



Order Form - Software Licensing and Services (SLS) Panel

ITEM	CLAUSE REFERENCE	DETAILS
1.	Contract Number:	SM-07969-FC9
2.	Buyer details (clauses 26 and 27.10 of the Head Agreement):	Buyer Department of Home Affairs ABN 33 380 054 835 Buyer Representative s. 22(1)(a)(ii) @homeaffairs.gov.au Buyer address for Notices 2 Constitution Avenue, Canberra ACT Australia 2601
3.	Seller details (clauses 26 and 27.9 of the Head Agreement):	Seller Buddi Ltd ABN 62 153 640 202 Seller Contract Representative s. 47F(1) Seller address for Notices 17 Church Street, Rickmansworth, Herts WD3 1DE, U.K. ceo@buddi.co.uk
4.	Category (clause 2 of the Head Agreement):	Category 2 – Commercial Off-the-Shelf Software.
5.	Offerings (clause 9 of the Head Agreement and Schedule 3):	Electronic Monitoring Services.
6.	Additional Information (clause 9.6 of the Head Agreement):	Not applicable.
7.	Order/RFQ reference number (clause 12.5 of the Head Agreement):	RFQ Reference Number SM-07969.

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8.	Contract Start Date, Contract Period, and Option Periods (clauses 15.1 and 15.2 of the Head Agreement):	Contract Start Date 1 Decembre 2024. Contract Period 12 months. Option Periods One (1) Option of up to 12 months at the Buyer's sole discretion. Notice Period 10 Business Days.
9.	Language and measurement (clause 28.2 of the Head Agreement):	In accordance with the Head Agreement.
10.	Approvals and Consents (clause 28.3 of the Head Agreement):	In accordance with the Head Agreement.
11.	Charges (clause 29 of the Head Agreement) and Additional Charges (clause 30.5 of the Head Agreement) and Charges for Category 2 (clause 4 of Annexure A to Schedule 3):	As per Attachment B – Pricing Schedule
12.	Key Personnel (clause 31.5 of the Head Agreement):	Not applicable.
13.	Subcontractors (clauses 32.1, 32.3 and 36.2 of the Head Agreement):	Approved Subcontractors Not applicable. Subcontractor terms and conditions Not applicable.
14.	Written Undertakings (clause 33.4 of the Head Agreement):	In accordance with the Head Agreement.
15.	Notifiable Data Breaches (clause 35 of the Head Agreement):	Clauses 35.1 to 35.6 apply to the Contract.
16.	Audit of Buyers (clauses 37.16 and 37.17 of the Head Agreement):	The Buyer shall keep accurate and complete records and accounts pertaining to its compliance with its obligations under the license agreement with the Vendor. Seller or Vendor may request the Buyer to conduct a compliance review with 14 days' notice to the Buyer. The Buyer shall correct any non-compliance identified during the Buyer's compliance review. The Seller or Vendor may not conduct a compliance review of the

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		Buyer within 12 months after the conclusion of any prior compliance review that does not reveal any material non-compliance.
17.	Reseller options (clause 38 of the Head Agreement):	Is the Seller providing Offerings as a Reseller under this Contract? ☐ Yes. Option 2 – Seller Facilitation applies to this Contract.
18.	Offering Warranties (clauses 40.5 and 40.8 of the Head Agreement):	Offering Warranties Clause 40.6 applies.
19.	Insurance (clauses 41 and 70.1 of the Head Agreement)	Insurance In accordance with the Head Agreement. Cyber security insurance The Buyer reserves the right to request Cyber Insurance from the Seller within the duration of the agreement.

s. 33(a)(i)

21.	Liability Cap under a Contract (clauses 45.1 to 45.3 of the Head Agreement):	The total contract value.
22.	Indemnity (clauses 46 and 54.4 of the Head Agreement):	In accordance with the Head Agreement.
23.	Intellectual Property Rights (clauses 49.1 to 49.26 of the Head Agreement and clause 12 of Annexure B to Schedule 3):	In accordance with the Head Agreement (as applicable).
24.	End User Licence Agreements (clause 12.1 of Annexure B to Schedule 3):	Not applicable.
25.	Termination (clauses 50.1, 50.3, 50.9, 50.10, 50.15 of the Head Agreement):	In accordance with the Head Agreement.

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26.	Dispute Resolution (clause 51 of the Head Agreement):	Clause 51 applies to the Contract.
27.	Delivery (clauses 52.1 to 52.3 of the Head Agreement):	In accordance with the Head Agreement.
28.	Implementation and project management (clause 52.5 of the Head Agreement):	Not applicable.
29.	Removal of Offerings (clause 52.9 of the Head Agreement):	In accordance with the Head Agreement.
30.	Standards and codes (clause 53.1 of the Head Agreement):	Clause 53.2.2 of the Head Agreement applies to the Contract.
31.	Buyer Supplied Items (clauses 54.1 to 54.5 of the Head Agreement), Buyer Assistance (clause 55 of the Head Agreement), and Access to Buyer's Site (clauses 56.1 and 56.5 of the Head Agreement):	Buyer Supplied Items In accordance with the Head Agreement. Buyer Assistance Nil. Access to Buyer's Site Not applicable.
32.	Acceptance Testing (clauses 57.1, 57.2, 57.3, 57.4, 57.9, 57.10 and 57.11 of the Head Agreement):	The Offerings will be deemed Accepted on Delivery to the Buyer.
33.	Rectification (clauses 58.1 and 58.3 of the Head Agreement):	In accordance with the Head Agreement.
34.	Warranties (clauses 59.1 and 59.2 of the Head Agreement):	Clause 59.4 applies.
35.	Documentation (clause 60.1 to 60.3 of the Head Agreement):	In accordance with the Head Agreement.
36.	Packaging (clause 61.1 of the Head Agreement):	Not applicable.
37.	Transfer of title and risk (clause 63 of the Head Agreement):	Not applicable.
38.	Performance Management Framework	In accordance with the Head Agreement.

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	(clause 64.1 of the Head Agreement), Service Credits (clauses 64.2 and 64.3 of the Head Agreement):	
39.	Transition Out (clauses 65.1 to 65.3 of the Head Agreement):	As per attachment A – Scope of Work.

s. 33(a)(i)

s. 33(a)(i)

41. Harmful Code (clause 68.2 of the Head Agreement):	In accordance with the Head Agreement.
42. Protection of Buyer Material (clause 69 of the Head Agreement):	The Seller cannot remove Buyer Material from the Seller's premises or allow Buyer Material to be transmitted, stored, or taken by any means outside of Australia and any related conditions.
43. Non-return of Offerings (clause 71.1 of the Head Agreement):	In accordance with the Head Agreement.
44. Reporting to the Buyer (clauses 74.6 and 74.9 of the Head Agreement):	As per Attachment A – Scope of Work.
45. Commonwealth policy (clause 75.1 of the Head Agreement):	In accordance with the Head Agreement.
46. Business Hours:	9AM to 5PM Monday to Friday, Canberra Local Time.

s. 33(a)(i)

48.	Seller Confidential Information:	No additional Seller Confidential Information specified.
49.	Warranty Period:	Not applicable.
50.	Direct Competitors:	Not applicable.
51.	Additional Terms (clauses 13 and 14 of the Head Agreement):	Not applicable.
52.	Source Materials to be Held in Escrow (clause 5.1 of Annexure B to Schedule 3):	Does the Buyer require any the source materials be held in escrow? ☐ Yes ☒ No
53.	Restrictions on Use (clause 6.1 of Annexure B to Schedule 3):	In accordance with the Head Agreement
54.	Audit of Use (clause 7.1 of Annexure B to Schedule 3):	In accordance with the Head Agreement
55.	Support (clause 8.1 of Annexure B to Schedule 3):	Is the Seller required to provide Support during the Contract Period? ☒ Yes ☐ No
56.	Remote Access to Buyer's Systems (clause 9.1 of Annexure B to Schedule 3):	Is the Seller permitted to remotely access the Buyer's systems? ☐ Yes ☒ No, other than those provided by the Seller to the Buyer, for the purposes intended in the Head Agreement.

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57. Updates and New Releases (clause 10.1 and 10.2 of Annexure B to Schedule 3):	In accordance with the Head Agreement.
58. Time and Materials (clause 11.1 of Annexure B to Schedule 3):	Not applicable.
59. Compliance with the Commonwealth Supplier Code of Conduct (Paragraph 6.12 of the Commonwealth Procurement Rules (CPRs) states that non-corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in section 30 in the Public Governance, Performance and Accountability Rule 2014 must incorporate the Commonwealth Supplier Code of Conduct (Code) into all Commonwealth forms of contract):	59.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time. 59.2 The Seller must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract. 59.3 The Seller must: a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and b) on request from the Buyer, promptly provide information regarding: i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and ii. the Seller's compliance with clause 59.2. 59.4 The Seller must immediately issue the Buyer a Notice on becoming aware of any breach of clause 59.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved. 59.5 Where the Buyer identifies a possible breach of clause 59.2, it may issue the Seller a Notice, and the Seller must, within three (3) Business Days of receiving the Notice, either: a) where the Seller considers a breach has not occurred: advise the Buyer that there has not been a breach and provide information supporting that determination; or b) where the Seller considers that a breach has occurred: issue a Notice under clause 59.4 and otherwise comply with its obligations under this clause 59. 59.6 Notwithstanding clause 59.5, a Buyer may notify the Seller in writing that it considers that the Seller has breached clause 59.2, in which case the Seller must issue a Notice under clause 62.4 and otherwise comply with its obligations under this clause 59. 59.7 A failure by the Seller to comply with its obligations under any part of this clause will be a

	material breach of the Contract. 59.8 Nothing in this clause or the Code limits, reduces, or derogates from the Seller's other obligations under the Contract. The Buyer's rights under this clause are in addition to and do not otherwise limit any other rights the Buyer may have under the Contract. The performance by the Seller of its obligations under this clause will be at no additional cost to the Buyer. 59.9 The Seller agrees that the Buyer or any other Commonwealth agency may take into account the Sellers's compliance with the Code in any future approach to market or procurement process.
61. Notifications of breach	a) The Seller must proactively monitor compliance with its obligations under this clause, and if it becomes aware of any breach or potential breach of those obligations, then it must provide the Buyer immediate Notice of that breach or potential breach, and will: i. immediately comply with all directions of the Buyer in order to address the incident or breach, and ensure it does not occur again; ii. provide all information requested by the Buyer in relation to a breach of this clause; iii. take all action necessary to: • eliminate or minimise the impact of such breach or potential breach; and • prevent any repeat of such breach in the future; and iv. retain evidence and logs regarding the incident to help in determining cause, damage and likely source.
62. Security breaches	a) The Seller acknowledges and agrees that if any Specified Personnel lose their security clearances or cause a security breach, then the Buyer may: i. after consultation with the Seller, require the replacement of that person; or ii. immediately terminate this agreement.
63. Security training	The Seller must, upon request by the Buyer, ensure that its Personnel undertake training as Notified by the Buyer.
64. Audit by the Buyer	The Buyer may audit the Seller's compliance with the arrangements, policies, procedures, restrictions and safeguards required under this clause from time to time.

65. Immigration and Border Protection Workers

- a) The Seller acknowledges that it, its employees and Contracted Persons (including the Specified Personnel) may be Immigration and Border Protection Workers as determined by the Secretary or Australian Border Force Commissioner under section 5 of the ABF Act.
- b) The Seller acknowledges that Immigration and Border Protection Workers must comply with:
 - i. requirements and directions that may be issued under Part 5 of the ABF Act relating to alcohol and drug tests;
 - ii. secrecy and disclosure provisions in Part 6 of the ABF Act;
 - iii. Directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection Workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards or other matters;
 - iv. any other obligations under the ABF Act; and
 - v. Departmental policies issued by the Buyer to Immigration and Border Protection workers, as applicable.
- c) The Seller must ensure that its employees and Contracted Persons who are Immigration and Border Protection Workers are aware of and comply with their obligations under the ABF Act and applicable Departmental policies.
- d) At the Commencement Date, the directions and Departmental policies applicable to Immigration and Border Protection Workers are available on an ongoing basis on the following Buyer website:
<https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/integrity-and-professional-standards>.
- e) The Seller must include written terms and conditions in any agreement that it enters into with Contracted Persons, obliging such Contracted Persons, if they are Immigration and Border Protection Workers, to:
 - i. Be aware of and comply with their obligations under the ABF Act and applicable Departmental directions

and policies;

- ii. Ensure that their employees and Contracted Persons are aware of and comply with their obligations under the ABF Act and applicable Departmental policies; and
 - iii. Ensure that they have the right to cease the involvement of their employees and Seller Personnel in the performance of the Services or the Requirement, if so requested by the Buyer under this clause.
- f) If the Seller or its employees or Contracted Persons, including the Specified Personnel:
- i. breach this clause;
 - ii. fail at any time to comply with their obligations under the ABF Act or applicable Departmental policies; or
 - iii. fail to exercise any right to cease the involvement of any of their employees or Contracted Persons in the performance of the Services or the Requirement, if so requested by the Buyer under this clause,
 - iv. then the Buyer may (without limiting or affecting the Buyer's rights at law or otherwise), by written notice, in its absolute discretion:
 - require that the Seller immediately cease the involvement of specified employees or Contracted Persons, including Specified Personnel, in the performance of all or part of the Services or the Requirement;
 - immediately revoke its approval of a Subcontractor under this Contract; or
 - immediately terminate this Contract, whether or not the breach, failure or conduct is capable of being remedied,

without liability and at no additional cost to the Commonwealth.

- g) Without limiting or affecting the Buyer's rights at law or otherwise, the Buyer may also claim damages in connection with any of the matters.
- h) The Seller acknowledges that the Commonwealth's rights under this clause are in addition to the rights of the Secretary and the Australian Border

	Force Commissioner under section 57 of the ABF Act, and in particular their rights to require that persons cease to perform services for the Buyer or to terminate this agreement. i) Any termination of this agreement by the Secretary or the Australian Border Force Commissioner under section 57 of the ABF Act is also a valid termination under the terms and conditions of this agreement.
66. Step-In Rights	a) If at any time: i. a default occurs (whether or not the Seller has notified the Buyer); and ii. the Buyer considers that it is necessary to exercise its step-in rights to ensure the provision of the Services and/or Deliverables; or iii. the Seller requests the Buyer to exercise step-in-rights under this clause for a reasonable cause stated by the Seller, the Buyer may by written Notice to the Seller suspend the obligation on the Seller to provide some or all of the Services and/or Deliverables as specified in the Notice (Step-in Notice). b) From the date specified in the Step-in Notice: i. other than as directed by the Buyer, the Seller will cease being responsible for the provision of the Services and/or Deliverables as specified in the Step-in Notice; ii. the Buyer may, acting on its own behalf or through a third party, take any step to perform this Contract; iii. the Buyer's obligation to pay the Contract Charges is suspended to the extent the Seller has ceased to be responsible for the provision of the Services and/or Deliverables; and iv. the Seller will provide all reasonable assistance and comply with any direction of the Buyer to enable the Buyer to exercise its rights under this clause and manage this arrangement. c) The Buyer may by written Notice (Step-In Withdrawal Notice), withdraw the Step-In Notice where, in the Buyer's reasonable opinion: i. the circumstances giving rise to the Step-in Notice have ceased or are able to be appropriately managed by

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	the Seller; and ii. the Seller will otherwise be able to comply with its obligations under this Contract. d) The Seller will as soon as reasonably practicable and in any event by the date specified in the Step-In Withdrawal Notice, recommence performance of any obligations suspended under this clause. e) Nothing in this clause obliges the Buyer to exercise its step-in rights and the exercise of its rights under this clause will not affect any other right of the Buyer under this agreement, including but not limited to any right to terminate this agreement.
67. Termination by the Buyer as a result of a Step-In Event	a) The Buyer may terminate this agreement if: i. the event giving rise to the Step-In Event has not been remedied or resolved within a period of 40 Business Days after the date that the Notice under this clause was given, or such later date for remedy or resolution agreed to in writing by the Buyer and the Seller; or ii. in the Seller's reasonable opinion it is unlikely that the Seller will be able to continue to perform the Requirement upon the remedy or resolution of the Step-In Event. b) If this agreement is terminated in the circumstances referred to in this clause the Seller is not entitled to any termination compensation. c) No action of the Buyer or its nominee under this clause limits or otherwise affects the Seller's liability to the Buyer with respect to any default or non-performance by, or other liability of, the Seller under this agreement.
68. Other matters	Not applicable.
69. Notification of Significant Events	a) For the purposes of this clause, 'Significant Event' means: i. 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 officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or ii. any other significant matters,

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including the commencement of legal, regulatory or disciplinary action involving the Seller or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

- b) The Seller must immediately issue the Buyer a Notice on becoming aware of a Significant Event.
- c) The Notice issued under this clause must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Requirement were involved.
- d) The Buyer 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 this clause in relation to the event within three (3) Business Days of being notified by the Buyer.
- e) Where reasonably requested by the Buyer, the Seller must provide the Buyer with any additional information regarding the Significant Event within three (3) Business Days of the request.
- f) If requested by the Buyer, the Seller must prepare a draft remediation plan and submit that draft plan to the Buyer Project Officer for approval within ten (10) Business Days of the request.
- g) A draft remediation plan prepared by the Seller under this clause must include the following information:
 - i. how the Seller will address the Significant Event in the context of the Requirement, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Requirement 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.
- h) Upon receipt of a draft remediation plan, the Buyer will review the draft remediation plan and either provide

written approval of the draft remediation 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 reasonably requested by the Buyer and resubmit the draft remediation plan to the Buyer for approval within three (3) Business Days of the request for changes, unless a different timeframe is agreed in writing by the Buyer. This clause will apply to any resubmitted draft remediation plan.

- i) Without limiting its other obligations under this agreement, the Seller must comply with the remediation plan as approved in writing by the Buyer under this clause. 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.
- j) Where required in an approved remediation plan, the Seller, at no additional cost to the Buyer, must promptly remove from involvement in this agreement any Subcontractor that the Buyer reasonably considers should be removed.
- k) The Seller agrees that:
 - i. a failure by the Seller to comply with its obligations under this clause will be a material breach of this agreement for which the Buyer may terminate this agreement;
 - ii. the Buyer's rights under this clause are in addition to and do not otherwise limit any other rights the Buyer may have under this agreement; and
 - iii. the performance by the Seller of its obligations under this clause will be at no additional cost to the Buyer.

70. Change of Control

- a) Subject to this clause, the Seller shall seek the Buyer's prior written consent to any proposed Change of Control by providing notice to the Buyer at least 10 Business Days before the proposed Change of Control is to occur.
- b) If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange and the consent of the Buyer Representative could not have been obtained in accordance with this clause, the Seller shall seek that consent by providing notice to the Buyer within 30 Business Days after the Change of Control.

- c) In any notice given to the Buyer seeking consent to a Change of Control, the Seller shall include the following details:
- i. the ownership and management arrangements of the Seller that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Seller became aware of the prospective change;
 - ii. the ownership and management arrangements of the Seller that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Seller reasonably expects to be put in place if the change occurs;
 - iii. the impact (if any) that the change has had on the Seller's ability to meet its obligations under the agreement or, if the change has yet to occur, that the Seller reasonably expects the change to have on that ability; and
 - iv. the steps the Seller has taken or proposes to take to minimise the impact of the change or prospective change.
- d) If there is a Change of Control and the Buyer does not consent to the Change of Control, then the Buyer will be entitled to give the Seller a notice of termination.
- e) The Buyer may, in its absolute discretion, consent to, not provide its consent to, or impose conditions on, any Change of Control.
- f) Nothing in this clause requires the Seller to act in a manner inconsistent with its obligations under the Corporations Act or equivalent laws and regulations in the jurisdiction for the agreement, or where applicable, a foreign jurisdiction.

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Executed as an agreement by
Department of Home Affairs (ABN 33 380
054 835),

by its duly authorised delegate:

s. 22(1)(a)(ii)

Signature of delegate

In the presence of:

s. 22(1)(a)(ii)

Signature of witness

Sandra Jeffery

Name of delegate (print)

s. 22(1)(a)(ii)

Name of witness (print)

27/11/2024

Date

27/11/2024

Date

Executed as an agreement for and on
behalf of (Buddi Ltd 62 153 640 202),

by its duly authorised representative:

s. 47F(1)

Signature of authorised representative

In the presence of:

s. 47F(1)

Signature of witness

s. 47F(1)

s. 47F(1)

Name and position of authorised
representative (print)

Name of witness (print)

25 November 2024

Date

25 November 2024

Date

EXECUTED AS AN AGREEMENT

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Australian Government

Department of Home Affairs

ELECTRONIC MONITORING SERVICES

Attachment A – SCOPE OF WORK

s. 33(a)(i)

Monthly Report Content
Monthly summary
Alerts & Escalations - Alerts Generated & Escalation to ABF Type - Alerts Generated by Region Trend analysis regarding alerts (e.g. increase in No Communication Alerts and rationale)
Equipment & Inventory - Count of equipment provided - Count of total wearers - Total wearers by region - Actual number of pieces of equipment on hand at the end of the reporting period (by region) - Date and time of any stock requested by the Department - Date and time of any stock supplied by the Supplier - Percentage of stock supplied within the 48-hour timeframe - Faulty equipment data including Supplier assessment outcomes - Lost stock data - Equipment movement summary Repairs and maintenance of stock undertaken
Specified Personnel - List of Specified Personnel (roles and personnel) - Qualifications and relevant training undertaken - Attrition (and attrition rates) - Succession /contingencies activities undertaken
Finance Invoicing
Key focus areas As applicable
Key Performance Indicator Reporting - System availability - Provision of equipment - Customer service levels - Reporting and analysis - Response to and rectification of system faults and failures - Alert response

s. 47(1)(b)

17. Additional Services

- (a) The Department may, from time to time during the Term of the agreement, require additional Services related to the Requirement which may include, but are not limited to:
 - i. Additional quantities or frequency of goods and/or Services;
 - ii. Ongoing maintenance;
 - iii. Supply of consumables and spare parts;

-
- iv. Additional training;
 - v. Professional advice or consultation on topics related to the Requirement

18. Planning and Programme Implementation

- (a) The Supplier must perform the Services in an efficient manner in accordance with the following requirements:
 - i. must provide all the plans set out in clause 17(b) within the specified timeframes outlined in this agreement and must ensure all plans include:
 - specific requirements where appropriate; and
 - overarching management principles.
- (b) The Supplier must develop the following plans and documents for approval by the Department and comply with those plans and documents once they have been approved:
 - i. Transition-In Plan;
 - ii. Transition-Out Plan;
 - iii. Business Continuity Plan
 - iv. Risk Management and Fraud Control Plan; and
 - v. Work Health and Safety Plan.

s. 33(a)(i)

s. 33(a)(i)

20. Data Access

In addition to reports to be provided to the Department, the Supplier will also allow the Department access to data pertaining to a Monitored Person via a user portal.

- (a) All data collected will remain the property of the Department, and will be managed and secured in line with the Supplier's policies and applicable Commonwealth Law. The Supplier must seek the Department's approval prior to the destruction of any records, such approval not to be unreasonably withheld or delayed.
- (b) Data will be securely hosted and stored within Australia by the Supplier.
- (c) If an 'authorised officer' of the Supplier discloses information to a third party, the Supplier must notify the Department of the circumstances around that disclosure as soon as practicable.
- (d) In addition to the requirements in this agreement, the Supplier may collect, use and disclose information when an 'authorised officer' complies with s76F(2) of the Migration Act.

The Supplier is to ensure that the Electronic Monitoring Services are:

- (a) supported by onshore data storage, i.e. within Australia, including cloud-based data storage solutions with redundancy methods that are to be developed to prevent loss of data;
- (b) active data back-up solutions;
- (c) scalable storage capacity; and
- (d) scheduled server maintenance.

The Supplier must meet any industry standards, such as those listed in the Cloud Controls Matrix (for example ISO/IEC 207001/27002/27017/27018) to manage risks related to the security of data owned or handled by the Supplier, and that this system respects all the best practices and principles enshrined in such standards and comply with Departmental policies relating to the storage of data; and comply with the *Privacy Act 1988* (Cth), Migration Act and relevant surveillance laws.

21. Licensing and Ownership of Intellectual Property

- (a) The services are to be provided in compliance with the following:

- i. to the extent that the Department needs to use any of the Suppliers pre-existing material or third party material to receive the full benefit of the services (including the contract material), the Supplier grants the Department for the Term a world-wide, royalty free, non-exclusive (including the right to sublicense to parties agreed by the Supplier in writing) licence to use, reproduce, adapt and communicate (only where appropriate for the purposes of the Contract) that Material; or
- ii. the Supplier needs to use any of the Department material and Departmental data or Contract Material for the purpose of performing its obligations under this Contract, the Department grants to the Supplier, for the Term, a royalty-free, non-exclusive, non-transferable licence to use, reproduce and adapt such Material solely for the purpose of providing the services.

22. Compliance with other Commonwealth Policies

- (a) The services are to be provided in compliance with the following:

Policy	Administered by	Issues to consider
Australian Government Policy on Open Source software	Australian Government Information Management Office	For software procurements, Suppliers will be required to demonstrate a willingness to actively consider open source software.
Web Content Accessibility Guidelines version 2.0 (WCAG 2.0)	Australian Government Information Management Office	This policy applies to procurements for web or web-related goods or services, including but not limited to: • web applications; • software as a service; • cloud solutions; • use of online social media services, tools or widgets; and • any situation where a good or a service, including the provision of government information, is provided through an online mechanism or rendered through web technologies. Consider including the clause below in the Statement of Work.
Australian Government ICT Sustainability Plan 2010-2015	Department of the Environment	The Plan requires officials to adopt environmental standards for ICT acquisitions and to strengthen management processes for environmental risks and issues such as managing ICT energy use, carbon emissions and waste.
Commonwealth Supplier Code of Conduct	Department of Finance	The Code requires all Suppliers to conduct themselves with high

Policy	Administered by	Issues to consider
		standards of ethics such that they act with integrity and accountability. Suppliers must be able to demonstrate they have appropriate policies, frameworks, or similar, in place regarding ethics, governance and accountability to comply with these expectations.

23. Web Content Accessibility Guidelines Version 2.0

- (a) Having regard to the Web Accessibility National Transition Strategy (NTS), the Australian Government is committed to improved web accessibility. The Web Accessibility NTS:
- i. promotes improved web services, including but not limited to: websites, web content, and web applications used for the dissemination of information and/or the delivery of government services and the design, development, maintenance or upgrade of these;
 - ii. details the key milestones, scope and Transition In Plan for the Department's transition of its online information and services, for conformance with the Web Content Accessibility Guidelines (WCAG) version 2.0, developed by the World Wide Web Consortium (W3C); and
 - iii. encourages a more accessible and usable web environment that will more fully engage with, and allow participation by, more people within our society.
- (b) Services should comply with the Web Accessibility NTS, and all products, services and outputs should conform to WCAG 2.0 (specifying Level A, AA or AAA), preferably through the use of Sufficient Techniques (as that term is defined in the WCAG 2.0 Quick Reference (<http://www.w3.org/WAI/WCAG20/quickref/>)).

24. Records Management

- (a) Without limiting or reducing the Supplier obligations under the agreement, the Supplier must:
- i. create, maintain, store securely and transfer records to the Department in accordance with the *Archives Act 1983* (Cth) and the Australian and International Standard for Records Management, AS ISO 15489;
 - ii. ensure privacy is maintained in accordance with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles;
 - iii. comply with any applicable obligations concerning records as required by the *Work Health and Safety Regulations 2011* (Cth);
 - iv. produce timely, legible, accurate and comprehensive records of all Services;
 - v. transfer the custody of any hard or soft copy records to the Department within agreed timeframes acceptable to the Department;
 - vi. ensure records are safeguarded from unauthorised access or use;
 - vii. ensure all hand written records are transferred into an electronic record in the Supplier relevant information technology system;
 - viii. ensure all electronic records have been effectively backed up on a daily basis; and

-
- ix. ensure that no data, record or report is inappropriately accessed, removed, lost, corrupted or misplaced.

25. Ozone Depleting Substances and Hazardous Substances

- (a) The Supplier must inform the Department about ozone depleting substances and hazardous substances that may be used in undertaking services or contained in goods supplied as part of the Requirement.
- (b) The Supplier must declare any ozone depleting or hazardous substance that may be used in undertaking services, or contained in any goods supplied as part of the services and set out full details of each ozone depleting or hazardous substance concerned.

26. Protection of Personal Information

- (a) The Supplier is required to participate in any assurance activities undertaken; both electronic and physical to ensure compliance with the Privacy Act.
- (b) The Supplier must cooperate with the Department and undertake any recommendations identified through regular Privacy Impact Assessment activities.
- (c) No personal information may be disclosed by the Supplier at any time without the written consent of the Department. Any such requests for such information given to the Supplier must be referred to the Department.
- (d) The Supplier must ensure that Personnel are restricted from manually altering records related to personal information.
- (e) The Supplier must perform penetration testing annually and make the results known to the Department, including corrective actions if required.
- (f) The Department reserves the right to conduct independent penetration testing if deemed required.
- (g) The Supplier is required to provide training to all Personnel associated with the agreement in relation to their obligations under the Privacy Act. The Supplier is to make this training available to the Department for review upon request.
- (h) If required the Supplier will facilitate instruction of training programs to relevant Personnel made available by the Department in relation to privacy obligations.
- (i) The Supplier must not transfer, or permit the transfer of custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Department. All Commonwealth records, including any held by Subcontractors, must be returned to the Department at the conclusion of the agreement.

27. Business Quality Assurance

- (a) The Supplier must, at a minimum, have a documented quality management system in place that demonstrates capacity to systematically plan and manage the quality of work.
- (b) It is a highly desirable requirement for the Supplier to have, and provide evidence of a certified quality management system to AS/NZS ISO 9001:2008 or equivalent by a certifying body registered with the Joint Accreditation System – Australia and New Zealand or an equivalent body.

28. Transition-in Plan

- (c) The Supplier will be required to provide a final Transition-In Plan version incorporating any changes requested by the Department, at the time of agreement execution.
- (d) The Transition-in Plan must, at a minimum, describe all the tasks and activities, (including outlining all documents, plans and other deliverables required to be developed or approved in accordance with this agreement) to ensure that the Supplier can effectively perform the services in accordance with the agreement within one calendar month of the Commencement Date, including:

-
- i. staffing arrangements;
 - ii. records and information management;
 - iii. asset management;
 - iv. communications and stakeholder engagement;
 - v. financial records and acquittal; and
 - vi. departmental property.
- (e) The Supplier will be required to describe how they will transition all services, which may include transitioning services from the incumbent Provider, including:
- i. the proposed transition team, names, roles, experience and percentage of their time allocated to transition and the intended dates of their withdrawal;
 - ii. a comprehensive personnel transition strategy;
 - iii. process mapping;
 - iv. collection and migration of data; and
 - v. establishment of systems, if applicable, and links to existing systems.
- (f) The Supplier must include in the Transition-in Plan:
- i. appropriate milestones for the acceptance of and timeframes for performing the Transition-in activities and tasks, which if there is more than one Supplier must include a milestone date for the approval of the operating model(s) required in accordance with this agreement;
 - ii. milestones for the acceptance of all plans required in accordance with the agreement;
 - iii. details of the acceptance criteria for each of the milestones in accordance with the requirements of the agreement;
 - iv. details of the responsibilities of the parties during the Transition-in period;
 - v. details of how the Supplier will establish capacity to deliver the services;
 - vi. details of how the Supplier will establish robust managerial and administrative arrangements to deliver the services, which comply with the agreement;
 - vii. details of how the Supplier will engage sufficient and adequately skilled personnel to perform the services;
 - viii. details of how the Supplier will establish and maintain appropriate security processes and practices to protect Commonwealth information, in accordance with the agreement (including applicable privacy and records management requirements); and
 - ix. Details of how the Supplier will work cooperatively with the incumbent service provider to transition existing services, including undertaking audits and stocktakes of existing assets and property.

29. Transition-out Plan

- (a) The Supplier is required to provide the Department with a Transition-out Plan for approval by the Department, in accordance with the following:
- i. a draft plan within six (6) months of the Commencement Date;
 - ii. an updated version incorporating any changes requested by the Department within ten (10) business days of the request;

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- iii. an update annually on the anniversary of the Commencement Date;
 - iv. if a Termination Notice is issued under the agreement, within one (1) month of the date on which that notice is given; and
 - v. if no Termination Notice issued under the agreement, at least six (6) months before the agreement expires.

(b) The Transition-out Plan must, at a minimum, describe:

- i. how the Supplier will effectively and efficiently disengage from the services upon expiry or termination of the agreement by the end of the Term, or such other date agreed by the Department;
- ii. detail all the tasks and activities that will be undertaken to disengage, including:
 - staffing arrangements;
 - records and information management;
 - asset management;
 - communications and stakeholder engagement activities;
 - financial records and acquittals; and
 - departmental property.

(c) The Supplier must include details in its Transition-out Plan which describes:

- i. their ability to work with the Department and other Suppliers in collaboration, ensuring service continuity if there is a transfer of services to the Department or another Supplier;
- ii. how they will ensure all services commenced under the agreement are completed in accordance with the agreement, or are appropriately transferred to the Department, or another Supplier (as required by the Department);
- iii. how they will meet all other transition-out requirements as notified by the Department;
- iv. appropriate milestones for accepting of, and timeframes for performing, the transition-out activities and tasks; and
- i. their responsibilities during the transition-out period.

