

CONTRACT

CONTRACT IN RELATION TO SAP SYSTEM SUPPORT, MAINTENANCE,
ENHANCEMENTS AND RELATED SERVICES

^Contractor Name^

^Contractor ABN ACN^

The Commonwealth of Australia represented by the Department of Foreign
Affairs and Trade
ABN 47 065 364 525

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DRAFT

DRAFT CONTRACT

CONTRACT IN RELATION TO ENTERPRISE RESOURCE PLANNING SYSTEM SUPPORT, MAINTENANCE, ENHANCEMENTS AND RELATED SERVICES

DATE

This contract is dated ^day(numeric) month(name) year in full^.

PARTIES

This contract is made between and binds the following parties:

1. **The Commonwealth of Australia represented by the Department of Foreign Affairs and Trade**, R.G Casey Building, John McEwen Crescent, Barton ACT 2600, ABN 47 065 634 525 (DFAT)
2. ^Full Name of Contractor^, ^Address of Contractor^ ACN ^Contractor ACN^ ABN ^Contractor ABN^ (Contractor)

Note to Tenderers: Contractor details will be included when known.

CONTEXT

This contract is made in the following context:

- A. DFAT requires the provision of the Services by the Contractor.
- B. The Contractor will perform all functions and accountabilities associated with the Services, including the provision of all Items, in a highly efficient, effective, flexible and stakeholder focussed way and in accordance with industry best practice and in full compliance with all Laws and relevant Australian Government policies.
- C. The Contractor represents that it is highly skilled, experienced and qualified in all matters required under this contract and in relation to services of the type required for DFAT's requirement, and can and will provide DFAT with Services that are fully fit for purpose and will fully meet DFAT's requirements as set out in this contract.
- D. The Contractor acknowledges that a failure to cooperate well with DFAT and other contractors, or meet schedule requirements under this contract, will cause substantial disruption to DFAT. The Contractor will make all efforts consistent with this contract to ensure the Services are delivered in a way that does not cause such disruption and instead benefits DFAT's overall objectives.

OPERATIVE PROVISIONS

In consideration of the mutual promises contained in this contract, the parties to this contract agree as follows:

1. INTERPRETATION

1.1. Definitions

- 1.1.1. In this contract, unless the context implies a contrary intention, capitalised terms have the meaning set out in:
- a. the Contract Definitions contained in Schedule 2 to this contract, and
 - b. the Glossary in the Statement of Work (if any).
- 1.1.2. To the extent of any inconsistency between the Contract Definitions and the Glossary in the Statement of Work, the meaning in the Contract Definitions will prevail.

1.2. Interpretation

- 1.2.1. In this contract, unless the contrary intention appears:
- a. a reference to the singular includes plural and vice versa
 - b. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity
 - c. a reference to a document or instrument includes the document or instrument as amended, replaced or novated from time to time
 - d. a reference to a party to a document (including this contract) includes the party's executors, administrators, successors and permitted assigns and substitutes
 - e. if the Contractor is a trustee, the Contractor enters this contract personally and in its capacity as trustee and represents and warrants that it has the power to perform its obligations under this contract
 - f. reference to any statute or other legislation (whether primary or subordinate), or a provision of any statute or other legislation, is to a statute, legislation or provision as modified, amended or replaced from time to time
 - g. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings
 - h. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions
 - i. headings are for convenience only and are not to be used in the interpretation of this contract
 - j. all references to A\$, \$A, dollar or \$ is to Australian currency
 - k. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day
 - l. any schedule or attachment to this document (no matter how named) forms part of this contract
 - m. 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
 - n. a reference to a named member of DFAT's Personnel includes anyone acting in DFAT post held by that person, or who is otherwise authorised or empowered to perform any function or to exercise any power or discretion of the post held by that person

- o. a reference to a specific DFAT post includes anyone acting in that post or who is otherwise authorised or empowered to perform any function or to exercise any power or discretion related to that post, and
- p. where any act, function, right or power of DFAT is specified to be exercised or performed by a named post or member of DFAT's Personnel, that act, function, right or power can be exercised or performed by any superior officer of that person or post within DFAT.

1.3. Priority

- 1.3.1. To the extent of any inconsistency, provisions or details in documents forming part of this contract, will prevail in the following order of priority:
 - a. the body of this document excluding any schedule or attachment (no matter how named)
 - b. Schedule 2 (the Contract Definitions)
 - c. the Statement of Work
 - d. any schedule or attachment (no matter how named), except the Statement of Work, and Schedule 9 (Project Documents)
 - e. unless explicitly stated otherwise in an Official Order, any Official Order, and
 - f. Schedule 9 (Project Documents).

1.4. Guidance on construction of this contract

- 1.4.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.4.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of this contract remains in force.
- 1.4.3. This contract is to be construed in accordance with the laws of the Australian Capital Territory, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts that have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

2. COMMENCEMENT AND TERM

- 2.1.1. This contract commences on the date of its execution and (unless otherwise lawfully terminated) will continue in full force and effect for a period of three years (Standard Term).
- 2.1.2. DFAT, at its sole discretion, may elect to extend the Standard Term for all, or part of the Services, for further periods (each of which is an Option Period) as set out in clause 2.1.3. DFAT will provide the Contractor with written notice if exercising any option to extend.
- 2.1.3. The option to extend in clause 2.1.2 may be exercised a total of three times for an additional period of 12 months in each instance. The Term of the contract is the Standard Term plus all Option Periods.

3. SCOPE AND COOPERATION

3.1. Contract scope

- 3.1.1. The Contractor must, as required under the contract, provide the Services to DFAT. The Services includes the Contractor:

Note to Tenderers: Service and Item details will be amended in accordance with the scope provided for in the Statement of Work.

- a. providing [key Services will be listed here – detail will be provided in the SOR]
- b. implementing any Certified Disengagement Plan and providing Disengagement Services as and when required by DFAT
- c. providing all Items, including:
 - i. [key Items will be listed here – detail will be provided in the SOR]
 - ii. all Data Items, and
- d. providing Additional Services under the Standing Offer as and when required by DFAT.

3.2. General requirements

- 3.2.1. The Contractor must provide the Services in accordance with the Statement of Work, relevant Official Order and all other parts of this contract, including the Schedules and attachments.
- 3.2.2. The Contractor must perform all activities necessary to provide the Services, whether such activities are fully detailed in this contract or not.
- 3.2.3. The Contractor is fully responsible for providing the Services except to the extent that DFAT is expressly stated in this contract to be responsible for a particular task or element of the Services.

3.3. Commitment to DFAT Objectives

- 3.3.1. Without prejudice to any other obligation of the Contractor under this contract or at Law, the Contractor must use all reasonable endeavours to achieve the following fundamental objectives in performing its obligations:
- a. support and maintenance of a reliable System, 24 hours a day, 7 days a week, 365 days a year
 - b. an ability to support business growth and changes with minimal disruption
 - c. enhanced monitoring and reporting capabilities to facilitate continuous improvement of the services and system performance, and
 - d. facilitate the upskilling and capability of DFAT's Level 2 support team.

3.4. Contract phases

- 3.4.1. The Contractor must as and from the Commencement Date, undertake the contract comprising the following phases (including the provision of all associated Items and parts of the Services) in accordance with all requirements of this contract:
- a. Transition Services Phase, and
 - b. Ongoing Services Phase.

- 3.4.2. The Contractor will comply with all project management requirements for each phase that may be included in this contract.
- 3.4.3. The Contractor must conduct the phases in accordance with all requirements of this contract, including:
 - a. the Statement of Work
 - b. any Data Items and the CDRL, and
 - c. the Program Timetable.

3.5. Cooperation

- 3.5.1. The Contractor agrees to use all reasonable efforts to extend its full cooperation to DFAT and to any other contractors of DFAT (**Suppliers**) involved in performing services relating to the System. The Contractor agrees to, throughout the Term of this contract:
 - a. identify all dependencies visible to the Contractor between the Contractor's obligations and the obligations of other Suppliers and of DFAT, and notify DFAT of these as soon as practicable
 - b. work closely with DFAT to ensure that all dependencies are satisfied without any adverse impact on any item, service or solution provided to DFAT under any contract relating to the System, including by entering into variations to this contract to address dependencies that DFAT requires the Contractor to address
 - c. do all things reasonably requested by DFAT in order to enable and facilitate items and services to be provided to DFAT by other Suppliers
 - d. cooperate with, and provide reasonable assistance requested by, other Suppliers for the purposes of enabling the Contractor and each other Supplier to fulfil its obligations to DFAT relevant to the operation of the System
 - e. with the exception of activities reasonably required to meet its obligations under this contract, not do (or omit to do) anything which prevents or hinders a Supplier from fulfilling its obligations to DFAT
 - f. on becoming aware of any act or omission by another Supplier that may prevent or hinder its performance of its obligations under this contract, promptly notify the relevant Supplier and DFAT and work together with DFAT and the relevant Supplier to address the concern and ensure that there is no adverse impact on any services provided to DFAT
 - g. take part in all meetings and other activities specified in the Statement of Work and any other ad hoc reviews with other Suppliers that are reasonably initiated by DFAT to deal with performance issues in the System, and
 - h. provide any other cooperation (even where that falls outside of the direct requirements of this contract) where such cooperation is requested by DFAT.
- 3.5.2. The costs of all such cooperation will be met by the Contractor, unless:
 - a. the cooperation falls outside of the requirements of this contract
 - b. the costs are material (that is not minor and incidental)
 - c. the Contractor advises DFAT in writing in advance of the nature of such costs, including providing whatever reasonable evidence of such costs as DFAT requires, and
 - d. DFAT approves those additional costs through a variation to this contract.
- 3.5.3. If DFAT does not approve those additional material costs, the Contractor is not bound to provide the cooperation related to those costs, provided that it:

- a. continues to provide all other cooperation necessary to meet the requirements of this contract, and
- b. continues to provide all cooperation that falls outside of the requirements of the contract which has been requested by DFAT, and which does not involve the Contractor incurring material costs.

4. TRANSITION SERVICES PHASE

4.1. Overview

- 4.1.1. The Contractor is required to conduct the Transition Services Phase on and from the Commencement Date.

4.2. Requirements

- 4.2.1. During the Transition Services Phase, the Contractor must complete all requirements and activities of the phase in accordance with the contract and in particular the Statement of Work, relevant Data Items, the CDRL and the Program Timetable.
- 4.2.2. The Contractor must:
 - a. deliver and (if required in the Statement of Work) install Items in accordance with the Statement of Work
 - b. assist DFAT in performing all Acceptance Testing of Items in accordance with the Statement of Work and the requirements for Acceptance Testing detailed in clause 7, and
 - c. assist DFAT in performing all End to End Testing of the Services as a whole in accordance with the Statement of Work and the requirements for Acceptance Testing detailed in clause 7.

4.3. Data Items – Transition Services Phase

- 4.3.1. The Contractor must deliver to DFAT, the Data Items specified for the Transition Services Phase in:
 - a. the Statement of Work, and
 - b. the CDRL.

4.4. Mandated Service Review – Transition Services Phase

- 4.4.1. In relation to each Mandated Service Review during the Transition Services Phase, the Contractor must:
 - a. complete all pre-requisites for the Mandated Service Review, and
 - b. participate in the Mandated Service Review,in accordance with the Statement of Work.
- 4.4.2. A Mandated Service Review will be successfully completed if the Exit Criteria for completing that Mandated Review as specified in the Statement of Work have been achieved and DFAT issues the Contractor with a Completion Certificate for the Mandated Service Review.
- 4.4.3. If DFAT, in its sole discretion, chooses not to issue a Completion Certificate for the Operational Readiness Review, DFAT may exercise its right to terminate this contract in accordance with clause 36.1 or 36.3 (as relevant).

5. ONGOING SERVICES PHASE

5.1. Overview

- 5.1.1. The Contractor is required to conduct the Ongoing Services Phase in accordance with the Completion Certificate for the Operational Readiness Review from DFAT.
- 5.1.2. The Completion Certificate may require the Contractor to commence all or part of the Ongoing Services. Where a Completion Certificate requires the Contractor to commence only part of the Ongoing Services, the Contractor must not conduct any other Ongoing Services until DFAT has further notified the Contractor in writing.

5.2. Requirements

- 5.2.1. During the Ongoing Services Phase, the Contractor must complete all requirements and activities of the phase in accordance with the Completion Certificate for the Operational Readiness Review, any further notice issued by DFAT under clause 5.1.2, the contract and in particular the Statement of Work, any relevant Official Order, relevant Data Items, the CDRL and the Program Timetable.

5.3. Data Items – Ongoing Services Phase

- 5.3.1. During the Ongoing Services Phase, the Contractor must deliver to DFAT, the Data Items specified for that phase in:
 - a. the Completion Certificate for the Operational Readiness Review
 - b. any notice issued under clause 5.1.2
 - c. relevant Official Order
 - d. the Statement of Work, and
 - e. the CDRL.

5.4. Commencement of Support and Maintenance Services

- 5.4.1. The Contractor must provide Support and Maintenance in accordance with this clause 5 and the Statement of Work and any relevant Official Order during the Ongoing Services Phase for all Items and Services subject to the Ongoing Services Phase.

5.5. Support and Maintenance requests

- 5.5.1. The Contractor must provide comprehensive facilities to enable DFAT to seek Support and Maintenance and report any Fault or possible Fault in any Supported Item in accordance with the requirements detailed in the Statement of Work and any relevant Official Order.

5.6. Remedial Maintenance

- 5.6.1. The Contractor must respond within the relevant Response Time to any Fault or possible Fault in a Supported Item reported to (or otherwise detected by) the Contractor, by ensuring that fully qualified maintenance staff totally familiar with the relevant Supported Item and, where relevant, DFAT configuration and operational environment, examines the Supported Item and immediately performs any necessary Remedial Maintenance.

- 5.6.2. DFAT may, but is not obliged to, assist the Contractor in assessing any Fault or possible Fault and in the performance of Remedial Maintenance by relaying information to or carrying out instructions from the Contractor but any such action (whether properly performed or not):
- a. will be at the Contractor's sole risk and without any liability on behalf of DFAT or its Personnel, and
 - b. will not in any way limit or diminish the Contractor's obligations in respect of Maintenance or otherwise in respect of this contract.
- 5.6.3. The Contractor acknowledges that any use of remote access to DFAT system or installation of diagnostics tools that do not form part of a Supported Item as disclosed and delivered to and subjected to Acceptance Testing by DFAT, is completely at DFAT's discretion and that should DFAT consent to any such access or installation, that consent may be revoked at any time with or without notice.
- 5.6.4. The Contractor must resolve any Fault in a Supported Item within the applicable Resolution Time (if any) or otherwise as soon as reasonably practicable.

5.7. Issue Management

- 5.7.1. The Contractor must comprehensively manage all Maintenance activities and ensure that DFAT is fully informed as to their status (including through access to all relevant systems or documents). Without limiting the foregoing, this must include, in accordance with the requirements in the Statement of Work:
- a. properly logging all reported Faults, possible Faults and requests for Support and Maintenance
 - b. tracking and advising DFAT of the status of all Support and Maintenance requests and all activities, actions, decisions and responses, through to resolution, and
 - c. automatically escalating the response in accordance with the severity of any Fault or possible Fault.
- 5.7.2. The Contractor must maintain accurate records of all Support and Maintenance activities and provide reports to DFAT, including in accordance with the requirements in the Statement of Work.
- 5.7.3. The Contractor must ensure that all relevant documentation is updated to fully and properly reflect all Maintenance activities, which, without limitation must include updating all relevant Data Items, manuals, DFAT site documentation, DFAT Supported Item management or tracking systems and DFAT management information systems.
- 5.7.4. Where possible the Contractor must minimise the impact of any Fault or potential Fault by replacing affected units or components with ones not so affected and / or otherwise providing work-arounds or temporary solutions while full Remedial Maintenance is in the process of being completed.
- 5.7.5. All Maintenance must be carried out in a manner that will, under the circumstances, cause the least disruption to DFAT's operations as can reasonably be expected.
- 5.7.6. The Contractor must properly test any proposed patch or update (or other change no matter how designated) or Supported Item that is repaired or any replacement Supported Item prior to proposing to implement it or certifying that any Fault or possible Fault is fixed or a Service Incident is closed.
- 5.7.7. The Contractor must promptly notify DFAT when it considers that Remedial Maintenance has been completed. DFAT reserves the right to conduct Acceptance Tests in respect of Remedial Maintenance on the same basis as if the relevant item was newly installed or delivered, and in such event Remedial Maintenance will not be considered completed until such time as the Acceptance Tests have been successfully completed.

- 5.7.8. Where the Contractor as part of Maintenance replaces any component that might contain DFAT Data, the Contractor must immediately take all reasonable action to remove and return to DFAT or, where removal and return is not reasonably possible, totally and permanently erase all DFAT Data contained in it in accordance with the Protective Security Policy Framework and the Australian Government Information Security Manual. Where DFAT Data on a replaced item cannot be removed or erased the Contractor must seek specific instructions from DFAT on how to deal with the item. The Contractor acknowledges and agrees that DFAT may require the secure destruction of the component.
- 5.7.9. To the extent that the Contractor underpins its ability to meet its Maintenance obligations under this contract by use of any Manufacturer or other third party maintenance agreement, then except as specifically agreed to the contrary in writing by DFAT, DFAT may at any time require that the relevant Manufacturer or third party maintenance contract be put in place directly between DFAT and the relevant Manufacturer or third party maintenance provider (including by means of novation) and:
- a. the Contractor will, if required by DFAT, manage each such maintenance contract and deal with the relevant Manufacturer or third party maintenance provider as DFAT's authorised contractor for the purposes of providing seamless Maintenance
 - b. any costs incurred by DFAT in respect of such maintenance contracts will be deducted from the Fees in respect to Maintenance payable by DFAT to the Contractor under this contract, and
 - c. such arrangements will not in any way vary or limit in way the Contractor's obligations to fully and effectively comply with the requirements of this clause 5 or other relevant provisions of this contract.
- 5.7.10. The Contractor must immediately advise DFAT if it detects or becomes aware of any condition or potential condition within the Supported Item that might constitute a hazard or affect safety.

5.8. Major Enhancement Projects

- 5.8.1. As part of the Ongoing Services, the Contractor must develop and deliver to DFAT for its approval, proposals for the delivery of Major Enhancement Projects in accordance with the requirements specified in the Statement of Work and clause 17.2.
- 5.8.2. The Contractor acknowledges and agrees that:
- a. DFAT may accept or reject a proposal provided in accordance with clause 5.8.1 in its absolute discretion
 - b. where DFAT accepts a proposal, DFAT will issue an Official Order to the Contractor in accordance with clause 17.3
 - c. the Contractor must deliver the Major Enhancement Project in accordance with clauses 17.3, and
 - d. clause 17.4 applies to any proposal for a Major Enhancement Project.
- 5.8.3. The Contractor acknowledges and agrees that:
- a. DFAT may determine that a Major Enhancement Project is to include a Mandated Service Review
 - b. such a Mandated Service Review will follow a similar process and approach to the Mandated Service Review for the Transition Services Phase specified in clause 4.4 (except where otherwise noted in the Official Order), and
 - c. the Exit Criteria for this Mandated Service Review will be specified in the relevant Official Order.

5.9. Disengagement

- 5.9.1. The Contractor will commence disengagement of the Ongoing Services Phase on request from DFAT. Following such request, the Contractor will comply with the provisions of this contract, and in particular, clause 37 and the Certified Disengagement Plan.

6. DATA ITEMS

6.1. Contract Data Requirements List (CDRL)

- 6.1.1. Where the Contractor is required to develop, deliver, update or otherwise provide a Data Item under this contract, the Contractor must ensure the Data Item meets all requirements specified for that Data Item in the relevant Data Item Descriptions as specified in the CDRL, or such other requirements as may be specified in the Statement of Work, relevant Official Order or as notified to the Contractor by DFAT.

6.2. Provision of Data Items

- 6.2.1. The Contractor must develop, deliver and update all Data Items to DFAT in accordance with this clause 6.
- 6.2.2. Data Items include:
- a. all Data Items specified in the CDRL
 - b. all Project Plans requested by DFAT, and
 - c. any other Data Items agreed between the parties.

6.3. Data Item standards

- 6.3.1. The Contractor must ensure that each Data Item:
- a. is consistent with, and suitably elaborates on, the draft of the Data Item prepared by the Contractor (if any), including where such Data Item is attached at Schedule 9 (Project Documents), subject to changes requested by DFAT or reasonably required in the circumstances and agreed by DFAT
 - b. is developed in accordance with the Statement of Work and the CDRL
 - c. meets the Certification Criteria
 - d. conforms to all relevant Specifications
 - e. is delivered to DFAT:
 - i. by the date set out in the CDRL, or
 - ii. where no date is specified, sufficiently in advance of the date on which DFAT could reasonably be expected to need the Data Item for use to allow:
 - A. DFAT to thoroughly review the Data Item
 - B. the Contractor to modify the Data Item with all necessary amendments arising from DFAT's review, and
 - C. DFAT to Certify the Data Item in accordance with the process set out in clause 6.4
 - f. is delivered to DFAT (at a minimum) in a form, and containing the content, that could reasonably be expected of a high quality publication to enable easy review for Certification by DFAT in accordance with clause 6.4, and

- g. is actively maintained and updated following Certification to ensure continuing accuracy and relevance, including where updates are requested by DFAT.
- 6.3.2. The Contractor will at all times closely consult with DFAT about the development and intended contents of each Data Item so that relevant the DFAT Personnel can provide informal feed-back on key issues and will be in a position to more quickly assess the document on delivery for Certification in accordance with clause 6.4.
- 6.3.3. The Contractor is not relieved of its responsibility for the content or delivery of a Data Item as a result of the consultation with DFAT specified in clause 6.3.2.
- 6.3.4. The Contractor must ensure each completed Data Item is written in English, is provided in a format approved by DFAT and includes a copyright notice in a form approved by DFAT.
- 6.3.5. The Contractor acknowledges that any updates that it proposes to a Data Item must be Certified by DFAT in accordance with clause 6.4. No proposed amendments to a Data Item will have effect until they are Certified by DFAT.
- 6.3.6. The Contractor is responsible for all costs associated with the development, provision and updating of Data Items, except where otherwise agreed in writing by DFAT.

