



## PANEL AGREEMENT

PANEL AGREEMENT FOR DIGITAL MARKETPLACE PANEL 2

^Party 1 Name^

^Party 1 ABN ACN^

^Party 2 Name^

^Party 2 ABN ACN^



**Australian Government**

**Digital Transformation Agency**

## **PART A – PANEL TERMS**

PART A – PANEL TERMS

**^Party 1 Name^**

**^Party 1 ABN ACN^**

**^Party 2 Name^**

**^Party 2 ABN ACN^**

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## Introduction

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- A. DTA administers the Digital Marketplace Panel 2 on behalf of the Commonwealth of Australia.
- B. DTA has conducted a procurement process and Appointed the Seller to the Panel.
- C. The Seller offers to provide Products and Services to Buyers, subject to this Panel Agreement.
- D. Buyers may procure Digital Products and Services from the Seller under this Panel Agreement through the Online Portal.

**Note:** The Online Portal is currently at [BuyICT.gov.au](http://BuyICT.gov.au).



## SECTION 1 - PANEL OVERVIEW

### 1. Parties

The parties to this Panel Agreement are set out in Item 2 of Schedule A1 - Panel Appointment Details.

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

### 2. Interpretation of Panel Agreement

All capitalised terms in this Panel Agreement have the meaning given in Part F – Definitions and Interpretation.

### 3. Panel Agreement structure

#### 3.1. Panel Agreement parts

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

<i><b>Part</b></i>	<i><b>Purpose</b></i>
<b>Part A - Panel Terms</b>	The terms for the operation of the Panel that apply to DTA and the Seller.
<b>Schedule A1 - Panel Appointment Details</b>	The panel appointment details for the Seller, including the Modules and Categories under which the Seller is permitted to provide Products and Services to Buyers.
<b>Part B - Core Contract Terms</b>	The core terms for all Contracts entered between the Seller and a Buyer under the Panel.
<b>Part C - Module Specific Terms</b>	Supplement Part B with additional contract terms that only apply to Products and Services delivered under the relevant Module.
<b>Part D – Module and Category Descriptions</b>	Describes the Products and Services that come within a Module and the Categories within the relevant Module.
<b>Part E - Contract Details</b>	Is a schedule to be agreed and completed by the Buyer and Seller for each Contract.

**Part F - Definitions and Interpretation**

Defines capitalised terms used throughout the Panel Agreement and states rules for interpreting the Panel Agreement.

**DTA Forms**

Are the standard forms that the parties agree to use under this Panel Agreement available at [link to be added].

**Any documents incorporated by reference into this Panel Agreement**

**3.2. Order of precedence**

3.2.1. To the extent of any inconsistency between any parts of this Panel Agreement, the parts will have priority in the descending order set out in clause 3.1.1.

**4. Seller's role**

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**4.1. Appointment to Panel, Modules and Categories**

4.1.1. DTA Appoints the Seller to the Panel to offer to sell Products and Services within the scope of:

- a. the Modules and Categories stated in Item 7 of Schedule A1 – Panel Appointment Details;
- b. the additional Modules to which DTA may subsequently Appoint the Seller, subject to clause 6.4.1;
- c. the additional Categories to which DTA may subsequently Appoint the Seller in accordance with clause 6.7.

**4.2. Offer to provide Products and Services on the Panel**

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

4.2.2. A Buyer may enter a Contract with the Seller to provide Appointed Products and Services to the Buyer by following the procedure in clause 13.

4.2.3. Each Contract:

- a. is a separate Contract to this Panel Agreement subject to Part B – Core Contract Terms;
- b. is between the Seller and a Buyer; and
- c. continues for the Contract Period regardless of the Panel Agreement Period.

**4.3. Offer is non-exclusive**

**4.3.1. The Seller acknowledges:**

- a. it is one of a number of sellers on the Panel which may be requested by Buyers to provide Products and Services;
- b. this Panel Agreement does not guarantee the Seller any exclusivity, quantity or value of work; and
- c. Buyers may procure digital products and services elsewhere without using the Panel.

**4.4. Contracts must not modify Parts A, B, C, D or F**

**4.4.1. It is a condition of this Panel Agreement that the Seller must use each Part of this Panel Agreement ‘as is’ to form a Contract with a Buyer.**

**4.4.2. The Seller must not modify, or seek to modify, the terms of Parts A, B, C, D or F in any Contract with a Buyer unless DTA has given prior written approval for the Seller to do so. Any request from the Seller under this clause must state:**

- a. the clause the Seller wishes to modify;
- b. the suggested amendment; and
- c. the reasons for the requested change.

**4.4.3. Subject to clause 4.4.2, the Seller may agree the terms of Part E – Contract Details with a Buyer, subject to this Panel Agreement, however any provision in Part E – Contract Details that is inconsistent with or seeks to modify Parts A, B, C, D or F will have no effect.**

**5. DTA’s role**

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**5.1. DTA**

**5.1.1. DTA will:**

- a. manage the Panel;
- b. Appoint the Seller to Modules and Categories;
- c. administer this Panel Agreement;
- d. approve any changes to this Panel Agreement;
- e. monitor the Seller’s performance under the Performance Management Framework;
- f. collect feedback;
- g. conduct procurement processes to add sellers to Modules and Categories; and
- h. operate the Online Portal.

## **6. Panel**

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### **6.1. Panel structure**

- 6.1.1. The Panel is divided into Modules, which include Categories of Products and Services.

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

### **6.2. Panel Agreement Period**

- 6.2.1. The Panel Agreement Period begins on the Panel Agreement Start Date and ends on the Panel Agreement Initial End Date, as stated in Item 5 of Schedule A1 - Panel Appointment Details, unless:
- a. DTA extends the term of this Panel Agreement under clause 6.2.2; or
  - b. this Panel Agreement is terminated.
- 6.2.2. DTA may extend the Panel Agreement Period for a further period ending no later than the Panel Agreement Extension Date stated in Item 6 of Schedule A1 - Panel Appointment Details.
- 6.2.3. An extension under clause 6.2.2 will be by notice to the Seller at least 30 Business Days before the Panel Agreement Initial End Date.
- 6.2.4. Any extension will be on the same terms and conditions, and cover the same Products and Services, as set out in this Panel Agreement.

### **6.3. Modules**

- 6.3.1. The Panel has Modules for different types of Products and Services as described in Part D – Module and Category Descriptions.

**Note:** The Products and Services supplied under the Panel are separated into Modules and Categories. Please see the link here for more information [Link to be added]

- 6.3.2. Each Module has Part C - Module Specific Terms that supplement the Part B – Core Contract Terms and apply to each Contract entered under the relevant Module.

### **6.4. DTA may Appoint Seller to Modules**

- 6.4.1. The Seller may apply to be Appointed to additional Modules and if Appointed must complete a variation as set out in clause 24.10 to amend Schedule A1 - Panel Appointment Details.

## **6.5. Module Periods**

- 6.5.1. Each Module Period begins on the applicable Module Start Date and ends on the applicable Module Initial End Date as stated in Item 7 of Schedule A1 - Panel Appointment Details unless:
- a. DTA extends the applicable Module Period under clause 6.5.2;
  - b. this Panel Agreement ends or is terminated;
  - c. DTA notifies the Seller that a Module will be removed from the Panel in accordance with clause 7.1.2; or
  - d. the Seller is suspended or terminated from the Module.
- 6.5.2. DTA may extend the Module Period for a further period ending no later than the applicable Module Extension Date as stated in Item 7 by notifying the Seller at least 30 Business Days before the Module Initial End Date.
- 6.5.3. Any extension will be on the same terms and conditions, and cover the same Products and Services, as set out in this Panel Agreement.

## **6.6. Categories**

- 6.6.1. Each Module is separated into Categories of Products and Services as described in Part D – Module and Category Descriptions.

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

## **6.7. Seller's offer to provide additional Categories**

- 6.7.1. The Seller offers to provide the additional Categories of Products and Services stated in Item 8 of Schedule A1 – Panel Appointment Details, in accordance with this Panel Agreement, if it is Appointed to do so by DTA (**additional Categories**).
- 6.7.2. DTA may by notice Appoint the Seller to offer to provide one or more additional Categories. The Seller may offer to provide Products and Services to Buyers under the Panel from the Appointed Categories from the date of the notice.

**Note:** DTA will update the Online Platform to show the additional categories that the Seller can offer to provide.

## **6.8. Category Periods**

- 6.8.1. Each Category Period begins on the Category Start Date and ends on:
- a. the date this Panel Agreement expires or is terminated;
  - b. the date the applicable Module ends, is terminated or removed; or
  - c. the date notified to the Seller as the date that a Category will be removed from this Panel Agreement for all sellers in accordance with 7.1.2.

## **7. Panel review and refresh**

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- 7.1.1. DTA may make changes to the Panel as follows:
- a. add or remove Modules;
  - b. add or remove Categories to any Module;
  - c. update an existing Category Description; or
  - d. approach the market to add sellers to the Panel in one or more Modules or Categories.
- 7.1.2. If DTA removes a Module or Category, it will give at least 30 Business Days' notice to the Seller, stating the date that the relevant Module or Category will end.

**Note:** DTA can change the Products and Services available on the Panel and add Sellers to the Panel.

This is to reflect:

- the rapidly changing ICT environment which includes evolving and emerging products and services
- new suppliers offering new capabilities, and
- existing Sellers changing their current capabilities.

- 7.1.3. The Seller:
- a. must remain Appointed to at least one Module at all times; and
  - b. may apply to be Appointed to additional Modules through an open tender process.
- 7.1.4. The Seller must only sell (or offer to sell) Products and Services within the scope of the Seller's Modules and Categories to which it is Appointed.
- 7.1.5. DTA may require the Seller to agree to a deed of variation to amend Schedule A1 - Panel Appointment Details if:
- a. the Seller is Appointed to new Modules; or
  - b. DTA varies any part of this Panel Agreement.

## **7.2. Recording Seller's Schedule A1 – Panel Appointment Details**

- 7.2.1. DTA may issue, record and publish Schedule A1 - Panel Appointment Details on the Online Portal including the Seller's Maximum Fees.

## **8. Price**

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### **8.1. Maximum Fees**

- 8.1.1. Item 9 of Schedule A1 - Panel Appointment Details states the Maximum Fees for the Seller's Products and Services, which:
- a. have been agreed with the Seller; and
  - b. are a maximum price, maximum price based on a rate card, maximum mark-up, minimum discount, maximum management fee, maximum margin or other method approved by DTA to be applied by the Seller to its Products and Services.
- 8.1.2. The Seller must offer their Products and Services to Buyers at or below the Maximum Fee for the relevant Products and Services.
- 8.1.3. The Seller must not enter Contracts that exceed the Maximum Fees.
- 8.1.4. The Seller must ensure that pricing in Contracts is inclusive of Fees and all applicable taxes (other than GST).
- 8.1.5. DTA may amend the Seller's Maximum Fees:
- a. based on a Price Review under clause 8.2;
  - b. when the Seller is Appointed to or removed from a new or amended Module or Category; or
  - c. the parties agree to update the Seller's Maximum Fees.

### **8.2. Price Review**

- 8.2.1. The Seller may review the Maximum Fees under the Price Review mechanism (if any) set out for each Module under section 6 of these Part A - Panel Terms.
- 8.2.2. Part C - Module Specific Terms may specify additional requirements for reviews under clause 8.2.1 that apply to Products and Services within a Module or Category.

## **9. Operation of the Panel**

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### **9.1. Panel administered through Online Portal**

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

**Note:** the BuyICT portal can be found at [www.buyict.gov.au](http://www.buyict.gov.au)

- 9.1.2. The Online Portal may include functionality related directly or indirectly to:
- a. Catalogues;
  - b. the Seller's Schedule A1 – Panel Appointment Details;
  - c. facilitating Buyers' procurements under the Panel including:
    - i. contractual terms and templates;

- ii. Request for Quote templates;
    - iii. DTA Forms; and
    - iv. contract execution mechanisms;
  - d. reporting mechanisms;
  - e. monitoring the Seller's performance;
  - f. guidance for Buyers and sellers;
  - g. facilitating changes to this Panel Agreement;
  - h. sending and receiving notices; and
  - i. other functionality at DTA's discretion.
- 9.1.3. The Seller must agree to be bound by the Online Portal Terms and Conditions, as amended from time to time, create an account for use of the Online Portal and comply with requirements for use of the Online Portal as advised by DTA.

**Note:** the current version of the Online Portal Terms and Conditions can be found here [\[Link to be added\]](#)

- 9.1.4. The Seller must use the Online Portal when:
- a. responding to Requests for Quotes; and
  - b. entering into Contracts,
- unless the relevant Buyer has permission from DTA not to use the Online Portal for its procurement process.

## **9.2. Catalogues**

- 9.2.1. DTA will publish the Seller's Catalogues of Products and Services on the Online Portal that:
- a. are within the scope of the Seller's Modules and Categories;
  - b. meet the requirements for that Seller's Modules and Categories as set out in the applicable Part C - Module Specific Terms and Part D – Module and Category Descriptions; and
  - c. meet any other requirements which are set out in Schedule A1 - Panel Appointment Details.
- 9.2.2. The Seller may request in the Online Portal for DTA to add, update or remove a Panel Catalogue in accordance with the process notified to the Seller by DTA from time to time.
- 9.2.3. The Seller must use best endeavours to ensure that all Products and Services listed in the Panel Catalogue are available to Buyers to purchase, at the time required by Buyers.



9.2.4. DTA may at any time add, change or remove a Panel Catalogue in relation to the Seller or other sellers appointed to the Panel, remove certain Products and Services from a Panel Catalogue, or restrict access to certain Products and Services for particular Buyers.

9.2.5. DTA will ensure that any Confidential Information of a Seller included in a Panel Catalogue is identified as confidential.

### **9.3. Risk Management and Supply Chain Integrity**

9.3.1. In order for Buyers to assess value for money, DTA may make supply chain information available to Buyers in the Panel Catalogue.

### **9.4. Seller information to be compliant**

9.4.1. The Seller must ensure all Seller Information:

- a. is accurate;
- b. is not false, deceptive or misleading; and
- c. complies with this Panel Agreement.

9.4.2. The Seller must review Seller Information before it is published or uploaded to the Online Portal, to ensure it complies with clause 9.4.

9.4.3. The Seller must promptly notify DTA if it becomes aware at any time that Seller Information does not comply with clause 9.4.

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

## **10. Panel Agreement representatives**

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### **10.1. DTA's Representative**

10.1.1. The DTA Representative and their contact details are stated in Item 10 of Schedule A1 - Panel Appointment Details.

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

10.1.3. All notices and correspondence from the Seller must be sent to the DTA Representative.

### **10.2. The Seller's Representative**

10.2.1. The Seller Representative and their details are stated in Item 11 of Schedule A1 - Panel Appointment Details.

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

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

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

### **10.3. Changing Representatives**

10.3.1. The parties may change their respective representatives in accordance with the process notified to the Seller by DTA from time to time.

## **11. Reporting**

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### **11.1. Reporting to DTA**

11.1.1. The Seller must, within 5 Business Days of a request:

- a. provide DTA with any reports or information in respect of this Panel Agreement or any Contract that DTA reasonably requests from time to time; and
- b. ensure that such reports and information are provided in the form and format requested by DTA.

11.1.2. The Seller must, if requested by DTA, provide evidence to support the accuracy of any reports or information delivered.

## **12. Relationships**

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### **12.1. General obligations of the parties**

12.1.1. The Seller undertakes to:

- a. diligently perform its obligations under this Panel Agreement; and
- b. work together in a collaborative manner in good faith.

12.1.2. The Seller must comply with any reasonable directions given by DTA in respect of this Panel Agreement.

12.1.3. The Seller must participate in any meetings reasonably requested by DTA, which may be by video, in relation to:

- a. the operation of this Panel Agreement and the Online Portal;
- b. providing advice on new products or services relevant to the Products and Services; and
- c. any other subject matter that DTA reasonably requires.

## SECTION 2 - BUYER ORDER PROCESS

### 13. Ordering Products and Services

#### 13.1. How Buyers place Orders

13.1.1. The Seller must only offer to sell Products and Services from the Seller's Appointed Modules and Categories during the Panel Agreement Period and any applicable Module Period.

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

#### 13.2. RFQ process

13.2.1. The Buyer will:

- a. issue a Request for Quote seeking Quotes from any number of sellers on the Panel;
- b. select a preferred seller (if any);
- c. agree Part E - Contract Details or Purchase Order Contract terms with the preferred seller; and
- d. issue an Order, including the agreed Part E - Contract Details or Purchase Order Contract terms, to the preferred seller.

13.2.2. A Buyer may issue a Request for Quote to any number of sellers for Products and Services using the Online Portal.

**Note:** Please see guidance here [Link to be added] for information to assist with this process.

Buyers should specify the particular Products and Services required in as much detail as possible, including all relevant technical specifications, all Contract Material required in respect of those Products and Services and any obligations or requirements that the successful Seller will be required to meet.

13.2.3. The Seller must comply with:

- a. requirements set out in a Buyer's Request for Quote when providing a Quote; and
- b. any additional requirements of DTA for an RFQ Process.

13.2.4. The Seller irrevocably offers to provide Products and Services to the Buyer in accordance with a submitted Quote.

**Note:** [DTA may include worked examples here for; (i) a more straightforward procurement; and (ii) a worked example for a solution that could be met by different Modules and Categories] follow the procedure set out in the Request for Quote, assess Seller's Quotes and issue an Order to the Seller assessed as providing the best value for money.

### **13.3. Forming a Contract**

- 13.3.1. The Buyer will evaluate Quotes and select a preferred seller (if any) and issue them with an order (**Order**) based on the RFQ and Quote.
- 13.3.2. When a Buyer issues an Order, a Contract will be created between the Seller and the Buyer for the provision of Products and Services and the parties will execute the Contract.
- 13.3.3. Unless otherwise permitted by DTA in writing, the Seller must only accept Orders using the Online Portal.

### **13.4. Buyer may use Purchase Order Contract terms**

- 13.4.1. Where permitted by DTA, a Buyer may use its own Purchase Order Contract terms when entering into a contract with a Seller following an RFQ process.

### **13.5. Buyers may purchase from different Modules and Categories**

- 13.5.1. A Contract may be for Products and Services:
  - a. within one Module or Category; or
  - b. across a number of Modules or Categories to which the Seller is Appointed.

### **13.6. Buyers may purchase in groups**

- 13.6.1. A Contract may be for the provision of Products and Services from the Seller to:
  - a. one Buyer; or
  - b. a group of Buyers (in which case the Contract must specify whether there will be a single Contract with multiple Buyers as parties, or separate Contracts for each Buyer).

### **13.7. Pricing in a Request for Quote**

- 13.7.1. In a Request for Quote, a Buyer may:
  - a. seek quotes on a fixed price or other basis;
  - b. give sellers the opportunity to quote on the basis of the Seller's Maximum Fees; or
  - c. request Fees lower than those set out in a Seller's Maximum Fees.

### **13.8. Seller response to Request for Quote**

- 13.8.1. Upon receipt of a Request for Quote, the Seller must:
  - a. prepare and submit a Quote by the Request for Quote Closing Date using the Quote template in the DTA Form with:
    - i. a description of how the Seller would provide the requested Products and Services and whether it could do so within the timeframe specified in the Request for Quote;

- ii. indicate the Key Personnel and Labour Hire Workers, if any, that would provide the requested Products and Services;
    - iii. declare any Conflict the Seller may have in providing the requested Products and Services;
    - iv. a fee quote to provide the Products and Services, which must not exceed the applicable Maximum Fees; and
    - v. any other information requested by the Buyer in the Request for Quote; or
  - b. advise the Buyer as soon as possible (and, in any event, before the Request for Quote Closing Date), that the Seller is not submitting a Quote in response to that RFQ.
- 13.8.2. Seller Quotes must remain open for acceptance by the Buyer for 60 Business Days unless otherwise specified in a Request for Quote.
- 13.8.3. The Seller warrants that it will not:
- a. include Fees for Products and Services which are higher than the applicable Maximum Fees.; or
  - b. communicate to any person other than the relevant Buyer, Vendor or DTA, the amount or approximate amount of the tender.
- 13.8.4. The Seller acknowledges and agrees that a Request for Quote does not commit a Buyer to obtain products and services from the Seller or any other seller on the Panel.
- 13.9. Request for Quotes across more than one Module or Category**
- 13.9.1. If a Request for Quote relates to Products and Services in more than one Module or Category:
- a. the Seller must only respond to the Request for Quote with Products and Services within the scope of the Seller's Modules and Categories; and
  - b. if a part of the Product or Service can be provided under more than one Module or Category:
    - i. the Seller must ensure that the pricing for the Product or Service in its Quote reflects the pricing that will result in the lowest Fees to the Buyer; and
    - ii. the applicable Part C - Module Specific Terms will be those that correspond with the Product or Service quoted under clause 13.9.1bi.
- 13.10. Seller request to be invited to a Request for Quote**
- 13.10.1. If the Seller was not initially invited to respond to a Request for Quote, the Seller may request the Buyer to allow it to respond to the Request for Quote.

- 13.10.2. The Seller's request under clause 13.10.1 must be in accordance with the process notified by DTA to the Seller from time to time, which may set out the circumstances when a request under clause 13.10.1 cannot be made.
- 13.10.3. If the Seller makes a request under clause 13.10.1, the Seller acknowledges:
- a. the Buyer does not have to consent to the Seller's request; and
  - b. if it is allowed to provide a Quote, it will not assert to the Buyer at any stage including in any complaint or legal proceedings that it has been disadvantaged by having less time to respond to the Request for Quote than another seller.

**13.11. Publication of Contracts and Quote information**

- 13.11.1. DTA and any Buyer may publish executed Contracts and details about a Contract on AusTender.
- 13.11.2. DTA and any Buyer may publish executed Contracts and details about a Quote or Contract on the Online Portal or elsewhere, with the Seller's Confidential Information removed.

**13.12. Other Approaches to Market**

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

- 13.12.1. The Seller agrees that Buyers may also conduct an Approach to Market on the Panel.
- 13.12.2. The Seller must comply with requirements set out in a Buyer's Approach to Market and any other requirements notified by DTA when responding to the Approach to Market.

**14. Whole of Government Arrangements**

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**14.1. Application of Whole of Government Arrangements**

- 14.1.1. The Seller acknowledges that:
- a. the Commonwealth manages Whole of Government Arrangements (WofG Arrangements), some of which are mandatory for Buyers under Commonwealth policy;
  - b. the scope of the Products and Services that may be procured by a Buyer under the Panel may overlap with the scope of the products and services that are required to be, or may be, procured under a WofG Arrangement; and
  - c. despite any WofG Arrangement entered into by the Seller, the terms of this Panel Agreement continue to apply to the management and operation of the Panel.

- 14.1.2. If the Seller is a party to a WofG Arrangement, and a Buyer wishes to procure Products and Services that are within the scope of both the Panel and the scope of the WofG arrangement, the Seller agrees:
- a. if the Buyer is required or permitted to use the WofG arrangement for a procurement, the terms of the WofG Arrangement will apply to the procurement;
  - b. if the Buyer is not permitted to use the WofG Arrangement but is permitted to use the Panel, the terms of this Panel Agreement will apply to the procurement.
- 14.1.3. If the Seller is not a party to a WofG Arrangement, and a Buyer wishes to procure Products and Services that are within the scope of both the Panel and the scope of the WofG arrangement, the Seller must not provide those products and services to the Buyer if the Buyer is required to use the WofG Arrangement.
- 14.1.4. If a Buyer places an order for any products and services under the WofG Arrangement, the Seller must ensure that:
- a. the order is placed using the processes set out in the WofG Arrangement;
  - b. the terms of the resulting contract are in accordance with the WofG Arrangement (unless otherwise approved by DTA) and not the terms of this Panel Agreement; and
  - c. the resulting contract includes the best available pricing for the relevant products and services.
- 14.2. Effect of WofG Arrangements on existing Contracts**
- 14.2.1. Subject to the terms of the WofG Arrangement, if the Seller has entered into a Contract with a Buyer and subsequently enters into a WofG Arrangement, from the date the WofG Arrangement is entered into (or other date agreed with DTA):
- a. the Seller must supply any Products and Services within the scope of the WofG Arrangement on the terms of the WofG Arrangement and not on the terms of the Contract;
  - b. the Seller must continue to supply any Products and Services not within the scope of the WofG Arrangement on the terms of the Contract;
  - c. if this Panel Agreement or any Contract include terms that are not covered by the terms of the WofG Arrangement, then those terms will be incorporated into the WofG Arrangement;
  - d. the Seller must comply with any specific transition requirements in the WofG Arrangement; and
  - e. the Buyer and Seller must, in consultation with DTA, negotiate in good faith to vary the Contract to reflect any changes required by the transition to the WofG Arrangement.

14.2.2. Unless otherwise stated in the WofG Arrangement, this clause 14.2 does not apply to Products and Services which have already been delivered or invoiced in accordance with a Contract prior to the date the WofG Arrangement is entered into.

**14.3. Subcontractors**

14.3.1. If a Subcontractor to a Contract is a party to a WofG Arrangement, the Seller:

- a. acknowledges that the Subcontractor may be required to provide the Subcontracted Products and Services to a Buyer directly on the terms of the WofG Arrangement, and if so, the Seller must negotiate with the Buyer in good faith any amendments to this Panel Agreement and any Contract necessary to give effect to that arrangement; and
- b. must use its best endeavours to ensure that any Products and Services provided by the Subcontractor to the Buyer which are within the scope of the WofG Arrangement are provided on terms no less favourable than the terms of the WofG Arrangement, including any terms relating to pricing, unless otherwise agreed in writing by the Buyer.

14.3.2. The Seller acknowledges and agrees that, if the Products and Services of the Seller are within the scope of a WofG Arrangement with another entity, DTA may notify the Seller that those Products and Services may no longer be supplied under this Panel Agreement to certain types of Buyers from a specified date. If the Seller receives such a notice, the Seller must not sell any Products and Services specified in the notice to the specified types of Buyers unless DTA has approved that sale in writing.



## SECTION 3 – GENERAL TERMS AND CONDITIONS

### 15. General Warranties

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#### 15.1. Representations and Warranties

15.1.1. The Seller warrants that:

- a. it has full power and authority to enter into this Panel Agreement and to perform the obligations under it;
- b. its execution and performance of this Panel Agreement will not contravene:
  - i. any law;
  - ii. the Seller's constituent documents; or
  - iii. any agreement or instrument to which the Seller is a party, or any obligation that the Seller owes to another person;
- c. if Item 4 of Schedule A1 - Panel Appointment Details is marked 'Not applicable', then the Seller is not entering into this Panel Agreement as a trustee of any trust or settlement;
- d. it is not insolvent;
- e. there is no current or pending judicial action against the Seller that could have an adverse effect on the Seller's reputation or the Seller's capacity to perform its obligations under this Panel Agreement or a Contract;
- f. it does not rely on any representation, warranty, condition or other conduct, information, statement or document given by DTA, or any person purporting to act on behalf of DTA, in entering into this Panel Agreement;
- g. it has all necessary licences and authorisations required to operate and provide the Products and Services to Buyers under Contracts;
- h. none of its directors or executive management have been convicted of an offence relating to fraud or dishonesty;
- i. it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- j. it is not on the Commonwealth's Consolidated List of individuals and entities to which Australian sanctions apply and none of its Personnel are on, or are a member of an entity on, that list;
- k. it and its Personnel have the necessary experience, qualifications, skills, knowledge and competence to provide Products and Services under Contracts;
- l. its performance of the Panel Agreement will comply with AS EN 301 549:2020 – Accessibility requirements for ICT products and services;

- m. it has not made any false declaration about any current or past dealings with DTA or any Buyers; and
  - n. there has been no significant deficiency in the Seller's performance of any other agreement with DTA or any Buyers.
- 15.1.2. The Seller acknowledges that DTA has entered into this agreement in reliance on the warranties and representations contained in this Panel Agreement.
- 15.1.3. The Seller warrants that it will notify and fully disclose to DTA any breach of any of the warranties in this clause 15.1 as soon as it becomes aware of a breach, or any event or occurrence actual or threatened during the Panel Agreement Period that would materially affect the Seller's ability to perform any of its obligations under this Panel Agreement.

## **16. Subcontractors and Personnel**

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### **16.1. The Seller is fully responsible despite involvement of Subcontractors or Personnel**

- 16.1.1. The Seller is fully responsible for the performance of this Panel Agreement and for ensuring compliance with the requirements of this Panel Agreement, and will not be relieved of that responsibility because of any:
  - a. involvement by DTA;
  - b. Subcontracting of the Products and Services; or
  - c. payment made to the Seller for the Products and Services.
- 16.1.2. The Seller must not Subcontract any part of the performance of this Panel Agreement unless approved by a Buyer under a Contract.

### **16.2. Extension of provisions to Subcontractors and Personnel**

- 16.2.1. The Seller agrees to ensure that:
  - a. its Subcontractors and Personnel comply with all relevant Requirements; and
  - b. any contract entered into in connection with this Panel Agreement imposes all relevant Requirements on the other party.
- 16.2.2. The Seller agrees to exercise any rights it may have against any of its Subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by DTA.

## **17. Liability**

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### **17.1. Proportionate liability regimes excluded**

*Note: Several Australian States have proportionate liability regimes which relate to the apportionment of liability between responsible parties. For more*

information see Part 4 of the [Civil Liability Act 2002 \(NSW\)](#) and equivalent regimes in other States.

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

## **18. Indemnity**

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### **18.1. Seller indemnifies DTA**

- 18.1.1. The Seller indemnifies DTA from and against any:
- a. cost or liability incurred by DTA;
  - b. loss of or damage to property of DTA; or
  - c. loss or expense incurred by DTA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by DTA, arising from either:
    - d. a breach by the Seller of this Panel Agreement or any Contract; or
    - e. an act or omission involving fault on the part of the Seller or its Personnel in connection with this Panel Agreement or any Contract.
- 18.1.2. The Seller's liability to indemnify DTA under clause 18.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of DTA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 18.1.3. The right of DTA to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power or remedy provided by law.

## **19. Cure Plan**

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### **19.1. Seller to provide a Cure Plan if there is a Performance Issue**

- 19.1.1. If DTA considers that:
- a. the Seller has breached any Requirement under this Panel Agreement;
  - b. a Security Incident has occurred;
  - c. a Service Level Failure has occurred; or
  - d. the Seller has received any Performance Ratings at the Not Met level,
- (each a **Performance Issue**) the Seller must within 2 Business Days of being notified to do so (or such time as the notice specifies) provide DTA with a Cure Plan to remedy the Performance Issue and its underlying causes.
- 19.1.2. A Cure Plan must include:

- a. full details of the cause of the Performance Issue, where known, or the full details of what the Seller considers to be the cause of the Performance Issue (including where relevant, its root cause and all underlying causes);
- b. the proposed method by which:
  - i. the Performance Issue will be cured (if it is capable of being cured); and
  - ii. the Seller will ensure that the Performance Issue does not happen again;
- c. any temporary measures that can be taken to work around or minimise the impact of the Performance Issue;
- d. the time that will be required to fully complete all aspects of the Cure Plan;
- e. a risk assessment detailing the risks, mitigations and risk ratings for the cause of the Performance Issue; and
- f. the tasks, timing, resources, dependencies, contingencies, availability of resources, the relationships between tasks and all other information as DTA may reasonably require in order for it to assess the Seller's plan.

**19.2. Seller to implement Cure Plan if notified to do so**

19.2.1. DTA may either:

- a. notify the Seller to implement the Cure Plan; or
- b. notify the Seller to revise the Cure Plan, in which case the Seller must revise and resubmit the Cure Plan within 2 Business Days (or other time stated in the notice) as required in the notice.

19.2.2. If DTA issues the Seller a notice under clause 19.2.1.a, the Seller must immediately implement the Cure Plan and:

- a. keep DTA fully informed about the progress of work against the Cure Plan;
- b. promptly provide DTA with information that it requests about the progress of work under the Cure Plan or any related matter;
- c. diligently perform all work in accordance with the Cure Plan and properly manage it through to conclusion;
- d. provide an updated risk assessment if requested by DTA; and
- e. notify DTA when it believes the Cure Plan has been fully implemented and completed.

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

19.2.4. Nothing in this clause 19 limits any rights or remedies of DTA under this Panel Agreement including any right of termination.

## **20. Intellectual Property**

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### **20.1. Licence of information and materials**

- 20.1.1. The Seller grants to (or will procure for) DTA and each Buyer a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute and communicate and exploit Application Material provided by the Seller to DTA or the relevant Buyer for any purpose in connection with the Panel.
- 20.1.2. The Seller agrees, on request by DTA or the relevant Buyer, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 20.
- 20.1.3. The Seller warrants that:
  - a. it is entitled; or
  - b. it will be entitled at the relevant time,to deal with the Intellectual Property in the Application Material in the manner provided for in this clause 20.
- 20.1.4. DTA grants (or will procure) a royalty-free, non-exclusive licence for the Seller to use DTA Material for the purposes of this Panel Agreement.

## **21. Digital Security**

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### **21.1. General security obligations**

- 21.1.1. To the extent applicable to the Seller's performance of this Panel Agreement, the Seller must comply, and ensure its Personnel comply, with the Protective Security Policy Framework.
- 21.1.2. The Seller must notify DTA immediately in the event of any requests from a foreign government or foreign agency requesting access to any Buyer Data (unless such notification is prohibited by law), and the Seller must redirect any such request to DTA.

### **21.2. Harmful code**

- 21.2.1. The Seller must take reasonable precautions, including using best industry practice, to ensure that it and its Personnel do not introduce any Harmful Code into:
  - a. any Products and Services;
  - b. the Online Portal;
  - c. DTA's Digital System; or
  - d. any Digital System used to facilitate or support performance of this Panel Agreement.

(together the **Applicable Systems**)

- 21.2.2. The Seller must on request promptly provide DTA with full details of all processes and procedures it has in place to ensure a breach of clause 21.2.1 does not occur.
- 21.2.3. The Seller must immediately notify DTA with full information and details if it knows or reasonably suspects that a breach of clause 21.2.1 may have occurred.
- 21.2.4. If any Harmful Code is found (or is reasonably suspected) to have been introduced into the Applicable Systems in breach of clause 21.2.1, the Seller must:
- a. take all reasonable action requested by DTA to contain and eliminate the Harmful conduct; and
  - b. ensure any actual or potential loss of, or threat to, DTA's operations and efficiency is minimised until it is established that breach of clause 21.2.1 has been remedied or has not occurred.

This clause 21.2.4 does not limit any other right or remedy DTA has under this Panel Agreement or at law.

- 21.2.5. The Seller must not insert or knowingly permit any third party to insert any code into the Applicable Systems that would shut down or disable the Applicable Systems.

### **21.3. Cyber Attacks**

- 21.3.1. The Seller must take reasonable and prudent steps consistent with best industry practice to reduce the risk of Cyber Attack on the Digital Systems of the Seller and any Subcontractor.
- 21.3.2. If requested by DTA's, the Seller must provide details of the security measures put in place by the Seller and any Subcontractors to reduce the risk of Cyber Attack on the Digital Systems of DTA, Buyers, the Seller and any Subcontractor.
- 21.3.3. If the Seller becomes aware of a Cyber Attack on the Digital Systems of the Seller or any Subcontractor, the Seller must immediately:
- a. contact the DTA Representative (by phone or email, whichever is fastest), providing full details of the Cyber Attack; and
  - b. if required by law or if directed by DTA, advise CERT Australia and/or the Australian Cyber Security Centre.
- 21.3.4. If requested by DTA, the Seller must, within 10 Business Days, prepare and provide to DTA for approval a cyber security plan. The cyber security plan must provide details of the security measures put in place by the Seller and any Subcontractors to reduce the risk of Cyber Attack on their Digital Systems.
- 21.3.5. DTA may either:
- a. notify the Seller that the cyber security plan is an Approved Plan; or

- b. notify the Seller to promptly revise and resubmit the cyber security plan within 2 Business Days (or such longer time as the notice specifies) to meet the reasonable requirements of DTA as set out in the notice, in which case Seller must revise and resubmit the cyber security plan in accordance with the notice.
- 21.3.6. The Seller must begin providing the Products and Services on and from the date that the cyber security plan is an Approved Plan under clause 21.3.5.a.
- 21.3.7. DTA may:
  - a. suspend the Seller from the Panel following a Cyber Attack; and
  - b. have discussions with Buyers regarding a Cyber Attack, regardless of whether the Buyer has a Contract in place with the Seller.
- 21.4. Data security and dealing with DTA Data**
- 21.4.1. The Seller must not without DTA's prior written consent:
  - a. remove any DTA Data or allow any DTA Data to be removed from DTA's systems or premises or Seller's systems or premises; or
  - b. transmit, store, take or access DTA Data or allow DTA Data to be transmitted, stored, taken or accessed by any means outside of Australia.
- 21.4.2. The Seller must implement all necessary measures to ensure that any DTA Data which is accessed, transmitted or stored using, or on, the Seller's or any Subcontractor's Digital System is:
  - a. protected from:
    - i. unauthorised access or use by a third party; and
    - ii. misuse, loss, damage, destruction, alteration or corruption by any person; and
  - b. without limiting clause 21.1.1, afforded protective measures (including but not limited to administrative, physical and technical safeguards) that are consistent with best industry practice for the Products and Services.