30. Relationship Management

(a) The Supplier must:

- i. Implement and manage its internal governance arrangements to foster cooperation and a professional working relationship with the Department and other Service Providers.
- ii. Develop and implement its own governance arrangements for effective contract and relationship management to ensure service delivery is accountable, consistent and in coordination with the Department.
- iii. Be responsive to requests from the Department, including changes in delivery to Services and requests for reporting.

(b) The Supplier must ensure that the Key Positions are occupied at all times to achieve a strong and effective partnership and facilitate effective Service delivery and contract management.

(c) The Supplier must advise of change of Key Positions within five (5) working days.

31. Business Continuity Plan

- (a) The Supplier is required to provide the Department with a Business Continuity Plan for approval as follows:
- i. a draft at the Commencement Date of the agreement;
 - ii. a final version incorporating any changes requested by the Department within 30 business days of the Commencement Date; and
 - iii. an update annually on the anniversary of the Commencement Date.
- (b) The Business Continuity Plan must address the following:
- i. Describe the strategies and actions to ensure continuity of the goods and/or services when normal operations are disrupted or circumstances exist that may threaten the operation of the goods and/or services;
 - ii. Align with recognised standards for business continuity including:
 - ISO 22301:2012 Societal Security Business Continuity Management Systems requirements.
 - ISO 5050:2010 Business Continuity Managing Disrupted Related Risk or equivalent.
 - iii. Be consistent with and reflect the approved Risk Management and Fraud Control Plan;
 - iv. Include criteria for identifying and managing business continuity risks, including descriptions of likelihood and consequence criteria, and appropriate risk management criteria;
 - v. Describe how business continuity issues will be reported internally and to the Department; and
 - vi. Describe the threshold for escalation and management of business continuity issues.

32. Work Health and Safety Plan

- (a) The Supplier is required to provide the Department with a Work Health and Safety (WHS) Plan for approval as follows:
- i. a draft at the Commencement Date of the agreement;
 - ii. a final version incorporating any changes requested by the Department within 30 business days of the Commencement Date; and
 - iii. an update annually on the anniversary of the Commencement Date.
- (b) The WHS Plan must, at a minimum, address the following:
- i. describe how the Supplier will comply with its WHS duties and obligations under the agreement and applicable legislation and any current industry standards and practice, including the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth);
 - ii. eliminate risks to health and safety so far as reasonably practicable, and, if it is not reasonably practicable to eliminate risks to health and safety, then to minimise those risks so far as reasonably practicable applying the hierarchy of controls specified in the *Work Health and Safety Regulations 2011* (Cth);
 - iii. consult, cooperate and coordinate on activities and management of risks;
 - iv. incident management and response;

-
- v. be consistent with AS/NZS ISO 45001:2018 – Occupational Health and Safety Management Systems; and
 - vi. include policies and procedures relating to:
 - Hazard control and risk management;
 - Infection control, where appropriate;
 - Occupational hygiene;
 - Safety and security of persons working at a facility;
 - WHS training and induction requirements for Supplier's Personnel working onsite at a facility;
 - Consultation;
 - Incident notification;
 - Emergency and disaster management procedures in the event of cyclones and bushfires where relevant to risk; and
 - Supplier's Personnel support including Post-Incident Management and debrief activities.
- (c) The Supplier must:
- i. regularly review and update the WHS Plan throughout the term of the agreement to ensure it remains appropriate and current at all times, and submit any updated plan to the Department for approval; and
 - ii. comply with the WHS Plan.

33. Risk Management and Fraud Control Plan

- (a) The Supplier must provide and manage the Risk Management and Fraud Control Plan in order to manage risks effectively, and take a systematic and stringent approach to the prevention and detection of fraud to achieve outcomes.
- (b) Effective risk management requires the Supplier and the Department to understand the nature of the risks and to systematically identify, assess, treat, monitor and review those risks. The Supplier must ensure that risk and fraud identification, assessment, and prevention are embedded into processes at all levels.
- (c) The Supplier is required to provide the Department with a Risk Management and Fraud Control Plan for approval in accordance with the following:
 - i. within one (1) month of the agreement's start date and is consistent with the Commonwealth Fraud Control Framework (Fraud Control Plan);
 - ii. a final version incorporating any changes requested by the Department within the date specified in the Transition-in Plan; and
 - iii. an update of the Fraud Control Plan at least every six (6) months over the term of the agreement, or whenever there is a significant change in the structure or activities of the Supplier, or as requested by the Department.
- (d) The Risk Management and Fraud Control Plan must be consistent with the Department's Risk Management strategies and the Commonwealth Fraud Control Guidelines, and must, at a minimum, describe:
 - i. how the Supplier will identify, seek to prevent and manage risks in relation to the services;
 - ii. the level of conformance to recognised standards for risk management (AS ISO 31000:2018);

-
- iii. criteria for identifying and managing risks, including descriptions of likelihood and consequence criteria;
 - iv. how risks will be categorised and appropriate risk treatment strategies applied;
 - v. how risks will be reported internally and to the Department;
 - vi. the thresholds for escalation and management of risks;
 - vii. how the Supplier will identify, prevent and manage risk of fraud in the performance of the services; and
 - viii. how any instances of fraud or suspected fraud will be reported internally and to the Department.
- (e) The Supplier must:
- i. incorporate or otherwise address any comments or feedback on the Risk Management and Fraud Control Plan;
 - ii. comply with and implement the approved Risk Management and Fraud Control Plan during the term of the agreement;
 - iii. perform its obligations under the agreement in a manner that facilitates identification, control, management and mitigation of the risks in connection with the agreement, whether or not a risk is identified in the approved Risk Management and Fraud Control Plan;
 - iv. provide the Department with information and documents in relation to the Risk Management and Fraud Control Plan promptly on request by the Department;
 - v. promptly report to the Department on the status of the Risk Management and Fraud Control Plan, and any significant new or changed risks; and
 - vi. regularly update and submit for approval the Risk Management and Fraud Control Plan throughout the term of the agreement as and when necessary, to ensure the plan identifies current risks and appropriate prevention or mitigation strategies at all times.
 - vii. strategies to ensure Supplier Personnel meet ongoing qualification, registration and training requirements for different roles; and
 - viii. the Supplier's training strategy.

Software Licensing and Services (SLS) Panel Head Agreement

Digital Transformation Agency
and

(ABN:)

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Contents

PART A – General Provisions	9
1. The Head Agreement.....	9
2. Categories	9
3. Mandatory Use of the Panel	10
4. Not Used	10
5. Not Used	10
6. Suspension and removal from the Panel	10
7. Not Used	11
8. Licence of information and materials	12
9. The Online Portal	12
10. Not Used	14
11. Ordering Offerings.....	14
12. Contract Creation	15
13. Terms and conditions of a Contract	15
14. Additional Terms in a Contract.....	16
15. Contract Period	17
16. Whole-of-Australian-Government Arrangements.....	18
PART B – Head Agreement Administration	20
17. Term of the Head Agreement	20
18. DTA's role	20
19. Directions	20
20. Cooperation and Collaboration	20
21. Governance.....	21
22. Variations to the Head Agreement or Contracts	21
23. Changes to the Commonwealth Policy Terms.....	22
24. Panel Performance	22
25. Head Agreement Representatives.....	23
26. Contract Representatives.....	23
27. Notices and other Communications	23
28. General.....	24
Panel Standard Terms.....	28
PART C – Financial Provisions	28
29. Charges.....	28
30. GST	30
PART D – Personnel	31
31. Personnel	31
32. Subcontracting	32

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under the Freedom of Information Act 1982

PART E – Information Management	34
33. Confidentiality.....	34
34. Privacy.....	35
35. Notifiable Data Breaches	36
36. Books and Records.....	37
37. Audit and Access	38
PART F – Risk Management.....	41
38. Responsibility for all Offerings and Reseller arrangements.....	41
39. Authorisations	42
40. Warranties	43
41. Insurance	44
42. Unconditional Financial Undertaking	45
43. Performance Guarantee.....	45
44. Liability under Head Agreement and Contract.....	45
45. Liability Cap under a Contract.....	45
46. Indemnity.....	46
47. Circumstances Beyond Control	48
48. Conflicts of Interest and Improper Conduct	48
PART G – Intellectual Property Rights	50
49. Intellectual Property Rights	50
PART H – Termination and Dispute	55
50. Termination	55
51. Dispute resolution	59
PART I – Delivery	60
52. Delivery	60
53. Standards and codes	61
54. Buyer Supplied Items	62
55. Buyer assistance	62
56. Access to Buyer's site	63
57. Acceptance Testing.....	63
58. Rectification.....	65
59. Warranties	65
60. Documentation	66
61. Packaging	67
62. Not Used	67
63. Transfer of title and risk.....	67
64. Performance management framework.....	67
65. Transition out	68
PART J – Security	69

66.	General.....	69
67.	Security clearance.....	70
68.	Harmful Code	70
69.	Protection of Buyer Material.....	70
70.	Cyber security insurance.....	71
71.	Non–return of Offerings.....	71
72.	Security Incidents.....	71
73.	Legislative offences.....	71
	PART K - Reporting.....	73
74.	Reporting.....	73
	Commonwealth Policy Terms.....	74
	PART L – Commonwealth Laws and Policies.....	74
75.	General.....	74
76.	Archives Act Requirements.....	74
77.	APS Values	74
78.	Freedom of information	74
79.	Fraud and corruption.....	75
80.	Illegal Workers	75
81.	Procurement on-time payment policy	76
82.	Work health and safety	76
83.	Workplace Gender Equality	78
	Schedule 1 Interpretation and Definitions.....	80
1.	Interpretation	80
2.	Order of precedence for this Head Agreement.....	81
3.	Order of precedence for a Contract	82
4.	Definitions	83
	Schedule 2 Category 1 – Microsoft Licensing Solution	94
	Schedule 3 Category 2 – Commercial-Off-The-Shelf Software.....	95
	Annexure A – Category 2 - Statement of Work and Charges	96
1.	Software Classes	96
2.	Related Service Classes	97
3.	Other Requirements and Reports	100
4.	Charges for Category 2.....	101
	Annexure B – Category 2 – Category Terms	103
1.	Term of the Head Agreement	103
2.	Software Classes and Service Classes	103
3.	Description of Offerings.....	104
4.	Charges.....	104
5.	Source Materials to be Held in Escrow	104

6.	Restrictions on Use	104
7.	Audit of Use	105
8.	Support	105
9.	Remote Access to Buyer's Systems	106
10.	Updates and New Releases	106
11.	Time and Materials	107
12.	EULAs	107
Schedule 4 Category 3 – Enterprise Resource Planning Products and Service Solutions		109
Annexure A – Category 3 - Statement of Work and Charges		110
1.	ERP Classes	110
2.	Related Service Classes	110
3.	Other Requirements and Reports	115
4.	Charges for Category 3	116
Annexure B - Category 3 – Category Terms		117
1.	Term of the Head Agreement	117
2.	ERP Classes	117
3.	Description of Offerings	118
4.	Charges	118
5.	Source Materials to be Held in Escrow	118
6.	Audit of Use	118
7.	Support	119
8.	Remote Access to Buyer's Systems	120
9.	Updates and New Releases	120
10.	Time and Materials	121
11.	EULAs	122
12.	Warranties	123
13.	Additional Usage Rights for Category 3 Offerings	123
14.	ERP Platform Requirements	125
15.	System integration and data migration services	126
16.	Cooperation with other providers	128
17.	Personnel	129
18.	Intellectual Property Rights	130
19.	Business Continuity	131
20.	Hosting Certification Framework	131
21.	Notification of significant events	132
22.	Corrupt Conduct	133
23.	Unfair contract terms	134
24.	Shadow Economy Procurement Connected Policy	134
25.	Modern Slavery	135

26. Payment Times Procurement Connected Policy 135

27. Supplier Pay on Time or Pay Interest Policy..... 137

28. Definitions 138

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Parties:

COMMONWEALTH OF AUSTRALIA as represented by the **Digital Transformation Agency** (ABN 96 257 979 159) (**DTA**)

and

(ABN) (**Seller**).

Background

- A. DTA has established a panel (**Panel**) of suppliers (**Panellists**) for certain offerings associated with software licensing and services (**Offerings**). There are different Categories of Offerings within the Panel being:
 - A.1 Category 1 – Microsoft Licensing Solutions;
 - A.2 Category 2 – Commercial-Off-The-Shelf Software; and
 - A.3 Category 3 – Enterprise Resource Planning Products and Service Solutions.
- B. Panellists are able to offer to provide Buyers with Offerings within the Category or Categories for which they have been appointed to the Panel.
- C. Panellists may provide Offerings to Buyers by entering into a Contract with that Buyer. Subject to the Category Terms, a Contract may require the Panellist to provide:
 - C.1 Offerings as a Reseller of Products that are supplied by a Vendor, in which case:
 - C.1.1 if a Contract indicates that the Panellist is the agent of the Vendor:
 - C.1.1.1 the Contract will require the Panellist to provide those Offerings as the agent for the Vendor; and
 - C.1.1.2 the supply of those Offerings will be governed by those terms in this Head Agreement and the Contract; or
 - C.1.2 if a Contract indicates that the Panellist is not the agent of the Vendor:
 - C.1.2.1 the Contract will require the Panellist to ensure that there is a separate contractual arrangement directly between the Vendor and the Buyer for the supply of the Offerings; and
 - C.1.2.2 the Panellist must ensure that the terms of that contractual arrangement between the Vendor and the Buyer meet the requirements in the Contract, including where applicable any Category Terms; and/or
 - C.2 Offerings in their own right, in which case:
 - C.2.1 the Contract will require the Panellist to provide those Offerings in its own right; and
 - C.2.2 the supply of those Offerings will be governed by the terms in this Head Agreement and the Contract.

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- D. Panellists are also required to:
- D.1 provide information and reports to DTA, including about their participation in the Panel; and
 - D.2 participate in the Request for Quote process and otherwise provide information to Buyers in relation to their offered Offerings.
- E. DTA has offered to appoint the Seller to the Panel established for the supply of Offerings, within the Category or Categories specified in or determined in accordance with Schedule 2, Schedule 3, and Schedule 4.
- F. The Seller has agreed to make its Offerings for which it has been approved by DTA available to Buyers to purchase on the terms and conditions of this Head Agreement. The Seller acknowledges and agrees that any Buyer may enter into a Contract under this Head Agreement with the Seller to procure Offerings.
- G. DTA has implemented an Online Portal to facilitate the management of the Panel and the procurement of Offerings. DTA will administer the Online Portal and the details of the Offerings that are included in the Online Portal.
- H. The Panel is intended to be an evolving panel. Over time, DTA may add, remove or change the Categories or Software Classes, Service Classes and ERP Classes. The Seller acknowledges that DTA may add additional Panellists to the Panel over time.

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Agreement

PART A – General Provisions

1. The Head Agreement

- 1.1 This Head Agreement is a standing offer between DTA and the Seller. On an as required basis, a Buyer may enter into a Contract with the Seller for the provision of Offerings.
- 1.2 This Head Agreement does not:
- 1.2.1 mean the Seller is the sole supplier of Offerings under the Panel;
 - 1.2.2 subject to clause 3, mean DTA or any Buyer must buy any, or any particular quantity of, Offerings from the Seller; or
 - 1.2.3 prevent DTA or any Buyer from buying goods or services that are the same as, or similar to, the Offerings from any other seller (whether or not that provider participates in the Panel).
-

2. Categories

- 2.1 The types of Offerings for which the Seller may be enrolled under the SLS Panel are described in:
- 2.1.1 for Category 1 – Microsoft Licensing Solutions – Schedule 2;
 - 2.1.2 for Category 2 – Commercial Off-the-Shelf Software – Schedule 3; and
 - 2.1.3 for Category 3 – Enterprise Resource Planning Products and Service Solutions – Schedule 4.
- 2.2 DTA may conduct a procurement process through an open approach to market in order to add or amend a Category or select suppliers to enrol in a Category. There is no limit to the number of Sellers that may be enrolled in any Category.
- 2.3 Each Category has its own Category Terms. The Seller must comply with the Category Terms for the Categories in which it has been enrolled.
- 2.4 If any Category Terms are specified in this Head Agreement for a Category, those Category Terms:
- 2.4.1 apply to this Head Agreement and any Contract applicable to that Category; and
 - 2.4.2 override this Head Agreement and any Contract.
- 2.5 The parties acknowledge and agree that the Category Terms may modify the terms of this Head Agreement or include additional terms that apply to the Category (including with respect to the administration of the Category).

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3. Mandatory Use of the Panel

3.1 As at the Head Agreement Start Date:

3.1.1 Offerings in Category 1 are Mandatory Offerings;

3.1.2 Offerings in Category 2 are not Mandatory Offerings; and

3.1.3 Offerings in Category 3 are Mandatory Offerings.

3.2 For:

3.2.1 Offerings in Category 1;

3.2.2 Offerings in Category 2 which DTA Notifies the Seller are Mandatory Offerings; and

3.2.3 Offerings in Category 3,

the Seller must only sell, or offer to sell, those Mandatory Offerings (or goods or services substantially similar to Mandatory Offerings) to Non-Corporate Commonwealth Entities:

3.2.4 by using the Panel as applicable to that Category; and

3.2.5 if the Seller has been approved by DTA to provide the Mandatory Offerings, unless DTA has approved that sale in writing.

4. Not Used

5. Not Used

6. Suspension and removal from the Panel**Suspension from the Panel**

6.1 DTA may suspend the Seller by Notice from the Panel at any time if:

6.1.1 DTA has received substantiated evidence of continuous or substantial negative feedback from one or more Buyers in respect of the performance of the Seller in connection with the Panel;

6.1.2 DTA reasonably considers that the Seller is not providing its Offerings to Buyers in accordance with this Head Agreement; or

6.1.3 the Seller has materially breached this Head Agreement or DTA has a right to terminate this Head Agreement.

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- 6.2 Any suspension of the Seller may apply to any one or more Categories or Software Classes, Service Classes or ERP Classes and may be for any period of time.
- 6.3 Before DTA suspends the Seller, DTA will:
- 6.3.1 provide the Seller with the reasons for any suspension;
 - 6.3.2 consider any feedback provided by the Seller within the timeframes reasonably required by DTA; and
 - 6.3.3 in DTA's absolute discretion, allow the Seller a reasonable opportunity to rectify the issues that would entitle DTA to suspend the Seller, within the timeframes reasonably required by DTA.
- 6.4 If the Seller is suspended:
- 6.4.1 the Seller must not enter into any Contract (or add any Offerings to an existing Contract) in respect of the suspended Category or Software Classes, Service Classes or ERP Classes;
 - 6.4.2 the Seller must promptly Notify DTA if it receives any request to enter into a Contract or any Request for Quote in respect of the suspended Category or Software Classes, Service Classes or ERP Classes and must not respond to the request to enter into a Contract or Request for Quote (other than to inform the requesting party that the Seller is not able to respond to that request); and
 - 6.4.3 all other provisions of this Head Agreement and any existing Contracts not affected by the suspension continue.
- 6.5 DTA may at any time lift a suspension by Notifying the Seller. DTA must lift the suspension promptly after the Seller demonstrates to DTA's reasonable satisfaction that the Seller has rectified the issues that caused the suspension.

Removal from the Panel or a Category

- 6.6 If:
- 6.6.1 any suspension is not lifted within six calendar months;
 - 6.6.2 DTA has reasonable grounds to believe that the Seller no longer supplies Offerings that meet the requirements for the Panel (or for a Category in which the Seller has been appointed); or
 - 6.6.3 the Seller requests,
- then DTA may remove the Seller from the Panel (or from a Category for which they have been appointed to the Panel) by issuing Notice to the Seller.
- 6.7 DTA may refuse to allow the Seller to re-join the Panel (or re-join a Category) to supply any Offerings if it has been previously suspended or removed from the Panel.

7. Not Used

8. Licence of information and materials

- 8.1 The Seller licences DTA and Buyers to use all information and materials provided by the Seller for inclusion in the Online Portal for any purpose in connection with the Panel.
- 8.2 DTA will make the Online Portal available to Buyers.
- 8.3 DTA will ensure that any Confidential Information of a Seller included in the Online Portal is identified as confidential (provided that the Seller has identified any such Confidential Information to DTA).

9. The Online Portal

- 9.1 The Seller acknowledges that DTA operates an Online Portal to facilitate the procurement of Offerings under the Panel by Buyers. The Online Portal will be in the form, and contain the information, as determined by DTA from time to time, which may include:
- 9.1.1 details about the Seller and the Software Classes, Service Classes or ERP Classes for which it has been approved by DTA; and
- 9.1.2 details about the Seller's Offerings (including any applicable Specifications and Charges or other pricing arrangements that apply to those Offerings), but may not include details about all Offerings.
- 9.2 The parties acknowledge and agree that:
- 9.2.1 DTA may change the scope, operation or contents of the Online Portal in its absolute discretion;
- 9.2.2 although DTA will use reasonable endeavours to ensure that the Online Portal is available for use by Buyers and Sellers to the extent determined by DTA, DTA is not liable to the Seller if the Online Portal is not available or fully operational for any reason;
- 9.2.3 unless agreed by DTA, if Buyers and Sellers wish to use the Panel, they must use the Online Portal to:
- (a) issue Requests for Quotes;
- (b) provide Quotations;
- (c) enter into Contracts; and
- 9.2.4 the Online Portal may not be used for all Categories.
- 9.3 Without limiting this Head Agreement, the Seller must supply the Offerings in accordance with this Head Agreement, the Contract, the Specifications, and the Online Portal, provided that the Seller has entered into a Contract for those Offerings.
- 9.4 The Seller must use reasonable efforts to ensure that all Offerings listed in the Online Portal are available to Buyers to purchase, at the time required by the Buyer.
- 9.5 The Seller must provide up-to-date and accurate information to DTA and Buyers if requested by DTA in relation to Offerings it offers or provides to Buyers under the Panel, and must use reasonable endeavours to ensure DTA or Buyers are made aware in advance of changes or enhancements in relation to those Offerings.

- 9.6 Information requested under clause 9.5 must be provided in the form requested, including via:
- 9.6.1 telephone;
 - 9.6.2 email;
 - 9.6.3 meetings with solutions specialists;
 - 9.6.4 kick-start kits;
 - 9.6.5 contract management meetings with DTA, and meetings with a Buyer upon request by the Buyer; or
 - 9.6.6 another communication method as specified by DTA or by a Buyer in relation to a Contract.
- 9.7 The Seller may ask DTA to add, update, or remove any information included in the Online Portal in accordance with the process Notified to the Seller by DTA from time to time.
- 9.8 Without limiting clause 2 of the Category Terms, DTA may add or update existing Offerings in the Online Portal, including if:
- 9.8.1 the proposed Offerings are within the scope of the Category or Software Classes, Service Classes and ERP Classes for which the Seller has been approved by DTA;
 - 9.8.2 the proposed Charges are consistent with (or better than) the pricing arrangements applicable to the Seller's Offerings;
 - 9.8.3 DTA considers that there is a reasonable demand for the Offerings by Buyers;
 - 9.8.4 the Offerings are not available under a different whole-of-government arrangement; and
 - 9.8.5 DTA has determined that adding or updating the Offerings is consistent with the operation of the Online Portal and that the Offerings represent value for money.
- 9.9 Subject to this clause 9, DTA will update the information in the Online Portal (including to remove Offerings from the Online Portal) within 60 days of receiving a request from the Seller.
- 9.10 DTA may remove Offerings from the Online Portal at any time or restrict access to Offerings for particular Buyers. If DTA removes or restricts any access to any Offering, it must provide the Seller with written reasons and reasonable prior Notice (unless the removal was requested by the Seller).
- 9.11 The Seller must promptly Notify DTA if it becomes aware that any information included in the Online Portal:
- 9.11.1 is not accurate or is misleading; or
 - 9.11.2 does not meet the requirements of this Head Agreement,
- and must promptly follow any reasonable directions given by DTA that relate to addressing that inaccurate or misleading information or non-compliance with the requirements of this Head Agreement.

- 9.12 If a Seller has issued a Notice to DTA requesting removal or modification of information included in the Online Portal and DTA has not updated the Online Portal in accordance with that Notice, the Seller will not be considered to have breached any obligation under this Head Agreement to ensure that information in the Online Portal is accurate, and not misleading, and meets the requirements of this Head Agreement.
- 9.13 DTA may add Offerings from other sellers to the Online Portal at any time, including if any Categories or any Software Classes, Service Classes or ERP Classes are added or refreshed.
- 9.14 The Seller must, if requested, provide information to DTA and Buyers about their Offerings and must use reasonable endeavours to ensure that DTA or Buyers are aware in advance of any changes or enhancements in relation to those Offerings.

10. Not Used

11. Ordering Offerings

- 11.1 If a Buyer wants to purchase any Offerings, it must either:
- 11.1.1 for Offerings on the Online Portal, issue an Order; or
 - 11.1.2 issue a Request for Quote, which may result in an Order (a Buyer may issue a Request for Quote even if the Offering is on the Online Portal).
- 11.2 DTA will determine when a Buyer must issue an Order and when it must issue a Request for Quote and the processes that must be followed (which will be Notified to the Seller from time to time).
- 11.3 A Buyer may at any time issue a Request for Quote for the required Offerings to one or more Sellers.
- 11.4 The Seller is not required to agree to any Order or to respond to any Request for Quote.
- 11.5 The Seller may (but is not required to) respond to a Request for Quote, by providing a Quote to the Buyer for its Offerings in accordance with the Request for Quote. For Offerings included in the Online Portal, a Quote must not include Charges for Offerings which are higher than those included in the Online Portal.
- 11.6 The Seller must ensure that its Quote contains pricing for its Offerings that is consistent with the pricing arrangements in the Online Portal.
- 11.7 If Charges for the Offerings requested by the Buyer are calculated based on a List Price, the Seller must provide the Buyer, on request, with a copy of its current List Price for the relevant Offerings so the Buyer can verify that the Charges (or proposed Charges) for the Offerings are consistent with the Online Portal.
- 11.8 Nothing in this clause 11 prevents a party from referring a matter the subject of a disagreement to dispute resolution in accordance with clause 51.

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12. Contract Creation

- 12.1 If:
- 12.1.1 a Buyer wishes to accept a Quote; or
 - 12.1.2 a Buyer and the Seller have complied with any processes referred to in clause 11.2,
- a Buyer may give an Order to the Seller.
- 12.2 An Order may be for one or more Offerings.
- 12.3 An Order may be for the provision of Offerings by the Seller to:
- 12.3.1 one Buyer; or
 - 12.3.2 a group of Buyers (in which case the Order must specify whether there will be a single Contract, or separate Contracts for each Buyer).
- 12.4 Once an Order has been executed (either physically or electronically) by both the Seller and the Buyer, a separate Contract will be formed. No Contract is formed if the Buyer and Seller cannot agree the terms of an Order.
- 12.5 Each Order and RFQ will include a reference number provided by DTA. The Seller must ensure that any Contract which is agreed includes the applicable reference number.
- 12.6 Unless and until a Contract is created, the Seller is not required to sell any Offerings to Buyers.

13. Terms and conditions of a Contract

- 13.1 The terms and conditions that apply to each Contract are:
- 13.1.1 the terms of this Head Agreement to the extent they apply to a Contract or provide for a right or obligation in relation to a Contract;
 - 13.1.2 the terms specified in the executed Order (including any Additional Terms specified in the Order, if those terms comply with clause 14.1, and the Charges calculated in accordance with clause 29); and
 - 13.1.3 any Specifications for the Offerings.
- 13.2 Some of the terms of this Head Agreement are expressed to give rights to DTA, and some are expressed to give rights to a Buyer (or both). Unless Notified to the Seller by DTA:
- 13.2.1 any right or benefit given to DTA under this Head Agreement may be exercised by DTA for itself, or by DTA on behalf of any Buyer;
 - 13.2.2 any right or benefit given to a Buyer under this Head Agreement may be exercised by the Buyer in respect of a Contract; and
 - 13.2.3 DTA can exercise any right or benefit given to a Buyer on behalf of the Buyer, or the Buyer can exercise that right or benefit for itself.

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- 13.3 The Seller must comply with any processes Notified by DTA from time to time about when and how a Contract may be extended.

14. Additional Terms in a Contract

General position

- 14.1 Subject to clause 14.2 and the Category Terms, any Additional Terms included in a Contract (including through any third party terms applicable to the Offering or to a component of the Offerings included or provided as part of an Offering, licensing or usage statement, shrink or click wrap agreement, external link, hyperlink, website, Documents or other item) that seek to:

14.1.1 be incorporated into, add to, or otherwise modify this Head Agreement;

14.1.2 create any legal liability for any user of the Offerings; or

14.1.3 modify the terms that would otherwise apply to a Contract or to any Offerings provided pursuant to this Head Agreement or a Contract,

do not create any separate agreement and do not apply including to the extent they purport to:

14.1.4 apply Charges that are inconsistent with or are not calculated in accordance with this Head Agreement;

14.1.5 apply licence or usage rights or metrics, or vary any licence or usage rights or metrics, for an Offering (other than those permitted by clause 49 and specified in the Contract);

14.1.6 change the liability of DTA or a Buyer to the Seller from the position set out in clauses 44 and 45;

14.1.7 reduce or limit any rights DTA or a Buyer would otherwise have under the terms of this Head Agreement, including any right for DTA or a Buyer to:

(a) terminate this Head Agreement or any Contract;

(b) recover damages for breach;

(c) include any additional grounds for the Seller to terminate this Head Agreement or a Contract or any licences granted pursuant to this Head Agreement or a Contract;

(d) include any additional rights for the Seller or third parties to access DTA's or a Buyer's premises or systems; or

(e) limit or reduce the liability that the Seller or any third party would otherwise have under this Head Agreement or any Contract.

- 14.2 Any Additional Terms that

14.2.1 modify this Head Agreement, only apply if DTA has approved those Additional Terms and the written approval for the Additional Terms is specified in the applicable Contract; and

- 14.2.2 without limiting clause 14.2.1, are incorporated into, add to, or otherwise modify the terms that would otherwise apply to a Contract or to any Offerings provided pursuant to this Head Agreement or a Contract, only apply if a Buyer has agreed to those Additional Terms in the Contract.
- 14.3 If DTA approves any Additional Terms in accordance with this clause 14 for a Contract, this Head Agreement is deemed to be amended for that Contract (but not for any other Contracts).
- 14.4 Without limiting this clause 14, terms that a Buyer or user is required to accept (for example, by clicking 'I agree' or commencing use of the Offering), are not included in any Contract and are not enforceable.
- 14.5 This clause 14 also applies to:
- 14.5.1 any terms and conditions (however included) which have been included in the Online Portal for Offerings which are required to be provided under a Contract (including terms in a Document referenced or linked to details included in the Online Portal); and
- 14.5.2 any variations to a Contract.

15. Contract Period

- 15.1 A Contract begins on the Contract Start Date and continues for the Contract Period unless the Contract is terminated.
- 15.2 Any Notice to extend the Contract Period must be provided:
- 15.2.1 at least 20 Business Days before the end of the then current Contract Period; or
- 15.2.2 within another period specified in the Contract.
- 15.3 Any Notice to extend the Contract Period must be in the form specified by DTA (if any), unless otherwise agreed in writing by DTA.
- 15.4 Any extension of the Contract Period is on the terms and conditions of the Contract then in effect (including any Charges) unless otherwise agreed by the Buyer and Seller. Any extension takes effect from the end of the then current Contract Period.
- 15.5 The Contract Period may extend beyond the term of this Head Agreement.
- 15.6 A Contract formed before the expiration or termination of this Head Agreement continues for the Contract Period, even if this Head Agreement has expired or has been terminated. The terms of this Head Agreement continue to apply to the Contract for the entire Contract Period.

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16. Whole-of-Australian-Government Arrangements

- 16.1 The Seller acknowledges that the Commonwealth may have established, or may establish, whole-of-Australian-government arrangements individually with the Seller in respect to the Seller's goods and services (**WofG Arrangement**) from time to time.
- 16.2 If the Seller is a party to a WofG Arrangement, or if the Seller is a Reseller for a Vendor who is party to a WofG Arrangement, then if a Buyer who is entitled to purchase from the WofG Arrangement purchases any Offerings through the Panel, the terms of the applicable WofG Arrangement will apply to those Offerings, unless approved by DTA.
- 16.3 Subject to the terms of the WofG Arrangement, if the Seller has entered into a Contract and subsequently enters into a WofG Arrangement, from the date the WofG Arrangement is entered into (or other date agreed with DTA):
- 16.3.1 the Seller must supply any Offerings within the scope of the WofG Arrangement on the terms of WofG Arrangement and not pursuant to the terms of this Head Agreement or applicable Contract (and the Contract is deemed to exclude that scope);
 - 16.3.2 the Seller must continue to supply any Offerings not within the scope of the WofG Arrangement on the terms of this Head Agreement and the applicable Contract;
 - 16.3.3 if either or both this Head Agreement and any applicable Contract include any terms in addition to those set out in the WofG Arrangement which are applicable to the scope of the Offerings under the WofG Arrangement, then those terms will be incorporated into the WofG Arrangement for those Offerings except to the extent that:
 - (a) those terms are inconsistent with the terms of the WofG Arrangement; or
 - (b) those terms are less favourable to the Buyer than the terms of the WofG Arrangement, including any terms relating to charges and pricing, unless otherwise agreed in writing by DTA; and
 - (c) the Seller must comply with any specific transition requirements which have been specified in the WofG Arrangement; and
 - (d) Offerings which have already been delivered and invoiced or paid for in accordance with the applicable Contract prior to the date the WofG Arrangement is entered into are not required to be supplied under the WofG Arrangement.
- 16.4 The Buyer, in consultation with DTA, must prepare any necessary Documentation to reflect any changes required to the Contract and provide it to the Seller. Any Documentation prepared by the Buyer in accordance with this clause 16.4 must be approved by DTA prior to being provided to the Seller.
- 16.5 If a Subcontractor is a party to a WofG Arrangement, the Seller:
- 16.5.1 acknowledges that the Subcontractor may be required to provide the subcontracted goods and services to the Buyer directly on the terms of the WofG Arrangement and if so, the Seller must agree to negotiate with the Buyer in good faith any amendments required to this Head Agreement and any Contract, as necessary to give effect to that arrangement; and
 - 16.5.2 must use its best endeavours to ensure that any goods and services provided by the Subcontractor which are within the scope of any WofG Arrangement and

provided to the Buyer are provided on terms no less favourable to the Buyer than the terms of the WofG Arrangement, including any terms relating to charges and pricing, unless otherwise agreed in writing by the Buyer.