6.4. Certification of Data Items

- 6.4.1. DFAT must, within a reasonable time of the receipt of a Data Item, advise the Contractor Representative in writing that DFAT either:
 - a. Certifies, or
 - b. does not Certify,the Data Item.
- 6.4.2. The Contractor acknowledges that any time frames included in this contract (including the CDRL) for DFAT review of Data Items are indicative only and are not to be taken as binding on DFAT. A failure by DFAT to meet such indicative time frames does not permit the Contractor to delay any of its obligations under the contract.
- 6.4.3. DFAT must provide reasonable details of why it does not Certify any part of a Data Item and the Contractor must promptly (and within any reasonable period specified by DFAT) take all necessary action to address those reasons and resubmit the Data Item in accordance with this clause 6 for further consideration for certification.
- 6.4.4. The Contractor must amend, revise or enhance the Data Item as reasonably directed by DFAT (including by providing detailed technical information) at any time either before or after Certification and submit those amendments, revisions or enhancements as soon as reasonably possible to DFAT for certification in accordance with this clause 6 at no additional cost to DFAT
- 6.4.5. The Contractor may at any time propose its own amendments, revisions or enhancements to a Data Item and submit them to DFAT's Project Manager for certification in accordance with this clause 6, providing however that such proposals must be in accordance with any reasonable requirements specified by DFAT, for example in respect of the frequency of such requests or criteria that must be met before a proposed change will be considered by DFAT to be warranted.
- 6.4.6. The Contractor acknowledges that DFAT is relying on the Contractor's expertise in preparing the Data Items. DFAT's Certification, or any comments provided by DFAT in relation to a Data Item, does not in any way reduce the Contractor's obligations or liabilities under this contract or at Law or in any way waive, estop, diminish or otherwise affect the rights of DFAT under this contract or at Law.

6.4.7. Without limitation to any other obligation of the Contractor under this contract or at Law, and except as otherwise specifically agreed in writing by the DFAT Contract Authority, the Contractor must comply (and otherwise act in accordance) with all Certified Data Items.

6.5. Data Item procedures

- 6.5.1. The Contractor must implement and observe systematic processes and procedures (*version control*) that will ensure that:
- a. all Data Items have a unique name and document number consistent with the Data Item Descriptions
 - b. the current version of all Data Items is known and available to all relevant Personnel of both the Contractor and DFAT, and is easily ascertainable
 - c. that all copies of Data Items in operational use within its organisation are updated or replaced as soon as they become obsolete
 - d. that all copies of Data Items prominently include a version number and complete version history, the document owner, the person making the change, the status of the change (for example 'draft' or 'approved'), the date of any DFAT Certification and the details of the certifying officer and the date the change became effective
 - e. a comprehensive archive is established and maintained and available to DFAT of all versions of Data Items, clearly showing in respect of each Data Item all changes from each previous version, together with reasonable information concerning the reasons and context of the change
 - f. the integrity of documents is maintained (for example by comprehensive page and clause numbering, by audit and quality control and by use of unalterable electronic reference versions)
 - g. that all Data Items are stored in a manner appropriate to their security classification in accordance with the requirements of the Protective Security Policy Framework and the Australian Government's Information Security Manual, and
 - h. that all Data Items are in an electronic format approved by DFAT.

7. ACCEPTANCE TESTING

7.1. Overview

- 7.1.1. In accordance with the Statement of Work, relevant Official Order and all relevant Data Items, the parties will (unless requested otherwise in writing by DFAT) conduct Acceptance Tests of each Item and Service.
- 7.1.2. The Contractor acknowledges and agrees that End to End Testing of the Services may be conducted once DFAT is satisfied, in its sole discretion, that all relevant Acceptance Testing and related activities in relation to the Services, including all relevant Items, have been successfully completed.
- 7.1.3. The Contractor will develop Acceptance Test plans in accordance with the CDRL and all requirements of this contract for Certification by DFAT. The Contractor agrees to include in the Acceptance Test plans, any Acceptance Tests that DFAT considers appropriate and effective for its purposes in respect of all relevant Items and Services to be provided by the Contractor pursuant to this contract.
- 7.1.4. The Contractor must fully cooperate with and support all Acceptance Testing, including by providing all tools required by DFAT for Acceptance Testing. The Contractor must, if

requested to do so by DFAT, be present at, actively participate in, or conduct on DFAT's behalf, any and all Acceptance Tests.

- 7.1.5. For the avoidance of doubt, this clause 7 applies to any and all Major Enhancement Projects unless otherwise specified in the relevant Official Order.

7.2. Unit Acceptance Tests

- 7.2.1. DFAT reserves the right to submit each unit of an Item provided by the Contractor to full Acceptance Tests.
- 7.2.2. The Contractor must promptly inform DFAT in writing if it believes the unit of an Item provided to DFAT and which was subjected to Acceptance Testing may not for any reason be representative of all units of that Item (without limitation including that the unit has been subject to quality checks or pre-delivery configuration or testing of a higher standing than would normally be the case).
- 7.2.3. Without prejudice to any other right under this contract or at Law, if an Item unit fails any Acceptance Test more than once due to any Fault, the Contractor must, if requested to do so by DFAT, replace (rather than repair) that unit.

7.3. Configuration Changes

- 7.3.1. Except as specifically provided to the contrary in this contract, no proposed change to an Item (without limitation including any engineering change or change to microcode, firmware or other Software) or Service may be implemented by the Contractor where it might affect DFAT (whether in respect of repair or replacement of an Item or Service under Maintenance or undelivered or additional units yet to be provided) without:
- a. the Contractor providing DFAT reasonable prior written notice of the proposed change
 - b. DFAT first having the opportunity to conduct such Acceptance Tests on the proposed change as DFAT sees fit, and
 - c. DFAT consenting to the implementation of the change (such consent not to be unreasonably withheld, but the Contractor acknowledges that it will not be unreasonable for DFAT to refuse to consent to the implementation of any variation to an Item or Service that is a material change).

7.4. Provision of an Acceptance Readiness Certificate by the Contractor

- 7.4.1. When the Contractor is satisfied that each Item and Service provided (including the Services as a whole), has:
- a. successfully passed all tests to be conducted by the Contractor in accordance with the Statement of Work and all other tests, checks, inspections, reviews specified in all other Data Items and requirements of this contract, and
 - b. the Contractor is otherwise fully satisfied that the Item or Service has been developed and provided in accordance with, and meets, all requirements of this contract, the Contractor will certify this is the case by issuing an Acceptance Readiness Certificate to DFAT.
- 7.4.2. The Contractor will provide DFAT with all of the results of any tests conducted by the Contractor in accordance with clause 7.4.1.a.
- 7.4.3. The Contractor must ensure that DFAT receives the relevant Acceptance Readiness Certificate so that the Acceptance Test commences in sufficient time for DFAT to

complete the Acceptance Test (including reasonable contingency for resolution of problems) prior to any relevant date or Milestone in this contract, or other agreed date.

7.5. Failure of Acceptance Tests

- 7.5.1. If an Item or Service fails to pass any Acceptance Test and the failure was due to any Fault in the Item or Service, the party conducting the test will promptly notify the other and provide relevant details.
- 7.5.2. Upon the Contractor's awareness of a failure occurring, the Contractor must immediately investigate the reason for the failure and promptly report its findings to DFAT and within 3 Business Days (or such longer period as the DFAT may agree in writing):
 - a. promptly take whatever action is necessary to correct any Fault in the Item or Service (and, if requested by DFAT, provide and implement a Cure Plan in accordance with clause 15.5) and resubmit the rectified Item or Service to DFAT together with an Acceptance Readiness Certificate to notify DFAT that the Item or Service is ready for recommencement of Acceptance Testing, or
 - b. notify DFAT of complete details of why the Contractor does not consider that the failure was due to any Fault in the Item or Service, in which case the matter will be treated as a Dispute to be resolved in accordance with the Dispute resolution process specified in clause 32.
- 7.5.3. Without prejudice to any other right under this contract or at Law, including termination for default pursuant to clause 36.1, DFAT may terminate the whole or any relevant part of this contract immediately by notice if any Item or Service fails any applicable Acceptance Test for a second time and either:
 - a. within 5 Business Days from the date of a notice of failure in accordance with clause 7.5.1:
 - i. the relevant Item or Service is not available for recommencement of Acceptance Testing in accordance with clause 7.5.2.a, or
 - ii. the Contractor does not issue DFAT with a notice disputing the validity of the relevant Acceptance Test or its results in accordance with clause 7.5.2.b, or
 - b. the relevant Item or Service again fails any Acceptance Test.

7.6. DFAT's Acceptance Certificate

- 7.6.1. DFAT must, upon being satisfied that an Item or Service has successfully passed its Acceptance Tests promptly issue the Contractor with an Acceptance Certificate in respect of that Item or Service.
- 7.6.2. DFAT must, upon being satisfied that the Services have successfully passed all relevant Acceptance Tests (including any End to End Testing) promptly issue the Contractor with a Final Acceptance Certificate in respect of the Services.
- 7.6.3. DFAT may, at its sole discretion:
 - a. issue an Acceptance Certificate without performing any or all Acceptance Tests, or
 - b. conditionally accept an Item or Service, subject to the Contractor agreeing to deliver a work-around and to otherwise rectify any outstanding Fault within a set time frame.

7.7. Test Costs

- 7.7.1. Notwithstanding any other right or remedy under this contract or at Law, the Contractor will pay on demand all reasonable costs and expenses incurred by DFAT as a result of

DFAT having to re-perform any Acceptance Test due to any Fault or Acceptance Test failure.

- 7.7.2. No fee, cost, charge or expense of any kind is payable by DFAT in respect of:
- a. any use made by DFAT of an Item or Service for Acceptance Test purposes, or
 - b. any matter related to the Contractor's support of Acceptance Tests, involvement with any Acceptance Testing, investigation of any Acceptance Test failure or any other matter related to Acceptance.

8. GOVERNMENT FURNISHED MATERIAL

8.1. Provision and Management of Government Furnished Material

- 8.1.1. DFAT will deliver or provide access to, and the Contractor must manage, Government Furnished Material in accordance with this contract.
- 8.1.2. DFAT must deliver or provide access to Government Furnished Material to the Contractor at the place and times agreed in writing between the parties.
- 8.1.3. If at any time the Contractor's requirement for the timing of delivery or access to Government Furnished Material changes because of a delay by the Contractor in meeting its obligations under this contract, DFAT:
- a. must use reasonable endeavours to accommodate changes to the Contractor's requirements for delivery or access to Government Furnished Material and to deal with them in accordance with clause 40, and
 - b. is only required to deliver or provide access to the Government Furnished Material at the time it becomes available for use for the purposes of this contract.
- 8.1.4. The Contractor must, within 5 Business Days of delivery:
- a. acknowledge in writing, receipt of the Government Furnished Material to the DFAT Project Manager
 - b. inspect Government Furnished Material for defects or deficiencies and any physical damage which impact on, or are likely to impact on, the intended use of the Government Furnished Material, and
 - c. report in writing its satisfaction or dissatisfaction with the Government Furnished Material to the DFAT Project Manager.
- 8.1.5. Unless otherwise agreed between the parties, the Contractor must not use Government Furnished Material which has been found on inspection to be damaged, defective or deficient.
- 8.1.6. The Contractor must be responsible for ensuring that the Government Furnished Material does not adversely impact on production, delivery or functionality of the Services.
- 8.1.7. The Contractor must skilfully incorporate Government Furnished Material into the Services or utilise Government Furnished Material in production of the Services in accordance with this contract.
- 8.1.8. The Contractor must return Government Furnished Material that is not incorporated into the Services (other than consumable items of Government Furnished Material) to DFAT as directed by the DFAT Project Manager.
- 8.1.9. The Contractor must provide suitable facilities to store and handle all Government Furnished Material as it is received.

8.2. Government Furnished Material Ownership and Restrictions

- 8.2.1. Subject to clause 8.2.3, Government Furnished Material remains the property of DFAT. DFAT retains the right to reasonably identify Government Furnished Material as its property and the Contractor must preserve any means of identification.
- 8.2.2. The Contractor must not:
- a. use Government Furnished Material other than for the purposes of this contract
 - b. modify Government Furnished Material
 - c. transfer possession or control of Government Furnished Material to any other party
 - d. move Government Furnished Material from the location to which it was delivered, or
 - e. create or allow to be created any lien, charge, mortgage or encumbrance over any Government Furnished Material.
- 8.2.3. The DFAT Project Manager must notify the Contractor of any Intellectual Property Rights applicable to the Government Furnished Material and the Contractor must not act contrary to the existence of such rights.
- 8.2.4. The Contractor must return all items of Government Furnished Material to DFAT in accordance with instructions from the DFAT Project Manager.

9. GENERAL OBLIGATIONS IN RESPECT OF ITEMS AND SERVICES

9.1. Item requirements

- 9.1.1. Each Item must conform with its Specifications.

9.2. Third Party Warranties – purchased Items

- 9.2.1. Without limiting in any way any Support, Maintenance or other obligation of the Contractor pursuant to this contract, the Contractor must, in relation to Items purchased by DFAT:
- a. ensure DFAT receives all standard Manufacturer and other relevant third party warranties in respect of each Item provided pursuant to this contract, and
 - b. ensure DFAT receives a copy and is otherwise fully advised of and approves all such warranties prior to any order or commitment being made in respect of an Item.

9.3. Third Party Warranties – Third Party Licensed Products

- 9.3.1. Without limiting in any way any other obligation of the Contractor pursuant to this contract, the Contractor must, in relation to Third Party Licensed Products provided to DFAT:
- a. ensure DFAT receives all standard Third Party Licensed Product warranties in respect of such Software, and
 - b. ensure DFAT receives a copy and is otherwise fully advised of and approves all such warranties prior to any order or commitment being made in respect of such Software.

9.4. Transfer of Title and Risk

- 9.4.1. The Contractor transfers title in each Item (other than Licensed Products) to DFAT on:
- a. the date of issue of the relevant Acceptance Certificate, or
 - b. if the Item is not subject to any Acceptance Testing, the date of delivery of the Item to DFAT.

9.5. Provision of upgrades, new releases and preventative maintenance

- 9.5.1. Except to the extent specifically agreed to the contrary by DFAT, Maintenance includes provision of:
- a. all new versions, releases, upgrades, updates, patches, maintenance releases, service packs (and the like, no matter how named or designated) for any Software Supported Item (**updates and new releases**), and
 - b. all Preventative Maintenance.
- 9.5.2. The Contractor must also promptly supply updates and new releases to DFAT:
- a. where required for compliance with changes to Laws relating to the Software, and
 - b. that are necessary to use the Software under new releases of the operating system or other changes that are made to DFAT's Software, Hardware and environment with which the Software must interoperate.
- 9.5.3. The Contractor must promptly provide DFAT with the following information for any update or new release it may make or has made available to DFAT or any other customers from time to time:
- a. the nature of the improvements and/or corrections contained in the update or new release
 - b. any adverse effects that the update or new release may be expected to have on DFAT's system(s) and environment, including any expected degradation in reliability, performance or functionality, and
 - c. sufficient information to enable DFAT to determine whether the update or new release will suit DFAT's requirements.
- 9.5.4. DFAT reserves the right to conduct Acceptance Tests in respect of any such updates and new releases and in respect of any Preventative Maintenance. DFAT may refuse to implement any item that fails to pass its Acceptance Tests and such refusal will not diminish the Contractor's obligations or adversely affect DFAT's rights in respect of Support or Maintenance.

9.6. Service requirements

- 9.6.1. The Contractor must provide all Services in accordance with this contract.
- 9.6.2. The Contractor must establish, maintain and utilise comprehensive and fully documented systems, processes and procedures in respect to the provision and management of all Services and performance of its obligations under this contract, including in accordance with the requirements of clause 10 so as to ensure:
- a. full details of each Service and its components are properly documented, and the documentation provided to DFAT as a Data Item
 - b. the quality, timeliness and other characteristics of the performance of all Services are accurately recorded and measured against the Service Level requirements in the Service Level Agreement (where relevant), and relevant industry benchmarks or metrics at the date of this contract or as may develop over time

- c. the occurrence of Service Incidents are minimised, and where Service Incidents occur despite the best efforts of the Contractor that they are detected and corrected by the Contractor as efficiently as possible (and without the need for DFAT complaint or intervention) and a report of the Service Incident, action taken and its resolution provided to DFAT
 - d. Assets are properly protected from loss, damage, compromise or adverse impact of any kind
 - e. continuous Service improvement is driven
 - f. comprehensive, accurate and up to date records are kept and are continuously available to the Contractor and DFAT which are suitable for purposes including service management, incident management, issues management, quality management, problem resolution, benchmarking, billing and invoicing, financial management, audit, reporting, public accountability, planning, modelling, risk management, and Disengagement
 - g. that the end to end integrity and performance of each Service is established and maintained, notwithstanding the involvement of or handover to DFAT or third parties that may be involved with associated processes, tasks or services
 - h. best practice is achieved
 - i. risks are properly identified, treated and managed, and
 - j. all matters relating to the Contractor's performance and discharge of its obligations and accountabilities under or in relation to this contract can be established.
- 9.6.3. DFAT has the right, and the Contractor will take all necessary action to enable DFAT, to:
- a. observe, monitor and measure the performance of any and all Services at any time, as DFAT sees fit, including by electronic means, and
 - b. examine and test all work in progress at any time.
- 9.6.4. The Contractor must ensure that all Services:
- a. are effectively planned, managed and supervised so as to ensure they are performed as required by this contract
 - b. are implemented, performed, supplied and disengaged in accordance with the requirements of this contract and in accordance with relevant Certified Data Items, and
 - c. comply with all relevant Specifications.
- 9.6.5. The Contractor must:
- a. immediately notify DFAT if an act or omission of the Contractor, a Subcontractor or its Personnel causes a problem or delay that has a material impact on the Contractor's ability to provide the Services, and
 - b. work with DFAT and/or Subcontractor to prevent or circumvent the problem or delay.
- 9.6.6. Where this contract, a Data Item or a relevant Official Order specifies a location for the performance of Services, the Services must be performed at the relevant location.

9.7. Virus protections and disabling code

- 9.7.1. The Contractor must use its best efforts to ensure that no Virus or Harmful Code is included or introduced into any Item provided by the Contractor pursuant to this contract or any system used to provide or support any Service (or that may be otherwise affected by any Service).

- 9.7.2. The Contractor must on request promptly provide DFAT with full details of all processes and procedures the Contractor has in place to ensure a breach of clause 9.7.1 does not occur.
- 9.7.3. The Contractor must immediately notify DFAT with full information and details if it knows or reasonably suspects that a breach of clause 9.7.1 may have occurred.
- 9.7.4. Without limitation to any other right or remedy of DFAT under this contract or at Law, if any Virus or Harmful Code is found (or is reasonably suspected) to have been introduced into any Item or system in breach of clause 9.7.1, the Contractor will (until such time as it is established that a breach of clause 9.7.1 has not occurred) take at no charge to DFAT all reasonable action requested by DFAT to contain and eliminate the Virus or Harmful Code and ensure any actual or potential loss of or threat to DFAT's operations and efficiency is minimised.
- 9.7.5. Without limiting clause 9.7.1, the Contractor must not insert or knowingly permit any third party to insert into any Item provided by the Contractor pursuant to this contract or into any system used to provide or support any Service (or that may be otherwise affected by the Service) any code that would have the effect or intended effect of shutting down, disabling or otherwise inhibiting all or any portion of any such Item or system under any circumstances.

9.8. Service management and quality assurance

- 9.8.1. Unless otherwise agreed in writing by DFAT, all Services must be documented, managed and provided in accordance with the standards set out in the Statement of Work and any such other service management standards, processes and methodologies that are required to effectively deliver managed services to meet DFAT's business and other requirements, as may be agreed by DFAT in writing.

9.9. Import approvals

- 9.9.1. The Contractor must obtain all necessary import licences or other approvals to meet the requirements of the contract related to the supply of Hardware and Software. The Contractor must provide, on request by DFAT, a copy of any necessary import licence or other approval, or proof that such licence or approval has been obtained.
- 9.9.2. The Contractor must notify DFAT in writing within 5 Business Days of the Contractor becoming aware of the grant, refusal, revocation or qualification of, or a new requirement for, an import licence or other approval that will have, or is likely to have, a material impact on the ability of the Contractor to perform its obligations under the contract. Nothing in this clause reduces the Contractor's obligations to comply with its obligations under the contract, including in relation to Hardware or Software.

10. ITEM AND SERVICE DOCUMENTATION

- 10.1.1. Except where included in a Data Item provided to DFAT, the Contractor must provide all Items and Services with comprehensive documentation including, where relevant, in respect of their installation, configuration, use, operation, optimisation, support and maintenance.
- 10.1.2. In addition to any manuals or documentation normally included as part of an Item or Service the Contractor must if requested by DFAT provide DFAT at no cost with at least one copy of all manuals and other documentation (including updates) related to each Item or Service that the Contractor or relevant Manufacturer publishes during the Term of this contract. Such manuals and other documentation will, without limitation, include all user, training, technical and maintenance manuals.

- 10.1.3. All training provided or arranged by the Contractor in accordance with this contract must include the provision to DFAT of a copy, in editable form, of all training materials relevant to the training provided (which for 'train the trainer' training will include, without limitation and except as may otherwise be agreed, trainer manuals, lesson plans, course outlines, training aids and trainee manuals)
- 10.1.4. Where generally available, the Contractor must supply the documentation referred to in this clause 10 in editable form in such electronic format and on such type of media as DFAT may reasonably require.
- 10.1.5. All documentation must be in English.