*Note: Clause 26.2.1.c imposes certain obligations on the Seller where it breaches clause 21.4.1 or clause 21.4.2.*
- 21.4.3. The Seller agrees, on expiration or termination of this Panel Agreement, to deal with all DTA Data as directed by DTA, subject to any requirement of law binding on the Seller.

## **22. Privacy**

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### **22.1. Seller's Privacy Act obligations**

- 22.1.1. The Seller agrees, in providing Products and Services:

- a. to comply with its obligations under the Privacy Act and not to do any act or engage in any practice which, if done or engaged in by DTA, would be a breach of an Australian Privacy Principle under the Privacy Act; and
  - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in Schedule A1 - Panel Appointment Details, to the extent that they are consistent with the obligations referred to in clause 22.1.1.a above.
- 22.1.2. The Seller must promptly notify DTA if the Seller:
  - a. becomes aware that a disclosure of Personal Information is required by law; or
  - b. receives a request or an inquiry from the Privacy Commissioner, or from any individual to whom any Personal Information held by the Seller or Subcontractors relates, in respect of Personal Information.
- 22.1.3. Seller to act on Eligible Data Breaches**
- 22.1.4. If the Seller becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Panel Agreement or a Contract, the Seller agrees to:
  - a. notify DTA in writing as soon as possible, which must be within 72 hours; and
  - b. unless otherwise directed by DTA, carry out an assessment in accordance with the requirements of the Privacy Act.
- 22.1.5. Where the Seller is aware that there are reasonable grounds to believe there has been, or where DTA notifies the Seller that there has been, an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Panel Agreement or a Contract, the Seller must:
  - a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
  - b. unless otherwise directed by DTA, take all other action necessary to comply with the requirements of the Privacy Act; and
  - c. take any other action as reasonably directed by DTA.
- 22.1.6. The Seller agrees to notify DTA immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 22.
- 22.1.7. Without limiting the rights and obligations in this clause 22, DTA may have discussions with Buyers concerning the matters set out in clause 22 if there are reasonable grounds to believe there has been an Eligible Data Breach.



## **23. Notices**

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### **23.1. Format, addressing and delivery**

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

- a. *if given by the Seller to DTA* – addressed to the DTA Representative at the address notified by DTA; or
- b. *if given by DTA to the Seller* – addressed to the Seller Representative as stated in Item 11 of Schedule A1 - Panel Appointment Details (or as updated in accordance with clause 10.3).

23.1.2. A notice is to be:

- a. transmitted electronically by the person giving the notice by email; or
- b. transmitted through the Online Portal.

### **23.2. When effective**

23.2.1. A notice will take effect:

- a. *if transmitted by email* – when it becomes capable of being retrieved by the addressee; and
- b. *if transmitted through the Online Portal* – on the date of posting on its website or transmission through that system provided that the party uses reasonable endeavours to ensure that the other party is informed of the notice.

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

## **24. General provisions**

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### **24.1. Books and Records**

24.1.1. The Seller must keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by a Buyer under a Contract to be determined.

### **24.2. Compliance with Panel Agreement**

24.2.1. If requested by DTA, the Seller must provide evidence of its compliance with the Panel Agreement.

### **24.3. Audit and access**

24.3.1. For the purposes of this clause 24, the definition of Official Resources includes any Official Resources to which the Seller has access under any Contract or this Panel Agreement.

24.3.2. The Seller agrees:

- a. to give the DTA Representative, or any persons authorised in writing by the DTA Representative:
  - i. access to premises where this Panel Agreement and any Contracts are being performed or where Official Resources are located; and
  - ii. records and information in a generally accepted data format and storage medium specified by DTA.
- b. to permit those persons set out in clause 24.3.2a to inspect and take copies of any Material relevant to this Panel Agreement and any Contract, including but not limited to:
  - i. details of the Seller's compliance with all international industry standards, best practice and guidelines;
  - ii. the Seller's operational practices and procedures as they relate to this Panel Agreement and any Contract;
  - iii. security procedures;
  - iv. the Performance Management Framework;
  - v. the Fees and the accuracy of the Seller's invoices and reports in relation to the provision of Products and Services under this Panel Agreement and any Contract;
  - vi. the Seller's compliance with its confidentiality, privacy, security, and other obligations under this Panel Agreement and any Contract;
  - vii. material (including accounts and records) in the possession of the Seller relevant to the Products and Services delivered under this Panel Agreement or any Contract; and
  - viii. any other matters determined by DTA to be relevant to the operations and the performance of this Panel Agreement or any Contract.

24.3.3. The rights referred to in clause 24.3.2 are subject to:

- a. DTA providing reasonable prior notice;
- b. reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a Deed of confidentiality by the persons to whom access is given.

24.3.4. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 24.

24.3.5. This clause 24 does not affect the statutory powers of the Auditor-General or Information Officer (including their delegates).

**24.4. Costs**

24.4.1. Subject to clause 24.5.2, each party must bear its own costs of all inspections, access and audits.

**24.5. Consequences of audit**

24.5.1. The Seller must promptly, at no additional cost to DTA, take corrective action to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Seller has performed its obligations under this Panel Agreement or a Contract unless otherwise agreed in writing by DTA.

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

- a. refund any amounts overcharged to the relevant Buyer; and
- b. if the audit reveals material overcharging (as reasonably determined by DTA), pay to DTA, as applicable, the cost of any auditor fees that DTA has incurred.

**24.6. Insurance**

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

24.6.2. Prior to the Start Date of a Contract, the Seller must hold and maintain the insurance stated in Item 13 Schedule A1 – Panel Appointment Details and any additional insurance specified in a Contract, as a minimum.

24.6.3. The Seller must, on request, provide proof of insurance acceptable to DTA.

24.6.4. This clause 24.6 continues in operation for so long as any obligations remain in connection with this Panel Agreement.

**24.7. Relationship of parties**

24.7.1. The Seller is not by virtue of this Panel Agreement an officer, employee, partner or agent of DTA, nor does the Seller have any power or authority to bind or represent DTA unless specifically authorised in writing.

24.7.2. The Seller agrees:

- a. not to misrepresent its relationship with DTA or any Buyer;
- b. not to use the Commonwealth coat of arms, or any DTA branding in connection with this Panel Agreement on its website, in marketing material or any other public facing document without the prior written permission of DTA; and
- c. not to engage in any misleading or deceptive conduct in relation to the Products and Services.

#### **24.8. Public announcements**

- 24.8.1. The Seller agrees not to make any public announcement about this Panel Agreement unless it has DTA's prior written approval.
- 24.8.2. The Seller is not required to obtain approval to make a public announcement if the public announcement is required by law or a regulatory body (including a relevant stock exchange).
- 24.8.3. If the Seller is required by law or a regulatory body to make a public announcement, the Seller must:
  - a. limit the public announcement to the extent required by the relevant law or regulatory body; and
  - b. to the extent practicable, first consult with and take into account the reasonable requirements of DTA.

#### **24.9. Waiver**

- 24.9.1. A failure or delay by a party to exercise any right or remedy it holds under this Panel Agreement does not operate as a waiver of that right.
- 24.9.2. The exercise or partial exercise by a party of any right or remedy it holds under this Panel Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

#### **24.10. Variation**

- 24.10.1. A variation of this Panel Agreement is binding only if it is properly executed by the authorised representative of each party and substantially in the form of the relevant DTA Form.
- 24.10.2. If a party wishes to make changes to this Panel Agreement, it must provide the proposed changes in writing to the other party (giving all necessary details and justification for the change). The other party must respond to the proposal as soon as practicable (but no later than 10 Business Days unless otherwise agreed by the parties).
- 24.10.3. Any variation to this Panel Agreement does not vary any Contracts already in existence, unless otherwise agreed by the parties to the Contract in writing.

#### **24.11. Assignment and Novation**

- 24.11.1. The Seller must not assign or novate its rights or obligations under this Panel Agreement, without the prior written consent of DTA.
- 24.11.2. DTA will conduct due diligence on any new entity proposed for an assignment or novation, to determine whether to provide consent under clause 24.11.1 and Seller agrees to provide all necessary information to DTA for this purpose.
- 24.11.3. Where DTA agrees to the Seller assigning or novating its rights or obligations under this Panel Agreement, the Seller must provide the DTA Representative with a completed deed of novation in the form required by DTA.

**24.12. Change in Control**

24.12.1. If the Seller may be subject to a Change of Control, it must notify DTA promptly and at least 10 Business Days before any Change of Control occurring.

24.12.2. Following a Change of Control, DTA may:

- a. conduct due diligence;
- b. consent to the Change of Control;
- c. consent to the Change of Control subject to conditions; or
- d. terminate this Panel Agreement under clause 25.4.1.a.

24.12.3. The Seller must promptly provide DTA all information reasonably requested by DTA in relation to a Change of Control or proposed Change of Control, including details about the Seller's ownership, corporate structure, beneficiaries, and details of any controlling entities.

**24.13. Change in Seller's country of tax residency**

24.13.1. The Seller's country of tax residency and, if applicable, ultimate parent entity's country of tax residency, is as stated in Item 3 of Schedule A1 - Panel Appointment Details.

24.13.2. If there is a change in the Seller's country of tax residency or change in Seller's ultimate parent entity's country of tax residency, the Seller must notify DTA within 10 Business Days of that change occurring.

**24.14. Severability**

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

**24.15. Further action**

24.15.1. Each Party must, at its own expense, do everything reasonably necessary (including executing all documents) to give full effect to this Panel Agreement.

**24.16. Entire Agreement**

24.16.1. This Panel Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**24.17. Electronic signatures and acceptance**

24.17.1. If a document is required to be signed or accepted in accordance with, or for purposes related to, this Panel Agreement, that document may be signed or otherwise accepted electronically, unless otherwise notified by DTA.

**24.18. Counterparts**

24.18.1. This Panel Agreement may be executed in counterparts. All executed counterparts constitute one document.

**24.19. Trustee Seller**

24.19.1. If the Seller acts as trustee of a trust (as specified in Item 4 of Schedule A1 - Panel Appointment Details), in relation to this Panel Agreement:

- a. it is liable both personally, and in its capacity as trustee of that trust;
- b. it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Panel Agreement;
- c. it must not retire, resign nor by act or omission effect or facilitate a change to its status as the trustee of that trust; and
- d. it represents and warrants that:
  - i. such trust has been duly established and currently exists;
  - ii. it is the duly appointed, current and only trustee of that trust;
  - iii. as such trustee it has the power to enter into and perform its obligations under this Panel Agreement;
  - iv. it has a right of indemnity out of the assets of that trust in respect of its obligations;
  - v. any Conflict and duty affecting it as such trustee (and/or its directors, if any) does not arise or otherwise is overcome by the terms of the relevant trust deed; and
  - vi. no breach of the relevant trust deed exists or would arise.

**24.20. Survival**

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

- a. liability;
- b. indemnity;
- c. warranties;
- d. termination (in respect to rights and obligations arising on termination);
- e. reporting;
- f. licensing of Intellectual Property;
- g. confidentiality;
- h. the Performance Management Framework;

- i. privacy;
- j. books and records;
- k. audit and access;
- l. integrity;
- m. security; or
- n. any other provision which the parties expressly or by implication intend to continue.

## **25. Termination and suspension**

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### **25.1. Termination for convenience**

- 25.1.1. DTA may by notice, at any time, terminate this Panel Agreement or reduce the scope of this Panel Agreement immediately.
- 25.1.2. If this Panel Agreement is terminated or reduced in scope as set out in clause 25.1.1, the Seller is not entitled to compensation from DTA for any loss.
- 25.1.3. Any termination under clause 25.1.1 will not affect Contracts between Buyers and the Seller that were entered before termination of this Panel Agreement.

### **25.2. Seller initiated removal from Panel**

- 25.2.1. The Seller may request that this Panel Agreement is terminated. When making such a request the Seller must provide reasons, which DTA will consider in good faith. DTA will notify the Seller of its decision within a reasonable timeframe and, if agreed, the termination will be effective from the date stated in the notice. Such termination will have no effect on Contracts executed before that date.

### **25.3. Seller initiated removal of Products and Services from Panel**

- 25.3.1. If the Seller requests that Products and Services are removed from a Panel Catalogue, DTA will remove the Products and Services within 30 Business Days of receiving the request from the Seller.

### **25.4. Termination for fault**

- 25.4.1. If the Seller fails to satisfy any of its obligations under this Panel Agreement, then DTA – *if it considers that the failure is:*
  - a. *not capable of remedy* – may, by notice, terminate, or reduce the scope of, this Panel Agreement immediately; or
  - b. *capable of remedy* – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate, or reduce the scope of, this Panel Agreement immediately by giving a second notice.

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

- a. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration;
- b. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors;
- c. has a Contract terminated by a Buyer due to a failure by the Seller to satisfy any of its obligations under the Contract;
- d. is found to have provided false or misleading information to DTA in connection with the Panel including when joining the Panel and providing Quotes to Buyers;
- e. receives an overall rating of Not Met on three or more occasions under the Performance Management Framework;
- f. receives an adverse assessment from a periodic review conducted by DTA under clause 41;
- g. has received substantiated evidence of continuous or substantial negative feedback from one or more Buyers in respect to the performance of the Seller under the Performance Management Framework or otherwise;
- h. fails to notify DTA of a Change in Control in accordance with clause 24.12;
- i. fails to implement a Cure Plan where required to do so under clause 19, or a Cyber Security Plan where required to do so under clause 21.3;
- j. and DTA cannot agree to a variation to this Panel Agreement;
- k. in DTA's reasonable opinion:
  - i. no longer has the capacity and capability to perform its obligations under this Panel Agreement;
  - ii. is no longer providing value for money to the Australian Government through the Seller's Appointment to the Panel; or
  - iii. has not meaningfully engaged with Buyers and DTA for 12 months so as to be inactive on the Panel;
- l. *or any of its Associates* – has committed a breach of national security or without written authorisation released any Official Information to a third party whether under this Panel Agreement, a Contract or otherwise; or
- m. *or any of its Associates* – embarrasses or brings DTA or the Commonwealth into disrepute or diminishes the public trust in them whether under this Panel Agreement, a Contract or otherwise.



## **25.5. Impact of termination**

25.5.1. If this Panel Agreement is terminated:

- a. no new Contracts may be formed after termination of this Panel Agreement;
- b. Contracts placed before termination of this Panel Agreement remain in effect unless a Buyer terminates the Contract in accordance with the terms of the Contract;
- c. subject to this Panel Agreement, the parties are relieved from future performance of the terminated Panel Agreement (or relevant part of it);
- d. subject to this Panel Agreement, any licences and authorisations that DTA granted to the Seller relating to or concerning this Panel Agreement terminate immediately despite anything to the contrary contained in the licence or authorisation, except to the extent necessary for the Seller to perform any Contract still in effect;
- e. the Seller must take all available steps to protect Intellectual Property Rights, Official Information and Personal Information relating to or provided or accessed in connection with this Panel Agreement;
- f. the Seller must return to DTA all DTA Material, except in respect of Contracts that have been formed prior to the termination of this Panel Agreement and which continue;
- g. the Seller must follow any reasonable direction of DTA and continue to perform any part of this Panel Agreement (and any Contract) not affected by or which survives the termination.

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

## **25.6. Suspension**

25.6.1. If the Seller:

- a. fails to satisfy any of its obligations under this Panel Agreement; or
- b. receives an overall rating of Not Met on one or more occasions under the Performance Management Framework,

DTA may, by notice, suspend the Seller's ability to accept:

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

until such time as the Seller remedies the failure in accordance with this Panel Agreement or for such shorter period as may be specified in the Suspension Notice (**Suspension Period**).

- 25.6.2. If at the end of the Suspension Period the Seller has failed to remedy its breach (or breaches) in accordance with this Panel Agreement, DTA may maintain the suspension by issuing a further Suspension Notice under clause 25.6.1.
- 25.6.3. During any Suspension Period:
- a. the Seller must not respond to a Request for Quote or enter into any Contracts for the Modules or Categories stated in the relevant Suspension Notice; and
  - b. all other provisions of this Panel Agreement and any existing Contracts not affected by the suspension continue.
- 25.6.4. Nothing in this clause 25.6 limits any other rights of DTA under this Panel Agreement or at law.
- 25.7. Impact of termination if Seller applies to re-join Panel**
- 25.7.1. If the Seller:
- a. is terminated from the Panel or any Module or Category; and
  - b. applies to be re-appointed to the Panel or the relevant Module or Category, then:
  - c. the Seller must demonstrate to DTA's satisfaction that it has rectified all issues that caused the Seller to be terminated; and
  - d. DTA may refuse to re-appoint the Seller to the Panel, or relevant Module or Category.
- 25.7.2. This clause 25.7 survives the termination of this Panel Agreement.

## **SECTION 4 – INTEGRITY REQUIREMENTS**

### **26. Confidentiality of Official Information and other security obligations**

#### **26.1. Confidentiality of Official Information**

- 26.1.1. The Seller will not, without the prior written authorisation of DTA, disclose any Official Information to any person (unless required to do so by law).
- 26.1.2. Subject to clause 26.2.1, the Seller is authorised to provide Official Information to those Personnel who require access for the purposes of this Panel Agreement.
- 26.1.3. The Seller agrees, on request by DTA at any time, to arrange for the Personnel referred to in clause 26.1.2 to give a written undertaking in a form acceptable to DTA relating to the use and non-disclosure of Official Information.
- 26.1.4. The Seller agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

#### **26.2. Other security obligations of the Seller**

- 26.2.1. The Seller must:
    - a. ensure that all Personnel who require access to Security Classified Resources:
      - i. hold the appropriate security clearance;
      - ii. comply with Australian Government Vetting Service (AGSVA) requirements for holders of the relevant security clearance; and
      - iii. otherwise comply with reporting requirements applicable to security clearance holders (for example, regarding significant changes to personal circumstances);
    - b. prevent access to Security Classified Resources by Personnel:
      - i. whose security clearances are revoked or have lapsed; or
      - ii. who do not have a legitimate and genuine need to access the relevant Security Classified Resources for the purposes of this Panel Agreement.
    - c. notify DTA immediately if the Seller:
      - i. becomes aware that a Security Incident or breach of clause 21.4.1, clause 21.4.2, clause 26.1.4 or clause 26.2.1 of this Panel Agreement has occurred; or
      - ii. reasonably suspects that a Security Incident or such a breach has occurred.
- and otherwise follow DTA's reasonable directions in relation to Security Incident reporting and management.

26.2.2. The Seller must implement security procedures to ensure that it meets its obligations under this clause 26 and will provide details of these procedures to DTA on request.

**26.3. Consequences of breach**

The Seller acknowledges that any failure to fully comply with any of its obligations under this clause 26 or equivalent obligations under a Contract may be treated by DTA as a failure that is not capable of remedy.

**27. Confidential Information of the Seller**

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**27.1. Confidential Information not to be disclosed**

27.1.1. Subject to clause 27.2, DTA will not, without the prior written authorisation of the Seller, disclose any Confidential Information of the Seller to a third party.

**27.2. Exceptions to obligations**

27.2.1. The obligations on DTA under this clause 27 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by DTA to its Personnel solely in order to comply with obligations, or to exercise rights, under this Panel Agreement;
- b. is disclosed by DTA to its internal management Personnel, solely to enable effective management or auditing of contract related activities;
- c. is disclosed by DTA to the responsible Minister;
- d. is disclosed by DTA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by DTA within DTA's organisation;
- f. is disclosed to a Buyer including to assist a Buyer with a procurement process under the Panel;
- g. is authorised or required by law to be disclosed; or
- h. is in the public domain otherwise than due to a breach of this clause 27.

27.2.2. Where DTA discloses Confidential Information to another person pursuant to clauses 27.2.1.a - 27.2.1.f, DTA will notify the receiving person that the information is confidential.

27.2.3. In the circumstances referred to in clauses 27.2.1.a, 27.2.1.b, 27.2.1.e and 27.2.1.f, DTA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

**27.3. Period of confidentiality**

27.3.1. The obligations under this clause 27 in relation to an item of Confidential Information of the Seller continue for the period set out in Item 12 of Schedule A1 - Panel Appointment Details in respect of that item.

## **28. Conflict of interest**

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### **28.1. Seller must notify DTA of any Conflicts**

- 28.1.1. The Seller warrants that, to the best of its knowledge after making diligent inquiries at the Panel Agreement Start Date, no Conflict, except as disclosed in writing to DTA, exists or is likely to arise.
- 28.1.2. If, during the Panel Agreement Period a Conflict arises, or appears likely to arise, the Seller agrees:
- a. to notify DTA immediately;
  - b. to make full disclosure of all relevant information relating to the Conflict; and
  - c. to take any steps DTA reasonably requires to resolve or otherwise deal with the Conflict.
- 28.1.3. DTA may notify the Seller of conduct or circumstances that in DTA's view amount to a Conflict and the Seller must comply with the directions of DTA in respect of that notice.
- 28.1.4. If the Seller fails to comply with this clause 28, DTA may terminate this Panel Agreement in accordance with clause 25.4.1.a.
- 28.1.5. If the Seller breaches equivalent requirements to those set out in this clause 28 under a Contract, DTA may terminate this Panel Agreement in accordance with clause 25.4.1.a.
- 28.1.6. At any time, DTA may require the Seller, Seller's Personnel to execute a Conflict declaration in the form specified by DTA.

## **29. Notification of Significant Events**

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### **29.1. Significant Events**

- 29.1.1. For the purposes of this clause, 'Significant Event' means:
- a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Seller or its Personnel or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
  - b. any other significant matters, including the commencement of legal, regulatory or disciplinary action by an independent person or disciplinary action internal to the Seller, involving the Seller or its Personnel or Subcontractors, that may adversely impact on:
    - i. the Seller's compliance with any applicable laws or Commonwealth policy;

- ii. DTA or Buyer compliance with any applicable laws or Commonwealth policy;
    - iii. the Commonwealth's reputation; or
    - iv. the professional capacity or capability of the Seller or its Personnel to deliver Products and Services; and
  - c. any non-compliance by:
    - i. the Seller or its Personnel; or
    - ii. the Seller's Subcontractors, to the extent that information is known by or reasonably available to the Seller;
 

with any judgement against the Seller, its Personnel, or Subcontractors from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.
- 29.1.2. The Seller must immediately issue DTA a notice on becoming aware of a Significant Event during the Panel Agreement Period and any Contract Period.
- 29.1.3. The notice issued under clause 29.1.2 must provide a summary of the Significant Event, including the date that it occurred and whether any Key Personnel or other Personnel engaged in connection with the Products and Services were involved.
- 29.1.4. DTA may notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Seller must issue a notice under clause 29.1.3 in relation to the event within 3 Business Days of being notified by DTA.
- 29.1.5. If requested by DTA, the Seller must provide DTA with any additional information regarding the Significant Event within 3 Business Days of the request.
- 29.1.6. If requested by DTA, the Seller must prepare a draft remediation plan and submit that draft plan to the DTA Representative for approval within 10 Business Days of the request.
- 29.1.7. A draft remediation plan prepared by the Seller under clause 29.1.6 must include the following information:
- i. how the Seller will address the Significant Event in the context of the Products and Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Products and Services or compliance by the Seller with its other obligations under the Contract; and

- ii. how the Seller will ensure events similar to the Significant Event do not occur again; and
  - iii. any other matter reasonably requested by DTA.
- 29.1.8. DTA will review the draft remediation plan and either approve the plan or provide the Seller with the details of any changes that are required. The Seller must make any changes to the draft remediation plan that are reasonably requested by DTA and resubmit the draft remediation plan to DTA for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by DTA. This clause 29.1.8 will apply to any resubmitted draft remediation plan.
- 29.1.9. Without limiting its other obligations under this Panel Agreement, the Seller must comply with the remediation plan as approved by DTA. The Seller agrees to provide reports and other information about the Seller's progress in implementing the remediation plan as reasonably requested by DTA.
- 29.1.10. If the Seller fails to comply with its obligations under this clause 29.1, DTA may terminate this Panel Agreement in accordance with clause 25.4.1.a. DTA's rights under this clause are in addition to and do not otherwise limit any other rights DTA may have under this Panel Agreement. The performance by the Seller of its obligations under this clause will be at no additional cost to DTA.
- 29.1.11. In addition, and without limiting the rights and obligations in this clause 29 DTA may:
  - a. suspend the Seller from the Panel following a Significant Event; and
  - b. have discussions with Buyers regarding a Significant Event, regardless of whether the Buyer has a Contract on foot with the Seller.

## **29.2. National Anti-Corruption Commission Act 2022 (Cth) Requirements**

- 29.2.1. The Seller acknowledges that in providing the Products and Services under this Panel Agreement, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (NACC Act).
- 29.2.2. The Seller must comply with any reasonable request, policy or direction issued by DTA and otherwise cooperate with DTA in relation to any action taken by DTA required or authorised by the NACC Act.

## **29.3. Fraud and Corruption**

- 29.3.1. The Seller must comply with:
- 29.3.2. the Commonwealth Fraud Control Framework, as amended from time to time at:  
<http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx..>
- 29.3.3. The Seller must:
  - a. take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in

relation to this Panel Agreement and any Contracts (including by the Seller or its Personnel); and

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

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



## **SECTION 5 – COMPLIANCE WITH COMMONWEALTH LAWS AND POLICIES**

### **30. Compliance with laws and policies**

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#### **30.1. Compliance with laws**

- 30.1.1. The Seller agrees to comply with any laws and Commonwealth policies applicable to its performance of this Panel Agreement or a Contract and any DTA or Buyer policies referred to in this Panel Agreement or a Contract.
- 30.1.2. Without limiting clause 30.1, the Seller must comply with the following:
- a. *Crimes Act 1914* (Cth);
  - b. *Criminal Code Act 1995* (Cth);
  - c. *Privacy Act 1988* (Cth);
  - d. *Copyright Act 1968* (Cth);
  - e. *Workplace Gender Equality Act 2012* (Cth);
  - f. *Work Health and Safety Act 2011* (Cth);
  - g. *Auditor-General Act 1997* (Cth);
  - h. *Part 4 of the Charter of the United Nations Act 1945* (Cth);
  - i. *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);
  - j. *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
  - k. *Modern Slavery Act 2018* (Cth); and
  - l. all applicable laws relating to taxation.

#### **30.2. Applicable law**

- 30.2.1. This Panel Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State of New South Wales.

#### **30.3. Codes of Conduct**

- 30.3.1. In performing any part of this Panel Agreement or a Contract, the Seller must ensure that its Personnel comply with the:
- a. APS Values;
  - b. APS Code of Conduct; and
  - c. any other applicable code notified to the Seller,
- to the standard required of 'APS employees' as defined under the *Public Service Act 1999* (Cth).
- 30.3.2. The Seller must provide all reasonable assistance to DTA with any investigation of a report of a breach of clause 30.3.1.

#### **30.4. Illegal Workers**

- 30.4.1. The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Panel Agreement or any Contract.
- 30.4.2. If it becomes aware of the involvement of an Illegal Worker, the Seller must:
  - a. promptly notify DTA and any relevant Buyer; and
  - b. immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to DTA or the Buyer.
- 30.4.3. If requested in writing by DTA or a Buyer, the Seller must provide evidence within 10 Business Days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

#### **30.5. Access to Documents**

- 30.5.1. In this clause 30.5, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 30.5.2. This clause 30.5 applies only to the extent that the arrangements between the Seller and DTA under this Panel Agreement meet the definition of a Commonwealth contract under the *Freedom of Information Act 1982* (Cth).
- 30.5.3. Where DTA has received a request for access to a document created by, or in the possession of, the Seller or any Subcontractor that relates to the performance of this Panel Agreement (and not to the entry into this Panel Agreement):
  - a. DTA may at any time by notice require the Seller to provide the document to DTA; and
  - b. the Seller must, at no additional cost to DTA, promptly comply with the notice.
- 30.5.4. The Seller must include in any Subcontract relating to the performance of the Contract provisions that will enable the Seller to comply with its obligations under this clause 30.5.
- 30.5.5. If an application is made to DTA under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Seller, DTA may, before making a decision, consult with the Seller, without prejudice to any decision to release the information.

#### **31. Small to Medium Enterprise (SME) Participation**

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##### **31.1. Seller to give SMEs opportunities**

- 31.1.1. The Seller must identify opportunities to increase SME participation in the provision of Contracts.
- 31.1.2. The Seller must, where possible, seek to engage SMEs as Subcontractors or utilise SMEs in the supply chain for the Products and Services.

## **32. Indigenous Procurement Policy**

---

### **32.1. Indigenous Procurement Policy**

- 32.1.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 32.1.2. The Seller must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
  - b. employment of Indigenous Australians,
- in the delivery of the Services.
- 32.1.3. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Seller's supply chain.

## **33. Shadow Economy Procurement Connected Policy**

---

**Note:** Clause 33.1 is required where the Seller has engaged a first tier subcontractor to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy.

Subclause 33.1.2 is only required to be included to the extent that the Seller is a partnership.

These clauses address clauses 6.b, 6.a.iv, 7.e, 8.b, 9.a, 10.b and 13.a.iii of the Shadow Economy Procurement Connected Policy.

### **33.1. Shadow Economy Procurement Connected Policy**

- 33.1.1. The Seller warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) that the Seller holds a Satisfactory Statement of Tax Record for the subcontractor that was Valid at the time of entry into the subcontract by the Seller and the subcontractor.
- 33.1.2. If the Seller, is a partnership, the Seller will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to DTA as soon as possible after they become a partner to the partnership.

### **33.2. Statement of Tax Record**

- 33.2.1. The Seller warrants that at the commencement of this Panel Agreement it holds a Valid and Satisfactory Statement of Tax Record.

- 33.2.2. The Seller must hold a Valid and Satisfactory Statement of Tax Record at all times during the Panel Agreement Period (including any extension) and, on request by DTA, provide to DTA a copy of any such Statement of Tax Record.
- 33.2.3. Without limiting its other rights under this Panel Agreement or at law, any failure by the Seller to comply with the requirements outlined in clauses 33.2.1 and 33.2.2 will be a breach of this Panel Agreement.
- 33.2.4. The Seller must ensure that any first tier subcontractor engaged under a contract to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- 33.2.5. The Seller must retain a copy of any Statement of Tax Record held by any first tier subcontractor in accordance with clause 33.2.4 and must, on request by DTA, provide to DTA a copy of any such Statement of Tax Record.

#### **34. Workplace Gender Equality**

---

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

A 'relevant employer' is defined as being a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia.

- 34.1.1. The Seller must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 34.1.2. If the Seller becomes non-compliant with the WGE Act during the Panel Agreement Period, the Seller must promptly notify DTA.
- 34.1.3. The Seller must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Panel Agreement Start Date and, following this, annually to DTA.
- 34.1.4. Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under the Panel Agreement.
- 34.1.5. DTA may provide a copy of the Seller's current letter of compliance provided under clause 34.1.3 to a Buyer.

#### **35. Modern Slavery**

---

- 35.1.1. The Seller must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of Services.
- 35.1.2. If at any time the Seller becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Panel Agreement or a Contract, the Seller must as soon as reasonably practicable take all

reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

## **SECTION 6 MODULE SPECIFIC TERMS FOR PANEL**

### **36. Module Specific Terms for Panel**

---

#### **36.1. Application of Module Specific Terms for Panel**

- 36.1.1. This section of the Panel Terms sets out terms and conditions that apply to specific Modules under the Panel, where the Seller is Appointed to those Modules as stated in Item 7 of Schedule A1 - Panel Appointment Details.

### **37. ICT Labour Hire**

---

#### **37.1. Scope**

- 37.1.1. This clause 36.1.1 applies to the Seller if Item 7 of Schedule A1 - Panel Appointment Details states that the Seller is Appointed to the ICT Labour Hire Module.

#### **37.2. Pricing Transparency**

- 37.2.1. When providing Quotes, the Seller must provide to Buyers a breakdown of the fees quoted for each Candidate setting out:
- a. the percentage and sum of Fees on an hourly basis that will be paid to the Candidate; and
  - b. the percentage and sum of Fees on an hourly basis that will be retained by the Seller.
- 37.2.2. DTA may provide the Candidate put forward for a role with a breakdown of the fees quoted for the role set out in clause 37.2.1.

#### **37.3. Expanding functionality of the Online Portal**

- 37.3.1. DTA may expand the functionality of the Online Portal to:
- a. assist DTA administer various activities under the ICT Labour Hire Module; and
  - b. include functionality related to registration, creation and maintenance of Online Portal profiles for Candidates and Labour Hire Workers.
- 37.3.2. DTA may contact Candidates and Labour Hire Workers to update them about available roles, Online Portal functionality, the operation of the Panel and other matters at DTA's discretion.

#### **37.4. Performance management framework**

- 37.4.1. DTA may invite Candidates or Labour Hire Workers to provide DTA with feedback about work performed under a Contract or the Panel.
- 37.4.2. If requested by DTA, the Seller must:
- a. facilitate a Candidate or Labour Hire Worker to give feedback to DTA or a Buyer; and

- b. provide DTA with feedback regarding the Labour Hire Worker's performance in providing Products and Services on the Panel.

**37.5. Seller warranty**

- 37.5.1. Without limiting its obligations under Part B - Core Contract Terms, the Seller warrants that it holds, and will continue to hold for the full Panel Agreement Period, a Labour Hire Licence as required in each Location.
- 37.5.2. The Seller must provide DTA with details of any Labour Hire Licence held and must provide updated details whenever these details change during the Panel Agreement Period.
- 37.5.3. The Seller must promptly notify and fully disclose to DTA any breach of the warranty in this clause 37.5.

**37.6. Unique identifier**

- 37.6.1. The Seller must provide the personal email and personal mobile phone contact number of each Candidate to DTA at the time the Candidate is offered to a Buyer as a Labour Hire Worker.

**37.7. Seller must have Candidate's express permission before being put forward for a role**

- 37.7.1. The Seller must have a Candidate's express permission to be put forward for a role with a Buyer as a Labour Hire Worker or Candidate.

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

- 37.8.1. The Seller must ensure that its contracts and employment agreements with Candidates and Labour Hire Workers:
  - a. permit Candidates and Labour Hire Workers to participate directly in the Online Portal as required by DTA;
  - b. include the individual's consent to the collection, use and disclosure of the information set out in 37.6.1 to DTA; and
  - c. otherwise facilitate compliance with the Seller's obligations under the Panel Agreement and Contracts.

**37.9. Restraint of trade**

- 37.9.1. In contracts with Labour Hire Workers or Candidates, the Seller must not include:
  - a. restraint of trade terms where the Labour Hire Worker has been sourced by a Buyer and referred to the Seller; or
  - b. terms which would otherwise amount to an unreasonable restraint of trade.

## **38. Professional and Consulting Services**

---

### **38.1. Scope**

- 38.1.1. This clause 38 applies to the Seller if Item 7 of Schedule A1 - Panel Appointment Details states that the Seller is Appointed to the Professional and Consulting Services Module.

### **38.2. Price Review**

- 38.2.1. On 1 July in each year, following the anniversary of the Panel Agreement Start Date, DTA will adjust the Seller's Maximum Fee based on the Wage Price Index for the preceding 12 months to be calculated using the following formula:

$$AUP = EDP \times \frac{V}{V_0}$$

where:

- AUP = the adjusted Maximum Fees;
- EDP = the Maximum Fees at Panel Agreement Start Date (or previous anniversary of the Commencement Date);
- V = the index number for the quarter preceding the quarter containing the most recent anniversary of the Panel Agreement Start Date;
- Vo = the index number for the quarter containing the Panel Agreement Start Date (or previous anniversary of the Panel Agreement Start Date); and
- the index number to be used in the formula is the first published index number for the relevant quarter.



## **SECTION 7 PERFORMANCE MANAGEMENT FRAMEWORK**

### **39. DTA use of Seller's Performance Ratings**

---

- 39.1.1. DTA will collect and keep a record of the Seller's Performance Ratings for each Contract and may publish them on the Online Portal.
- 39.1.2. DTA may review Performance Ratings through consultation with the relevant Buyer and the Seller. DTA may request and consider additional information from Buyers or other persons about the Seller's performance of Contracts under the Panel.
- 39.1.3. DTA may consider other information about the Seller's performance including:
  - a. feedback;
  - b. results from any Buyer satisfaction survey;
  - c. information provided by a Buyer or other persons; or
  - d. information obtained through an audit conducted by a Buyer under a Contract or by DTA under clause 24 of this Panel Agreement.
- 39.1.4. DTA may provide information on Seller performance to Buyers, including through the Online Portal.

### **40. Seller's responsibility to correct**

---

- 40.1.1. In the event of:
  - a. the Seller receiving any Performance Ratings at the Not Met level; or
  - b. a Service Level Failure under any Contract,DTA may by notice require the Seller to provide DTA with a Cure Plan under clause 19 to remedy the failure and its underlying causes. If DTA does so, then the parties' rights and obligations under clause 19 will apply.
- 40.1.2. DTA may communicate any failure and any established interim processes or procedures with the relevant Buyer(s).