- 16.6 The Seller must comply with any directions of DTA (including any timeframes) given in respect of any WofG Arrangement.
- 16.7 The Seller acknowledges and agrees that, if Offerings of the Seller are within the scope of a WofG Arrangement with another entity, DTA may Notify the Seller that:
- 16.7.1 those Offerings may no longer be supplied under this Head Agreement to certain types of Buyers from a specified date; or
- 16.7.2 the supply of those Offerings are subject to additional or alternative requirements as specified in that Notice,

and if the Seller receives such a Notice, the Seller must not sell any Offerings specified in the Notice to the specified types of Buyers unless DTA has approved that sale in writing or must comply with any additional or alternative requirements Notified to it by DTA.

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PART B – Head Agreement Administration

17. Term of the Head Agreement

- 17.1 This Head Agreement begins on the Head Agreement Start Date or such other date specified in the Category Terms and expires on the date specified in the Category Terms, unless:
- 17.1.1 DTA extends the term of this Head Agreement; or
- 17.1.2 this Head Agreement is terminated.
- 17.2 DTA may extend the term of this Head Agreement, by issuing a Notice, by any period or periods up to the maximum period specified in the Category Terms provided that the term of the Head Agreement may not be extended beyond the date specified in the Category Terms. Any extension takes effect from the end of the then current term.

18. DTA's role

- 18.1 DTA will administer the Panel in accordance with this Head Agreement.
- 18.2 DTA may transfer some or all of its responsibility for the administration of the Panel (including this Head Agreement) to another Commonwealth Entity from time to time, including as part of a machinery of government change. If this happens, DTA may require the Seller to enter into a deed of variation or a new agreement on substantially the same terms as this Head Agreement.

19. Directions

- 19.1 The Seller must comply with any reasonable directions given by DTA in respect of this Head Agreement or any Contract.

20. Cooperation and Collaboration

- 20.1 Each party must:
- 20.1.1 act reasonably, diligently, and in good faith in performing their obligations and exercising their rights under this Head Agreement and any Contract; and
- 20.1.2 work together in a collaborative and co-operative manner (including with each other's Personnel) in the performance of this Head Agreement and any Contract.
- 20.2 The Seller must:
- 20.2.1 act in good faith in all transactions relating to DTA and Buyers;
- 20.2.2 not do anything which may impair the reputation of the Panel, DTA or any Buyer;
- 20.2.3 provide all reasonable assistance required by DTA or a Buyer; and

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- 20.2.4 use its best efforts to coordinate its activities so as to support and facilitate, in the Buyer's best interests, the timely and efficient completion of all activities to be performed for the Buyer by any person.
- 20.3 This Head Agreement, and any Contract, does not create a relationship of employment, agency or partnership between the parties or their respective Personnel. The Seller must clearly identify itself as a contractor when communicating with Buyers in relation to the Panel. Subject to clause 13.2, neither DTA, the Buyer or the Seller may represent themselves as being an officer, employee, partner or agent of another party, or as otherwise able to bind or represent that other party.
- 20.4 The parties will cooperate in performing their respective obligations under this Head Agreement and any Contract in a digital environment.

21. Governance

- 21.1 DTA may hold forums and meetings in relation to the operation of the Panel (including forums or meetings with other Sellers or with Buyers). If requested by DTA, the Seller must attend and participate in any such forums or meetings (which may be via remote attendance) as reasonably requested by DTA, at the Seller's own expense.
- 21.2 DTA may (no more than once in any 12 months), conduct a review of the operation of this Head Agreement and all Contracts (if any). If requested by DTA, the Seller must participate in such a review (including by providing data and participating in meetings), at the Seller's own cost.

22. Variations to the Head Agreement or Contracts

- 22.1 Subject to clause 23:
- 22.1.1 no variation of this Head Agreement is binding unless it is in writing and signed by both the DTA Representative and the Seller; and
- 22.1.2 no variation of a Contract is binding unless it is in writing and signed by both the Buyer and the Seller.
- 22.2 Subject to clause 22.3, if a party wishes to make changes to this Head Agreement or a 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).
- 22.3 Any variation to this Head Agreement or a Contract must be in the form specified by DTA from time to time (if any), unless otherwise agreed in writing by DTA.
- 22.4 Any variation to this Head Agreement does not vary any Contracts already in existence, unless otherwise agreed by the parties in writing.
- 22.5 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 the Contract.

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23. Changes to the Commonwealth Policy Terms

- 23.1 At any time, DTA may change any of the Commonwealth Policy Terms by giving the Seller at least 10 Business Days prior Notice which:
- 23.1.1 sets out details of the changes to the Commonwealth Policy Terms; and
- 23.1.2 the date that the changes will take effect.
- 23.2 In consideration of the ongoing opportunity to sell in the Panel, the Seller accepts any changes made by DTA to the Commonwealth Policy Terms by continuing to participate in the Panel.
- 23.3 If the Seller does not agree to any changed Commonwealth Policy Terms it will not be able to continue to participate in the Panel and the Seller may terminate this Head Agreement by giving at least 10 Business Days' Notice to DTA.
- 23.4 If the Seller does not terminate this Head Agreement within 20 Business Days of the date of any change to the Commonwealth Policy Terms, DTA may terminate this Head Agreement provided that DTA has given the Seller at least 40 Business Days' Notice to the Seller.
- 23.5 The parties acknowledge that DTA may make the most recent versions of Commonwealth Policy Terms available on its website for the Panel and will Notify the Seller accordingly.
- 23.6 If Notified by DTA in accordance with clause 23.5, this Head Agreement will be automatically amended to replace the contents of the Commonwealth Policy Terms with the Commonwealth Policy Terms specified on its website.
- 23.7 The Seller agrees that any Commonwealth Policy Terms which are published electronically by DTA (including on its website) in accordance with this clause 23 form part of this Head Agreement (including as the Commonwealth Policy Terms are changed, from time to time), and take precedence over any other form of the Commonwealth Policy Terms from the date Notified by DTA.
- 23.8 Subject to clause 23.1, if the Commonwealth Policy Terms are changed, the changed Commonwealth Policy Terms only apply to Contracts entered into after the date the varied Commonwealth Policy Terms take effect.

24. Panel Performance

- 24.1 DTA may publish information regarding the operation and performance of the Panel (or any Category) from time to time, including information about the performance of the Seller and other members of the Panel (or any Category). This information may be made available to the public or other members of the Panel (but will only be provided in anonymous and aggregated form). Without limiting DTA's rights in clause 33, DTA will not publicly publish Seller Confidential Information without its permission.
- 24.2 If the Seller has any issues with the information made available by DTA, it may raise that issue with DTA. DTA will consider any issues raised by the Seller in good faith.

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25. Head Agreement Representatives

- 25.1 DTA will appoint a DTA Representative to administer this Head Agreement on behalf of DTA.
- 25.2 The Seller must appoint a Seller Representative to administer this Head Agreement on behalf of the Seller.
- 25.3 The parties must Notify the other party of their representatives so that the other party has up to date contact details at all times. The parties may change their representatives at any time by Notifying the other party.
- 25.4 The Seller Representative and the DTA Representative may each delegate their functions, or authorise that their functions be carried out on their behalf (including by a third party) by Notifying the other party.

26. Contract Representatives

- 26.1 The Seller Contract Representative and Buyer Representative for a Contract must be specified in the Contract.
- 26.2 The Seller Contract Representative and the Buyer Representative may each delegate their functions, or authorise that their functions be carried out on their behalf (including by a third party) by Notifying the other party.

27. Notices and other Communications

- 27.1 A Notice must be in writing and in English.
- 27.2 Subject to clause 27.3, a Notice must be hand delivered or sent by prepaid post or electronic mail to the recipient's address for Notices Notified to the other party.
- 27.3 For Notices issued by DTA in relation to this Head Agreement that affect all Sellers in respect of the Head Agreement or have general application, DTA may post the Notice on its website (provided that DTA will use reasonable endeavours to ensure that the Seller is informed of any such Notice). DTA may also establish an electronic system through which communications with the Seller may occur. If this system is established, the parties may send Notices to each other using that system.
- 27.4 Notices:
- 27.4.1 from DTA must be signed by the DTA Representative;
 - 27.4.2 from the Buyer must be signed by the Buyer Representative; and
 - 27.4.3 from the Seller must be signed by the Seller Representative.
- 27.5 A Notice given in accordance with this clause 27 takes effect when it is taken to be received (or at a later time specified in it). Notices are taken to be received:
- 27.5.1 if hand delivered, on delivery;
 - 27.5.2 if sent by prepaid post, on the fifth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia);

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- 27.5.3 if sent by electronic mail, on the day of dispatch providing the sender receives an acknowledgement or read receipt to the correct email address from the sender's machine; and
- 27.5.4 if posted on DTA's website or given through any electronic system established by DTA, the date of posting on its website or transmission through that system.
- 27.6 If the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Address for Notices

- 27.7 DTA's address for Notices as at the Head Agreement Start Date is:

Name:	s. 22(1)(a)(ii)
Position:	Director (Hardware and Software Marketplace)
Address:	s. 22(1)(a)(ii)
Email address:	s. 22(1)(a)(ii) @DTA.gov.au
Telephone:	s. 22(1)(a)(ii)

but DTA may Notify a different address to the Seller from time to time.

- 27.8 The Seller's address for Notices under the Head Agreement as at the Head Agreement Start Date is:

Name:	
Position:	
Address:	
Email address:	
Telephone:	

but the Seller may Notify a different address to DTA from time to time.

- 27.9 The Seller's address for Notices under a Contract is specified in the Contract.
- 27.10 The Buyer's address for Notices is specified in the Contract.

Change of address

- 27.11 Each party must Notify the other of any change in its representative or address for Notices.

28. General

Language and measurement

- 28.1 All information and Documentation provided by the Seller as part of the Offerings must be written in English. If any information or Documentation is a translation into the English language, the translation must be accurate and free from ambiguity.
- 28.2 Unless specified in a Contract, all measurements are, and must be, in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth).

Approvals and consents

- 28.3 Except where this Head Agreement or a Contract states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Head Agreement or a Contract.

Costs

- 28.4 Each party must pay its own costs of negotiating, preparing and executing this Head Agreement and any Contract.

Further action

- 28.5 Each party must do, at its own expense, everything reasonably necessary (including executing all Documents) to give full effect to this Head Agreement and any Contract and any transaction contemplated by them.

Assignment and novation

- 28.6 Subject to clause 28.7, a party may only assign its rights or novate its rights and obligations under this Head Agreement or any Contract (in whole or part) with the prior written consent of the other party (which must not be unreasonably withheld).
- 28.7 DTA or a Buyer may assign its rights or novate its rights and obligations under this Head Agreement or any Contract to another Buyer without obtaining the Seller's consent if its functions in relation to this Head Agreement or the Contract are transferred to another Buyer as part of a machinery of government change.

Trustee Seller

- 28.8 If the Seller acts as trustee of a trust, in relation to this Head Agreement and any Contract:

- 28.8.1 it is liable both personally, and in its capacity as trustee of that trust;
- 28.8.2 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 Head Agreement or any Contract;
- 28.8.3 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
- 28.8.4 it represents and warrants that:
- (a) such trust has been duly established and currently exists;
 - (b) it is the duly appointed, current and only trustee of that trust;
 - (c) as such trustee it has the power to enter into and perform its obligations under this Head Agreement and any Contract;
 - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (e) Conflict of Interest 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

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- (f) no breach of the relevant trust deed exists or would arise.

Waiver

- 28.9 Any waiver of any provision of, or right under, this Head Agreement or a Contract:
- 28.9.1 must be by Notice from the party entitled to the benefit of that provision or right;
and
- 28.9.2 is effective only to the extent set out in such Notice.
- 28.10 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Head Agreement or a Contract, does not amount to a waiver of any obligation of, or breach of obligation by, the other party.

Severability

- 28.11 A term or part of a term of this Head Agreement or any Contract that is illegal or unenforceable may be severed from this Head Agreement or the Contract and the remaining terms or parts of the terms of that Document will continue in force.

Entire agreement

- 28.12 This Head Agreement and any 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.

Rights are cumulative

- 28.13 The rights, powers and remedies provided in this Head Agreement and any Contract are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Head Agreement and any Contract.

No merger

- 28.14 The rights and obligations of the parties under this Head Agreement and any Contract do not merge on completion of any transaction contemplated by this Head Agreement.

Survival

- 28.15 The following clauses survive the termination and expiry of this Head Agreement and any Contract:
- 28.15.1 clause 29 (Charges);
- 28.15.2 clause 33 (Confidentiality);
- 28.15.3 clause 34 (Privacy);
- 28.15.4 clause 36 (Books and Records);
- 28.15.5 clause 37 (Audit and Access);
- 28.15.6 clause 40 (Warranties);
- 28.15.7 clause 43 (Performance Guarantee);
- 28.15.8 clause 45 (Liability cap under a Contract);

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28.15.9 clause 46 (Indemnity);

28.15.10 clause 49 (Intellectual Property Rights);

28.15.11 clause 50 (Termination) in respect of the rights and obligations arising on termination;

28.15.12 clause 65 (Transition Out);

28.15.13 clause 74 (Reporting); and

28.15.14 any clauses that are expressed to or which by their nature survive termination or expiry or are required to give effect to this clause 28.15 (including any terms expressed to survive termination or expiry in the Category Terms).

Electronic signatures and acceptance

28.16 If a Document is required to be signed or otherwise accepted in accordance with, or for purposes related to, this Head Agreement, that Document may be signed or otherwise accepted electronically, unless otherwise Notified by DTA.

Counterparts

28.17 This Head Agreement and any Contract may be executed in counterparts. All executed counterparts constitute one Document.

Governing Law and jurisdiction

28.18 This Head Agreement and any Contract is governed by the Laws of the Australian Capital Territory.

28.19 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Compliance with Laws

28.20 Each party must comply with all applicable Laws in carrying out its obligations under this Head Agreement and any Contract.

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Panel Standard Terms

PART C – Financial Provisions

29. Charges

Charges for Category 1

- 29.1 The Charges payable by the Buyer to the Seller under a Contract for Category 1 are specified in or calculated in accordance with Schedule 2.

Charges for Category 2

- 29.2 The Charges payable by the Buyer to the Seller under a Contract for Category 2 are specified in or calculated in accordance with Schedule 3.

Charges for Category 3

- 29.3 The Charges payable by the Buyer to the Seller under a Contract for Category 3 are specified in or calculated in accordance with Schedule 4.

Provisions that apply to Category 1, Category 2 and Category 3

- 29.4 The Charges applicable to any Contract must be specified in the Contract and must:
- 29.4.1 be consistent with (or better than) the pricing or pricing arrangements specified for the Seller;
 - 29.4.2 for Category 1 – as specified in or calculated in accordance with Schedule 2;
 - 29.4.3 for Category 2 – as specified in or calculated in accordance with Schedule 3;
 - 29.4.4 for Category 3 – as specified in or calculated in accordance with Schedule 4; and
 - 29.4.5 if the Offerings are included in the Online Portal, be consistent with any pricing arrangements for those Offerings on the Online Portal.
- 29.5 The Charges are payable subject to achievement of any milestones specified in a Contract.
- 29.6 If the Charges are calculated based on variables, such as volumes of consumption, the Seller must comply with any requirements in a Contract and directions from the Buyer about the volumes of use of the applicable Offerings. A Contract may specify the volumes or volume bands that may be charged under the Contract without reference to the Buyer. If a Contract specifies that the Seller must not charge above a specified volume without prior approval from the Buyer, any Charges invoiced without approval are not payable.
- 29.7 The Buyer will pay the Seller if the Seller has met its obligations under the Contract that relate to the applicable Charges.

- 29.8 Unless otherwise specified in a Contract, the Buyer will make payment in accordance with Commonwealth policy:
- 29.8.1 Where the Buyer and the Seller both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing) in a Contract, the Buyer will pay the amount of a correctly rendered Tax Invoice to the Seller within five (5) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.
- 29.8.2 Where clause 29.8.1 does not apply, the Buyer will pay the amount of a correctly rendered Tax Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.
- 29.9 If there is a dispute about whether an amount is payable under a Contract, the Buyer may withhold the disputed amount until the dispute is resolved but must pay the undisputed amount within the period specified in clause 29.8.
- 29.10 The Charges include all costs and resources required by the Seller to perform the Contract.

Payment Not Evidence

- 29.11 The payment of an amount by a Buyer is deemed to be payment on account only and any such payment is not to be taken as evidence against or an admission by the Buyer:
- 29.11.1 of the value of any Offerings; or
- 29.11.2 of any Offerings having been supplied in accordance with the Contract.

Set Off

- 29.12 DTA may, in respect of any amounts owing to it under this Head Agreement, and a Buyer may, in respect of any amounts owing to it under a Contract:
- 29.12.1 require the Seller to pay the amount (and the Seller must comply with the request);
- 29.12.2 require the Seller to adjust the next invoice to reflect the amount owing; or
- 29.12.3 set-off the amount against any amounts owing to the Seller.

Additional charges

- 29.13 The Buyer is only required to pay the Seller for any pass-through expenses or time and material costs (as specified in a Contract) to the extent those expenses or costs were actually incurred by the Seller. If requested by the Buyer, the Seller must provide sufficient evidence of any pass-through expenses or time and material costs the Seller has incurred and is claiming payment for.

Pricing not consistent with this Head Agreement

- 29.14 If a Contract includes pricing which is not consistent with the pricing arrangements specified in or determined accordance with this Head Agreement, the Buyer may:
- 29.14.1 recover any overpayment by the Buyer from the Seller, upon request by the Buyer; or
- 29.14.2 set-off the overpayment against any Charges due under a Contract.

Payments to Resellers

29.15 The Charges paid to the Seller are in full satisfaction of any payment obligations owed by the Buyer:

29.15.1 to the Seller; and

29.15.2 if the Seller is a Reseller, to the applicable Vendor,

in respect of Offerings.

Payment for Offerings

29.16 The Seller must not:

29.16.1 levy Charges or seek any other compensation for the development of Offerings if it has previously received Charges under any Contract for the development of the same Offerings;

29.16.2 charge the Buyer for any additional charges, fees or expenses (including travel and accommodation, document reproduction, transportation and courier fees, and telecommunications fees) in addition to the Charges; or

29.16.3 if the Seller is a Reseller, fail to pass on any amount payable to the Vendor for Products supplied by that Vendor.

30. GST

30.1 In this clause 30, a word or expression defined in the GST Act has the meaning given to it in that Act.

30.2 If a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Head Agreement or a Contract, the Recipient must pay to the Supplier the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:

30.2.1 the date when any consideration for the taxable supply is first paid or provided; and

30.2.2 the date when the Supplier issues a Tax Invoice to the Recipient.

30.3 If, under or in connection with this Head Agreement or a Contract, the Supplier has an adjustment for a supply under the GST Law which varies the amount of GST payable by the Supplier, the Supplier must adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 20 Business Days after becoming aware of the adjustment.

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Other GST Matters

- 30.4 If a party is entitled to be reimbursed or indemnified under this Head Agreement or a Contract, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 30.2. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.
- 30.5 Any reference in this Head Agreement or in a Contract to any amount is a reference to that amount exclusive of GST (unless otherwise specified).

PART D – Personnel

31. Personnel

General

- 31.1 The Seller must, at its own cost, use such Personnel as are necessary to enable it to fulfil its obligations under any Contract.
- 31.2 The Seller must ensure that Seller Personnel that it uses to perform a Contract have (and will continue to have) the requisite skills, qualifications, and experience necessary to provide the Offerings:
- 31.2.1 in a skilful, diligent, responsive, professional, efficient and controlled manner, and with a high degree of quality; and
- 31.2.2 to a standard that complies with the Contract.
- 31.3 The Seller must:
- 31.3.1 provide any information reasonably requested by the Buyer about the Seller's Personnel;
- 31.3.2 provide suitable replacement Seller Personnel if any Seller Personnel are unavailable or requested to be removed by the Buyer (after consulting reasonably with the Seller);
- 31.3.3 ensure Seller Personnel do not do anything which would breach the Seller's obligations under this Head Agreement or any Contract; and
- 31.3.4 ensure Seller Personnel comply with any requirements and directions of the Buyer when on or using the Buyer's premises, facilities, or information.

Seller's responsibilities

- 31.4 The Seller is responsible for all wages, salaries and other payments required to be paid to Seller Personnel.

Key Personnel

- 31.5 Unless otherwise specified in a Contract, the Seller must:

- 31.5.1 ensure that each Key Person named in the Contract is appointed to the role nominated for that person for the period specified in the Contract;
- 31.5.2 promptly remove a Key Person on request from the Buyer (after consulting reasonably with the Seller);
- 31.5.3 not otherwise remove any Key Person unless agreed by the Buyer in writing (which must not be unreasonably withheld), except if the removal arises as a result of the Key Person's voluntary resignation, sickness or injury, internal promotion or involuntary termination of employment for cause; and
- 31.5.4 if clauses 31.5.2 or 31.5.3 apply, provide replacement Key Persons acceptable to the Buyer at no additional cost to the Buyer within 10 Business Days (or such other period agreed with the Buyer). Any replacement Key Person must be approved by the Buyer (which must not be unreasonably withheld).

32. Subcontracting

- 32.1 Unless otherwise specified in the Contract, the Seller must:
 - 32.1.1 not subcontract any part of the Contract without the prior written approval of the Buyer, which will not be unreasonably withheld;
 - 32.1.2 not subcontract on terms that would permit the Subcontractor to do (or not do) something that would, if done (or not done) by the Seller, constitute a breach of this Head Agreement or the Contract;
 - 32.1.3 not subcontract with an entity that:
 - (a) has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;
 - (b) is on, or which has any employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; or
 - (c) is named in a report tabled in the Australian Parliament by the Workplace Gender Equality Agency as a supplier that has not complied with the WGEA; and
 - 32.1.4 ensure that any Subcontractor is bound by, and complies with, provisions to the effect of the following clauses of this Head Agreement:
 - (a) clause 33 (Confidentiality);
 - (b) clause 34 (Privacy);
 - (c) clause 37 (Audit and Access);
 - (d) clause 48 (Conflict of Interest and Improper Conduct);
 - (e) clause 50 (Termination); and
 - (f) Part J (Security).

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- 32.2 The Seller must provide the Buyer with details of the subcontract (excluding pricing) between the Seller and the Subcontractor within 10 Business Days after the Buyer's request.
- 32.3 At the Contract Start Date, the Subcontractors identified in a Contract are approved Subcontractors under that Contract.
- 32.4 The Seller must inform its Subcontractors that the Subcontractor's provision of any Offerings under the Contract may be disclosed publicly.

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PART E – Information Management

33. Confidentiality

Disclosure of Confidential Information

- 33.1 Subject to clause 33.6, a party to this Head Agreement or a Contract must not, without the prior consent of the other party, disclose any Confidential Information of the other party to a third party.
- 33.2 When giving consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party must comply with those conditions if it makes the disclosure.

Written undertakings

- 33.3 Each party must take all reasonable steps to ensure that, subject to clause 33.6, its Personnel engaged to perform work under this Head Agreement or a Contract do not disclose Confidential Information of the other party.
- 33.4 Unless otherwise specified in a Contract, a Buyer may at any time request the Seller to arrange for any of the Seller's Personnel to whom information may be disclosed to give a written undertaking in the form required by the Buyer.
- 33.5 If the Seller receives a request under clause 33.4, it must promptly arrange for all such undertakings to be given and must provide copies to the Buyer.

Exceptions to obligations

- 33.6 A party may disclose Confidential Information of the other party to the extent that the Confidential Information:
- 33.6.1 is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Head Agreement or any Contract;
 - 33.6.2 is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Head Agreement or Contract related activities;
 - 33.6.3 is disclosed by DTA or a Buyer in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly;
 - 33.6.4 is disclosed because it is authorised or required by Law, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed;
 - 33.6.5 is disclosed by DTA or a Buyer to either or both a Commonwealth or State or Territory minister or the Minister's advisers;
 - 33.6.6 is shared by DTA within DTA, or with another Buyer or potential Buyer (including Commonwealth entities), if this serves the Commonwealth's or a Buyer's, or potential Buyer's legitimate interests;
 - 33.6.7 is shared by a Buyer within the Buyer or with another Buyer or potential Buyer, if this serves the Commonwealth's or the Buyer's legitimate interests; or

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- 33.6.8 is in the public domain otherwise than due to a breach of this Head Agreement or a Contract.

Obligations on disclosure

- 33.7 A party that discloses Confidential Information to another person must:
- 33.7.1 if the disclosure is pursuant to clauses 33.6.1 or 33.6.2:
- (a) inform the receiving person that the information is Confidential Information; and
 - (b) not provide the information unless the receiving person agrees to keep the information confidential; or
- 33.7.2 if the disclosure is pursuant to clauses 33.6.3, 33.6.4, 33.6.5, 33.6.6 or 33.6.7, inform the receiving party that the information is Confidential Information.

Announcements

- 33.8 Subject to clause 33.9, the Seller must not make any public announcement about:
- 33.8.1 this Head Agreement or any transaction contemplated by it unless it has DTA's written agreement; or
- 33.8.2 a Contract or any transaction contemplated by it unless it has a Buyer's written agreement.
- 33.9 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).
- 33.10 If the Seller is required by Law or a regulatory body to make a public announcement, the Seller must:
- 33.10.1 limit the public announcement to the extent required by the relevant Law or regulatory body; and
- 33.10.2 to the extent practicable, first consult with and take into account the reasonable requirements of:
- (a) DTA if the public announcement relates to this Head Agreement; and
 - (b) the Buyer if the public announcement relates to a Contract.

34. Privacy

Personal Information

- 34.1 This clause 34 applies only where the Seller deals with Personal Information for the purpose of providing the Offerings in accordance with this Head Agreement or any Contract.
- 34.2 The Seller must:
- 34.2.1 comply with all privacy Laws in respect of its collection, use, storage, or disclosure of Personal Information;

- 34.2.2 use or disclose Personal Information obtained during the course of performing this Head Agreement and any Contract only for the purposes of this Head Agreement and the Contract;
 - 34.2.3 carry out and discharge the obligations contained in the Australian Privacy Principles as if it were a Buyer under the Privacy Act;
 - 34.2.4 not use or disclose Personal Information or engage in an act or practice that would breach an APP or a registered Approved Privacy Code that is applicable to the Seller;
 - 34.2.5 assist DTA and any Buyer to meet its obligations in relation to Personal Information collected, used or disclosed in connection with the Offerings; and
 - 34.2.6 ensure that any Seller Personnel are made aware of the privacy obligations of the Seller.
- 34.3 The Seller must promptly Notify the DTA Representative (in respect of this Head Agreement) and the Buyer Representative (in respect of a Contract) if the Seller:
- 34.3.1 becomes aware of a breach or possible breach of any of its privacy obligations;
 - 34.3.2 becomes aware that a disclosure of Personal Information is required by Law; or
 - 34.3.3 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.
- 34.4 The Seller must ensure that all Subcontracts entered into for the purposes of fulfilling its obligations under a Contract contain provisions to ensure that each Subcontractor has equivalent privacy awareness and obligations as the Seller, including the requirement in relation to Subcontracts.

35. Notifiable Data Breaches

- 35.1 Clauses 35.1 to 35.6 apply to a Contract unless a Contract expressly specifies that they do not apply, or apply with modifications.
- 35.2 If the Seller becomes aware of an event that could amount to an Eligible Data Breach in relation to the Buyer, Buyer Personnel, or any of the Seller's obligations under this Head Agreement or a Contract, the Seller must:
- 35.2.1 as soon as possible, but within two Business Days, Notify the Buyer of the event;
 - 35.2.2 provide the Buyer with all information that the Buyer requests in relation to the event that the Seller can lawfully provide; and
 - 35.2.3 if the Buyer requires, allow the Buyer to participate in the Seller's assessment of the event to determine if the event is an Eligible Data Breach (and the Buyer must comply with the Seller's reasonable security and confidentiality requirements when participating in that assessment).
- 35.3 If:
- 35.3.1 the Seller determines, or the Buyer determines and Notifies the Seller, that an Eligible Data Breach has or may have occurred; and

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- 35.3.2 the Privacy Act requires that the Eligible Data Breach be notified to the Privacy Commissioner,

the parties must meet to discuss and endeavour to agree who will issue notification of the Eligible Data Breach (**Notifying Party**). If the parties cannot agree which party will issue the notification within 2 Business Days of meeting (or such other period agreed in writing), the Buyer will determine which party will be the Notifying Party.

- 35.4 If:

35.4.1 the Seller is the Notifying Party, the Seller must, within two Business Days of the determination or Notification being made or given in accordance with this clause 35 and prior to notifying the Privacy Commissioner of the Eligible Data Breach, give to the Buyer a draft notice to the Privacy Commissioner in respect of the Eligible Data Breach; or

35.4.2 the Buyer is the Notifying Party, the Buyer will notify the Privacy Commissioner of the Eligible Data Breach, in which case, the Buyer will give the Seller a copy of the notification before it is given to the Privacy Commissioner.

- 35.5 The Buyer may request the Seller to make changes to the draft notice to the Privacy Commissioner (and the Seller must consider and include the requested changes if reasonable to do so).

- 35.6 The Seller must ensure that the Buyer is promptly advised of any investigation or other action taken by the Privacy Commissioner in connection with the actual or suspected Eligible Data Breach and kept informed in relation to the investigation or other action.

- 35.7 In this clause, a reference to the Privacy Commissioner includes a reference to the Australian Information Commissioner.

36. Books and Records

Maintenance of records

- 36.1 The Seller must maintain complete, accurate, and up-to-date accounts and records relating to this Head Agreement and each Contract. All accounts and records must:

36.1.1 be kept in a manner that permits them to be conveniently and properly audited, and enables the amounts payable under a Contract to be determined and audited;

36.1.2 comply with any applicable Australian accounting standards; and

36.1.3 be made available to DTA (and a Buyer in respect of a Contract) as required for monitoring and reviewing the performance of the Seller's obligations under this Head Agreement or any Contract.

Seller and Subcontractor requirements

- 36.2 The Seller must:

36.2.1 securely retain all accounts and records referred to in clause 36.1 for a period of seven years after termination or expiration of this Head Agreement and each Contract; and

36.2.2 unless otherwise specified in a Contract, require its Subcontractors to securely retain all accounts and records referred to in clause 36.1 for a period of seven

years after termination or expiration of the Contract for which they were a Subcontractor.

Survival

- 36.3 This clause 36 applies for the Term and for a period of seven years after the termination or expiry of this Head Agreement or all Contracts, whichever is later.

Costs

- 36.4 The Seller must bear its own costs of complying with clauses 36.1 to 36.3.

37. Audit and Access

Right to conduct audits

- 37.1 Authorised Investigators may conduct audits relevant to the performance of the Seller's obligations under this Head Agreement or a Contract at any time. DTA will use reasonable endeavours to co-ordinate Buyers to avoid DTA and a Buyer conducting audits of the same Contract at the same time. Audits under this clause 37 may be conducted of:
- 37.1.1 the Seller's operational practices and procedures as they relate to this Head Agreement and any Contract (including security procedures);
 - 37.1.2 the Charges and the accuracy of the Seller's invoices and reports in relation to the provision of Offerings under this Head Agreement and any Contract;
 - 37.1.3 the Seller's compliance with its confidentiality, privacy, security, and other obligations under this Head Agreement and any Contract;
 - 37.1.4 material (including accounts and records) in the possession of the Seller relevant to the Offerings or this Head Agreement or any Contract; and
 - 37.1.5 any other matters determined by the Authorised Investigator to be relevant to the operations and the performance of the Offerings or this Head Agreement or any Contract.
- 37.2 DTA or a Buyer may, at reasonable times and on giving reasonable Notice to the Seller, require the provision by the Seller or Seller Personnel, of records and information in a generally accepted data format and storage medium specified by DTA or the Buyer.

Access Authorised Investigator

- 37.3 An Authorised Investigator may at reasonable times and on giving reasonable Notice to the Seller:
- 37.3.1 access the premises of the Seller to the extent relevant to the performance of this Head Agreement or a Contract; and
 - 37.3.2 inspect and copy relevant Documentation, books and records, however stored, in the possession, custody or control of the Seller or its Personnel relevant to the performance of this Head Agreement or a Contract.
- 37.4 An Authorised Investigator must comply with the Seller's reasonable security requirements when on the Seller's premises.

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- 37.5 The Seller must comply with any request from an Authorised Investigator, as applicable, for the Seller to:
- 37.5.1 give the Authorised Investigator copies of Documentation, books, records and information in a data format and storage medium accessible by the Authorised Investigator by use of the Authorised Investigator's existing computer hardware and software or other facilities; and
- 37.5.2 provide assistance in respect of any inquiry into or concerning this Head Agreement or any Contract.
- 37.6 For the purpose of this clause 37, an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to the Authorised Investigator, and any inquiry conducted by Parliament or any Parliamentary Committee, or the Authorised Investigator.

