seller. This includes security measures that are in place for the Seller's Supply Chain.

24.3.3. If the Seller becomes aware of a Cyber Attack on the Digital Systems of the Seller or any Subcontractor that has or may have an effect on the Products and Services, the Seller must:

a. immediately take all reasonable action to mitigate the risk of the Cyber Attack causing serious harm to DTA;

b. promptly contact the DTA Representative (by phone or email, whichever is fastest), providing full details of the Cyber Attack to the extent available at the time; and

c. if required by law or if directed by DTA, advise CERT Australia and/or the Australian Cyber Security Centre.

24.3.4. If asked by DTA, the Seller must, within 10 Business Days, give DTA a cyber security plan for approval. The cyber security plan must provide details of the security measures put in place by:

a. the Seller; and

b. any Subcontractors,

to reduce the risk of Cyber Attack on their Digital Systems. The cyber security plan must cover risks relevant to the provision of the Products and Services.

24.3.5. DTA may either:

a. notify the Seller that the cyber security plan is approved; or

b. notify the Seller to promptly revise and resubmit the cyber security plan within 2 Business Days (or such longer time as the notice states) to meet the reasonable requirements of DTA as set out in the notice. If this occurs, the Seller must revise and resubmit the cyber security plan in accordance with the notice.

24.3.6. The Seller must provide the Products and Services in accordance with the approved cyber security plan. This obligation applies from the date that the cyber security plan is approved under clause 24.3.5.a.

24.3.7. DTA may:

a. suspend the Seller from the Panel following a Cyber Attack; and

b. have discussions with Buyers regarding a Cyber Attack, regardless of whether the Buyer has a Contract in place with the Seller.

24.4. Data security and dealing with DTA Data

24.4.1. The Seller must not:

a. remove any DTA Data or allow removal of any DTA Data from DTA's systems or premises or the Seller's systems or premises; or

b. transmit, store, take or access DTA Data or allow DTA Data to be transmitted, stored, taken or accessed by any means outside of Australia,

unless the DTA has given the Seller written approval to do so.

24.4.2. The Seller must have in place all necessary measures to protect DTA Data. If the Seller or any Subcontractor use their Digital Systems to access, transmit or store DTA Data, the Seller must ensure the DTA Data is protected from:

a. unauthorised access or use by a third party; and

b. misuse, loss, damage, destruction, alteration or corruption.

24.4.3. The Seller must have in place administrative, physical and technical protective measures that are consistent with best industry practice for the Products and Services.

Note: Clause 27.2.4.a imposes certain obligations on the Seller where it breaches clause 24.4.1 or 24.4.2.

24.4.4. The Seller must deal with all DTA Data as directed by DTA at the end of the Panel Agreement, subject to any law that applies to the Seller.

25. Artificial Intelligence (AI)

25.1. Seller not to use Banned AI Systems

> ***Note:*** A Banned AI System is any AI System which the Commonwealth prevents the access, use or installation of, on DTA or Buyer Systems, in accordance with any Commonwealth law or policy. For example, under a Protective Security Direction issued by the Department of Home Affairs.

25.1.1. The Seller must ensure that a Banned AI System is not used in the provision of the Products and Services, including that a Banned AI System is not:

a. used in any part of the Supply Chain to provide the Products and Services;

b. accessed, used or installed on a DTA Digital System or Buyer Digital System; or

c. used in any web services or applications to be provided by the Seller under this Panel Agreement.

25.1.2. If the Seller discovers that a Banned AI System has been used in contravention of clause 25.1.1, whether under the Panel Agreement or a Contract, the Seller must immediately notify DTA and remove the Banned AI System from use.

26. Privacy

26.1. Seller's Privacy Act obligations

26.1.1. The Seller agrees, in providing Products and Services:

a. to comply with its obligations under the Privacy Act;

b. not to do anything that, if done by DTA, would be a breach of an Australian Privacy Principle under the Privacy Act; and

c. to comply with other requirements stated in Part B – Panel Appointment Details that relate to Privacy Act compliance.

26.1.2. The Seller must promptly notify DTA if, in performing the Panel Agreement, the Seller:

a. is required by law to disclose Personal Information; or

b. receives a request for, or an inquiry about, Personal Information from:

i. the Privacy Commissioner; or

ii. any individual to whom any Personal Information held by the Seller or Subcontractors relates.

26.2. Seller to act on Eligible Data Breaches

26.2.1. If the Seller becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by the Seller as a result of this Panel Agreement or a Contract, the Seller agrees to:

a. notify DTA in writing as soon as possible, which must be within 72 hours; and

b. unless otherwise directed by DTA, carry out an assessment in accordance with the requirements of the Privacy Act.

26.2.2. Where the Seller is aware that there are reasonable grounds to believe there has been, or where DTA notifies the Seller that there has been, an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Panel Agreement or a Contract, the Seller must:

a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;

b. unless otherwise directed by DTA, take all other action necessary to comply with the requirements of the Privacy Act; and

c. take any other action as reasonably directed by DTA.

26.2.3. The Seller agrees to notify DTA immediately if it becomes aware of:

a. a breach; or

b. possible breach,

of any of its obligations under this clause 26.2.

26.2.4. DTA may have discussions with Buyers concerning the matters set out in clause 26.2 if there are reasonable grounds to believe there has been an Eligible Data Breach. This clause does not limit the rights and obligations in this clause 26.2.

27. Official Information and other security obligations

27.1. Confidentiality of Official Information

27.1.1. The Seller must not, without the prior written authorisation of DTA, disclose any Official Information to any person. The Seller does not need DTA's authorisation to disclose information if the Seller is required to do so by law.

27.1.2. The Seller is authorised to provide Official Information to those Personnel who require access for the purposes of this Panel Agreement. This clause is subject to the requirements in clause 27.2.1.

27.1.3. DTA may ask Seller Personnel to give a written undertaking not to disclose Official Information. The Seller Personnel must give the undertaking in a form acceptable to DTA. The Seller must arrange for Personnel to provide such undertakings when asked.

27.1.4. The Seller agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

27.2. Other security obligations of the Seller

27.2.1. The Seller must ensure that all Personnel who require access to Security Classified Resources:

a. obtain and hold the appropriate security clearance;

b. comply with Australian Government Security Vetting Agency (AGSVA) requirements for holders of the relevant security clearance; and

c. comply with reporting requirements applicable to security clearance holders. For example, regarding significant changes to personal circumstances.

27.2.2. The Seller is responsible for the cost of getting security clearances unless the Buyer agrees to cover the cost under the relevant Contract for which the clearance is required.

27.2.3. The Seller must prevent access to Security Classified Resources by Personnel:

a. whose security clearances are revoked or have lapsed; or

b. who do not have a legitimate and genuine need to access the relevant Security Classified Resources for the purposes of this Panel Agreement;

27.2.4. The Seller must:

a. subject to a Buyer's security requirements under a Contract if applicable, notify DTA immediately if the Seller:

   i. becomes aware that a Security Incident or breach of clauses 24.4.1, 24.4.2, 27.1.4 or 27.2.1 has occurred; or

   ii. reasonably suspects that a Security Incident or such a breach has occurred; and

b. follow DTA's reasonable directions in relation to Security Incident reporting and management.

27.2.5. The Seller must implement security procedures to ensure that it meets its obligations under this clause 27.2 and must provide details of these procedures to DTA if asked.

27.3. Consequences of breach

27.3.1. The Seller acknowledges that DTA may treat any failure to fully comply with any of its obligations under:

a. this clause 27; or

b. equivalent obligations under a Contract,

as a failure that is not capable of remedy.

28. Confidential Information of the Seller

28.1. Confidential Information not to be disclosed

28.1.1. DTA will not, without the prior written authorisation of the Seller, disclose any Confidential Information of the Seller to a third party. This clause 28.1.1 is subject to the exceptions in clause 28.2.

28.2. Exceptions to obligations

28.2.1. The obligations on DTA under clause 28 will not be taken to have been breached to the extent that Confidential Information is:

a. disclosed by DTA to its Personnel to comply with obligations, or exercise rights, under this Panel Agreement;

b. disclosed by DTA to its internal management Personnel, for effective management or auditing of contract related activities;

c. disclosed by DTA to the responsible Minister;

d. disclosed for public accountability purposes;

e. disclosed by DTA in response to a request by a House or a Committee of the Parliament of the Commonwealth;

f. shared by DTA within DTA's organisation;

g. disclosed to a Buyer including to assist a Buyer with a procurement process under the Panel;

h. authorised or required by law to be disclosed; or

i. in the public domain otherwise than due to a breach of this clause 28.

28.2.2. Where DTA discloses Confidential Information to another person pursuant to clauses 28.2.1.a - 28.2.1.g, DTA will notify the receiving person that the information is confidential.

28.2.3. In the circumstances referred to in clauses:

a. 28.2.1.a;

b. 28.2.1.b;

c. 28.2.1.f; or

d. 28.2.1.g,

DTA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

28.3. Period of confidentiality

28.3.1. The obligations under this clause 28 in relation to an item of Confidential Information of the Seller continue for the period set out in Item 10 of Part B – Panel Appointment Details for the item.

29. Conflict of interest

29.1. Seller must notify DTA of any Conflicts

29.1.1. The Seller warrants that, to the best of its knowledge after making diligent inquiries at the Panel Agreement Start Date, no Conflict, except as disclosed in writing to DTA, exists or is likely to arise.

29.1.2. If, during the Panel Agreement Period a Conflict arises, or is likely to arise, the Seller agrees:

a. to notify DTA immediately;

b. to make full disclosure of all relevant information relating to the Conflict; and

c. to take any steps DTA reasonably requires to resolve or otherwise deal with the Conflict.

29.1.3. DTA may notify the Seller of conduct or circumstances that in DTA's view amount to a Conflict. The Seller must comply with the directions of DTA in the notice.

29.1.4. If the Seller fails to comply with this clause 29, DTA may terminate this Panel Agreement under clause 23.4.1.a.

29.1.5. If the Seller breaches equivalent requirements to those set out in this clause 29 under a Contract, DTA may terminate this Panel Agreement under clause 23.4.1.a.

29.1.6. At any time, DTA may require the Seller or Seller's Personnel to execute a Conflict declaration. The Conflict declaration will be in the form stated by DTA.

30. Notification of Significant Events

30.1. Seller to inform DTA of Significant Events

30.1.1. For the purposes of this clause 30, '**Significant Event**' means:

a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body:

i. about the conduct or performance of the Seller or its Personnel or Subcontractors; and

ii. that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation;

b. any other significant matters, including the commencement of legal, regulatory or disciplinary action by an independent person, or disciplinary action internal to the Seller, involving the Seller or its Personnel or Subcontractors, which may adversely impact on:

i. the Seller's compliance with any applicable laws or Commonwealth policy;

ii. DTA or Buyer compliance with any applicable laws or Commonwealth policy;

iii. the Commonwealth's reputation; or

iv. the professional capacity or capability of the Seller or its Personnel to deliver Products and Services under the Panel; or

c. any non-compliance by:

i. the Seller or its Personnel; or

ii. the Seller's Subcontractors, to the extent that information is known by or reasonably available to the Seller;

with any judgement against the Seller, its Personnel, or Subcontractors from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

30.1.2. The Seller must immediately give DTA a notice on becoming aware of a Significant Event during the Panel Agreement Period and any Contract Period.

30.1.3. The Seller must include in a notice given under clause 30.1.2 a summary of the Significant Event, including:

a. the date that it occurred; and

b. whether any Key Personnel or other Personnel engaged in connection with the Products and Services were involved.

30.1.4. DTA may notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause 30. If this occurs, the Seller must give DTA a notice under clause 30.1.2 about the event, within 3 Business Days of being notified by DTA.

30.1.5. If asked by DTA, the Seller must provide DTA with any additional information regarding the Significant Event within 3 Business Days.

30.1.6. If asked by DTA, the Seller must prepare a draft remediation plan and submit that draft plan to the DTA Representative for approval within 10 Business Days.

30.1.7. A draft remediation plan prepared by the Seller under clause 30.1.6 must include the following information:

a. how the Seller will address the Significant Event in the context of the Products and Services. This must include:

i. confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Products and Services; or

ii. compliance by the Seller with its other obligations under the Contract;

b. how the Seller will ensure events similar to the Significant Event do not occur again; and

c. any other matter reasonably requested by DTA.

30.1.8. DTA will review the draft remediation plan and either approve the plan or give the Seller details of any required changes. The Seller must:

a. make any changes to the draft remediation plan that are reasonably requested by DTA; and

b. resubmit the draft remediation plan to DTA for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by DTA.

30.1.9. Clause 30.1.8 will apply to any resubmitted draft remediation plan.

30.1.10. The Seller must comply with a remediation plan that is approved by DTA. The Seller agrees to provide reports and other information about the Seller's progress in implementing the remediation if asked by DTA. This clause does not limit the Seller's other obligations under this Panel Agreement.

30.1.11. If the Seller fails to comply with its obligations under this clause 30, DTA may terminate this Panel Agreement under clause 23.4.1.a. DTA's rights under this clause are in addition to and do not otherwise limit any other rights DTA may have under this Panel Agreement.

30.1.12. In addition, and without limiting the rights and obligations in this clause 30, DTA may:

a. suspend the Seller from the Panel following a Significant Event; or

b. have discussions with Buyers regarding a Significant Event, regardless of whether the Buyer has a Contract with the Seller.

31. National Anti-Corruption Commission Act 2022 (Cth) Requirements

31.1. Seller to comply and cooperate

31.1.1. The Seller acknowledges that in providing the Products and Services under this Panel Agreement, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (NACC Act).

31.1.2. The Seller must comply with any reasonable request, policy or direction issued by DTA and otherwise cooperate with DTA in relation to any action taken by DTA required or authorised by the NACC Act.

32. Fraud and Corruption

32.1. Seller to prevent fraud and corruption

32.1.1. The Seller must comply with the Commonwealth Fraud Control Framework (Commonwealth Fraud Control Framework) as amended from time to time.

32.1.2. The Seller must:

a. take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in relation to this Panel Agreement and any Contracts (including by the Seller or its Personnel); and

b. notify DTA if the Seller knows or has reason to suspect that any fraud has occurred, is occurring, or is likely to occur in relation to this Panel Agreement or a Contract.

32.1.3. If the Seller or any of its Personnel or Subcontractors have committed fraud, or the Seller has failed to take reasonable steps to prevent fraud by its Personnel or Subcontractors, the Seller must reimburse DTA for the reasonable costs it incurs because of the fraud.

SECTION 5 – COMPLIANCE WITH LAWS AND POLICIES

33. Compliance with laws and policies

33.1. Compliance with laws

33.1.1. The Seller agrees to comply with:

a. any laws and Commonwealth policies applicable to its performance of this Panel Agreement or a Contract; and

b. any DTA or Buyer policies referred to in this Panel Agreement or a Contract.

33.1.2. Without limiting clause 33.1.1, the Seller must comply with the following:

a. *Crimes Act 1914* (Cth);

b. *Criminal Code Act 1995* (Cth), including Division 137 of that Act;

c. Privacy Act;

d. *Copyright Act 1968* (Cth);

e. WGE Act;

f. *Work Health and Safety Act 2011* (Cth);

g. *Auditor-General Act 1997* (Cth);

h. Part 4 of the *Charter of the United Nations Act 1945* (Cth);

i. *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);

j. *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);

k. *Modern Slavery Act 2018* (Cth); and

l. all applicable laws relating to taxation.

33.2. Applicable law

33.2.1. The parties must construe the Panel Agreement in accordance with the law of the State of New South Wales.

33.2.2. Any matter related to the Panel Agreement is to be governed by the law of New South Wales.

33.3. Codes of Conduct

33.3.1. In performing any part of this Panel Agreement or a Contract, the Seller must ensure that its Personnel comply with the:

a. APS Values; and

b. APS Code of Conduct,

to the standard required of 'APS employees' as defined under the *Public Service Act 1999* (Cth); and

c. any other applicable code notified to the Seller.

33.3.2. The Seller must assist DTA with any investigation of a report of a breach of clause 33.3.1.

33.4. Illegal Workers

33.4.1. The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Panel Agreement or any Contract.

33.4.2. If it becomes aware of the involvement of an Illegal Worker, the Seller must:

a. promptly notify DTA and any relevant Buyer; and

b. immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to DTA or the Buyer.

33.4.3. If asked by DTA or a Buyer, the Seller must give evidence, within 10 Business Days, that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

33.5. Access to Documents

33.5.1. In this clause 33.5, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

33.5.2. This clause 33.5 applies only to the extent that the arrangements between the Seller and DTA under this Panel Agreement meet the definition of a Commonwealth contract under the *Freedom of Information Act 1982* (Cth).

33.5.3. Where DTA has received a request for access to a document created by, or in the possession of, the Seller or any Subcontractor that relates to the performance of this Panel Agreement (and not to the entry into this Panel Agreement):

a. DTA may at any time by notice require the Seller to provide the document to DTA; and

b. the Seller must promptly comply with the notice.

33.5.4. The Seller must include in any Subcontract relating to the performance of the Contract, provisions that will enable the Seller to comply with its obligations under this clause 33.5.

33.5.5. If an application is made to DTA under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Seller, DTA may, before deciding, consult with the Seller, without prejudice to any decision to release the information.

34. Small to Medium Enterprise (SME) Participation

34.1. Seller to give SMEs opportunities

34.1.1. The Seller must, where possible:

a. identify opportunities to increase SME participation in the provision of Contracts; and

b. seek to engage SMEs as Subcontractors or use SMEs in the Supply Chain for the Products and Services.

35. Australian Skills Guarantee Procurement Connected Policy

35.1. Australian Skills Guarantee Procurement Connected Policy

35.1.1. The Seller must comply with any requirements set out in a Buyer's RFQ and as notified by the Buyer when responding to an RFQ including the provision of information and/or plans in accordance with the Australian Skills Guarantee Procurement Connected Policy.

36. Indigenous Procurement Policy

36.1. Indigenous Procurement Policy

36.1.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

36.1.2. The Seller must use its reasonable endeavours to increase its:

a. purchasing from Indigenous enterprises; and

b. employment of Indigenous Australians,

in the delivery of the Services.

36.1.3. Purchases from Indigenous enterprises may be in the form of:

a. engagement of an Indigenous enterprise as a Subcontractor; and

b. use of Indigenous suppliers in the Seller's Supply Chain.

37. Shadow Economy Procurement Connected Policy

> ***Note***: Clause 37.1 is required where the Seller has engaged a first tier subcontractor to deliver goods and/or services with an estimated value of $4 million or more (GST inclusive).
>
> Clause 37.1.2 applies if the Seller is a partnership.
>
> These clauses address clauses 6.b, 6.a.iv, 7.e, 8.b, 9.a, 10.b and 13.a.iii of the Shadow Economy Procurement Connected Policy.

37.1. Shadow Economy Procurement Connected Policy

37.1.1. The Seller warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services as part of a contract resulting from a procurement with an estimated value of $4 million or more (GST inclusive) that, at the time of entry into the subcontract, the Seller obtained all Valid and Satisfactory

Statements of Tax Record required for the subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy. The Seller must, on request by DTA, provide to DTA a copy of any such Statement of Tax Record.

37.1.2. If the Seller is a partnership, the Seller will ensure that if a new partner joins the partnership that it will provide a Valid and Satisfactory Statement of Tax Record for the partner to DTA as soon as possible after they become a partner to the partnership.

37.2. Statement of Tax Record

37.2.1. The Seller warrants that at the Panel Agreement Start Date it holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

37.2.2. The Seller must hold all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the Panel Agreement Period (including any extension) and, on request by DTA, provide to DTA a copy of any such Statement of Tax Record.

37.2.3. Without limiting its other rights under this Panel Agreement or at law, any failure by the Seller to comply with the requirements under clauses 37.2.1 and 37.2.2 will be a breach of this Panel Agreement.

37.2.4. The Seller must ensure that any first tier subcontractor engaged under a contract to deliver goods and/or services as part of a Contract resulting from a procurement with an estimated value of over $4 million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the term of the relevant subcontract.

37.2.5. The Seller must retain a copy of any Statements of Tax Record held by any first tier subcontractor in accordance with clause 37.2.4 and must, on request by DTA, provide to DTA a copy of any such Statement of Tax Record.

38. Workplace Gender Equality

Note: This clause only applies where the Seller is a 'relevant employer' for the purposes of the WGE Act.

A 'relevant employer' is an employer of 100 or more employees in Australia.

38.1.1. The Seller must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

38.1.2. If the Seller becomes non-compliant with the WGE Act during the Panel Agreement Period, the Seller must promptly notify DTA.

38.1.3. The Seller must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Panel Agreement Start

Date. Following this, the Seller must provide a current letter of compliance to DTA annually.

38.1.4. Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under the Panel Agreement.

38.1.5. DTA may provide a copy of the Seller's current letter of compliance provided under clause 38.1.3 to a Buyer.

39. Modern Slavery

39.1.1. The Seller must take reasonable steps to:

a. identify;

b. assess; and

c. address

risks of Modern Slavery practices in the operations and Supply Chains used in the provision of Products and Services.

39.1.2. If at any time the Seller becomes aware of Modern Slavery practices in the operations and Supply Chains used in the performance of this Panel Agreement or a Contract, the Seller must take all reasonably practicable action to address or remove these practices. This includes addressing any relevant practices of other entities in the Seller's Supply Chains.

40. Commonwealth Supplier Code of Conduct

40.1. Compliance with the Commonwealth Supplier Code of Conduct

40.1.1. The Seller must comply with the Code in connection with the performance of this Panel Agreement. The Seller must ensure that it's Personnel and Subcontractors comply with the Code.

40.1.2. The Seller must:

a. periodically monitor and assess its and its Personnel's compliance with the Code; and

b. on request from DTA, promptly provide information regarding:

i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and

ii. the Seller's compliance with clause 40.1.1.

40.1.3. The Seller must immediately issue DTA a notice on becoming aware of any breach of clause 40.1.1. The notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel involved.

40.1.4. Where DTA identifies a possible breach of clause 40.1.1, it may issue the Seller a notice, and the Seller must, within 3 Business Days of receiving the notice, either:

a. *where the Seller considers a breach has not occurred*: advise DTA that there has not been a breach and provide information supporting that determination; or

b. *where the Seller considers that a breach has occurred*: issue a notice under clause 40.1.3 and otherwise comply with its obligations under this clause 40.

40.1.5. Notwithstanding clause 40.1.4, DTA may notify the Seller in writing that it considers that the Seller has breached clause 40.1.1, in which case the Seller must issue a notice under clause 40.1.3 and otherwise comply with its obligations under this clause 40.

40.1.6. DTA may treat a failure by the Seller to comply with its obligations under any part of this clause as a failure subject to clause 23.4 of the Panel Agreement.

40.1.7. DTA's rights under this clause are in addition to and do not otherwise limit any other rights DTA may have under the Panel Agreement. The performance by the Seller of its obligations under this clause will be at no additional cost to DTA.

40.1.8. The Seller agrees that DTA or any other Commonwealth agency may take into account the Seller's compliance with the Code in any future approach to market or procurement process.

SECTION 6 – PERFORMANCE MANAGEMENT FRAMEWORK

41. Seller Performance Ratings

41.1. Commencement

41.1.1. DTA will notify Sellers about when the Performance Management Framework will start. Notice will be given through the Online Portal at least 30 Business Days before it starts.

41.2. DTA use of Seller's Performance Ratings

41.2.1. DTA will collect and keep a record of the Seller's Performance Ratings, provided to DTA by Buyers, for each Contract. DTA may publish the records on the Online Portal to be available for review by Buyers.

41.2.2. DTA may review Performance Ratings through consultation with the relevant Buyer and the Seller. DTA may request and consider additional information from Buyers, Sellers or other persons about the Seller's performance of Contracts under the Panel.

41.2.3. DTA may consider other information about the Seller's performance including:

a. feedback;

b. frequency of responses to Requests for Quote and other Approaches to Market;

c. results from any Buyer satisfaction survey, which may include Buyers providing comments on their overall satisfaction with the Seller;

d. information provided by a Buyer or other persons; or

e. information obtained through an audit conducted by a Buyer under a Contract or by DTA under clause 21 of this Panel Agreement.

41.2.4. DTA may provide information on Seller performance to Buyers, including through the Online Portal.

41.3. Seller's responsibility to correct

41.3.1. In the event of:

a. the Seller receiving any Overall Rating at the Not Met level; or

b. a Service Level Failure under any Contract,

DTA may ask the Seller to provide DTA with a Cure Plan under clause 42 to remedy the failure and its underlying causes. If DTA does so, then the parties' rights and obligations under clause 42 will apply.

41.3.2. DTA may communicate any failure and any established interim processes or procedures with Buyer(s).

41.4. Periodic review

41.4.1. DTA may conduct periodic review of the Products and Services provided and the performance by the Seller under this Panel Agreement.

42. Cure Plan

42.1. Seller to provide a Cure Plan if there is a Performance Issue

42.1.1. If DTA considers that:

a. the Seller has breached any Requirement under this Panel Agreement;

b. a Security Incident has occurred;

c. a Service Level Failure has occurred; or

d. the Seller has received an Overall Rating at the Not Met level (each a **Performance Issue**),

the Seller must within 5 Business Days of being notified to do so (or such time stated in the notice) provide DTA with a Cure Plan to remedy the Performance Issue and its underlying causes.

42.1.2. A Cure Plan must include:

a. full details of the cause of the Performance Issue, where known, or the full details of what the Seller considers to be the cause of the Performance Issue (including where relevant, its root cause and all underlying causes);

b. the proposed method by which:

i. the Seller will cure the Performance Issue (if it is capable of being cured); and

ii. the Seller will ensure that the Performance Issue does not happen again;

c. any temporary measures that can be taken to work around or minimise the impact of the Performance Issue;

d. the time that will be required to fully complete all aspects of the Cure Plan;

e. a risk assessment detailing the risks, mitigations and risk ratings for the cause of the Performance Issue; and

f. the tasks, timing, resources, dependencies, contingencies, availability of resources, the relationships between tasks and all other information DTA may reasonably require in order for it to assess the Seller's plan.

42.2. Seller implementing Cure Plan

42.2.1. DTA may either:

a. notify the Seller to implement the Cure Plan; or

b. notify the Seller to revise the Cure Plan, in which case the Seller must revise and resubmit the Cure Plan within 5 Business Days (or such time stated in the notice) as required in the notice.

42.2.2. If DTA gives the Seller a notice under clause 42.2.1.a, the Seller must immediately implement the Cure Plan and:

a. keep DTA fully informed about the progress of work against the Cure Plan and any proposed modification to the Cure Plan;

b. promptly provide DTA with information that it requests about the progress of work under the Cure Plan or any related matter;

c. diligently perform all work in accordance with the Cure Plan and properly manage it through to conclusion;

d. provide an updated risk assessment if requested by DTA; and

e. notify DTA when it believes it has fully implemented and completed the Cure Plan.

42.2.3. DTA may conduct due diligence in respect of work related to the Cure Plan. The Cure Plan will not be considered completed until DTA provides confirmation following due diligence.

42.2.4. Nothing in this clause 42 limits any rights or remedies of DTA under this Panel Agreement including any right of audit or termination or under any applicable law.

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SCHEDULE A1 – ICT LABOUR HIRE MODULE

CONTENTS

SECTION 1 – MODULE TERMS FOR PANEL – ICT LABOUR HIRE

1. Scope

1.1. Scope

1.1.1. This Schedule A1 – ICT Labour Hire Module applies if Item 6 of Part B – Panel Appointment Details states that the Seller is Appointed to the ICT Labour Hire Module.

2. Price under Contracts

> ***Note:*** Price under Contracts is determined through the RFQ and Quote process. Further information on Price under Contracts is in clause 14 of Schedule C1 – ICT Labour Hire Module Terms.

3. Maximum Price and Pricing Quotes

> **Note**: ***Maximum Price***
>
> The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller will have a different Maximum Price for each type of ICT Labour Hire Service under this Module. The Seller's Maximum Price is determined on the basis set out in the table below. DTA will record the Seller's Maximum Prices in Part B – Panel Appointment Details.

3.1.1. The Maximum Price for each Category of the Seller's Products and Services under the ICT Labour Hire Module is stated in Item 7 of Part B – Panel Appointment Details.

3.1.2. The Maximum Price for the ICT Labour Hire Module, is determined as follows:

Type of ICT Labour Hire Services	***Basis for Maximum Price***
Seller-Sourced Labour Hire Workers	Maximum Price is a maximum Hourly Management Rate stated as a percentage of any Hourly Salary under a Contract. Clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms sets out how the Hourly Management Rate applies to the Price of a Contract.
Buyer-Sourced Labour Hire Workers	Maximum Price will be a maximum Hourly Management Rate stated as a percentage of any Hourly Salary under a Contract.

	Clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms sets out how the Hourly Management Rate applies to the Price of a Contract.
Seller-Sourced Buyer Workers	Maximum Price will be the maximum percentage Placement Fee, stated as a percentage of the commencement salary (base salary excluding superannuation) of any Buyer Worker placed with a Buyer under a Contract. Clause 14.6 of Schedule C1 – ICT Labour Hire Module Terms sets out how the Placement Fee applies to the Price of a Contract.
Other services	No Maximum Price. Pricing will be determined through the RFQ process for each Contract. Clause 14.7 of Schedule C1 – ICT Labour Hire Module Terms sets out how the Buyer will price Other Services under a Contract.

3.1.3. The Seller must:

a. Quote for their Products and Services to Buyers at or below the Maximum Price;

b. not enter Contracts where Price exceeds the Maximum Price;

c. price any Contract Variations to be at or below the Maximum Price that applies at the time of the variation; and

d. ensure that pricing in Contracts includes all applicable taxes (other than GST).

3.2. Seller's Maximum Price Review

3.2.1. DTA may amend the Seller's Maximum Price:

a. when DTA amends a Module or Category; or

b. when the parties agree to update the Seller's Maximum Price.

3.2.2. If DTA agrees to a change to the Maximum Price, DTA and the Seller will enter a Deed of Variation to the Panel Agreement to give effect to the change.

3.2.3. If the Seller's Maximum Price changes under clause 3.2.1, it will not affect the Price of Contracts entered before the date that the Deed of Variation is signed. To change the Price of a Contract, a Seller must:

a. follow the Price Review mechanism in the Contract; and

b. apply the Maximum Price, or below, that is applicable at the time of the Contract Variation.

3.3. Pricing Transparency

> ***Note:*** It is a policy of DTA to improve transparency as this will increase competition when Buyers procure ICT Labour Hire Workers. This will achieve better value for money for Buyers.

3.3.1. The Seller must give Buyers a breakdown of the Price for each Candidate when providing Quotes for Labour Hire Workers. The breakdown must include the:

a. Agreed Hourly Rate;

b. Hourly Salary stated as a dollar amount;

c. Hourly Management Rate stated as both a dollar amount and as a percentage of the Hourly Salary; and

d. Hourly Employment Oncosts stated as a dollar amount (**Price breakdown information**).

3.3.2. The Seller must give Buyers the proposed Placement Fee for each Candidate when providing Quotes for Seller-Sourced Buyer Workers.

3.3.3. If the Seller quotes for additional Candidates under an existing Contract, it must give DTA the information set out in clause 3.3.1 or 3.3.2.

3.3.4. DTA will collect and hold the information specified in clause 3.3.1 or 3.3.2 and may share:

a. Price breakdown information that relates to an individual Labour Hire Worker with that Labour Hire Worker once a Contract is in place;

b. the Placement Fee that relates to a Buyer Worker with that Buyer Worker once a Contract is in place.

3.3.5. The Seller may provide a Candidate that it puts forward for a role with a breakdown of the Price as set out in clauses 3.3.1 or 3.3.2. This will not contravene clause 14.8.6 of Part A – Panel Terms.

4. Functionality of the Online Portal

4.1. Expanding functionality of the Online Portal

4.1.1. DTA may expand the functionality of the Online Portal to:

a. administer the ICT Labour Hire Module; and

b. create and manage Online Portal profiles for Candidates and Labour Hire Workers.

4.1.2. DTA may contact Candidates to inform them that they have been put forward for Labour Hire Worker or Buyer Worker roles.

4.1.3. DTA may contact Candidates and Labour Hire Workers to update them about:

a. available roles;

b. the Online Portal;

c. the operation of the Panel; and

d. other matters.

5. Performance Management Framework

5.1. Performance Management Framework

5.1.1. DTA may ask Candidates or Labour Hire Workers to give DTA feedback about a Quote process, a Contract or the Panel. The Seller must assist DTA to get this feedback.

5.1.2. DTA may collect information about a Labour Hire Worker's performance under a Contract. This will be done under the Performance Management Framework set out in the Module Terms. DTA may give this information to Buyers, including through the Online Portal.

6. Seller obligations

6.1. Seller warranty

6.1.1. The Seller warrants that it will at all times hold a Labour Hire Licence and any other licence that is required in each Location.

6.1.2. The Seller must give DTA information about its licences if asked. The Seller must give updated information to DTA if its licences change during the Panel Agreement Period.

6.1.3. The Seller must promptly notify DTA of any breach of the warranty in this clause 6.1.

6.2. Contact details

6.2.1. The Seller must give the personal email and personal mobile phone number of each Candidate to DTA. This must be done when the Seller offers a Candidate to a Buyer.

6.2.2. The Seller must get the consent of a Candidate:

a. to give this information to DTA; and

b. for DTA to hold and use this information to manage the Panel.

6.3. Candidate's permission to be put forward for a role

6.3.1. The Seller must get a Candidate's written permission before the Seller puts a Candidate forward to a Buyer. The Seller must provide a copy of the permission to DTA, if asked.

6.4. Seller's contracts and employment arrangements with Candidates and Labour Hire Workers

6.4.1. The Seller must ensure that its contracts and employment agreements with Candidates and Labour Hire Workers permit their direct participation in the Online Portal as required by DTA.

6.4.2. The Seller must obtain consent from individuals to the:

a. collection;

b. use; and

c. disclosure,

of personal information by DTA and Buyers under the Panel Agreement including for the purposes of assessment of the individual's performance under the Performance Management Framework.

6.5. Restraint of trade

6.5.1. In contracts with Labour Hire Workers or Candidates, the Seller must not:

a. *where the Buyer has sourced the Labour Hire Worker and referred them to the Seller* – include restraint of trade terms; or

b. *in any other case* – include terms which would amount to an unreasonable restraint of trade.

6.6. Pay secrecy

6.6.1. In contracts with Labour Hire Workers or Candidates the Seller must not include pay secrecy terms.

SECTION 2 – CATEGORY DESCRIPTIONS – ICT LABOUR HIRE

<table>
<tr><th colspan="2">Service Category</th><th>Description</th></tr>
<tr><td>1.</td><td>Labour Hire, recruitment and related services</td><td>
The Seller offers to provide the following ICT sourcing, engagement, recruitment and related services to assist the Buyer to engage appropriately skilled and qualified ICT personnel to undertake work under the direction of the Buyer.
a. Seller-Sourced Labour Hire Workers
The Seller sources a Candidate that matches the requirements of the Buyer. The Candidate is then put forward to the Buyer to decide if they are suitable or not. If suitable, the Buyer takes them as a Labour Hire Worker. The Labour Hire Worker performs work for the Buyer. The Seller is responsible for employing or engaging the Labour Hire Worker under a contract.
b. Buyer-Sourced Labour Hire Workers
The Buyer sources a worker that meets their requirements. The Seller then employs or engages the worker under a contract. The worker is provided to the Buyer as a Labour Hire Worker. The Labour Hire Worker performs work for the Buyer.
c. Seller-Sourced Buyer Workers
Note: For more information on where it may be appropriate to enter into an arrangement for Seller-sourced Buyer Worker, Buyers can review the Australian Public Service Commission’s website.
The Seller sources a Candidate that matches the requirements of the Buyer. The Candidate is then put forward to the Buyer. If accepted, the Buyer employs or engages the Candidate under a contract as a Buyer Worker.
d. Other services
The Seller may provide a range of services in connection with sourcing, employing and contracting ICT workers to meet the requirements of the Buyer.
</td></tr>
</table>

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SCHEDULE A2 – PROFESSIONAL AND CONSULTING SERVICES MODULE

CONTENTS

SECTION 1 – MODULE TERMS FOR PANEL – PROFESSIONAL AND CONSULTING SERVICES

1. Scope

1.1. Scope

1.1.1. This Schedule A2 – Professional and Consulting Services Module applies if Item 6 of Part B – Panel Appointment Details states that the Seller is Appointed to the Professional and Consulting Services Module.

2. Price under Contracts

> ***Note:*** Price under Contracts is determined through the RFQ and Quote process. Further information on Price under Contracts is in clause 6 of Schedule C2 – Professional and Consulting Services Module Terms.

3. Maximum Price and Pricing Quotes

> ***Note: Maximum Price***
>
> The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller's Maximum Price is determined on the basis set out below. DTA will record the Seller's Maximum Prices in Part B – Panel Appointment Details.

3.1.1. The Maximum Price for each Category of the Seller's Products and Services under the Professional and Consulting Services Module is stated in Item 7 of Part B – Panel Appointment Details.

3.1.2. The Maximum Price under the Professional and Consulting Services Module is:

a. based on hourly rates;

b. for each Personnel Classification;

c. in each Category.

3.1.3. The Seller must:

a. Quote for their Products and Services to Buyers at or below the Maximum Price;

b. not enter Contracts where Price exceeds the Maximum Price;

c. price any Contract Variations to be at or below the Maximum Price that applies at the time of the variation; and

d. ensure that pricing in Contracts includes all applicable taxes (other than GST).

3.2. Seller's Maximum Price Review

3.2.1. DTA may amend the Seller's Maximum Price:

a. in accordance with clauses 3.2.4-3.2.6;

b. when DTA amends a Module or Category; or

c. when the parties agree to update the Seller's Maximum Price.

3.2.2. If DTA agrees to a change to the Maximum Price, DTA and the Seller will enter a Deed of Variation to the Panel Agreement to give effect to the change.

3.2.3. If the Seller's Maximum Price changes under clause 3.2.1, it will not affect the Price of Contracts entered before the date that the Deed of Variation is signed. To change the Price of a Contract, a Seller must:

a. follow the Price Review mechanism in the Contract; and

b. apply the Maximum Price, or below, that is applicable at the time of the Contract Variation.

3.2.4. DTA will adjust the Seller's Maximum Price on 1 July in each year, following the anniversary of the Panel Agreement Start Date.

3.2.5. DTA will base the price review on the Wage Price Index (all sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics. DTA will calculate the price review using the following formula:

$$AUP = EDP \times \frac{V}{Vo}$$

where:

AUP =	the adjusted Maximum Price;
EDP =	the Maximum Price: • at Panel Agreement Start Date; or • previous anniversary of the Commencement Date as applicable;
V =	the index number for the quarter preceding the quarter containing the most recent anniversary of the Panel Agreement Start Date;
Vo =	the index number for the quarter containing: • the Panel Agreement Start Date; or • previous anniversary of the Panel Agreement Start Date as applicable;
	the index number DTA will use in the formula is the first published index number for the relevant quarter.

3.2.6. Following a price review under clause 3.2.1, DTA will notify the Seller of the adjustment to the Seller's Maximum Price.

SECTION 2 – CATEGORY DESCRIPTIONS – PROFESSIONAL AND CONSULTING SERVICES

Service Category		Description
1.	**Artificial Intelligence (AI) Engineering**	***Note***: The Services under this Category do not include the provision of licensed Software or Cloud Services. These must be procured through the Software and Cloud Services Module. Where the Seller is developing a bespoke AI System for the Buyer under this Category, the Buyer should add additional clauses to the Contract from DTA's AI model clauses, available here. Additional clauses can be included in Item 45 of Part D – Contract Details. Under this Category, Sellers focus on specialised AI tasks that extend beyond standard software engineering or analytics, including designing, deploying, and managing AI systems. This may involve advanced model architectures, system optimisation, reinforcement learning, machine learning pipelines, autonomous systems, governance, assurance, and developing AI tools and frameworks. All Services under this Category should: • support compliance with DTA's policy for responsible AI use; • help government make informed, risk-based decisions on adopting AI; • integrate with digital infrastructure and cloud systems where needed; • support management and monitoring of AI implementation and systems; • generate actionable insights and data-driven recommendations to inform business decisions; • store and manage government data in an accessible, machine-readable format; • be customised to organisational needs to enhance operations; and • follow a structured and controlled development process.

		Buyers may ask Sellers to: • design AI system architecture, including deep neural networks, transformers, and custom models specific to problem domains like computer vision, natural language processing, and robotics; • develop AI systems that enable real-time action or automate decision making; • optimise and scale AI models, including performance tuning across multiple platforms; • design and deploy reinforcement learning systems, including custom simulation environments for training AI agents in complex decision-making scenarios; • develop and deploy Machine Learning Ops focused on end-to-end management of the AI system lifecycle, and best engineering practices to enhance reliability, efficiency, reduce downtime, and improve operational performance of AI models; or integrate emerging AI methodologies, such as self-supervised learning, image annotation, few-shot and zero-shot learning, and federated learning.
2.	**Application, software engineering and development services**	Under this Category, Sellers will develop and maintain digital and ICT systems. Systems could include; secure applications, software systems and web-based solutions. This Category encompasses everything from bug fixes and maintenance to whole-of-system development and deployment. All services under this Category should: • leverage technology; • ensure best practice; • improve business operations; • improve stakeholder interactions; • be tailored to the unique needs and processes of the organisation; • ensure a systematic, structured and controlled software development process; and • ensure applications function correctly and meet quality standards. Buyers may ask Sellers to:

		- develop front-end software solutions; - develop back-end software solutions; - integrate software, and emerging technology, with other systems and applications; - deliver effective and efficient content management systems; - test and quality assure applications; - write, test and debug application code; - deploy, install and configure to production; - maintain and enhance existing applications and software to keep them current and optimised; or - work using agile software methods, or other methodologies and best practices. Examples of deliverables under this Category include: - client-side elements of websites, including HTML, CSS, and JavaScript coding; - servicer-side logic, databases and application functionality; - e-commerce online payment processing systems; or - ongoing support, bug fixes and updates.
3.	**Architecture services**	Under this Category, Sellers will lay the architectural foundation of digital solutions. Work under this Category could include: designing the overall structure of a system, establishing or implementing a framework, and implementing a new system architecture. All system architecture developed under this Category should: - ensure scalability; - ensure integration; - ensure security; - ensure adaptability; - ensure efficiency; and - address business needs and goals. Buyers may ask Sellers to: - plan and design a high-level, technology ecosystem;

		• align technology investments with business goals; • establish and enforce technology standards and best practices; • develop technology roadmaps; • design specific technology solutions or systems; • gather and analyse business requirements; • create detailed technical designs and system designs, that identify solution components, interfaces and integration points; or • incorporate security measures and data protection considerations. Examples of deliverables under this Category include: • application architecture; • cloud architecture; • business system architecture; • enterprise architecture; • information architecture; • solution architecture; • technology architecture; • cloud-based data storage architecture; • microservices architecture for a web application; or • system blueprints for IoT devices.
4.	**Business, systems and process analysis services**	Under this Category, Sellers will design, analyse, and deliver efficient, effective and productive digital processes. These digital processes should be fit-for-purpose, data-driven and improve business practices. Digital processes developed under this Category should: • reduce points of failure; • reduce cost of service; • improve user experience; • improve efficiency, productivity, and effectiveness; • reduce manual work; • minimise errors; and

		• accelerate process transformation. Sellers approved under this Category may be asked to: • examine, re-engineer, improve, and document current business processes; • identify gaps, bottlenecks, inefficiencies, and areas for improvement; • identify opportunities for streamlining and automation; • identify opportunities to use emerging technologies including AI, IoT and cloud computing; or • define functional and non-functional requirements. Examples of deliverables under this Category include: • process maps and visual representations; • strategic research and design services; • business need collection and analysis; • data analysis; • workflow automation tools and technologies; • frameworks for ongoing monitoring and improvement; • key performance indicator (KPIs) and metric setting; • data integration; • recommendations for updates or replacements to the technology stack and digital tools; • quality assurance and testing; or • business documentation and supporting roadmaps such as user stories, data journeys, data catalogues and dictionaries, technical specifications, and impact assessments.
5.	**Content and publishing services**	Under this Category, Sellers will plan, create, manage, share and optimise digital content. Content should be accessible, engaging and enhance the user experience. This Category could include information architecture design, content design, content strategy and content management frameworks. All content developed under this Category should: • engage and connect with digital audiences in meaningful ways;

		• ensure compliance with regulations and standards, including the latest Web Content Accessibility Guidelines (WCAG); • meet best practice principles for accessibility and cultural diversity; • use innovative content formats where appropriate; • meet the needs of users; • enhance the user experience (UX); • follow appropriate style guides; • align with digital communication objectives; and • be transparent and accurate. Buyers may ask Sellers to: • measure content performance; • deliver content governance and compliance services; • manage, publish and share digital content; • perform content audits; • plan, review and develop information architecture; • define and maintain taxonomies, tagging systems and metadata; • provide technical writing services; • offer insights into content performance using data to track and analyse trends; • manage and maintain content management systems, content governance frameworks and content publishing calendars; or • understand and use service applications, software, frameworks and methodologies. Examples of deliverables under this Category include: • blog posts; • articles; • videos; • infographics; • multimedia content;

		• user guides; • social media; • email marketing; • content performance insights, such as data visualisation, dashboards, A/B testing, and comprehensive reports; • interactive multimedia; • virtual reality (VR); • augmented reality (AR); • mixed reality (MR) experiences; or • content hosted in XML messaging services, HTML, CSS, JavaScript, Restful Services, APIs, Service Oriented Architecture (SOA) and respective frameworks.
6.	**Cybersecurity services**	Under this Category, Sellers will design and implement cybersecurity practices, strategies, and technologies. These services will protect government systems from internal and external threats and adhere to security standards and compliance requirements. All services developed under this Category should: • protect from threats; • test, enhance and maintain security of digital assets systems and data; and • adhere to security standards and compliance requirements. Buyers may ask Sellers to: • lead the design and management of security strategy; • conduct digital forensics; • manage incidents; • automate risk profiling, asset inventory, and security response; • conduct security, regulatory and cyber risk management reviews; • draft privacy impact assessments and identify privacy risks and issues; or • enhance security awareness through phishing simulations, targeted training and police enforcement.

		Examples of deliverables under this Category include: • incident response and recovery; • incident investigation; • containment and eradication; • business continuity; • disaster recovery; • testing operational and executive response plans; • cybersecurity architecture and solutions; • firewalls and IPS; • endpoint security; • identity and access management (IAM); • attack surface management; • threat detection and prevention; • intrusion detection systems (IDS); • intrusion prevention systems (IPS); • penetration testing; • security information and event management (SIEM); or • vulnerability scanning.
7.	**Data analytics and business intelligence services**	Under this Category, Sellers will collect, synthesise, and analyse data. This data will be used to inform business decisions across government, and could include financial, market, statistical, geographical and geospatial data. All services developed under this Category should: • process meaningful insights and interpretations to inform business decisions; • gain insights into digital processes, enabling data-driven improvements; • enable accessible Government data in machine-readable formats; and • enable Government to store and manage data effectively. Buyers may ask Sellers to: • design, develop, manage and convert data systems, models and languages;

		• review and uplift data management and governance policies; • perform data discovery; • design, implement and assess data risks, access, governance, and quality frameworks; • use data modelling methods, integration, and governance; • use emerging technologies such as AI; • design and implement data analytics; • create and use business intelligence tools; • provide geospatial technologies for planning, emergency response and environmental monitoring; • develop statistical analysis systems, software and database languages that can store, modify and retrieve data values, create reports and compute complex and simple statistical analysis; or • create and improve databases. Examples of deliverables under this Category include: • documentation of end-to-end data lineage; • interactive dashboards and reporting; • analytics including real-time, market trends, cost benefiting, forecasting and experiment analytics; • data mining; • data visualisation; • business performance management; • location intelligence; • predictive analysis; • interactive reporting capabilities; • Geographic Information Systems (GIS); • aerial survey data; • data maintenance; • sea and terrestrial survey data; or • supervised and unsupervised machine learning and machine learning software and algorithms.

8.	**Digital sourcing, procurement and contract management services**	Under this Category, Sellers will provide knowledge, skills and experience in digital and ICT sourcing processes. Sourcing could encompass the end-to-end acquisition process, from needs identification to contract management. All services offered under this Category should: • comply with appropriate procurement principles and legislation; • be completed in a strategic, efficient, effective, economical and ethical manner; • ensure digital initiatives, advice, technologies and practices are environmentally, socially, and economically sustainable; • ensure risks are monitored and controlled; • ensure procurement outcomes meet an organisation's specific needs; • ensure procurement outcomes meet quality standards and specifications; and • ensure negotiations secure favourable terms. Buyers may ask Sellers to: • run end-to-end procurement processes for digital and ICT services, products and technology services; • optimise Supply Chains; • assess suppliers to confirm their capabilities, financial stability, ethical practices and compliance with industry standards; • engage in negotiations; • monitor and control procurement costs; • administer supplier contracts to ensure compliance, risk mitigation and value for money; • draft contracts that define the terms, conditions and responsibilities of both parties; or • track supplier performance against contractual obligations.
9.	**Market research and advisory services**	Under this Category, Sellers will provide market insights, strategic advice, and data-driven recommendations. These services should be well-informed, timely and will be used to inform decision-making and communication practices.

		All services offered under this Category should: • help organisations gain a deeper understanding of market dynamics and trends; • inform decision-making and communication practices; • help decision-makers respond to market changes; • investigate emerging and existing technologies to measure the market and identify gaps; and • ensure recommendations are clear and aligned to the objectives and strategic goals of the organisation. Buyers may ask Sellers to: • analyse the market; • assess market trends and potential technology disruptions; • offer strategic insights; • employ research methods such as surveys, trend analysis, quantitative modelling; • collect and interpret market data; • provide reports on actionable insights and recommendations; • use industry specific knowledge and experience to tailor research and advice; • conduct viability studies on adopting new technologies or upgrading existing ones; and • provide advice on how to market new technology based on demographic data from adoption behaviour and products and messaging preferences.
10.	**Marketing, advertising communications and engagement services**	Under this Category, Sellers will deliver digital and ICT marketing and advertising services. The Category covers design, management, distribution and optimisation. These services should foster relationships, increase engagement and increase presence and recognition in the market. All services under this Category will: • apply digital media, technology tools and methodologies, and data analytics to create impactful campaigns; • foster relationships within the public sector; • enhance stakeholder outreach and engagement;

		• align with the digital and ICT marketing objectives of the organisation and achieve business objectives; • enhance digital products and services by tracking user behaviour and performance metrics; and • develop and optimise data-driven content. Buyers may ask Sellers to: • create and enhance brand strategies to increase market presence and recognition; • understand and implement search engine optimisation (SEO) for marketing and reporting purposes; • provide public sector account and relationship management services; • develop effective press and digital communications strategies; • design and deliver digital marketing campaigns that achieve high user engagement, and drive significant product or service usage; • plan and execute events; • publish timely and consistent digital content; or • provide website analytics and monitoring services. Examples of deliverables under this Category include: • comprehensive marketing plans that incorporate audience research, performance analytics, data collection, reporting, and optimisation recommendations; • brand strategies; • search engine results page (SERP) analysis; • digital advertising budgets; and • keyword research.
11.	**Program, project and change management services**	Under this Category, Sellers provide change management services to organisations. Sellers will coordinate, plan, design and deliver change management activities. This includes communications and stakeholder engagement. All services under this Category should: • align with business needs; and

		• assist organisations to adapt to new technologies, processes and ways of working. Buyers may ask Sellers to: • review all portfolio, program and project management offerings; • use Agile or other project delivery and governance methods and best practices to manage and deliver a program or project; • set business priorities, roles and responsibilities throughout the program or project lifecycle; • design and put in place governance processes for large digital transformation and ICT programs; • find drivers and barriers for organisational change; • design and deliver change programs. This includes assessing business readiness, design and put in place target operating models; • develop strategies for managing digital transformation. This includes communication plans and training for employees; • help cultural change in a technology driven environment; or • lead stakeholder engagements and meet their requirements through showcases, dashboards, reports and visualisations.
12.	**Risk management, benchmarking and audit services**	Under this Category, Sellers will manage issues and opportunities related to digital operations. Sellers will need to assess performance and find areas for improvement. They will need to make sure operations comply with regulations, industry standards and best practices. All services under this Category should: • comply with regulations, industry standards and best practices; • ensure business continuity; and • assess and manage risk. Buyers may ask Sellers to:

		• develop risk management and audit strategies, frameworks and architecture (including models and patterns); • provide risk assessment, mitigation and monitoring services (opportunity and threat); • provide business continuity, capacity and availability planning and design services; • assess third party risk and put in place third party risk frameworks and solutions; • regularly review architectures, patterns and portfolios to make sure investments meet business strategies; • put in place assurance and performance metrics to assess digital transactions and delivery; • provide benchmarking services to assess an organisation; • design and execute technology cost reduction and efficiency programs; • carry out process and technology audits; • assess financial risks associated with digital and ICT investments; or • manage legal and regulatory compliance in digital operations. Examples of deliverables under this Category include: • digital and ICT practice benchmark reports; • performance and process benchmark reports; • application, system, solution and infrastructure benchmark reports; or • compliance reports that identify areas for improvement, including financial, operational, service level, functional, and customer experience.
13.	**Solutions implementation services**	Under this Category, Sellers will be responsible for end-to-end solution, and system, implementation, integration and improvement. This Category encompasses holistic solution implementation, including both technical and non-technical elements. All services under this Category will:

		• support change strategies, operational services and business systems; • enable transformation; • comply with government digital policies including government sourcing arrangements, governance frameworks and security practices; • support business continuity; • enhance business processes; • ensure alignment with product development roadmaps; • enable seamless data flow; • enable cloud integration where applicable; • comply with service level agreements (SLAs) and change management practices throughout the project lifecycle; and • provide comprehensive management, monitoring and testing services at all stages of the project lifecycle. Buyers may ask Sellers to: • lead the set up, integration, testing and removal of systems; • execute end-to-end digital and ICT transformations, covering full life-cycle management and comprehensive testing; • manage suppliers to deliver holistic solutions or services; • establish strategic vendor partnerships; • connect disparate systems and technologies, both software and hardware; • facilitate transitions to digital services; • develop and execute implementation or decommission plans; or • write clear and transparent service level agreements (SLAs) to support system integration and decommissioning processes. Examples of deliverables under this Category include: • modern workplace and productivity suites; • digital identity;

		• customer relationship manager (CRM); • enterprise resource planning (ERP); • managed internet system (MIS); • content management system (CMS); • learning management system (LMS); • electronic document management system (EDMS); • everything as a service (XaaS); or • secure cloud.
14.	**Strategy, policy and governance services**	Under this Category, Sellers will deliver strategy, policy and governance services. Sellers will design organisational policies and technology strategies. They will plan digital initiatives and develop planning documentation. They will also develop guidelines and rules for digital operations. The services provided under this Category will support organisations to allow effective decision-making. All services under this Category should: • align with government direction; and • support organisations to allow effective decision-making. Buyers may ask Sellers to: • create a digital transformation or technology strategy that aligns with government direction; • design workforce and enterprise resource planning (ERP) strategies; • develop business cases, strategies and other planning documents; • give policy interpretation and advice to delivery teams; • give advice on areas including digital governance, leadership, investment and assurance; • review and analyse existing products, practices or processes; • create governance structures for digital and ICT investments; • record recommendations on investment strategies; • create digital and ICT policies for data security;

		• create data privacy policies; • set up governance structures for technology decision-making; • perform digital capability and maturity assessments; or • use quantitative and qualitative evidence sources (e.g. web analytics, user feedback, and applications and financial data) to give recommendations.
15.	**Support and operations services**	Under this Category, Sellers will deliver technical support and operations services. These services involve maintaining an organisation's digital services, ICT infrastructure and systems. In doing so, users should ensure availability, reliability and performance. All services under this Category should: • support and help users; • maintain a secure and optimal environment; • ensure policy compliance; • support effective resource management; • align with business needs; and • maintain service quality and improve operations. Buyer may ask Sellers to: • provide user-centric technical helpdesk, service desk and service management services that will coordinate and optimise digital and ICT service delivery, and manage incidents, requests and problems; • provide infrastructure-centric digital and ICT operations management services for an organisation’s digital infrastructure and technology stack that will track performance; • help manage an organisation's digital and ICT operations by using frameworks and principles (including ITSM, ITOM and ITIL); or • perform testing.
16.	**Training, learning and development services**	Under this Category, Sellers will deliver digital and ICT related training, learning and development services. These services will improve digital literacy and leadership. They will also support skills development and capability across organisations. The services will use technology solutions, following industry

		standards and best practices. They aim to increase knowledge and drive productivity and efficiency. All services under this Category should: • grow users' digital literacy; • be developed in collaboration with subject matter experts; • work in alignment with industry best practice; • meet user needs; and • identify user capability and gaps. Buyers may ask Sellers to: • conduct an analysis to understand the training requirements needed across an organisation; • design, develop and implement learning solutions; • provide detailed post-training reporting; or • provide guidance on the cost of implementation and return on investment of Learning Management Systems (LMS).
17.	**User research and Design services**	Under this Category, Sellers will perform research to understand user needs and behaviours. The research may be exploratory, generative or evaluative. Sellers will use the research to design user-friendly products and services. All services under this Category should: • comply with accessibility standards, including the latest Web Content Accessibility Guidelines (WCAG); • work across different screen sizes and device types; and • comply with the organisation's style guide. Buyers may ask Sellers to: • plan, design, conduct and analyse user research using different methodologies. For example, surveys, user/usability testing, contextual inquiry, ethnographic research; • design low to high-fidelity concepts and prototypes; • design web and mobile application interfaces that meet requirements; • communicate user research findings to stakeholders through different formats;

		• create and maintain design operations (DesignOps); or • create and maintain research operations (ResearchOps). Examples of deliverables under this Category include: • research governance protocols, templates, tools and libraries; • design systems, libraries and style guides; • presentations, journey maps and video; • low to high-fidelity prototypes; or • surveys, user/usability testing, contextual inquiry, ethnographic research.

SECTION 3 – WORK LEVEL STANDARDS

Personnel Classification	Expected work level standards
Level 6	A Level 6 is fully responsible for the Sellers' end-to-end delivery of all aspects of the Services.
	A Level 6 is fully accountable for actions taken and decisions made, both by themselves and other Seller Personnel assigned work in connection with the Services.
	A Level 6 possesses extensive and in-depth knowledge and experience of the Services being provided.
	It is expected that a Level 6 would hold undergraduate and post graduate degrees relevant to the area(s) of specialisation or similarly regarded qualification, professional body senior membership, and professional body certifications.
Level 5	A Level 5 has authority and accountability for the delivery of the Services. A Level 5 will oversee the work of a Level 4 and Level 3.
	A Level 5 will have a deep understanding of their own specialisation(s) within the Service being provided and performs highly complex work activities.
	It is expected that a Level 5 would hold undergraduate and post graduate degrees relevant to the area(s) of specialisation or similarly regarded qualification, and professional body certification in area(s) of specialisation.
Level 4	A Level 4 is fully responsible for meeting allocated tasks and is responsible for the assignment of tasks and/or responsibilities in the delivery of the Services.
	A Level 4 performs an extensive range and variety of work activities within their own area(s) of specialisation in the delivery of the Services.
	It is expected that a Level 4 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification and professional body certification in area(s) of specialisation.

Level 3	A Level 3 works under broad direction, often self-initiated, and is responsible for meeting allocated tasks relating to the Services. A Level 3 will oversee the work of a Level 2 and Level 1.
	A Level 3 performs a range and variety of work activities within their own area(s) of specialisation in the delivery of the Services.
	It is expected that a Level 3 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification and may be a member of professional body in area(s) of specialisation.
Level 2	A Level 2 works under general direction within a clear framework of accountability for their area of responsibility. A Level 2 uses their own discretion when resolving minor problems or external enquiries.
	A Level 2 has a good understanding of their own specialisation(s) in the delivery of the Services and performs routine work activities.
	It is expected that a Level 2 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification.
Level 1	A Level 1 may be at the beginning of their career and will typically do work to support Level 2, Level 3 and Level 4 in data collection and analysis, workshop support, etc.
	A Level 1 has a sound generic, domain and specialist knowledge and performs work under supervision.
	It is expected that Level 1 would hold an undergraduate degree or similarly regarded qualification.

Australian Government
Digital Transformation Agency

SCHEDULE A3 – SOFTWARE AND CLOUD SERVICES MODULE

CONTENTS

SECTION 1 – MODULE TERMS FOR PANEL – SOFTWARE AND CLOUD SERVICES

1. Scope

1.1. Scope

1.1.1. This Schedule A3 – Software and Cloud Services Module applies if Item 6 of Part B – Panel Appointment Details states that the Seller is Appointed to the Software and Cloud Services Module.

2. Price under Contracts

> ***Note:*** Price under Contracts is determined through the RFQ and Quote process. Further information on Price under Contracts is in clause 15 of Schedule C3 – Software and Cloud Services Module Terms.

3. Module 3 Price List, Maximum Price and Pricing Quotes

> ***Note:***
>
> **Module 3 Price List**
>
> The Seller's Module 3 Price List was approved by DTA when the Seller joined the Panel. It is part of the Seller's Catalogue found on the Seller's Online Portal profile.
>
> It may change during the Panel Agreement Period, following the processes set out in clauses 3.3 and 3.4.

3.1. Module 3 Price List

3.1.1. The Seller's Module 3 Price List is part of the Seller's Catalogue on their Online Portal Profile and forms part of the Panel Agreement.

3.1.2. The Seller must ensure that its Module 3 Price List:

a. only includes Products and Services within the scope of the Seller's Appointed Categories under the Software and Cloud Services Module;

b. includes:

i. Products and Services; and

ii. for a Reseller, the Publishers of the Products and Services,

that the Seller:

iii. most commonly sells; or

iv. that the Seller expects to commonly sell,

under this Module;

c. states for each item under clause 3.1.2:

i. for b.i, the price of the Products and Services; and

ii. b.ii, for each Publisher, the minimum discount for the Products and Services;

d. includes a:

i. Subscription-Based Pricing Model minimum discount; and

ii. Usage-Based Pricing Model minimum discount,

for each of the Seller's Appointed Categories under this Module; and

e. meets any other requirements notified by DTA in relation to the Module 3 Price List.

3.2. Maximum Price

> ***Note*:**
>
> **Maximum Price**
>
> The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller's Maximum Price is determined on the basis set out below.