### **41. Periodic review**

---

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

## SCHEDULE A1 – PANEL APPOINTMENT DETAILS

### Panel Appointment Details

Item	Details
1.	<p><b>Preliminary matters</b></p> <p>This Schedule A1 – Panel Appointment Details supersedes all Schedule A1 – Panel Appointment Details previously agreed by the parties.</p>
2.	<p><b>Parties</b></p> <p>This Panel Agreement is signed, sealed and delivered as a deed, made between and binding on the following parties:</p> <p><b>^Party 1 Name^ ^Party 1 ABN^</b>  <b>^Party 1 Address^ (DTA)</b></p> <p><b>^Party 2 Name^ ^Party 2 ABN and ACN/ARBN if applicable^</b>  <b>^Party 2 Address^ (the Seller)</b></p>
3.	<p><b>Seller country of tax residency</b> <b>^insert^</b></p> <p><b>Ultimate parent entity country of tax residency (if applicable)</b> <b>^insert^</b></p>
4.	<p><b>Trust Details</b> <b>^insert details or 'Not applicable' if the Seller is not acting as a trustee^</b></p>

### Panel Agreement Period (clause 6.2)

5.	<p><b>Panel Agreement Start Date:</b> <b>^Insert date^</b></p> <div style="border: 1px solid green; padding: 5px; margin: 5px 0;"> <p><b>Note:</b> State the date this Panel Agreement is executed.</p> </div> <p><b>Panel Agreement Initial End Date:</b> <b>^Insert date^</b></p> <div style="border: 1px solid green; padding: 5px; margin: 5px 0;"> <p><b>Note:</b> State the date this Panel Agreement will expire if not extended.</p> </div>
6.	<p><b>Panel Agreement Extension Date:</b> <b>^Insert date^</b></p>

**Note:** State the latest date to which this Panel Agreement may be extended by the Agency under clause 6.2.2.

Note that any decision to extend a Panel arrangement requires the Agency to consider whether such an extension represents value for money in accordance with the Commonwealth Procurement Rules.

## Module and Category Appointment

7.

### Seller Appointment

The Seller is Appointed to the Panel to provide the Modules and Categories listed below for the Panel Agreement Period and applicable Module and Category Periods.

#### Module – Professional and Consulting Services

**Applicable terms:** Part C - Professional and Consulting Services Module Specific Terms

#### Category

*[E.g. Application, software engineering and development services]*

#### Applicable terms

*[Item 1 of Part D – Module and Category Descriptions]*

**Module Start Date:**

**^Insert date^**

**Module Initial End Date:**

**^Insert date^**

**Note:** State the date this Module will expire if not extended.

**Module Extension Date:**

**^Insert date^**

**Note:** State the latest date to which this Module may be

extended by the Agency under clause 6.5.2.

DTA will consider whether it would represent value to the Commonwealth to extend a Module or Category Period when considering an application for an extension.

### Module – ICT Labour Hire

**Applicable terms:** Part C – ICT Labour Hire Module Specific Terms

<b>Category</b>	<b>Applicable terms</b>
-----------------	-------------------------

<b>Module Start Date:</b>	<b>^Insert date^</b>
---------------------------	----------------------

<b>Module Initial End Date:</b>	<b>^Insert date^</b>
---------------------------------	----------------------

**Note:** State the date this Module will expire if not extended.

<b>Module Extension Date:</b>	<b>^Insert date^</b>
-------------------------------	----------------------

**Note:** State the latest date to which this Module may be extended by the Agency under clause 6.5.2.

Note that any decision to extend a Module would require DTA to consider whether such an extension represents value for money in accordance with the Commonwealth Procurement Rules.

### Additional offerings (clause 6.7)

8.

### Additional categories

<b>Category</b>	<b>Applicable terms</b>
-----------------	-------------------------

## Fees, allowances & costs (clause 8)

9. **Maximum Fees** The Maximum Fees for the Products and Services are as follows:

### Module – Professional and Consulting Services

**Category** [e.g. Agile Delivery]

#### Rate Card

Position/Classification of Personnel	Maximum Fees (hourly rates)	
	GST exclusive	GST inclusive

[repeat for each Category]

### Module – ICT Labour Hire

**Margin**

## Representatives and address for notices

10. **DTA Representative (clause 10.1)** The DTA Representative is the person for the time being holding, occupying or performing the duties of Branch Manager, Digital Sourcing Branch, DTA.

**DTA Representative's address for notices (clause 23)** **Via the Online Portal** <sup>^DTA to insert^</sup>

**Note:** Clearly state all relevant addresses using the format provided. **Email** <sup>^DTA to insert^</sup>

11. **Seller Representative (clause 10.2)** The Seller Representative is <sup>^DTA to insert^</sup>

**Seller Representative's address  
for Notices**

**(clause 23)**

**Physical address**

**^insert^**

**Postal address**

**^insert^**

**Email**

**^insert^**

**Note:** Clearly state all relevant addresses using the format provided.

## Security

12.

**Confidential Information  
(clause 27)**

The Seller's Confidential Information is in the following table:

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

## Insurance (clause 24.6)

13.

**Type**

**Minimum limits**

**Periods of insurance**

Professional indemnity insurance

\$2 million per occurrence and \$2 million in the aggregate per annum

Until expiration of the period of 7 years following expiry of all Contracts under the Panel

Public liability insurance	\$10 million in the aggregate per annum	Until expiry or termination of all Contracts under the Panel
----------------------------	---	--

General

14.
- Additional terms

^Specify any Additional Terms for a Seller's Panel Agreement here^

**Note:** State any Additional Terms for a Seller's Panel Agreement here.

This is likely to be for the Telecommunications and Data Centres panels.

## Executed as a Deed

---

**Note:** You will need to ensure that the appropriate execution clause is used for the parties to this deed. This will depend on the types of entities that the parties are. AGS has prepared a fact sheet on execution clauses that can be accessed here: <https://www.ags.gov.au/publications/fact-sheets/index.html>.

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

---

*^Name of signatory^*

---

*Signature*

In the presence of:

---

*^Name of witness^*

---

*Signature of witness*

SIGNED, SEALED AND  
DELIVERED for and on behalf of  
*^Party 2 Name^* by:

---

*^Name of signatory^*

---

*Signature*

In the presence of:

---

*^Name of witness^*

---

*Signature of witness*





**Australian Government**

**Digital Transformation Agency**

**PART B - CORE CONTRACT  
TERMS**

PART B - CORE CONTRACT TERMS

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## SECTION 1 - CORE CONTRACT TERMS

### OPERATIVE TERMS

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

#### 1. Parties

---

The parties to this Contract are set out in Items 3 and 4 of Part E - Contract Details.

#### 2. Interpretation of the Contract

---

The parties agree to interpret the Contract using Part F - Definitions and Interpretation.

#### 3. Contract Period

---

##### 3.1. Initial Contract Period

- 3.1.1. The Contract begins on the Contract Start Date and continues for the Contract Period, unless the Buyer terminates the Contract earlier under clause 16.

##### 3.2. Extending the Contract Period

- 3.2.1. The Buyer may extend the Contract Period as specified in Item 6 of Part E - Contract Details by giving notice to the Seller. Any notice under this clause must be provided:
- a. at least 20 Business Days before the end of the then current Contract Period; or
  - b. within another period agreed between the parties.
- 3.2.2. Any extension of the Contract Period is on the existing terms and conditions of the Contract (including any Fees) unless otherwise agreed by the Buyer and Seller. Any extension takes effect from the end of the then current Contract Period.
- 3.2.3. The Contract Period may extend beyond the end of the Panel Agreement.

#### 4. Contract structure

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##### 4.1. Contract parts

- 4.1.1. This Contract consists of the following parts:
- a. Part A - Panel Terms;
  - b. Schedule A1 - Panel Appointment Details;
  - c. Part B - Core Contract Terms;
  - d. Part C - Module Specific Terms;
  - e. Part D – Module and Category Descriptions;
  - f. Part E - Contract Details;

- g. Part F - Definitions and Interpretation; and
- h. any documents incorporated by reference into the Contract.

#### **4.2. Order of precedence**

- 4.2.1. To the extent of any inconsistency between any parts of this Contract, the relevant parts will have priority in the descending order set out in clause 4.1.1.

### **5. Provision of Products and Services**

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#### **5.1. Products and Services**

- 5.1.1. The Seller must:
  - a. provide the Products and Services in accordance with the requirements set out in this Contract, including those in Item 11 of Part E - Contract Details;
  - b. provide the Products and Services to a standard recognised as a high professional standard by the industry to which the Seller belongs;
  - c. adopt relevant best practice and comply with:
    - i. all applicable Australian standards, or, where none apply, relevant international standards;
    - ii. all applicable industry standards, codes and guidelines; and
    - iii. any other policies, standards, codes or guidelines specified in Items 25 and 26 of Part E - Contract Details;
  - d. provide continuous quality assurance and quality improvement during the Contract Period by identifying and applying proven techniques and tools utilised by the Seller or industry that would benefit the Buyer either operationally or financially;
  - e. ensure that the Products and Services are fit for the purpose set out at Item 17 of Part E - Contract Details (if any);
  - f. provide to the Buyer the Material specified in Item 41 of Part E - Contract Details;
  - g. comply with the Delivery Schedule and meet any Milestones;
  - h. meet or exceed all Service Levels;
  - i. achieve a Performance Rating of 'met' or 'exceeded' for each performance assessment completed under clause 25.1.2; and
  - j. submit invoices and any required supporting documentation in the manner specified in clause 6.1 and Item 36 of Part E - Contract Details.

#### **5.2. Ownership of Products**

- 5.2.1. Title in each Product will transfer to the Buyer immediately upon being delivered to or fully paid for by the Buyer, whichever is sooner.



- 5.2.2. The Buyer accepts the risk of loss of or damage to each Product from the time the Product is delivered to the Buyer, except to the extent that the loss or damage is caused or contributed to by the Seller or its Personnel.

### **5.3. Warranties – Products**

- 5.3.1. The Seller warrants that on delivery to the Buyer, Products will:
- a. if stated in Item 16 of Part E - Contract Details, be newly manufactured;
  - b. be free from any material Defect in workmanship, design and materials;
  - c. be free from any encumbrances; and
  - d. meet or exceed the technical requirements set out in this Contract.
- 5.3.2. The Seller must, to the extent permitted by law, pass through and assign to the Buyer all Vendor and other relevant third party warranties that apply to, or are provided with, the Products (**Third Party Warranty**) and do all things requested by the Buyer to enforce any Third Party Warranty. This does not limit any other warranties provided by the Seller.
- 5.3.3. If during the Contract Period an issue arises in relation to a Product procured from a Vendor or other third party, the Seller must:
- a. notify the Vendor or other third party of the issue; and
  - b. use best efforts to ensure that the Vendor or other third party promptly repairs or replaces the Product in accordance with the relevant Third Party Warranty.
- 5.3.4. If as a result of the Seller's act or omission:
- a. a Third Party Warranty becomes void or unenforceable; or
  - b. the application of a Third Party Warranty is limited,
- the Seller must:
- c. use best efforts to restore the full validity and application of the Third Party Warranty; and
  - d. comply with the Buyer's directions, including any direction to purchase (at the Seller's expense) a replacement Product or an extended or additional Third Party Warranty.

### **5.4. Acceptance testing**

- 5.4.1. If stated in Item 20 of Part E – Contract Details, the Products and Services are subject to Acceptance Testing by the Buyer.
- 5.4.2. Products and Services that by their nature do not require Acceptance Testing, will be considered for Acceptance on the basis of their compliance with the requirements set out in this Contract.
- 5.4.3. Where requested by the Buyer, the Seller will provide details of tests to perform for the certification, installation, commissioning or acceptance of any relevant Products and Services that Buyer may use to develop its Acceptance Tests.

Such details should be documented in writing and contain a test methodology detailing:

- a. the conditions under which each test should be conducted;
- b. full details of each test;
- c. how each test should be conducted;
- d. the input or data required for the test;
- e. the expected result of each test;
- f. any assumption behind, qualification to, or known shortcoming of, each test;
- g. suitable test data in any reasonable electronic format and on any reasonable type of media as the Buyer may specify.

5.4.4. The Buyer will carry out the Acceptance Testing and the Seller must assist the Buyer to ensure that the Products and Services meet the Acceptance Test Criteria stated in Item 20 of Part E – Contract Details.

5.4.5. The Seller must assist the Buyer to observe the performance of the Acceptance Testing or other tests where they are conducted by the Seller.

5.4.6. The Seller acknowledges and agrees that Acceptance Tests may include a live production test of up to 45 days duration.

5.4.7. The Seller must comply with any reasonable request by the Buyer for further testing in relation to the Products and Services.

5.4.8. If the Buyer finds that the Seller:

- a. *has satisfied the Acceptance Criteria* – the Buyer must notify the Seller within the timeframe stated in Item 20 of Part E - Contract Details that the Products and Services have passed Acceptance Testing (and the relevant Products and Services will then be deemed to have been Accepted by the Buyer); or
- b. *has not satisfied the Acceptance Criteria* – the Buyer must notify the Seller within the timeframe stated in Item 20 of Part E - Contract Details, that the Products and Services have not passed Acceptance Testing and the Seller must:
  - i. do all things necessary to rectify any problems to ensure that the Acceptance Criteria is met; and
  - ii. repeat the Acceptance Testing as soon as practicable or within the time period agreed by the parties after the Seller notifies the Buyer that it believes it meets the Acceptance Criteria, and this clause 5.4.8 will apply to the repeated Acceptance Testing.

5.4.9. If the Buyer notifies the Seller that the Products and Services have passed Acceptance Testing under clause 5.4.8.a.:

- a. the Buyer may impose conditions on Acceptance; and
- b. it is not a waiver of the Buyer's rights under this Contract.

- 5.4.10. If the Seller has not met the Acceptance Criteria for relevant Products and Services within:
- a. 15 Business Days after the commencement of Acceptance Testing; or
  - b. if further Acceptance Testing is required under clause 5.4.8, such further period as is notified by the Buyer,
- the Buyer may treat the Seller's failure to meet the Acceptance Criteria as a failure by the Seller to comply with the applicable requirements for the Products and Services under this Contract.
- 5.4.11. If the Buyer does not notify the Seller in accordance with clause 5.4.8.b within 20 Business Days of the Products and Services being provided to the Buyer for Acceptance, the Products and Services will be deemed to have been accepted by the Buyer in accordance with clause 5.4.8.a.
- 5.4.12. The Seller must perform its obligations under this Contract in such a way that the Buyer is able to participate in any necessary inspections of work in progress and tests or evaluations of the Products and Services.

## **5.5. Moral Rights**

- 5.5.1. To the extent permitted by law and for the benefit of the Buyer, the Seller:
- a. consents to the Buyer using all Material that is either vested in or licensed to the Buyer under this Contract (**Relevant Material**); and
  - b. must ensure that each author of Relevant Material consents in writing to the Buyer using the Relevant Material,
- even if the use may otherwise be an infringement of their Moral Rights.

## **5.6. Buyer's Representative**

- 5.6.1. The Buyer Representative stated in Item 3 of Part E - Contract Details will administer this Contract on behalf of the Buyer.
- 5.6.2. The Seller must:
- a. send all notices and correspondence to the Buyer Representative;
  - b. work with the Buyer's Representative as reasonably required; and
  - c. comply with directions of the Buyer's Representative that are consistent with this Contract.

## **5.7. Seller Contract Representative**

- 5.7.1. The Seller Contract Representative stated in Item 4 of Part E - Contract Details will represent the Seller and is the Seller's primary contact under this Contract.
- 5.7.2. All notices and correspondence from the Buyer must be sent to the Seller Contract Representative.

## **5.8. Changing Representatives**

- 5.8.1. A party may change its representative by notice to the other party.

## **5.9. Subcontractors**

### **5.9.1. The Seller must:**

- a. not subcontract the provision of any part of the Products and Services to:
  - i. any Prohibited Entity; or
  - ii. any other entity without the Buyer's prior written approval;
- b. ensure that all Subcontracts contain payment terms that are consistent with the payment terms in clause 7.2.1; and
- c. give the Buyer details of each Subcontract within 5 Business Days after the Buyer's request.

### **5.9.2. The Seller must provide pricing details of each Subcontract when complying with clause 5.9.1.c, if this is required under any other provision of this Contract.**

### **5.9.3. The Buyer has approved the subcontracting of the performance of the parts of this Contract to the persons, and subject to the conditions (if any), stated in Item 24 of Part E - Contract Details.**

### **5.9.4. The Seller acknowledges, and must inform all Subcontractors, that:**

- a. it will make available to the Buyer (if requested), details of all Subcontractors engaged in the provision of the Products and Services; and
- b. the Buyer may publicly disclose the names of any Subcontractors engaged in the performance of the Products and Services.

## **5.10. Seller's Personnel**

### **5.10.1. The Seller must ensure that the Personnel it uses to perform this Contract:**

- a. have and apply the skills, qualifications, experience, knowledge and competence necessary to provide the Products and Services to a standard that complies with this Contract; and
- b. are of known reliability and integrity and may be reasonably relied upon not to breach the terms and conditions of this Contract, including those relating to confidentiality, privacy, security and safety.

### **5.10.2. The Seller must, at the request of the Buyer, promptly remove any of the Seller's Personnel (including any Key Personnel) from work under this Contract.**

### **5.10.3. The Seller must:**

- a. provide any information reasonably requested by the Buyer about the Seller's Personnel;
- b. without limiting the Seller's obligations under clause 5.11, provide suitable replacement Personnel with the skills, qualifications, experience, knowledge and competence needed to perform work under this Contract if any of the Seller's Personnel:
  - i. are unavailable;
  - ii. require access to Security Classified Resources but are prevented from having such access under clause 43; or

- iii. are requested to be removed by the Buyer under clause 5.10.2;
- c. ensure its Personnel do not do anything which would breach the Seller's obligations under this Contract; and
- d. ensure its Personnel comply with any requirements and directions of the Buyer when on or using the Buyer's premises or facilities.

**5.11. Key Personnel**

- 5.11.1. Subject to the other provisions of this clause 5.11, the Seller must ensure that each Key Personnel performs the role nominated for that Key Personnel in Item 23 of Part E - Contract Details.
- 5.11.2. Key Personnel must be charged out at rates not exceeding that stated in Item 9 of Schedule A1 - Panel Appointment Details and Maximum Fees.
- 5.11.3. The Seller must at all times have in place contingency plans, succession plans, and other relevant plans, processes and procedures to minimise any potential adverse impact for the Buyer if any Key Personnel should, for any reason, not be available.
- 5.11.4. If, despite the best efforts of the Seller, any Key Personnel becomes (or is anticipated to be) unavailable for any reason, the Seller must notify the Buyer's Representative immediately and take all reasonable action to minimise any potential adverse impact for the Buyer.
- 5.11.5. If any Key Personnel:
  - a. becomes (or is anticipated to be) permanently unavailable or unavailable for a period not acceptable to the Buyer;
  - b. requires access to Security Classified Resources but is prevented from having such access under clause 17.3.1; or
  - c. is requested to be removed by the Buyer under clause 5.10.2,
 the Seller must:
  - d. as soon as practicable identify suitably skilled, qualified and experienced potential replacements;
  - e. provide full written details of the potential replacements to the Buyer;
  - f. where requested by the Buyer, arrange for potential replacements to attend interviews with the Buyer and provide requested information about them, to assist the Buyer in its consideration any potential replacement;
  - g. if the Buyer confirms in writing that a potential replacement is acceptable, immediately engage that person and provide them as a substituted Key Personnel; and
  - h. not engage any person as a substituted Key Personnel without the Buyer's prior written approval.
- 5.11.6. The Buyer must use its best efforts to ensure that turnover of Key Personnel is kept to a minimum.

**5.12. Seller responsible for entitlements of its Personnel**

- 5.12.1. The Buyer is not required to make any superannuation, long service leave contributions, payroll tax or other statutory employment payments in connection with this Contract, regardless of the arrangements between the Seller and its Personnel and regardless of any legal structures adopted by those Personnel for their engagement.
- 5.12.2. The Seller is fully responsible for all wages, salaries and other payments and entitlements to its Personnel, including superannuation contributions.
- 5.12.3. The Seller must fully comply with all relevant laws and other Commonwealth requirements in relation to the Seller's Personnel, including labour and industrial relations laws and those relating to working conditions, salary, wages, leave, the payment of withholding tax and any other relevant tax and any other amounts, remissions and allowances including those under any industrial awards or agreements relevant to this Contract.
- 5.12.4. Without limiting clauses 5.12.2 or 5.12.3, the Seller must:
- a. comply with all laws and other requirements relating to the security of payments that are due to its Personnel;
  - b. ensure that payments made to its Personnel are made in a timely manner; and
  - c. ensure that disputes about any payment to its Personnel are resolved in a reasonable, timely and cooperative way.
- 5.12.5. Upon request by the Buyer, the Seller must demonstrate that it has complied with the obligations under this clause 5.12.
- 5.12.6. If the Buyer is at any time held to be liable for payment of any amount within the scope of clause 5.12, the Seller must indemnify the Buyer to the full extent allowable under law for all such amounts (including interest).
- 5.12.7. This clause 5.12 survives the expiry or earlier termination of this Contract.

**5.13. Seller's responsibilities**

- 5.13.1. The Seller is fully responsible for:
- a. the provision of the Products and Services; and
  - b. ensuring compliance with this Contract,
- regardless of:
- c. whether the Seller is a Reseller;
  - d. any involvement by the Buyer in the provision of the Products and Services;
  - e. the suitability, quality or performance of any Buyer Material;
  - f. any subcontracting of the provision of the Products and Services;
  - g. any acceptance by the Buyer of Key Personnel or other members of the Seller's Personnel; or

- h. any payment made to the Seller or any Vendor on account of the Products and Services.

#### **5.14. Cooperation with other contractors**

5.14.1. Without limiting its obligations under this Contract, the Seller must:

- a. coordinate the Seller's activities so as to ensure that all work to be performed for the Buyer by any person is completed efficiently, on time and otherwise in accordance with this Contract; and
- b. otherwise fully cooperate and work in good faith with any third parties engaged by the Buyer as required by the Buyer.

#### **5.15. Reseller arrangements**

5.15.1. Item 13 of Part E - Contract Details may state that certain Products and Services are to be provided by the Seller as a Reseller (**Reseller Products**) in accordance with one of the following options:

- a. **Option 1 – Direct Supply from the Seller:** the Seller must supply the Reseller Products in accordance with the terms of this Contract.
- b. **Option 2 – Seller Facilitation:** under this option:
  - i. the Seller must do all things necessary to facilitate the supply of the Reseller Products to the Buyer by the Vendor by arranging for the Vendor to enter into a separate form of contract with the Buyer for the supply of the Reseller Products;
  - ii. the terms and conditions of the contractual arrangement with the Vendor must be specified in or attached to Part E - Contract Details (but if no such terms and conditions are specified, the terms of this Contract will apply);
  - iii. the Seller must ensure that the Vendor enters into that contract within any timeframe specified in Part E - Contract Details or, if no timeframe is specified, promptly after the Contract Start Date; and
  - iv. if specified in Part E - Contract Details, the Buyer must pay the Seller the Fees for the Reseller Products and the Seller must pay, and is responsible for, all amounts payable to the Vendor for the Reseller Products.
- c. **Option 3 – Seller as Agent:** under this option:
  - i. the Seller must supply the Reseller Products to the Buyer as the agent for the Vendor;
  - ii. the terms and conditions for the supply of the Reseller Products from the Vendor:
    - A. must be specified in or attached to Part E - Contract Details;
    - B. will create a contractual relationship (**Vendor Contract**) between the Vendor and the Buyer; and
    - C. will apply from the Contract Start Date.

- iii. unless specified otherwise in Part E - Contract Details, the Buyer must pay the Seller the Fees for the Reseller Products and the Seller must pay, and is responsible for, all amounts payable to the Vendor; and
  - iv. the Seller warrants that it is fully authorised to enter into the Vendor Contract as the agent of the Vendor in respect of the supply of the Reseller Contract Details and to bind the Vendor to the terms and conditions of the Vendor Contract.
- 5.15.2. Unless otherwise specified in Part E - Contract Details, if Option 2 or 3 applies, the Seller must:
  - a. ensure that all Reseller Products required to be provided by the Vendor are provided to the Buyer;
  - b. ensure that the Buyer is granted a right to exercise the licence and usage rights (including any Intellectual Property Rights) specified in this Contract applicable to the Reseller Products;
  - c. coordinate and manage the provision of the Reseller Products to the Buyer in accordance with the contractual arrangements in clause 5.15.1; and
  - d. coordinate and manage the provision of the Vendor's obligations under the contractual arrangements, including any warranty service that is required to be provided in respect of any Defect in the Reseller Products.
- 5.15.3. If Item 13 of Part E - Contract Details does not specify which option in clause 5.15.1 applies to any Reseller Products, Option 1 applies.
- 5.16. Authorisations**
- 5.16.1. The Seller must ensure that it:
  - a. obtains and maintains all approvals and licences (including all export approvals) necessary to provide the Products and Services in accordance with this Contract (**Authorisations**);
  - b. provides a copy of any Authorisations to the Buyer within 5 Business Days of a request from the Buyer; and
  - c. ensures that all work under this Contract (including the provision of the Products and Services) is performed in accordance with all Authorisations.
- 5.16.2. The Seller must promptly notify the Buyer if there is any change in circumstances which prevents the Seller from performing its obligations under this Contract in accordance with all Authorisations.
- 5.16.3. The Buyer acknowledges that it may be required to comply with any export control laws that apply to the Products and Services.
- 5.16.4. Meetings**
- 5.16.5. The Seller must attend the meetings as stated in Item 8 of Part E - Contract Details and ensure the required Personnel attend the meetings.
- 5.17. Transition out**
- 5.17.1. The Seller must take all actions that are necessary to ensure there is:



- a. an efficient and effective disengagement from the Services so as to enable the Buyer to make full use of the Products and Services and any associated documentation; and
  - b. a transfer of the Products and Services to the Buyer or its nominee (including any incoming contractor) so as to cause minimum disruption and inconvenience to the Buyer.
- 5.17.2. In addition to clause 5.17.1, the Seller must provide the following assistance to the Buyer on termination or expiration of this Contract as relevant:
  - a. work with the Buyer or its nominee to plan and implement all necessary actions;
  - b. comply with all relevant security and data protection obligations in this Contract;
  - c. transfer or provide access to the Buyer, or its nominee, all information, data and documents stored by whatever means by the Seller or under the control of the Seller relating to the Products and Services or this Contract;
  - d. if requested by the Buyer, provide training related to the Products and Services that were provided under this Contract to the Buyer's Personnel and any third party; and
  - e. make the Seller's Personnel available for discussions with the Buyer;
  - f. otherwise fully cooperate with the Buyer and any third party nominated by the Buyer, and do all other tasks and provide all information as may be reasonably necessary, to ensure a smooth transition to the Buyer or that third party; and
  - g. any other decommissioning activities or Services as required by this Contract.
- 5.17.3. If requested, the Seller must provide to the Buyer verification of the Seller's performance of its obligations under clause 5.17.
- 5.17.4. The obligations in this clause 5.17 apply for the period stated in Item 9 of Part E - Contract Details, or if no period is stated, for the period of three months after termination or expiry of this Contract.

## **6. Fees**

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### **6.1. Fees, allowances and costs**

- 6.1.1. Subject to this clause 6, the Buyer will pay the Seller the fees, including allowances, reimbursements and costs as stated in Item 29 of Part E - Contract Details (**Fees**), for the provision of the Products and Services in this Contract.

### **6.2. Pricing inconsistent with Part A - Panel Terms**

- 6.2.1. The Seller must not invoice for Fees that exceed the Seller's Maximum Fees (**Overcharge**).
- 6.2.2. If the Seller Overcharges, the Buyer may:

- a. recover any overpayment by the Buyer from the Seller, and the Seller must repay such overpayment to the Buyer within 10 Business Days of the Buyer's request; or
- b. may reduce any Fees due under this Contract by the amount of the overpayment.

### **6.3. Fees are all inclusive**

6.3.1. Unless otherwise stated in Part E - Contract Details, the Fees:

- a. cover all costs and resources required by the Seller to perform this Contract; and
- b. represent the total consideration payable by the Buyer for all matters relevant to this Contract, including the provision of the Products and Services.

### **6.4. Fees not to exceed maximum costs**

6.4.1. Where a Product or Service Price Cap or Total Price Cap (or both) is stated in Item 32 of Part E – Contract Details, this clause 6.4 applies.

6.4.2. The total Fees payable by the Buyer to the Seller:

- a. for a given Product or Service will not exceed the relevant Product or Service Price Cap; and
- b. under this Contract will not exceed the Total Price Cap.

6.4.3. The Seller must stop work and advise the Buyer immediately if the accrued costs reach the maximum cost threshold for the Products and Services (or a component of the Products and Services). The Seller must not commence work or exceed the threshold without the Buyer's approval.

## **7. Invoicing and payment**

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### **7.1. Submission of invoices**

7.1.1. The Seller must submit invoices for Products and Services, together with any supporting documentation, in the manner set out in Item 36 of Part E - Contract Details.

7.1.2. Unless otherwise stated in Part E - Contract Details invoices must be submitted monthly in arrears.

7.1.3. If an invoice is not a Correctly Rendered Invoice, the Buyer will return it to the Seller for correction and resubmission.

### **7.2. When payment is due**

7.2.1. The Buyer will pay the Seller the Fees within the following timeframes:

- a. if the Buyer and the Seller both have the capability to deliver and receive invoices through the Pan-European Public Procurement On-Line framework and have agreed to use this method of invoicing (as stated in Item 36 of Part E - Contract Details), the Buyer will pay the amount of a

Correctly Rendered Invoice to the Seller within 5 calendar days after receiving it; or

- b. if clause 7.1.3 does not apply, the Buyer will pay the amount of a Correctly Rendered Invoice to the Seller within 20 calendar days after receiving it.

7.2.2. The Buyer will make all payments in the manner set out under the heading Fees, Allowances and Costs in Part E - Contract Details.

### 7.3. Interest

7.3.1. For the purpose of this clause 7.3, **the day that payment is made** is the day that the Buyer's system generates a payment request into the banking system for payment to the Seller.

7.3.2. Subject to clause 7.3.3, if the Buyer fails to pay to the Seller an amount under this Contract by the due date for payment, the Buyer will pay simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that payment is made in accordance with the formula set out below:

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

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

7.3.3. The Buyer will only be required to pay simple interest under clause 7.3.2 if:

- a. the amount of interest exceeds \$100; and
- b. Item 34 of Part E - Contract Details is marked 'Yes'.

### 7.4. GST

7.4.1. Words or expressions used in this clause 7.4 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 7.4.

7.4.2. Unless otherwise indicated, the Fees and all other consideration for any supply made under this Contract are exclusive of any GST imposed on the supply.

7.4.3. If one party (**supplier**) makes a taxable supply to the other party (**recipient**) under this Contract, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question. The additional amount must be paid by the recipient at the same time as the GST exclusive consideration for the taxable supply is paid.

- 7.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

**7.5. Other taxes**

- 7.5.1. Except as provided by this clause 7 or otherwise set out in Part E - Contract Details, the Seller agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

**7.6. Payment does not amount to evidence or an admission**

- 7.6.1. The payment of an amount by the Buyer is taken to be payment on account only and not as evidence against or an admission by the Buyer of:
- a. the value of any Products and Services; or
  - b. any Products and Services having been supplied in accordance with this Contract.

**7.7. Disputes**

- 7.7.1. If there is a dispute about whether an amount is payable under this Contract, the Buyer may withhold the disputed amount until the dispute is resolved but must pay the undisputed amount within the period stated in clause 7.2.

**7.8. Adjustment of amounts after payment**

- 7.8.1. The Buyer reserves the right to retrospectively adjust payments if the Buyer determines that the Products and Services have not been provided in accordance with this Contract.
- 7.8.2. If the Buyer:
- a. pays an invoice from the Seller; and
  - b. later finds that the invoice was not a Correctly Rendered Invoice,
- then the Buyer may:
- c. recover any overpayment from the Seller, and the Seller must repay such overpayment to the Buyer immediately upon request by the Buyer; or
  - d. reduce any Fees due under this Contract by the amount of the overpayment.

**8. Digital and physical security**

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**8.1. General security obligations**

- 8.1.1. The Seller must provide the Products and Services in a way that complies with and ensures the Buyer can comply with the Protective Security Policy Framework, including those parts of the Protective Security Policy Framework stated in Item 43 of Part E - Contract Details.
- 8.1.2. The Seller must notify the Buyer immediately in the event of any requests from a foreign government or foreign agency requesting access to any Buyer Data

(unless such notification is prohibited by law), and the Seller must redirect any such request to the Buyer.

## **8.2. Harmful code**

- 8.2.1. The Seller must take reasonable precautions, including using best industry practice, to ensure that it and its Personnel do not introduce any Harmful Code into:
- a. any Products and Services;
  - b. the Online Portal;
  - c. the Buyer's Digital System; or
  - d. any Digital System used to facilitate or support performance of this Contract (together the **Applicable Systems**)
- 8.2.2. The Seller must on request promptly provide the Buyer with full details of all processes and procedures that it has in place to ensure a breach of clause 8.2.1 does not occur.
- 8.2.3. The Seller must immediately notify the Buyer with full information and details if it knows or reasonably suspects that a breach of clause 8.2.1 may have occurred.
- 8.2.4. If any Harmful Code is found (or is reasonably suspected) to have been introduced into the Applicable Systems in breach of clause 8.2.1, the Seller must:
- a. take all reasonable action requested by the Buyer to contain and eliminate the Harmful Code;
  - b. ensure any actual or potential loss of or threat to the Buyer's operations and efficiency is minimised until it is established that breach of clause 8.2.1 has been remedied or has not occurred;
  - c. This clause 8.2.4 does not limit any other right or remedy the Buyer has under this Contract or at law; and
  - d. The Seller must not insert or knowingly permit any third party to insert any code into the Applicable Systems that would shut down or disable the Applicable Systems.

## **8.3. Cyber Attacks**

- 8.3.1. The Seller must take reasonable and prudent steps consistent with best industry practice to reduce the risk of Cyber Attack on the Digital Systems of the Seller and any Subcontractor.
- 8.3.2. Where stated in Item 43 of Part E – Contract Details, the Seller must ensure all Products and Services meet or exceed the stated requirements for the:
- a. Essential Eight Maturity Level; and
  - b. Information Security Manual.

- 8.3.3. The Seller must provide evidence of assessment, certification and compliance with the Essential Eight Maturity Model and Information Security Manual requirements under clause 8.3.2.
- 8.3.4. If requested by the Buyer, the Seller must provide details of the security measures put in place by the Seller and any Subcontractors to reduce the risk of Cyber Attack on the Digital Systems of the Buyer, the Seller and any Subcontractor.
- 8.3.5. If the Seller becomes aware of a Cyber Attack on the Digital Systems of the Seller or any Subcontractor, the Seller must immediately:
- a. contact the Buyer Representative (by phone or email, whichever is fastest), providing full details of the Cyber Attack; and
  - b. if required by law or if directed by the Buyer, advise CERT Australia and/or the Australian Cyber Security Centre.
- 8.3.6. If requested by the Buyer, the Seller must within 10 Business Days prepare and provide a cyber security plan to the Buyer for approval. The cyber security plan must provide details of the security measures put in place by the Seller and any Subcontractors to reduce the risk of Cyber Attack on their Digital Systems.
- 8.3.7. The Buyer may either:
- a. notify the Seller that the cyber security plan is an Approved Plan; or
  - b. notify the Seller to promptly revise and resubmit the cyber security plan within 2 Business Days (or such longer time as the notice specifies) to meet the reasonable requirements of the Buyer as set out in the notice, in which case Seller must revise and resubmit the cyber security plan in accordance with the notice.
- 8.3.8. The Seller must begin providing the Products and Services on and from the date that the cyber security plan is an Approved Plan under clause 8.3.7.
- 8.3.9. Without limiting the rights and obligations in this clause 8.3, the Buyer may have discussions with DTA concerning the matters set out in clause 8.3 if there are reasonable grounds to believe there has been a Cyber Attack.

#### **8.4. Data security and dealing with Buyer Data**

- 8.4.1. The Seller must not without the Buyer's prior written consent:
- a. remove any Buyer Data or allow any Buyer Data to be removed from the Buyer's systems or premises or Seller's systems or premises; or
  - b. transmit, store, take or access Buyer Data or allow Buyer Data to be transmitted, stored, taken or accessed by any means outside of Australia.
- 8.4.2. The Seller must implement all necessary measures to ensure that any Buyer Data which is accessed, transmitted or stored using or on the Seller's or any Subcontractor's Digital System is:
- a. protected from:
    - i. unauthorised access or use by a third party; and

- ii. misuse, loss, damage, destruction, alteration or corruption by any person; and
- b. without limiting clause 5.1 or clause 8.1.1, afforded protective measures (including but not limited to administrative, physical and technical safeguards) that are consistent with best industry practice for the Products and Services.

*Note: Clause 17.3.1.f imposes certain obligations on the Seller where it breaches clause 8.4.1 or clause 8.4.2.*

- 8.4.3. The Seller agrees, on expiration or termination of this Contract, to deal with all Buyer Data as directed by the Buyer, subject to any requirement of law binding on the Seller.

## **8.5. Seller to act on Eligible Data Breaches**

- 8.5.1. If the Seller becomes aware that there are reasonable grounds to suspect an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Contract or its provision of the Products and Services, the Seller agrees to:

- a. notify the Buyer in writing as soon as possible, which must be within 72 hours; and
  - b. unless otherwise directed by the Buyer, carry out an assessment in accordance with the requirements of the Privacy Act.

- 8.5.2. Where the Seller is aware that there are reasonable grounds to believe there has been, or where the Buyer notifies the Seller that there has been, an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Contract or its provision of the Products and Services, the Seller must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
  - b. unless otherwise directed by the Buyer, take all other action necessary to comply with the requirements of the Privacy Act; and
  - c. take any other action as reasonably directed by the Buyer.