11. GENERAL RESPONSIBILITIES OF THE CONTRACTOR

11.1. General obligations of the Contractor

11.1.1. The Contractor must:

- a. comply with any reasonable instruction or direction of DFAT or its Personnel relating to the performance of any matters relating to this contract
- b. comply with DFAT's environmental sustainability policies as notified to the Contractor in so far as these are relevant to performance of any matters relating to this contract
- c. be familiar and comply with (and reasonably ensure that all relevant members of its Personnel are familiar, and comply, with) all relevant Australian Government and DFAT policies and standards of conduct that are notified to it in writing from time to time
- d. ensure that all relevant members of its Personnel at all relevant times observe and comply with the APS Code of Conduct set out in section 13 of the *Public Service Act 1999* (Cth) as if they were Australian Government employees
- e. protect DFAT's equipment, Material and other property and Assets from loss or damage, interception, compromise or breach of security while in the Contractor's possession or control
- f. provide all resources to fully and effectively discharge all its obligations under this contract including adequately skilled Personnel, Facilities, working capital and administrative support, and allocate those resources as is reasonably necessary to fully and effectively discharge all its obligations under this contract
- g. comply with all relevant Laws, without limitation including:
 - i. the *Criminal Code* (Cth)
 - ii. the *Racial Discrimination Act 1975* (Cth)
 - iii. the *Sex Discrimination Act 1984* (Cth)
 - iv. the *Disability Discrimination Act 1992* (Cth)
 - v. the *Privacy Act 1988* (Cth)
 - vi. the *Work Health and Safety Act 2011* (Cth)
 - vii. the *Safety, Rehabilitation and Compensation Act 1988* (Cth)
 - viii. the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
 - ix. the *Auditor-General Act 1997* (Cth)
 - x. the *Ombudsman Act 1976* (Cth), and

- xi. the *Public Governance, Performance and Accountability Act 2013* (Cth)
- h. ensure at its own cost that it and all relevant members of its Personnel possess, and at all relevant times maintain, all:
 - i. licences, permits, approvals, and
 - ii. accreditation, certification or scheme memberships from any relevant Regulatory Agency, Manufacturer or industry body
 that are necessary or reasonably required for the proper performance of any obligation of the Contractor pursuant to this contract or the provision of any Item or Service
 - i. comply with all Codes of Conduct and all Regulatory Agencies' lawful requirements and give all notices and pay all fees necessary to perform its obligations, and
 - j. promptly notify DFAT in writing if it believes any Item or Service or any other matter related to this contract does or might conflict with any Law, Applicable Standard, Code of Conduct or Regulatory Agencies' lawful requirements, or may be hazardous or unsafe, or if any necessary certification, permit, or approval is required and have not been obtained.
- 11.1.2. The Contractor must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). If the Contractor becomes non-compliant with the WGE Act during the Term of this contract, the Contractor must promptly notify DFAT.
- 11.1.3. The Contractor must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Commencement Date and, following this, annually to DFAT.

11.2. Indigenous procurement policy

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

11.3. Access to DFAT Facilities

- 11.3.1. Subject to clause 11.4 and the Contractor's compliance with other relevant provisions of this contract, DFAT will give the Contractor access to DFAT Facilities and provide relevant assistance as specified in the Contract Details or relevant Official Order (or as otherwise specifically agreed in writing by DFAT) for the purposes of this contract only.

11.4. Conditions of use of DFAT Facilities

- 11.4.1. The Contractor's access to and use of any such Facility or assistance pursuant to clause 11.3.1 is subject to:
 - a. the Contractor's compliance with all relevant provisions of this contract
 - b. any additional limitations or restriction on use or access specified in the Contract Details or relevant Official Order or Data Item, and

- c. such other limitations or restrictions or requirements as otherwise may be reasonably imposed by DFAT from time to time, including directions from DFAT regarding security and work health and safety issues.
- 11.4.2. The Contractor must ensure that such access and use will not in any way interfere with or disrupt any relevant Facility or use of it by DFAT or any other authorised person, unless and to the extent:
 - a. that disruption or interference is strictly necessary to perform the relevant Services, and
 - b. DFAT has been advised in advance of the potential disruption or interference and has specifically consented in writing to it occurring.
- 11.4.3. The Contractor must make all reasonable effort to minimise its need to access and use all relevant Facilities and assistance.
- 11.4.4. The Contractor acknowledges and agrees that:
 - a. it has had an opportunity to inspect all relevant Facilities and to conduct any due diligence that it requires in respect of them prior to entering into this contract
 - b. except where expressly required by Law, DFAT makes no representation and gives no warranty concerning any relevant Facility including that any Facility is fit for any purpose or where any assistance or service might be provided by DFAT to the Contractor in respect or support of this contract that such service will be provided with due skill or care, and
 - c. any use of any relevant Facility and assistance by the Contractor is at the Contractor's sole risk.
- 11.4.5. The Contractor acknowledges and agrees that DFAT may monitor its access to, and its usage of, any relevant Facility.

11.5. Standard of care

- 11.5.1. The Contractor must perform its obligations under the contract:
 - a. in accordance with suitable and appropriate methods and practices, and
 - b. in a timely, safe, prudent and reasonable manner and with the degree of professional skill, care and diligence which may reasonably be expected of a skilled and professional person suitably qualified and experienced in the performance of obligations similar to those imposed under this contract.
- 11.5.2. The Contractor must also ensure that all physical components and standards of work must meet or exceed the standards and requirements adopted by DFAT for similar components or work at the relevant Facility.

11.6. Contractor Personnel

- 11.6.1. The Contractor must only employ or otherwise directly or indirectly engage persons or organisations to perform this contract who:
 - a. are properly qualified and adequately experienced to perform the duties allocated to them
 - b. exhibit a degree of professional skill, care, diligence and timeliness which may reasonably be expected of a skilled professional person suitably qualified and experienced in the performance of obligations similar to the obligations under the contract

- c. are of known reliability and integrity and may be reasonably relied upon not to breach the terms and conditions of this contract including, without limitation, those relating to confidentiality, privacy, security and safety
 - d. comply with all lawful directions of DFAT relevant to this contract
 - e. do not represent in any way that they are employees of DFAT or the Commonwealth Government
 - f. behave with integrity and in an ethical manner, and
 - g. while on DFAT or other Commonwealth Government premises, or any premises required for the conduct of this contract, carry and display at all times required identification.
- 11.6.2. The Contractor must ensure that its Personnel are aware of all requirements under this contract that relate to their duties in respect of the provision of Items and Services and the performance or support of this contract, and must take all reasonable action to ensure that its Personnel strictly comply with those requirements.
- 11.6.3. The Contractor must actively manage the performance of its Personnel at all times.
- 11.6.4. Notwithstanding any other right or remedy of DFAT pursuant to this contract or by Law, the Contractor must promptly remove and replace any of its Personnel, including Specified Personnel, from work in respect or support of this contract where requested by DFAT, at its sole discretion, to do so.
- 11.6.5. The Contractor is responsible for all wages, salaries and other payments (including superannuation) to its Personnel and must fully comply with all relevant Laws or other Government requirements in relation to its Personnel including labour and industrial relations Laws and those relating to working conditions, salary, wages, the payment of any relevant Tax, superannuation, levy, and any other amounts, remissions allowances including those under any industrial awards or agreements relevant to this contract. Upon request, the Contractor must provide such evidence as DFAT may require and otherwise demonstrate to DFAT that it has complied with these obligations.
- 11.6.6. If DFAT is at any time held to be liable for payment of any amount within the scope of clause 11.6.5, the Contractor will, to the extent permitted by Law, indemnify DFAT for such amounts and any related costs, expenses or liability of any kind (including interest).
- 11.6.7. Clauses 11.6.5 – 11.6.6 survive the expiry or earlier termination of the contract.

11.7. Specified Personnel

- 11.7.1. Where any Specified Personnel are identified to perform a role or Service, that role or Service must be performed exclusively by the relevant member or members of the Specified Personnel.
- 11.7.2. The Contractor must not remove any Specified Personnel (unless they resign from employment with the Contractor) without DFAT's prior written approval. If, despite the best efforts of the Contractor, any member of the Specified Personnel is unavailable temporarily or permanently, the Contractor must promptly notify DFAT and take all reasonable action to minimise any potential adverse impact for DFAT.
- 11.7.3. Notwithstanding clauses 11.7.1 and 11.7.2, the Contractor must at all times have in place contingency plans to minimise any potential adverse impact for DFAT if any member of the Specified Personnel should, for any reason, not be available, or is required to be replaced under this contract.
- 11.7.4. Without limiting the Contractor's other obligations under this clause 11.7 and this contract in general, where any Specified Personnel will be permanently unavailable, or unavailable for a period not acceptable to DFAT or is otherwise replaced, the Contractor must:

- a. as soon as possible identify suitably skilled, experienced and qualified potential replacements
 - b. provide full details of the potential replacements to DFAT in writing and, if requested by DFAT, make them available to DFAT for interview, and
 - c. where DFAT confirms in writing that a relevant potential replacement is acceptable, immediately retain that person and provide them as the relevant substituted member of the Specified Personnel.
- 11.7.5. The Contractor must use its best efforts to ensure that turnover of Specified Personnel is kept to a minimum.

11.8. Innovation and continuous improvement

- 11.8.1. The Contractor acknowledges it must show continuous improvement throughout the Term of this contract. In doing so, the Contractor will ensure that it constantly improves the Items and Services it provides to DFAT. As such the Contractor must use all reasonable endeavours to:
- a. seek to reduce the cost of the Services including Items and elements of the Services to DFAT by improving efficiency and all other reasonable means
 - b. seek to improve its performance in all relevant areas without increasing cost
 - c. seek to improve processes and procedures relating to or affected by this contract
 - d. seek to ensure that Software releases provided to DFAT are (subject to prior written approval from DFAT) expeditiously updated when the Contractor develops new versions of such releases
 - e. research and implement suitable processes of continuous improvement in all aspects of the Services
 - f. take the initiative to be pro-active in improving and refining the process for delivery and performance of the Services
 - g. propose innovations and continuous process improvement to DFAT
 - h. perform the continuous improvement activities specified in the Statement of Work, and
 - i. otherwise genuinely seek to enhance the benefits of this arrangement to DFAT.
- 11.8.2. Either party may at any time submit a written innovation or continuous improvement proposal to the other party concerning a possible variation to the Services, including the Services, or other matters relating to this contract that it believes will reduce costs, improve quality or efficiency or provide other tangible benefits to both or either DFAT and the Contractor.
- 11.8.3. Where the Contractor submits an innovation or continuous improvement proposal to DFAT, it must be accompanied by an 'Innovation Benefits Statement'.
- 11.8.4. Where DFAT submits an innovation or continuous improvement proposal to the Contractor, the Contractor must, as soon as possible, submit an Innovation Benefits Statement in respect of that proposal.
- 11.8.5. An Innovation Benefits Statement must set out in detailed written form the expected effect the implementation of the innovation or continuous improvement proposal will have on the actual costs of the Contractor in providing the Services or otherwise related to this contract (including but not limited to staffing or labour costs, materials charges, holding costs, overheads or other fixed costs, cost of funds, utility costs, maintenance) and quantifiable benefits which might be achieved. The Innovation Benefits Statement must also identify potential risks and how they might be managed and addressed.

11.8.6. The Contractor agrees to implement any innovation or continuous improvement proposal that is likely to produce material benefits to either party and to negotiate in good faith to equally share (or in such other proportion as must be agreed) those benefits by either or both of an appropriate variation to the Fees and other means.

11.8.7. Implementation and consideration of any innovation or continuous improvement proposal by DFAT is completely at its discretion.

11.9. Black economy procurement connected policy

11.9.1. In this clause 11.9 only:

- a. **Black Economy Procurement Connected Policy** means the *Black economy - increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>
- b. **First Tier Subcontractor** means any subcontractor directly engaged by the Contractor to provide any goods or services with an estimated value of over \$4 million (GST inclusive) that forms part of the Services;
- c. **Satisfactory** means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy
- d. **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,
- e. **Valid** means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.

11.9.2. The Contractor warrants in relation to any First Tier Subcontractor, that the Contractor either:

- a. provided a Valid and Satisfactory Statement of Tax Record for the First Tier Subcontractor as part of its response to the approach to market that resulted in the entry of this contract, or
- b. holds a Satisfactory Statement of Tax Record for the First Tier Subcontractor that was Valid at the time of entry into the subcontract by the Contractor and the First Tier Subcontractor.

11.9.3. [If the Contractor is a partnership, the supplier will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to DFAT as soon as possible after they become a partner to the partnership.]

Note to Tenderers: Clause 11.9.3 is only required if the successful tenderer is a partnership.

12. USE OF SUBCONTRACTORS

12.1. Use of Subcontractors must be approved

12.1.1. The Contractor must not Subcontract any part of the performance of this contract without first obtaining DFAT's written approval.

- 12.1.2. The Contractor must ensure that each Subcontractor complies with all relevant provisions of this contract and all rules, policies, and procedures of DFAT that are relevant to the Subcontractor's performance of the Services.
- 12.1.3. Notwithstanding any approval of a Subcontractor by DFAT, the Contractor remains responsible for the performance of all the Contractor's obligations under this contract and at Law and for each Subcontractor's acts and omissions to the same extent as if they were the direct acts or omissions of the Contractor.
- 12.1.4. The Contractor must promptly upon request by DFAT provide full written details of which Approved Subcontractors are involved in the performance of the contract at any point in time (or part of such performance as may be specified by DFAT, including the specific role, function and scope of their involvement).
- 12.1.5. The Contractor acknowledges and agrees DFAT may publicly disclose the names and role of all Approved Subcontractors and ensure that the Contractor must obtain any relevant consent required from any proposed Subcontractor prior to seeking approval for them to be an Approved Contractor under this contract.
- 12.1.6. The Contractor must not use a Subcontractor in relation to this contract where the Subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of any policy or Law of the Commonwealth.
- 12.1.7. DFAT must at its request have direct and immediate access to any Subcontractor to make any enquiry, discuss any matter or obtain any information relevant to this contract, and the Contractor must fully facilitate and support such access, but DFAT must not be obliged to become involved in any issue or dispute between the Contractor and any Subcontractor (including with respect to payment) or have direct dealings with any Subcontractor acting on its own behalf.
- 12.1.8. DFAT may revoke its approval of a Subcontractor at its sole discretion, in that case, the Contractor will promptly cease using that Subcontractor to perform or support the performance of Services or other obligations of the Contractor pursuant to this contract.

12.2. Subcontract provisions

- 12.2.1. Except as specifically agreed to the contrary in writing by DFAT, each Subcontract with an Approved Subcontractor must include the following:
 - a. a right to terminate that Subcontract for convenience if DFAT terminates this contract for convenience
 - b. an obligation requiring the Subcontractor to comply with all relevant Laws
 - c. the right for DFAT to take a novation of the Subcontract if this contract is terminated
 - d. a prohibition on the Approved Subcontractor itself Subcontracting any part of the performance of the Subcontract without obtaining approval from DFAT in advance, and
 - e. obligations consistent with and no less onerous than those contained in this contract applicable to the Contractor in respect of confidentiality, privacy, security, record keeping, audit, conflicts of interest and Intellectual Property Rights.
- 12.2.2. If requested, the Contractor must provide DFAT with a copy of each Subcontract executed between the Contractor and an Approved Subcontractor.

13. SERVICE LEVELS

13.1. Service Levels

- 13.1.1. At a minimum, the Contractor must meet the requirements of all Service Levels specified in this contract. The Contractor acknowledges that, in accordance with the Service Level Agreement or otherwise in accordance with this contract (including the Statement of Work or any relevant Official Order, or as otherwise may be formally and specifically agreed in writing by the parties), the Fees may be reduced if the Contractor fails to meet a Service Level.

14. PROJECT SCHEDULE

14.1. Milestones

- 14.1.1. The Contractor agrees to meet the obligations set out in the Program Timetable by the Milestones identified.
- 14.1.2. The Contractor acknowledges that due to the nature and dependencies of the Services, time is of the essence in meeting the Milestones and any failure to do so will be a breach of this contract.
- 14.1.3. The Contractor must keep DFAT regularly apprised of its progress against the Program Timetable and must notify DFAT immediately if it becomes clear to the Contractor that it will be unlikely to meet a Milestone. In such event, the Contractor will provide DFAT with a plan within 3 Business Days of its notification to DFAT, setting out the cause of the delay and the steps the Contractor proposes to undertake to mitigate the delay in meeting the Milestone.
- 14.1.4. DFAT's acceptance of any mitigation plan does not in any way prevent DFAT from exercising any right it has under this contract as a result of the Contractor's failure to meet the Milestone, including the application of Liquidated Damages.

14.2. Schedule acceleration

- 14.2.1. DFAT may request the Contractor to bring forward the date of one or more Milestones. On such request, the Contractor will, within 5 Business Days, provide DFAT with a written statement on whether such acceleration is possible and any additional fees or costs that accrue directly as a result of the acceleration. If the Contractor does not consider that the requested acceleration is possible, the Contractor will include in its statement such acceleration as it believes is possible.
- 14.2.2. If DFAT accepts the acceleration and direct additional fees and costs (if any) proposed by the Contractor then the parties will progress a variation of the contract on that basis.

15. PERFORMANCE MANAGEMENT

15.1. Meetings

- 15.1.1. The Contractor must, and must ensure Contractor Personnel comply with all requirements to prepare for, attend and participate in meetings with DFAT as specified in the Statement of Work.

15.2. Issues management

- 15.2.1. The Contractor must ensure that all issues relating to matters relevant to this contract are properly documented, actioned and managed through to resolution and must maintain a comprehensive issues management system that meets DFAT's specifications to track and manage all issues in an integrated manner and in accordance with any relevant Data Item.

15.3. Progress and other reports

- 15.3.1. The Contractor must ensure that DFAT is kept constantly apprised of all information relevant to the provision of each Item and Service and compliance with Data Items and other relevant the Contractor obligations pursuant to this contract and, without limiting the foregoing, must:
- a. furnish to DFAT the reports required by and prepared in accordance with the reporting requirements set out in the Statement of Work, or any other relevant Schedule or Data Item or as is otherwise required in accordance with a provision of this contract or otherwise as may be reasonably specified by DFAT
 - b. promptly enter data in relevant DFAT systems, or provide data in an electronic form suitable to directly feed into relevant DFAT systems in accordance with the reporting requirements set out in this contract or any relevant Data Item or as is otherwise reasonably specified by DFAT
 - c. report any Security Incident or Service Incident and provide reports in accordance with clauses 15.4 and 23.8
 - d. provide DFAT with any ad hoc report or information in relation to any Item or Service, or any other matter related to this contract that DFAT requests, in such format and within such a time frame as DFAT may reasonably require, and
 - e. immediately notify DFAT with full details of any material fact or circumstance that threatens compliance with any obligation of this contract.
- 15.3.2. The Contractor must permit DFAT, upon reasonable notice, to examine designs, plans, documentation or any other work in progress for the purposes of satisfying itself as to the present status and quality of the work and its progress against any relevant Data Item or requirement of this contract.

15.4. Fault and failure diagnosis

- 15.4.1. The Contractor must promptly on request investigate any Fault, Service Incident or Security Incident (each of which for the purposes of this clause 15 is an *Incident*) and promptly report to DFAT what it considers to be the cause of the Incident together with details of the action, if any, the Contractor proposes to ensure that the direct and underlying causes are remedied and to ensure that similar incidents do not occur and / or minimise the potential adverse consequences for DFAT.

15.5. Cure Plan

- 15.5.1. Notwithstanding any other right or remedy of DFAT, where any Incident occurs, the Contractor must within a period not exceeding 2 Business Days of being notified to do so (or such other time period as the notice specifies) provide DFAT with a detailed written plan to remedy the Incident and its underlying causes (and to ensure that no similar breach or Incident occurs), such Cure Plan to include:
- a. full details of the nature of the cause of the Incident, where known, or if not known the full details of what the Contractor considers to be the cause of the breach or Incident

- b. the proposed method by which the Incident will be cured, including alternate action that can be taken if necessary
 - c. any temporary measures that can be taken to work around or minimise the impact of the Incident
 - d. the time that will be required to fully complete all aspects of the Cure Plan, and
 - e. a Project Plan setting out the tasks, timing, resources, dependencies, contingencies, availability of resources, the relationships between tasks and all other information as DFAT may reasonably require in order for it to assess the Contractor's plan.
- 15.5.2. DFAT may either:
- a. notify the Contractor to implement the Cure Plan, or
 - b. notify the Contractor to promptly revise and resubmit the Cure Plan within a period not exceeding 2 Business Days (or such other time as the notice specifies) to meet the reasonable requirements of DFAT as set out in the notice, in which case the Contractor must revise and resubmit the Cure Plan in accordance with the notice.
- 15.5.3. Upon receipt of a notice pursuant to clause 15.5.2.a the Contractor must immediately implement the Cure Plan and:
- a. keep DFAT fully informed about the progress of work against the Cure Plan and any proposed modification to the Cure Plan
 - b. promptly provide DFAT with any information that it reasonably requests about the progress of work, the Cure Plan or any related matter
 - c. diligently perform all work in accordance with the Cure Plan and properly manage it through to conclusion, and
 - d. notify DFAT when the Contractor believes the Cure Plan has been fully implemented and completed by providing DFAT with a Rectification Completion Certificate. DFAT reserves the right to conduct Acceptance Tests in respect of work related to the Cure Plan on the same basis as if the relevant items were newly installed or delivered, and in such event the Cure Plan will not be considered completed until such time as the Acceptance Tests have been successfully completed.
- 15.5.4. DFAT may also request a Cure Plan in response to a breach of a Service Level in accordance with the Service Level Agreement.
- 15.6. Not used**
- 15.7. Conflict of Interest**
- 15.7.1. During the course of this contract the Contractor must not be subject to any Conflict of Interest, and must use its best endeavours to ensure that none of its Personnel are subject to any Conflict of Interest.
- 15.7.2. Without prejudice to any other right or remedy under this contract or at Law, if during the course of this contract an actual or potential Conflict of Interest arises, the Contractor must:
- a. notify DFAT immediately
 - b. make full disclosure of all relevant information relating to the actual or potential Conflict of Interest, and
 - c. take such steps as DFAT may reasonably require to resolve or otherwise deal with the actual or potential Conflict of Interest.

16. RELATIONSHIP MANAGEMENT

16.1. The Contractor's Representative

- 16.1.1. The Contractor must appoint and at all times maintain a Contractor Representative with full power and authority to represent and bind it in any matter related to this contract.
- 16.1.2. The Contractor must, as at the Commencement Date, identify in writing to DFAT a reasonable number of senior executive contacts within the Contractor's organisation to ensure that DFAT is able to raise all relevant issues that might arise from the activities contemplated by this contract at the senior executive level within the Contractor's organisation. The Contractor will keep this list up to date throughout the Term of the contract.

16.2. DFAT's Representatives

- 16.2.1. DFAT must, unless otherwise advised by DFAT to the Contractor, appoint and at all times maintain:
 - a. a person in the role of DFAT Project Manager to be its main point of operational contact for all matters related to this contract generally, and
 - b. a person in the role of DFAT Contract Authority to be its main point of contact for legal or contract administration purposes.
- 16.2.2. The DFAT Project Manager has the power and authority to make all operational and administrative decisions in relation to this contract for DFAT but is not empowered to:
 - a. issue a notice of termination, or
 - b. make or agree to a variation or amendment to the terms of this contract (including, without limitation, agree to any variation or amendment to any Fee).

These powers may only be exercised by the DFAT Contract Authority.