3.2.1. The Seller's Maximum Price will be stated in the Module 3 Price List.

3.2.2. The Seller must apply the applicable pricing model/s to Contracts under the Panel Agreement. The basis for the Maximum Price will depend on the type of Products and Services to be provided under the Contract as follows:

Type of Maximum Price pricing model	Basis for Maximum Price
For Products and Services where a price and/or a minimum discount is stated in the Module 3 Price List	
Stated price/minimum discount	The Maximum Price for a Product or Service under the Software and Cloud Services Module is the price and/or minimum discount stated in the Module 3 Price List. Where a stated price in the Module 3 Price List exceeds the Recommended Retail Price (RRP), the applicable price will be the RRP. The minimum discount is applied to the component of Contract Price relating to Pricing Metrics.

For Products and Services (or for a Reseller – a Publisher) where there is no stated price and/or minimum discount	
Subscription-Based Pricing Model minimum discount	Under this pricing model, the Contract Price is based on the scale and scope of the Software or Cloud Services provided. The minimum discount is applied to the RRP for the component of Contract Price relating to Pricing Metrics. Pricing Metrics may include: • the number of users; or • level or tier of features provided. This model is primarily suited for Contracts involving Software or Software as a Service. ***Note:*** Examples of Pricing approaches within this pricing model include: • user licensing models (e.g. monthly per-user fees); • annual licence fee per user or seat; or • pricing levels or tiers based on features.
Usage-Based Pricing Model minimum discount	Under this pricing model, Contract Price is determined based on the Buyer's actual usage of the Products and Services. The minimum discount is applied to the RRP for the component of Contract Price relating to Pricing Metrics. Pricing Metrics may include: • the number of API calls; • volume of data transferred; or • total compute or processing hours. This model is primarily suited for Contracts involving Platform as a Service or Infrastructure as a Service. ***Note:*** Examples of Pricing approaches within this pricing model include:

	• ‘pay per use’; and • ‘pay as you go’.

3.2.11. The Seller must:

a. Quote for their Products and Services to Buyers at or below the Maximum Price. This means that the Seller must apply no less than the agreed minimum discount when Quoting for Products and Services and pricing Contracts;

b. apply the most applicable Pricing Model to the Product or Service, or component of the Product or Service, when Quoting or pricing Contract Variations;

c. not enter Contracts where Price exceeds the Maximum Price;

d. price any Contract Variations to be at or below the Maximum Price that applies at the time of the variation; and

e. ensure that pricing in Contracts includes all applicable taxes (other than GST).

Note: See clause 14.1.2 of Part A – Panel Terms in relation to Sellers Quoting for their Products and Services. See also clause 15.2 of Schedule C3 – Software and Cloud Services Module in relation to pricing in Contracts that is inconsistent with the Seller’s Maximum Price.

3.3. Changes to the Module 3 Price List

3.3.1. The parties may amend the information in the Module 3 Price List as follows:

a. ***Maximum Price information*** – by following the process set out at clause 3.4; and

b. ***Any other information*** – by written agreement between DTA and the Seller.

3.4. Seller’s Maximum Price Review

3.4.1. DTA may amend the Seller’s Maximum Price:

a. when DTA amends a Module or Category; or

b. when the parties agree to update the Seller’s Maximum Price.

3.4.2. The Seller may apply to DTA to increase the Maximum Price, by writing to the DTA Representative. The Seller must meet any requirements notified by DTA when making a request.

3.4.3. DTA may, by notice to the Seller, approve or not approve an application made under clause 3.4.2.

3.4.4. Where DTA approves an application made by the Seller under clause 3.4.2, DTA will amend the Maximum Price set out in the Module 3 Price List on the Online Platform.

3.4.5. If the Seller's Maximum Price changes it will not affect the Price of Contracts entered before the date that the change is made. To change the Price of a Contract, a Seller must:

a. follow the Price Review mechanism in the Contract; and

b. apply the Maximum Price, or below, that is applicable at the time of the Contract Variation.

3.5. Verification of Price in Contracts

3.5.1. The Seller must provide to DTA, within 5 Business Days of a request, any information required by DTA to verify that the Price under a Contract did not exceed the Seller's Maximum Price when it was entered or varied.

3.6. Payment in advance and rebate

3.6.1. If the Buyer is required to make payment in advance for access to the Products and Services, the period of advance payment must be no more than one year.

4. Agreement terms under this Module

4.1. The Seller's agreement with DTA

4.1.1. The Seller agrees that:

a. the entire agreement between the DTA and the Seller is contained in the Panel Agreement; and

b. no Seller End User Licence Agreement (**EULA**) or other Seller notices or terms and conditions apply to the terms of the Panel Agreement between DTA and the Seller.

4.2. The Seller's Contracts with Buyers

> ***Note:*** The Buyer can select clauses from the DTA Approved Special Conditions for Software and Cloud Services (**Module 3 Special Conditions**) to include in a Contract to replace certain clauses in Part C – Contract Terms and Schedule C3 – Software and Cloud Services Module Terms. The Module 3 Special Conditions are optional and reflect the commercial position in the Government EULA.

4.2.1. The Seller agrees that:

a. clause 4 of Part C – Contract Terms applies to any EULA, notices or terms and conditions in relation to the Licensed Software and Cloud Services provided under Contracts;

b. if it is supplying Products and Services as a Reseller it must be authorised by the Publisher to do so and under:

   i. ***Option 1 (clause 11.11.1.a of Part C – Contract Terms) where the Publisher is an Approved Subcontractor of a Reseller*** – the terms of the Subcontract with the Publisher must:

      A. be consistent with the requirements in the applicable Contract; and

      B. enable the Seller to comply with its obligations under the applicable Contract.

   ii. ***Option 2 (clause 11.11.1.b of Part C – Contract Terms) where the Publisher will form a separate Contract with the Buyer*** – when Quoting, the Reseller must:

      A. only put forward Publishers who will enter into an agreement with the Buyer on the terms of the Government EULA; and

      B. state the Publisher's requested Government EULA Additional Terms and Government EULA Special Conditions.

SECTION 2 – CATEGORY DESCRIPTIONS – SOFTWARE AND CLOUD SERVICES

5. Category descriptions and requirements

5.1.1. Module 3 has the following Categories of Products and Services.

5.1.2. When Sellers provide Products and Services from this Module to Buyers, Sellers must comply with the requirements for the Products and Services as stated below for the relevant Category.

5.1.3. Unless otherwise stated in Part E – Definitions and Interpretation, capitalised terms used in the Category Descriptions are standard industry terms and are not defined in the Panel Agreement.

Service Category		Description and Requirements
1.	**Business Applications**	**Purpose**: Business Applications encompass a broad range of software solutions designed to support and streamline a wide range of business and corporate processes. These tools enhance productivity, improve collaboration, and enable efficient day-to-day operations. **Scope**: This Category includes Licensed Software and Cloud Services that support general business functions and productivity, excluding core Enterprise Resource Planning (ERP) systems. These applications can be deployed both on-premises or in the cloud as Software-as-a-Service (SaaS), offering flexibility in how organisations choose to implement them. **Requirements:** Products and Services provided under this Category must: • Ensure adherence to industry best practices to enhance efficiency and effectiveness. • Improve overall business operations and streamline processes. • Enhance interactions and communication with stakeholders. • Meet high-quality standards to ensure reliability and performance. • Provide user-friendly interfaces and ensure accessibility for all users. • Be secure, stable, and suitable for use in a government context.

		• Support integration with other systems and data sources to ensure seamless workflows, where required.
		
		Examples:
		
		• Collaboration and communication:
		  o Team communication platforms
		  o File sharing and remote work coordination tools
		
		• Productivity and office tools:
		  o Word processors, spreadsheets, presentation software, email clients
		
		• Project and task management:
		  o Project planning and tracking tools
		  o Task management platforms
		
		• Customer engagement and marketing:
		  o Customer Relationship Management (CRM) systems
		  o Customer service tools (e.g., support ticketing)
		  o Digital marketing tools (e.g., campaign automation, outreach)
		
		• Content and records management:
		  o Records Management systems
		  o Content management platforms (e.g., publishing and organising digital content)
		
		• Learning and training:
		  o Learning Management Systems (LMS)

2.	**Reporting and Data Analytics**	**Purpose**: Software and Cloud Services designed to collect, process, analyse, present, and visualise data to support evidence-based decision-making and operational insights. **Scope**: This Category includes Software and Cloud Services that support the end-to-end management and interpretation of structured and unstructured data. These tools enable organisations to generate reports, dashboards and visualisations, monitor key performance indicators, and derive insights from internal and external data sources. Solutions

		may also support strategic planning, operational monitoring, and performance evaluation across various domains.
		
		Requirements: Products and Services provided under this Category must:
		• Efficiently process data to generate meaningful trends, insights, and interpretations to inform business decisions
		• provide insights into digital processes to enable data-driven improvements.
		• enable accessible Government data in machine-readable formats
		• support compliance with government requirements for data handling, security, and reporting.
		
		Examples:
		• Data collection and integration:
		  ○ Tools for data collection, transformation (ETL), and migration
		  ○ Extract, Transform, Load (ETL) tools
		• Data storage and warehousing:
		  ○ Database creation, storage, and retrieval tools
		  ○ Data warehousing systems for aggregating and harmonising data
		• Data Management:
		  ○ Data organisation, access control, encryption, cleaning, archiving, version control
		  ○ Metadata management and Master Data Governance (MDG)
		• Analytics and insights:
		  ○ Pattern recognition, anomaly detection, and forecasting tools
		  ○ Tools for conducting and analysing surveys
		• Reporting and Visualisation:
		  ○ Business Intelligence (BI) and Business Warehouse (BW) platforms
		• Market intelligence platforms and dashboards

3.	**Artificial Intelligence and Machine Learning**	**Purpose:** Software and Cloud Services that use artificial intelligence and machine learning to automate tasks, generate insights, and support intelligent decision-making. These tools enhance operational efficiency, improve user experiences, and enable new capabilities across a range of business and service delivery contexts.
		
		Scope: This Category includes AI and Machine Learning (ML) products that deliver intelligent functionality through pre-trained models, customisable platforms, or embedded features. Software and Cloud Services may support natural language processing, computer vision, predictive analytics, autonomous systems, and other AI-driven capabilities. Products may be delivered as standalone tools or integrated into broader applications, and may include platforms for model development, deployment, and monitoring.
		
		Requirements: Products and Services provided under this Category must:
		• Apply AI or ML techniques to enhance or automate business processes and decision-making.
		• Support transparency, explainability, and ethical use of AI in line with government policies and standards.
		• Be secure, reliable, and appropriate for use in government environments.
		• Provide mechanisms for model training, tuning, deployment, and lifecycle management where applicable.
		• Enable integration with existing systems, workflows, and data sources.
		
		Examples:
		• AI Delivery Models and Platforms:
		  o AI-as-a-Service (AIaaS)
		  o AI development platforms
		  o AIOps and MLOps tools
		• Natural Language and Text Processing:
		  o Natural Language Processing (NLP) tools (e.g., sentiment analysis, summarisation)
		  o Large Language Models (LLMs) and generative AI applications

		o AI-powered document processing and data extraction tools • Vision and Perception: o Computer vision tools (e.g. image classification, facial recognition, object detection) • Predictive and Autonomous Systems: o Predictive analytics and forecasting tools o Autonomous decision-making systems
4.	**Security, Risk and Compliance**	**Purpose**: Software and Cloud Services designed to protect digital and physical assets, ensure operational resilience, and support compliance with legal, regulatory, and policy requirements. These solutions help organisations manage risk, maintain security, and uphold trust in digital services. **Scope**: This Category includes Software and Cloud Services that support cybersecurity, physical security, identity management, and governance. These solutions help detect, prevent, and respond to threats, manage access and authentication, and ensure adherence to compliance frameworks and standards. **Requirements:** Products and Services provided under this Category must meet one of the following criteria: • Protect systems, networks, and data from internal and external threats. • Support the detection, response, and recovery from security incidents. • Enable organisations to meet compliance obligations and audit requirements. • Provide tools for managing risk, access, and governance in a secure and scalable manner. • Be suitable for use in government environments, with appropriate certifications and controls. **Examples**: • Identity and Access Management: o Identity and Access Management (IAM) systems

		• Cybersecurity and Threat Protection:
		  ○ Cybersecurity tools for protecting digital assets and systems
		  ○ Data security tools and protocols
		  ○ Network security solutions (e.g., firewalls, intrusion detection)
		  ○ Application security tools
		  ○ Endpoint security solutions
		  ○ Vulnerability scanners and penetration testing tools
		  ○ Incident response tools
		  ○ Digital forensics tools
		• Security Operations and Monitoring:
		  ○ Security assessment and testing tools
		  ○ Security Operations Centre (SOC) applications
		• Governance, Risk and Compliance:
		  ○ Risk and compliance tools (e.g., risk assessments, compliance tracking)
		  ○ Governance, Risk and Compliance (GRC) management software
		• Physical and Environmental Security:
		  ○ Software for managing physical security

5.	**Digital Design and Development**	**Purpose**: Tools and platforms that support the design, development, testing, and maintenance of digital solutions and engineering projects. These products enable teams to build software, prototype user experiences, and model complex systems efficiently and collaboratively. **Scope**: This Category includes Software and Cloud Services that provide the tools necessary to create, prototype, and develop digital solutions and products. These solutions support collaboration across teams, accelerate delivery, and improve product quality. This Category includes Software development environments, DevOps tools, design platforms, and engineering modelling applications. It covers the full lifecycle of digital product development from coding and testing to deployment. It also includes tools used in structural, architectural, and systems engineering.

		Requirements: Products and Services provided under this Category must: • Improve technical operations and efficiency. • Help deploy software and cloud tools to meet organisational needs. • Ensure a systematic, structured, and controlled design or development process. • Assist in customising and adapting to unique workflows. • Ensure applications function correctly and meet quality standards. **Examples**: • Software Development Tools: o Platform-as-a-Service (PaaS) o Code editing applications o Integrated Development Environments (IDEs) o Source code management and version control tools o Software Development Kits (SDKs) • DevOps and Testing: o Continuous Integration/Continuous Deployment (CI/CD) tools o Debuggers and profilers o Unit and performance testing tools o Containerisation and configuration management tools o Application monitoring and logging tools • Design and Prototyping: o UI/UX design tools o Website design and hosting platforms o Application integration middleware • Engineering and Modelling: o System simulation tools o Structural engineering applications o Building Information Modelling (BIM) o Computer-Aided Design (CAD) tools

6.	**Network & Infrastructure**	**Purpose**: Solutions, technologies, and frameworks intended to deliver computing resources over the internet, within private networks, or serverless environments.
		
		Scope: This Category includes solutions for cloud computing, network monitoring, virtualisation, and infrastructure management, and operating systems. These solutions ensure reliable connectivity, scalability, and efficient management of computing resources for organisations.
		
		Requirements: Products and Services provided under this Category must:
		
		• Support the ability to scale resources up or down based on demand, ensuring that the infrastructure can handle varying workloads efficiently.
		• Ensure seamless integration with existing systems and applications, facilitating smooth operations and data flow across the organisation.
		• Provide robust security measures to protect data, applications, and network resources from threats and vulnerabilities.
		• Offer flexibility to adapt to changing business needs and technological advancements, ensuring long-term viability and performance.
		• Ensure high availability and reliability of network and infrastructure services to support continuous business operations.
		
		Examples:
		
		• Infrastructure Services:
		  o Infrastructure-as-a-Service (IaaS)
		  o Virtual Machines (VMs)
		  o Desktop-as-a-Service (DaaS)
		  o Operating systems and runtime environments
		  o Managed database instances
		  o Backup and disaster recovery solutions
		
		• Network Components:
		  o Virtual Private Networks (VPNs)
		  o Firewalls and Secure Internet Gateways (SIG)
		  o Load balancers, virtual routers, and switches
		  o Email and web gateways

		• Cloud and Virtualisation Tools:
		  ○ Cloud management and monitoring platforms
		  ○ Multi-cloud and hybrid cloud networking tools
		  ○ Kubernetes and container orchestration
		  ○ Serverless computing (Function-as-a-Service, Backend-as-a-Service)
		  ○ Application and API hosting environments
		• Application and Data Management:
		  ○ Middleware and application servers
		  ○ API management tools
		  ○ Configuration and automation tools
		  ○ Data integration and event streaming platforms
		• Performance and Monitoring:
		  ○ Application Performance Monitoring (APM) tools
		  ○ Infrastructure and network monitoring tools
		  ○ Logging and observability platforms

7.	**Geospatial Systems**	**Purpose**: Products and Services that enable capturing, storing, analysing, mapping, and visualising geographic and geospatial information. **Scope**: This Category includes solutions that enable organisations to integrate location-based insights into decision-making processes, supporting a variety of use cases such as mapping, spatial analysis, and asset management. **Requirements**: Products and Services under this Category must: • Enable collection, storage, and management of geographic data from multiple sources (e.g., satellite imagery, GPS, sensors) • Provide tools for spatial analysis, including mapping, geospatial modelling, and predictive analytics • Facilitate the visualisation of geographic data through dynamic maps, charts, and 3D models • Support real-time geospatial data processing for applications like asset tracking, environmental monitoring, and disaster management

		• Offer integration capabilities with other systems to enhance workflows and decision-making processes • Ensure scalability and flexibility to meet the needs of the Buyer **Examples**: • Geographic mapping and visualisation tools • Geospatial database management solutions • Geographic information system (GIS) models • Spatial analysis and data collection software • Remote sensing tools • Meteorology and positioning Tools • Geocoding and reverse geocoding tools • Routing and navigation applications
n/a	**Complementary Services**	The Seller may provide professional services under this Module to the extent those services: a. are incidental to; b. are ancillary to; c. are integrated with; d. are bundled with; or e. typically accompany, the Licensed Software and Cloud Services provided under this Contract (**Complementary Services**). Complementary Services are supplementary, non-standalone services bundled with Licensed Software or Cloud Services to support its setup, configuration, and ongoing use. Complementary Services must be minor in scope and be directly tied to the Licensed Software or Cloud Services and be necessary for its effective use, delivery or operation. They are distinct from the professional and consulting services offered under Module 2 – Professional and Consulting Services, as they do not involve strategic, advisory, or standalone engagements.

		Clause 1.2 of Schedule C3 – Software and Cloud Services Module Terms sets out further requirements in relation to Complementary Services. **Examples**: • Installation and configuration of the Licensed Software or Cloud Services including security enablement • Basic or introductory training, guidance and support • Ongoing maintenance and updates to keep the Licensed Software or Cloud Services secure and up to date • Backups and recovery of Buyer Data to ensure data protection and restoration capabilities • Hosting or Infrastructure to the extent it is necessary for Licensed Software or Cloud Service delivery (but not services in scope of Category 6 – Network & Infrastructure)

PART B – PANEL APPOINTMENT DETAILS

Panel Appointment Details			
Item	**Clause reference**	**Details**	
Parties			
1.	N/A	**Preliminary matters**	This Part B – Panel Appointment Details supersedes all Part B – Panel Appointment Details previously agreed by the parties.
2.	Part A clause 1	**Parties**	This Panel Agreement is signed, sealed and delivered as a deed, made between and binding on the following parties: ^Party 1 Name^ ^Party 1 ABN^ ^Party 1 Address^ (DTA) ^Party 2 Name^ ^Party 2 ABN and ACN/ARBN if applicable^ ^Party 2 Address^ (the Seller)
3.	Part A clause 22.6	**Seller country of tax residency** ***Note***: The Seller can change this by notice.	^insert^
		Ultimate parent entity country of tax residency (if applicable) ***Note***: The Seller can change this by notice.	^insert^
4.	Part A clause 22.7	**Trust Details**	^insert details or 'not used' if the Seller is not acting as a trustee^
Panel Agreement Period			

5.	Part A clause 6.2	**Panel Agreement Start Date** ***Note:*** This is the date on which DTA signs the Panel Agreement. This will be after the Seller signs the Panel Agreement.	^insert date on which DTA signs the Panel Agreement. This will be after the Seller signs the Panel Agreement^
		Panel Agreement Initial End Date	^insert date that is 5 years from the date that the **Panel commences** [*note that this is 5 years from the date that the DMP2 Panel commences. This will be the same for all Sellers. It is not the Panel Agreement Start Date*]^
		DTA Panel Option Term ***Note***: DTA **may** extend the term of the Panel Agreement for any period or periods up to the last date in this term by giving notice to the Seller under clause 6.2.2.	5 years from the Panel Agreement Initial End Date
Module and Category Appointment and Periods			
6.	Part A clause 4.1	**Seller Appointment**	DTA Appoints the Seller to the Panel to provide the Modules and Categories listed below for the Panel Agreement Period and applicable Module and Category Periods.
	Part A clause 4.1	**Module**	***Note***: These fields relating to Modules should be repeated for each Module the Seller is appointed to. ^insert Module to which DTA Appoints the Seller e.g. Professional and Consulting Services^
	Part A clause 6.4	**Module Start Date**	^Insert date^

		Module Initial End Date	^Insert date^	
		DTA Module Option Term ***Note:*** DTA may extend the term of a Module for any period or periods up to this term by giving notice to the Seller under clause 6.4.3.	^Insert maximum time that DTA will extend the Module^	
	Part A clause 4.1	**Category**	***Note***: These fields relating to Categories should be repeated for each Category the Seller is appointed to. ^Insert Category to which DTA Appoints the Seller e.g. Architecture Services^	
	Part A clause 6.6	**Category Start Date**	^Insert date^	
Price, allowances & costs				
7.	Part A clause 8, Schedule A1 clause 3, Schedule A2 clause 3, Schedule A3 clause 3	The Maximum Price for the Products and Services are as follows: ***Note***: Delete any Modules which the Seller is not Appointed to under Item 6 of Part B – Panel Appointment Details.		
		Module – Professional and Consulting Services		
		Category	^insert Category e.g. Architecture Services – Duplicate the table below for each category^	
		Personnel Classification ***Note:*** For more information, see Category Descriptions in Schedule A2 – Professional and Consulting Services.	**Maximum Price (hourly rates)**	
			GST exclusive	**GST inclusive**
		Level 6		

		Level 5		
		Level 4		
		Level 3		
		Level 2		
		Level 1		
		Module – ICT Labour Hire		
		Type of service		**Maximum Price**
		Seller-Sourced Labour Hire Worker (Hourly Management Rate maximum percentage of Hourly Salary)		
		Buyer-Sourced Labour Hire Worker (Hourly Management Rate maximum percentage of Hourly Salary)		
		Seller-Sourced Buyer Worker (Maximum percentage of Buyer Worker's commencement salary)		
		Module – Software and Cloud Services		
		Note: For this Module, the Seller's Maximum Price is set out in the Module 3 Price List. Please refer to clause 3 of Schedule A3 – Software and Cloud Services Module for further information and the Module 3 Price List on the Seller's Online Portal profile. As stated in the Module 3 Price List.		
Representatives and address for notices				
8.	Part A clause 10.1	**DTA Representative** ***Note***: DTA can change the DTA Representative by	The DTA Representative is the person for the time being:	

		following the process under clause 10.3.	• holding; • occupying; or • performing, the duties of Branch Manager, Digital Sourcing Branch, DTA.	
	Part A clause 11.1	**DTA Representative's address for notices** ***Note***: DTA can change this address by following the notification process under clause 10.3.	**Via the Online Portal**	Contact us - BuyICT
			Email	ICTProcurement@dta.gov.au
9.	Part A clause 10.2	**Seller Representative** ***Note***: The Seller can change the Seller Representative by following the process under clause 10.3.	The Seller Representative is ^insert^	
	Part A clause 11.1	**Seller Representative's address for Notices** ***Note:*** Clearly state all relevant addresses using the format provided. The Seller can change this by following the process under clause 10.3.	**Physical address**	^insert^
			Postal address	^insert^
			Email	^insert^
Seller's Confidential Information				
10.	Part A clause 28			

Item	**Description of Information**	**Reason for confidentiality**	**Period of confidentiality**
1.	Seller information of a confidential proprietary nature received by DTA as part of an audit	This information is commercially sensitive to the Seller.	Until five years after the later of expiry or termination of: (a) this Panel Agreement; and

			under this Panel Agreement.		(b) all Contracts placed under the Panel.
		2.	Insurance policy documents	This information is commercially sensitive to the Seller.	Until five years after the later of expiry or termination of: (a) this Panel Agreement; and (b) all Contracts placed under the Panel.
		3.	^insert^	^insert^	^insert^
Insurance					
11.	Part A clause 22.3	**Type**	**Minimum limits**	**Periods of insurance**	
		Professional indemnity insurance	$2 million per occurrence and $10 million in the aggregate per annum	Until 7 years after expiry of all Contracts under the Panel.	
		Public liability insurance	$10 million per occurrence	Until expiry or termination of all Contracts under the Panel.	
General					
12.	Part A clause 4.5	**Additional or amended terms**	^State any additional or amended terms for a Seller's Panel Agreement here^		

Executed as a Deed

Note: The parties must use the appropriate execution clause. This will depend on the types of entities that the parties are. AGS has prepared a fact sheet on execution clauses.

SIGNED, SEALED AND DELIVERED for and on behalf of the Commonwealth of Australia, as represented by the Digital Transformation Agency ABN 96 257 979 159, by:

^*Name of signatory*^	*Signature*

In the presence of:

^*Name of witness*^	*Signature of witness*

SIGNED, SEALED AND DELIVERED by ^Party 2 Name^ ACN ^Party 2 ACN^ in accordance with the requirements of Section 127 of the *Corporations Act 2001* (Cth) by:

Name of Director	*Signature*

In the presence of:

^Name of witness^	*Signature of witness*

And by:

Name of Director/Secretary	*Signature*

In the presence of:

^Name of witness^	*Signature of witness*

Australian Government
Digital Transformation Agency

PART C – CONTRACT TERMS

CONTENTS

SECTION 1 – CORE CONTRACT TERMS

Note: This Contract can be used for a wide range of ICT procurements. Not all of the clauses will apply to all Contracts. Where a clause does not apply, this is stated in the relevant Item in Part D – Contract Details. For example, the Acceptance Testing provisions in clause 5.4 does not apply if Item 19 of Part D – Contract Details states that the Products and Services are not subject to Acceptance Testing.

OPERATIVE TERMS

The following terms and conditions apply to the Contract between the Seller and the Buyer.

1. Parties

The parties to this Contract are set out in Items 4 and 5 of Part D – Contract Details.

2. Interpretation of the Contract

The parties agree to interpret the Contract using Part E – Definitions and Interpretation.

3. Contract Period

3.1. Initial Contract Period

3.1.1. The Contract begins on the Contract Start Date. The Contract continues for the Contract Period stated in Item 8 of Part D – Contract Details, unless terminated earlier.

3.2. Extending the Contract Period

3.2.1. The Buyer may extend the Contract Period as stated in Item 9 of Part D – Contract Details by giving notice to the Seller. Any notice under this clause must be given:

a. at least 20 Business Days before the end of the then current Contract Period; or

b. within another period agreed between the parties.

3.2.2. Any extension takes effect from the end of the then current Contract Period.

3.2.3. Any extension will be on the existing terms and conditions of the Contract (including Price) unless otherwise agreed by the Buyer and Seller.

3.2.4. The Contract Period may extend beyond the end of the Panel Agreement.

4. Contract structure

4.1. Contract parts

4.1.1. This Contract consists of the following parts:

a. Part A – Panel Terms;

b. Schedules to Part A – Panel Terms stated in Item 2 of Part D – Contract Details;

c. Part B – Panel Appointment Details;

d. Part C – Contract Terms;

e. Schedules to Part C – Contract Terms stated in Item 2 of Part D – Contract Details;

f. Attachments to Schedules to Part C – Contract Terms (if applicable);

g. Part D – Contract Details;

h. Attachments to Part D – Contract Details;

i. Part E – Definitions and Interpretation; and

j. any other documents incorporated by reference into the Contract.

4.2. Order of precedence

4.2.1. To the extent of any inconsistency between any parts of this Contract, the parts will have priority in the descending order set out in clause 4.1.1. This clause is subject to clause 4.2.2.

4.2.2. Amended terms approved in accordance with clause 4.4.1 will have priority over the parts and Schedules set out in clause 4.1.1 to the extent that they are different.

Note: The terms of the Contract have been set and generally cannot be changed except in the following circumstances:

Buyer approval only

1. **Adding terms that are not inconsistent with the Contract (clause 4.3)** – Buyers and Sellers may agree to add terms to the Contract where the terms are not inconsistent with the set terms of the Contract. For example, to address a specific Buyer requirement not addressed in the set terms of the Panel Agreement. To be enforceable, any added clauses must meet the requirements, set out in clauses 4.3 and 4.4. If approved, these changes are to be included in Item 49 of Part D – Contract Details.

2. **Amending terms where expressly permitted (clause 4.4.1.e)** – Buyers and Sellers may agree to amend certain clauses in Part C – Contract Terms and the Module Terms. For example, clause 14.7 – Liquidated damages. If approved, these changes are to be included in the Item in Part D that applies to the relevant clause.

Buyer and DTA approval

3. **Amending terms where not expressly permitted (clause 4.4.1.f)** – Buyers and Sellers may only change the terms of a Contract to be inconsistent with the set terms of the Contract after receiving approval from DTA. If approved, these changes are to be included in Item 49 of Part D – Contract Details.

4.3. Additional terms

4.3.1. The parties may include additional terms in a Contract if the terms:

a. are agreed to in writing by the Buyer;

b. do not fall within clauses 4.4.1.a to 4.4.1.d; and

c. are set out in Item 49 of Part D – Contract Details.

4.3.2. This clause 4.3 also applies to any variations to this Contract.

4.4. Amended terms

4.4.1. The parties must not add to or amend the terms of the Panel Agreement in a Contract with terms that:

a. are inconsistent with or in conflict with the terms of the Panel Agreement;

b. seek to reduce the legal obligations of a Seller;

c. impose additional obligations on the Buyer; or

d. limit the rights or remedies of a Buyer,

unless the Buyer has agreed to the amendment; and

e. the amendment is expressly permitted under the Panel Agreement; or

f. DTA has approved the amendment in writing.

4.4.2. Amended terms to a Contract under clause 4.4.1 will be set out:

a. *for amendments made under clause 4.4.1.e* – in the relevant Item in Part D – Contract Details that relates to the amended term; or

b. *for amendments made under clause 4.4.1.f* – in Item 49 of Part D – Contract Details.

4.4.3. If DTA approves any amended terms under clause 4.4.1 for this Contract, the relevant part of the Panel Agreement is amended for this Contract only. Any other Contracts are unaffected.

4.4.4. This clause 4.4 also applies to any variations to a Contract.

4.5. Terms that will have no effect

4.5.1. Any addition or amendment to the Panel Agreement terms in a Contract that is not made in accordance with clause 4.3 and clause 4.4 will have no effect.

4.5.2. If the Seller tries to apply terms to Products and Services, such as by requiring a Buyer user to click ‘I agree’ to terms when using Products and Services, those terms will not be enforceable.

5. Provision of Products and Services

5.1. Products and Services

5.1.1. The Seller must:

a. provide the Products and Services in accordance with the requirements set out in this Contract, including in Item 15 of Part D – Contract Details;

b. provide the Products and Services to a standard recognised as a high professional standard by the industry to which the Seller belongs;

c. ensure that the Products and Services are fit for the purpose set out in Item 18 of Part D – Contract Details (if any) and other known purposes;

d. provide the Buyer the Contract Material, including the Contract Material stated in Item 30 of Part D – Contract Details;

e. comply with the Delivery Schedule stated in Item 10 of Part D – Contract Details and meet any Milestones;

f. meet or exceed any Service Levels;

g. comply with the Performance Management Framework; and

h. submit invoices and any required supporting documentation in the manner stated in clause 13, the relevant Module Terms and Item 28 of Part D – Contract Details.

5.2. Transfer of ownership

5.2.1. Title in each item of Hardware or tangible property that is part of the Products and Services will transfer to the Buyer when:

a. delivered;

b. Accepted when the Hardware or tangible property is subject to Acceptance Testing; and

c. fully paid for by the Buyer.

5.2.2. The Buyer accepts the risk of loss of or damage to each item of Hardware or tangible property that is part of the Products and Services from the time that it is delivered to the Buyer. Despite this, the Seller will be liable for any loss or damage to the extent that it is contributed to or caused by the Seller or its Personnel.

5.3. Warranties – Hardware

Note: This clause only applies when the Seller is providing Hardware under the Contract.

5.3.1. The Seller warrants that on delivery to the Buyer, Hardware will:

a. be newly manufactured, unless otherwise stated in Item 17 of Part D – Contract Details;

b. be fit for the purpose:

i. set out at Item 18 of Part D – Contract Details (if any); and

ii. any other known purposes;

c. be free from any Fault in workmanship, design and materials;

d. be free from any encumbrances; and

e. meet or exceed the requirements set out in this Contract.

5.3.2. The Seller must, to the extent permitted by law, pass through and assign to the Buyer all Publisher and other relevant third party warranties that apply to, or are provided with, the Products (**Third Party Warranty**). The Seller must do everything requested by the Buyer to enforce any Third Party Warranty. This does not limit any other warranties given by the Seller.

5.3.3. If during the Contract Period an issue arises in relation to a Product procured from a Publisher or other third party, the Seller must:

a. notify the Publisher or other third party of the issue; and

b. use best efforts to ensure that the Publisher or other third party promptly:

i. repairs the Product;

ii. replaces the Product; or

iii. otherwise resolves the issue,

under the relevant Third Party Warranty.

5.3.4. If as a result of the Seller's act or omission:

a. a Third Party Warranty becomes void or unenforceable; or

b. the application of a Third Party Warranty is limited,

the Seller must:

c. use best efforts to obtain the benefit of the Third Party Warranty; and

d. comply with the Buyer's directions. This may include a direction to purchase (at the Seller's expense) a replacement item of Product or an extended or additional Third Party Warranty.

5.4. Acceptance Testing

5.4.1. If stated in Item 19 of Part D – Contract Details, the Products and Services are subject to Acceptance Testing by the Buyer.

5.4.2. The Buyer may amend clause 5.4 with terms stated in Item 19 of Part D – Contract Details.

5.4.3. Products and Services that by their nature do not require Acceptance Testing, will be considered for Acceptance on the basis of their compliance with the requirements set out in this Contract.

5.4.4. If requested by the Buyer, the Seller will provide details of tests to perform for the:

a. certification;

b. installation;

c. commissioning; or

d. acceptance,

of any relevant Products and Services that the Buyer may use to develop its Acceptance Tests.

5.4.5. Details should be in writing and contain a test methodology detailing:

a. the conditions under which each test should be conducted;

b. full details of each test;

c. how each test should be conducted;

d. the input or data required for each test;

e. the expected result of each test;

f. any assumption behind, qualification to, or known shortcoming of, each test; and

g. suitable test data.

5.4.6. Test data must be provided in the reasonable electronic format and on the type of media as the Buyer may specify.

5.4.7. The Buyer will carry out the Acceptance Testing. The Seller must assist the Buyer to ensure that the Products and Services meet the Acceptance Test Criteria stated in Item 19 of Part D – Contract Details.

5.4.8. If the Buyer asks the Seller to carry out Acceptance Testing, the Seller must allow the Buyer to observe the performance of the tests.

5.4.9. The Seller acknowledges and agrees that Acceptance Tests may include a live production test of up to 45 days duration. The Buyer may state another timeframe in Item 19 of Part D – Contract Details.

5.4.10. The Seller must comply with any reasonable request by the Buyer for further testing in relation to the Products and Services.

5.4.11. If the Buyer finds that the Seller:

a. *has satisfied the Acceptance Criteria* – the Buyer must notify the Seller:

i. within the timeframe stated in Item 19 of Part D – Contract Details; or

ii. if no time is stated, 10 Business Days,

that the Products and Services have passed Acceptance Testing. The relevant Products and Services will then be deemed to have been Accepted by the Buyer; or

b. *has not satisfied the Acceptance Criteria* – the Buyer must notify the Seller:

i. within the timeframe stated in Item 19 of Part D – Contract Details; or

ii. if no time is stated, 10 Business Days,

that the Products and Services have not passed Acceptance Testing including details. The Seller must then:

iii. do everything necessary to rectify any problems to ensure that the Acceptance Criteria are met;

iv. notify the Buyer that it believes it meets the Acceptance Criteria; and

v. repeat the Acceptance Testing as soon as practicable or within the time period agreed by the parties.

5.4.12. Clause 5.4.11 will apply to any repeated Acceptance Testing.

5.4.13. If the Buyer notifies the Seller that the Products and Services have passed Acceptance Testing under clause 5.4.11.a:

a. the Buyer may impose conditions on Acceptance; and

b. it is not a waiver of the Buyer's rights under this Contract.

5.4.14. If the Seller has not met the Acceptance Criteria for relevant Products and Services within:

a. 15 Business Days after the commencement of Acceptance Testing; or

b. if further Acceptance Testing is required under clause 5.4.11, such further period as notified by the Buyer,

the Buyer may treat the Seller's failure to meet the Acceptance Criteria as a failure to comply with the applicable requirements for the Products and Services under this Contract.

5.4.15. If the Buyer does not notify the Seller under clause 5.4.11 within:

a. 20 Business Days; or

b. such other time stated in Item 19 of Part D – Contract Details,

of the Products and Services being provided to the Buyer for Acceptance, the Products and Services will be deemed to have been accepted by the Buyer under clause 5.4.11.a.

5.4.16. The Seller must perform its obligations under this Contract in such a way that the Buyer is able to participate in any necessary:

a. inspections of work in progress;

b. tests; or

c. evaluations,

of the Products and Services.

5.5. Plans

5.5.1. This clause 5.5 applies if stated in Item 20 of Part D – Contract Details.

5.5.2. The Seller must give the Buyer a draft of each plan stated in Item 20 of Part D – Contract Details (**Plan**). Plans must be given within the timeframe stated in the Delivery Schedule in Item 10 of Part D – Contract Details.

5.5.3. Each draft Plan must meet the content requirements for that Plan as stated in Item 20 of Part D – Contract Details.

5.5.4. The Buyer may either:

a. notify the Seller that a draft Plan is an Approved Plan; or

b. notify the Seller to revise and resubmit the Plan within 5 Business Days (or such time as the notice specifies). The Seller must revise and resubmit the draft Plan in accordance with the requirements in the notice.

5.5.5. The Seller must provide the Products and Services as required in an Approved Plan, from the date the draft Plan is an Approved Plan under clause 5.5.4.a.

5.5.6. The Buyer may terminate this Contract immediately by notice to the Seller if the Seller has not obtained Buyer approval of all Plans within the timeframe stated in the Delivery Schedule or such longer period as approved by the Buyer in writing.

5.5.7. The Seller may request changes to any Approved Plan by submitting an updated draft of that Plan to the Buyer. The process for obtaining Buyer approval of the changes is the same as in clauses 5.5.3 and 5.5.4.

5.5.8. The Seller must comply with the Approved Plans in:

a. providing the Products and Services; and

b. performing its obligations under this Contract.

5.6. Milestones

5.6.1. This clause 5.6 applies if stated in Item 21 of Part D – Contract Details.

5.6.2. The Seller must complete and obtain Buyer approval of the Milestones:

a. stated in Part D – Contract Details, including in Item 21; or

b. stated in any Approved Plans;

by the completion date stated in Item 21 of Part D – Contract Details, or in an Approved Plan, for the Relevant Milestone.

5.6.3. The Seller must confirm in writing the completion of a Milestone by promptly providing a completion certificate to the Buyer. The certificate should be substantially in the form given in the DTA Forms.

5.6.4. The Buyer may approve or not approve completion of the Milestone:

a. *if the Buyer does not approve completion* – it will not approve the completion certificate and will promptly notify the Seller, giving reasons. The Seller must then use its best endeavours to complete the Milestone; or

b. *if the Buyer approves completion* – it will approve the completion certificate in writing.

5.7. Additional Work

> ***Note**: Buyers should consider the Commonwealth Procurement Rules and Department of Finance guidance on procurement before requesting Additional Work.*

5.7.1. The Buyer may ask the Seller for Additional Work outside the scope of this Contract.

5.7.2. The Seller agrees to give a quote for the Additional Work based on:

a. the hourly rates of the Key Personnel who will undertake the work, as set out in Item 24 of Part D – Contract Details or Attachment A (Pricing), Part D – Contract Details;

b. the additional fees set out in Item 26 of Part D – Contract Details or Attachment A (Pricing), Part D – Contract Details for the relevant Products or Services; or

c. pricing agreed with the Buyer.

5.7.3. The Seller agrees that the pricing in the quote must not exceed the Maximum Price.

5.7.4. If the Buyer approves the quote in writing, the Seller will agree to a Contract Variation to include the Additional Work.

5.8. Delay

5.8.1. If the Seller becomes aware that there will be, or is likely to be, a delay in relation to any Milestone, the Seller must:

a. immediately notify the Buyer;

b. use its best endeavours to minimise any delay, and the impact of the delay on the Buyer, regardless of the cause of the delay; and

c. where requested by the Buyer, provide the Buyer with a Cure Plan in accordance with clause 35.

5.9. Buyer's right to withhold payment

5.9.1. To the extent that a delay is caused by the Seller, the Buyer may withhold any payment due for completion of a Relevant Milestone. Payment may be withheld for so long as the Seller has not obtained approval of completion of that Milestone.

5.10. Moral Rights

5.10.1. To the extent permitted by law and for the benefit of the Buyer, the Seller:

a. consents to the Buyer using all Material that is either vested in or licensed to the Buyer under this Contract (**Relevant Material**); and

b. must ensure that each author of Relevant Material consents in writing to the Buyer using the Relevant Material,

even if the use may otherwise be an infringement of their Moral Rights.

5.11. Indigenous Cultural Intellectual Property

5.11.1. If the Products and Services include Indigenous Cultural Intellectual Property (**ICIP**) the Seller must:

a. obtain the prior written consent of the ICIP owner or owners for use of the ICIP;

b. make fair and reasonable payment to the owner or owners for the ICIP;

c. comply with any conditions that the owner or owners place on the use of ICIP; and

d. give proper acknowledgement and attribution for the ICIP.

5.11.2. The Seller must notify the Buyer of any requirements for its use of ICIP under clause 5.11.1.c or 5.11.1.d.

5.12. Indigenous Data

Note: Buyers are required to implement the Framework for Governance of Indigenous Data (GID).

5.12.1. The Seller must indicate to the Buyer the location and nature of any Indigenous Data included in the Products and Services:

a. upon delivery of the Products and Services; and

b. if any Indigenous Data is added to the Products and Services, during the Contract Period.

5.13. Buyer Property

5.13.1. The Buyer may make Buyer Property available to the Seller or its Personnel for the purpose of providing the Products and Services.

5.13.2. Buyer Property, including as stated in Item 35 of Part D – Contract Details, remains the property of the Buyer. The Seller must ensure that it and its Personnel return all Buyer Property that is not required for the purposes of this Contract to the Buyer as soon as practicable. The parties may agree different arrangements in writing.

5.13.3. The Seller must ensure that it and its Personnel:

a. comply with any additional conditions stated in Item 35 of Part D – Contract Details or otherwise notified by the Buyer to the Seller, regarding the Buyer Property;

b. take all reasonable care of Buyer Property;

c. promptly inform the Buyer of any loss or damage (excluding fair wear and tear) to any Buyer Property. If requested by the Buyer and if loss or damage has been caused by the fault of the Seller or its Personnel, the Seller must replace the Buyer Property as soon as practical and at no cost to the Buyer;

d. return Buyer Property if asked by the Buyer;

e. comply with instructions of the Buyer for preserving, forwarding or disposing of any damaged Buyer Property provided that such damage has been caused by the fault of the Seller or its Personnel; and

f. not do any of the following without the prior written approval of the Buyer:

i. use or allow others to use any Buyer Property other than for the purposes of this Contract;

ii. part with possession or custody of any Buyer Property;

iii. create or allow the creation of any lien, charge or mortgage over any Buyer Property;

iv. modify any Buyer Property; or

v. remove Buyer Property from the Buyer's premises or facilities.

5.14. Authorisations

5.14.1. The Seller must ensure that:

a. it obtains and maintains all approvals and licences necessary to provide the Products and Services in accordance with this Contract (**Authorisations**). This includes export approvals;

b. it provides a copy of any Authorisations to the Buyer within 5 Business Days of a request from the Buyer; and

c. all work under this Contract is performed in accordance with all Authorisations.

5.14.2. The Seller must promptly notify the Buyer if there is any change in circumstances which prevents the Seller from performing its obligations under this Contract in accordance with all Authorisations.

5.14.3. The Buyer acknowledges that it may need to comply with any export control laws that apply to the Products and Services.

5.15. Transition out

> ***Note:*** Buyers may wish to include additional requirements in relation to data migration where clause 5.15.3.c is not sufficient to cover the Buyer's requirements. Refer to DTA's DMP 2 model clauses for provisions relating to migration of Buyer Data to a new service provider at the end of the Contract.

5.15.1. The Buyer may state additional requirements for transition out in Item 15 of Part D – Contract Details.

5.15.2. The Seller must take all actions necessary to ensure there is:

a. an efficient and effective separation from the Products and Services so that the Buyer can fully utilise the Products and Services and any related documentation; and

b. a transfer of the Products and Services to the Buyer or its nominee (including any new contractor) to cause minimal disruption and inconvenience to the Buyer.

5.15.3. In addition to clause 5.15.2, the Seller must provide the following assistance to the Buyer on termination or expiration of this Contract as relevant:

a. work with the Buyer or its nominee to plan and implement all necessary actions;

b. comply with all relevant security and data protection obligations in this Contract;

c. transfer or provide access to the Buyer, or its nominee, all:

i. information;

ii. data in accordance with the requirements stated in clause 23.5; and

iii. documents,

stored by the Seller or under the control of the Seller relating to the Products and Services or this Contract;

d. if requested by the Buyer, provide training related to the Products and Services to the Buyer's Personnel and any third party;

e. make the Seller's Personnel available for discussions with the Buyer;

f. otherwise fully cooperate with the Buyer and any third party nominated by the Buyer. The Seller must do all other tasks and provide all information as may be reasonably necessary, to ensure a smooth transition to the Buyer or that third party; and

g. any other decommissioning activities or Services as required by this Contract.

5.15.4. If requested by the Buyer, the Seller must provide verification of its performance of its obligations under clause 5.15.3.

5.15.5. The obligations in this clause 5.15 apply:

a. for the period stated in Item 12 of Part D – Contract Details; or

b. if no period stated, for three months after termination or expiry of this Contract.

5.16. Escrow

Note: This is a simple escrow clause. Where appropriate, Buyers may replace this clause with a more comprehensive escrow clause (see DTA's DMP 2 model clauses).

5.16.1. This clause 5.16 applies if stated in Item 23 of Part D – Contract Details.

5.16.2. The Buyer may amend clause 5.16 with terms specified in Item 23 of Part D – Contract Details.

5.16.3. The Seller must store source code that the Seller is required to develop as part of the Products and Services with an escrow agent.

5.16.4. The Seller must enter into an escrow arrangement:

a. with an escrow agent in Australia that is selected by the Buyer; and

b. in the form of agreement reasonably required by the Buyer.

5.16.5. The parties:

a. are responsible for their own costs of entering into the escrow arrangements; and

b. will pay the costs of the escrow agent as stated in Item 26 of Part D – Contract Details or Attachment A (Pricing), Part D – Contract Details.

6. Data

6.1. Hosting of Buyer Data

6.1.1. This clause 6.1 applies if stated in Item 33 of Part D – Contract Details.

6.1.2. The Buyer may amend this clause 6.1 with terms specified in Item 33 of Part D – Contract Details.

6.1.3. The Seller must provide the Products and Services and host all Buyer Data using the:

a. approved cloud provider; and

b. hosting location,

stated in Item 33 of Part D – Contract Details (**Approved Cloud Provider and Hosting Location**).

6.1.4. The Seller must notify the Buyer immediately if the Approved Cloud Provider and Hosting Location:

a. is not available to provide cloud-based hosting of the Buyer Data for any reason; or

b. does not continue to hold the required level of certification under the Hosting Certification Framework stated in Item 33 of Part D – Contract Details.

6.1.5. If the Seller is required to provide a notice under clause 6.1.4, the Seller must, as soon as practical:

a. identify a potential replacement cloud provider that holds the required level of certification under the Hosting Certification Framework stated in Item 33 of Part D – Contract Details (**Proposed Replacement**); and

b. give the Buyer written details of the Proposed Replacement including the proposed hosting location.

6.1.6. If the Buyer confirms in writing that the Seller's Proposed Replacement is approved, then the Seller must immediately:

a. stop hosting the Buyer Data with the previous cloud provider and remove all Buyer Data from that hosted environment;

b. appoint the Proposed Replacement as the new Approved Cloud Provider and Hosting Location; and

c. transfer all Buyer Data to the new Approved Cloud Provider and Hosting Location.

6.1.7. If the Buyer does not agree to the Seller's Proposed Replacement, then:

a. the Buyer may terminate this Contract immediately by notice to the Seller; and

b. the Seller must immediately stop hosting the Buyer Data with the cloud provider and return all Buyer Data to the Buyer.

6.2. Media decommissioning

6.2.1. This clause 6.2 applies if stated in Item 34 of Part D – Contract Details.

6.2.2. The Seller must conduct a media decommissioning process before disposing of storage media used to store Buyer Data. This includes ensuring the storage media is degaussed, erased, purged, physically destroyed or otherwise sanitised in accordance with:

a. the requirements of the Information Security Manual; and

b. any other requirements in Item 34 of Part D – Contract Details.

6.2.3. If requested by the Buyer, the Seller must provide the Buyer with a report or certification showing compliance with this clause 6.2.

6.3. Data Mining

6.3.1. The Seller must not, at any time:

a. conduct Data Mining activities with any Buyer Material; or

b. ingest Buyer Data into a large language model or any artificial intelligence model,

unless otherwise specified as part of the Services under this Contract.

6.3.2. The prohibition on Data Mining applies even if a user is required to click through and accept any Seller terms permitting the Seller to conduct Data Mining on a user or a collection of user accounts. Such terms have no effect whatsoever.

6.3.3. If the Seller ordinarily conducts Data Mining by means of an automated process, the Seller must disable it.

6.4. Business continuity and disaster recovery

6.4.1. The Seller must take reasonable and prudent steps for disaster recovery and business continuity consistent with good industry practice to ensure that Buyer Data on the Seller's systems is not lost, corrupted or rendered inaccessible.

7. Artificial Intelligence (AI)

Note: This clause 7 is appropriate:

- where the Seller uses an AI System to assist in the provision of the Products or Services;
- where an AI System is integrated into the Products or Services; or
- where the Seller is providing a bespoke AI System to the Buyer.

Where the Seller is providing a bespoke AI System to the Buyer, the Buyer should add additional clauses to the Contract from DTA's AI model clauses, available here. Additional clauses can be included in Item 49 of Part D – Contract Details.

7.1. Seller use of AI must be approved by Buyer

7.1.1. Where:

a. the Seller intends to use an AI System for the provision of the Products and Services; or

b. an AI System is integrated into the Products or Services,

the Seller must:

c. notify the Buyer prior to the provision of the Products and Services with details of the proposed AI technology and functionality; and

d. obtain the Buyer's prior written approval for such use or integration.

7.1.2. The Seller must only use an AI System in accordance with:

a. the Buyer's approval and any conditions to the approval, if given, as stated in Item 22 of Part D – Contract Details; and

b. the terms of the Contract, including those in relation to:

i. Intellectual Property;

ii. confidentiality;

iii. Official Information;

iv. security;

v. privacy; and

vi. data usage.

7.1.3. The Seller is fully responsible for the performance of this Contract regardless of any use of an AI System at any point in the Supply Chain used to deliver the Product and Services. This includes where the use is approved by the Buyer.

7.2. Seller to confirm accuracy

7.2.1. Where the Seller uses an AI System for the provision of the Products and Services, it must conduct quality assurance checks on the AI System outputs to ensure they are accurate and reliable.

7.3. Seller to keep records

7.3.1. Where the Buyer approves the use of an AI System or an AI System is integrated into the Products and Services, the Seller must ensure that it retains detailed records of:

a. the AI System used;

b. the scope of the AI System's use in providing the Products and Services;

c. any data collected, processed and stored by the AI System; and

d. any systems that the AI System interacts with in connection with providing the Products and Services.

7.3.2. The Seller must promptly provide these records if asked by the Buyer.

7.4. Seller not to use Banned AI Systems

7.4.1. The Seller must ensure that a Banned AI System is not used in the provision of the Products and Services, including that it is not:

a. used in any part of the Supply Chain used to provide the Products and Services;

b. accessed, used or installed on the Buyer's Digital Systems; or

c. used in any web services or applications to be provided by the Seller under this Contract.

7.4.2. If the Seller discovers that a Banned AI System has been used in contravention of clause 7.4.1, the Seller must immediately notify the Buyer and remove the Banned AI System from use.

7.5. AI Inputs and AI Outputs

7.5.1. The Seller must ensure:

a. Buyer AI Inputs; and

b. AI Outputs in response to Buyer AI Inputs:

are:

c. kept confidential;

d. securely protected from third party access;

e. not incorporated into or merged with an AI System, and

f. stored and protected as specified in Schedule 1.

7.5.2. The Seller must:

a. conduct quality assurance checks to ensure AI Outputs are accurate and reliable; and

b. keep detailed records of the AI System, its scope of use, data handled, and systems it interacts with. The Seller must provide these records to the Buyer if requested.

7.6. Compliance with additional requirements

> ***Note:*** This clause 7.6 requires the Seller to meet certain obligations in accordance with best industry practice.
>
> Buyers should consider including additional requirements from DTA's AI model clauses based on their risk assessment and the particular circumstances of their project. For example, Buyers may require the Seller to act in accordance with best industry practice **and/or** ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System.

7.6.1. The Seller must ensure that any AI System used for the provision of the Products and Services or integrated into the Products and Services:

a. complies with all applicable laws and policies relating to the development, delivery, installation and integration of the AI System;

b. does not discriminate, or cause or facilitate discrimination, against any person or group on grounds of any protected characteristic set out in:

   i. *Age Discrimination Act 2004* (Cth);

   ii. *Disability Discrimination Act 1992* (Cth);

   iii. *Racial Discrimination Act 1975* (Cth);

   iv. *Sex Discrimination Act 1984* (Cth);

c. is designed, developed and tested in a way which ensures that its operation is sufficiently transparent to enable:

   i. the Buyer to understand and use the AI System appropriately; and

   ii. where possible, its output to be traced back to the input data;

d. keeps automatic records of events; and

e. is subject to training, testing, monitoring and validation including to the extent possible to ensure that the AI System:

   i. does not result in a breach of clause 7.6.1.b; or

   ii. result in bias,

in each case, in accordance with best industry practice.

7.7. Notification of incidents

7.7.1. The Seller must notify the Buyer immediately if the Seller becomes aware that:

a. an AI Incident has occurred;

b. an AI Hazard exists;

c. the AI System is malfunctioning or producing incorrect or harmful outputs; or

d. an event listed in Item 22 of Part D – Contract Details occurs,

in relation to the AI System used for the provision of the Products and Services or integrated into the Products and Services.

7.7.2. The Seller must comply with all reasonable directions of the Buyer in relation to an AI Incident or AI Hazard, which may include disabling the AI System under clause 7.8.

7.8. Circuit breaker – intervene or disengage the AI System

7.8.1. The Seller must ensure that the AI System used for the provision of the Products and Services or integrated into the Products and Services contains a circuit-breaker capable of interrupting and stopping the AI System immediately:

a. upon the Buyer's instructions to the Seller or if an event listed in Item 22 of Part D – Contract Details occurs; and

b. via a human-machine interface tool accessible to the Buyer.

7.9. Human oversight

7.9.1. The Seller must provide relevant information and guidance to the Buyer so that Buyer Personnel:

a. are aware of and sufficiently understand the relevant capacities and limitations of the AI System used for the provision of the Products and Services or integrated into the Products and Services;

b. are able to monitor the AI System used for the provision of the Products and Services or integrated into the Products and Services, so that signs of anomalies, dysfunctions and unexpected performance can be detected and addressed as soon as possible; and

c. remain aware of the possible tendency of automatically relying or over-relying on the output produced by the AI System used for the provision of the Products and Services or integrated into the Products and Services.

8. Support and Maintenance

8.1. Provision of Support and Maintenance

> ***Note:*** Support and Maintenance includes Rectification under clause 8.3 and Preventative Maintenance under clause 8.4. The Seller must comply with clauses 8.1 and 8.2 when providing any Support and Maintenance including Rectification and Preventative Maintenance.

8.1.1. The Seller must comply with clauses 8.1 and 8.2 if providing Support and Maintenance under the Contract as stated in Item 46 of Part D – Contract Details or otherwise set out in the Module Terms.

> ***Note:*** Buyers should specify any additional Support and Maintenance required in Item 46 of Part D – Contract Details, including any Support and Maintenance required outside the Rectification Period.

8.1.2. The Seller must:

a. provide any additional Support and Maintenance in relation to any Supported Items stated in Item 46 of Part D – Contract Details, for the period stated in Item 46 of Part D – Contract Details; and

b. comply with any Service Levels relating to Support and Maintenance.

8.1.3. The Buyer may amend this clause 8 with terms stated in Item 46 of Part D – Contract Details.

8.2. Issue Management

> ***Note:*** The default position in this clause 8.2.1 is that the Seller provides contact facilities on a 24 hour and 7 day a week basis. However, the Buyer and Seller may agree to a different availability in Item 46 of Part D – Contract Details.

8.2.1. The Seller must provide comprehensive facilities to enable the Buyer to:

a. seek Support and Maintenance; and

b. report any Fault or possible Fault in any Supported Item,

including (unless otherwise agreed by the Buyer):

c. a single number toll free telephone facility, together with email; and

d. internet reporting facilities,

available on a 24 hour and 7 day a week basis on every day of the year (unless otherwise stated in Item 46 of Part D – Contract Details).

8.2.2. The Seller must manage all Support and Maintenance activities and ensure that the Buyer is fully informed as to their status, including:

a. properly logging all reported Faults, possible Faults and requests for Support and Maintenance;

b. tracking and advising the Buyer of the status of all Support and Maintenance requests and all activities, actions, decisions and responses, through to resolution; and

c. automatically escalating the response in accordance with:

   i. the severity of any Fault or possible Fault or issue;

   ii. impact on the Buyer's operations;

   iii. the elapsed time during which a Fault remains unresolved in accordance with the Seller's normal practice and the Buyer's reasonable expectations; and

   iv. any request from the Buyer to escalate the response.

8.2.3. The Seller must maintain accurate records of all Support and Maintenance activities, including full details of all:

a. Faults or potential Faults reported or otherwise detected, including the exact time of report or detection;

b. all Support requests, including the exact time of request;

c. problem diagnosis, remedial and preventative Support and Maintenance and other action taken, including the exact time and nature of the action taken;

d. escalation and other management action in relation to the Support and Maintenance activity;

e. the Seller Personnel involved;

f. any parts replaced, modified or added; and

g. the exact time a Fault or possible Fault is fully resolved and closed.

8.2.4. The Seller must ensure that all relevant documentation is updated to fully and properly reflect all Support and Maintenance activities. This will include updating:

a. all relevant manuals;

b. Buyer site documentation;

c. Buyer Supported Item management or tracking systems; and

d. Buyer management information systems.

8.2.5. All Support and Maintenance must be carried out in a manner that will cause the least disruption to the Buyer's operations.

8.2.6. The Seller must properly test any:

a. proposed patch;

b. update;

c. other change; or

d. Supported Item,

that is repaired prior to proposing to implement it or certifying that any Fault or possible Fault is fixed.

8.2.7. The Seller must promptly notify the Buyer when it considers that Support and Maintenance has been completed.

> ***Note***: The below is typically a requirement where PROTECTED level data will be on systems or other high security situations.

8.2.8. Where the Seller, as part of Support and Maintenance, replaces any component that may contain Buyer Data, the Seller must:

a. immediately take all reasonable action to remove and return to the Buyer; or

b. where removal and return is not reasonably possible, totally and permanently erase,

all the Buyer Data contained in it.

8.2.9. Where the Buyer Data on a replaced component cannot be removed or erased, the Seller must seek specific instructions from the Buyer on how to deal with the component. The Seller must securely destroy the component if directed to do so by the Buyer.

8.2.10. The Seller must immediately advise the Buyer if it detects or becomes aware of any condition or potential condition within the Supported Item or the Buyer's Digital Systems that might:

a. constitute a hazard;

b. affect the Buyer; or

c. affect safety.

8.3. Rectification (remedial maintenance)

> ***Note:*** This clause 8.3 requires that the Seller conduct unscheduled maintenance to rectify Faults and restore Supported Items during the applicable Rectification Period. This includes Faults arising from a breach of any warranty set out in this Contract.
>
> For procurements of Software and Cloud Services, Schedule C3 – Software and Cloud Services Module Terms require that the Seller Rectify Faults during the

applicable Rectification Period. The requirements in clauses 8.1 and 8.2 apply to the Seller's obligations to Rectify Faults.

8.3.1. The Seller must comply with this clause 8.3 as stated in:

a. the Module Terms; or

b. Item 46 of Part D – Contract Details.

8.3.2. The Seller must Rectify Faults in Supported Items during the applicable Rectification Periods.

8.3.3. The Seller must:

a. within 24 hours (unless otherwise stated in Item 46 of Part D – Contract Details or agreed by the Buyer in writing) of being informed by the Buyer of a Fault, replace, repair or modify the affected Supported Item to rectify the Fault;

b. meet all costs associated with Rectification, including any packing, freight, repair, modification, disassembly, reassembly, site attendance or other costs, except if the Fault in the Product or Service is due to:

i. negligence of the Buyer; or

ii. any use or modification of the Supported Item by the Buyer which is not in accordance with or permitted by this Contract.

8.3.4. Any Rectification work is subject to the same Acceptance Testing requirements that applied to the original Product or Service.

8.3.5. Where Rectification work is necessary, the applicable Rectification Period will be extended for 60 Business Days from:

a. the date the Rectification work is Accepted by the Buyer; or

b. the end date of the Rectification Period,

whichever is later.

8.3.6. If the Seller does not Rectify a Fault within 24 hours (or other period stated in Item 46 of Part D – Contract Details or agreed by the Buyer in writing), the Buyer may:

a. at its discretion, perform, or have performed, the Rectification works; and

b. recover the reasonable expenses of the Rectification works from the Seller.