- 8.5.3. The Seller agrees to notify the Buyer immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.5.

- 8.5.4. Without limiting the rights and obligations in this clause 8.5, the Buyer may have discussions with DTA concerning the matters set out in clause 8.5.

## **Physical security**

- 8.6. The Seller may only access the Buyer's premises (including any area licensed to the Buyer related to this Contract) if authorised in writing by the Buyer and so long as the Seller complies with the requirements of the Buyer as set out in this Contract (and as otherwise notified to the Seller by the Buyer from time to time) and, in any event, must immediately vacate such premises and cease such access if notified to do so by the Buyer.
- 8.6.1.

- 8.6.2. The Seller must safeguard, and must ensure that its Personnel safeguard:
- a. any keys or passes or other relevant access, identification or authentication items or information; or
  - b. any Material detailing access or security arrangements or that could otherwise compromise security
- that are provided to the Seller under this Contract.

## **9. Access to documents**

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- 9.1.1. In this clause 9, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
- 9.1.2. The Seller acknowledges that this Contract may be a Commonwealth contract.
- 9.1.3. Where the Buyer has received a request for access to a document created by, or in the possession of, the Seller or any Subcontractor that relates to the performance of this Contract (and not to the entry into this Contract):
- a. the Buyer may at any time by notice require the Seller to provide the document to the Buyer; and
  - b. the Seller must, at no additional cost to the Buyer, promptly comply with the notice.
- 9.1.4. The Seller must include in any Subcontract relating to the performance of this Contract provisions that will enable the Seller to comply with its obligations under this clause 9.
- 9.1.5. If an application is made to Buyer under the FOI Act for access to documents concerning the Seller, the Buyer may, before making a decision, consult with the Seller, without prejudice to any decision to release the information.

## **10. Liability**

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- 10.1.1. Subject to clause 10.1.2, the liability of a party to the other arising out of or in connection with this Contract (including under any indemnity) is limited to:
- a. the amount stated in Part E - Contract Details; or
  - b. if no amount is stated in Part E - Contract Details, an amount equal to three times the total Fees payable under this Contract exclusive of GST.
- 10.1.2. Any limit on the liability of each party under this clause does not apply to liability relating to:
- a. personal injury (including sickness and death);
  - b. loss of, or damage to, tangible property;
  - c. an infringement of Intellectual Property Rights;
  - d. a breach of any obligation of confidentiality, security matter or privacy; or
  - e. any breach of any statute or any wilfully wrong act or omission including any act or omission that constitutes repudiation of this Contract.



## **11. Indemnity**

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- 11.1.1. The Seller indemnifies the Buyer from and against any:
- a. cost or liability incurred by the Buyer;
  - b. loss of or damage to property of the Buyer; or
  - c. loss or expense incurred by the Buyer in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Buyer, arising from either:
    - d. a breach by the Seller of this Contract; or
    - e. an act or omission involving fault on the part of the Seller or its Personnel in connection with this Contract.
- 11.1.2. The Seller's liability to indemnify the Buyer under clause 11.1.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Buyer or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 11.1.3. The right of the Buyer to be indemnified under this clause 11 is in addition to, and not exclusive of, any other right, power or remedy provided by law. However, the Buyer is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **12. Notices**

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### **12.1. Format, addressing and delivery**

- 12.1.1. A notice under this Contract is only effective if it is in writing, in English and dealt with as follows:
- a. *if given by the Seller to the Buyer* – addressed to the Buyer Representative as stated in Item 3 of Part E - Contract Details or otherwise notified by the Seller; or
  - b. *if given by the Buyer to the Seller* – addressed to the Seller Contact Representative as stated in Item 4 of Part E - Contract Details or (or as updated in accordance with clause 5.8).
- 12.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand;
  - b. signed by the person giving the notice and sent by pre-paid post; or
  - c. transmitted electronically by the person giving the notice by email.

### **12.2. When effective**

- 12.2.1. A notice will take effect:
- a. if delivered by hand – upon delivery to the relevant address;
  - b. if sent by post – upon delivery to the relevant address; and

- c. if transmitted by email – when it becomes capable of being retrieved by the addressee.
- 12.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, will take effect at 9.00am on the next Business Day in that place.
- 13. Audit and access**

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- 13.1. Seller to permit audits**
- 13.1.1. The Seller agrees:
  - a. to give the Buyer Representative, or any persons authorised in writing by the Buyer Representative:
    - i. access to premises where this Contract is being performed or where Official Resources are located; and
    - ii. records and information in a generally accepted data format and storage medium specified by the Buyer.
  - b. to permit those persons set out in clause 13.1.1a to inspect and take copies of any Material relevant to this Contract, including but not limited to:
    - i. details of the Seller's compliance with all international industry standards, best practice and guidelines;
    - ii. the Seller's operational practices and procedures as they relate to this Contract;
    - iii. security procedures;
    - iv. the Fees and the accuracy of the Seller's invoices and reports in relation to the provision of Products and Services under this Contract;
    - v. the Seller's compliance with its confidentiality, privacy, security, and other obligations under this Contract;
    - vi. material (including accounts and records) in the possession of the Seller relevant to the Products and Services delivered under this Contract; and
    - vii. any other matters determined by the Buyer to be relevant to the operations and the performance of this Contract.
- 13.1.2. The rights referred to in clause 13.1.1 are subject to:
  - a. the Buyer providing reasonable prior notice;
  - b. reasonable security procedures in place at the premises; and
  - c. if appropriate, execution of a Deed of confidentiality by the persons to whom access is given.
- 13.1.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 13.1.1.a.
- 13.1.4. This clause 13 does not affect the statutory powers of the Auditor-General or Information Officer (including their delegates).

## **13.2. Costs**

- 13.2.1. Subject to clause 13.3, each party must bear its own costs of all inspections, access and audits.

## **13.3. Consequences of audit**

- 13.3.1. The Seller must promptly take, at no additional cost to the Buyer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Seller has performed its obligations under this Contract unless otherwise agreed in writing by the Buyer.
- 13.3.2. If an audit reveals any overcharging, the Seller must:
- a. refund any amounts overcharged to the Buyer; and
  - b. if the audit reveals material overcharging (as reasonably determined by Buyer), pay to the Buyer, as applicable, the cost of any auditor fees that the Buyer has incurred.

## **14. Privacy**

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### **14.1. Seller's Privacy Act obligations**

- 14.1.1. The Seller agrees, in providing Products and Services:
- a. to comply with its obligations under the Privacy Act and not to do any act or engage in any practice which, if done or engaged in by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act; and
  - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in Item 45 of Part E - Contract Details, to the extent that they are consistent with the obligations referred to in 14.1.1.a above.
- 14.1.2. The Seller must promptly notify the Buyer if the Seller:
- a. becomes aware that a disclosure of Personal Information is required by law; or
  - b. receives a request or an inquiry from the Privacy Commissioner, or from any individual to whom any Personal Information held by the Seller or Subcontractors relates, in respect of Personal Information.

## **15. General provisions**

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### **15.1. General Representations and Warranties**

- 15.1.1. The Seller warrants that it:
- a. has full power and authority to enter into this Contract and to perform the obligations under it;
  - b. its execution and performance of this Contract will not contravene:
    - i. any law;
    - ii. the Seller's constituent documents; or

- iii. any agreement or instrument to which the Seller is a party, or any obligation that the Seller owes to another person;
  - c. if Item 4 of Part E – Contract Details under trust details is marked 'Not applicable', then the Seller is not entering into this Contract as a trustee of any trust or settlement;
  - d. is not insolvent;
  - e. there is no current or pending judicial action against the Seller that could have an adverse effect on the Seller's reputation or the Seller's capacity to perform its obligations under this Contract;
  - f. it does not rely on any representation, warranty, condition or other conduct, information, statement or document given by the Buyer, or any person purporting to act on behalf of Buyer in entering into this Contract;
  - g. it has all necessary licences and authorisations required to operate and provide the Products and Services;
  - h. none of its directors or executive management has been convicted of an offence relating to fraud or dishonesty;
  - i. it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
  - j. it is not on the Commonwealth's Consolidated List of individuals and entities to which Australian sanctions apply and none of its Personnel are on, or are a member of an entity on, that list;
  - k. it and its Personnel have the necessary experience, qualifications, skills, knowledge and competence to provide Products and Services under this Contract;
  - l. it has not made any false declaration about any current or past dealings with the Buyer or any other agency; and
  - m. there has been no significant deficiency in the Seller's performance of any other agreement with the Buyer or any other agency.
- 15.1.2. The Seller acknowledges that the Buyer has entered into this Contract in reliance on the warranties and representations contained in this Contract.
- 15.1.3. The Seller warrants that it will notify and fully disclose to the Buyer any breach of any of the warranties in this clause 15.1 as soon as it becomes aware of a breach, or any event or occurrence actual or threatened during the Contract Period that would materially affect the Seller's ability to perform any of its obligations under this Contract.
- 15.2. Archives Act requirements**
- 15.2.1. The Seller acknowledges and agrees that:
- a. the Products and Services may be used to store Commonwealth Records;
  - b. the *Archives Act 1983* (Cth) applies to Commonwealth Records; and

- c. the Seller must not dispose of any Commonwealth Records unless directed in writing to do so by the Buyer.
- 15.2.2. The Seller must comply with any reasonable directions of the Buyer which are relevant to any applicable laws or policies relating to archival and information management requirements. This may include directions in relation to the ICT requirement under the Digital Continuity 2020 Policy (issued under the *Archives Act 1983*) to ensure all business systems have appropriate information management functionality.
- 15.3. Work health and safety**
- 15.3.1. In carrying out this Contract, the Seller must comply with:
  - a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
  - b. all applicable policies and procedures relating to work health and safety, including those that apply to the Buyer's premises when using those premises.
- 15.3.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 15.3.1, the Seller will comply with those policies and procedures that produce the highest level of health and safety.
- 15.4. Books and Records**
- 15.4.1. The Seller must:
  - a. keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by a Buyer under a Contract to be determined; and
  - b. keep copies of all certifications and other records to confirm their compliance with all applicable Australian standards.
- 15.5. Reporting**
- 15.5.1. The Seller must, within 5 Business Days of a request:
  - a. provide the Buyer with any ad hoc report or information in relation to the Products and Services that the Buyer reasonably requests from time to time; and
  - b. ensure that such reports and information are provided in the form and format requested by the Buyer.
- 15.5.2. The Seller must, if requested by the Buyer, provide evidence to support the accuracy of any reports or information delivered.
- 15.6. Insurance**
- 15.6.1. The Seller must hold and maintain the insurance stated in Item 13 of Schedule A1 – Panel Appointment Details and Item 49 of Part E - Contract Details.
- 15.6.2. The Seller must, on request, provide proof of insurance acceptable to the Buyer.

- 15.6.3. This clause 15.6 continues in operation for so long as any obligations remain in connection with this Contract.

**15.7. Extension of provisions to Subcontractors and Personnel**

- 15.7.1. In this clause 15.7:

- 15.7.2. The Seller agrees to ensure that:

- a. its Subcontractors and Personnel comply with all relevant requirements of this Contract; and
- b. any contract (including any Subcontract) entered into in connection with this Contract imposes all relevant requirements of this Contract on the other party.

- 15.7.3. The Seller agrees to exercise any rights it may have against any of its Subcontractors, Personnel or third parties in connection with a requirement of this Contract in accordance with any direction by the Buyer.

**15.8. Relationship of parties**

- 15.8.1. The Seller is not by virtue of this Contract an officer, employee, partner or agent of the Buyer, nor does the Seller have any power or authority to bind or represent the Buyer unless specifically authorised in writing.

- 15.8.2. The Seller must not:

- a. misrepresent its relationship with the Buyer;
- b. represent itself as an employee of the Buyer;
- c. use the Commonwealth coat of arms, or any Buyer branding in connection with this Contract on its website, in marketing material or any other public facing document without prior permission of the Buyer;
- d. engage in any misleading or deceptive conduct in relation to the Products and Services; or
- e. attempt to exercise any delegation under the *Public Governance, Performance and Accountability Act 2013* (Cth) or the *Public Service Act 1999* (Cth) unless formally appointed to do so.

- 15.8.3. Without limiting any other provision of this clause 15.8:

- a. the Seller's Personnel are not entitled to any benefit from the Buyer usually attributable to an employee; and
- b. this Contract does not create any contractual relationship between the Buyer and the Seller's Personnel.

**15.9. Additional Terms**

- 15.9.1. Any Additional Terms:

- a. that modify Part A - Panel Terms, Part B - Core Contract Terms, Part C - Module Specific Terms, Part D – Module and Category Descriptions or Part F – Definitions and Interpretation only apply if DTA has approved those Additional Terms in writing; and

- b. without limiting clause 15.9.1a, only apply if a Buyer has expressly agreed to those Additional Terms in this Contract.
- 15.9.2. If DTA approves any Additional Terms in accordance with clause 15.9.1.a for this Contract, the relevant component of the Panel Agreement is only amended for this Contract and not for any other Contracts.
- 15.9.3. Without limiting this clause 15.9.1, terms that a Buyer or user of any Products and Services is required to accept (for example, by clicking 'I agree' when commencing use of the Products and Services), are not included in any Contract and are not enforceable.
- 15.9.4. This clause 15.9.1 also applies to any variations to a Contract.
- 15.10. Public announcements**
- 15.10.1. The Seller agrees not to make any public announcement about this Contract unless it has the Buyer's prior written approval.
- 15.10.2. The Seller is not required to obtain approval to make a public announcement if the public announcement is required by law or a regulatory body (including a relevant stock exchange).
- 15.10.3. If the Seller is required by law or a regulatory body to make a public announcement, the Seller must:
  - a. limit the public announcement to the extent required by the relevant law or regulatory body; and
  - b. to the extent practicable, first consult with and take into account the reasonable requirements of the Buyer.
- 15.11. Waiver**
- 15.11.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract does not operate as a waiver of that right.
- 15.11.2. The exercise or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.
- 15.12. Variations**
- 15.12.1. A variation of this Contract is binding only if it is properly executed by the authorised representative of each party and substantially in the form of the Contract Variation.
- 15.12.2. If a party wishes to make changes to this Contract, it must provide the proposed changes in writing to the other party (giving all necessary details and justification for the change). The other party must respond to the proposal as soon as practicable (but no later than 10 Business Days unless otherwise agreed by the parties).
- 15.12.3. A Buyer is not liable to the Seller for any additional work undertaken or expenditure incurred by the Seller unless the variation has been agreed by the parties to this Contract.

**15.13. Assignment and Novation**

- 15.13.1. The Seller must not assign or novate its rights or obligations under this Contract, without the prior written consent of the Buyer.
- 15.13.2. The Buyer will conduct due diligence on any new entity proposed for an assignment or novation to determine whether to provide consent under clause 15.13.1 and Seller agrees to provide all necessary information to the Buyer for this purpose.

**15.14. Change in Control**

- 15.14.1. If the Seller undergoes a Change of Control, the Seller must notify the Buyer within 10 Business Days of that Change of Control occurring.
- 15.14.2. Following a Change of Control, the Buyer may:
  - a. conduct due diligence;
  - b. consent to the Change of Control;
  - c. consent to the Change of Control subject to conditions; or
  - d. terminate this Contract under clause 16.2.1.a.
- 15.14.3. The Seller must promptly provide the Buyer all information reasonably requested by the Buyer in relation to a Change of Control or proposed Change of Control, including details about the Seller's ownership, corporate structure, beneficiaries, and details of any controlling entities.

**15.15. Change in Seller's country of tax residency**

- 15.15.1. The Seller warrants that its country of tax residency and, if applicable, ultimate parent entity's country of tax residency, is as stated in Item 4 of Part E - Contract Details.
- 15.15.2. If there is a change in the Seller's country of tax residency or change in Seller's ultimate parent entity's country of tax residency, the Seller must notify the Buyer within 10 Business Days of that change occurring.

**15.16. Cooperation and collaboration**

- 15.16.1. For this Contract, each party must:
  - a. diligently perform its obligations; and
  - b. work together in a collaborative manner in good faith.
- 15.16.2. The Seller must comply with any reasonable directions given by the Buyer in respect of this Contract.

**15.17. Severability**

- 15.17.1. A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of that document will continue in force.



**15.18. Further action**

- 15.18.1. Each Party must, at its own expense, do everything reasonably necessary (including executing all documents) to give full effect to this Contract.

**15.19. Entire Agreement**

- 15.19.1. This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**15.20. Electronic signatures and acceptance**

- 15.20.1. If a document is required to be signed or accepted in accordance with, or for purposes related to, this Contract, that document may be signed or otherwise accepted electronically, unless otherwise notified by the Buyer.

**15.21. Counterparts**

- 15.21.1. This Contract may be executed in counterparts. All executed counterparts constitute one document.

**15.22. Trustee Seller**

- 15.22.1. If the Seller acts as trustee of a trust (as stated in Item 4 of Part E - Contract Details), in relation to this Contract:
- a. it is liable both personally, and in its capacity as trustee of that trust;
  - b. it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Contract;
  - c. it must not retire, resign nor by act or omission effect or facilitate a change to its status as the trustee of that trust; and
  - d. it represents and warrants that:
    - i. such trust has been duly established and currently exists;
    - ii. it is the duly appointed, current and only trustee of that trust;
    - iii. as such trustee it has the power to enter into and perform its obligations under this Contract;
    - iv. it has a right of indemnity out of the assets of that trust in respect of its obligations;
    - v. any Conflict and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
    - vi. no breach of the relevant trust deed exists or would arise.

**15.23. Survival**

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

- a. liability;
- b. indemnity;
- c. warranties;
- d. termination (in respect to rights and obligations arising on termination);
- e. reporting;
- f. licensing of Intellectual Property;
- g. the Performance Management Framework
- h. confidentiality;
- i. privacy;
- j. books and records;
- k. audit and access;
- l. integrity;
- m. security;
- n. transition out; or
- o. any other provision which the parties expressly or by implication intend to continue.

## **16. Termination**

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**Note:** These clauses outline how the Contract can be ended by Buyers and Sellers.

### **16.1. Buyer's right to terminate for convenience**

- 16.1.1. The Buyer may by notice, at any time, immediately terminate this Contract or reduce the scope of any Products and Services.
- 16.1.2. The Seller agrees, on receipt of a notice of termination or reduction:
  - a. to stop or reduce work as specified in the notice;
  - b. to take all available steps to minimise loss resulting from that termination or reduction; and
  - c. to continue work on any part of the supply of the Products and Services not affected by the notice.
- 16.1.3. If the Buyer terminates this Contract under clause 16.1.1, the Buyer will be liable only:
  - a. to pay any Fees relating to Products and Services supplied before the date of termination;
  - b. to reimburse any verified expenses (excluding: (i) the cost of redundancies, redeployment or other costs associated with employment actions taken as a result of the termination (ii) the costs of termination of Subcontractors; and (iii) costs relating to premises) that are:

- i. properly, unavoidably and directly incurred by the Seller as a result of the termination; and
  - ii. substantiated to the Buyer's reasonable satisfaction.
- 16.1.4. The Buyer will not be liable to pay amounts under clause 16.1.3.a and 16.1.3.b which would, added to any Fees already paid to the Seller under this Contract, together exceed the total Fees set out in Part E – Contract Details.
- 16.1.5. If the Buyer reduces the scope of any Products and Services under clause 16.1.1, the Buyer's liability to pay Fees under this Contract will, unless the parties agree otherwise in writing, reduce in accordance with the reduction in the Products and Services.
- 16.2. Termination for fault**
- 16.2.1. If the Seller fails to satisfy any of its obligations under this Contract, then the Buyer – if it considers that the failure is:
  - a. *not capable of remedy* – may, by notice, terminate this Contract immediately; or
  - b. *capable of remedy* – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- 16.2.2. The Buyer may also by notice terminate this Contract or reduce the scope of this Contract immediately (but without prejudice to any prior right of action or remedy which the Buyer has or may have) if the Seller:
  - a. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration; or
  - b. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors;
  - c. is found to have provided false or misleading information to the Buyer during the procurement process for this Contract;
  - d. fails to notify the Buyer of a Change in Control in accordance with clause 15.14;
  - e. fails to implement a Cure Plan where required to do so under clause 25.4, or a cyber security plan where required to do so under clause 8.3;
  - f. receives an overall rating of 'not met' on three or more occasions under the Performance Management Framework;
  - g. has been terminated from the Panel by DTA;
  - h. *or its Associates* – has committed a breach of national security or without written authorisation released Commonwealth Confidential Information to a third party whether under this Contract or otherwise; or
  - i. *or its Associates* – embarrass or bring the Buyer into disrepute or diminish the public trust in them whether under this Contract or otherwise.

**16.3. Impact of termination**

**16.3.1. If this Contract is terminated:**

- a. the Seller must within 10 Business Days of the termination date refund to the Buyer any Fees already paid by the Buyer for the remainder of the Contract Period;
- b. subject to the terms of this Contract, the parties are relieved from future performance of the terminated Contract (or relevant part of it);
- c. subject to this Contract, any licences and authorisations relating to or concerning this Contract granted to the Seller by the Buyer terminate immediately despite anything to the contrary contained in the licence or authorisation;
- d. the Seller must take all available steps to protect Intellectual Property Rights, Confidential Information, and Personal Information relating to or provided or accessed in connection with this Contract;
- e. the Seller must return to the Buyer all of Buyer's Confidential Information;
- f. the Seller must follow any reasonable direction of the Buyer; and
- g. continue to perform any part of this Contract not affected by or which survives the termination.

**16.3.2. Termination does not affect the rights accumulated by either party.**

## SECTION 2 - INTEGRITY REQUIREMENTS

### 17. Confidentiality of Official Information and other security obligations

#### 17.1. Security classification

- 17.1.1. Unless otherwise notified by the Buyer, the highest level of Security Classified Resources that the Seller will have access to under this Contract is that stated in Item 43 of Part E - Contract Details.

#### 17.2. Confidentiality of Official Information

- 17.2.1. The Seller will not, without the prior written authorisation of the Buyer, disclose any Official Information to any person (unless required to do so by law).
- 17.2.2. Subject to clause 17.3.1, the Seller is authorised to provide Official Information to those Personnel and Approved Subcontractors who require access for the purposes of this Contract.
- 17.2.3. The Seller agrees, on request by the Buyer at any time, to arrange for the Personnel and Approved Subcontractors referred to in clause 17.2.2 to give a written undertaking in a form acceptable to the Buyer relating to the use and non-disclosure of Official Information.

**Note:** Any undertaking required under the above clause should confirm that the requirements relating to the use and non-disclosure of Official Information:

- continue after the end of the Contract; and
- survive the expiration of any subcontract or the end of the person's employment with the Seller.

It is recommended that you obtain legal advice on the form of required undertaking.

- 17.2.4. The Seller must secure all Official Information against loss and unauthorised access, use, modification or disclosure.

#### 17.3. Other security obligations of the Seller

- 17.3.1. The Seller must:
- a. ensure that all Personnel who require access to Security Classified Resources:
    - i. hold the appropriate security clearance;
    - ii. comply with Australian Government Vetting Service (AGSVA) requirements for holders of the relevant security clearance; and
    - iii. otherwise comply with reporting requirements applicable to security clearance holders (for example, regarding significant changes to personal circumstances);
  - b. prevent access to Security Classified Resources by Personnel:
    - i. whose security clearances are revoked or have lapsed; or

- ii. who do not have a legitimate and genuine need to access the relevant Security Classified Resources for the purposes of this Contract;
- c. make its Personnel available to attend any security training provided by the Buyer;
- d. notify the Buyer of any change in the personal circumstances of Personnel referred to in clause 17.3.1a;
- e. not (either directly or indirectly) perform any part of this Contract outside Australia or permit or facilitate any third party to do so, without the Buyer's prior written approval;
- f. notify the Buyer immediately if the Seller:
  - i. becomes aware that a Security Incident or breach of clause 8.4.1, clause 8.4.2, clause 17.2.4 or clause 17.3.1.e has occurred; or
  - ii. reasonably suspects that a Security Incident or such a breach has occurred,
 and otherwise implement the Buyer's procedures for Security Incident reporting and management as advised by the Buyer from time to time; and
- g. comply with any additional security requirements stated in Item 43 of Part E - Contract Details and any variations or additions to those requirements as notified by the Buyer from time to time, provided that:
  - i. if the Seller incurs (or will incur) any material expenses which are directly related to complying with clause 17.3.1.g (having regard to the total value of this Contract), the Buyer and the Seller may negotiate any appropriate variation to this Contract to reflect the Seller's reasonable and substantiated costs of such compliance;
  - ii. without limiting clause 1.2.1.m of Part F - Definitions and Interpretation, unless such variation is agreed between the parties, the Seller is solely responsible for the costs of complying with clause 17.3.1.g; and
  - iii. the Seller must not refuse to comply with clause 17.3.1.g or delay such compliance pending the outcome of any negotiations under clause 17.3.1.g.i.

17.3.2. The Seller must implement security procedures to ensure that it meets its obligations under this clause 17 and will provide details of these procedures to the Buyer on request.

#### **17.4. Consequences of breach**

17.4.1. The Seller acknowledges that any failure to fully comply with any of its obligations under this clause 17 may be treated by the Buyer as a failure that is not capable of remedy.

#### **17.5. No Fees payable where certain Security Incidents occur**

17.5.1. If:

- a. either:

- i. a Security Incident occurs; or
- ii. the Seller is taking action to prevent or rectify any Security Incident; and
- b. this prevents the Buyer from being able to use the Products and Services as intended by this Contract,

the Buyer is not required to pay any Fees to the extent and for the period that it is prevented from using the Products and Services due to the matters described in clause 17.5.1.a (**Prevention Period**).

17.5.2. The amount of Fees the Buyer is not required to pay must be calculated as follows:

- a. the Buyer must pay any Fees for Products and Services delivered before the Prevention Period, but the Buyer will not be required to pay any further Fees for those Products and Services until they can be used in accordance with this Contract; and
- b. Fees will not be payable during the Prevention Period.

17.5.3. If the Buyer has paid any Fees that the Buyer is not required to pay under clauses 17.5.1 and 17.5.2, then the Buyer may exercise its rights under clause 7.8.2 in respect of those Fees.

#### **17.6. Seller's other obligations not limited**

17.6.1. Nothing in this clause 17 limits the Seller's other obligations under this Contract, including those under clause 8.

### **18. Confidential Information of the Seller**

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#### **18.1. Confidential Information not to be disclosed**

18.1.1. Subject to clause 18.2.1, the Buyer will not, without the prior written authorisation of the Seller, disclose any Seller Confidential Information stated in Items 46 or 47 of Part E - Contract Details to a third party.

#### **18.2. Exceptions to obligations**

18.2.1. The obligations on the Buyer under this clause 18 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Buyer to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
- b. is disclosed by the Buyer to its internal management Personnel, solely to enable effective management or auditing of Contract related activities;
- c. is disclosed by the Buyer to the responsible Minister;
- d. is disclosed by the Buyer in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Buyer within the Buyer's organisation;
- f. is shared with DTA;
- g. is shared with other Buyers (within the meaning of the Panel Agreement);

- 18.2.2. Where the Buyer discloses Confidential Information to another person pursuant to clauses [a-g above], the Buyer will notify the receiving person that the information is confidential.
- 18.2.3. In the circumstances referred to in clauses [a, b, e, f, g above], the Buyer agrees not to provide the information unless the receiving person agrees to keep the information confidential.

The obligations under this clause 18 in relation to an item of Confidential Information of the Seller continue for the period set out in Items 46 and 47 of Part E - Contract Details in respect of that item.

- 19.1.1. The Seller warrants that, to the best of its knowledge after making diligent inquiries, at the Contract Start Date no Conflict, except as disclosed in writing to the Buyer, exists or is likely to arise in the performance of the its obligations under this Contract.
- 19.1.2. If, during the Contract Period a Conflict arises, or appears likely to arise, the Seller agrees:
  - a. to notify the Buyer immediately;
  - b. to make full disclosure of all relevant information relating to the Conflict; and
  - c. to take any steps the Buyer reasonably requires to resolve or otherwise deal with the Conflict.
- 19.1.3. The Buyer may notify the Seller of conduct or circumstances that in the Buyer's view amount to a Conflict and the Seller must comply with the directions of Buyer in respect of that notice.
- 19.1.4. If the Seller fails to comply with this clause 19, the Buyer may terminate this Contract in accordance with clause 16.2.1.a.
- 19.1.5. At any time, the Buyer may require the Seller, Seller's Personnel to execute a Conflict of Interest declaration in the form specified by the Buyer.

20.1.1. For the purposes of this clause, 'Significant Event' means:

- a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Seller or its Personnel or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation;



- b. any other significant matters, including the commencement of legal, regulatory or disciplinary action by an independent person or disciplinary action internal to the Seller, involving the Seller or its Personnel or Subcontractors, that may adversely impact on:
  - i. Seller compliance with any applicable law or Commonwealth policy;
  - ii. Buyer compliance with any applicable law or Commonwealth policy;
  - iii. the Commonwealth's reputation; or
  - iv. the professional capacity or capability of the Seller or its Personnel to deliver Products and Services; or
- c. any non-compliance by:
  - i. the Seller or its Personnel; or
  - ii. the Seller's Subcontractors, to the extent that information is known by or reasonably available to the Seller;

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

- 20.1.2. The Seller must immediately issue the Buyer a notice on becoming aware of a Significant Event during the Contract Period.
- 20.1.3. The notice issued under clause 20.1.2 must provide a summary of the Significant Event, including the date that it occurred and whether any Key Personnel or other personnel engaged in connection with the Products and Services were involved.
- 20.1.4. The Buyer may notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause 20, and where this occurs the Seller must issue a notice under clause 20.1.2 in relation to the event within 3 Business Days of being notified by the Buyer.
- 20.1.5. If requested by the Buyer, the Seller must provide the Buyer with any additional information regarding the Significant Event within 3 Business Days of the request.
- 20.1.6. If requested by the Buyer, the Seller must prepare a draft remediation plan and submit that draft plan to the Buyer's Representative for approval within 10 Business Days of the request.
- 20.1.7. A draft remediation plan prepared by the Seller under clause 20.1.6 must include the following information:
  - i. how the Seller will address the Significant Event in the context of the Products and Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Products and Services or compliance by the Seller with its other obligations under this Contract;

- ii. how the Seller will ensure events similar to the Significant Event do not occur again; and
  - iii. any other matter reasonably requested by the Buyer.
- 20.1.8. The Buyer will review the draft remediation plan and either approve the plan or provide the Seller with the details of any changes that are required. The Seller must make any changes to the draft remediation plan that are reasonably requested by the Buyer and resubmit the draft remediation plan to the Buyer for approval within 3 Business Days of the request unless a different timeframe is agreed in writing by the Buyer. This clause 20.1.8 will apply to any resubmitted draft remediation plan.
- 20.1.9. Without limiting its other obligations under this Contract, the Seller must comply with the remediation plan as approved by the Buyer. The Seller agrees to provide reports and other information about the Seller's progress in implementing the remediation plan as reasonably requested by the Buyer.
- 20.1.10. If the Seller fails to comply with its obligations under this clause 20, the Buyer may terminate this Contract in accordance with clause 16.2.1.a. The Buyer's rights under this clause 20 are in addition to and do not otherwise limit any other rights the Buyer may have under this Contract. The performance by the Seller of its obligations under this clause will be at no additional cost to the Buyer.
- 20.1.11. The Buyer may discuss Significant Events with DTA.

## **21. *National Anti-Corruption Commission Act 2022 (Cth) Requirements***

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### **21.1. Seller to comply and cooperate**

- 21.1.1. The Seller acknowledges that in providing the Products and Services to the Buyer under this Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (NACC Act)*.
- 21.1.2. The Seller must comply with any reasonable request, policy or direction issued by the Buyer and otherwise cooperate with the Buyer in relation to any action taken by the Buyer required or authorised by the NACC Act.

## **22. *Fraud and Corruption***

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### **22.1. Seller to prevent fraud or corruption**

- 22.1.1. The Seller must comply with the Commonwealth Fraud Control Framework, as amended from time to time at <http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx>.
- 22.1.2. The Seller must:
  - a. take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in relation to this Contract (including by the Seller or its Personnel); and
  - b. notify the Buyer if the Seller knows or has reason to suspect that any fraud has occurred, is occurring, or is likely to occur in relation to this Contract.

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

## SECTION 3 - COMPLIANCE WITH LAWS AND POLICIES

### 23. Compliance with laws and policies

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#### 23.1. Seller must comply with laws and policies

- 23.1.1. The Seller must comply with any laws and Commonwealth policies applicable to its performance of this Contract.

#### 23.2. Applicable law

- 23.2.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory stated in Item 48 of Part E - Contract Details.
- 23.2.2. The parties submit to the jurisdiction of the courts of that State or Territory.

#### 23.3. Codes of Conduct

- 23.3.1. In performing any part of this Contract, the Seller must ensure that its Personnel comply with the:
- a. APS Values;
  - b. APS Code of Conduct; and
  - c. any other applicable code of conduct notified to the Seller;
- to the standard required of 'APS employees' as defined under the *Public Service Act 1999* (Cth).
- 23.3.2. The Seller must provide all reasonable assistance to the Buyer with any investigation of a report of a breach of clause 23.3.1.

#### 23.4. Illegal Workers

- 23.4.1. The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract.
- 23.4.2. If it becomes aware of the involvement of an Illegal Worker, the Seller must:
- a. promptly notify the Buyer; and
  - b. immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to the Buyer.
- 23.4.3. If requested in writing by the Buyer, the Seller must provide evidence within 10 Business Days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

## SECTION 4 - PERFORMANCE MANAGEMENT FRAMEWORK

### 24. Application of Performance Management Framework

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#### 24.1. Buyer may exercise any other rights

- 24.1.1. Nothing in this Section 4 limits any rights or remedies of the Buyer, including any right of termination.

### 25. Performance Management Framework

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#### 25.1. Buyer to Manage Seller performance

- 25.1.1. The Buyer will assess the performance of the Seller at the times stated in Item 54 of Part E - Contract Details or, where no time is stated, each 6 months from the Contract Start Date.
- 25.1.2. The Buyer will assess the Seller's performance based on the Performance Indicators to determine:
- a. the Seller's Performance Rating for each Performance Indicator; and
  - b. an overall Performance Rating for the period.
- 25.1.3. The Buyer will use the following Performance Rating levels:
- a. not met;
  - b. met; or
  - c. exceeded.
- 25.1.4. The Buyer will provide the Seller with a provisional Performance Rating and the Seller may provide feedback within 10 Business Days of receipt. The Buyer will consider any feedback and then issue a final Performance Rating.
- 25.1.5. The Buyer will report the Seller's Performance Ratings to DTA to use in accordance with Part A - Panel Terms.
- 25.1.6. Where the Seller's Performance Rating is 'not met', the Buyer will invite the Seller to meet to discuss performance improvement. If requested by the Buyer, the parties must meet at agreed times to discuss any issues relating to the Seller's performance under this Contract.
- #### 25.2. Seller's responsibility to correct
- 25.2.1. In the event of:
- a. a trend of Performance Ratings at the 'not met' level; or
  - b. a Service Level Failure,
- the Buyer may by notice require the Seller to provide the Buyer with a Cure Plan under clause 25.4 to remedy the failure and its underlying causes. If the Buyer does so, then the parties' rights and obligations under clause 25.4 will apply.
- 25.2.2. The Buyer may communicate any failure and any established interim processes or procedures with DTA.

### 25.3. Performance Indicators

25.3.1. The Buyer will use the following Performance Indicators to assess the Seller's performance:

Item	Criteria	Performance Indicators
1	Technical requirements met	TBC
2	Delivery Schedule met	TBC
3	Price met	TBC

### 25.4. Cure Plan

25.4.1. If the Buyer considers that:

- a. the Seller's performance is unsatisfactory;
- b. the Seller may have breached any requirement under this Contract; or
- c. a Security Incident has occurred (each a **Performance Issue**),

the Seller must within 2 Business Days of being notified to do so (or such longer time as the notice specifies) provide the Buyer with a Cure Plan to remedy the Performance Issue and its underlying causes.

25.4.2. A Cure Plan must include:

- a. full details of the cause of the Performance Issue, where known, or the full details of what the Seller considers to be the cause of the Performance Issue (including where relevant, its root cause and all underlying causes);
- b. the proposed method by which:
  - i. the Performance Issue will be cured (if it is capable of being cured); and
  - ii. the Seller will ensure that the Performance Issue does not happen again;
- c. any temporary measures that can be taken to work around or minimise the impact of the Performance Issue;
- d. the time that will be required to fully complete all aspects of the Cure Plan;
- e. a risk assessment detailing the risks, consequences, mitigations and overall ratings for the proposed rectification of the Performance; and
- f. the tasks, timing, resources, dependencies, contingencies, availability of resources, to implement the Cure Plan.