16.3. General

- 16.3.1. Subject to clause 11.7, each party may at any time vary or revoke the appointment of any of its Representatives by written notice to the other party.
- 16.3.2. The powers, duties, discretions and authority of a Representative may be exercised or discharged by any relevant superior officer of that Representative.
- 16.3.3. Notwithstanding any other provision of this contract, an instruction, advice or notice given to any Representative of the Contractor is deemed to be given to the Contractor.
- 16.3.4. The Contractor must ensure that the Contractor Representative is available for and will attend meetings, provide information, advice and assistance to DFAT and to discuss and facilitate any matter related to this contract at all reasonable times.

17. STANDING OFFER FOR ITEMS AND SERVICES

17.1. Standing Offer

- 17.1.1. The Contractor hereby irrevocably offers to provide Additional Services to DFAT during the Term of this contract.
- 17.1.2. Where DFAT wishes the Contractor to provide Additional Services pursuant to clause 17.1, DFAT may either:

- a. request the Contractor to provide DFAT with a proposal for the relevant Additional Services if a proposal is not already required to be provided by the Contractor under the Statement of Work, or
 - b. directly issue an Official Order to the Contractor for the Additional Services.
- 17.1.3. Where DFAT requests a proposal, the Contractor must provide a written proposal that meets the DFAT's stated requirements within 10 Business Days of the request. The Contractor also agrees to, at DFAT's request, meet and/or discuss the proposal with DFAT at a time and place reasonably determined by DFAT.

17.2. Proposals

- 17.2.1. A proposal for Additional Services must:
- a. specify all proposed Fees relating to the proposal with all prices quoted conforming to or bettering the provisions of this contract and in particular the Price Schedule
 - b. set out how the Contractor will ensure all requirements specified by DFAT will be met, and
 - c. include all other information or material specified by DFAT in its request and/or Statement of Work, or otherwise reasonably necessary to support the proposal.

17.3. Official Order

- 17.3.1. Once DFAT is satisfied with a proposal, it may issue an Official Order to the Contractor.
- 17.3.2. On receipt of an Official Order from DFAT, the Contractor will deliver the Additional Services in accordance with the Official Order and this contract.
- 17.3.3. For the purpose of clarity, each Official Order is a transaction under this contract and does not constitute a separate contract in its own right.

17.4. Contractor Acknowledgements

- 17.4.1. The Contractor acknowledges and agrees that:
- a. the arrangement under which the Contractor offers to supply Items and Services to DFAT under this clause 17 is non-exclusive and without any representation or commitment of any kind that DFAT will place any Official Order or acquire any volume of any Item or Service
 - b. DFAT has the absolute right and discretion to acquire any goods or services (including goods and services identical or similar to Items and Services that are offered pursuant to this contract) under any process or arrangement and from any supplier as DFAT in its absolute discretion thinks fit
 - c. DFAT reserves the right to market test the provision of goods and services identical or similar to Items or Services that are offered pursuant to the Standing Offer as DFAT sees fit, and
 - d. any Additional Services provided pursuant to this clause 17 form part of the Services.

18. FEES AND PAYMENT

18.1. Fees and Taxes

- 18.1.1. The Fees and payment arrangements are set out in the Price Schedule or relevant Official Order.
- 18.1.2. All Taxes levied in Australia or overseas in connection with the performance of this contract must be borne by the Contractor.

18.2. GST

- 18.2.1. Unless otherwise indicated, the Fees and all other consideration for any supply made to DFAT under this contract is inclusive of any GST imposed on the supply.
- 18.2.2. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the GST exclusive value of the supply in question as correctly detailed in a tax invoice provided by the supplier to the recipient.
- 18.2.3. No party may claim from the other party under this contract any amount for which the first party may claim an input tax credit (or would have been able to claim an input tax credit if it was registered for GST).
- 18.2.4. In this clause 18.2 the terms 'consideration', 'GST', 'input tax credit', 'supply', 'taxable supply' and 'tax invoice' have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

18.3. Payment is not an admission

- 18.3.1. Payment of any amount by DFAT is not:
 - a. evidence of or an admission that any Item or Service has been Accepted by DFAT or provided by the Contractor in accordance with this contract
 - b. evidence of the value of the Item or Service
 - c. an admission of liability, nor
 - d. acceptance or approval by DFAT of the Contractor's performance,but is to be taken only as a payment on account.

18.4. Disputed amounts

- 18.4.1. Any Dispute in respect of an Invoice will be resolved in accordance with the Dispute resolution provisions in clause 32.
- 18.4.2. Where DFAT has overpaid any Fee due to a mistake of any kind, the Contractor must immediately remit to DFAT the amount of any overpayment and such amount is recoverable as a debt due from the Contractor as from the date the existence of the overpayment is notified to the Contractor.

19. PERFORMANCE AND PRICE BENCHMARKING

- 19.1.1. From time to time during the Term of this contract, DFAT may measure (or require the Contractor to measure) the performance and price of Services to determine if the performance matches, and the price is competitive with, the delivery of Comparable Services (Benchmarking).

- 19.1.2. Benchmarking will be conducted in accordance with this clause 19 and any agreed procedures otherwise agreed in writing by the parties.
- 19.1.3. If DFAT conducts the Benchmarking, DFAT will engage and, unless otherwise agreed, will pay the costs of the Benchmarking. If the Contractor conducts the Benchmarking, the Contractor will pay the costs of the Benchmarking.
- 19.1.4. Each party will bear its own internal costs of each Benchmarking.
- 19.1.5. If the Benchmarking shows that the Contractor's performance is not competitive when measured against Comparable Services:
 - a. DFAT will assist the Contractor to determine the causes of the failure, and
 - b. unless the Contractor satisfies DFAT that the difference in performance is due to DFAT's unique requirements and not the Contractor's performance, the Contractor must, at no additional cost to DFAT, promptly take corrective action to meet the benchmark (and while maintaining competitive pricing) including, where appropriate, by providing additional staffing, increasing levels of training, upgrading equipment and Software, introducing new and improved tools and improving processes.
- 19.1.6. If the Benchmarking shows that the Fees are not price competitive because they are higher than charges for Comparable Services:
 - a. the Contractor will assist DFAT to determine causes of the uncompetitive pricing, and
 - b. to the extent that the uncompetitive pricing is not caused by DFAT's unique requirements, the Contractor must lower the relevant Fees to meet the benchmark.

20. AUDIT AND ACCESS REQUIREMENTS

20.1. Audits

- 20.1.1. Audits under this clause 20 will be conducted by an Australian Government Auditor and can include audits and investigations of:
 - a. The Contractor's compliance with all its obligations under this contract including but not limited to:
 - i. confidentiality, privacy, security and its adherence to Commonwealth Laws and policy requirements referred to in this contract, and
 - ii. The Contractor's Invoices and reports produced for the purposes of this contract
 - b. The Contractor's practices and procedures as they relate to this contract, including security procedures
 - c. any matter specified as being subject to audit in the Statement of Work, and
 - d. any other matters reasonably determined by DFAT to be relevant to the performance of the Contractor's obligations under this contract.

20.2. Conduct of audits

- 20.2.1. The Contractor must participate promptly and cooperatively in audits at the frequency and in relation to the matters specified by DFAT acting reasonably, for the purpose of ensuring that this contract is being properly performed and administered. Audits may consider all aspects of the Contractor's performance including but not limited to any performance indicators, benchmarks or targets.

- 20.2.2. Except in those circumstances in which notice is not practicable or appropriate, DFAT must give the Contractor reasonable notice of an audit and, where reasonably practicable, an indication of which documents and/or class of documents the auditor may require.
- 20.2.3. Nothing in this clause 20 limits any right or statutory power or function of an Australian Government Auditor.
- 20.2.4. Subject to any express provisions in this contract to the contrary, each party must bear its own costs associated with any audits.
- 20.2.5. The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this contract.
- 20.2.6. DFAT must use reasonable endeavours to ensure that audits performed in accordance with this clause 20 do not unreasonably delay or disrupt the Contractor's performance of its obligations under this contract.
- 20.2.7. The Contractor must promptly take, at no additional cost to DFAT, corrective action to rectify any error, non-compliance or inaccuracy identified in an audit.

20.3. Access to premises and records

- 20.3.1. An Australian Government Auditor, may, at reasonable times:
 - a. access any premises that are directly or indirectly under the control of the Contractor
 - b. require the provision by the Contractor of any documentation, records and other information or material which are related to this contract, and
 - c. access or inspect any copy, documentation and records or any other information or matter relevant to the Contractor's obligations or performance of this contract, however stored, that are directly or indirectly under the control of the Contractor.
- 20.3.2. The Contractor must ensure that any Subcontract contains equivalent provisions to this clause 20 in respect to the Subcontractor's premises, data, records, accounts, financial material and information of its Personnel.
- 20.3.3. Without limiting any of its other obligations under this contract, the Contractor must, at its own cost, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause 20.
- 20.3.4. The provisions of this clause 20 apply for the Term of this contract and for a period of seven (7) years from the date of its expiry or termination.

21. ARCHIVES

- 21.1.1. The Contractor must:
 - a. not arrange for, nor effect, a transfer of custody or ownership of any Australian Government record without the prior written approval of DFAT, nor will the Contractor remove any such record, except in accordance with arrangements agreed to by DFAT
 - b. where DFAT and the National Archives of Australia authorises the transfer of custody of Australian Government records to the Contractor, comply in every respect with the requirements of the *Archives Act 1983* (Cth)

- c. comply with any direction given by DFAT for the purpose of transferring Australian Government records to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records
- d. at all times:
 - i. permit DFAT to access all Australian Government records in the custody of the Contractor, and
 - ii. facilitate reasonable access to Australian Government records by a requesting Australian Government Agency
- e. comply with Laws providing for public access to Australian Government records, and
- f. on or before the date of termination or expiry of this contract, deliver all Australian Government records in the Contractor's possession or under the Contractor's control to DFAT or, if directed by DFAT, to another party specified in writing by DFAT.

22. OFFSHORE SERVICES AND ACTIVITIES

- 22.1.1. The Contractor must not, without the explicit prior written consent of DFAT, transfer outside of Australia or allow any other person to transfer or access outside of Australia any:
 - a. Security Classified Information, or
 - b. Confidential Information or Personal Information that belongs to or is held by DFAT.
- 22.1.2. The Contractor must ensure that all work and activities are performed in Australia only, except with the explicit prior written consent of DFAT.
- 22.1.3. In relation to any consent given by DFAT under clauses 22.1.1 or 22.1.2, the Contractor acknowledges and agrees that such consent:
 - a. can be subject to any conditions that DFAT considers necessary or desirable, including the
 - b. can have conditions imposed at any time including, on reasonable notice, after consent is given and that all conditions form part of and are enforceable under this contract, and
 - c. can be withdrawn at any time (providing however that DFAT will not exercise this right unreasonably).
- 22.1.4. Without limiting clauses 22.1.1 to 22.1.3.c, any work or activities to be performed offshore (including the transfer of information offshore) must also be covered by an Offshore Management Plan, which must be Certified by DFAT in accordance with clause 6. Where future work or activities are to be performed offshore, and are not covered by the Offshore Management Plan, the Contractor must submit an amendment to the plan in accordance with clause 6.4 for Certification by DFAT. Until the amendment is certified by DFAT, the Contractor may not perform that work or activity offshore.

23. SECURITY

23.1. General security

- 23.1.1. The Contractor must comply, and must ensure that its Personnel comply, with:

- a. all relevant provisions of the Protective Security Policy Framework and Australian Government Information Security Manual
 - b. all relevant provisions of DFAT's security policies
 - c. any Additional Security Requirement specified in the Contract Details or an Official Order, and
 - d. any variations, or additions, to those security and other requirements that DFAT, in its absolute discretion, notifies the Contractor in writing, from the date specified in the notice, or within 5 Business Days after it receives the notice if no date is specified.
- 23.1.2. If a variation to security requirements pursuant to clause 23.1.1.d has cost implications for the Contractor that the Contractor can substantiate and that cannot be avoided after due and proper consultation with DFAT, DFAT will not unreasonably refuse a variation proposal made by the Contractor in respect of the recovery of such reasonable and necessarily additional costs as may be actually incurred and substantiated by the Contractor.
- 23.1.3. Without limiting any other provision of this contract, where Security Classified Information is in the possession or control of the Contractor, the Contractor must ensure that all Facilities used for the storage, processing, handling, transmission and disposal of the Security Classified Information meet the requirements of this contract for the relevant security classification of the information.
- 23.1.4. The Contractor acknowledges and agrees that access to Security Classified Information of at least SECRET may be involved in the routine performance of the Contractor's obligations under this contract.

23.2. Personnel security

- 23.2.1. All persons (in this clause 23 referred to as 'Designated Persons') whom the Contractor proposes to carry out work or perform duties under or in support of this contract and who will be required, while carrying out some or all of that work or performing some or all of those duties, to:
- a. have access to Security Classified Information or Official Resources
 - b. hold a particular kind of security clearance (including a level of security clearance identified in the Statement of Work or relevant Official Order), the details of which have been notified to the Contractor by DFAT
 - c. enter any secure areas in DFAT's or other Commonwealth Government buildings or places, or
 - d. work with DFAT's Personnel for extended periods,
- must be authorised in writing by DFAT under this clause 23 to carry out that work or perform those duties.
- 23.2.2. the Contractor must provide to DFAT, in the form required by DFAT, such information and consents as DFAT from time to time reasonably requests for the purpose of allowing DFAT to undertake reasonable investigations for the purposes of this clause 23.
- 23.2.3. Except as otherwise specifically provided in this contract or otherwise agreed in writing, the Contractor will, if requested to do so, reimburse DFAT for the reasonable costs and expenses it incurs in the authorisation of a Designated Person. The Contractor and the Designated Person must bear their own costs in respect of authorisation, including with respect to obtaining required security clearances.
- 23.2.4. DFAT must not unreasonably withhold authorisation of a Designated Person and must advise the Designated Person or the Contractor either that it:

- a. has authorised that person to carry out work or perform duties under this contract (i.e. that they are an Authorised Person), and the type and level of clearance given and the date from which, or the period during which, those clearances will be effective, or

- b. refuses to authorise to carry out such work or perform such duties,

and, if requested, the Designated Person or the Contractor must acknowledge receipt of that advice.

23.2.5. The Contractor must take reasonable steps to inform itself of and regularly review relevant information and circumstances concerning each Authorised Person and advise DFAT promptly in writing of any relevant information or change in the circumstances of an Authorised Person that, in the Contractor's reasonable opinion, might affect DFAT's assessment of the person as an Authorised Person.

23.2.6. DFAT may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular Authorised Person and, in such event, must notify the Contractor accordingly. Any such action by DFAT must not in any way limit or diminish the Contractor's obligation to strictly perform all its obligations under this contract.

23.2.7. Without prejudice to any other right or remedy of DFAT under this contract or at Law, where DFAT withdraws, limits or suspends the authorisation of a person under this clause 23.2, the Contractor must, if required by DFAT and without inconvenience or cost to DFAT, propose and make available another person for authorisation by DFAT under this clause 23.2 within a reasonable time.

23.3. Information security

23.3.1. The Contractor must not permit any of its Personnel to have any access to Security Classified Information unless:

- a. the relevant member of its Personnel has been cleared to the appropriate security level
- b. DFAT has given written authority under this clause 23
- c. the relevant person has undergone the training (if any) specified in the Contract Details or relevant Official Order or otherwise reasonably required by DFAT relating to access and use of Security Classified Information, and
- d. the relevant person has a legitimate and genuine need to know the relevant Security Classified Information for the purposes of this contract.

23.3.2. The Contractor must immediately notify DFAT on becoming aware or suspecting that any unauthorised person has had or may have had access to Security Classified Information.

23.3.3. The Contractor must not perform any Service, or transfer any Security Classified Information or Confidential Information of DFAT, outside of Australia, without specific prior written approval of DFAT.

23.4. Legislative requirements

23.4.1. The Contractor acknowledges that:

- a. section 121.1 of the Schedule to the *Criminal Code Act 1995* (Cth) (the Criminal Code) states that the term 'Commonwealth officer' includes an individual 'who is a contracted service provider for a Commonwealth contract' and also an individual who is 'an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract',

- b. its attention has been drawn to Part 5.6 of the Criminal Code which creates certain secrecy-related offences, and
 - c. any unauthorised access, destruction, alteration, addition or impediment to access or usefulness of data stored in any computer or information system in the course of performing this contract may be an offence under Part 10.7 of the Criminal Code for which there are a range of penalties, including imprisonment.
- 23.4.2. The Contractor acknowledges that in performing this contract, it may become subject to certain statutory provisions relating to security and security issues, and it undertakes to ensure that any relevant member of the Contractor's Personnel involved in providing or supporting the provision of the Services or otherwise performing obligations in respect of this contract are relevantly aware of, and comply, with those statutory provisions.
- 23.4.3. Without limiting clause 23.4.2, the Contractor must:
- a. inform its Personnel who will have access to DFAT's documents, Materials or information that contain Security Classified Information, of the provisions of:
 - i. Part 5.6 of the Criminal Code, and
 - ii. Part 10.7 of the *Criminal Code Act 1995* (Cth), and
 - b. prior to giving such access, ensure the person to be given such access has provided DFAT with an acknowledgment that the person is aware of the provisions of the legislation listed in this clause 23.4.3.

23.5. Physical security

- 23.5.1. Where the Contractor is required in the Statement of Work or relevant Official Order to carry out certain activities under this contract on DFAT's premises, or is otherwise requested in writing by DFAT to do so, the Contractor must ensure that it complies.
- 23.5.2. Notwithstanding clause 23.5.1, the Contractor may only access DFAT's premises (including any area licensed to the Contractor related to this contract) so long as the Contractor complies with the requirements of DFAT set out in this contract (and as may otherwise be notified to the Contractor by DFAT from time to time) and, in any event, must immediately vacate such premises and cease such access if notified to do so by DFAT.
- 23.5.3. The Contractor must safeguard, and must ensure that its Personnel safeguard:
- a. any keys or passes or other relevant access, identification or authentication items or information, or
 - b. any Material detailing access or security arrangements or that could otherwise compromise security,
- that are provided to the Contractor in the course of this contract.
- 23.5.4. The Contractor must protect any Official Resources that are in its possession or under its control in the manner that DFAT would be required to protect those Official Resources if they were in the possession or under the control of DFAT, including by ensuring that any Official Information is not accessible by unauthorised persons.

23.6. Return of Assets

- 23.6.1. Except as may be specifically agreed to the contrary by DFAT in writing, the Contractor must promptly return (or account for, if return is not possible) to DFAT all Security Classified Information, Material and Assets obtained by the Contractor as a result of this contract:
- a. upon termination or expiry of this contract for any reason

- b. when the relevant Security Classified Information, Material or Asset is no longer reasonably required to be held by the Contractor for the purposes of this contract, or
 - c. when requested by DFAT to do so.
- 23.6.2. Where return of Security Classified Information, Material or Asset is not reasonably possible due the nature of storage in the Contractor's systems or other reasons agreed in writing by DFAT, the Contractor must ensure that this material is promptly (or in such time frame as may otherwise be agreed by DFAT in writing) and irretrievably erased or destroyed in accordance with the requirements of the Protective Security Policy Framework and Australian Government Information Security Manual and the erasure or destruction is confirmed in writing to DFAT.
- 23.6.3. To the extent that return of Security Classified Information, Material or Asset in accordance with clause 23.6.1.c constitutes a Force Majeure Event affecting the ability of the Contractor to perform the Services it will be dealt with in accordance with clause 30.

23.7. Preventing loss and misuse of data

- 23.7.1. The Contractor agrees to take all steps necessary to prevent deletion or loss of DFAT data (including any Material, Security Classified Information and other information or data) while in the possession or under the control of the Contractor, including where such data is located on DFAT systems, unless deletion is approved in advance by DFAT or is otherwise authorised under this contract.
- 23.7.2. The Contractor agrees to put in place all necessary protections to prevent misuse of DFAT data, whether by Contractor personnel or any third party. For the purposes of this clause 23.7.2, misuse of data includes any use or access to data by any person who is not authorised by DFAT or the Contractor (acting reasonably and in accordance with its obligations under this contract) to access or use that data.

23.8. Security reports

- 23.8.1. The Contractor agrees to supply written security reports to DFAT in a form and at the times specified in accordance with this contract, or as otherwise may be reasonably required by DFAT, which reports must include, as a minimum, the following security information:
- a. all Security Incidents, including steps taken by the Contractor to address these
 - b. perceived security problems
 - c. where appropriate, recommendations for security improvements
 - d. proposed and actual changes in Contractor Personnel, and
 - e. any other security information reasonably required by DFAT from time to time.
- 23.8.2. In addition to clause 23.8.1, the Contractor must also notify DFAT immediately on becoming aware of a Security Incident having occurred, and promptly confirm the report in writing to DFAT.

23.9. Security training

- 23.9.1. If specified in the Contract Details or relevant Official Order, the Contractor must, and must ensure that all relevant members of its Personnel must, undertake the specified training, or as may otherwise be specified on reasonable notice in writing to the Contractor during the period of this contract.

24. PROTECTION OF PERSONAL INFORMATION

24.1. Obligations of the Contractor in relation to Personal Information

- 24.1.1. The Contractor acknowledges that to the extent that it provides Services under this contract that it is a Contracted Service Provider.
- 24.1.2. The Contractor agrees to the extent that the Contractor has access to or deals with Personal Information in connection with this contract:
- a. not to do any act or engage in any practice which, if done or engaged in by DFAT would be a breach of an Australian Privacy Principle
 - b. to comply with any directions, guidelines, determinations or recommendations referred to or relating to Personal Information given by DFAT, to the extent that they are not inconsistent with the requirements of this clause 24, and
 - c. to notify DFAT immediately if the Contractor becomes aware of a breach of this clause 24 or its equivalent by itself or any Subcontractor.
- 24.1.3. The Contractor agrees to ensure that any Subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this contract imposes on the Subcontractor the same obligations that the Contractor has under this clause (including this requirement in relation to Subcontracts).
- 24.1.4. The Contractor agrees to indemnify DFAT in respect of any loss, liability, damage or expense suffered or incurred by DFAT which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 24.1, or a Subcontractor under the subcontract provisions referred to in clause 24.1.3.