Conduct of audit and access

- 37.7 The Seller must provide:
- 37.7.1 access to its computer hardware and software used in providing the Offerings under Contracts or on which it stores information about the performance of Contracts to the extent necessary for the Authorised Investigator to exercise its rights under this clause 37; and
- 37.7.2 the Authorised Investigator with any reasonable assistance requested by the Authorised Investigator to use that hardware and software.
- 37.8 The Authorised Investigator must use reasonable endeavours to ensure that audits and the exercise of the rights granted by this clause 37, do not unreasonably delay or disrupt any material in respect of the Seller's performance of its obligations under this Head Agreement or any Contract.

Costs

- 37.9 Subject to clause 37.10, each party must bear its own costs of all inspections, access and audits.
- 37.10 If the Seller can prove that it has incurred direct expenses in the exercise by the Authorised Investigator of the rights granted under this clause 37 which, having regard to the value of this Head Agreement and any Contract, are substantial, DTA or the Buyer (as applicable) and the Seller may negotiate an appropriate and reasonable reimbursement. Any reimbursement must not be greater than the proven direct expenses incurred, and is not payable if the audit reveals failures by the Seller to comply with this Head Agreement or any Contract.

Seller to comply with Authorised Investigator's requirements

- 37.11 The Seller must comply with the requirements of an Authorised Investigator provided such requirements are legally enforceable and within the power of the Authorised Investigator.

No restriction

- 37.12 This clause 37 operates in addition to, and does not limit, any statutory function, power, right or entitlement of an Authorised Investigator.

No reduction in responsibility

- 37.13 The requirement for, and participation in, audits does not in any way reduce the Seller's responsibility to perform its obligations in accordance with this Head Agreement or any Contract.

Consequences of audit

- 37.14 The Seller must promptly take, at no additional cost to DTA or a 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 Head Agreement or any Contract unless otherwise agreed in writing by DTA or the Buyer (as applicable).
- 37.15 If an audit reveals any overcharging, the Seller must:
- 37.15.1 refund any amounts overcharged to the relevant Buyer; and
 - 37.15.2 if the audit reveals material overcharging (as reasonably determined by DTA or the Buyer), pay to DTA or the Buyer, as applicable, the cost of any auditor fees that DTA or a Buyer has incurred.

Audit of Buyers

- 37.16 Unless specified in a Contract, the Seller must not audit or access any of the Buyer's premises, systems or information (including to verify any licence or other compliance issues).

Accessing Seller Proprietary Information

- 37.17 Unless otherwise specified in a Contract (and subject to clause 37.12) this clause 37 does not allow an Authorised Investigator to audit or access Seller Proprietary Information.

Survival

- 37.18 This clause 37 applies for the Term and for a period of seven years after the termination or expiry of all Contracts.

PART F – Risk Management

38. Responsibility for all Offerings and Reseller arrangements

- 38.1 Subject to clause 38.2, the Seller is responsible for all aspects of the provision of Offerings under a Contract, regardless of whether it is a Reseller of those Offerings, or engages Subcontractors for the provision of those Offerings.
- 38.2 A Contract may specify that some or all of the Offerings are to be provided by the Seller as a Reseller (**Reseller Offerings**) in accordance with one of the following options:
- 38.2.1 **Option 1 – Direct Supply from the Seller:** The Seller must supply the Reseller Offerings in accordance with the terms of this Head Agreement and the Contract.
- 38.2.2 **Option 2 – Seller Facilitation:** The Seller must do all things necessary to facilitate the supply of the Reseller Offerings to the Buyer by the Vendor of the Reseller Offerings by arranging for the Vendor to enter into a separate form of contract with the Buyer for the supply of the Reseller Offerings. If this option is specified in a Contract:
- (a) the terms and conditions of the contractual arrangement with the Vendor must be specified in or attached to the Contract (but if no such terms and conditions are specified, the terms of this Head Agreement will apply);
 - (b) the Seller must ensure that the Vendor enters into that contract within any timeframe specified in the Contract, or otherwise promptly after the Contract Start Date; and
 - (c) if specified in the Contract, the Buyer must pay the Seller the Charges for the Reseller Offerings and the Seller must pay, and is responsible for, all amounts payable to the Vendor for the Reseller Offerings.
- 38.2.3 **Option 3 – Seller as Agent:** The Seller must supply the Reseller Offerings to the Buyer as the agent for the Vendor. If this option is specified in a Contract:
- (a) the terms and conditions for the supply of the Reseller Offerings from the Vendor:
 - (i) must be specified in or attached to the Contract; and
 - (ii) will create a contractual relationship between the Vendor and the Buyer when Buyer and the Seller (acting as the agent of the Vendor) enter into the Contract;
 - (b) unless specified otherwise in the Contract, the Buyer must pay the Seller the Charges for the Reseller Offerings and the Seller must pay, and is responsible for, all amounts payable to the Vendor for the Reseller Offerings; and
 - (c) the Seller warrants that it is fully authorised to enter into the Contract as the agent of the Vendor in respect of the supply of the Reseller Offerings, and to bind the Vendor to the terms and conditions for the supply of the Reseller Offerings.

- 38.3 Unless otherwise specified in the Contract, if Option 2 or 3 applies, the Seller:
- 38.3.1 must ensure that all Reseller Offerings required to be provided by the Vendor are provided to the Buyer, ensure that the Buyer is granted a right to exercise the licence or usage rights specified in the Contract applicable to the Offering, and coordinate and manage the provision of the Reseller Offerings to the Buyer in accordance with the contractual arrangements in clause 38.2;
 - 38.3.2 must 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 error or defect in the Reseller Offerings that is reported by the Buyer to the Seller during the applicable Warranty Period; and
 - 38.3.3 is not relieved of any of its obligations under this Head Agreement or a Contract by virtue of it being a Reseller.
- 38.4 For clarity, if a Contract specifies Reseller Offerings:
- 38.4.1 the Seller must provide all Offerings which are not Reseller Offerings in a manner consistent with the supply of the Reseller Offerings; and
 - 38.4.2 all terms of this Head Agreement and the Contract apply to Offerings which are not Reseller Offerings.
- 38.5 If a Contract does not specify which option in clause 38.2 applies to any Reseller Offerings, Option 1 – Direct Supply from the Seller applies.
- 38.6 Nothing in this clause 38 limits the operation of clause 16 of this Head Agreement.

39. Authorisations

- 39.1 The Seller must, and must ensure that its Subcontractors:
- 39.1.1 obtain and maintain all authorisations (including all export approvals) required to lawfully perform the work under a Contract and to provide the Offerings;
 - 39.1.2 provide a copy of any authorisations to DTA or the Buyer within 10 Business Days of a request from DTA or the Buyer; and
 - 39.1.3 ensure that all work under the Contract is performed and the Offerings are provided in accordance with all applicable authorisations.
- 39.2 The Seller must promptly Notify the Buyer if there is any change in circumstances which prevents the Seller from performing its obligations under a Contract in accordance with all required authorisations.
- 39.3 The Buyer acknowledges that it may be required to comply with any export control Laws that apply to the Offerings.

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40. Warranties

Application of warranties

- 40.1 The warranties provided under this clause 40 survive the termination or expiry of this Head Agreement and any Contract.

Seller warranty – Seller has informed itself

- 40.2 The Seller warrants, on the Head Agreement Start Date and each Contract Start Date (if any), that:
- 40.2.1 it has done all things necessary to understand and inform itself about the requirements of this Head Agreement and each Contract;
 - 40.2.2 it enters into this Head Agreement and any Contract based on its own investigations, interpretations, deductions, information and determinations;
 - 40.2.3 it does not rely on any representation, warranty, condition or other conduct, information, statement or Document given by DTA, a Buyer, or any person purporting to act on behalf of DTA or a Buyer in entering into this Head Agreement or any Contract, other than an express warranty contained in this Head Agreement or any Contract;
 - 40.2.4 it has all rights, power, consents, and authority to enter into and lawfully perform its obligations under and grant all licences required under this Head Agreement and each Contract (including from any Vendor for Offerings supplied by the Seller as a Reseller); and
 - 40.2.5 to the best of its knowledge, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Head Agreement or any Contract.

Seller warranty – capacity and ability

- 40.3 The Seller warrants that it has disclosed any relevant circumstances that materially affect the Seller's capacity or ability to perform and fulfil its obligations under this Head Agreement or any Contract or materially affect the Seller's reputation:
- 40.3.1 in writing to DTA prior to the Head Agreement Start Date; and
 - 40.3.2 in writing to the Buyer prior to entering into any Contract,
- and that it will promptly disclose any changes in those circumstances to DTA and the Buyer.

Seller warranty – Australian Government policy

- 40.4 The Seller warrants on this Head Agreement Start Date and each Contract Start Date that:
- 40.4.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the WGEA;
 - 40.4.2 it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount; and
 - 40.4.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list.

Offering warranties

- 40.5 Unless specified in a Contract, the Seller warrants that on delivery to the Buyer, the Offerings will:
- 40.5.1 be free from any material Defect in workmanship, design, and materials;
 - 40.5.2 be free from any encumbrances; and
 - 40.5.3 be compliant with the Specifications and Documentation.
- 40.6 The Seller must pass through to the Buyer all Vendor and other relevant third party warranties that apply to, or are provided with, the Offerings.
- 40.7 Any replacement of any Offerings must comply, at the date of delivery, with the requirements set out in clauses 40.5 and 40.6.

Effect of warranties

- 40.8 Nothing in this Head Agreement or any Contract:
- 40.8.1 excludes, restricts or modifies any condition, warranty, right or remedy which may be implied by Law unless specified in a Contract (but only to the extent that the exclusion, restriction or modification specified in the Contract is permitted by Law); or
 - 40.8.2 limits DTA's or a Buyer's right to take action on the basis of any other Laws.

41. Insurance

- 41.1 Unless otherwise agreed by DTA in writing, the Seller must, before entering into a Contract, have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels:
- 41.1.1 public liability insurance for a minimum of \$10,000,000 in the aggregate per annum;
 - 41.1.2 either professional indemnity or errors and omissions insurance for a minimum of \$2,000,000.00 per claim and \$2,000,000 in the aggregate per annum;
 - 41.1.3 product liability insurance for a minimum of \$10,000,000.00 per claim and \$10,000,000 in the aggregate per annum;
 - 41.1.4 workers' compensation as required by law; and
 - 41.1.5 any other, or increased, insurance specified in a Contract.
- 41.2 Unless specified in a Contract, the Seller must maintain the insurances required under:
- 41.2.1 clause 41.1 for the Contract Period (or such longer period specified in a Contract); and
 - 41.2.2 clause 41.1.2 in accordance with clause 41.2.1 and for three years following the expiry or termination of any Contract.

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- 41.3 DTA may review the amounts of insurance from time to time to ensure that they are sufficient and may require the Seller to adjust the insurance amounts accordingly, subject to agreement between DTA and the Seller.
- 41.4 The Seller must, on request by DTA, provide to DTA proof of the currency of the required insurances within 5 Business Days (provided that the Seller is not required to hold and maintain the insurances required by this Head Agreement unless it intends to enter, or has entered into, a Contract).

42. Unconditional Financial Undertaking

- 42.1 If specified in a Contract, the Seller must, on or before the Contract Start Date (or other date agreed by the parties in the Contract), provide the Buyer with an executed unconditional financial undertaking in the form required by the Buyer.
- 42.2 If the Seller does not comply with any of its obligations under the Contract, the Buyer may call on the unconditional financial undertaking without Notice to the Seller.
- 42.3 Unless otherwise specified in a Contract:
- 42.3.1 if the Buyer calls on the unconditional financial undertaking in accordance with clause 42.2, then no later than five Business Days after the Buyer gives the Seller a Notice asking for it, the Seller must deliver to the Buyer a replacement or additional unconditional financial undertaking; and
- 42.3.2 if the Buyer does not call on the unconditional financial undertaking, the Buyer will return the unconditional financial undertaking, within six months after expiry or termination of the Contract.

43. Performance Guarantee

- 43.1 If specified in a Contract, the Seller must, on or before the Contract Start Date (or other date agreed by the parties in the Contract), provide the Buyer with an executed performance guarantee substantially in the form required by the Buyer.

44. Liability under Head Agreement and Contract

- 44.1 The liability of a party for breach of this Head Agreement and any Contract, or in tort, or for any other cause of action arising out of the operation of this Head Agreement, will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia.

45. Liability Cap under a Contract

- 45.1 Subject to clause 45.2, the Seller's liability arising out of or in connection with a Contract (including under an indemnity) is limited to:
- 45.1.1 the amount specified in the applicable Contract; or
- 45.1.2 if no amount is specified in the applicable Contract, an amount equal to three times the total value of the Contract,

and a Contract may also limit the Buyer's liability, as specified in the Contract.

- 45.2 Unless otherwise specified in a Contract, any limitation of liability does not apply to any Loss arising out of:
- 45.2.1 personal injury (including sickness or death of a person);
 - 45.2.2 loss of, or damage to, tangible property;
 - 45.2.3 any infringement of Intellectual Property Rights;
 - 45.2.4 any breach of confidentiality, security, or privacy obligations in this Head Agreement, the Contract or at Law;
 - 45.2.5 any breach of any Law, fraud or any unlawful act or omission; or
 - 45.2.6 liability for taxes (and any related penalties or interest) in respect of the Contract payable by the Seller or payable by the Buyer but recoverable from the Seller.
- 45.3 Unless otherwise specified in a Contract, the limitation of liability specified in the Contract or determined in accordance with clause 45.1.2 applies annually in the aggregate.
- 45.4 The liability of a party for Loss sustained by the other party is reduced proportionately to the extent that such Loss has been caused by:
- 45.4.1 the other party's failure to comply with its obligations and responsibilities under the Contract; or
 - 45.4.2 the negligent act or omission of the other party.

46. Indemnity

Application

- 46.1 Clause 46 applies to a Contract unless otherwise specified in a Contract.

Seller's Indemnity

- 46.2 The Seller indemnifies:
- 46.2.1 with respect to this Head Agreement, DTA, and DTA Personnel; and
 - 46.2.2 with respect to a Contract, a Buyer, and Buyer Personnel,
- (each being **Indemnified Persons**) in respect of any Loss suffered or incurred by an Indemnified Person which is caused by or arises from:
- 46.2.3 any breach of this Head Agreement or a Contract by the Seller or Seller Personnel;
 - 46.2.4 any breach of any Law by the Seller or Seller Personnel in the performance of this Head Agreement or any Contract;
 - 46.2.5 any negligent or unlawful act or omission of the Seller or Seller Personnel in relation to this Head Agreement or a Contract; or

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- 46.2.6 a claim made by a third party arising out of or in connection with an allegation that any Offerings (including the use of any Offerings by the Indemnified Persons) infringes the Intellectual Property Rights or Moral Rights of the third party, except to the extent that such infringement was caused by an act or omission of the Buyer.
- 46.3 The indemnity in clause 46.2 is reduced proportionately to the extent that such Loss was caused by:
- 46.3.1 the Indemnified Person's failure to comply with its obligations and responsibilities under this Head Agreement or the relevant Contract; or
- 46.3.2 the act or omission of the Indemnified Person.

Rights not exclusive

- 46.4 The rights of the Indemnified Persons pursuant to the indemnity in this clause 46 are in addition to, and not exclusive of, any other right, power, or remedy provided by Law, but the Indemnified Persons are not entitled to be compensated in excess of the amount of the relevant Loss they have incurred.

Indemnified Person's obligations

- 46.5 If an Indemnified Person wishes to enforce an indemnity under clause 46, it must:
- 46.5.1 give written Notice to the Seller as soon as practicable;
- 46.5.2 subject to the Seller agreeing to comply at all times with clause 46.6, permit the Seller, at the Seller's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- 46.5.3 in the event that the Seller is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, provide all reasonable assistance to the Seller in the handling of any negotiations and litigation at the Seller's cost.

Seller's obligations

- 46.6 Unless otherwise agreed in writing by the Indemnified Person, if the Seller is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, the Seller must:
- 46.6.1 comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiations as if the Seller was the Indemnified Person (including the Legal Services Directions and any direction issued by the Attorney-General);
- 46.6.2 keep the Indemnified Person informed of any significant developments relating to the conduct of the defence or settlement of any claim;
- 46.6.3 provide to the Indemnified Person all information and Documents reasonably requested by the Indemnified Person, to enable the Indemnified Person to determine whether the defence or settlement by the Seller of any claim is being conducted in accordance with applicable government policy and obligations (including any requirements relating to legal professional privilege and confidentiality); and
- 46.6.4 comply with any reasonable conditions imposed by the Indemnified Person.

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Rights held on trust

- 46.7 If an indemnity provides a benefit to a person who is not a party to this Head Agreement or any Contract, that benefit is held on trust for that person by DTA (in relation to this Head Agreement) or the Buyer (in relation to any Contract), through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by DTA or the Buyer as trustee (as applicable).

Mitigation

- 46.8 Each party must use all reasonable endeavours to mitigate its Loss, arising under or in connection with this Head Agreement and any Contract.

47. Circumstances Beyond Control

- 47.1 If the Seller cannot perform its obligations under this Head Agreement or any Contract (including meeting any timeframes) due to:
- 47.1.1 circumstances beyond the Seller's reasonable control (for example, but not limited to, acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation); or
 - 47.1.2 circumstances caused by DTA (in respect of this Head Agreement) or a Buyer (in respect of a Contract),
- the Seller must:
- 47.1.3 Notify the DTA Representative if the Seller's obligations under this Head Agreement are affected; and
 - 47.1.4 Notify the Buyer Representative if the Seller's obligations under a Contract are affected,
- as soon as possible. The Notice must describe the circumstances, how they have or will affect the Seller's obligations under this Head Agreement or the Contract, and explain the Seller's proposed way to manage the circumstances.
- 47.2 The Seller must make all reasonable efforts to minimise the effects of any circumstances beyond the Seller's reasonable control on this Head Agreement and any Contract.
- 47.3 The Seller may request an extension of time for the performance of its obligations under this Head Agreement or the applicable Contract. If DTA or the Buyer agrees to an extension of time under a Contract (which must not be unreasonably withheld), the parties must amend the Contract accordingly.

48. Conflicts of Interest and Improper Conduct

- 48.1 The Seller must not engage in any Improper Conduct. DTA may suspend or remove the Seller from the Panel if a Conflict of Interest arises or the Seller or its Personnel engage in Improper Conduct.
- 48.2 If, during the performance of this Head Agreement or any Contract any Conflict of Interest arises or appears likely to arise or Improper Conduct occurs, or appears likely to occur, the Seller must:

- 48.2.1 Notify DTA and the applicable Buyer immediately in writing;
 - 48.2.2 make full disclosure of all relevant information relating to the Conflict of Interest or Improper Conduct; and
 - 48.2.3 take all steps that DTA or the applicable Buyer reasonably requires the Seller to take in order to resolve or otherwise deal with the Conflict of Interest or Improper Conduct.
- 48.3 DTA may Notify the Seller of conduct or circumstances that in DTA's view amount to Improper Conduct or a Conflict of Interest and the Seller must comply with the directions of DTA or the Buyer in respect of that Notice.

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PART G – Intellectual Property Rights

49. Intellectual Property Rights

Buyer Supplied Items

- 49.1 Unless otherwise specified in a Contract, the Buyer grants to the Seller, or will ensure that the Seller is granted, a revocable, non-exclusive licence to use, copy, reproduce, and adapt the Buyer Supplied Items for the purposes of performing the Seller's obligations under the Contract.

Offerings – General

- 49.2 The Seller grants to the Buyer (or must obtain the grant for the benefit of the Buyer) all Intellectual Property Rights and any Moral Rights it needs to use the Offerings in accordance with a Contract. Without limiting this, unless otherwise specified in a Contract:
- 49.2.1 the Seller grants to the Buyer (or must obtain the grant for the benefit of the Buyer) a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Offerings (and any Intellectual Property Rights that subsist in those Offerings) to receive the full benefit of the Offerings;
 - 49.2.2 the Seller must obtain all necessary Intellectual Property Right permissions before providing any Offerings to the Buyer; and
 - 49.2.3 if the Seller supplies Offerings as a Reseller (whether or not the Seller is an agent for the Vendor), the Seller must ensure the Buyer is granted by the Vendor a right to exercise the licensed rights specified in the Contract, or as applicable to the Offering.

Offerings - Software Licensing

- 49.3 Unless otherwise specified in a Contract, for all Offerings that are Software, the Seller:
- 49.3.1 grants to the Buyer (or where the Seller is a Reseller, must grant or ensure the Buyer is granted) an irrevocable, world-wide, non-exclusive, royalty free licence to:
 - (a) at the Buyer's discretion, install the Software (without affecting the Buyer's entitlement to any other Offerings);
 - (b) use and access the Software, from the Buyer's environment or the Buyer's system;
 - (c) adapt and configure the Software to the extent necessary to enable it to be used on the Buyer's systems and with other software of the Buyer;
 - (d) use and communicate each part of the Software, and the Documentation, in either hardcopy or softcopy (including online);
 - (e) make necessary copies of the Software, and the Documentation, to enable the full use of the Software and Documentation, and for backup and security purposes;

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- (f) access, use and copy the Software;
 - (i) by the users;
 - (ii) at the locations; and
 - (iii) in accordance with any other requirements,

as specified in the Contract (or if none specified, by any users (including employees, agents and contractors) authorised by the Buyer); and

- 49.3.2 authorises the Buyer to sublicense and assign to third parties the rights referred to in clause 49.3.1 solely for the benefit of the Buyer.
- 49.4 Unless otherwise specified in the Contract, the Buyer may permit its Personnel to exercise the rights set out in clause 49.3.1, and to use the Software and Documentation provided that:
- 49.4.1 the Buyer must ensure that its Personnel use the Software and Documentation in accordance with this Head Agreement and other applicable terms of a Contract; and
- 49.4.2 the Buyer retains responsibility for the use of the Software and Documentation in accordance with this Head Agreement and other applicable terms of a Contract.
- 49.5 The licence referred to in clause 49.3, and any licence of Software under clause 49.12 of the Head Agreement, is:
- 49.5.1 if the Contract specifies that the licence is for a particular period of time only or will expire after a particular period of time unless renewed – for the period of time specified in the Contract (and any renewal in accordance with that Contract); or
- 49.5.2 otherwise – perpetual.
- 49.6 The Buyer retains Intellectual Property Rights in data and Buyer Material stored in the Offerings received as part of the Contract.

Offerings – New Material

- 49.7 For reports specifically developed to meet:
- 49.7.1 DTA's requirements - Intellectual Property Rights in these reports provided under this Head Agreement will vest in DTA upon creation; and
- 49.7.2 the Buyer's requirements - Intellectual Property Rights in these reports provided under a Contract will vest in the Buyer upon creation (unless specified otherwise in a Contract).
- 49.8 Unless specified otherwise in a Contract and subject to clause 49.7 and the licences granted under this clause 49, Intellectual Property Rights in any New Material vest in the Seller absolutely upon creation.
- 49.9 If the Seller owns Intellectual Property Rights in any New Material, unless otherwise specified in a Contract, the Seller grants to the Buyer:
- 49.9.1 if the New Material is Software – a licence consistent with clause 49.3 to 49.5; or
- 49.9.2 otherwise - an irrevocable, perpetual, non-exclusive, world-wide, paid-up licence to hold, use, copy, communicate, display, perform and sublicense that New

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Material and to alter, enhance, and produce derivative works from that New Material for use by the Buyer, but not to exploit that New Material for commercial purposes.

- 49.10 If ownership of any New Material vests in the Buyer, the Buyer grants to the Seller a revocable, non-exclusive licence to use, copy, reproduce, and adapt the New Material for the purposes of performing the Seller's obligations under the Contract.

Existing Material

- 49.11 Unless specified in a Contract, nothing in this Head Agreement affects the ownership of the Intellectual Property Rights in any Existing Material.
- 49.12 Unless specified in the Contract, to the extent that the Buyer needs to use any Existing Material to receive the full benefit of the Contract and the Offerings (including all components of the Offerings) the Seller grants to the Buyer:
- 49.12.1 if the Existing Material is Software – a licence consistent with clause 49.3 to 49.5; or
- 49.12.2 otherwise - an irrevocable, perpetual, non-exclusive, world-wide, paid-up licence to hold, use, copy, communicate, display, perform and sublicense that Existing Material and to alter, enhance, and produce derivative works from that Existing Material for use by the Buyer, but not to exploit that Existing Material for commercial purposes.

Additional licence rights

- 49.13 Unless specified otherwise in a Contract, a licence granted by the Seller under this clause 49 includes the right for the Buyer and end-users of the Offerings to:
- 49.13.1 properly exercise all functions and tasks contemplated by the Contract (including using the Offerings) and as necessary or incidental to the use of the Offerings;
- 49.13.2 integrate, interface, load, compile, and run the Offerings for any purpose including for the purposes of developing, implementing, and operating the Buyer's systems;
- 49.13.3 access and use the Offerings, and to permit all users of the Offerings to use and access the Offerings, from the Buyer's or users' environment or systems;
- 49.13.4 permit adaptation and configuration of the Offerings as contemplated by the Specifications or the Contract;
- 49.13.5 test and evaluate the Offerings, and confirm their suitability, and compliance with applicable Specifications or other requirements in the Contract;
- 49.13.6 assign the rights in the Contract to another Buyer where that Buyer requires use of the Offerings as a result of an Administrative Arrangements Order;
- 49.13.7 dispose of or transfer the Offerings (including by sale);
- 49.13.8 allow use of the Offerings by any user anywhere in the world, and by any Buyer; and
- 49.13.9 use any additional Software, Offerings or other Material that is required to receive the benefit of the Offerings.

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- 49.14 Additional licence rights may be specified in a Contract, subject to the Additional Terms restrictions in clause 14 of this Head Agreement.
- 49.15 Unless otherwise specified in a Contract, the Seller must ensure the licence permits the Offerings to be used by any number or type of persons, including any person who is authorised by the Buyer as a user and grants the rights in this clause 49 to the Buyer and all users of the Offerings.
- 49.16 All licensed rights are included in the Charges. A Contract may specify how the Charges are calculated to reflect the licensed rights.
- 49.17 Unless otherwise specified in a Contract, the Buyer may transfer or sublicense any licence under this clause 49 to any person for any purpose related to the Offerings (including any other service providers who require use of the Existing Material to provide services to the Buyer).

Third Party Intellectual Property

- 49.18 The Seller must obtain all necessary consents before providing any Intellectual Property Rights owned or licensed by a third party to DTA under this Head Agreement or a Buyer under a Contract.

Intellectual Property warranty

- 49.19 Unless specified otherwise in a Contract, the Seller warrants that:
- 49.19.1 the Offerings, and use of those Offerings in accordance with this Head Agreement or a Contract, will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- 49.19.2 it has the necessary rights to grant the licences required by this clause 49.

Remedy for breach of Intellectual Property warranty

- 49.20 If someone claims, or the Buyer reasonably believes that someone is likely to claim, that all or part of the Offerings infringe their Intellectual Property Rights or that use of the Offerings in accordance with this Head Agreement or a Contract infringes their Moral Rights, the Seller must, at the Seller's expense:
- 49.20.1 secure the rights for the Buyer to continue to use the affected Offerings free of any claim or liability for infringement; or
- 49.20.2 replace or modify the affected Offerings so that the Offerings or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any person in a way that does not degrade the performance or quality of the affected Offerings.

Moral Rights

- 49.21 To the extent permitted by applicable Laws, the Seller must ensure that each of the Personnel used by the Seller in the production or creation of the New Material gives a genuine consent in writing, in a form acceptable to the Buyer, to the use of the New Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

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Delivery of Intellectual Property

49.22 Unless otherwise specified in a Contract, on the expiration or termination of a Contract, the Seller must ensure that the Buyer has access to up to date versions of:

49.22.1 all New Material and any data relevant to that New Material; and

49.22.2 a copy of all other Material created under the Contract,

held by the Seller or under its control, in a format that the Buyer can use.

49.23 If requested by the Buyer, the Seller must bring into existence, sign, execute or otherwise deal with any Document that may be necessary to give effect to this clause 49.

Additional Intellectual Property Terms

49.24 The Seller must comply with any additional intellectual property requirements set out in a Contract.

Outsource Supplier

49.25 Unless otherwise specified in the Contract, if the Buyer outsources some or all of its information technology services, the Buyer may:

49.25.1 sublicense to any outsource supplier the rights specified in clause 49; or

49.25.2 assign the licence to any outsource supplier during the term of its appointment,

without the Seller's consent and without any financial consequence for the Buyer or the outsource supplier.

49.26 Unless otherwise specified in the Contract, the Seller must, at no additional cost to the Buyer, provide such assistance to the Buyer or any outsource supplier as is reasonably required by the Buyer.

PART H – Termination and Dispute

50. Termination

Termination for default

- 50.1 Without limiting any other rights or remedies DTA or a Buyer may have against the Seller arising out of or in connection with this Head Agreement or a Contract:
- 50.1.1 DTA may terminate this Head Agreement; and
 - 50.1.2 a Buyer may terminate a Contract,
effective immediately by giving Notice to the Seller if:
 - 50.1.3 the Seller breaches a material provision of this Head Agreement or a Contract, where that breach is not capable of remedy;
 - 50.1.4 the Seller breaches any provision of this Head Agreement or a Contract that is capable of remedy, and fails to remedy the breach within 20 Business Days (or such other period agreed in writing by the parties) after receiving Notice requiring it to remedy the breach;
 - 50.1.5 an event listed in clause 50.4 happens to the Seller and DTA or the Buyer reasonably considers that such an event will adversely impact on the Seller's ability to provide the Offerings; or
 - 50.1.6 the Seller is prevented from performing its obligations under the Contract due to circumstances under clause 47.1.1 for a period of more than 20 Business Days or such other period specified in a Contract.
- 50.2 This Head Agreement or a Contract can be terminated in whole or in part.
- 50.3 Without limitation, for the purposes of clause 50.1.3, each of the following constitutes a breach of a material provision:
- 50.3.1 for termination of this Head Agreement:
 - (a) a failure to comply with clause 33 (Confidentiality);
 - (b) breach of a warranty in clause 40 except clauses 40.2.2 and 40.2.3 (Warranties); and
 - (c) engaging in Improper Conduct or a failure to resolve a Conflict of Interest to the reasonable satisfaction of DTA; and
 - 50.3.2 for termination of a Contract:
 - (a) a failure to comply with clause 33 (Confidentiality);
 - (b) failure to comply with clause 34 (Privacy);
 - (c) a breach of any warranty in clause 40 (Warranties) as it relates to a Contract;
 - (d) failure to comply with clause 49 (Intellectual Property Rights);

- (e) subject to any applicable Laws, an event specified in clause 50.4 occurs;
- (f) failure to comply with Part J (Security);
- (g) engaging in Improper Conduct or a failure to resolve a Conflict of Interest to the reasonable satisfaction of the Buyer; and
- (h) a failure to meet any other material provision which may be specified in a Contract.

50.4 The Seller must Notify DTA (and in respect of any Contract, the Buyer) in writing immediately if one or more of the following occurs:

- 50.4.1 there is a Change in Control of the Seller;
- 50.4.2 the Seller disposes of the whole or any substantial part of its assets, operations or business other than in the ordinary course of business;
- 50.4.3 the Seller ceases to carry on business;
- 50.4.4 subject to any applicable Laws, the Seller ceases to be able to pay its debts as they become due;
- 50.4.5 subject to any applicable Laws, the Seller becomes an Insolvent Under Management or is the subject of any related application or proceedings;
- 50.4.6 if the Seller is a partnership, any step is taken to dissolve that partnership; or
- 50.4.7 the Seller is a trustee and the trust is terminated or an event occurs for vesting the trust property.

Removal from the Panel

50.5 DTA may terminate this Head Agreement at any time if, in its absolute discretion, it considers that:

- 50.5.1 the Seller's participation in the Panel does not represent value for money to DTA or any Buyer; or
- 50.5.2 the Seller has failed to maintain a high standard of quality in its provision of Offerings it has been contracted to provide.

Termination and reduction for convenience

- 50.6 DTA may by Notice, at its absolute discretion, terminate or reduce the scope of this Head Agreement for any reason, including as a result of a machinery of government change.
- 50.7 If this Head Agreement is terminated or reduced in scope pursuant to clause 50.6, the Seller is not entitled to compensation for any Loss.
- 50.8 The Buyer may, by Notice, at its absolute discretion, terminate or reduce the scope of any Contract for any reason, including as a result of a machinery of government change.
- 50.9 If a Contract is terminated or reduced in scope pursuant to clause 50.8:
 - 50.9.1 the Seller must comply with reasonable directions given by the Buyer;
 - 50.9.2 the Seller must mitigate any Loss; and

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50.9.3 unless otherwise specified in the Contract:

- (a) the Buyer is only liable for:
 - (i) payments under the payment terms specified in the Contract for work conducted before the effective date of termination or reduction; and
 - (ii) any:
 - (A) other unavoidable costs suffered by the Seller in direct consequence of a termination or reduction under clause 50.8 which the Seller substantiates to the reasonable satisfaction of the Buyer up to any maximum amount specified in the Contract (or if no amount is specified, the total Charges payable under the Contract); or
 - (B) cancellation fees specified in the Contract (in which case the Seller is not also entitled to any costs in accordance with clause 50.9.3(ii)(A)); and
- (b) except for payments in respect of work conducted before the effective date of termination or reduction and any cancellation fees specified in a Contract, the Seller is not entitled to compensation for Loss including of prospective profits or any other indirect or consequential Losses.