- 25.4.3. The Buyer may either:
- a. notify the Seller to implement the Cure Plan; or
  - b. notify the Seller to promptly revise and resubmit the Cure Plan within 2 Business Days (or such longer time as the notice specifies) to meet the reasonable requirements of the Buyer as set out in the notice, in which case Seller must revise and resubmit the Cure Plan in accordance with the notice.
- 25.4.4. Where notified to implement the Cure Plan under clause 25.4.3, the Seller must immediately implement the Cure Plan and:
- a. keep the Buyer fully informed about the progress of work against the Cure Plan and any proposed modification to the Cure Plan;
  - b. promptly provide the Buyer with any information that it reasonably requests about the progress of work, the Cure Plan or any related matter;
  - c. diligently perform all work in accordance with the Cure Plan and properly manage it through to conclusion;
  - d. provide an updated risk assessment if requested by the Buyer; and
  - e. notify the Buyer when it believes the Cure Plan has been fully implemented and completed. The Buyer may conduct due diligence in respect of work related to the Cure Plan. The Cure Plan will not be considered completed until such time as the Buyer provides written confirmation following due diligence.
- 25.4.5. Nothing in this clause 25.4 limits any rights or remedies of the Buyer under this Contract including any right of termination.

**25.5. Service Levels**

- 25.5.1. Clauses 25.5 and 25.6 apply if stated in Item 53 of Part E - Contract Details.
- 25.5.2. The Seller must meet the Service Levels stated in Item 53 of Part E - Contract Details.

**25.6. Service Credits**

- 25.6.1. If the Seller fails to meet any of the Service Levels stated in Item 53 of Part E - Contract Details, the Seller must reduce the Fees in accordance with the table in Item 53 of Part E - Contract Details. If Service Credits are incurred and payable to the Buyer under that Item, then:
- a. the Seller must:
    - i. adjust the amount of the next invoice under clause 7.1; or
    - ii. where there are no more invoices under clause 7.1, pay to the Buyer (on demand by the Buyer) the applicable Service Credit; or
  - b. the Buyer may deduct the applicable Service Credit from any Fees payable to the Seller.
- 25.6.2. The Seller acknowledges that:

- a. its failure to meet a Service Level may have a material adverse impact on the business and operations of the Buyer;
  - b. Service Credits represent a reduction in Fees to reflect the provision by the Seller of a lower level of service than is required under this Contract and constitute an agreed amount by which the Fees may be reduced in accordance with this Contract (for clarity, unless otherwise agreed in the Order, any limitation of liability under this Contract does not apply to any Service Credits); and
  - c. except as stated in clause 25.6.3, the Buyer's rights under this clause 25.6 are in addition to, and do not waive, the Buyer's right to seek any other remedy under this Contract or at law.
- 25.6.3. Any damages recovered by the Buyer under or in connection with this Contract will be reduced by the amount of any Service Credits (if any) which the Buyer has received in respect of the same event giving rise to the damage.
- 25.7. Process for determining a Service Level Failure**
- 25.7.1. A Service Level Failure is recorded for each occasion the Seller does not comply with or maintain the Minimum Expected Performance of a Service Level (**Service Level Failure**).
- 25.7.2. Where a Service Level has a Minimum Expected Performance, availability or operation of 100%, if there is a single occasion where the performance of that Service Level is not satisfactory or maintained in accordance with the Service Level then it will constitute a Service Level Failure.
- 25.7.3. Clauses 25.7.1 and 25.7.2 do not apply to the extent that a Service Level Failure is caused by an event outside the reasonable control of the Seller or is significantly contributed to by an act or omission by the Buyer.

## **26. Support and Maintenance**

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### **26.1. Provision of Support and Maintenance**

- 26.1.1. The Seller must comply with this clause 26 if stated in Item 52 of Part E – Contract Details.
- 26.1.2. The Seller must:
- a. provide Support and Maintenance in relation to any Supported Items stated in Item 52 of Part E – Contract Details for the Contract Period; and
  - b. comply with any Service Levels relating to Support and Maintenance.
- 26.1.3. The Seller must provide comprehensive facilities to enable the Buyer to seek Support and Maintenance and report any Fault or possible Fault in any Supported Item which, without limitation, will include (unless expressly agreed to the contrary by the Buyer in writing) a single number toll free telephone facility, together with email, and Internet reporting facilities available on a 24 X 7 basis.



## **26.2. Remedial Maintenance**

- 26.2.1. The Seller must respond as soon as practical to any Fault or possible Fault in a Supported Item reported to (or otherwise detected by) the Seller, by ensuring that a fully qualified maintenance technician familiar with the relevant Supported Item and, where relevant, the Buyer configuration and operational environment, examines the Supported Item and immediately performs any necessary Support and Maintenance.
- 26.2.2. The Seller acknowledges that any use of remote access to the Buyer systems or installation of diagnostics tools that do not form part of a Supported Item is at the Buyer's discretion and that should the Buyer consent to any such access or installation, that consent may be revoked at any time with or without notice.

## **26.3. Issue Management**

- 26.3.1. The Seller must manage all Support and Maintenance activities and ensure that the Buyer is fully informed as to their status, including:
- a. properly logging all reported Faults, possible Faults and requests for Support and Maintenance;
  - b. tracking and advising the Buyer of the status of all Support and Maintenance requests and all activities, actions, decisions and responses, through to resolution; and
  - c. automatically escalating the response in accordance with the severity of any Fault or possible Fault or issue and its impact on the Buyer's operations and the elapsed time during which a Fault remains unresolved in accordance with the Seller's normal practice and the Buyer's reasonable expectations.
- 26.3.2. The Seller must maintain accurate records of all Support and Maintenance activities, which without limitation shall include full details of all:
- a. Faults or potential Faults reported or otherwise detected, including the exact time of report or detection;
  - b. all Support requests, including the exact time of request;
  - c. problem diagnosis, remedial and preventative Support and Maintenance and other action taken, including the exact time and nature of the action taken;
  - d. escalation and other management action in relation to the Support and Maintenance activity;
  - e. the Seller Personnel involved;
  - f. any parts replaced, modified or added; and
  - g. the exact time a Fault or possible Fault is fully resolved and closed.
- 26.3.3. The Seller shall ensure that all relevant documentation is updated to fully and properly reflect all Support and Maintenance activities, which, without limitation shall include updating all relevant manuals, the Buyer site documentation, the Buyer Supported Item management or tracking systems and the Buyer management information systems.

- 26.3.4. All Support and Maintenance must be carried out in a manner that will, under the circumstances, cause the least disruption to the Buyer's operations.
- 26.3.5. The Seller must properly test any proposed patch or update (or other change) or Supported Item that is repaired prior to proposing to implement it or certifying that any Fault or possible Fault is fixed.
- 26.3.6. The Seller must promptly notify the Buyer when it considers that Support and Maintenance has been completed.

**Note:** The below is typically a requirement where PROTECTED level data will reside on systems or other high security situations.

- 26.3.7. Where the Seller as part of Support and Maintenance replaces any component that might contain the Buyer Data, the Seller must immediately take all reasonable action to remove and return to the Buyer or, where removal and return is not reasonably possible, totally and permanently erase all the Buyer Data contained in it. Where the Buyer Data on a replaced item cannot be removed or erased the Seller must seek specific instructions from the Buyer on how to deal with the item. The Seller acknowledges and agrees that the Buyer may require the secure destruction of the component.
- 26.3.8. The Seller must immediately advise the Buyer if it detects or becomes aware of any condition or potential condition within the Supported Item or the Buyer systems that might constitute a hazard or affect the Buyer or safety.

## **27. Liquidated damages**

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- 27.1.1. This clause 27 applies if stated in Item 51 of Part E - Contract Details.
- 27.1.2. If there is a failure by the Seller to achieve any Milestone, then (without limiting any other rights or remedies of the Buyer) the Buyer may recover from the Seller the amounts specified in Item 51 of Part E - Contract Details.
- 27.1.3. The parties agree that the amounts specified in Item 51 of Part E - Contract Details are not penalties but are reasonable, having regard to the loss, costs and expenses that the Buyer is estimated to incur as a result of the delay.
- 27.1.4. If the Seller considers that the delay arose as a result of an event beyond its control, the Seller must provide written notice to the Buyer within 5 Business Days of that event occurring setting out the reasons why it considers that liquidated damages should not be payable. Unless and until the Buyer agrees that the liquidated damages are not payable, the Seller must deduct the liquidated damages from its invoices or pay the liquidated damages to the Buyer.

## SECTION 5 - PROCUREMENT POLICIES

### 28. Application of plans and policies

- 28.1.1. The plans and policies in this Section 5 only apply to this Contract where stated in Item 27 of Part E - Contract Details.

### 29. Workplace Gender Equality

**Note:** Broadly, this applies for Contracts over the relevant threshold specified in the Commonwealth Procurement Rules and when the Seller is a 'relevant employer' for the purposes of the WGE Act. Buyers should review [Workplace Gender Equality Procurement Principles | WGEA](#) to determine whether they should include these clauses.

#### 29.1. Workplace Gender Equality clauses apply if the Seller is a 'relevant employer' for the purposes of the WGE Act

- 29.1.1. This clause 29 applies if stated in the relevant part of Item 27 of Part E - Contract Details.
- 29.1.2. The Seller must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- 29.1.3. If the Seller becomes non-compliant with the WGE Act during the Contract Period, the Seller must promptly notify the Buyer.
- 29.1.4. If the Contract Period exceeds 18 months, the Seller must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Contract Start Date and, following this, annually to the Buyer.
- 29.1.5. Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under this Contract.

### 30. Shadow Economy Procurement Connected Policy

**Note:** Broadly, this applies for Contracts valued over \$4 million entered into by NCEs. Buyers should review the policy here [Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement | Treasury.gov.au](#) to determine whether they should include these clauses.

#### 30.1. Shadow Economy clauses for contracts valued over \$4 million

- 30.1.1. The Seller must comply with the Shadow Economy Policy requirements in this clause 30 if stated in the relevant part of Item 27 of Part E - Contract Details.
- 30.1.2. The Seller warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) that the Seller either:
- provided a Valid and Satisfactory Statement of Tax Record for the subcontractor as part of its response for the approach to market that resulted in the entry of this Contract; or

- b. holds a Satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the subcontract by the Seller and the subcontractor.

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

## **30.2. Statement of Tax Record**

30.2.1. The Seller warrants that at the Contract Start Date it holds a Valid and Satisfactory Statement of Tax Record.

30.2.2. The Seller must hold a Valid and Satisfactory Statement of Tax Record at all times during the Contract Period and, on request by the Buyer, provide to the Buyer a copy of any such Statement of Tax Record.

30.2.3. Without limiting its other rights under this Contract or at law, any failure by the Seller to comply with the requirements outlined in clauses 30.2.1 and 30.2.2 will be a breach of this Contract.

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

30.2.5. The Seller must ensure that any first tier subcontractor engaged under a Contract to deliver Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.

30.2.6. The Seller must retain a copy of any Statement of Tax Record held by any first tier subcontractor in accordance with clause 30.2.5 and must, on request by the Buyer, provide to the Buyer a copy of any such Statement of Tax Record.

## **31. Payment Time Policy**

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**Note:** Broadly, this applies to Contracts if the Buyer is an NCE, the Seller is a “Reporting Entity” at the date of its tender response and the value of the Contract is above \$4 million. Buyers should review the policy to determine whether they should include these clauses [Payment Times Procurement Connected Policy | Treasury.gov.au](#).

### **31.1. Application of Payment Time Policy Requirements**

31.1.1. The Seller must comply with the Payment Policy requirements in this clause 31 if stated in the relevant part of Item 27 of Part E - Contract Details.

### **31.2. Payment Policy Subcontracts**

31.2.1. The Seller must comply with the Payment Policy.

31.2.2. If the Seller enters into a Payment Policy Subcontract, the Seller must include in that subcontract:

- a. a requirement for the Seller to pay the Payment Policy Subcontractor:
    - i. subject to clause 31.2.4, within 20 calendar days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
    - ii. subject to clause 31.2.5, for payments made by the Seller after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 31.2.6;
  - b. a statement that the Payment Policy applies to that subcontract; and
  - c. a statement that the subcontractor may make a complaint to the Payment Policy Team or to the Buyer in accordance with the Payment Policy if there has been non-compliance with the requirements of this clause 31.2.2.
- 31.2.3. If the Seller enters into a Reporting Entity Subcontract in anticipation of (or after) entering this contract, the Seller must use reasonable endeavours to include in that subcontract:
  - a. obligations equivalent to those in clause 31.2.2; and
  - b. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
    - i. obligations equivalent to those in clause 31.2.1; and
    - ii. obligations equivalent to this clause 31.2.3 (such that the obligations in this clause 31.2.3 are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 31.2.4. Clause 31.2.2.a.i does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 31.2.2.a.i.
- 31.2.5. The Seller is not required to pay interest in accordance with clause 31.2.2.a.ii if either:
  - a. the Buyer has failed to pay the Seller in accordance with the timeframes and requirements under this contract; or
  - b. the amount of the interest payable is less than \$100 (GST inclusive).
- 31.2.6. For the purpose of clause 31.2.2.a.ii, interest is to be calculated in accordance with the formula at clause 7.3.
- 31.3. Payment Policy Evaluation Questionnaire**
- 31.3.1. If requested in writing by the Buyer, the Seller must properly complete and return a Payment Policy Evaluation Questionnaire within 30 calendar days of the request.
- 31.4. Non-compliance and remediation**
- 31.4.1. If the Buyer considers or becomes aware that the Seller has not or may not have complied with:

- a. the requirements of clause 31.2; or
  - b. the payment requirements of a Payment Policy Subcontract,
- the Buyer may direct the Seller to provide to the Buyer either or both of the following within the timeframes specified by the Buyer:
- c. information to enable the Buyer to review the Seller's compliance; or
  - d. a properly completed Payment Policy Remediation Plan.
- 31.4.2. The Seller must complete all of the steps and activities contained in the Payment Policy Remediation Plan provided under clause 31.4.1.d.
- 31.4.3. If the Buyer considers that the Seller has failed to comply with any of its obligations under this clause 31, without limiting the Buyer's rights and remedies at law or otherwise under this contract, the Buyer may do either or both of the following:
- a. take the failure or non-compliance into account as part of the Buyer's monitoring of the Seller's performance under this contract; or
  - b. report the non-compliance (and provide a copy of the completed Payment Policy Remediation Plan) to the Payment Policy Team.
- 31.4.4. The Seller agrees that if it is the subject of a complaint in relation to its compliance with clause 31.2 or the associated payment provisions of a Payment Policy Subcontract:
- a. it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
  - b. it will cooperate in good faith with the Buyer in connection with any investigation or inquiry and any attempt to resolve the complaint.
- 31.5. Consent**
- 31.5.1. For any Payment Policy Purpose, the Seller consents to the Buyer:
- a. using and sharing with any other Commonwealth Entity the information provided by the Seller as part of a Payment Policy Evaluation Questionnaire, a Payment Policy Remediation Plan, or otherwise received or obtained by the Buyer in connection with this contract or a Payment Policy Subcontract; and
  - b. receiving information obtained under, or in accordance with, the PTR Act ('**Protected Information**') from an Entrusted Person and using such Protected Information.
- 31.5.2. By submitting a Payment Policy Evaluation Questionnaire or a Payment Policy Remediation Plan or other document in connection with the Payment Policy that includes any personal information within the meaning of Privacy Act, the Seller warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 31.5. The Seller will provide evidence of such consents to the Buyer on request.

## **31.6. Interpretation**

- 31.6.1. A reference to the Buyer in clauses 31.3, 31.4.1, 31.4.4.b and 31.5 includes the Payment Policy Team.

## **32. Indigenous Procurement Policy**

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**Note:** Broadly, these provisions apply if the Buyer is an NCE. If the total value of the Contract is worth over \$7.5 million, then clause 32.1 will apply, if it is under \$7.5 million, then clause 32.2 will apply. Buyers should review the policy found [here Indigenous Procurement Policy | National Indigenous Australians Agency \(niaa.gov.au\)](https://niaa.gov.au) for further information.

### **32.1. IPP clauses for Contracts over \$7.5m**

- 32.1.1. Where the total value of this Contract is over \$7.5 million and if stated in Item 28 of Part E - Contract Details, the Seller must comply with the Indigenous Procurement Policy requirements in this clause 32.1.
- 32.1.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 32.1.3. The Seller must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
  - b. employment of Indigenous Australians,
- in the delivery of the Products and Services.
- 32.1.4. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Seller's supply chain.
- 32.1.5. Without limiting clause 32.1.3, the Seller must comply with the Indigenous Participation Plan.
- 32.1.6. The Seller must provide a written report to the Buyer via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan:
- a. at least once every quarter during the term of this Contract; and
  - b. within 5 Business Days after the end of the Contract Period (**End of Term Report**).
- 32.1.7. The End of Term Report must identify whether the Seller:
- a. met the mandatory minimum requirements as set out in the Indigenous Participation Plan; and
  - b. otherwise complied with the Indigenous Participation Plan.

If the Seller did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.

- 32.1.8. During the term of this contract, the Seller is responsible for managing their access to the IPP Contractor Portal, including by enabling and disabling, as required, its authorised Personnel's access to the IPP Contractor Portal.
- 32.1.9. If the Buyer considers, in its absolute discretion at any time during the term of this contract, that it has concerns in relation to the Seller's:
- a. compliance with the Indigenous Participation Plan; or
  - b. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
- the Buyer may request the Seller to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Seller must comply with all reasonable directions issued by the Buyer in relation to the Seller's implementation of the Indigenous Participation Plan.
- 32.1.10. Without limiting its other rights under the contract or at law, any material failure by the Seller to:
- a. implement the Indigenous Participation Plan; or
  - b. comply with a direction issued by the Buyer under clause 32.1.9.
- will be a breach of this contract, and the Buyer may terminate this contract in accordance with clause 16.2.1.a.
- 32.1.11. Notwithstanding any other clause of this Contract, the Seller acknowledges and agrees that the reports it submits under clause 32:
- a. will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
  - b. will not be considered to be Seller Confidential Information; and
  - c. may be used by Commonwealth entities for any purpose, including for evaluation of an offer by the Seller to provide goods and/or services to a Commonwealth entity.
- 32.2. IPP Clauses for Contracts under \$7.5m**
- 32.2.1. Where the total value of this Contract is **under** \$7.5 million, as stated in Part E - Contract Details, the Seller must comply with the Indigenous Procurement Policy requirements in this clause 32.2.
- 32.2.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 32.2.3. The Service Provider must use its reasonable endeavours to increase its:
- a. increase its purchasing from Indigenous enterprises;
  - b. increase its employment of Indigenous Australians; and
  - c. meet the requirements for Indigenous participation stated in Item 28 of Part E - Contract Details,
- in the delivery of the Products and Services.



**Note:** If a Seller provided detail in their Quote of how they will increase purchasing from an Indigenous enterprise, you should include this as part of the description of the Products and Services.

- 32.2.4. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Seller's supply chain.
- 32.2.5. Where stated in Item 28 of Part E - Contract Details, the Seller must provide a written report of its compliance with this clause 32.2 by the times stated in Item 28 of Part E - Contract Details.
- 32.2.6. If during the term of this contract the value of this contract exceeds \$7.5 million (GST inclusive), then this Contract will become a High Value Contract for the purposes of the Indigenous Procurement Policy, in which case the Seller must:
- a. within 20 Business Days after the \$7.5 million (inclusive) value is reached, develop an Indigenous Participation Plan as defined in the Indigenous Procurement Policy that addresses:
    - i. how the Seller intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
    - ii. the Seller's current rate of Indigenous employment and supplier use;
    - iii. the Seller's commitment to Indigenous participation; and
    - iv. if any part of the Products and Services is being or will be delivered in a Remote Area, how the Seller will ensure that its provision of the Products and Services will deliver significant Indigenous employment or Seller use outcomes in that Remote Area; and
  - b. submit the draft Indigenous Participation Plan to the Buyer for its review and, if appropriate, approval.
- 32.2.7. Upon approval of the draft Indigenous Participation Plan under clause 32.2.5 the Seller must, in performing its obligations under this Contract:
- a. comply with the Indigenous Participation Plan;
  - b. report against its compliance with the Indigenous Participation Plan quarterly during the remainder of the Contract Period; and
  - c. comply with any directions issued by the Buyer in relation to the Seller's implementation of the Indigenous Participation Plan.

### **33. Australian Industry Participation Plan (AIP Plan)**

**Note:** Broadly, these clauses will apply for Contracts valued over \$20 million where the Department of Industry, Science, Energy and Resources has informed the Buyer that the clauses are required. Buyers should review the information [here Australian industry participation | Department of Industry, Science and Resources](#) to determine whether these clauses should be included in the Contract.

**33.1. AIP Plan for Contracts for \$20m or more**

- 33.1.1. The Seller must comply with the AIP Plan requirements in this clause 29 if the relevant part of Item 27 of Part E - Contract Details is marked 'Yes'.

**33.2. Effect of AIP Plan**

- 33.2.1. If any conflict arises between any part of the AIP Plan and any other part of this Contract, the other part of this Contract will prevail.
- 33.2.2. The AIP Plan must not be construed as limiting the Seller's responsibility to provide the Products and Services in accordance with and otherwise comply with the requirements of this Contract.

**33.3. Implementation Report**

- 33.3.1. The Seller must provide the Buyer with an Implementation Report that meets the Implementation Report Requirements:
- a. for Contracts with a Contract Period of more than 12 months, within 60 days of the first anniversary of the Contract Start Date; or
  - b. for Contracts with a Contract Period of less than 12 months, 30 days prior to the end of the Contract Period.
- 33.3.2. Where the Buyer considers that the Implementation Report does not meet the Implementation Report Requirements, the Buyer may, by written notice to the Seller, reject the Implementation Report. Where the Buyer rejects the Implementation Report, the Buyer will provide the Seller with reasons for the rejection.
- 33.3.3. Where the Buyer has rejected the Implementation Report under clause 33.3.2, the Seller must provide the Buyer with the Implementation Report, amended to address the reasons advised by the Buyer and that otherwise meets the Implementation Report Requirements, within 10 Business Days of the date of the rejection notice issued under clause 33.3.2.
- 33.3.4. The Seller consents to the Buyer or any other Commonwealth Agency:
- a. publishing the executive summary of its AIP Plan;
  - b. publicising or reporting on the Seller's performance in relation to the AIP Plan and level of compliance with the AIP Plan; and
  - c. publicising or reporting on any information contained in the AIP Plan or AIP Implementation Report under this Contract.

**34. Environmental Sustainability**

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**Note:** Buyers should consider the context of the procurement before using model wording. Additional optional model clauses are available at: [Sustainable Procurement Model Clauses—Appendix D to the Sustainable Procurement Guide \(dcceew.gov.au\)](#).

Please note – Environmental Sustainability Plan requirements should be included in Item 16 of Part E – Contract Details.

**34.1. Continuous improvement – waste management performance**

- 34.1.1. The Seller must comply with this clause 34.1 if stated in Item 27 of Part E - Contract Details.
- 34.1.2. The Seller must review and report to the Buyer on further opportunities to improve its waste management performance through the Contract Period as opportunities arise and at regular intervals with a frequency of no less than annually. The Seller must utilise these opportunities when directed by the Buyer to do so, subject to the parties agreeing any reasonable amendments to the fees and payment arrangements directly associated with the relevant opportunities.

**35. Modern Slavery**

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**Note:** The below optional clause is appropriate for contracts which are assessed as having low risk of Modern Slavery practices occurring in the performance of the Contract.

For Contracts assessed as having a moderate or high risk of Modern Slavery practices occurring, alternative model clauses are available at: Resources ([modernslaveryregister.gov.au](https://modernslaveryregister.gov.au)).

**35.1. Seller must identify, assess and address risks of Modern Slavery practices**

- 35.1.1. The Seller must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of Services.
- 35.1.2. If at any time the Seller becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Contract, the Seller must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

**36. Small to Medium Enterprise Participation**

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**36.1. Seller to give SMEs opportunities**

- 36.1.1. The Seller must, where possible, seek to engage SMEs as Subcontractors or utilise SMEs as part of the supply chain for the Products and Services.
- 36.1.2. The Seller must report on SME participation in the performance of this Contract, including on the matters referred to in clause 36.1.1, in the manner and level of detail required by the Buyer.



**Australian Government**

**Digital Transformation Agency**

**PART C - ICT LABOUR HIRE  
MODULE SPECIFIC TERMS**

PART C - ICT LABOUR HIRE MODULE SPECIFIC TERMS

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## **PART C - ICT LABOUR HIRE MODULE SPECIFIC TERMS**

### **OPERATIVE TERMS**

These Part C - Module Specific Terms apply to all Contracts entered under the ICT Labour Hire Module.

#### **1. Scope of this Module**

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- 1.1.1. The scope of Products and Services available under this Module is limited to the Categories as stated in Part D - ICT Labour Hire Module and Category Descriptions.
- 1.1.2. The Services under the ICT Labour Hire Module do not include any other Products and Services, such as:
  - a. consultancy services within the scope of the Professional and Consulting Services Module;
  - b. services available under other Whole of Government arrangements such as [to be listed], or
  - c. the provision of software, hardware or Services available under any other Module.

#### **2. Seller responsibility for Candidates**

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##### **2.1. Candidates**

- 2.1.1. Based on the requirements in Item 22 of Part E - Contract Details, the Seller must source and provide Candidates to the Buyer for potential placement with the Buyer as either:
  - a. Labour Hire Workers - to be placed with the Buyer and employed or engaged under contract by the Seller; or
  - b. Buyer Workers - to be directly employed or engaged under a contract by the Buyer.

##### **2.2. Pre-placement checks**

- 2.2.1. The Seller must ensure that, prior to starting a placement with the Buyer, all Candidates:
  - a. have undergone a criminal history assessment or police check;
  - b. have undergone a medical check or fitness assessment;
  - c. are Australian citizens, unless otherwise agreed by the Buyer in writing;
  - d. have obtained any security clearance required by the Buyer as stated in Item 22 of Part E - Contract Details; and

- e. have obtained any other relevant clearances or checks required by the Buyer, as stated in Item 43 of Part E - Contract Details (e.g. Employment Suitability Clearance, working with children and/or vulnerable persons).
- f. have had their qualifications (educational and professional) and personal skills verified; and
- g. have obtained a minimum of two reference checks from employers within the past five years.

2.2.2. In respect of each of the pre-placement checks and clearances specified in clause 2.2.1, the Seller must:

- a. obtain from the Candidates all documentation necessary to complete the checks and clearances;
- b. ensure it has obtained the consent of the Candidate for the Buyer to receive, read and retain copies of the checks and clearance documents (and related documents and Personal Information); and
- c. provide any other information reasonably required by the Buyer to enable the Buyer to establish that the Candidate is a suitable person to provide the Labour Hire Worker Services or to be employed as a Buyer Worker as applicable.

### **2.3. Sourcing Candidates**

2.3.1. When sourcing Candidates Seller must:

- a. manage the entire recruitment process, including advertising, sourcing Candidates and conducting interviews;
- b. ensure all Candidates have the skills, qualifications, experience, knowledge and competence necessary for the agreed role, as stated in Item 22 of Part E - Contract Details; and
- c. undertake database searches and sourcing activities based on the requirements and position descriptions stated in Item 22 of Part E - Contract Details.

2.3.2. Prior to the placement of the Labour Hire Workers or Buyer Workers:

- a. the Seller must provide a list of Candidates being offered by the Seller for a placement, which includes, for each Candidate;
  - i. identity and contact information (e.g. full name, address, phone number, email address and date of birth);
  - ii. relevant education, qualifications, training and licences;
  - iii. relevant work history, including details of previous employers and reasons for termination of prior placements (if any);
  - iv. relevant skills and abilities (e.g. computer skills, languages);



- v. relevant health particulars (e.g. any pre-existing injuries, known allergies, or other health conditions that may place them at risk during a placement);
  - vi. references;
  - vii. the proposed start date and finish date (if known);
  - viii. the Fees for each Candidate;
  - ix. confirmation that each Candidate has undergone the relevant pre-placement checks, and the results of those checks;
  - x. the details of clearances held (e.g. security clearance);
  - xi. where no clearance is held, details of whether the Candidate is prepared to undergo a security assessment to meet the Buyer's security guidelines should they be successful; and
  - xii. any other information requested by the Buyer.
- b. the Seller must provide the Buyer with information reasonably required by the Buyer about the Candidates and the steps taken by the Seller to check or validate the information;
  - c. the Seller must have the Candidate's express permission to be put forward to the Buyer for a Labour Hire Worker or Buyer Worker role;
  - d. the Seller must follow any directions given by the Buyer in respect of the Candidates; and
  - e. the Buyer will review the list of Candidates and may approve or reject particular individuals offered by the Seller as Labour Hire Workers or Buyer Workers.

## **2.4. Timing for offering Candidates**

- 2.4.1. The obligations in clauses 2.3.1 and 2.3.2 apply whether the Seller offers the Candidate to the Buyer before or after this Contract is entered into.

## **3. Provision of Buyer Workers**

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- 3.1.1. The Buyer will become responsible for the Candidate from the date that it formalises an offer of employment, or engagement of the Candidate under a contract, (**engagement date**) so as to become a Buyer Worker.
- 3.1.2. If the Buyer reasonably considers that a Buyer Worker placed by the Seller is not suitable for employment or engagement as a Buyer Worker within 6 months from the engagement date, the Buyer will be entitled to a full refund from the Seller of payments made under this Contract for the placement of that Buyer Worker.
- 3.1.3. The Seller must not approach a Buyer Worker with other employment opportunities. If the Seller is approached by the Buyer Worker, the Seller must

not offer recruitment services to the Buyer Worker for a period of 2 years from the engagement date.

- 3.1.4. Where the Seller is sourcing Candidates as potential Buyer Workers the provisions relating to Labour Hire Workers do not apply.

#### **4. Buyer sourced Labour Hire Workers**

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- 4.1.1. Where stated in the Part E - Contract Details, the Buyer will source Labour Hire Workers without the assistance of the Seller.
- 4.1.2. The Seller will employ, or engage under a contract, the Buyer sourced personnel and provide them to the Buyer as a Labour Hire Worker.

#### **5. Provision of Labour Hire Workers**

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##### **5.1. Supervision of Labour Hire Workers**

- 5.1.1. Labour Hire Workers provided to the Buyer will be under the supervision, direction and control of the Buyer for the Contract Period.
- 5.1.2. The Buyer is responsible for the advice and work product provided by a Labour Hire Worker under a Contract. However, nothing in this clause 5.1.2 relieves the Seller from its obligations under this Contract, including obligations in respect of the conduct of Labour Hire Workers.
- 5.1.3. The Seller warrants that it fully complied with clauses 2.3.1 and 2.3.2 in placing the Labour Hire Workers identified in Item 22 of Part E - Contract Details.

##### **5.2. Seller responsibilities for Labour Hire Workers**

- 5.2.1. When providing the Services, the Seller must:
- a. ensure that all Labour Hire Workers act at the direction of the Buyer in relation to work to be performed;
  - b. ensure that all Labour Hire Workers sign any undertaking required by the Buyer in respect of their confidentiality, privacy and secrecy obligations (**Nondisclosure Undertaking**);
  - c. ensure that all Labour Hire Workers are aware of, and comply with, all confidentiality, privacy and secrecy obligations required by the Buyer (including as stated in Items 43, 44 and 45 of Part E - Contract Details and in any Nondisclosure Undertaking signed by a Labour Hire Worker) for the duration of their placement and any relevant period after their placement including any additional requirements;
  - d. provide Labour Hire Workers in the agreed role, for the duration of placement, and at the time and location(s) stated in Item 22 of Part E - Contract Details (subject to clause 5.6.1.b);
  - e. have the capacity and capability to manage a continual supply of appropriately qualified and skilled Labour Hire Workers, including

replacement of Labour Hire Workers when necessary and provision of Labour Hire Workers at short notice;

- f. ensure that the Seller satisfies all of its obligations in respect of Labour Hire Workers' entitlements; and
- g. create and maintain records of all Labour Hire Workers who are placed with the Buyer.

5.2.2. The Seller must:

- a. satisfy all legal obligations concerning the terms and conditions of employment or engagement for Labour Hire Workers, including under the *Fair Work Act 2009* (Cth), the National Employment Standards and any applicable industrial award; and
- b. ensure that Labour Hire Workers are adequately informed about their pay rates and other conditions of employment or engagement.

**5.3. Responsibility for Labour Hire Workers**

5.3.1. The Seller is fully responsible for the acts and omissions of the Labour Hire Workers.

5.3.2. Where this Contract:

- a. imposes an obligation on Labour Hire Workers, the Seller is responsible for the performance by Labour Hire Workers of such obligations; and
- b. prohibits an act by the Seller, the performance of that act by Labour Hire Workers will be deemed to be a performance of that act by the Seller.

5.3.3. The Seller must ensure that Labour Hire Workers:

- a. are given full details of the Services to be carried out; and
- b. are aware of, and comply with, the Seller's obligations in providing the Services.

**5.4. Seller warranty**

5.4.1. Without limiting its obligations under Part B - Core Contract Terms, the Seller warrants that it holds, and will continue to hold for the full Contract Period, a Labour Hire Licence as required in each Location.

5.4.2. The Seller must notify and fully disclose to the Buyer any breach of the warranty in this clause 5.4 as soon as it becomes aware of a breach.

**5.5. Other employment**

5.5.1. The Seller must immediately notify the Buyer if a Candidate or Labour Hire Worker is working elsewhere. This obligation continues throughout the Contract Period.

## **5.6. Changes to number of Labour Hire Workers**

- 5.6.1. The Buyer may, at any time during the Contract Period, change:
- a. the required number of Labour Hire Workers placed with the Buyer; or
  - b. the required Location of the Labour Hire Workers placed with the Buyer,
- by providing 10 Business Days written notice (or such other longer period as may be agreed with the Seller) to the Seller.
- 5.6.2. Where the Buyer changes the number of Labour Hire Workers placed under clause 5.6.1:
- a. such change is not a termination or reduction in scope for convenience of this Contract for the purposes of clause 16.1 of Part B - Core Contract Terms; and
  - b. the Seller will not be entitled to any compensation or reimbursement of costs for terminated Labour Hire Workers under clause 16.1.3 of Part B - Core Contract Terms, regardless of how many times the Buyer exercises the relevant right.
- 5.6.3. Where the Buyer changes the number of Labour Hire Workers under clause 5.6.1 and the change results in certain Labour Hire Workers no longer being placed with the Buyer, any Fees payable for Labour Hire Worker Services provided by those Labour Hire Workers up until their placement ends will still be payable in accordance with this Contract.

## **5.7. Extension of placement**

- 5.7.1. The Buyer may request to extend the placement of Labour Hire Workers by notifying the Seller in writing at least 10 Business Days prior to the end date of the Labour Hire Workers' placement as stated in Item 22 of Part E - Contract Details and, subject to the availability of the Labour Hire Workers, the Seller must make all reasonable efforts to grant such a request.
- 5.7.2. Where the Seller is unable to grant an extension request made by the Buyer, the Seller must notify the Buyer within 5 Business Days of receiving the notice in clause 5.7.1.

## **5.8. On site requirements for Labour Hire Workers**

- 5.8.1. Unless agreed by the Buyer in writing, Labour Hire Workers must work on-site at the Buyer's premises at the Location.
- 5.8.2. The Buyer must ensure that the Labour Hire Worker has reasonable access to the Buyer's premises at the Location.
- 5.8.3. The Seller must ensure Labour Hire Workers comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at the Buyer's premises or facilities whether specifically drawn to its attention or as might reasonably be inferred from the circumstances.

**5.9. Work location other than Buyer's premises**

- 5.9.1. The Buyer may allow a Labour Hire Worker to work remotely from the Worker's home or from another location other than the Buyer's premises.
- 5.9.2. The Seller must ensure the Labour Hire Worker has the capability to work from home or another location, including a safe workplace, a suitable work station, internet connectivity and all required IT equipment.
- 5.9.3. The Seller must ensure the Labour Hire Worker complies with the Buyer's policies, procedures and guidelines in relation to working from home/working remotely.

**5.10. Unsuitable persons**

- 5.10.1. If the Buyer forms the view that a Labour Hire Worker:
  - a. is incompetent, negligent or guilty of misconduct;
  - b. has disobeyed or disregarded a lawful direction given by the Buyer;
  - c. has failed to comply with any relevant law or engaged in serious misconduct;
  - d. has failed to act in accordance with the standards and requirements of the APS Values, the APS Code of Conduct, the Buyer's work health and safety requirements, the Buyer's social media policy or any applicable Buyer policies, procedures or guidelines specified in this Contract;
  - e. has engaged in conduct that brings the Buyer into disrepute;
  - f. has misused, accessed without authorisation or improperly disclosed Official Information, or has otherwise failed to comply with the requirements of any Nondisclosure Undertaking signed by the Labour Hire Worker;
  - g. has failed to comply with the Buyer's security requirements;
  - h. while accessing or using the Buyer's premises, Buyer Material or Buyer Equipment, has failed to comply with the Buyer's access and use requirements;
  - i. is not performing (or has not performed) their role to the satisfaction of the Buyer; or
  - j. is otherwise not suitable to perform the Services,then the Buyer may, at any time, and without liability to the Seller or the relevant Labour Hire Worker:
  - k. undertake a process to ensure that the conduct or performance of the Labour Hire Worker is suitably managed to the satisfaction of the Buyer; or
  - l. immediately, on providing notice to the Seller, terminate the placement of the relevant Labour Hire Worker in connection with the Labour Hire Worker Services.

