



Head Agreement

relating to

Whole of Australian Government Software Licensing and Services (SLS) Panel
Standing Offer Number (SON)

Between

Commonwealth of Australia represented by
the DIGITAL TRANSFORMATION AGENCY
(ABN 96257979159)

- and -

«Company__Legal_Name» (ABN «Company_ABN»)

[Note; this document is a draft Head Agreement for Software Licensing Services (SLS) for a planned RFT to establish a SLS Panel. DTA reserves the right to amend this Head Agreement (and any other draft documents that may be released for information) as the RFT is developed.]

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This Head Agreement is

Between:

- (1) **THE COMMONWEALTH OF AUSTRALIA** as represented by the Digital Transformation Agency ('DTA')
- (2) The party specified in Item 1 of Schedule 3 ('Contractor')

Background:

- A. DTA has offered to include the Contractor on its Panel for the supply of Software Licensing and Services (SLS).
- B. The Contractor has accepted the offer and agreed to the terms and conditions of this Head Agreement, and to offer SLS Deliverables within the Category(s) specified in Schedule 2.
- C. The Contractor acknowledges and agrees that any Entity may enter into a Contract under this Head Agreement with the Contractor to procure SLS Deliverables.
- D. The Contractor acknowledges that DTA may approach the market at its discretion to add additional Panellists to this arrangement or to include additional categories.

Agreed Terms:

Part 1 - General Provisions

1 Operative Provisions

- 1.1 This Head Agreement is intended to operate, and is executed, as a deed.
- 1.2 In this Head Agreement, the definitions and interpretations in Schedule 1 apply. An Entity who has entered into a Contract is referred to as a Customer.
- 1.3 The Contractor must comply with its obligations in the Head Agreement in respect of any Entity who requests Deliverables, whether or not they enter into a Contract or become a Customer.
- 1.4 DTA may exercise any rights of a Customer in connection with the Head Agreement or a Contract. Rights expressed to be for DTA can be exercised by a Customer in respect of a Contract.
- 1.5 DTA may enter into Head Agreements with multiple Panellists. Each Head Agreement will include the Categories for which the Panellist has been included on the Panel.

2 Head Agreement Term

- 2.1 This Head Agreement constitutes a standing offer for the Head Agreement Term during which an Entity may require the Contractor to supply Deliverables.
- 2.2 This Head Agreement commences on the Commencement Date and (unless otherwise lawfully terminated) will continue until the expiry of the Head Agreement Term as specified in Item 5 of Schedule 3.

- 2.3 The Head Agreement Term may be extended by DTA as specified in Item 6 of Schedule 3, on the terms and conditions then in effect, by giving written Notice to the Contractor at least 10 Business Days before the end of the current term.

3 Priority of Documents

- 3.1 If there is inconsistency between any of the documents forming part of this Head Agreement or a Contract, those documents must be interpreted in the following order of priority to the extent of any inconsistency:

- 3.1.1 Schedules 1 and 2;
- 3.1.2 the Agreed Terms;
- 3.1.3 Schedules 3 and 6;
- 3.1.4 for a Contract, the Contract Details; then
- 3.1.5 other Schedules and documents mentioned or incorporated by reference in this Head Agreement or a Contract.

4 Role of DTA

- 4.1 DTA's role is to do (either directly or through a representative) each of the following:
- 4.1.1 administer this Head Agreement, including approving any proposed changes to its terms;
 - 4.1.2 approve or deny any changes to this Head Agreement;
 - 4.1.3 collect data from Panellists and make that data available to Entities;
 - 4.1.4 oversee the proper performance of the Contracts to ensure that Customers obtain the individual benefits to which they are entitled under the Contracts; and
 - 4.1.5 monitor and report on the operation of the Panel, including its operation, viability and usage.
- 4.2 Where an Entity or a Customer is not an Entity that is part of the Commonwealth of Australia, the DTA's role will be as Notified to the Contractor.

5 Role of Contractor and Relationship Between The Parties

- 5.1 The Contractor must:
- 5.1.1 comply with its obligations in this Head Agreement in respect of making Deliverables available to Customers;
 - 5.1.2 provide Deliverables in accordance with any Contract placed under the Head Agreement (for clarity, if the Contractor is:
 - 5.1.2.1 a Software Vendor for a Category, then it must provide required Software Products as well as other Deliverables in its own right; and

- 5.1.2.2 if the Contractor is a Reseller for a Category, it must provide the required Software Products as agent for, or on behalf of, the Software Vendor, as well as other Deliverables in its own right);
- 5.1.3 work together with DTA and Entities in a collaborative manner and in good faith;
- 5.1.4 comply with any reasonable directions given by DTA in respect of this Head Agreement;
- 5.1.5 provide all reasonable assistance required by DTA or an Entity; and
- 5.1.6 communicate with Entities in the manner specified in this Head Agreement and any Contract or as otherwise directed by DTA from time to time.
- 5.2 The Contractor must participate in any forums or meetings, as reasonably requested by DTA, at the Contractor's own expense, in relation to the operation of this Head Agreement and any Contract (including forums or meetings with other contractors or with Entities).
- 5.3 The Contractor must clearly identify itself as a member of the Panel when communicating through telephone, facsimile, email or any other method in relation to this Head Agreement and in the course of performing a Contract.
- 5.4 This Head Agreement does not create a relationship of employment, agency or partnership between the parties or their respective Personnel.
- 5.5 The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

Part 2 - Provision of Deliverables

6 Categories of Deliverables

- 6.1 The Categories included in Schedule 2 encompass SLS Deliverables relative to the procurement and management of Software Products and services available from Software Vendors. Each Category will specify Deliverables available in respect of Contracts relative to a specific Software Vendor.
- 6.2 The Contractor acknowledges that the Categories as described in Schedule 2 may be changed by DTA, including by:
 - 6.2.1 adding new Categories; and
 - 6.2.2 varying existing Categories.
- 6.3 DTA may as required:
 - 6.3.1 invite the Contractor (and other Panellists) to propose variations or additions to the Categories or Deliverables;
 - 6.3.2 conduct evaluations of any variations or additions to the Categories or Deliverables proposed by the Contractor (and other Panellists);
 - 6.3.3 reduce the scope of the Panel arrangement by removing a Category from the Panel by Notice; and

- 6.3.4 approach the market for new Panellists for the provision of existing or additional Categories or Deliverables via request for tender or other method to be determined by the DTA.
- 6.4 For all Categories, the Contractor must provide licensing information to DTA and Entities in relation to Software Products available from the relevant Software Vendor and ensure DTA or Entities are made aware in advance of Software Product licensing changes and enhancements.
- 6.5 The Contractor must provide to DTA and the Entity, information about licensing of Software Products as requested, including via:
 - 6.5.1 telephone;
 - 6.5.2 email;
 - 6.5.3 meetings with Solutions Specialists;
 - 6.5.4 Kick-start Kits;
 - 6.5.5 monthly contract management meetings with DTA, and meetings with an Entity upon request by the Entity;
 - 6.5.6 training in relation to Software licensing as required; or
 - 6.5.7 another communication method as specified by the DTA or by a Customer in relation to a Contract.
- 6.6 The Contractor must supply the Deliverables:
 - 6.6.1 as specified in Schedule 2 and otherwise in accordance with the applicable Contract;
 - 6.6.2 to meet the requirements of this Head Agreement and the applicable Contract and to achieve Acceptance, where applicable;
 - 6.6.3 with due skill and care and to the best of the Contractor's knowledge and expertise;
 - 6.6.4 in accordance with all Laws applicable to the Contractor;
 - 6.6.5 in accordance with Commonwealth policies applicable to this Head Agreement and any Contract; and
 - 6.6.6 so as to meet the Milestones, or where no Milestones requirements are specified, promptly and without delay.

7 Reporting to DTA

- 7.1 At no cost to DTA or any other Entity, the Contractor must provide DTA with the reports for transactions under each Category, in a format or via a tool as agreed by DTA or the Customer, or as set out in a Contract, within 5 Business Days of the beginning of each month.
- 7.2 At a minimum, the reports must be provided by the Contractor monthly and include:
 - 7.2.1 details of the Customer's Contracts for Deliverables in the preceding calendar month, including the:

- 7.2.1.1 Customer's name,
- 7.2.1.2 date of execution of the Contracts;
- 7.2.1.3 any applicable Charges including the agreed Mark Up as a separate data point (inclusive and exclusive of GST);
- 7.2.1.4 equivalent Government estimated retail pricing for that Contract, inclusive of GST;
- 7.2.1.5 quantities and descriptions of any Deliverables invoiced to Entities;
- 7.2.2 the date of provision of access to the Deliverables, including any delays;
- 7.2.3 status of outstanding Service Level issues for any Contract, including expected time to resolve; and
- 7.2.4 if no actual consumption of Deliverables has been made, a response stating 'nil' will be required.
- 7.3 The Contractor must provide copies of invoices and Contracts to DTA upon request to support the Contractor's reports.
- 7.4 The Contractor must promptly provide additional information in respect of this Head Agreement and any Contract as may reasonably be requested by DTA or an Entity from time to time at no additional cost.
- 7.5 For reports specifically developed to meet DTA's requirements, Intellectual Property Rights in these reports provided under this Head Agreement will vest in DTA upon creation.

8 Formation of Contracts

- 8.1 DTA makes no representations about whether any Contracts will be placed and the Contractor is not appointed as the sole provider of any Deliverables to any Entity.
- 8.2 An Entity or DTA may, by issuing to the Contractor a Request For Quote, invite the Contractor to submit a Quotation for specified Deliverables.
- 8.3 Quotations may be requested via:
 - 8.3.1 the Contractor's Account Manager;
 - 8.3.2 email via dedicated email address; or
 - 8.3.3 an On-Line Portal.
- 8.4 The Contractor may be requested to obtain a Tracking Number from DTA and/or other identification number from Entities and display this number in its Quotation and any subsequent Contract.
- 8.5 The Contractor must provide its Quotation to the Entity via a On-Line Portal, if specified by DTA from time to time.
- 8.6 The Contractor must:

- 8.6.1 provide a Quotation by the date and time that the Quotation is required as specified in the Request For Quote; or
- 8.6.2 provide a response indicating that the Contractor does not wish to submit a Quotation or be considered further for the specified Deliverables.
- 8.7 Quotations must reflect and not exceed the amount of Charges calculated in accordance with Schedule 2.
- 8.8 The Entity may accept or reject a Quotation in its absolute discretion.
- 8.9 If the Entity accepts a Quotation, the Entity may enter into a Contract with the Contractor. A Contract may be in the form specified in Schedule 4 (Contract Order Form), or another form approved by the DTA.
- 8.10 Each Contract forms a separate contract between the Customer and the Contractor and will take effect from the later of:
 - 8.10.1 if the Customer wishes the Contract to be signed, the date of execution of the Contract by both parties; or
 - 8.10.2 another date stipulated in the Contract.
- 8.11 DTA reserves the right to require Contracts to be entered into electronically, at its absolute discretion.
- 8.12 The terms of each Contract include the terms of this Head Agreement.
- 8.13 Any terms in a Contract that purport to modify, add to, or which are inconsistent with, this Head Agreement have no effect unless they:
 - 8.13.1 are expressly included in the Contract; and
 - 8.13.2 are recorded as having been agreed to by DTA.
- 8.14 Clause 8.13 also applies to any terms incorporated into a Contract by reference (including by hyperlink or otherwise).
- 8.15 The Customer is not liable to pay any amount for Deliverables provided unless a Contract has been entered into by the Customer for those Deliverables in accordance with this clause 8.
- 8.16 Unless a Contract is terminated earlier in accordance with this Head Agreement, the Contract Term may continue beyond the expiry of this Head Agreement.
- 8.17 Despite the termination or expiry of this Head Agreement, the terms of this Head Agreement continue to apply to a Contract.