8.3.7. Nothing in this clause 8.3 limits any rights of the Buyer under applicable law.

8.4. Preventative Maintenance

8.4.1. The Seller must provide Preventative Maintenance in relation to any Supported Items as stated in:

a. Item 46 of Part D – Contract Details; and

b. the Module Terms.

8.4.2. Any Preventative Maintenance is subject to the same Acceptance Testing requirements that applied to the original Product or Service.

8.4.3. The Buyer may refuse to implement any Supported Item that fails to pass its Acceptance Tests. Such refusal will not:

a. reduce the Seller's obligations under this Contract; or

b. adversely affect the Buyer's rights in respect of Support and Maintenance.

9. Service Levels and Credits

9.1. Service Levels

9.1.1. Clauses 9.1 to 9.3 apply if stated in Item 47 of Part D – Contract Details.

9.1.2. The Seller must meet the Service Levels stated in Item 47 of Part D – Contract Details.

9.2. Service Credits

9.2.1. If the Seller fails to meet any of the Service Levels stated in Item 47 of Part D – Contract Details, the Seller must reduce the Price in accordance with the table in Item 47 of Part D – Contract Details.

9.2.2. If Service Credits are incurred and payable to the Buyer under that Item, then:

a. the Seller must:

i. adjust the amount of the next invoice under clause 9.1; or

ii. where there are no more invoices under clause 9.1, pay to the Buyer (on demand by the Buyer) the applicable Service Credit; or

b. the Buyer may deduct the applicable Service Credit from the Price payable to the Seller.

9.2.3. The Seller acknowledges that:

a. its failure to meet a Service Level may have a material adverse impact on the business and operations of the Buyer;

b. Service Credits represent a reduction in the Price to reflect the provision by the Seller of a lower level of service than is required under this Contract;

c. Service Credits are an agreed amount by which the Price may be reduced in accordance with this Contract; and

d. except under clause 9.2.5, the Buyer's rights under this clause 9.2 are in addition to, and do not waive, the Buyer's right to seek any other remedy under this Contract or at law.

9.2.4. Any limitation of liability under this Contract does not apply to any Service Credits.

9.2.5. Any damages recovered by the Buyer under or in connection with this Contract will be reduced by the amount of any Service Credits (if any) which the Buyer has received in respect of the same event giving rise to the damage.

9.3. Process for determining a Service Level Failure

9.3.1. A Service Level Failure is recorded for each occasion the Seller does not comply with or maintain the Minimum Expected Performance of a Service Level (**Service Level Failure**).

9.3.2. Where a Service Level has a Minimum Expected Performance, availability or operation of 100%, if there is a single occasion where the performance of that Service Level is not satisfactory or maintained in accordance with the Service Level then it will constitute a Service Level Failure.

9.3.3. Clauses 9.3.1 and 9.3.2 do not apply to the extent that a Service Level Failure is caused by an event outside the reasonable control of the Seller or is significantly contributed to by an act or omission by the Buyer.

10. Whole of Government Arrangements

Note: DTA and the Commonwealth manage a number of WofG Arrangements. WofG Arrangements include both SSAs and Mandatory Panels. Buyers and Sellers should refer to clause 15 of Part A – Panel Terms for further information.

10.1. Application of Whole of Government Arrangements

10.1.1. The Seller acknowledges that:

a. the Commonwealth manages Whole of Government Arrangements (WofG Arrangements);

b. some WofG Arrangements may be mandatory for the Buyer under Commonwealth policy; and

c. the terms set out in the following table apply to this Contract if the Buyer is required or chooses to procure products and services under a WofG arrangement.

Seller	Buyer	Applicable terms
SSAs		
Seller enters into an SSA with DTA after the commencement of the Panel	If this Contract is entered *before* the SSA is in place. The Products and Services within the scope of the SSA will come under the SSA after the SSA commences.	From the date the SSA commences The Seller must supply Products and Services within the scope of the SSA on the terms of the SSA contract and not on the terms of this Contract. The Seller must comply with any transition requirements in the WofG Arrangement.

		The Seller must continue to supply any Products and Services not within the scope of the SSA under the terms of this Contract. The Seller must agree to resultant changes to this Contract through a Contract Variation. Unless otherwise stated in the SSA, the above requirements do not apply to Products and Services which have already been delivered or invoiced under this Contract before the date the SSA commenced.
Subcontractor enters into an SSA after the commencement of the Contract	Buyer has a Contract with Seller who uses an SSA subcontractor	The Buyer may: • require the Subcontracted Products and Services be provided under the terms of the SSA. • The Buyer may establish a separate contract with the Subcontractor for this purpose; or • require the Seller to provide the Subcontracted Products and Services on SSA pricing and terms under this Contract. The Seller must make resultant changes to this Contract through a Contract Variation to give effect to the above.

11. Representatives, Personnel and Subcontractors

11.1. Buyer Representative

11.1.1. The Buyer Representative stated in Item 4 of Part D – Contract Details will administer this Contract on behalf of the Buyer.

11.1.2. The Seller must:

a. send all notices and correspondence to the Buyer Representative;

b. work with the Buyer Representative as reasonably required; and

c. comply with directions of the Buyer Representative that are consistent with this Contract.

11.2. Seller Contract Representative

11.2.1. The Seller Contract Representative stated in Item 5 of Part D – Contract Details will represent the Seller under this Contract. They will be the Seller's primary contact.

11.2.2. All notices and correspondence from the Buyer must be sent to the Seller Contract Representative.

11.3. Changing Representatives

11.3.1. A party may change its representative by notice to the other party.

11.4. Subcontractors

> ***Note:*** The Buyer may refer to DTA's DMP 2 model clauses for provisions that require the Subcontract contain terms that are consistent with certain terms in this Contract. These can be added to Item 49 of Part D – Contract Details

11.4.1. The Seller must not subcontract the provision of any part of the Products and Services to any Prohibited Entity.

11.4.2. The Buyer has approved the subcontracting of the performance of the parts of this Contract to the Approved Subcontractors stated in Item 25 of Part D – Contract Details. This approval is subject to any conditions stated in Item 25 of Part D – Contract Details.

11.4.3. The Seller must not Subcontract any part of the Contract, other than to Approved Subcontractors, unless it has the Buyer's prior written approval. If the Seller does have approval to Subcontract it must:

a. ensure that all Subcontracts contain payment terms that are consistent with terms setting out when payment is due under the relevant Module Terms; and

b. give the Buyer details of each Subcontract within 5 Business Days of a request by the Buyer.

11.4.4. The Seller must provide pricing details of each Subcontract when complying with clause 11.4.3.

11.4.5. The Buyer may revoke approval provided under clause 11.4.2 at any time by notice to the Seller.

11.4.6. The Seller acknowledges, and must inform all Subcontractors, that:

a. it will make available to the Buyer (if requested), details of all Subcontractors engaged in the performance of this Contract; and

b. the Buyer may publicly disclose the names of any Subcontractors engaged in the performance of this Contract.

> ***Note***: Labour Hire Workers and Key Personnel are types of Seller Personnel.

11.5. Seller's Personnel

11.5.1. The Seller must ensure that the Personnel it uses to perform this Contract:

a. have and apply the skills, qualifications, experience, knowledge and competence necessary to provide the Products and Services to a standard that complies with this Contract;

b. are of known reliability and integrity; and

c. may be reasonably relied upon not to breach the terms and conditions of this Contract, including those relating to:

i. confidentiality;

ii. privacy;

iii. security; and

iv. safety.

11.5.2. The Seller must, at the request of the Buyer, promptly remove any of the Seller's Personnel from work under this Contract. This includes any Key Personnel.

11.5.3. The Seller must:

a. provide any information reasonably requested by the Buyer about the Seller's Personnel;

b. provide suitable replacement Personnel with the skills, qualifications, experience, knowledge and competence needed to perform work under this Contract if any of the Seller's Personnel:

i. are unavailable;

ii. require access to Security Classified Resources but are prevented from having such access under clause 25.3; or

iii. are requested to be removed by the Buyer under clause 11.5.2.

This clause 11.5.3b does not limit the Seller's obligations under clause 11.6;

c. ensure its Personnel do not do anything which would breach the Seller's obligations under this Contract; and

d. ensure its Personnel comply with any requirements and directions of the Buyer when on or using the Buyer's premises or facilities.

11.6. Key Personnel

11.6.1. The Seller must ensure that each Key Personnel performs the role nominated for that Key Personnel in Item 24 of Part D – Contract Details. This clause 11.6.1 is subject to the other provisions of clause 11.6.

11.6.2. Key Personnel must not be charged out at rates exceeding that stated in Item 7 of Part B – Panel Appointment Details and Maximum Price.

11.6.3. The Seller must at all times have in place:

a. contingency plans;

b. succession plans; and

c. other relevant plans, processes and procedures, to minimise any potential adverse impact for the Buyer if any Key Personnel should, for any reason, not be available.

11.6.4. If, despite the best efforts of the Seller, any Key Personnel becomes (or is anticipated to be) unavailable for any reason, the Seller must notify the Buyer's Representative immediately and take all reasonable action to minimise any potential adverse impact for the Buyer.

11.6.5. If any Key Personnel:

a. becomes (or is anticipated to be) permanently unavailable or unavailable for a period not acceptable to the Buyer;

b. requires access to Security Classified Resources but is prevented from having such access under clause 25.3; or

c. is requested to be removed by the Buyer under clause 11.5.2,

the Seller must:

d. as soon as possible, identify suitably skilled, qualified and experienced potential replacements;

e. provide full written details of the potential replacements to the Buyer;

f. where requested by the Buyer, arrange for potential replacements to attend interviews with the Buyer and provide requested information about them, to assist the Buyer in its consideration of any potential replacement;

g. if the Buyer confirms in writing that a potential replacement is acceptable, immediately engage that person and provide them as a substituted Key Personnel; and

h. not engage any person as a substituted Key Personnel without the Buyer's prior written approval.

11.6.6. The Seller must use its best efforts to ensure minimum turnover of Key Personnel.

11.7. Seller responsible for entitlements of its Personnel

11.7.1. Unless otherwise stated in the Module Terms, the Seller is fully responsible for all payments to its personnel, or in connection with the employment of its personnel, including:

a. superannuation contributions;

b. long service leave contributions;

c. leave loading, penalty rates and overtime;

d. payroll tax payments; or

e. other statutory employment payments,

in connection with this Contract. The Buyer is not required to make any of these payments.

11.7.2. Clause 11.7.1 applies regardless of the arrangements between the Seller and its Personnel or any legal structures adopted by those Personnel for their engagement.

11.7.3. The Seller must fully comply with all relevant laws and other Commonwealth requirements in relation to the Seller's Personnel, including laws relating to:

a. labour and industrial relations;

b. working conditions;

c. salary;

d. wages;

e. leave; and

f. the payment of withholding tax, other relevant tax and any other amounts, remissions and allowances.

11.7.4. Clause 11.7.3 includes requirements under any industrial awards or agreements relevant to this Contract.

11.7.5. The Seller must:

a. comply with all laws and other requirements relating to the security of payments that are due to its Personnel;

b. ensure that payments to its Personnel are made in a timely manner; and

c. ensure that disputes about any payment to its Personnel are resolved in a reasonable, timely and cooperative way.

This clause does not limit clauses 11.7.1 or 11.7.3.

11.7.6. The Seller must give the Buyer evidence of its compliance with its obligations under this clause 11.7, if asked.

11.7.7. This clause 11.7 survives the expiry or earlier termination of this Contract.

11.8. Seller's responsibilities

11.8.1. The Seller is fully responsible for:

a. the provision of the Products and Services; and

b. ensuring compliance with this Contract,

regardless of:

c. whether the Seller is a Reseller;

d. the suitability, quality or performance of any Buyer Material;

e. any subcontracting of the provision of the Products and Services;

f. any acceptance by the Buyer of Key Personnel or other members of the Seller's Personnel; or

g. any payment made to the Seller or any Publisher for the Products and Services.

11.9. Cooperation with other contractors

11.9.1. The Seller must coordinate its activities to ensure that work performed for the Buyer by any person is completed efficiently, on time and in accordance with this Contract.

11.9.2. The Seller must fully cooperate and work in good faith with any third parties engaged by the Buyer as required by the Buyer.

11.9.3. This clause 11.9 does not limit the Seller's other obligations under this Contract.

11.10. Meetings

11.10.1. The Seller must attend meetings as stated in Item 11 of Part D – Contract Details. The Seller must ensure the required Personnel attend meetings.

11.11. Publisher arrangements

11.11.1. Item 16 of Part D – Contract Details may state that certain Products and Services are provided by the Seller as a Reseller (**Publisher Products and Services**) in accordance with one of the following options:

a. **Option 1 – Direct Supply from the Seller with the Publisher as an Approved Subcontractor**. Under this option:

i. the Seller must include terms in its agreement with the Publisher that require the Seller to novate its rights and obligations under the agreement to the Buyer if directed by the Buyer;

ii. if the Buyer directs the Seller to novate under clause 11.11.1.a.i, the Seller must novate its rights and obligations under its agreement with the Publisher to the Buyer;

iii. the Seller must ensure that it is authorised by the Publisher to supply the Publisher Products and Services;

iv. notwithstanding clause 11.4.2, the Seller must state the Publisher in Item 16 and not Item 25 of Part D – Contract Details; and

v. the Seller must ensure its agreement with the Publisher contains terms that:

A. are consistent with the requirements in this Contract; and

B. enable the Seller to comply with its obligations under this Contract.

Note: Buyers can request Sellers provide details of Subcontracts including those under Option 1 under clause 11.4.3.

b. **Option 2 – Seller Facilitation: Under this option:**

i. the Seller must facilitate the supply of the Publisher Products and Services to the Buyer by the Publisher and be authorised by the Publisher to do so;

ii. the Seller must arrange for the Publisher to enter into a separate contract with the Buyer for the supply of the Publisher Products and Services (**Buyer-Publisher Contract**);

iii. the Seller must ensure that the Buyer-Publisher Contract:

A. is on the terms of the Software and Cloud Licence Agreement;

B. is entered by the time stated in Item 16 of Part D – Contract Details, or, if no timeframe is stated, promptly after the Contract Start Date;

iv. unless otherwise stated in Part D – Contract Details, the Buyer must pay the Seller the Price for the Publisher Products and Services and the Seller must pay, and is responsible for, all amounts payable to the Publisher for the Publisher Products;

v. if the Seller is acting as an agent for the Publisher as specified in Item 16 of Part D – Contract Details, the Seller warrants that it is fully authorised to:

A. enter into the Buyer-Publisher Contract as the agent of the Publisher in respect of the supply of the Publisher Products; and

B. to bind the Publisher to the terms and conditions of the Buyer-Publisher Contract.

11.11.2. Unless otherwise stated in Item 16 of Part D – Contract Details, if Option 2 applies, the Seller must:

a. comply with the Panel Agreement when providing all Products and Services that are not Publisher Products and Services;

b. ensure that all Publisher Products required to be provided by the Publisher are provided to the Buyer;

c. ensure that the Buyer is granted a right to exercise the licence and usage rights set out in this Contract applicable to the Publisher Products. This includes any Intellectual Property Rights;

d. coordinate and manage the provision of the Publisher Products to the Buyer in accordance with the contractual arrangements in clause 11.11.1; and

e. coordinate and manage the provision of the Publisher's obligations under the contractual arrangements. This includes any warranty service that is required to be provided in respect of any Fault in the Publisher Products.

11.11.3. If Item 16 of Part D – Contract Details does not specify which option in clause 11.11.1 applies to any Publisher Products, Option 1 applies.

11.12. Funds paid by Reseller to Publisher

11.12.1. This clause 11.12 applies to:

a. Option 1 under clause 11.11.1.a; and

b. Option 2 under clause 11.11.1.b, unless Item 16 of Part D – Contract Details states that the Buyer will pay the Publisher directly for Publisher Products and Services.

11.12.2. After the Buyer pays the Price to the Seller, the Seller must pay any part of the Price payable to the Publisher for Publisher Products and Services (**the Publisher Funds**).

11.12.3. The Seller must hold the Publisher Funds on trust for the sole benefit of the Publisher and Buyer. The Seller must hold the Publisher Funds in a separate trust account, must not mix the Publisher Funds with other Seller money, and must only use the Publisher Funds to pay the Publisher in accordance with:

i. this Contract;

ii. if Option 1 under clause 11.11.1.a applies - the Seller's agreement with the Publisher; or

iii. if Option 2 under clause 11.11.1.b applies - the Buyer-Publisher Contract.

11.12.4. If, for any reason, any part of the Publisher Funds are not paid or payable to the Publisher, the Seller must repay that part of the Publisher Funds in full to the Buyer.

11.12.5. If requested by the Buyer, the Seller must provide evidence to the Buyer of its compliance with its obligations in respect of Publisher Funds.

12. Price

12.1. Price in Module Terms

Note: See the following provisions in the Schedules to Part A – Panel Terms for the Maximum Price of the Seller's Products and Services:

- Clause 3 of Schedule A1 – ICT Labour Hire Module;
- Clause 3 of Schedule A2 – Professional and Consulting Services Module; and
- Clause 3 of Schedule A3 – Software and Cloud Services Module.

See the following provisions in the Module Terms for Price in a Contract between the Buyer and Seller:

- Clause 13 of Schedule C1 – ICT Labour Hire Module;
- Clause 4 of Schedule C2 – Professional and Consulting Services Module; and
- Clause 14 of Schedule C3 – Software and Cloud Services Module.

See Attachment A (Pricing), Part D – Contract Details for details of the Price for the Seller's Products and Services.

12.1.1. The parties will comply with the Price terms for the Seller's Products and Services, as set out in the relevant Module Terms.

13. Invoicing and payment

13.1. Invoicing and payment

13.1.1. The parties will comply with the invoicing and payment terms for the Seller's Products and Services, as set out in the relevant Module Terms.

14. Liability and indemnity

14.1. Exclusion and limitation of liability

14.1.1. The liability of a party to the other in connection with this Contract (including under any indemnity):

a. excludes liability for:

i. loss of good will or damage to reputation;

ii. loss of anticipated profit, profit or the opportunity to earn profit;

iii. financing costs and funding costs; or

iv. aggravated, exemplary or punitive damages; and

b. is limited to:

i. the amount stated in Item 44 of Part D – Contract Details; or

ii. if no amount is stated in Item 44 of Part D – Contract Details, an amount equal to three times the total Price payable under this Contract exclusive of GST.

14.1.2. Any exclusion of, or limitation on, liability under clause 14.1 does not apply to liability relating to:

a. personal injury (including sickness and death);

b. loss of, or damage to, tangible property;

c. an infringement of Intellectual Property Rights;

d. a breach of any obligation of confidentiality, security matter, data, or privacy; or

e. any breach of any statute or any wilfully wrong act or omission including any act or omission that constitutes repudiation of this Contract.

14.2. Statutory liability scheme

14.2.1. In addition to the exclusions under clause 14.1, if the Seller participates in a Statutory Liability Scheme, then:

a. the Seller's liability in relation to this Contract (including liability under any indemnity) is limited for:

i. any types of liability covered by that Statutory Liability Scheme – in accordance with that Statutory Liability Scheme; and

ii. any types of liability not covered by the Statutory Liability Scheme – as described in clause 14.1.

14.3. Indemnity

14.3.1. The Seller indemnity under this clause 14.3 does not cover excluded or limited liability under clauses 14.1 or 14.2.

14.3.2. The Seller indemnifies the Buyer from and against any:

a. cost or liability incurred by the Buyer;

b. loss of or damage to property of the Buyer;

c. loss or expense incurred by the Buyer in dealing with any claim against it; or

d. legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Buyer, in connection with paragraph a, b or c,

arising from either:

e. a breach by the Seller of an obligation under this Contract; or

f. an unlawful or negligent act or omission of the Seller in connection with this Contract.

14.3.3. The Seller's liability to indemnify the Buyer under clause 14.3.2 will reduce proportionately to the extent that any act or omission involving fault on the part of the Buyer or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

14.3.4. The Buyer's right to be indemnified under this clause 14.3 is in addition to, and not exclusive of, any other right, power or remedy provided by law.

14.4. Mitigation

14.4.1. Each party must use reasonable endeavours to mitigate its losses and expenses in connection with a breach of this Contract.

14.5. Claims under indemnity

Note: Australian Government Buyers are required to comply with the *Legal Services Directions 2017* when conducting litigation.

14.5.1. Subject to the *Legal Services Directions 2017,* if a third party makes a claim against the Buyer that is subject to the indemnity in clause 14.3, the Buyer will:

a. give written notice to the Seller with relevant details of the claim, as soon as practicable;

b. keep the Seller informed, and consult with the Seller, about the conduct of litigation relating to the claim; and

c. where practicable, seek the consent of the Seller to settlement of the claim.

14.6. Proportionate liability regimes excluded

Note: Several States have proportionate liability regimes which relate to how liability is allocated between parties. See Part 4 of the *Civil Liability Act 2002* (NSW) and similar regimes in other States.

14.6.1. Both parties agree to exclude any legislative proportionate liability regime that would otherwise apply to a claim against either party in connection with this Contract, to the extent permitted by law.

14.7. Liquidated damages

14.7.1. This clause 14.7 applies if stated in Item 45 of Part D – Contract Details.

14.7.2. The Buyer may amend clause 14.7 with terms stated in Item 45 of Part D – Contract Details.

14.7.3. If there is a failure by the Seller to achieve any Milestone, then the Buyer may recover from the Seller the amounts stated in Item 45 of Part D – Contract Details (**Liquidated Damages**).

14.7.4. The parties agree that the amounts stated in Item 45 of Part D – Contract Details are not penalties but are reasonable, having regard to the loss, costs and expenses that the Buyer is estimated to incur as a result of the delay.

14.7.5. Any exclusion or limitation of liability under clause 14.1 or clause 14.2 does not apply to Liquidated Damages.

14.7.6. This clause 14.7 does not limit any other rights or remedies of the Buyer.

15. Notices

15.1. Format, addressing and delivery

15.1.1. The Buyer may amend clause 15.1 with terms stated in Item 13 of Part D – Contract Details.

15.1.2. A notice under this Contract is only effective if it is in writing, in English and dealt with as follows:

a. *if given by the Seller to the Buyer* – addressed to the Buyer Representative stated in Item 4 of Part D – Contract Details (or as updated under clause 11.3); or

b. *if given by the Buyer to the Seller* – addressed to the Seller Contract Representative stated in Item 5 of Part D – Contract Details (or as updated under clause 11.3).

15.1.3. A notice is to be:

a. signed by the person giving the notice and delivered by hand;

b. signed by the person giving the notice and sent by pre-paid post; or

c. transmitted electronically by the person giving the notice by email.

15.2. When effective

15.2.1. A notice will take effect:

a. if delivered by hand – upon delivery to the relevant address;

b. if sent by post – upon delivery to the relevant address; and

c. if transmitted by email – when it becomes capable of being retrieved by the addressee.

15.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, will take effect at 9.00am on the next Business Day in that place.

16. Reporting

16.1. Reporting to the Buyer

16.1.1. If asked by the Buyer, the Seller must give the Buyer any reports or information in relation to the Products and Services:

a. within 10 Business Days (or other timeframe stated by the Buyer) from when the Buyer asks; and

b. in the form and format requested by the Buyer.

16.1.2. The Seller must give the Buyer evidence to support the accuracy of any reports or information delivered, if asked by the Buyer.

17. Relationship of the parties

17.1. Relationship of parties

17.1.1. This Contract does not have the effect that the Seller is an officer, employee, partner or agent of the Buyer.

17.1.2. The Seller does not have any power or authority to bind or represent the Buyer unless specifically authorised in writing.

17.1.3. The Seller must not:

a. misrepresent its relationship with the Buyer;

b. represent itself as an employee of the Buyer;

c. use the Commonwealth coat of arms, or any Buyer branding in connection with this Contract on its website, in marketing material or any other public facing document without prior permission of the Buyer;

d. engage in any false, misleading or deceptive conduct in relation to the Products and Services; or

e. attempt to exercise any delegation under the *Public Governance, Performance and Accountability Act 2013* (Cth) or the *Public Service Act 1999* (Cth) unless formally appointed to do so.

17.1.4. Without limiting any other provision of this clause 17.1:

a. the Seller's Personnel are not entitled to any benefit from the Buyer usually attributable to an employee; and

b. this Contract does not create any contractual relationship between the Buyer and the Seller's Personnel.

17.2. Extension of provisions to Subcontractors and Personnel

17.2.1. The Seller agrees to ensure that:

a. its Subcontractors and Personnel comply with requirements under this Contract that are relevant to them (**Requirements**); and

b. any contract (including any Subcontract) entered into in connection with this Contract imposes relevant Requirements on the other party.

17.2.2. If directed by the Buyer, the Seller agrees to exercise any rights it may have against any of its:

a. Subcontractors;

b. Personnel; or

c. third parties,

in connection with Requirements.

18. Publication

18.1. Public announcements

18.1.1. The Seller must get the Buyer's written approval before making any public announcement about this Contract.

18.1.2. However, the Seller does not need approval for public announcements if required by law or a regulatory body (including a relevant stock exchange) but must:

a. limit the public announcement to what is required by the relevant law or regulatory body; and

b. if possible, first consult with and consider the reasonable requirements of the Buyer.

18.2. Publication of Contracts

18.2.1. The Buyer may publish executed Contracts and details about Contracts on AusTender.

18.2.2. The Buyer may publish executed Contracts and details about Contracts on the Online Portal, or elsewhere, with Confidential Information removed.

19. Audit and access

19.1. Seller to permit audits

19.1.1. The Seller must give the Buyer Representative, or any persons authorised in writing by the Buyer access to:

a. premises where this Contract is performed or where Official Resources are located; and

b. records and information, in the data format and storage medium required by the Buyer.

19.1.2. The Seller must permit those persons set out in clause 19.1.1 to inspect and take copies of any Material relevant to this Contract, including:

a. details of the Seller's compliance with applicable international industry standards, best practice and guidelines;

b. the Seller's operational practices and procedures relevant to this Contract;

c. security procedures;

d. the Performance Management Framework;

e. the Price and the accuracy of the Seller's invoices and reports in relation to the provision of Products and Services under this Contract;

f. the Seller's compliance with its confidentiality, privacy, security, and other obligations under this Contract;

g. material (including accounts and records) in the possession of the Seller relevant to the Products and Services delivered under this Contract; and

h. any other matters determined by the Buyer to be relevant to the operations and the performance of this Contract.

19.1.3. The rights referred to in clause 19.1.1 are subject to:

a. the Buyer providing reasonable prior notice;

b. reasonable security procedures in place at the premises; and

c. if appropriate, the persons given access executing a deed of confidentiality.

19.1.4. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 19.1.

19.1.5. This clause 19.1 does not affect the statutory powers of the Auditor-General or Information Officer (including their delegates).

19.2. Costs

19.2.1. Subject to clause 19.3, each party must bear its own costs of all inspections, access and audits.

19.3. Consequences of audit

19.3.1. The Seller must promptly take action to rectify any error, non–compliance or inaccuracy identified in any audit relating to the way the Seller has performed its obligations under this Contract.

19.3.2. If an audit reveals any overcharging, the Seller must:

a. refund any amounts overcharged to the Buyer; and

b. if the audit reveals material overcharging (as reasonably determined by Buyer), pay to the Buyer the cost of any auditor fees that the Buyer has incurred.

20. General provisions

20.1. General Representations and Warranties

20.1.1. The Seller warrants that:

a. it has full power and authority to enter into and perform the obligations under this Contract;

b. its execution and performance of this Contract will not contravene:

i. any law;

ii. its constituent documents; or

iii. any agreement or instrument to which the Seller is a party, or any obligation that it owes to another person;

c. if Item 7 of Part D – Contract Details under trust details is marked 'not used', then the Seller is not entering into this Contract as a trustee of any trust or settlement;

d. it is not subject to an Insolvency Event;

e. there is no current or pending judicial action against the Seller that could have an adverse effect on its reputation or capacity to perform its obligations under this Contract;

f. it is not a Prohibited Entity;

g. it does not rely on any representation, warranty, condition or other conduct, information, statement or document given by the Buyer (or any person purporting to act on behalf of Buyer) in entering into this Contract;

h. it has all licences and authorisations required to operate and provide the Products and Services;

i. none of its directors or executive management has been convicted of an offence relating to fraud or dishonesty;

j. it and its Personnel have the necessary experience, qualifications, skills, knowledge and competence to provide Products and Services under this Contract;

k. it has not made any false, misleading or deceptive declaration about any current or past dealings with the Buyer or any other agency; and

l. there has been no significant default in the Seller's performance of any other agreement with the Buyer or any other agency.

20.1.2. The Seller acknowledges that the Buyer has entered into this Contract in reliance on the warranties and representations contained in this Contract.

20.1.3. The Seller warrants that it will notify and fully disclose to the Buyer any breach of any of the warranties in this clause 20.1. The Seller must do so as soon as it becomes aware of:

a. a breach; or

b. any event or occurrence actual or threatened during the Contract Period that would materially affect the Seller's ability to perform any of its obligations under this Contract.

20.2. Archives Act requirements

20.2.1. The Seller acknowledges and agrees that:

a. the Products and Services may be used to store Commonwealth Records;

b. the *Archives Act 1983* (Cth) applies to Commonwealth Records; and

c. the Seller must not dispose of any Commonwealth Records unless directed in writing to do so by the Buyer.

20.2.2. The Seller must comply with any reasonable directions of the Buyer which are relevant to any applicable laws or policies relating to archival and information management requirements. This may include directions in relation to the ICT requirement under the Digital Continuity 2020 Policy (issued under the *Archives Act 1983*) to ensure all business systems have appropriate information management functionality.

20.3. Work health and safety

20.3.1. In carrying out this Contract, the Seller must comply with:

a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and

b. all applicable policies and procedures relating to work health and safety,

including those that apply to the Buyer's premises when using those premises.

20.3.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 20.3.1, the Seller will comply with those policies and procedures that produce the highest level of health and safety.

20.4. Books and Records

20.4.1. The Seller must:

a. keep adequate books and records, in accordance with Accounting Standards; and

b. keep copies of all certifications and other records to confirm their compliance with all applicable Australian standards.

20.4.2. Books and records must have enough detail to enable the amounts payable by a Buyer under a Contract to be determined.

20.5. Insurance

20.5.1. The Seller must hold the insurances a prudent supplier would hold in accordance with best industry practice to cover the Products and Services and as a minimum the insurances stated in Item 11 of Part B – Panel Appointment Details and Item 43 of Part D – Contract Details.

Note: A certificate of currency is proof of the Seller holding the correct insurance. Buyers should seek specialist advice on insurance where appropriate.

20.5.2. The Seller must, if asked, provide proof of insurance acceptable to the Buyer.

20.5.3. This clause 20.5 applies for as long as any obligations remain in connection with this Contract.

20.6. Assignment

20.6.1. The Seller must not assign its rights or obligations under this Contract, without the prior written consent of the Buyer.

20.6.2. The Buyer will conduct due diligence on any new entity proposed for an assignment and may treat this as a Change of Control under clause 20.7. The Seller must give all necessary information to the Buyer for this purpose.

20.6.3. If the Buyer agrees to the Seller assigning or novating its rights or obligations under this Contract, the Seller must provide the Buyer with a completed deed of novation in the form required by the Buyer.

20.7. Change of Control

> ***Note:*** A Change of Control may require a novation of the Seller's rights or obligations under this Contract e.g. if the legal entity will change following the Change of Control.

20.7.1. The Seller must not undergo a Change of Control without the prior written consent of the Buyer.

20.7.2. The Seller must notify the Buyer as soon as possible before any Change of Control is to occur. The notification must not be later than 10 Business Days before the Change of Control.

20.7.3. If the Seller gives the Buyer a notice of a proposed Change of Control, the Buyer may:

a. conduct due diligence;

b. consent to the proposed Change of Control;

c. consent to the proposed Change of Control subject to conditions; or

d. terminate this Contract under clause 21.2.2.g.

20.7.4. The Seller must promptly provide the Buyer all information asked for by the Buyer about a Change of Control or proposed Change of Control. This may include details about the Seller's ownership, corporate structure, beneficiaries, and any controlling entities.

20.7.5. If the Buyer agrees to the Seller undergoing a Change of Control that would require a novation of the Seller's rights or obligations under this Contract, the Seller must provide the Buyer with a completed deed of novation in the form required by the Buyer.

20.8. Change in Seller's country of tax residency

20.8.1. The Seller warrants that its country of tax residency is as stated in Item 6 of Part D – Contract Details.

20.8.2. The Seller warrants that its ultimate parent entity's country of tax residency is as stated in Item 6 of Part D – Contract Details if it has an ultimate parent entity.

20.8.3. If there is a change in the Seller's:

a. country of tax residency; or

b. ultimate parent entity's country of tax residency,

the Seller must notify the Buyer within 10 Business Days of that change occurring.

20.9. Trustee Seller

20.9.1. If the Seller acts as trustee of a trust this must be stated in Item 7 of Part D – Contract Details. In this case, the Seller:

a. is liable both personally, and in its capacity as trustee of that trust;

b. must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but keep and apply such indemnity to meet its obligations under this Contract;

c. must not retire, resign or change its status as the trustee of that trust; and

d. represents and warrants that:

i. such trust has been duly established and currently exists;

ii. it is the duly appointed, current and only trustee of that trust;

iii. it has the power to enter into and perform its obligations under this Contract;

iv. it has a right of indemnity out of the assets of that trust in respect of its obligations;

v. any Conflict and duty affecting it as trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and

vi. no breach of the relevant trust deed exists or would arise.

20.10. Waiver

20.10.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract does not operate as a waiver of that right.

20.10.2. The exercise or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

20.11. Contract Variation

20.11.1. The Buyer may amend clause 20.11 with terms stated in Item 14 of Part D – Contract Details.

20.11.2. A variation of this Contract is binding only if it is:

a. properly executed by the authorised representative of each party; and

b. substantially in the form of the Contract Variation.

20.11.3. If a party wishes to make changes to this Contract, it must provide the proposed changes in writing to the other party. It must give all necessary details and justification for the change. The other party must respond to the proposal as soon as practicable (but no later than 10 Business Days unless agreed by the parties).

20.11.4. The Buyer is not liable to the Seller for any additional:

a. work undertaken; or

b. expenditure incurred,

by the Seller unless the variation has been agreed by the parties.

20.12. Severability

20.12.1. A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of that document will continue in force.

20.13. Collaboration and direction

20.13.1. The Seller must:

a. work with the Buyer in a collaborative manner; and

b. comply with any reasonable directions given by the Buyer in respect of this Contract.

20.14. Communication between Buyer and DTA

20.14.1. The Buyer may have discussions with DTA concerning any matter related to this Contract. This clause does not limit the rights and obligations of the Buyer, DTA or the Seller.

20.15. Further action

20.15.1. Each party must do everything reasonably necessary to give full effect to this Contract.

20.16. Entire Agreement

20.16.1. The parties agree that this Contract constitutes the entire agreement between the parties in connection with its subject matter. This Contract supersedes all previous agreements or understandings between the parties in connection with its subject matter.

20.17. Electronic signatures and acceptance

20.17.1. The parties may sign or accept a document electronically under this Contract unless otherwise notified by the Buyer.

20.18. Counterparts

20.18.1. The parties may execute this Contract in counterparts. All executed counterparts constitute one document.

20.19. Survival

20.19.1. The expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:

a. liability;

b. indemnity;

c. warranties;

d. termination (in respect to rights and obligations arising on termination);

e. reporting;

f. licensing of Intellectual Property;

g. the Performance Management Framework;

h. data;

i. confidentiality;

j. privacy;

k. books and records;

l. audit and access;

m. integrity;

n. security;

o. transition out; or

p. any other provision which the parties expressly or by implication intend to continue.

21. Termination

Note: These clauses set out how the Contract can be ended by the Buyer and the Seller.

21.1. Termination or reduction of scope for convenience

21.1.1. The Buyer may by notice, at any time:

a. immediately terminate; or

b. reduce the scope of,

this Contract.

21.1.2. The Seller agrees, on receipt of a notice of termination or reduction:

a. to stop or reduce work as stated in the notice;

b. to take all available steps to minimise loss resulting from that termination or reduction; and

c. to continue work on any part of the supply of the Products and Services not affected by the notice.

21.1.3. If the Buyer terminates this Contract under clause 21.1.1, the Buyer will be liable only:

a. to pay the part of the Price relating to Products and Services supplied before the date of termination;

b. to reimburse any verified expenses that are:

   i. properly, unavoidably and directly incurred by the Seller as a result of the termination; and

   ii. substantiated to the Buyer's reasonable satisfaction.

21.1.4. Clause 21.1.3.b does not include costs relating to premises or costs of:

a. redundancies;

b. redeployment;

c. other costs associated with employment actions taken as a result of the termination; and

d. termination of Subcontractors.

21.1.5. The Buyer will not be liable to pay amounts under clause 21.1.3.a and 21.1.3.b:

a. which would, added to any part of the Price already paid to the Seller under this Contract, together exceed the total Price set out in Part D – Contract Details;

b. to compensate for loss of prospective profits attributable to a termination or reduction in scope under clause 21.1; or

c. for loss of any benefits that would have been conferred on the Seller had a termination or a reduction in scope made under clause 21.1 not occurred.

21.1.6. If the Buyer reduces the scope of any Products and Services under clause 21.1.1, the Buyer's liability to pay the Price under this Contract will reduce in accordance with the reduction in the Products and Services. This clause applies unless otherwise agreed by the parties in writing.

21.2. Termination for fault

21.2.1. If the Seller fails to satisfy any of its obligations under this Contract, then the Buyer – if it considers that the failure is:

a. *not capable of remedy* – may, by notice, terminate this Contract immediately; or

b. *capable of remedy* – may, by notice require that the Seller remedy the failure within the time stated in the notice. If not remedied within that time, the Buyer may terminate this Contract immediately by giving a second notice.

21.2.2. The Buyer may also by notice terminate this Contract or reduce the scope of this Contract immediately (but without prejudice to any prior right of action or remedy which the Buyer has or may have) if the Seller:

a. becomes subject to an Insolvency Event;

b. is found to have provided false or misleading information to the Buyer during the procurement process for this Contract;

c. fails to implement a Cure Plan where required to do so under clause 35;

d. fails to implement a cyber security plan where required to do so under clause 23.3.6;

e. receives an Overall Rating of 'Not Met' on three or more occasions under the Performance Management Framework;

f. has been terminated from the Panel by DTA;

g. in relation to a Change of Control:

i. fails to notify the Buyer of a Change of Control as provided in clause 20.7;

ii. undergoes a Change of Control without the Buyer's consent; or,

iii. fails to comply with conditions placed on a Change of Control by the Buyer;

h. does not comply with clause 7.4 in relation to the use of Banned AI Systems;

i. suffers a Force Majeure Event entitling the Buyer to terminate under clause 21.4.5;

j. is unable to provide replacement Key Personnel under clause 11.6.5:

i. acceptable to the Buyer; or

ii. in sufficient time for the Seller to fulfil their obligations under the Contract;

k. if Service Levels apply:

i. has a Service Level Failure recorded in respect of the Service Levels for the times and during the period stated in Item 47 of Part D – Contract Details;

ii. if not specified in Item 47 of Part D – Contract Details, has a Service Level Failure recorded three or more times for a Service Level:

A. in any consecutive six month period during the Contract Period; or

B. during the Contract Period, if the Contract Period is less than six months;

l. has or will exceed the liability cap in clause 14.1.1, ;

m. is or becomes a Prohibited Entity, or subcontracts the provision of the Products and Services to any Prohibited Entity;

n. *or its Associates* – commits a breach of national security or without written authorisation released Official Information to a third party whether under this Contract or otherwise; or

o. *or its Associates* – embarrass or bring the Buyer into disrepute or diminish the public trust in them whether under this Contract or otherwise.

21.3. Impact of termination

21.3.1. If this Contract is terminated:

a. the Seller must, within 10 Business Days of the termination date, refund to the Buyer any part of the Price already paid by the Buyer for the remainder of the Contract Period;

b. subject to this Contract, the parties are relieved from future performance of the terminated Contract (or relevant part of it);

c. subject to this Contract, any licences and authorisations for this Contract granted to the Seller by the Buyer terminate immediately, despite anything to the contrary contained in the licence or authorisation;

d. the Seller must take all available steps to protect Intellectual Property Rights, Official Information, Buyer Material and Personal Information accessed in connection with this Contract;

e. the Seller must return all of the Buyer's Official Information;

f. the Seller must follow any reasonable direction of the Buyer; and

g. the Seller must continue to perform any part of this Contract not affected by the termination or which survives termination under clause 20.19.

21.3.2. Termination does not affect the rights accumulated by either party.

21.4. Force Majeure

21.4.1. Where a Force Majeure Event occurs in relation to a party (**affected party**) and the affected party gives the other party (**notified party**) prompt written notice of the Force Majeure Event stating:

a. the nature of the Force Majeure Event, the reasons for it and the estimated duration;

b. how the Force Majeure Event affects the Contract;

c. each party's obligations affected by the Force Majeure Event and the extent of its effect on those obligations; and

d. the steps required to address the impact of the Force Majeure Event;

the obligations notified are suspended for as long as and to the extent that:

e. the obligations are affected by the Force Majeure Event; and

f. the affected party is meeting its obligations under this clause 21.4 (**Force Majeure Period**).

21.4.2. Any obligation of the notified party to make any payment or perform any obligation that is contingent on a suspended obligation of the affected party, is also suspended.

21.4.3. A failure or omission by either party to perform an obligation that is suspended under this clause 21.4 will not be a breach of this Contract, subject to clause 21.4.4.

21.4.4. The party claiming a Force Majeure Event must:

a. use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible;

b. unless otherwise advised by the Buyer, give weekly written notice to the notified party on the status of matters referred to in clause 21.4.1; and

c. notify the notified party in writing as soon as the Force Majeure Period ends.

21.4.5. Where an affected party is subject to a Force Majeure event that continues for more than 60 days from a notice issued under clause 21.4.1, or for more than 60 calendar days (whether continuous or not) in any year, the notified party may terminate this Contract under clause 21.2.2.h.

22. Language and measurement

22.1. Language

22.1.1. Unless otherwise agreed by the Buyer, the Seller must ensure all information provided as part of the Products and Services is written in English.

22.2. Measurement

22.2.1. Unless otherwise agreed by the Buyer, the Seller must ensure that all measurements provided as part of the Products and Services are in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth).

SECTION 2 – SECURITY AND INTEGRITY REQUIREMENTS

23. Digital and physical security

23.1. General security obligations

23.1.1. The Seller must provide the Products and Services in a way that:

a. complies with; and

b. ensures the Buyer can comply with,

the:

c. Protective Security Policy Framework (PSPF);

d. Protective Security Directions; and

e. Information Security Manual (ISM),

including the parts of the PSPF and ISM stated in Item 36 of Part D – Contract Details.

> ***Note:*** The Australian Signals Directorate recommends organisations implement eight essential mitigation strategies known as Strategies to Mitigate Cyber Security Incidents as a baseline. For further information see the Australian Signals Directorate Essential Eight page.

23.1.2. The Seller must ensure all Products and Services meet or exceed Essential Eight Maturity Level 2 (unless otherwise stated in Item 36 of Part D – Contract Details), for each of the Essential Eight, including:

a. patch applications;

b. patch operating systems;

c. multi-factor authentication;

d. restrict administrative privileges;

e. application control;

f. configure Microsoft Office macro settings;

g. user application hardening; and

h. regular backups.

23.1.3. The Seller must:

a. notify the Buyer immediately in the event of any requests from a foreign government or foreign agency requesting access to any Buyer Data; and

b. redirect any such request to the Buyer.

23.2. Harmful code

23.2.1. The Seller must take reasonable precautions, including using best industry practice, to ensure that it and its Personnel do not introduce any Harmful Code into:

a. any Products and Services;

b. the Online Portal;

c. the Buyer's Digital System; or

d. any Digital System used to facilitate or support performance of this Contract,

(together the **Applicable Systems**).

23.2.2. If requested by the Buyer, the Seller must promptly provide the Buyer with full details of all processes and procedures that it has in place to prevent Harmful Code from being introduced into the Applicable Systems.

23.2.3. The Seller must immediately notify the Buyer with full information if it:

a. knows; or

b. reasonably suspects,

that Harmful Code has been or may have been introduced into the Applicable Systems in the course of providing Products and Services.

23.2.4. If any Harmful Code is found, or is suspected, to have been introduced into the Applicable Systems in the course of providing Products and Services, the Seller must:

a. take all reasonable action requested by the Buyer to contain and eliminate the Harmful Code;

b. repair any damage caused by the Harmful Code, subject to any directions given by the Buyer; and

c. ensure any actual or potential loss of or threat to the Buyer's operations and efficiency is minimised.

23.2.5. This clause 23.2 does not limit any other right or remedy the Buyer has under this Contract or at law; and

23.2.6. The Seller must not:

a. insert; or

b. knowingly permit any third party to insert,

any code into the Applicable Systems that would shut down or disable the Applicable Systems.

23.3. Cyber Attacks

23.3.1. The Seller must take all steps consistent with best industry practice to reduce the risk of Cyber Attack on the Digital Systems of the Seller and any Subcontractor.

23.3.2. The Seller must ensure all Products and Services meet or exceed the requirements in Item 36 of Part D – Contract Details as they apply to the:

a. Essential Eight Maturity Level; and

b. Information Security Manual.

23.3.3. If asked by the Buyer, the Seller must provide evidence of assessment, certification and compliance with the Essential Eight Maturity Model and Information Security Manual.

23.3.4. If asked by the Buyer, the Seller must give details of its security measures that are in place to reduce the risk of Cyber Attack on the Digital Systems of the Buyer and the Seller. This includes security measures that are in place for the Seller’s Supply Chain.

23.3.5. If the Seller becomes aware of a Cyber Attack on the Digital Systems of the Seller or any Subcontractor that has or may have an effect on the Products and Services, the Seller must:

a. immediately take all reasonable action to mitigate the risk of the Cyber Attack causing serious harm to the Buyer;

b. promptly contact the Buyer Representative (by phone or email, whichever is fastest), providing full details of the Cyber Attack to the extent available at the time; and

c. if required by law or if directed by the Buyer, advise CERT Australia and/or the Australian Cyber Security Centre.

23.3.6. Where stated in Item 20 of Part D – Contract Details, the Seller must give the Buyer a cyber security plan for approval as an Approved Plan. The parties must follow the process for obtaining Buyer approval and implementation of any Approved Plan set out in clauses 5.5.3 to 5.5.8.

23.3.7. The cyber security plan must provide details of the security measures in place by:

a. the Seller; and

b. any Subcontractors,

to reduce the risk of Cyber Attack on their Digital Systems. The cyber security plan must cover risks relevant to the provision of the Products and Services.

23.3.8. The Buyer may have discussions with DTA concerning the matters set out in clause 23.3 if there are reasonable grounds to believe there has been a Cyber Attack. This clause does limit the rights and obligations in this clause 23.3.

23.4. Data security and dealing with Buyer Data

23.4.1. The Seller must only use, reproduce and adapt Buyer Data in accordance with this Contract.

23.4.2. The Seller must not:

a. use Buyer Data for any purpose other than the performance of this Contract;

b. sell, licence or otherwise permit any third party to access or use Buyer Data;

c. remove any Buyer Data or allow removal of any Buyer Data from the Buyer's systems or premises or Seller’s systems or premises;

d. alter Buyer Data; or

e. transmit, store, take or access Buyer Data or allow Buyer Data to be transmitted, stored, taken or accessed by any means outside of Australia unless:

   i. it is permitted in Item 36 of Part D – Contract Details; or

   ii. the Buyer has otherwise given the Seller written approval to do so.

23.4.3. The Seller must have in place all necessary measures to protect Buyer Data. If the Seller or any subcontractor use their Digital Systems to access, transmit or store Buyer Data, the Seller must ensure the Buyer Data is protected from:

a. unauthorised access or use by a third party; and

b. misuse, loss, damage, destruction, alteration or corruption.

23.4.4. The prohibitions in clause 23.4 apply even if a user is required to click through and accept any Seller terms permitting the Seller to conduct the activities listed in clause 23.4 on a user account or a collection of user accounts. Such terms have no effect whatsoever.

23.4.5. The Seller must have in place administrative, physical and technical protective measures that are consistent with best industry practice for the Products and Services.

> ***Note***: Clause 25.3.3.e imposes certain obligations on the Seller where it breaches clause 23.4.1 or clause 23.4.3.

23.4.6. The Seller must deal with all Buyer Data as directed by the Buyer at the end of this Contract, subject to any law that applies to the Seller.

23.5. Buyer Data portability

23.5.1. The Seller must provide Buyer Data stored on the Products and Services to the Buyer on request in a:

a. structured;

b. commonly used; and

c. machine-readable format,

that enables the Buyer to efficiently transmit the Buyer Data to software or cloud services.

23.5.2. The Seller must ensure that the Buyer Data under clause 23.5.1:

a. complies with any technical standards; and

b. be compatible and inter-operate with any common data systems,

specified in the Contract and in the Buyer's request under clause 23.5.1.

23.6. Remote access to Buyer's Digital Systems

23.6.1. The Seller must:

a. ensure that only authorised Seller Personnel access or control (including by remote access) any Digital System of the Buyer;

b. ensure that any unauthorised third parties do not access or control any Digital System of the Buyer;

c. ensure that any access to the Buyer's Digital Systems by the Seller or Seller Personnel is:

   i. limited to the minimum access necessary to enable the Seller to comply with its obligations under this Contract; and

   ii. only with the clear identification and recording of the individual gaining access; and

d. comply with any other requirements set out in Item 36 of Part D – Contract Details.

23.7. Physical security

23.7.1. The Buyer may amend clause 23.6 with terms stated in Item 36 of Part D – Contract Details.

23.7.2. The Seller may only use or access the Buyer's premises and facilities (including any area licensed to the Buyer):

a. if authorised in writing by the Buyer; and

b. so long as the Seller complies with the requirements and procedures of the Buyer:

   i. as set out in this Contract;

   ii. as notified to the Seller by the Buyer from time to time; and

   iii. as might reasonably be inferred from the circumstances.

23.7.3. The Buyer may deny or suspend the Seller's access to the Buyer's premises and facilities at any time. The Seller must immediately vacate such premises and cease access if notified to do so by the Buyer.

23.7.4. The Seller must safeguard, and must ensure that its Personnel safeguard:

a. any keys or passes or other relevant access, identification or authentication items or information; and

b. any Material detailing access or security arrangements or that could otherwise compromise security,

that are provided to the Seller under this Contract.

23.8. Supply Chain security

23.8.1. The Seller must protect the Buyer's Digital System (including any virtual or online environment) including by:

a. ensuring the security, confidentiality, integrity, and availability of the Products and Services; and

b. maintaining the integrity of the Supply Chain in relation to the Products and Services.

23.8.2. The Seller must allow the Buyer to conduct a:

a. due diligence; or

b. risk review,

of the Seller's Supply Chain and all Supply Chain Elements at any time during the Contract Period.

23.8.3. The Seller must provide the Buyer with information requested by the Buyer under clause 23.8.2, within the timeframe requested by the Buyer (or if no timeframe is specified, promptly), relevant to:

a. the Seller's Supply Chain as it relates to, or impacts on, the Products and Services, including information about:

i. the identity of the Seller's Supply Chain Elements;

ii. the Seller's alliances, partnerships, and contracts with third parties; and

iii. the particular element of the Products and Services (or part thereof) provided by each Supply Chain Element;

b. risks in the Seller's Supply Chain; and

c. information that the Buyer considers relevant to assist with the assessment of national security or other risks.

This clause does not limit clause 23.8.2.

23.8.4. The Seller must use reputable Supply Chain Elements to protect the:

a. security;

b. confidentiality;

c. integrity; and

d. availability,

of the Products and Services, and Buyer Data.

23.8.5. The Buyer may, by notice to the Seller, require the Seller to remove or cease using one or more Supply Chain Elements used to provide Products and Services to the Buyer within a timeframe requested by the Buyer (or if no timeframe is specified, promptly) following any due diligence or risk review under clause 23.8.2.

23.8.6. The Buyer will use reasonable endeavours to consult with the Seller before issuing a notice under clause 23.8.5.

23.8.7. The Seller remains fully responsible for all obligations of the Seller under this Contract regardless of the involvement of any Supply Chain Elements.

23.9. IRAP or equivalent certification

23.9.1. This clause 23.9 applies if stated in Item 36 of Part D – Contract Details.

23.9.2. In accordance with Item 36 of Part D – Contract Details, the Seller will undergo:

a. an Information Security Registered Assessors Program (**IRAP**) assessment; or

b. an equivalent security assessment,

for the Products and Services (**Information Security Assessment**).

23.9.3. The Seller must undergo:

a. an Information Security Assessment at the times specified in Item 36 of Part D – Contract Details; and

b. if requested by the Buyer, a further Information Security Assessment if the Seller notifies the Buyer of an event in clause 23.9.11.

23.9.4. The Seller agrees to give information and assistance to the IRAP or equivalent assessor for the purpose of preparing an Information Security Assessment.

23.9.5. The Seller must ensure that the Information Security Assessment includes any additional or more detailed criteria specified in Item 36 of Part D – Contract Details on the assessment of the Products and Services.

23.9.6. The Seller must comply with any recommendations in an Information Security Assessment that the Buyer notifies to the Seller (**Information Security Requirements**).

23.9.7. Where:

a. the Buyer notifies the Seller of Information Security Requirements after this Contract commences; and

b. the cost of complying with the Information Security Requirements is not allowed for in the Price,

the Seller:

c. may request a Price Review to cover the additional costs; and

d. must give details to support the request.

23.9.8. The Buyer may or may not agree to a request for Price Review. If the parties agree to a Price Review, the parties must execute a Contract Variation.

23.9.9. The Seller must give the Buyer:

a. written confirmation or certification in the form specified in Item 36 of Part D – Contract Details; and

b. supporting evidence,

that it has met the Information Security Requirements. The Seller must do so within 3 months, or other time agreed in writing by the Buyer, of a notice under clause 23.9.5.

23.9.10. The Buyer may consider the Seller's compliance with Information Security Requirements to determine whether:

a. the Products and Services meet the Buyer’s security requirements; or

b. to Accept the Products and Services.

23.9.11. The Seller must notify the Buyer of:

a. any changes to the Products and Services that impact the security stated in an Information Security Assessment; and

b. any other security events that may impact the security and risk of the Buyer’s Digital Systems or Buyer Data.

23.9.12. This clause 23.9 does not limit any of the Seller’s other security obligations in this Contract.

24. Privacy

24.1. Seller’s Privacy Act obligations

24.1.1. The Seller agrees, in providing the Products and Services:

a. to comply with its obligations under the Privacy Act (including as a ‘contracted service provider’); and

b. not to do anything that, if done by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act; and

c. to comply with any other requirements stated in Item 37 of Part D – Contract Details that relate to Privacy Act compliance.

24.1.2. The Seller must ensure that Subcontractors:

a. comply with their obligations under the Privacy Act; and

b. do not do anything that, if done by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act.

24.1.3. The Seller must promptly notify the Buyer if, in providing Products and Services, the Seller:

a. is required by law to disclose Personal Information; or

b. receives a request for, or an inquiry about, Personal Information from:

i. the Privacy Commissioner, or

ii. any individual to whom any Personal Information held by the Seller or Subcontractors relates.

24.2. Seller to act on Eligible Data Breaches

24.2.1. If the Seller becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Contract or its provision of the Products and Services, the Seller must:

a. notify the Buyer in writing immediately, and provide a report to the Buyer on the Eligible Data Breach within 72 hours; and

b. carry out an assessment in accordance with the requirements of the Privacy Act (unless the Buyer notifies the Seller that an assessment is not required).

24.2.2. Where the Seller is aware that there has been, or where the Buyer notifies the Seller that there has been, an Eligible Data Breach in relation to any Personal

Information held by the Seller as a result of this Contract or its provision of the Products and Services, the Seller must:

a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;

b. unless otherwise directed by the Buyer, take all other action necessary to comply with the requirements of the Privacy Act; and

c. take any other action as reasonably directed by the Buyer.

24.2.3. The Seller agrees to notify the Buyer immediately if it becomes aware of:

a. a breach; or

b. possible breach,

of any of its obligations under this clause 24.2.

24.3. Data Protection

24.3.1. The Seller must comply with international data protection laws as they apply to the performance of this Contract including:

a. any federal or state data protection and privacy laws and regulations in force within the United States of America;

b. Regulation (EU) 2016/679 (General Data Protection Regulation); and

c. Data Protection Act 2018 (UK),

as they apply to the performance of this Contract.

25. Official Information and other security obligations

25.1. Security classification

25.1.1. Unless otherwise notified by the Buyer, the highest level of Security Classified Resources that the Seller will have access to under this Contract is stated in Item 36 of Part D – Contract Details.

25.2. Confidentiality of Official Information

25.2.1. The Seller must not, without the prior written authorisation of the Buyer, disclose any Official Information to any person. The Seller does not need the Buyer's authorisation to disclose information if the Seller is required to do so by law.

25.2.2. The Seller is authorised to provide Official Information to those Personnel and Approved Subcontractors who require access for the purposes of this Contract. This clause is subject to the requirements in clause 25.3.1.

25.2.3. The Buyer may ask Seller Personnel or Approved Subcontractors to give a written undertaking not to disclose Official Information. Seller Personnel and Approved Subcontractors must give the undertaking in a form acceptable to the Buyer. The Seller must arrange for such undertakings to be given when asked.

> ***Note:*** Any undertaking required should confirm that the requirements relating to the use and non-disclosure of Official Information:

- continue after the end of the Contract; and
- survive the expiration of any subcontract or the end of the person's employment with the Seller.

25.2.4. The Seller must secure all Official Information that it holds in connection with this Contract against loss and unauthorised access, use, modification or disclosure.

25.3. Other security obligations of the Seller

25.3.1. The Seller must ensure that all Personnel who require access to Security Classified Resources:

a. obtain and hold the appropriate security clearance;

b. comply with Australian Government Security Vetting Agency(AGSVA) requirements for holders of the relevant security clearance; and

c. comply with reporting requirements applicable to security clearance holders. For example, regarding significant changes to personal circumstances.

25.3.2. The Seller is responsible for the cost of getting security clearances unless the Buyer agrees to cover the cost as stated in Item 36 of Part D – Contract Details.

25.3.3. The Seller must:

a. prevent access to Security Classified Resources by Personnel:

i. whose security clearances are revoked or have lapsed; or

ii. who do not have a legitimate and genuine need to access the relevant Security Classified Resources for the purposes of this Contract.

b. make any of its Personnel who require access to Security Classified Resources available to attend any security training provided by the Buyer;

c. notify the Buyer of any change in the personal circumstances of Personnel referred to in clause 25.3.1;

d. not (either directly or indirectly) perform any part of this Contract outside Australia or permit or facilitate any third party to do so, without the Buyer's prior written approval.

Note**:** In addition to the following notification requirements, a Buyer may require the Seller provide a Cure Plan under clause 35 if a Security Incident occurs.

e. notify the Buyer immediately if the Seller:

i. becomes aware that a Security Incident or breach of clauses 23.4.1, 23.4.3, 25.2.4 or 25.3.1 has occurred; or

ii. reasonably suspects that a Security Incident or such a breach has occurred;

f. implement the Buyer's procedures for Security Incident reporting and management as advised by the Buyer from time to time; and

g. comply with any additional security requirements stated in Item 36 of Part D – Contract Details and any variations or additions to those requirements as notified by the Buyer from time to time, provided that:

   i. if the Seller incurs (or will incur) any material expenses which are directly related to complying with clause 25.3.3.g, the parties may negotiate any appropriate variation to this Contract to reflect the Seller's reasonable and substantiated costs of such compliance. When determining whether an expense is material, the parties will have regard to the total value of this Contract;

   ii. unless such variation is agreed between the parties, the Seller is solely responsible for the costs of complying with clause 25.3.3.g. This does not limit clause 1.2.1.m of Part E – Definitions and Interpretation; and

   iii. the Seller must not refuse to comply with clause 25.3.3.g or delay such compliance pending the outcome of any negotiations under clause 25.3.3.g.i.

25.3.4. The Seller must implement security procedures to ensure that it meets its obligations under this clause 25.3. The Seller must provide details of these procedures to the Buyer on request.

25.4. Consequences of breach

25.4.1. The Seller acknowledges that the Buyer may treat any failure to fully comply with any of its obligations under this clause 25 as a failure that is not capable of remedy.

25.5. No Price payable where certain Security Incidents occur

25.5.1. If:

a. either:

   i. a Security Incident occurs; or

   ii. the Seller is taking action to prevent or rectify any Security Incident; and

b. this prevents the Buyer from being able to use the Products and Services as intended by this Contract,

the Buyer is not required to make any payment for the period that it is prevented from using the Products and Services (**Prevention Period**).

25.5.2. The Buyer must still pay any part of the Price for Products and Services delivered before the Prevention Period.

25.5.3. If the Buyer has made any payment that the Buyer is not required to make under clauses 25.5.1 and 25.5.2, then the Buyer may recover the overpayment or reduce the Price in accordance with the *adjustment of amounts after payment* clause in the relevant Module Terms.

25.6. Seller's other obligations not limited

25.6.1. Nothing in this clause 24.3 limits the Seller's other obligations under this Contract, including those under clause 23.

26. Confidential Information of the Seller

26.1. Confidential Information not to be disclosed

26.1.1. The Buyer will not, without the prior written authorisation of the Seller, disclose any Seller Confidential Information stated in Item 38 of Part D – Contract Details to a third party. This clause is subject to clause 26.2.1.

26.2. Exceptions to obligations

26.2.1. The obligations on the Buyer under this clause 26 will not be taken to have been breached to the extent that Confidential Information is:

a. disclosed by the Buyer to its Personnel to comply with obligations, or exercise rights, under this Contract;

b. disclosed by the Buyer to a Labour Hire Worker for the purposes of clause 3.3 of Schedule A1 – ICT Labour Hire Module;

c. disclosed by the Buyer to its internal management Personnel, for effective management or auditing of Contract related activities;

d. disclosed by the Buyer to the responsible Minister;

e. disclosed for public accountability purposes;

f. disclosed by the Buyer in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

g. shared by the Buyer within the Buyer's organisation;

h. shared with DTA;

i. shared with other Buyers (within the meaning of the Panel Agreement);

j. authorised or required by law to be disclosed; or

k. in the public domain otherwise than due to a breach of this clause 26.