- 5.10.2. The Seller must notify the Buyer immediately if it becomes aware of any information that may affect that Buyer's acceptance of any Labour Hire Workers.
- 5.10.3. Without limiting clause 5.10.2, the Seller must immediately notify the Buyer if a Labour Hire Worker is charged with a criminal offence for which there is or would (if admitted or proven) be a connection between the offending conduct and the duties, role or position of the Labour Hire Worker under this Contract.
- 5.10.4. The Buyer reserves the right at any time to refuse to allow any Labour Hire Workers to enter the Buyer's premises.

**5.11. Absences or unavailability of Labour Hire Workers**

- 5.11.1. Where a Labour Hire Worker has been placed with the Buyer, that Labour Hire Worker may, with prior approval from the Buyer, be absent from the placement for a period of time approved by the Buyer.
- 5.11.2. Where the Seller becomes aware that a Labour Hire Worker will be absent from the relevant workplace (e.g. due to illness) or otherwise unavailable or unable to carry out their role (e.g. due to resignation), the Seller must notify the Buyer immediately.
- 5.11.3. Subject to clause 5.11.5, the Seller must not seek to charge, and the Buyer will not be liable to pay, any Fees in respect of a Labour Hire Worker for any period while they are absent.
- 5.11.4. Where a Labour Hire Worker has been placed with the Buyer for a specific duration, the Seller must not (except where entirely unavoidable – e.g. due to genuine illness or resignation of the Labour Hire Worker) permit or facilitate the removal of that Labour Hire Worker prior to the end date of their placement with the Buyer.
- 5.11.5. An absence or unavailability of a Labour Hire Worker as a result of taking paid family and domestic violence leave in accordance with the *Fair Work Act 2009* (Cth) will not be considered an absence or an unavailability for the purposes of clause 5.11.3.

**5.12. Replacement of unavailable Labour Hire Workers**

- 5.12.1. Where a Labour Hire Worker is unavailable, the Seller must, if required by the Buyer, provide a replacement Labour Hire Worker who is suitably qualified and acceptable to the Buyer, at no additional charge, and within 10 Business Days unless otherwise agreed by the Buyer.
- 5.12.2. If the Seller is unable to provide a replacement Labour Hire Worker in accordance with clause 5.12.1, the Buyer may, in addition to any other rights it has under this Contract, immediately terminate or reduce the scope of this Contract.

**5.13. Performance management**

- 5.13.1. Performance management of Labour Hire Workers is the responsibility of the Seller, and the Seller must:
- a. communicate with the Buyer throughout the Contract Period regarding the performance of the Labour Hire Workers; and
  - b. if the Buyer advises that the performance of a Labour Hire Worker is not satisfactory, promptly:
    - i. comply with any reasonable directions from the Buyer; and
    - ii. implement any remedial action required by the Buyer.

**5.14. Termination of Labour Hire Worker placement**

- 5.14.1. The Buyer may end the placement of a Labour Hire Worker under a Contract:
- a. by giving the Seller a minimum of 10 Business Days' notice, where the Labour Hire Worker is no longer required by the Buyer; or
  - b. effective immediately upon notice from the Buyer to the Seller:
    - i. in accordance with clause 5.10.1.i; or
    - ii. where otherwise permitted by this Contract.
- 5.14.2. Where the Buyer ends the placement of a Labour Hire Worker under clause 5.14.1, on and from the date of termination of the placement, the Seller must:
- a. immediately stop providing the Labour Hire Worker to the Buyer;
  - b. if required by the Buyer, replace the Labour Hire Worker with a suitable substitute Labour Hire Worker at no additional cost to the Buyer and within any timeframe specified by the Buyer; and
  - c. not seek to charge the Buyer any Fees for the Labour Hire Worker for any period after the date of termination.
- 5.14.3. A termination of the placement of any Labour Hire Worker by the Buyer in accordance with clause 5.14.1 does not:
- a. constitute a termination or reduction in scope of this Contract; or
  - b. give the Seller the right to any compensation or reimbursement of costs under clause 16.1.3 of Part B - Core Contract Terms, regardless of how many times the right under clause 5.14.1 is exercised by the Buyer.
- 5.14.4. If the Seller is unable to provide replacement Labour Hire Workers in accordance with clause 5.14.2.b, the Buyer may, in addition to any other rights it has under this Contract, immediately terminate or reduce the scope of this Contract.

## **6. Intellectual Property Rights**

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### **6.1. Use of Buyer Material**

- 6.1.1. The Buyer agrees to provide Buyer Material to the Seller as stated in Item 41 of Part E - Contract Details.
- 6.1.2. The Buyer grants (or will obtain) a royalty-free, non-exclusive licence for the Seller to use, reproduce and adapt the Buyer Material for the purposes of this Contract.
- 6.1.3. The Seller must use the Buyer Material strictly in accordance with any conditions or restrictions set out in this Contract and any direction from the Buyer.

### **6.2. Rights in Contract Material**

- 6.2.1. Intellectual Property Rights in all Contract Material vests or will vest in the Buyer.
- 6.2.2. Clause 6.2.1 does not affect the ownership of Intellectual Property Rights in:
  - a. any Buyer Material incorporated into Contract Material; or
  - b. any Material in existence at the Contract Start Date and specified in Item 40 of Part E - Contract Details;
- 6.2.3. The Seller grants to (or will procure for) the Buyer a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 6.2.2.b, in conjunction with the Contract Material, for any purpose.
- 6.2.4. The Seller agrees that the licence granted in clause 6.2.3 includes a right for the Buyer to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 6.2.5. The Seller agrees, on request by the Buyer, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 6.2.

### **6.3. Intellectual Property warranty**

- 6.3.1. The Seller warrants that:
  - a. the Contract Material and the Buyer's use of the Contract Material will not infringe the Intellectual Property Rights of any person; and
  - b. the Seller and all Labour Hire Workers:
    - i. are entitled; or
    - ii. will be entitled at the relevant time



to deal with the Intellectual Property Rights in the Contract Material in the manner provided for in this clause 6.2.

## **7. Security obligations**

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- 7.1.1. Without limiting the Seller's other obligations under this Contract, the Seller must ensure that, for the duration of their placement, all Labour Hire Workers comply with the Buyer's policies, procedures and other requirements relating to security as specified in Item 43 of Part E - Contract Details or communicated to the Labour Hire Workers in the course of their work for the Buyer (including any variations or additions to those policies, procedures or other requirements that may be communicated by the Buyer from time to time).

## **8. General Provisions**

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### **8.1. Price review**

- 8.1.1. After the first anniversary of the Contract Start Date, the Seller may apply for an annual increase of its Fees by applying to the Buyer Representative no later than 31 March in each year of the Contract Period. The Fee increase may not be more than the change in the Wage Price Index (all sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics and the proposed new Fees may not exceed the Seller's Maximum Fees under the Panel Agreement.
- 8.1.2. Where the Seller applies for an increase to its Fees in accordance with clause 8.1.1, the Seller's Fees will be adjusted from 1 July of that year using a Contract Variation.

### **8.2. Price transparency**

- 8.2.1. Whenever the Fees change, the Seller must provide the Labour Hire Worker with an updated breakdown of the new Fees setting out:
- a. the percentage and sum of Fees on an hourly basis that will be passed to the Labour Hire Worker; and
  - b. the percentage and sum of Fees on an hourly basis that will be retained by the Seller.

### **8.3. Buyer Equipment**

- 8.3.1. The Buyer may make Buyer Equipment available to the Seller or the Labour Hire Workers for the purpose of providing the Services.
- 8.3.2. Buyer Equipment remains the property of the Buyer. The Seller must, and must ensure Labour Hire Workers, return all Buyer Equipment that is no longer required for the purposes of this Contract to the Buyer as soon as practicable (unless other arrangements are agreed in writing by the parties).
- 8.3.3. The Seller must, and must ensure Labour Hire Workers:

- a. comply with all conditions regarding the Buyer Equipment specified in Item 42 of Part E - Contract Details or notified by the Buyer to the Seller;
- b. take all reasonable care of all Buyer Equipment;
- c. promptly inform the Buyer of any loss or damage to any Buyer Equipment and, if requested by the Buyer and if such loss or damage has been caused by the fault of the Seller or the Labour Hire Workers, as soon as practical replace the Buyer Equipment at no cost to the Buyer;
- d. return any Buyer Equipment in accordance with any request by the Buyer;
- e. comply with any reasonable instructions of the Buyer for preserving, forwarding or disposing of any damaged Buyer Equipment provided that such damage has been caused by the fault of the Seller or the Labour Hire Workers; and
- f. not do any of the following without the prior written approval of the Buyer:
  - i. use or allow others to use any Buyer Equipment other than for the purposes of this Contract;
  - ii. part with possession or custody of any Buyer Equipment;
  - iii. create or allow the creation of any lien, charge or mortgage over any Buyer Equipment;
  - iv. modify any Buyer Equipment; or
  - v. remove Buyer Equipment from the Buyer's premises or facilities.

8.3.4. The Seller indemnifies the Buyer for any loss of, or damage to, any Buyer Equipment caused by the Seller or the Labour Hire Workers.

8.3.5. The Seller is responsible for the suitability and performance of any Buyer Equipment that the Seller has recommended for use, including any Buyer Equipment specified in Item 41 of Part E - Contract Details.

#### **8.4. Travel and related expenses**

8.4.1. Where the Buyer requires the Labour Hire Worker to travel for official purposes, the Buyer will either:

- a. pay for the travel itself; or
- b. reimburse the Seller in accordance with this clause 8.4 for reasonable travel, accommodation and associated travel expenses,

if the relevant travel and/or accommodation (and the associated cost) is pre-approved in writing by the Buyer before the travel takes place.

8.4.2. In order to be reimbursed for travel costs as described in clause 8.4.1, the Seller must give the Buyer a Correctly Rendered Invoice, together with supporting receipts and other travel documents as required by the Buyer. The Buyer will then reimburse the Seller in accordance with this Contract.

- 8.4.3. Unless otherwise agreed by the Buyer in writing before the travel takes place, time spent by a Labour Hire Worker in transit between origin and destination, or between destinations if there is more than one, in respect of approved travel is not to be included in the Timesheet of the Labour Hire Worker.
- 8.4.4. Without limiting clause 8.4.1, the Seller must comply with the reasonable travel and overtime meal allowance expense amounts stated in the Taxation Determination issued by the Australian Taxation Office as updated from time to time.

**Note: The Current ATO Taxation Determination is TD 2023/3.**

## **8.5. Drug and alcohol testing**

- 8.5.1. The Seller must ensure that Labour Hire Workers and Buyer Workers are aware that they have a responsibility to ensure the use of alcohol, drugs or other substances does not impact on safety in the work environment in which they carry out their duties.
- 8.5.2. The Buyer may require that the Labour Hire Workers or Candidates be tested for alcohol or other drugs at any time (including prior to commencement, during a placement, randomly or as a result of an incident) and the Seller must ensure that the Labour Hire Worker submits to such testing.
- 8.5.3. Where drug or alcohol testing occurs in respect of a Labour Hire Worker or Candidate:
- a. the testing will be undertaken by a suitably trained, qualified collector who is authorised by the Buyer;
  - b. the testing itself, and the outcome of a test (including where a Labour Hire Worker or Candidate refuses to submit to a test), will be undertaken according to the Buyer's policies and procedures relating to drugs and/or alcohol; and
  - c. the Buyer will notify the Seller of any issues or concerns as soon as reasonably practical.

## **8.6. Timesheets**

- 8.6.1. The Seller may only invoice for time up to the maximum hours in Item 38 of Part E - Contract Details and must ensure Labour Hire Workers do not work more than those hours. The Seller must keep complete and accurate Timesheets for Labour Hire Workers it provides to the Buyer under this Contract.
- 8.6.2. Each Timesheet must:
- a. include the following information as a minimum:
    - i. the name of the Buyer;
    - ii. the name and role of each Labour Hire Worker provided to the Buyer;

- iii. the time period covered by the Timesheet;
    - iv. an accurate record of the Hours Worked by each Labour Hire Worker, including any absences by the Labour Hire Worker during the Timesheet period; and
    - v. the Buyer reference number (if any).
  - b. any other requirements stated in Item 38 of Part E - Contract Details.
- 8.6.3. The Seller must submit each Timesheet to the Buyer for approval following the approval processes set out in Item 38 of Part E - Contract Details, or if no approval processes are set out there, in accordance with the following process:
- a. the Seller must submit each Timesheet to the Buyer within 10 Business Days of the end of the relevant Timesheet period;
  - b. the Buyer must approve or reject the relevant Timesheets within 10 Business Days of the Timesheet being submitted by the Seller; and
  - c. where the Buyer rejects a Timesheet, the Buyer must notify the Seller giving reasons for rejection (e.g. the Timesheet was incomplete or inaccurate) and the Seller must make any necessary changes and resubmit the Timesheet to the Buyer for approval within 5 Business Days of receiving a notice of rejection.
- 8.6.4. The Seller must not invoice the Buyer for, and the Buyer will not be liable to pay, any amount to the Seller in respect of a Timesheet that has not been approved by the Buyer.

## **8.7. Ordinary hours**

- 8.7.1. Subject to clause 8.7.2 and the requirements of any relevant industrial instrument, the Labour Hire Worker Services must be performed during the standard working hour period specified in Item 22 of Part E - Contract Details. Where no standard working hour period is specified, the standard working hour period will be an agreed and set 7.5 hour period between 7am to 7pm on Business Days.
- 8.7.2. The Buyer may require Labour Hire Workers to work outside the standard working periods (determined in accordance with clause 8.7.1) which may include weekends and public holidays.
- 8.7.3. The Seller must ensure that no Labour Hire Worker works outside the standard working periods unless instructed to do so by the Buyer, and the Buyer will not be liable to pay the Seller for any hours worked by a Labour Hire Worker outside of agreed or ordinary hours under this Contract without the prior written approval of the Buyer.

## **8.8. Conversion of a Labour Hire Worker to a Buyer employee**

- 8.8.1. In certain circumstances the Buyer may offer a Labour Hire Worker an opportunity to become a direct employee of the Buyer. Conversion occurs

where a Labour Hire Worker who is engaged by the Seller for the purpose of the Seller providing Services to the Buyer under this Contract accepts an offer of employment by the Buyer (**Conversion**).

8.8.2. Where a Conversion takes place, the Seller must provide a seamless transition of the Labour Hire Worker to the Buyer.

8.8.3. If Conversion occurs in respect of a Labour Hire Worker:

- a. the Seller may be eligible for a Conversion Fee if this is stated in Item 35 of Part E - Contract Details in respect of the Conversion; and
- b. the Seller must immediately stop charging any Fees for that Labour Hire Worker other than any Conversion Fee that the Seller is entitled to charge.

8.8.4. Subject to clause 8.8.5, the Seller will only be eligible for a Conversion Fee if:

- a. at the time when the offer of employment is accepted by the relevant Labour Hire Worker, the Labour Hire Worker has been engaged to fill the relevant position for the Buyer under a Contract for a period less than 12 months in aggregate; and
- b. the relevant Labour Hire Worker is made an offer of employment by the Buyer for either the same position which the Labour Hire Worker has filled under the Contract immediately prior to accepting the offer or a Similar Role (including where that role is publicly advertised by the Buyer).

8.8.5. The Seller will not be entitled to the Conversion Fee if:

- a. the Labour Hire Worker has been engaged for a period of 12 months or more in aggregate by the Buyer under a Contract prior to accepting the offer of employment from the Buyer;
- b. the Labour Hire Worker is made an offer of employment by the Buyer for a position other than either the position which the Labour Hire Worker has filled under the Contract immediately prior to accepting the offer or a Similar Role;
- c. the offer of employment to the Labour Hire Worker is made as a result of the Labour Hire Worker applying for any position (other than the position the Labour Hire Worker has filled under the Contract or a Similar Role) that is publicly advertised by the Buyer; or
- d. the Labour Hire Worker was at any time referred by the Buyer to the Seller.

8.8.6. The Conversion Fee of a Labour Hire Worker engaged on a full time basis will be calculated on the following basis:

**(([TBC] x A) x B) x (48 weeks per annum minus Actual Number of Weeks Worked)**

**A** = for a full time worker means 7.5 hours

**B** = for a full time worker means 4.75 days

**Actual Number of Weeks Worked** = the number of weeks (or part thereof) the relevant Labour Hire Worker has worked in aggregate under a Contract with the Buyer prior to the Labour Hire Worker accepting the offer of employment.

8.8.7. The Conversion Fee for the Conversion of a Labour Hire Worker engaged on a part time basis will be 50% of the amount calculated in accordance with the formula in 8.8.6.

8.8.8. The Seller acknowledges that any Labour Hire Worker placed with the Buyer under this Contract is not guaranteed to be made an offer of employment with the Buyer.

**8.9. Feedback and Performance Management Framework**

8.9.1. The Buyer may request feedback from a Candidate or Labour Hire Worker about the Seller's performance of this Contract and consider such feedback when assessing the Seller's performance under Section 4 (Performance Management Framework) of Part B - Core Contract Terms.

**8.10. Seller to provide email address of each Candidate to the Buyer**

8.10.1. The Seller must provide the personal email address and personal mobile phone contact number of each Candidate to the Buyer at the time the Candidate is offered to the Buyer as a Labour Hire Worker or Buyer Worker.

**8.11. Fees for Labour Hire Workers**

8.11.1. *[Subject to further consideration by DTA]*

**8.12. Fees for Buyer Workers**

8.12.1. *[Subject to further consideration by DTA]*



**Australian Government**

**Digital Transformation Agency**

**PART C - PROFESSIONAL AND  
CONSULTING SERVICES  
MODULE SPECIFIC TERMS**

PART C - PROFESSIONAL AND CONSULTING SERVICES MODULE  
SPECIFIC TERMS

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## **PART C - PROFESSIONAL AND CONSULTING SERVICES MODULE SPECIFIC TERMS**

### **OPERATIVE TERMS**

These Part C - Module Specific Terms apply to all Contracts entered under the Professional and Consulting Services Module.

#### **1. Scope of this Module**

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- 1.1.1. The scope of Services available under this Module is limited to the Categories as stated in Part D – Professional and Consulting Services Module and Category Descriptions.
- 1.1.2. The Services under the Professional and Consulting Services Module do not include any other Services, such as:
  - a. contractor (non-consultancy) services performed under the supervision of a Buyer, recruitment, or labour hire services (these are covered by the ICT Labour Hire Module);
  - b. services available under other Whole of Government arrangements such as [to be listed], or
  - c. the provision of software, hardware or Products and Services available under any other Modules.

#### **2. Licenses**

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- 2.1.1. Without limiting the Seller's other obligations under this Contract, the Seller must ensure that it and all relevant members of its Personnel possess, and throughout the Contract Period maintain, all:
  - a. licenses, permits and approvals; and
  - b. qualifications, accreditation, certification or scheme memberships from any relevant Regulatory Agency or industry bodythat:
  - c. are necessary or reasonably required for the proper performance of any obligation of the Seller under this Contract; or
  - d. might otherwise reasonably be expected to be held by leading and reputable providers of services that are similar to the Services.

#### **3. Plans and Milestones**

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##### **3.1. Plans**

- 3.1.1. This clause 3.1 applies if stated in Item 18 of Part E – Contract Details.
- 3.1.2. The Seller must give the Buyer a draft of each plan stated in Item 18 of Part E – Contract Details (**Plan**) within the timeframe stated in the Delivery Schedule in Item 7 of Part E – Contract Details.

- 3.1.3. Each draft Plan must meet the content requirements for that Plan as stated in Item 18 of Part E – Contract Details.
- 3.1.4. The Buyer may either:
- a. notify the Seller that a draft Plan is an Approved Plan; or
  - b. notify the Seller to promptly revise and resubmit the Plan within 2 Business Days (or such longer time as the notice specifies) to meet the reasonable requirements of the Buyer as set out in the notice, in which case Seller must revise and resubmit the draft Plan in accordance with the notice.
- 3.1.5. The Seller must begin providing the Services on and from (but no earlier than) the date the Buyer approves the draft of the final Plan to be provided under clause 3.1.4.a.
- 3.1.6. The Buyer may terminate this Contract immediately by notice to the Seller if the Seller has not obtained Buyer Approval of all draft Plans to be provided under clause 3.1.4.a within the timeframe stated in the Delivery Schedule in Item 7 of Part E – Contract Details or such longer period as the Buyer may approve in writing.
- 3.1.7. The Seller may request changes to any Approved Plan by submitting an updated draft of that Plan to the Buyer. The process for the Seller getting the Buyer's Approval of the changes is the same as stated in clauses 3.1.3 and 3.1.4.
- 3.1.8. The Seller must comply with the Approved Plans in providing the Services and otherwise performing its obligations under this Contract.

## **3.2. Milestones**

- 3.2.1. This clause 3.2 applies if stated in Item 19 of Part E – Contract Details.
- 3.2.2. The Seller must complete and obtain Buyer Approval of the Milestones:
- a. stated in Part E – Contract Details, including in Item 19; or
  - b. stated in Approved Plans;
- by the completion date for the Relevant Milestone.
- 3.2.3. The Seller must confirm the completion of a Milestone by promptly providing a completion certificate to the Buyer substantially in the form given in the DTA Forms.
- 3.2.4. The Buyer may Approve or not Approve completion of the Milestone:
- a. *If the Buyer does not Approve completion* - it will not sign the completion certificate and will promptly notify the Seller giving reasons, the Seller must then use best endeavours to complete the Milestone; or
  - b. *If the Buyer Approves completion* - it will sign the completion certificate.

### **3.3. Delay**

- 3.3.1. The Seller must immediately notify the Buyer if the Seller becomes aware that there will be, or is likely to be, a delay in relation to any Milestone and provide the Buyer with a Cure Plan.
- 3.3.2. The Seller must use its best endeavours to minimise any delay in relation to any Milestone, and the impact of the delay on the Buyer, irrespective of the cause of the delay.

### **3.4. The Buyer's right to defer payment**

- 3.4.1. To the extent that a delay is caused by the Seller, the Buyer may defer any payment due for completion of a Milestone for so long as the Seller has not obtained Approval of completion of a Milestone.

## **4. Additional work**

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*Note: Buyers should consider the Commonwealth Procurement Rules and Department of Finance guidance before requesting Additional Work and should consider whether a Contract Variation is required.*

- 4.1.1. The Buyer may request that the Seller provide Additional Work. In which case the Seller may provide a quote and agrees to do so based on the hourly/daily rates of the Relevant Key Personnel who will undertake the work, as set out in Item 23 of Part E – Contract Details, not exceeding the Maximum Fees.
- 4.1.2. If the Buyer Approves the quote in writing, the Seller agrees to undertake the Additional Work as stated in the quote as part of the Services to be provided under the terms of this Contract and the Seller may charge the Buyer additional Fees as stated in the Approved quote.

## **5. Data**

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### **5.1. Hosting of Buyer Data**

- 5.1.1. This clause 5.1 applies if stated in Item 21 of Part E – Contract Details.
- 5.1.2. The Seller must provide the Services and host all Buyer Data solely using cloud-based hosting provided by the entity nominated in Item 21 of Part E - Contract Details (**Approved Cloud Provider**).
- 5.1.3. The Seller must notify the Buyer immediately if the Approved Cloud Provider:
  - a. is no longer available to provide cloud-based hosting of the Buyer Data for any reason; or
  - b. does not continue to hold the required level of certification under the Hosting Certification Framework stated in Item 21 of Part E - Contract Details.
- 5.1.4. If the Seller is required to provide a notice under clause 5.1.3, the Seller must immediately:

- a. stop hosting the Buyer Data with that cloud provider and remove all Buyer Data from that hosted environment; and
  - b. as soon as practical:
    - i. identify a potential replacement cloud provider that holds the required level of certification under the Hosting Certification Framework stated in Item 21 of Part E - Contract Details (**Proposed Replacement**); and
    - ii. give the Buyer written details of the Proposed Replacement.
- 5.1.5. If the Buyer confirms in writing that the Seller's Proposed Replacement is approved, then the Seller must immediately appoint the Proposed Replacement as the replacement Approved Cloud Provider.
- 5.1.6. If the Buyer does not agree to the Seller's Proposed Replacement, then the Buyer may terminate this Contract immediately by notice to the Seller.

## **5.2. Data Mining**

- 5.2.1. The Seller must not at any time conduct Data Mining activities with any Buyer Material.
- 5.2.2. The prohibition on Data Mining applies even if a user is required to click through and accept any Seller terms permitting the Seller to conduct Data Mining on a user or a collection of user accounts. Such terms have no effect whatsoever.
- 5.2.3. If the Seller ordinarily conducts Data Mining by means of an automated process, the Seller must disable it.

## **6. Artificial Intelligence (AI)**

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### **6.1. Seller use of AI must be approved by Buyer**

- 6.1.1. The Seller must not use an AI System for the provision of the Services without the prior written Approval of the Buyer.
- 6.1.2. Where the Seller intends to use an AI System it must notify the Buyer beforehand with full details of the proposed use (**Proposed AI Use**).
- 6.1.3. In relation to Proposed AI Use, the Buyer may:
  - a. *Approve* – by written Approval, or, by stating the Approved use in Item 15 of Part E - Contract Details;
  - b. *Approve with conditions* – by written Approval, stating conditions that the Seller must comply with in any use of AI, or, stating such conditions in Item 15 of Part E - Contract Details; or
  - c. *not approve* – by written notice.
- 6.1.4. The Seller must only use an AI System in accordance with:
  - a. the Buyer's Approval, if given, under clause 6.1.3; and

- b. the terms of the Contract, including those in relation to Intellectual Property, confidentiality, Official Information, security, privacy and data usage.
- 6.1.5. The Seller is fully responsible for the performance of this Contract regardless of any use of an AI System in the supply chain.
- 6.1.6. If requested by the Buyer, the Seller must provide an AI Plan in relation to Proposed AI Use in accordance with clause 3.1.
- 6.2. Seller to confirm accuracy**
- 6.2.1. Where the Seller uses an AI System for the provision of the Services, it must conduct quality assurance checks on AI System outputs to ensure they are accurate and reliable.
- 6.3. Seller to keep records of AI use**
- 6.3.1. Where the Buyer approves the use of an AI System the Seller must ensure that it retains detailed records of the AI System used and the scope of its use in providing the Services, and must provide these records to the Buyer promptly on request.

## **7. Intellectual Property Rights**

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### **7.1. Use of Buyer Material**

- 7.1.1. The Buyer agrees to provide Buyer Material to the Seller as stated in Item 41 of Part E - Contract Details.
- 7.1.2. The Buyer grants (or will procure) a royalty-free, non-exclusive licence for the Seller to use, reproduce and adapt the Buyer Material for the purposes of this Contract.
- 7.1.3. The Seller must use the Buyer Material strictly in accordance with any conditions or restrictions set out in this Contract and any direction from the Buyer.

### **7.2. Underlying software**

- 7.2.1. The Seller will provide the Services using the Underlying Software stated in Item 14 of Part E – Contract Details.
- 7.2.2. The Buyer will procure a license to the Underlying Software and provide it as Buyer Material to the Seller.

### **7.3. Rights in Contract Material**

- 7.3.1. Intellectual Property Rights in all Contract Material vests or will vest in the Buyer.
- 7.3.2. Clause 7.3.1 does not affect the ownership of Intellectual Property Rights in:
  - a. any Buyer Material incorporated into Contract Material; or

- b. any Material in existence at the Contract Start Date and specified in Item 40 of Part E - Contract Details;
- 7.3.3. The Seller grants to (or will procure for) the Buyer a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 7.3.2.b, in conjunction with the Contract Material, for any purpose.
- 7.3.4. The Seller agrees that the licence granted in clause 7.3.3 includes a right for the Buyer to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 7.3.5. The Seller agrees, on request by the Buyer, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 7.3.
- 7.4. Intellectual Property warranty**
- 7.4.1. The Seller warrants that:
  - a. the Contract Material and the Buyer's use of the Contract Material will not infringe the Intellectual Property Rights of any person; and
  - b. the Seller:
    - i. is entitled; or
    - ii. will be entitled at the relevant time
 to deal with the Intellectual Property Rights in the Contract Material in the manner provided for in clause 7.3.

## **8. General Provisions**

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### **8.1. Price review**

- 8.1.1. After the first anniversary of the Contract Start Date, the Seller may apply for an annual increase of its Fees by applying to the Buyer Representative no later than 31 March in each year of the Contract Period.
- 8.1.2. The Fee increase may not be more than the change in the Wage Price Index (all sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics and the proposed new Fees may not exceed the Seller's Maximum Fees under the Panel Agreement.
- 8.1.3. Where the Seller applies for an increase to its Fees in accordance with clause 8.1.1, the Seller's Fees will be adjusted from 1 July of that year using a Contract Variation.

### **8.2. Buyer Equipment**

- 8.2.1. The Buyer may make Buyer Equipment available to the Seller or the Seller's Personnel for the purpose of providing the Services.

- 8.2.2. Buyer Equipment remains the property of the Buyer, and the Seller must return all Buyer Equipment that is no longer required for the purposes of this Contract to the Buyer as soon as practical (unless other arrangements are agreed in writing by the parties).
- 8.2.3. The Seller must:
- a. comply with all conditions regarding the Buyer Equipment stated in Item 42 of Part E - Contract Details or notified by the Buyer to the Seller;
  - b. take all reasonable care of all Buyer Equipment;
  - c. promptly inform the Buyer of any loss or damage to any Buyer Equipment and, if requested by the Buyer and if such loss or damage has been caused by the fault of the Seller or its Personnel, as soon as practicable replace the Buyer Equipment at no cost to the Buyer;
  - d. return any Buyer Equipment in accordance with any request by the Buyer;
  - e. comply with any reasonable instructions of the Buyer for preserving, forwarding or disposing of any damaged Buyer Equipment provided that such damage has been caused by the fault of the Seller or its Personnel.
  - f. not do any of the following without the prior written approval of the Buyer:
    - i. use or allow others to use any Buyer Equipment other than for the purposes of this Contract;
    - ii. part with possession or custody of any Buyer Equipment;
    - iii. create or allow the creation of any lien, charge or mortgage over any Buyer Equipment;
    - iv. modify any Buyer Equipment; or
    - v. remove Buyer Equipment from the Buyer's premises or facilities.
- 8.2.4. The Seller indemnifies the Buyer for any loss of, or damage to, any Buyer Equipment caused by the Seller or its Personnel.
- 8.2.5. The Seller is responsible for the suitability and performance of any Buyer Equipment it has recommended for use in a Contract, including any Buyer Equipment stated in Item 42 of Part E - Contract Details.
- 8.3. Procurement**
- 8.3.1. Where the Services include advice or assistance to a Buyer with a Commonwealth procurement process, the Seller must ensure that all such advice and assistance is in accordance with the Commonwealth Procurement Rules, procurement related policies, any guidance on procurement issued by the Department of Finance and any applicable policies of the Buyer.

#### **8.4. Escrow**

- 8.4.1. Where stated in in Item 56 of Part E – Contract Details, the Seller will enter into an escrow arrangement in a form reasonably required by the Buyer and with an escrow agent in Australia selected by the Buyer, in respect of the Source Code to be developed as part of the Services. Each party will bear its own costs in respect of the escrow arrangements and the costs of the escrow agent will be shared between the Buyer and Seller as set out in the escrow agreement.

#### **8.5. Travel and related expenses**

- 8.5.1. Where the Buyer requires the Seller's Personnel to travel for official purposes, the Buyer will either:
- a. pay for the travel itself; or
  - b. reimburse the Seller in accordance with this clause 8.5 for reasonable travel, accommodation and associated travel expenses,
- if the relevant travel and/or accommodation (and the associated cost) is pre-approved in writing by the Buyer before the travel takes place.
- 8.5.2. In order to be reimbursed for travel costs as described in clause 8.5.1, the Seller must give the Buyer a Correctly Rendered Invoice, together with supporting receipts and other travel documents as required by the Buyer. The Buyer will then reimburse the Seller in accordance with this Contract.
- 8.5.3. Unless otherwise agreed by the Buyer in writing before the travel takes place, time spent by the Seller's Personnel in transit between origin and destination, or between destinations if there is more than one, in respect of approved travel is not to be included in any request for reimbursement under clause 8.5.2.
- 8.5.4. Without limiting clause 8.5.1, the Seller must comply with the reasonable travel and overtime meal allowance expense amounts stated in the Taxation Determination issued by the Australian Taxation Office as updated from time to time.

<b>Note:</b> The Current ATO Taxation Determination is TD 2023/3.
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**PART D – ICT LABOUR HIRE MODULE  
AND CATEGORY DESCRIPTIONS**

PART D – ICT LABOUR HIRE MODULE AND CATEGORY DESCRIPTIONS

## PART D – CATEGORY DESCRIPTIONS – ICT LABOUR HIRE

Service Category	Description
1. <b>Labour Hire, recruitment and related services</b>	<p>The finding of suitably qualified and appropriately skilled ICT personnel to undertake work at the direction of the Buyer.</p> <p>The Seller offers to provide the following ICT labour hire, recruitment and related services.</p> <p><b>Sourcing Candidates and providing them as Labour Hire Workers</b></p> <p>The Seller finds suitable Candidates that match the requirements of the Buyer and offers them to the Buyer. If the Buyer finds the Candidate suitable, the Seller provides the Candidate to the Buyer as a Labour Hire Worker. The Seller is responsible for employing the Labour Hire Worker or engaging them under a contract. The Labour Hire works under the direction of the Buyer.</p> <p><b>Providing Buyer sourced workers as Labour Hire Worker</b></p> <p>The Buyer finds a worker that meets its requirements then the Seller employs the worker, or engages them under a contract, and provides them as a Labour Hire Worker to the Buyer. The Labour Hire Worker works under the direction of the Buyer.</p> <p><b>Recruitment services</b></p> <p>The Seller finds suitable Candidates for the Buyer that match the requirements of the Buyer and offers them to the Buyer. If the Buyer finds a Candidate suitable, the Buyer may employ the Candidate or engage them under a contract, to become a Buyer Worker.</p> <p><b>Other services</b></p> <p>The Seller may provide a range of services in connection with sourcing, employing and contracting ICT workers to meet the requirements of the Buyer.</p>



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**PART D – CATEGORY DESCRIPTIONS –  
PROFESSIONAL AND CONSULTING  
SERVICES**

PART D – CATEGORY DESCRIPTIONS – PROFESSIONAL AND CONSULTING  
SERVICES

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## PART D – CATEGORY DESCRIPTIONS – PROFESSIONAL AND CONSULTING SERVICES

Service Category	Description
<b>1. Application, software engineering and development services</b>	<p>Development and maintenance of secure applications, software systems and web-based solutions which leverage technology and best practice to improve business operations and stakeholder communications.</p> <p>Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• System architecture</li> <li>• Developing software solutions tailored to the unique needs and processes of the organisation</li> <li>• Utilising Agile software development (and other methodologies and best practices) to ensure a systematic, structured and controlled software development process</li> <li>• Writing, testing, and debugging application code</li> <li>• Testing and quality assurance to ensure applications function correctly and meet quality standards</li> <li>• Deployment (installing and configuring in the production environment)</li> <li>• Maintenance and enhancements of existing applications and software by providing ongoing support, bug fixes, and updates to keep the application current and optimised</li> <li>• Integrating software with other systems and applications, including emerging technologies</li> <li>• Front-end development (building client-side elements of websites, including HTML, CSS, and JavaScript coding)</li> <li>• Back-end development (building and debugging server-side logic, databases, and application functionality)</li> <li>• Implementation of Content Management Systems (CMS) platforms for easy content updates</li> <li>• E-commerce development by creating online payment processing systems</li> </ul>
<b>2. Architecture services</b>	<p>Laying the foundation of digital solutions by designing the overall structure, framework and implementation, while ensuring scalability, integration, security, adaptability and efficiency. Architecture services include, but are not limited to: Application,</p>

Cloud, Business Systems, Enterprise, Information, Solution and Technology Architecture.

Examples include, but are not limited to:

- High-level planning and design of a technology ecosystem
- Aligning technology investments with business goals
- Establishing and enforcing technology standards and best practices across the organisation
- Developing technology roadmaps outlining evolution and adoption of cloud or emerging technologies
- Designing specific technology solutions or systems to address business needs
- Designing the architecture for a cloud-based data storage system, developing microservices architecture for a web application, and creating system blueprints for IoT devices
- Gathering and analysing business requirements, defining solution scope and functionality
- Creating detailed technical and system designs that specify solution components, interfaces, and integration points
- Incorporating security measures and data protection considerations into solution design

**3. Business, systems and process analysis services**

Design, analysis and implementation of digital processes to improve an organisation's digital efficiency, productivity and effectiveness. This includes examining, reengineering, optimising and documenting business processes to reduce points of failure, cost of service and to improve user experience.

Examples include, but are not limited to:

- Process mapping and optimisation by creating visual representations of business processes to understand gaps and how tasks and information flows within the organisation, and highlighting potential areas for improvement or transformation
- Strategic research and design services
- Collecting and analysing business needs to identify pain points and areas for improvement, as well as developing functional and non-functional requirements

- Analysing data related to business processes to identify bottlenecks, inefficiencies, and areas for digital optimisation
- Creating and delivering supporting roadmaps and business documentation, such as user stories, data journeys, data catalogues and dictionaries, technical specifications, and impact assessments
- Evaluating current digital workflows and identifying areas where processes can be streamlined or automated
- Designing and implementing workflow automation tools and technologies to reduce manual work, minimise errors and accelerate process transformation
- Establishing frameworks for ongoing monitoring and optimisation of digital processes
- Defining and establishing performance metrics and Key Performance Indicators (KPIs) to measure the effectiveness of optimised processes
- Identifying opportunities to integrate data from various digital systems and sources to improve data flow and accessibility
- Assessing the technology stack and digital tools in use and recommend updates or replacements where necessary
- Redesigning processes for digital transformation and leveraging emerging technologies, such as AI, IoT, and cloud computing, to enhance efficiency and competitiveness
- Quality assurance and testing of digital processes to identify and resolve any bugs or issues that may arise during optimisation

**4. Content and publishing services**

The planning, creation, management, sharing and optimisation of digital content to engage effectively and connect with digital audiences in meaningful ways, while ensuring compliance with regulations, making content accessible, measuring content performance and leveraging innovative content formats.