9 Cooperation of Third Parties

- 9.1 In the performance of its obligations under a Contract, the Contractor must, at no additional cost to the Customer, fully cooperate with third party contractors (including other Panellists if applicable) appointed by the Customer who supply the same, similar or other products to the Customer (**Third Parties**), including to:

- 9.1.1 work together in a collaborative manner, co-operatively and productively with Third Parties (including providing all reasonable co-operation and assistance requested by Third Parties):
 - 9.1.1.1 to meet the Customer's business requirements, agreed objectives and obligations under the Contract;
 - 9.1.1.2 so that the Customer receives a seamless, end-to-end service within a potentially multi-contractor environment; and
 - 9.1.1.3 so that the Customer is not adversely affected by Deliverables being provided from multiple sources;
- 9.1.2 establish working relationships with Third Parties, including as necessary, through clarifying responsibilities, objectives, expectations, requirements and priorities with Third Parties;
- 9.1.3 develop efficient communications with Third Parties including proactively communicating and sharing information with Third Parties in a meaningful, timely and contractually sensitive and compliant manner;
- 9.1.4 use any co-operation processes and procedures or engagement models specified by DTA or the Customer from time to time and seek to improve these processes, procedures and models over time to improve the performance of the Contractor and other Panellists;
- 9.1.5 know and understand the responsibilities of Third Parties that interact with the Contractor;
- 9.1.6 be flexible and efficiently, ethically and professionally deal with and act towards Third Parties to address any changes to the Customer's business over time;
- 9.1.7 work with the Customer and Third Parties to solve issues with Third Parties in an efficient, effective and ethical manner prior to instituting any dispute in relation to those issues with Third Parties; and
- 9.1.8 use nominated tools and processes or interface with other Third Parties' tools or processes as required by any Contract; and
- 9.1.9 ensure relevant security requirements are adhered to at all times.

10 Resellers

- 10.1 The Contractor may be a Software Vendor or a Reseller of Deliverables, as described in Item 2 of Schedule 3.
- 10.2 The Contractor is responsible for all aspects of the provision of Deliverables under a Contract, irrespective of whether it is a Reseller or a Software Vendor of the Deliverables.
- 10.3 The Contractor's responsibility under clause 10.2 includes responsibility for Software Products provided as an agent for or on behalf of a Software Vendor.

11 Acceptance

- 11.1 The Deliverables delivered under a Contract are subject to Acceptance by the Customer, unless otherwise specified in a Contract.

- 11.2 Clauses 11.3 to 11.5 apply when Acceptance Testing is required in a Contract.
- 11.3 The Contractor must promptly Notify the Customer when the Deliverables are ready for Acceptance Testing, which will be conducted by the Customer unless otherwise specified in a Contract. The Contractor must provide assistance with Acceptance Testing, at no cost, as reasonably requested by the Customer.
- 11.4 In the event that the Deliverables do not pass Acceptance Testing:
- 11.4.1 the Customer may Notify the Contractor that some or all of the relevant Deliverables are not Accepted (along with the reasons for rejection);
 - 11.4.2 the Contractor must, at its own cost, remedy any Deliverables that are not Accepted to meet the requirements of the Contract within 5 Business Days after the date of the Notice not Accepting the Deliverables (or such other time as agreed between the parties in writing); and
 - 11.4.3 allow the Customer to repeat the Acceptance Tests for all or part of the relevant Deliverables.
- 11.5 If any part of the Deliverables delivered under a Contract fail an Acceptance Test on two or more occasions, the Customer may (in addition to its other remedies) terminate the Contract immediately by giving the Contractor written Notice.
- 11.6 Acceptance of a Deliverable does not limit or affect the Contractor's obligations to comply with the Contract. Unless otherwise expressly specified in the Contract, any review, comments, Acceptance or approval of a Deliverable is:
- 11.6.1 no more than an indication that the Deliverable appears to the Customer to be suitable;
 - 11.6.2 not a limit on the Contractor's obligation to comply with the Contract; and
 - 11.6.3 not to be construed as a waiver of any right under the Contract or any cause of action arising out of any act or omission of the Contractor.

12 Service Levels

- 12.1 DTA or a Customer may Notify the Contractor if it assesses the Contractor's provision of Deliverables as not meeting the Service Levels (if any) or other requirements under a Contract or this Head Agreement.
- 12.2 The Contractor must:
- 12.2.1 cooperate with and facilitate (by providing access to the Deliverables) any performance assessment conducted by DTA; and
 - 12.2.2 provide to DTA performance reports in accordance with the requirements of the Head Agreement, Schedule 2, a Contract or as reasonably requested by DTA;
 - 12.2.3 if requested, provide to a Customer performance reports in accordance with the requirements of a Contract, or as reasonably requested by the Customer.
- 12.3 The Contractor is not relieved of responsibility for the Deliverables because of any approval or other comment on performance given by DTA under this Head Agreement.

- 12.4 When advised by DTA or a Customer or otherwise becoming aware of an error or a defect in the Deliverables including any failure to meet a Service Level, the Contractor must promptly do all that is required, within 5 Business Days, to ensure the Deliverables meet the requirements of this Head Agreement or a Contract. The Contractor must Notify the Customer and DTA of the action taken by it under this clause including the outcome of any investigation.
- 12.5 If DTA or the Customer is not satisfied with the Contractor Representative's response to a failure to meet the Service Levels, the issue will be escalated to the Contractor Representative's manager.
- 12.6 DTA reserves the right to suspend the Contractor from providing Deliverables within any specified Category, or under the Panel generally, for a period of time in accordance with clause 19.1.
- 12.7 DTA reserves the right to request a new Contractor Representative or Account Manager, or a change to any other Personnel providing Deliverables, if the current incumbent's performance has not met any requirements of this Head Agreement or a Contract, including the Service Levels.

13 Rights in Customer Material

- 13.1 Except as provided for in the Contract, the Customer is not required to provide any Customer Material to the Contractor to assist it to provide the Deliverables. The Contractor must provide all resources or information needed to comply with a Contract.
- 13.2 To the extent that the Contractor needs to use or may access any of the Customer Material, for the purpose of performing its obligations under a Contract, the Customer grants to the Contractor a world-wide, royalty-free, non-exclusive, non-transferable licence to use and communicate such Material solely for the purpose of performing these obligations and subject to any restrictions notified by the Customer.
- 13.3 The Contractor must ensure that Customer Material supplied to it or hosted by it is used and hosted only for the purposes of performing its obligations under the Contract and in accordance with any direction by the Customer.
- 13.4 Customer Material remains, at all times, the property of the Customer.
- 13.5 If a Customer provides the Contractor with Customer Material, the Contractor must not without the prior written approval of the Customer:
- 13.5.1 modify that Customer Material other than for the purposes of the Contract; or
 - 13.5.2 destroy, or cause to be destroyed, any Customer Material in the care, custody or control of the Contractor.
- 13.6 The Contractor must:
- 13.6.1 comply with the Customer's requirements for security;
 - 13.6.2 remove all Customer Material from its possession that is not required by the Contractor for the purpose of performing the Contractor's obligations under this Head Agreement; and

13.6.3 at the Customer's request at any time, promptly return all Customer Material held or accessed by it, to the Customer, in a non-proprietary format that is readily usable by the Customer, or otherwise treat it as directed by the Customer.

14 Licence and Usage Rights for Software Products

14.1 Subject to this clause 14:

14.1.1 for Deliverables that are Software Products:

14.1.1.1 where the Contractor is the Software Vendor, the Contractor to the Customer grants, for the Contract Term (and at no additional cost), an irrevocable right to exercise the licensed rights specified in the Contract, or as applicable to the Deliverable; and

14.1.1.2 where the Contractor is not the Software Vendor, the Contractor must obtain the grant from the Software Vendor to the Customer, for the Contract Term (and at no additional cost), of an irrevocable right to exercise the licensed rights specified in the Contract, or as applicable to the Deliverable; and

14.1.2 for all Deliverables, the Contractor to the Customer grants for the Contract Term (and at no additional cost) an irrevocable right to:

14.1.2.1 use, and permit use by its Personnel, any Software required to receive the benefit of the Deliverables;

14.1.2.2 test, evaluate and confirm the suitability (acceptance), compliance with Service Levels and operation of the Deliverables; and

14.1.2.3 assign the rights in clause 14.1 to any other Entity where those Entities require the Deliverables as a result of an Administrative Arrangements Order.

14.2 The licence and usage rights in clause 14.1 apply to and for the term of any Contract created in accordance with this Head Agreement and continue for that term regardless of the expiry of this Head Agreement.

14.3 The rights in this clause 14 apply to the Customer's (and its users') use of the Deliverables to the exclusion of any terms of conditions of use, restrictions or additional charges set out in any other agreements, including but not limited to any:

14.3.1 licensing or usage statements;

14.3.2 shrink wrap arrangements;

14.3.3 hyperlink terms; or

14.3.4 click-wrap arrangements,

wherever appearing, and whether or not user 'acceptance' is required or provided.

14.4 The Contractor must ensure that the Customer (or any of its users) are not required to accept or comply with any usage or other terms in respect of the Deliverables, including any such terms originating from the Software Vendor or any other owner or supplier of the Deliverables. Where user 'acceptance' of such terms is necessary in order to access

Deliverables, such acceptance is deemed to be acceptance of the terms of the Contract, to the exclusion of all other terms, and does not create a separate contract with users or impose terms and conditions that are not included in the Contract.

15 Intellectual Property Rights

- 15.1 In addition to clause 14, the Contractor grants the Customer all Intellectual Property Rights and any Moral Rights it needs to use the Deliverables in accordance with a Contract (including any Existing Material in those Deliverables and irrespective of whether the Contractor or any third party owns those Intellectual Property Rights).
- 15.2 The Customer retains Intellectual Property Rights in data and Customer Material stored in the Deliverables received as part of the Contract.
- 15.3 The Customer owns Intellectual Property Rights in any New Material developed for a Contract, from the date of creation, unless otherwise specified in a Contract.

16 Contractor Representations and Agreements

- 16.1 The Contractor represents and agrees that:
 - 16.1.1 the Deliverables will be delivered in accordance with the requirements of this Head Agreement and the Contract, including any specifications and representations in those documents,
 - 16.1.2 the use of any Material provided under this Head Agreement in accordance with this Head Agreement, or provided under a Contract in accordance with that Contract, will not infringe any third party's Intellectual Property Rights or other third party restrictions on use;
 - 16.1.3 there are no provisions in the Contractor's own contracts with its Subcontractors or Software Vendors, that if observed, would cause the Contractor not to comply, or be able to comply, with any requirement under this Head Agreement; and
 - 16.1.4 none of its Personnel:
 - 16.1.4.1 have unlawfully entered or remain in Australia; or
 - 16.1.4.2 are working in Australia in breach of their visa conditions.
- 16.2 If, during the duration of this Head Agreement a representation and agreement in clause 16.1 is breached the Contractor must promptly:
 - 16.2.1 Notify DTA in writing of all details relating to why the representation and agreement is no longer accurate; and
 - 16.2.2 remedy the defect at the Contractor's cost or take any other action as directed by DTA.

17 Performance Assessment and Management

- 17.1 The Contractor must report to DTA in accordance with the Head Agreement and Schedule 2, and as otherwise requested on performance under this Head Agreement including the number of current Contracts and their progress.

- 17.2 The Contractor must promptly provide any additional information in respect of this Head Agreement and any Contracts as reasonably requested by DTA from time to time.
- 17.3 Following each anniversary of the Commencement Date of the Head Agreement, the DTA may comprehensively review the operation of the Head Agreement and the Contracts, including the compliance by the Contractor within the Deliverable requirements and any Service Levels specified in a Contract. This may require the cooperation of the Contractor.
- 17.4 The Head Agreement review, which will include information derived from the review of the Contracts, will be undertaken by the Contractor, DTA and any Customers nominated by DTA.
- 17.5 Following each anniversary of the Commencement Date of each Contract, the Contractor and the Customer may comprehensively review the operation of the Contract, including the compliance by the Contractor within the Deliverable requirements and any Service Levels specified in a Contract. DTA may have such involvement in that review as DTA may Notify to the Contractor.
- 17.6 The Contractor must (to the extent that the Contractor has access to relevant data) comply with any specific obligations for review specified by Notice from DTA or a Customer or as specified in a Contract. This may include provision of data and participation in meetings.
- 17.7 Each party must bear its own costs of any review conducted under this clause 17.

