



Australian Government
Digital Transformation Agency



**PANEL AGREEMENT FOR DIGITAL
MARKETPLACE PANEL 2**



PART A – PANEL TERMS

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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: BuyICT.gov.au.

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: For the first 2 modules: Schedule A1 – ICT Labour Hire Module and; Schedule A2 – Professional and Consulting 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: For the first 2 modules: Schedule C1 – ICT Labour Hire Module Terms; and Schedule	Additional terms to Part C – Contract Terms that only apply to Products and Services under the relevant Module.

C2 – Professional and Consulting Services Module Terms.	
Part D – Contract Details	The form that the Buyer and Seller must agree and complete for each Contract.
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 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 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 clause 4.3 and clause 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.g. 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, Software and Telecommunications*.

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 term of this Panel Agreement 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 7.2.3.
- 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. Maximum Price

- 8.1.1. The Maximum Price for the Seller's Products and Services is stated in Item 7 of Part B – Panel Appointment Details. The Maximum Price:

- a. has been agreed with the Seller; and
- b. is a maximum price, maximum price based on a rate card, maximum mark-up, minimum discount, maximum management fee, maximum margin or other method approved by DTA,

that the Seller must apply to its Products and Services.

- 8.1.2. The Seller must offer their Products and Services to Buyers at or below the Maximum Price.

- 8.1.3. The Seller must not enter Contracts that exceed the Maximum Price.

- 8.1.4. The Seller must ensure that pricing in Contracts includes all applicable taxes (other than GST).

8.2. Seller's Maximum Price Review

- 8.2.1. DTA may amend the Seller's Maximum Price:

- a. based on a Price Review mechanism (if provided for) under a Module as set out in a Schedule to Part A – Panel Terms;
- b. when DTA amends a Module or Category; or
- c. when the parties agree to update the Seller's Maximum Price.

- 8.2.2. If the Seller's Maximum Price changes under clause 8.2.1, it will not affect the Price of existing Contracts. To change the Price of a Contract, a Seller must follow the Price Review mechanism in the Module Terms or as agreed with a Buyer.

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: BuyICT.gov.au.

- 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: [Terms of Use - BuyICT](#).

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.
- 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 include a Price for Products and Services higher than the applicable Maximum Price in a Quote.
- 14.8.6. 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 Vendor or DTA.
- 14.8.7. 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 commencement of the Panel	Buyer enters a Contract with Seller for Products and Services <i>before</i> the SSA is in place. The Products and Services within the scope of the SSA then come under the SSA.	<i>From the date the SSA commences</i> 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 the 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	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. If so, the Seller must make resultant changes to the Contract through a Contract Variation. If the Buyer does not require SSA terms for the Subcontracted Products and Services, the Seller must provide them under SSA pricing and terms. The Seller must make resultant changes to the

		Contract through a Contract Variation.
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 applicable’, 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 9 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:

- a. the Seller's liability in relation to this Panel Agreement (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 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 and maintain the insurance 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 and Novation

22.4.1. The Seller must not assign or novate 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 or novation. The Seller must give all necessary information to DTA for this purpose.

22.4.3. If DTA agrees to the Seller assigning or novating its rights or obligations under this Panel Agreement, the Seller must provide the DTA Representative with a completed deed of novation. DTA will specify the form that must be used for this purpose.

22.5. Change of Control

22.5.1. 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.

22.5.2. 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.h.

22.5.3. 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.

22.6. 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. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration;
- b. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors;
- c. has a Contract terminated by a Buyer due to a failure by the Seller to satisfy any of its obligations under the Contract;
- d. 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;
- e. receives an Overall Rating of Not Met under one or more Contracts on three or more occasions under the Performance Management Framework;
- f. receives an adverse assessment from a periodic review conducted by DTA under clause 40.4 where DTA determines that the Seller no longer has the capacity and capability to provide Products and Services under this Panel Agreement;
- g. 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;
- h. 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;
- i. fails to implement a Cure Plan where required to do so under clause 41;
- j. fails to implement a cyber security plan where required to do so under clause 24.3.4;

- k. and DTA cannot agree to a variation to this Panel Agreement;
- l. misuses the Online Portal or does not comply with the Online Portal Terms and Conditions;
- m. suffers a Force Majeure event entitling DTA to terminate under clause 23.8.5; or
- n. in DTA's reasonable opinion:
 - i. no longer has the capacity and capability to perform its obligations under this Panel Agreement;
 - ii. is no longer providing value for money to the Australian Government 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. If the Seller:

- a. does not meet its obligations under this Panel Agreement; or
- b. receives an Overall Rating of Not Met under one or more Contracts on one or more occasions under the Performance Management Framework,

DTA may, by notice, suspend the Seller from accepting:

- c. any RFQs
- d. any Orders; or
- e. any Orders under a particular Module or Category as stated in the Suspension Notice,

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

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

23.6.3. If at the end of the Suspension Period the Seller has not remedied its breach (or breaches), DTA may extend the suspension by issuing a further Suspension Notice under clause 23.6.1.