Examples include, but are not limited to:

- Providing content strategy, planning, creation, and optimisation services for digital platforms, including crafting articles, blog posts, videos, infographics, multimedia

content, user guides and more, which meet the need of users and are align with digital communication objectives

- Providing content governance and compliance services to ensure that content is compliant with government regulations and standards, with a focus on transparency, accuracy, and legal adherence
- Managing, publishing and disseminating digital content to effectively share and engage followers and audiences across various platforms, such as websites, blogs, social media, email marketing, and other digital channels
- Enhancing the user experience (UX) and ensuring accessibility for all audiences, taking into account factors like different screen sizes, input methods, style guides, adherence to the latest Web Content Accessibility Guidelines (WCAG), standards, and best practice principles for accessibility and cultural diversity
- Performing content audits, plans and reviews, including the development of information architecture (IA)
- Offering insights into content performance through various formats, such as data visualisation, dashboards, A/B testing and comprehensive reports by utilising data to track and analyse website traffic, engagement, conversion rates, and audience demographics
- Exploring and implementing innovative content formats, such as interactive multimedia, virtual reality (VR), augmented reality (AR), and mixed reality (MR) experiences, to captivate audiences and deliver messages effectively
- Managing and maintaining content management systems (CMS), content governance frameworks and content publishing calendars
- Defining and maintaining taxonomies, tagging systems and metadata
- Providing technical writing services with the ability to translate complex technical terms into easily digestible information for diverse stakeholders and audiences
- Understanding and utilising service applications, software, frameworks and methodologies such as XML messaging services, HTML, CSS, JavaScript, Restful Services, API's, Service Orientated Architecture (SOA) and respective frameworks



**5. Cybersecurity services**

The range of practices, strategies, and technologies designed to protect from threats, test, enhance and maintain the security of digital assets, systems, and data.

Examples include, but are not limited to:

- Leading security strategy design and management
- Attack surface management, threat detection and prevention, intrusion detection systems (IDS), intrusion prevention systems (IPS), penetration testing, security information and event management (SIEM), and vulnerability scanning
- Provision of incident response and recovery, incident investigation, containment and eradication, business continuity, disaster recovery, and testing operational and executive response plans
- Automated risk profiling, asset inventory, and security orchestration and response
- Creation of cybersecurity architecture and solutions, firewalls and IPS, endpoint security, identity, and access management (IAM)
- Conducting security, regulatory and cyber risk management reviews by ensuring digital assets, processes and information adhere to security standards and compliance requirements
- Drafting Privacy Impact Assessments and other digital privacy risks and issues
- Enhancing security awareness, including phishing simulations, targeted training and policy enforcement

**6. Data analytics and business intelligence services**

The collection, synthesis and analysis of data to process meaningful insights and interpretations to inform business decisions. Design, development, management and/or conversion of data systems, models and languages.

Examples include, but are not limited to:

- Data modelling methods, integration and governance, including the use of emerging technologies such as AI
- Review and uplift of data management and governance policies
- Performing data discovery

- Design, implementation and assessment of data risks, access, governance and quality frameworks
- Documentation of end to end data lineage
- Design and implementation of data analytics to gain insights into digital processes, enabling data-driven improvements
- Design of interactive dashboards and reporting
- Enabling accessible Government data in machine-readable formats to aid evidence based decision-making
- Creating and using business intelligence tools and systems, to enable analytics, data mining, visualisation, business performance management, location intelligence, predictive analysis and interactive reporting capabilities
- Provision of geospatial technologies for planning, emergency response and environmental monitoring, including Geographic Information Systems (GIS), aerial survey data, data maintenance, sea and terrestrial survey data
- Statistical analysis systems, software and/or database languages, to store and retrieve data values, modify data, compute both simple and complex statistical analyses and report creation
- Machine learning and machine learning software and/or algorithms (both supervised and unsupervised)
- Real time analytics, market trend analysis, cost benefiting, forecasting and experiment analysis
- Creating and optimising databases to store and manage data efficiently

**7. Digital sourcing, procurement and contract management services**

Specialist knowledge, skills and experience in the end-to-end process of acquiring and contract managing digital and ICT services, products and technology resources in a strategic, efficient, effective, economical and ethical manner.

Examples include, but are not limited to:

- Optimising supply chains and ensuring quality and compliance of products and services
- Identifying and managing potential procurement and contract management risks associated with the full life-cycle of a product or service

- Creating digital and ICT procurement documentation
- Identifying, evaluating, and selecting sellers that can meet an organisation's specific needs
- Assessing seller capabilities, financial stability, ethical practices, and compliance with industry standards
- Engaging in negotiations with suppliers to secure favourable terms (pricing, delivery schedules and service level agreements)
- Ensuring procured goods and services meet the required quality standards and specifications
- Enabling digital sustainability in sourcing activities. This is the structured and strategic approach for ensuring digital initiatives, advice, technologies, and practices are environmentally, socially, and economically sustainable
- Monitoring and controlling procurement costs
- Administration and oversight of supplier contracts to ensure compliance, risk mitigation and maximise the value of agreements
- Assisting in drafting and finalising contractual agreements that define the terms, conditions, and responsibilities of both parties
- Tracking supplier performance against contractual obligations, including delivery schedules, quality standards, and service levels

**8. Market research and advisory services**

Providing market insights, strategic advice, and data-driven recommendations to help organisations gain a deeper understanding of market dynamics and trends to inform decision-making and communication practices. Providing comprehensive investigation into emerging and existing technologies to measure the market and identify gaps.

Examples include, but are not limited to:

- Analysing the market by assessing market trends and potential technology disruptions and offering strategic insights that help decision-makers respond effectively to market changes
- Employing research methods such as surveys, trend analysis, and quantitative modelling

- Collecting and interpreting market data and providing reports on actionable insights and recommendations that drive strategic decision-making
- Utilising industry-specific knowledge and experience to provide tailored research and advice ensuring recommendations are conveyed clearly and aligned to the objectives and strategic goals of the organisation
- Conducting viability studies on adopting new technologies or upgrading existing ones by considering factors like market direction, cost, technical constraints, and potential benefits
- Providing advice on how to market new technology - oriented around demographic data regarding adoption behaviour and preferences in products and messaging

**9. Marketing, advertising communications and engagement services**

The design, management, distribution and optimisation of digital and ICT-driven marketing and advertising services to achieve business objectives by applying digital media, data analytics, and technology tools and methodologies to create impactful campaigns.

Examples include, but are not limited to:

- Marketing strategy and guidance services which encompass the development of comprehensive marketing plans that strategically leverage content, incorporating audience research, performance analytics, data collection, reporting, and optimisation recommendations
- Brand strategy development utilising expertise in creating and enhancing brand strategies to increase market presence and recognition
- Understanding and implementing Search Engine Optimization (SEO) for marketing and reporting purposes, including keyword research, SERP analysis, and digital advertising budgeting
- Providing public sector account and relationship management services which encompass experience and proficiency in managing accounts and fostering relationships within the public sector
- Developing effective press and digital communications strategies to enhance stakeholder outreach and engagement

- Creating strategies designed to increase engagement within digital communities, building connections and fostering interactions
- Designing and delivering targeted digital marketing campaigns geared toward achieving high user engagement and driving significant product or service usage
- Providing event planning and execution services that align with the digital and ICT marketing objectives of the organisation
- Timely and consistent delivery of digital content publishing services in alignment with a digital marketing calendar
- Providing website analytics and monitoring services which are used to enhance digital products or services by tracking user behaviour and performance metrics
- Employing web scraping tools and services to enable data capture and support content marketing strategies which contribute to data-driven content development and optimisation

**10. Program, project and change management services**

Coordination, planning, delivery and oversight of digital and ICT portfolio, program or project management activities to achieve defined outcomes and ensure smooth transitions. Design and delivery of change activities, communications and stakeholder engagement which help organisations adapt to new technologies, processes and ways of working.

Examples include, but are not limited to:

- Encompassing all portfolio, program and project management offerings
- Leading Agile and other governance, delivery methods and best practices to ensure the successful management and delivery of a program or project
- Clarifying business priorities, and roles and responsibilities throughout the program or project lifecycle
- Designing and implementing governance processes for large digital transformation and ICT programs
- Identify drivers and barriers for organisational change

- Designing and embedding change programs, including assessing business readiness, design and implement target operating models
- Developing strategies for managing digital transformation, including communication plans and training to help employees adapt to new processes
- Facilitating cultural change in a technology driven environment
- Leading stakeholder engagements, including showcases, dashboards, reports and visualisations to ensure stakeholder engagement requirements are met

**11. Risk management, benchmarking and audit services**

Identification, assessment and management of issues and opportunities associated with digital operations. Comparing and contrasting performance to identify areas for improvement, and ensuring optimal compliance with regulations, industry standards and best practices.

Examples include, but are not limited to:

- Developing risk management and audit strategies, frameworks and architecture, including models and patterns
- Providing risk assessment, mitigation and monitoring services (opportunity and threat)
- Providing business continuity, capacity and availability planning and design services
- Assessing third party risk and implementing third party risk frameworks and solutions
- Performing periodic reviews of architectures, patterns and portfolios to ensure that planned investments will successfully achieve business strategies
- Designing and implementing assurance and performance metrics to track and assess digital transactions and delivery
- Providing benchmarking services by comparing an organisation's digital and ICT practices, performance and processes or applications, systems, solutions, and infrastructure with industry standards and best practices to identify areas for improvement. This may include financial, operational, service level, functional, and customer experience

- Designing and executing technology cost reduction and efficiency programs
- Conducting process and technology audits
- Assessing financial risks associated with digital and ICT investments
- Managing legal and regulatory compliance in digital operations

**12. Solutions implementation services**

The holistic design, execution, integration, and optimisation of solutions, supporting transformational strategies, operational services, and business systems that drive transformation and align with government digital strategies. The configuration, integration, comprehensive testing and decommissioning of systems to support business continuity and improved business processes.

Examples include, but are not limited to:

- Executing end-to-end transformational digital and ICT solutions, covering full lifecycle management and incorporating comprehensive testing activities
- Managing suppliers to deliver holistic solutions or services and establishing strategic vendor partnerships for strategic insight and alignment with product development roadmaps
- Connecting disparate software and hardware systems and technologies to enable seamless data flow, functionality, and business continuity, including cloud integration
- Integrating services to facilitate the delivery and transition to digital services, with an emphasis on cloud solutions and alignment with government sourcing arrangements
- Supporting business systems and ensuring business continuity during transitions, including the development and execution of implementation or decommission plans
- Documenting and providing clear and transparent Service Level Agreements (SLAs) to support system integration and decommissioning processes
- Following SLAs and change management practices throughout the lifecycle, including implementation, integration, and decommissioning
  - Providing comprehensive management, monitoring and testing services at all stages of solution integration, including ensuring compliance with governance and

security practices and frameworks, particularly in relation to large transformation programs where management of consortia may be required

- Examples of possible products and solutions may include modern workplace and productivity suites, digital identity, CRM, ERP, FMIS, CMS, LMS, EDMS, or XaaS and secure cloud

**13. Strategy, policy and governance services**

Design of organisational policies, technology strategies, comprehensive planning for digital initiatives, establishing guidelines and rules for digital operations, planning documentation, and ensuring effective decision-making.

Examples include, but are not limited to:

- Formulating a digital transformation or technology strategy in alignment with government direction
- Developing business cases, strategies and other planning documents
- Providing policy interpretation and advice to delivery teams
- Providing digital governance, leadership, investment and assurance advice
- Reviewing and analyse existing products, practices or processes
- Setting data privacy policies
- Creating governance structures for digital and ICT investments
- Documenting recommendations on investment strategies
- Establishing digital and ICT policies for data security
- Setting up governance structures for technology decision-making
- Designing workforce / enterprise resource planning (ERP) strategies
- Conducting digital capability and maturity assessments
- Developing recommendations based on the quantitative and qualitative evidence gathered via web analytics, applications data, financial data and user feedback



- 14. Support and operations services**
- Technical support and operations services, encompassing a broad range of activities and functions essential for maintaining the efficient functioning of an organisation's digital services, ICT infrastructure and systems, ensuring availability, reliability, and performance.
- Examples include, but are not limited to:
- Provision of technical helpdesk, service desk and service management services (user-centric). Focussing on providing support and assistance to users, coordinating and optimising digital and ICT service delivery, incident, request and problem management, and resource allocation
  - Provision of digital and ICT operations management services (infrastructure-centric). Focussing on managing digital infrastructure and technology stack in an organisation, including monitoring performance, maintaining a secure and optimal environment, policy compliance, and effective resource management
- Using frameworks and principles, such as but not limited to, ITSM, ITOM and ITIL to help organisations manage their digital and ICT operations effectively, aligning services with business needs, testing, maintaining service quality and continuously improving operations
- 15. Training, learning and development services**
- Digital and ICT related training, learning and development services to enhance digital literacy, skills development and capability across organisations. Harnessing technology solutions, industry standards and best practices to increase knowledge and drive productivity and efficiency.
- Examples include, but are not limited to:
- Conducting analysis, determining user capability and gaps, and assessing training requirements across an organisation
  - Designing, developing and implementing learning solutions to uplift digital literacy
  - Developing learning solutions (in conjunction with subject-matter experts) and in alignment with industry best practice, learning design standards and other sources to meet user needs across appropriate modalities
  - Provision of thorough post training reporting

- Evaluating Learning Management Systems (LMS) and providing guidance on the cost of implementation and return on investment

**16. User research and Design services**

Product, service, and strategic Research and Design. Using exploratory, generative and/or evaluative research to understand user needs and behaviour and design of user-friendly interfaces and experiences.

Examples include, but are not limited to:

- Planning, designing, conducting and analysing user research in a digital context across a range of methodologies (e.g. survey, user/usability testing, contextual inquiry, ethnographic research)
- Designing concepts and/or prototypes (low to high-fidelity)
- High-fidelity user interface and interaction design
- Designing web and mobile application interfaces with a focus on accessibility, designing for different screen sizes and input methods, following style guides, and the latest Web Content Accessibility Guidelines (WCAG)
- Communicating user research findings to stakeholders through a wide range of formats (presentations, journey maps, videos etc.)
- DesignOps - Creating and maintaining design systems, libraries, and style guides
- ResearchOps - Creating and maintaining research governance protocols, templates, tools, libraries, etc

## PART E - CONTRACT DETAILS

**Note:** This is a suggested format only. You may want to include further information that is relevant to the ordered Products and Services. In doing so, ensure that it is consistent with Part A - Panel Terms and Part B – Core Contract Terms.

This template includes drafting text. Once you have completed each of the relevant sections, please remove the guidance so it is not visible to Sellers.

### Contract Details

#### Item Details

- Context**  
This Contract is placed under the Panel Agreement between the Buyer and ^insert name of the Seller^ dated ^insert date of Panel Agreement^.

### Contract title and reference numbers

- Contract title** ^insert^  
**BuyICT reference number** ^insert^

**Note:** You must include the DTA BuyICT reference number. Buyers and Sellers may include other reference numbers at their discretion.

- AusTender SON** ^insert^  
**Buyer reference number** ^insert^

### Buyer details

(clause 5.6)

- Agency/entity** ^insert^  
**Buyer Representative** ^insert^  
**Job title** ^insert^  
**Branch and division** ^insert^  
**Email** ^insert^

Phone number ^insert^

Address for notices ^insert^

#### Seller details

(clause 5.7)

4.

Seller name ^insert^

Seller Contract Representative ^insert^

Email ^insert^

Phone number ^insert^

Address for notices ^insert^

Country of Tax Residency ^insert^

Trust Details ^insert details or 'Not applicable' if the Seller is not acting as a trustee^

#### Contract duration and timeframe

5.

Contract Start Date ^insert^

**Note:** Specify the commencement date of the Contract.

Contract Period ^insert^

6.

Extension term ^insert^  
^Optional^

No of extension options ^insert number of extension options available^  
^Optional^

7.

Delivery schedule ^Insert time frame^

**Note:** Set out the time frame for the provision of the Products and Services (including the delivery of Contract Material) specifying all relevant dates (e.g.

commencement,  
progress or interim  
stages and completion).

8. **Scheduled management meetings** <sup>^Insert dates and/or frequency of meetings between Buyer and Seller^</sup>

9. **Transition Out Period** <sup>^insert duration of Transition Out Period^</sup>

### Modules and Categories

**Note:** Insert the Modules and Categories applicable to the Contract.

10. **Module** **Applicable Terms incorporated into this Contract**
- <sup>^Insert name of Module e.g. Professional and Consulting Services^</sup> <sup>^Insert terms applicable to relevant Module e.g. Part C – Professional and Consulting Services Module Specific Terms^</sup>
- Category** **Applicable Terms incorporated into this Contract**
- <sup>^Insert name of Category e.g. Architecture services^</sup> <sup>^Insert terms applicable to relevant Category e.g. Part D – Professional and Consulting Services Module and Category Descriptions^</sup>

### Provision of Products and Services

(clause 5)

11. <sup>^Either:</sup>
- The Seller will provide the Products and Services set out in the Statement of Requirement attached to these Part E - Contract Details; or
- The Seller will provide the following Products and Services to the Buyer: [insert details]^
12. **Product technical requirements** <sup>^insert details of any technical requirements^</sup>
- <sup>^Optional^</sup>

- |     |   |   |
|-----|---|---|
| 13. | <b>Reseller Products</b><br><b>^Optional^</b> | <p>^insert details of any Products that are to be provided by the Seller as a Reseller. Select the applicable option below:</p> <p>Option 1 – Direct Supply from the Seller</p> <p>Option 2 – Seller Facilitation</p> <p>Option 3 – Seller as Agent ^</p> |
| 14. | <b>Underlying Software</b>                    | ^Insert details of Underlying Software required by the Seller to provide the Products and Services^   |
| 15. | <b>Approved AI use</b>                        | ^insert approved use of AI, if any. See clause 6 of Part C – Professional and Consulting Services Module Specific Terms^  |
| 16. | <b>Newly manufactured</b>                     | ^insert whether products must be newly manufactured, yes/no. Buyers should consider the Sustainable Procurement Guide when making this decision^  |

#### Purpose

- |     |   |   |
|-----|---|---|
| 17. | <b>The Products and Services must be fit for the following purpose(s)</b> | <p>^describe the purpose of the Products and Services. If necessary, list the Products and Services, or types of Products and Services, and details the individual purposes of each.^</p> <p>^The Seller agrees that the Products and Services may be used by the Buyer to provide shared services to other Commonwealth agencies.^</p> |
|-----|---|---|

#### Plans and Milestones

- |     |                                     |  |
|-----|-------------------------------------|--|
| 18. | <b>Plan</b>                         | <p>^Are any Plans required in accordance with clause 3.1 of Part C - Professional and Consulting Services Module Specific Terms – insert Yes or No. If 'Yes' include details of required plans^</p> <p>Examples of Plans include:</p> <ul style="list-style-type: none"> <li>• Project plan;</li> <li>• Implementation plan;</li> <li>• Acceptance testing plan;</li> <li>• Architecture plan;</li> <li>• Sustainability plan;</li> <li>• AI plan</li> </ul> |
|     | <b>Plan additional requirements</b> | ^insert any other requirements relating to the Plan (if any). For example phases, dependencies,  |

contingencies, additional reporting obligations, incorporation of any agreed implementation plans, etc.^

19. **Milestones** ^Are any Milestones required in accordance with clause 3.2 of Part C - Professional and Consulting Services Module Specific Terms – insert Yes or No^

Item	Milestone description	Completion date
1.	^Include details of the milestone, including deliverable description^	^insert date for completion of milestone^
2.		

#### Acceptance Testing (clause 5.4)

20. **Acceptance Testing** ^Are the Products and Services subject to Acceptance Testing – insert Yes/No^
- Acceptance Test Criteria** ^insert acceptance test criteria^
- Timeframe** ^insert timeframe within which the Buyer must notify the Seller following Acceptance Testing^

#### Hosting of Buyer Data

21. **Cloud Services** ^Is the Seller required to use an approved cloud provider? Insert Yes or No^
- Approved Cloud Provider** ^Insert approved provider^
- Required level of certification** ^insert required level of certification under the Hosting Certification Framework (available here: [Framework | Hosting Certification Framework](#))
- [Strategic]
- [Assured]
- [Uncertified]^

#### Personnel

22. **Labour Hire Workers** **Name** ^insert the full name of the Seller's Labour Hire Worker^

**^To be included for ICT Labour Hire Module otherwise to be removed^**

**Note:** Labour Hire Workers are relevant to the ICT Labour Hire Module only. For Personnel in other Modules, complete Key Personnel fields below.

<b>Position</b>	<b>^insert position title^</b>
<b>Position description and requirements</b>	<b>^insert^</b>
<b>Agreed role</b>	<b>^insert agreed role in performing the Seller's obligations^</b>
<b>Key duties and responsibilities</b>	<b>^insert key duties and responsibilities of the position^</b>
<b>Security clearance</b>	<b>^insert required security clearance^</b>
<b>Location of work</b>	<b>^insert regular location of work i.e. Buyer premises address^</b>
<b>Working hour period</b>	<b>^insert working hour period (if none specified default will be 7am to 7pm on Business Days)^</b>
<b>Hourly rates</b>	<b>^insert hourly rates for each Labour Hire Worker^</b>
<b>Duration of engagement</b>	<b>^insert duration of engagement for the Labour Hire Worker^</b>
<b>End date for engagement of Labour Hire Worker</b>	<b>^insert end date for engagement of Labour Hire Worker^</b>

23.

**Key Personnel  
(clause 5.11)**

**^Insert details^ ^Use of table is optional^**

**Note:** If applicable, specify details of any particular individuals nominated to undertake and perform the Products and Services or

<b>Name</b>	<b>^insert the full name of the Seller's Key Personnel^</b>
<b>Position</b>	<b>^insert current position^</b>
<b>Qualifications/Certifications</b>	<b>^insert^</b>



provide particular  
Contract Material.

**Agreed role**

^insert agreed role in  
performing the Seller's  
obligations^

**Security clearance**

^insert required security  
clearance^

**Hourly Rate**

^insert hourly rates for each  
key personnel^

24.

**Subcontractors**  
(clause 5.9)

The Buyer permits the Seller to Subcontract the  
provision of the Products and Services as follows:

**Note:** Include this clause  
if the Seller has  
proposed to use  
Subcontractors to deliver  
the work.

**Approved  
Subcontractor**

**Description of the Products  
and Services that may be  
provided.**

^insert the details  
of the  
Subcontractor^

^insert description of Products  
and Services to be provided by  
the Subcontractor^

## Policies, Standards and Guidelines

25.

**Australian standards**  
(clause 5.1.1.c.i)

^Insert details of relevant Australian standards. The  
below are examples of potentially useful standards  
which could be included^

**Note:** For procurements  
valued at or above the  
relevant procurement  
thresholds (stated in the  
Commonwealth  
Procurement Rules),  
paragraph 7.26 of the  
Commonwealth  
Procurement Rules  
provides that where  
applying a standard for  
Products and Services  
being procured, Buyers  
must make reasonable  
enquiries to determine  
the Seller's compliance  
with the standard.

AS EN 301 549:2020 – Accessibility requirements for  
ICT products and services

26.

**Buyer or  
Commonwealth  
policies, standards or  
guidelines**

^Insert details of any relevant policies. The below are  
examples which could be included ^

**(clause 5.1.1.c.iii)**

Web Content Accessibility Guidelines (WCAG) Level  
2.1

**Note:** State any applicable Buyer, Commonwealth, industry or other standards which the Seller must meet in preparing quality work.

Standards vary depending on the nature of the Products and Services, but some of the most common standards are contained in:

- The Commonwealth Style Manual, AGPS, Canberra (latest edition);
- Australian Standards for Document Management (AS ISO 15489);

The Buyer should reference any specific work health and safety policies in this Item.

**Web Content  
Accessibility  
Guidelines**

The Web Accessibility National Strategy provides for the implementation of the WCAG. Where the Products and Services involve material that may be made available as web content it is important that the Buyer complies with the requirements of the WCAG.

To view the Web Content Accessibility Guidelines (WCAG) 2.0 [click here](#).

**Digital Service Standard** – available at [Digital Service Standard criteria | Digital Transformation Agency \(dta.gov.au\)](https://www.dta.gov.au/digital-service-standard/criteria)

27.	<b>Commonwealth Procurement Connected Policies</b>	<b>Policy</b>	<b>Optional Clauses Apply</b>
		Australian Industry Participation Plan (AIP Plan)	<b>^applies yes/no^</b>
		Indigenous Procurement Policy (high value contract provisions)	<b>^applies yes/no, must be one or the other with the below (or neither). Cannot be both^</b>
		Indigenous Procurement Policy (non-high value contract provisions)	<b>^applies yes/no, must be one or the other with the above (or neither). Cannot be both ^</b>
		Shadow Economy Procurement Connected Policy	<b>^applies yes/no^</b>
		Workplace Gender Equality	<b>^applies yes/no^</b>
		Payment Time Policy	<b>^applies yes/no^</b>
28.	<b>Indigenous participation</b>	Waste Management Performance	<b>^applies yes/no^</b>
		Requirements for Indigenous participation	<b>^insert requirements including if there is a requirement to comply with an Indigenous Participation Plan^</b>
		Written report of compliance with Indigenous participation requirements	<b>^insert applicable/not applicable^</b>

Timeframe for delivery of written report    ^insert timeframe^

**Fees, allowances and costs**

29.    **Fees, allowances & costs**    ^Insert payment details^ ^Each Item below is optional^  
(clause 6)

**Note:**

**Fees**

Specify details of fees to be paid/agreed upon/applicable to the particular Products and Services under this Contract.

Fees may be based on:

- a)        time and materials;
- a)        unit price for items of Products and Services; or
- b)        payment milestones. Indicate whether the Buyer will pay the Fees in instalments and, if so, the intervals for payment. Where possible the obligation to pay fees should be linked to delivery of the Products and Services and/or Contract Material.

The default is that invoices must be submitted monthly in arrears. Where this is not the case, specify here.

30. **Contract value** The total Fees are \$<sup>^insert total value of this Contract^</sup>  
(both GST exclusive and inclusive)

31. **Payment Schedule** <sup>^describe the payment approach for this Contract^</sup>.

**Note:** if relevant, complete the following Milestone payment schedule

Milestone	Milestone payment (GST excl)	Milestone payment (GST incl)
1.		
2.		
<b>TOTAL</b>		

32. **Product or Service Price Cap** **Products and Services** **Maximum Fees (GST excl)** **Maximum Fees (GST incl)**

**Total Price Cap**

<sup>^List the price cap for each Product and Service and list a Total Price Cap if applicable^</sup>

33. **Allowances & costs** <sup>^Insert details of allowances and other disbursements^</sup>

**Note:** State details of other financial obligations the Buyer will cover, eg. Travel costs or printing and production costs. The obligations should be clearly stated to prevent claims for excessive expenses.

34. **Interest** <sup>^Will interest be payable to the Seller if the Buyer fails to pay an amount under the Contract by the due date? Insert Yes or No^</sup>

35. **Conversion fee**  
**^Optional Item for Labour Hire ICT Module^**      ^insert fee payable to Seller for Conversion of a Labour Hire Worker to an employee of the Buyer – See clause 8.8 of Part C - ICT Labour Hire Module Specific Terms^
36. **Invoicing**      ^Insert requirements for invoicing.
- Note:** State the Buyer's invoicing requirements.

For more information see the requirements for tax invoices as set out by the ATO at:  
<https://www.ato.gov.au/Business/GST/Issuing-tax-invoices/>
- For example: Invoices will be issued by the Seller at the end of each calendar month.
- To be correctly rendered, invoices must include the following information:
- a. the words "tax invoice" stated prominently;
  - b. the Seller's name;
  - c. the Seller's ABN;
  - d. the Buyer's name (Entity's name) and address;
  - e. the date of issue of the tax invoice;
  - f. the title of this Contract and the Contract number or purchase order number (if any);
  - g. details of Fees, allowances and costs including the items to which they relate;
  - h. the total amount payable (including GST);
  - i. the GST amount shown separately; and
  - j. written certification in a form acceptable to the Buyer that the Seller has paid all remuneration, fees or other amounts payable to its Personnel and/or Subcontractors involved in performance of this Contract.
- All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Seller's entitlement to those allowances or costs.
- An invoice is not correctly rendered where:
- a. it includes amounts that are not properly payable under this Contract or are incorrectly calculated; or
  - b. it relates to a payment in relation to which the Buyer has exercised its rights under clause 7.7.
- All invoices must be addressed to the Buyer Representative.^
- ^Further optional terms^:

^when a Contract is based on time, insert the details of the amount of time spent by each person, including Key Personnel (if any)^;

37. **Maximum hours** ^insert maximum hours of work permitted to be invoiced – specify whether daily/weekly/monthly hours (For the purposes of clause 7.5 ICT Labour Hire Module Specific Terms)^
38. **Timesheets** ^Optional Item for ICT Labour Hire Module^ ^Clause 8.6 of the ICT Labour Hire Module includes Timesheet requirements, insert any additional Timesheet requirements here^

**Material** ^If not set out in an annexed Statement of Requirement, detail relevant Material under a Contract here^

39. **Required Contract Material** ^Insert Contract Material^  
(Intellectual Property clauses in Part C Module Specific Terms)

**Note:** State:

- the nature and extent of the Contract Material that must be produced and delivered (e.g. plans, models, specifications etc.);

- any reports (including interim reports), required under the Contract should be included here;

- the form in which the Material is to be produced (e.g.

documents, CD ROM or other media);

- any equipment necessary to access the Material; and

- the manner and timing of delivery of intermediate and final stages if this is not specified elsewhere.

It is important to include all Material here because it may be difficult for the Buyer to acquire ownership or Intellectual Property rights in Material unless:

- it is listed here; or

- it is clearly created for the purposes of the Contract.

40.

**Existing Material**

<sup>^</sup>Insert pre-existing Material<sup>^</sup>

**(Intellectual Property terms in Part C - Module Specific Terms)**

**Note:** State any pre-existing Material for which Intellectual Property is not to vest in the Buyer. This would arise typically in relation to Material the Seller owns, although it may also arise in relation to Material owned by a third party. The Seller must grant or procure the grant to the Buyer of a licence to use the Material in the terms set out in Part C – Module Specific Terms.



Whether Material is 'Existing Material' is to be judged as at the Contract Start Date.

If none, insert "none specified".

41. **Buyer Material** <sup>^Insert details^</sup>  
(Intellectual Property terms in Part C - Module Specific Terms)

**Note:** Insert details of any Material to be provided to the Seller by the Buyer to provide the Products and Services. Also specify any conditions or restrictions attaching to the Seller's use of Buyer Material.

If none, insert "none specified".

42. **Buyer Equipment** <sup>^insert details of any Buyer Equipment^</sup>

## Security and Privacy

43. **Security** Level of Security Classified Resources  
(clause 8) <sup>^Insert details^</sup>

**Note:**

State any additional security requirements, whether these derive from the PSPF or from specific Buyer requirements.

Applicable standards, legislation and regulations that may apply to the Seller include:

The Seller is authorised to disclose <sup>^insert relevant official Information^</sup> to <sup>^insert name of person(s) to whom disclosure is authorised^</sup> provided that <sup>^insert any conditions^</sup>.

The Seller must comply with:

<sup>^insert any additional security requirements regarding the work, premises or location^</sup>

PSPF requirements:

The Seller must comply with the following PSPF policies:

*Risk Management  
AS/NZS ISO 31000:2009  
and Australian Standards  
HB 167:2006*

*Australian Government  
Information Security  
Manual - Guidance for  
agencies and Sellers for  
managing the risks  
arising from greater  
sharing and exchange of  
information - see  
[https://www.cyber.gov.au  
/acsc/view-all-content/](https://www.cyber.gov.au/acsc/view-all-content/)  
for further information.*

*Australian Government  
Investigation Standards -  
for reporting and  
investigating security  
incidents and taking  
corrective action – see  
here for further  
information  
[https://www.ag.gov.au/int  
egrity/publications/austra  
lian-government-  
investigation-standards](https://www.ag.gov.au/integrity/publications/australian-government-investigation-standards).*

*The Essential Eight for  
mitigation strategies to  
protect against cyber  
threats. See here for  
further information  
[https://www.cyber.gov.au  
/resources-business-  
and-  
government/essential-  
cyber-security/essential-  
eight](https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/essential-eight)*

*Where Buyers conduct  
an InfoSec Registered  
Assessors Program  
(IRAP) assessment, any  
requirements from the  
IRAP should be specified  
here. See here for further  
information*

- Policy 6 – Security governance for contracted goods and service providers;
- Policy 10 – Safeguarding data from cyber threats;
- Policy 11 – Robust ICT systems;
- Policy 12 – Eligibility and suitability of personnel;
- Policy 13 – Ongoing assessment of personnel;
- Policy 14 – Separating personnel;
- Policy 15 – Physical security for entity resources;
- ^insert any additional PSPF policies required^

<https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/strategies-mitigate-cyber-security-incidents/strategies-mitigate-cyber-security-incidents>

44. **Security clearances** <sup>^insert required security clearances^</sup>

45. **Privacy** <sup>^Insert details of privacy directions, guidelines, determinations or recommendations^</sup>  
(clause 14)

**Note:** Include reference to any relevant privacy directions, guidelines, determinations or recommendations. For example, this could include a list of any Australian Privacy Principle codes that bind the Buyer. See AGS Fact Sheet Privacy Act reforms – implications for enforcement functions, available at <http://www.ags.gov.au/publications/fact-sheets/index.html>.

#### **Seller's Confidential Information** (clause 18)

**Note:** State the Confidential Information (of the Seller) and the period of confidentiality, being as specific as possible.

Details should be formatted using the example below:

46.	<b>Contract Provisions / Schedules / Attachments</b>	<b>Item</b>	<b>Period of confidentiality</b>
-----	--	-------------	----------------------------------

^insert relevant items - or  
"none specified"^

47.	<b>Contract-related material</b>	<b>Item</b>	<b>Period of confidentiality</b>
-----	----------------------------------	-------------	----------------------------------

^insert relevant items - or  
"none specified"^

#### Applicable Law

48.	<b>Applicable law (clause 23.2)</b>	New South Wales
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#### Insurance

49.	<b>Insurance (clause 15.6)</b>	<b>Type</b>	<b>Minimum limits</b>	<b>Periods of insurance</b>
		Professional indemnity insurance	\$2 million per occurrence and \$2 million in the aggregate per annum	Until expiration of the period of 7 years following expiry of this Contract
		Public liability insurance	\$10 million in the aggregate per annum	Until expiry or termination of this Contract
		Cyber insurance ^Optional^	\$^insert amount^ ^per occurrence / in aggregate / and not less for^	Until expiry or termination of the this Contract
		product liability ^Optional^	\$^insert amount^ ^per occurrence / in aggregate / and not less for^	Until expiry or termination of this Contract
		^insert required insurance policy type^	\$^insert amount^ ^per occurrence / in aggregate / and not less for^ ^type of entity^^	^insert required period – for example: until expiry or termination of this Contract / until expiration of the period of [x]

following expiry  
or termination of  
this Contract<sup>^</sup>

## Optional Items

50. **Confidentiality undertaking** <sup>^Optional^</sup> Before the Seller commences work, confidentiality undertakings in a form attached to these Contract Details or otherwise prescribed by the Buyer are required from:
- <sup>^Seller/Personnel/Key Personnel/Subcontractors/financial, legal or other professional adviser/third party^</sup>
51. **Liquidated damages** <sup>^Optional^</sup> <sup>^insert table setting out the Milestones and liquidated damages regime below^</sup>  
(clause 27)
52. **Support and Maintenance** <sup>^Optional^</sup> <sup>^Does clause 26 of Part B – Core Contract Terms apply to this Contract, insert Yes/No^</sup>
- Supported Items** <sup>^insert details of any Supported Items here, for the purposes of clause 26 of Part B – Core Contract Terms^</sup>
53. **Service Levels, Service Credits and Minimum Expected Performance** <sup>^Optional^</sup> <sup>^insert table setting out the Service Level and Service Credit regime below^.</sup>
54. **Timing of performance management assessments** <sup>^Optional^</sup> <sup>^insert frequency of timing for assessment by the Buyer (default under clause 26: every 6 months from this Contract Start Date)</sup>
- 1 month
  - 3 months
  - 6 months<sup>^</sup>
55. **Limitation of liability** <sup>^Optional^</sup> The liability of a party to the other arising out of or in connection with this contract (including under any indemnity) is limited to \$<sup>^Insert amount^</sup> <sup>^per event OR over [insert time] years^</sup> exclusive of GST.
- Note:**

If no amount is specified here, the default limitation of liability will be an amount equal to

three times the total  
value of the Contract  
exclusive of GST.