18 Benchmarking

- 18.1 From time to time during the Term, DTA may:
- 18.1.1 undertake benchmarking to measure the standards of delivery and cost of the Deliverables in part or in the aggregate to determine if the performance of the Contractor matches and the Charges are competitive with, then current market prices and standards of delivery for similar items; and
 - 18.1.2 undertake benchmarking of some or all of the Deliverables.
- 18.2 Benchmarking will be conducted in accordance with the timing and procedures determined by DTA. DTA will consult the Contractor on these matters and benchmarking will not occur more than once every 12 months.
- 18.3 Without limiting the rights of DTA, DTA may release benchmarking results to:
- 18.3.1 other Entities;
 - 18.3.2 Ministers and their advisors;
 - 18.3.3 the Commonwealth Parliament or Committee of the Commonwealth Parliament, or a State or Territory Parliament or Assembly or Committee of such Parliament or Assembly; and
 - 18.3.4 advisers to DTA who have executed an appropriate confidentiality undertaking.
- 18.4 If the benchmarking shows that the Charges are not priced competitively for similar Deliverables, unless the Contractor satisfies DTA that the difference in price is due to the relevant Contract's unique requirements and not due to the Contractor's performance:

- 18.5 the Contractor agrees to assist DTA for a 3 month period to determine the causes of the findings from the benchmarking and proactively seek resolution within 60 days;
- 18.5.1 if no resolution is reached within 60 days, the Charges (including the Charges payable under any Contract) will be deemed to be reduced by the amount of the excess determined in the manner described in clause 18.4 from the end of that period;
- 18.5.2 Schedule 2 must be updated to reflect the reduced Charges; and
- 18.5.3 the reduced Charges must be reflected in subsequent invoices or may be set-off by a Customer against any invoice received under a Contract.
- 18.6 A Dispute in relation to benchmarking will be resolved in accordance with clause 32 of this Head Agreement.

19 Changes To The Panel or Deliverables

- 19.1 Without limiting any other rights or remedies DTA may have against the Contractor arising out of or in connection with this Head Agreement, DTA may, by giving Notice to the Contractor, impose a change or a suspension in respect of any one or more Categories (including any Deliverables provided within any one or more Category) which is specified in Schedule 2 for the Contractor if one or more of the following occurs:
- 19.1.1 DTA has received substantiated negative feedback from a Customer in respect of the performance of the Contractor;
- 19.1.2 DTA considers that Deliverables provided by the Contractor do not meet the applicable Service Levels for those Deliverables; or
- 19.1.3 DTA considers that the Contractor is not providing Deliverables in accordance with this Head Agreement and any Contract.
- 19.2 DTA has a right to terminate this Head Agreement in accordance with clause 33.
- 19.3 If DTA imposes a change or suspension in accordance with clause 19.1:
- 19.3.1 DTA must Notify the Contractor of the reason for imposing the change or suspension;
- 19.3.2 for a suspension, the following apply until the suspension is lifted in accordance with clause 19.4:
- 19.3.2.1 the Contractor must promptly Notify DTA if it receives any Contract for the provision of Deliverables under the suspended Category;
- 19.3.2.2 the Contractor must not enter into a Contract with an Entity for any Deliverables under the suspended Category;
- 19.3.2.3 if the Contractor does enter into a Contract, it has no right to require payment from the Customer; and
- 19.3.2.4 each party must continue to perform all of its other obligations under this Head Agreement and all existing Contracts. To avoid doubt, Entities rights and obligations continue under existing Contracts.

- 19.4 DTA may at any time lift a change or suspension that it has imposed in accordance with clause 19.1 by issuing a Notice to the Contractor that the change or suspension is lifted. DTA must lift the change or suspension promptly after the Contractor demonstrates to DTA's satisfaction that the Contractor has rectified the issue that caused the change or suspension.

Part 3 - Financial Provisions

20 Payment for Deliverables

- 20.1 The Charges payable by the Customer to the Contractor under a Contract will comprise:
- 20.1.1 for Deliverables that are Software Products - the Software Price and, if the Contractor is a Reseller, the applicable Mark Up; and
 - 20.1.2 for other Deliverables - the Service Price,
- which must not exceed the amounts for these Charges described in Schedule 2 for the Deliverables provided by the Contractor under the Contract. *[Note to Tenderers: For Category 1, Schedule 2 will contain additional requirements – ie, the Mark Up is to be calculated as a percentage of the charges payable for Microsoft Products under the VSA for Commonwealth Entities.]*
- 20.2 The Charges paid to the Contractor are in full satisfaction of any obligation owed by the Customer:
- 20.2.1 to the Contractor; and
 - 20.2.2 if the Contractor is a Reseller, to the applicable Software Vendor,
- in respect of Deliverables.
- 20.3 The Charges specified in the Contract are payable on receipt of a correctly rendered invoice, 30 days in arrears, unless the Customer and the Contractor agree to alternative terms in a Contract.
- 20.4 The Contractor must not:
- 20.4.1 levy Charges or seek any other compensation for the development of Deliverables if it has previously received Charges under any Contract for the development of the same; or
 - 20.4.2 charge the Customer for any additional charges, fees or expenses (including travel and accommodation, document reproduction, transportation and courier fees, and telecommunications fees) in addition to the Charges.
- 20.5 The Customer may, in respect of any amounts owing to it under a Contract:
- 20.5.1 require the Contractor to pay the amount (and the Contractor must comply with the request);
 - 20.5.2 require the Contractor to adjust the next invoice; or
 - 20.5.3 set-off the amount against any amounts owing to the Contractor.

- 20.6 The Contractor must provide correctly rendered GST compliant invoices to the Customer that includes the following details:
- 20.6.1 the Tracking Number, name of the Customer, a description of the Deliverables provided, including the Charges, for the relevant period or the achievement of the event to which the invoice relates; and
 - 20.6.2 any further information required by the Contract or reasonably requested by the Customer.
- 20.7 For the purposes of clause 20.6, an invoice is correctly rendered if:
- 20.7.1 it is correctly addressed and calculated in accordance with the applicable Contract;
 - 20.7.2 it relates only to Deliverables that have been delivered in accordance with the applicable Contract; and
 - 20.7.3 it is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('**GST Act**').
- 20.8 A Customer may withhold from any payment due to the Contractor, such amounts that the Customer deems reasonable or appropriate to protect it from loss because of any failure by the Contractor, in any material respect, to perform its obligations under the Contract, until such time as the Customer is satisfied that those obligations have been completed.
- 20.9 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and may be offset against any amount subsequently due by the Customer to the Contractor. The Customer may at its sole discretion require that interest at the general interest rate charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) be paid on the overpaid amount until the amount is repaid to the Customer in full.
- 20.10 Charges cannot be increased by the Contractor except in accordance with this Head Agreement. For clarity, any rights to increase the Charges included in any documents incorporated or referred to in a Contract have no effect.
- 20.11 The payment of moneys under an invoice is to be taken to be payment on account only and any such payment is not to be taken as evidence against or an admission by the Customer:
- 20.11.1 of the value of any Deliverables; or
 - 20.11.2 of any Deliverables having been performed in accordance with the Contract.

21 GST

- 21.1 In this clause 21, a word or expression defined in the GST Act has the meaning given to it in that Act.
- 21.2 If the Contractor makes a delivery under or in connection with a Contract in respect of which GST is payable, the Customer named in the Contract must pay to the Contractor the GST payable as part of the Charges ('**GST Amount**').

- 21.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 21.6.
- 21.4 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- 21.5 If any discounts are being applied to a Customers Invoice (i.e. early payment discounts), such discounts must be applied prior to the calculation of GST on the Invoice.
- 21.6 If the GST payable by a Contractor on any supply made under or in connection with a Contract varies from the GST Amount paid or payable by the Customer under clause 21.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the Contract, then the Contractor must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Customer.
- 21.7 Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 21.2.
- 21.8 If an adjustment event occurs in relation to the Contract, the Contractor must issue an adjustment note to the Customer in relation to that supply within 10 Business Days after becoming aware of the adjustment.
- 21.9 A party need not make a payment for a taxable supply made under or in connection with a Contract:
- 21.9.1 until it receives a tax invoice for the Deliverables to which the payment relates; and
 - 21.9.2 in the case of a tax invoice issued by the Contractor, the tax invoice complies with clause 20, unless any requirement of that clause is inconsistent with the GST Act.

22 Taxes, Duties and Government Charges

- 22.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Head Agreement must be borne by the Contractor.

Part 4 - Information Management

23 Confidentiality

- 23.1 A party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party, unless the Confidential Information:
- 23.1.1 is disclosed to its Personnel only to the extent strictly necessary in order for it to manage and perform its obligations or to exercise or enforce its rights under this Head Agreement or a Contract;
 - 23.1.2 is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of activities related to this Head Agreement or a Contract;

- 23.1.3 is disclosed within an Entity or to DTA (or another Entity), if this serves the Commonwealth's or the Entity's legitimate interests;
 - 23.1.4 is disclosed by an Entity to the Responsible Minister and his or her advisers;
 - 23.1.5 is disclosed by an Entity in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the Entity is a State or Territory Entity, or otherwise to meet public accountability obligations;
 - 23.1.6 disclosure is authorised or required by Law, including under this Contract, under a licence or otherwise, to be disclosed; or
 - 23.1.7 is in the public domain other than as a result of a breach of this clause 23.
- 23.2 Where a party discloses Confidential Information to another person:
- 23.2.1 if the disclosure is under clause 23.1.1 or 23.1.2, the party making the disclosure must, if required by the other party, obtain from the recipient a properly executed Confidentiality Undertaking (subject to clause 23.3); and
 - 23.2.2 if the disclosure is under clauses 23.1.3, 23.1.4, 23.1.5 or 23.1.6, the party making the disclosure must inform the recipient of the confidential nature of the information.
- 23.3 A Confidentiality Undertaking will not be required under clause 23.2.1 if the party making the disclosure confirms to the other party in writing that the recipient is an individual who is bound by obligations in their employment or services contract not to disclose the Confidential Information. The party making the disclosure must use all reasonable endeavours to enforce those obligations.
- 23.4 The Contractor must not make a public announcement about the Head Agreement or a Contract, or any transaction contemplated by the Head Agreement or a Contract, unless it has:
- 23.4.1 DTA's written agreement if the announcement concerns the Head Agreement; and
 - 23.4.2 the Customer's written agreement if the announcement concerns a Contract,
- except if the public announcement is required by Law or a regulatory body (including a relevant stock exchange).
- 23.5 If the Contractor is required by Law or a regulatory body to make a public announcement in connection with:
- 23.5.1 the Head Agreement or any Contract; or
 - 23.5.2 any transaction contemplated by the Head Agreement or a Contract,
- the Contractor must:
- 23.5.3 limit the public announcement to the extent required by the relevant Law or regulatory body;
 - 23.5.4 to the extent practicable, first consult with and take into account the reasonable requirements of DTA and the Customer (as applicable); and

- 23.5.5 not include or disclose the Customer's name, logo or identify any information, including in any list of the Contractor's customers, online or informational materials unless otherwise authorised in writing by the Customer.
- 23.6 Nothing in clauses 23.4 to 23.5 prohibits DTA or a Customer from disclosing to DTA Personnel or Customer Personnel, or the Contractor from disclosing to Contractor Personnel, the fact of the Head Agreement or any Contract and the subject matter of those agreements, provided that the confidentiality obligations set out in this clause 23 are complied with.

24 Protection of Personal Information

- 24.1 This clause 24 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Deliverables. In this clause 24, 'Eligible Data Breach', 'Personal Information', 'Approved Privacy Code' and 'Australian Privacy Principles' have the meaning given to those terms in the *Privacy Act 1988* (Cth) (**Privacy Act**).
- 24.2 The Contractor must:
- 24.2.1 not breach any privacy laws in its collection, use, storage or disclosure of data;
 - 24.2.2 use or disclose Personal Information obtained during the course of performing this Head Agreement and any Contract only for the purposes of this Head Agreement and the Contract;
 - 24.2.3 carry out and discharge the obligations contained in the Australian Privacy Principles as if it were an Entity under the Privacy Act;
 - 24.2.4 not use or disclose Personal Information or engage in an act or practice that would breach a registered Approved Privacy Code that is applicable to the Contractor; and
 - 24.2.5 assist the Commonwealth to meet its obligations in relation to Personal Information collected, used or disclosed in connection with the Deliverables.

Part 5 - Risk Management

25 Indemnities

- 25.1 The Contractor indemnifies the Customer and their Personnel ('**Indemnified Parties**') in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal expenses on a solicitor own client basis) which any of the Indemnified Parties pays, suffers, incurs or for which it is liable in connection with:
- 25.1.1 any breach of this Head Agreement or a Contract by the Contractor;
 - 25.1.2 any infringement by the Contractor of the Intellectual Property Rights of, or usage restrictions imposed by, a third party; and
 - 25.1.3 any negligent, unlawful, illegal, fraudulent or dishonest act, error or omission of the Contractor and its Personnel in the provision of the Deliverables.
- 25.2 The indemnity in clause 25.1 will be reduced proportionally to the extent that the Indemnified Parties caused or contributed to the breach, error or omission, or improperly and unnecessarily incurred any such claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payments.