After termination

50.10 On termination (in whole or in part) of:

50.10.1 this Head Agreement, the Seller must:

- (a) take all available steps to protect Intellectual Property Rights, Confidential Information, and Personal Information relating to or provided or accessed in connection with this Head Agreement;
- (b) return to DTA all of DTA's Confidential Information, except in respect of Contracts that have been formed prior to the termination of this Head Agreement and which continue;
- (c) follow any reasonable direction of DTA; and
- (d) continue to perform any part of this Head Agreement (and any Contract) not affected by or which survive the termination; and

50.10.2 a Contract, the Seller must:

- (a) take all available steps to protect Intellectual Property Rights, Confidential Information, and Personal Information relating to or provided or accessed in connection with the Contract;
- (b) return to the Buyer all of the Buyer's Confidential Information in respect of the Contract, unless otherwise agreed in writing with the Buyer;
- (c) follow any reasonable direction of the Buyer; and
- (d) continue to perform any part of the Contract not affected by or which survive the termination.

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Consequences of termination

- 50.11 If this Head Agreement or a Contract is terminated (in whole or in part):
- 50.11.1 subject to the terms of this Head Agreement or the applicable Contract, the parties are relieved from future performance of the terminated Head Agreement or Contract (or relevant part of it);
 - 50.11.2 subject to this Head Agreement or the applicable Contract, all licences and authorisations relating to or concerning this Head Agreement or the Contract granted to the Seller by DTA or the Buyer terminate immediately despite anything to the contrary contained in the licence or authorisation;
 - 50.11.3 each party must comply with all surviving terms of this Head Agreement or applicable Contract; and
 - 50.11.4 Contracts placed before termination of this Head Agreement remain on foot unless a Buyer terminates the Contract in accordance with the terms of the Contract.
- 50.12 Termination does not affect the accrued rights of either party.
- 50.13 No new Contracts may be formed after termination of this Head Agreement.

Termination by Seller

- 50.14 The Seller may terminate this Head Agreement if the Seller no longer wishes to provide Offerings under this Head Agreement by providing at least 20 Business Days prior Notice to DTA.
- 50.15 Unless otherwise specified in a Contract, the Seller may terminate a Contract by issuing a Notice to the Buyer if the Buyer has:
- 50.15.1 not paid a correctly rendered Tax Invoice that is not disputed by the Buyer within 90 Business Days after payment was due (**Payment Due Date**) provided that the Seller has:
 - 50.15.2 Notified the Buyer in writing of its claim for payment at least 20 Business Days after the Payment Due Date (or such other period specified in the Contract); and then
 - 50.15.3 subsequently Notified the Buyer at least 40 Business Days after the Payment Due Date (and at least 10 Business Days has elapsed since this subsequent Notice was provided) (or such other periods specified in the Contract); or
 - 50.15.4 breached a material provision (as specified in clause 50.3 or in the Contract) and has failed to remedy the breach within 40 Business Days or such other period agreed by the parties after receiving a Notice requiring it to remedy the breach.
- 50.16 The Seller has no right and, to the extent permitted by Law, waives any right which it may otherwise have to terminate the Contract.

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51. Dispute resolution

51.1 This clause 51 applies to a Contract unless otherwise specified or modified in a Contract.

No arbitration or court proceedings

51.2 If any disagreement or other dispute arises in relation to this Head Agreement or any Contract (**Dispute**), a party must comply with this clause 51 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 51.

Dispute Notice

51.3 A party claiming there is a Dispute must give the other parties to the Dispute a Notice setting out details of the Dispute.

Parties to resolve Dispute

51.4 During the 10 Business Days after a Notice is given under clause 51.3 (or a longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable endeavours to resolve the Dispute.

51.5 If the parties cannot resolve the Dispute in accordance with clause 51.4, they must refer the Dispute to the Seller Representative, DTA Representative and Buyer Representative (as applicable) at the request of one of the parties to the Dispute.

51.6 If the matter remains in Dispute 10 Business Days (or longer period if the parties to the Dispute agree in writing) after referral to the Seller Representative, DTA Representative or the Buyer Representative under clause 51.5, the parties must refer the Dispute to alternative dispute resolution at the request of one of the parties to the Dispute.

Costs

51.7 Each party to a Dispute must pay its own costs of complying with this clause 51. The parties to the Dispute must equally pay the costs of any alternative dispute resolution.

Termination of process

51.8 A party to a Dispute may terminate the Dispute resolution process by giving Notice to each other party after it has complied with clauses 51.2 to 51.6 and any alternative dispute resolution process undertaken by the parties.

Breach of this clause

51.9 If a party to a Dispute breaches any of clauses 51.2 to 51.8, the other party does not have to comply with those clauses in relation to the Dispute.

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PART I – Delivery

52. Delivery

Delivery

- 52.1 Upon entering into a Contract, the Seller must provide the Offerings:
- 52.1.1 in accordance with:
 - 52.1.2 this Head Agreement; and
 - 52.1.3 the Contract (including the Specifications and any other functional, performance and other requirements, specified in the Contract); and
 - 52.1.4 to a standard of due skill, care, and diligence expected of an expert, professional provider of such Offerings.
- 52.2 The Seller must:
- 52.2.1 ensure that the Offerings are fit for the purpose set out in the Contract;
 - 52.2.2 provide the Offerings at the times, locations, and within the timeframes specified in the Contract including so as to meet any milestones specified in a Contract, or where none are specified, promptly and without delay;
 - 52.2.3 manage all stages of the supply of the Offerings so as to meet the requirements of the Contract;
 - 52.2.4 take timely and corrective action where the Offerings are not being performed in accordance with the Contract; and
 - 52.2.5 keep records of all Offerings supplied and any actions taken to correct any deficiencies in the provision of the Offerings.
- 52.3 Unless specified otherwise in a Contract, the Seller must ensure that the Specifications for all Offerings delivered pursuant to the Contract are the same, whether delivered to one site or several different sites.

Directions

- 52.4 The Seller must comply with any reasonable directions given by the Buyer in respect of the Contract.

Implementation and project management

- 52.5 The Seller must undertake all tasks and activities required (including as specified in a Contract) to meet the Seller's obligations under this Head Agreement and any Contract. The Seller is not relieved of its obligations because of any:
- 52.5.1 involvement by the Buyer in the provision of the Offerings;
 - 52.5.2 payment made to the Seller; or
 - 52.5.3 subcontracting of the Seller's obligations.

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Cooperation with other contractors

- 52.6 Without limiting its obligations under any Contract, the Seller must, at no additional cost to the Buyer, fully cooperate and work in good faith with any third parties appointed by the Buyer as required by the Buyer, including to coordinate its activities so as to support and facilitate, in the Buyer's best interests, the timely and efficient completion of all work to be performed for the Buyer by any person.

Monitoring progress

- 52.7 If requested by the Buyer, the parties must meet at agreed times to discuss any issues relating to the Seller's performance under a Contract or the Offerings. The Seller must ensure that the Seller Representative, and the Buyer must ensure the Buyer Representative, are reasonably available to attend and meaningfully participate in these meetings.

Third party support

- 52.8 The Seller acknowledges and agrees that the Buyer may:
- 52.8.1 support the Offerings itself or enter into an agreement for support of the Offerings by a third party; and
 - 52.8.2 provide any spares provided by or purchased from the Seller to the third party for the purpose of the third party providing support for the Offerings.

Removal of Offerings

- 52.9 Unless otherwise specified in a Contract, the Seller must not remove any Offerings purchased by a Buyer from a Buyer's premises without the Buyer's consent.

53. Standards and codes

- 53.1 The Seller must, in providing the Offerings, comply with any standards, industry codes and methodologies specified in this Head Agreement and the applicable Contract.
- 53.2 If:
- 53.2.1 there are no standards specified in a Contract, the Seller must comply with any applicable Australian or New Zealand standards that are consistent with the Specifications; or
 - 53.2.2 there are no standards specified in the Contract and no applicable Australian or New Zealand standards, any applicable international standards that are consistent with the Specifications.
- 53.3 The Seller must, if requested in writing by DTA or a Buyer, provide evidence of its compliance with any applicable standards, industry codes, and methodologies.

54. Buyer Supplied Items

- 54.1 The Buyer must provide any Buyer Supplied Items specified in the Contract.
- 54.2 Unless otherwise specified in a Contract, Buyer Supplied Items remain the property of the Buyer and the Seller must return all Buyer Supplied Items that are no longer required for the purposes of the Contract to the Buyer as soon as practicable (unless other arrangements are agreed in writing by the Parties).
- 54.3 The Seller must:
- 54.3.1 comply with all conditions regarding the Buyer Supplied Items specified in a Contract or Notified by the Buyer to the Seller;
 - 54.3.2 not do any of the following without the prior written approval of the Buyer:
 - (a) use or allow others to use any Buyer Supplied Items other than for the purposes of the Contract;
 - (b) part with possession or custody of any Buyer Supplied Items;
 - (c) create or allow the creation of any lien, charge or mortgage over any Buyer Supplied Items;
 - (d) modify any Buyer Supplied Items; or
 - (e) remove Buyer Supplied Items from the Buyer's premises or facilities;
 - 54.3.3 take all reasonable care of all Buyer Supplied Items;
 - 54.3.4 promptly inform the Buyer of any loss or damage to any Buyer Supplied Items and, if requested by the Buyer and to the extent that such loss or damage has been caused by the fault of the Seller or Seller Personnel, as soon as practicable replace the Buyer Supplied Items at no cost to the Buyer;
 - 54.3.5 return any Buyer Supplied Items in accordance with any request by the Buyer; and
 - 54.3.6 comply with any reasonable instructions of the Buyer for preserving, forwarding or disposing of any damaged Buyer Supplied Items at its own cost provided that such damage has been caused by the fault of the Seller or Seller Personnel.
- 54.4 Unless otherwise specified in a Contract, the Seller indemnifies the Buyer for any loss of, or damage to, any Buyer Supplied Items caused by the Seller or Seller Personnel.
- 54.5 To the extent specified in a Contract, the Seller is responsible for the suitability and performance of any Buyer Supplied Items it has recommended for use in a Contract.

55. Buyer assistance

- 55.1 The Buyer must:
- 55.1.1 make available, as reasonably requested by the Seller, any management decisions, information and approvals that are reasonably necessary for the Seller to perform or provide the Offerings as specified in a Contract; and

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- 55.1.2 provide to the Seller any accommodation, facilities, equipment, furnishings, fixtures, support and other assistance as specified in a Contract.
- 55.2 The Seller must comply with any terms set out or referred to in the Contract, or Notified by the Buyer, in relation to any provision of accommodation, facilities, equipment, furnishings, fixtures, support or other assistance by the Buyer.

56. Access to Buyer's site

- 56.1 The Buyer must cooperate with the Seller by providing access to its premises and facilities as set out in the Contract to the extent reasonably necessary (during Business Hours) to enable the Seller to perform or provide the Offerings.
- 56.2 The Seller must, if using or accessing the Buyer's premises and facilities, comply with all reasonable directions and procedures given by the Buyer, or as might reasonably be inferred from the circumstances.
- 56.3 Access to the Buyer's premises and facilities may be denied or suspended by the Buyer, at its sole discretion. The Buyer must, following any denial or suspension of access, permit a resumption of access as soon as practicable.
- 56.4 The Seller is relieved of its obligations under the Contract to the extent that the Seller is unable to perform its obligations because the Buyer denies or suspends the Seller's access in accordance with clause 56.3. This clause 56.4 does not apply to the extent that the Buyer denies or suspends the Seller's access because of an act or omission by the Seller, or because of any security risk related to the Seller.
- 56.5 To the extent specified in Contract, the Buyer is responsible for the preparation of its premises and facilities to enable the Seller to perform or provide the Offerings.

57. Acceptance Testing

- 57.1 Unless otherwise specified in a Contract, the Offerings under a Contract are subject to Acceptance by the Buyer.
- 57.2 The Offerings will be considered for Acceptance in accordance with the requirements set out in this clause 57 and in the Contract.
- 57.3 Offerings (such as Documentation but excluding Software) that by their nature do not require the conduct of Acceptance Testing, will be considered for Acceptance on the basis of their compliance with the Specifications or other criteria specified in the Contract.
- 57.4 The Seller must carry out Acceptance Testing as agreed in the Contract, to ensure that the Offerings meet the Acceptance Criteria in the Contract and the Specifications.
- 57.5 Unless specified to the contrary in clause 57.6, the costs of complying with this clause 57 must be borne by the Seller.
- 57.6 The Seller agrees that the Buyer may also carry out all or part of the Acceptance Testing. The direct costs of the Buyer undertaking the Acceptance Testing will be borne by the Buyer unless the testing shows that the Seller failed to comply with the provisions of the Contract, in which case the cost of the testing must be borne by the Seller.
- 57.7 The Seller must comply with any reasonable request by the Buyer for further testing in relation to the Offerings.

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- 57.8 The Seller must allow the Buyer or its authorised representative to observe the performance of the Acceptance Testing or other tests by the Seller.
- 57.9 If the Buyer finds that the Seller:
- 57.9.1 has satisfied the Acceptance Criteria, the Buyer must within the timeframe specified in the Contract, Notify the Seller in writing that the Offerings have passed Acceptance Testing (and the relevant Offerings will then be deemed to have been Accepted by the Buyer); or
- 57.9.2 has not satisfied the Acceptance Criteria, the Buyer must within the timeframe specified in the Contract, Notify the Seller in writing that the Offerings have not passed Acceptance Testing and the Seller must (at no cost to the Buyer):
- (a) do all things necessary to rectify any problems to ensure that the Acceptance Criteria is met; and
- (b) repeat the Acceptance Testing as soon as practicable or within the time period agreed by the parties after Notification from the Seller that it believes it meets the Acceptance Criteria, and this clause 57.9 will apply to the repeated Acceptance Testing.
- 57.10 Unless otherwise specified in a Contract, if the Seller has not met the Acceptance Criteria for relevant Offerings within:
- 57.10.1 15 Business Days after the commencement of Acceptance Testing for that Offering; or
- 57.10.2 if further Acceptance Testing is required under clause 57.9.2, 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 Offering.
- 57.11 If the Buyer does not Notify the Seller in accordance with clause 57.9 within 20 Business Days of the Offering being provided to the Buyer for Acceptance (or another period specified in a Contract), the Offerings will be deemed to have been accepted by the Buyer in accordance with clause 57.9.1.
- 57.12 If the Buyer Notifies the Seller that the Offerings have passed Acceptance Testing under clause 57.9.1 this is not a waiver of rights, and the Buyer may impose such conditions and qualifications on Acceptance as it reasonably requires.

- 57.13 The Seller must perform its obligations under a 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 Offerings, and is able to maintain full use of the Offerings for the purposes for which they are delivered without being in breach of any workplace health and safety Laws.

58. Rectification

- 58.1 Any Offerings which do not conform to the requirements of the Specifications or comply with any warranties applicable to a Contract must be rectified by the Seller during the Warranty Period in accordance with the warranty and rectification terms (including the Warranty Period) and procedures contained in the Contract, the Category Terms, the Online Portal and the Specifications.
- 58.2 If the Contract does not contain rectification terms and procedures for a particular Offering, and no such terms or procedures have been Notified by DTA, the Seller must:
- 58.2.1 within five Business Days, or such other period agreed by the Buyer and the Seller in writing, of being informed by the Buyer of a Defect, replace, repair or modify the affected Offerings so as to ensure the Offerings conform to the Specifications and comply with all warranties applicable to the Contract; and
 - 58.2.2 meet all costs associated with that replacement, including any packing, freight, repair, modification, disassembly, reassembly site attendance or other costs, except if the Defect in the Offering(s) is due to negligence of the Buyer, or due to any use or modification of the Offerings by the Buyer which is not in accordance with or permitted by this Head Agreement or a Contract.
- 58.3 Unless specified in a Contract, any rectification work is subject to the same Acceptance Testing requirements that applied to the original Offering.
- 58.4 Rectification work is warranted for 60 Business Days from the date the rectification work is Accepted by a Buyer, or the end date of the Warranty Period, whichever is later.
- 58.5 If the Seller does not rectify Offerings within the timeframe required by the applicable warranty arrangements or such other period agreed with the Buyer:
- 58.5.1 a Buyer may, at its discretion, perform or have performed that rectification; and
 - 58.5.2 the reasonable expenses of the rectification will be recoverable by the Buyer from the Seller under the Contract, if requested by the Buyer.

59. Warranties

- 59.1 Unless specified otherwise in the Contract, the Seller must:
- 59.1.1 ensure the Buyer receives all standard Vendor and other relevant third party warranties in respect of Offerings provided under the Contract;
 - 59.1.2 ensure the Buyer receives a copy and is fully advised of and approves all such warranties prior to any order or commitment being made in respect of any Offerings; and
 - 59.1.3 do all things requested by the Buyer to enforce any third party warranties.

- 59.2 The Seller must also comply with any warranty obligations specified in the Specifications and in the Contract.
- 59.3 Nothing in this clause 59 relieves the Seller of the obligation to comply with warranties offered directly by the Seller.
- 59.4 If the Seller is a Reseller of Offerings:
- 59.4.1 if a Contract provides that title to Offerings is to pass to the Buyer, the Reseller warrants that title in those Offerings passes to the Buyer on the date that the Reseller obtains title to the Offerings from the Vendor, provided that such date must be no later than 60 days after Acceptance of the Offerings (subject to the Reseller receiving payment from the Buyer prior to 45 days after the Acceptance of the Offerings); and
- 59.4.2 the Reseller must use best efforts to ensure that all benefits of the warranty provided by the Vendor in relation to the Offerings are utilised to the benefit of the Buyer.

60. Documentation

- 60.1 The Seller must provide the Documentation:
- 60.1.1 that the Seller or Vendor of any Offering usually makes available to its customers for the Offerings required to be supplied under the Contract; and
- 60.1.2 in accordance with the applicable Contract.
- 60.2 Unless otherwise specified in a Contract, the Seller must ensure that, at the time of delivery, the Documentation:
- 60.2.1 contains sufficient information to enable the Buyer to have full use, operation and maintenance of the Offerings;
- 60.2.2 is current and accurate and consistent with any applicable specifications;
- 60.2.3 is of a professional standard in terms of its presentation, accuracy and scope;
- 60.2.4 adequately explains key terms and symbols; and
- 60.2.5 is in English.
- 60.3 Unless otherwise specified in a Contract, if any Documentation is revised or replaced for any reason, or needs to be revised or replaced to update it or to correct inaccuracies, the Seller must give the Buyer access to revisions or replacements at no additional cost to the Buyer during the Contract Period.
- 60.4 The Buyer and its Personnel may use the Documentation for any use in conjunction with the use of the Offerings including undertaking other tender processes, maintenance and support activities, internal training activities associated with the Offerings and auditing or reviewing the Seller's performance under the Contract.
- 60.5 The Seller grants to the Buyer the applicable licences in accordance with clause 49 with respect of the Documentation.

61. Packaging

- 61.1 Unless otherwise specified in a Contract, the Seller must package and label all Offerings which are required to be physically delivered to ensure their safe delivery and ensure that all packaging and labelling is consistent with the Seller or Vendor's normal standard.
- 61.2 Any discrepancies in quantity or any damage to the Offerings found at the time of receipt must be corrected by the Seller at no cost to the Buyer.

62. Not Used

63. Transfer of title and risk

- 63.1 Unless otherwise specified in a Contract, title in physical components of the Offerings passes to the Buyer:
- 63.1.1 on Acceptance (if the Offerings must be Accepted); or
- 63.1.2 on delivery to the Buyer (if the Offerings do not need to be Accepted).
- 63.2 Clause 63.1 does not:
- 63.2.1 transfer title in any software to the Buyer; and
- 63.2.2 apply to Offerings which are services.
- 63.3 The Buyer accepts risk for Loss of or damage to physical components of the Offerings from the time the Buyer or its nominee takes delivery, except to the extent that the Loss or damage is caused or contributed to by the Seller or its Personnel.

64. Performance management framework

- 64.1 The Seller must comply with any performance management framework specified in a Contract.

Reductions in Charges – Service Credits

- 64.2 Unless otherwise specified in a Contract, if Service Credits are incurred and payable to the Buyer in accordance with a Contract, then:
- 64.2.1 the Seller must adjust the next Tax Invoice, or, where there are no more Tax Invoices, pay to the Buyer on demand by the Buyer, the applicable Service Credit; or
- 64.2.2 the Buyer may deduct the applicable Service Credit from Charges payable to the Seller.

- 64.3 The Seller acknowledges that:
- 64.3.1 its failure to meet a Service Level may have a material adverse impact on the business and operations of the Buyer;
 - 64.3.2 Service Credits represent a reduction in Charges to reflect the provision by the Seller of a lower level of service than is required of it under the Contract as the case may be and constitute an agreed amount by which the Charges may be reduced in accordance with the Contract; and
 - 64.3.3 unless specified in a Contract, the Buyer's rights under this clause 64 are in addition to, and do not waive, the Buyer's right to seek any other remedy under the Contract or at Law. However, any damages recovered by the Buyer under or in connection with the Contract will be reduced by the amount of any Service Credits (if any) which the Buyer has been paid in respect of the same event giving rise to the damage.

65. Transition out

- 65.1 The Seller must comply with any transition out obligations specified in a Contract.
- 65.2 Unless otherwise specified in a Contract, the Seller must:
- 65.2.1 ensure the orderly transition out of any Offerings required to be transitioned out under the Contract;
 - 65.2.2 do all tasks and things, and provide all information, as may be reasonably necessary to ensure the smooth transition from the Seller to the Buyer or the incoming contractor or the Buyer (as the case may be) with minimal disruption; and
 - 65.2.3 comply with all reasonable directions from the Buyer, having regard to the transition requirements of the Buyer or the incoming contractor.
- 65.3 The obligations in this clause 65 apply for the period specified in the Contract, or if no period is specified, for the period of three months after termination or expiry of the Contract.

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PART J – Security

66. General

- 66.1 This Part J applies to all Contracts and the Seller must:
- 66.1.1 comply with any security requirements specified in a Contract, and as otherwise Notified by the Buyer to the Seller from time to time;
 - 66.1.2 comply with any security directions given by the Buyer;
 - 66.1.3 use best endeavours to ensure that all DTA Material and Buyer Material of which the Seller has custody or control is protected at all times from unauthorised access or use, misuse, damage or destruction by any person (including through botnet and denial of service attacks and any other phishing emails or related activities, Trojan, worm, or malware);
 - 66.1.4 do all things that a reasonable and prudent entity would do to protect information and systems and implement security measures that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, DTA Material and Buyer Material;
 - 66.1.5 provide any information requested by DTA or a Buyer about the security measures the Seller is using or could use to protect DTA Material and Buyer Material;
 - 66.1.6 ensure that Seller Personnel are appropriately trained to a standard that is no less rigorous than accepted industry standards (including in relation to cyber security risks);
 - 66.1.7 comply with the requirements of the PSPF and the ISM as applicable to the Offerings, as amended from time to time; and
 - 66.1.8 Notify the Buyer of any changes to circumstances which may affect the Seller's capacity to provide the Offerings in accordance with the Buyer's security requirements.
- 66.2 If the Seller becomes aware of any actual or threatened Security Incident, or has reasonable grounds to suspect that a Security Incident has occurred or may occur in relation to the Head Agreement or a Contract, it must inform the Buyer, and when required, DTA, by telephone as soon as possible after it becomes aware of any Security Incident, and as soon as practicable (and at least within five Business Days) confirm the details by Notice in writing and comply with all directions of the Buyer in relation to the Security Incident.
- 66.3 Unless specified in a Contract, the Seller must not at any time conduct Data Mining activities in respect of the Offerings or any Buyer Material, user material or information uploaded, accessed or manipulated in the Offerings by DTA or the Buyer or its authorised users. This prohibition on Data Mining applies even if an end user is required to click through and accept the terms permitting the Seller to conduct Data Mining on a user, or a collection of user accounts. Such terms will have no effect. If Data Mining is ordinarily conducted by the Seller by means of an automated process, the Seller must disable it for Buyer or DTA data collected when performing its obligations under this Head Agreement or a Contract.

- 66.4 For the purpose of this clause 66, '**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.

67. Security clearance

- 67.1 Unless otherwise specified in a Contract, the Seller is responsible for all costs associated with obtaining any security clearances required by a Contract.
- 67.2 If the Buyer denies access to, or requests removal of, any Seller Personnel because they do not hold the required security clearance, the Seller must provide suitable replacement Seller Personnel.

68. Harmful Code

- 68.1 The Seller must take all reasonable endeavours to not, and must take all reasonable endeavours to ensure Seller Personnel do not, introduce any Harmful Code into DTA's or the Buyer's systems or any Offerings (including by implementing systems and security measures that are no less rigorous than accepted industry standards).
- 68.2 Unless specified in a Contract, if any Harmful Code is introduced by the Seller or Seller Personnel, the Seller must:
- 68.2.1 use best endeavours to promptly report that introduction to DTA and the Buyer;
 - 68.2.2 use best endeavours to eliminate the Harmful Code in accordance with best industry practice (subject to any directions of the Buyer); and
 - 68.2.3 promptly, at its own cost, repair any harm or destruction caused by that Harmful Code in accordance with best industry practice (subject to any directions of the Buyer).

69. Protection of Buyer Material

- 69.1 The Seller must not, and must ensure that Seller Personnel do not, without the Buyer's prior written consent (which may be subject to conditions with which the Seller must comply, including any conditions specified in a Contract):
- 69.1.1 remove Buyer Material or allow Buyer Material to be removed from the Buyer's premises or Seller's premises; or
 - 69.1.2 transmit, store, take Buyer Material or allow Buyer Material to be transmitted, stored, or taken by any means outside of Australia.
- 69.2 The Seller must immediately Notify the Buyer, and must comply with all directions of the Buyer, if the Seller becomes aware of any contravention of the Buyer's data security requirements.

70. Cyber security insurance

- 70.1 The Seller must, if specified in a Contract, take out and maintain insurance to protect against the risks of cyber Security Incidents.

71. Non-return of Offerings

- 71.1 The Seller must comply with any restrictions that apply to the return of Offerings specified in a Contract or as otherwise agreed in writing by the parties from time to time.

72. Security Incidents

- 72.1 If:

72.1.1 a Security Incident occurs; or

72.1.2 the Seller is taking action to prevent or rectify any Security Incident,

and this prevents the Buyer from being able to use the Offerings as intended by a Contract, the Buyer is not obliged to pay the Charges for that Offering to the extent and for the period that it is prevented from using that Offering due to the actions by the Seller (**Prevention Period**).

- 72.2 The amount of Charges the Buyer is not obliged to pay must be calculated as follows:

72.2.1 the Buyer must pay any Charges relating to Offerings delivered before the Prevention Period, but the Buyer will not be obliged to pay any further Charges for those Offerings until they can be used in accordance with the Contract; and

72.2.2 Charges will not be payable during the Prevention Period.

- 72.3 Any refunds due to a Buyer may be set-off against any Tax Invoice in accordance with this Head Agreement.

73. Legislative offences

- 73.1 The Seller acknowledges and agrees that:

73.1.1 any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Offerings may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment;

73.1.2 the giving of false or misleading information to the Commonwealth is a serious offence under Division 137 of the *Crimes Act 1914* (Cth); and

73.1.3 the publication or communication of any fact or Document by a person which has come to their knowledge or into their possession or custody by virtue of this Head Agreement or any Contract (other than to whom the Seller is authorised to publish or disclose the fact or Document) may be an offence under sections 70 and 79 of

the *Crimes Act 1914* (Cth), the maximum penalty for which is seven years imprisonment.

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PART K - Reporting

74. Reporting

Reporting to DTA

- 74.1 At no cost to DTA or any other Buyer, the Seller must, in the format required by DTA, provide DTA with the reports:
- 74.1.1 specified in this Head Agreement; and
 - 74.1.2 reasonably requested by DTA from time to time.
- 74.2 Intellectual Property Rights in all reports provided to DTA under this Head Agreement vest in DTA upon creation.
- 74.3 Subject to its confidentiality and security obligations, the Seller may use, reproduce, modify, display and sublicense any reports provided to DTA under this Head Agreement for its own purposes. DTA is not liable in respect of any Loss caused by the Seller's use, reproduction, modification, display or sublicensing of any reports.

Sales report

- 74.4 The Seller must provide DTA with a sales report by the fifth Business Day of each month in the format and that contains the information specified by DTA from time to time.
- 74.5 The sales report must be provided by email or as otherwise specified by DTA from time to time.

Reporting to the Buyer

- 74.6 At no cost to the Buyer, the Seller must provide the reports specified in the Contract to the Buyer.
- 74.7 The Seller must promptly provide additional information to the Buyer in respect of any Contract as the Buyer may reasonably request from time to time.
- 74.8 Intellectual Property Rights in all reports provided under a Contract will vest in the Buyer upon creation.
- 74.9 Unless otherwise specified in a Contract and subject to its confidentiality and security obligations, the Seller may use, reproduce, modify, display and sublicense any reports provided to the Buyer under a Contract for its own purposes. The Buyer is not liable in respect of any Loss caused by the Seller's use, reproduction, modification, display or sublicensing of any reports.

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Commonwealth Policy Terms

PART L – Commonwealth Laws and Policies

75. General

- 75.1 In performing this Head Agreement and any Contract, the Seller must comply with all Laws, Commonwealth policies, and other policies of a Buyer, which are publicly available or which are specified in a Contract that are applicable to the supply of the Offerings, and must comply with this Part L.

76. Archives Act Requirements

- 76.1 The Seller acknowledges and agrees that:
- 76.1.1 the Offerings supplied under a Contract may be used to store Commonwealth Records and that the *Archives Act 1983* (Cth) applies to Commonwealth Records; and
 - 76.1.2 the Seller must not dispose of any Commonwealth Records unless directed in writing to do so by the Buyer.
- 76.2 The Seller must comply with, and follow 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.

77. APS Values

- 77.1 The Seller must ensure that Seller Personnel engaged in providing the Offerings comply with the APS Values and Code of Conduct while at Buyer's premises and while liaising with the Buyer Personnel or members of the public in connection with the provision of the Offerings. In this clause 77, 'APS Values' and 'Code of Conduct' have the same meaning as they have in the *Public Service Act 1999* (Cth).
- 77.2 The Seller must provide all reasonable assistance to DTA and the Buyer with any investigation of a report of a breach of the APS Code of Conduct by Seller Personnel.

78. Freedom of information

- 78.1 In this clause, 'document' and 'Commonwealth Contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 78.2 The Seller acknowledges and accepts that this Head Agreement and any Contract may be a Commonwealth Contract.

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- 78.3 If DTA or a 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 Head Agreement or Contract (and not to the entry into this Head Agreement or a Contract), DTA or the Buyer may at any time by Notice require the Seller to provide the document to DTA or the Buyer and the Seller must, at no additional cost to DTA or the Buyer, promptly comply with the Notice.
- 78.4 The Seller must include in any Subcontract relating to the performance of a Contract provisions that will enable the Seller to comply with its obligations under this clause 78.
- 78.5 If an application is made to DTA or a Buyer under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Seller, DTA or the Buyer may, before making a decision, consult with the Seller, without prejudice to any decision to release the information.

79. Fraud and corruption

- 79.1 The Seller must comply with:
- 79.1.1 the Commonwealth Fraud Control Framework, as amended from time to time at: <https://www.ag.gov.au/Integrity/FraudControl/Documents/CommonwealthFraudControlFramework2017.PDF>; and
 - 79.1.2 any applicable State or Territory fraud control guidelines or policies if it is providing Offerings to a Buyer that is a State or Territory.
- 79.2 The Seller must:
- 79.2.1 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 Head Agreement and any Contract (including by the Seller or its Personnel); and
 - 79.2.2 Notify DTA or the Buyer, as relevant, 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 Head Agreement or any Contract.

80. Illegal Workers

- 80.1 The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Head Agreement or the Contract.
- 80.2 If it becomes aware of the involvement of an Illegal Worker, the Seller must:
- 80.2.1 promptly Notify DTA, or the Buyer, as relevant; and
 - 80.2.2 immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to DTA or the Buyer.
- 80.3 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.

81. Procurement on-time payment policy

81.1 Clauses 81.2 to 81.4 only apply if:

81.1.1 the value of a Contract is less than A\$1 million (GST inclusive); and

81.1.2 the amount of the interest payable exceeds A\$100.

81.2 For payments made by a Buyer after the amount is due, the Buyer must pay the interest on the payment provided that the Seller has issued a correctly rendered invoice for the interest.

81.3 Interest payable under clause 81.2 will be calculated as follows:

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

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.

81.4 In this clause 81, 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

82. Work health and safety

82.1 In clauses 82.2 to 82.3 below:

82.1.1 '**Act**' means the Work Health and Safety Act 2011 (Cth);

82.1.2 '**Notifiable Incident**' has the meaning in the Act or corresponding State or Territory legislation; and

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

(a) whether the person conducts the business or undertaking alone or with others; and

(b) whether or not the business or undertaking is conducted for profit or gain.