56. **Escrow** ^Optional^ ^Insert Yes/No if escrow period will apply – see clause 8.4 of Part C - Professional and Consulting Services Module Specific Terms^
57. **Additional Terms** ^Optional^ ^Specify any Additional Terms for a Contract here^  
(clause 15.9)

## Signatures

**Note:** You will need to ensure that the appropriate execution clause is used for the parties to this contract. This will depend on the types of entities that the parties are. The execution clauses below will not be appropriate in all circumstances.

SIGNED, SEALED AND DELIVERED  
for and on behalf of ^Buyer Name^  
ABN ^Buyer ABN^ by:

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
Signature

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
Signature of witness

SIGNED for and on behalf of ^Party  
2 Name^ by:

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*

**Note:** The date of signing should *not* generally be included in the execution clauses. Commencement is determined by the date stated in Item 5. The terms of the Contract apply on and from the Contract Start Date as stated in Part F – Definitions and Interpretation.



## PART F - DEFINITIONS AND INTERPRETATION

### 1. Definitions and Interpretation

#### 1.1. Definitions

1.1.1. In the Panel Agreement and any Contract, unless the context indicates otherwise:

Term	Definition
<b>Acceptance</b>	means accepted by the Buyer in accordance with a Contract. ' <b>Accept</b> ' and ' <b>Accepted</b> ' have a corresponding meaning.
<b>Acceptance Criteria</b>	means a list of criteria that the Products and Services must meet before the Buyer will Accept them, as set out in the Contract.
<b>Acceptance Testing</b>	means the testing of Products and Services against the Acceptance Criteria.
<b>Accounting Standards</b>	means the standards maintained by the Australian Accounting Standards Board (referred to in section 227 of the Australian Securities and Investments Commission Act 2001 (Cth));  other accounting standards which are generally accepted and consistently applied in Australia.
<b>Additional Terms</b>	means the additional terms (if any) that apply to the Panel Agreement or Contract, as specified in Schedule A1 - Panel Appointment Details or Part - E Contract Details.
<b>Additional Work</b>	means additional Services provided in accordance with clause 4 of Part C – Professional and Consulting Services.
<b>AI System</b>	means any technology that uses artificial intelligence including machine-based systems that are capable of generating or producing an output for a given set of objectives.
<b>AIP Contract</b>	means a Contract stated to be an AIP Contract in Item 27 of Part E - Contract Details.
<b>AIP Plan</b>	means any AIP plan attached to this Contract.
<b>AIP Plans User Guide for developing an AIP Plan</b>	means the Australian Industry Participation Plans dated March 2020 published by the Department of Industry, Science, Energy and Resources as at the date of this contract a copy of which can be obtained from the internet site <a href="http://www.industry.gov.au">http://www.industry.gov.au</a> .



<b>Application Material</b>	<p>means all Material provided to DTA or a Buyer by the Seller in connection with the Panel, including but not limited to:</p> <ol style="list-style-type: none"> <li>an application or tender to be appointed to the Panel and/or a Module or Category;</li> <li>a Quote;</li> <li>a Panel Catalogue; or</li> <li>any Material related to the above.</li> </ol>
<b>Appoint and Appointed</b>	means the process of being appointed to provide Appointed Products and Services as stated in clause 4.1.1 of Part A – Panel Terms.
<b>Appointed Products and Services</b>	means the Products and Services that the Seller is Appointed to offer to sell through the Panel.
<b>Approach to Market</b>	has the meaning given in the Commonwealth Procurement Rules.
<b>Approved Plan</b>	means, at any given time, each Plan most recently approved by the Buyer under clause 3.1.4.a of Part C - Professional and Consulting Services Module Specific Terms.
<b>APS Code of Conduct</b>	has the same meaning as it has in the <i>Public Service Act 1999</i> (Cth).
<b>APS Values</b>	has the same meaning as it has in the <i>Public Service Act 1999</i> (Cth).
<b>Artificial Intelligence or AI</b>	means an output generated or produced by an AI System.
<b>Associate</b>	has the meaning given to it in section 9 of the <i>Corporations Act 2001</i> (Cth).
<b>Australian Privacy Principle</b>	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).
<b>Background IP</b>	<p>means Intellectual Property Rights (other than Third Party IP) that are:</p> <ol style="list-style-type: none"> <li>in existence as at the Contract Start Date or are subsequently brought into existence other than as a result of the performance of a Contract; and</li> <li>embodied in, or attach to, the Products and Services or is otherwise necessarily related to the functioning or operation of the Products and Services,</li> </ol> <p>but does not include any Intellectual Property Rights that subsist in any Buyer Material.</p>
<b>Business Day (in a place)</b>	<ol style="list-style-type: none"> <li>for DTA, means a weekday other than a public holiday in the ACT;</li> </ol>

- b. for the Buyer, means a weekday other than a public holiday in the address stated for the Buyer Representative at Item 3 of Part E – Contract Details or, if no place is specified, in the State or Territory specified in Item 48 of Part E – Contract Details;
- c. for the Seller, means a weekday other than a public holiday in the address stated for the Seller Representative at Item 4 of Part E – Contract Details or, if no place is specified, in the State or Territory specified in Item 48 of Part E – Contract Details.

## **Buyer**

means:

- a. when used in Part A - Panel Terms – any person that is entitled to purchase Products and Services through the Panel, being:
  - i. all entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth) and all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control;
  - ii. all bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments);
  - iii. State or Territory Local Governments established under the *Local Government Act 1993* (NSW) or equivalent legislation in other States and Territories;
  - iv. Publicly owned Australian universities;
  - v. DTA approved Third Party Providers.
- b. when used in a Contract – each entity that is identified as such in Item 3 of Part E - Contract Details associated with that Contract or such other departments, agencies or authorities of the Commonwealth (or a State, Territory or Local Government) as are from time to time responsible for administering the Contract.

## **Buyer Data**

means any document, device, article or medium which embodies Buyer Material, Official

	Information or other Material owned or licensed by the Buyer.
<b>Buyer Equipment</b>	means any equipment that is: <ul style="list-style-type: none"> <li>a. owned or controlled by the Buyer; and</li> <li>b. provided to the Seller or a Labour Hire Worker.</li> </ul>
<b>Buyer Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. provided by the Buyer to the Seller for the purposes of a Contract;</li> <li>b. owned by or in the possession, custody or control of the Buyer; or</li> <li>c. derived at any time from the Material referred to in paragraph a.</li> </ul>
<b>Buyer Representative</b>	has the meaning set out in clause 5.6.1 of Part B - Core Contract Terms and Item 3 of Part E - Contract Details.
<b>Buyer Workers</b>	means a person employed by, or engaged under a contract by, a Buyer.
<b>Candidate</b>	has the meaning in clause 2, Part C – Labour Hire.
<b>Catalogue</b>	any catalogue established and administered by DTA as set out in clause 9.2 of Part A – Panel Terms which includes the details of the Products and Services that can be purchased by Buyers.
<b>Category</b>	means a category of Products and Services which are available under a Module and which have been specified in Part D – Module and Category Descriptions.
<b>Category Period</b>	the period of a Category as set out in clause 6.8 of Part A – Panel Terms.
<b>Change of Control</b>	means: <ul style="list-style-type: none"> <li>a. a body corporate or entity that Controls the Seller ceases to Control the Seller; or</li> <li>b. a body corporate or entity that does not Control the Seller comes to Control the Seller.</li> </ul>
<b>Cloud Services</b>	means any cloud-related services subcontracted by the Seller under a Contract or made available by the Buyer under a Contract, including the physical infrastructure used to deliver such services.
<b>Commonwealth</b>	means the Commonwealth of Australia.

<b>Commonwealth Entity</b>	has the same meaning as it has in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
<b>Commonwealth Record</b>	has the meaning given to it in the <i>Archives Act 1983</i> (Cth).
<b>Confidential Information (of the Seller)</b>	means information that is by its nature confidential and is described in Items 46 and 47 of Part E - Contract Details as applicable.
<b>Conflict</b>	means: <ul style="list-style-type: none"> <li>a. when used in Part A – Panel Terms – any matter, circumstance, interest or activity affecting the Seller or its Personnel which may or may appear to impair the ability of the Seller to perform its obligations under the Panel Agreement or any Contract diligently and independently;</li> <li>b. when used in a Contract – any matter, circumstance, interest or activity affecting the Seller or its Personnel which may or may appear to impair the ability of the Seller to perform its obligations under the Contract diligently and independently.</li> </ul>
<b>Consequential Loss</b>	means such losses as may reasonably be supposed to have been in the contemplation of the parties, at the time they entered into a Contract, as the probable result of breach of the Contract, other than losses such as may fairly and reasonably be considered as arising naturally from the relevant breach.
<b>Consolidated List</b>	means the list of individuals and entities listed in the consolidated sanctions list published by the Australian Government's Department of Foreign Affairs and Trade.
<b>Contract</b>	means a contract made under the Panel Agreement for the provision of Products and Services and includes the parts stated in clause 4.1.1 of Part B - Core Contract Terms.
<b>Contract Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of a Contract (including any reports that the Seller is required to provide under the Contract);</li> <li>b. provided or required to be provided to the Buyer as part of the Products and Services; or</li> </ul>

	<ul style="list-style-type: none"> <li>c. derived at any time from the Material referred to in paragraphs a or b.</li> </ul>
<b>Contract Period</b>	means the period of a Contract as specified in Item 5 of Part E - Contract Details, plus any extension of that period in accordance with clause 3.2 of the Part B – Core Contract Terms.
<b>Contract Start Date</b>	means the date specified in Item 5 of Part E - Contract Details.
<b>Contract Variation</b>	means the DTA Form designated by DTA to be used for the purposes of recording and giving effect to any Contract variations under clause 15.12 of Part B - Core Contract Terms.
<b>Control</b>	<p>means, in relation to the Seller in the context of a Change of Control, any of the following:</p> <ul style="list-style-type: none"> <li>a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Seller;</li> <li>b. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Seller;</li> <li>c. the ability to appoint or remove a majority of the directors of the Seller;</li> <li>d. the ability to exercise or control the exercise of the casting of a majority of votes at the meeting of the board of directors of the Seller; and</li> <li>e. any other means, direct or indirect, of dominating the decision making and financial and operating policies of Seller.</li> </ul>
<b>Conversion</b>	has the meaning given in clause 7.8.1 of Part C - ICT Labour Hire Module Specific Terms.
<b>Conversion Fee</b>	means the fee payable for the Conversion of a Labour Hire Worker, as specified in or determined in accordance with Item 35 of Part E - Contract Details.
<b>Correctly Rendered Invoice</b>	<p>means an invoice which is:</p> <ul style="list-style-type: none"> <li>a. rendered in accordance with all of the requirements of the Contract (note that Contracts will often specify that the invoice must be a tax invoice and/or that certain information must be included in the invoice and/or the format of the invoice); and</li> </ul>

- b. for amounts that are correctly calculated and due for payment and payable under the terms of the Contract.

**Cure Plan**

means a plan developed in accordance with clause 19 of Part A - Panel Terms or clause 25.4 of Part B – Core Contract Terms (as applicable).

**Cyber Attack**

includes any action taken through the use of computer systems, networks or digital devices or any unauthorised access to or use of a Digital System that is intended to have, is likely to have or does have an adverse effect on the security or reliability of data on the Digital System or the accessibility of the Digital System, and includes denial of service attacks.

**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.

**Defect**

means a deficiency in design, materials, functional capacity or workmanship which means a Product does not meet the requirements set out in Item 12 of Part E - Contract Details.

**Delivery Schedule**

means the timeframes for the delivery of the Products and Services as set out in the Item 7 of Part E - Contract Details.

**Digital System**

includes any electronic or other system, or any related process, equipment, tool, device, infrastructure, network, data, information, transmission, communication, software or facility, whether 'stand alone' or connected with any other item.

**DTA**

means the Commonwealth of Australia as represented by the Digital Transformation Agency (ABN 96 257 979 159) and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering the Panel Agreement.

**DTA Data**

means any document, device, article or medium which embodies Buyer Material, Official Information or other Material owned or licensed by the DTA and includes Buyer Data contained on the Online Portal.

<b>DTA Forms</b>	means the templates on the Online Portal as amended by DTA from time to time
<b>DTA Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. provided by the DTA to the Seller for the purposes of the Panel Agreement;</li> <li>b. owned by or in the possession or control of the DTA; or</li> <li>c. derived at any time from the Material referred to in paragraph a.</li> </ul>
<b>DTA Representative</b>	has the meaning set out in clause 10.1 of the Part A – Panel Terms and Item 10 of Schedule A1 - Panel Appointment Details.
<b>Eligible Data Breach</b>	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).
<b>Entrusted Person</b>	has the same meaning as it has in the <i>PTR Act</i> .
<b>Essential Eight Maturity Model or EEMM</b>	means the Essential Eight Maturity Model published by the Australian Signals Directorate, as updated from time.
<b>Fault</b>	means any defect, error, malfunction or problem in or arising from a Product or Service that relates to, arises from, or threatens or results in: <ul style="list-style-type: none"> <li>a. a non-compliance with any relevant specification for the Product or Service stated in the Contract; or</li> <li>b. a breach of an obligation of the Seller under this contract; or</li> <li>c. interferes with or threatens the Buyer's normal production environment,</li> <li>d. and includes any circumstance where such matters are reasonably suspected until such time as they are reasonably established not to apply.</li> </ul>
<b>Fees</b>	has the meaning given in clause 6.1.1 of Part B - Core Contract Terms.
<b>Foreground IP</b>	means Intellectual Property Rights created by the Seller or a Subcontractor on or following the Contract Start Date for the purpose of, or as a result of performing its obligations under, the Contract (other than Background IP or Third Party IP).
<b>General Interest Charge Rate</b>	means the general interest charge rate determined under section 8AAD of the <i>Taxation Administration</i>

	<p><i>Act 1953 (Cth)</i> on the day that payment is due, expressed as a decimal rate per day.</p>
<b>GST</b>	<p>has the meaning it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>.</p>
<b>Harmful Code</b>	<p>includes any computer code or instruction that is designed, created, replicated or distributed to have the ability to:</p> <ol style="list-style-type: none"> <li>damage, inhibit, interfere with or adversely affect computer programs or data or information and communications technology systems; or</li> <li>compromise or adversely affect the security, integrity, confidentiality or privacy of such systems or programs or data of any person; or</li> <li>otherwise is or is intended to be disruptive, vexatious, harmful, malicious or destructive to any person or thing,</li> </ol> <p>including any computer ‘virus’, ‘worm’, ‘Trojan horse’, ‘time bomb’, ‘spyware’, ‘malware’ or ‘backdoor’ and any computer code or instruction designed to disable all or part of any Digital System on an expiry date or if certain conditions are or are not met. However, <b>Harmful Code</b> does not include any specific feature or function which the Buyer has explicitly directed the Seller to include as part of any Product.</p>
<b>Hours Worked</b>	<p>means the number of hours worked by a Labour Hire Worker as stated in a Timesheet approved by the Buyer.</p>
<b>Illegal Worker</b>	<p>means a person who:</p> <ol style="list-style-type: none"> <li>has unlawfully entered and remains in Australia;</li> <li>has lawfully entered Australia, but remains in Australia after his/her visa has expired; or</li> <li>is working in breach of their visa conditions.</li> </ol>
<b>Implementation Report</b>	<p>means a report provided to the Buyer in accordance with clause 33.3 of Part B – Core Contract Terms.</p>
<b>Implementation Report Requirements</b>	<p>means the requirements for an Implementation Report set out in the AIP Plan User Guide for developing an AIP Plan and the Implementation Report User Guide referred to within.</p>
<b>Indigenous enterprise</b>	<p>means an organisation that is 50% or more Indigenous owned that is operating a business.</p>



<b>Indigenous Participation Plan</b>	means any such plan attached or incorporated by agreement into this Contract.
<b>Indigenous Procurement Policy</b>	means the Indigenous Procurement Policy of the Commonwealth, details of which are available at <a href="https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy">https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy</a> .
<b>Information Security Manual or ISM</b>	means the Information Security Manual as published by the Australian Signals Directorate, as updated from time
<b>Intellectual Property Rights or IP</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to Confidential Information.</li> </ul>
<b>IPP Contractor Portal</b>	means the online portal where the Seller can report on their progress against the mandatory minimum requirements under the Indigenous Procurement Policy and which is available here: <a href="https://www.niaa.gov.au/ippcp">https://www.niaa.gov.au/ippcp</a> .
<b>Key Personnel</b>	means the individuals specified in Item 23 of Part E - Contract Details as required to perform all or part of the work constituting the provisions of the Products and Services.
<b>Labour Hire Licence</b>	means a current and valid labour hire licence issued to the Seller by the relevant licensing authority as required in the Location.
<b>Labour Hire Worker</b>	means the individuals identified as such in Item 22 of Part E - Contract Details and any other individuals engaged by the Seller under clause 3.1 of Part C - ICT Labour Hire Module Specific Terms.
<b>Labour Hire Worker Services</b>	means the part of the Products and Services provided by Labour Hire Workers.

<b>Legislation</b>	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
<b>Licence</b>	means a worldwide, transferable, perpetual, non-exclusive, royalty-free and irrevocable licence (including a right to sub-license).
<b>Location</b>	means: <ul style="list-style-type: none"> <li>a. when used in Part A – Panel Terms or a Contract – each location (including State or Territory) in which the Seller provides the Products and Services;</li> <li>b. when used in Part C – ICT Labour Hire Module Specific Terms – the address at which a Labour Hire Worker will generally perform the Services, being the address specified in Item 22 of Part E - Contract Details or nominated by a Buyer under clause 4.4.1.b of Part C - ICT Labour Hire Module Specific Terms.</li> </ul>
<b>Material</b>	means any thing in relation to which Intellectual Property Rights arise.
<b>Maximum Fees</b>	means the pricing arrangements set out in Item 9 of Schedule A1 - Panel Appointment Details and under clause 8.1 of Part A – Panel Terms as varied from time to time in accordance with the Panel Agreement.
<b>Milestone</b>	means an event specified as a “milestone” or key event or date (no matter how expressed) in Item 19 of Part E - Contract Details or any other part of a Contract.
<b>Minimum Expected Performance</b>	means the performance measures outlined in Item 53 of Part E – Contract Details.
<b>Modern Slavery</b>	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
<b>Modify</b>	means to add to, correct, enhance, reduce, change and/or replace; and ‘ <b>Modification</b> ’ has a corresponding meaning.
<b>Module</b>	means a class of Products and/or Services which are available under the Panel and which have been specified in Part C – Module Specific Terms.
<b>Module End Date</b>	means the later of the Module Initial End Date and the final day of any extension of the Module Period under clause 6.5.2 of Part A - Panel Terms.

<b>Module Extension Date</b>	means the dates specified as such in Item 7 of Schedule A1 - Panel Appointment Details for each Module.
<b>Module Initial End Date</b>	means the dates specified as such in Item 7 of Schedule A1 - Panel Appointment Details for each Module.
<b>Module Period</b>	means the term of a Module, being the period from the Module Start Date to the Module End Date.
<b>Module Start Date</b>	means the dates specified as such in Item 7 of Schedule A1 - Panel Appointment Details for each Module.
<b>Moral Rights</b>	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed.</li> </ul>
<b>Official Information</b>	means any information developed, received or collected by or on behalf of the DTA or Buyer to which the Seller gains access under or in connection with the Panel Agreement or Contract, and includes any Material contained in Products and Services and the terms of the Panel Agreement or Contract.
<b>Official Resources</b>	includes: <ul style="list-style-type: none"> <li>a. Official Information;</li> <li>b. people who work for or with the Buyer; and</li> <li>c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Buyer.</li> </ul>
<b>Online Portal</b>	means the internet-based system for the administration of the Panel as notified by DTA to the Seller from time to time.
<b>Online Portal Terms and Conditions</b>	means the terms of use for the Online Portal as amended from time to time.
<b>Open Access Licence</b>	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see

<http://creativecommons.org.au/learn-more/licences>).

<b>Order</b>	has the meaning given in clause 13.3.1 of Part A - Panel Terms.
<b>Panel</b>	Means the panel of Sellers who have been appointed by DTA to offer to provide ICT Products and Services to Buyers known as the Digital Marketplace Panel, administered by the DTA. 2.
<b>Panel Agreement</b>	means the deed of standing offer between DTA and the Seller and includes the schedules (and any attachments to the schedules) as the context requires.
<b>Panel Appointment Details</b>	means the form, substantially in the form of Schedule A1 detailing the terms of the Seller's appointment to the Panel.
<b>Panel End Date</b>	means the later of the Panel Initial End Date and the final day of any extension of the Panel Period under clause 6.2.2 of Part A – Panel Terms.
<b>Panel Extension Date</b>	means the date specified as such in Item 6 of Schedule A1 - Panel Appointment Details.
<b>Panel Initial End Date</b>	means the date specified as such in Item 5 of Schedule A1 - Panel Appointment Details.
<b>Panel Period</b>	means the term of the Panel, being the period from the Panel Start Date to the Panel End Date.
<b>Panel Start Date</b>	means the date specified as such in Item 5 of the Panel Appointment Details.
<b>Part</b>	Means any one of parts A to F of the Panel Agreement and includes any schedules or attachments to those parts.
<b>Part A - Panel Terms</b>	means the terms set out in the document titled Panel Terms or Part A - Panel Terms.
<b>Part B - Core Contract Terms</b>	means the terms and conditions set out in the document titled Part B – Core Contract Terms.
<b>Part C - Module Specific Terms</b>	means the terms that apply to a Module as specified in each document titled Part C.
<b>Part D – Module and Category Descriptions</b>	Means the document titled Part D.
<b>Part E – Contract Details</b>	means the form, substantially in the form of Part E detailing the terms of the Seller's agreement with a Buyer forming a Contract.
<b>Part F - Definitions and Interpretation</b>	means this Part F document.
<b>Payment Policy</b>	means the Commonwealth's ' <i>Payment Times Procurement Connected Policy</i> '.

**Payment Policy  
Evaluation  
Questionnaire**

means a questionnaire in substantially the form of Appendix C of the Payment Policy.

**Payment Policy  
Purpose**

means:

- a. the review, evaluation, monitoring, assessment and reporting on the Payment Policy, including the compliance by those Commonwealth Sellers (and their subcontractors) that are Reporting Entities; and
- b. improving payment times to PAYMENT TIMES POLICY Subcontractors.

**Payment Policy  
Remediation Plan**

means a written remediation plan substantially in the form of Appendix D of the Payment Policy.

**Payment Policy  
Subcontract**

means a subcontract between a Reporting Entity and another party (**Other Party**) where:

- a. the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Contract;
- a. both parties are carrying on business in Australia; and
- b. the component of the subcontract for the provision of goods or services for the purposes of this Contract has a total value of less than (or is reasonably estimated will not exceed) \$1 million (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements),

but does not include the following subcontracts:

- c. subcontracts entered into prior to the Reporting Entities' tender response for this Contract;
- d. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
- e. subcontracts for the purposes of:

- i. procuring and consuming goods or services overseas; or
- ii. procuring real property, including leases and licences.

**Note to Reporting Entities:** You will need to identify whether a subcontract delivers goods or services for the purposes of the contract with the Commonwealth.

**Payment Policy Subcontractor**

means the party that is entitled to receive payment for the provision of goods or services under a Payment Policy Subcontract.

**Payment Policy Team**

means the relevant Minister, department or authority that administers or otherwise deals with the Payment Policy on the relevant day.

**Performance Indicators**

means the performance indicators and associated criteria described in the table in clause 25.3 of Part B – Core Contract Terms.

**Performance Issue**

has the meaning given in clause 20.1 of Part A – Panel Terms and clause 25.4 of Part B – Core Contract Terms.

**Performance Management Framework**

means the framework described in section 4 of Part B – Core Contract Terms.

**Performance Rating**

means the performance rating given to the Seller by the Buyer in accordance with clause 25 of Part B – Core Contract Terms.

**Personal Information**

has the same meaning as it has in the *Privacy Act 1988* (Cth).

**Personnel**

means:

- a. in relation to the Seller – any natural person who is an officer, employee, contracted staff member, agent or professional advisor of the Seller or of a Subcontractor, including any Key Personnel, Labour Hire Workers and Expert Personnel; and
- b. in relation to the Buyer – any natural person, other than a person referred to in paragraph a, who is an officer, employee, contracted staff member, agent or professional advisor of the Commonwealth.
- c. in relation to the DTA – any natural person, other than a person referred to in paragraph

	a, who is an officer, employee, agent or professional advisor of the Commonwealth
<b>Plan</b>	has the meaning given in clause 3.1.2 of the Part C - Professional and Consulting Services Module Specific Terms.
<b>Price Review</b>	<p>in relation to the Panel Agreement - means the process set out at clause 38.2 of Part A – Panel Terms; and</p> <p>in relation to the Contract - means the process set out in the relevant Part C – Module Specific Terms.</p>
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	means the Privacy Commissioner for the Commonwealth or the equivalent State or Territory office holder.
<b>Product or Service Price Cap</b>	means the maximum Fees payable for a given Product or Service, as specified in Item 32 of Part E - Contract Details.
<b>Products</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a. any information, document, hardware, product, system, Software, Material, or other thing; or</li> <li>b. any replacement of the things mentioned in paragraph a of this definition</li> </ul> <p>which is, or is required to be, delivered or provided by the Seller under a Contract.</p>
<b>Products and Services</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a. in the context of the Panel Agreement - the Products and Services that a Seller is Appointed to sell under the Panel Agreement; and</li> <li>b. in the context of a Contract – the Products and Services that the Seller is required to provide in accordance with a Contract.</li> </ul>
<b>Prohibited Entity</b>	<p>means any entity that:</p> <ul style="list-style-type: none"> <li>a. has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;</li> <li>b. is on, or which has any employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of</li> </ul>

	individuals and entities to which terrorist asset freezing applies; or
	c. is named in a report tabled in the Australian Parliament by the Workplace Gender Equality Agency as a supplier that has not complied with the WGE Act.
<b>Protected Information</b>	has the same meaning as it has in the <i>PTR Act</i> .
<b>Protective Security Policy Framework</b>	means the Protective Security Policy Framework available at <a href="http://www.protectivesecurity.gov.au">www.protectivesecurity.gov.au</a> and the Australian Government Information Security Manual available at <a href="https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism">https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism</a> , as amended or replaced from time to time.
<b>PTR Act</b>	means the <i>Payment Times Reporting Act 2020</i> (Cth).
<b>Purchase Order Contract</b>	<p>means a contract made under the Panel for the provision of Products and Services using the Buyer's chosen purchase order terms.</p> <p>In Part A – Panel Terms, Contract will be interpreted to include Purchase Order Contracts unless a contrary intention is clear.</p>
<b>Quote</b>	means a quote issued by a Seller in response to a Request for Quote.
<b>Relevant Milestone</b>	means, in respect of a Correctly Rendered Invoice, any Milestone that was due to be achieved during the period to which that invoice relates.
<b>Remote Area</b>	means the areas identified in the Remote Indigenous Procurement Policy map on the National Indigenous Australians Agency website, as updated from time to time.
<b>Reporting Entity</b>	has the same meaning as it has in the <i>PTR Act</i> .
<b>Reporting Entity Subcontractor</b>	<p>means any person that:</p> <ol style="list-style-type: none"> <li>is a Reporting Entity; and</li> <li>provides goods or services directly or indirectly to the Seller for the purposes of the contract where the value of such goods or services is estimated to exceed \$4 million (GST inclusive).</li> </ol>



	<b>'Reporting Entity Subcontract'</b> has a corresponding meaning.
<b>Request for Quote Closing Date</b>	means the date specified in the Request for Quote as the deadline for submission of Quotes.
<b>Request for Quote or RFQ</b>	a request for quote for the provision of Products and Services as set out in clause 13 of Part A – Panel Terms.
<b>Requirement</b>	means an obligation, condition, restriction or prohibition binding on the Seller under the Panel Agreement or a Contract.
<b>Reseller</b>	means a Seller who is authorised to supply a Product as: <ul style="list-style-type: none"> <li>a. an agent for the Vendor of that Product or Service; or</li> <li>b. an entity that facilitates the entry into a direct contract between the Buyer and the Vendor for the relevant Product or Service.</li> </ul>
<b>RFQ Process</b>	means a process conducted by a Buyer in accordance with clause 13.2 of Part A – Panel Terms.
<b>Satisfactory</b>	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
<b>Security Classified Resources</b>	means Official Resources that, if compromised, could have adverse consequences for the DTA or a Buyer.
<b>Security Incident</b>	means any actual or suspected breach of security (whether relating to information, data, logical, physical or system security or otherwise), or any contact, request or approach from any person seeking unauthorised access to Official Resources, or circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security.
<b>Seller</b>	means: <ul style="list-style-type: none"> <li>a. with respect to the Panel Agreement, each entity that is identified as such in Item 4 of Schedule A1 - Panel Appointment Details; or</li> <li>b. with respect to a Contract, each entity that is identified as such in Item 4 of Part E - Contract Details associated with the Contract,</li> </ul>

	and, where the context requires, includes the Seller's Personnel.
<b>Seller Contract Representative</b>	has the meaning set out in clause 5.7.1 of Part B - Core Contract Terms.
<b>Seller Information</b>	any document or information on the Online Portal pertaining to the Seller including information on a Catalogue and the Seller's Online Portal profile
<b>Seller Representative</b>	has the meaning set out in clause 10.2 of Part A – Panel Terms.
<b>Seller's Modules and Categories</b>	has the meaning given under clause 7.1.4 of Part A - Panel Terms.
<b>Service Credit</b>	means the amount (if any) credited to a Buyer as a result of a failure by the Seller to achieve a Service Level as stated in Item 53 of Part E - Contract Details.
<b>Service Level</b>	means a metric used to measure and report on the Seller's performance under a Contract as stated in Item 53 of Part E - Contract Details (if any).
<b>Service Level Failure</b>	has the meaning given in clause 25.7 of Part B - Core Contract Terms.
<b>Services</b>	means the services stated in Item 11 or elsewhere in Part E - Contract Details or a Contract and includes all: <ul style="list-style-type: none"> <li>a. incidental services;</li> <li>b. functions required for the provision of those services;</li> <li>c. Material that forms part of the Services; and</li> <li>d. associated Products required for the provision of those services.</li> </ul>
<b>Shadow Economy Procurement Connected Policy</b>	means the <i>Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> available at <a href="https://www.treasury.gov.au/Shadow-Economy-Procurement-Connected-Policy">Shadow Economy Procurement Connected Policy   Treasury.gov.au</a> .
<b>Similar Role</b>	means a role that is: <ul style="list-style-type: none"> <li>a. substantially similar to the role which the relevant Labour Hire Worker has performed under the relevant Contract immediately prior to accepting the offer of employment from the Buyer; and</li> <li>b. within the same branch (or branch-equivalent), being an area of the Buyer that is under the remit of an APS classification SES Band 1 (or equivalent).</li> </ul>

<b>Small to Medium Enterprise or SME</b>	has the meaning given in the Commonwealth Procurement Rules.
<b>Statement of Requirements</b>	The Buyer's functional and technical requirements for Products and Services as described or incorporated by reference in a Contract. Includes <b>Specification</b> .
<b>Statement of Tax Record</b>	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at <a href="https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR">https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR</a> .
<b>Subcontractor</b>	means any person (other than the Buyer) that, for the purposes of the Contract, provides Products and Services directly or indirectly to the Seller and includes Approved Subcontractors; and ' <b>Subcontract</b> ' has a corresponding meaning.
<b>Support and Maintenance</b>	includes the provision of such instructions, documentation, support, maintenance, advice and assistance as may be reasonably required by the Buyer in respect of the installation, configuration, testing, tuning, roll-out, features, functions, performance, operation, interfacing and integration with other Items (whether supplied by the Seller or not) and problem diagnosis in respect of a Supported Item.
<b>Supported Item</b>	means any Item stated in Item 52 of Part E – Contract Details for which the Seller is required to provide Maintenance in accordance with clause 6 of Part C – Professional and Consulting Services Module Specific Terms or otherwise in respect of this Contract.
<b>Suspension Notice</b>	means a notice issued by DTA as set out in clause 25.6 of Part A – Panel Terms.
<b>Third Party IP</b>	means Intellectual Property Rights which are owned by a person other than the DTA, Buyer or the Seller and is: <ul style="list-style-type: none"> <li>a. used or required to be used by the Seller in the course of performing the Relevant Services; or</li> <li>b. supplied or required to be supplied under a Contract,</li> </ul> but does not include any Intellectual Property Rights that subsist in any Buyer Material.
<b>Timesheet</b>	means a record of the Hours Worked in a specified period by a Labour Hire Worker, which record must comply with the form and substance details set out in Item 38 of the Contract Details.

<b>Total Price Cap</b>	means the maximum Fees payable by the Buyer under a Contract, as specified in Item 32 of Part E - Contract Details.
<b>Transition Out Period</b>	means the time period specified in Item 9 of Part E - Contract Details during which the Seller must perform the obligations set out in the Contract.
<b>Underlying Software</b>	means any software required for the provision of the Products and Services, as stated in Item 14 of Part E - Contract Details.
<b>Valid</b>	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.
<b>Vendor</b>	for a Product for which the Seller is a Reseller, means the third party providing that Product to the Seller for the purposes of resale to a Buyer (either through the Seller being the agent of the Vendor, or through the Seller facilitating a direct contractual relationship between the Vendor and the Buyer).
<b>Wage Price Index</b>	means at any point in time, the 'Wage Price Index (Australia, Original Series)' as published by the Australian Bureau of Statistics at that point in time or, if that index is discontinued or materially altered, such substitute index as may be agreed by the parties or, in the absence of such agreement, as may be determined by the President of the Law Society of New South Wales or his or her nominee to be an appropriate index reflecting the general level of monetary inflation across Australia.
<b>WGE Act</b>	means the <i>Workplace Gender Equality Act 2012</i> (Cth).
<b>Whole of Government Arrangement or WofG Arrangement</b>	means an arrangement set out in clause 14 of Part A – Panel Terms.

## 1.2. Interpretation

- 1.2.1. In the Panel Agreement and any Contract, unless the contrary intention appears:
- a. a reference to DTA means DTA as a party to the Panel Agreement;
  - b. a reference to a Buyer does not include DTA, unless DTA is a Buyer under a Contract;
  - c. a reference to a clause, paragraph, schedule or attachment in:
    - i. the Panel Terms - is to a clause or paragraph of, or schedule or attachment to, the Panel Agreement;
    - ii. the Core Contract Terms - is to a clause or paragraph of, or schedule or attachment to, the Contract;

- iii. the Module Specific Terms - is to a clause or paragraph of, or schedule or attachment to, the Module Specific Terms; and
  - iv. the Module and Category Descriptions - is to a clause or paragraph of, or schedule or attachment to, the Module and Category Descriptions.
- d. a reference to a clause, section or paragraph includes a reference to a subclause of that clause, subsection of that section or subparagraph of that paragraph;
- e. words importing a gender include any other gender;
- f. words in the singular include the plural and words in the plural include the singular;
- g. clause headings are inserted for convenient reference only and have no legal effect including limiting or extending the language or meaning of provisions to which they refer;
- h. guidance for Buyers and/or Sellers is for assistance only and has no legal effect;
- i. words importing a person include a partnership and a body whether corporate or otherwise;
- j. words of inclusion are not to be interpreted as words of limitation;
- k. all references to dollars are to Australian dollars;
- l. if a payment is due or a thing is to be done on a day other than a Business Day, that payment must be made or the thing done by the next Business Day;
- m. if the Seller has an obligation to do (or not do) something, the Seller must comply with that obligation at its cost;
- n. if the DTA has the right to reduce the scope of the Panel Agreement, this includes the right to remove the Seller from any Module or Category to which the Seller has been appointed;
- o. wherever the Panel Agreement or Contract gives the DTA or a Buyer the right to take (or not take) certain action, then the DTA or the Buyer may (or may not) take the action in its absolute discretion;
- p. where the agreement, approval or consent of the DTA or the Buyer is required, the DTA or the Buyer may (or may not):
  - i. require the Seller to comply with conditions before giving its agreement, approval or consent; and
  - ii. give its agreement, approval or consent subject to conditions, provided that such conditions must not be unlawful or inconsistent with the Panel Agreement or the Contract;
- q. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;

- r. a reference to a document, publication, standard, Commonwealth policy or instrument is a reference to the document, publication, standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
- s. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- t. if the parties have not completed an Item in Schedule A1 - Panel Appointment Details or Part E - Contract Details, that item will be taken to be 'not applicable' for the purpose of the Panel Agreement or the relevant Contract;
- u. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form;
- v. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally; and
- w. a reference to a document includes a report, manual, design, drawing and the like.

### **1.3. Guidance on construction of contract**

- 1.3.1. As far as possible all provisions of the Panel Agreement and any Contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.2. If anything in the Panel Agreement or any Contract is void or otherwise unenforceable then it will be severed and the rest of the Panel Agreement or Contract remains in force.
- 1.3.3. A provision of the Panel Agreement or any Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.3.4. Under a Contract, wherever the Buyer is in the situation labelled b under the definition of Buyer above, all references:
  - a. to the Commonwealth;
  - b. Commonwealth laws;
  - c. Commonwealth policies; and
  - d. Commonwealth guidelines,

will as far as necessary refer to the equivalent provisions for the State or Territory applicable to the Buyer. Any disagreement over the application of this clause is to be determined by the Buyer in its absolute discretion.