- 25.3 The Indemnified Parties must take all reasonable steps to mitigate their losses which may be subject to a claim for payment under clause 25.1.
- 25.4 A Customer may enforce the indemnity in clause 25.1 on behalf of its Personnel.
- 25.5 In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of DTA, it must comply at all times with government policy and obligations relevant to the conduct of the litigation as notified by DTA.

26 Limitation Of Liability

- 26.1 The parties agree that the Contractor's maximum liability to a Customer under a Contract entered into under this Head Agreement is limited to the higher of:
- 26.1.1 three times the value of the Contract; or
 - 26.1.2 the amount set out in the applicable Contract.
- 26.2 The limit on liability under clause 26.1 does not apply in relation to liability for:
- 26.2.1 personal injury (including sickness or death);
 - 26.2.2 loss, or damage to tangible property;
 - 26.2.3 an infringement of third party Intellectual Property Rights;
 - 26.2.4 a breach of any obligation of confidentiality, the security obligations in clause 13, or privacy;
 - 26.2.5 malicious, unlawful or illegal acts or conduct; or
 - 26.2.6 any conduct that would amount to repudiation.

27 Conflict of Interest

- 27.1 If, during the performance of this Head Agreement or any Contract a Conflict of Interest arises, or appears likely to arise, the Contractor must:
- 27.1.1 Notify DTA immediately in writing;
 - 27.1.2 make full disclosure of all relevant information relating to the Conflict of Interest; and
 - 27.1.3 take all steps that DTA reasonably requires the Contractor to take in order to resolve or otherwise deal with the Conflict of Interest.

28 Insurance

- 28.1 The Contractor must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels:
- 28.1.1 for the Term of the Head Agreement and any Contract which survives the expiry or termination of the Head Agreement:
 - 28.1.1.1 minimum \$20,000,000.00 per claim for public liability;

- 28.1.1.2 minimum \$2,000,000.00 per claim for either professional indemnity or errors and omissions;
- 28.1.1.3 minimum \$10,000,000.00 per claim for product liability;
- 28.1.1.4 workers' compensation as required by law; and
- 28.1.1.5 any other, or increased, insurance specified in a Contract; and
- 28.1.2 for 7 years following the expiry or termination of the later of the Head Agreement or any Contract, \$2,000,000.00 per claim either professional indemnity or errors and omissions.
- 28.2 The Contractor must, on request by DTA or the Customer, provide to DTA or the Customer, within 5 Business Days, proof of the currency of the required insurances.

29 Guarantees

- 29.1 If required by DTA, the Contractor must provide DTA within the timeframe specified by DTA with an executed:
 - 29.1.1 Performance Guarantee in a form acceptable to DTA; and/or
 - 29.1.2 Unconditional Financial Undertaking in a form acceptable to DTA,
 for the benefit of DTA and any Customer under a Contract.

Note: DTA will manage Performance Guarantees and Unconditional Financial Undertakings. An Entity may only require the Contractor to provide a Performance Guarantee and/or Unconditional Financial Undertaking for a Contract if DTA has provided its prior written approval to the Entity to do so. Normally Performance Guarantees and Unconditional Financial Undertakings will be taken out at the Head Agreement rather than Contract level.
- 29.2 DTA may require the Contractor to increase or reduce the amount of the Unconditional Financial Undertaking from time to time. The Contractor must comply with any such request.
- 29.3 If the Contractor does not comply with any of its obligations under this Head Agreement or any Contract, DTA may call on either or both of any Performance Guarantee and/or Unconditional Financial Undertaking (at DTA's absolute discretion) without Notice to the Contractor, including to reflect any loss suffered by DTA or a Customer.
- 29.4 If DTA calls on an Unconditional Financial Undertaking under clause 29.3, DTA may, by written Notice to the Contractor, require the Contractor to provide a replacement or additional Unconditional Financial Undertaking and the Contractor must provide such replacement or additional Unconditional Financial Undertaking to DTA within 5 Business Days after the date of the Notice.
- 29.5 All costs incurred in obtaining and maintaining the required security will be met by the Contractor.

30 Accounts, Books and Records

- 30.1 The Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by the Customer under this Head Agreement to be determined.

31 Audit and Access

- 31.1 DTA in respect of the Head Agreement or Contract, and the Customer in respect of the Contract to which it is a party, or a person or organisation nominated by DTA or the Customer, as applicable, may conduct audits relevant to the performance of the Contractor's obligations under the Head Agreement or Contract at any time.
- 31.2 Audits may be conducted if they relate to this Head Agreement or Contract of:
- 31.2.1 the Contractor's operational practices and procedures as they relate, including security procedures;
 - 31.2.2 the accuracy of the Contractor's invoices and reports in relation to the provision of Deliverables;
 - 31.2.3 the Contractor's compliance with its confidentiality, privacy and security and other obligations;
 - 31.2.4 Material (including books and records) in the possession of the Contractor relevant to the Deliverables; and
 - 31.2.5 any other matters reasonably determined by DTA or the Customer to be relevant to the Deliverables.
- 31.3 DTA in respect of the Head Agreement or Contract, and the Customer in respect of a Contract to which it is a party, or a person nominated by DTA or the Customer, as applicable, may, at reasonable times and on giving reasonable Notice to the Contractor:
- 31.3.1 access the premises of the Contractor to the extent relevant to the performance of the Contract;
 - 31.3.2 require the Contractor to allow access by the Customer in Australia; and
 - 31.3.3 inspect and copy relevant documents, books and records, however stored, in the possession, custody or control of the Contractor or its Personnel.
- 31.4 The Contractor must comply with any request from DTA or the Customer, as applicable, for the Contractor to:
- 31.4.1 give DTA or the Customer, or their nominee, copies of records and information in a data format and storage medium accessible by DTA or the Customer by use of the Customer's existing computer hardware and Software or other facilities; and
 - 31.4.2 provide assistance in respect of any inquiry into or concerning the Head Agreement or Contract. For this purpose, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to DTA or the Customer's organisation), any request for information directed to DTA or the Customer, and any inquiry conducted by the Commonwealth Parliament or any Committee of the Parliament of the Commonwealth, or by a State or Territory Parliament or Assembly if the Customer is a State or Territory Entity.
- 31.5 The Contractor must provide access to its computer hardware and Software in Australia to the extent necessary for DTA or the Customer to exercise its rights under this clause 31, and provide DTA or the Customer, or their nominee, with any reasonable assistance requested by DTA or the Customer to access that hardware and Software.

- 31.6 DTA and the Customer must use reasonable endeavours to ensure that:
- 31.6.1 audits are performed pursuant to clause 31.1;
 - 31.6.2 they exercise the general rights granted by clauses 31.1, 31.2 and 31.3; and
 - 31.6.3 they do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Head Agreement or Contract.
- 31.7 Each party must bear its own costs of all inspections, access and audits.
- 31.8 The rights of DTA and the Customer under clauses 31.3 and 31.4 apply equally to the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner, the Privacy Commissioner or a delegate of the Privacy Commissioner and the Ombudsman or a delegate of the Ombudsman for the purpose of performing the Auditor-General's, the Information Commissioner's, the Privacy Commissioner's or Ombudsman's statutory functions or powers or, if the Customer is a State or Territory Entity, to the equivalent office holders in that State or Territory (each an '**Authorised Investigator**').
- 31.9 The Contractor must do all things necessary to comply with the requirements of an Authorised Investigator, notified under clauses 31.1 and 31.2, provided such requirements are legally enforceable and within the power of the Authorised Investigator.
- 31.10 Nothing in the Head Agreement or any Contract reduces, limits or restricts in any way any function, power, right or entitlement of an Authorised Investigator. The rights of DTA and the Customer under this clause 31 are in addition to any other power, right or entitlement of an Authorised Investigator.
- 31.11 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Head Agreement or Contract.
- 31.12 The Contractor must ensure that any subcontract entered into for the purpose of the Head Agreement or Contract contains an equivalent clause granting the rights specified in this clause 31.
- 31.13 The Contractor must promptly take, at no additional cost to DTA or the Customer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Contractor has performed its obligations under the Head Agreement or Contract, including the way the Contractor has:
- 31.13.1 supplied any Deliverables; or
 - 31.13.2 calculated Charges, or any other amounts or fees billed to the Customer.

32 Dispute Resolution

- 32.1 If a dispute ('**Dispute**'), arises in relation to the conduct of this Head Agreement or any Contract a party must comply with this clause 32, before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). If a party has sought or obtained any urgent interlocutory relief that party must then follow this clause 32.
- 32.2 A Party claiming a Dispute has arisen must give the other parties to the Notice setting out details of the Dispute.

- 32.3 During the 10 Business Days after a Notice is given under clause 32.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period or such longer period that they may agree to, they must refer the Dispute to a mediator (or if the dispute is solely in relation to a factual issue and not, for example, to the interpretation of this Head Agreement or a Contract, to an expert) if one of them requests.
- 32.4 Despite the existence of a Dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their obligations under this Head Agreement and any Contracts.
- 32.5 If the Parties to the Dispute cannot agree on an expert or mediator within 5 Business Days after a request under clause 32.3, DTA will appoint an expert or mediator, as applicable.
- 32.6 The Parties agree to be bound by the determinations of the expert appointed under clauses 32.3 and 32.4 or 32.5.
- 32.7 The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 15 Business Days of the request for mediation in clause 32.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.
- 32.8 Any information or documents disclosed by a party under this clause 32:
- 32.8.1 must be kept confidential; and
- 32.8.2 may only be used to attempt to resolve the Dispute.
- 32.9 Each Party to a Dispute must pay its own costs of complying with this clause 32. The parties to the Dispute must equally pay the costs of any expert or mediator.
- 32.10 A party to a Dispute may terminate the dispute resolution process by giving Notice to the other party after it has complied with clauses 32.1 to 32.7. Clauses 32.8 and 32.9 survive termination of the dispute resolution process.
- 32.11 If a party to a Dispute breaches clauses 32.1 to 32.10, the other party does not have to comply with those clauses in relation to the Dispute.
- 32.12 This clause 32 does not apply to any action undertaken by either party under, or purportedly under clause 33.

33 Termination and Reduction of Scope

- 33.1 DTA may, at any time, by giving not less than 7 Business Days' Notice to the Contractor,
- 33.1.1 terminate this Head Agreement or a Contract;
- 33.1.2 reduce the scope of the Deliverables; or
- 33.1.3 remove the Contractor from a Category.
- 33.2 A Customer may, at any time, by giving not less than 7 Business Days' Notice to the Contractor, terminate a Contract between the Customer and the Contractor, remove the Contractor from a Category, or reduce the scope of the Deliverables in relation to a Contract between the Customer and the Contractor. If a Customer exercises its right under this clause,

the Contractor must, in addition to its obligations in clause 34, assist the Customer to transfer the Deliverables to an alternative service provider on request.