82.2 The Seller must:

82.2.1 comply with, and ensure that all work conducted by or on its behalf complies with, all applicable WHS Laws;

82.2.2 ensure, so far as is reasonably practicable, that the health and safety of persons is not put at risk;

- 82.2.3 ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;
- 82.2.4 comply, and ensure that its Personnel comply, with any direction given by the Buyer that the Buyer considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons;
- 82.2.5 promptly provide to the Buyer, upon request, information or documentation to assist the Buyer comply with its duties under WHS Law;
- 82.2.6 co-operate fully with any investigation by any government agency, parliamentary inquiry, board of inquiry or coronial inquiry with respect to work health and safety;
- 82.2.7 ensure the regulator is notified immediately after a Notifiable Incident in accordance with WHS Laws; and
- 82.2.8 to the extent relevant to or arising in relation to the provision of the Offerings, Notify DTA, or the Buyer as relevant, of:
 - (a) any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom the Seller has a duty under any WHS Law;
 - (b) any work related injury that causes death or serious personal injury;
 - (c) any Notifiable Incident;
 - (d) any adverse court or tribunal decision for a breach by the Seller of WHS Law during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision; and
 - (e) each occasion it reports to, or notifies, a regulatory authority of a Notifiable Incident, within one day after the incident has occurred or within two hours if the injury causes death.
- 82.3 If a Notifiable Incident occurs in the Seller's performance of a Contract, the Seller must investigate the Notifiable Incident as soon as possible to determine its cause and any adverse effects on the Contract (including risks to health and safety), and take all reasonable steps to remedy any effects on health and safety and to ensure the event or circumstances that led to the Notifiable Incident do not recur.
- 82.4 The Seller must provide reasonable assistance to DTA, the Buyer, or Comcare if requested (including giving access to the Seller's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Offerings.
- 82.5 The Seller must ensure that each Subcontract imposes obligations on the Subcontractor equivalent to the obligations under this clause 82.

83. Workplace Gender Equality

- 83.1 Clause 83.2 applies only to the extent that the Seller is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the **WGE Act**).
- 83.2 The Seller must comply with its obligations, if any, under the WGE Act. If the Seller becomes non-compliant with the WGE Act, the Seller must Notify DTA and each Buyer with which it has a Contract.

EXECUTED AS A DEED

Executed as a deed for and on behalf of the
Commonwealth of Australia as represented by
the **Digital Transformation Agency**
(ABN 61 970 632 495) by its duly authorised
delegate:

In the presence of:

.....
Signature of delegate

.....
Signature of witness

.....
Name of delegate (print)

.....
Name of witness (print)

.....
Date

.....
Date

Executed as a deed by
(ABN) by the following persons in
accordance with section 127 of the *Corporations*
Act 2001 (Cth):

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Name of Director (print)

.....
Name of Director/Company Secretary (print)

.....
Date

.....
Date

The Seller acknowledges and agrees that the Commonwealth has relied on the validity of the electronic signatures of the Seller, and, without limiting any of the warranties set out in the deed the Seller warrants that it has duly executed this deed in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth).

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Schedule 1 Interpretation and Definitions

1. Interpretation

1.1 In this Head Agreement and any Contract, except where the contrary intention is expressed:

- 1.1.1 a reference to this Head Agreement is to clauses 1 to 83, and includes the schedules (and any attachments to the schedules) as the context requires;
- 1.1.2 a reference to DTA means DTA as a party to this Head Agreement;
- 1.1.3 a reference to a Buyer, does not include DTA, unless DTA is a Buyer under a Contract;
- 1.1.4 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.5 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.6 a reference to a clause, paragraph, schedule or attachment is to a clause or paragraph of, or schedule or attachment to, this Head Agreement or any Contract and a reference to this Head Agreement or any Contract includes any schedule or attachment to this Head Agreement or the Contract, as the context requires;
- 1.1.7 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;
- 1.1.8 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;
- 1.1.9 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- 1.1.10 a reference to time is to the time in the place where the obligation is to be performed;
- 1.1.11 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.12 if the Seller is a trustee, the Seller enters this Head Agreement and any Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Head Agreement and any Contract;
- 1.1.13 a reference to a Law includes consolidations, amendments, re-enactments or replacements of that Law;
- 1.1.14 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.1.15 any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

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- 1.1.16 any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - 1.1.17 a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Head Agreement, the applicable Contract or any part of those Documents;
 - 1.1.18 if a day on or by which an obligation must be performed or an event must occur is not a Business Day in the relevant location, the obligation must be performed or the event must occur on or by the next Business Day in that location;
 - 1.1.19 headings are for ease of reference only and do not affect interpretation; and
 - 1.1.20 a reference to a matter being to the knowledge of a person means that the matter is the best of the knowledge and belief of that person after proper inquiry including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.
- 1.2 To the extent that the parties have not completed items in a Contract, unless otherwise stated in that Contract, that item will be taken to be 'not applicable' for the purpose of this Head Agreement and any applicable Contract.

2. Order of precedence for this Head Agreement

- 2.1 For this Head Agreement, to the extent of any conflict between the provisions contained or referred to in this Head Agreement, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):
- 2.1.1 the applicable Category Terms; then
 - 2.1.2 the body of this Head Agreement; then
 - 2.1.3 Schedule 1 (Interpretation and Definitions); then
 - 2.1.4 for:
 - (a) Category 1 – Annexure A of Schedule 2 (Statement of Work and Charges);
 - (b) Category 2 – Annexure A of Schedule 3 (Statement of Work and Charges); and
 - (c) Category 3 – Annexure A of Schedule 4 (Statement of Work and Charges); then
 - 2.1.5 the other schedules; and then
 - 2.1.6 any Documents incorporated by reference in this Head Agreement.

3. Order of precedence for a Contract

- 3.1 To the extent of any conflict between the provisions contained or referred to in a Contract, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):
- 3.1.1 the applicable Category Terms; then
 - 3.1.2 the terms of this Head Agreement to the extent they apply to the Contract or provide for a right or obligation in relation to the Contract; then
 - 3.1.3 Schedule 1 (Interpretation and Definitions) to the extent it applies to the Contract; then
 - 3.1.4 for:
 - (a) Category 1 – Annexure A of Schedule 2 (Statement of Work and Charges);
 - (b) Category 2 – Annexure A of Schedule 3 (Statement of Work and Charges); and
 - (c) Category 3 – Annexure A of Schedule 4 (Statement of Work and Charges); then
 - 3.1.5 the terms of the Order; then
 - 3.1.6 the other schedules to this Head Agreement to the extent they apply to the Contract; then
 - 3.1.7 any attachments, annexures, or schedules to the Order; and then
 - 3.1.8 any Documents incorporated by reference in the Contract.

4. Definitions

Term	Definition
Acceptance	Accepted by the Buyer in accordance with a Contract. 'Accept' and 'Accepted' have a corresponding meaning.
Acceptance Criteria	A list of criteria that the Offerings must meet before the Buyer will Accept them, as set out in the Contract.
Acceptance Testing	The testing of Offerings against the Acceptance Criteria.
Additional Terms	The additional terms (if any) that apply to a Contract, as specified in a Contract.
Administrative Arrangement Order	Has the meaning in the <i>Acts Interpretation Act 1901</i> (Cth).
Approved Privacy Code	Has the meaning given in the Privacy Act.
Approved Third Party Provider	A third party ICT provider that has been: a) contracted by a Buyer (or group of Buyers) to provide ICT services to that Buyer (or group of Buyers); and b) approved in writing by DTA and that Buyer to enter into a Contract or Contracts under the Head Agreement with the Seller for the provision of Offerings as part of the third party ICT provider's provision of ICT services to that Buyer (or group of Buyers).
Archives Act	<i>Archives Act 1983</i> (Cth).
Auditor-General	Auditor-General for the Commonwealth or an equivalent State or Territory office holder.
Australian Information Commissioner	Commonwealth Australian Information Commissioner or equivalent State or Territory office holder.
Australian Privacy Principle or APP	The Australian Privacy Principles as set out under the Privacy Act.
Authorised Investigator	Is each of the following: a) DTA in respect of this Head Agreement or a Contract; b) the Buyer in respect of the Contract to which it is a party; c) a person or organisation authorised to conduct audits on DTA's or the Buyer's behalf (provided that person or organisation is not a Direct Competitor); and d) the Auditor-General, Australian Information Commissioner, Privacy Commissioner, and any ombudsman (or any of their delegates) for the

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Term	Definition
	purpose of performing their functions or powers and the equivalent office holders in any State or Territory.
Business Day	a) For receiving a Notice under clause 27 of this Head Agreement, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Offerings are provided or a Notice is to be received; and b) for all other purposes, any day that is not a Saturday or Sunday or a Commonwealth public holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Business Hours	a) For a Contract, has the meaning set out in the applicable Contract; and b) for this Head Agreement, means 9 am to 5 pm on Business Days.
Buyer	Any one or more of the following as the context requires: a) all entities that are subject to the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth) and all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control; and b) 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); and c) Approved Third Party Providers. In the case of a Contract, means the Buyer that enters into that Contract.
Buyer Confidential Information	In relation to a Buyer, means information that: a) is by its nature confidential; or b) is designated by a Buyer as confidential; or c) the Seller knows or ought to know is confidential, including: - information comprised in, or relating to, any of a Buyer's Intellectual Property Rights; - information relating to the policies, strategies, practices and procedures of a Buyer and any information in the Seller's possession relating to a Buyer; - information relating to other contractors of a Buyer; and - Security Classified Information; or d) is Buyer Material or Buyer Data, but does not include information which: e) is or becomes public knowledge other than by a breach of any confidentiality obligation; or f) has been independently developed or acquired by the Seller as established by written evidence.
Buyer Data	All data and information (including Personal Information) generated by or relating to the Buyer and its functions (including data relating to the Buyer's operations, assets, programs, Buyer Personnel, clients and other entities) in whatever form that data and information may exist.

Term	Definition
Buyer Material	Any Material owned, administered or provided by a Buyer, and includes Buyer Data.
Buyer Personnel	Any employee, director, officer, agent, contractor, or professional adviser of the Buyer (not including Seller Personnel).
Buyer Representative	The person appointed by the Buyer to administer a Contract on behalf of the Buyer.
Buyer Supplied Item	Any items to be provided or made available to the Seller by the Buyer as set out in the Contract.
Category	means a category of Offerings as specified in Schedule 2 (Category 1), Schedule 3 (Category 2), or Schedule 4 (Category 3).
Category Terms	the terms that apply to a Category as specified in: a) Annexure B of Schedule 2 for Category 1; b) Annexure B of Schedule 3 for Category 2; and c) Annexure B of Schedule 4 for Category 3.
Change in Control	Means: 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 or other equity in the Seller; b) the ability to dispose of, or to exercise control over the disposal of, more than 50% of the shares or other form of equity in the Seller; c) the ability to appoint, or to remove, a majority of the directors of the Seller; d) the ability to exercise, or to control the exercise of, the casting of a majority of the votes at the meeting of the board of directors of the Seller; or e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Seller.
Charges	The amount or amounts (excluding GST) payable by the Buyer to the Seller for the Offerings in accordance with a Contract.
Commonwealth	Commonwealth of Australia.
Commonwealth Entity	Has the meaning given to it in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Commonwealth Fraud Control Guidelines	The document as amended from time to time at: https://www.ag.gov.au/Integrity/FraudControl/Documents/CommonwealthFraudControlFramework2017.PDF
Commonwealth Record	Has the meaning given to it in the <i>Archives Act 1983</i> (Cth).
Confidential Information	Buyer Confidential Information, or Seller Confidential Information, or DTA Confidential Information.

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Term	Definition
Conflict of Interest	Any known actual, potential or perceived conflict between: a) the duty that the Seller, Seller Personnel, and any Related Body Corporate has to DTA or a Buyer under the Head Agreement or a Contract; and b) either: i) the personal interests of the Seller, Seller Personnel or a Related Body Corporate; or ii) the duty of the Seller, Seller Personnel or a Related Body Corporate to another person or entity.
Contract	A contract entered into under this Head Agreement for the provision of Offerings and includes all schedules and attachments and Documents incorporated into that Contract.
Contract Period	The period of the Contract as specified in the Contract, plus any extension of that period in accordance with the relevant Contract.
Contract Start Date	The date: a) on which a Contract is executed by the parties; or b) a date agreed by the parties and included in the Contract.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Criminal Code	<i>Criminal Code Act 1995</i> (Cth).
Defect	A deficiency in design, materials, functional capacity or workmanship which means an Offering does not meet the applicable Specifications.
Direct Competitor	An entity that: a) DTA has determined (acting reasonably); or b) for the purposes of a Contract, the parties to the Contract have agreed in the Contract or otherwise in writing, which competes directly with the Seller in providing goods and services which are materially the same as, or similar to, the Offerings provided by the Seller.
Dispute	Has the meaning given in clause 51 of this Head Agreement.
Document or Documentation	Includes: a) any paper or other Material on which there is words, figures, symbols or perforations having a meaning for persons qualified to interpret them; and b) any article or Material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.
DTA	Commonwealth of Australia represented by the Digital Transformation Agency.
DTA Confidential Information	In relation to DTA, information that: a) is by its nature confidential; or b) is designated by DTA as confidential; or

Term	Definition
	c) the Seller knows or ought to know is confidential; or d) is DTA Material or DTA Data, but does not include information which: e) is or becomes public knowledge other than by breach of any confidentiality obligation; or f) has been independently developed or acquired by the Seller as established by written evidence.
DTA Data	All data and information (including Personal Information) generated by or relating to DTA and its functions (including data relating to DTA's operations, assets, programs, Personnel, clients and other entities) in whatever form that data and information may exist.
DTA Material	Any Material owned, administered or provided by DTA and includes DTA Data.
DTA Personnel	Any employee, director, officer, agent, contractor, or professional adviser of DTA (not including Seller Personnel).
DTA Representative	The person nominated as such by DTA.
Eligible Data Breach	Has the same meaning as under the Privacy Act.
ERP	Enterprise Resource Planning
ERP Class	Means the class in which Offerings may be categorised as described in Annexure A of Schedule 4 (Statement of Work) for Category 3.
EULA	Means a set of written terms and conditions for the use of an Offering, which sets out the rights and restrictions applicable to that Offering and any other terms and conditions applicable in relation to that Offering, however described (for clarity, such a reference may be details of a valid website address or hyperlink).
Existing Material	Material that: a) is in existence prior to the Head Agreement Start Date or, for a Contract, the applicable Contract Start Date; or b) is brought into existence after the Head Agreement Start Date or, for a Contract, the applicable Contract Start Date other than as a result of the performance of obligations under this Head Agreement or the Contract, (including any Material in which a third party owns or holds Intellectual Property Rights) and is embodied in, or attaches to, the Offerings or is otherwise necessarily related to the provision of the Offerings, and includes Material that is a modification of Existing Material.
GST	Has the meaning defined in the GST Act.
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth).</i>

Term	Definition
Harmful Code	Any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or technical mechanism that is included to manage the proper use any software.
Head Agreement	This Head Agreement between DTA and the Seller.
Head Agreement Start Date	The date when this Head Agreement has been signed by both DTA and the Seller.
Illegal Worker	A person who: a) has unlawfully entered and remains in Australia; b) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or c) is working in breach of their visa conditions.
Improper Conduct	Any conduct which is anti-competitive, collusive, unethical or illegal or involves a Conflict of Interest which cannot be effectively managed or which may improperly influence or affect the parties' obligations under this Head Agreement or any Contract.
Insolvent Under Management	Any of the following circumstances: a) if the Seller becomes bankrupt or insolvent; b) if the Seller becomes subject to one of the forms of external administration; c) the appointment of a person to administer a scheme or compromise in relation to the Seller occurs; d) the appointment of a controller or managing controller to the whole or any part of the Seller's assets or undertakings occurs; e) the appointment of an administrator or liquidator in relation to the Seller occurs; f) the Seller is wound up by resolution or an order of the court; g) the Seller suffers execution against any of its assets which has an adverse effect on the Seller's ability to perform its obligations under this Head Agreement or Contract; h) the Seller makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; i) the Seller becomes insolvent under administration; or j) the Seller becomes subject to any form of administration under the Laws of another country, which is the same as, or substantially equivalent to the circumstances described above.
Intellectual Property Rights	Are: a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered; b) any application or right to apply for registration of any intellectual property; and c) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (b) which may subsist in Australia or elsewhere.

Term	Definition
ISM	Australian Government Information Security Manual.
Key Person	A person specified as such in any Contract.
Law	Any applicable law including, without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures in force from time to time in Australia or, as applicable, overseas (including any amendment, modification or re-enactment of them).
Legal Services Directions	The Legal Services Directions made under the <i>Judiciary Act 1903</i> (Cth) as amended from time to time.
List Price	For the purposes of clause 11, means the Document that sets out: a) the publicly available recommended retail price for an Offering; or b) if the Document referred to in paragraph (a) is not available, the standard product list price provided in writing by the Seller to the Buyer. The List Price is the lower of the prices for an Offering as set out in the Documents referred to above.
Loss	All losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
Mandatory Offerings	Offerings that are mandatory for a Non-Corporate Commonwealth Entities to purchase under this Head Agreement as specified by DTA from time to time.
Material	Any tangible thing in which Intellectual Property Rights subsist.
Moral Rights	The right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
New Material	Material created by the Seller (or its Subcontractors) on or after: a) the Head Agreement Start Date, for the purpose of or as a result of performing its obligations under this Head Agreement; or b) the Contract Start Date, for the purpose of or as a result of performing its obligations under a Contract, and includes any modifications that may be required for that purpose.
New Release	Means Software produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining its original designated purpose.
Non-Corporate Commonwealth Entity	Has the meaning in the <i>Public Governance Performance and Accountability Act 2013</i> (Cth).

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Term	Definition
Notice	A Notice under this Head Agreement or a Contract that is given in accordance with clause 27 of this Head Agreement. Notify and Notified have a corresponding meaning.
Offering	The goods and services that a Seller is entitled to sell under the Panel or purchased by a Buyer under a Contract.
Online Portal	means an internet based interface as Notified by DTA to the Seller from time to time.
Order	An order from a Buyer to a Seller to purchase the Offerings in accordance with clause 11 of this Head Agreement.
Party	A reference to a party is to a party to this Head Agreement or a Contract as the context requires, and includes the party's executors, administrators, successors and permitted assigns and substitutes.
Personal Information	Has the meaning given to it in the Privacy Act.
Personnel	In relation to: a) DTA, means DTA Personnel; b) a Buyer, means Buyer Personnel; and c) the Seller, means Seller Personnel.
Prevention Period	The time during which DTA or the Buyer is prevented from being able to use the Offerings as intended by the Contract.
Privacy Act	<i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	Privacy Commissioner for the Commonwealth or the equivalent State or Territory office holder.
PSPF	Australian Government Protective Security Policy Framework (PSPF) as amended from time to time, including the Protective Security Protocols, and the Protective Security Governance Guidelines - Security of outsourced services and functions.
Quote	A quote issued by a Seller in response to a Buyer's Request for Quote.
Related Body Corporate	In relation to the Seller, any person which is a related body corporate of the Seller (as defined in section 50 of the Corporations Act).
Representative	The: a) DTA Representative; b) Buyer Representative; c) Seller Contract Representative; or d) Seller Representative, as applicable.

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Term	Definition
Request for Quote (RFQ)	A request for quote for the provision of Offerings issued under clause 11 of this Head Agreement.
Reseller	A Seller who is authorised to supply an Offering as: a) an agent for the Vendor of that Offering; or b) an entity that facilitates the entry into a direct contract between the Buyer and the Vendor for the relevant Offering.
Security Classified Information	Information defined as Security Classified Information in accordance with the ISM and PSPF.
Security Incident	Any of the following: a) any breach of any security obligation under this Head Agreement, a Contract or at Law; b) any accidental or unlawful destruction, loss, alteration, or unauthorised access to or disclosure of information (including Buyer Material and Personal Information) or systems; c) actions taken through the use of computer networks or any unauthorised access or use that may result in an actual or potentially adverse effect on any or all of the following: i) the Buyer's, the Seller's or its Subcontractor's information systems or the ability to use the Buyer's, Seller's or its Subcontractor's information systems as intended; and ii) Buyer Material residing on those systems or accessible by the Seller's or its Subcontractor's systems; and d) any request from foreign governments or entities for access to any DTA Material or Buyer Material.
Seller	The organisation that has entered into this Head Agreement to provide the Offerings.
Seller Confidential Information	In relation to the Seller, information agreed in a Contract that is confidential, but does not include information which: a) information included in the Online Portal which has been identified by the Seller to the DTA as confidential information and which has been agreed in writing by the DTA as confidential; and b) information agreed in a Contract that is confidential, but does not include information which: c) is or becomes public knowledge other than by breach of any confidentiality obligation; or d) has been independently developed or acquired by DTA or by the Buyer as established by written evidence.
Seller Contract Representative	The person appointed by the Seller to administer a Contract on behalf of the Seller.
Seller Personnel	Any individual who is an employee, director, officer, agent, contractor, or professional adviser of the: a) Seller; or

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Term	Definition
	b) a Subcontractor.
Seller Proprietary Information	means the Seller's: a) cost models; b) information relating to other customers of the Seller; c) Seller Confidential Information relating to the Seller's employees; and d) profit margin information.
Seller Representative	The person appointed by the Seller to administer this Head Agreement on behalf of the Seller.
Service	Means services (other than the provision of Software) to be provided by the Seller as described in Schedule 2 (Statement of Work) or a Contract.
Service Class	Means the class in which Services may be categorised as described in Annexure A of Schedule 2 (Statement of Work) for Category 2.
Service Credit	An amount (if any) credited to a Buyer as a result of a failure by the Seller to achieve a Service Level as specified in a Contract.
Service Level	A metric used to measure and report performance of the Offerings under a Contract as specified in a Contract.
Software	Means items that fall within the definition of 'computer program' in the <i>Copyright Act 1968</i> (Cth).
Software Class	Means the class in which Software may be categorised as described in Annexure A of Schedule 2 (Statement of Work) for Category 2.
Specifications	In order of priority: a) any relevant specifications contained in the Online Portal or provided to DTA (including in response to any procurement process); b) the Buyer's functional and technical requirements for any Offering as described or incorporated by reference in a Contract; and c) all applicable Seller's, Vendor's, or other suppliers' specifications and applicable standards. Specifications may include warranty details.
Specified Acts	Means: a) not attributing the authorship, or falsely attributing the authorship, of any New Material, or any content in the New Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the <i>Copyright Act 1968</i> (Cth)); b) materially altering the style, format, colours, content or layout of the New Material and dealing in any way with the altered New Material; c) reproducing, communicating, adapting, publishing or exhibiting any New Material; and d) adding any additional content or information to the New Material.

Term	Definition
Subcontract	Any agreement with a third party who will perform or provide any part of the Offerings under this Head Agreement or a Contract.
Subcontractor	An entity engaged under a Subcontract and includes that entity's directors, officers, employees, subcontractors, agents and consultants.
Tax Invoice	A tax invoice as defined in the GST Act.
Term	The term of this Head Agreement.
Update	Means Software which has been produced primarily to overcome defects in, or to improve the operation of, the Software without significantly altering the Software specifications whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement.
Vendor	For Software for which the Seller is a Reseller, means the third party providing that Software to the Seller for the purposes of resale to Buyers (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).
Warranty Period	Subject to the order of precedence specified in Schedule 1, the period in which an Offering must be rectified as set out in the Specifications, the Online Portal or a Contract.
WHS Laws	The <i>Work Health Safety Act 2011</i> (Cth) and any corresponding work health and safety law that applies to the Seller (including any applicable State and Territory Laws).

Schedule 2 Category 1 – Microsoft Licensing Solution

Not Used

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Schedule 3 Category 2 – Commercial-Off-The-Shelf Software

This Schedule 3 comprises:

- (a) Annexure A – Category 2 – Statement of Work and Charges; and
- (b) Annexure B – Category 2 – Category Terms.

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Annexure A – Category 2 - Statement of Work and Charges

1. Software Classes

- 1.1 In accordance with this Head Agreement, the Seller is entitled to supply any Offerings which fall within the Software Classes for which it has been approved by DTA from time to time.
- 1.2 As at the Head Agreement Start Date, the Software Classes for which DTA may give approval under this Head Agreement are as follows:

SOFTWARE CLASSES	
1	Financial and Accounting
2	Productivity, Business Intelligence and Performance Improvement
3	Digital Workplace, Big Data, Analytics, Data Quality, Artificial Intelligence, Virtual Assistants and Process Automation
4	Development Tools
5	Documentation, Authoring, Publishing, Information Management, EDMS and CMS
6	Service Management, IT Service Management (ITSM) and Customer Experience (CX)
7	Customer Relationship Management, Case Management, Grants Management
8	Workflow, Supply Chain and Logistics
9	Law Enforcement, Intelligence, Investigation, Source and Case Management and Court Software
10	Project Management
11	Database Management
12	Educational, Training, Survey and Reservations
13	Field Operations, Asset Management and Infrastructure Management
14	Geographic and Geospatial Information System (GIS)
15	Simulation and Simulator
16	Media, Graphics and Audio Visual
17	Product Design, Engineering and Compilation

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18	Cyber and Physical Security - Protective, Investigative, Authentication and Identity Management
19	Data Protection, Disaster Recovery and Business Continuity
20	Communications, Messaging and Event Driven Architecture
21	Observation, Meteorology and Positioning
22	Medical, Scientific and Research
23	Network Management and Virtualisation
24	E-Commerce and Self Service
25	Operating Systems and Integrated Applications
26	Utility/Miscellaneous

2. Related Service Classes

- 2.1 In accordance with this Head Agreement, the Seller is entitled to supply any Offerings which fall within the Service Classes for which it has been approved by DTA from time to time.
- 2.2 As at the Head Agreement Start Date, the Service Classes for which DTA may give approval under this Head Agreement are as follows:

SERVICE CLASSES	
1	Analysis, Design and COTS Development Services for a Software Acquisition and or Implementation
2	Software Integration, Implementation, Change Management and Training
3	Data Migration and Conversion
4	Software and System Testing
5	Software and System Maintenance and Support
6	Cyber Security

- 2.3 The specific Offerings to be provided under the applicable Service Class must be within the scope defined for each Service Class, as may be modified in accordance with this Head Agreement from time to time. As at the Head Agreement Start Date, the scope of the Service Classes are as follows:

Analysis, Design and COTS Development Services for a Software Acquisition and or Implementation

- 2.4 Offerings within this Service Class include analysis (which includes structured identification and documentation of requirements associated with the design, development and implementation of software systems), design and development services. Offerings within this Service Class may include:
- 2.4.1 process analysis and design;
 - 2.4.2 procedure development;
 - 2.4.3 data migration and conversion planning;
 - 2.4.4 development and execution of testing strategies;
 - 2.4.5 problem identification and resolution;
 - 2.4.6 assessment of training needs;
 - 2.4.7 information and data models;
 - 2.4.8 processes for managing information;
 - 2.4.9 standards for the manipulation and presentation of information;
 - 2.4.10 governance of information;
 - 2.4.11 taxonomy for categorisation of information;
 - 2.4.12 the capabilities which together make up the application;
 - 2.4.13 the relationship of the application to business functions, business processes and sets of data / information;
 - 2.4.14 the organisation of the components within the application, such as presentation, business logic, business rule and workflow;
 - 2.4.15 the way in which components or capabilities communicate with one another;
 - 2.4.16 the way in which applications communicate with one another;
 - 2.4.17 the organisation of the software within the application (software architecture);
 - 2.4.18 the relationship of the application to operating systems and middleware; and
 - 2.4.19 software engineering and the development of software applications and services (advising) on emerging technologies and trends and how government may take advantage of such developments.

Software Integration, Implementation, Change Management and Training

- 2.5 Offerings within this Service Class are for software integration, implementation, change management and training and may include:
- 2.5.1 integration which refers to the process of combining parts so that they work together. In an information technology context, integration is the process in which

separate components or subsystems are combined to function together seamlessly as one. It includes application integration and integration of testing services;

- 2.5.2 implementation which refers to and encompasses all the processes involved in ensuring new software operates properly in its environment. Implementation includes installation, configuration, running, testing, and making necessary changes; and
- 2.5.3 training in support of a software acquisition, implementation and change management which may include:
 - (i) instructor led, seminar style to large groups;
 - (ii) training at departmental site or provider site; and
 - (iii) interactive workshops, customised courses, modular course, train the trainer, computer based training, roaming trainer, e-learning training, in-house developed system and associated training programs and technically aligned training.

Data Migration and Conversion

- 2.6 Offerings within this Service Class are for Data Migration and Conversion and may include:
 - 2.6.1 the process of moving data from one operating environment to another operating environment including such services as integration, data management and quality. Data migration can be as simple as moving data from one storage device to another, or it may be more complex, requiring a conversion process if the format of the old and new databases differ; and
 - 2.6.2 the process of changing software or information to make it relevant and correct in a new or different operating environment. This may include the extraction and transformation and loading of data from one operating platform to another.

Software and System Testing

- 2.7 Offerings within this Service Class are for software and system testing and may include:
 - 2.7.1 software testing to determine that the product(s) are fit for purpose. Testing also encompasses the development of testing strategies and the configuration and use of automated test tools right through to the actual testing regime. Types of testing may include unit testing, systems testing, regression testing, performance/load testing, security/risk testing, end to end testing, integration testing, user acceptance testing, conversion and implementation testing, server and software compatibility testing;
 - 2.7.2 the complete testing lifecycle from test case development right through to the configuration of test software, running of test cases and writing of test reports;
 - 2.7.3 recommending and delivering testing strategies for software projects; and
 - 2.7.4 conducting tests utilising manual methods and automated testing tools.

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Software and System Maintenance and Support

- 2.8 Offerings within this Service Class are for software and system maintenance and support and may include:
- 2.8.1 ongoing support and maintenance services, which may be in the form of a support/maintenance agreement, which ensure that a system or application is available to users for the agreed periods and at agreed service levels. Support services may include:
- (i) defining problems and/or issues;
 - (ii) rectifying and/or resolving problems and/or issues; and
 - (iii) providing availability management and configuration management;
- 2.8.2 making changes, modifications or enhancements to applications, systems or interfaces; and
- 2.8.3 making upgrades to applications and the installation and testing of patch releases.

Cyber Security

- 2.9 Offerings within this Service Class are for cyber security and may include:
- 2.9.1 concepts and or actions contributing to the practice of preventing unauthorised access, use, disclosure, disruption, modification, inspection, recording or destruction of information; and
- 2.9.2 preventative, investigative and corrective controls required for the successful implementation and management of software or systems. Activities may include concepts and design, policy, governance, implementation of protective measures, undertaking assessments and investigations, monitoring, corrective measures and reporting.

3. Other Requirements and Reports

- 3.1 Without limiting the Head Agreement, the Seller must:
- 3.1.1 ensure that all Quotes include the GST exclusive and inclusive amounts;
- 3.1.2 provide accurate statements of the details of any licences held by any Buyer which have been provided by the Seller pursuant to the Head Agreement within 5 Business Days of a request from the Buyer;
- 3.1.3 report on any Buyer's Software assurance and licence expiry dates within 20 Business Days of a request from the Buyer;
- 3.1.4 provide cost reports for any Buyer including cost centre breakdowns, where cost centre information has been provided by the Buyer;
- 3.1.5 provide assistance, including any Documentation required by DTA, or the relevant Buyer, with licence acquisition, and financial year maintenance forecast for budgeting upon request;

- 3.1.6 provide licence keys and related Software activation information within 10 Business Days of a request or as agreed between the Buyer and the Seller;
- 3.1.7 provide a monthly transaction report to DTA of all Contracts placed by DTA and Buyers. The report must be in a format specified by DTA and at a minimum the reports must include:
- (i) the name of the Buyer;
 - (ii) the date the Contract was executed;
 - (iii) the value of the Contract, inclusive of GST; and
- 3.1.8 provide a monthly activity report to DTA, which consists of the response times achieved for all Offerings for that month including, but not limited to:
- (i) issues or requests raised by DTA or a Buyer;
 - (ii) dates that the issues or requests were raised with the Seller;
 - (iii) the length of time elapsed since the issue or request was raised with the Seller;
 - (iv) the actions taken by the Seller to remedy the issue or respond to the request; and
 - (v) the date the issue was resolved, or is expected to be resolved (as applicable) or the date the request was responded to.

4. Charges for Category 2

- 4.1 The Online Portal may describe the pricing arrangements for Category 2 (including in the form of a minimum discount or not to exceed Charges) for each Offering able to be provided by the Seller in accordance with this Head Agreement.
- 4.2 The Charges for any Offerings specified in the Online Portal for Category 2 which are:
- 4.2.1 Software must be calculated on a basis which applies at least the minimum discount and must not otherwise exceed the Charges specified in or calculated in accordance with the Online Portal as applicable to that Offering; and
 - 4.2.2 Services must be calculated on a basis which applies at least the minimum discount and must not exceed the Charges specified in or calculated in accordance with the Online Portal as applicable to that Offering. In addition:
 - 4.2.3 the hourly rates specified in the Online Portal for each labour rate role are billable only for the hours in which the Offerings were actually provided by the Seller;
 - 4.2.4 if Seller Personnel work for only part of any hour in a day, then the hours worked must be rounded to the nearest quarter hour; and
 - 4.2.5 the Seller must not charge a Buyer any amounts for the following:
 - (i) time spent on any break (e.g. lunch); or
 - (ii) time spent travelling to and from home to work (unless required to travel at the request of the Buyer and this is specified in the Contract).

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Annexure B – Category 2 – Category Terms

1. Term of the Head Agreement

- 1.1 This Head Agreement begins on the Head Agreement Start Date and expires on 30 April 2022, unless:
- 1.1.1 DTA extends the term of this Head Agreement; or
 - 1.1.2 this Head Agreement is terminated.
- 1.2 DTA may extend the term of this Head Agreement, by issuing a Notice, by any period or periods up to a total of five years provided that the term of the Head Agreement may not be extended beyond 30 April 2027. Any extension takes effect from the end of the then current term.