23.6.4. 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.

23.6.5. 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 Protective Security Policy Framework (PSPF). This obligation applies 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 26.2.4.a imposes certain obligations on the Seller where it breaches clause 24.4.1 or clause 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. Privacy

25.1. Seller's Privacy Act obligations

- 25.1.1. 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.
- 25.1.2. 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.

25.2. Seller to act on Eligible Data Breaches

- 25.2.1. 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.
- 25.2.2. 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.
- 25.2.3. 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 25.2.
- 25.2.4. DTA may have discussions with Buyers concerning the matters set out in clause 25.2 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 25.2.

26. Official Information and other security obligations

26.1. Confidentiality of Official Information

- 26.1.1. 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.
- 26.1.2. 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 26.2.1.
- 26.1.3. 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.
- 26.1.4. The Seller agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

26.2. Other security obligations of the Seller

- 26.2.1. 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 Vetting Service (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.
- 26.2.2. 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.
- 26.2.3. 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;
- 26.2.4. 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, 26.1.4 or 26.2.1 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.
- 26.2.5. The Seller must implement security procedures to ensure that it meets its obligations under this clause 26.2 and must provide details of these procedures to DTA if asked.

26.3. Consequences of breach

- 26.3.1. The Seller acknowledges that DTA may treat any failure to fully comply with any of its obligations under:
 - a. this clause 26; or
 - b. equivalent obligations under a Contract,as a failure that is not capable of remedy.

27. Confidential Information of the Seller

27.1. Confidential Information not to be disclosed

- 27.1.1. DTA will not, without the prior written authorisation of the Seller, disclose any Confidential Information of the Seller to a third party. This clause 27.1.1 is subject to the exceptions in clause 27.2.

27.2. Exceptions to obligations

- 27.2.1. The obligations on DTA under clause 27 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 27.
- 27.2.2. Where DTA discloses Confidential Information to another person pursuant to clauses 27.2.1.a - 27.2.1.g, DTA will notify the receiving person that the information is confidential.

27.2.3. In the circumstances referred to in clauses:

- a. 27.2.1.a;
- b. 27.2.1.b;
- c. 27.2.1.f; or
- d. 27.2.1.g,

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

27.3. Period of confidentiality

27.3.1. The obligations under this clause 27 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.

28. Conflict of interest

28.1. Seller must notify DTA of any Conflicts

28.1.1. 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.

28.1.2. 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.

28.1.3. 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.

28.1.4. If the Seller fails to comply with this clause 28, DTA may terminate this Panel Agreement under clause 23.4.1.a.

28.1.5. If the Seller breaches equivalent requirements to those set out in this clause 28 under a Contract, DTA may terminate this Panel Agreement under clause 23.4.1.a.

28.1.6. 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.

29. Notification of Significant Events

29.1. Seller to inform DTA of Significant Events

29.1.1. For the purposes of this clause 29, '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.

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

29.1.3. The Seller must include in a notice given under clause 29.1.2 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.

- 29.1.4. DTA may notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause 29. If this occurs, the Seller must give DTA a notice under clause 29.1.2 about the event, within 3 Business Days of being notified by DTA.
- 29.1.5. If asked by DTA, the Seller must provide DTA with any additional information regarding the Significant Event within 3 Business Days.
- 29.1.6. 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.
- 29.1.7. A draft remediation plan prepared by the Seller under clause 29.1.6 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.
- 29.1.8. 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.
- 29.1.9. Clause 29.1.8 will apply to any resubmitted draft remediation plan.
- 29.1.10. 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.
- 29.1.11. If the Seller fails to comply with its obligations under this clause 29, 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.
- 29.1.12. In addition, and without limiting the rights and obligations in this clause 29, 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.

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

30.1. Seller to comply and cooperate

- 30.1.1. 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).
- 30.1.2. 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.

31. Fraud and Corruption

31.1. Seller to prevent fraud and corruption

- 31.1.1. The Seller must comply with the Commonwealth Fraud Control Framework ([Commonwealth Fraud Control Framework](#)) as amended from time to time.
- 31.1.2. 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.
- 31.1.3. 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

32. Compliance with laws and policies

32.1. Compliance with laws

32.1.1. 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.

32.1.2. Without limiting clause 32.1, the Seller must comply with the following:

- a. *Crimes Act 1914* (Cth);
- b. *Criminal Code Act 1995* (Cth);
- c. *Privacy Act 1988* (Cth);
- d. *Copyright Act 1968* (Cth);
- e. *Workplace Gender Equality Act 2012* (Cth);
- 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.