- 33.3 If this Head Agreement or a Contract is terminated under clause 33.1 or 33.2, DTA and the Customer are not liable for any costs incurred or loss of profit by the Contractor that are attributable to the termination.
- 33.4 DTA is not liable for any costs whatsoever in respect of a Contract(s) between a Contractor and a Customer if a Customer chooses to terminate a Contract(s) (for whatever reason) before or after DTA terminates the Head Agreement.
- 33.5 Without limiting any other rights or remedies DTA or a Customer may have against the Contractor arising out of or in connection with this Head Agreement or a Contract, DTA may terminate this Head Agreement or a Customer may terminate a Contract effective immediately by giving Notice to the Contractor if:
- 33.5.1 the Contractor breaches a material provision where that breach is not capable of remedy;
 - 33.5.2 the Contractor does not comply with an obligation in clause 16.2.1 or clause 16.2.2;
 - 33.5.3 a machinery of government change means that termination or reduction in scope, is necessary in the opinion of the Customer or DTA (as applicable);
 - 33.5.4 the Contractor breaches any provision and fails to remedy the breach within 10 Business Days or such longer period as may be specified in the Notice after receiving Notice requiring it to do so;
 - 33.5.5 the Contractor would incur liability which but for clause 26 would exceed the limitation amount set out in this Head Agreement or the Contract;
 - 33.5.6 another provision of the Head Agreement or the Contract permits the DTA or the Customer to terminate the Head Agreement or Contract; or
 - 33.5.7 an event specified in clause 33.6 happens to the Contractor.
- 33.6 The Contractor must Notify DTA and any Customers promptly if:
- 33.6.1 there is a change in control of the Contractor;
 - 33.6.2 the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - 33.6.3 the Contractor ceases to carry on business;
 - 33.6.4 the Contractor ceases to be able to pay its debts as they become due;
 - 33.6.5 the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed under *Corporations Act 2001* (Cth);
 - 33.6.6 the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or

- 33.6.7 where the Contractor is a partnership, any step is taken to dissolve that partnership.
- 33.7 The following clauses survive the expiry or termination of the Head Agreement or any Contract: 0 (Security, Data Protection and Data Mining), 14 (Intellectual Property Rights), 16 (Contractor Representations and Agreements), 34 (Disengagement), 23 (Confidentiality), 25 (Indemnities), 26 (Limitations of Liability), 28 (Insurance), 30 (Accounts, Books and Records), 31 (Audit and Access) and Schedule 6 (Commonwealth Policy).
- 33.8 Expiry or termination of the Head Agreement, or a Contract, does not affect any accrued rights or remedies of a party.

34 Disengagement

- 34.1 The Contractor must take all actions that are reasonably necessary to ensure there is an efficient and effective disengagement from the Deliverables and/or transfer to the Customer or its nominee in the event of expiry or termination of a Contract, so as to cause minimum disruption and inconvenience to the Customer. Without prejudice to the generality of that obligation, the Contractor must:
- 34.1.1 liaise with the Customer to plan and implement all necessary actions;
- 34.1.2 comply with its security and data protection obligations in this Head Agreement and the Contract; and
- 34.1.3 transfer to the Customer or its nominee all Customer Material in a non-proprietary format that is readily usable by the Customer or its nominee and sufficient information to allow reading of, searching of, interpretation and processing of the Material by the Customer or its nominee.
- 34.2 If required, the Contractor must provide to the Customer such verification that the Customer or its nominee reasonably requires, verifying the Contractor's performance of its obligations under clause 34.1.
- 34.3 The Contractor must not destroy any Customer Material unless it has prior written approval of the Customer.

Part 6 - Law and Policy

35 Laws and Policies

- 35.1 The Contractor must, in performing its obligations under this Head Agreement, comply with all applicable Laws. When the Contractor is performing its obligations in relation to an Entity who is also an entity as defined by the Public Governance and Performance Accountability Act, the Contractor must also comply with applicable Commonwealth policy, including the requirements set out in Schedule 6 and as notified to the Contractor by DTA or a Customer from time to time.

Part 7 - Standards and Codes

36 Standards and Codes

- 36.1 The Contractor must, in providing the Deliverables, comply with any Standards, industry codes and methodologies specified in the Head Agreement or a Contract.

- 36.2 The Contractor must, if requested in writing by DTA or a Customer, provide evidence of its compliance with any applicable Standards, industry codes and methodologies.

Part 8 - Miscellaneous

37 Head Agreement Administration

- 37.1 The Contractor Representative is responsible for administration of this Head Agreement on behalf of the Contractor and must:

37.1.1 assign to DTA a Head Agreement Account Manager, to assist with day to day activities in relation to the management of the Head Agreement and any Contracts;

37.1.2 be able to answer enquiries, queries or requests for quotation for Deliverables;

37.1.3 be contactable within Business Hours; and

37.1.4 ensure that their contact details are accurate and up to date at all times.

- 37.2 The Contractor Representative must have sufficient authority within the Contractor's organisation to be able to resolve any issues that arise, in a prompt and effective manner.

- 37.3 The Contractor Representative and Account Manager (as at the Commencement Date) are the persons identified in Item 3 and Item 4 of Schedule 3.

- 37.4 DTA may request an alternate Head Agreement Account Manager and the Contractor must nominate an alternative when requested.

- 37.5 The Customer Representative named in a Contract is responsible for administration of the applicable Contract to which the Customer is a party on behalf of the Customer. The Customer Representative and DTA are the only parties authorised to agree to changes to a Contract.

- 37.6 The DTA Representative is responsible for administration of this Head Agreement on behalf of DTA. The DTA Representative is the only person authorised to agree to changes to this Head Agreement.

- 37.7 The DTA Representative will be nominated by Notice to the Contractor from time to time. At the Commencement Date the DTA Representative is:

Director Hardware Software and Services, ICT Procurement Branch
Digital Transformation Agency
50 Marcus Clarke Street
Canberra ACT 2601

Email: ICTProcurement@DTA.gov.au

- 37.8 The Customer Representative will be identified in the relevant Contract.

- 37.9 The Contractor Representative, the Account Manager, the Customer Representative and the DTA Representative may each delegate their functions, or authorise that their functions be carried out on their behalf. The Contractor, Customer or DTA, as appropriate, must Notify the other party of any such delegation or authorisation.

- 37.10 Any oral directions given by a party that, in the other party's opinion will have an impact on scope, costs, timing or resources relevant to the Head Agreement or a Contract, must be confirmed by Notice from the party's Representative in accordance with the Head Agreement or a Contract, within a reasonable period.
- 37.11 DTA may need to escalate issues where there is an insufficient response from the Head Agreement Account Manager or Contractor Representative. In this case, DTA may escalate to the Contractor Representative's manager.
- 37.12 The DTA Representative for escalation is:

Assistant Secretary, ICT Procurement Branch
Digital Transformation Agency
50 Marcus Clarke Street
Canberra ACT 2601

Email: ICTProcurement@DTA.gov.au

- 37.13 The parties must cooperate in performing their respective obligations under the Head Agreement in an electronic environment. If DTA implements electronic systems to manage processes and procedures for quoting, Contracts and invoicing, the Contractor must utilise that electronic system as directed.

38 Notices

- 38.1 A Notice must be:
- 38.1.1 in writing, in English, and signed by a person duly authorised by the sender; and
 - 38.1.2 hand delivered or sent by prepaid post or facsimile or electronic mail to the recipient's address for Notices specified in Schedule 2 of this Head Agreement.
- 38.2 A Notice given in accordance with this clause 38 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
- 38.2.1 if hand delivered, on delivery;
 - 38.2.2 if sent by prepaid post, on the second Business Day after the date of posting (or on the 7th Business Day after the date of posting if posted to or from a place outside Australia); and
 - 38.2.3 if sent by electronic mail, on the day of dispatch providing the sender receives an acknowledgement or read receipt to the correct email address from the sender's machine.
- 38.3 If any Notice is received on a day that is not a Business Day, or if on a Business Day, after 5 pm on that day, it is to be treated as having been given or made at the beginning of the next Business Day.
- 38.4 Clause 38.1 applies without limitation to establishment and variation of a Contract.

39 Variations

- 39.1 No variation of this Head Agreement will be binding on the parties unless it is in writing and signed by both the Contractor and DTA.

- 39.2 If the Contractor proposes to vary this Head Agreement it must provide DTA with a draft Change Proposal setting out the detail of the proposed changes and specifying the reasons for the proposed variation and its likely effect on the Head Agreement. A Change Proposal for the Head Agreement must be in the form of a deed.
- 39.3 If DTA proposes to vary this Head Agreement it may:
- 39.3.1 request the Contractor to complete a Change Proposal and the Contractor must promptly do so; or
 - 39.3.2 provide the Contractor with a Change Proposal setting out the detail of the proposed changes and the reasons for the proposed variation.
- 39.4 DTA must consider, but may in its sole and absolute discretion execute or refuse to execute, any Change Proposal provided by the Contractor pursuant to clauses 39.2 and 39.3.1.
- 39.5 Variations to the Head Agreement do not affect Contracts existing at the time of the variation, and will only affect future Contracts, unless otherwise agreed by the Customer and the Contractor.
- 39.6 If the Contractor proposes to vary a Contract it must provide the Customer with a draft Change Proposal setting out the detail of the proposed changes and specifying the reasons for the proposed variation and its likely effect on the Contract. A Change Proposal for a Contract does not need to be in the form of a deed.
- 39.7 No variation of a Contract will be binding on the parties unless it is in writing and signed by both the Contractor and the Customer.
- 39.8 If the Customer proposes to vary the Contract it may:
- 39.8.1 request the Contractor to complete a Change Proposal and the Contractor must promptly do so; or
 - 39.8.2 provide the Contractor with a Change Proposal setting out the detail of the proposed changes and the reasons for the proposed variation.
- 39.9 Variations to a Contract that affect the terms of the Head Agreement, as included in the Contract, are subject to clause 8.13.
- 39.10 The Customer must consider, but may in its sole and absolute discretion execute or refuse to execute, any Change Proposal provided by the Contractor pursuant to clauses 39.6 and 39.8.1.
- 39.11 DTA may act as if it were the relevant Customer for the purposes of clauses 39.8 to 39.10 for the purposes of varying a Contract.
- 39.12 DTA or the Customer (as relevant) are not liable for the cost of any additional work undertaken or expenditure incurred by the Contractor pursuant to a variation of this Head Agreement or any Contract unless such variation has been effected in accordance with this clause 39.
- 40 Other Miscellaneous**
- 40.1 This Head Agreement records the entire agreement between the parties in relation to its subject matter and supersedes any prior negotiations and communications between the parties in connection with its subject matter, whether written or oral.

- 40.2 Except where this Head Agreement expressly states otherwise, DTA or a Customer may, in its discretion, give conditionally or unconditionally or withhold any approval or consent.
- 40.3 The Contractor may only assign its rights or novate its rights and obligations under this Head Agreement or a Contract with the prior written consent of DTA or affected Customers.
- 40.4 This Head Agreement may be executed in counterparts. All executed counterparts constitute one document.
- 40.5 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Head Agreement and any transaction contemplated by it.
- 40.6 A term or part of a term of this Head Agreement that is illegal or unenforceable may be severed from this Head Agreement and the remaining terms or parts of the terms of this Head Agreement continue in force.
- 40.7 Waiver of any provision of or right under this Head Agreement:
- 40.7.1 must be in writing signed by the party entitled to the benefit of that provision or right; and
- 40.7.2 is effective only to the extent set out in any written waiver.
- 40.8 This Head Agreement is governed by the Law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

EXECUTED AND DELIVERED AS A DEED:

DATE:

Executed and delivered as a deed for and on behalf of the **Digital Transformation Agency representing the Commonwealth of Australia ABN 96 257 979 159** by its duly authorised delegate:

In the presence of:

.....

Signature of delegate

.....

Signature of witness

.....

Name of delegate (print)

.....

Name of witness (print)

.....

Date

.....

Date

Executed and delivered as a deed by
«**Company_Legal_Name**»
ABN «Company_ABN» acting by the
following persons or, if the seal is affixed,
witnessed by the following persons in
accordance with s127 of the
Corporations Act 2001:

In the presence of:

.....

.....

Signature of director/company secretary

Signature of director

.....

.....

Name of director/company secretary (print)

Name of director (print)

.....

.....

Date

Date

[Note: The above execution block may be changed to an alternative execution clause, suitable for a deed, if required for a particular Contractor.]

Schedule 1: Head Agreement Glossary

1. Head Agreement Glossary

1.1 In this Head Agreement, except where the contrary intention is expressed, the following provisions apply:

1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;

1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;

1.1.3 a reference to a document or instrument including any referred to by a web address includes the document or instrument as novated, altered, supplemented or replaced including at a new web address from time to time;

1.1.4 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency;

1.1.5 a reference to time is to the time in the place where the obligation is to be performed;

1.1.6 a reference to a party is to a party to this Head Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

1.1.7 a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

1.1.8 the meaning of general words is not limited by specific examples and the word 'includes' in any form is not a word of limitation;

1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Head Agreement or any part of it; and

1.1.10 if a day on or by which an obligation must be performed is not a Business Day, the obligation must be performed on or by the next Business Day.

1.2 In this Head Agreement, the following definitions apply:

Defined Terms	Definition
Accept	accepted by the Customer in accordance with a Contract.
Acceptance Testing	performance of tests in accordance with clause 11.2 for the purpose of considering a Deliverable for Acceptance.
Account Manager	means the person specified in Item 4 of Schedule 3 (as changed by Notice from the Contractor to the DTA from time to time).
Agreed Terms	clauses 1 to 40.8 inclusive of the Head Agreement.