2. Software Classes and Service Classes

- 2.1 The Seller is entitled to supply any Offerings which fall within the Software Classes and Service Classes for which it has been approved by DTA from time to time. DTA will Notify the Seller of the Software Classes and Service Classes for which it is approved.
- 2.2 DTA intends to specify those Software Classes and Service Classes on the Online Portal. If there is any inconsistency, the latest Notice issued by DTA will prevail. From time to time DTA may, in its discretion:
- 2.2.1 list some or all Offerings falling within the relevant Software Classes or Service Classes on the Online Portal (including by specifying sub-classes or further groupings of Offerings within those Software Classes or Service Classes);
 - 2.2.2 allocate Offerings into the appropriate Software Classes or Service Classes on the Online Portal; and
 - 2.2.3 change the Software Classes or Service Classes in which a particular Offering has been categorised in the Online Portal,
- but may consult with the Seller to ensure that the Offerings are allocated appropriately.
- 2.3 The specific requirements for the Offerings to be provided within the applicable Software Classes and Service Classes must be specified in the applicable Order for a Contract.
- 2.4 Due to changes in business needs, technology and market competition, a broader range of Software Classes or Service Classes may be required in the future. DTA may, at its discretion and at any time, issue updates to the Software Classes or Service Classes by Notice to the Seller (including by modifying, adding or removing Software Classes or Service Classes). DTA will Notify the Seller of any changes to the Software Classes or Service Classes that are applicable to the Seller's Offerings.

3. Description of Offerings

- 3.1 The Seller must ensure that it meets the requirements for Offerings set out in Annexure A of Schedule 3.

4. Charges

- 4.1 The Seller must comply with the requirements for Charges set out in Annexure A of Schedule 3.

5. Source Materials to be Held in Escrow

- 5.1 If a Contract specifies that source materials must be held in escrow, the Seller must:
- 5.1.1 either:
- (i) following Acceptance of the relevant Software, promptly deposit those source materials with an escrow agent approved by Buyer on terms approved by the Buyer; or
 - (ii) if the Seller has entered into a master escrow agreement in relation to the Software, add the Buyer as a party to that master escrow agreement promptly following Acceptance of that Software; and
- 5.1.2 regularly update any source materials held in escrow so that they reflect the Software used by the Buyer from time to time, on an ongoing basis.
- 5.2 Without limiting this Head Agreement or a Contract, the Seller grants to the Buyer a licence to make full use of any source materials held in escrow to enable it to derive the full benefits it is entitled to receive under the terms of this Head Agreement and the Contract (including the right to modify, adapt and support the Software), with effect from the date of the event that triggered release of the source materials to the Buyer in accordance with the relevant escrow agreement.
- 5.3 This clause survives expiry or termination of this Head Agreement.

6. Restrictions on Use

- 6.1 The Buyer agrees, except to the extent permitted by this Head Agreement, a Contract, or applicable Law:
- 6.1.1 not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code;
- 6.1.2 not to sell, rent, lease, license, sublicense, display, time share the Software or otherwise transfer the Software to, or permit the use of the Software by, any third party;
- 6.1.3 not to remove any copyright or proprietary notice from the Software; and
- 6.1.4 to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software.

7. Audit of Use

- 7.1 If specified in a Contract, the Seller may audit the Buyer's use of any Software under a Contract to the extent permitted by that Contract and provided that:
- 7.1.1 the Seller must give the Buyer at least 20 Business Days' notice of any audit; and
 - 7.1.2 any audit must only be conducted while a representative of the Buyer is present, unless agreed otherwise between the parties in writing.

8. Support

- 8.1 If the Seller is required to provide Software support in accordance with the Contract, unless otherwise specified in the Contract, the Seller must provide the following support as a minimum:
- 8.1.1 supply of telephone or other electronic support to the Buyer in order to support users in the use of the Software, and to enable the Buyer to locate and correct problems with the Software;
 - 8.1.2 maintain an electronic mail communication facility that will enable Software and Documentation to be downloaded from the Seller to the Buyer in softcopy;
 - 8.1.3 correct any problem in accordance with any applicable Service Levels;
 - 8.1.4 promptly correct any failure of the Documentation to provide adequate and correct instruction for the proper use and operation (by an appropriately qualified person) of any function or any performance or other requirement set out in the relevant specifications or Documentation, and delivering to the Buyer appropriate amendments to the Documentation;
 - 8.1.5 supply any Updates of the Software as required to:
 - (i) rectify problems;
 - (ii) comply with statutory or regulatory changes relating to the Software; and
 - (iii) operate the Software under New Releases of the operating system and other system Software and any other Buyer hardware and Software configurations (including the Buyer's existing systems) with which the Software is designed to operate;
 - 8.1.6 replace the Software at no charge if the media on which it is provided becomes destroyed or damaged so that the Software becomes unusable or defective; and
 - 8.1.7 provide any training set out in the Contract.

9. Remote Access to Buyer's Systems

- 9.1 Without limiting this Head Agreement or any Contract, unless otherwise specified in a Contract, the Seller must:
- 9.1.1 ensure that it does not, and does not permit, any access or control of any server or other hardware or Software of the Buyer without the Buyer's written permission (including by remote access);
 - 9.1.2 use best endeavours to ensure that no unauthorised attempt whatsoever is made to access or use in any way the Buyer's software systems;
 - 9.1.3 limit all access to the Buyer's systems, hardware and Software to those Seller Personnel who have been approved by the Buyer in writing and who have a need for such access and must ensure that such access is limited to the minimum access necessary to enable the Seller to comply with its obligations under a Contract;
 - 9.1.4 ensure that no data of the Buyer is changed without the express prior written approval of the Buyer;
 - 9.1.5 ensure that any access to the Buyer's systems, hardware and Software by the Seller or its Personnel is only with the clear identification and recording of the individual gaining such access; and
 - 9.1.6 ensure that any access by the Seller to the Buyer's systems, hardware and Software complies with any other requirements relating to remote access set out in the Contract.

10. Updates and New Releases

- 10.1 Unless otherwise specified in the Contract, the Seller must:
- 10.1.1 provide the Buyer with, or provide the Buyer with access to, all Updates and New Releases for any Offerings that are Software for the period specified in the Contract (and appropriate Documentation for those Updates and New Releases), including those that the Seller generally provides without charge to other licensees of the Software;
 - 10.1.2 promptly provide the Buyer with the following information for any Update or New Release it may make or has made available to the Buyer or any other customers from time to time:
 - (i) the nature of the improvements and corrections contained in the Update or New Release;
 - (ii) any adverse effects that the Update or New Release may be expected to have on the Buyer's systems, hardware or Software, including any expected degradation in reliability, performance or functionality; and
 - (iii) sufficient information to enable the Buyer to determine whether the Update or New Release will suit the Buyer's requirements; and

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10.1.3 if the Seller is required to provide and implement an Update or New Release of Software and the Buyer (acting reasonably) considers that the Update or New Release as implemented:

- (i) is not operating in accordance with its specifications; or
- (ii) is operating in accordance with its specifications but is causing problems or issues for the Buyer's other information and communication technology systems or components (including degradation, incompatibility, or other problems or issues with those other systems or components),

then the Seller must if requested by the Buyer promptly provide and re-implement the previous version of the Software in effect immediately before implementation of the Update or New Release.

10.2 Unless specified otherwise in the Contract, a refusal by the Buyer to install an Update or New Release does not affect its entitlement to the Offerings under a Contract.

11. Time and Materials

11.1 Unless otherwise specified in a Contract, in respect of any Offerings provided on a time and materials basis, the Seller must:

- 11.1.1 perform the tasks in accordance with the Contract and any reasonable directions from the Buyer that are consistent with the scope of the Seller's obligations in the Contract;
- 11.1.2 substantiate the time spent performing tasks required under the Contract if requested by the Buyer;
- 11.1.3 not invoice the Buyer for any time which is not actually incurred by the Seller; and
- 11.1.4 document all travel and expenses chargeable to the Buyer, and which are pre-approved by the Agency in writing.

12. EULAs

12.1 The parties acknowledge and agree that a Contract may specify that the supply of certain Offerings are:

- 12.1.1 subject to a EULA for those Offerings; and
- 12.1.2 subject to a EULA for those Offerings, but as modified by the Contract.

12.2 If a EULA is attached or otherwise expressly referenced in a Contract as applicable to particular Offerings (including by reference to a website address), the Buyer is deemed to have agreed to those terms in respect of the supply of the Offerings and the terms of the EULA will apply:

- 12.2.1 to the Contract (where the Seller is supplying the Offerings in its own right); or
- 12.2.2 to the contract between the Buyer and the Vendor (where the Seller is a Reseller of those Offerings),

but, subject to clause 12.3 below, the terms of the EULA will not:

12.2.3 apply to the contractual arrangements between DTA and the Seller (and will not be incorporated into, add to, or otherwise modify DTA's or the Sellers rights or obligations under the Head Agreement);

12.2.4 apply to the extent that the Contract modifies the terms of the EULA; or

12.2.5 create any legal liability for any individual person using the Offering.

12.3 The terms of a EULA (to the extent incorporated into a Contract) will:

12.3.1 apply to the applicable contractual arrangements only in respect of the Offering(s) specified in the Contract as subject to the EULA; and

12.3.2 override the terms of the Head Agreement as they apply to the Contract to the extent of any inconsistency with the terms of the EULA for that Contract.

12.4 For clarity:

12.4.1 clauses 14.1 to 14.5 of this Head Agreement will not operate to prevent the terms of a EULA which meet the requirements in clauses 12.1 to 12.3 of this Annexure B to Schedule 3 from applying to a Contract or contractual arrangement with a Vendor; and

12.4.2 clauses 14.1 to 14.5 of this Head Agreement will operate in respect of:

- (i) any EULA or contractual arrangement which does not meet the requirements in clauses 12.1 to 12.3 of this Annexure B to Schedule 3; and
- (ii) any Offering which is not identified in an Contract as being subject to a EULA.

Schedule 4 Category 3 – Enterprise Resource Planning Products and Service Solutions

This 4 comprises:

- (a) Annexure A – Category 3 – Statement of Work and Charges; and
- (b) Annexure B – Category 3 – Category Terms.

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Annexure A – Category 3 - Statement of Work and Charges

1. ERP Classes

1.1 In accordance with this Head Agreement, the Seller is entitled to supply any Offerings which fall within the ERP Classes for which it has been approved by DTA from time to time.

1.2 As at the Head Agreement Start Date, the ERP Classes for which DTA may give approval under this Head Agreement are as follows:

PRODUCT CLASSES	
1	ERP Core and Edge

1.3 Product Classes include solutions that manage, improve or automate enterprise resource planning operations and processes. This includes products that are a complimentary component of a broader ERP solution but are not a complete ERP offering (edge products).

1.3.1 Capabilities include but not limited to:

- (a) financial management services, accounts payable, accounts receivable, asset management and logistics, budgeting, contract management & procurement, contracts, procurement and grant support, credit card management, financial reporting, financial, policy and advice, financial viability, ledger maintenance, ledger management, taxation, travel, and treasury; and
- (b) human resource management services, employee relations, human resource policy and advice, human resource reporting and analysis, human resource strategy and planning, learning and development, pay and conditions, scheduling, time and attendance, payroll administration, recruitment; and
- (c) corporate services or any other product or solution that supports or compliments products and services provided under paragraphs 1.3.1(a) and 1.3.1(b).

2. Related Service Classes

2.1 In accordance with this Head Agreement, the Seller is entitled to supply any Offerings which fall within the Related Service Classes for which it has been approved by DTA from time to time.

2.2 As at the Head Agreement Start Date, the Related Service Classes for which DTA may give approval under this Head Agreement are as follows:

RELATED SERVICE CLASSES	
1	Research and design services
2	Project and change management services
3	Business analysis and process optimisation services

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RELATED SERVICE CLASSES	
4	Application software development services
5	Cybersecurity services
6	Solutions implementation, integration and testing services
7	Data analytics and business intelligence services
8	Training, learning and development services

- 2.3 The specific Offerings to be provided under the applicable Related Service Class will be specified in a Contract. All Related Service Classes are limited to services relevant to the ERP Classes.

Class 1 Research and design services

- 2.4 Offerings within this Related Service Class relate to the research and design of a digital product, service, and user experience. This includes using exploratory, generative and/or evaluative research to understand user needs and behaviour and design of user-friendly interfaces and experiences. Services required by the Buyer will be specified in the applicable Contract and may include the following:

- 2.4.1 planning, designing, conducting and analysing user research in a digital context (for example, ethnographic research);
- 2.4.2 conducting user research to improve digital system usability;
- 2.4.3 designing wireframes and prototypes for intuitive interfaces;
- 2.4.4 developing iterative service designs based on Buyer and user needs;
- 2.4.5 designing web and mobile application interfaces for the Buyer with a focus on accessibility, designing for different screen sizes and input methods, following style guides and WCAG 2.0 AA guidelines; and
- 2.4.6 communicating user research findings to stakeholders through a wide range of formats (presentations, journey maps, videos etc).

Class 2 Project and change management services

- 2.5 Offerings within this Related Service Class relate to the planning, execution, monitoring and management of digital ERP projects. This involves, strategic planning, communications stakeholder engagement, risk assessment and performance tracking to achieve defined objectives and ensure smooth transitions. Services required by the Buyer will be specified in the applicable Contract and may include the following:

- 2.5.1 management and delivery of a digital ERP program, project or change within the Buyer's organisation;
- 2.5.2 leading Agile and other governance and delivery methods;
- 2.5.3 identifying drivers and barriers for Buyer organisational change;
- 2.5.4 designing and embedding change programs;

- 2.5.5 facilitating Buyer cultural change in a technology driven environment;
- 2.5.6 planning and delivering change activities and leading stakeholder engagement within the Buyer's organisation;
- 2.5.7 assessing Buyer business readiness, design and implement target operating models; and
- 2.5.8 clarifying and managing Buyer business priorities, roles and responsibilities throughout the lifecycle.

Class 3 Business analysis and process optimisation services

2.6 Offerings within this Related Service Class relate to the design, analysis and implementation of digital processes to improve digital efficiency, productivity and effectiveness. This includes examining, reengineering, optimising and documenting business processes. Services required by the Buyer will be specified in the applicable Contract and may include the following:

- 2.6.1 requirements gathering (i.e. collecting and analysing Buyer business requirements to identify pain points and areas for improvement);
- 2.6.2 analysing data related to Buyer business processes to identify bottlenecks, inefficiencies, and areas for digital optimisation;
- 2.6.3 design and delivery of clear and transparent optimisation roadmaps which deliver at scale, forecast change and eliminate redundancies in the Buyer's organisation (e.g. automating repetitive tasks and reducing manual interventions); and
- 2.6.4 designing workflow automation tools and technologies to minimise errors and accelerate process transformation for the Buyer.

Class 4 - Application, software development services

2.7 Offerings within this Related Service Class relate to the creation, customisation enhancement and maintenance of applications and software solutions. These services include custom software development to address unique business requirements through various phases, requirement analysis, design, coding, testing, and deployment. Services required by the Buyer will be specified in the applicable Contract and may include:

- 2.7.1 requirements analysis by gathering and documenting the Buyer's detailed functional and non-functional requirements;
- 2.7.2 creating architectural and user interface designs for Buyer applications;
- 2.7.3 deployment (installing and configuring the application in the Buyer's production environment);
- 2.7.4 maintenance and updates of the Offerings by providing ongoing support, bug fixes, and updates to keep the application current;
- 2.7.5 designing software solutions tailored to the unique needs and processes of the Buyer's organisation; and
- 2.7.6 integrating software with other Buyer systems and applications.

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Class 5 Cybersecurity services

- 2.8 Offerings within this Related Service Class relate to security preventative, investigative and corrective controls required for the successful implementation and management of software or systems. Activities may include preparing concepts and design, policy, governance, implementation of protective measures, undertaking assessments and investigations, monitoring, corrective measures and reporting. Services required by the Buyer will be specified in the applicable Contract and may include the following:
- 2.8.1 leading security strategy design and management;
 - 2.8.2 provision of threat detection and prevention, intrusion detection systems (IDS), intrusion prevention systems (IPS), penetration testing, security information and event management (SIEM), and vulnerability scanning;
 - 2.8.3 incident response and recovery, incident investigation, containment and eradication, business continuity and disaster recovery;
 - 2.8.4 enhancing Buyer and Buyer Personnel security awareness, including: Phishing simulations, targeted training and policy enforcement;
 - 2.8.5 creation of cybersecurity architecture and solutions, firewalls and IPS, endpoint security, identity and access management (IAM) for Buyer systems and environments; and
 - 2.8.6 conducting regulatory compliance and risk management assessments.

Class 6 Solutions implementation, integration and testing services

- 2.9 Offerings within this Related Service Class relate to the software development lifecycle, translating design into a functional solution through coding and configuration. This includes integration services intended to ensure collaboration between diverse systems, applications, or modules e.g. thorough testing encompassing, integration, and acceptance testing, functionality, and security. Services required by the Buyer will be specified in the applicable Contract and may include the following:
- 2.9.1 the optimisation, configuration, integration, testing and decommissioning of systems to support the Buyer's business continuity and improved business processes;
 - 2.9.2 connecting disparate software and hardware systems and technologies to enable seamless data flow, functionality and business continuity for the Buyer;
 - 2.9.3 integrating services to support the delivery and/or transition to digital services for the Buyer, including products and services from whole-of-government sourcing arrangements (including WofG Arrangements) to support a managed service to government;
 - 2.9.4 writing, testing, and debugging application code;
 - 2.9.5 testing and quality assurance to ensure applications function correctly and meet quality standards required by the Buyer;
 - 2.9.6 developing and executing digital ERP implementation or decommission plans; and
 - 2.9.7 providing training services to Buyer Personnel during and/or upon completion of a new solution implementation or system integration.

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Class 7 Data management, analytics, migration, and business intelligence services

- 2.10 Offerings within this Service Class relate to data management, analytics, migration and conversion. Services involve the end-to-end governance of the data lifecycle, data, storage, processing, integration, and security while complying with regulatory requirements Data modelling, integration and governance. Services required by the Buyer will be specified in the applicable Contract and may include the following:
- 2.10.1 data migration i.e. the process of moving data from one operating environment to another operating environment including such services as integration, data management and quality. Data migration can be as simple as moving data from one storage device to another, or it may be more complex, requiring a conversion process if the format of the old and new databases differ;
 - 2.10.2 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;
 - 2.10.3 design of interactive dashboards and reporting;
 - 2.10.4 enabling accessible Buyer data in machine-readable formats to aid evidence based decision- making;
 - 2.10.5 providing 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;
 - 2.10.6 providing machine learning and machine learning software and/or algorithms (both supervised and unsupervised); and
 - 2.10.7 real time analytics, market trend analysis, cost benefiting, forecasting and experiment analysis.

Class 8 Training, learning and development services

- 2.11 Offerings within this Service Class relate to digital and ICT training, learning and development services to enhance digital literacy, skill development and capability requirements across organisations. This includes harnessing technology solutions and training industry standards and best practices to increase knowledge and drive productivity and efficiency. Services required by the Buyer will be specified in the applicable Contract and may include the following:
- 2.11.1 analysing and determining user capability and gaps, and assessing training requirements across the Buyer's organisation
 - 2.11.2 designing, developing and implementing learning solutions to uplift digital literacy within the Buyer's organisation;
 - 2.11.3 developing learning solutions for the Buyer (in conjunction with the Buyer and its subject-matter experts and in alignment with industry best practice), learning design standards and other sources to meet user needs across appropriate modalities;
 - 2.11.4 provision of thorough post training reporting to the Buyer; and
 - 2.11.5 evaluating relevant learning management systems (LMS) and providing guidance to the Buyer on the cost of implementation and return on investment.

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3. Other Requirements and Reports

- 3.1 Without limiting the Seller's obligations in Head Agreement (including in clause 11 of the Head Agreement) or any Contract, the Seller must:
- 3.1.1 ensure that all Quotes include the GST exclusive and inclusive amounts;
 - 3.1.2 provide accurate statements of the details of any licences held by any Buyer which have been provided by the Seller pursuant to the Head Agreement within 5 Business Days of a request from the Buyer;
 - 3.1.3 report on any Buyer's Software assurance and licence expiry dates within 20 Business Days of a request from the Buyer;
 - 3.1.4 as required by the Buyer, provide cost reports for any Buyer including cost centre breakdowns, where cost centre information has been provided by the Buyer;
 - 3.1.5 provide assistance, including any Documentation required by the DTA, or the relevant Buyer, with licence acquisition, and financial year maintenance forecast for budgeting upon request from DTA or a Buyer;
 - 3.1.6 provide relevant Software activation information within 10 Business Days of a Buyer request or as agreed between the Buyer and the Seller;
 - 3.1.7 as required provide DTA with a monthly transaction report of all Contracts placed by DTA and Buyers. The report must be in a format specified by DTA and at a minimum the reports must include:
 - 3.1.8 the name of the Buyer;
 - 3.1.9 the date the Contract was executed;
 - 3.1.10 the value of the Contract, inclusive of GST; and
 - 3.1.11 provide a monthly activity report to DTA, which consists of the response times achieved for all Offerings for that month including, but not limited to:
 - (a) issues or requests raised by the DTA or a Buyer;
 - (b) dates that the issues or requests were raised with the Seller;
 - (c) the length of time elapsed since the issue or request was raised with the Seller;
 - (d) the actions taken by the Seller to remedy the issue or respond to the request; and
 - (e) the date the issue was resolved by the Seller, or is expected to be resolved (as applicable) or the date the request was responded to.

4. Charges for Category 3

- 4.1 The Online Portal may describe the pricing arrangements for Category 3 (including in the form of a minimum discount or not to exceed Charges) for each Offering able to be provided by the Seller in accordance with this Head Agreement.
- 4.2 The Charges for any Offerings specified in the Online Portal for Category 3 which are:
- 4.2.1 ERP products must be calculated on a basis which applies at least the minimum discount and must not otherwise exceed the Charges specified in or calculated in accordance with the Online Portal as applicable to that Offering; and
 - 4.2.2 Services must be calculated on a basis which applies at least the minimum discount and must not exceed the Charges specified in or calculated in accordance with the Online Portal as applicable to that Offering. In addition:
 - 4.2.3 the hourly rates specified in the Online Portal for each labour rate role are billable only for the hours in which the Offerings were actually provided by the Seller;
 - 4.2.4 if Seller Personnel work for only part of any hour in a day, then the hours worked must be rounded to the nearest quarter hour; and
 - 4.2.5 the Seller must not charge a Buyer any amounts for the following:
 - (a) time spent on any break (e.g. lunch); or
 - (b) time spent travelling to and from home to work (unless required to travel at the request of the Buyer and this is specified in the Contract).

Annexure B - Category 3 – Category Terms

1. Term of the Head Agreement

- 1.1 This Head Agreement begins on the Head Agreement Start Date and expires on 29 April 2026, unless:
- 1.1.1 DTA extends the term of this Head Agreement; or
 - 1.1.2 this Head Agreement is terminated.
- 1.2 DTA may extend the term of this Head Agreement, by issuing a Notice, by any period or periods up to a total of five years provided that the term of the Head Agreement may not be extended beyond 29 April 2026. Any extension takes effect from the end of the then current term.

2. ERP Classes

- 2.1 The Seller is entitled to supply any Offerings which fall within the ERP Class(es) for which it has been approved by DTA from time to time. DTA will Notify the Seller of the ERP Class(es) for which it is approved.
- 2.2 DTA intends to specify those ERP Classes on the Online Portal. If there is any inconsistency, the latest Notice issued by DTA will prevail. From time to time DTA may, in its discretion:
- 2.2.1 list some or all Offerings falling within the relevant ERP Class on the Online Portal (including by specifying sub-classes or further groupings of Offerings within those ERP Classes);
 - 2.2.2 allocate Offerings into the appropriate ERP Classes on the Online Portal; and
 - 2.2.3 change the ERP Classes in which a particular Offering has been categorised in the Online Portal,
- but may consult with the Seller to ensure that the Offerings are allocated appropriately.
- 2.3 The specific requirements for the Offerings to be provided within the applicable ERP Classes must be specified in the applicable Order for a Contract.
- 2.4 Due to changes in business needs, technology and market competition, a broader range of ERP Classes may be required in the future. DTA may, at its discretion and at any time, issue updates to the ERP Classes by Notice to the Seller (including by modifying, adding or removing ERP Classes). DTA will Notify the Seller of any changes to the ERP Classes that are applicable to the Seller's Offerings.

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3. Description of Offerings

- 3.1 The Seller must ensure that it meets the requirements for Offerings set out in Annexure A of Schedule 4.

4. Charges

- 4.1 The Seller must comply with the requirements for Charges set out in Annexure A of Schedule 4.

5. Source Materials to be Held in Escrow

- 5.1 If a Contract specifies that source materials must be held in escrow, the Seller must:
- 5.1.1 either:
- (a) following Acceptance of the relevant Software, promptly deposit those source materials with an escrow agent approved by Buyer on terms approved by the Buyer; or
 - (b) if the Seller has entered into a master escrow agreement in relation to the Software, add the Buyer as a party to that master escrow agreement promptly following Acceptance of that Software; and
- 5.1.2 regularly update any source materials held in escrow so that they reflect the Software used by the Buyer from time to time, on an ongoing basis.
- 5.2 Without limiting this Head Agreement or a Contract, the Seller grants to the Buyer a licence to make full use of any source materials held in escrow to enable it to derive the full benefits it is entitled to receive under the terms of this Head Agreement and the Contract (including the right to modify, adapt and support the Software), with effect from the date of the event that triggered release of the source materials to the Buyer in accordance with the relevant escrow agreement.
- 5.3 This clause survives expiry or termination of this Head Agreement.

6. Audit of Use

- 6.1 If specified in a Contract, and subject to applicable security restrictions, the Seller may audit the Buyer's use of any Software under a Contract to the extent permitted by that Contract and provided that:
- 6.1.1 the Seller must give the Buyer at least 20 Business Days' Notice of any audit; and
- 6.1.2 any audit must only be conducted while a representative of the Buyer is present, unless agreed otherwise between the parties in writing.
- 6.2 If:
- 6.2.1 the Buyer has underpaid any subscription Charges to the Seller; or
- 6.2.2 the Buyer has used the Offerings in excess of the authorised Usage Metric,

then the Buyer must:

- 6.2.3 resolve or remove any redundant Use (e.g. removal of users who are no longer employed by the Buyer or who no longer need rights to use the Offerings); and/or
 - 6.2.4 if desired by the Buyer, reduce the Buyer's use of the Offerings to be consistent with the authorised Usage Metric.
- 6.3 After the Buyer has had the opportunity to resolve, remove or reduce excess Use in accordance with clause 6.2 and if those steps have not resolved the excess use of the Offerings, then:
- 6.3.1 after consultation with the Buyer and verification of the excess use, the Seller may invoice the Buyer for, and the Buyer must pay, the underpaid Charges or the excess usage Charges based on the applicable Charges set out in the Contract, for the period starting on the date on which the excess Use first occurred; and
 - 6.3.2 the Buyer may promptly negotiate in good faith with the Seller to agree an additional Contract to document the required purchase of any additional quantities or levels for that excess use in the future.
- 6.4 In no circumstances will the Buyer be entitled to claim any reduction of the Charges payable under a Contract or reduce the Usage Metric during the Contract Period, subject to the Buyer's rights under this clause 6.
- 6.5 When exercising its rights under this clause 6, the Seller must:
- 6.5.1 comply with the access, security and privacy requirements in the Head Agreement, and any additional requirements specified in a Contract or Notified by the Buyer from time to time; and
 - 6.5.2 ensure that its actions do not interfere with the Buyer's normal business operations.

7. Support

- 7.1 If the Seller is required to provide Software support in accordance with the Contract, unless otherwise specified in the Contract, the Seller must provide the following support as a minimum:
- 7.1.1 supply of telephone or other electronic support to the Buyer in order to support users in the use of the Software, and to enable the Buyer to locate and correct problems with the Software;
 - 7.1.2 maintain an electronic mail communication facility that will enable Software and Documentation to be downloaded from the Seller to the Buyer in softcopy;
 - 7.1.3 correct any problem in accordance with any applicable Service Levels;
 - 7.1.4 promptly correct any failure of the Documentation to provide adequate and correct instruction for the proper use and operation (by an appropriately qualified person) of any function or any performance or other requirement set out in the relevant Specifications or Documentation, and delivering to the Buyer appropriate amendments to the Documentation;

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- 7.1.5 supply any Updates of the Software, or take any other steps, as required to:
- (a) rectify problems;
 - (b) comply with statutory or regulatory changes relating to the Software; and
 - (c) operate the Software under New Releases of the operating system and other system Software and any other Buyer hardware and Software configurations (including the Buyer's existing systems) with which the Software is designed to operate;
- 7.1.6 replace the Software at no charge if the media on which it is provided becomes destroyed or damaged so that the Software becomes unusable or defective; and
- 7.1.7 provide any training set out in the Contract.

8. Remote Access to Buyer's Systems

- 8.1 Without limiting this Head Agreement or any Contract, unless otherwise specified in a Contract, the Seller must:
- 8.1.1 ensure that it does not, and does not permit, any access or control of any server or other hardware or Software of the Buyer without the Buyer's written permission (including by remote access);
 - 8.1.2 use best endeavours to ensure that no unauthorised attempt whatsoever is made to access or use in any way the Buyer's software systems;
 - 8.1.3 limit all access to the Buyer's systems, hardware and Software to those Seller Personnel who have been approved by the Buyer in writing and who have a need for such access and must ensure that such access is limited to the minimum access necessary to enable the Seller to comply with its obligations under a Contract;
 - 8.1.4 ensure that no data of the Buyer is changed without the express prior written approval of the Buyer;
 - 8.1.5 ensure that any access to the Buyer's systems, hardware and Software by the Seller or its Personnel is only with the clear identification and recording of the individual gaining such access; and
 - 8.1.6 ensure that any access by the Seller to the Buyer's systems, hardware and Software complies with any other requirements relating to remote access set out in the Contract.

9. Updates and New Releases

- 9.1 Unless otherwise specified in the Contract, the Seller must:
- 9.1.1 provide the Buyer with, or provide the Buyer with access to, all Updates and New Releases for any Offerings that are Software for the period specified in the Contract (and appropriate Documentation for those Updates and New Releases), including those that the Seller generally provides without charge to other licensees of the Software;

- 9.1.2 promptly provide the Buyer with the following information for any Update or New Release it may make or has made available to the Buyer or any other customers from time to time:
- (a) the nature of the improvements and corrections contained in the Update or New Release;
 - (b) any adverse effects that the Update or New Release may be expected to have on the Buyer's systems, hardware or Software, including any expected degradation in reliability, performance or functionality; and
 - (c) sufficient information to enable the Buyer to determine whether the Update or New Release will suit the Buyer's requirements; and
- 9.1.3 if the Seller is required to provide and implement an Update or New Release of Software and the Buyer (acting reasonably) considers that the Update or New Release as implemented:
- (a) is not operating in accordance with its Specifications; or
 - (b) is operating in accordance with its Specifications but is causing problems or issues for the Buyer's other information and communication technology systems or components (including degradation, incompatibility, or other problems or issues with those other systems or components),

then the Seller must if requested by the Buyer promptly provide and re-implement the previous version of the Software in effect immediately before implementation of the Update or New Release.

- 9.2 Unless specified otherwise in the Contract, a refusal by the Buyer to install an Update or New Release does not affect its entitlement to the Offerings under a Contract.

10. Time and Materials

- 10.1 Unless otherwise specified in a Contract, in respect of any Offerings provided on a time and materials basis, the Seller must:
- 10.1.1 perform the tasks in accordance with the Contract and any reasonable directions from the Buyer that are consistent with the scope of the Seller's obligations in the Contract;
 - 10.1.2 substantiate the time spent performing tasks required under the Contract if requested by the Buyer;
 - 10.1.3 not invoice the Buyer for any time which is not actually incurred by the Seller; and
 - 10.1.4 document all travel and expenses chargeable to the Buyer, and which are pre-approved by the Buyer in writing.

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11. EULAs

Note to Applicants: A EULA is a set of Additional Terms for the purposes of the Head Agreement.

Sellers will be required to obtain approvals for EULA terms where approval is required under clause 14 of the Head Agreement. For example, if a EULA contains a limited warranty that is inconsistent with the rectification obligations in clause 58 of the Head Agreement, that limited warranty will not apply unless it is approved by DTA and the Buyer. EULA terms that are product descriptions or use guidance will apply if they do not meet the criteria in clause 14 of the Head Agreement (and will not require approval).

This is different to the approach for Category 2, but is required for the business critical Offerings available under Category 3.

If a Buyer is ordering any COTS Offerings, the Seller's standard terms (or a Vendor's standard terms where the Seller is a Reseller) can apply to the Offerings (i.e. a EULA as defined in the Head Agreement). However, the terms of the Head Agreement, these Category Terms and any specific terms agreed in a Contract will take priority over those standard terms, where they are inconsistent (unless otherwise approved as described above).

Any standard terms and conditions that do not meet the criteria in clause 14 of the Head Agreement, or which are approved as described above, will apply from the date of a Contract. These terms will be set out in or attached to the Contract. Subsequent changes to those terms will apply to a Contract only if those terms are approved in accordance with clause 14 of the Head Agreement and that Contract is varied in accordance with clause 22 of the Head Agreement.

If the Seller is providing other Services, for example data migration, Seller standard terms will not apply, and only the terms of the Head Agreement and Contract will apply to those Services.

- 11.1 The parties acknowledge and agree that a Contract may specify that the supply of certain Offerings are:

11.1.1 subject to a EULA for those Offerings; and

11.1.2 subject to a EULA for those Offerings, but as modified by the Contract.