32.2. Applicable law

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

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

32.3. Codes of Conduct

32.3.1. 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.
- 32.3.2. The Seller must assist DTA with any investigation of a report of a breach of clause 32.3.1.
- 32.4. Illegal Workers**
- 32.4.1. 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.
- 32.4.2. 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.
- 32.4.3. 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.

32.5. Access to Documents

- 32.5.1. In this clause 32.5, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 32.5.2. This clause 32.5 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).
- 32.5.3. 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.
- 32.5.4. 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 32.5.
- 32.5.5. 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.

33. Small to Medium Enterprise (SME) Participation

33.1. Seller to give SMEs opportunities

- 33.1.1. 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.

34. Australian Skills Guarantee Procurement Connected Policy

34.1. Australian Skills Guarantee Procurement Connected Policy

- 34.1.1. 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.

35. Indigenous Procurement Policy

35.1. Indigenous Procurement Policy

- 35.1.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 35.1.2. 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.
- 35.1.3. 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.

36. Shadow Economy Procurement Connected Policy

Note: Clause 36.1 is required where the Seller has engaged a first tier subcontractor to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive).

Subclause 36.1.2 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.

36.1. Shadow Economy Procurement Connected Policy

- 36.1.1. The Seller warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) that the Seller holds a Satisfactory Statement of Tax Record for the

subcontractor that was Valid at the time of entry into the subcontract by the Seller and the subcontractor.

- 36.1.2. 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.

36.2. Statement of Tax Record

- 36.2.1. The Seller warrants that at the commencement of this Panel Agreement it holds a Valid and Satisfactory Statement of Tax Record.
- 36.2.2. The Seller must hold a Valid and Satisfactory Statement of Tax Record at all times during the Panel Agreement Period (including any extension). If asked by DTA, the Seller must give DTA a copy of any such Statement of Tax Record.
- 36.2.3. Any failure by the Seller to comply with the requirements in clauses 36.2.1 and 36.2.2 will be a breach of this Panel Agreement. This does not limit the Seller's other rights under this Panel Agreement or at law.
- 36.2.4. The Seller must ensure that any first tier subcontractor engaged under a contract to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- 36.2.5. The Seller must retain a copy of any Statement of Tax Record held by any first tier subcontractor in accordance with clause 36.2.4 and must, if requested by DTA, provide a copy of any such Statement of Tax Record.

37. 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.

- 37.1.1. The Seller must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 37.1.2. If the Seller becomes non-compliant with the WGE Act during the Panel Agreement Period, the Seller must promptly notify DTA.
- 37.1.3. 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.
- 37.1.4. Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under the Panel Agreement.
- 37.1.5. DTA may provide a copy of the Seller's current letter of compliance provided under clause 37.1.3 to a Buyer.

38. Modern Slavery

- 38.1.1. 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.
- 38.1.2. 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.

39. Commonwealth Supplier Code of Conduct

39.1. Compliance with the Commonwealth Supplier Code of Conduct

- 39.1.1. The Seller must comply with the Code in connection with the performance of this Panel Agreement. The Seller must ensure that its Personnel and Subcontractors comply with the Code.
- 39.1.2. 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 39.1.1.
- 39.1.3. The Seller must immediately issue DTA a notice on becoming aware of any breach of clause 39.1.1. The notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel involved.
- 39.1.4. Where DTA identifies a possible breach of clause 39.1.1, 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 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 39.1.3 and otherwise comply with its obligations under this clause 39.

- 39.1.5. Notwithstanding clause 39.1.4, DTA may notify the Seller in writing that it considers that the Seller has breached clause 39.1.1, in which case the Seller must issue a notice under clause 39.1.3 and otherwise comply with its obligations under this clause 39.
- 39.1.6. 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.
- 39.1.7. 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.
- 39.1.8. 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

40. Seller Performance Ratings

40.1. Commencement

- 40.1.1. 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.

40.2. DTA use of Seller's Performance Ratings

- 40.2.1. DTA will collect and keep a record of the Seller's Performance Ratings for each Contract. DTA may publish the records on the Online Portal to be available for review by Buyers.
- 40.2.2. 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.
- 40.2.3. 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.
- 40.2.4. DTA may provide information on Seller performance to Buyers, including through the Online Portal.

40.3. Seller's responsibility to correct

- 40.3.1. 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 41 to remedy the failure and its underlying causes. If DTA does so, then the parties' rights and obligations under clause 41 will apply.
- 40.3.2. DTA may communicate any failure and any established interim processes or procedures with Buyer(s).

40.4. Periodic review

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

41. Cure Plan

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

41.1.1. 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.

41.1.2. 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.

41.2. Seller implementing Cure Plan

41.2.1. 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.
- 41.2.2. If DTA gives the Seller a notice under clause 41.2.1.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.
- 41.2.3. 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.
- 41.2.4. Nothing in this clause 41 limits any rights or remedies of DTA under this Panel Agreement including any right of termination.