Defined Terms	Definition
Administrative Arrangements Order	means a decision by the Prime Minister to abolish or create a Commonwealth Entity, or to move functions/responsibilities between Commonwealth Entities.
Auditor General	the Auditor-General for the Commonwealth or equivalent office holder with jurisdiction over the Customer.
Authorised Investigator	has the meaning given in clause 31.8.
Business Day	(a) for receiving a Notice under clause 38, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and (b) for all other purposes, any day that is not a Saturday or Sunday or a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Business Hours	from 8:00am to 6:00pm on a Business Day at the place where the Deliverables are to be provided with regards to a Contract, or from 8:00am to 6:00pm Canberra time on a Business Day when not in relation to a Contract.
Category	means a category of Deliverables specified in Schedule 2.
Category Start Date	means the Commencement Date or a later date as specified under the applicable Category in Schedule 2.
Change Proposal	a document substantially in the form of that at Schedule 5 which is used to implement and record changes to a Contract or the Head Agreement.
Charges	the amount or amounts (including GST or other tax) that is specified in Schedule 2 for a Category and which is payable by the Customer to the Contractor for Deliverables in accordance with a Contract. The Charges are calculated as set out in Schedule 2.
Commencement Date	for the Head Agreement, the date on which the Head Agreement is executed by both parties; for a Contract, the date on which the Contract is executed by both parties or such other date as is specified in the Contract Details.

Defined Terms	Definition
Confidential Information	information that: <ul style="list-style-type: none"> (a) is by its nature confidential; (c) is designated by DTA or the Customer as confidential; (d) the Contractor knows or ought to know is confidential: <ul style="list-style-type: none"> (i) information comprised in or relating to any of DTA's or a Customer's Intellectual Property; (ii) information relating to the policies, strategies, practices and procedures of DTA or a Customer and any information in the Contractor's possession relating to DTA or a Customer; (iii) information relating to other contractors of DTA or a Customer; and (iv) Security Classified Information; or (e) is Customer or DTA Material and data, but does not include information which: <ul style="list-style-type: none"> (f) is or becomes public knowledge other than by breach of the Contractor of any confidentiality obligation; or (g) has been independently developed or acquired by the Contractor as established by written evidence.
Confidentiality Undertaking	means a document in the form approved by DTA providing for confidentiality obligations.
Contract	means a contract formed in accordance with the Head Agreement for the provision of Deliverables by the Contractor to an Entity. 'Contract' does not include any contracts placed by an Entity with a Software Vendor who is not the Contractor.
Contract Details	means the details applicable to a Contract (including any Statement of Work included in a Contract) specified using the template set out at Schedule 4 in the table headed 'Contract Details' (or in such other template as is Notified to the Contractor by the DTA).
Contract Term	the Initial Term for the Contract plus any extension in accordance with the Contract.
Contractor	means the organisation described at Item 1 of Schedule 3.
Contractor Personnel	means any employee, director, officer, agent, professional adviser or Subcontractor of the Contractor.
Contractor Representative	the person identified in Item 3 of Schedule 3 (as changed by Notice from the Contractor to the DTA from time to time).
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Customer	means the Entity or named administrative unit of an Entity specified in a Contract.
Customer Data	means all data and information (including Personal Information) generated by or relating to the Customer and its functions (including data and information relating to the Customer's operations, assets, programs, Customer Personnel, clients and other Entities) in whatever form that data and information may exist.
Customer Material	Means any Material owned, administered or provided by a Customer and includes Customer Data.

Defined Terms	Definition
Customer Personnel	<p>means any natural person who is an employee, director, officer, agent or professional adviser of the Customer (not including Contractor Personnel) and includes all:</p> <ul style="list-style-type: none"> a) responsible Ministers and all staff of such Minister's offices; b) officers and employees within the Customer, including public servants at all levels employed on a full-time, part-time, permanent, casual or temporary basis; c) contractors (including contractors providing outsourcing services to the Customer) and agents which perform services for or on behalf of the Customer; and d) other personnel as agreed between the Customer and the Contractor.
Customer Representative	the person identified in a Contract as the Customer Representative.
Data Mining	has the meaning in clause 1.28 of Schedule 6.
Deliverable	means all services and Material provided, or required to be provided, under a Contract, including the SLS, Software Products, other services and other Material specified in Schedule 2. For clarity, Deliverables include Pre-Purchase Deliverables.
Document	<p>includes:</p> <ul style="list-style-type: none"> (a) any paper or other material on which there is works, figures, symbols or perforations having a meaning for persons qualified to interpret them; and (b) any article or material in which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.
Documentation	the Documents to be provided by the Contractor under a Contract.
DTA Representative	the person identified from time to time in clause 37.7.
Entity	<p>means:</p> <ul style="list-style-type: none"> (c) all entities or bodies described in the <i>Public Governance Performance and Accountability Act 2013</i> (Cth); (d) any other body governed by the Governor-General or State Governor or by a Minister of State of the Commonwealth or a State or Territory including departments of State or Territory Governments; and (e) any other body over which the Commonwealth or a State or Territory exercises control.
Existing Material	<p>material that:</p> <ul style="list-style-type: none"> (a) is in existence prior to the Commencement Date of the Head Agreement, or (b) is subsequently brought into existence other than as a result of the performance of obligations under the Head Agreement or a Contract, <p>and is embodied in or attaches to the Deliverables or is otherwise necessarily related to the functioning or operation of the Deliverables and including Material that is a modification of Existing Material but which is not useable except as a part of the Existing Material.</p>

Defined Terms	Definition
Head Agreement	the agreement between DTA and the Contractor under which Pre-Purchase Deliverables must be provided on request by the DTA or Entities, and Contracts may be placed for the provision of other Deliverables.
Head Agreement Term	the Initial Term for the Head Agreement plus any extension in accordance with the Head Agreement.
Information Commissioner	means the Information Commissioner for the Commonwealth or equivalent State or Territory office holder (if any) with jurisdiction over the Customer.
Initial Term	the initial period of time for which the Head Agreement or Contract, as the context requires, is intended to continue, as specified in Item 5 of Schedule 3 for the Head Agreement and the Contract Details for a Contract.
Intellectual Property (IP)	means all forms of intellectual property, including the following: <ul style="list-style-type: none"> a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and business, company and domain names; and b) all property of a similar nature to property set out in paragraph a) which may subsist in Australia or elsewhere.
Intellectual Property Rights or IPR	means: <ul style="list-style-type: none"> a) all rights in respect of Intellectual Property, whether or not such rights are registered or capable of being registered; b) any application or right to apply for registration of any Intellectual Property; and all rights of a similar nature to any of the rights referred to in paragraphs a) and b) which may subsist in Australia or elsewhere.
Key Personnel	means the Personnel to be used by the Contractor to perform or provide the Deliverables, as set out in the Contract Details (and as amended from time to time).
Kick-start Kit	means an ‘on boarding pack’ for Deliverables containing all relevant contractual documents.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time.
Loss	all losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements) and costs of investigation, litigation, settlement, judgment, interest and penalties.
Mark Up	means a percentage of the Software Price charged by the Contractor for Deliverables in addition to the Software Price.
Material	any tangible thing in which Intellectual Property Rights can subsist, including without limitation Software, firmware, Documentation, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).

Defined Terms	Definition
New Material	means Material created by the Contractor on or after the Commencement Date, for the purpose of or as a result of performing its obligations under this Head Agreement or a Contract, and includes any modifications that may be required for that purpose.
Notice	a Notice under the Head Agreement or any Contract that is sent in accordance with clause 38 of the Head Agreement or a Contract.
Ombudsman	means the Commonwealth Ombudsman or an equivalent State or Territory office holder with jurisdiction over the Customer.
On-Line Portal	means an internet based interface as Notified by DTA to the Contractor from time to time.
Option Period	the period of time for which the Head Agreement or a Contract, as the context requires, may be extended by the DTA or a Customer (as applicable) giving Notice to the Contractor. The Option Period for the Head Agreement is specified in Item 6 of Schedule 3 and the Option Period for a Contract is specified in the Contract Details.
Panel	means the panel for the provision of the Whole of Government Software Licensing Solutions (SLS) Deliverables.
Panellist	means a member of the Panel as appointed by DTA.
Personal Information	has the meaning given in clause 24.1
Personnel	in relation to the Customer, Customer Personnel, and in relation to the Contractor, Contractor Personnel.
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Pre-Purchase Deliverables	any Deliverables requested from the Contractor by the DTA under this Head Agreement, or by any Entity in accordance with Schedule 2 whether or not a Contract is entered into.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	the Privacy Commissioner for the Commonwealth or equivalent office holder (if any) with jurisdiction over the Customer.
PSPF	<i>Australian Government Protective Security Policy Framework</i> (PSPF) which, amongst other things, directs Commonwealth Entities to consider the security implications of their electronic information systems and to devise policy and plans to ensure the systems are appropriately protected.
Quotation	A quotation issued by a Contractor issued in response to an Entities' Request for Quote.
Request For Quote	A request for quotation issued by an Entity the requirements of which could be met by the provision of Deliverables under any one or more Categories.
Reseller	means a Contractor who is authorised to supply Software as an agent or on behalf of a Software Vendor.
Schedule	each of the schedules to the Head Agreement.

Defined Terms	Definition
Security Classified Information	information defined as Security Classified Information in accordance with the Australian Government Protective Security Manual.
Service Levels	the service levels and performance standards available from a Software Vendor and specified in a Contract.
Service Price	means the cost of a Deliverable that is not Software.
Software Price	means the cost of Software or any services sourced from the Software Vendor.
Software Product	Software that is a Deliverable (and includes services available from the Software Vendor), or in respect of which Deliverables are provided.
Software	items that fall within the definition of 'computer program' in the <i>Copyright Act 1968</i> (Cth).
Software Licensing and Services (or SLS)	has the meaning given in paragraph A of the Background to this Head Agreement. This is also abbreviated as SLS which has the same meaning.
Software Vendor	means: <ul style="list-style-type: none"> a) if the Contractor is a Reseller of a Software Product - the entity providing the Software Product to the Contractor for the purposes of resale to Customers; or b) if the Contractor is not a Reseller of a Software Product – the Contractor.
Solutions Specialist	means Contractor Personnel having expertise in Software Products.
Subcontractor	means an entity engaged under a subcontract to perform any part of the work under a Contract and that entity's directors, officers, employees, Subcontractors, agents and consultants.
Tracking Number	A number issued by DTA or DTA's On-Line Portal (or another method as Notified to the Contractor by DTA from time to time) used to identify a Request for Quote.

Schedule 2: Deliverables and Charges

Category 1 – Microsoft Software Licensing and Services

[To be included based on the SOR in the RFT and a selected Tenderer's response.]

Schedule 3: Head Agreement Details

Item Number	Description	Clause Reference	Details
Item 1	Contractor	37.1	«Company__Legal_Name» ABN «Company_ABN»
Item 2	Contractor Reseller Status	-	The Contractor is a Software Vendor / Reseller [delete whichever doesn't apply].

Item Number	Description	Clause Reference	Details
Item 3	Contractor Representative	37.1	<p>The Contractor Representative is:</p> <p>Name: «Contractor_Rep»</p> <p>Position: «CR_Position»</p> <p>Address: «CR_Address_1» «CR_Address_2» «CR_Suburb»«CR_State»«CR_State»«CR_Pcode» «CR_Country»</p> <p>Email: «CR_Email_1» «CR_Email_2»</p> <p>The Contractor Representative’s Manager for escalation is:</p> <p>Name: «Contractor_Rep_Manager»</p> <p>Position: «CRM_Position»</p> <p>Address: «CRM_Address_1» «CRM_Address_2» «CRM_Suburb» «CRM_State» «CRM_Pcode» «CRM_Country»</p> <p>Email: «CRM_Email_1» «CRM_Email_2»</p>
Item 4	Account Manager	37.1.1	[Insert details]
Item 5	Head Agreement Term	2.2	The Head Agreement Term begins at the Commencement Date and will expire on [insert day]/02/2023
Item 6	Option Period for the Head Agreement	2.3	3 periods each of 12 months duration

Schedule 4: Contract Order Form

Title of task:

Purchase Order Number:

Deliverables: *[Insert or refer to an Attachment to the Contract Order Form.]*

Charges: *[Insert or refer to an Attachment to the Contract Order Form.]*

Note: This document sets out the variables that must be specified for a Contract. The detail of the Deliverables to be included in a Contract must be specified.