24.2. Data Breach

- 24.2.1. If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this contract or its provision of Items or Services, the Contractor agrees to:
- a. notify DFAT in writing as soon as possible, which must be no later than within 3 days, and
 - b. unless otherwise directed by DFAT, carry out an assessment in accordance with the requirements of the Privacy Act.
- 24.2.2. Where the Contractor is aware that there are reasonable grounds to believe there has been, or where DFAT notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this contract or its provision of the Items or Services, the Contractor must:
- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates
 - b. unless otherwise directed by DFAT, take all other action necessary to comply with the requirements of the Privacy Act, and
 - c. take any other action as reasonably directed by DFAT.
- 24.2.3. The Contractor agrees to notify DFAT immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 24.2.

25. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

25.1. Confidential Information not to be disclosed

- 25.1.1. Subject to clause 25.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party or use it for any purpose otherwise than strictly for the purposes this contract.

25.2. Written undertakings

- 25.2.1. DFAT may at any time require the Contractor to arrange for any person having access to DFAT's Confidential Information pursuant to this contract to give a written undertaking in a form reasonably required by DFAT relating to the use and non-disclosure of DFAT's Confidential Information.
- 25.2.2. If the Contractor receives a request under clause 25.2.1, it must promptly arrange for all such undertakings to be given.

25.3. Exceptions to obligations

- 25.3.1. An obligation of a party under clause 25.1 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed in accordance with the provisions of this contract by a party to its Personnel for the sole purpose of, and only to the extent strictly necessary to, comply with its obligations, or to exercise its rights, under this contract
 - b. is made available by a party to its management Personnel on a 'need to know basis'
 - c. is made available by a party to its auditor or a professional adviser on a 'need to know basis' and in such circumstances where they are legally bound to comply with confidentiality and security requirements no less stringent than under the terms of this contract
 - d. is disclosed by DFAT for use by any Minister of the Australian Government
 - e. without limiting the application of this clause 25.3.1, is disclosed by DFAT in response to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia, for information
 - f. is used by DFAT or disclosed to, and used by, another agency, where this serves the Australian Government's legitimate interests
 - g. is authorised or required by Law to be disclosed
 - h. is in or comes into the public domain otherwise than due to a breach of this clause 25
 - i. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party, or
 - j. has been independently developed or acquired by the receiving party.

25.4. Obligation on disclosure

- 25.4.1. Where a party discloses Confidential Information to another person:
- a. pursuant to clauses 25.3.1.a, 25.3.1.b, 25.3.1.c or 25.3.1.f the disclosing party must:
 - i. notify the receiving person that the information is Confidential Information, and

- ii. not provide the information unless the receiving person agrees to keep the information confidential, or
- b. pursuant to clauses 25.3.1.d or 25.3.1.e, the disclosing party must notify the receiving party that the information is Confidential Information.

25.5. Period of confidentiality

- 25.5.1. Except as otherwise may be agreed in writing, all Confidential Information must remain confidential until it becomes available from a legal public source without restriction.

25.6. No reduction in other obligations

- 25.6.1. Nothing in this clause 25 derogates from any other obligation a party may have at Law, or under any deed or agreement, in respect to confidentiality, privacy, protection of personal information, security or information protection.

25.7. Additional Confidential Information

- 25.7.1. The parties may agree in writing after the date of this contract that certain information is to constitute Confidential Information for the purposes of this contract.
- 25.7.2. Where the parties agree in writing after the date of this contract that certain information is to constitute Confidential Information for the purposes of this contract, that documentation is incorporated into, and becomes part of this contract, on the date by which both parties have signed that documentation.

25.8. Publicity or promotion

- 25.8.1. The Contractor must not use DFAT as a reference site, or mention DFAT (either directly or in terms such as might reasonably lead a person to conclude that DFAT was being referred to) or use DFAT's name in any customer list or in any promotion or form of publicity without the express and specific prior written consent of the DFAT Project Manager.

26. INTELLECTUAL PROPERTY RIGHTS

26.1. Licensed Products

- 26.1.1. The Contractor hereby grants (or will ensure the relevant Contractor entity grants) in respect to each Contractor Licensed Product, and in respect of Third Party Licensed Products will ensure on or before delivery the relevant rights owner grants to DFAT, an irrevocable and non-exclusive licence to hold and use each such Licensed Product on such other terms as may be set out in the Statement of Work and to:
 - a. make such number of backup, archival or other non-production use copies of the Licensed Product as DFAT reasonably requires to support DFAT's ordinary production use of the Licensed Product and that such copies may be held and used for non-production purposes beyond the ordinary period of the licence to the extent this is reasonably necessary by extract data or comply with statutory requirements relating to access to government records or archives, and
 - b. transfer the licence to another Australian Government Agency, at no cost, subject to prior written notice to the Contractor and subject further to the other agency consenting to the terms of the licence.

- 26.1.2. The Contractor acknowledges and agrees that nothing in any licence for a Contractor Licensed Product diminishes or affects any right of DFAT under the *Copyright Act 1968* or any other relevant law in respect of Intellectual Property Rights.
- 26.1.3. For each Contractor Licensed Product, the Contractor will ensure that on or before delivery of that Licensed Product the Contractor provides to DFAT all Source Code, object code, scripts and other items required for the purposes of installation or Maintenance of that Licensed Product.
- 26.1.4. The provisions of this clause 26, and any licence rights or other terms applicable to Licensed Products in the Statement of Work, apply notwithstanding any provision to the contrary in any licence agreement in respect of a Licensed Product agreed to by DFAT with the Contractor, unless and only to the extent agreed to the contrary in writing by DFAT with express reference to this clause 26.

26.2. Ownership and Licensing of Material

- 26.2.1. Intellectual Property Rights in all Foreground Material vest on their creation in DFAT.
- 26.2.2. Intellectual Property Rights in all Background Material are retained by the Contractor or the relevant third party rights owner. However, in respect of all Background Material, the Contractor grants (or will procure) a non-exclusive, worldwide, permanent, irrevocable, royalty-free licence for DFAT to use, reproduce, modify, adapt, communicate, publish, perform and exploit that Background Material (including a right to sub-licence on the same terms) for any purpose in conjunction with the Foreground Material.

26.3. Source Code

- 26.3.1. For all Developed Software, the Contractor must ensure that on or before delivery of that Software, the Contractor provides to DFAT a software package containing all Source Code, object code, scripts and other items associated with the Developed Software.

26.4. Licensing of DFAT Material for the Services

- 26.4.1. Where DFAT provides any Material to the Contractor for a specific purpose in respect of the performance of this contract, DFAT grants to the Contractor:
- a. a revocable, royalty free, non-exclusive licence to use, reproduce, modify and adapt that DFAT Material in Australia only for that purpose during the Term of this contract, and subject to any additional limitations or other conditions advised by DFAT to the Contractor, and
 - b. except as otherwise may be specified by DFAT, the right to grant a sub-licence to Approved Subcontractors on the same terms and subject to the same limitations.

27. FURTHER ASSURANCE AND MORAL RIGHTS

27.1. Further assurance

- 27.1.1. Each of the parties agrees to join in and execute such further instruments as may be necessary to give full effect to the intent of clause 26 regarding the allocation of Intellectual Property Rights.

27.2. Moral Rights

- 27.2.1. For the purposes of clause 27.2.2 'Specified Acts' in relation to any Foreground Material or Background Material, means the following classes or types of acts or omissions:

- a. those that would, but for this clause 27, infringe the author's right of attribution of authorship, and
- b. those that would, but for this clause 27, infringe the author's right of integrity of authorship,

but does not include:

- c. those that would infringe the author's right not to have authorship falsely attributed.

27.2.2. Prior to each item of Foreground Material, Background Material or Contractor Licensed Product being provided to DFAT or used in provision or support of the Services, the Contractor must obtain from the author(s) of that item a written consent to the Specified Acts being performed by any person in respect of that item.

27.2.3. The Contractor must promptly provide DFAT with an original of any consent referred to in clause 27.2.2 if requested by DFAT.

28. REPRESENTATIONS AND WARRANTIES

28.1. Representations and warranties

28.1.1. Without limitation to any other provision of this contract, the Contractor represents and warrants to DFAT as follows:

- a. no Intellectual Property Right or Moral Right of any person will be infringed as a result of:
 - i. the Contractor's provision of any Item or Service in performing any of its obligations pursuant to this contract
 - ii. DFAT's holding or using any Item or Service, or exercising any other right it has in accordance with this contract
- b. no information or Material provided or otherwise made available by the Contractor to DFAT pursuant to or connected with this contract breaches any obligation of confidentiality to any third party
- c. the Services, including each Item and each element of the Services as delivered, complies with the Statement of Work and all relevant Specifications and is fit for the purpose for which it will be used
- d. each Item provided by the Contractor is free from Latent Defect
- e. all Items provided under this contract are suitable for installation in, and operation under, normal environmental conditions (except as specifically agreed to the contrary by DFAT)
- f. the Contractor is not party to any arrangement or understanding that might require the Contractor to provide access to or possession or control of Security Classified Information (either directly or indirectly (for example by access to or possession or control of Material, equipment or Facilities containing Security Classified Information)) to a third party
- g. the Contractor is not subject to any actual or potential Conflict of Interest and, to the best of the Contractor's knowledge and belief, no relevant member of its Personnel is subject to any actual or potential Conflict of Interest, and the Contractor is satisfied that no actual or potential Conflict of Interest is likely to arise during the Term of this contract
- h. the Contractor has the requisite title, interests, rights, power and authority to enter into this contract and to carry out the obligations contemplated by this contract

(and without limitation is duly authorised to assign or grant any licence in respect of, or otherwise deal with all relevant Intellectual Property Rights as required by this contract)

- i. the Contractor is registered for GST, has notified DFAT of its correct Australian Business Number and is not aware of any fact or circumstance that might result in its registration for GST being cancelled or suspended
- j. the Contractor has specifically disclosed in writing to the DFAT Contract Authority prior to making this representation and giving this warranty:
 - i. any litigation or proceeding whatsoever, actual or threatened, against the Contractor that is material to any Item or Service or other matter related to this contract
 - ii. the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Contractor that is material to any Item or Service or other matter related to this contract, and
 - iii. matters relating to the commercial, technical or financial capacity of the Contractor (or of any Subcontractor proposed to be engaged in respect of this contract, where known to the Contractor) that may materially inhibit or adversely affect the ability of the Contractor to fully and properly perform its obligations pursuant to this contract, and
- k. the Contractor does not have any judgement or binding decision of any kind against them (not including decisions under appeal) relating to employee entitlements, work health or safety, or workers' compensation, that have not been paid or otherwise satisfied and complied with.

28.2. Reliance on representations and warranties

- 28.2.1. The Contractor acknowledges that DFAT has executed this contract and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause 28.
- 28.2.2. The Contractor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of DFAT in deciding to enter into this contract or to exercise any right or perform any obligation under it.

28.3. When representations and warranties are made

- 28.3.1. The representations and warranties in clause 28.1 are taken to be repeated on each date on which any Fee is due in respect of this contract, on the basis of the facts and circumstances as at that date.

29. RISK MANAGEMENT

29.1. Risk Management Plan and workshops

- 29.1.1. The Contractor must develop and maintain a Risk Management Plan consistent with the risk management methodology and processes specified by DFAT. The Risk Management Plan is to include:
 - a. the framework for risk and issue management that complies with industry standards including processes for identifying the risk, who is responsible for the risk, its likelihood, consequence, impact and proposed mitigations

- b. a register of identified risks and issues for the Services, including assessment in accordance with DFAT's specified risk management methodology
 - c. the specific proposed risk mitigation strategies, and
 - d. any other information or requirements as specified in the CDRL.
- 29.1.2. The Contractor must attend and facilitate or contribute to risk management workshops as required by DFAT.
- 29.1.3. As necessary during the Term, and following each risk management workshop, the Contractor must update the Risk Management Plan and the risk and issue register to reflect changes to risks and mitigation strategies and obtain Certification from DFAT of the updated plan in accordance with the process in clause 6 of this contract.
- 29.1.4. The Contractor agrees to deliver the Services, and provide proactive management of risks and issues, in accordance with the Certified Risk Management Plan.

29.2. Unconditional Financial Undertaking

- 29.2.1. If requested at any time by DFAT, the Contractor must provide security in the form of an unconditional and irrevocable financial undertaking (in this clause 29.2 referred to as 'the Security') from an Australian trading bank having a branch in Canberra or such other financial institution approved by the DFAT Contract Authority in writing. The Security provided must be in a form acceptable to the DFAT Contract Authority and must be for a minimum amount of:
- a. the aggregate amount of all advance payments made by DFAT at any time under this contract, or
 - b. any amount reasonably determined by DFAT as being required to ensure the Contractor can meet its obligations in respect of any indemnity or other relevant provision of this contract or any potential Liability that DFAT might suffer should the Contractor default under this contract or other relevant risk exposure of DFAT to the Contractor.
- 29.2.2. The Security must be provided, if requested by DFAT:
- a. not less than 14 days prior to the date any advance payment is required to be paid by DFAT, or
 - b. otherwise within 14 days of notification from DFAT that the Security is required and the amount is determined in accordance with clause 29.2.1.b.
- 29.2.3. Without prejudice to clause 29.2.1.b, the Contractor acknowledges that the amount specified in the Contract Details as the 'on request' amount for the Unconditional Financial Undertaking is an amount reasonably determined by DFAT as one that can be required at any stage to ensure the Contractor can meet its obligations under or related to this contract generally.
- 29.2.4. Notwithstanding any other provisions of this contract, DFAT must not be obliged to make any payments under this contract, whether or not such payments are due, prior to receipt of the Security duly executed, and where applicable stamped, in accordance with clause 29.2.1.
- 29.2.5. Costs incurred by the Contractor in obtaining and maintaining the Security pursuant to clause 29.2.1 will be met by DFAT in accordance with the Price Schedule.
- 29.2.6. On each occasion where an Official Order is issued by DFAT to the Contractor, DFAT (acting reasonably) may increase the amount of the Security (as may be specified in the Official Order) to reflect any risks of liability associated with Items and Services that are included in the Official Order that were not expressly required to be provided under this contract at the Commencement Date.

29.3. Performance Guarantee

29.3.1. The Contractor must, within 14 days of a request from DFAT, lodge with DFAT a properly executed deed of guarantee by guarantor, approved in writing by DFAT guaranteeing the performance of the obligations and the discharge of the liabilities of the Contractor under this contract. The deed of guarantee must be in a form acceptable to the DFAT Contract Authority.

29.4. Insurance

29.4.1. Without limiting the Contractor's obligations under this contract, the Contractor must arrange and maintain with a reputable insurance company acceptable to DFAT (and must ensure its Subcontractors are covered by or independently have), insurance as specified in the Contract Details for the Term of this contract or, in respect of professional indemnity insurance, the Term of this contract plus seven years (or such other period as may be specified).

29.4.2. The Contractor must, on request from time to time by DFAT, produce to DFAT, satisfactory evidence of such insurance.

29.4.3. The insurances referred to in this clause 29.4 must, if the Contractor does not already hold such a policy, be effected from the date required by DFAT and must be maintained for the period required by DFAT.

30. FORCE MAJEURE

30.1. Force Majeure Event

30.1.1. If a party is affected, or likely to be affected, by a Force Majeure Event that party (the *affected party*) must promptly notify the other of that fact and all relevant details including:

- a. full particulars of the Force Majeure Event
- b. an estimate of its likely duration
- c. the obligations affected by it and the extent of its effect on those obligations
- d. the steps taken to mitigate it, and

subject to clauses 30.1.2 and 30.1.3, the obligations under this contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

30.1.2. Where DFAT disputes any circumstance is a Force Majeure Event, the circumstances will not be a Force Majeure Event unless the outcome of Dispute dealt with in accordance with clause 32 deems it to be so.

30.1.3. The Contractor may not claim a Force Majeure Event that interferes with its ability to perform this contract where such interference would not have occurred had the Contractor fully complied with its obligations under this contract and fully implemented the requirements of any Certified Data Items including in respect of backup, disaster recovery and business continuity.

30.2. Best endeavours to be used to overcome Force Majeure Event

30.2.1. A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

30.3. Rights of the non-affected party

- 30.3.1. During any period that a party is not performing any obligation because of a claimed Force Majeure Event, all corresponding obligations of any other party are also suspended or abated (for example the other party has no liability to payment for Items and Services not actually provided) and the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the party claiming the Force Majeure Event is not performing, without incurring any liability to the party claiming the Force Majeure Event. Where it is reasonable for such alternative arrangements to extend beyond the duration of the original Force Majeure Event (for example due to a minimum contract term with an alternative provider or because of transition requirements) the period of suspension of relevant obligations under this clause 30 must continue until such alternative arrangements expire or are no longer necessary.

31. EXTENSION OF TIME FOR PERFORMANCE

31.1. Excusable delay

- 31.1.1. The Contractor will be entitled to postponement of the meeting of a Milestone or delivery of Items or Services, to the extent that the failure of DFAT to perform an obligation imposed on it under this contract within the timeframe specified in the contract:
- a. unreasonably delays the Contractor in the performance of its obligations under the contract
 - b. is beyond the reasonable control of the Contractor
 - c. could not have been reasonably contemplated or allowed for by the Contractor and provided that the Contractor:
 - d. submits to DFAT a proposal for a variation to the contract requesting postponement of the meeting of a Milestone or delivery of an Item or Service and an assessment of the additional costs (if any) associated with such postponement
 - e. demonstrates to DFAT's reasonable satisfaction that work under the contract cannot be performed in such a way to meet the Milestone or delivery of an Item or Service in accordance with the requirements of the contract as a direct result of DFAT's failure
 - f. makes all reasonable endeavours to minimise the delay and mitigate both parties' losses, and
 - g. supports the proposal for a variation with substantiating documentation in respect of the delay and any claimed costs to the satisfaction of DFAT.
- 31.1.2. The postponement of the meeting of a Milestone or delivery of an Item or Service that is accepted by DFAT under clause 31.1.1 must not be for a period longer than the duration of the delay giving rise to the Contractor's proposal under clause 31.1.1.d.
- 31.1.3. Unless and until a proposal for a variation to the contract is approved by DFAT, the Contractor is fully responsible for any potential or actual delay in achievement of a Milestone or the delivery of any Item or Service and any loss, damage, cost or expense arising from the delay or failure to deliver.

32. DISPUTE RESOLUTION

32.1. Resolution at operational level

- 32.1.1. If any Dispute arises, the parties must at first instance endeavour to resolve it by discussion and agreement between their relevant operational representatives.

32.2. Referral to executive management

- 32.2.1. A party to a Dispute may at any time by written notice to the other party request that the Dispute be referred for resolution by their respective executive management. Within 5 Business Days of such request, each party must by written notice to the other party:
- a. nominate a member of its executive management with authority to settle the Dispute to represent it in discussions
 - b. ensure that its nominated executive manager is reasonably available to discuss the Dispute and nominate a range of times and venues when discussions can take place, and
 - c. provide a written summary of what it sees as the issues in Dispute and other relevant facts or information that will assist the executive managers in discussing the Dispute.
- 32.2.2. All nominated executive managers must make every effort to meet and otherwise progress discussions aimed at resolving the Dispute.

32.3. Mediation available at any time

- 32.3.1. At any time a Dispute remains unresolved, the parties agree to participate in good faith in confidential mediation of the Dispute to be administered on a without prejudice basis by a mediator appointed by the Australian Commercial Disputes Centre Limited¹ (ACDC) on the application of any party (or by such other mediator as is mutually agreed). Such mediation must be conducted in accordance with the ACDC's mediation rules and take place in Canberra (or at such other location and/or in accordance with such rules as are mutually agreed).

32.4. Other action

- 32.4.1. If within 14 days of a request to refer a Dispute to executive management in accordance with clause 32.2, the nominated executive managers have not met or the Dispute otherwise remains unresolved, then subject to this clause 32, any party may commence litigation to resolve the Dispute.
- 32.4.2. Nothing in this contract prevents a party seeking an injunction or other interlocutory relief at any time.

32.5. Continued performance of obligations despite Dispute

- 32.5.1. The parties must at all times continue to perform this contract and otherwise comply with their obligations pursuant to this contract (other than in respect of any payment that is subject to Dispute) despite the existence of any Dispute.

¹ Australian Commercial Disputes Centre Limited A.C.N. 003 042 840
<http://www.acdcltd.com.au/> tel : (02) 9267 1000

33. REMEDIES

33.1. Rectification by the Contractor

- 33.1.1. Without prejudice to any other right or remedy of DFAT pursuant to this contract or at Law, the Contractor must at its own cost rectify any faulty Item or Service or remedy any other breach of the Contractor as may reasonably be required by DFAT.

33.2. Rectification by DFAT

- 33.2.1. Without prejudice to any other right or remedy of DFAT pursuant to this contract or at Law, if the Contractor fails to provide any Item or Service or carry out any work in accordance with this contract, or otherwise does not comply with this contract, then DFAT may replace or supplement the Item or Service or otherwise make good or remedy the breach of or non-compliance with this contract by the Contractor and may offset the reasonable cost of such action against any amount otherwise payable to the Contractor or treat the amount as a debt due from the Contractor.

33.3. Step-in

- 33.3.1. Without prejudice to any other right or remedy under this contract or at law, if any alleged default or non-performance by the Contractor under this contract substantially prevents, hinders, degrades, delays or threatens any DFAT function, accountability, or operation (whether generally or the specific provision of the Services) as a whole or at any location, DFAT may, at its option and on written notice to the Contractor, take control (either directly or through its agents) of all or part of the Contractor's operations relating to this contract (including systems and equipment) at any relevant site.

- 33.3.2. Notwithstanding the generality of clause 33.3.1, DFAT may exercise its rights under this clause 33.3 where the Contractor:

- a. fails to ensure that DFAT does not breach any of its contractual commitments under the terms of any software licence, or other contract, licence, instrument, memorandum of understanding or intra/inter-governmental arrangement of any kind which the Contractor is managing or has compliance responsibilities under this contract
- b. breaches any of its obligations under clause 23 (Security)
- c. fails to exercise an option existing under any licence or other relevant instrument, or
- d. fails to rectify a breach of any obligation existing at Law, including without limitation in respect of work health and safety.

- 33.3.3. Where DFAT exercises its rights under this clause 33.3:

- a. the Contractor must co-operate fully with and use its best endeavours to assist DFAT (and its agents) in every way possible, which, without limitation must include making available all Contractor Personnel and resources normally available to perform or support the provision of the Services or the discharge of the Contractor's obligations under this contract
- b. DFAT is not obliged to use any of the Contractor's Personnel, operations or resources, and
- c. DFAT may, at its discretion, where DFAT is exercising such rights on Contractor premises, require the Contractor to vacate any relevant part of the relevant work site to the extent reasonably necessary to facilitate DFAT's exercise of those rights.