26.2.2. Where the Buyer discloses Confidential Information to another person pursuant to clauses 26.2.1.a to 26.2.1.i, the Buyer will notify the receiving person that the information is confidential.

26.2.3. In the circumstances referred to in clauses:

a. 26.2.1.a;

b. 26.2.1.c;

c. 26.2.1.g;

d. 26.2.1.h; and

e. 26.2.1.i,

the Buyer agrees not to provide the information unless the receiving person agrees to keep the information confidential.

26.3. Period of confidentiality

The obligations under this clause 26 in relation to an item of Confidential Information of the Seller continue for the period set out in Item 38 of Part D – Contract Details for the item.

27. Conflict of Interest

27.1. Seller to notify the Buyer of any Conflicts

27.1.1. The Seller warrants that, to the best of its knowledge after making diligent inquiries, at the Contract Start Date no Conflict, except as disclosed in writing to the Buyer, exists or is likely to arise in the performance of its obligations under this Contract.

27.1.2. If, during the Contract Period a Conflict arises, or is likely to arise, the Seller agrees:

a. to notify the Buyer immediately;

b. to make full disclosure of all relevant information relating to the Conflict; and

c. to take any steps the Buyer reasonably requires to resolve or otherwise deal with the Conflict.

27.1.3. The Buyer may notify the Seller of conduct or circumstances that in the Buyer's view amount to a Conflict. The Seller must comply with the directions of the Buyer in the notice.

27.1.4. If the Seller fails to comply with this clause 27, the Buyer may terminate this Contract under clause 21.2.1.a.

27.1.5. At any time, the Buyer may require the Seller or Seller's Personnel to execute a Conflict of Interest declaration. The Conflict declaration will be in the form stated by the Buyer.

28. Notification of Significant Events

28.1. Seller to inform the Buyer of Significant Events

28.1.1. For the purposes of this clause, '**Significant Event**' means:

a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body:

i. about the conduct or performance of the Seller or its Personnel or Subcontractors; and

ii. that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation;

b. any other significant matters, including the commencement of legal, regulatory or disciplinary action by an independent person or disciplinary action internal to the Seller, involving the Seller or its Personnel or Subcontractors, which may adversely impact on:

i. Seller compliance with any applicable law or Commonwealth policy;

ii. Buyer compliance with any applicable law or Commonwealth policy;

iii. the Commonwealth's reputation; or

iv. the professional capacity or capability of the Seller or its Personnel to deliver Products and Services under the Contract; or

c. any non-compliance by:

i. the Seller or its Personnel; or

ii. the Seller's Subcontractors, to the extent that information is known by or reasonably available to the Seller;

with any judgement against the Seller, its Personnel or Subcontractors from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

28.1.2. The Seller must immediately give the Buyer a notice on becoming aware of a Significant Event during the Contract Period.

28.1.3. The Seller must include in a notice given under clause 28.1.2 a summary of the Significant Event, including:

a. the date that it occurred; and

b. whether any Key Personnel or other Personnel engaged in connection with the Products and Services were involved.

28.1.4. The Buyer may notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause 28. If this occurs the Seller must give the Buyer a notice under clause 28.1.2 about the event within 3 Business Days of being notified by the Buyer.

28.1.5. If asked by the Buyer, the Seller must provide the Buyer with any additional information regarding the Significant Event within 3 Business Days.

28.1.6. If asked by the Buyer, the Seller must prepare a draft remediation plan and submit that draft plan to the Buyer's Representative for approval within 10 Business Days.

28.1.7. A draft remediation plan prepared by the Seller under clause 28.1.6 must include the following information:

a. how the Seller will address the Significant Event in the context of the Products and Services. This must include:

i. confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Products and Services; or

ii. compliance by the Seller with its other obligations under this Contract;

b. how the Seller will ensure events similar to the Significant Event do not occur again; and

c. any other matter reasonably requested by the Buyer.

28.1.8. The Buyer will review the draft remediation plan and either approve the plan or give the Seller details of any required changes. The Seller must:

a. make any changes to the draft remediation plan that are reasonably requested by the Buyer; and

b. resubmit the draft remediation plan to the Buyer for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Buyer.

28.1.9. Clause 28.1.8 will apply to any resubmitted draft remediation plan.

28.1.10. The Seller must comply with a remediation plan that is approved by the Buyer. The Seller agrees to provide reports and other information about the Seller's progress in implementing the remediation plan if asked by the Buyer. This clause does not limit the Seller's other obligations under this Contract.

28.1.11. If the Seller fails to comply with its obligations under this clause 28, the Buyer may terminate this Contract under clause 21.2.1.a. The Buyer's rights under this clause 28 are in addition to and do not otherwise limit any other rights the Buyer may have under this Contract.

29. National Anti-Corruption Commission Act 2022 (Cth) Requirements

29.1. Seller to comply and cooperate

29.1.1. The Seller acknowledges that in providing the Products and Services to the Buyer under this Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (**NACC Act**).

29.1.2. The Seller must comply with any reasonable request, policy or direction issued by the Buyer and otherwise cooperate with the Buyer in relation to any action taken by the Buyer required or authorised by the NACC Act.

30. Fraud and Corruption

30.1. Seller to prevent fraud and corruption

30.1.1. The Seller must provide the Products and Services in a way that complies with and ensures the Buyer complies with the Commonwealth Fraud Control Framework, as amended from time to time: http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx.

30.1.2. The Seller must:

a. take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in relation to this Contract (including by the Seller or its Personnel); and

b. notify the Buyer if the Seller knows or has reason to suspect that any fraud has occurred, is occurring, or is likely to occur in relation to this Contract.

30.1.3. If the Seller or any of its Personnel or Subcontractors have committed fraud, or the Seller has failed to take reasonable steps to prevent fraud by its Personnel or Subcontractors, the Seller must reimburse the Buyer for the reasonable costs it incurs because of the fraud.

SECTION 3 – COMPLIANCE WITH LAWS, STANDARDS AND POLICIES

31. Compliance with laws, policies, standards, codes and guidelines

31.1. Seller must comply with laws and Commonwealth policies

31.1.1. The Seller must:

a. comply with all laws and Commonwealth policies applicable to its performance of this Contract; and

b. not do anything that, if done by the Buyer, would be a breach of the applicable law or policy.

31.1.2. Without limiting clause 31.1.1, the Seller:

a. must comply with the following:

i. *Crimes Act 1914* (Cth);

ii. *Criminal Code Act 1995* (Cth), including Division 137 of that Act;

iii. Privacy Act;

iv. *Copyright Act 1968* (Cth);

v. WGE Act;

vi. *Work Health and Safety Act 2011* (Cth);

vii. *Auditor-General Act 1997* (Cth);

viii. Part 4 of the *Charter of the United Nations Act 1945* (Cth);

ix. *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);

x. *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);

xi. *Modern Slavery Act 2018* (Cth); and

xii. all applicable laws relating to taxation; and

b. acknowledges that:

i. any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) while providing the Products and Services may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth); and

ii. the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of this Contract (other than to whom the Seller is authorised to publish or disclose the fact or document) may be an offence under sections 70 and 79 of the *Crimes Act 1914* (Cth).

31.2. Applicable law

31.2.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by:

a. the law of the State or Territory stated in Item 42 of Part D – Contract Details; or

b. if no State or Territory is stated in Item 42 of Part D – Contract Details, the law of New South Wales.

31.2.2. The parties submit to the jurisdiction of the courts of that State or Territory.

31.3. Compliance with standards, codes, guidelines and Buyer policies

31.3.1. The Seller must adopt relevant best practice and comply with:

a. all applicable Australian standards, or, where none apply, relevant international standards;

b. all applicable industry standards, codes and guidelines; and

c. any other policies, standards, codes or guidelines stated in Item 39 of Part D – Contract Details.

31.3.2. The Seller must ensure that the any AI System used for the provision of the Products and Services or integrated into the Products and Services complies with the *Technical standard for government's use of artificial intelligence* published by DTA.

31.3.3. The Buyer may allow the Seller to not comply with the *Technical standard for government's use of artificial intelligence* at any time during the Contract or by stating that the standard does not apply in Item 39 of Part D – Contract Details.

> ***Note:*** The *Technical standard for government's use of artificial intelligence* can be located on the DTA's digitial.gov.au website.

32. Codes of Conduct

32.1. Compliance with APS Values and Code of Conduct

32.1.1. In performing any part of this Contract, the Seller must ensure that its Personnel comply with the:

a. APS Values; and

b. APS Code of Conduct;

to the standard required of 'APS employees' as defined under the *Public Service Act 1999* (Cth); and

c. any other applicable code of conduct notified to the Seller.

32.1.2. The Seller must assist the Buyer with any investigation of a report of a breach of clause 32.1.1.

32.2. Illegal Workers

32.2.1. The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract.

32.2.2. If it becomes aware of the involvement of an Illegal Worker, the Seller must:

a. promptly notify the Buyer; and

b. immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to the Buyer.

32.2.3. If asked by the Buyer, the Seller must give evidence within 10 Business Days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

32.3. Access to documents

32.3.1. In this clause 32.3, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

32.3.2. The Seller acknowledges that this Contract may be a Commonwealth contract.

32.3.3. Where the Buyer has received a request for access to a document created by, or in the possession of, the Seller or any Subcontractor that relates to the performance of this Contract (and not to the entry into this Contract):

a. the Buyer may at any time by notice require the Seller to provide the document to the Buyer; and

b. the Seller must promptly comply with the notice.

32.3.4. The Seller must include in any Subcontract relating to the performance of this Contract provisions that will enable the Seller to comply with its obligations under this clause 32.3.

32.3.5. If an application is made to Buyer under the FOI Act for access to documents concerning the Seller, the Buyer may, before deciding, consult with the Seller, without prejudice to any decision to release the information.

SECTION 4 – PERFORMANCE MANAGEMENT FRAMEWORK

33. Application of Performance Management Framework

33.1. Commencement

33.1.1. DTA will notify Sellers about when the Performance Management Framework will start. Notice will be given through the Online Portal at least 30 Business Days before it starts.

33.2. Buyer may exercise any other rights

33.2.1. Nothing in this Section 4 limits any rights or remedies of the Buyer, including any right of termination.

34. Performance Management Framework

34.1. Buyer to manage Seller performance

34.1.1. The Buyer may assess the performance of the Seller at the times stated in Item 48 of Part D – Contract Details or if no times stated:

a. each 6 months from the Contract Start Date and at the end of the Contract Period; or

b. at the end of the Contract Period if the Contract Period is less than 6 months.

34.2. Performance Criteria, Performance Indicators and Ratings

34.2.1. The Buyer may assess the performance of the Seller:

a. against each Performance Criteria;

b. using the Performance Indicators that the Buyer considers to be relevant to the Products and Services;

c. to determine a Rating for:

i. each Performance Criteria; and

ii. an Overall Rating.

Item	Performance Criteria	Performance Indicators	Ratings
1	Delivery schedule met	Seller delivers the Products and Services before or by the times set out in Part D – Contract Details. Seller is responsive to Buyer's requirements in relation to the delivery schedule.	Not Met; or Met

2	Quality of Products and Services	Seller provides Products and Services are to a standard that meets the requirements of the Contract. Seller's Personnel are experienced, qualified, capable and available to provide the required Products and Services. For *Seller-Sourced Labour Hire Workers only* – based on Buyer ratings of Labour Hire Workers under Schedule C1.	Not Met; or Met
3	Pricing and Invoicing	Seller delivers all Products and Services within the agreed Price for the Contract. Seller provides invoices in a timely way. Seller provides necessary documentation to support invoices for payments. Seller offers competitive pricing at or below the Maximum Price.	Not Met; or Met
4	Compliance with Contract (excluding matters covered by other Performance Criteria)	Seller is diligent in complying with security and integrity requirements set out in section 2 of this Part C – Contract Terms. Seller otherwise complies with terms of the Contract. Seller efficiently and effectively addresses any Contract performance issues raised by the Buyer.	Not Met; or Met
5	Professional practice	*Communication* – Seller communicates effectively with the Buyer in accordance with the requirements of Part D – Contract Details. *Reliability* – Seller works both independently and collaboratively with the Buyer and any other Buyer contractors to deliver agreed outcomes.	Not Met; or Met

		Claimed Expertise – Seller Personnel have the expertise claimed in the Request for Tender process.	
Overall Rating			Not Met; or Met

34.2.2. The Buyer may notify the Seller of its provisional Performance Rating. The Seller may provide feedback within 10 Business Days of the date of the notice. The Buyer may consider any feedback and then issue a Performance Rating.

34.2.3. The Buyer may report the Seller's Performance Ratings to DTA to use in accordance with Part A – Panel Terms.

34.2.4. Where the Seller's Overall Rating is 'Not Met', the Buyer may invite the Seller to meet to discuss performance improvement. If asked by the Buyer, the parties must meet at agreed times to discuss any issues relating to the Seller's performance under this Contract.

34.3. Seller's responsibility to correct poor performance

34.3.1. The Seller must rectify any performance issues resulting in a rating of Not Met. The Seller must notify the Buyer of the steps it has taken to do so.

34.4. Reporting to DTA

34.4.1. The Buyer may communicate any failure and any established interim processes or procedures with DTA.

35. Cure Plan

35.1. Seller to provide a Cure Plan if there is a Performance Issue

35.1.1. The Buyer may notify the Seller to provide a Cure Plan if:

a. the Seller is given a single or Overall Rating of 'Not Met';

b. there is a Service Level Failure,

c. the Seller's performance is unsatisfactory;

d. the Seller may have breached any requirement under this Contract; or

e. a Security Incident has occurred (each a **Performance Issue**).

35.1.2. The Seller must give the Buyer a Cure Plan that sets out how the Seller will remedy the Performance Issue and its underlying causes within 5 days of a Buyer notice under clause 35.1.1.

35.1.3. The Seller must include in a Cure Plan:

a. details of the cause of the Performance Issue, including where relevant, its root cause and all underlying causes;

b. the proposed method by which:

    i. the Seller will cure the Performance Issue (if it is capable of being cured); and

    ii. the Seller will ensure that the Performance Issue does not happen again;

c. any temporary measures that can be taken to work around or minimise the impact of the Performance Issue;

d. the time that will be required to fully complete all aspects of the Cure Plan;

e. a risk assessment detailing the risks, consequences, mitigations and overall ratings for the proposed rectification of the Performance Issue; and

f. the tasks, timing and resources (including those of the Buyer) required to implement the Cure Plan.

35.2. Seller implementing Cure Plan

35.2.1. The Buyer may either:

a. notify the Seller to implement the Cure Plan; or

b. notify the Seller to revise the Cure Plan, in which case the Seller must revise and resubmit the Cure Plan within 5 Business Days (or such time stated in the notice) as required in the notice.

35.2.2. If the Buyer gives the Seller a notice under clause 35.2.1.a, the Seller must immediately implement the Cure Plan and:

a. keep the Buyer fully informed about the progress of work against the Cure Plan and any proposed modification to the Cure Plan;

b. promptly provide the Buyer with any information that it reasonably requests about the progress of work, the Cure Plan or any related matter;

c. diligently perform all work in accordance with the Cure Plan and properly manage it through to conclusion;

d. provide an updated risk assessment if requested by the Buyer; and

e. notify the Buyer when it believes it has fully implemented and completed the Cure Plan.

35.2.3. The Buyer may conduct due diligence in respect of work related to the Cure Plan. The Cure Plan will not be considered completed until such time as the Buyer provides written confirmation following due diligence.

35.2.4. Nothing in this clause 35 limits any rights or remedies of the Buyer under this Contract including any right of audit or termination or under any applicable law.

SECTION 5 – PROCUREMENT POLICIES

36. Application of plans and policies

36.1.1. The plans and policies in this Section 5 only apply to this Contract where stated in Item 40 of Part D – Contract Details.

37. Workplace Gender Equality

> ***Note:*** This applies for Contracts over the relevant threshold stated in the Commonwealth Procurement Rules and when the Seller is a 'relevant employer' for the purposes of the WGE Act. Buyers should review Workplace Gender Equality Procurement Principles | WGEA to determine whether they should include these clauses.

37.1. Workplace Gender Equality clauses apply if the Seller is a 'relevant employer' for the purposes of the WGE Act

37.1.1. This clause 37 applies if stated in the relevant part of Item 40 of Part D – Contract Details.

37.1.2. The Seller must comply with its obligations, if any, under the WGE Act.

37.1.3. If the Seller becomes non-compliant with the WGE Act during the Contract Period, the Seller must promptly notify the Buyer.

37.1.4. If the Contract Period exceeds 18 months, the Seller must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Contract Start Date. Following this, the Seller must provide a current letter of compliance to the Buyer annually.

37.1.5. Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under this Contract.

38. Shadow Economy Procurement Connected Policy

> ***Note:*** This applies for Contracts valued at $4 million or more entered into by Non-Corporate Commonwealth Entities. Buyers should review the Shadow Economy Policy: Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement | Treasury.gov.au to determine whether they should include these clauses.

38.1. Shadow Economy clauses for contracts valued over $4 million

38.1.1. The Seller must comply with the Shadow Economy Policy requirements in this clause 38 if stated in the relevant part of Item 40 of Part D – Contract Details.

38.1.2. The Seller warrants in relation to any first tier Subcontractor that delivers goods and/or services as part of a contract resulting from a procurement with an estimated value of $4 million or more (GST inclusive) that the Seller either:

a. at the time of responding to the RFQ that resulted in the entry of this Contract, obtained all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy; or

b. obtained at the time of entry into the Subcontract, all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

The Seller must, on request by the Buyer, provide to the Buyer a copy of any such Statement of Tax Record.

38.1.3. If the Seller is a partnership, the Seller will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Buyer as soon as possible after they become a partner to the partnership.

38.2. Statement of Tax Record

38.2.1. The Seller warrants that at the Contract Start Date it holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

38.2.2. The Seller must:

a. hold all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the Contract Period (including any extension); and

b. on request by the Buyer, provide to the Buyer a copy of any such Statement of Tax Record.

38.2.3. Without limiting its other rights under this Contract or at law, any failure by the Seller to comply with the requirements under clauses 38.2.1 and 38.2.2 will be a breach of this Contract.

38.2.4. The Seller must ensure that any first tier Subcontractor engaged to deliver goods and/or services as part of a Contract resulting from a procurement with an estimated value of $4 million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the term of the relevant subcontract.

38.2.5. The Seller must retain a copy of any Statements of Tax Record held by any first tier Subcontractor in accordance with clause 38.2.4 and must, on request by the Buyer, provide to the Buyer a copy of any such Statement of Tax Record.

39. Payment Time Policy

> ***Note:*** Broadly, this applies to Contracts if the Buyer is an NCE, the Seller is a "Reporting Entity" at the date of its tender response and the value of the Contract is above $4 million. Buyers should review the Payment Times Procurement Policy to determine whether they should include these clauses Payment Times Procurement Connected Policy | Treasury.gov.au.

39.1. Application of Payment Time Policy requirements

39.1.1. The Seller must comply with the Payment Policy requirements in this clause 39 if stated in the relevant part of Item 40 of Part D – Contract Details.

39.2. Payment Policy Subcontracts

39.2.1. The Seller must comply with the Payment Policy.

39.2.2. If the Seller enters into a Payment Policy Subcontract, the Seller must include in that subcontract:

a. a requirement for the Seller to pay the Payment Policy Subcontractor:

i. subject to clause 39.2.4, within 20 calendar days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and

ii. subject to clause 39.2.5, for payments made by the Seller after the payment is due, the unpaid amount plus interest on the unpaid amount calculated under clause 39.2.6;

b. a statement that the Payment Policy applies to that subcontract; and

c. a statement that the subcontractor may make a complaint to the Payment Policy Team or to the Buyer in accordance with the Payment Policy if there has been non-compliance with the requirements of this clause 39.2.2.

39.2.3. If the Seller enters into a Reporting Entity Subcontract in anticipation of (or after) entering this contract, the Seller must use reasonable endeavours to include in that subcontract:

a. obligations equivalent to those in clause 39.2.2; and

b. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:

i. obligations equivalent to those in clause 39.2.1; and

ii. obligations equivalent to this clause 39.2.3 (such that the obligations in this clause 39.2.3 are to continue to be flowed down the Supply Chain to all Reporting Entity Subcontractors).

39.2.4. Clause 39.2.2.a.i does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 39.2.2.a.i.

39.2.5. The Seller is not required to pay interest under clause 39.2.2.a.ii if either:

a. the Buyer has failed to pay the Seller in accordance with the timeframes and requirements under this contract; or

b. the amount of the interest payable is less than $100 (GST inclusive).

39.2.6. For the purpose of clause 39.2.2.a.ii, interest is to be calculated using the formula set out in the interest clause under the relevant Module Terms.

39.3. Payment Policy Evaluation Questionnaire

39.3.1. If requested in writing by the Buyer, the Seller must properly complete and return a Payment Policy Evaluation Questionnaire within 30 calendar days of the request.

39.4. Non-compliance and remediation

39.4.1. If the Buyer considers or becomes aware that the Seller has not or may not have complied with:

a. the requirements of clause 39.2; or

b. the payment requirements of a Payment Policy Subcontract,

the Buyer may direct the Seller to provide to the Buyer either or both of the following within the timeframes stated by the Buyer:

c. information to enable the Buyer to review the Seller's compliance; or

d. a properly completed Payment Policy Remediation Plan.

39.4.2. The Seller must complete all of the steps and activities contained in the Payment Policy Remediation Plan provided under clause 39.4.1.d.

39.4.3. If the Buyer considers that the Seller has failed to comply with any of its obligations under this clause 39, without limiting the Buyer's rights and remedies at law or otherwise under this contract, the Buyer may do either or both of the following:

a. take the failure or non-compliance into account as part of the Buyer's monitoring of the Seller's performance under this contract; or

b. report the non-compliance (and provide a copy of the completed Payment Policy Remediation Plan) to the Payment Policy Team.

39.4.4. The Seller agrees that if it is the subject of a complaint in relation to its compliance with clause 39.2 or the associated payment provisions of a Payment Policy Subcontract:

a. it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and

b. it will cooperate in good faith with the Buyer in connection with any investigation or inquiry and any attempt to resolve the complaint.

39.5. Consent

39.5.1. For any Payment Policy Purpose, the Seller consents to the Buyer:

a. using and sharing with any other Commonwealth Entity the information provided by the Seller as part of a Payment Policy Evaluation Questionnaire, a Payment Policy Remediation Plan, or otherwise received or obtained by the Buyer in connection with this contract or a Payment Policy Subcontract; and

b. receiving information obtained under, or in accordance with, the PTR Act ('**Protected Information**') from an Entrusted Person and using such Protected Information.

39.5.2. By submitting a Payment Policy Evaluation Questionnaire or a Payment Policy Remediation Plan or other document in connection with the Payment Policy that includes any personal information within the meaning of Privacy Act, the Seller warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 39.5. The Seller will provide evidence of such consents to the Buyer on request.

39.6. Interpretation

39.6.1. A reference to the Buyer in clauses 39.3, 39.4.1, 39.4.4.b and 39.5 includes the Payment Policy Team.

40. Indigenous Procurement Policy

> ***Note:*** These provisions apply if the Buyer is a Non Corporate Commonwealth Entity (NCE). If the total value of the Contract is worth over $7.5 million, then clause 40.1 will apply, if it is under $7.5 million, then clause 40.2 will apply. Buyers should review the Indigenous Procurement Policy for further information: Indigenous Procurement Policy | National Indigenous Australians Agency (niaa.gov.au).

40.1. IPP clauses for Contracts over $7.5m

40.1.1. Where the total value of this Contract is **over** $7.5 million and if stated in the relevant part of Item 40 of Part D – Contract Details, the Seller must comply with the Indigenous Procurement Policy requirements in this clause 40.1.

40.1.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

40.1.3. The Seller must use its reasonable endeavours to increase its:

a. purchasing from Indigenous enterprises; and

b. employment of Indigenous Australians,

in the delivery of the Products and Services.

40.1.4. Purchases from Indigenous enterprises may be in the form of:

a. engagement of an Indigenous enterprise as a Subcontractor; and

b. use of Indigenous suppliers in the Seller's Supply Chain.

40.1.5. Without limiting clause 40.1.3, the Seller must comply with the Indigenous Participation Plan.

40.1.6. The Seller must provide a written report to the Buyer via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan:

a. at least once every quarter during the term of this Contract; and

b. within 5 Business Days after the end of the Contract Period (**End of Term Report**).

40.1.7. The End of Term Report must identify whether the Seller:

a. met the mandatory minimum requirements as set out in the Indigenous Participation Plan; and

b. otherwise complied with the Indigenous Participation Plan.

If the Seller did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.

40.1.8. During the term of this contract, the Seller is responsible for managing their access to the IPP Contractor Portal, including by enabling and disabling, as required, its authorised Personnel's access to the IPP Contractor Portal.

40.1.9. If the Buyer considers, in its absolute discretion at any time during the term of this contract, that it has concerns in relation to the Seller's:

a. compliance with the Indigenous Participation Plan; or

b. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Buyer may request the Seller to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Seller must comply with all reasonable directions issued by the Buyer in relation to the Seller's implementation of the Indigenous Participation Plan.

40.1.10. Without limiting its other rights under the contract or at law, any material failure by the Seller to:

a. implement the Indigenous Participation Plan; or

b. comply with a direction issued by the Buyer under clause 40.1.9,

will be a breach of this contract, and the Buyer may terminate this contract under clause 21.2.1.a.

40.1.11. Notwithstanding any other clause of this Contract, the Seller acknowledges and agrees that the reports it submits under clause 40:

a. will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;

b. will not be considered to be Seller Confidential Information; and

c. may be used by Commonwealth entities for any purpose, including for evaluation of an offer by the Seller to provide goods and/or services to a Commonwealth entity.

40.2. IPP Clauses for Contracts under $7.5m

40.2.1. Where the total value of this Contract is **under** $7.5 million and if stated in the relevant part of Item 40 of Part D – Contract Details, the Seller must comply with the Indigenous Procurement Policy requirements in this clause 40.2.

40.2.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

40.2.3. The Seller must use its reasonable endeavours to increase its:

a. increase its purchasing from Indigenous enterprises;

b. increase its employment of Indigenous Australians; and

c. meet the requirements for Indigenous participation stated in Item 41 of Part D – Contract Details,

in the delivery of the Products and Services.

> ***Note***: If a Seller provided detail in their Quote of how they will increase purchasing from an Indigenous enterprise, you should include this as part of the description of the Products and Services.

40.2.4. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Seller's Supply Chain.

40.2.5. Where stated in Item 41 of Part D – Contract Details, the Seller must provide a written report of its compliance with this clause 40.2 by the times stated in Item 41 of Part D – Contract Details.

40.2.6. If during the term of this contract the value of this contract exceeds $7.5 million (GST inclusive), then this Contract will become a High Value Contract for the purposes of the Indigenous Procurement Policy, in which case the Seller must:

a. within 20 Business Days after the $7.5 million (inclusive) value is reached, develop an Indigenous Participation Plan as defined in the Indigenous Procurement Policy that addresses:

i. how the Seller intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;

ii. the Seller's current rate of Indigenous employment and supplier use;

iii. the Seller's commitment to Indigenous participation; and

iv. if any part of the Products and Services is being or will be delivered in a Remote Area, how the Seller will ensure that its provision of the Products and Services will deliver significant Indigenous employment or Seller use outcomes in that Remote Area; and

b. submit the draft Indigenous Participation Plan to the Buyer for its review and, if appropriate, approval.

40.2.7. Upon approval of the draft Indigenous Participation Plan under clause 40.2.5 the Seller must, in performing its obligations under this Contract:

a. comply with the Indigenous Participation Plan;

b. report against its compliance with the Indigenous Participation Plan quarterly during the remainder of the Contract Period; and

c. comply with any directions issued by the Buyer in relation to the Seller's implementation of the Indigenous Participation Plan.

41. Australian Industry Participation Plan (AIP Plan)

> ***Note:*** Broadly, these clauses will apply for Contracts valued over $20 million where the Department of Industry, Science and Resources (DISR) has informed the Buyer that the clauses are required. Buyers should review the information on DISR's website to determine whether these clauses should be included in the

Contract: [Australian industry participation | Department of Industry, Science and Resources].

41.1. AIP Plan for Contracts for $20m or more

41.1.1. The Seller must comply with the AIP Plan requirements in this clause 41 if the relevant part of Item 40 of Part D – Contract Details is marked 'Yes'.

41.1.2. The Seller must comply with the AIP Plan.

41.2. Effect of AIP Plan

41.2.1. If any conflict arises between any part of the AIP Plan and any other part of this Contract, the other part of this Contract will prevail.

41.2.2. The AIP Plan must not be construed as limiting the Seller's responsibility to provide the Products and Services in accordance with and otherwise comply with the requirements of this Contract.

41.3. Implementation Report

41.3.1. The Seller must provide the Buyer with an Implementation Report that meets the Implementation Report Requirements:

a. for Contracts with a Contract Period of more than 12 months, within 60 days of the first anniversary of the Contract Start Date; or

b. for Contracts with a Contract Period of less than 12 months, 30 days prior to the end of the Contract Period.

41.3.2. Where the Buyer considers that the Implementation Report does not meet the Implementation Report Requirements, the Buyer may, by written notice to the Seller, reject the Implementation Report. Where the Buyer rejects the Implementation Report, the Buyer will provide the Seller with reasons for the rejection.

41.3.3. Where the Buyer has rejected the Implementation Report under clause 41.3.2, the Seller must provide the Buyer with the Implementation Report, amended to address the reasons advised by the Buyer and that otherwise meets the Implementation Report Requirements, within 10 Business Days of the date of the rejection notice issued under clause 41.3.2.

41.3.4. The Seller consents to the Buyer or any other Commonwealth Agency:

a. publishing the executive summary of its AIP Plan;

b. providing a copy of the Implementation Report to the Department of Industry, Science and Resources (note that a copy of the approved report and evidence will be received by the Department of Industry, Science and Resources via the SmartForm process);

c. collecting and using information, including personal information, supplied in connection with the Products and Services, AIP Plan and Implementation Reports for the purposes of:

i. meeting the objectives and requirements of the AIP Policy;

ii. program evaluation and monitoring;

iii. policy research, evaluation and development;

iv. providing information to the public and industry to assist and improve the participation of Australian entities; and

v. as may be otherwise authorised or required by law.

42. Environmental Sustainability

> ***Note:*** Buyers should consider the context of the procurement before using model wording. Additional optional model clauses are available on DCCEEW's website: Sustainable Procurement Model Clauses—Appendix D to the Sustainable Procurement Guide (dcceew.gov.au).

42.1. Continuous improvement – waste management performance

42.1.1. The Seller must comply with this clause 42.1 if stated in the relevant part of Item 40 of Part D – Contract Details.

42.1.2. The Seller must review and report to the Buyer on further opportunities to improve its waste management performance through the Contract Period as opportunities arise and at regular intervals with a frequency of no less than annually. The Seller must utilise these opportunities when directed by the Buyer to do so, subject to the parties agreeing any reasonable amendments to the price and payment arrangements directly associated with the relevant opportunities.

43. Modern Slavery

> ***Note:*** The below optional clause is appropriate for contracts which have low risk of Modern Slavery practices occurring in the performance of the Contract.
>
> For Contracts which have moderate or high risk of Modern Slavery practices occurring, alternative model clauses are available on the Attorney General's Department website: Resources (modernslaveryregister.gov.au).

43.1. Seller must identify, assess and address risks of Modern Slavery practices

43.1.1. The Seller must take reasonable steps to:

a. identify;

b. assess; and

address

risks of Modern Slavery practices in the operations and Supply Chains used in the provision of the Products and Services.

43.1.2. If at any time the Seller becomes aware of Modern Slavery practices in the operations and Supply Chains used in the performance of this Contract, the Seller must take all reasonably practicable action to address or remove these practices. This includes addressing any relevant practices of other entities in the Seller's Supply Chains.

44. Small to Medium Enterprise Participation

44.1. Seller to give SMEs opportunities

44.1.1. The Seller must, where possible, seek to engage SMEs as Subcontractors or use SMEs as part of the Supply Chain for the Products and Services.

44.1.2. The Seller must report on SME participation in the performance of this Contract, including on the matters referred to in clause 44.1.1, in the manner and level of detail required by the Buyer.

45. Australian Skills Guarantee Procurement Connected Policy

> ***Note***: Include the below clause 45.2 in the Contract for a Major ICT Project. Clauses 45.2, 45.3 and 45.4 apply to the extent that the RFQ states that the Australian Skills Guarantee Procurement Connected Policy applies to the Contract.
>
> Where these clauses apply, include the Skills Guarantee Reporting Worksheet available on the Australian Skills Guarantee Operational Resources and Stakeholder Engagement GovTEAMS community.

45.1. Application of clause

45.1.1. The Seller must comply with this clause 45 if stated in the relevant part of Item 40 of Part D – Contract Details.

45.2. Australian Skills Guarantee Targets

45.2.1. The Seller must meet the Overarching Apprentice and ICT Cadet Target and the Apprentice and ICT Cadet Target for Women stated in the relevant part of Item 41 of Part D – Contract Details in its performance of the Contract, as calculated in accordance with the Australian Skills Guarantee Procurement Connected Policy.

45.2.2. Clause 45.2.1 does not limit or change the Seller's responsibility to provide the Products and Services in accordance with and otherwise comply with the requirements of this Contract.

> ***Note:*** The Buyer may also set out the reporting requirements in clauses 45.2.3 and 45.2.4 in the Delivery Schedule in Item 10 of Part D – Contract Details.

45.2.3. The Seller must submit a Skills Guarantee Report, in accordance with the reporting requirements of the Australian Skills Guarantee Procurement Connected Policy.

45.2.4. Without limiting clause 45.2.3, a Skills Guarantee Report:

a. must be submitted within 10 Business Days after the end of every quarter during the Contract Period, reporting on performance against the Australian Skills Guarantee Targets during the preceding quarter;

b. must be submitted within 10 Business Days after the end of every financial year during the Contract Period, reporting on performance against the Australian Skills Guarantee Targets during the preceding financial year;

c. must be submitted within 10 Business Days after the end of the Contract Period, reporting on performance against the Australian Skills Guarantee Targets during the Contract Period; and

d. must be submitted using the Skills Guarantee Reporting Worksheet or such other form approved by the Buyer.

45.2.5. If the Seller did not meet one or more of the Australian Skills Guarantee Targets during the relevant reporting period, the Seller must include details of the non-compliance in the relevant Skills Guarantee Report.

45.3. Right to use Skills Guarantee Information

45.3.1. The Seller consents to the Buyer using and providing a copy of Skills Guarantee Information to the Department of Employment and Workplace Relations, for the purposes of:

i. meeting the objectives and requirements of the Australian Skills Guarantee Procurement Connected Policy;

ii. evaluation and monitoring; and

iii. policy research and development; and

iv. administration of the Australian Skills Guarantee.

45.3.2. The Seller notes that Skills Guarantee Information may also be used and disclosed where authorised or required by law.

45.3.3. By submitting Skills Guarantee Information to the Buyer, which may include personal information within the meaning of the Privacy Act, the Seller warrants and represents that:

a. it has made its Apprentices aware that their personal information will be collected by the Seller, and disclosed to the Buyer and the Department of Employment and Workplace Relations for use in the manner contemplated in this clause 45 and as set out in more detail at https://www.dewr.gov.au/australian-skills-guarantee/resources/australian-skills-guarantee-privacy-notice; and

b. it has obtained all necessary consents from its Apprentices and ICT Cadets in accordance with relevant privacy laws to the collection, use and disclosure of their personal information in the manner contemplated by this clause 45. The Seller will provide evidence of such consents to the Buyer on request.

45.3.4. The Seller agrees that high level aggregated data on the Seller's performance against the Australian Skills Guarantee Targets may be recorded in a central repository that is able to be accessed by Commonwealth entities for the purposes of evaluation of an offer by the Seller to provide goods and/or services to a Commonwealth entity.

45.4. Buyer's rights

45.4.1. If the Buyer has concerns in relation to the Seller's ability to meet the Australian Skills Guarantee Targets at any time during the Contract Period, the Buyer may direct the Seller to provide additional information and implement strategies to ensure it meets the Australian Skills Guarantee Targets.

45.4.2. The Seller must comply with all reasonable directions issued by the Buyer under clause 45.4.1.

> ***Note*: Clause 45.4.3 is optional and may be included if the Buyer wishes to include express rights to terminate the Contract in the event of Seller non-compliance with the Australian Skills Guarantee Targets or non-compliance with a reasonable direction issued by the Buyer.**

45.4.3. Without limiting its other rights under the Contract or at law, a failure by the Seller to:

a. comply with the Australian Skills Guarantee Targets; or

b. comply with its obligations under clause 45.4.2,

will be a failure by the Seller to satisfy its obligations under this Contract, subject to clause 21.2.1.a.

46. Commonwealth Supplier Code of Conduct

46.1. Compliance with the Commonwealth Supplier Code of Conduct

46.1.1. The Seller must comply with the Code in connection with the performance of this Contract. The Seller must ensure that it's Personnel and Subcontractors comply with the Code.

46.1.2. The Seller must:

a. periodically monitor and assess its, and its Personnel's compliance with the Code; and

b. on request from the Buyer, promptly provide information regarding:

   i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and

   ii. the Seller's compliance with clause 46.1.1.

46.1.3. The Seller must immediately issue the Buyer a notice on becoming aware of any breach of clause 46.1.1. The notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel involved.

46.1.4. Where the Buyer identifies a possible breach of clause 46.1.1, it may issue the Seller a notice, and the Seller must, within three (3) Business Days of receiving the notice, either:

a. *where the Seller considers a breach has not occurred*: advise the Buyer that there has not been a breach and provide information supporting that determination; or

b. *where the Seller considers that a breach has occurred*: issue a notice under clause 46.1.3 and otherwise comply with its obligations under this clause 46.

46.1.5. Notwithstanding clause 46.1.4, a Buyer may notify the Seller in writing that it considers that the Seller has breached clause 46.1.1, in which case the Seller must issue a notice under clause 46.1.3 and otherwise comply with its obligations under this clause 46.

46.1.6. The Buyer may treat a failure by the Seller to comply with its obligations under any part of this clause as a failure subject to clause 21.2.1.a.

46.1.7. The Buyer's rights under this clause are in addition to and do not otherwise limit any other rights the Buyer may have under the Contract. The performance by the Seller of its obligations under this clause will be at no additional cost to the Buyer.

46.1.8. The Seller agrees that the Buyer or any other Commonwealth agency may take into account the Seller's compliance with the Code in any future approach to market or procurement process.

Australian Government
Digital Transformation Agency

SCHEDULE C1 – ICT LABOUR HIRE MODULE TERMS

CONTENTS

SCHEDULE C1 – ICT LABOUR HIRE MODULE TERMS

OPERATIVE TERMS

These Schedule C1 – ICT Labour Hire Module Terms apply to all Contracts under which the Seller is required to provide Products and Services under the ICT Labour Hire Module.

1. Scope of this Module

1.1.1. Under this Module, the Seller must only provide Products and Services within the scope of the Categories stated in Schedule A1 – ICT Labour Hire Module.

1.1.2. The Services under the ICT Labour Hire Module do not include any other products and services, such as:

a. services available under Whole of Government arrangements; or

b. the provision of Products and Services available under the other Modules of this Panel.

2. Services under the ICT Labour Hire Module

2.1. Seller-Sourced Labour Hire Workers

2.1.1. If Seller-Sourced Labour Hire Worker services are part of the requirements in Item 51 of Part D – Contract Details, the Seller must provide the Services stated in the requirements as follows:

a. the Seller sources a Candidate that matches the requirements of the Buyer;

b. the Candidate is then put forward to the Buyer to decide if they are suitable or not;

c. if suitable, the Buyer takes them as a Labour Hire Worker;

d. the Labour Hire Worker performs work for the Buyer; and

e. the Seller is responsible for employing or engaging the Labour Hire Worker under a contract.

2.2. Buyer-Sourced Labour Hire Workers

2.2.1. If Buyer-Sourced Labour Hire Worker services are part of the requirements in Item 51 of Part D – Contract Details, the Seller must provide the Services stated in the requirements as follows:

a. the Buyer sources a Candidate that meets their requirements;

b. the Seller then employs or engages the Candidate under a contract;

c. the Candidate is provided to the Buyer as a Labour Hire Worker; and

d. the Labour Hire Worker performs work for the Buyer.

2.3. Seller-Sourced Buyer Workers

> ***Note***: For more information on where it may be appropriate to enter into an arrangement for Seller-Sourced Buyer Worker services, Buyers can review the Australian Public Service Commission's Non-ongoing and Irregular or Intermittent Employment page.

2.3.1. If Seller-Sourced Buyer Worker services are part of the requirements in Item 50 of Part D – Contract Details, the Seller must provide the Services stated in the requirements as follows:

a. the Seller sources a Candidate that matches the requirements of the Buyer;

b. the Candidate is then put forward to the Buyer to decide if they are suitable or not; and

c. if accepted, the Buyer employs or engages the Candidate under a contract as a Buyer Worker.

2.3.2. The provisions in this Schedule relating to Labour Hire Workers do not apply where the Seller is sourcing Candidates as potential Buyer Workers.

2.3.3. The Buyer will become responsible for the Candidate from the date that it formalises an offer of employment, or engagement of the Candidate under a contract, (**engagement date**) so as to become a Buyer Worker.

2.3.4. From the Buyer Worker's engagement date, the Seller must not:

a. approach a Buyer Worker with other employment opportunities; or

b. if approached by the Buyer Worker, offer recruitment services to the Buyer Worker for a period of 2 years from the engagement date.

3. Seller Sourcing responsibilities

3.1. Sourcing Candidates

3.1.1. This clause 3 applies if the Seller is required to source and provide Candidates to the Buyer for potential placement with the Buyer as either:

a. Seller-Sourced Labour Hire Workers; or

b. Seller-Sourced Buyer Workers (**Seller Sourcing**);

as stated in Items 50 and 51 of Part D – Contract Details.

3.1.2. This clause 3 does not apply where the Services are only for Buyer-Sourced Labour Hire Workers.

3.1.3. When conducting Seller Sourcing the Seller must:

a. manage the entire sourcing and recruitment process, including:

i. advertising;

ii. sourcing Candidates; and

iii. conducting interviews;

b. ensure all Candidates have the:

i. skills;

ii. qualifications;

iii. experience;

iv. knowledge; and

v. competence,

necessary for the agreed position, stated in Item 50 and 52 of Part D – Contract Details; and

c. undertake database searches and sourcing activities based on the requirements and position descriptions stated in Item 50 and 52 of Part D – Contract Details.

4. Checking Candidates

4.1. Pre-placement checks

4.1.1. Clause 4 applies:

a. where the Services include Seller Sourcing; and

b. for Buyer-Sourced Labour Hire Workers, if stated to be part of Other Services in Item 53 of Part D – Contract Details.

4.1.2. The Seller must obtain the Candidate's consent for:

a. the Buyer to conduct a criminal history assessment or police check in a form acceptable to the Buyer; or

b. if the Seller is an accredited body with the Australian Criminal Intelligence Commission, the Seller to conduct a criminal history assessment or police check in a form acceptable to the Buyer.

4.1.3. The Seller must undertake the following pre-placement checks for each Candidate:

a. citizenship, to confirm Candidates are Australian citizens, unless otherwise agreed by the Buyer in writing;

b. security clearance, to confirm Candidates hold the clearance required by the Buyer, as stated in Items 36, 50 or 52 of Part D – Contract Details;

c. other clearances or checks required by the Buyer, as stated in Item 36 of Part D – Contract Details. E.g. Employment Suitability Clearance, working with children and/or vulnerable persons;

d. verification of qualifications (educational and professional) and skills; and

e. a minimum of two reference checks from employers recorded in writing, from within the past five years (**pre-placement checks**).

4.1.4. The Seller must get:

a. all of the documents needed to complete the pre-placement checks; and

b. any other information needed to determine whether a Candidate is suitable to the Buyer and give this to the Buyer.

> ***Note:*** When checking Candidates under clause 4, the Buyer and Seller should be aware of their obligations under the *Privacy Act 1988* (Cth) and the APPs.
>
> In particular:
>
> - the Buyer should be aware of their obligations under APP 3.1 to only collect reasonably necessary personal information. For example, more detailed information about Candidates may only be required at the short-listing or onboarding stage.
>
> - the Seller should be aware of the obligation under APP 10.2 to only disclose relevant personal information.

4.1.5. The Seller must provide a list of Candidates being offered by the Seller for a placement that includes for each Candidate;

i. identity and contact information e.g. full name, address, phone number, email address and date of birth;

ii. relevant education, qualifications, training and licences;

iii. relevant work history, including details of previous employers and reasons for termination of prior placements (if any);

iv. relevant skills and abilities e.g. computer skills, languages;

v. references;

vi. the proposed start date and finish date (if known);

vii. the Price for each Candidate;

viii. confirmation that each Candidate has undergone the relevant pre-placement checks, and the results of those checks;

ix. the details of any clearances held e.g. security clearance;

x. where the Candidate does not hold a clearance, details of whether the Candidate is prepared to undergo a security assessment to meet the Buyer's security guidelines should they be successful; and

xi. any other information requested by the Buyer.

4.1.6. The Seller must provide the Buyer with:

a. information on Candidates that the Buyer needs; and

b. the steps taken by the Seller to check or validate the information.

4.1.7. The Seller must have the Candidate’s express permission to be put forward to the Buyer for a Labour Hire Worker or Buyer Worker role.

4.1.8. The Seller must arrange interviews for the Buyer and Candidates and follow any reasonable directions given by the Buyer in respect of selecting Candidates.

4.1.9. The Buyer will review the list of Candidates and will notify the Seller that it approves or rejects each Candidate.

4.2. Timing for offering Candidates

4.2.1. The Seller’s obligations in clauses 3 and 4 apply whether the Seller offers the Candidate to the Buyer before or after this Contract is entered into.

5. Privacy

5.1. Candidate consent

5.1.1. The Seller must obtain the consent of the Candidate for the Buyer to:

a. receive;

b. read; and

c. retain,

copies of pre-placement check documents and other Personal Information required by the Buyer under this Contract.

6. Provision of Labour Hire Workers

6.1. Supervision of Labour Hire Workers

6.1.1. The Buyer is responsible for the management, supervision and direction of Labour Hire Workers.

6.1.2. The Buyer is responsible for the advice and work product provided by a Labour Hire Worker under a Contract. However, nothing in this clause 6.1.2 relieves the Seller from its obligations under this Contract.

6.1.3. The Seller warrants that it fully complied with clauses 3.1 and 4.1 in placing the Labour Hire Workers identified in Item 52 of Part D – Contract Details.

6.2. Seller responsibilities for Labour Hire Workers

6.2.1. When providing the Services, the Seller must:

a. ensure that all Labour Hire Workers act at the direction of the Buyer in relation to work to be performed;

b. ensure that all Labour Hire Workers sign any undertaking required by the Buyer in respect of their confidentiality, privacy and secrecy obligations (**Nondisclosure Undertaking**);

c. ensure that all Labour Hire Workers are aware of, and comply with, all confidentiality, privacy and secrecy obligations required by the Buyer. This includes those stated in Items 36, 37 and 38 of Part D – Contract Details and in any Non-disclosure Undertaking signed by a Labour Hire Worker. The Labour Hire Worker must comply with these obligations for the duration of their placement and any relevant period after their placement;

d. provide Labour Hire Workers in the agreed position, for the duration of placement, and at the time and location(s) stated in Item 52 of Part D – Contract Details. This is subject to clause 6.6.1.b;

e. have the capacity and capability to manage a continual supply of appropriately qualified and skilled Labour Hire Workers. This includes replacement of Labour Hire Workers when necessary and provision of Labour Hire Workers at short notice;

f. ensure that the Seller satisfies all of its obligations in respect of Labour Hire Workers' entitlements; and

g. create and maintain records of all Labour Hire Workers it places with the Buyer.

6.2.2. The Seller must:

a. satisfy all legal obligations concerning the terms and conditions of employment or engagement for Labour Hire Workers. This includes under:

i. the *Fair Work Act 2009* (Cth);

ii. the National Employment Standards; and

iii. any applicable industrial award; and

b. ensure that Labour Hire Workers are adequately informed about their pay rates and other conditions of employment or engagement.

6.3. Responsibility for Labour Hire Workers

6.3.1. The Seller is fully responsible for the acts and omissions of the Labour Hire Workers. This clause is subject to clause 6.1.2.

6.3.2. Where this Contract:

a. imposes an obligation on Labour Hire Workers, the Seller is responsible for the performance by Labour Hire Workers of such obligations; and

b. prohibits an act by the Seller, the performance of that act by Labour Hire Workers will be deemed to be a performance of that act by the Seller.

6.3.3. The Seller must ensure that Labour Hire Workers:

a. are given full details of the Services to be carried out; and

b. are aware of, and comply with, the Seller's obligations in providing the Services.

6.4. Seller warranty

6.4.1. The Seller warrants that it holds, and will continue to hold for the full Contract Period, a Labour Hire Licence and any other licence in each Location as required by law.

6.4.2. The Seller must provide the Buyer with details of its licences held if asked. The Seller must give updated information to the Buyer if its licences change during the Contract Period.

6.4.3. The Seller must notify and fully disclose to the Buyer any breach of the warranty in this clause 6.4 as soon as it becomes aware of a breach.

6.4.4. This clause 6.4 does not limit the Seller's obligations under the Contract.

6.5. Other employment

6.5.1. The Seller must immediately notify the Buyer if a Candidate or Labour Hire Worker is working elsewhere. This obligation continues throughout the Contract Period.

6.6. Changes to number of Labour Hire Workers

6.6.1. The Buyer may, at any time during the Contract Period, change:

a. the required number of Labour Hire Workers placed with the Buyer; or

b. the required location of work of the Labour Hire Workers placed with the Buyer,

by providing 10 Business Days written notice (or such other longer period as agreed by the parties) to the Seller.

6.6.2. If the Buyer requires a replacement Labour Hire Worker the Seller must offer new Candidates. The Seller must complete the sourcing and checking requirements under clauses 2, 3 and 4 for the new Candidates.

6.6.3. If the Buyer changes the number of Labour Hire Workers placed under clause 6.6.1:

a. the change is not a termination or reduction in scope for convenience of this Contract for the purposes of clause 21.1 of Part C – Contract Terms; and

b. the Seller is not entitled to any compensation or reimbursement of costs for terminated Labour Hire Workers under clause 21.1.3 of Part C – Contract Terms, regardless of how many times the Buyer exercises the relevant right.

6.6.4. Where the Buyer:

a. changes the number of Labour Hire Workers under clause 6.6.1; and

b. the change results in certain Labour Hire Workers no longer being placed with the Buyer, any Price payable for Services provided by those Labour Hire Workers up until their placement ends will still be payable in accordance with this Contract.

6.7. Extension of placement

6.7.1. The Buyer may ask to extend the placement of Labour Hire Workers. To do this, the Buyer must notify the Seller in writing at least 20 Business Days before the end date of the Labour Hire Worker's placement as stated in Item 52 of Part D – Contract Details. The Seller agrees to use its best efforts to meet such a request, subject to the availability of the Labour Hire Workers.

6.7.2. If the Seller is unable to grant an extension request made by the Buyer, the Seller must notify the Buyer within 5 Business Days of receiving the notice in clause 6.7.1.

6.8. On site requirements for Labour Hire Workers

6.8.1. Unless agreed by the Buyer in writing, Labour Hire Workers must work on-site at the Buyer's premises at the location stated in Item 52 of Part D – Contract Details.

6.8.2. The Buyer must ensure that the Labour Hire Worker has reasonable access to the Buyer's premises at the location stated in Item 52 of Part D – Contract Details.

6.8.3. The Seller must ensure Labour Hire Workers comply with all reasonable:

a. instructions;

b. directions;

c. policies; and

d. procedures,

relating to work health and safety in operation at the Buyer's premises or facilities.

6.9. Work location other than Buyer's premises

6.9.1. The Buyer may allow a Labour Hire Worker to work remotely from the Labour Hire Worker's home or from another location other than the Buyer's premises.

6.9.2. The Seller must ensure the Labour Hire Worker has the facilities to work from home or another location, including a safe workplace, a suitable work station, internet connectivity and all required IT equipment.

6.9.3. The Seller must ensure the Labour Hire Worker complies with the Buyer's policies, procedures and guidelines in relation to working from home or working remotely.

6.10. Unsuitable persons

6.10.1. If the Buyer forms the view that a Labour Hire Worker:

a. is incompetent, negligent or guilty of misconduct;

b. has disobeyed or disregarded a lawful direction given by the Buyer;

c. has failed to comply with any relevant law or engaged in serious misconduct;

d. has failed to act in accordance with the standards and requirements of:

   i. the APS Values;

   ii. the APS Code of Conduct;

   iii. the Buyer's work health and safety requirements;

   iv. the Buyer's social media policy; or

   v. any applicable Buyer policies, procedures or guidelines specified in this Contract;

e. has engaged in conduct that brings the Buyer into disrepute;

f. has misused, accessed without authorisation or improperly disclosed Official Information, or has otherwise failed to comply with the requirements of any Nondisclosure Undertaking signed by the Labour Hire Worker;

g. has failed to comply with the Buyer's security requirements;

h. while accessing or using the Buyer's premises, Buyer Material or Buyer Property, has failed to comply with the Buyer's access and use requirements;

i. is not performing (or has not performed) their role to the satisfaction of the Buyer; or

j. is otherwise not suitable to perform the Labour Hire Worker Services,

then the Buyer may, at any time, and without liability to the Seller or the relevant Labour Hire Worker:

k. undertake a process to ensure that the conduct or performance of the Labour Hire Worker is suitably managed to the satisfaction of the Buyer; or

l. immediately, on providing notice to the Seller, terminate the placement of the relevant Labour Hire Worker.

6.10.2. The Seller must notify the Buyer immediately if it becomes aware of any information that may affect the Buyer's acceptance of any Labour Hire Worker.

6.10.3. The Seller must immediately notify the Buyer if a Labour Hire Worker is charged with a criminal offence for which there is or would (if admitted or proven) be a connection between the offending conduct and the duties, role or position of the Labour Hire Worker under this Contract. This clause does not limit clause 6.10.2.

6.10.4. The Buyer reserves the right at any time to refuse to allow any Labour Hire Worker to enter the Buyer's premises.

6.11. Absences or unavailability of Labour Hire Workers

6.11.1. Labour Hire Workers must inform the Buyer of any leave arrangements as early as possible before they plan to take the leave. They may take leave with the prior written approval of the Buyer.

6.11.2. The Seller must notify the Buyer immediately if a Labour Hire Worker will be absent from work or otherwise unavailable or unable to carry out their role. E.g. due to illness or resignation.

6.11.3. The Seller must not charge, and the Buyer is not liable to pay, any part of the Price for a Labour Hire Worker for any period of absence. This clause is subject to clause 6.11.5.

6.11.4. Where a Labour Hire Worker has been placed with the Buyer for a specific duration, the Seller must not permit or facilitate the removal of that Labour Hire Worker before the end date of their placement with the Buyer. This obligation does not apply where it is entirely unavoidable. E.g. due to illness or resignation.

6.11.5. An absence or unavailability of a Labour Hire Worker as a result of taking paid family and domestic violence leave under the *Fair Work Act 2009* (Cth) will not be considered an absence or an unavailability for the purposes of clause 6.11.3.

6.12. Replacement of unavailable Labour Hire Workers

6.12.1. Where a Labour Hire Worker is unavailable for 5 Business Days or more, the Seller must, if required by the Buyer, provide a replacement Labour Hire Worker. The replacement must be:

a. suitably qualified and acceptable to the Buyer;

b. provided at no additional charge; and

c. provided within 10 Business Days unless otherwise agreed by the Buyer.

6.12.2. If the Seller is unable to provide a replacement Labour Hire Worker under clause 6.12.1, the Buyer may, in addition to any other rights it has under this Contract, immediately terminate or reduce the scope of this Contract.

6.13. Termination of Labour Hire Worker placement

6.13.1. The Buyer may end the placement of a Labour Hire Worker under a Contract:

a. by giving the Seller a minimum of 10 Business Days' notice, where the Labour Hire Worker is no longer required by the Buyer; or

b. effective immediately upon notice from the Buyer to the Seller:

   i. under clause 6.10.1.l; or

   ii. where otherwise permitted by this Contract.

6.13.2. If the Buyer ends the placement of a Labour Hire Worker under clause 6.13.1, on and from the date of termination of the placement, the Seller must:

a. immediately stop providing the Labour Hire Worker to the Buyer;

b. if required by the Buyer, replace the Labour Hire Worker with a suitable substitute Labour Hire Worker at no additional cost to the Buyer and within any timeframe specified by the Buyer; and

c. not seek to charge the Buyer any part of the Price for the Labour Hire Worker for any period after the date of termination.

6.13.3. A termination of the placement of any Labour Hire Worker by the Buyer under clause 6.13.1 does not:

a. constitute a termination or reduction in scope of this Contract; or

b. give the Seller the right to any compensation or reimbursement of costs under clause 21.1.3 of Part C – Contract Terms. This is regardless of how many times the right under clause 6.13.1 is exercised by the Buyer. This clause 6.13.3 is subject to clause 6.6.4.

6.13.4. If the Seller is unable to provide replacement Labour Hire Workers under clause 6.13.2.b, the Buyer may, in addition to any other rights it has under this Contract, immediately terminate or reduce the scope of this Contract.

7. Intellectual Property Rights

7.1. Table of Intellectual Property Rights

7.1.1. The parties agree to the Intellectual Property Rights and licensing arrangements as set out in the table in this clause 7.1.

Item	Scope	Provisions
1.	**Buyer Material**	a. Intellectual Property Rights in Buyer Material and Buyer Data remain Vested with the Buyer. b. The Buyer Grants to the Seller a Limited Licence in relation to Buyer Material solely for the Seller Purpose. c. The Buyer will provide Buyer Material to the Seller. d. The Buyer may amend Item 1 of this table with terms specified in Item 31 of Part D – Contract Details. e. The Seller must promptly return Buyer Material to the Buyer, and must destroy all hard or electronic copies of Buyer Material, if requested

		by the Buyer or on expiry or termination of this Contract.
2.	**Incorporated IP**	a. The Seller Grants to the Buyer a Licence to Use any Incorporated IP, for the purposes of this Contract and any other purpose. b. The Buyer must ask for permission from the Seller to publish logos or distinctive branding included in the Incorporated IP. The Seller must be reasonable in responding to such a request. c. The Seller agrees that this Licence includes a right for the Buyer to license the Incorporated IP in conjunction with the Contract Material to the public under an Open Access Licence.
3.	**Contract Material**	a. Intellectual Property Rights in all Contract Material Vests in the Buyer. b. The Buyer Grants to the Seller a Limited Licence in relation to the Contract Material for the Seller Purpose.

7.2. Seller giving effect to Intellectual Property Rights

7.2.1. On request by the Buyer, the Seller will create, sign, execute or otherwise deal with any document necessary or desirable to give effect to the table in clause 7.1.

7.3. Intellectual Property warranty

7.3.1. The Seller warrants that:

a. it holds all necessary rights to grant the Intellectual Property Rights to the Buyer under this Contract; and

b. the Buyer's use of the Products and Services in accordance with the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

8. Security obligations

8.1.1. The Seller must ensure that all Labour Hire Workers comply with the Buyer's policies, procedures and other requirements relating to security:

a. specified in Item 36 of Part D – Contract Details; and

b. communicated to the Labour Hire Workers in the course of their work for the Buyer,

including any variations or additions to those policies, procedures or other requirements that the Buyer communicates from time to time.

8.1.2. The obligations in this clause extend for the duration of the Labour Hire Worker's placement.

8.1.3. This clause 8 does not limit the Seller's other obligations under this Contract.

9. Managing Labour Hire Worker Performance

9.1. Seller responsibilities

9.1.1. Where the Buyer notifies the Seller of a performance issue with a Labour Hire Worker:

a. as a result of assessment under the Performance Management Framework in Section 4 (**Performance Management Framework**) of Part C – Contract Terms and this clause 9; or

b. otherwise,

the Seller must:

c. comply with any reasonable directions from the Buyer to address the performance issue; and

d. implement any remedial action required by the Buyer.

9.2. Performance Management Framework – Labour Hire Workers

> ***Note:*** The Buyer will assess the Seller under the Performance Management Framework. The Buyer will also assess Labour Hire Workers. The Buyer may use its assessment of Seller-Sourced Labour Hire Workers as part of its assessment of the Seller under the Performance Management Framework. Refer to Item 5 of clause 34.2 of Part C – Contract Terms.

9.2.1. DTA will notify Sellers about when the Performance Management Framework will start. DTA will give the notice through the Online Portal at least 30 Business Days before it starts. DTA may start the Buyer's assessment of Labour Hire Workers under these Module Terms at a different time to the assessment of Sellers under the Performance Management Framework.

9.2.2. The Buyer will assess the performance of the Labour Hire Worker at the times stated in Item 48 of Part D – Contract Details or if no time is stated:

a. each 6 months from the Contract Start Date; or

b. at the end of the Contract Period if less than 6 months.

9.2.3. The Buyer's assessment of a Labour Hire Worker under clause 9.2 is in addition to the Buyer's assessment of the Seller under the Performance Management Framework set out at clause 34 of Part C – Contract Terms.

9.2.4. The Buyer will assess the performance of each Labour Hire Worker:

a. against each Performance Criteria;

b. using the Performance Indicators;

c. to determine a Rating for:

i. each Performance Criteria; and

ii. an Overall Rating;

as follows:

Item	Performance Criteria	Performance Indicators	Ratings
1	**Capability of Labour Hire Worker**	Labour Hire Worker provides the Labour Hire Worker Services to a standard that meets the requirements in the position description. Labour Hire Worker holds the skills they were held out to have in the Request for Tender process. The Buyer would recommend the Labour Hire Worker. Labour Hire Worker communicates effectively and works cooperatively with the Buyer.	Not Met; or Met.
2	Compliance with laws and Buyer policies	Labour Hire Worker complies with IT use policy. Labour Hire Worker complies with Buyer code of conduct. Labour Hire Worker complies with Buyer policies.	Not Met; or Met.

		Labour Hire Worker does not commit misconduct or fraudulent conduct.	
Overall Rating			Not Met; or Met.

9.2.5. The Buyer will notify the Labour Hire Worker of their provisional Performance Rating. The Labour Hire Worker may provide feedback within 10 Business Days of the notice. The Buyer will consider any feedback and then issue a final Performance Rating.