Contract Details

Item Number	Description	Clause Reference (Head Agreement)	Details
1	Commencement Date of the Contract	-	<i>[insert date the Contract is due to commence e.g. dd/mm/yy otherwise insert 'on execution']</i>
2	Initial Term for the Contract	-	<i>[insert period of time for which the Contract will run prior to any extensions]</i>
3	Option Period for the Contract	-	<i>[insert period of time for which the Contract will be extended, e.g. 2 years, and any limits on extensions]</i>
4	Invoicing and payment requirements	-	<i>[Insert requirements, including any requirements for e-commerce (eg if invoices are to be paid electronically, Name of Contractor's Account Contractor's Banking or financial institution, BSB and Account Number)]</i>
5	Liability	-	<i>[Insert any agreed cap on liability (see clause 26 of the Head Agreement)]</i>
6	Insurance Details	-	<i>[Insert any additional insurance requirements (ie, in addition to those in clause 28 of the Head Agreement, eg cyber insurance)]</i>
7	Key Personnel	-	<i>[insert positions and/or names of Contractor's Key Personnel]</i>

Item Number	Description	Clause Reference (Head Agreement)	Details
8	Standards and Codes	-	<i>[insert specific Standards for the supply of Deliverables. Otherwise insert 'not applicable']</i>
9	Contract Management	-	<i>[specify all Contract management requirements (eg if the Contractor is to provide a Project Plan for Acceptance, and the details for that Project Plan)]</i>
10	Customer Material	-	<i>[insert details of any Customer Material to be provided to the Contractor. Otherwise insert 'not applicable']</i>
11	Customer Assistance	-	<i>[insert any requirements for assistance to be provided to the Contractor, including any requirements to provide facilities]</i>
12	Delivery and Installation of Software Products	-	<i>[insert any requirements for installation of Software Products (including any preparation of the Customer's site or systems in anticipation of delivery and installation of a Deliverable)]</i>
13	Technology threats	-	<i>[insert any requirements or obligations in relation to technology threats.]</i>
14	Performance management framework	-	<i>[insert details of any performance management framework such as Service Levels, as well as any measurement and reporting requirements (see clause 17 of the Head Agreement). Include any obligations for a review of the Contract (see clause 17.6 of the Head Agreement). Otherwise insert 'not applicable']</i>
15	Intellectual Property Rights	-	<i>[insert any alterations to the rights granted under clause 15 of the Head Agreement. Otherwise insert 'As per clause 15 of the Head Agreement']</i>

Item Number	Description	Clause Reference (Head Agreement)	Details
16	Acceptance Testing	-	<i>[insert whether Acceptance Testing is required which will be in accordance with the Head Agreement. Insert any other details relating to the Acceptance Testing (eg Acceptance Criteria)]</i>
17	Other Requirements	-	<i>[insert any other requirements not covered by other items of the Contract Order Form]</i>

Execution

Executed as a contract for and on behalf of the **Commonwealth of Australia** as represented *[Delete preceding if not a Commonwealth entity]* by *[insert name of CUSTOMER]* (ABN *[insert ABN]*) by its duly authorised delegate:

In the presence of:

.....

.....

Signature of delegate

Signature of witness

.....

.....

Name of delegate (print)

Name of witness (print)

.....

.....

Date

Date

Executed as a contract for and on behalf of
by **[the Contractor]** by its authorised
representative in accordance with section 126
of the *Corporations Act 2001* (CT):

In the presence of:

.....
Signature of authorised representative who
represents that the authorisation is current and
has not been revoked

.....
Signature of witness

.....
Name of authorised representative director
(print)

.....
Name of witness (print)

.....
Date

.....
Date

Schedule 5: Change Proposal

This Change Proposal (including its attachments, if any) serves to vary the [*Contract / Head Agreement*] executed by the Contractor and the Customer on [*date*] (the [*Contract / Head Agreement*]), in accordance with the terms set out below. Unless specifically stated in this Change Proposal, all terms and conditions of the [*Contract / Head Agreement*] continue unaffected. This Change Proposal form may be amended by Notice from DTA specifying an alternative form. DTA is not obliged to comply with clause 39 in varying this Change Proposal form.

- 1. Change Proposal number**
- 2. Raised by**
- 3. Details of change (use attachments if required)**
- 4. Implementation date of variation**
- 5. Effect on Deliverables or their specifications**
- 6. Plan for implementing the change**
- 7. Effect on Charges**
- 8. Effect on Service Level requirements**
- 9. Effect on documentation / reporting**
- 10. Other relevant matters (e.g. Acceptance criteria etc.)**

EXECUTED AND DELIVERED AS A DEED:

Executed and delivered as a deed for and on behalf of the [*insert DTA or Entity name*] representing the Commonwealth of Australia ABN 96 257 979 159 by its duly authorised delegate:

In the presence of:

.....

.....

Signature of delegate

Signature of witness

.....

.....

Name of delegate (print)

Name of witness (print)

.....

.....

Date

Date

Executed and delivered as a deed by **[insert Contractor name]** ABN **[insert ABN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001*:

In the presence of:

.....

.....

Signature of director/company secretary

Signature of director

.....

.....

Name of director/company secretary (print)

Name of director (print)

.....

.....

Date

Date

[Note: The above execution block may be changed to an alternative execution clause, suitable for a deed, if required for a particular Contractor.]

Schedule 6: Commonwealth Policy

- 1.1 In performing its obligations under the Head Agreement, and any Contract entered into under this Head Agreement with an Entity who is also an entity as defined by the PGPA Act, the Contractor must comply with all applicable Laws and Commonwealth policies including as set out in this Schedule 6.
- 1.2 This Schedule applies to other Contracts if specified in the Contract.
- 1.3 In this Schedule, the following definitions apply:

Defined Terms	Definition
AIP Plan User Guide	means the User Guide for Australian Industry Participation Plans in Australian Government procurement, published by the Department of Innovation Industry Science and Research, a copy of which can be obtained from the internet site: Australian Industry Participation Website (as at the Commencement Date).
Commonwealth Data Protection Plan (CDPP)	means a plan developed by the Contractor in accordance with clause 1.33.6.
Eligible Data Breach	has the same meaning as under the <i>Privacy Act Amendment (Notifiable Data Breaches) Act 2017</i> (Cth).
Fair Work Principles	means the Fair Work Principles set out in the Fair Work Principles User Guide (available at Fair Work principles Website), as amended from time to time.
Illegal Worker	means a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia, but remains in Australia after his or her visa has expired; or (c) is working in breach of his or her visa conditions. For more information refer to ‘Australian Immigration Guide to Work Entitlements’ available at Department of Immigration Website .

1. Archives Act Requirements

- 1.1 The Contractor acknowledges that:
- 1.1.1 the Deliverables may be used to store Commonwealth Records and that the requirements of the *Archives Act 1983* (Cth) apply to Commonwealth Records; and
- 1.1.2 the Contractor has an obligation under this Head Agreement not to dispose of any DTA Material or Customer Data (either of which may include Commonwealth Records) unless directed in writing to do so by DTA or the Customer.

- 1.2 The Contractor must:
- 1.2.1 comply with, and follow any reasonable directions by DTA or the Customer which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements; and
 - 1.2.2 ensure that it implements minimum metadata requirements in providing the Services that comply with the *Australian Government Recordkeeping Metadata Standard* (AGRkMS) available at: [National Archives of Australia Website](#)).
- 1.3 For the purposes of clauses 1.1.1 and 1.1.2, 'Commonwealth Record' has the meaning given under clause 3 of the *Archives Act*.

Anti-Discrimination

- 1.4 The Contractor must comply with all Commonwealth, State or Territory Laws relevant to anti-discrimination as may be relevant to the Head Agreement or the Contract, including but not limited to:
- 1.4.1 the *Disability Discrimination Act 1992* (Cth);
 - 1.4.2 the *Racial Discrimination Act 1975* (Cth);
 - 1.4.3 the *Sex Discrimination Act 1984* (Cth); and
 - 1.4.4 the *Age Discrimination Act 2004* (Cth).

APS Values

- 1.5 The Contractor must ensure that all of its Personnel engaged in providing the Deliverables comply with the APS Values and Code of Conduct while at the Customer's premises and while liaising with the Customer Personnel or members of the public in connection with the provision of the Deliverables. In these clauses 1.5 and 1.6 'APS Values' and 'Code of Conduct' have the same meaning as they have in the *Public Service Act 1999* (Cth).
- 1.6 The Contractor must provide all reasonable assistance to DTA and the Customer with any investigation of a report of a breach of the APS Code of Conduct.

Freedom of Information

- 1.7 If an application is made to DTA under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Contractor, DTA or the Customer:
- 1.7.1 may, before making a decision, consult with the Contractor, without prejudice to any decision to release the information; and
 - 1.7.2 must determine the application in accordance with the requirements of the *Freedom of Information Act*.

Fraud

- 1.8 The Contractor must comply with the Commonwealth Fraud Control Guidelines, as amended from time to time at: [Attorney Generals Website](#).

- 1.9 The Contractor must Notify DTA or the Customer, as relevant, immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Head Agreement or a Contract (including by the Contractor or its Personnel).

Illegal Workers

- 1.10 The Contractor must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Head Agreement or the Contract.
- 1.11 Upon becoming aware of the involvement of an Illegal Worker, the Contractor must:
- 1.11.1 Promptly Notify DTA, or the Customer as relevant; and
 - 1.11.2 remove, or cause to be removed, the Illegal Worker and arrange for their replacement at no cost to DTA or the Customer immediately.
- 1.12 If requested in writing by DTA or a Customer, the Contractor must provide evidence within 14 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.

Procurement On-Time Payment Policy

- 1.13 Clauses 1.14 to 1.16 only apply where:
- 1.13.1 the value of this Head Agreement or a Contract is not more than A\$1 million (GST inclusive); and
 - 1.13.2 the amount of the interest payable exceeds A\$10.
- 1.14 DTA, or the Customer as relevant, will pay interest on late payments to the Contractor as follows:
- 1.14.1 for payments made by DTA, or the Customer as relevant, 30 days and up to 60 days after the amount became due and payable, only where the Contractor issues a correctly rendered invoice for the interest; or
 - 1.14.2 for payments made by DTA, or the Customer as relevant, more than 60 days after the amount became due and payable, DTA, or the Customer as relevant, will pay the interest accrued together with the payment.
- 1.15 Interest payable under clause 1.14 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that DTA, or the Customer as relevant, effects payment as represented by the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

1.16 In clauses 1.14 to 1.16, 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act* on the day payment is due, expressed as a decimal rate per day.

Security

1.17 The Contractor must comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at [Protective Security Framework at the Attorney Generals Website](#), as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services and functions and the Information Security Manual at [Information Security Manual at the Australian Signals Directorate Website](#).

Work Health and Safety

1.18 In clauses 1.19 to 1.21 below:

1.18.1 'Act' means the *Work Health and Safety Act 2011* (Cth).

1.18.2 **Person Conducting a Business or Undertaking (PCBU)** as defined by the Act means a person conducting a business or undertaking:

1.18.2.1 whether the person conducts the business or undertaking alone or with others; and

1.18.2.2 whether or not the business or undertaking is conducted for profit or gain.

1.19 The Contractor must ensure that the Deliverables are provided in a manner that does not pose any avoidable health or safety risk to the Contractor's Personnel, to DTA's Personnel, to a Customer's Personnel or to any other person.

1.20 Without limiting in any way the work health and safety obligations that the Contractor has under this Head Agreement or the Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Contractor must:

1.20.1 ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;

1.20.2 ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act or corresponding State or Territory legislation; and

1.20.3 Notify DTA, or the Customer as relevant, of:

1.20.3.1 any work related injury that causes death or serious personal injury;

1.20.3.2 any notifiable incident as defined at sections 35, 36 and 37 of the Act, or corresponding State or Territory legislation; and

1.20.3.3 each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, or the relevant work health and safety legislation in that jurisdiction,

within 1 Business Day after the incident has occurred or within 2 hours if the injury causes death.

1.21 At DTA's request, or at the Customer's request as relevant, the Contractor must provide reasonable assistance to DTA, the Customer, or Comcare (including giving DTA, the Customer, Comcare and their agents access to the Contractor's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Deliverables.