- 33.3.4. The Contractor will not be liable for Services to the extent that they are performed by the Contractor or its agents (other than Contractor Personnel) under this clause 33.3.
- 33.3.5. DFAT may hand back the operations it has taken control of pursuant to clause 33.3.1 at any time on 12 hours' notice, providing however that the hand back must occur once any dispute regarding the alleged default or non-performance by the Contractor is resolved.
- 33.3.6. The Contractor will not be entitled to receive any Fee for operations under the control of DFAT pursuant to this clause 33.3.
- 33.3.7. Subject to clause 33.3.4, nothing in this clause 33.3 limits the Contractor's liability or obligations under this contract including with respect to any default or non-performance.
- 33.3.8. To the extent that DFAT has any liability as a result of taking action under this clause 33.3, DFAT will only be liable to the Contractor for any losses incurred by the Contractor arising directly out of the unlawful, wilfully wrongful or negligent act or omission of DFAT or any replacement service provider engaged by DFAT in taking control of the operations.

33.4. Adjustment of Fees for delay

- 33.4.1. Where the Contractor fails to fully and properly comply with any obligation under this contract, then if an amount has been specified in a relevant schedule to this contract, an Official Order or Project Plan, or is otherwise agreed in writing between the parties as an amount (Liquidated Damages) that is to be payable by the Contractor to DFAT in respect to the relevant matter, and DFAT notifies the Contractor that it intends to rely on this clause 33.4, the Contractor must pay the Liquidated Damages in respect of each such day of delay during the currency of that notice that the non-compliance is continuing.
- 33.4.2. Any notice by DFAT under clause 33.4.1 of an intention to require the payment of the Liquidated Damages is:
 - a. revocable by notice to the Contractor, and
 - b. unless DFAT notifies the Contractor in writing to the contrary, must in any event be automatically revoked and no longer apply should the non-compliance last more than 60 days.
- 33.4.3. The parties agree that the Liquidated Damages are an adjustment to Fees only and are not a penalty or an admission in respect of the quantum of loss suffered by DFAT and does not limit or affect DFAT's ability or right to prove and recover any loss or damage that would otherwise be recoverable at Law except in respect of the delay during the time in which a notice by DFAT under clause 33.4.1 is in effect.

34. INDEMNITIES

34.1. General Indemnity

- 34.1.1. The Contractor indemnifies, and must at all times defend and hold harmless the Australian Government, DFAT and its Personnel from any and all Claims and Liability arising out of, or in connection with any of the following:
 - a. any breach of any of the Contractor's obligations in clause 23 (Security), clause 25 (Confidentiality and Disclosure of Information), and clause 24 (Protection of Personal Information)
 - b. any allegation that any Item or Service (including DFAT's use or rights in respect of any Item or Service) or any act of the Contractor in relation to this contract infringes any Intellectual Property Right or Moral Right of any person

- c. any failure to comply with, or breach, of any Law, or
 - d. any wilfully wrong, fraudulent or malicious act or omission, by the Contractor or any of the Contractor's Personnel.
- 34.1.2. For the purposes of clause 34.1.1.b, an infringement of Intellectual Property Rights includes unauthorised acts that would constitute an infringement but for the operation of:
- a. the *Copyright Act 1968* (Cth) s 183
 - b. the *Patents Act 1990* (Cth) s 163
 - c. the *Designs Act 2003* (Cth) s 96, or
 - d. the *Circuits Layout Act 1989* (Cth) s 25.
- 34.1.3. It is not necessary for DFAT to incur expense or make payment before enforcing a right of indemnity conferred by this contract.

34.2. Continued use or replacement of infringing material

- 34.2.1. If a Claim of infringement of Intellectual Property Rights or Moral Rights is made or threatened by any person, the Contractor must at the Contractor's expense, if requested by DFAT to do so, use its best efforts to either:
- a. obtain for DFAT and / or itself all necessary rights necessary to remove the Claim, or
 - b. replace or modify the relevant Item or Service so that the alleged infringement ceases so long as the Item or Service continues to fully comply with its Specifications and all other relevant obligations of this contract. Without limiting the foregoing, DFAT may subject any such replaced or modified Item or Service to Acceptance Testing.

34.3. Conduct of settlement negotiations and defence of Claims

- 34.3.1. Where DFAT wishes to enforce an indemnity under this contract, DFAT must:
- a. notify the Contractor in writing as soon as practicable, and
 - b. subject to the provisions of this clause 34.3, must reasonably permit and assist the Contractor, at the Contractor's expense, to handle all negotiations or settlement and, as permitted by Law, to control and direct any litigation that may follow.
- 34.3.2. In defending DFAT or otherwise dealing with any Claim in accordance with clause 34.3.1.b, the Contractor must comply with the provisions of the Commonwealth Attorney-General's Legal Services Directions issued under section 55ZF of the *Judiciary Act 1903* (Cth) (the *Legal Services Directions*) as if the Contractor were DFAT.
- 34.3.3. The Contractor must also:
- a. keep DFAT informed of any significant developments relating to the conduct of negotiations and the defence of any Claim
 - b. consult with DFAT immediately in circumstances where the requirements stated in the Legal Services Directions, paragraph 2 (Tied work) or paragraph 10 (Sharing of advice within Government) arise, and
 - c. provide to DFAT, information and documentation reasonably requested by DFAT, to enable DFAT to ascertain whether the defence by the Contractor of any Claim or any negotiation or other relevant matter is being conducted in accordance with the provisions of the Legal Services Directions and DFAT's best interests.

34.3.4. The information and documentation that the Contractor is obliged under clause 34.3.3 to provide to DFAT includes information and documentation covered by legal professional privilege or any other confidentiality obligation.

34.4. Additional rights of the DFAT

34.4.1. In the event of the failure of the Contractor to comply with this clause 34, DFAT may, without prejudice to any other right of action or remedy that DFAT may have, suspend any payment due under this contract until such Claim has been resolved.

35. LIABILITY

35.1.1. The liability of a party for breach of this contract, or in tort (including negligence), or for any other common law or statutory cause of action arising out of the operation of this contract, will be determined under the relevant law of this contract.

35.1.2. Subject to clauses 35.1.3 and 35.1.4 the liability of each party to the other arising pursuant to clause 35.1.1 above is limited to:

- a. \$4,000,000 in respect to any single event or series of related occurrences arising from a single event occurring and \$10,000,000 in the aggregate during the Transition Services Phase;
- b. \$4,000,000 in respect to any single event or series of related occurrences arising from a single event occurring and \$10,000,000 in the aggregate during the Ongoing Services Phase; and

The higher of the values specified in clauses 35.1.2.a and 35.1.2.b applies in the event of any uncertainty regarding whether the event occurred in the Transition Services Phase or Ongoing Services Phase.

35.1.3. The liability cap set out in clause 35.1.2 is subject to change in the following circumstances:

- a. On each occasion where an Official Order is issued by DFAT to the Contractor, DFAT (acting reasonably) may increase the liability cap (as may be specified in the Official Order) to reflect any risks of liability associated with Items and Services that are included in the Official Order that were not expressly required to be provided under this contract at the Commencement Date, and
- b. On each anniversary of the Commencement Date, the liability cap will change by a percentage equivalent to the Consumer Price Index (CPI) for the closest preceding 12 month period for which the CPI is calculated.

35.1.4. The limitation in clause 35.1.2 does not apply in relation to any liability for:

- a. personal injury, including sickness or death
- b. loss of, or damage to, tangible property
- c. infringement of Intellectual Property Rights
- d. a breach of any obligation relating to confidentiality, security, protection of personal information or privacy
- e. a breach of any warranty or representation
- f. any indemnity, or
- g. unlawful or illegal acts or conduct.

36. TERMINATION

36.1. Termination for Contractor default

36.1.1. DFAT may terminate the whole or any part of this contract immediately by notice if:

- a. the Contractor fails to comply with any of its obligations under this contract (other than a failure referred to elsewhere in this clause 36.1.1) and:
 - i. DFAT considers that the failure cannot be remedied, or
 - ii. DFAT considers that the failure can be remedied, and the failure is not remedied within 10 Business Days of the day that DFAT gives notice to the Contractor that the failure must be remedied
- b. a non-compliance with an obligation under this contract reoccurs (which for the purposes of this clause 36.1.1.b must include the occurrence of a related or similar non-compliance) within 40 Business Days of it having been originally remedied in accordance with a notice given under 36.1.1.a.ii
- c. any representation, warranty or statement made by, or repeated by, the Contractor, in or in connection with this contract is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated
- d. DFAT does not issue a Completion Certificate for the Operational Readiness Review, as a result of the failure of the Contractor to adequately meet one or more of the requirements of the Operational Readiness Review
- e. an Insolvency Event occurs in respect of the Contractor or any of its subsidiaries
- f. the Contractor ceases to carry on any business or suspends the carrying on of any business material to its obligations under this contract
- g. the Contractor ceases for any reason to be able lawfully to carry out all the transactions that this document contemplates may be carried out by it
- h. if any matter relating to the Contractor or any of its subsidiaries becomes subject to an investigation under any Law relating to companies, or
- i. any Change of Control occurs in the Contractor or DFAT reasonably claims this to be the case.

36.2. Termination for unacceptable conduct

36.2.1. DFAT may terminate the whole or any part of this contract immediately by notice if the Contractor or Related Party of the Contractor, or Subcontractor has, in the reasonable opinion of DFAT, been involved in any act or omission that will involve DFAT or the Commonwealth Government in significant controversy or cause serious embarrassment to DFAT or the Commonwealth Government, without limitation including:

- a. any involvement in conduct that would amount to a breach of the Law, and
- b. any involvement in conduct that creates doubt about the quality, security, availability or reliability of the Services or the System.

36.3. Termination for convenience

36.3.1. In addition to any other rights it has under this contract, DFAT may at any time and in its absolute discretion terminate the whole or any part of this contract, or reduce its scope, by written notice (i.e. for convenience).

36.3.2. The Contractor acknowledges and agrees that it must take all reasonable action to arrange its affairs to ensure that its involvement in this contract and all matters supporting

it can be terminated, cancelled, unwound or discontinued at minimal cost, expense or damage should DFAT exercise its rights under clause 36.3.1 and will immediately comply with any directions given in the notice by DFAT.

- 36.3.3. The Contractor must do everything possible to mitigate any loss arising out of or otherwise connected with the termination of all or any part of this contract.
- 36.3.4. Subject to the Contractor fully complying with its obligations under clauses 36.3.2 and 36.3.2, DFAT will pay to the Contractor the Early Termination Fees set out in the Price Schedule, unless this right is exercised within 3 months of the Commencement Date, in which case the Contractor's only compensation is payment for work completed and delivered to DFAT as at the date of termination.
- 36.3.5. If a purported termination for cause by DFAT under this clause 36 is determined to be invalid or wrongful by a competent authority, then such termination by DFAT will be deemed to be a termination for convenience under this clause 36.3 and any liabilities DFAT may have to the Contractor for wrongful termination or repudiation will be limited to the amount calculated in accordance with clause 36.3.4.
- 36.3.6. The Early Termination Fees are the maximum amount payable by DFAT to the Contractor in respect of any matter arising out of or directly or indirectly related to the termination or deemed termination of this contract pursuant to this clause 36.3, no matter how arising.

36.4. Termination for Force Majeure

- 36.4.1. If a Force Majeure Event continues for more than 14 days and is continuing, the non-affected party may terminate all or any relevant part of this contract by written notice to the other party.

36.5. Termination for DFAT's default

- 36.5.1. The Contractor may terminate this contract immediately by notice if DFAT fails to comply with any of its obligations in respect of this contract and DFAT has not commenced to remedy that failure within 30 Business Days after the Contractor notifies DFAT to do so or DFAT has not tendered reasonable compensation in respect of its failure to the Contractor within that period.

36.6. Accrued rights

- 36.6.1. Termination of the whole or any part of this contract must not prejudice any right or liability that accrued to a party prior to the date of such termination.
- 36.6.2. If DFAT terminates only part of this contract, the Contractor must continue to perform the remainder of this contract and, subject to any alterations occurring as a result of such termination, DFAT and the Contractor must be subject to the same rights and obligations as existed prior to such partial termination.
- 36.6.3. Without prejudice to any other right or remedy of DFAT pursuant to this contract or at Law, any damages, costs and expenses recoverable by DFAT from the Contractor in consequence of the Contractor's breach of this contract or otherwise payable by the Contractor in respect of this contract may be deducted from money due to the Contractor under this contract and if that money is insufficient for that purpose, the balance remaining unpaid must be a debt due by the Contractor to DFAT and may be recovered from the Contractor by DFAT in any Court of competent jurisdiction.

37. TRANSITION AND DISENGAGEMENT

37.1. Disengagement Plan

- 37.1.1. The Contractor must provide DFAT with a Disengagement Plan in accordance with the Statement of Work and ensure it is Certified in accordance with clause 6. Except to the extent otherwise specifically agreed in writing by DFAT, the Disengagement Plan must, without limiting any other requirements specified in this contract:
- a. include a comprehensive plan for Disengagement of all Services and transition of the Services and performance of ongoing services to any relevant Incoming Service Provider at the end of the Standard Term and each Option Period
 - b. identify the methodologies, processes, key dates or milestones for the Disengagement process
 - c. detail how Disengagement will be managed and quality assured
 - d. include a stakeholder consultation and communication plan detailing how all stakeholders (including the Incoming Service Providers) will have input into the Disengagement
 - e. detail the key roles and responsibilities of DFAT and the Contractor
 - f. include a comprehensive schedule and Project Plan for the Disengagement of all elements of the Services
 - g. include details of the procedures and processes for transferring data, information, documentation, Software licences, Hardware or other system elements of any kind to DFAT and any relevant Incoming Service Provider
 - h. include a comprehensive plan (as relevant) detailing how the Contractor will ensure that DFAT and its Personnel and any relevant Incoming Service Provider will acquire all necessary knowledge, information, skills and experience to enable them to successfully implement the Services into suitable technical environments and operate, maintain and further develop it, and maintain services and Service Levels to the same or better standard as required under this contract, and
 - i. comply with all relevant requirements of this contract.

37.2. Effective conduct of Disengagement

37.2.1. The Contractor must fully and effectively conduct and perform Disengagement in accordance with the Certified Disengagement Plan, this contract and DFAT's reasonable requirements.

37.2.2. The Contractor must ensure that:

- a. all equipment, Facilities, data, information, and Assets of any kind that are:
 - i. used in the provision, performance, management and support of the Services
 - ii. are relevant to any obligation under this contract, or
 - iii. are relevant to ensuring the provision of Ongoing Services to DFAT in a seamless manner and at least at the same Service Levels as under this contract,

are transferred to the ownership and control of DFAT or that DFAT will at all times be in a position to acquire all such things as may be relevant to ensuring the provision of Ongoing Services to DFAT:
- iv. in a seamless manner

- v. and at least at the same Service Levels as under this contract
 - vi. for a known cost, as explicitly stated in the Disengagement Plan, and within the relevant Disengagement Period prior to the relevant Disengagement Date
- b. all Assets of any kind that are in the possession or control of the Contractor are returned to DFAT at a time and in a manner that facilitates the smooth transition of services and continuity of all Service Levels
 - c. that the Contractor will otherwise conduct all Disengagement Services:
 - i. in a manner that will ensure the provision of Ongoing Services to DFAT in a seamless manner and at least at the same Service Levels as under this contract, to the extent this is within the reasonable control of the Contractor
 - ii. as explicitly stated in the Disengagement Plan, and
 - iii. within the relevant Disengagement Period prior to the relevant Disengagement Date
 - d. all knowledge and information relevant to the provision, performance, management and support of the Services and all obligations of the Contractor under this contract, or that are otherwise relevant to ensuring the provision of Ongoing Services to DFAT in a seamless manner, is effectively captured in the Data Items and are available at all times to DFAT in an efficient, effective and easy to understand format, and
 - e. The Contractor at all times takes all reasonable action to arrange its affairs to ensure that they fully support and are directed to effect rapid, full and effective Disengagement in DFAT's best interests, which, without limiting the foregoing will include:
 - i. ensuring any Subcontract, to the extent relevant to this contract, can, and if requested by DFAT, will, be novated or assigned to DFAT so as to support Ongoing Services, and
 - ii. ensuring that no obstacle or impediment is in place or occurs that might prevent or hinder Contractor Personnel from taking up any opportunity with DFAT or an Incoming Service Provider, should they wish to do so.
- 37.2.3. To the extent that an Item:
- a. does not have a known cost explicitly stated in the Disengagement Plan, the Contractor must provide that item to DFAT at no cost, as and when required, and
 - b. is not readily obtainable within the relevant Disengagement Period prior to the relevant Disengagement Date, the Contractor must at its own cost arrange for an interim solution or workaround acceptable to DFAT.
- 37.2.4. The Contractor acknowledges and agrees that DFAT will conduct Acceptance Tests on the Disengagement Services in accordance with clause 7 and that Disengagement will not be successfully completed until DFAT issues the Contractor with an Acceptance Certificate for Disengagement.
- 37.2.5. The Contractor acknowledges and agrees that it is a fundamental term and essential provision of this contract that the Contractor must ensure it has fully and effectively completed all work and tasks and other obligations under the Disengagement Plan and in respect to requested additional Disengagement Services and otherwise in respect to this contract, such that to the best of its ability, and to the extent that it is within its control, any Incoming Service Provider will be able to fully and effectively commence the provision of relevant Ongoing Services as and from the Disengagement Date.

37.3. Payment for Disengagement Services

- 37.3.1. Provided that the Contractor meets the requirements of clause 37.2, and subject to clause 37.3.2, DFAT will pay the Contractor:
- a. the Disengagement Fee for all work, tasks and other activities within the scope of the Disengagement Plan, and
 - b. for additional Disengagement Services that are outside the scope of the Disengagement Plan and are specifically requested to be provided by DFAT, in accordance with an agreed Official Order put in place in respect to those Services.
- 37.3.2. DFAT is not liable to pay
- a. any component of the Disengagement Fee relating to Disengagement consequent on the termination of this contract pursuant to clause 36.1 (termination for default), or
 - b. for any additional Disengagement Services to the extent they are reasonably necessary to achieve proper Disengagement, where that Disengagement is consequent on the termination of this contract pursuant to clause 36.1 (termination for default).

38. DUE DILIGENCE AND ACCOUNTABILITY

38.1. Due diligence

- 38.1.1. The Contractor acknowledges that, on entering this contract, it has made all relevant inspections, has had access to all relevant information and has made all relevant enquires and has taken (and will take throughout the Term of the contract) all due diligence action that the Contractor considers necessary or desirable to perform its obligations under this contract. Any failure of the Contractor to be fully acquainted with all facts, circumstances and conditions affecting its decision to enter into this contract or that might affect any matter related to the provision of any Item or Service or the Services, or any obligation of the Contractor or other matter pursuant or related to this contract, will not relieve the Contractor in any way from its obligation to perform this contract strictly according to its terms.

38.2. Verification of information and Material received from DFAT

- 38.2.1. The Contractor acknowledges that, except to the extent required by Law, DFAT does not make any representation or give any warranty that anything that it provides to the Contractor in relation to this contract, including information or Material of any kind, is complete, comprehensive, accurate, up to date, is error-free, is fit for any purpose or is of merchantable quality or has been provided by the exercise of due skill or care. The use of, and reliance on, such things are at the Contractor's sole risk.

38.3. Accountability

- 38.3.1. The Contractor is accountable for its own decisions in performing this contract and is solely responsible for meeting its obligations and liabilities under this contract, including meeting the requirements of the Statement of Work.
- 38.3.2. The giving of any endorsement, Completion Certificate, Certification, Acceptance, approval, permission, recommendation or comment by DFAT, or any inspection, review, audit or investigation by DFAT, does not in any way affect or reduce the Contractor's obligations or liabilities under this contract or at Law or in any way waive, estop or diminish the rights of DFAT under this contract or at Law.

39. CHANGES TO GOVERNMENT POLICY AND ADMINISTRATION

- 39.1.1. The Contractor acknowledges and agrees that a fundamental objective of DFAT in entering into this contract is to ensure that the arrangement will at all times:
- a. comply with all applicable Commonwealth Government policy, and
 - b. be readily adaptable to ensure the Commonwealth Government will receive the full benefit of the arrangement in circumstances where functions, operations, or accountabilities of DFAT as at the date of this contract are transferred in whole or in part to other Australian Government departments, agencies or legal entities or where the Australian Government considers it desirable for relevant Commonwealth Government departments, agencies or legal entities to coordinate, cooperate, share or leverage arrangements or operations of any kind,
- and accordingly the Contractor agrees to vary, split, replicate or novate this contract (and any associated licence) or take such other action as DFAT requests at any time, so as to fully and properly reflect and support DFAT's and the Commonwealth Government's ongoing requirements including as outlined above.

40. VARIATION

40.1. Variations to be in writing

- 40.1.1. No variation to this contract will be effective unless it is in writing and signed by the parties.
- 40.1.2. In respect of DFAT any variation must be signed (or approved in writing for execution) by the DFAT Contract Authority.

40.2. Variation request

- 40.2.1. DFAT may initiate discussions of a proposed variation of this contract by issuing a formal request for a proposal to the Contractor containing details of the requirements that DFAT wishes to be met.

40.3. Variation proposal

- 40.3.1. Within 10 Business Days after receipt of a variation request in accordance with clause 40.2, the Contractor must provide DFAT with a formal variation proposal.
- 40.3.2. The Contractor may also on its own initiative at any time propose a variation to this contract by submitting a variation proposal to DFAT, for example in respect of an innovation proposal.
- 40.3.3. A variation proposal must (except as specified in any variation request):
- a. be in writing
 - b. be signed and dated by the Contractor's Representative
 - c. include an executive summary outlining the proposal
 - d. contain full details of how the Contractor intends to meet the requirements of any variation request, including:
 - i. itemised Fees and Costs together with all supporting evidence reasonably necessary to support the price or costing and how it was calculated
 - ii. any assumptions underlying the proposal

- iii. any resources or requirements expected from DFAT
 - iv. all perceived risks and suggested risk mitigations
 - v. relevant timetables specifying how and when the requirements are proposed to be met, and
 - vi. any impact on the terms and conditions and schedules of the existing contract.
- 40.3.4. Any variation proposal must be on terms consistent with this contract (unless this is impossible given the nature of the proposed variation) and the pricing must be no less favourable to DFAT than that specified in (or underlying) this contract.
- 40.3.5. No fee is payable by DFAT in respect of the preparation of a variation proposal or any related matter.