9.2.6. The Buyer may keep a record of a Labour Hire Worker's performance for each Contract and provide the assessment to DTA. DTA may provide this information to other Buyers.

9.3. Feedback and Performance Management Framework

9.3.1. The Buyer may request feedback from a Candidate or Labour Hire Worker about the Seller's performance of this Contract. The Buyer may consider such feedback when assessing the Seller's performance under Section 4 (**Performance Management Framework**) of Part C – Contract Terms.

10. Contact details

10.1.1. The Seller must provide the personal email address and personal mobile phone contact number of each Labour Hire Worker at the time they are placed with the Buyer.

11. Contracts and employment arrangements

11.1.1. The Seller must ensure that its contracts and employment agreements with Candidates and Labour Hire Workers:

a. include the individual's consent to the collection, use and disclosure of the information set out in clauses 5, 6.5, 9.2 and 10; and

b. otherwise facilitate compliance with the Seller's obligations under the Contract.

12. Testing

12.1. Drug and alcohol testing

12.1.1. This clause 12.1 applies if stated in Item 57 of Part D – Contract Details.

12.1.2. The Seller must ensure that Labour Hire Workers and Buyer Workers are aware that they have a responsibility to ensure the use of alcohol, drugs or other substances does not impact on safety in the work environment in which they carry out their duties.

12.1.3. The Buyer may require that the Labour Hire Workers or Candidates be tested for alcohol or other drugs at any time. This includes:

a. prior to commencement;

b. during a placement;

c. randomly; or

d. as a result of an incident.

12.1.4. The Seller must ensure that the Labour Hire Worker submits to testing stated in this clause 12.1.

12.1.5. Where drug or alcohol testing occurs in respect of a Labour Hire Worker or Candidate:

a. the testing will be undertaken by a suitably trained, qualified collector who is authorised by the Buyer;

b. the Labour Hire Worker or Candidate will undertake testing according to the Buyer's policies and procedures relating to drugs and/or alcohol. This includes:

    i. the testing itself;

    ii. the outcome of a test; and

    iii. where a Labour Hire Worker or Candidate refuses to submit to a test; and

c. the Buyer will notify the Seller of any issues or concerns as soon as reasonably practical.

13. Maximum Price and Pricing Quotes – ICT Labour Hire

> ***Note*: *Maximum Price***
>
> The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller will have a different Maximum Price for each type of ICT Labour Hire Service under this Module. The Seller's Maximum Price is determined on the basis set out in the table at clause 3.1.2 of Schedule A1 – ICT Labour Hire Module. DTA has recorded the Seller's Maximum Prices in Part B – Panel Appointment Details and on the Online Portal.
>
> Refer to clause 3 of Schedule A1 – ICT Labour Hire Module for further information.

14. Price under this Contract

14.1. Price, allowances and costs

14.1.1. Subject to the Seller's proper performance of the Contract, the Buyer will pay the Seller the Price stated in Item 54 of Part D – Contract Details. The Price will include:

a. the Agreed Hourly Rate; and

b. allowances, reimbursements and costs permitted under the Contract.

14.1.2. The Seller must state the Price in Part D – Contract Details on a GST inclusive and exclusive basis.

14.2. Price must not exceed the Maximum Price

14.2.1. The Seller must price the Contract at or below the Maximum Price when the Contract is entered.

14.2.2. The Seller must price any variation to the Contract at or below the Maximum Price stated in the Seller's Module 3 Price List at the time of the Contract Variation.

14.3. Price is all inclusive

14.3.1. Unless otherwise stated in Part D – Contract Details, the Price:

a. covers all costs and resources required by the Seller to perform this Contract; and

b. represents the total consideration payable by the Buyer for all matters relevant to this Contract.

14.4. Calculation of Agreed Hourly Rate for Labour Hire Workers

14.4.1. The Agreed Hourly Rate for this Contract is the total of:

a. Hourly Management Rate (stated as a dollar amount); plus

b. Hourly Salary; plus

c. Hourly Employment Oncosts;

where:

Hourly Management Rate includes the Seller's:

d. costs of sourcing a Labour Hire Worker (if the Services include a Seller-Sourced Labour Hire Worker);

e. costs for ongoing engagement and provision of the Labour Hire Worker;

f. costs of maintaining insurances (including workers compensation insurance); and

g. profit margin;

The Hourly Management Rate:

h. is stated in Part D – Contract Details as both a dollar amount and as a percentage of the Hourly Salary; and

i. where stated as a percentage of the Hourly Salary, must not exceed the Seller's Maximum Price;

Hourly Salary – is the hourly amount payable to the Labour Hire Worker before tax and excluding compulsory superannuation contributions. It passes through directly to the Buyer.

Hourly Employment Oncosts – is the following statutory employment on-costs, passed through directly to the Buyer:

j. payroll tax payable under any applicable State or Territory Law. This excludes any penalty charge arising as a result of a failure to pay State payroll tax in accordance with any applicable State or Territory Law;

k. compulsory superannuation contributions as payable under any Commonwealth Law. This excludes any superannuation guarantee charge or any other similar penalty charge arising because of a failure to pay superannuation in accordance with Commonwealth Law; and

l. other statutory charges (excluding workers compensation insurance) applicable for the Labour Hire Worker required by law and agreed by the Buyer in a Contract.

14.4.2. If the actual Hourly Employment Oncosts paid by the Seller are less than the amounts specified in Part D – Contract Details, then clause 15.7 applies.

14.5. Calculation of daily Price for Labour Hire Workers

14.5.1. The daily Price for each Labour Hire Worker provided under this Contract will be calculated on the following basis:

Hours Worked x Agreed Hourly Rate

Hours Worked – is the number of hours worked by the Labour Hire Worker set out in an approved Timesheet under clause 14.11.

Agreed Hourly Rate – as calculated under clause 14.4.

14.6. Price for Seller-Sourced Buyer Worker

14.6.1. If the Seller sources a Candidate or Candidates for the Buyer to employ or engage, the Buyer will pay the Seller a one off payment calculated as a percentage of the base salary, excluding superannuation, of the Candidate (**Placement Fee**).

14.6.2. The Placement Fee is stated in Item 54 of Part D – Contract Details and must not exceed the Seller's Maximum Price.

14.7. Price for Other Services

14.7.1. The Price for Other Services will be stated in Item 54 of Part D – Contract Details.

14.8. Price review

14.8.1. This clause 14.8 applies if stated in Item 26 of Part D – Contract Details.

14.8.2. After the first anniversary of the Contract Start Date, the Seller may apply for an annual adjustment of its Price by applying to the Buyer Representative no later than 31 March in each year of the Contract Period.

14.8.3. The Price adjustment requested must not be more than the change in the Wage Price Index (all sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics. The proposed new Price may not exceed the Seller's Maximum Price under the Panel Agreement at the time the Contract Variation is entered.

14.8.4. The Buyer may, by written notice to the Seller, approve or not approve an application made under clause 14.8.2.

14.8.5. Where the Buyer approves an application made by the Seller under clause 14.8.2, the Seller's Price will be adjusted from 1 July of that year using a Contract Variation.

14.9. Price and placement end date transparency

14.9.1. If the parties agree to a change to the Price under clauses 14.4.2 or 14.8, the Seller must provide the Labour Hire Worker with an updated breakdown of the new Price as it applies to the Labour Hire Worker, setting out the:

a. Agreed Hourly Rate;

b. Hourly Salary stated as a dollar amount;

c. Hourly Management Rate stated as both a dollar amount and as a percentage of the Hourly Salary; and

d. Hourly Employment Oncosts stated as a dollar amount.

or, where approved in writing by the DTA, the Seller is not required to provide the information under clause 14.9.1.a, c, and d, and is only required to provide the Labour Hire Worker with the:

e. updated Hourly Salary; and

f. updated total Contract Price.

14.9.2. The Seller must notify a Labour Hire Worker of any Contract Variation that changes the end date of that Labour Hire Worker's placement with the Buyer.

14.10. Conversion of a Labour Hire Worker to a Buyer employee

14.10.1. The Buyer may offer a Labour Hire Worker an opportunity to become a direct employee of the Buyer. Conversion occurs where a Labour Hire Worker who is placed with the Buyer under this Contract accepts an offer of employment by the Buyer (**Conversion**).

14.10.2. Where a Conversion occurs, the Seller must provide a seamless transition of the Labour Hire Worker to the Buyer.

14.10.3. If Conversion occurs in respect of a Labour Hire Worker:

a. the Seller must immediately stop charging any part of the Price for that Labour Hire Worker, other than any applicable Conversion Fee; and

b. subject to clauses 14.10.4 and 14.10.5, the Buyer will pay the Seller the Conversion Fee if stated in Item 54 of Part D – Contract Details.

14.10.4. The Seller will only be eligible for a Conversion Fee if:

a. at the time when the relevant Labour Hire Worker accepts the offer of employment, the Labour Hire Worker has been placed in the relevant position with the Buyer under a Contract for less than 12 months in aggregate; and

b. the Buyer makes an offer of employment to the relevant Labour Hire Worker for either the same position which the Labour Hire Worker is in under the Contract or a Similar Role (including where that role is publicly advertised by the Buyer).

This clause 14.10.4 is subject to clause 14.10.5.

14.10.5. The Seller is not entitled to a Conversion Fee if:

a. the Labour Hire Worker has been placed for a period of 12 months or more in aggregate by the Buyer under a Contract prior to accepting the offer of employment from the Buyer;

b. the Labour Hire Worker is made an offer of employment by the Buyer for a position other than either the position which the Labour Hire Worker has filled under the Contract immediately prior to accepting the offer or a Similar Role;

c. the offer of employment to the Labour Hire Worker is made as a result of the Labour Hire Worker applying for any position (other than the position the Labour Hire Worker has filled under the Contract or a Similar Role) that is publicly advertised by the Buyer; or

d. the Labour Hire Worker was at any time referred by the Buyer to the Seller.

14.10.6. The Conversion Fee of a Labour Hire Worker engaged on a full time basis will be calculated on the following basis:

((**Hourly Management Rate as a dollar value x A**) x **B**) x (48 weeks per annum minus **Actual Number of Weeks Worked**)

A = for a full time worker means 7.5 hours

B = for a full time worker means 4.75 days

Actual Number of Weeks Worked = the number of weeks (or part thereof) the relevant Labour Hire Worker has worked in aggregate under a Contract with the Buyer prior to the Labour Hire Worker accepting the offer of employment.

14.10.7. The Conversion Fee for the Conversion of a Labour Hire Worker engaged on a part time basis will be 50% of the amount calculated using the formula in clause 14.10.6.

14.10.8. The Seller acknowledges there is no guarantee the Buyer will make an offer of employment to any Labour Hire Worker placed with the Buyer under this Contract.

14.11. Timesheets

14.11.1. The Seller may only invoice for time up to the maximum hours stated in Item 56 of Part D – Contract Details. The Seller must ensure Labour Hire Workers do not work more than those hours. The Seller must keep complete and accurate Timesheets for Labour Hire Workers it provides to the Buyer under this Contract.

14.11.2. Each Timesheet must:

a. include the following information as a minimum:

   i. the name of the Buyer;

   ii. the name and role of each Labour Hire Worker provided to the Buyer;

   iii. the time period covered by the Timesheet;

   iv. an accurate record of the Hours Worked by each Labour Hire Worker, including any absences by the Labour Hire Worker during the Timesheet period; and

v. the Buyer reference number (if any); and

b. any other requirements stated in Item 56 of Part D – Contract Details.

14.11.3. The Seller must submit each Timesheet to the Buyer for approval following the approval processes set out in Item 56 of Part D – Contract Details. If no approval processes are set out there:

a. the Seller must submit each Timesheet to the Buyer within 10 Business Days of the end of the relevant Timesheet period;

b. the Buyer must approve or reject the relevant Timesheet within 10 Business Days of the Seller submitting the Timesheet; and

c. where the Buyer rejects a Timesheet:

i. the Buyer must notify the Seller giving reasons for rejection. E.g. the Timesheet was incomplete or inaccurate; and

ii. the Seller must make any necessary changes and resubmit the Timesheet to the Buyer for approval within 5 Business Days of receiving a notice of rejection.

14.11.4. The Seller must not invoice the Buyer for, and the Buyer will not be liable to pay, any amount in respect of a Timesheet that the Buyer has not approved.

14.12. Standard hours

14.12.1. The Labour Hire Worker must perform Labour Hire Worker Services for:

a. the standard working hours (paid hours);

b. during the standard working hour period (window within which standard working hours must be worked),

stated in Item 52 of Part D – Contract Details.

14.12.2. Where no standard working hours or standard working hour period is stated in Item 52 of Part D – Contract Details, they will be:

a. *standard working hours* – 7.5 hours (paid hours);

b. *standard working hour period* – agreed and set between 7am to 7pm on Business Days.

14.12.3. Clauses 14.12.1 and 14.12.2 are subject to clause 14.12.5 and the requirements of any relevant industrial instrument.

14.12.4. The Buyer must not make a Labour Hire Worker work for more than five hours without an unpaid break of at least 30 minutes.

14.12.5. The Buyer may require Labour Hire Workers to work:

a. more hours than the standard working hours; or

b. outside the standard working hour period (determined under clause 14.12.1) which may include weekends and public holidays.

14.12.6. The Seller must ensure that no Labour Hire Worker works outside the standard working hour period unless instructed to do so by the Buyer. The Buyer will not be liable to pay the Seller for any hours worked by a Labour Hire Worker outside of standard working hours under this Contract without the prior written approval of the Buyer.

14.13. Travel and related expenses

14.13.1. Where the Buyer requires the Labour Hire Worker to travel for official purposes, the Buyer will either:

a. pay for the travel itself; or

b. reimburse the Seller in accordance with this clause 14.13 for reasonable travel, accommodation and associated travel expenses,

if the relevant travel and/or accommodation (and the associated cost):

c. is in accordance with any relevant Buyer policy; and

d. pre-approved in writing by the Buyer before the travel takes place.

14.13.2. For the Buyer to reimburse travel costs as described in clause 14.13.1, the Seller must:

a. give the Buyer a Correctly Rendered Invoice;

b. supporting receipts; and

c. other travel documents as required by the Buyer.

The Buyer will then reimburse the Seller in accordance with this Contract.

14.13.3. Time spent by the Labour Hire Worker on approved travel:

a. in transit between origin and destination; or

b. between destinations if there is more than one,

is not to be included in the Timesheet of the Labour Hire Worker. This clause 14.13.3 applies unless otherwise agreed by the Buyer in writing before the travel takes place.

14.13.4. The Seller must comply with the reasonable travel and overtime meal allowance expense amounts stated in the Taxation Determination issued by the Australian Taxation Office as updated from time to time. This clause does not limit 14.13.1.

> ***Note**: The Current ATO Taxation Determination is TD 2024/3.*

15. Invoicing and payment

15.1. Submission of invoices

15.1.1. Invoices for Services must be submitted, together with any supporting documentation, in the manner set out in Item 28 of Part D – Contract Details.

15.1.2. Unless otherwise stated in Item 28 of Part D – Contract Details invoices must be submitted monthly in arrears.

15.1.3. If an invoice is not a Correctly Rendered Invoice, the Buyer will return it to the Seller for correction and resubmission.

15.2. When payment is due

15.2.1. The Buyer will pay the Seller the Price within the following timeframes:

a. if the Buyer and the Seller:

i. both have the capability to deliver and receive eInvoices through the Pan-European Public Procurement On-Line framework; and

ii. have agreed to use this method of invoicing (as stated in Item 28 of Part D – Contract Details),

the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 5 calendar days after receiving it; or

b. if clause 15.2.1.a does not apply, the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 20 calendar days after receiving it.

15.2.2. The Buyer will make all payments in the manner set out under the heading 'Price, allowances and costs' in Part D – Contract Details.

15.3. Interest

15.3.1. The Buyer will only be required to pay simple interest under clause 15.3.3 if:

a. the amount of interest exceeds $100; and

b. stated in Item 27 of Part D – Contract Details.

15.3.2. For the purpose of this clause 15.3, **the day that payment is made** is the day that the Buyer's system generates a payment request into the banking system for payment to the Seller.

15.3.3. This clause 15.3.3 is subject to clause 15.3.1. If the Buyer fails to pay to the Seller an amount under this Contract by the due date for payment, the Buyer will pay simple interest on the unpaid amount at the General Interest Charge Rate. Simple interest will be calculated in respect of each day from the day after the amount was due and payable, up to and including the day that payment is made in accordance with the formula set out below:

SI = UA x GIC x D

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

15.4. GST

15.4.1. Words or expressions used in this clause 15.4 which are defined in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) have the same meaning in this clause 15.4.

15.4.2. Unless otherwise indicated, the Price and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.

15.4.3. If one party (**supplier**) makes a taxable supply to the other party (**recipient**) under this Contract, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question. The additional amount must be paid by the recipient at the same time as the GST exclusive consideration for the taxable supply is paid.

15.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

15.5. Other taxes

15.5.1. Except as provided by this clause 15 or otherwise set out in these Module Terms or Part D – Contract Details, the Seller agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

15.6. Payment does not amount to evidence or an admission

15.6.1. The Buyer's payment of an amount is taken to be payment on account only and not as evidence against or an admission by the Buyer of:

a. the value of any Services; or

b. any Services having been supplied in accordance with this Contract.

15.7. Buyer may recover Overcharge

15.7.1. If the Seller charges the Buyer for any amount that does not comply with this Contract (**Overcharge**), the Buyer may recover the Overcharge from the Seller as a debt owing to the Buyer by either:

a. notifying the Seller to repay the Overcharge to the Buyer within 10 Business Days of the notice; or

b. reducing the Price due under this Contract by the amount of the Overcharge.

15.8. Price not to exceed price cap

15.8.1. This clause 15.8 applies if a Product or Service Price Cap or Total Price Cap (or both) is stated in Item 29 of Part D – Contract Details.

15.8.2. Subject to any Contract Variation under clause 20.11 of Part C – Contract Terms, the total Price payable by the Buyer to the Seller must not exceed the Total Price Cap.

15.8.3. The Seller must promptly advise the Buyer if the accrued costs reach 80% of the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details.

15.8.4. The Seller must advise the Buyer immediately if the accrued costs reach the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details and stop work if directed by the Buyer. The Seller must not re-commence work or exceed the threshold without the Buyer's approval. This clause does not limit clause 15.8.2.

15.9. Disputes

15.9.1. If there is a dispute about whether an amount is payable under this Contract, the Buyer must notify the Seller and may withhold the disputed amount until the dispute is resolved.

15.9.2. If the Buyer withholds the disputed amount under clause 15.9.1:

a. the Seller must issue a Correctly Rendered Invoice for the undisputed amount; and

b. the Buyer must pay the undisputed amount within the timeframe under clause 15.2.

15.10. Adjustment of amounts after payment

15.10.1. The Buyer reserves the right to retrospectively adjust payments if the Buyer determines that the Services have not been provided in accordance with this Contract.

15.10.2. If the Buyer:

a. pays an invoice from the Seller; and

b. later finds that the invoice was not a Correctly Rendered Invoice,

then the Buyer will notify the Seller setting out why it believes the invoice was not a Correctly Rendered Invoice and may:

c. recover any overpayment as a debt owing by the Seller, and the Seller must repay such overpayment to the Buyer immediately upon request by the Buyer; or

d. reduce the Price due under this Contract by the amount of the overpayment.

SCHEDULE C2 – PROFESSIONAL AND CONSULTING SERVICES MODULE TERMS

Version 3.0

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SCHEDULE C2 – PROFESSIONAL AND CONSULTING SERVICES MODULE TERMS

OPERATIVE TERMS

These Schedule C2 – Professional and Consulting Module Terms apply to all Contracts under which the Seller is required to provide Products and Services under the Professional and Consulting Services Module.

1. Scope of this Module

1.1.1. Under this Module, the Seller must only provide Products and Services within:

a. the scope of the Categories stated in Schedule A2 – Professional and Consulting Services Module; and

b. their Appointed Categories.

1.1.2. The Services available under the Professional and Consulting Services Module do not include any other products and services, such as:

a. services available under Whole of Government arrangements, or

b. the provision of Products and Services available under the other Modules of this Panel.

2. Licenses

2.1.1. The Seller must ensure that it and all relevant members of its Personnel hold, and maintain throughout the Contract Period, all:

a. licenses, permits and approvals; and

b. qualifications, accreditations, certifications or scheme memberships from any relevant regulatory agency or industry body,

that:

c. are necessary or reasonably required for the proper performance of any obligation of the Seller under this Contract; or

d. might otherwise reasonably be expected to be held by leading and reputable providers of services that are like the Services.

2.1.2. This clause 2 does not limit the Seller’s other obligations under this Contract.

3. Intellectual Property Rights

3.1. Table of Intellectual Property Rights

3.1.1. The parties agree to the Intellectual Property Rights and licensing arrangements as set out in the table in this clause 3.1.

Item	Scope	Provisions
1.	**Buyer Material**	a. Intellectual Property Rights in Buyer Material and Buyer Data remain Vested with the Buyer. b. The Buyer Grants to the Seller a Limited Licence in relation to Buyer Material solely for the Seller Purpose. c. The Buyer will provide Buyer Material to the Seller. d. The Buyer may amend Item 1 of this table with terms specified in Item 31 of Part D – Contract Details. e. The Seller must promptly return Buyer Material to the Buyer, and must destroy all hard or electronic copies of Buyer Material, if requested by the Buyer or on expiry or termination of this Contract.
2.	**Incorporated IP**	a. The Seller Grants to the Buyer a Licence to Use any Incorporated IP, for the purposes of this Contract and any other purpose. b. The Buyer must ask for permission from the Seller to publish logos or distinctive branding included in the Incorporated IP. The Seller must be reasonable in responding to such a request. c. The Seller agrees that this Licence includes a right for the Buyer to license the Incorporated IP in conjunction with the Contract Material to the public under an Open Access Licence.
3.	**Contract Material**	a. Where *Standard – Buyer owns IP* is selected in Item 30 of Part D – Contract Details or the Item is blank, then: i. Intellectual Property Rights in all Contract Material Vests in the Buyer; and ii. the Buyer Grants to the Seller a Limited Licence to Use the Contract Material for the Seller Purpose. b. Where *Alternative – Seller owns IP* is selected in Item 30 of Part D – Contract Details, then: i. Intellectual Property Rights in all Contract Material Vest in the Seller; and ii. the Seller Grants to the Buyer a Licence to Use the Contract Material for any purpose.

3.2. Seller giving effect to Intellectual Property Rights

3.2.1. On request by the Buyer, the Seller will create, sign, execute or otherwise deal with any document necessary or desirable to give effect to the table in clause 3.1.

3.3. Base Third Party Software

Note: Sellers cannot provide Base Third Party Software under the Professional and Consulting Services Module.

Where the Seller needs to use Base Third Party Software to deliver the Services, details of the required Base Third Party Software should be stated in Item 32 of Part D – Contract Details.

Procuring Base Third Party Software

If the Buyer needs to procure Base Third Party Software it can procure it under the Software and Cloud Services Module, either:

- from the same Seller who is providing the Professional and Consulting Services. In this case a cross module procurement will be required under Module 2 and Module 3, or
- from a different seller. In this case a separate procurement under Module 3 will be required.

Any software licence terms that apply to the Seller's use of Base Third Party Software should be stated in Item 32 of Part D – Contract Details.

Managed services and procurement services

If the Seller advises or assists the Buyer in relation to Base Third Party Software as part of:

- managed service provider Services; or
- procurement Services,

the Seller must not provide the Base Third Party Software under this Module 2. If the Services require the Seller to assist the Buyer to source Base Third Party Software, the Seller must facilitate the supply of that Base Third Party Software at the direction of the Buyer. This should include:

- assisting the Buyer to procure the Base Third Party Software in a procurement under the Software and Cloud Services Module, and
- arranging for the Publisher of the Base Third Party Software to enter into a separate contract with the Buyer for its supply.

3.3.1. Any Base Third Party Software required for the Services must be stated in Item 32 of Part D – Contract Details. The Seller must:

a. provide the Services for use with the Base Third Party Software; and

b. ensure the Services are fully compatible with the Base Third Party Software.

3.3.2. The Buyer will procure a licence to the Base Third Party Software and provide it to the Seller. The licence will be subject to any applicable licence terms stated in Item 32 of Part D – Contract Details.

3.3.3. The Seller must comply with the licence terms for Base Third Party Software as stated in Item 32 of Part D – Contract Details or as otherwise notified to the Seller.

3.3.4. Where the Seller specifies the required Base Third Party Software, it must ensure that the functionality and performance of the Base Third Party Software is suitable for the provision of the Services.

3.4. Intellectual Property warranty

3.4.1. The Seller warrants that:

a. it holds all necessary rights to grant the Intellectual Property Rights to the Buyer under this Contract; and

b. the Buyer's use of the Products and Services in accordance with the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

4. Procurement

4.1. Services including procurement advice or assistance

4.1.1. Where the Services include advice or assistance to a Buyer with a Commonwealth procurement process, the Seller must ensure that all such advice and assistance is in accordance with:

a. the Commonwealth Procurement Rules;

b. procurement related policies;

c. any guidance on procurement issued by the Department of Finance; and

d. any applicable policies of the Buyer.

5. Maximum Price and Pricing Quotes – Professional and Consulting Services

Note*: *Maximum Price

The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller's Maximum Price is determined on the basis set out in clause 3 of Schedule A2 – Professional and Consulting Services Module. DTA has recorded the Seller's Maximum Prices in Part B – Panel Appointment Details and on the Online Portal.

6. Price under this Contract

6.1. Price, allowances and costs

6.1.1. Subject to the Seller's proper performance of the Contract, the Buyer will pay the Seller the Price stated in Item 26 of Part D – Contract Details.

6.1.2. The Seller must state the Price in Part D – Contract Details on a GST inclusive and exclusive basis.

6.2. Price must not exceed the Maximum Price

6.2.1. The Seller must price the Contract at or below the Maximum Price when the Contract is entered.

6.2.2. The Seller must price any variation to the Contract at or below the Maximum Price stated in the Seller's Module 3 Price List at the time of the Contract Variation.

6.3. Price is all inclusive

6.3.1. Unless otherwise stated in Part D – Contract Details, the Price:

a. covers all costs and resources required by the Seller to perform this Contract; and

b. represents the total consideration payable by the Buyer for all matters relevant to this Contract.

6.4. Time and Materials

6.4.1. Where the Seller is required to provide any Products and Services on a Time and Materials basis, the Seller must:

a. perform the tasks in accordance with:

   i. Item 15 of Part D – Contract Details; and

   ii. any reasonable directions from the Buyer that are consistent with the scope of the Seller's obligations in this Contract;

b. substantiate the time spent performing tasks required under this Contract if requested by the Buyer; and

c. not invoice the Buyer for any time which is not actually incurred by the Seller.

6.5. Price review

> ***Note:*** The Buyer may add benchmarking clauses from the DMP 2 model clauses to Item 49 of Part D – Contract Details if it requires the ability to conduct price benchmarking for Professional and Consulting Services.

6.5.1. This clause 6.2 applies if stated in Item 26 of Part D – Contract Details.

6.5.2. After the first anniversary of the Contract Start Date, the Seller may apply for an annual increase of its Price by applying to the Buyer Representative. This must occur no later than 31 March in each year of the Contract Period.

6.5.3. The Price adjustment requested must not be more than the change in the Wage Price Index (all sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics. The proposed new Price must not exceed the Seller's Maximum Price under the Panel Agreement at the time the Contract Variation is entered.

6.5.4. The Buyer may, by written notice to the Seller, approve or not approve an application made under clause 6.5.2.

6.5.5. Where the Buyer approves an application made by the Seller under clause 6.5.2, the Seller's Price will be adjusted from 1 July of that year using a Contract Variation.

6.6. Travel and related expenses

6.6.1. Where the Buyer requires the Seller's Personnel to travel for official purposes, the Buyer will either:

a. pay for the travel itself; or

b. reimburse the Seller in accordance with this clause 6.6 for reasonable and verified travel, accommodation and associated travel expenses,

if the relevant travel and/or accommodation (and the associated cost) is:

c. in accordance with any relevant Buyer policy; and

d. pre-approved in writing by the Buyer before the travel takes place.

6.6.2. For the Buyer to reimburse travel costs as described in clause 6.6.1, the Seller must:

a. give the Buyer a Correctly Rendered Invoice;

b. supporting receipts; and

c. other travel documents as required by the Buyer.

The Buyer will then reimburse the Seller in accordance with this Contract.

6.6.3. In respect of approved travel, time spent by the Seller’s Personnel:

a. in transit between origin and destination; or

b. between destinations if there is more than one,

is not to be included in any request for reimbursement under clause 6.6.1. This clause 6.6.2 applies unless otherwise agreed by the Buyer in writing before the travel takes place.

6.6.4. The Seller must comply with the reasonable travel and overtime meal allowance expense amounts stated in the relevant Taxation Determination issued by the Australian Taxation Office as updated from time to time. This clause 6.6.4 does not limit clause 6.6.1.

Note: The current ATO Taxation Determination is TD 2024/3.

7. Invoicing and payment

7.1. Buyer to make payments

7.1.1. The Buyer will make all payments in the manner set out under the heading ‘Price, allowances and costs’ in Part D – Contract Details.

7.2. Submission of invoices

7.2.1. Invoices for Products and Services must be submitted, together with any supporting documentation, in the manner set out in Item 28 of Part D – Contract Details.

7.2.2. Unless otherwise stated in Item 28 of Part D – Contract Details invoices must be submitted monthly in arrears.

7.2.3. If an invoice is not a Correctly Rendered Invoice, the Buyer will return it to the Seller for correction and resubmission.

7.3. When payment is due

7.3.1. The Buyer will pay the Seller the Price within the following timeframes:

a. if the Buyer and the Seller:

i. both have the capability to deliver and receive eInvoices through the Pan-European Public Procurement On-Line framework; and

ii. have agreed to use this method of invoicing (as stated in Item 28 of Part D – Contract Details),

the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 5 calendar days after receiving it; or

b. if clause 7.3.1.a does not apply, the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 20 calendar days after receiving it.

7.4. Interest

7.4.1. The Buyer will only be required to pay simple interest under clause 7.4.3 if:

a. the amount of interest exceeds $100; and

b. Item 27 of Part D – Contract Details is marked ‘Yes’.

7.4.2. For the purpose of this clause 7.4, **the day that payment is made** is the day that the Buyer's system generates a payment request into the banking system for payment to the Seller.

7.4.3. This clause 7.4.3 is subject to clause 7.4.1. If the Buyer fails to pay to the Seller an amount under this Contract by the due date for payment, the Buyer will pay simple interest on the unpaid amount at the General Interest Charge Rate. Simple interest will be calculated in respect of each day from the day after the amount was due and payable, up to and including the day that payment is made in accordance with the formula set out below:

SI = UA x GIC x D

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

7.5. GST

7.5.1. Words or expressions used in this clause 7.5 which are defined in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) have the same meaning in this clause 7.5.

7.5.2. Unless otherwise indicated, the Price and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.

7.5.3. If one party (**supplier**) makes a taxable supply to the other party (**recipient**) under this Contract, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question. The additional amount must be paid by the recipient at the same time as the GST exclusive consideration for the taxable supply is paid.

7.5.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

7.6. Other taxes

7.6.1. Except as provided by this clause 6.6 or otherwise set out in these Module Terms or Part D – Contract Details, the Seller agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

7.7. Payment does not amount to evidence or an admission

7.7.1. The Buyer's payment of an amount is taken to be payment on account only and not as evidence against or an admission by the Buyer of:

a. the value of any Products and Services; or

b. any Products and Services having been supplied in accordance with this Contract.

7.8. Buyer may recover Overcharge

7.8.1. If the Seller charges the Buyer for any amount that does not comply with this Contract (**Overcharge**), the Buyer may recover the Overcharge from the Seller as a debt owing to the Buyer by either:

a. notifying the Seller to repay the Overcharge to the Buyer within 10 Business Days of the notice; or

b. reducing the Price due under this Contract by the amount of the Overcharge.

7.9. Price not to exceed price cap

7.9.1. This clause 7.9 applies if a Product or Service Price Cap or Total Price Cap (or both) is stated in Item 29 of Part D – Contract Details.

7.9.2. The total Price payable by the Buyer to the Seller:

a. *for a given Product or Service* – will not exceed the relevant Product or Service Price Cap; and

b. *under this Contract* – will not exceed the Total Price Cap.

7.9.3. The Seller must promptly advise the Buyer if the accrued costs reach 80% of the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details.

7.9.4. The Seller must advise the Buyer immediately if the accrued costs reach the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details and stop work if directed by the Buyer. The Seller must not re-commence work or exceed the threshold without the Buyer's prior written approval. This clause does not limit clause 7.9.2.

7.10. Disputes

7.10.1. If there is a dispute about whether an amount is payable under this Contract, the Buyer must notify the Seller and may withhold the disputed amount until the dispute is resolved.

7.10.2. If the Buyer withholds the disputed amount under clause 7.10.1:

a. the Seller must issue a Correctly Rendered Invoice for the undisputed amount; and

b. the Buyer must pay the undisputed amount within the timeframe under clause 7.3.

7.11. Adjustment of amounts after payment

7.11.1. The Buyer reserves the right to retrospectively adjust payments if the Buyer determines that the Products and Services have not been provided in accordance with this Contract.

7.11.2. If the Buyer:

a. pays an invoice from the Seller; and

b. later finds that the invoice was not a Correctly Rendered Invoice,

then the Buyer will notify the Seller setting out why it believes the invoice was not a Correctly Rendered Invoice and may:

c. recover any overpayment as a debt owing by the Seller, and the Seller must repay such overpayment to the Buyer immediately upon request by the Buyer; or

d. reduce the Price due under this Contract by the amount of the overpayment.

Australian Government
Digital Transformation Agency

SCHEDULE C3 – SOFTWARE AND CLOUD SERVICES MODULE TERMS

Version 3.0

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SCHEDULE C3 – SOFTWARE AND CLOUD SERVICES MODULE TERMS

OPERATIVE TERMS

These Schedule C3 – Software and Cloud Services Module Terms apply to all Contracts under which the Seller is required to provide Products and Services under the Software and Cloud Services Module.

1. Scope of this Module

Note: Under this Module, Buyers can procure:

- Licensed Software; and
- Cloud Services, including Software as a Service (SaaS), Infrastructure as a Service (IaaS) and Platform as a Service (PaaS).

Buyers can also procure some professional and consulting services under this Module, where those services are ancillary to Software or Cloud Services procured by the Buyer (Complementary Services).

Buyers cannot procure Developed Software under this Module. Buyers must procure Developed Software under the Professional and Consulting Services Module.

For further detail on the scope of this Module, refer to the Category Descriptions in Schedule A3 – Software and Cloud Services Module.

1.1.1. Under this Module, the Seller must only provide Products and Services within:

a. the scope of the Categories stated in Schedule A3 – Software and Cloud Services Module; and

b. their Appointed Categories.

1.1.2. The Products and Services available under this Module do not include professional services outside the scope of clause 1.2.

1.2. Scope of Complementary Services under this Module

1.2.1. The Seller may only provide services under this Module to the extent that those services are:

a. Complementary Services, which must be within the scope of the description of Complementary Services set out in Schedule A3 – Software and Cloud Services Module; or

b. expressly provided for under this Schedule.

2. Deployment method

2.1. Deployment of Products and Services

2.1.1. Under this Module, Products and Services may be deployed as:

a. Software;

b. Cloud Services; or

c. a hybrid of Software and Cloud Services.

2.1.2. The Seller must deliver the Products and Services under this Contract using the deployment method stated in Item 58 of Part D – Contract Details.

> ***Note***: If the Buyer and Seller wish to change the deployment method during the Contract Period, the parties should agree a Contract Variation.

3. Provision of Licensed Software and Cloud Services

3.1. Seller to provide Licensed Software and Cloud Services

3.1.1. The Seller must provide the Buyer with the Licensed Software or Cloud Services as required under Item 59 or 62 of Part D – Contract Details.

3.1.2. **Licence Period and Cloud Subscription Period**

3.1.3. The Seller must:

a. *where the Seller is required to provide Licensed Software* – provide the Licensed Software for the Licence Period stated in Item 59 of Part D – Contract Details or, if no period is specified, for the Contract Period; and

b. *where the Seller is required to provide Cloud Services* - provide the Cloud Services for the Cloud Subscription Period stated in Item 62 of Part D – Contract Details or, if no period is specified, for the Contract Period.

3.1.4. The Licensed Software and Cloud Services must:

a. be provided for a fixed term; and

b. not have any automatic right of renewal.

3.1.5. Under this Contract, any options to extend the:

a. Contract Period;

b. Licence Period; or

c. Cloud Subscription Period,

are at the Buyer's discretion.

3.1.6. The Buyer may extend the Licence Period or Cloud Subscription Period on the same terms and conditions by notifying the Seller 10 Business Days before expiry of the then current Licence Period or Cloud Subscription Period.

3.2. Delivery and activation

3.2.1. The Seller must:

a. deliver and activate the Licensed Software or Cloud Services in accordance with any requirements in Item 59 or 62 of Part D – Contract Details; and

b. provide to the Buyer any licence keys and related activation information:

i. on delivery or activation of the Licensed Software or Cloud Services; and

ii. on request by the Buyer.

3.3. Backups of Buyer Data

> ***Note:*** By default:

- the *Buyer* will be responsible for backups of Buyer Data where the Buyer is procuring Licensed Software; and
- the *Seller* will be responsible for backups of Buyer Data where the Buyer is procuring Cloud Services.

Buyers may change these default position by selecting a different option in Item 63 of Part D – Contract Details.

3.3.1. The Buyer may amend clause 3.3 with terms stated in Item 63 of Part D – Contract Details.

3.3.2. The parties will be responsible for backups of Buyer Data under this Contract as follows:

a. *for Licensed Software* - the Buyer is responsible; and

b. *for Cloud Services* - the Seller is responsible,

unless Item 63 of Part D – Contract Details states otherwise.

Buyer's responsibility to back up Buyer Data

3.3.3. Where the Buyer is responsible to back up Buyer Data under clause 3.3.2.a, then the Seller must reasonably assist the Buyer in relation to:

a. any backup, transfer or restoration of such Buyer Data; and

b. any backups made by the Buyer.

Seller's responsibility to back up Buyer Data

3.3.4. Where the Seller is responsible to back up Buyer Data under clause 3.3.2.b, then the Seller must:

a. perform an initial backup; and

b. take and maintain daily backups (or at the frequency otherwise specified in Item 63 of Part D – Contract Details),

of such Buyer Data.

3.3.5. The Seller must undertake any backup under clause 3.3.4 in a manner which enables the relevant Buyer Data to be accurately and completely restored, in the event that any failure of the Licensed Software or Cloud Services, however caused, results in damage to, or loss of, that Buyer Data.

3.4. Backups – restoration of Buyer Data

3.4.1. This clause applies where the Seller is responsible for backups of Buyer Data under clause 3.3.

3.4.2. The Seller must restore the Buyer Data on request by the Buyer:

a. within four hours (or within the timeframe otherwise specified in Item 63 of Part D – Contract Details); and

b. in a manner which enables the relevant Buyer Data to be accurately and completely restored.

3.5. Records and audit

3.5.1. The Buyer will:

a. monitor its use of the Licensed Software or Cloud Services; and

b. report any use in excess of any applicable cap, consumption or other ceiling under this Contract to the Seller.

3.6. Documentation

3.6.1. The Seller must provide:

a. the Documentation required under Item 15 of Part D – Contract Details; and

b. any other Documentation that the Seller usually makes available to its customers for the Licensed Software, Cloud Services or Complementary Services provided under this Contract.

3.6.2. The Seller must ensure that, at the time of delivery, the Documentation:

a. contains all information to enable the Buyer to install (where applicable), configure, use, operate, optimise, support and maintain the Licensed Software and Cloud Services;

b. is current and accurate;

c. complies with any format requirements stated in the Statement of Requirements;

d. is of a professional standard in terms of its presentation, accuracy and scope; and

e. adequately explains key terms and symbols.

3.6.3. If any Documentation:

a. is revised or replaced for any reason; or

b. needs to be revised or replaced to update it or to correct inaccuracies,

the Seller must provide the Buyer with access to such revisions or replacements.

4. Installation of Licensed Software

4.1. Installation by the Buyer

4.1.1. If Item 61 of Part D – Contract Details states that the Buyer is responsible for installing the Licensed Software, the Buyer:

a. is responsible for downloading and/or installing the Licensed Software; and

b. must perform the installation in accordance with any instructions in the Documentation.

4.1.2. Where the Seller makes the Licensed Software and Documentation available for download from a website, the Seller must provide the Buyer with the relevant access codes prior to the date of delivery of the Licensed Software.

4.1.3. The Buyer’s act of installing the Licensed Software will not:

a. invalidate any warranty provided by the Seller under this Contract; or

b. reduce the Seller's obligations under this Contract.

4.2. Installation by the Seller

4.2.1. If Item 61 of Part D – Contract Details states that the Seller is responsible for installing the Licensed Software, the Seller must:

a. properly install the Licensed Software within the Buyer's Digital Systems:

i. at the time stated in the Delivery Schedule, and

ii. in accordance with any requirements stated in Item 61 of Part D – Contract Details (or as otherwise agreed between the parties in writing); and

b. following installation, carry out all necessary tests to ensure that the installed Licensed Software:

i. complies with any requirements set out in the Statement of Requirements and Items 15 and 61 of Part D – Contract Details; and

ii. otherwise operates in accordance with all requirements in this Contract.

4.2.2. If stated in Item 61 of Part D – Contract Details, installation by the Seller is subject to Acceptance Testing.

5. End User Licence Agreements (EULAs) and Software and Cloud Licence Agreement

> ***Note***: See clause 11.11.b of Part C – Contract Terms. If Option 2 applies, the Buyer and Publisher will enter into the Software and Cloud Licence Agreement, which operates as a separate contract alongside the Contract between the Buyer and Seller.
>
> Where a Seller or Publisher wishes to include the terms of its own EULA, those terms will only apply to the extent permitted under clause 4 of Part C – Contract Terms.

5.1. Software and Cloud Licence Agreement

5.1.1. The Seller agrees that the Software and Cloud Licence Agreement will apply between the Buyer and Publisher as described in clause 11.11.b of Part C – Contract Terms.

5.2. End User Licence Agreements (EULAs)

5.2.1. The Seller agrees that clause 4 of Part C – Contract Terms applies to any EULA, notices or terms and conditions in relation to the Licensed Software and Cloud Services.

6. Warranties

6.1. Warranties – Licensed Software and Cloud Services

6.1.1. In addition to the warranties in clause 20.1 of Part C – Contract Terms, the Seller warrants that, during any applicable Licence Period or Cloud Subscription Period:

a. the Licensed Software and Cloud Services:

i. will comply with and perform in accordance with the requirements in this Contract, including the Statement of Requirements and any specifications;

ii. will be fit for purpose;

iii. will meet the representations made by the Seller about the Licensed Software and Cloud Services:

A. in communications with the Buyer including as part of the RFQ process; and

B. publicly (e.g. on a website);

iv. will be compatible and inter-operate with the Buyer's Digital Systems and any third party products and services listed in Item 65 of Part D – Contract Details,

v. will not detrimentally affect the operation or performance of the Buyer's Digital Systems when used in accordance with the Documentation;

vi. will be free of any Harmful Code;

vii. will function no less favourably than any trial version of the Licensed Software and Cloud Services provided by the Seller to the Buyer, whether under this Contract or otherwise; and

viii. have been developed using a professional degree of care, skill and diligence according to applicable industry standards; and

b. the Seller:

i. has security measures in place to protect Buyer Data; and

ii. will not decrease the functionality or overall security of the Licensed Software and Cloud Services.

7. Other Support and Maintenance requirements – Licensed Software

7.1. Application of clause

7.1.1. This clause 7 applies if the Seller provides, or is required to provide Licensed Software, under this Contract.

7.2. Rectification

7.2.1. The Seller must comply with clause 8.3 of Part C – Contract Terms in relation to Licensed Software provided under this Contract.

7.2.2. The applicable Rectification Period is the Licence Period, unless otherwise stated in Item 46 of Part D – Contract Details.

7.3. Preventative Maintenance

7.3.1. The Seller must conduct Preventative Maintenance under clause 7.3.1 during the Licence Period, unless otherwise stated in Item 46 of Part D – Contract Details.

7.3.2. The Seller must conduct Preventative Maintenance to ensure the Licensed Software meets the requirements in this Contract, including any Service Levels. This includes provision of all:

a. minor updates or refinements to existing functionality and features, such as minor releases, feature updates or enhancements;

b. patches to fix bugs, security vulnerabilities or performance issues, such as bug fixes, security patches or hotfixes;

c. maintenance releases; and

d. service packs,

and similar, no matter how named or designated.

7.4. Software Releases and Major Updates

7.4.1. This clause 7.4 applies if stated in Item 66 of Part D – Contract Details.

7.4.2. The Buyer may amend this clause 7.4 with terms stated in Item 66 of Part D – Contract Details.

7.4.3. If and when it becomes available, the Seller must provide the Buyer with:

a. any Software Releases and Major Updates; and

b. any relevant Documentation for those Software Releases and Major Updates,

including those Software Releases and Major Updates and relevant Documentation that the Seller generally provides without cost to other customers of the Seller.

7.4.4. Unless otherwise specified in Attachment A (Pricing), Part D – Contract Details, the Seller must provide Software Releases and Major Updates at no additional charge.

7.4.5. For any Software Releases and Major Updates provided under this clause 7.4, the Seller must promptly provide the Buyer with:

a. information on the nature of the improvements and corrections contained in the Software Release or Major Update;

b. information on any adverse effects that the Software Release or Major Update may be expected to have on the Buyer's Digital Systems, hardware or Licensed Software, including any expected degradation in reliability, performance or functionality; and

c. sufficient information to enable the Buyer to determine whether the Software Release or Major Update will suit the Buyer's requirements.

7.4.6. Software Releases and Major Updates are subject to the same Acceptance Testing requirements that applied to the original Licensed Software.

7.4.7. If the Seller is required to provide and implement a Software Release or Major Update and the Buyer considers that the Software Release or Major Update as implemented:

a. is not operating in accordance with the requirements set out in Item 15 of Part D – Contract Details or the Statement of Requirements; or

b. is operating in accordance with the requirements set out in Item 15 of Part D – Contract Details or the Statement of Requirements but is causing problems or issues for the Buyer's Digital Systems (including degradation, incompatibility or other problems or issues with those Digital Systems),

then the Seller must, if requested by the Buyer, promptly provide and re-implement the previous version of the Licensed Software in effect immediately before implementation of the Software Release or Major Update.

7.4.8. A refusal by the Buyer to install a Software Release or Major Update does not affect its entitlement to the Licensed Software under this Contract.

7.4.9. This clause 7.4 does not limit the Seller's other obligations under this Contract.

8. Other Support and Maintenance requirements – Cloud Services

8.1. Application of clause

8.1.1. This clause 8 applies if the Seller provides, or is required to provide, Cloud Services under this Contract.

8.2. Rectification

8.2.1. The Seller must comply with clause 8.3 of Part C – Contract Terms in relation to Cloud Services provided under this Contract.

8.2.2. The applicable Rectification Period is the Cloud Subscription Period, unless otherwise stated in Item 46 of Part D – Contract Details.

8.3. Minimum service requirements for Cloud Services

> ***Note:*** The Seller must comply with both of the following:
>
> - *clause 9 of Part C – Contract Terms*; and
> - *clause 8.3.1 below*.
>
> When a Service Level Failure is recorded, the Buyer may require a Cure Plan or, in certain circumstances, terminate the Contract under clauses 35.1 and 21.2 of Part C – Contract Terms (respectively).

8.3.1. Without limiting the Seller's obligations in relation to Service Levels in clause 9 of Part C – Contract Terms and the Rectification clauses in clause 8.2 and clause 8.3 of Part C – Contract Terms, the Seller must:

a. ensure continuity of performance of the Cloud Services and minimise interruptions to the Buyer's operations;

b. respond to an incident where most features and functionalities of the Cloud Services are not available within 1 hour;

c. resolve the incident within 3 hours, unless otherwise directed by the Buyer; and

d. provide minimum up time (at full functionality) for the Cloud Services of 99.5% per month.

8.3.2. Without limiting clause 9.3 of Part C – Contract Terms, a Service Level Failure is recorded for each occasion the Seller does not comply with any of the minimum service requirements in clause 8.3.1 (**Service Level Failure**).

8.4. Scheduled Downtime

8.4.1. The Seller must:

a. use its best efforts to minimise interruptions to the Buyer's use of the Cloud Services during a planned period where the features and functionality of the Cloud Services will not be available (**Scheduled Downtime**); and

b. give the Buyer at least 20 Business Days prior notice of all Scheduled Downtime, unless a different notice period has been approved in writing by the Buyer.

8.5. Preventative Maintenance

8.5.1. The Seller must conduct Preventative Maintenance for Cloud Services to ensure the Cloud Services meets the requirements in this Contract, including any Service Levels. This includes maintaining, upgrading and replacing:

a. infrastructure, methodologies, facilities and systems; and

b. any other resources used in the performance and provision of the Cloud Services.

8.5.2. The Seller must conduct Preventative Maintenance under clause 8.5.1 during the Cloud Subscription Period, unless otherwise stated in Item 46 of Part D – Contract Details.

8.6. Continuous Modifications

8.6.1. The Seller may, from time to time:

a. make technical or product enhancements or modifications to the Cloud Services; or

b. correct errors or provide upgrades to the Cloud Services,

(each, a **Continuous Modification**).

8.6.2. The Seller must ensure that the Products and Services meet all of the requirements of the Contract following Continuous Modification.

8.6.3. The Seller must, at least 90 days prior to the proposed date when a Continuous Modification will come into effect:

a. notify the Buyer of the matter; and

b. provide details of:

i. the type and nature of the Continuous Modification;

ii. the proposed date when the Continuous Modification will come into effect; and

iii. any effects that the Continuous Modification may have on the performance of the Cloud Services.

8.6.4. Continuous Modifications are subject to the same Acceptance Testing requirements that applied to the Cloud Services originally provided under this Contract.

8.6.5. If, after a Continuous Modification takes effect, the Buyer determines that the Continuous Modification:

a. has materially diminished or reduced the functionality of the Cloud Services; and/or

b. makes the Cloud Services unfit for purpose,

the Buyer may:

c. request the Seller provide a Cure Plan under clause 35 of Part C – Contract Terms; and

d. if the Seller fails to remedy the circumstances within 20 Business Days (or other period agreed by the Buyer), terminate the Contract or reduce the scope of the Cloud Services under clause 21.2.1.a of Part C – Contract Terms.

9. Additional security obligations

9.1. Seller must prepare Commonwealth Data Protection Plan

9.1.1. If stated in Item 67 of Part D – Contract Details, the Seller must prepare a draft Commonwealth Data Protection Plan (**CDPP**).

9.1.2. The Seller must set out in the draft CDPP how the Seller will manage and protect Buyer Data (including Personal Information) consistent with the ISM, when it provides the Licensed Software and Cloud Services.

9.1.3. The Seller must ensure the CDPP is approved by the Buyer under clause 5.5 of Part C – Contract Terms as an Approved Plan prior to the provision of the Licensed Software and Cloud Services.

9.1.4. Once approved by the Buyer, the CDPP will form part of this Contract.

9.2. Open Source Code Vulnerability Scanning

9.2.1. The Seller must not use Open Source Code in the Software and Cloud Services that contains vulnerabilities that cannot be patched or otherwise mitigated.

9.2.2. If the Seller is using Open Source Code in the Software and Cloud Services, the Seller must actively monitor the sources of the Open Source Code. This includes monitoring for vulnerabilities, 'back doors', or Harmful Code. Where such vulnerabilities are identified, the Seller must:

a. immediately notify the Buyer; and

b. as soon as possible:

   i. patch or otherwise remediate the vulnerability; and

   ii. deliver the remediation or patch to the Buyer.

9.3. Hosting Certification Framework

9.3.1. This clause 9.3 applies if stated in Item 68 of Part D – Contract Details.

9.3.2. The Seller will comply, at all times, with the terms of the Certification Deed in relation to the Cloud Services. This includes the components of Part C of the Certification Deed that apply to the Seller's certification to the applicable level of their certification.

9.3.3. The Seller must:

a. maintain its Certification at the level stated in Item 68 of Part D – Contract Details during the provision of the Cloud Services; and

b. comply with its ongoing obligations in respect of Certification.

9.3.4. If the Seller fails to comply with its obligations in clause 9.3.3, the Buyer may terminate or reduce the scope of this Contract in accordance with clause 21.2 of Part C – Contract Terms.

9.3.5. If the Buyer terminates or reduces the scope of this Contract under clause 9.3.4, then the Price payable must be either, at the request of the Buyer:

a. refunded to the Buyer on a pro-rata basis so that payments made cover only the period during the Contract for which the Certification was held; or

b. decreased proportionally so that Price payable from the date of termination or reduction in scope cover only the period during which the Certification was held.

9.3.6. The Buyer may set-off any amounts payable under clause 9.3.5.a against any future Price payable to the Seller.

9.3.7. This clause 9.3 does not limit any other right or remedy the Buyer has under this Contract or at law.

10. Additional Artificial Intelligence (AI) requirements

10.1. Application of clause

10.1.1. The Seller must comply with the requirements in this clause 10 where an AI System is integrated into the Licensed Software or Cloud Services.

10.1.2. This clause 10 does not limit any other clauses in this Contract.

> ***Note:*** This is a short clause to supplement clause 7 of Part C – Contract Terms. This clause 10 applies where there is an AI System integrated into Licensed Software or Cloud Services.
>
> Buyers should also consider including additional requirements from DTA's AI model clauses. Buyers should have regard to their risk assessment and the particular circumstances of their project when determining the appropriate requirements.
>
> For example, Buyers may like to add additional clauses in relation to:
>
> - audit rights;
> - training data requirements;
> - user manuals;
> - user training;
> - risk management; and
> - reporting requirements.

10.2. AI System transparency

10.2.1. The Seller must not use any AI System integrated into the Licensed Software or Cloud Services unless:

a. it is stated in Item 22 of Part D – Contract Details; or

b. approved in writing by the Buyer following a request under clause 10.2.3,

(**Approved Integrated AI System**).

10.2.2. The Seller must ensure that the Approved Integrated AI System conforms to the requirements:

a. stated in Item 22 of Part D – Contract Details; or

b. as approved in writing by the Buyer,

including:

c. its country of origin;

d. the details of its ownership; and

e. the location of Buyer DTA at rest and during processing.

10.2.3. The Seller must request written approval from the Buyer before any change is made to the Approved Integrated AI System that would result in a breach of clause 10.2.3.

10.2.4. The Buyer may:

a. approve;

b. approve with conditions; or

c. not approve,

any request under clause 10.2.2.b or 10.2.3

10.2.5. If the Buyer does not approve a request under clause 10.2.1.b or 10.2.3, the Buyer may terminate the Contract in accordance with clause 21.2.1.a of Part C – Contract Terms.

10.2.6. The Seller is fully responsible for the provision of the Licensed Software and Cloud Services regardless of the Buyer's approval, approval with conditions or non-approval of an AI System.

11. Intellectual Property Rights

11.1. Table of Intellectual Property Rights

11.1.1. The parties agree to the Intellectual Property Rights and licensing arrangements as set out in the table in this clause 11.1.

Item	Scope	Provisions
1.	**Buyer Material**	a. Intellectual Property Rights in Buyer Material and Buyer Data remain Vested with the Buyer. b. The Buyer Grants to the Seller a Limited Licence in relation to Buyer Material solely for the Seller Purpose. c. The Buyer will provide Buyer Material to the Seller. d. The Buyer may amend Item 1 of this table with terms specified in Item 31 of Part D – Contract Details. e. The Seller must promptly return Buyer Material to the Buyer, and must destroy all hard or electronic copies of Buyer Material, if requested by the Buyer or on expiry or termination of this Contract.
2.	**Incorporated IP**	a. The Seller Grants to the Buyer a Licence to Use any Incorporated IP, for the purposes of this Contract and any other purpose. b. The Buyer must ask for permission from the Seller to publish logos or distinctive branding included in the Incorporated IP. The Seller must be reasonable in responding to such a request. c. The Seller agrees that this Licence includes a right for the Buyer to license the Incorporated IP in conjunction

		with the Contract Material to the public under an Open Access Licence.
3.	**Contract Material**	a. Intellectual Property Rights in all Contract Material Vests in the Seller. b. The Seller Grants to the Buyer a Licence to Use the Contract Material for any purpose.
4.	**Licensed Software (except Modifications)** Software and Cloud Services Module	a. Intellectual Property Rights in the Licensed Software remain Vested in the Seller. b. The Seller Grants to the Buyer a Software Licence to Use the Licensed Software. c. The Buyer agrees to comply with the Restrictions on Use of the Licensed Software.
5.	**Cloud Services (except Modifications)** Software and Cloud Services Module	a. All Intellectual Property Rights in the Cloud Services remain Vested in the Seller. b. The Seller grants to the Buyer a Cloud Licence to Use the Cloud Services. c. The Buyer agrees to comply with the Restrictions on Use of the Cloud Services. d. This Item 5 does not limit access to the Cloud Services following termination or expiry of the licence to the extent required under clause 12.2.
6.	**Modifications to Licensed Software and Cloud Services**	a. Where *Standard – Buyer owns IP* is selected in Item 30 of Part D – Contract Details or the Item is blank, then: i. Intellectual Property Rights in all Modifications Vest in the Buyer; and ii. the Buyer Grants the Seller a Licence to Use the Modifications for the Seller Purpose. b. Where *Alternative – Seller owns IP* is selected in Item 30 of Part D – Contract Details, then: i. Intellectual Property Rights in all Modifications Vest in the Seller; and ii. the Seller Grants to the Buyer a Licence to Use the Modifications for any purpose.

11.2. Intellectual Property warranty

11.2.1. The Seller warrants that:

a. it holds all necessary rights to grant the Intellectual Property Rights to the Buyer under this Contract; and

b. the Buyer's use of the Products and Services in accordance with the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

11.3. Additional Intellectual Property provisions

11.3.1. On request by the Buyer, the Seller will create, sign, execute or otherwise deal with any document necessary or desirable to give effect to clause 11.1.

12. Termination and reduction in scope

12.1. Reduction in scope of Licensed Software and Cloud Services

12.1.1. Without limiting the Buyer's other rights under the Contract, the Buyer may, at any time, by giving 20 Business Days' notice to the Seller, reduce the scope of the Licensed Software or Cloud Services.

12.1.2. If the Buyer reduces the scope of Licensed Software or Cloud Services under clause 12.1.1, the parties will enter a Contract Variation to reduce the Price accordingly.

12.2. Impact of termination or expiry generally

12.2.1. Without limiting clause 21 of Part C – Contract Terms, upon expiry or termination of this Contract, the Seller must:

a. at the Buyer's option:

i. enable the Buyer to access the Licensed Software and Cloud Services for a minimum period of 6 months after the end of this Contract in order to obtain, extract or retrieve its Buyer Data; or

ii. return the Buyer Data to the Buyer; and

b. if requested by the Buyer:

i. destroy or securely erase all Buyer Data from the Licensed Software and Cloud Services;

ii. remove all Buyer Data stored on servers hosting the Cloud Services, or infrastructure or platforms provided as part of the Cloud Services; and

iii. confirm to the Buyer when it has complied with its obligations in this clause 12.2.1.b.

12.2.2. After termination or expiry of the Buyer's access to the Cloud Services including access under clause 12.2.1.a.i, the Seller must provide the Buyer with access to the Cloud Services and related documentation:

a. to the extent required by law; and

b. for the Buyer's reasonable internal credit, risk, insurance, legal and audit responsibilities.

12.3. Impact of termination for convenience

12.3.1. This clause 12.3 applies if the Buyer:

a. terminates the Contract or reduces the scope of the Licensed Software or Cloud Services under clause 21.1 of Part C – Contract Terms; and

b. has paid any amounts in advance to the Seller for access to the Licensed Software or Cloud Services.

12.3.2. The Seller must refund to the Buyer any amounts paid in advance to the Seller for any Licensed Software or Cloud Services that would have otherwise been provided to the Buyer after the termination date or the date that the scope is reduced.

12.4. Termination or expiry of licence in the Licensed Software

12.4.1. This clause 12.3 is subject to clause 12.1.

12.4.2. After termination or expiry of the Buyer's licence in the Licensed Software, the Buyer must:

a. destroy and provide evidence of such destruction as the Seller may reasonably require; or

b. return to the Seller,

all copies of the Licensed Software that are in its possession or control.

12.4.3. The Buyer may retain a copy of the Licensed Software and its related Documentation:

a. to the extent required by law; or

b. for the Buyer's reasonable internal credit, risk, insurance, legal and audit responsibilities.

13. Rebundling

13.1. Renaming and rebranding

13.1.1. The Seller may rename or rebrand the Software and Cloud Services only if it will not reduce the functionality, performance or interoperability of the Software and Cloud Services or otherwise affect the Publisher's obligations under this Contract.

13.2. Rebundling

13.2.1. The Seller may Rebundle the Software and Cloud Services if:

a. the Seller provides the Buyer with 60 Business Days' notice setting out details;

b. the Rebundling must not reduce the functionality, performance and interoperability of the Software and Cloud Services;

c. the Rebundling must not affect the Seller's obligations under this Contract; and

d. no additional fees, costs or other amounts are payable by the Buyer.

14. Other general obligations

14.1. Licensed Software and Cloud Services record keeping

14.1.1. For Licensed Software and Cloud Services (or parts of the Licensed Software and Cloud Services) with a security classification specified in Item 36 of Part D – Contract Details, the Seller must ensure that it retains accurate records of:

a. any access to;

b. Software uploaded on; or

c. keystrokes made in connection with,

the Licensed Software and Cloud Services.

14.2. Cooperation with other providers

14.2.1. If, during the Contract Period, a Fault arises in relation to the Licensed Software or Cloud Services that is caused by a third party, the Seller must, if directed by the Buyer, work with that third party as required to promptly resolve the Fault.

14.2.2. This clause 14.2 applies in addition to the Seller's obligations in clause 11.9 of Part C – Contract Terms.

15. Maximum Price and Pricing Quotes – Software and Cloud Services

> ***Note*: *Maximum Price***
>
> The Seller's Maximum Price is the maximum the Seller can charge to a Buyer under a Contract. The Seller will have a different Maximum Price for different types of Products and Services under this Module. The Seller's Maximum Price is determined on the basis set out in clause 3 of Schedule A3 – Software and Cloud Services Module. DTA has recorded the Seller's Maximum Prices on the Online Portal.