- 11.2 For the purposes of this Category 3:

11.2.1 a EULA is a set of Additional Terms as described in the Head Agreement; and

11.2.2 clause 14 of the Head Agreement applies to any EULA or Additional Terms that a Seller seeks to incorporate into a Contract.

- 11.3 If a EULA is attached to or otherwise expressly referenced in a Contract as applicable to particular Offerings (including by reference to a website address), clauses 13 and 14 of the Head Agreement apply to those terms. For clarity:

11.3.1 terms in a EULA that require approval under clause 14 of the Head Agreement must be approved by DTA in accordance with clause 14 of the Head Agreement to apply to a Contract for Category 3 Offerings; and

11.3.2 the terms of a EULA will not override the terms of the:

- (a) Head Agreement unless they are approved by DTA in accordance with clause 14.2.1 of the Head Agreement; or
- (b) Contract unless the Buyer agrees to those terms in accordance with clause 14.2.2 of the Head Agreement.

11.4 If DTA or a Buyer approve application of the EULA in accordance with clause 14.2 of the Head Agreement, the terms of the EULA will apply:

11.4.1 subject to clauses 13 and 14 of the Head Agreement, the order of precedence in Schedule 1 to the Head Agreement, and any other conditions required by the Buyer as specified in a Contract;

11.4.2 to the Contract (where the Seller is supplying the Offerings in its own right); or

11.4.3 to the contract between the Buyer and the Vendor (where the Seller is a Reseller of those Offerings),

but, subject to clause 11.3, the terms of the EULA will not:

11.4.4 apply to the contractual arrangements between DTA and the Seller (and will not be incorporated into, add to, or otherwise modify DTA's or the Sellers rights or obligations under the Head Agreement);

11.4.5 apply to the extent that the Contract modifies the terms of the EULA; or

11.4.6 create any legal liability for any individual person using the Offering.

11.5 For clarity, this clause 11 applies to Offerings procured under Category 3 only. The Category Terms for Category 1 or Category 2 will apply to procurements of Offerings from those Categories.

12. Warranties

12.1 The Seller warrants that the Offerings (including ERP Products unless otherwise specified in the Contract) are, and will at all times during the Term and each Contract Period be, capable of complying with the following Australian Government Architecture capabilities (accessible at <https://architecture.digital.gov.au/>), either with or without the need for configuration:

13. Additional Usage Rights for Category 3 Offerings

Usage Rights

13.1 The rights in this clause 13 are in addition to the licence rights granted under the Head Agreement and any additional rights specified in a Contract.

13.2 Subject to this clause 13, the Seller grants to the Buyer a non-exclusive, non-transferable right during the relevant Contract Period for the applicable Offering to:

13.2.1 use the Offerings and Documentation;

13.2.2 permit use by Users of the Offerings and Documentation; and

- 13.2.3 implement, configure and permit its Users (including Business Partners) to remotely access and use the Offerings and the associated Documentation, for Government Purposes; and
- 13.2.4 utilise all relevant configuration and implementation Documentation provided by the Seller for the relevant Contract, in the transition out of the Offerings under that Contract (whether to the Buyer or to a new provider), and permit use by Users and any new provider for that purpose.
- 13.3 If the Seller undertakes customisation, reconfiguration or modification of any ERP software provided as part of the Offerings under a Contract, then:
- 13.3.1 the Seller grants to DTA and each Buyer, an irrevocable, perpetual, non-exclusive, world-wide, paid-up licence to hold, use, execute, reproduce, upload, display, perform and sublicense that New Material for Government Purposes; and
- 13.3.2 the Seller must advise Buyers of that New Material where it is reasonable to expect the New Material would assist in satisfying that Buyer's requirements.
- 13.4 Subject to clause 6, the Buyer's use of the Offerings will not exceed the Usage Metric for that Service set out in the relevant Contract.
- 13.5 If a Buyer has other licences to use relevant software or services that would otherwise be licensed under a Contract, those licences will be taken into account in calculating the use of the Offerings for the purposes of the Usage Metrics (thereby reducing the Buyer's usage for the purposes of the Contract). Those licences may be acquired by the Buyer prior to entering into the relevant Contract, or during the Contract Period, for example if a whole of government licence is subsequently negotiated for relevant software or services.
- 13.6 User access credentials issued to access or utilise the Offerings cannot be shared or used by more than one individual at a time. However, a User's access rights may be transferred from one individual to another if the original User is removed from the Offerings, no longer requires, or is no longer permitted access to or use of the Offerings.

Business Partner use

- 13.7 Use of the Offerings by a Business Partner is conditional on the Buyer ensuring that the Business Partner agrees to comply with the terms of the Contract, including Usage Metrics (on an aggregated basis with Buyer use).

Restrictions

- 13.8 Unless otherwise specified in a Contract, the Buyer must not, and must ensure that its Users do not:
- 13.8.1 sublicense, license, sell, lease, rent or otherwise make any Offerings available to third parties other than persons in one of the following categories who are using the Offerings in accordance with the relevant Contract:
- (a) Users;
 - (b) third parties who are accessing or configuring the Offerings solely for the purpose of supporting the Buyer's Use for Government Purposes;
- 13.8.2 copy, translate, disassemble, decompile, reverse-engineer, or attempt to create the source code from object code;

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- 13.8.3 modify or make any derivative works of the Offerings;
- 13.8.4 use any Offerings to transmit any content, data or information that is unlawful;
- 13.8.5 infringe any Intellectual Property Rights when using the Offerings;
- 13.8.6 interfere with or disrupt any Offerings;
- 13.8.7 circumvent or disclose the user authentication, or security of the Offerings or any host, network, or account related to the Offerings;
- 13.8.8 access or use the Offerings for the purpose of building a competitive product or service or copying its features or user interface; or
- 13.8.9 remove any copyright or proprietary notice from the Offerings.

Machinery of government changes

- 13.9 For the avoidance of doubt, machinery of government changes for a Buyer receiving Offerings will be dealt with as follows:
 - 13.9.1 changes in staff numbers within an Buyer as a result of a machinery of government change will be accommodated within that Buyer's licence or usage rights under the relevant Contract (for example will be addressed by the relevant Usage Metrics);
 - 13.9.2 additional Buyers joining a Contract as a result of a machinery of government change will be added to the relevant Buyer's Offerings under the relevant Contract in accordance with the transition-in arrangements for that Contract; and
 - 13.9.3 where a Buyer leaves a Contract as a result of a machinery of government change, that Buyer may continue to utilise the Contract for Offerings (and other Offerings) to which they were a party until they have successfully transitioned to receipt of services under a new Contract (if required by the relevant Buyer).

Buyer and Seller Responsibilities

- 13.10 The Buyer will be responsible for the acts and omissions of its Users the Buyer permits to use the Offerings as if they were acts and omissions of the Buyer.
- 13.11 The Seller is responsible for the acts and omissions of Seller Personnel and any Subcontractors and sub-processors used by the Seller to provide the Offerings, as if they were acts and omissions of the Seller.

14. ERP Platform Requirements

- 14.1 If the Offerings are an ERP Platform, the Seller must ensure that the ERP Platform:
 - 14.1.1 if specified in a Contract:
 - (a) allows for use by the Buyer for the benefit of the Buyer and for the benefit of any other Buyer (including to provide shared services to those Buyers); and
 - (b) allows for use by any other Buyer (including by users of that Buyer) while installed on the Buyer's ICT infrastructure or on the other Buyer's ICT infrastructure;

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- 14.1.2 is adaptable, scalable and flexible to meet various and changing requirements of the Buyer and any other Buyers that use the ERP Platform;
- 14.1.3 complies with the security requirements in the Head Agreement and the applicable Contract;
- 14.1.4 is maintainable, so that Seller can easily modify the ERP Platform to correct faults, improve performance or other attributes, or adapt it to a changed environment;
- 14.1.5 enables configuration of the ERP Platform to meet another Buyer's specific requirements;
- 14.1.6 meets the functionality, interoperability, integration and scalability requirements in the Contract;
- 14.1.7 facilitates continuous improvement and effective risk management, without degrading the level of functionality or security required by the Buyer as specified in a Contract;
- 14.1.8 allows for enhancements to the ERP Platform to be managed and controlled for the benefit of all Buyers, where appropriate;
- 14.1.9 is consistent with existing whole of government policies, frameworks and strategies as further described in the applicable Contract;
- 14.1.10 allows for the ERP Platform be supported and further developed by appropriately skilled personnel from the Buyer or any other contractor; and
- 14.1.11 enables transfer of the ERP Platform to another Buyer as a result of a machinery of government change or for any other reason.

15. System integration and data migration services

Systems integration obligations

- 15.1 References in this clause to 'software' include 'cloud services'.
- 15.2 If the Seller is providing systems integration services under a Contract, the Seller:
 - 15.2.1 must supply and integrate the Offerings described in the Contract;
 - 15.2.2 must comply with the requirements set out in the Contract to deliver and integrate the Offerings;
 - 15.2.3 must ensure that the Offerings include all components specified in the Contract, or required to meet the Specifications or other requirements of the Contract;
 - 15.2.4 if specified in the Contract, must prepare a written detailed design by the date specified in the Contract for the Buyer's approval in accordance with clause 15.8. The Contract will specify timeframes for review and approval of the detailed design; and

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- 15.2.5 warrants that the Offerings:
- (a) will interact with each relevant Buyer's existing information technology environment as that environment exists at the date of Acceptance of the systems integration services; and
 - (b) will interact with each relevant interface within that environment, as required by the Contract and the Specifications, unless otherwise specified in the Contract; and
- 15.2.6 must provide advice on appropriate measures to maintain the interaction and interfaces described in this clause 15 following any changes to the Buyer's information technology environment.
- 15.3 If, at any time during the Warranty Period, the Offerings do not comply with the requirements set out in clause 15.2.5, the Buyer may Notify the Seller that it is not complying or has not complied with clause 15.2.5, and require the Seller to take all such steps as may be necessary or desirable so as to rectify that non-compliance to the Buyer's satisfaction.
- 15.4 The Seller must undertake all activities necessary to ensure that all components of the Offerings are fully and seamlessly integrated and that the Offerings function as a whole, in accordance with the Contract. If specified in the Contract, the Seller must ensure full and seamless integration, compatibility and interoperability:
- 15.4.1 within the system, including within any software and between the software and hardware and any software or hardware that is not provided by the Seller under any Contract;
 - 15.4.2 with other components of the Buyer's system, including all aspects of the Buyer system and any additional software;
 - 15.4.3 between various system environments; and
 - 15.4.4 with the Buyer's ICT environment.
- 15.5 The Seller must, at its cost, perform all tasks necessary to integrate the Offerings (and all of its components) to meet the requirements of the Contract, whether those components are supplied by the Seller, the Buyer or Other Providers.
- 15.6 The Seller acknowledges that some components of the system may be supplied:
- 15.6.1 directly to the Buyer by Other Providers; or
 - 15.6.2 to the Seller by Other Providers, for inclusion in the system that is the subject of the systems integration services.
- 15.7 The Seller must:
- 15.7.1 ensure that any deliverables from Other Providers specified in the Contract as to be included in the Offerings, and whether provided by the Seller or directly by the Other Providers, will meet the requirements (including Specification requirements) of the Contract (including, as required, by customisation and configuration); and
 - 15.7.2 cooperate with the Other Providers to support achievement of the requirements of the Offerings as set out in the Contract and ensure that deliverables provided by Other Providers for the Offerings are integrated in accordance with the Contract.

Detailed Design

- 15.8 Without limiting the Seller's obligations under a Contract, any detailed design prepared by the Seller must provide a detailed technical explanation of how the Offerings will meet the business outcomes, Specifications, and other functions set out in the Contract, and how the Offerings will provide for and take into account the evolving Buyer environment.
- 15.9 The Seller must provide the Buyer with any information or data requested by the Buyer and otherwise at monthly intervals (or an alternative period required by the Buyer) regarding any aspect of the development of a detailed design.
- 15.10 The Seller acknowledges that the Buyer is relying on the Seller's expertise in preparing any detailed design and any Notification given, or a failure to Notify the Seller of any change the Buyer reasonably requires to be made must not be construed as any approval of or representation by the Buyer as to the suitability or otherwise of the detailed design.

Data migration

- 15.11 The Seller must cooperate in good faith with, and provide such assistance as is necessary to, the Buyer and any Other Providers so as to enable migration of Buyer Data from existing systems into the system that is the subject of the systems integration services.
- 15.12 If the Seller is providing data migration services under a Contract, then, unless otherwise specified in the Contract, the Seller warrants that:

15.12.1 subject to clause 15.12.2:

- (a) the integrity of the Buyer Data, when fully migrated, will not be altered from the data that was provided to the Seller by the relevant Buyer; and
- (b) the data that is migrated into the system is in the same in form and has the same content as the data when it was in the existing Buyer system; and

15.12.2 if the Buyer Data is amended or otherwise edited or enhanced by the Seller in the course of and as part of the services, then the migrated Buyer Data complies with any requirements specified in the Contract.

16. Cooperation with other providers

- 16.1 The Parties acknowledge and agree that this clause 16 supplements, and does not limit, the Parties' rights and obligations in clauses 20 and 52.6 of the Head Agreement.
- 16.2 The Seller acknowledges that a Buyer may acquire services from a range of Other Providers for the implementation and provision of the Offerings.
- 16.3 If a Buyer engages any Other Providers to perform any services related to or interacting with a Contract, the Seller must do everything requested by the Buyer that is reasonably within the Seller's ability to provide, to enable those Other Providers to provide their relevant services to the Buyer, including:
- 16.3.1 if the Seller is providing cloud services under a Contract, by facilitating the provision of implementation, configuration and data migration by the Other Providers for the benefit of the Buyer;

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- 16.3.2 subject to the Other Provider entering into an appropriate non-disclosure agreement, providing any information regarding the Seller's operating environment, system constraints, protocols, interfaces, design, architecture and other operating parameters which a person with reasonable technical and commercial skills and expertise would find reasonably necessary for the Buyer or the Other Providers to perform the relevant services;
- 16.3.3 providing assistance to the Buyer and the Other Providers as required to:
- (a) connect or interface any Offerings; and
 - (b) make any Offerings compatible or interoperable with other hardware, Software or services; and
- 16.3.4 agreeing on procedures with the Buyer and the Other Providers for the division of responsibilities in relation to the services and functions that may overlap between the Seller, the Buyer and the Other Providers.

17. Personnel

Seller's responsibilities

- 17.1 Without limiting clauses 31 or 32 of the Head Agreement, the Seller:
- 17.1.1 is responsible for all wages, salaries and other payments to Subcontractors;
 - 17.1.2 must fully comply with all relevant Laws and other Commonwealth of Australia requirements in relation to Seller Personnel and Subcontractors including labour and industrial relations Laws and those relating to working conditions, salary, wages, the payment of any relevant tax, superannuation, 'pay as you go' or other income tax remissions and any other amounts, remissions allowances including those under any industrial awards or agreements relevant to the Contract; and
 - 17.1.3 must, upon request, demonstrate that it has complied with its obligations in this clause 17.1.
- 17.2 Without limiting clause 17.1, the Seller must:
- 17.2.1 comply with all applicable Laws and other requirements relating to the security of payments that are due to persons;
 - 17.2.2 ensure that payments made by the Seller, including to Seller Personnel and Subcontractors, are made in a timely manner; and
 - 17.2.3 as far as practicable, ensure that disputes about any payments, whether to Subcontractors or Seller Personnel, are resolved in a reasonable, timely and cooperative way.

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18. Intellectual Property Rights**Intellectual Property in ERP Platform**

- 18.1 The Seller, its Related Bodies Corporate or its or their licensors own all right, title and interest in and to any and all Intellectual Property Rights in and to:
- 18.1.1 the ERP Platform and associated Documentation;
 - 18.1.2 any improvements, design contributions or derivative works to the ERP Platform and associated Documentation (but not including New Material created for the purpose of configuring and integrating the Offerings in accordance with the Contract); and
 - 18.1.3 any knowledge or processes related to the ERP Platform and associated Documentation or provided under a Contract.
- 18.2 Except for the rights expressly granted under this Category 3, the Seller does not transfer any proprietary right or interest in the ERP Platform or associated Documentation.
- 18.3 The Buyer covenants, on behalf of itself and its successors and assigns, not to assert against the Seller, its Related Bodies Corporate or its or their licensors, any rights, or any claims of any rights, in any ERP Platform or associated Documentation (other than Buyer Material).

DTA and Buyer Material

- 18.4 The Parties agree that:
- 18.4.1 DTA retains the ownership of and Intellectual Property Rights in respect of DTA Material relevant to this Head Agreement; and
 - 18.4.2 the Buyer retains the ownership of and Intellectual Property Rights in respect of Buyer Material stored by means of the Offerings and New Material created for the purpose of designing and integrating the Offerings.
- 18.5 The Seller must ensure that, to the extent it or a Subcontractor has possession or control of DTA, Buyer Material or New Material, it is used, copied, supplied or reproduced only for the purposes of this Head Agreement or a Contract and in accordance with clause 33 of the Head Agreement.

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19. Business Continuity

- 19.1 The Seller must develop and maintain a business continuity plan for each Contract, which minimises the disruption of Services to Buyers in the event of a disaster or critical event.
 - 19.2 The Seller must put in place measures to ensure all information is accessible and recoverable through an appropriately developed business continuity plan, which minimises the disruption of Services to Buyers.
 - 19.3 The Seller must regularly review and test its business continuity plan, at periods not greater than every six months, to ensure it is current and up to date with any changes the Seller has made to its infrastructure.
-

20. Hosting Certification Framework

- 20.1 The Hosting Certification Framework has been developed by the DTA to give effect to the principles of the Commonwealth's Whole-of-Government Hosting Strategy, in particular the requirement for certain types of government data to be hosted using services (including cloud services) and infrastructure that meet appropriate privacy, sovereignty and security requirements.
- 20.2 As at the Head Agreement Start Date:
 - 20.2.1 the Hosting Certification Framework requires Buyers to ensure that services for high-value government data, whole-of-government systems or systems rated at the classification level of "PROTECTED" or above are hosted using providers and cloud services that are certified; and
 - 20.2.2 as part of the process for certification, entities seeking certification are required to enter into a deed of certification or similar arrangement (**Hosting Certification Deed**).
- 20.3 The Seller acknowledges and agrees that a Contract may include a requirement for Offerings to be provided using an entity or cloud service (which may be the Seller or its Subcontractor) that holds a particular certification under the Hosting Certification Framework (a **Certified Entity**), in which case the Seller must ensure that:
 - 20.3.1 it provides the Offerings only using Certified Entities that are certified at the required level;
 - 20.3.2 the Certified Entities provide the Offerings using services (including cloud services) and infrastructure that are certified at the required level;
 - 20.3.3 the Certified Entities maintain the required certification while providing the Offerings; and
 - 20.3.4 the Certified Entities comply with their Hosting Certification Deeds while providing their Offerings.
- 20.4 If the Seller fails to comply with its obligations under this clause 20 then the Buyer may (in addition to any other remedies it may have under the applicable Contract, at Law or otherwise) terminate the Contract for default in accordance with clause 50.1 of the Head Agreement.

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- 20.5 The Seller is responsible for the actions of any party to which it subcontracts performance of its obligations under the Contract. This clause does not affect or limit that responsibility.

21. Notification of significant events

- 21.1 For the purposes of this clause 21, '**Significant Event**' means:

- 21.1.1 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 Seller Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- 21.1.2 any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Seller or Seller Personnel, that may adversely impact on compliance with government policy and legislation or the government's reputation.

- 21.2 The Seller must immediately issue DTA and any Buyer with which it has a Contract a Notice on becoming aware of a Significant Event.

- 21.3 The Notice issued under clause 21.2 must provide a summary of the Significant Event, including the date that it occurred and whether any Key Person or other Seller Personnel engaged in connection with this Head Agreement or any Contract were involved.

- 21.4 DTA or a Buyer may Notify the Seller in writing that an event is to be considered a Significant Event for the purposes of this clause 21, and where this occurs the Seller must issue a Notice under clause 21.2 in relation to the event within three (3) Business Days of being Notified by DTA or the Buyer.

- 21.5 Where reasonably requested by DTA or a Buyer, the Seller must provide DTA or the Buyer with any additional information regarding the Significant Event within three (3) Business Days of the request.

- 21.6 If requested by DTA or a Buyer, the Seller must prepare a draft remediation plan and submit that draft plan to the DTA Representative or the Buyer Representative (as applicable) for approval within ten (10) Business Days of the request.

- 21.7 A draft remediation plan prepared by the Seller under clause 21.6 must include the following information:

- 21.7.1 how the Seller will address the Significant Event in the context of the Offerings, this Head Agreement and any Contract, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Offerings or compliance by the Seller with its other obligations under this Head Agreement and any Contract;
- 21.7.2 how the Seller will ensure events similar to the Significant Event do not occur again; and
- 21.7.3 any other matter reasonably requested by DTA or the Buyer.

- 21.8 DTA or the Buyer (as applicable) will review the draft remediation plan and either approve the draft remediation 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 reasonably requested by DTA or the Buyer and resubmit the draft remediation plan to DTA or the Buyer for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by DTA or the Buyer. This clause 21.8 will apply to any resubmitted draft remediation plan.
- 21.9 Without limiting its other obligations under this Head Agreement or any Contract, the Seller must comply with the remediation plan as approved by DTA or a Buyer. The Seller agrees to provide reports and other information about the Seller's progress in implementing the remediation plan as reasonably requested by DTA or a Buyer.
- 21.10 A failure by the Seller to comply with its obligations under this clause 21 will be a breach of a material provision that is not capable of remedy, and clause 50.1.3 of the Head Agreement will apply.
- 21.11 DTA and the Buyer's rights under this clause 21 are in addition to and do not otherwise limit any other rights DTA or the Buyer may have under this Head Agreement and the applicable Contract. The Seller's performance of its obligations under this clause 21 will be at no additional cost to DTA or the Buyer.

22. Corrupt Conduct

- 22.1 In this clause 22, '**Corrupt Conduct**' has the meaning given in the *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**).
- 22.2 The Seller:
- 22.2.1 acknowledges that it, and Seller Personnel, are contracted service providers for the purposes of the NACC Act;
 - 22.2.2 acknowledges that Seller Personnel may be public officials for the purposes of the NACC Act; and
 - 22.2.3 agrees that the Seller will not engage in, and will ensure Seller Personnel do not engage in, Corrupt Conduct.
- 22.3 The Seller agrees to:
- 22.3.1 ensure that its arrangements with Seller Personnel and Subcontractors include obligations that are consistent with this clause 22;
 - 22.3.2 take all reasonable steps to ensure it does not engage, or facilitate the engagement of, Corrupt Conduct;
 - 22.3.3 immediately report to DTA and any Buyers with which it has a Contract if it becomes aware of any Corrupt Conduct or any risk of Corrupt Conduct in connection with the Head Agreement or a Contract;
 - 22.3.4 cooperate in full in any action or investigation by the DTA or a Buyer or as required under the NACC Act; and
 - 22.3.5 provide information as requested by DTA or the Buyer on the processes it has implemented to ensure compliance with this clause 22.

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- 22.4 The Seller acknowledges that a finding of Corrupt Conduct by the National Anti-Corruption Commissioner is a breach of a material provision that is not capable of remedy, and clause 50.1.3 of the Head Agreement will apply.
- 22.5 If an investigation finds that the Seller or Seller Personnel have engaged in, is engaging in, or has engaged in, Corrupt Conduct, or the Seller has failed to take reasonable steps to prevent Corrupt Conduct, the Seller must reimburse or compensate DTA and the Buyer as applicable in full for any costs associated with the Corrupt Conduct.

23. Unfair contract terms

- 23.1 The Seller acknowledges that:
- 23.1.1 unfair contract terms legislation applicable in Australia (including in Part 2-3 of the *Competition and Consumer Act 2010* (Cth) Schedule 2 (Australian Consumer Law) and Part 2, Div 2 of the *Australian Securities and Investments Commission Act 2001* (Cth)) may have application to some contracts entered into between the Seller and its customers; and
 - 23.1.2 it is reasonable that any contract terms the Buyer is invited to enter into, reflect terms that would not be considered unfair under that legislation.
- 23.2 The Seller confirms and agrees that:
- 23.2.1 no terms included in or applicable to this Contract fall within the scope of the unfair contracts legislation; and
 - 23.2.2 any terms that would be unenforceable under that legislation, will not be utilised or enforced by the Seller in connection with a Contract.

24. Shadow Economy Procurement Connected Policy

- 24.1 If the Seller is a partnership, the Seller must 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 DTA and any Buyer as soon as possible after they become a partner to the partnership.
- 24.2 The Seller warrants that at the Head Agreement Start Date it holds a Valid and Satisfactory Statement of Tax Record.
- 24.3 The Seller must:
- 24.3.1 hold a Valid and Satisfactory Statement of Tax Record at all times during the Term of the Head Agreement (including any extension); and
 - 24.3.2 on request by DTA or a Buyer, provide to DTA or the Buyer a copy of any such Statement of Tax Record.
- 24.4 Without limiting its other rights under this Head Agreement or at Law, any failure by the Seller to comply with the requirements outlined in clauses 24.1 and 24.3 will be a breach of the Head Agreement.

- 24.5 The Seller must ensure that any first tier Subcontractor engaged under a Contract to deliver Offerings 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 Contract and Subcontract.
- 24.6 The Seller must:
- 24.6.1 retain a copy of any Statement of Tax Record held by any first tier Subcontractor in accordance with clause 24.5; and
- 24.6.2 on request by DTA or a Buyer, provide to DTA or the Buyer a copy of any such Statement of Tax Record.

25. Modern Slavery

- 25.1 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 the Offerings.
- 25.2 If at any time the Seller becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Head 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.
- 25.3 The Seller must comply with any additional Buyer requirements for Modern Slavery as specified in a Contract.

26. Payment Times Procurement Connected Policy

- 26.1 This clause 26 applies to any Contract:
- 26.1.1 with a value of \$4,000,000 (GST inclusive) as determined by DTA or a Buyer; and
- 26.1.2 where the Seller is a Reporting Entity at the date of its response to any request for quote issued by a Buyer.
- 26.2 The Seller must comply with the PT PCP.
- 26.3 If the Seller enters into a PT PCP Subcontract, the Seller must include in that PT PCP Subcontract:
- 26.3.1 a requirement for the Seller to pay the PT PCP Subcontractor:
- (a) subject to clause 26.5, 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
- (b) subject to clause 26.6, 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 26.7;
- 26.3.2 a statement that the PT PCP applies to that PT PCP Subcontract; and

- 26.3.3 a statement that the subcontractor may make a complaint to the Commonwealth in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 26.3.
- 26.4 If the Seller enters into a Reporting Entity Subcontract in anticipation of (or after) entering the Contract, the Seller must use reasonable endeavours to include in that subcontract:
- 26.4.1 obligations equivalent to those in clause 26.3; and
- 26.4.2 a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
- (a) obligations equivalent to those in clause 26.3; and
- (b) obligations equivalent to this clause 26.4.2 (such that the obligations in this clause 26.4.2 are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 26.5 Clause 26.3.1(a) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 26.3.1(a).
- 26.6 The Seller is not required to pay interest in accordance with clause 26.3.1(b) if either:
- 26.6.1 the Buyer has failed to pay the Seller in accordance with the timeframes and requirements under a Contract; or
- 26.6.2 the amount of the interest payable is less than \$100 (GST inclusive).
- 26.7 Interest payable under clause 26.3.1(b) will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Seller effects payment as represented by the formula at clause 81.3 of the Head Agreement.

PT PCP Evaluation Questionnaire

- 26.8 If requested in writing by the Commonwealth, the Seller must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non-compliance and Remediation

- 26.9 If the Commonwealth considers or becomes aware that the Seller has not or may not have complied with:
- 26.9.1 the requirements of clause 26; or
- 26.9.2 the payment requirements of a PT PCP Subcontract,
- the Commonwealth may direct the Seller to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth:
- 26.9.3 information to enable the Commonwealth to review the Seller's compliance with this clause 26; or
- 26.9.4 a properly completed PT PCP Remediation Plan.
- 26.10 The Seller must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 26.9.4.

- 26.11 If the Commonwealth considers that the Seller has failed to comply with any of its obligations under this clause 26, without limiting the Commonwealth's rights and remedies at Law or otherwise under this Head Agreement or the applicable Contract, the Commonwealth may do either or both of the following:
- 26.11.1 take the failure or non-compliance into account as part of the Commonwealth's monitoring of the Seller's performance under this Head Agreement or the applicable; or
 - 26.11.2 report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.
- 26.12 The Seller agrees that if it is the subject of a complaint in relation to its compliance with clause 26 or the associated payment provisions of a PT PCP Subcontract:
- 26.12.1 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
 - 26.12.2 it will cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

- 26.13 For any PT PCP Purpose, the Seller consents to the Commonwealth:
- 26.13.1 using and sharing with any other Commonwealth Entity the information provided by the Seller as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Commonwealth in connection with this Head Agreement, a Contract or a PT PCP Subcontract; and
 - 26.13.2 receiving information obtained under, or in accordance with, the PTR Act (including any Protected Information) from an Entrusted Person and using such Protected Information.
- 26.14 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of *Privacy Act 1988* (Cth), 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 26. The Seller will provide evidence of such consents to the Commonwealth on request.

Interpretation

- 26.15 A reference to the Commonwealth in this clause 26 includes DTA, the Buyer and the Policy Team.

27. Supplier Pay on Time or Pay Interest Policy

- 27.1 The parties agree that:
- 27.1.1 clause 81.1.1 of the Head Agreement does not apply to any Contract placed for Category 3 Offerings; and
 - 27.1.2 the remainder of the terms in the Head Agreement relevant to the Supplier Pay on Time or Pay Interest Policy (including clauses 81.1.2, 81.2 to 81.4 and 29.8) apply to Contracts placed for Category 3 Offerings.

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28. Definitions

28.1 This clause 28 sets out the meaning of the key terms used in this Schedule 4. These definitions apply in addition to any applicable definitions used in the Head Agreement or in any other part of the Contract.

Term	Definition
Business Partner	A legal entity that requires access to the Offerings in connection with the Buyer's operations, and the operations of each Buyer specified in the Contract, including customers, distributors, suppliers and service providers.
Correctly Rendered Invoice	means an invoice which is: (a) rendered in accordance with all of the requirements of the Contract; and (b) for amounts that are correctly calculated and due for payment and payable under the terms of the Contract.
Entrusted Person	has the meaning given to this term in the PTR Act.
ERP Platform	The software, hardware, systems and other infrastructure provided by the Seller (including where the Seller is a Reseller) used to deliver services to multiple customers, including any modifications to that software, hardware, systems or infrastructure made from time to time and all proprietary methodologies of the Seller.
ERP Products	The products referred to in this Schedule 4. that are software products, cloud-based, platform products or hosted in some other way. ERP Products are Offerings, and all rights and obligations relevant to Offerings throughout this Schedule 4 apply to ERP Products.
ERP Class	means Product Class or Related Service Class (or both) as intended by the use of that term
Government Purpose	means any lawful purpose of the government or a Buyer, but does not include the right to commercialise.
Guiding Principles on Business and Human Rights	means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf
Modern Slavery	Has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Other Provider	means any ICT supplier or other service provider that provides ICT services to a Buyer, other than the Seller and its Subcontractors.
Product Class	means the class in which Offerings that are ERP Products may be categorised as described in Annexure A of Schedule 4 (Statement of Work) for Category 3.
PT PCP Policy Team	means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.

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Term	Definition
Protected Information	has the meaning given to this term in the PTR Act.
PT PCP	means the Commonwealth's 'Payment Times Procurement Connected Policy'.
PT PCP Evaluation Questionnaire	means a questionnaire in substantially the form of Appendix C of the PT PCP.
PT PCP Purpose	means: (a) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those Commonwealth's suppliers and their subcontractors that are Reporting Entities; or (b) improving payment times to PT PCP Subcontractors.
PT PCP Remediation Plan	Means a written remediation plan substantially in the form of Appendix D of the PT PCP.
PT PCP 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 the Contract; (b) both parties are carrying on business in Australia; and (c) the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements); but does not include the following subcontracts: (d) subcontracts entered into prior to the Reporting Entities' tender response for the Contract; (e) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or (f) subcontracts for the purposes of: (i) procuring and consuming goods or services overseas; or (ii) procuring real property, including leases and licences.
PT PCP Subcontractor	means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

Term	Definition
PTR Act	means the <i>Payment Times Reporting Act 2020</i> (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the PTR Act.
Related Service Class	means the class in which services may be categorised as described in Annexure A of Schedule 4 (Statement of Work) for Category 3 which support the products provided under the Product Class.
Reporting Entity	has the meaning given to this term in the PTR Act.
Reporting Entity Subcontractor	means any person that: (a) is a Reporting Entity; and (b) provides goods or services directly or indirectly to the Seller for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive). 'Reporting Entity Subcontract' has a corresponding meaning.
Satisfactory	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.
Services	means services (other than the provision of Software) to be provided by the Seller as described in Schedule 4 (Statement of Work) or a Contract.
Shadow Economy Procurement Connect Policy	means the Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019 available at https://treasury.gov.au/sites/default/files/2022-08/p2019-t369466-22_0.pdf
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR .
Supplier Pay on Time or Pay Interest Policy	means the Commonwealth policy of that name as updated from time and accessible at https://www.finance.gov.au/government/procurement/clausebank/supplier-pay-time-or-pay-interest
Usage Metric	The usage parameters for determining the permitted access and use and if relevant calculating the Charges payable for the Offerings as specified in a Contract.
User	Any person who is authorised by a Buyer to use any of the Offerings (including Business Partners).
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

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