Workplace Gender Equality

1.22 Clauses 1.23 to 1.26 apply only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the 'WGE Act').

1.23 The Contractor must comply with its obligations, if any, under the WGE Act.

1.24 If the Contractor becomes non-compliant with the WGE Act, the Contractor must Notify the Representative for DTA, or the Customer as relevant.

1.25 If the Head Agreement Term exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Representative for DTA or the Customer as relevant.

1.26 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Head Agreement and the Contract.

Security, Data Protection and Data Mining

1.27 The Contractor must:

1.27.1 ensure that Customer Material, in respect of which the Contractor has custody or control for purposes connected with a Contract, or which is accessed, transmitted or stored using or on the Contractor's information systems or equipment under a Contract:

1.27.1.1 is protected at all times from unauthorised access, use or by a third party, and from misuse, damage or destruction by any person; and

1.27.1.2 has protective measures, including but not limited to administrative, physical, and technical safeguards, that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Customer Material;

1.27.2 maintain and provide to DTA and the Customer on request an audit log of access to Customer Material;

1.27.3 ensure that DTA and Customers are advised of remote access to DTA's or a Customer's systems and that remote access is strictly limited to access:

- 1.27.3.1 approved by DTA or the Customer; and
- 1.27.3.2 in accordance with this Head Agreement;
- 1.27.4 ensure that remote access does not damage, alter or destroy DTA or a Customer's systems;
- 1.27.5 ensure that Customer Material is not accessed from or stored outside Australia unless expressly permitted by the Customer;
- 1.27.6 ensure that if Customer Material is stored in or transferred to any location outside of Australia (including through the remote access or control of any server or other hardware or Software) access is restricted to those Contractor Personnel with the appropriate authorisations who have a need for such access, and that access is limited to the minimum access necessary to enable the Contractor to comply with its obligations under a Contract;
- 1.27.7 comply with the PSPF and any other reasonable security requirements set out in a Contract or given by the Customer from time to time regarding any aspect of security of, or access to, the Customer's information, material or premises;
- 1.27.8 when using or accessing DTA or Customer supplied premises or facilities comply with (and ensure its Personnel are aware of and comply with) all reasonable directions of DTA and the Customer and any security and safety requirements notified to the Contractor by DTA and the Customer;
- 1.27.9 Notify DTA and the Customer immediately (or as soon as practicable in the circumstances) in the event of any requests from foreign governments or entities for access to any Customer Material (unless such notification is prohibited by law) and attempt to redirect any foreign government or entity requesting access to Customer Material to request the access directly from DTA and the Customer; and
- 1.27.10 inform the Customer, and when required, DTA, by telephone as soon as possible after it becomes aware of any Security Incident, and as soon as practicable (and at least within 5 Business Days) confirm the details by Notice in writing. In the event of any security incident, the Contractor must comply with all directions of the Customer to resolve the Security Incident, including in relation to:
 - 1.27.10.1 notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Customer;
 - 1.27.10.2 obtaining evidence about how, when and by whom the Contractor's information system and/or the Customer Material has or may have been compromised, providing it to the Customer on request, and preserving and protecting that evidence for a period of up to 12 months;
 - 1.27.10.3 implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident; and

40.8.1.1 preserving and protecting Customer Material (including as necessary reverting to any backup or alternative site or taking other action to recover Customer Material).

- 1.28 For the purposes of this clause 0, 'Data Mining' means analysing or searching for patterns in data sets to extract information and transform it into an understandable structure, whether through automated or human means, and includes data dredging, data fishing and data snooping or similar methods.
- 1.29 Unless authorised in writing by the DTA Representative or Customer Representative, the Contractor must not at any time conduct Data Mining activities in respect of the Deliverables or any Customer Material, user material or information uploaded, accessed or manipulated in the Deliverables by DTA or the Customer or its authorised users.
- 1.30 The prohibition on Data Mining applies even if a user is required to click through and accept the Contractor terms permitting the Contractor to conduct Data Mining on a user, or a collection of user accounts. Such terms have no effect whatsoever.
- 1.31 Subject to clause 1.28, if Data Mining is ordinarily conducted by the Contractor by means of an automated process the Contractor must disable it for Customer or DTA data collected when performing its obligations under this Head Agreement or a Contract.

Cyber Security

- 1.32 This clause 1.32 sets out the Contractor's obligations in respect of protecting the information and materials of an Entity (including Customer Material, Customer Data and other information relating to the Commonwealth's operations, assets, programs, its Personnel and clients):
- 1.32.1 in respect of which the Contractor has custody or control for purposes connected with this Head Agreement or any Contract; or
- 1.32.2 which are accessed, transmitted or stored using or on the Contractor's or its Subcontractor's information systems or equipment under this Head Agreement or any Contract.
- 1.33 The Contractor must:
- 1.33.1 do all things that a reasonable and prudent entity would do to ensure that all Customer Data in the possession or control of the Contractor is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person (including through botnet and denial of service attacks and any other phishing emails or related activities, Trojan, worm, or malware);
- 1.33.2 comply with all security regulations or procedures or directions as are specified in this Head Agreement and any Contract or Notified by an Entity from time to time regarding any aspect of security of, or access to, an Entity's information, material or premises;
- 1.33.3 provide any information requested by DTA or an Entity about the protective measures the Contractor is using or could use to protect Customer Data, including any information made available to other Customers;

- 1.33.4 where agreed in a Contract, use any specific tools or other methodologies an Customer specifies to protect Customer Data (e.g. to block certain categories of emails);
- 1.33.5 ensure that Contractor Personnel are appropriately trained to a standard that is no less rigorous than accepted industry standards for the type of Deliverables that are to be provided under the relevant Contract in cyber security risks and risk management (including in relation to botnet and denial of service attacks, phishing emails, Trojans, worms, malware, and other related activities and risks) and, as requested, provide evidence to DTA of the types of training it requires Contractor Personnel to undertake; and
- 1.33.6 where agreed in a Contract, develop for acceptance by the Customer a Commonwealth Data Protection Plan (**CDPP**) that sets out how the Contractor and the Customer will deal with and discharge their obligations in respect of Customer Data (including Personal Information) during the provision of the Deliverables. The CDPP must:
- 1.33.6.1 be consistent with the requirements of the Contract (including clause 1.33.1);
 - 1.33.6.2 be consistent with the requirements of the Privacy Act;
 - 1.33.6.3 specifically deal with cybercrime risks, including unauthorised access and denial of service attacks;
 - 1.33.6.4 be consistent with the Commonwealth's PSPF and ISM; and
 - 1.33.6.5 set out the steps and processes that the Contractor and the Customer will follow to protect the Customer Data from unauthorised access, use, misuse, destruction or loss,
- and once accepted, the CDPP will form part of the Contract and the Contractor must comply with it unless the Customer otherwise agrees in writing.
- 1.34 If the Contractor becomes aware of any actual or Threatened Cyber Incident, or has reasonable grounds to suspect that a Cyber Incident has occurred or may occur, it must take the steps specified in clause 1.35. For the purpose of this clause, 'Cyber Incident' means any of the following suspected or threatened:
- 1.34.1 actions taken through the use of computer networks or any unauthorised access or use that may result in an actual or potentially adverse effect on any or all of the following:
 - 1.34.1.1 the Contractor's or its Subcontractor's information system or the ability to use the Contractor's or its Subcontractor's information system as intended; and
 - 1.34.1.2 Customer Data residing on that system or accessible by the Contractor's or its Subcontractor's systems,(each being a **Cyber Incident**).
- 1.35 If the circumstances in clause 1.34 arise, the Contractor must:

- 1.35.1 Notify the Entity in writing promptly (and in any event, no longer than 12 hours after becoming aware of the Cyber Incident) and when required, by telephone as soon as possible after it becomes aware of any Cyber Incident, and as soon as practicable (and at least within 5 Business Days) confirm the details by Notice in writing. A Notice under this clause must provide the Entity with as much time as is reasonably practicable to mitigate any risks arising in connection with the Cyber Incident;
- 1.35.2 comply with any directions issued by the Entity in connection with the Cyber Incident or Other Incident (including to resolve the Cyber Incident or Other Incident), including in relation to:
 - 1.35.2.1 Notifying CERT Australia, or any other relevant body, as required by the Entity;
 - 1.35.2.2 obtaining evidence about how, when and by whom the Cyber Incident has or may have compromised the Contractor's information system or the Customer Data or both, providing that evidence to the Entity on request, and preserving and protecting that evidence for a period of up to 12 months; and
 - 1.35.2.3 implementing any mitigation strategies to reduce the impact of the Cyber Incident or the likelihood or impact of any future similar incident;
- 1.35.3 notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Entity;
- 1.35.4 obtaining evidence about how, when and by whom the Contractor's information system or the Customer Data and Customer Material has or may have been compromised, providing it to the Entity on request, and preserving and protecting that evidence for a period of at least 12 months; and
- 1.35.5 implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident, including any actions required by an Entity.
- 1.36 The Contractor must, if specified in the Contract, take out and maintain insurance to protect against the risks of a Cyber Incident, and comply with the provisions of clause 28 of the Agreed Terms in respect of that insurance.
- 1.37 The Contractor must ensure that all Personnel and any Subcontractors who have access to Customer Data comply with clauses 1.33 and 1.34.
- 1.38 If:
 - 1.38.1 a Cyber Incident occurs; or
 - 1.38.2 the Contractor is taking action to prevent or rectify any Cyber Incident,

and this prevents the Customer from being able to use the Deliverables as intended by a Contract, the Customer is not obliged to pay the Charges for that Deliverable to the extent it is prevented from using that Deliverable due to the actions by the Contractor (the time during which the Customer is prevented from being able to use the Deliverables as intended by the

Contract is the ‘**Prevention Period**’). If this clause applies, the amount of Charges the Customer is not obliged to pay must be calculated as follows:

- 1.38.3 the Customer must continue to pay any Charges relating to Deliverables that are delivered for the period before the Prevention Period, but the Customer will not be obliged to pay any further Charges for those Deliverables until they can be used in accordance with the Contract; and
 - 1.38.4 Charges will not be payable during the Prevention Period.
- 1.39 Any refunds due to a Customer under clause 1.38 may be set-off against any invoice in accordance with clause 20.9.

Notifiable Data Breaches

- 1.40 Clauses 1.41 to 1.44:
- 1.40.1 apply from the time that Schedule 1 to the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) comes into effect, unless a Contract expressly specifies that clauses 1.40 to 1.44 does not apply, or applies with modifications to it.
 - 1.40.2 do not affect the Contractor’s obligations under the Privacy Act; and
 - 1.40.3 do not affect the Contractor’s performance of other obligations under the Head Agreement or a Contract, unless the DTA or the Customer agrees otherwise in writing.
- 1.41 If the Contractor becomes aware of an event that could amount to an Eligible Data Breach in relation to a Contract, the Contractor must:
- 1.41.1 as soon as possible, but within 2 Business Days, notify the Customer of the event;
 - 1.41.2 comply with its obligations under the Privacy Act in relation to the event;
 - 1.41.3 provide the Customer with all information that the Customer requests in relation to the event; and
 - 1.41.4 if the Customer requires it, allow the Customer to participate in the Contractor’s assessment of the event to determine if the event is an Eligible Data Breach.
- 1.42 If:
- 1.42.1 the Contractor determines, or the Customer determines and Notifies the Contractor, that an Eligible Data Breach has or may have occurred; and
 - 1.42.2 the Privacy Act requires that the Eligible Data Breach be notified to the Privacy Commissioner,
- then the Contractor must, within 2 Business Days of the determination or notification (as applicable), prepare and give to the Customer a draft notice to the Privacy Commissioner in respect of the Eligible Data Breach.
- 1.43 The Customer may:

- 1.43.1 require the Contractor to make changes to the draft notice to the Privacy Commissioner; or
 - 1.43.2 determine that the Customer will notify the Privacy Commissioner of the Eligible Data Breach, in which case, the Customer will give the Contractor a copy of the notification before it is given to the Privacy Commissioner.
- 1.44 The Contractor must ensure that the Customer is:
- 1.44.1 promptly advised of any investigation or other action taken by the Privacy Commissioner in connection with the actual or suspected Eligible Data Breach; and
 - 1.44.2 kept informed in relation to the investigation or other action.