16. Price under this Contract

16.1. Price, allowances and costs

16.1.1. Subject to the Seller's proper performance of the Contract, the Buyer will pay the Seller the Price stated in Item 26 of Part D – Contract Details or Attachment A (Pricing).

> ***Note:*** Price may be included in either an Item of the Contract Details or Attachment A (Pricing). It may be appropriate to include Price in Attachment A (Pricing) where the Price includes several components or is highly detailed.

16.1.2. The Seller must state the Price in Part D – Contract Details on a GST inclusive and exclusive basis.

16.1.3. Price for Licensed Software and Cloud Services must:

a. be in accordance with Attachment A (Pricing), Part D – Contract Details;

b. be transparent, with no indirect or hidden costs;

c. be based on the applicable Maximum Price pricing model;

d. include any minimum and maximum usage conditions associated with the Price;

e. include any commissioning and decommissioning costs; and

f. for any Complementary Services, be in accordance with clause 16.13.

16.2. Price must not exceed the Maximum Price

16.2.1. The Seller must price the Contract at or below the Maximum Price stated in the Seller's Module 3 Price List at the time the Contract is entered.

16.2.2. The Seller must price any variation to the Contract at or below the Maximum Price stated in the Seller's Module 3 Price List at the time of the Contract Variation.

16.3. Price is all inclusive

16.3.1. Unless otherwise stated in Part D – Contract Details, the Price:

a. covers all costs and resources required by the Seller to perform this Contract; and

b. represents the total consideration payable by the Buyer for all matters relevant to this Contract.

16.4. Time and Materials

16.4.1. Where the Seller is required to provide any Products and Services on a Time and Materials basis, the Seller must:

a. perform the tasks in accordance with:

i. Item 15 of Part D – Contract Details; and

ii. any reasonable directions from the Buyer that are consistent with the scope of the Seller's obligations in this Contract;

b. substantiate the time spent performing tasks required under this Contract if requested by the Buyer; and

c. not invoice the Buyer for any time which is not actually incurred by the Seller.

16.5. Verification of Price

16.5.1. The Seller must provide to the Buyer, within 5 Business Days of a request, any information required by the Buyer to verify that the Price for the Products and Services does not exceed the Seller's Maximum Price.

16.6. Pricing based on Metrics

16.6.1. The parties agree that, if stated, the Pricing Metric stated in Item 59 or 62 of Part D – Contract Details applies to the Licensed Software or Cloud Services.

16.6.2. If the Price is calculated based on a Metric, the Seller must:

a. comply with any requirements in Item 26 of Part D – Contract Details and Attachment A (Pricing), Part D – Contract Details;

b. comply with any directions from the Buyer about the volumes of use of the Products and Services; and

c. allow the Buyer to increase or decrease its use of the Licensed Software or Cloud Services in accordance with the agreed unit prices (and any volume discounts) specified in Attachment A (Pricing), Part D – Contract Details.

16.6.3. The Seller must ensure Price is calculated based on the value of one unit for each Metric as stated in Attachment A (Pricing), Part D – Contract Details.

16.7. Volume bands

16.7.1. The parties may specify volume bands for pricing for Licensed Software or Cloud Services in Attachment A (Pricing), Part D – Contract Details.

16.7.2. The Seller must not charge above any volume specified in Attachment A (Pricing), Part D – Contract Details without prior written approval from the Buyer. Any amount invoiced without approval will not be payable.

16.8. Price caps and ceilings

16.8.1. The Buyer must ensure that it does not exceed any applicable cap, consumption or other ceiling with respect to use of the Licensed Software or Cloud Services as stated in Item 59 or 62 of Part D – Contract Details or in Attachment A (Pricing), Part D – Contract Details.

16.8.2. The Buyer may increase the cap, consumption or ceiling at any time during the Licence Period or Cloud Subscription Period, if the Buyer pays the additional relevant fees stated in Attachment A (Pricing), Part D – Contract Details.

16.9. Monitoring use of Cloud Services

16.9.1. The Seller may monitor the Buyer's Use of the Cloud Services.

16.9.2. Where the Seller monitors the Buyer's Use of the Cloud Services it must notify the Buyer if the accrued costs reach 80% of the usage (monthly or otherwise) stated in Attachment A (Pricing), Part D – Contract Details.

16.10. Discount or credit

> ***Note*:** If the Seller provides any discounts (or similar), under this clause, they will only apply to this Contract. Other Contracts held by the Buyer, or Contracts the Seller holds with other Buyers will not be affected.

16.10.1. The Seller must provide the Buyer with any discount, credit, rebate or other similar benefit stated in Attachment A (Pricing), Part D – Contract Details from the time that any necessary conditions stated in Attachment A (Pricing), Part D – Contract Details are met.

16.10.2. If the necessary conditions are met after a Contract is formed, then the Seller must apply that discount, credit, rebate or other similar benefit on all invoices after the date that the conditions are met.

16.11. Payment in advance and rebate

16.11.1. If the Buyer is required to make payment in advance for access to the Licensed Software or Cloud Services, the period of advance payment must be no more than one year.

16.12. Sublicence and transfer of excess licences

16.12.1. If:

a. the Buyer has paid for the Licensed Software in advance; and

b. the number of Authorised Users that the Buyer has paid for exceeds the Buyer's requirements,

then, at any time, the Buyer may sublicense and transfer:

c. any excess licences; and

d. associated licensing rights and obligations under this Contract,

to any buyer specified in Item 60 of Part D – Contract Details.

16.13. Price of Complementary Services

> ***Note***: Price for Complementary Services is determined through the RFQ and Quote process. It may be included in the underlying Price for the Licensed Software or Cloud Services or determined on the basis of:
>
> - Time and Materials;
> - payment in accordance with Milestones; and/or

- other methods deemed appropriate by the Buyer permissible under this Contract.

16.13.1. Price for Complementary Services must be in accordance with Item 26 of Part D – Contract Details and Attachment A (Pricing), Part D – Contract Details.

16.13.2. Notwithstanding clause 16.1, the Seller's Maximum Price will not apply to the Price for Complementary Services when it is Priced separately to the underlying Price for the Licensed Software or Cloud Services.

16.14. Seller must not suspend access due to late payment

16.14.1. The Seller must not suspend access to the Licensed Software or Cloud Services:

a. during the Licence Period or Cloud Subscription Period (as applicable); or

b. under clause 12.2.1,

for any reason including late payment of an invoice.

16.15. Price review

Note: The Buyer may add benchmarking clauses from the DMP 2 model clauses to Item 49 of Part D – Contract Details if it requires the ability to conduct price benchmarking for Software and Cloud Services.

16.15.1. After the first anniversary of the Module Start Date, the Seller may apply for an annual increase of its Price by applying to the Buyer Representative. This must occur no later than 31 March in each year of the Contract Period.

16.15.2. The Price adjustment requested must not be more than the change in the Consumer Price Index (CPI) for the preceding 12 months, as published by the Australian Bureau of Statistics. The proposed new Price must not exceed the Seller's Maximum Price under the Panel Agreement at the time the Contract Variation is entered.

16.15.3. The Buyer may, by written notice to the Seller, approve or not approve an application made under clause 16.15.1.

16.15.4. Where the Buyer approves an application made by the Seller under clause 16.15.1, the Seller's Price will be adjusted from 1 July of that year using a Contract Variation.

16.16. Travel and related expenses

16.16.1. Where the Buyer requires the Seller's Personnel to travel for official purposes, the Buyer will either:

a. pay for the travel itself; or

b. reimburse the Seller in accordance with this clause 16.16 for reasonable and verified travel, accommodation and associated travel expenses,

if the relevant travel and/or accommodation (and the associated cost) is:

c. in accordance with any relevant Buyer policy; and

d. pre-approved in writing by the Buyer before the travel takes place.

16.16.2. For the Buyer to reimburse travel costs as described in clause 16.16.1, the Seller must:

a. give the Buyer a Correctly Rendered Invoice;

b. supporting receipts; and

c. other travel documents as required by the Buyer.

The Buyer will then reimburse the Seller in accordance with this Contract.

16.16.3. In respect of approved travel, time spent by the Seller's Personnel:

a. in transit between origin and destination; or

b. between destinations if there is more than one,

is not to be included in any request for reimbursement under clause 16.16.1. This clause 16.16.2 applies unless otherwise agreed by the Buyer in writing before the travel takes place.

16.16.4. The Seller must comply with the reasonable travel and overtime meal allowance expense amounts stated in the relevant Taxation Determination issued by the Australian Taxation Office as updated from time to time. This clause 16.16.4 does not limit clause 16.16.1.

Note: The current ATO Taxation Determination is TD 2024/3.

17. Invoicing and payment

17.1. Submission of invoices

17.1.1. Invoices for Products and Services must be submitted, together with any supporting documentation, in the manner set out in Item 28 of Part D – Contract Details.

17.1.2. Unless otherwise stated in Item 28 of Part D – Contract Details invoices must be submitted monthly in arrears.

17.1.3. If an invoice is not a Correctly Rendered Invoice, the Buyer will return it to the Seller for correction and resubmission.

17.2. When payment is due

17.2.1. The Buyer will pay the Seller the Price within the following timeframes:

a. if the Buyer and the Seller:

i. both have the capability to deliver and receive eInvoices through the Pan-European Public Procurement On-Line framework; and

ii. have agreed to use this method of invoicing (as stated in Item 28 of Part D – Contract Details),

the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 5 calendar days after receiving it; or

b. if clause 17.2.1.a does not apply, the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 20 calendar days after receiving it.

17.2.2. The Buyer will make all payments in the manner set out under the heading 'Price, allowances and costs' in Part D – Contract Details.

17.3. Interest

17.3.1. For the purpose of this clause 17.3, **the day that payment is made** is the day that the Buyer's system generates a payment request into the banking system for payment to the Seller.

17.3.2. This clause 17.3.2 is subject to clause 17.3.3. If the Buyer fails to pay to the Seller an amount under this Contract by the due date for payment, the Buyer will pay simple interest on the unpaid amount at the General Interest Charge Rate. Simple interest will be calculated in respect of each day from the day after the amount was due and payable, up to and including the day that payment is made in accordance with the formula set out below:

SI = UA x GIC x D

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

17.3.3. The Buyer will only be required to pay simple interest under clause 17.3.2 if:

a. the amount of interest exceeds $100; and

b. Item 27 of Part D – Contract Details is marked ‘Yes’.

17.4. GST

17.4.1. Words or expressions used in this clause 17.4 which are defined in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) have the same meaning in this clause 17.4.

17.4.2. Unless otherwise indicated, the Price and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.

17.4.3. If one party (**supplier**) makes a taxable supply to the other party (**recipient**) under this Contract, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question. The additional amount must be paid by the recipient at the same time as the GST exclusive consideration for the taxable supply is paid.

17.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

17.5. Other taxes

17.5.1. Except as provided by this clause 16.16 or otherwise set out in these Module Terms or Part D – Contract Details, the Seller agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

17.6. Payment does not amount to evidence or an admission

17.6.1. The Buyer's payment of an amount is taken to be payment on account only and not as evidence against or an admission by the Buyer of:

a. the value of any Products and Services; or

b. any Products and Services having been supplied in accordance with this Contract.

17.7. Buyer may recover Overcharge

17.7.1. If the Seller charges the Buyer for any amount that does not comply with this Contract (**Overcharge**), the Buyer may recover the Overcharge from the Seller as a debt owing to the Buyer by either:

a. notifying the Seller to repay the Overcharge to the Buyer within 10 Business Days of the notice; or

b. reducing the Price due under this Contract by the amount of the Overcharge.

17.8. Price not to exceed price cap

17.8.1. This clause 17.7 applies if a Product or Service Price Cap or Total Price Cap (or both) is stated in Item 29 of Part D – Contract Details.

17.8.2. Subject to any Contract Variation under clause 20.11 of Part C – Contract Terms, the total Price payable by the Buyer to the Seller:

a. *for a given Product or Service* – will not exceed the relevant Product or Service Price Cap; and

b. *under this Contract* – will not exceed the Total Price Cap.

17.8.3. The Seller must promptly advise the Buyer if the accrued costs reach 80% of the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details.

17.8.4. The Seller must advise the Buyer immediately if the accrued costs reach the Product or Service Price Cap or Total Price Cap stated in Item 29 of Part D – Contract Details and stop work if directed by the Buyer. The Seller must not re-commence work or exceed the threshold without the Buyer's prior written approval. This clause does not limit clause 17.8.2.

17.9. Disputes

17.9.1. If there is a dispute about whether an amount is payable under this Contract, the Buyer must notify the Seller and may withhold the disputed amount until the dispute is resolved.

17.9.2. If the Buyer withholds the disputed amount under clause 17.9.1:

a. the Seller must issue a Correctly Rendered Invoice for the undisputed amount; and

b. the Buyer must pay the undisputed amount within the timeframe under clause 17.2.

17.10. Adjustment of amounts after payment

17.10.1. The Buyer reserves the right to retrospectively adjust payments if the Buyer determines that the Products and Services have not been provided in accordance with this Contract.

17.10.2. If the Buyer:

a. pays an invoice from the Seller; and

b. later finds that the invoice was not a Correctly Rendered Invoice,

then the Buyer will notify the Seller setting out why it believes the invoice was not a Correctly Rendered Invoice and may:

c. recover any overpayment as a debt owing by the Seller, and the Seller must repay such overpayment to the Buyer immediately upon request by the Buyer; or

d. reduce the Price due under this Contract by the amount of the overpayment.

ATTACHMENT A (SOFTWARE AND CLOUD LICENCE AGREEMENT), SCHEDULE C3 – SOFTWARE AND CLOUD SERVICES MODULE

ATTACHMENT A (SOFTWARE AND CLOUD LICENCE AGREEMENT), SCHEDULE C3 – SOFTWARE AND CLOUD SERVICES MODULE

Note: Publishers may supply Software and Cloud Services to the Buyer. This supply is facilitated by a Reseller appointed to the Digital Marketplace 2 Panel.

The Publisher and Buyer must enter into a **contract on the terms of this Software and Cloud Licence Agreement** for the supply of the Software and Cloud Services.

The Publisher must not use other forms of end user licence agreements to govern the supply of Software and Cloud Services to the Buyer.

The terms of this Software and Cloud Licence Agreement are appropriate for routine Software and Cloud Services procurements. Buyers should complete Schedule 1 with Requirements and Special Conditions. Buyers may also add additional clauses in Schedule 1 that are required for their specific procurement.

Amending the terms of this Software and Cloud Licence Agreement

Buyers and Publishers may add to and amend the terms of the Software and Cloud Licence Agreement depending on the requirements for a particular procurement as follows:

Buyer approval only

Requirements under clause 2.3 – Buyers and Publishers should agree on terms for a specific Contract and set these out in Schedule 1. These should include the Buyer's requirements that are not covered by the Software and Cloud Licence Agreement. To be enforceable, any added clauses must meet the requirements, set out in clause 2.3.1.

Special Conditions under clause 2.4.2.b – Buyers and Publishers may agree to amend certain clauses of the Software and Cloud Licence Agreement where the terms expressly provide for this. For example, Buyers and Publishers can agree to a different liability cap under clause 8.1.1.b. These changes should be included in Schedule 1.

Buyer and DTA approval

Special Conditions under clause 2.4.2.c – Where amendment is not expressly permitted under the Software and Cloud Licence Agreement Terms, Buyers and Publishers must request DTA approval to amend a term in the Software and Cloud Licence Agreement. If approved, these changes are to be included in Schedule 1.

DTA will not consider amendments to a number of clauses, such as where it would be contrary to the Commonwealth's statutory or policy obligations. Examples of these clauses include the Publisher's indemnity for third party intellectual property claims, and obligations relating to security, data protection, confidentiality, and audit. Please see the Software and Cloud Licence Agreement – Summary of Positions document for further details on these clauses.

SOFTWARE AND CLOUD LICENCE AGREEMENT TERMS

This Software and Cloud Licence Agreement (SCLA) is:

a. made between the Buyer and the Publisher

b. to provide the Deliverables

c. on the date

d. for the SCLA Period,

as stated in Schedule 1.

The Buyer and the Publisher agree:

PART 1. GENERAL TERMS

1. Overview

1.1. Overview

1.1.1. The Publisher will provide the Deliverables to the Buyer in accordance with this SCLA.

1.1.2. The parties will interpret terms and definitions in this Software and Cloud Licence Agreement as set out in Schedule 2 – Definitions and Interpretation.

1.2. SCLA Period

1.2.1. The SCLA is for the SCLA Period, unless terminated earlier.

1.2.2. The Publisher and Buyer may amend the SCLA Period following written agreement between the Publisher and the Buyer.

1.2.3. The Buyer may, at its discretion, exercise any options stated in Schedule 1 to extend the SCLA Period.

1.2.4. The SCLA must not automatically renew.

2. SCLA structure

2.1. SCLA parts

2.1.1. This SCLA consists of:

a. the SCLA Terms;

b. Schedule 1 – SCLA Details; and

c. Schedule 2 – Definitions and Interpretation;

d. any other documents attached to or incorporated by reference into this SCLA.

2.2. Order of precedence

2.2.1. To the extent of any inconsistency between any parts of this SCLA:

a. Special Conditions in accordance with clause 2.4 will have priority; and

b. the other parts will have priority in the descending order set out in clause 2.1.1.

2.3. Requirements

2.3.1. The Requirements for the Deliverables are stated in Schedule 1 (**Requirements**).

2.3.2. The Requirements must:

a. be consistent with and must not conflict with the terms of this SCLA;

b. be agreed by both parties;

c. be expressly permitted under the SCLA Terms; and

d. set out in Schedule 1.

2.4. Special Conditions

2.4.1. Special Conditions that apply to this SCLA are stated in Schedule 1 (**Special Conditions**).

2.4.2. The Special Conditions must not reduce Publisher obligations, increase Buyer obligations or limit Buyer rights, under the SCLA unless:

a. the Buyer agrees to the amendment;

and

b. the amendment is expressly permitted under the SCLA Terms; or

c. DTA has given prior written approval for the amendment.

2.5. Terms that will have no effect

2.5.1. The Publisher must not seek to apply any terms to Deliverables, such as by:

a. requiring a Buyer user to click ‘I agree’ to terms when using Deliverables; or

b. including linked terms and conditions in any document included in, attached to or otherwise related to this SCLA.

2.5.2. Any terms that a party seeks to include in this SCLA, or that do not comply with clauses 2.3, 2.4 or 2.5, will have no effect and be unenforceable by either party.

3. Provision of Deliverables

3.1. Provision of Deliverables

3.1.1. The Publisher must provide Deliverables in accordance with the SCLA Terms and that meet the Requirements stated in Schedule 1, including:

a. ***Specifications –*** provide Deliverables that conform with the specifications stated in Schedule 1;

b. ***Delivery, activation and installation*** – deliver, activate and install the Deliverables in accordance with the requirements stated in Schedule 1 and provide to the Buyer any necessary licence keys and related activation information;

c. ***Documentation*** – provide the Documentation required by the Buyer to make proper use of the Deliverables and any other Documentation stated in Schedule 1;

d. ***Acceptance Testing*** – comply with the Buyer's Acceptance Testing requirements stated in Schedule 1;

e. ***Authorisations*** – obtain and maintain all Intellectual Property Rights, permits, approvals (including export approvals), consents and licences required for the lawful provision of the Deliverables;

f. ***Transition out*** – if the SCLA expires or is terminated, transfer or provide access to the Buyer, or its nominee, all:

i. Information;

ii. Buyer Data in accordance with the requirements stated in clauses 14.4.1 and 16.1.1.c; and

iii. documents,

accessed, stored or under the control of the Publisher, in connection with this SCLA;

g. ***Compliance with standards, codes and guidelines*** – comply with:

i. all applicable Australian standards, codes and guidelines, or, where none apply, relevant international standards, codes and guidelines;

ii. any other standards, codes or guidelines stated in Schedule 1; and

iii. standard industry practice for the provision of the Deliverables.

4. Whole of Government Arrangements

4.1. Whole of Government Arrangements

4.1.1. If the Publisher enters into an SSA with DTA after the commencement of the SCLA, the Publisher must supply the Deliverables on the terms of the SSA and not the terms of this SCLA.

4.1.2. If the Publisher has a subcontractor who enters into an SSA with DTA after the commencement of the SCLA, the Buyer may:

a. require the Deliverables provided by the subcontractor to be provided under the terms of the SSA. The Buyer may establish a separate agreement with the subcontractor for this purpose; and

b. require the Publisher to provide the subcontracted Deliverables on SSA pricing and terms.

4.1.3. The Publisher must make resultant changes to this SCLA through a SCLA Variation to give effect to clauses 4.1.1 and 4.1.2.

5. Representatives and subcontractors

5.1. Representatives

5.1.1. A party may change its Representative by notice to the other party.

5.2. Subcontractors

5.2.1. The Publisher:

a. must not subcontract the provision of any part of the Deliverables to any Prohibited Entity;

b. must give the Buyer details of any subcontract relevant to the SCLA within 5 Business Days of a request by the Buyer; and

c. must inform all subcontractors engaged in the performance of this SCLA that their details may be disclosed to the Buyer and publicly.

5.3. Extension of provisions to subcontractors, Supply Chain and Personnel

5.3.1. The Publisher is fully responsible for the performance of its obligations under the SCLA.

5.3.2. The Publisher must ensure that its subcontractors, Supply Chain, Supply Chain Elements and Personnel comply with requirements under this SCLA that are relevant to them.

6. Intellectual Property Rights

6.1. Intellectual Property Rights

6.1.1. The parties agree to the following:

Item	Scope	Provisions
1.	**Buyer Data**	a. Nothing in this SCLA affects the Intellectual Property Rights in any Buyer Data. b. The Buyer grants (or will procure) a Limited Licence for the Publisher over Buyer Data stored in, or generated by the Buyer's use of, the Deliverables, solely for the purposes of providing the Deliverables to the Buyer in accordance with this SCLA. c. The Buyer will provide Buyer Data to the Publisher including as stated Schedule 1. d. The Publisher must promptly return Buyer Data to the Buyer, and must destroy all hard or electronic copies of Buyer Data, if requested by the Buyer. e. The Publisher will comply with any requirements for use of Buyer Data stated in this SCLA or notified by the Buyer to the Publisher.
2.	**Deliverables**	a. Intellectual Property Rights in the Deliverables remain Vested in the Publisher. b. The Publisher grants (and must procure all necessary rights to grant) a Licence for the Buyer to Use the Deliverables. c. The Buyer agrees to comply with the Restrictions on Use.
3.	**Incorporated IP**	a. The Publisher grants (and must procure all necessary rights to grant) a Licence for the Buyer to Use any Incorporated IP, for the purposes of this SCLA.

6.2. Intellectual Property warranty

6.2.1. The Publisher warrants that:

a. it holds all necessary rights to grant the Intellectual Property Rights to the Buyer under this SCLA; and

b. the Buyer's and Publisher's use of the Deliverables and Incorporated IP will not infringe the Intellectual Property Rights or Moral Rights of any person.

7. Price and Invoicing

7.1. Price, allowances and costs

7.1.1. The Reseller will pay the Publisher for all Deliverables under this SCLA.

7.1.2. The Buyer is not required to make any direct payment to the Publisher under this SCLA.

7.2. Late payment

7.2.1. The Publisher must notify the Buyer if the Reseller has not paid the Publisher as required under clause 7.1.1 and provide details of the non-payment.

7.2.2. The Publisher must not suspend access to the Deliverables if the Reseller is late paying an invoice.

7.3. Invoicing and payment

7.3.1. The Publisher must provide Correctly Rendered Invoices to the Reseller for payment under clause 7.1.1.

7.3.2. The Publisher must provide the Buyer with copies of invoices and evidence to substantiate performance of the SCLA by the Publisher, if requested by the Buyer.

8. Liability and indemnity

8.1. Exclusion and limitation of liability

8.1.1. A party's liability under this SCLA (including under any indemnity):

a. excludes liability for:

i. loss of good will or damage to reputation;

ii. loss of anticipated profit, profit or the opportunity to earn profit;

iii. financing costs and funding costs; or

iv. aggravated, exemplary or punitive damages; and

b. is limited to the amount stated in Schedule 1, or where no amount is stated an amount equal to three times the total Price payable under this SCLA exclusive of GST.

8.1.2. Any exclusion of, or limitation on, liability under clause 8.1.1 does not apply to liability relating to:

a. personal injury (including sickness and death);

b. loss of, or damage to, tangible property;

c. an infringement of Intellectual Property Rights;

d. unless otherwise stated in Schedule 1, a breach of any obligation of confidentiality, security matter, Buyer Data or privacy; or

e. any breach of any statute or any wilfully wrong act or omission including any act or omission that constitutes repudiation of this SCLA.

8.2. Indemnity

8.2.1. The Publisher must indemnify the Buyer from any cost (including legal costs on a solicitor-own client basis), liability, loss, damage or expense arising from claims of infringement of third party Intellectual Property Rights arising from the Buyer's use of the Deliverables.

8.2.2. The Publisher's liability under clause 8.1.1 will reduce proportionately to the extent that the Buyer or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

8.3. Claims under indemnity

8.3.1. Subject to the *Legal Services Directions 2017* (Cth), if a third party makes a claim against the Buyer that is subject to the indemnity in clause 8.2, the Buyer will:

a. give written notice to the Publisher with relevant details of the claim, as soon as practicable; and

b. where practical, seek the consent of the Publisher to the management and settlement of the claim.

9. Notices

9.1. Notices

9.1.1. A notice under this SCLA is only effective if it is signed, in writing, in English and delivered to by a party's Representative to the other party's Representative at the email address stated in Schedule 1.

9.1.2. A notice will take effect:

a. when it becomes capable of being retrieved by the addressee; and

b. if received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, at 9.00 am on the next Business Day in that place.

10. Audit and access and monitoring use of Deliverables

10.1. Books and Records

10.1.1. The Publisher must:

a. keep adequate books and records, in accordance with Accounting Standards; and

b. keep copies of all certifications and other records to confirm their compliance with all applicable Australian standards.

10.2. Publisher to permit audits

10.2.1. The Publisher must give the Buyer Representative, or any persons authorised in writing by the Buyer, access to records and information, in the data format and storage medium required by the Buyer, in relation to the SCLA.

10.2.2. The Publisher must permit those persons set out in clause 10.2.1 to inspect and take copies of any Material relevant to this SCLA, including any review of the Publisher's performance under the SCLA, including in connection with a request made under the *Freedom of Information Act 1982* (Cth) or an audit or review by the Australian National Audit Office.

10.3. Buyer records and audit of Deliverables

10.3.1. The Buyer will:

a. monitor its use of the Deliverables; and

b. report any use in excess of any applicable cap, consumption or other ceiling under this SCLA to the Publisher.

10.4. Monitoring use of Cloud Services

10.4.1. The Publisher may monitor the Buyer's Use of the Cloud Services to determine the costs under the SCLA. The Publisher must give the Buyer evidence to support its assessment of Buyer Use if requested by the Buyer.

10.4.2. Where the Publisher monitors the Buyer's Use of the Cloud Services it must notify the Buyer if the accrued costs reach 80% of the usage (monthly or otherwise) stated in Schedule 1.

11. Rebundling

11.1. Renaming and rebranding

11.1.1. The Publisher may rename or rebrand the Deliverables only if it will not reduce the functionality, performance or interoperability of the Deliverables or otherwise affect the Publisher's obligations under this SCLA.

11.2. Rebundling

11.2.1. The Publisher may Rebundle the Deliverables if:

a. the Publisher provides the Buyer with 60 Business Days' notice setting out details;

b. the Rebundling must not reduce the functionality, performance and interoperability of the Deliverables;

c. the Rebundling must not affect the Publisher's obligations under this SCLA; and

d. no additional fees, costs or other amounts are payable by the Buyer.

12. General provisions

12.1. Obligations of the Publisher

12.1.1. The Publisher:

a. acknowledges the Buyer relies on the Deliverables to meet its operational requirements;

b. is not subject to an Insolvency Event;

c. must not be a Prohibited Entity;

d. must have all licences and authorisations required to operate and provide the Deliverables; and

e. must not make any false, misleading or deceptive declaration about any current or past dealings with the Buyer or any other agency.

12.2. Warranties

12.2.1. The Publisher warrants at all times that the Deliverables:

a. will comply with and perform in accordance with the requirements in the SCLA and the Publisher's specifications;

b. will function no less favourably than any trial version of the Deliverables provided by the Publisher to the Buyer;

c. the Deliverables have been developed and will be provided using a professional degree of care, skill and diligence according to applicable industry standards; and

d. the Publisher will not decrease the functionality or overall security of the Deliverables.

12.3. Publisher must disclose breach

12.3.1. The Publisher will notify and fully disclose to the Buyer as soon as it becomes aware of:

a. any breach of clause 12.1 or any warranty in clause 12.2; or

b. any event or occurrence (actual or threatened) that would materially affect the Publisher's ability to perform its obligations under the SCLA.

12.4. Insurance

12.4.1. The Publisher must hold:

a. as a minimum, the insurances stated in Schedule 1; and

b. any other insurances a prudent supplier would hold in accordance with best industry practice to cover the Deliverables.

12.4.2. The Publisher must provide proof of insurance acceptable to the Buyer if requested.

12.5. Assignment

12.5.1. The Publisher must not assign or seek to novate its rights or obligations under this SCLA, without the prior written consent of the Buyer.

12.5.2. The Buyer may conduct due diligence on any new entity proposed for an assignment or novation and treat this as a Change of Control under clause 12.6. The Publisher must give all necessary information to the Buyer for this purpose.

12.6. Change of Control

12.6.1. The Publisher must not undergo a Change of Control without the prior written consent of the Buyer.

12.6.2. The Publisher must notify the Buyer as soon as possible and no later than 10 Business Days before any Change of Control is to occur.

12.6.3. If the Publisher gives the Buyer a notice of a proposed Change of Control, the Buyer may:

a. conduct due diligence;

b. consent to the proposed Change of Control;

c. consent to the proposed Change of Control subject to conditions; or

d. not approve the proposed Change of Control.

12.6.4. The Buyer may terminate this SCLA under clause 14.2.1.a. if:

a. the Buyer does not approve the proposed Change of Control; and

b. the Publisher intends to go ahead with the Change of Control.

12.6.5. The Publisher must promptly provide the Buyer all information requested about a proposed Change of Control.

12.6.6. If the Buyer agrees to the Publisher's Change of Control and a novation of the SCLA is required, the Publisher must provide a completed deed of novation in the form required by the Buyer.

12.7. Survival

12.7.1. The following terms survive termination or expiry of this SCLA:

a. Requirements;

b. Special Conditions;

c. liability of the Publisher;

d. transition out;

e. compliance with law and policy;

f. insurance requirements;

g. security requirements;

h. Buyer Data;

i. confidentiality; or

j. any other provision which the parties expressly or by implication intend to continue.

13. Cure Plan

13.1. Performance Issue

13.1.1. The Buyer may notify the Publisher to provide a Cure Plan if the Buyer considers that the Publisher may have breached any requirement of this SCLA or the Publisher's performance is otherwise unsatisfactory (**Performance Issue**).

13.1.2. The Publisher must give the Buyer a Cure Plan that sets out how the Publisher will remedy the Performance Issue and its underlying causes within 5 days of a Buyer notice under clause 13.1.1.

13.2. Publisher implementing Cure Plan

13.2.1. The Buyer may either:

a. notify the Publisher to implement the Cure Plan; or

b. notify the Publisher to revise the Cure Plan, in which case the Publisher must revise and resubmit the Cure Plan within 5 Business Days (or such time stated in the notice) as required in the notice.

13.2.2. If the Buyer gives the Publisher a notice under clause 13.2.1.a, the Publisher must implement the Cure Plan and notify the Buyer when it believes it has fully completed the Cure Plan.

13.2.3. The Buyer may conduct due diligence in respect of work related to the Cure Plan. The Cure Plan will not be considered completed until such time as the Buyer provides written confirmation following due diligence.

14. Termination

14.1. Termination or reduction for convenience

14.1.1. In addition to any other rights the Buyer has under the SCLA, it may, at any time, terminate the SCLA or reduce the scope or quantity of the Deliverables by notice to the Publisher.

14.1.2. If the Buyer issues a notice under clause 14.1.1, the Publisher must:

a. comply with any reasonable directions given by the Buyer;

b. stop or reduce the provision of Deliverables as stated in the notice;

c. continue to provide any part of the Deliverables not affected by the notice; and

d. mitigate all loss and expenses in connection with the termination or reduction in scope.

14.1.3. The Buyer:

a. will only be liable to pay the part of the Price relating to Deliverables already supplied before the date of the notice under clause 14.1 in accordance with this SCLA;

b. is entitled to a refund of any part of the Price already paid by the Buyer for the period of the SCLA following the date of termination under clause 14.1.1;

c. must reimburse any verified expenses that are:

i. properly, unavoidably and directly incurred by the Publisher as a result of the termination; and

ii. substantiated to the Buyer's satisfaction; and

d. in the case of a reduction in scope, will only need to pay the Price in accordance with the reduction in Deliverables.

14.1.4. The total of payments from the Buyer to the Publisher in relation to a termination under clause 14.1 must not exceed the Price. The Publisher will not be entitled to loss of anticipated profit for any part of the SCLA not performed or for costs associated with redundancies, redeployments or termination of subcontracts.

14.2. Termination for fault

14.2.1. If the Publisher fails to satisfy any of its obligations under this SCLA, then the Buyer – if it considers that the failure is:

a. *not capable of remedy* – may, by notice, terminate this SCLA immediately; or

b. *capable of remedy* – may, by notice, require that the Publisher remedy the failure within the time stated in the notice. If not remedied within that time, the Buyer may terminate this SCLA immediately by giving a second notice.

14.2.2. The Buyer may also by notice terminate this SCLA or reduce the scope of this SCLA immediately (but without prejudice to any prior right of action or remedy which the Buyer has or may have) if the Publisher:

a. becomes subject to an Insolvency Event;

b. fails to implement a Cure Plan where required to do so under clause 13;

c. fails to comply with obligations under this SCLA in relation to security, Change of Control, Banned AI Systems, confidentiality, Buyer Data or Intellectual Property.

14.3. Impact of termination

14.3.1. If this SCLA is terminated:

a. the Publisher must, within 10 Business Days of the termination date, refund to the Buyer any part of the Price already paid by the Buyer for the remainder of the SCLA Period;

b. subject to surviving obligations, the parties are relieved from future performance of the terminated SCLA (or relevant part of it);

c. subject to this SCLA, any licences and authorisations for this SCLA granted to the Publisher by the Buyer terminate immediately;

d. the Publisher must protect Intellectual Property Rights, Buyer Data, and Personal Information and follow any reasonable direction of the Buyer; and

e. the Publisher must continue to perform any part of this SCLA not affected by the termination or which survives termination under clause 12.7.

14.3.2. Termination does not affect the rights accrued by either party before termination.

14.4. Impact of termination or expiry on Licensed Software or Cloud Services

14.4.1. Without limiting clause 14.3, upon expiry or termination of this SCLA, the Publisher must:

a. at the Buyer's option:

i. enable the Buyer to access the Licensed Software or Cloud Services for a minimum period of 6 months, or other timeframe stated in Schedule 1, after the end of this SCLA in order to obtain, extract or retrieve its Buyer Data; or

ii. return the Buyer Data to the Buyer; and

b. if requested by the Buyer, remove, destroy or securely erase all Buyer Data from the Licensed Software or Cloud Services.

14.4.2. After termination or expiry of the Buyer's licence in the Licensed Software, the Buyer must destroy or return copies of the Licensed Software if requested by the Publisher.

14.4.3. After termination or expiry of this SCLA, the Buyer may retain a copy of the Licensed Software and access to the Cloud Services and related documentation (as relevant):

a. to the extent required by law; or

b. for the Buyer's reasonable internal credit, risk, insurance, legal and audit responsibilities.

15. Miscellaneous provisions

15.1. Miscellaneous provisions

15.1.1. Under this SCLA:

a. ***Variation*** – the parties may only vary this SCLA under a written and properly executed contract variation;

b. ***Entire agreement*** – the parties agree that this SCLA constitutes the entire agreement between the parties in connection with its subject matter. This SCLA supersedes all previous agreements or understandings between the parties in connection with its subject matter;

c. ***Counterparts*** – the parties may execute this SCLA electronically or in counterparts. All executed counterparts constitute one document;

d. ***Relationship of parties*** – the Publisher is not an officer, employee, partner or agent of the Buyer. The Publisher does not have any power or authority to bind or represent the Buyer unless specifically authorised in writing;

e. ***Buyer coat of arms or branding*** – the Publisher must not use the Commonwealth coat of arms, or any Buyer branding in connection with this SCLA on its website, in marketing material or any other public facing document without prior permission of the Buyer; and

f. ***Public announcements*** – the Publisher must get the Buyer's written approval before making any public announcement about this SCLA.

15.2. Applicable law

15.2.1. This SCLA is to be construed in accordance with, and any matter related to it is to be governed by, the law of New South Wales, unless otherwise stated in Schedule 1.

15.2.2. The parties submit to the jurisdiction of the courts of that State or Territory.

PART 2. DATA, SECURITY AND CONFIDENTIALITY

16. Data

16.1. Dealing with Buyer Data

16.1.1. The Publisher must:

a. ***General*** – only use Buyer Data for the performance of this SCLA and must not sell, licence or otherwise permit any third party to access or use Buyer Data;

b. ***Location of Buyer Data*** – not transmit, store, take or access Buyer Data or allow Buyer Data to be transmitted, stored, taken or accessed by any means outside of:

i. the Buyer's Digital Systems or the Publisher's Digital Systems; or

ii. otherwise outside of Australia,

unless it is permitted in Schedule 1;

c. ***Data portability*** – provide Buyer Data stored on the Deliverables to the Buyer on request in a:

i. structured;

ii. commonly used; and

iii. machine-readable format,

that enables the Buyer to retrieve or transmit the Buyer Data to software or cloud services without hindrance;

d. ***Data Mining*** – not, at any time, conduct Data Mining activities with any Buyer Data unless otherwise specified in the Deliverables under this SCLA;

e. ***Media decommissioning*** – securely remove and retire storage media used to store Buyer Data in accordance with best industry practice, the Information Security Manual and Schedule 1; and

f. ***Hosting on the cloud*** – host all Buyer Data:

i. at the required level of Certification; and

ii. at the hosting location,

stated in Schedule 1.

16.2. Remote access to Buyer's Digital Systems

16.2.1. In providing the Deliverables, the Publisher must:

a. ensure there is no unauthorised access (including no unauthorised remote access) to the Buyer's Digital Systems;

b. only permit access to the Buyer's Digital Systems to those Personnel who have been approved by the Buyer in writing and have a need for such access; and

c. maintain records of all Personnel access to the Buyer's Digital Systems.

16.3. Backups of Buyer Data

16.3.1. Unless otherwise stated in Schedule 1, the parties will be responsible for backups of Buyer Data under this SCLA as follows:

a. *for Licensed Software* - the Buyer is responsible; and

b. *for Cloud Services* - the Publisher is responsible.

16.3.2. Where the Buyer is responsible, the Publisher must assist as requested with backups, transfers or restorations of Buyer Data.

16.3.3. Where the Publisher is responsible, it must perform an initial backup and maintain daily backups (or any other frequency stated in Schedule 1) to ensure accurate and complete restoration of Buyer Data.

16.4. Backups – restoration of Buyer Data

16.4.1. Where the Publisher is responsible for backups of Buyer Data, the Publisher must restore the Buyer Data on request by the Buyer:

a. within 4 hours (or other frequency if stated in Schedule 1); and

b. in a manner which enables the relevant Buyer Data to be accurately and completely restored.

17. Digital and physical security

17.1. General digital security obligations

17.1.1. The Publisher must provide the Deliverables in a manner:

a. that complies with and ensures the Buyer can comply with the Protective Security Policy Framework (PSPF), Protective Security Directions, the Information Security Manual and Essential Eight Maturity Level 2 (or other maturity level stated in Schedule 1) and any other Requirements stated in Schedule 1;

b. incorporate administrative, physical and technical measures consistent with best industry practice to:

i. ensure the security, confidentiality, integrity and availability; and

prevent unauthorised access or use by a third party, misuse, loss, damage, destruction, alteration or corruption, of the Buyer Data and Deliverables.

17.2. Harmful Code and Cyber Attacks

17.2.1. The Publisher must use best endeavours in accordance with best industry practice, to prevent, detect and address:

a. the introduction of Harmful Code into the Applicable Systems; and

b. Cyber Attacks on the Digital Systems of the Publisher and any member of the Publisher's Supply Chain.

17.2.2. The Publisher must not charge the Buyer for any period that the Buyer is unable to use the Deliverables as a result of a Security Incident, Harmful Code or Cyber Attack. This does not limit the Buyer's other rights in relation to these events.

17.3. Other security obligations of the Publisher

17.3.1. The Publisher must:

a. ***Security procedures*** – implement procedures to ensure it meets security requirements under this SCLA;

b. ***Access to Security Classified Resources*** – not access Security Classified Resources beyond the level stated in Schedule 1, ensure that all Personnel who require access to Security Classified Resources hold the required clearance to access that information and otherwise comply with requirements stated in Schedule 1;

c. ***Perform SCLA in Australia*** – not perform any part of this SCLA outside Australia, or permit or facilitate any third party to do so, unless stated in Schedule 1, or otherwise with the Buyer's prior written approval; and

d. ***Open Source Code*** – not use Open Source Code in the Deliverables that contains vulnerabilities that cannot be patched or otherwise mitigated.

18. Artificial Intelligence (AI) requirements

18.1. AI System use

18.1.1. The Publisher must only deploy or integrate an AI System as part of the Deliverables if:

a. the AI System and scope of its use is stated in Schedule 1; or

b. the Buyer has given prior written approval.

18.1.2. The Publisher must comply with any conditions that the Buyer places on use of an AI System as stated in Schedule 1.

18.2. AI Inputs and AI Outputs

18.2.1. The Publisher must ensure:

a. Buyer AI Inputs; and

b. AI Outputs in response to Buyer AI Inputs:

are:

c. kept confidential;

d. securely protected from third party access;

e. not incorporated into or merged with an AI System, and

f. stored and protected as specified in Schedule 1.

18.2.2. The Publisher must:

a. conduct quality assurance checks to ensure AI Outputs are accurate and reliable; and

b. keep detailed records of the AI System, its scope of use, data handled, and systems it interacts with. The Publisher must provide these records to the Buyer if requested.

18.3. AI System performance

18.3.1. The Publisher must ensure any AI System integrated into the Deliverables:

a. conforms to the requirements stated in Schedule 1;

b. complies with all applicable laws, including discrimination legislation, and policies;

c. can be operated in a sufficiently transparent manner to enable:

i. the Buyer to understand and use the AI System appropriately; and

ii. where possible, AI Outputs to be traced back to AI Inputs;

d. keeps automatic records of events;

e. contains a circuit-breaker capable of interrupting and stopping the AI System immediately:

i. upon the Buyer's instructions to the Publisher; and

ii. via a human-machine interface tool accessible to the Buyer.

18.3.2. The Publisher must provide information and guidance to the Buyer so that Buyer Personnel:

a. understand the capacities and limitations of any AI System integrated into the Deliverables;

b. avoid over-reliance on the AI Outputs; and

c. can monitor, detect and address anomalies and unexpected performance in the AI System.

18.4. Publisher not to use Banned AI Systems

18.4.1. The Publisher must not use a Banned AI System in the provision of the Deliverables, including in any part of the Supply Chain.

19. Confidentiality of Buyer Data

19.1. Confidentiality of Buyer Data

19.1.1. The Publisher must not, without the prior written authorisation of the Buyer, disclose any Buyer Data and the terms of this SCLA to any person, except to the extent required by law.

20. Confidential Information of the Publisher

20.1. Confidential Information not to be disclosed

20.1.1. The Buyer will not, without the prior written authorisation of the Publisher, disclose any Publisher Confidential Information stated in Schedule 1 to a third party. This clause is subject to clause 20.2.1.

20.2. Exceptions to obligations

20.2.1. The Buyer's obligations under this clause 20 will not be taken to have been breached to the extent that Publisher Confidential Information is:

a. disclosed by the Buyer to its Personnel in connection with this SCLA or related activities;

b. disclosed by the Buyer for public accountability purposes or to a Minister, or a House or Committee of Parliament;

c. shared within the Buyer's organisation or with another agency where this serves the Commonwealth's legitimate interests;

d. authorised or required by law to be disclosed; or

e. in the public domain otherwise than due to a breach of this clause 20.

21. Security and confidentiality notification and reporting requirements

21.1. Notification requirements

21.1.1. The Publisher must:

a. notify the Buyer immediately with full details if it becomes or reasonably suspects:

i. a Security Incident has occurred;

ii. Harmful Code has been introduced into the Applicable Systems;

iii. a Cyber Attack has occurred on the Digital Systems of the Publisher or Supply Chain;

iv. an AI Incident has occurred, an AI Hazard exists, any AI System integrated into the Deliverables is malfunctioning or producing incorrect or harmful outputs or a Banned AI System has been used in the provision of the Deliverables; or

v. a breach of clauses 16.1, 16.2, 17.1.1, 17.3.1.b or 17.3.1.d has occurred;

b. take all reasonable action to mitigate any damage, subject to any directions from the Buyer;

c. ensure any actual or potential loss of or threat to the Buyer's operations and efficiency is minimised; and

d. if required by law or if directed by the Buyer, advise CERT Australia and/or the Australian Cyber Security Centre.

21.1.2. The Buyer may notify the Publisher of conduct or circumstances that in the Buyer's view amount to an occurrence under clause a. The Publisher must comply with the directions of the Buyer in the notice in relation to the occurrence.

21.1.3. The Publisher must notify the Buyer immediately if a foreign government or foreign agency requests access to any Buyer Data and the request must be redirected to the Buyer.

21.2. Supply Chain security

21.2.1. The Publisher must maintain the integrity of the Supply Chain and use reputable Supply Chain Elements to protect the security, confidentiality, integrity and availability of the Deliverables and Buyer Data.

21.2.2. The Buyer may require removal of Supply Chain Elements.

PART 3. SUPPORT AND MAINTENANCE, AND PERFORMANCE

22. Support and Maintenance

22.1. Issue Management

22.1.1. Unless otherwise stated in Schedule 1, the Publisher must allow the Buyer to request Support and Maintenance, and report Faults and possible Faults. This must be available via a toll free telephone number, email and internet reporting at all times.

22.1.2. The Publisher must:

a. log all requests, Faults and Support and Maintenance;

b. keep the Buyer fully informed as to status, actions and resolutions; and

c. escalate its responses as appropriate or if requested by the Buyer.

22.1.3. The Publisher must keep records of all Faults and Buyer requests, including:

a. the time of request or Fault and the time of resolution; and

b. details of all actions taken and the personnel involved.

22.1.4. The Publisher must properly test:

a. any remedy before it is implemented; and

b. the Deliverable prior to certifying that any Fault or possible Fault is fixed.

22.2. Rectification (Remedial Maintenance)

22.2.1. The Publisher must Rectify Faults in the Deliverables during the SCLA Period (or during the Rectification Period if stated in Schedule 1).

22.2.2. The Publisher must:

a. immediately inform the Buyer in writing of a Fault and provide a report to the Buyer on the Fault within 72 hours;

b. within a period of time agreed by the Buyer, replace, repair or modify the affected Deliverables to rectify the Fault;

c. meet all costs associated with Rectification except if the Fault in the Deliverables is due to:

   i. negligence of the Buyer; or

   ii. any use or modification of the Deliverables by the Buyer which is not in accordance with this SCLA.

22.2.3. Any Rectification work is subject to the same Acceptance Testing requirements that applied to the original Deliverable.

22.2.4. Where Rectification work is necessary, the applicable Rectification Period will be extended for 60 Business Days from:

a. the date the Rectification work is Accepted by the Buyer; or

b. the end date of the Rectification Period,

whichever is later.

22.2.5. If the Publisher does not Rectify a Fault within 24 hours (unless otherwise agreed by the Buyer in writing), the Buyer may perform or procure the Rectification work and recover reasonable expenses from the Publisher.

22.3. Preventative Maintenance

22.3.1. The Publisher must provide Preventative Maintenance in relation to the Deliverables, unless otherwise stated in Schedule 1, to ensure the Deliverables meet the requirements of this SCLA. This includes:

a. minor updates or refinements to existing functionality and features;

b. patches to fix bugs, security vulnerabilities or performance issues;

c. maintenance releases; and

d. service packs.

22.3.2. Any Preventative Maintenance is subject to the same Acceptance Testing requirements that applied to the original Deliverable.

22.4. Software Releases and Major Updates

22.4.1. The Publisher must, at least 90 days prior to the proposed date when a Software Release or Major Update will be implemented:

a. notify the Buyer of the matter; and

b. provide details of the Software Release or Major Update, including any effects that it may have on the functionality, performance and interoperability of the Licensed Software.

22.4.2. The Publisher must not implement the Software Release or Major Update unless Accepted by the Buyer.

22.4.3. If, after the Software Release or Major Update is implemented, the Buyer determines that the Software Release or Major Update:

a. has materially diminished or reduced the functionality of the Licensed Software; and/or

b. makes the Licensed Software unfit for purpose,

the Buyer may request the Publisher provide a Cure Plan under clause 13.

22.4.4. No additional charge is payable for the Software Release or Major Update unless agreed to by the Buyer in a contract variation in accordance with clause 1.1.

22.5. Continuous Modifications

22.5.1. The Publisher may, from time to time:

a. make technical or product enhancements or modifications to Cloud Services; or

correct errors or provide upgrades to the Cloud Services, (each, a **Continuous Modification**).

22.5.2. The Publisher must, at least 90 days prior to the proposed date when a Continuous Modification will come into effect:

a. notify the Buyer with details of the Continuous Modification, including date that it will take into effect and any effects on the performance of the Cloud Services.

22.5.3. Continuous Modifications are subject to the same Acceptance Testing requirements that applied to the Cloud Services originally provided under this SCLA.

22.5.4. If, after a Continuous Modification takes effect, the Buyer determines that the Continuous Modification:

a. has materially diminished or reduced the functionality of the Cloud Services; and/or

b. makes the Cloud Services unfit for purpose,

the Buyer may request the Publisher provide a Cure Plan under clause 13.

22.6. Scheduled Downtime for Deliverables

22.6.1. The Publisher must:

a. use its best efforts to minimise interruptions to the Buyer's use of the Deliverables during a planned period where the features and functionality of the Deliverables will not be available (**Scheduled Downtime**); and

b. give the Buyer at least 20 Business Days prior notice of all Scheduled Downtime, unless a different notice period has been agreed with the Buyer.

22.7. Amendment as Special Conditions

22.7.1. The Publisher's obligations in clause 22 may be amended as Special Conditions in Schedule 1.

23. Service Levels and Credits

23.1. Service Levels

23.1.1. The Publisher must meet the Service Levels stated in Schedule 1.

23.2. Service Credits

23.2.1. If the Publisher fails to meet any of the Service Levels, the Publisher must reduce the Price as stated in Schedule 1.

23.2.2. If Service Credits are incurred and payable to the Buyer, then the Publisher must:

a. adjust the amount of the next invoice; or

b. where there are no more invoices, pay to the Buyer the applicable Service Credit as a debt owing to the Buyer.

23.2.3. The Publisher acknowledges that the Buyer's rights under this clause 23.2 are in addition to, and do not waive, the Buyer's right to seek any other remedy under this SCLA or at law.

23.2.4. Any limitation of liability under this SCLA does not apply to any Service Credits.

PART 4. COMPLIANCE WITH LAWS AND POLICIES, AND INTEGRITY REQUIREMENTS

24. Publisher's compliance with laws and policies

24.1. Publisher's compliance with laws and policies

24.1.1. The Publisher must:

a. comply with all laws applicable to the performance of this SCLA;

b. comply with any policies stated in Schedule 1; and

c. not do anything that, if done by the Buyer, would be a breach of the applicable law or policy.

24.1.2. Without limiting clause 24.1.1, the Publisher:

a. ***Criminal Code Act 1995 (Cth) (Criminal Code)*** – must comply with the Criminal Code and acknowledges that:

i. giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the Criminal Code; and

ii. unauthorised disclosure of any information obtained under this SCLA, including Buyer Data, is an offence under the Criminal Code and there are penalties for unauthorised disclosure;

b. ***Fraud and corruption*** – must take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in relation to this SCLA;

c. ***Conflict of Interest*** – warrants that, to the best of its knowledge after making diligent inquiries, at the start of this SCLA no Conflict, except as disclosed in writing to the Buyer, exists or is likely to arise in the performance of its obligations under this SCLA;

d. ***Commonwealth Supplier Code of Conduct*** – must comply with the Commonwealth Supplier Code of Conduct in performing any part of this SCLA, notify the Buyer of a Significant Event and take steps;

e. ***APS –*** must comply with APS Values and APS Code of Conduct to the standard required of 'APS employees' as defined under the *Public Services Act 1999* (Cth) in performing any part of this SCLA;

f. ***Illegal Workers*** – must not engage Illegal Workers in any capacity to carry out any work under or in connection with this SCLA;

g. ***Archives Act requirements*** – acknowledges and agrees that:

   i. the Deliverables may be used to store Commonwealth Records;

   ii. the *Archives Act 1983* (Cth) applies to Commonwealth Records;

   iii. the Publisher must not dispose of any Commonwealth Records unless directed in writing to do so by the Buyer;

   iv. it must comply with any directions of the Buyer relating to archival and information management requirements; and

h. ***Significant Events*** – must:

   i. immediately notify the Buyer on becoming aware of a Significant Event and provide a summary including Personnel involved;

   ii. if the Buyer notifies the Publisher of a Significant Event, provide a notice under clause 24.1.2.h.i within 3 Business Days of the Buyer's notice;

   iii. if asked by the Buyer, provide with the Buyer with any additional information within 3 Business Days; and

   iv. if asked by the Buyer, prepare a Cure Plan under clause 13.

24.2. Notification and reporting requirements

24.2.1. The Publisher must:

a. notify the Buyer immediately with full details if it becomes aware of or has reason to suspect:

   i. any actual or suspected breach of the requirements set out in clauses 24.1.1 and 24.1.2;

   ii. any fraud has occurred or is likely to occur in relation to this SCLA; and

   iii. a Conflict has arisen or is likely to arise; and

b. comply with any directions by the Buyer in relation to investigation, further reporting, resolving or dealing with the issue.

24.2.2. The Buyer may notify the Publisher of conduct or circumstances that in the Buyer's view amount to an issue under clause a. The Publisher must comply with the directions of the Buyer in the notice.

24.2.3. The Publisher agrees to provide information demonstrating compliance with applicable laws, policies and other requirements under this SCLA as requested by the Buyer or as otherwise required by the applicable law or policy.

25. Privacy

25.1. Publisher's Privacy Act obligations

25.1.1. The Publisher must:

a. comply with its obligations under the Privacy Act (including as a 'contracted service provider'); and

b. not to do anything that, if done by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act.

25.2. Publisher to act on Eligible Data Breaches

25.2.1. If the Publisher becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Publisher as a result of the provision of the Deliverables:

a. the Publisher must notify the Buyer in writing immediately and provide a report to the Buyer on the Eligible Data Breach within 72 hours;

b. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm; and

c. take any other action as reasonably directed by the Buyer.

Schedule 1 SCLA DETAILS

Details
Item 1 – Agreement details
Parties This agreement is made between: **^**insert Buyer name**^** ABN ^insert Buyer ABN^ (**the Buyer**) and **^**insert Publisher name**^** ^ABN/ACN^ ^insert Publisher ABN/ACN^ (**the Publisher**) **Agreement date** This agreement is made on ^insert date^ **SCLA Period** The SCLA Period is for ^insert timeframe^ year(s) (as extended or terminated in accordance with this SCLA) **Deliverables** To provide: ^insert description of Deliverables^ (**the Deliverables**)
Item 2 – Requirements (clause 2.3)
Note: Buyers should complete this section with Requirements as appropriate for their procurement of the Software and Cloud Services. The headings below align with provisions in the SCLA Terms which explicitly allow the Buyer to set out Requirements. This is provided as guidance to Buyers, and it is open to Buyers to state other or additional Requirements in this section. ***SCLA Terms*** **Extension (clause 1.2.3)** ^insert number and length of extension options^ **Specifications (clause 3.1.1.a)** ^insert^ **Delivery, activation and installation of the Deliverables (clause 3.1.1.b)** ^insert^ **Documentation (clause 3.1.1.c)** ^insert^ **Acceptance Testing (clause 3.1.1.d)**

^insert^

Transition Out (clause 3.1.1.f)

^insert^

An example of possible Requirements that Buyers could include for Transition Out arrangements are below:

"If the SCLA expires or is terminated, the Publisher must:

a. comply with any reasonable directions given by the Buyer in order to facilitate the smooth transition of the provision of the Deliverables to the Buyer or to another supplier nominated by the Buyer;

b. comply with all relevant security and data protection obligations in this SCLA; and

c. comply with any other requirements stated in Schedule 1."

Compliance with standards, codes, guidelines (clause 3.1.1.g)

^insert^

Intellectual Property Rights – Buyer Data (clause 6.1.1.c)

^insert^

Representatives (clause 9.1.1)

^insert email address^

Insurance (clause 12.4)

^insert^

Media decommissioning (clause 16.1.1.e)

^insert^

Hosting Buyer Data on the cloud (clause 16.1.1.f)

^insert approved cloud provider and hosting location^

^insert required level of certification under the Hosting Certification Framework (available here: Framework | Hosting Certification Framework) [Strategic] [Assured] [Uncertified]^

General digital security obligations (clause 17.1.1.a)

^insert^

Publisher access to Security Classified Resources (clause 17.3.1.b)

^insert level of access required and any access requirements^

Performing SCLA in Australia (clause 17.3.1.c)

^insert^

AI System use (clause 18.1) ^insert scope of use and any conditions on use^ **AI Inputs and AI Outputs (clause 18.2.1.f)** ^insert^ **AI System performance (clause 18.3.1.a)** ^insert^ **Confidential Information not to be disclosed (clause 20.1)** ^insert^ **Service Levels (clause 23.1)** ^insert^ **Service Credits (clause 23.2)** ^insert^ **Publisher's compliance with laws and policies (clause 24.1.1.b)** ^insert^ ***Definitions and Interpretation from Schedule 2*** **Acceptance Criteria** ^insert^ **Banned AI System** ^insert^ **Restrictions on Use** ^insert^ ***Other or additional Requirements* (clause 3.1.1)** ^insert^
Item 3 – Special Conditions (clause 2.4)
Exclusion and limitation of liability (clause 8.1.1.b) ^insert amount^ **Exclusion and limitation of liability (clause 8.1.2.d)**

^insert ^

Impact of termination or expiry on Licensed Software or Cloud Services (clause 14.4.1.a.i)

^insert^

Applicable Law (clause 15.2)

^insert^

Dealing with Buyer Data – Location of Buyer Data (clause 16.1.1.b)

^insert^

Backups of Buyer Data (clauses 16.3.1 and 16.3.3)

^insert^

Backups – restoration of Buyer Data (clause 16.4.1.a)

^insert other frequency^

Support and Maintenance (clause 22)

^insert^

Item 4 – Price (clause 7)

Price, allowances and costs (clauses 7 and 10.4.2)

Metric

^insert metric e.g. user licences, terabytes, API calls^

Unit price

^Insert amount ex GST^ ex GST

^Insert amount inc GST^ inc GST

Volume (number of units)

^Insert^

Total price

^Insert amount ex GST^ ex GST

^Insert amount inc GST^ inc GST

26. Interpretation and Definitions

26.1. Interpretation

26.1.1. In this SCLA, unless the contrary intention appears:

a. a reference to a clause, paragraph, schedule or attachment in the SCLA Terms – is to a clause or paragraph of, or schedule or attachment to, the SCLA;

b. a reference to Schedule 1 includes a reference to any attachments to Schedule 1;

c. a reference to a clause, section or paragraph includes a reference to a subclause of that clause, subsection of that section or subparagraph of that paragraph;

d. words importing a gender include any other gender;

e. words in the singular include the plural and words in the plural include the singular;

f. clause headings are for convenient reference only and have no legal effect including limiting or extending the language or meaning of provisions to which they refer;

g. guidance for the Buyer and/or the Publisher is for assistance only and has no legal effect;

h. words importing a person include a partnership and a body whether corporate or otherwise;

i. words of inclusion are not to be interpreted as words of limitation;

j. all references to dollars are to Australian dollars;

k. if a payment is due or a thing is to be done on a day other than a Business Day, that payment must be made or the thing done by the next Business Day;

l. if the Publisher has an obligation to do (or not do) something, the Publisher must comply with that obligation at its cost;

m. wherever the SCLA gives the Buyer the right to take (or not take) certain action, then the Buyer may (or may not) take the action in its absolute discretion;

n. where the agreement, approval or consent of the Buyer is required, the Buyer may (or may not):

   i. require the Publisher to comply with conditions before giving its agreement, approval or consent; and

   ii. give its agreement, approval or consent subject to conditions,

   provided that such conditions must not be unlawful or inconsistent with the SCLA;

o. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;

p. a reference to a document, publication, standard, Commonwealth policy or instrument is a reference to the document, publication, standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;

q. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

r. if the parties have not completed an item in the SCLA Details, that item will be taken to be ‘not applicable’ for the purpose of the SCLA;

s. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form;

t. wherever the SCLA contains a provision that states ‘including’ followed by one or more listed items, the provision includes but is not limited to those items; and

u. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally.

26.2. Guidance on construction of SCLA

26.2.1. As far as possible, all provisions of the SCLA will be construed so as not to be void or otherwise unenforceable.

26.2.2. If anything in the SCLA is void or otherwise unenforceable then it will be severed and the rest of the SCLA remains in force.

26.2.3. A provision of the SCLA will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

26.3. Waiver

26.3.1. A failure or delay by a party to exercise any right or remedy it holds under this SCLA does not operate as a waiver of that right.

26.3.2. The exercise or partial exercise by a party of any right or remedy it holds under this SCLA or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

26.4. Severability

26.4.1. A term or part of a term of this SCLA that is illegal or unenforceable may be severed from this SCLA and the remaining terms or parts of the terms of that document will continue in force.