40.4. Acceptance of a Variation proposal

- 40.4.1. DFAT may, at DFAT's sole discretion, accept any variation proposal. Any such acceptance may be subject to negotiation on amendments to the proposal with the Contractor.
- 40.4.2. DFAT may request that the Contractor provide further detail or clarify any aspect of a variation proposal, and the Contractor must do so within a reasonable time from request.
- 40.4.3. DFAT must, within a reasonable time of the receipt of a variation proposal (and subject to any negotiation and/or receipt of further details requested by DFAT) advise the Contractor's Representative either that it:
- a. wishes to proceed with the variation proposal, or
 - b. does not wish to proceed the variation proposal.
- 40.4.4. If DFAT wishes to proceed with a variation proposal, the DFAT Contract Authority will prepare a formal contract variation to this contract to implement the variation.
- 40.4.5. Until such time as a formal contract variation document is executed by both parties in accordance with clause 40.1, no commitment of any kind is made by DFAT in respect of a proposed variation or any related matter, whether or not DFAT has formally or informally indicated it wishes to proceed or accepts any variation proposal.

41. MISCELLANEOUS

41.1. Notices

- 41.1.1. A notice under this contract must be in writing and, unless otherwise provided in this contract, be addressed to the address of the other party specified at the Contract Details as the address for notices (or as may be altered by notice given in accordance with this clause 41.1), and e-mailed, left at or sent by prepaid post to that address.
- 41.1.2. A notice given in accordance with this clause 41.1 is deemed to be received:
- a. if e-mailed, on receipt of the e-mail in the recipient's e-mail system, and
 - b. if left at the recipient's address or sent by prepaid post, on the date of delivery.

41.2. Other provisions

- 41.2.1. The Contractor may not make any public statement about this contract unless it has obtained DFAT's prior written consent. DFAT will not withhold its consent if and to the extent that the Contractor is required to make the public statement by Law or to a stock exchange under its listing requirements.

- 41.2.2. The parties agree to bear their own legal and other costs and expenses of, and incidental to, the preparation, execution and completion of this contract and of any related documentation.
- 41.2.3. Nothing in this contract or any circumstances associated with it or its performance give rise to any relationship of joint venture, partnership or employer and employee between DFAT and the Contractor or between DFAT and any Contractor Personnel or any Approved Subcontractor.
- 41.2.4. If a party has a right arising from the other party's failure to comply with an obligation under this contract and delays in exercising or does not exercise that right (in whole or in part), that delay in exercising or failure to exercise is not a waiver of that right or any other right.
- 41.2.5. Any waiver of any provision of or right under this contract must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.
- 41.2.6. DFAT may assign its rights or transfer its obligations under this contract without the Contractor's prior consent.
- 41.2.7. The Contractor may not assign its rights or transfer its obligations under this contract unless it obtains DFAT's prior written consent.
- 41.2.8. This contract may be executed in several counterparts, all of which taken together will constitute one single contract between the parties.
- 41.2.9. Unless the contrary intention appears, completion of performance or the expiration or termination of this contract must not affect the continued operation of any provision relating to:
- a. ownership or licensing of Intellectual Property Rights
 - b. security
 - c. Confidential Information
 - d. the protection of Personal Information
 - e. a representation, warranty or an indemnity by the Contractor
 - f. a guarantee, financial undertaking or other security in respect of any matter related to the performance or liability of the Contractor or risk exposure of DFAT to the Contractor related to this contract
 - g. insurance, or
 - h. audit, access and records,
- or any other provision that expressly or by implication from its nature is intended to survive completion of performance or the expiration or termination of this contract.
- 41.2.10. A right, power, remedy, entitlement or privilege given or granted to a party under this contract is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under this contract or by Law.
- 41.2.11. No rule of construction will apply in the interpretation of this contract to the disadvantage of one party on the basis that such party put forward or drafted this contract or any provision of this contract.

EXECUTED as a contract by the parties on the date first recorded above.

Note to Tenderers: the correct signature blocks will be confirmed and inserted once the successful Tenderer has been identified.

Signed for and on behalf
of the Commonwealth of
Australia as represented
by the Department of
Foreign Affairs and Trade
by its duly authorised
officer



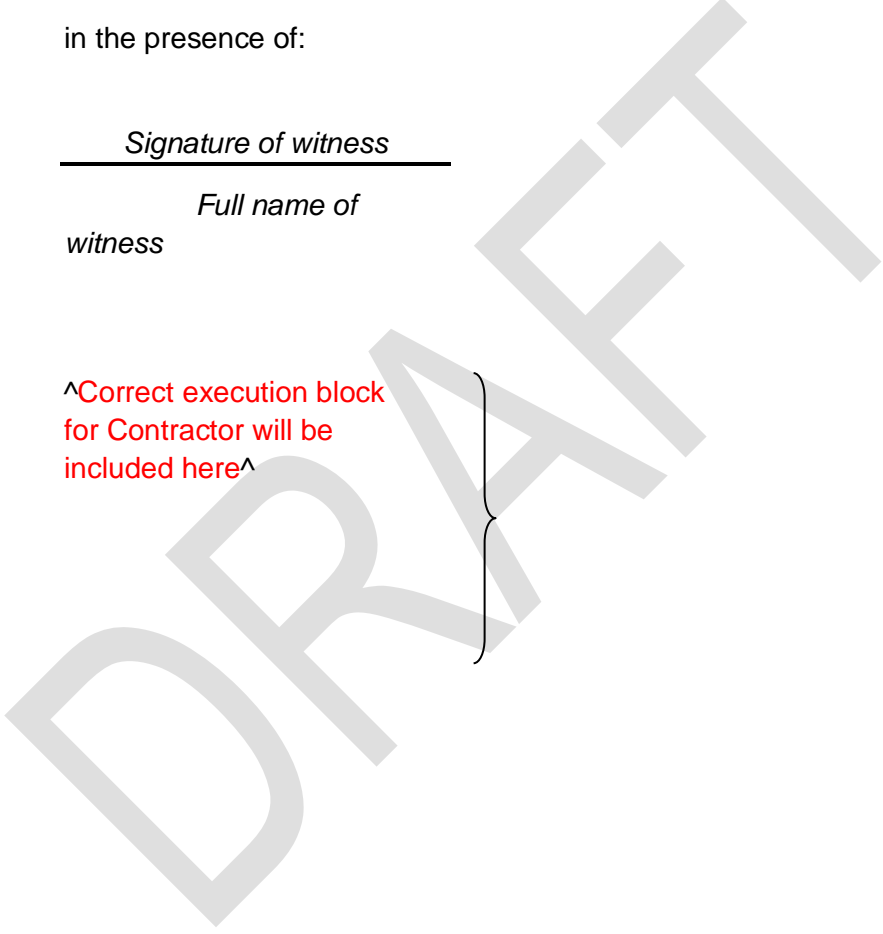
*Signature of DFAT's
authorised officer*

*name and title of
authorised officer*

in the presence of:

Signature of witness
*Full name of
witness*

*^Correct execution block
for Contractor will be
included here^*



Schedule 1 Contract Details

DFAT Contract Number	[Insert Details]
Related DFAT RFT	[Insert Details]
Commencement Date	[Insert Details]
DFAT Project Manager	<p><i>Title:</i> [Insert Details] <i>(Currently:</i> [Insert Name] <i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>Email:</i> [Insert Details]</p> <p>Note to Tenderers: DFAT expects to appoint a different Project Manager for the Ongoing Services Phase.</p>
DFAT Contract Authority	<p><i>Title:</i> Project Director <i>(Currently:</i> [Insert Name] <i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>Email:</i> [Insert Details]</p>
DFAT Address for Notices	<p><i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>E-mail Address:</i> [Insert Details]</p>
DFAT Address for Invoices	[Insert Details]
Contractor Invoice Contact	<p><i>Name:</i> [Insert Details] <i>Title:</i> [Insert Details] <i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>Email:</i> [Insert Details]</p>
Contractor Representative	<p><i>Name:</i> [Insert Details] <i>Title:</i> [Insert Details] <i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>Email:</i> [Insert Details]</p>

Contractor Address for Notices	<i>Physical Address:</i> [Insert Details] <i>Postal Address:</i> [Insert Details] <i>Email Address:</i> [Insert Details]
Contractor Bank Account	<i>Account Name:</i> [Insert Details] <i>Account Number:</i> [Insert Details] <i>BSB:</i> [Insert Details] <i>Bank:</i> [Insert Details] <i>Branch Name / Address:</i> [Insert Details] <i>Contractor email address for receipt of electronic remittance confirmations:</i> [Insert Details]
Specified Personnel	[Insert Details]
Subcontractors Pre-Approved Subcontractors	[Insert Details of specific pre-approved Subcontractors]
Special Security Arrangements Additional Security Requirements Security Training Requirements	[Insert Details] [Insert Details]
Insurance Requirements	<i>Public Liability:</i> [Insert amount] <i>Professional Indemnity:</i> [Insert amount] <i>Product Liability:</i> [Insert Details of cover held by Contractor] <i>Worker's Compensation:</i> As required by Law <i>Other / additional insurance:</i> As required by Law
Unconditional Financial Undertaking Requirements	

Confidential Information	DFAT Confidential information	Period of Confidentiality
	Personal Information	Indefinitely
	Security Classified Information	Indefinitely
	Contractor Confidential information	Period of Confidentiality
	Nil	N/A

Note to Tenderers: DFAT will only agree to keep information confidential in accordance with the Senate Order on Government Contracts and the guidance issued by the Department of Finance on confidentiality through the procurement cycle which can be accessed at:
<https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>

Schedule 2 Contract Definitions

Acceptance Certificate	means a certificate in substantially the same form as the template at Schedule 10 or otherwise in a form specified by DFAT, that is issued by DFAT certifying that an Item or Service has passed its Acceptance Tests, subject to any qualifications stated in the certificate.
Acceptance Criteria	means the criteria that must be met for an Acceptance Test to be passed, as set out in this contract or an Acceptance Test plan.
Acceptance Readiness Certificate	means a certificate in the form reasonably specified by DFAT, issued by the Contractor to DFAT certifying that an Item or Service has passed all tests to be conducted by the Contractor and all other requirements of this contract prior to performance of Acceptance Tests and otherwise fully complies with all relevant Specifications and requirements of this contract and is ready for Acceptance Testing by DFAT.
Acceptance Test	means, in respect of an Item or Service, any test performed or to be performed by DFAT (either directly or by any person on its behalf) pursuant to clause 7, and includes End to End Testing.
Accepted	means, in respect of an Item or Service, that the Item or Service has successfully passed such Acceptance Tests as DFAT decides to conduct and that DFAT has issued its Acceptance Certificate in respect of it.
Additional Security Requirements	means the requirements specified as “Additional Security Requirements” in the Contract Details.
Additional Services	means any additional Items or Services that DFAT may from time to time require the Contractor to provide in accordance with clause 17 including Major Enhancement Projects.
Applicable Standards	means in respect of an Item or Service: <ul style="list-style-type: none">(a) all applicable standards stated in this contract or relevant Official Order(b) all applicable standards or requirements in force in Australia by Law, and(c) to the extent they provide a higher standard, the highest standard set by the latest version of either:<ul style="list-style-type: none">(i) any applicable standard published or endorsed by Standards Australia(ii) any applicable standard published or recognised by the International Organization for Standardization (ISO), and(iii) for physical Items, any applicable standard in force by Law in the place of manufacture (where relevant).
Approved Subcontractor	means a Subcontractor to the Contractor approved by DFAT in accordance with clause 12.1.
Asset	means any DFAT physical or logical asset (including Software and Government Furnished Material) in the possession or control of the

	Contractor as a result of this contract, or for which the Contractor is responsible under this contract.
Australian Accounting Standards	means at any point in time the then current standards published or endorsed by the Australian Accounting Standards Board (a body created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)).
Australian Government Agency	means: <ul style="list-style-type: none"> (a) Commonwealth of Australia represented by a Department of State, or a Department of the its Parliament or an administrative unit thereof (d) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under such legislation (e) a body, established by the Commonwealth Parliament, or either House of the Parliament, or by the Governor-General or by a Minister of State of the Commonwealth (f) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution, and (g) an incorporated company over which the Commonwealth exercises control, acting directly or through an agent.
Australian Government Auditor	means, as the context requires, the Commonwealth Auditor General, or an Information Officer, or the delegate or nominee of any of them; or DFAT and / or an independent person or persons appointed by DFAT, but in no circumstances will the auditor be a direct competitor of the Contractor.
Australian Government Information Security Manual	means at any point in time the current version of the 'Australian Government Information Security Manual' (including any documents, material or information referenced by that publication) or any subsequent replacement publications and includes any published errata, or amendment or supplementary material to such publications, documents, material or information.
Australian Privacy Principle	has the same meaning given in the <i>Privacy Act 1988</i> (Cth).
Authorised Person	means a person authorised under the security provisions in clause 23 to perform or support a Service or other obligation of the Contractor pursuant to this contract.
Background Material	includes any Material that is provided or required to be provided by the Contractor to DFAT pursuant to this contract, or which is reasonably necessary for operation and maintenance of the Services, but excluding Foreground Material and Licensed Products.
Baseline	has the meaning given in clause 3.11.3.b of Schedule 7– Service Levels
Baseline Measurement Period	has the meaning given in clause 3.11.3.a of Schedule 7 – Service Levels

Benchmarker	means the person engaged to perform Benchmarking pursuant to clause 19.
Benchmarking	means the process described in clause 19.1.1.
Billable Volumes	means the billable volumes determined in accordance with clause 3.3 of the Price Schedule.
Business Day	means in respect of the location at which a right or obligation is to be performed pursuant to this contract: <ul style="list-style-type: none"> (a) for locations within Australia, a day not being a Saturday, Sunday or public holiday in that location, or if no such location is specified or reasonably ascertainable, in Melbourne, and (b) for locations outside of Australia, a day which is a business day as recognised by the relevant governmental authority in that jurisdiction.
Cap	has the meaning defined in clause 3.4.1 of the Price Schedule.
Capped Time and Materials Fee	means a Fee with the characteristics set out in clause 3.4 of the Price Schedule.
Certification Criteria	means the criteria which must be met prior to DFAT determining whether it can Certify a Data Item, and which are identified as such in the CDRL as applying to a Data Item. Where no criteria are identified with respect to a Data Item, the Certification Criteria will be as DFAT may advise the Contractor in writing.
Certified	means that DFAT has notified the Contractor in writing that the Data Item has been certified in accordance with the requirements in clause 6.4 of this contract. 'Certifies' and 'Certification' have corresponding meanings.
Change of Control	includes, in relation to a corporation, a change in Control of: <ul style="list-style-type: none"> (a) the composition of the board of directors of the corporation (b) more than half the voting rights attaching to shares in the corporation, or (c) more than half the issued shares of the corporation (excluding any part that carries no right to participate beyond a specified amount in the distribution of either profit or capital).
Claim	includes any dispute, action, application, claim, suit, proceeding, demand, of any kind, whether formal or informal, and whether or not involving any legal, administrative or other process.
Code of Conduct	means any relevant code of conduct including those that operate by force of Law, or are endorsed by any relevant industry association or professional body, or to which a relevant party has formally or informally ascribed.
Commencement Date	means the date specified as the 'Commencement Date' in the Contract Details or, if no such date is specified, the date of execution of this contract by the last party to sign it.
Commonwealth	means the Commonwealth of Australia.

Government

Comparable Services means services which are provided by third parties (or the Contractor) to any person, and which (in the reasonable opinion of the Benchmarker) are substantially similar to a Service or a relevant component of a Service, having regard to relevant factors including the nature and size of supplier/customer, the service levels and volumes, and any particular or unique circumstances in which such services are received/supplied.

Completion Certificate means in respect of a Mandated Service Review, a written certificate (in substantially the same form as the template at Schedule 10 or otherwise in a form reasonably specified by DFAT) issued by DFAT to the Contractor confirming that the Contractor has successfully completed all of the requirements for that Mandated Service Review.

In respect of the Operational Readiness Review only, the Completion Certificate also authorises the Contractor to commence the Ongoing Services, or some element of it, as identified in the Completion Certificate.

Confidential Information means:

- (a) in respect of DFAT's confidential information, any information that is by its nature confidential that is provided by DFAT to the Contractor or that the Contractor otherwise accesses or becomes aware of as a result of this contract and that:
 - (i) is listed as 'DFAT's Confidential Information' in the Contract Details, or
 - (ii) the Contractor knows or ought to know is confidential, and
- (b) in respect of the Contractor's confidential information, any information that is by its nature confidential and:
 - (i) is listed as 'Contractor's Confidential Information' in the Contract Details, or
 - (ii) is otherwise specifically agreed in writing by DFAT in respect of this contract to be confidential.

Conflict of Interest includes engaging or participating in, or otherwise being directly or indirectly involved in or associated with, any activity or relationship, or directly or indirectly obtaining any interest or benefit, that does or might reasonably be seen to conflict with or restrict, diminish or potentially compromise the Contractor's, or a member of the Contractor's Personnel's, willingness or ability to perform or support any Service or security requirement or any other obligation of the Contractor under this contract in a fair, objective or independent manner or to act in good faith and in the best interests of DFAT.

Consumer Price Index means at any point in time the difference between the 'Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities)' as published by the Australian Bureau of Statistics at that point in time ('Current CPI') and one year earlier ('Base CPI'), expressed as a percentage of the Base CPI, or if that index is discontinued or materially altered, the relevant change, expressed as a percentage, in such

substitute index (or adjustment to that Consumer Price Index) as may be agreed by the parties.

Contract Data Requirements List (CRDL)	means the schedule to this contract headed 'Contract Data Requirements List' which includes the list of deliverable Data Items under the contract and the completion dates for delivery of these Data Items.
Contract Definitions	means the definitions as set out in Schedule 2 to this this contract.
Contract Details	means Schedule 1 or, in respect of an Official Order, any equivalent document contained in that Official Order.
Contracted Service Provider	has the same meaning given in the <i>Privacy Act 1988</i> (Cth).
Contractor Bank Account	means the bank account of the Contractor specified as the 'Contractor Bank Account' in the Contract Details or such other account as the Contractor advises to DFAT with at least 20 Business Day's prior written notice from time to time.
Contractor Licensed Product	means a Licensed Product other than a Third Party Licensed Product.
Contractor Representative	means, in respect of the Contractor, the person specified as the 'Contractor Representative' in the Contract Details or as otherwise may be notified by the Contractor to DFAT from time to time.
Control	includes control or a power or ability to control that is direct or indirect or is or can be, exercised as a result of, by, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Correctly Rendered Invoice	means an Invoice submitted only where permitted and strictly in accordance with this contract by the Contractor to DFAT that meets the requirements set out below. <ul style="list-style-type: none">(a) Unless otherwise specified by DFAT, it is a single Invoice in respect of all Items and Services that have been fully and completely provided in accordance with this contract during the Invoice Period to which it relates.(b) The Invoice is properly delivered to DFAT at its notified address for invoices under this contract.(c) The Invoice details all Fees, credits, discounts, and allowances relating to the Invoice Period.(d) The amount specified in the Invoice as payable is correctly calculated and is due for payment in accordance with this contract.(e) The Invoice is set out in a manner that enables DFAT to ascertain the DFAT Official Order (if any) relevant to each item to which the Invoice relates and the amount payable in respect of each of those items.(f) The Invoice is a valid Tax Invoice in respect of all Taxable Supplies.

- (g) The Invoice includes a break-down of Fees, including (where applicable) all Fees charged on a time and material basis to enable DFAT to ascertain the individuals who have provided relevant Services, the time spent by the individual in providing those Services and the narrative that explains the nature of the individual's work over the period covered by the Invoice.
- (h) The Invoice is accompanied by:
 - (i) a comprehensive statement of account, and
 - (ii) where necessary, or where reasonably requested by DFAT, any other verifying or supporting documentation.

Cost	means the actual cost payable after taking into account all discounts, allowances, adjustments, rebates, waivers, offsets, conditions or other mechanisms or benefits of any kind to the Contractor or any Related Party, that reduces (or has, or may have, the effect of reducing) the invoiced or ostensible cost payable or incurred.
Cure Plan	means a detailed written plan in accordance with clause 15.5 to assist in remedying a breach of this contract by the Contractor or address a Fault, Service Incident or Security Incident and its underlying causes (and to ensure that no similar breach or incident occurs).
DFAT	means the Commonwealth of Australia acting through and represented by DFAT and includes, as relevant, any Commonwealth Government Agency that is from time to time responsible for the supervision or administration of all or any relevant part of this contract or the provision or use of any Item or Service under this contract, or that is performing any relevant function or responsibility that is or was performed at any relevant time by DFAT.
DFAT Contract Authority	means, at a relevant point in time, the person occupying the post specified (or the post held at the date of this contract by the person specified) as the 'the DFAT Contract Authority' in the Contract Details or as otherwise may be notified by DFAT to the Contractor from time to time.
DFAT Data	means all relevant data and information relating to DFAT, or its clients or other stakeholders, operations, facilities, Personnel, plans, objectives, policies, procedures, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed through any system by or on behalf of DFAT and includes any data and information created as a result of any Service.
DFAT Personal Information	means Personal Information that is accessed, used or held by the Contractor as a result of this contract.
DFAT Project Manager	means the post specified (or the post held by the person specified) as the 'the DFAT Project Manager' in the Contract Details or as otherwise may be notified by DFAT to the Contractor from time to time.
DFAT Transition Board	has the meaning it has in the Statement of Work.
Data Item	means any document or Material created, maintained or controlled by the Contractor relevant to this contract, which is identified in the CDRL,

	the Statement of Work, relevant Official Order or which is otherwise notified to the Contractor by DFAT.
Data Item Description	means the description of the format and content required for a Data Item in accordance with the CDRL or relevant Official Order.
Developed Software	means the Software (including the Source Code) created by the Contractor under this contract.
Disengagement	means all work and activities necessary for the Contractor to ensure that the cessation or handover to DFAT or another party or parties of the Services (and where relevant any Service or part of a Service) and operations generally under this contract is fully, properly and professionally planned, documented, communicated, implemented, managed and achieved within the timeframe required by DFAT, and in full consultation and cooperation with all relevant stakeholders, and in DFAT's best interests.
Disengagement Date	means the date of termination or expiry of this contract or, in respect to Disengagement not relating to the termination or expiry of this contract, the date the relevant Item or Service is cancelled, suspended, varied, transitioned or terminated.
Disengagement Fee	means the total not to exceed all-inclusive fee for Disengagement of all or a component of the Services as and when required under this contract, calculated in accordance with the Price Schedule or relevant Official Order and specified in the Certified Disengagement Plan.
Disengagement Period	means the period as specified in the Disengagement Plan during which Disengagement Services are to be provided.
Disengagement Plan	means the plan developed by the Contractor in accordance with clause 37.1 which the Contractor must ensure, is Certified (and at all times remains Certified) and otherwise fully meets the requirements of this contract.
Disengagement Services	means all Services provided (or to be provided) by the Contractor in accordance with the Certified Disengagement Plan or otherwise in respect to Disengagement with respect to all or a component of the Services.
Dispute	means any dispute or difference of opinion between the parties in respect of rights or obligations or any other matter relevant to the due and proper performance of this contract.
Early Termination Fees	means the Fees payable (if any) by DFAT to the Contractor for a termination or reduction of the contract, calculated in accordance with the Price Schedule or relevant Official Order.
Eligible Data Breach	has the same meaning as set out in the <i>Privacy Act 1988</i> (Cth).
End to End Testing	means Acceptance Testing of all of the Services to ensure the Services operate correctly as integrated holistic Services in accordance with the Statement of Work, relevant Official Order and all Specifications.