26.5. Definitions

26.5.1. In this SCLA, unless the context indicates otherwise:

Term	Definition
Acceptance	means accepted by the Buyer in accordance with this SCLA. **Accept** and **Accepted** have a corresponding meaning.
Acceptance Criteria	means a list of criteria that the Deliverables must meet before the Buyer will Accept them, set out in Schedule 1.
Acceptance Testing	means the testing of Deliverables against the Acceptance Criteria.
Accounting Standards	means: a. the standards maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)); or b. other accounting standards which are generally accepted and consistently applied in Australia.
AI Hazard	means an event, circumstance or series of events where the development, use or malfunction of an AI System could plausibly lead to an AI Incident.
AI Incident	means an event, circumstance or series of events where the development, use or malfunction of an AI System directly or indirectly leads to harm to a person or group of people including any of the following harms: a. injury or harm to the health, safety or wellbeing of a person or groups of people;

	b. disruption to the management and operation of critical infrastructure; c. disruption to the effective delivery of government services; d. a breach of law; e. infringement of the rights of a person or group of people; f. a contravention of an applicable Australian Government policy; g. discrimination, adverse effect on employment status, loss of intellectual property rights, moral rights or indigenous cultural intellectual property; or h. loss or damage to property, communities or the environment.
AI Inputs	means input data provided to an AI System in any form, including queries, prompts, training data or documents.
AI Outputs	means output data from an AI System in any form, including model outputs, predictions, responses, generated content or inference results.
AI System	means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.
Applicable System	means: a. any Deliverables; b. the Buyer's Digital System; or c. any Digital System used to facilitate or support performance of this SCLA.
APS Code of Conduct	has the same meaning as it has in the *Public Service Act 1999* (Cth).
APS Values	has the same meaning as it has in the *Public Service Act 1999* (Cth).
Australian Privacy Principle	has the same meaning as it has in the *Privacy Act 1988* (Cth).
Background IP	means Intellectual Property Rights (other than Third Party IP) that are: a. in existence at the SCLA Start Date or are subsequently brought into existence other than as a result of the performance of this SCLA; and b. embodied in, or attach to, the Deliverables or otherwise necessarily relate to the functioning or operation of the Deliverables.

	Background IP does not include Intellectual Property Rights that subsist in any Buyer Data.
Banned AI System	means: a. any AI System which the Commonwealth prevents the access, use or installation of, on Buyer Systems, in accordance with any Commonwealth law or policy (including a Protective Security Direction issued by the Department of Home Affairs); and b. any other AI System stated in Schedule 1.
Business Day (in a place)	means: a. for the Buyer, means a weekday other than a public holiday in the address stated for the Buyer Representative in Schedule 1 or, if no place is stated, in the State or Territory stated in clause 15.2.1; b. for the Publisher, means a weekday other than a public holiday in the address stated for the Publisher Representative in Schedule 1 or, if no place is stated, in the State or Territory stated in clause 15.2.1.
Buyer	means each entity identified as such in Schedule 1 of this SCLA or such other departments, agencies or authorities of the Commonwealth (or a State, Territory or Local Government) as are from time to time responsible for administering this SCLA.
Buyer Data	means Buyer information in any: a. document; b. device; c. article; d. medium; e. Metadata; f. Buyer AI Inputs; g. Buyer AI outputs in response to Buyer AI Inputs; or h. other Material, which is owned, or held under licence from a third party, by the Buyer, to which the Publisher gains access under this SCLA.
Buyer Representative	means the representative of the Buyer as set out in Schedule 1.
Certification	means the level of certification stated in Schedule 1 in accordance with the Hosting Certification Framework.
Change of Control	means when: a. a body corporate, entity or person that Controls the Publisher ceases to Control the Publisher; or

	a. a body corporate, entity or person that does not Control the Publisher comes to Control the Publisher.
Cloud Services	means Software or Hardware resources that are provided over the internet, including: a. Software as a Service; b. Platform as a Service; or c. Infrastructure as a Service. **Cloud Services** include Modifications.
Commonwealth	means the Commonwealth of Australia.
Commonwealth Fraud Control Framework	means the Commonwealth Fraud Control Framework, published by the Australian Government, as amended from time to time, available at: http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx
Commonwealth Record	has the same meaning as it has in the *Archives Act 1983* (Cth).
Commonwealth Supplier Code of Conduct or **Code**	means the Commonwealth Supplier Code of Conduct, published by the Australian Government, as updated from time to time.
Conflict	means any: a. matter; a. circumstance; b. interest; or c. activity, affecting the Publisher or its Personnel which may or may appear to impair the ability of the Publisher to perform its obligations under the SCLA diligently and independently.
Consolidated List	means the list of individuals and entities listed in the consolidated sanctions list published by the Australian Government's Department of Foreign Affairs and Trade.
Continuous Modification	has the meaning given in clause 22.4.
Control	has the meaning given under section 50AA of the *Corporations Act 2001* (Cth).
Correctly Rendered Invoice	means an invoice which is: a. rendered in accordance with all of the requirements of this SCLA; and b. for amounts that are correctly calculated and due for payment and payable under the terms of this SCLA.

Cure Plan	means a plan developed in accordance with clause 13.
Cyber Attack	includes: a. any action taken through the use of computer systems, networks or digital devices; or a. any unauthorised access to or use of a Digital System, that is: b. intended to have; c. is likely to have; or d. does have, an adverse effect on the security or reliability of data on the Digital System or the accessibility of the Digital System. Cyber Attack includes denial of service attacks.
Data Mining	means analysing or searching for patterns and anomalies in data sets to extract information, whether through automated or human means. This includes: a. data clustering; b. data scraping; c. classification; d. regression; or e. similar methods.
Deliverables	means the Deliverables that the Publisher is required to provide to the Buyer in accordance with this SCLA and includes any Material: a. created by the Publisher for the purposes of the SCLA (including any reports that the Publisher has to give under the SCLA); and b. given or required to be given to the Buyer as part of the Deliverables.
Digital System	includes any electronic or other system, or any related: a. process; b. equipment; c. tool; d. device; e. infrastructure; f. network; g. data;

	h. information; i. transmission; j. communication; k. software; or l. facility, whether stand-alone or connected with any other item.
Documentation	means, in relation to Deliverables, any Material that describes the features and functions of the Deliverables.
DTA	means the Commonwealth of Australia as represented by the Digital Transformation Agency (ABN 96 257 979 159) and includes any department, agency or authority of the Commonwealth which is from time to time responsible for the functions of the Digital Transformation Agency.
Eligible Data Breach	has the same meaning as it has in the *Privacy Act 1988* (Cth).
Essential Eight	means the Strategies to Mitigate Cyber Security Incidents published by the Australian Signals Directorate, as updated from time to time.
Essential Eight Maturity Level	means the maturity level set out in the Essential Eight Maturity Model.
Essential Eight Maturity Model	means the Essential Eight Maturity Model published by the Australian Signals Directorate, as updated from time to time.
Fault	means any: a. defect; b. error; c. malfunction; or d. problem, in or arising from the Deliverables that relates to, arises from, or threatens or results in: e. a non-compliance with any relevant specification for the Deliverables stated in this SCLA; or f. a breach of an obligation or warranty of the Publisher under this SCLA; or g. interference with or threat to the Buyer's Digital Systems. **Fault** includes any circumstance where such matters are reasonably suspected until such time as they are reasonably established not to apply.
SCLA	means this document, being the SCLA for the provision of Deliverables and includes the attachments and schedules stated in clause 2.1.1.

SCLA Details	means the details set out in Schedule 1.
SCLA Period	means the period of the SCLA as stated in Schedule 1 of this SCLA, plus any extension of that period in accordance with clause 1.2.
SCLA Terms	means the terms of the SCLA, published by DTA on the Online Portal as updated from time to time, and includes: a. Part 1 – General Provisions; b. Part 2 – Data, Security and Confidentiality; and c. Part 3 – Support and Maintenance, and Performance; d. Part 4 – Compliance with Laws and Policies, and Integrity Requirements.
SCLA Variation	means a change to a SCLA agreed by the Buyer and Publisher under clauses 4.1.3 and 15.1.1.a.
GST	has the meaning it has in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).
Hardware	means all the physical parts of a computer system including: a. circuit boards; b. firmware; c. the case; d. central processing unit (CPU); e. random access memory (RAM); f. microchips; g. monitor; h. mouse; i. keyboard; j. computer data storage; k. graphics card; l. sound card; m. speakers; n. motherboard; o. racks; p. cables; q. peripherals; r. input and output devices; and s. any related tangible ICT product.

Harmful Code	means any computer code or instruction that is designed, created, replicated or distributed to have the ability to: a. damage, inhibit, interfere with or adversely affect computer programs or data or information and communications technology systems; or b. compromise or adversely affect the security, integrity, confidentiality or privacy of such systems or programs or data of any person; or c. otherwise is or is intended to be disruptive, vexatious, harmful, malicious or destructive to any person or thing. This includes any: a. computer ‘virus’; b. ‘worm’; c. ‘Trojan horse’; d. ‘time bomb’; e. ‘spyware’; f. ‘malware’ or ‘backdoor’; and g. any computer code or instruction designed to disable all or part of any Digital System on an expiry date or if certain conditions are or are not met. However, **Harmful Code** does not include any specific feature or function which the Buyer has explicitly directed the Publisher to include as part of any Deliverables.
Hosting Certification Framework	means the Whole of Australian Government Hosting Strategy: Hosting Certification Framework, as amended from time to time administered by the Department of Home Affairs or any department, agency or authority of the Commonwealth which is responsible.
Illegal Worker	means a person who: a. has unlawfully entered and remains in Australia; b. has lawfully entered Australia, but remains in Australia after his/her visa has expired; or c. is working in breach of their visa conditions.
Incorporated IP	means any Background IP or Third Party IP: a. incorporated into the SCLA Material; or b. otherwise forming part of the Deliverables. **Incorporated IP** does not include Deliverables.
Information Security Manual or **ISM**	means the Information Security Manual as published by the Australian Signals Directorate, as updated from time to time.

Infrastructure as a Service	means ICT infrastructure services provided over the internet that may include servers, storage and networking.
Insolvency Event	means in respect of a Publisher, any of the following: a. the Publisher becoming insolvent; b. ceasing to carry on all or a material part of its business; c. taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; d. the appointment of a controller, a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the Publisher or any of the Publisher's property; e. the Publisher becoming subject to external administration provided for in Chapter 5 of the Corporations Act 2001 (Cth); f. the Publisher suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the Publisher's property (including seizing the Publisher's property within the meaning of section 123 of the Personal Properties Securities Act 2009 (Cth)); g. the Publisher being taken under section 459F(1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand; h. an order or resolution for the winding up or deregistration of the Publisher; i. a court or other authority enforcing any judgment or order against the Publisher for the payment of money or the recovery of any property; and j. any analogous event under the law of any applicable jurisdiction.
Intellectual Property Rights or **IP**	includes: a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and d. Moral Rights, but does not include: e. the non-proprietary rights of performers; or f. rights in relation to confidential information.

Key Personnel	means the individuals stated in Schedule 1 as required to perform all or part of the work constituting the provisions of the Deliverables.
Licence	means, in relation to Intellectual Property Rights, a: a. perpetual; a. irrevocable; b. royalty-free; c. world-wide; d. non-exclusive, licence.
Licensed Software	means any Software that is, or is required to be, provided by the Publisher under the SCLA, including: a. commercial off-the-shelf Software; and b. Modifications.
Limited Licence	means, in relation to Intellectual Property Rights, a: a. revocable; b. royalty-free; c. non-exclusive, licence to: d. use; e. reproduce; and f. adapt, for the period of the SCLA only and subject to the: g. conditions and restrictions on use of Buyer Data set out in this SCLA; and h. any written notice or direction from the Buyer to the Seller in respect of Buyer Data.
Location	means each location (including State or Territory) in which the Publisher provides the Deliverables.
Mandatory Panel	means a panel established by the Commonwealth that may be mandatory for the Buyer to use. See the Whole of Australian Government Procurement page for more information: Whole of Australian Government Procurement | Department of Finance.
Material	means any thing in relation to which Intellectual Property Rights arise.
Metadata	means any system-generated data that is created or generated in connection with: a. the Buyer's use of the Deliverables; or

	b. the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Deliverables. **Metadata** includes: c. descriptive metadata; d. structural metadata; and e. administrative metadata.
Modifications	means, in relation to the Deliverables (as applicable): a. any configuration or customisation to activate or implement add-ons, features or functionality within the Deliverables; and b. any adaptations, modifications or derivatives of the Deliverables.
Moral Rights	means the following non-proprietary rights of authors of copyright Material: a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed.
Official Resources	includes: a. Buyer Data; b. people who work for or with the Buyer; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Buyer.
Open Source Code	means code available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at http://www.opensource.org, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at http://www.creativecommons.org.
Performance Issue	has the meaning given in clause 13.1.
Personal Information	has the same meaning as it has in the Privacy Act.
Personnel	means: a. in relation to the Publisher – any natural person who is an officer, employee, contracted personnel, agent or professional adviser of the Publisher or of a subcontractors, including any Key Personnel; and b. in relation to the Buyer – any natural person, other than a person referred to in paragraph a, who is an officer, employee, contracted personnel, agent or professional adviser of the Buyer.

Platform as a Service	means a cloud hosted environment, provided over the internet, that can be used to develop, configure, deploy and run application programs or application Software.
Preventative Maintenance	means scheduled maintenance (including the provision of parts, labour and materials) that is: a. specified in clause 22.3; or b. otherwise reasonably necessary to ensure that the Deliverables remain in good working order and will not be subject to undue Faults.
Preventative Maintenance	includes: a. maintaining, upgrading and replacing infrastructure, methodologies, facilities and systems, and any other resources used in the performance and provision of the Deliverables; and b. updating and upgrading the Deliverables as often as is reasonably required for the proper functioning and security of the Deliverables in accordance with this SCLA.
Price	means the total amount (including allowances, reimbursements and costs) that the Buyer must pay the Publisher under the SCLA, as stated in Schedule 1.
Privacy Act	means the *Privacy Act 1988* (Cth).
Prohibited Entity	means any entity that: a. has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount; b. is on, or which has any employees that are on, or which is a member of an entity that is on, the Commonwealth's Consolidated List; or c. is named in a report tabled in the Australian Parliament by the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth).
Protective Security Directions	means any directions issued by the Secretary of the Department of Home Affairs under the Protective Security Policy Framework.
Protective Security Policy Framework or PSPF	means the Protective Security Policy Framework available at www.protectivesecurity.gov.au and the Australian Government Information Security Manual available at https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism, as amended or replaced from time to time.
Publisher	means each entity that is identified as such in Schedule 1 of this SCLA. Where the context requires, **Publisher** includes the Publisher's Personnel.

Publisher Confidential Information	means, in relation to the Publisher: a. information that is by its nature confidential; or b. is described in Schedule 1.
Publisher Representative	means the representative of the Publisher as set out in Schedule 1.
Rebundling	means reorganising or repackaging the Deliverables (or parts of the Deliverables) into a new bundle, suite, or configuration.
Rectification	means unscheduled maintenance necessary to rectify any Fault and restore the Deliverables (including, as relevant, by replacement with identical parts) so that it: a. conforms to its specifications as required by the SCLA; b. is safe to use; and c. is in good working order. **Rectify** has a corresponding meaning.
Rectification Period	means the time period during which the Publisher must Rectify Faults in relation to the Deliverables.
Representative	means: a. in relation to the Publisher – the Publisher Representative; and b. in relation to the Buyer – the Buyer Representative.
Reseller	means a seller who is authorised to facilitate supply of the Publisher's Deliverables from the Publisher to the Buyer, as set out in a contract between that seller and the Buyer in relation to the Deliverables.
Restrictions on Use	means, in relation to the Licensed Software or Cloud Services (as applicable): a. not to decompile, disassemble, reverse engineer or otherwise attempt to derive the source code from object code in the Licensed Software or Cloud Services; b. not to distribute, sell, rent, lease, license, sub-license, display or share the Licensed Software or Cloud Services or otherwise transfer the Licensed Software or Cloud Services to, or permit the use of the Licensed Software or Cloud Services by, any third party except as permitted under Schedule 1; c. not to remove any copyright, proprietary or other notice from the Licensed Software or Cloud Services; and d. to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Licensed Software or Cloud Services, except to the extent permitted by this SCLA or any applicable law.
Requirements	means the terms stated in Schedule 1 in accordance with clause 2.3,

Scheduled Downtime	has the meaning given in clause 22.6.
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the Buyer.
Security Incident	means: a. any actual or suspected breach of security (whether relating to information, personnel, data, logical, physical or system security or otherwise); b. any contact, request or approach from any person seeking unauthorised access to Official Resources; or c. any circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security.
Service Credit	means the amount (if any) credited to a Buyer as a result of a failure by the Publisher to achieve a Service Level as stated in Schedule 1.
Service Level	means a metric used to measure and report on the Publisher's performance under a SCLA as stated in Schedule 1 (if any).
Significant Event	means: a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body: i. about the conduct or performance of the Publisher or its Personnel or subcontractors; and ii. that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; b. any other significant matters, including the commencement of legal, regulatory or disciplinary action by an independent person or disciplinary action internal to the Publisher, involving the Publisher or its Personnel or subcontractors, which may adversely impact on: i. Publisher compliance with any applicable law or Commonwealth policy; ii. Buyer compliance with any applicable law or Commonwealth policy; iii. the Commonwealth's reputation; or iv. the professional capacity or capability of the Publisher or its Personnel to deliver Deliverables under the SCLA; or c. any non-compliance by: i. the Publisher or its Personnel; or ii. the Publisher's subcontractors, to the extent that information is known by or reasonably available to the Publisher; with any judgement against the Publisher, its Personnel or subcontractors from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or

	instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.
Single Publisher Agreement or **SSA**	means an agreement established by the Commonwealth with a Publisher which may be mandatory for the Buyer to use under Commonwealth policy. Please see the BuyICT single Publisher arrangements page for further information: Overview – BuyICT.
Software	means: a. computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and b. recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. **Software** is a computer program for the purposes of the *Copyright Act 1968* (Cth).
Software as a Service	means Software that is provided over the internet.
Software Releases or Major Updates	means new releases or versions of Software which provide new features, architectural changes or redesigned interfaces, for the purposes of: a. providing new or extra functionality to the Software; b. enhancing the performance of the Software; and c. improving the operation of the Software. This includes version updates, major releases and feature releases (or similar, no matter how named or designated).
Special Conditions	means the conditions stated in Schedule 1 in accordance with clause 2.4.
Supply Chain	means a network or system of subcontractors, agents, suppliers or entities: a. in a direct or indirect business relationship (whether within Australia or internationally) with the Publisher; or b. which contribute directly or indirectly to the supply of the Deliverables to the Buyer, including entities in the network of business entities or individuals performing, providing, producing, handling, storing, transmitting or distributing: c. the Deliverables; or d. components of the Deliverables.

Supply Chain Elements	means an entity in the Supply Chain.
Support and Maintenance	includes the provision of: a. instructions; b. documentation; c. support; d. maintenance; e. advice; and f. assistance, as may be reasonably required by the Buyer in respect of the: g. installation; h. configuration; i. testing; j. tuning; k. roll-out; l. features; m. functions; n. performance; o. operation; p. interfacing and integration with other items (whether supplied by the Publisher or not); and q. problem diagnosis in respect of the Deliverables. **Support and Maintenance** includes **Rectification**, **Preventative Maintenance** and **Continuous Modifications**.
Third Party IP	means Material in which Intellectual Property Rights are owned by a person other than the Buyer or the Publisher and is incorporated by the Publisher into SCLA Material, or, used or required to be used by the Publisher in the course of providing Deliverables under this SCLA.
Use	means: a. in relation to Licensed Software: i. install, use and maintain the Licensed Software on the Buyer's Digital System; ii. adapt, modify and configure the Licensed Software to the extent necessary to enable it to be used on the Buyer's Digital System and with other software used by the Buyer;

	iii. make copies of the Licensed Software to enable the full use of the Licensed Software and for backup and security purposes; iv. permit Personnel to use the Licensed Software in accordance with this SCLA, including the metrics and volumes stated in Schedule 1; and b. in relation to Cloud Services: i. use and access the Cloud Services from the Buyer's Digital System; ii. permit configuration of the Cloud Services to the extent necessary to enable them to be used on the Buyer's systems; and iii. evaluate Service Levels and the Publisher's compliance with the SCLA in relation to the Cloud Services; iv. permit Personnel to use the Cloud Services in accordance with this SCLA, including the metrics and volumes stated in Schedule 1; and c. for all other Materials: i. use; ii. reproduce; iii. adapt; iv. modify; v. distribute; vi. communicate; and vii. publish.
Vest	means, in relation to Intellectual Property Rights, means vest or will vest immediately upon creation. **Vested** has a corresponding meaning.
Whole of Government Arrangement or **WofG Arrangement**	means SSAs and Mandatory Panels.

Signatures

Note: Buyers and Publishers will need to use the appropriate execution clause. This will depend on the types of entities that the parties are. The execution clauses below will not be appropriate in all circumstances.

EXECUTED for and on behalf of ^Buyer Name^ ABN ^Buyer ABN^ by:	)))	
^Name of signatory^ In the presence of:		*Signature*
^Name of witness^		*Signature of witness*
EXECUTED by ^Publisher Name^ ACN ^ Publisher ACN^ in accordance with the requirements of Section 127 of the *Corporations Act 2001* (Cth) by:	)))	
In the presence of:		
and by:	))	
Name of Director/Secretary In the presence of:	)	*Signature*
^Name of witness^		*Signature of witness*
^Date^		

Note: The Contract Details should be completed using the information from the:

- RFQ; and
- successful Quote.

Buyers should include all information that is relevant to the ordered Products and Services. Buyers may attach additional documents if needed, such as a Statement of Requirement.

Buyers should give close attention to whether the Contract permits the parties to complete items by either:

1) inserting details;
2) including optional terms; or
3) amending terms.

Parties must ensure that they do this in accordance with Part A – Panel Terms and Part C – Contract Terms.

This template includes drafting text. Once you have completed each of the relevant sections, please remove the guidance so it is not visible to Sellers.

Contract Details			
D: General			
Item	**Clause reference**	**Details**	
1.	N/A	**Context**	This Contract is entered into under the Panel Agreement on the following basis: ^Buyer to insert any further Context as needed^
Modules and Categories ***Note:*** Insert the Modules and Categories applicable to the Contract.			
2.	Part C clause 4.1	**Module**	**Applicable terms**
		^Insert name of Module e.g. Professional and Consulting Services^	^insert relevant module terms e.g. Schedule C2 – Professional and Consulting Services Module Terms^
		Category	

		^Insert name of Category e.g. Architecture services^	^insert relevant category descriptions e.g. Schedule A2 – Professional and Consulting Services Module^
Contract title and reference numbers			
3.	N/A	**Contract title**	^insert^
		BuyICT reference number	^insert^ ***Note:*** Include the DTA BuyICT reference number.
		AusTender SON	^insert^
		Buyer reference number ^Optional^	^insert^ ***Note:*** The Buyer may include a reference number if they wish.
Buyer details			
4.	Part C clause 11.1	**Buyer/agency name**	^insert^
		Buyer Representative name	^insert^
		Buyer Representative title	^insert^
		Branch and division	^insert^
		Email	^insert^
		Phone number	^insert^
		Address for notices	^insert^
Seller details			
5.	Part C clause 11.2	**Seller name**	^insert^
		Seller Contract Representative name	^insert^

		Seller Contract Representative title	^insert^
		Email	^insert^
		Phone number	^insert^
		Address for notices	^insert^
6.	Part C clause 20.8	**Country of tax residency**	^insert Seller's country of tax residency^
		Ultimate parent entity's country of tax residency	^insert Seller's ultimate parent entity's country of tax residency or 'not used' if the Seller does not have a parent entity^
7.	Part C clause 20.9	**Trust details**	^insert details or 'not used' if the Seller is not acting as a trustee^
Contract duration and timeframe			
8.	Part C clause 3.1	**Contract Start Date**	^insert date or 'the date the last party to execute the Contract does so'^ ***Note:*** If the Contract Start Date is the date the last party to execute the Contract does so, the date must be included in the execution block.
		Contract Period	^insert^
9.	Part C clause 3.2	**Extension period ^Optional^**	^insert^
		Number of extension options ^Optional^	^insert number of extension options available^
10.	Part C clause 5.1	**Delivery Schedule**	^insert timeframes^ ***Note:*** Set out the timeframe for the provision of the Products and Services. State all relevant dates. For example, delivery of draft and final Plans, completion of Milestones and project completion date. Include the Delivery Schedule as an attachment if required.

11.	Part C clause 11.10	**Scheduled management meetings**	^insert dates and/or frequency of meetings between Buyer and Seller^
12.	Part C clause 5.15	**Transition Out period**	^insert duration of Transition Out period^
Notices and variations			
13.	Part C clause 15.1	**Notices – Amended terms ^Optional^**	^insert any amended terms or 'not used'^ ***Note:*** Clause 15.1 (Format, addressing and delivery of notices) can be amended by the Buyer by including amendments here.
14.	Part C clause 20.11	**Contract Variations – Amended terms ^Optional^**	^insert any amended terms or 'not used'^ ***Note:*** Clause 20.11 (Contract Variation) can be amended by the Buyer by including amendments here.
Provision of Products and Services			
15.	Part C clause 5.1	^insert either: The Seller will provide the Products and Services set out in the Statement of Requirements attached to these Part D – Contract Details; or The Seller will provide the following Products and Services to the Buyer: [insert details]^ ***Note***: The Buyer may also choose to describe the delivery method here. For example, Agile methodology.	
		Statement of Requirements ^Optional^	^attach Statement of Requirements^ ***Note:*** Buyers should clearly specify any Contract Material that the Seller is required to deliver under the Contract. This should include: • the nature and extent of the Contract Material that must be produced and delivered. For example, plans, models, specifications etc; • any reports (including interim reports), required under the Contract should be included here e.g. monthly reports on its performance against the Service Levels or

			other performance metrics, reports on assurance, approvals and licence expiry dates, cost reports; • the form in which the Material is to be produced. E.g. documents, CD ROM or other media; • any equipment necessary to access the Material; and • the manner and timing of delivery of intermediate and final stages if the Contract does not state this elsewhere. It is important to include all Material here because it may be difficult for the Buyer to acquire ownership or Intellectual Property rights in Material unless: • it is listed here; or • it is clearly created for the purposes of the Contract.
16.	Part C clause 11.11	**Publisher Products ^Optional^**	^insert details of any Products that the Seller is to provide as a Reseller^ Select the applicable option below: ☐ Option 1 – Direct Supply from the Seller ☐ Option 2 – Seller Facilitation ^If Option 2 applies, specify whether the Seller is acting as agent for Publisher^
		Further details ^Optional^	^insert further details of the Reseller arrangement such as timeframes or conditions^
17.	Part C clause 5.3.1	**Newly manufactured Products**	^insert whether products must be newly manufactured, yes/no. Buyers should consider the Sustainable Procurement Guide when making this decision^
Purpose			
18.	Part C clause 5.1	**The Products and Services must be fit for the following purpose(s)**	^describe the purpose of the Products and Services. If necessary, list the Products and Services, or types of Products and Services, and detail the individual purpose of each. For example:

			The Seller agrees that the Products and Services may be used by the Buyer to provide shared services to other Commonwealth agencies^ ***Note:*** The Buyer may wish to include a broad general purpose statement in this item. The Buyer may draw on the description in the RFQ or summarise the purpose of the procurement when completing this item. Including a broad statement will allow for clause 5.1 to have as broad coverage as possible for the Buyer's objectives. It is important that the purpose is not too narrow, so that it does not restrict or limit any Seller obligations or warranties under the Contract. Further details and specifications relating to the purpose should be set out separately in the Statement of Requirements in Item 15 above.
Acceptance Testing ^Optional^			
19.	Part C clause 5.4	**Acceptance Testing**	^are the Products and Services subject to Acceptance Testing – insert yes/no^ ***Note:*** If the Buyer requires that a Product or Service is subject to Acceptance Testing, any Rectification work or Preventative Maintenance in relation to that Product or Service is automatically subject to Acceptance Testing under Part C – Contract Terms. In addition, if the Buyer requires that Software and Cloud Services provided under the Contract are subject to Acceptance Testing, any Software Updates or Continuous Modifications in relation to the Cloud Services is automatically subject to Acceptance Testing under Schedule C3 – Software and Cloud Services Module.
		Acceptance Criteria	^insert acceptance test criteria (the Buyer may attach this if greater details needed)^
		Timeframes	^insert timeframe within which the Buyer must notify the Seller following Acceptance Testing^

			^insert timeframe for live production test (optional)^	
		Amended terms ^Optional^	^insert any amended terms or 'not used'^	
Plans and Milestones				
20.	Part C clauses 5.5 and 23.3.6	**Plans ^Optional^**	^are any Plans required – insert yes/no. If 'yes' include details of required plans Examples of Plans include: • Project plan; • Implementation plan; • Acceptance testing plan; • Architecture plan; • Sustainability plan; • Cyber security plan; • Transition out plan; • AI plan^	
		Plan additional requirements	^insert any other requirements relating to the above Plans (if any). For example, phases, dependencies, contingencies, additional reporting obligations, incorporation of any agreed implementation plans, etc. These requirements may be tied to the Delivery Schedule (Item 10)^	
21.	Part C clause 5.6	**Milestones ^Optional^**	^are any Milestones required – insert yes/no^ ***Note***: If Milestone payments are to be used, include at Item 24 below.	
		Milestone number	**Milestone description**	**Completion date**
		1.	^include details of what the Seller needs to do to complete the milestone, including deliverable description^	^either: insert date for completion of milestone or insert 'refer to Delivery Schedule (Item 10 of Part D – Contract Details)'^

Artificial Intelligence (AI) and escrow			
22.	Part C clause 7	**Approved AI use ^Optional^**	^insert approved use of AI, if any^
		Conditions of approved AI use ^Optional^	^insert any conditions attached to approved AI use^
		Banned AI System ^Optional^	^insert any AI Systems which the Buyer requires to be banned under the Contract. Buyers do not need to include any AI systems that are banned by Home Affairs as these are automatically banned under the Contract.^ ***Note:*** A Banned AI System is any AI System which the Commonwealth prevents the access, use or installation of, on DTA or Buyer Systems, in accordance with any Commonwealth law or policy. For example, see Protective Security Direction 001-2025. The Buyer may wish to list additional AI Systems in this Item.
	Part C clause 7.7	**Notification of AI incidents**	^insert any additional events requiring notification^ ***Note:*** The Seller must notify the Buyer if an AI Incident has occurred, an AI Hazard exists or the AI System is malfunctioning or producing incorrect or harmful outputs. Buyers may wish to specify additional events requiring notification.
	Part C clause 7.8	**Circuit breaker**	^insert specific events requiring a circuit-breaker to come into effect^ ***Note:*** An Approved Integrated AI System must contain a circuit-breaker capable of interrupting and stopping the AI System immediately upon the Buyer's instructions to the Seller. Buyers may wish to specify events in this Item where a circuit-breaker must come into effect if that event occurs.

	Schedule C3 clause 10	**Approved Integrated AI System**	^insert name of AI System integrated into Software or Cloud Services^ ^insert requirements, including: Country of origin: insert Details of ownership: insert Location of Buyer Data at rest: insert Location of Buyer Data during processing: insert^
23.	Part C clause 5.16	**Escrow ^Optional^**	^do escrow provisions apply – insert yes/no^
		Escrow – Amended terms ^Optional^	^insert any amended terms^
Personnel			
24.	Part C clause 11.6	**Key Personnel** ***Note:*** If applicable, specify details of any particular individuals that the Buyer requires to provide the Products and Services or provide particular Contract Material. Buyers should include Labour Hire Workers and Buyer Workers under the ICT Labour Hire Module at Items 50 to 52 below, not here.	^insert details^ ^use of table is optional^ **Name**: ^insert the full name of the Seller's Key Personnel^ **Position**: ^insert current position^ **Qualifications/ Certifications**: ^insert^ **Agreed role**: ^insert agreed role in performing the Seller's obligations^ **Security clearance**: ^insert required security clearance^ ***Note:*** Security clearances do not need to be held at the time of Quote, but must be obtained prior to the Contract Start Date. **Hourly Rate**: ^insert hourly rates for each key personnel^

<table>
<tr><td rowspan="3">25.</td><td rowspan="3">Part C clause 11.4</td><td rowspan="3">Approved Subcontractors
Note: Include this if the Seller has proposed and the Buyer has approved certain Subcontractors to do work.</td><td colspan="3">The Buyer permits the Seller to Subcontract the provision of the Products and Services as follows:</td></tr>
<tr><td>Approved Subcontract or</td><td>Description of the Products and Services that the Subcontract or may provide</td><td>Conditions of approval ^Optional^</td></tr>
<tr><td>^insert the details of the Subcontractor ^</td><td>^insert description of Products and Services the Subcontractor may provide^</td><td>^insert conditions of approval (if any)^</td></tr>
<tr><td colspan="6">Price, allowances and costs
Note: Buyers and Sellers should complete Item 26 in this Part D if they entering into Contracts for ICT Labour Hire (Module 1) and Professional and Consulting Services (Module 2).

Buyers and Sellers entering into Contracts for Licensed Software and Cloud Services (Module 3) can complete Item 26 or Attachment A, Part D. Attachment A (Pricing) is intended to facilitate Contracts where the Price includes several components or is highly detailed.

Items 27, 28 and 29 should be completed for Contracts for all Modules as applicable.</td></tr>
<tr><td rowspan="2">26.</td><td>Part C clause 12</td><td>Contract value</td><td colspan="3">The total Price the Seller cannot exceed is $^insert total value of this Contract^ (state both GST exclusive and GST inclusive amounts)</td></tr>
<tr><td>Part C clause 12</td><td>Price
Note: Set out details of the price to be paid/agreed upon for the particular Products and Services under this Contract.</td><td colspan="3">^insert price details showing both GST exclusive and GST inclusive amounts^

^each Item below is optional^

^describe the payment schedule approach for this Contract^

^Price for Software and Cloud Services – specify Price including the maximum Price payable, any specified volume or band that may be charged and whether the Seller must</td></tr>
</table>

	Price may be based on: Time and Materials; unit price for items of Products and Services; or Payment milestones – Price should be included below. Note that the Price must not exceed the Seller's Maximum Price. ***Note:*** ICT Labour Hire Price – Buyers should state Price details at Item 54.	not charge above a specified volume without prior approval from the Buyer^ ^Alternatively, if the Buyer wants to include a spreadsheet, use Attachment A, Part D, setting out the price breakdown for the Contract. The spreadsheet can be modified as required by the Buyer and can include a detailed breakdown of the pricing with reference to the Maximum Price^	
		Price	
		GST exclusive	**GST inclusive**
		^insert GST exclusive price^	^insert GST inclusive price^
Part C clause 5.6	**Milestone Payments ^Optional^**		
	Note: If relevant, complete the following Milestone payment schedule with reference to the Milestones stated in the table at Item 21 above. If Milestone payments are being used, the Seller must provide a price breakdown for each Milestone (this should be detailed in the attached spreadsheet if used).		
	Milestone number	**Milestone payment** **(GST excl)**	**Milestone payment** **(GST incl)**
	1.		
	2.		
	TOTAL		
Schedule C1 clause 14.8, Schedule C2 clause 6.2 and Schedule C3 clause 15.15	**Price review**	^ICT Labour Hire – Do the price review clauses apply? – insert yes/no Professional and Consulting Services – Do the price review clauses apply? – insert yes/no Software and Cloud Services – Do the price review clauses apply? – insert yes/no^	

	Part C clause 12.1	**Allowances & costs**	^insert details of allowances and other disbursements^ ***Note:*** State details of other financial obligations the Buyer will cover. For example, travel costs or printing and production costs. Buyers should state obligations clearly to prevent claims for excessive expenses.
27.	Schedule C1 clause 15.3, Schedule C2 clause 7.4, Schedule C3 clause 16.3	**Interest**	^will interest be payable to the Seller if the Buyer fails to pay an amount under the Contract by the due date – insert yes/no^ ***Note:*** If the Supplier Pay on Time or Pay Interest Policy is applicable to a Buyer, the Buyer must select yes.
28.	Part C clause 13 and Module Terms	**Invoicing** ***Note:*** State the Buyer's invoicing requirements. For more information see the requirements for tax invoices as set out on the ATO's Tax Invoices page.	^insert requirements for invoicing. For example: The Seller will issue invoices at the end of each calendar month. To be correctly rendered, invoices must include the following information: a. the words "tax invoice" stated prominently; b. the Seller's name; c. the Seller's ABN; d. the Buyer's name (Entity's name) and address; e. the date of issue of the tax invoice; f. the title of this Contract and the Contract number or purchase order number (if any); g. details of the Price, allowances and costs including the items to which they relate; h. the total amount payable (including GST); i. the GST amount shown separately; and j. written certification in a form acceptable to the Buyer that the Seller has paid all remuneration, fees or other amounts

			payable to its Personnel and/or Subcontractors involved in performance of this Contract. The Seller must support all claims for allowances or costs by receipts or other documentation which clearly substantiate the Seller's entitlement to those allowances or costs. An invoice is not correctly rendered where: a. the Seller includes amounts that are not properly payable under this Contract or calculates amounts incorrectly; or b. it relates to a payment in relation to which the Buyer has exercised its rights under the *adjustment of amounts after payment* clause under the relevant Module Terms. All invoices must be addressed to the Buyer Representative.^ ^when a Contract is based on time, insert the details of the amount of time spent by each person, including Key Personnel (if any)^
29.	Schedule C1 clause 15.8, schedule C2 clause 7.9 and Schedule C3 clause 16.8	**Price Cap ^Optional^**	
		Products and Services	**Product or Service Price Cap**
		^insert the relevant Products or Services^	^insert the price cap for each Product and Service. Insert both GST inclusive and exclusive amounts^
		Total Price Cap	^insert a total price cap if applicable (both GST inclusive and exclusive amounts)^
Intellectual Property (IP)			
30.	Schedule C1 clause 7, Schedule C2 clause 3, Schedule C3 clause 11	**Required Contract Material**	Select either: ☐ Standard – Buyer owns IP in Contract Material, or ☐ *Alternative – Seller owns IP in Contract Material and licences it to Buyer*

			Note: All Contract Material should be specified in the Statement of Requirements. Refer to the guidance in Item 15 above.
31.	Schedule C1 clause 7, Schedule C2 clause 3, Schedule C3 clause 11	**Buyer Material**	^insert details of any Material that the Buyer will give the Seller in order for it to provide the Products and Services^
		Buyer Material – Amended terms ^Optional^	^insert any amended terms relating to Buyer Material^
32.	Schedule C2 clause 3.3	**Base Third Party Software ^Optional^**	^insert details of any Base Third Party Software required by the Seller to provide the Products and Services^ ***Note***: The Buyer must procure Base Third Party Software itself and provide it to the Seller unless the Buyer has conducted a multi Modular procurement and is buying the Software from the Seller under Module 3.
		Software licence terms applicable to Base Third Party Software ^Optional^	^insert software licence terms applicable to the Seller's use of the Base Third Party Software, if any^
Buyer Data ^Optional^			
33.	Part C clause 6.1	**Hosting Buyer Data**	^is the Seller required to use an approved cloud provider for hosting Buyer Data? Insert yes/no^
		Approved Cloud Provider and Hosting Location	^insert approved provider^ ^Insert location of hosting for cloud provider^
		Required level of certification	^insert required level of certification under the Hosting Certification Framework (available here: Framework | Hosting Certification Framework) [Strategic] [Assured] [Uncertified]^

		Hosting of Buyer Data – Amended terms ^Optional^	^insert any amended terms or 'not used'^
34.	Part C clause 6.2	**Media decommissioning**	^does the media decommissioning clause apply? Insert yes/no^ ***Note:*** Where Buyers require the Seller to conduct media decommissioning, they should state 'yes' in this Item. Under this clause, the Seller must conduct a media decommissioning process before disposing of storage media used to store Buyer Data. This includes ensuring the storage media is degaussed, erased, purged, physically destroyed or otherwise sanitised in accordance with the Information Security Manual. The Buyer can also state additional requirements here.
		Requirements for media decommissioning process	^insert any other requirements or 'not used'^
Tangible property			
35.	Part C clause 5.13	**Buyer Property ^Optional^**	***Note***: Buyer Property is broadly defined and will still be covered by clause 5.13 if not set out here. ^insert Buyer Property^ ^insert any conditions relating to Buyer Property^
Security and Privacy			
36.	Part C clauses 23 and 25	**Level of Security Classified Resources**	^insert details^
		Official Information	The Seller is authorised to disclose ^insert relevant Official Information^ to ^insert name of person(s) to whom disclosure is authorised^ provided that ^insert any conditions^.

IRAP or equivalent certification **^Optional^** ***Note:*** Where Buyers conduct an InfoSec Registered Assessors Program (IRAP) assessment, they should state any requirements from the IRAP here. For further information see the Australian Signals Directorate's Strategies to Mitigate Cyber Security Incidents page.	**IRAP or equivalent assessments**	^is an IRAP or equivalent certification required – insert yes/no. If 'yes' include details of assessment required e.g. IRAP assessment or name of equivalent security assessment^
	Timing of assessments	^insert frequency of timing for IRAP or equivalent e.g. every 12 months from the Contract Start Date^
	Additional criteria for assessment	^insert any additional or more detailed criteria for assessment of Software and Cloud Services or 'none specified'^
	Confirmation or certification of compliance with Information Security Requirements	^insert details of the form of confirmation or certification required^
Additional security requirements	^insert any additional security requirements regarding the Personnel, work, premises or location^ ***Note:*** State any additional security requirements, some examples are set out below. The Buyer may also consider adding clauses from DTA's cyber risk model clauses, available on the ClauseBank page. **Essential Eight Maturity Level** ***Note: Buyers who are Non-corporate Commonwealth Entities (NCE's)*** are required to implement the Essential Eight strategies to Maturity Level Two under the Australian Signals Directorate's (ASD's) Essential Eight Maturity Model.	

NCE's should also consider which of the remaining Strategies to Mitigate Cyber Security Incidents are required to address the entity's threats (see 14.2, *Australian Government Protective Security Policy Framework, Release 2024*).

NCEs should state what the Seller must do to meet these requirements under the Contract. NCEs could use a broad term such as:

Sellers must ensure that the Products and Services provided to the Buyer under this Contract meet all requirements to comply with Maturity Level Two under ASD's Essential Eight Maturity Model.

NCEs should expand on or adapt this as relevant to the Contract.

Other Buyers should consider the ASD publication *Strategies to Mitigate Cyber Security Incidents* - noting this recommends that organisations adopt the Essential Eight strategies as a baseline. For further information see the Australian Signals Directorate Essential Eight page.

For example, the Buyer may wish to include the following clause:

[*All Services must meet the following requirements to Maturity Level [x] as stated in the* ***Essential Eight Strategies to Mitigate Cyber Security Incidents****:*

a) patch applications

b) patch operating systems

c) multi-factor authentication

d) restrict administrative privileges

e) application control

f) restrict Microsoft Office macros

g) user application hardening

h) regular backups.]

Information Security Manual

	Note: *the Australian Government Information Security Manual* – provides guidance for agencies and Sellers for managing the risks arising from greater sharing and exchange of information. For further information see the Australian Signals Directorate Cyber Security Centre page. **Investigation Standards** ***Note:*** *Australian Government Investigation Standards* - for reporting and investigating security incidents and taking corrective action – For further information see the Australian Government Investigations Standards page. **Security clearances** ***Note:*** Security clearances for Key Personnel, Buyer Workers and Labour Hire Workers should be noted in Items 24, 50 or 52.
Cost of security clearances	^insert whether the Buyer will pay the cost of the Seller's Personnel obtaining required security clearances. If left unstated, the Seller will pay the cost^
PSPF requirements	^state specific Protective Security Policy Framework sections that apply to this Contract^ ***Note:*** By default, the whole Protective Security Policy Framework applies to this Contract. Buyers may state requirements that they require the Seller to meet under the Contract in order for the Buyer to meet its Protective Security Policy Framework obligations. For example, the Buyer may have specific requirements for the Seller relating to: • Section 3 – Security Planning, Incidents and Training; • Section 4 – Protective Security Reporting; • Section 6 – Third Party Risk Management; • Section 14 – Cyber Security Strategies; • Section 15 – Cyber Security Programs;

			• Section 16 – Pre-Employment Eligibility; • Section 18 – Security Clearances; • Section 21 – Maintenance and Ongoing Assessment; • Section 22 – Separation; and • Section 25 – Physical Security Measures and Controls.
		Remote access	^insert any additional requirements for Seller remote access to the Buyer's digital systems^
		Buyer Data outside of Australia	^insert list of regions or 'not used' if limited to Australia. If Buyer Data can be taken outside of Australia, list any requirements^
		Physical Security – Amended terms ^Optional^	^insert any amended terms relating to physical security or 'not used'^
37.	Part C clause 24	**Privacy**	^insert details of privacy directions, guidelines, determinations or recommendations^ ***Note:*** Include reference to any relevant privacy codes, directions, guidelines, determinations or recommendations that the Seller must comply with. The Seller must already comply with the Privacy Act and Australian Privacy Principles under clause 24 of Part C – Contract Terms. If personal information may be provided to the Seller in relation to the Contract (for example to enable to Seller to perform its obligations), the Buyer should review the Office of the Australian Information Commissioner's (OAIC) website here: Australian Privacy Principles | OAIC and the OAIC guide to securing personal information and consider whether additional requirements should be included to ensure personal information is properly protected.

Seller's Confidential Information

Note: State any information of the Seller that the Buyer agrees to treat as Confidential Information and the period of confidentiality, being as specific as possible.

Buyers should refer to the *'Confidentiality Test'* issued by the Department of Finance. This test must be met in order to treat certain Seller information as confidential.				
38.	Part C clause 26		**Item**	**Period of confidentiality**
		Contract Provisions / Schedules / Attachments	^insert items or 'none specified'^	
		Contract-related material	^insert items or 'none specified'^	
Policies, Standards and Guidelines				
39.	Part C clause 31.3	**Australian and International standards**	^insert details of relevant Australian or International standards. The below are examples of standards that the Buyer may want to apply: AS EN 301 549:2020 – Accessibility requirements for ICT products and services Australian Standards for Document Management (AS ISO 15489)^ ^insert whether the Seller is not required to comply with the *Technical standard for government's use of artificial intelligence*^ ***Note:*** For procurements valued at or above the relevant procurement thresholds (stated in the Commonwealth Procurement Rules), paragraph 7.26 of the Commonwealth Procurement Rules provides that if applying a standard for Products and Services being procured, Buyers must make reasonable enquiries to determine the Seller's compliance with the standard.	
		Buyer or Commonwealth policies or guidelines	^insert details of any relevant policies. The below are examples of policies that the Buyer may want to apply: Web Content Accessibility Guidelines (WCAG) Level 2.1^ ***Note***: State any applicable Buyer, Commonwealth, industry or other policies or guidelines that the Seller must comply with when performing the Contract.	

			Common Australian Government policies are: • the Commonwealth Style Manual, AGPS, Canberra (latest edition); • specific work health and safety policies of the Buyer; and • policies or requirements for accessing data centres or other third party premises. **Web Content Accessibility Guidelines** The Web Accessibility National Strategy provides for the implementation of the WCAG. Where the Products and Services involve material that may be made available as web content it is important that the Buyer complies with the requirements of the WCAG. To view the Web Content Accessibility Guidelines (WCAG) 2.0 click here. **Digital Service Standard –** available at Digital Service Standard | digital.gov.au
Commonwealth Procurement Connected Policies			
40.		**Policy**	**Optional Clauses Apply**
	Part C clause 41	**Australian Industry Participation Plan (AIP Plan)**	^applies yes/no^
	Part C clause 40.1	**Indigenous Procurement Policy (high value contract provisions)**	^applies yes/no, must be one or the other with the below (or neither). Cannot be both^
	Part C clause 40.2	**Indigenous Procurement Policy (non-high value contract provisions)**	^applies yes/no, must be one or the other with the above (or neither). Cannot be both^
	Part C clause 38	**Shadow Economy Procurement Connected Policy**	^applies yes/no^

	Part C clause 37	**Workplace Gender Equality**	^applies yes/no^
	Part C clause 39	**Payment Time Policy**	^applies yes/no^
	Part C clause 42.1	**Waste Management Performance and the Environmentally Sustainable Procurement Policy**	^applies yes/no^
	Part C clause 45	**Australian Skills Guarantee Procurement Connected Policy**	^applies yes/no^
Policy requirements			
41.	Part C clause 40	**Indigenous participation** ***Note:*** This section applies under the Indigenous Procurement Policy for non-high value contracts.	
		Requirements for Indigenous participation	^insert requirements including if there is a requirement to comply with an Indigenous Participation Plan^
		Written report of compliance with Indigenous participation requirements	^insert applicable/not used^
		Timeframe for delivery of written report	^insert timeframe^
	Part C clause 45	**Australian Skills Guarantee Procurement Connected Policy** ***Note:*** This section applies if the Australian Skills Guarantee Procurement Connected Policy applies.	

		Overarching Apprentice and ICT Cadet Target	^insert agreed percentage for Overarching Apprentice and ICT Cadet Target^
		Apprentice and ICT Cadet Target for Women	^insert agreed percentage for Apprentice and ICT Cadet Target for Women^
Applicable Law			
42.	Part C clause 31.2	**Applicable law**	New South Wales **Note:** Buyer may change the applicable law. Buyers should not agree to apply the law of a jurisdiction outside Australia as this would introduce additional risk into the Contract. If no State or Territory is stated here, the default applicable law will be New South Wales as this is the law that applies to the Panel Agreement.

Insurance

Note: Under clause 20.5 of Part C – Contract Terms, the Seller must hold:

- insurances a prudent supplier would hold in accordance with best industry practice; and
- as a minimum, the insurances stated in Item 11 of Part B – Panel Appointment Details and the following Item 43 of Part D – Contract Details.

These are examples of types and levels of insurance however, the Buyer should base its insurance requirements for the Seller on a liability risk assessment of the Contract, takinginto account the scale, complexity, cost and risk of the Contract.

The limits and periods for professional indemnity insurance and public liability insurance are the *minimum* limits and periods required under the Panel Agreement (clause 22.3 of Part A – Panel Terms and Item 11 of Part B – Panel Appointment Details). The Buyer may increase the limits and periods for these insurances.

43.	Part C clause 20.5	**Type**	**Minimum limits**	**Periods of insurance**
		Professional indemnity insurance	^$2 million per occurrence and $10 million in the aggregate per annum^	^Until expiration of the period of 7 years following expiry of this Contract^
		Public liability insurance	^$10 million per occurrence^	^Until expiry or termination of this Contract^

		Cyber insurance ^Optional^ ***Note***: For guidance on cyber insurance, see DTA's cyber insurance guide, available on the [ClauseBank page]().	$^insert amount^ ^per occurrence / in aggregate / and not less for^	^Until expiry or termination of this Contract^
		Product liability ^Optional^	$^insert amount^ ^per occurrence / in aggregate / and not less for^	^Until expiry or termination of this Contract^
		^insert required insurance policy type^	$^insert amount^ ^per occurrence / in aggregate / and not less for^ ^type of entity^^	^insert required period – for example: until expiry or termination of this Contract / until expiration of the period of [insert] following expiry or termination of this Contract^
Liability				
44.	Part C clause 14	**Limitation of liability** **^Optional^**	$^insert amount^ OR ^insert a multiple^ times the total Price payable under this Contract exclusive of GST ***Note:*** Any limit on liability should be based on the Buyer's liability risk assessment for the Contract. **If no amount is stated here, the default limitation of liability will be an amount equal to three times the total value of the Contract exclusive of GST.** Buyers may instead put the limit at $0 so that no limitation will apply, another amount, or specify a multiple of the total contract price.	
Liquidated damages				

<table>
<tr><td rowspan="3">45.</td><td rowspan="3">Part C clause 14.7</td><td>Liquidated damages ^Optional^</td><td colspan="2">^do liquidated damages apply to the failure to achieve Milestones – insert yes/no^</td></tr>
<tr><td>Liquidated damages regime ^Optional^</td><td colspan="2">^insert table setting out the Milestones and liquidated damages regime below^</td></tr>
<tr><td>Liquidated damages – Amended terms ^Optional^</td><td colspan="2">^insert any amended terms or ‘not used’^</td></tr>
<tr><td colspan="5">Support and Maintenance</td></tr>
<tr><td rowspan="6">46.</td><td rowspan="6">Part C clause 8</td><td>Support and Maintenance ^Optional^</td><td colspan="2">^is the Seller providing Support and Maintenance under this Contract, insert yes/no^</td></tr>
<tr><td>Issue Management ^Optional^</td><td colspan="2">^insert timeframe during which contact facilities will be required^</td></tr>
<tr><td>Rectification (remedial maintenance) ^Optional^</td><td colspan="2">^does clause 8.3 apply, insert yes/no^</td></tr>
<tr><td rowspan="3">Supported Items and Rectification Periods ^Optional^</td><td>Supported Item</td><td>Rectification Period</td></tr>
<tr><td>^Software^

Note: Under Schedule C3 – Software and Cloud Services Module, the Seller must Rectify Faults in relation to Software. Include this row if Software is provided under this Contract.</td><td>^default is the Licence Period. Insert different Rectification Period if applicable^</td></tr>
<tr><td>^Cloud Services^

Note: Under Schedule C3 – Software and Cloud Services Module, the Seller must Rectify Faults in relation to Software. Include this</td><td>^default is the Cloud Subscription Period. Insert different Rectification Period if applicable^</td></tr>
</table>

	row if Software is provided under this Contract.		
	^insert details of any Supported Items here^	^insert Rectification Period here^	
Additional Support and Maintenance ^Optional^	**Supported Item**	**Support and Maintenance required**	**Period of support**
	^insert details of any Supported Items where additional Support and Maintenance is required, including outside the Rectification Period or 'not used'^	^insert details of additional Support and Maintenance required^	^insert timeframe during which additional Support and Maintenance is required^
Preventative Maintenance ^Optional^	**Supported Item**	**Preventative Maintenance required**	**Period of support**
Note: For procurements of any Products and Services, insert any Preventative Maintenance required here. For procurements of Software or Cloud Services, the Seller is required to provide the Preventative Maintenance stated in Schedule C3 –	^insert details of any Supported Items where Preventative Maintenance is required or 'not used'^	^insert details of Preventative Maintenance required^	^insert period of support required^
	^Software^	^insert details of additional Preventative Maintenance required^	^default is the Licence Period. Insert different period if applicable^
	^Cloud Services^	^insert details of additional Preventative Maintenance required^	^default is the Cloud Subscription Period. Insert

		Software and Cloud Services Module. Include the relevant rows if additional Preventative Maintenance is required and/or a different period of support is required.			different period if applicable^
		Support and Maintenance – Amended terms ^Optional^	^insert any amended terms or 'not used'^		
Service Levels					
47.	Part C clause 9	**Service Levels, Service Credits and Minimum Expected Performance ^Optional^**	^insert table setting out the Service Level and Service Credit regime below. Where the Contract uses Service Credits this should be referenced in the Price and Payment items above^ ***Note***: Service Levels may include: • Incident resolution times; • Incident response times; • Availability levels; • Screen refresh times; • Recovery point objective (RPO) times; and • Recovery time objective (RTO) times.		
		Termination for a Service Level Failure	***Note:*** The default position is that the Buyer can terminate or reduce the scope of the Contract if a Service Level Failure occurs for the same Service Level three times: • in any consecutive six month period; or • if the Contract Period is less than six months, during the Contract Period.		

			The Buyer may set out different requirements in this Item where Service Level failures will result in the Buyer being able to terminate or reduce the scope of the agreement. The Buyer can: • set this out on the basis of repeated failures of the same Service Level during a stated period of time; and/or • define a 'Critical Service Level Failure' and state that any Critical Service Level Failure will result in the Buyer being able to terminate or reduce the scope of the Contract. ^state any changes to change the default position for termination for a Service Level failure^,
Performance management			
48.	Part C clause 34.1	**Timing of performance management assessments ^Optional^**	^insert frequency of timing for assessment by the Buyer (default under clause 34.1: every 6 months from the Contract Start Date and at the end of the Contract Period) • 1 month • 3 months • 6 months^
Additional and amended terms			
49.	Part C clause 4.3 and 4.4	**Additional terms under clause 4.3 ^Optional^**	^specify any additional terms for the Contract here^ ***Note***: Insert additional terms approved under clause 4.3 of Part C. Terms must not be inconsistent with the Contract.
		Amended or added terms under clause 4.4 (DTA's approval necessary and obtained) ^Optional^	^specify any amended terms for the Contract here^ ***Note***: Insert any amended (or added) terms approved under clause 4.4 of Part C. If DTA approval has not been obtained, amended terms will have no effect.

D1: ICT Labour Hire Module				
Personnel				
50.	Schedule C1 clause 2.3	**Seller-Sourced Buyer Workers**	^indicate whether the Seller will provide services sourcing Buyer Workers or 'not used'^	
		Buyer Worker	**Name**	^insert the full name of the Buyer Worker^
			Position	^insert position title^
			Position description and requirements	^insert^
			Key duties and responsibilities	^insert key duties and responsibilities of the position^
			Commencement salary	^insert the commencement salary for the Buyer Worker^
			Security clearance	^insert required security clearance^ ***Note:*** Personnel do not need to hold security clearances at the time of Quote but they must be obtained prior to the Contract Start Date.
			Location of work	^insert regular location of work i.e. Buyer premises address^
			Duration of engagement	^insert duration of engagement for the Buyer Worker^
51.	Schedule C1 clauses 2.2 and 2.3	**Buyer-Sourced Labour Hire Workers or Seller-Sourced Labour Hire Workers**	^indicate whether the Buyer or Seller will source Labour Hire Workers or insert 'not used' if the Contract is only for Buyer Workers^	

52.	Schedule C1 clause 2.1	**Labour Hire Worker** ***Note:*** Labour Hire Workers are relevant to the ICT Labour Hire Module only. For Personnel in other Modules, complete Key Personnel fields above.	**Name**	^insert the full name of the Labour Hire Worker^
			Position	^insert position title^
			Position description and requirements	^insert^
			Key duties and responsibilities	^insert key duties and responsibilities of the position^
			Security clearance	^insert required security clearance^ ***Note:*** Labour Hire Workers do not need to hold security clearances at the time of Quote but security clearances must be obtained prior to the Contract Start Date.
			Location of work	^insert regular location of work i.e. Buyer premises address^
			Standard working hours	^insert paid hours per day (if none stated the default will be 7.5 hours)^
			Standard working hour period	^insert window within which standard working hours must be worked (if none stated the default will be 7am to 7pm on Business Days)^
			Duration of placement	^insert duration of placement for the Labour Hire Worker^

			End date for placement	^insert end date for placement of the Labour Hire Worker^
53.	Schedule C1 clause 3.1	**Other Services** **^**Optional**^**	^indicate whether the Contract includes any Other Services. For example, pre-placement checks for candidates within Buyer-Sourced Labour Hire Worker^	
ICT Labour Hire Price, allowances and costs				

54.	Schedule C1 clause 14	**Price under the ICT Labour Hire Module**	**Component of Price**	**GST exclusive**	**GST inclusive**
		Seller-Sourced Labour Hire Workers or Buyer-Sourced Labour Hire Workers ***Note:*** Duplicate rows if there are multiple Labour Hire Workers.			
		Labour Hire Worker name	^insert^		
		Hourly Salary	**Dollar amount:**	^insert^	^insert^
		Hourly Management Rate	**Dollar amount:**	^insert^	^insert^
			Percentage of Hourly Salary:	^insert^	^insert^
		Hourly Employment Oncosts	**Dollar amount:**	^insert^	^insert^
		Agreed Hourly Rate (Total)	**Dollar amount:**	^insert (total of the above dollar amounts)^	^insert (total of the above dollar amounts)^
		Seller-Sourced Buyer Workers ***Note:*** Duplicate rows if there are multiple Buyer Workers.			

		Buyer Worker name	^insert^		
		Buyer Worker salary	**Dollar amount:**	^insert^	^insert^
		Placement Fee	**Percentage of Buyer Worker salary:**	^insert^	^insert^
			Dollar amount:	^insert^	^insert^
		Other Services			
		Fees	^insert^	^insert^	
	Schedule C1 clause 14.10	**Conversion Fee**	^insert^		
55.	Schedule C1 clause 14.11	**Maximum hours**	^insert maximum hours of work permitted that the Seller can invoice – specify whether daily/weekly/monthly hours^		
56.	Schedule C1 clause 14.11	**Timesheets ^Optional^**	^insert any additional Timesheet requirements here^		
Optional Items					
57.	Schedule C1 clause 12	**Drug and alcohol testing ^Optional^**	^do drug and alcohol testing provisions apply – insert yes/no^		
D2: Professional and Consulting Services Module					
No items					
D3: Software and Cloud Services Module					
58.	Schedule C3 clause 2.1	**Deployment method**	^insert the deployment method for the Products and Services. Either: • Software (e.g. on-premises); • Cloud (e.g. SaaS, PaaS); or • Hybrid^		

			Note: For the purposes of this Contract, the 'Cloud' deployment method should be selected for procurements of Software as a Service (SaaS).				
Licensed Software							
59.	Schedule C3 clause 3	**Licensed Software**	**Number of copies**	**Licence Period**	**Pricing Model**	**Pricing Metric**	**Delivery and activation requirements**
		^insert^	^insert^	^insert^	^insert^	^insert^	^insert^ ***Note***: The Buyer may specify details of how the Licensed Software or Cloud Services will be delivered. For example: to be downloaded from the Seller's website or delivered on an external storage device.
60.	Schedule C3 clause 15.12	**Sub-license and transfer of excess licences**	^insert buyers who Buyer can sublicense and transfer excess licences to^				

<table>
<tr><td>61.</td><td>Schedule C3 clause 4</td><td colspan="2">Installation of Licensed Software</td><td colspan="4">^who is responsible for installation of the Licensed Software – insert ‘Buyer’ or ‘Seller’^

^where the Seller is responsible for installation, is installation subject to Acceptance Testing – insert ‘subject to Acceptance Testing’ or ‘not subject to Acceptance Testing’^</td></tr>
<tr><td colspan="8">Cloud Services</td></tr>
<tr><td rowspan="2">62.</td><td rowspan="2">Schedule C3 clause 3</td><td>Cloud Services</td><td>Number of copies</td><td>Cloud Subscription Period</td><td>Pricing Model</td><td>Pricing Metric</td><td>Delivery and activation requirements</td></tr>
<tr><td>^insert^</td><td>^insert^</td><td>^insert^</td><td>^insert^</td><td>^insert^</td><td>^insert^

Note: The Buyer may specify details of how the Licensed Software or Cloud Services will be delivered. For example: to be downloaded from the Seller’s website or delivered on an external storage device.</td></tr>
<tr><td colspan="8">Backups</td></tr>
</table>

63.	Schedule C3 clause 3.3	**Responsibility for backups ^Optional^**	^Default is Buyer is responsible for Licensed Software and Seller is responsible for Cloud Services. Insert 'Buyer' or 'Seller' as required for different default position Licensed Software: insert Cloud Services: insert^
		Seller's responsibility to back up ^Optional^	^if 'Seller' is responsible, insert frequency that the Seller must back up the Buyer Data e.g. hourly. Default is daily. Insert 'not specified' if frequency is daily^
		Additional requirements ^Optional^	^insert any additional requirements for backups^
		Backups – Amended terms ^Optional^	^insert any amended terms or 'not used'^
	Schedule C3 clause 3.4	**Restoration of Buyer Data ^Optional^**	^Default is within four hours. Insert different time period if required^
Software and Cloud Licence Agreement			
64.	Schedule C3 clause 11.11.1	**Application of Software and Cloud Licence Agreement**	^does Option 2 in clause 11.11.1.b apply – insert yes/no^
Warranties ^Optional^			
65.	Schedule C3 clause 6.1.1.	**Compatibility and inter-operability of third party products and services**	^insert list of third party products and services which the Seller warrants the Software and Cloud Services will work with^
Software Updates and Major Releases ^Optional^			
66.	Schedule C3 clause 7.4	**Software Updates and Major Releases**	^does the Software Updates and Major Releases clause apply – insert yes/no^
		Software Updates and Major Releases – Amended terms ^Optional^	^insert any amended terms or 'not used'^ ***Note:*** Buyers may refer to the DMP 2 clause bank for additional clauses which allow the

			Buyer to stop a Software Update or Major Release for security reasons.
Commonwealth Data Protection Plan (CDPP) ^Optional^			
67.	Schedule C3 clause 9.1	**Commonwealth Data Protection Plan (CDPP)**	^is a CDPP required – insert yes/no^ ^if yes, insert CDPP^
Hosting Certification Framework ^Optional^			
68.	Schedule C3 clause 9.3	**Hosting Certification Framework**	^do the Hosting Certification Framework clauses apply for the Cloud Services – insert yes/no^

Signatures

Note: Buyers and Sellers will need to use the appropriate execution clause. This will depend on the types of entities that the parties are. The execution clauses below will not be appropriate in all circumstances.

If the Contract Start Date in Item 8 of Part D – Contract Details is 'the date the last party to execute the Contract does so', the date must be included in the execution block. Otherwise the execution date should not be included.

EXECUTED for and on behalf of ^Buyer Name^
ABN ^Buyer ABN^ by:

^*Name of signatory*^	*Signature*
In the presence of:	
^*Name of witness*^	*Signature of witness*
^Date^	

EXECUTED by ^Party 2 Name^ ACN ^Party 2 ACN^ in accordance with the requirements of Section 127 of the *Corporations Act 2001* (Cth) by:

Name of Director	*Signature*
In the presence of:	
^Name of witness^	*Signature of witness*
and by:	
Name of Director/Secretary	*Signature*
In the presence of:	
^Name of witness^	*Signature of witness*

^Date^

ATTACHMENT A (PRICING), PART D – CONTRACT DETAILS

Note: This is a pricing document to be attached to Part D – Contract Details.

This Attachment A is intended for Buyers and Sellers entering into Contracts for Licensed Software and Cloud Services (Module 3) where the Price includes several components or is highly detailed. Buyers and Sellers entering into Contracts for ICT Labour Hire (Module 1) and Professional and Consulting Services (Module 2) should include their Price information in Item 26 of Part D – Contract Details.

Buyers should select and use the required pricing items and delete those that do not apply.

If the Buyer has specific requirements in the way it wants the Seller to describe pricing (e.g. by completing a table, or a pricing template in Excel format) then the Buyer should attach this.

The Buyer should amend this Attachment to set out any other pricing requirements not already addressed.

Note: Set out details of the price to be paid/agreed upon for the particular Products and Services under this Contract.

All fields below are optional.

Price may be based on:

- lump sum amount;
- time and materials including rate cards;
- unit price for items of Products and Services;
- metrics for Software and Cloud Services;
- milestones; or
- another pricing method.

Note that the Price may not exceed the Seller's Maximum Price.

For information about how the Maximum Price applies to each Module, refer to the specific Module Terms.

Price

Item	Clause reference	Details	
1.	Part C clause 12	**Contract value**	The total Price the Seller cannot exceed is $^insert GST exclusive total value of this Contract^ (GST exclusive) ($^insert GST inclusive total value of this Contract^ (GST inclusive))
2.		**Price – lump sum**	^insert price details^

	Part C clause 12		**GST exclusive**	**GST inclusive**
			^insert GST exclusive price^	^insert GST inclusive price^
3.	Part C clause 5.6	**Milestone Payments ^Optional^**		
		Note: If relevant, complete the following Milestone payment schedule with reference to the Milestones stated in the table at Item of Part D – Contract Details. If Milestone payments are being used, the Seller must provide a price breakdown for each Milestone (this should be detailed in the attached spreadsheet if used).		
		Milestone number/title	**Milestone payment** **(GST excl)**	**Milestone payment** **(GST incl)**
		1.		
		2.		
		TOTAL		
Software and Cloud Services Pricing				
Note: The Buyer should include as much detail as possible, including: • any specified volume the Seller must not charge above without Buyer approval; • volume discount details; and • the metric used to calculate Price. Each field below is optional.				
Licensed Software Pricing				
4.	Schedule C3 clause 16.1.3 and clause 16.6	**Licensed Software**	^insert name of Licensed Software^	
		Details	^insert^	
		Maximum Price pricing model	^insert either subscription-based minimum discount OR usage-based minimum discount^	
		Metric	^insert^	

		Unit Price GST inc.	^insert^
		Volume (number of units)	^insert^
		Total Price GST exc.	^insert^
		Total Price GST inc.	^insert^
Cloud Services Pricing			
5.	Schedule C3 clause 16.1.3 and clause 16.6	**Cloud Services**	^insert name of Cloud Services^
		Details	^insert^
		Maximum Price pricing model	^insert either subscription-based minimum discount OR usage-based minimum discount^
		Metric	^insert^
		Unit Price GST inc.	^insert^
		Volume (number of units)	^insert^
		Total Price GST exc.	^insert^
		Total Price GST inc.	^insert^
Value-add costs and other fees ***Note:*** Include details of fees here to avoid incurring any hidden fees, for example in relation to value- add functionality that can be switched on and off by the user of Cloud Services.			
6.	Schedule C3 clause 16.1.3 and clause 16	**Fee component**	^insert^
		Details	^insert^
		Maximum Price pricing model	^insert either subscription-based minimum discount OR usage-based minimum discount^
		Metric	^insert^
		Unit Price GST inc.	^insert^
		Volume (number of units)	^insert^
		Total Price GST exc.	^insert^

		Total Price GST inc.	^insert^	
7.	Schedule C3 clause 16.7	**Volume discounts**	**Volume band**	**Volume discount percentage**
8.	Schedule C3 clause 16.10	**Rebates and other discounts**	**Details**	**Discount or rebate percentage**
Software and Cloud Services – Complementary Services ***Note:*** The Seller may provide Complementary Services under Section 2 of Schedule A3 – Software and Cloud Services Module. Complementary Services can vary significantly based on the type of procurement. Buyers should set out details of the Price to be paid for the Complementary Services under this Contract. For example, this could be based on a one off fee or time and materials. Where payment is made in accordance with milestones, details should be included in the applicable row above.				
Complementary Services				
9.	Schedule C3 clause 16.13	**Details of services**	^insert^	
		Price details	^insert^	
		Total Price GST exc.	^insert^	
		Total Price GST inc.	^insert^	
Software and Cloud Services – Additional Pricing ***Note:*** The Buyer may ask the Seller for additional work outside the scope of the Contract under clause 5.7 of Part C – Contract Terms. For Software and Cloud Services, any additional work quoted by the Seller must be on the basis of the additional fees set out here.				
Additional Licensed Software Pricing				
10.	Schedule C, clause 5.7 Schedule C3 clause 16.1.3 and clause 16	**Licensed Software**	^insert name of Licensed Software^	
		Details	^insert^	
		Maximum Price pricing model	^insert either subscription-based minimum discount OR usage-based minimum discount^	
		Metric	^insert^	

		Unit Price GST inc.	^insert^
		Volume (number of units)	^insert^
		Total Price GST exc.	^insert^
		Total Price GST inc.	^insert^
Additional Cloud Services Pricing			
11.	Schedule C, clause 5.7 Schedule C3 clause 16.1.3 and clause 16	**Cloud Services**	^insert name of Cloud Services^
		Details	^insert^
		Maximum Price pricing model	^insert either subscription-based minimum discount OR usage-based minimum discount^
		Metric	^insert^
		Unit Price GST inc.	^insert^
		Volume (number of units)	^insert^
		Total Price GST exc.	^insert^
		Total Price GST inc.	^insert^
Expenses			
12.	Part C clause 12.1	**Allowances & costs** ***Note:*** State details of other financial obligations the Buyer will cover. For example, travel costs or printing and production costs. Buyers should state obligations clearly to prevent claims for excessive expenses.	^insert details of allowances and other disbursements^
13.	Schedule C1 clause 13.6, Schedule C2 clause 4.2 and	**Price review**	^ICT Labour Hire – Do the price review clauses apply? – insert yes/no Professional and Consulting Services – Do the price review clauses apply? – insert yes/no

	Schedule C3 clause 7.11		Software and Cloud Services – Do the price review clauses apply? – insert yes/no^
14.	Part C clause 9	**Service Levels, Service Credits and Minimum Expected Performance ^Optional^** ***Note***: Service Levels may include: • Incident resolution times; • Incident response times; • Availability levels; • Screen refresh times; • Recovery point objective (RPO) times; and • Recovery time objective (RTO) times.	^insert table setting out the Service Level and Service Credit regime below. Where the Contract uses Service Credits this should be referenced in the Price and Payment items above^

Note: Buyers The DTA will be inserting values for the table below at a later date. This will give greater certainty to Buyer and Sellers to assist with completing the pricing information above.

Pricing model	**Metric examples**	**Value of one unit**
Subscription-based	User Licensing Model – monthly per user fee	^DTA will insert^
	User Licensing Model – annual licence fee per user/seat	^DTA will insert^
	User licence – one time per licence fee	^DTA will insert^
	Feature / tier-based pricing	^DTA will insert^
Usage-based	Compute or processing hours	^DTA will insert^
	API calls	^DTA will insert^
	Data stored	^DTA will insert^

Pricing model	Metric examples	Value of one unit
	Transactions	^DTA will insert^
	Document sent	^DTA will insert^

PART E – DEFINITIONS AND INTERPRETATION

1. Definitions and Interpretation

1.1. Definitions

1.1.1. In the Panel Agreement and any Contract, unless the context indicates otherwise:

Term	Definition
Acceptance	means accepted by the Buyer in accordance with a Contract. **Accept** and **Accepted** have a corresponding meaning.
Acceptance Criteria	means a list of criteria that the Products and Services must meet before the Buyer will Accept them, set out in Item 19 of Part D – Contract Details.
Acceptance Testing	means the testing of Products and Services against the Acceptance Criteria.
Accounting Standards	means: a. the standards maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)); or b. other accounting standards which are generally accepted and consistently applied in Australia.
Additional Work	means additional Products or Services provided in accordance with clause 5.7 of Part C – Contract Terms.
Agreed Hourly Rate	has the meaning set out in clause 14 of Schedule C1 – ICT Labour Hire Module Terms.
AI Hazard	means an event, circumstance or series of events where the development, use or malfunction of an AI System could plausibly lead to an AI Incident.
AI Incident	means an event, circumstance or series of events where the development, use or malfunction of an AI System directly or indirectly leads to harm to a person or group of people including any of the following harms: a. injury or harm to the health, safety or wellbeing of a person or groups of people; b. disruption to the management and operation of critical infrastructure; c. disruption to the effective delivery of government services; d. a breach of law; e. infringement of the rights of a person or group of people; f. a contravention of an applicable Australian Government policy;

	g. discrimination, adverse effect on employment status, loss of intellectual property rights, moral rights or indigenous cultural intellectual property; or h. loss or damage to property, communities or the environment.
AI Inputs	means input data provided to an AI System in any form, including queries, prompts, training data or documents.
AI Outputs	means output data from an AI System in any form, including model outputs, predictions, responses, generated content or inference results.
AI System	means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.
AIP Policy	means the Australian Government policy designed to ensure full, fair and reasonable opportunity for Australian industry, including small and medium enterprises, to compete for work. This is achieved through the development and implementation of an AIP Plan. More information on the AIP Policy and AIP Plan requirements can be found at www.industry.gov.au/aip.
Application Material	means all Material provided to DTA or a Buyer by the Seller in connection with the Panel, including: a. an application or tender for appointment to the Panel and/or a Module or Category; b. a Quote; c. a Panel Catalogue; or d. any Material related to the above. **Application Material** does not include Contract Material.
Appoint	means the process of being appointed to provide Appointed Products and Services as stated in clause 4.1.1 of Part A – Panel Terms. **Appointed** has a corresponding meaning.
Appointed Products and Services	means the Products and Services that the Seller is Appointed to offer to sell through the Panel.
Apprentice	means a person who is: a. employed under a Training Contract that has been registered with, and validated by, the relevant State/Territory training authority; b. undertaking paid work and structured training which commonly comprises both on and off the job training;

	c. undertaking a negotiated training program that involves obtaining a nationally recognised qualification; and d. either directly employed by the Supplier or Subcontractors, or indirectly employed through a Group Training Organisation to work on the Services.
Apprentice and ICT Cadet Target for Women	means the percentage, set out in Item 41 of Part D – Contract Details, of all Labour Hours which must be undertaken by Apprentices who are Women and/or Women ICT Cadets during the Contract Period.
Approach to Market	has the meaning given in the Commonwealth Procurement Rules 2024.
Approved Cloud Provider and Hosting Location	has the meaning given in clause 6.1.3 of Part C – Contract Terms.
Approved Integrated AI System	has the meaning given in clause 10.2 of Schedule C3 – Software and Cloud Services Module.
Approved Plan	means a Plan approved by the Buyer under a Contract.
Approved Subcontractor	means a Subcontractor listed in Item 25 of Part D – Contract Details.
APS Code of Conduct	has the same meaning as it has in the *Public Service Act 1999* (Cth).
APS Values	has the same meaning as it has in the *Public Service Act 1999* (Cth).
Associate	has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).
Auditor-General	has the meaning given to it in section 8 of the *Auditor General Act 1997* (Cth).
AusTender	means the central web-based facility for the publication of Australian Government procurement information.
Australian Industry Participation Plan or **AIP Plan**	means any AIP plan attached to this Contract.
Australian Privacy Principle	has the same meaning as it has in the *Privacy Act 1988* (Cth).
Australian Skills Guarantee Procurement Connected Policy	means the policy with this name published by the Australian Government as updated from time to time.

Australian Skills Guarantee Targets	means the: a. Overarching Apprentice and ICT Cadet Target; and b. Apprentice and ICT Cadet Target for Women.
Authorised User	means any Buyer Personnel that the Buyer authorises to use the Software or Cloud Services.
Background IP	means Material in which Intellectual Property Rights (other than Third Party IP) are: a. in existence at the Contract Start Date or are subsequently brought into existence other than as a result of the performance of a Contract; and b. embodied in, or attach to, the Products and Services or otherwise necessarily relate to the functioning or operation of the Products and Services. **Background IP** does not include Intellectual Property Rights that subsist in: c. any Buyer Material; d. Licensed Software; or e. Cloud Services.
Banned AI System	means: a. *when used in Part A – Panel Terms* – any AI System that the Commonwealth prevents Buyers or DTA from accessing or installing on DTA or Buyer Systems, in accordance with any Commonwealth law or policy (including a Protective Security Direction issued by the Department of Home Affairs); and b. *when used in a Contract* – any AI System referred to in: i. paragraph a; or ii. Item 22 of Part D – Contract Details.
Base Third Party Software	means any third party Software or Cloud Services on which the Products and Services are based and is required for the Buyer to operate and use the Products and Services.
Business Day (in a place)	a. for DTA, means a weekday other than a public holiday in the ACT; b. for the Buyer, means a weekday other than a public holiday in the address stated for the Buyer Representative at Item 4 of Part D – Contract Details or, if no place is stated, in the State or Territory stated in Item 42 of Part D – Contract Details; and c. for the Seller, means a weekday other than a public holiday in the address stated for the Seller Representative at Item 5 of Part D – Contract Details or, if no place is stated, in the State or Territory stated in Item 42 of Part D – Contract Details.
Buyer	means:

	d. when used in Part A – Panel Terms – any person entitled to purchase Products and Services through the Panel, being: i. all entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth) and all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control; ii. all bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments); iii. State or Territory Local Governments established under the *Local Government Act 1993* (NSW) or equivalent legislation in other States and Territories; iv. publicly owned Australian universities; and v. DTA Approved Third Party Providers; and e. when used in a Contract – each entity identified as such in Item 4 of Part D – Contract Details associated with that Contract or such other departments, agencies or authorities of the Commonwealth (or a State, Territory or Local Government) as are from time to time responsible for administering the Contract.
Buyer Data	means any: a. document; b. device; c. article; d. medium; or e. Metadata, which embodies Buyer Material, Official Information or other Material owned or licensed by the Buyer, but only includes Material owned by the Seller to the extent it is assigned to or licensed to the Buyer under this Contract.
Buyer Material	means any Material: a. provided by the Buyer to the Seller for the purposes of a Contract, including the Material stated in Item 31 of Part D – Contract Details; b. owned by or in the possession, custody or control of the Buyer; or c. derived at any time from the Material referred to in paragraph a or b. Buyer Material does not include Base Third Party Software.
Buyer Property	means any tangible property owned by or in the possession, custody or control of the Buyer.

Buyer Representative	has the meaning given in clause 11.1 of Part C – Contract Terms and Item 4 of Part D – Contract Details.
Buyer Worker	means a person employed by, or engaged under a contract by, a Buyer.
Buyer-Sourced Labour Hire Workers	has the meaning given in Item 1.b. of Schedule A1 – ICT Labour Hire Module.
Candidate	means an individual offered to the Buyer by the Seller for placement as a Labour Hire Worker or Buyer Worker under Schedule C1 – ICT Labour Hire Module Terms.
Catalogue	means any catalogue established and administered by DTA as set out in clause 9.2 of Part A – Panel Terms which includes the details of the Products and Services that can be purchased by Buyers.
Category	means a category of Products and Services which are available under a Module and which have been set out in the relevant schedule to Part A – Panel Terms.
Category Description	means the description of a Category set out in the relevant schedule to Part A – Panel Terms.
Category Period	means the period of a Category set out in clause 6.6 of Part A – Panel Terms.
Certification	has the meaning given in Part B of the Certification Deed.
Certification Deed	means a Deed of Certification (including all annexures to the Certification Deed) between the Certifying Authority and the Seller.
Certified Assured	has the meaning given in the Hosting Certification Framework.
Certified Strategic	has the meaning given in the Hosting Certification Framework.
Certifying Authority	means the Department of Home Affairs or any department, agency or authority of the Commonwealth which is from time to time responsible for determining the eligibility and suitability of a Seller to be certified in accordance with the Hosting Certification Framework.
Change of Control	means when: a. a body corporate, entity or person that Controls the Seller ceases to Control the Seller; or b. a body corporate, entity or person that does not Control the Seller comes to Control the Seller.
Cloud Licence	means, in respect of Cloud Services, a: a. perpetual, unless otherwise specified in Item 62 of Part D – Contract Details; b. irrevocable; c. royalty-free;

	d. fully-paid up (subject to clause 4 of Schedule C3 – Software and Cloud Services Module); e. world-wide; f. non-exclusive, licence (including a right of sub-licence only to Authorised Users).
Cloud Services	means Software or Hardware resources that are provided over the internet, including: a. Software as a Service; b. Platform as a Service; or c. Infrastructure as a Service. **Cloud Services** include Modifications provided under Schedule C3 – Software and Cloud Services Module Terms.
Cloud Subscription Period	means the period for which the Cloud Services are licensed, as stated in Item 62 of Part D – Contract Details.
Commonwealth	means the Commonwealth of Australia.
Commonwealth Data Protection Plan or **CDPP**	means a Commonwealth Data Protection Plan in the DTA Form.
Commonwealth Entity	has the same meaning as it has in the *Public Governance, Performance and Accountability Act 2013* (Cth).
Commonwealth Record	has the same meaning as it has in the *Archives Act 1983* (Cth).
Commonwealth Supplier Code of Conduct or **Code**	means the Commonwealth Supplier Code of Conduct, published by the Australian Government, as updated from time to time.
Complementary Services	has the meaning given in Section 2 – Category Descriptions of Schedule A3 – Software and Cloud Services Module.
Confidential Information (of the Seller)	means: a. information that is by its nature confidential; b. for the purposes of the Panel Agreement, is described in Item 10 of Part B – Panel Appointment Details; and c. for the purposes of a Contract, is described in Item 38 of Part D – Contract Details.
Conflict	means: a. when used in Part A – Panel Terms – any: i. matter; ii. circumstance;

	iii. interest; or iv. activity, affecting the Seller or its Personnel which may or may appear to impair the ability of the Seller to perform its obligations under the Panel Agreement or any Contract diligently and independently; and b. when used in a Contract – any: i. matter; ii. circumstance; iii. interest; or iv. activity, affecting the Seller or its Personnel which may or may appear to impair the ability of the Seller to perform its obligations under the Contract diligently and independently.
Consolidated List	means the list of individuals and entities listed in the consolidated sanctions list published by the Australian Government's Department of Foreign Affairs and Trade.
Continuous Modification	has the meaning given in clause 8.6 of Schedule C3 – Software and Cloud Services Module.
Contract	means a contract made under the Panel Agreement for the provision of Products and Services and includes the parts stated in clause 4.1.1 of Part C – Contract Terms.
Contract Material	means any Material: a. specified as such in the Statement of Requirements; b. created by the Seller for the purposes of a Contract (including any reports or other deliverables that the Seller has to give under the Contract); c. given or required to be given to the Buyer as part of the Products and Services, including Documentation that is not in scope of paragraphs e-i (inclusive); or d. derived at any time from the Material referred to in paragraphs a, b or c. **Contract Material** does not include: e. Background IP; f. Third Party IP; g. Licensed Software; h. Developed Software; or i. Cloud Services.

Contract Period	means the period of a Contract as stated in Item 8 of Part D – Contract Details, plus any extension of that period in accordance with clause 3.2 of Part C – Contract Terms.
Contract Start Date	means the date stated in Item 8 of Part D – Contract Details.
Contract Variation	means a change to a Contract agreed by the Buyer and Seller in the DTA Form.
Control	means control within the meaning of section 50AA of the *Corporations Act 2001* (Cth).
Conversion	has the meaning given in clause 12.11 of Schedule C1 – ICT Labour Hire Module Terms.
Conversion Fee	means the fee payable for the Conversion of a Labour Hire Worker, as determined in accordance with clause 14.10 of Schedule C1 – ICT Labour Hire Module Terms.
Correctly Rendered Invoice	means an invoice which is: a. rendered in accordance with all of the requirements of the Contract; and b. for amounts that are correctly calculated and due for payment and payable under the terms of the Contract. ***Note***: Contracts will often state that the invoice must be a tax invoice and/or must contain certain information or be in a certain format.
Cure Plan	means a plan developed in accordance with clause 42 of Part A – Panel Terms or clause 35 of Part C – Contract Terms (as applicable).
Cyber Attack	includes: a. any action taken through the use of computer systems, networks or digital devices; or b. any unauthorised access to or use of a Digital System, that is: c. intended to have; d. is likely to have; or e. does have, an adverse effect on the security or reliability of data on the Digital System or the accessibility of the Digital System. **Cyber Attack** includes denial of service attacks.
DAT Act	means the *Data Availability and Transparency Act 2022* (Cth).
Data Mining	means analysing or searching for patterns and anomalies in data sets to extract information whether through automated or human means. This includes:

	a. data clustering; b. data scraping; c. classification; d. text mining; e. anomaly detection; f. regression; or g. similar methods.
Deed of Variation	means a change to the Panel Agreement agreed by the DTA and Seller in the DTA Form.
Delivery Schedule	means the timeframes for the delivery of the Products and Services as set out in Item 10 of Part D – Contract Details.
Developed Software	means any new Software that is required to be created or developed by the Seller under a Contract, including: a. any configuration or customisation of the Developed Software including to activate or implement add-ons, features or functionality within such Developed Software; and b. any modifications, adaptations, translations or derivatives of the Developed Software.
Digital System	includes any electronic or other system, or any related: a. process; b. equipment; c. tool; d. device; e. infrastructure; f. network; g. data; h. information; i. transmission; j. communication; k. software; or l. facility, whether stand-alone or connected with any other item.
Documentation	means, in relation to Software and Cloud Services, any Material that describes the features and functions of: a. Software;

	b. Cloud Services; or c. Associated Services.
DTA	means the Commonwealth of Australia as represented by the Digital Transformation Agency (ABN 96 257 979 159) and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering the Panel Agreement.
DTA Approved Third Party Provider	means a third party provider that has been: a. contracted by a Buyer to provide ICT services; and b. approved in writing by DTA and that Buyer (which may be withdrawn at any time) to participate in the Panel but only to the extent that any Contracts entered into relate to the third party provider's provision of services to that Buyer. Participation in the Panel may include: i. issuing RFQs; and ii. entering into Contracts.
DTA Data	means any document, device, article or medium which embodies DTA Material, Official Information or other Material owned or licensed by the DTA and includes Buyer Data contained on the Online Portal.
DTA Forms	means the templates available on the Online Portal as updated by DTA from time to time.
DTA Material	means any Material: a. provided by the DTA to the Seller for the purposes of the Panel Agreement; b. owned by or in the possession or control of the DTA; or c. derived at any time from the Material referred to in paragraph a or b.
DTA Module Option Term	means the date stated in Item 6 of Part B – Panel Appointment Details for each Module.
DTA Panel Option Term	means the term stated in Item 5 of Part B – Panel Appointment Details.
DTA Representative	has the meaning set out in clause 10.1 of the Part A – Panel Terms and Item 8 of Part B – Panel Appointment Details.
Eligible Data Breach	has the same meaning as it has in the *Privacy Act 1988* (Cth).
Entrusted Person	has the same meaning as it has in the *PTR Act.*
Environmental Sustainability Principles	means the principles set out in Table 1 of the Environmentally Sustainable Procurement Policy.

Environmentally Sustainable Procurement Policy	means the *Environmentally Sustainable Procurement Policy July 2024* available at www.dcceew.gov.au/sustainable-procurement, as updated from time to time.
Essential Eight	means the Strategies to Mitigate Cyber Security Incidents published by the Australian Signals Directorate, as updated from time to time.
Essential Eight Maturity Level	means the maturity level set out in the Essential Eight Maturity Model.
Essential Eight Maturity Model	means the Essential Eight Maturity Model published by the Australian Signals Directorate, as updated from time to time.
EULA or End User Licence Agreement	means: a. a set of written terms and conditions for the use of Software or Cloud Services, which sets out rights and restrictions applicable to those Software or Cloud Services; and b. any other terms and conditions in relation to those Software or Cloud Services, however described.
Fault	means any: a. defect; b. error; c. malfunction; or d. problem, in or arising from a Product or Service that relates to, arises from, or threatens or results in: e. a non-compliance with any relevant specification for the Product or Service stated in the Contract; f. a breach of an obligation or warranty of the Seller under this Contract; or g. interference with or threat to the Buyer's Digital Systems. **Fault** includes any circumstance where such matters are reasonably suspected until such time as they are reasonably established not to apply.
Force Majeure Event	means any occurrence that prevents or delays the party relying on it from performing any of its obligations under the Panel Agreement or Contract that is beyond the reasonable control of that party. This includes, where relevant, due to: a. forces of nature; b. war; c. riot;

	d. civil commotion; e. public health order; f. failure of a public utility; or g. industrial action (other than industrial action specifically directed at a party). An event will not be a **Force Majeure Event** if it is an act or omission of any: h. Related Body Corporate; i. related entity; j. Related Party; or k. Subcontractor (for any matter related to the Panel Agreement or Contract) of any kind.
General Interest Charge Rate	means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day that payment is due, expressed as a decimal rate per day.
Grant	means, in respect of Intellectual Property Rights, to grant and to procure all necessary rights to grant.
Group Training Organisation	means an organisation that employs Apprentices under a Training Contract and places them with Host Employers.
GST	has the meaning it has in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).
Hardware	means all the physical parts of a computer system including: a. circuit boards; b. firmware; c. the case; d. central processing unit (CPU); e. random access memory (RAM); f. microchips; g. monitor; h. mouse; i. keyboard; j. computer data storage; k. graphics card; l. sound card; m. speakers; n. motherboard;

	o. racks; p. cables; q. peripherals; r. input and output devices; and s. any related tangible ICT product.
Harmful Code	means any computer code or instruction that is designed, created, replicated or distributed to have the ability to: a. damage, inhibit, interfere with or adversely affect computer programs or data or information and communications technology systems; b. compromise or adversely affect the security, integrity, confidentiality or privacy of such systems or programs or data of any person; or c. otherwise is or is intended to be disruptive, vexatious, harmful, malicious or destructive to any person or thing. This includes any: d. computer 'virus'; e. 'worm'; f. 'Trojan horse'; g. 'time bomb'; h. 'spyware'; i. 'malware' or 'backdoor'; and j. any computer code or instruction designed to disable all or part of any Digital System on an expiry date or if certain conditions are or are not met. **Harmful Code** does not include any specific feature or function which the Buyer has explicitly directed the Seller to include as part of any Product.
Host Employer	means an employer who hires an Apprentice through a Group Training Organisation.
Hosting Certification Framework	means the Whole of Australian Government Hosting Strategy: Hosting Certification Framework, as amended from time to time administered by the Department of Home Affairs or any department, agency or authority of the Commonwealth which is responsible.
Hourly Employment Oncosts	has the meaning set out in clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms.

Hourly Management Rate	has the meaning set out in clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms.
Hourly Salary	has the meaning set out in clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms.
Hours Worked	has the meaning set out in clause 14.4 of Schedule C1 – ICT Labour Hire Module Terms.
ICT Cadet	means a person who is: a. working on the Services; b. employed in an entry-level role; and c. undertaking academic study through either the VET or higher education system towards a qualification under the Australian Qualification Framework, where the employer has formally committed to providing the Employee with on-the-job training and support to complete the specific course of academic study.
ICT Labour Hire Module	means the Module under which a Seller may provide the Products and Services set out in Schedule A1 – ICT Labour Hire Module.
Illegal Worker	means a person who: a. has unlawfully entered and remains in Australia; b. has lawfully entered Australia, but remains in Australia after his/her visa has expired; or c. is working in breach of their visa conditions.
Implementation Report	means a report provided to the Buyer in accordance with clause 41.3 of Part C – Contract Terms.
Implementation Report Requirements	means the requirements for an Implementation Report set out in the AIP Policy and/or published elsewhere by the Department of Industry, Science and Resources.
Incorporated IP	means any Background IP or Third Party IP: a. incorporated into the Contract Material by a Seller; or b. otherwise forming part of the Products and Services provided by a Seller under a Contract. **Incorporated IP** does not include Licensed Software or Cloud Services.
Indigenous Cultural Intellectual Property or ICIP	means material based on Aboriginal and Torres Strait Islander cultural heritage, including: a. traditional knowledge; b. traditional cultural expression;

	c. cultural objects; d. secret and sacred material; and e. documentation of heritage in all forms of media such as films, photographs, artistic works, books, reports, records taken by others, sound recordings and digital databases.
Indigenous Data	means information or knowledge, in any format or medium, which is about and may affect Indigenous peoples both collectively and individually.
Indigenous Enterprise	means an organisation that is 50% or more Indigenous owned that is operating a business.
Indigenous Participation Plan	means any such plan attached or incorporated by agreement into this Contract.
Indigenous Procurement Policy	means the Indigenous Procurement Policy of the Commonwealth, the details of which are available at the National Indigenous Australian Agency's Indigenous Procurement Policy page.
Information Officer	means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing privacy functions as defined in that Act.
Information Security Assessment	has the meaning given in clause 23.9 of Part C – Contract Terms.
Information Security Manual or **ISM**	means the Information Security Manual as published by the Australian Signals Directorate, as updated from time to time.
Infrastructure as a Service	means ICT infrastructure services provided over the internet that may include servers, storage and networking.
Insolvency Event	means in respect of a Seller, any of the following: a. the Seller becoming insolvent; b. ceasing to carry on all or a material part of its business; c. taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; d. the appointment of a controller, a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the Seller or any of the Seller's property; e. the Seller becoming subject to external administration provided for in Chapter 5 of the *Corporations Act 2001* (Cth); f. the Seller suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the Seller's property (including seizing the Seller's property within the

	meaning of section 123 of the *Personal Properties Securities Act 2009* (Cth)); g. the Seller being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand; h. an order or resolution for the winding up or deregistration of the Seller; i. a court or other authority enforcing any judgment or order against the Seller for the payment of money or the recovery of any property; and j. any analogous event under the law of any applicable jurisdiction.
Intellectual Property Rights or **IP**	includes: a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information.
IPP Contractor Portal	means the online portal where the Seller can report on their progress against the mandatory minimum requirements under the Indigenous Procurement Policy and which is available on the National Indigenous Australian Agency's IPP Contractor Portal page.
IRAP	means the Information Security Registered Assessors Program.
Key Personnel	means the individuals stated in Item 24 of Part D – Contract Details as required to perform all or part of the work constituting the provisions of the Products and Services.
Labour Hire Licence	means a current and valid labour hire licence issued to the Seller by the relevant licensing authority as required in the Location.
Labour Hire Worker	means the individuals stated in Item 52 of Part D – Contract Details and any other individuals engaged by the Seller under clause 2.1 of Schedule C1 – ICT Labour Hire Module Terms.
Labour Hire Worker Services	means the work to be undertaken for the Buyer by Labour Hire Workers.
Labour Hours	means the number of hours a Worker worked on the Services. This may include:

	a. hours worked on-site; b. hours worked off-site that deliver inputs to the Services; or c. formal off-site training and education, provided that in circumstances where off-site hours are to be split between multiple projects, the sum of the reported hours must not be greater than the total hours the person worked off-site.
Legislation	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
Licence	means, in relation to Intellectual Property Rights, a: a. perpetual; b. irrevocable; c. royalty-free; d. world-wide; e. non-exclusive, licence (including a right of sub-licence on the same terms).
Licence Period	means the period for which the Licensed Software is licensed as stated in Item 59 of Part D – Contract Details.
Licensed Software	means any Software that is, or is required to be, provided by the Seller under a Contract, including: a. commercial off-the-shelf Software; and b. Modifications provided under Schedule C3 – Software and Cloud Services Module. **Licensed Software** does not include Developed Software.
Limited Licence	means, in relation to Intellectual Property Rights, a: a. royalty-free; b. non-exclusive, licence to: c. use; d. reproduce; and e. adapt, subject to any conditions or restrictions set out in this Contract and any direction from the Buyer.
Location	means each location (including State or Territory) in which the Seller provides the Products and Services.
Mandatory Panel	means a panel established by the Commonwealth that is mandatory for some Buyers to use. See the Whole of Australian Government

	Procurement page for more information: [Whole of Australian Government Procurement | Department of Finance].
Material	means any thing in relation to which Intellectual Property Rights arise.
Maximum Price	means the pricing arrangements set out in: a. Item 7 of Part B – Panel Appointment Details; b. clause 8.1 of Part A – Panel Terms; and c. clause 3 of each Schedule to Part A – Panel Terms, as varied from time to time in accordance with the Panel Agreement.
Metadata	means any system-generated data that is created or generated in connection with: a. the Buyer's use of the Products or Services; or b. the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Products and Services. **Metadata** includes: c. descriptive metadata; d. structural metadata; and e. administrative metadata.
Metric	means the metric used to calculate Price. For Software and Cloud Services, examples of **Metrics** are: a. user licences; b. terabytes; or c. API calls.
Milestone	means an event stated as a "milestone" or key event or date (no matter how expressed) in Item 21 of Part D – Contract Details or any other part of a Contract.
Minimum Expected Performance	means the performance measures outlined in Item 47 of Part D – Contract Details.
Modern Slavery	has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
Modifications	means, in relation to Licensed Software or Cloud Services (as applicable): a. any configuration or customisation to activate or implement add-ons, features or functionality within the Licensed Software or Cloud Services; and b. any adaptations, modifications or derivatives of the Licensed Software or Cloud Services.

Module	means a class of Products and/or Services which are available under the Panel and which have been set out in the relevant schedule to Part A – Panel Terms.
Module 3 Price List	means the Seller's list of prices for Module 3 set out on the Online Portal as part of the Seller's Catalogue.
Module End Date	means the later of the Module Initial End Date and the final day of any extension of the Module Period under clause 6.4.2 of Part A – Panel Terms.
Module Initial End Date	means the date stated as such in Item 6 of Part B – Panel Appointment Details for each Module.
Module Period	means the term of a Module, being the period from the Module Start Date to the Module End Date.
Module Start Date	means the date stated as such in Item 6 of Part B – Panel Appointment Details for each Module.
Module Terms	means the terms set out in the schedules to Part C – Contract Terms that apply to the relevant Module.
Moral Rights	means the following non-proprietary rights of authors of copyright Material: a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed.
Not Met	means the Performance Rating provided when a Seller does not meet the requirements set out in a Performance Criteria, Performance Indicator or in an Overall Rating under the Performance Management Framework as applicable.
Official Information	means any information: a. developed; b. received; or c. collected, by or on behalf of the DTA or a Buyer to which the Seller gains access under or in connection with the Panel Agreement or Contract, and includes any Material contained in Products and Services and the terms of the Panel Agreement or Contract.
Official Resources	includes: a. Official Information; b. people who work for or with the Buyer; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Buyer.
Online Portal	means the internet-based system for the administration of the Panel as notified by DTA to the Seller from time to time.

Online Portal Terms and Conditions	means the terms of use for the Online Portal as amended from time to time.
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see the Creative Commons webpage for more information).
Open Source Code	means code available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at http://www.opensource.org, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at http://www.creativecommons.org.
Order	has the meaning given in clause 14.3.1 of Part A – Panel Terms.
Other Services	has the meaning given in the Item 1.d. of Schedule A1 – ICT Labour Hire Module.
Overall Rating	means an overall rating given by a Buyer for a Seller or Labour Hire Worker under the Performance Management Framework
Overarching Apprentice and ICT Cadet Target	means the percentage, set out in Item 41 of Part D – Contract Details, of all Labour Hours spent on the Services that must be undertaken by Apprentices and/or ICT Cadets during the Contract Period.
Overcharge	means any amount charged to the Buyer that does not comply with the Contract.
Panel	means the panel of Sellers who have been Appointed by DTA to offer to provide ICT Products and Services to Buyers known as the Digital Marketplace Panel, administered by the DTA.
Panel Agreement	means the deed of standing offer between DTA and the Seller and includes the schedules (and any attachments to the schedules) as the context requires.
Panel Agreement End Date	means the later of the Panel Agreement Initial End Date and the final day of any extension of the Panel Agreement Period under clause 6.2.2 of Part A – Panel Terms.
Panel Agreement Initial End Date	means the date stated in Item 5 of Part B – Panel Appointment Details.
Panel Agreement Period	means the period from the Panel Agreement Start Date to the Panel Agreement End Date.
Panel Agreement Start Date	means the date stated in Item 5 of Part B –Panel Appointment Details.

Part	means any one of Parts A to E of the Panel Agreement and includes any schedules or attachments to those parts.
Part A – Panel Terms; Part A; or **Panel Terms**	means the terms set out in the document titled Part A – Panel Terms and includes any schedules or attachments to that document.
Part B – Panel Appointment Details; Part B; or **Panel Appointment Details**	means the form, substantially in the form of the document titled Part B – Panel Appointment Details detailing the terms of the Seller's appointment to the Panel.
Part C – Contract Terms; Part C; or **Contract Terms**	means the terms set out in the document titled Part C – Contract Terms and includes any schedules or attachments to that document.
Part D – Contract Details; Part D; or **Contract Details**	means the form, substantially in the form of the document titled Part D – Contract Details detailing the terms of the Seller's agreement with a Buyer forming a Contract.
Part E – Definitions and Interpretation; Part E; or **Definitions and Interpretation**	means this Part E document.
Payment Policy	means the Commonwealth's '*Payment Times Procurement Connected Policy*'.
Payment Policy Evaluation Questionnaire	means a questionnaire in substantially the form of Appendix C of the Payment Policy.
Payment Policy Purpose	means: a. the review, evaluation, monitoring, assessment and reporting on the Payment Policy, including the compliance by those Sellers (and their Subcontractors) that are Reporting Entities; and b. improving payment times to Payment Policy Subcontractors.
Payment Policy Remediation Plan	means a written remediation plan substantially in the form of Appendix D of the Payment Policy.
Payment Policy Subcontract	means a subcontract between a Reporting Entity and another party (**Other Party**) where: a. the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Contract;

	b. both parties are carrying on business in Australia; and c. the component of the subcontract for the provision of goods or services for the purposes of this Contract has a total value of less than (or is reasonably estimated will not exceed) $1 million (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to $1 million (GST inclusive) under standing offer (panel) arrangements, but does not include the following subcontracts: d. subcontracts entered into prior to the Reporting Entities' tender response for this Contract; e. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or f. subcontracts for the purposes of: i. procuring and consuming goods or services overseas; or ii. procuring real property, including leases and licences.
Payment Policy Subcontractor	means the party that is entitled to receive payment for the provision of goods or services under a Payment Policy Subcontract.
Payment Policy Team	means the relevant Minister, department or authority that administers or otherwise deals with the Payment Policy on the relevant day.
Performance Criteria	means the performance criteria described in the table in clause 34.2 of Part C – Contract Terms and in clause 8.2.4 of Schedule C1 – ICT Labour Hire.
Performance Indicators	means the performance indicators described in the table in clause 34.2 of Part C – Contract Terms and in clause 9.2.4 of Schedule C1 – ICT Labour Hire.
Performance Issue	has the meaning given in clause 42.1.1 of Part A – Panel Terms and clause 35.1.1 of Part C – Contract Terms.
Performance Management Framework	means: a. when used in Part A – Panel Terms – the framework described in section 6 of Part A – Panel Terms; and b. when used in a Contract – the framework described in section 4 of Part C – Contract Terms and any Module Terms.
Performance Rating	means the performance rating given to the Seller by the Buyer in accordance with clause 34.2 of Part C – Contract Terms or any performance rating provided in accordance with the Module Terms.
Personal Information	has the same meaning as it has in the Privacy Act.

Personnel	means: a. in relation to the Seller – any natural person who is an officer, employee, contracted personnel, agent or professional adviser of the Seller or of a Subcontractor, including any Key Personnel and Labour Hire Workers; b. in relation to the Buyer – any natural person, other than a person referred to in paragraph a, who is an officer, employee, contracted personnel, agent or professional adviser of the Buyer; and c. in relation to the DTA – any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional adviser of the DTA.
Personnel Classification	means the 6 classification levels set out in Section 3 of Schedule A2 – Professional and Consulting Services Module.
Placement Fee	has the meaning set out in clause 14.6 of Schedule C1 – ICT Labour Hire Module Terms.
Plan	means any plan required by the Buyer as stated in Item 20 of Part D – Contract Details. **Plan** does not include Cure Plan.
Platform as a Service	means a cloud hosted environment, provided over the internet, that can be used to develop, configure, deploy and run application programs or application Software.
Preventative Maintenance	means scheduled maintenance (including the provision of parts, labour and materials) that is: a. specified in Item 46 of Part D – Contract Details; or b. otherwise reasonably necessary to ensure that a Supported Item remains in good working order and will not be subject to undue Faults.
Price	means the total amount (including allowances, reimbursements and costs) that the Buyer must pay the Seller under a Contract, as stated in Part D – Contract Details.
Price Review	means: a. in relation to the Panel Agreement – the process for review set out in the relevant Schedule to Part A – Panel Terms; and b. in relation to a Contract – the process for Price review set out in the relevant Module Terms.
Privacy Act	means the *Privacy Act 1988* (Cth).
Privacy Commissioner	means the Privacy Commissioner for the Commonwealth or the equivalent State or Territory office holder.
Product or Service Price Cap	means the maximum Price payable for a given Product or Service, as stated in Item 29 of Part D – Contract Details.

Products	means: a. any information, document, Hardware, product, system, Software, Material, or other thing; or b. any replacement of the things mentioned in paragraph a of this definition, which is, or is required to be, delivered or provided by the Seller under a Contract.
Products and Services	means: a. in the Panel Agreement – the Products and Services that a Seller is Appointed to sell under the Panel Agreement; and b. in a Contract – the Products and Services that the Seller is required to provide to the Buyer in accordance with a Contract.
Professional and Consulting Services Module	means the Module under which a Seller may provide the Products and Services set out in Schedule A2 – Professional and Consulting Services Module.
Prohibited Entity	means any entity that: a. has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount; b. is on, or which has any employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; or c. is named in a report tabled in the Australian Parliament by the Workplace Gender Equality Agency as a supplier that has not complied with the WGE Act.
Proposed Replacement	has the meaning given in clause 6.1.5 of Part C – Contract Terms.
Protected Information	has the same meaning as it has in the *PTR Act.*
Protective Security Directions	means any directions issued by the Secretary of the Department of Home Affairs under the Protective Security Policy Framework.
Protective Security Policy Framework or PSPF	means the Protective Security Policy Framework available at www.protectivesecurity.gov.au, as amended or replaced from time to time.
PTR Act	means the *Payment Times Reporting Act 2020* (Cth).
Public Sector Data	has the same meaning given to that term in section 9 of the DAT Act.

Purchase Order Contract	means a contract made under the Panel for the provision of Products and Services using the Buyer's chosen purchase order terms.
Quote	means a quote issued by a Seller in response to an RFQ.
Rectification	means unscheduled maintenance necessary to rectify any Fault and restore any Supported Item (including, as relevant, by replacement with identical parts) so that it: a. conforms to its specifications as required by the Contract; b. is safe to use; and c. is in good working order. **Rectify** has a corresponding meaning.
Rectification Period	means the time period stated in Item 46 of Part D – Contract Details during which the Seller must Rectify Faults in relation to a Supported Item.
Related Body Corporate	has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).
Related Entity	has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).
Relevant Milestone	means, in respect of a Correctly Rendered Invoice, any Milestone that was due to be achieved during the period to which that invoice relates.
Remote Area	means the areas identified in the Remote Indigenous Procurement Policy map on the National Indigenous Australians Agency website, as updated from time to time.
Reporting Entity	has the same meaning as it has in the PTR Act.
Reporting Entity Subcontractor	means any person that: a. is a Reporting Entity; and b. provides goods or services directly or indirectly to the Seller for the purposes of the contract where the value of such goods or services is estimated to exceed $4 million (GST inclusive). **Reporting Entity Subcontract** has a corresponding meaning.
Reporting Template	means the reporting template provided in the Seller Environmental Sustainability Plan including as updated by the Buyer from time to time.
Request for Quote or **RFQ**	means a request for quote for the provision of Products and Services as set out in clause 14 of Part A – Panel Terms.
Requirement	means: a. an obligation; b. condition; c. restriction; or

	d. prohibition, binding on the Seller under the Panel Agreement or a Contract.
Reseller	means a Seller who is authorised to supply a Product or Service from a Publisher as set out in clause 11.11 of Part C – Contract Terms.
Restrictions on Use	means, in relation to the Software or Cloud Services (as applicable): a. not to decompile, disassemble, reverse engineer or otherwise attempt to derive the source code from object code in the Software or Cloud Services; b. not to distribute, sell, rent, lease, license, sub-license (except to Authorised Users), display or share the Software or Cloud Services or otherwise transfer the Software or Cloud Services to, or permit the use of the Software or Cloud Services by, any third party; c. not to remove any copyright, proprietary or other notice from the Software or Cloud Services; and d. to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software or Cloud Services, except to the extent permitted by this Contract or any applicable law.
RFQ Closing Date	means the date stated in the RFQ as the deadline for submission of Quotes.
RFQ Process	means a process conducted by a Buyer in accordance with clause 14.2 of Part A – Panel Terms.
Satisfactory	means: a. meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy; or b. if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, meets the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
Schedule	means a schedule to a Part of the Panel Agreement.
Scheduled Downtime	has the meaning given in clause 8.4 of Schedule C3 – Software and Cloud Services Module.
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the DTA or a Buyer.
Security Incident	means: a. any actual or suspected breach of security (whether relating to information, personnel, data, logical, physical or system security or otherwise); b. any contact, request or approach from any person seeking unauthorised access to Official Resources; or

	c. any circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security.
Seller	means: a. in relation to Panel Agreement – each entity that is identified as such in Item 2 of Part B – Panel Appointment Details; or b. in relation to a Contract – each entity that is identified as such in Item 5 of Part D – Contract Details associated with the Contract. Where the context requires, **Seller** includes the Seller's Personnel.
Seller Contract Representative	has the meaning set out in clause 11.2.1 of Part C – Contract Terms.
Seller Environmental Sustainability Plan	means the Seller Environmental Sustainability Plan substantially in the form of the relevant template available at https://www.dcceew.gov.au/environment/protection/waste/sustainable-procurement/toolkit, as updated from time to time.
Seller Information	means any document or information on the Online Portal pertaining to the Seller including information on a Catalogue and the Seller's Online Portal profile.
Seller Purpose	means, in relation to Intellectual Property Rights: a. the purpose of the Seller providing the required Products and Services to the Buyer under this Contract; and b. any purpose in relation to the relevant Material stated in Item 15 of Part D – Contract Details (if any).
Seller Representative	has the meaning set out in clause 10.2 of Part A – Panel Terms.
Seller's Modules and Categories	has the meaning given under clause 4.1 of Part A – Panel Terms.
Seller-Sourced Buyer Workers	has the meaning given in Item 1.c. of Schedule A1 – ICT Labour Hire Module.
Seller-Sourced Labour Hire Workers	has the meaning given in Item 1.a. of Schedule A1 – ICT Labour Hire Module.
Service Credit	means the amount (if any) credited to a Buyer as a result of a failure by the Seller to achieve a Service Level as stated in Item 47 of Part D – Contract Details.
Service Level	means a metric used to measure and report on the Seller's performance under a Contract as stated in Item 47 of Part D – Contract Details (if any).
Service Level Failure	has the meaning given in: a. for all Products and Services (including Cloud Services), clause 9.3 of Part C – Contract Terms; and

	b. for Cloud Services, clause 8.3 of Schedule C3 – Software and Cloud Services Module.
Services	means the services required to be provided by the Seller to the Buyer under the Contract, as stated in this Contract, including in Item 15 or elsewhere in Part D – Contract Details, and includes all: a. incidental services; b. functions required for the provision of those services; c. Material that forms part of the Services; d. associated Hardware required for the provision of those services; e. Complementary Services; and f. Cloud Services.
Shadow Economy Procurement Connected Policy	means the Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines October 2024 available at https://treasury.gov.au/publication/p2019-t369466 as amended from time to time.
Similar Role	means a role that is: a. substantially similar to the role which the relevant Labour Hire Worker has performed under the relevant Contract immediately prior to accepting the offer of employment from the Buyer; and b. within the same branch (or branch-equivalent), being an area of the Buyer that is under the remit of an APS classification SES Band 1 (or equivalent).
Single Seller Agreement or **SSA**	means an agreement established by the Commonwealth with a seller mandatory for certain Buyers to use under Commonwealth policy. Please see the BuyICT single seller arrangements page for further information: Overview - BuyICT.
Skills Guarantee Information	means Skills Guarantee Reports or other documents or information provided by the Supplier in connection with its obligations under clause 45.3 of Part C – Contract Terms.
Skills Guarantee Report	means a report submitted by the Supplier to the Customer on its performance against the Australian Skills Guarantee Targets.
Skills Guarantee Reporting Worksheet	means the worksheet in the form determined by the Buyer.
Small to Medium Enterprise or SME	has the meaning given in the Commonwealth Procurement Rules 2024.
Software	means: a. computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which

	recorded, that allow or cause a computer to perform a specific operation or series of operations; and b. recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. **Software** includes: c. Licensed Software; d. Developed Software; and e. Software Updates. **Software** is a computer program for the purposes of the *Copyright Act 1968* (Cth).
Software and Cloud Licencing Agreement (SCLA)	means the terms in Attachment A (Software and Cloud Licencing Agreement), Schedule C3 – Software and Cloud Services Module.
Software and Cloud Services Module	means the Module under which a Seller may provide the Products and Services set out in Schedule A3 – Software and Cloud Services Module.
Software as a Service	means Software that is provided over the internet.
Software Licence	means a: a. perpetual, unless otherwise specified in Item 59 of Part D – Contract Details; b. irrevocable; c. royalty-free; d. fully-paid up (subject to clause 4 of Schedule C3 – Software and Cloud Services Module); e. world-wide; f. non-exclusive, licence (including a right of sub-licence only to Authorised Users).
Software Releases and Major Updates	means new releases or versions of Software which provide new features, architectural changes or redesigned interfaces, for the purposes of: a. providing new or extra functionality to the Software; b. enhancing the performance of the Software; and c. improving the operation of the Software. This includes version updates, major releases and feature releases (or similar, no matter how named or designated).
Statement of Requirements	means the Buyer's functional and technical requirements for Products and Services as described or incorporated by reference in a Contract.

Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at the Australian Taxation Office's 'Statement of Tax Record' webpage.
Statutory Liability Scheme	means any statutory scheme in force from time to time that applies to the Seller to limit the liability of the Seller for the provision of certain services.
Subcontractor	means any person engaged by the Seller to provide any part of the Products and Services under a Contract, and includes Approved Subcontractors. **Subcontract** has a corresponding meaning. Publishers under Reseller Option 2 under clause 11.12 of Part C – Contract Terms are **not** Subcontractors.
Subscription-Based Pricing Model	means the pricing model set out in clause 3.1.3 of Schedule A3 – Software and Cloud Services Module.
Supply Chain	means a network or system of Subcontractors, agents, suppliers or entities: a. in a direct or indirect business relationship (whether within Australia or internationally) with the Seller; or b. which contribute directly or indirectly to the supply of the Products and Services to the Buyer, including entities in the network of business entities or individuals performing, providing, producing, handling, storing, transmitting or distributing: c. the Products and Services; or d. components of the Products and Services.
Supply Chain Elements	means an entity in the Supply Chain.
Support and Maintenance	includes the provision of: a. instructions; b. documentation; c. support; d. maintenance; e. advice; and f. assistance, as may be reasonably required by the Buyer in respect of the: g. installation; h. configuration; i. testing; j. tuning; k. roll-out;

	l. features; m. functions; n. performance; o. operation; p. interfacing and integration with other items (whether supplied by the Seller or not); and q. problem diagnosis in respect of a Supported Item. **Support and Maintenance** includes **Rectification**, **Preventative Maintenance**, **Software Updates** and **Continuous Modifications**.
Supported Item	means any item stated in Item 46 of Part D – Contract Details for which the Seller is required to provide Support and Maintenance in accordance with clause 8 of Part C – Contract Terms or otherwise in respect of this Contract.
Suspension Notice	means a notice issued by DTA as set out in clause 23.6 of Part A – Panel Terms.
Third Party IP	means Material in which Intellectual Property Rights are owned by a person other than the DTA, Buyer or the Seller and: a. in relation to the Panel Agreement – is used or required to be used by the DTA in connection with the Panel; and b. in relation to a Contract – is incorporated by the Seller into Contract Material, or, used or required to be used by the Seller in the course of providing Products and Services under a Contract.
Time and Materials	means the pricing model where Price is calculated on a time and materials basis, as stated in Attachment A (Pricing), Part D – Contract Details.
Timesheet	means a record of the Hours Worked in a stated period by a Labour Hire Worker. The record must comply with any form and substance details set out in Item 56 of Part D – Contract Details.
Total Price Cap	means the maximum Price payable by the Buyer under a Contract, as stated in Item 29 of Part D – Contract Details.
Training Contract	means a legally binding agreement between an employer and Apprentice administered under state/territory legislation.
Transition Out Period	means the time period stated in Item 12 of Part D – Contract Details during which the Seller must perform the obligations set out in clause 5.15 of the Contract.
Usage-Based Pricing Model	means the pricing model set out in clause 3.1.3 of Schedule A3 – Software and Cloud Services Module.
Use	means: a. in relation to Software: i. install the Software;

	ii. access, use, operate and maintain the Software, from the Buyer's Digital System; iii. download, load, compile and run the Software; iv. adapt, modify and configure the Software to the extent necessary to enable it to be used on the Buyer's Digital System and with other software used by the Buyer; v. use each part of the Software in either hardcopy or softcopy (including online); vi. make copies of the Software to enable the full use of the Software and for backup and security purposes; and vii. permit the Authorised Users to access and use the Software, from the Buyer's or the Authorised User's Digital System in accordance with this Contract; b. in relation to Cloud Services: i. use and access the Cloud Services from the Buyer's Digital System; ii. permit the Authorised Users to use and access the Cloud Services from the Buyer's Digital System; iii. permit configuration of the Cloud Services to the extent necessary to enable them to be used on the Buyer's systems; and iv. test, evaluate and confirm the suitability, compliance with Service Levels and operation of the Cloud Services; and c. for all other Materials: i. use; ii. reproduce; iii. adapt; iv. modify; v. perform; vi. distribute; vii. communicate; viii. publish; and ix. exploit.
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.
Publisher	for a Product or Service for which the Seller is a Reseller, means the third party providing that Product or Service to the Seller for the purposes of resale to a Buyer.
Vest	means, in relation to Intellectual Property Rights, means vest or will vest immediately upon creation. **Vested** has a corresponding meaning.
Wage Price Index	means at any point in time:

	a. the 'Wage Price Index (Australia, Original Series)' as published by the Australian Bureau of Statistics at that point in time; a. if that index is discontinued or materially altered, such substitute index as may be agreed by the parties; or b. in the absence of such agreement, as may be determined by the President of the Law Society of New South Wales or his or her nominee to be an appropriate index reflecting the general level of monetary inflation across Australia.
WGE Act	means the *Workplace Gender Equality Act 2012* (Cth).
Whole of Government Arrangement or **WofG Arrangement**	means SSAs and Mandatory Panels.
Women	means people who, regardless of their sex assigned at birth, identify as a woman irrespective of age.
Worker or Employee	means a person who is paid to work for an organisation for more than one hour in a week.

1.2. Interpretation

1.2.1. In the Panel Agreement and any Contract, unless the contrary intention appears:

a. a reference to DTA means DTA as a party to the Panel Agreement;

b. a reference to a Buyer does not include DTA, unless DTA is a Buyer under a Contract;

c. a reference to a clause, paragraph, schedule or attachment in:

   i. the Panel Terms – is to a clause or paragraph of, or schedule or attachment to, the Panel Agreement;

   ii. the Contract Terms – is to a clause or paragraph of, or schedule or attachment to, the Contract; and

   iii. the Module Terms – is to a clause or paragraph of, or schedule or attachment to, the Module Terms.

d. a reference to a clause, section or paragraph includes a reference to a subclause of that clause, subsection of that section or subparagraph of that paragraph;

e. if the Contract states that:

   i. particular information is to be set out in a stated Item in Part D – Contract Details; and

   ii. that information is instead included in a different Item in Part D – Contract Details or elsewhere in the Contract,

   the information has the same effect as if it had been set out in the stated Item in Part D – Contract Details.

f. words importing a gender include any other gender;

g. words in the singular include the plural and words in the plural include the singular;

h. clause headings are for convenient reference only and have no legal effect including limiting or extending the language or meaning of provisions to which they refer;

i. guidance for Buyers and/or Sellers is for assistance only and has no legal effect;

j. words importing a person include a partnership and a body whether corporate or otherwise;

k. words of inclusion are not to be interpreted as words of limitation;

l. all references to dollars are to Australian dollars;

m. if a payment is due or a thing is to be done on a day other than a Business Day, that payment must be made or the thing done by the next Business Day;

n. if the Seller has an obligation to do (or not do) something, the Seller must comply with that obligation at its cost;

o. if the DTA has the right to reduce the scope of the Panel Agreement, this includes the right to remove the Seller from any Module or Category to which the Seller has been Appointed;

p. wherever the Panel Agreement or Contract gives the DTA or a Buyer the right to take (or not take) certain action, then the DTA or the Buyer may (or may not) take the action in its absolute discretion;

q. where the agreement, approval or consent of the DTA or the Buyer is required, the DTA or the Buyer may (or may not):

    i. require the Seller to comply with conditions before giving its agreement, approval or consent; and

    ii. give its agreement, approval or consent subject to conditions,

    provided that such conditions must not be unlawful or inconsistent with the Panel Agreement or the Contract;

r. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;

s. a reference to a document, publication, standard, Commonwealth policy or instrument is a reference to the document, publication, standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;

t. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

u. if the parties have not completed an Item in Part B – Panel Appointment Details or Part D – Contract Details, that Item will be taken to be ‘not applicable’ for the purpose of the Panel Agreement or the relevant Contract;

v. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form;

w. wherever the Panel Agreement or a Contract contains a provision that states ‘including’ followed by one or more listed items, the provision includes but is not limited to those items.

x. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally; and

y. a reference to a document includes a report, manual, design, drawing and the like.

1.3. Guidance on construction of contract

1.3.1. As far as possible, all provisions of the Panel Agreement and any Contract will be construed so as not to be void or otherwise unenforceable.

1.3.2. If anything in the Panel Agreement or any Contract is void or otherwise unenforceable then it will be severed and the rest of the Panel Agreement or Contract remains in force.

1.3.3. A provision of the Panel Agreement or any Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.3.4. Under a Contract, wherever the Buyer is in the situation under paragraph d.ii under the definition of Buyer above, all references:

a. to the Commonwealth;

b. Commonwealth laws;

c. Commonwealth policies; and

d. Commonwealth guidelines,

will as far as necessary refer to the equivalent provisions for the State or Territory applicable to the Buyer. Any disagreement over the application of this clause is to be determined by the Buyer in its absolute discretion.