Exit Criteria	means, in respect of a Mandated Service Review, the criteria specified in the Statement of Work as the 'Exit Criteria' for that Mandated Service Review.
Facility	includes any equipment, system, tool, device, facility, premises, or infrastructure of any kind.
Fault	<p>means any defect, error, malfunction or problem in or arising from an Item, Service or the Services that relates to, arises from, or threatens or results in:</p> <ul style="list-style-type: none"> (a) a non-compliance with any relevant Specification (b) a breach of an obligation of the Contractor under this contract, or (c) interferes with or threatens DFAT's normal production environment <p>and includes any circumstance where such matters are reasonably suspected until such time as they are reasonably established not to apply.</p>
Fee	means any fee or other amount payable by DFAT in respect of this contract as specified in the Price Schedule or a relevant Official Order or as otherwise specifically agreed in writing by the DFAT Contract Authority.
Final Acceptance Certificate	means the Acceptance Certificate issued by DFAT to the Contractor signifying that DFAT has accepted the Services.
Fixed Fee	Means a Fee with the characteristics set out in clause 3.2 of the Price Schedule.
Force Majeure Event	means any occurrence or omission as a result of which the party relying on it is prevented from or delayed in performing any of its obligations under this contract and that is beyond the reasonable control of that party (which for the purposes of this definition will not under any circumstances include any act or omission of any Related Body Corporate or other related entity or Related Party of any kind or, in respect of any matter related to this contract, any act or omission of any Subcontractor), including, where relevant, due to forces of nature, war, riot, civil commotion, failure of a public utility, or industrial action (other than industrial action specifically directed at a party).
Foreground Material	<p>includes any Material that is developed, created or generated for or on behalf of DFAT pursuant to this contract, and also includes:</p> <ul style="list-style-type: none"> (a) any derivatives or modifications of such Material, and (b) all Developed Software.
Glossary	means the Glossary (if any) included within the Statement of Work.
Government Furnished Material (GFM)	<p>means the items (if any) to be provided to the Contractor and set out in either:</p> <ul style="list-style-type: none"> (a) the Statement of Work (b) any Certified Data Item, or

	(c) any relevant Official Order.
GST	has the meaning given to it in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Harmful Code	includes any 'spyware', 'malware', 'worm', 'trojan horse', 'back door', or any computer code or instruction that is designed wholly or partially to adversely affect or disable, under any circumstances, computer programs, or data, or information and communications technology systems, or that circumvents or in any way compromises or interferes with privacy, security, or DFAT's (or, as relevant, an authorised user's) control of data or communications, or that is implemented in a manner that a reasonable user might consider is inappropriate, or that is (or intended to be) surreptitious, misleading, deceptive, or that is implemented in a manner that is in any way lacking full and explicit disclosure to or fully informed and explicit consent by DFAT (and, as relevant, each authorised user), or that is (or intended to be), disruptive, malicious, misleading, vexatious or harmful (other than any specific feature or function that DFAT has explicitly directed the Contractor to include).
Incident	means any Fault, Service Incident or Security Incident in accordance with clause 15.4 of the contract.
Incoming Service Provider	means any person appointed by DFAT (including DFAT itself) to provide any service of the same or similar kind to a Service that the Contractor is providing pursuant to this contract, following the expiry or termination of this contract, or the cancellation, suspension or variation of a Service in whole or in part.
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act.
Innovation Benefits Statement	means a document which meets the requirements of clause 11.8.5.
Insolvency Event	means, for a person or entity, as relevant, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act, and or any analogous person under any other relevant Law) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act (or any analogous provision under any other relevant Law) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act or any analogous provision under any other relevant Law), entering into a compromise or arrangement with, or assignment

for the benefit of, any of its members or creditors, or any analogous event.

Intellectual Property Rights	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trade marks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the personal rights of performers or rights in relation to Confidential Information.
Invoice	means a Contractor invoice under (and compliant with) this contract.
Invoice Period	means the period to which a Fee relates as set out in the Pricing Tables in Appendix 1 of the Price Schedule.
Item	means each component of the Services (excluding a Service), including each individual product or deliverable, Licensed Product and instance of Software, equipment and Material, that is provided (or is proposed to be provided or, where relevant, can be required by DFAT to be provided) by the Contractor pursuant to this contract.
Latent Defect	includes any Fault or defect or non-compliance with any relevant Specification that would not be specifically detected by a reasonable Acceptance Test.
Law	means any applicable law, without limitation, including common law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).
Liability	includes any loss, damage, cost, expense, suffered or incurred in any way or liability of any kind (including any excess or deductibility under any policy of insurance and all reasonable legal costs and expenses on a solicitor and own client basis).
Licensed Product	means an Item that is licensed rather than sold and is specifically indicated as such in the Price Schedule or other relevant schedule to this contract or Official Order.
Liquidated Damages	means an amount identified as 'Liquidated Damages' in the Pricing Schedule or any other part of this contract or relevant Official Order.
Maintenance	means those activities identified as Maintenance Services in the Statement of Work.
Major Enhancement Project	has the meaning given in the Statement of Work.
Mandated Service Review	means a formal review process by which the Contractor's completion of part or all of a phase is reviewed and accepted by DFAT issuing a Completion Certificate.
Manufacturer	includes where the context permits any relevant developer, manufacturer, assembler, 'OEM', distributor, producer, primary or other provider, importer, or 'value added' reseller of any kind including the Contractor.

Material	includes any data, or anything that is the subject matter of any category of Intellectual Property Rights in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions.
Measurement Hours	has the meaning given in clause 2.3 (Measurement Hours) of Schedule 7 – Service Level Agreement.
Milestone	means an event specified as a ‘milestone’ or key event or date (no matter how expressed) in a Project Plan, the Program Timetable or any other document forming part of this contract including the Statement of Work or relevant Official Order.
Moral Rights	includes the following rights of an author of copyright material: <ul style="list-style-type: none"> (a) the right of attribution of authorship (b) the right of integrity of authorship, and (c) the right not to have authorship falsely attributed.
Official Information	means any information developed, received or collected by or on behalf of the Australian Government, through its agencies and contracted providers.
Official Order	means a formal [Agency] order for the provision of Items or Services pursuant to this contract.
Official Resources	includes Official Information, people who work for or with the Australian Government, assets in the possession of the Australian Government and assets belonging to the Australian Government, whether in the Australian Government’s possession or in the possession of its contractors or agents or any other person.
Offshore Management Plan	means the plan developed by the Contractor in accordance with clause 22.1.4 which if required, the Contractor must ensure, is Certified (and at all times remains Certified) and otherwise fully meets the requirements of this contract.
Ongoing Services	means the Ongoing Services as specified in the Statement of Work.
Ongoing Services Phase	means the phase described in clause 5 of this contract.
Operational Readiness Review	means the Mandated Service Review entitled the ‘Operational Readiness Review’ as set out in the Statement of Work.
Option Period	means an extension of the duration of this contract in accordance with clause 2.
Pass-Through Fee	means a Fee with the characteristics set out in clause 4 of the Price Schedule.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personnel	includes a party's officers, employees, agents, contractors and Subcontractors (and, where relevant, each agent's, contractor's and Subcontractor's personnel) relevant to this contract, but unless the context otherwise requires, does not include the other party.
Preventative Maintenance	means scheduled maintenance (including the provision of parts, labour and materials) specified in this contract, notified to the Contractor by DFAT or that is otherwise reasonably necessary to ensure that an Item (including any item that is used in providing or supporting a Service) remains in good working order and will not be subject to undue Faults.
Price Schedule	means the schedule to this contract headed 'Price Schedule'.
Pricing Table	means the pricing tables contained in Appendix 1 to the Price Schedule.
Priority Levels	has the meaning given in Schedule 7 – Service Levels, clause 2.4 (Priority Levels) and Appendix 1.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Production Environment	means the ICT environment in which the System will be installed in production.
Program Timetable	means the schedule to this contract headed 'Program Timetable'.
Project Plan	<p>means a detailed written Contractor plan related to a requirement under this contract, which without limitation includes:</p> <ul style="list-style-type: none"> (a) the relevant plans prepared by the Contractor for the supply, delivery, installation, commissioning and decommissioning of relevant Items, elements of the Services and the Services as a whole (b) the relevant plans prepared by the Contractor for the transition to, implementation, performance and Disengagement of a Service or series of related Services, and (c) any project plan related to a Cure Plan <p>that the Contractor must ensure sets out the relevant tasks, resources, timetable (with accompanying Milestones and other checkpoints), dependencies, contingencies, 'critical path' and other details reasonably expected to form part of a professional project plan and complies with any other relevant requirements of this contract.</p>
Protective Security Policy Framework	means at any point in time the current version of the Australian Government 'Protective Security Policy Framework' (including any documents, material or information referenced by that publication) or any subsequent replacement publications and includes any published errata, or amendment or supplementary material to such publications, documents, material or information.
Rectification Completion Certificate	means, in respect of any Acceptance Test failure, Service Incident, Security Incident, Fault or other relevant matter, a written certificate (in a form reasonably specified by DFAT) issued by the Contractor to DFAT to confirm that all rectification work has been completed in respect of that matter.

Regulatory Agency	means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity, ombudsman or authority and includes a Minister of the Crown (in any right).
Related Body Corporate	means a related body corporate within the meaning given to that term in Section 9 of the Corporations Act.
Related Party	means: <ul style="list-style-type: none"> (a) a related party within the meaning given to that term in Section 9 of the Corporations Act, and (b) any entity or person with whom any dealing, association, or relationship with in the relevant context might involve a Conflict of Interest.
Remedial Maintenance	means unscheduled maintenance necessary to rectify any Fault and restore any Item or Service so that it conforms to its Specifications, is safe to use and is in good working order.
Representative	means, as the context requires: <ul style="list-style-type: none"> (a) in the case of the Contractor, the Contractor Representative, or (b) in the case of DFAT, the DFAT Contract Authority or the DFAT Project Manager.
Resolution Time	means, in respect of Maintenance, the timeframe specified for a particular issue category in the Statement of Work or relevant Official Order as the time in which the Contractor must resolve the issue or Fault.
Resource Unit	means a measurable unit of a chargeable resource utilisation for a Service for the purposes of measuring the volume of supply and Fees for that Service.
Response Time	means, in respect of Maintenance, the timeframe specified for a particular issue category in the Statement of Work or relevant Official Order as the time in which the Contractor must log the issue and commence investigation in respect of the Fault or, if no such time is specified, 30 minutes.
Risk Management Plan	means the plan developed by the Contractor in accordance with clause 29.1.1 which the Contractor must ensure, is Certified (and at all times remains Certified) and otherwise fully meets the requirements of this contract.
Scheduled Price	means, in respect of an Item or Service, the price listed in respect of that Item or Service in the Price Schedule.
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Australian Government.
Security Incident	means any actual or suspected breach of security (whether relating to information, logical, physical or system security or otherwise), or any contact, request or approach from any person seeking unauthorised access to Security Classified Information or prevent, or circumstance

that highlights any actual or potential security vulnerability or which identifies a potential threat to security.

Services	means the comprehensive solution including all Items and elements of the Services to be provided by the Contractor under this contract to meet DFAT's requirements stated in this contract, and includes a specific service provided or to be provided by the Contractor under this contract and includes any Items to be provided or delivered as part of, or incidental to, that Service (which unless otherwise specifically agreed to the contrary in writing by DFAT includes provision of all data created in the course of provision of the Service).
Service Incident	means any incident, fact or circumstance that does or reasonably might cause a disruption to a Service or affect the quality or timeliness of a Service as normally provided pursuant to this contract or that might involve a breach of the Contractor's obligations under this contract.
Service Level	means, in respect to a Service, the agreed standard/s of performance in respect to that Service, as set out in the Service Level Agreement or otherwise in this contract (including the Statement of Work or any relevant Official Order, or as otherwise may be formally and specifically agreed in writing by the parties).
Service Level Agreement	means Schedule 7 of this contract.
Service Credit	is calculated in accordance with clause 3 of Schedule 7– Service Level Agreement.
Service Credit Cap	is defined in clause 3.3 of Schedule 7– Service Level Agreement.
Service Level Definition	means the Service Level definition as set out in Appendix 2 to Schedule 7.
Software	means any computer program (including Source Code, object code, micro code, firmware, any software tools, software objects or object libraries embedded in that software or otherwise forming part of it) and all Materials relating to that software and/or its design, development, modification, operation, support or maintenance of it and includes any new version or modifications or upgrade to such software.
Source Code	means the source code to any computer software (including any relevant module, function, procedure or object) and includes any software tools, software objects or object libraries embedded in that software or otherwise forming part of it and all Materials relating to that software and/or its design, development, modification, operation, support or maintenance (which, except as otherwise specifically agreed in writing by DFAT, must be in English).
Specification	includes in respect of any Item or Service, or any relevant component of any of them, as the context requires: <ul style="list-style-type: none">(a) any relevant functional, operational, performance or other requirement or specification (whether mandatory or optional) specified in this contract (including a schedule to this contract or a relevant Official Order)(b) for an Item, the Manufacturer of the Item's published

specifications for the Item together with its features, functions, method of operation, characteristics and other information as described in any manual published by the Manufacturer in respect of the Item, as at the date of this contract (and, to the extent that they provide for a higher or additional standard, in any subsequent specification or manual published by the Manufacturer at the date of supply of the Item or during any period in that the Contractor is required to supply, maintain or repair or reinstate the Item in accordance with this contract, and

(c) any Applicable Standard, and

to the extent of any inconsistency between any of the above, whichever DFAT in its absolute discretion nominates.

Specified Personnel	means the Contractor's Representatives and any other Contractor Personnel who are specifically identified to perform a particular role or function, or are specified as 'Specified Personnel' in this contract (including a schedule to this contract or a relevant Official Order).
Standing Offer	means the standing offer in clause 17.1.
Statement of Work	means the schedule to this contract headed 'Statement of Work'.
Subcontract	includes any direct or indirect contract or other arrangement between the Contractor and a Subcontractor relevant to this contract.
Subcontractor	includes, in respect of the Contractor: <ul style="list-style-type: none">(a) the ultimate and each intermediate provider of any task or service or part of any task or service, that forms part of a Service (other than the Contractor itself, and(b) any person who performs any obligation in respect to this contract for or on behalf of the Contractor.
Support	means those Services identified in the Statement of Work as Support Services.
Supported Item	means any Item or Service for which the Contractor is required to provide Maintenance and/or Support in accordance with clause 5, the Statement of Work or otherwise in respect of this contract or any Official Order.
System	means DFAT's Enterprise Resource Planning System.
Tax	means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by an Australian Government Agency (or any agency of a foreign government), together with any related interest, penalty, fine or other charge.
Tax Invoice	means a 'tax invoice' as defined in the GST Act.
Taxable Supply	means a 'taxable supply' as defined in the GST Act.
Term	means the total duration of this contract, including all Option Periods.
Third Party Licensed Product	means a Licensed Product the licensor of which is a third party and not the Contractor or a Related Party of the Contractor.
Time and Materials Fees	means a Fee with the characteristics set out in clause 3.3 of the Price Schedule.

Transition Close Review	means the Mandated Service Review entitled the 'Transition Close Review' as set out in the Statement of Work.
Transition Readiness Review	means the Mandated Service Review entitled the 'Transition Readiness Review' as set out in the Statement of Work.
Transition Services	means the Transition Services as specified in the Statement of Work.
Transition Services Phase	means the phase described in clause 4 of this contract.
Unit Fee	means a Fee with the characteristics set out in clause 3.3 of the Price Schedule.
Virus	means a computer program 'virus' or computer code or instructions that 'infects' a host file without the knowledge of an innocent user and that can spread or replicate itself (whether in the same or mutated form) by infecting other files on the computer system on which the host file is resident or other computer systems to which the host file may be transferred.
Warranty Period	means the period specified as the Warranty Period for an Item, or the period specified in an Official Order (if any), or such period as may be otherwise agreed in writing between the parties in respect of an Item, during which the Contractor will provide Maintenance in respect of that item as part of its purchase price, licence or Fee (as the case may be).

Schedule 3 Price Schedule

Note to Tenderers: Please see Schedule 3 – Price Schedule draft attached

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Schedule 4 Program Timetable

<i>No.</i>	<i>Milestones</i>	<i>Completion Date</i>
1	The Transition Services Phase commences.	3 February 2020
2	Transition Readiness Review (TRR) is successfully completed in accordance with the Contract.	28 February 2020
3	Operational Readiness Review (ORR) is successfully completed in accordance with the Contract.	30 April 2020
4	Commencement of the Ongoing Services.	4 May 2020
5	Transition Close Review (TCR) is successfully completed in accordance with the Contract.	31 May 2020

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Schedule 5 Statement of Work

Note to Tenderers: The Statement of Work as negotiated with the successful Tenderer will be included in this Schedule.

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Schedule 6 Contract Data Requirements List (CDRL)

Note to Tenderers: The CDRL from the RFT will be included in this Schedule.

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Schedule 7 Service Level Agreement

Note to Tenderers: Please see Schedule 7– Service Level Agreement draft attached. The SLA as negotiated with the successful Tenderer will be included in this Schedule.

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Note to Tenderers: Any draft Data Items that the Contractor submitted with its tender that are required to be updated/finalised and Certified will be included in this Schedule.

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Completion Certificate – [insert name of Mandated Service Review]

This Completion Certificate is issued by DFAT on _____.

Contract:	Contract in relation to enterprise resource planning system support, maintenance, enhancements and related services dated [insert date]
Contractor:	[insert]
DFAT Project Manager:	[insert]
Mandated Service Review name:	[insert]
Value (\$):	[insert]
Required completion date:	[insert]
Actual completion date:	[insert]
Exit Criteria:	<ol style="list-style-type: none"> 1. [insert] 2. [insert] <p><i>(Attach supporting documentation as required)</i></p>
Conditions or open issues:	[insert]
Certification:	<p>The Contractor has successfully completed all of the requirements of the Mandated Service Review listed above, subject to the conditions or open issues specified in this certificate.</p> <p>[For Operational Readiness Review only: DFAT authorises the Contractor to conduct the Ongoing Services on and from [date] as follows:</p> <ul style="list-style-type: none"> • [insert details of Ongoing Services to be provided and for which service categories (if all are required, then this could be deleted)]
Signature:	
Name:	
Title:	
Date:	

Acceptance Certificate

This Acceptance Certificate is issued by DFAT on _____.

Contract:	Contract in relation to enterprise resource planning system support, maintenance, enhancements and related services dated [insert date]		
Contractor:	[insert]		
DFAT Project Manager:	[insert]		
Item(s) and/or Service(s):	Acceptance Test Criteria:	Pass	Fail
[insert]	[insert]		
[insert]	[insert]		
[insert]	[insert]		
Acceptance:			
DFAT accepts the following Item(s) and/or Service(s), subject to the conditions specified in this certificate			
Conditions of Acceptance:			
[Insert any special conditions relevant to acceptance / partial acceptance of the Item(s) and or Service(s) eg specify if the Contractor must deliver a work-around or must otherwise rectify any outstanding Fault within a set time frame]			
Comments:			
[Insert any comments relevant to acceptance of the Item(s) and/or Service(s)]			
Signature:			
Name:			
Title:			
Date:			

Official Order template

Official Order number	[insert]
Context	This Official Order is placed pursuant to and subject to the terms and conditions of the Contract between DFAT and [insert name of Contractor] dated [insert date of Contract].
Ordered Services	[insert description or attach documentation which sets out the requirements. This could include the Data Items required, Licensed Products, warranty periods, additional Disengagement Services]
Policies, Standards and Guidelines	Australian Standards: [insert details of relevant Australian standards]
	Agency or Commonwealth policies, standards or guidelines: [insert details]
Required Material	[Insert description of Material to be provided by the contractor (e.g. a report, plans, models etc.)]
Commencement and Time Frame	
Commencement Date: [insert]	
Milestones: [insert details including whether Liquidated Damages apply]	
Time Frame: [insert]	
Specified Personnel	
[insert details any particular individuals nominated to undertake and perform the Additional Services or provide particular Contract Material.]	
Fees, Allowances & Costs	
An invoice must be submitted within 20 Business Days of completing the Ordered Services. [insert Fee details]	
Existing Material	
[insert any pre-existing Material for which Intellectual Property is not to vest in DFAT]	

Government Furnished Material

[Insert details of any GFM to be provided to the Contractor by DFAT to perform the Additional Services]

Contractor's Use and Access of DFAT Facilities

[Insert relevant limitations/restrictions]

Security and Privacy

The Contractor must comply with the Protective Security Policy Framework (PSPF).

Level of Security Classified Resources

[insert details]

The Contractor is authorised to disclose [insert relevant Official Information] to [insert name of person(s) to whom disclosure is authorised] provided that [insert any conditions].

Privacy

[Insert details of privacy directions, guidelines, determinations or recommendations]

Contractor's Confidential Information

Item: [insert relevant item]

Period of Confidentiality:

Item: [insert relevant item]

Period of Confidentiality:

Service Levels

[insert details]

Limitation of Liability Amount

Any Other Requirements

[Insert details – this may include additional security requirements as at 24.1.1, security training required for contractor personnel as at 24.3.1 etc.]

Signature:

Name:

Title:

Date:

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