Australian Government
Digital Transformation Agency

dta

TELECOMMUNICATIONS MARKETPLACE PANEL

Contact Centre Services Contract

Ref: PRQ0003516

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

and

DATACOM SYSTEMS (AU) PTY LTD

Parties:

COMMONWEALTH OF AUSTRALIA as represented by Australian Prudential Regulation Authority (ABN) 79 635 582 658 (Buyer)

and

Datacom Systems (Au) Pty Ltd (ABN 39 135 427 075) (**Seller**).

Background:

The Telecommunications Marketplace is a panel of sellers who have been enrolled by the Digital Transformation Agency (**DTA**) to provide certain telecommunications products and services (**Offerings**) to the Australian Government and other approved bodies (**Buyers**).
The Seller has been appointed to the Telecommunications Marketplace under the terms of Head Agreement No. TM14 (Head **Agreement**).
The Buyer has a requirement for the provision of Offerings which are within the scope of the Categories (or Sub-Categories) for which the Seller has been approved by the DTA to make available to Buyers to purchase in accordance with the terms and conditions of the Head Agreement.
The Seller has agreed to provide the Offerings specified in this Contract to the Buyer in accordance with terms of the Head Agreement and this Contract.

Contract Details:

Description	Details
Contract Reference Number	PRQ0003516
Buyer Representative *(Clause 8)*	s 22 [redacted] [redacted]@apra.gov.au s 22 [redacted]
Buyer's Address for Notices *(Clause 9)*	Level 12, 1 Martin Place Sydney NSW 2000
Seller Contract Representative *(Clause 8)*	s 47F [redacted] [redacted] [redacted]
Seller's Address for Notices *(Clause 9)*	Level 31, 1 Denison St, North Sydney, NSW 2060
Contract Start Date *(Clause 1)*	1 May 2023
Contract Period *(Clause 1)*	3 Years, APRA to give 90 days' notice period if it intends to end the agreement on the expiry of the initial term.
Option Period(s) *(Clause 1)*	2 x 12 month Option Periods will be subject to pricing review, and Seller will substantiate any increases sought to the Buyer's reasonable satisfaction. At a minimum, pricing for Option Periods will be adjusted for CPI, and where CPI is less than zero, pricing will remain the same."
Contract Extension Notice Period *(Clause 1)*	Any Notice to extend the Contract Period must be provided at least 30 Business Days before the end of the then current Contract Period.

Description	Details
Category Terms *(Clause 4)*	The Category Terms (as amended at Attachment 1) under which this Contract is entered into include: • Common Category Terms • Category 08 - Contact Centre Systems
Offerings *(Clause 11)*	Refer to Attachment 2 Technical Requirements
Documentation *(Clause 24)*	Refer to Attachment 2 Technical Requirements
Standards, codes and policies *(Clause 17)*	The system must comply with statutory, regulatory, contractual, and business requirements including (but not limited to): - Records must be protected from loss, destruction, and falsification, in accordance with statutory, regulatory, contractual, and business requirements (in accordance with the Archives Act 1983). - Data protection and privacy must be ensured as required in relevant legislation, regulations, and, if applicable, contractual clauses, as per the following acts: o Privacy Act 1988 (Cth) o Privacy and Personal Information Protection Act 1998 (NSW) o Australian Prudential Regulation Authority Act 1998 (Cth)
Cooperation and collaboration *(Clause 6)*	There are no additional cooperation and collaboration requirements. Where the Seller must work with other contractor(s) in accordance with clause 6.3, the Buyer will use ensure that the other contractor(s) are similarly required to work in a cooperative and collaborative manner with the Seller.

<table>
<tr><th>Description</th><th>Details</th></tr>
<tr><td>Reporting and governance
(Clause 15)</td><td>
<table>
<tr><th>Id</th><th>Item/ Description</th><th>Due Date</th></tr>
<tr><td>1</td><td>Daily Report - number of calls received and answered, and basic phone metrics.
Service level calculated from percentage of calls answered / the calls offered, which should be targeted at >80%
Average Handle Time calculated from total of Average Talk + Average Hold + Average Wrap Times
Average Speed Answering
Abandon rate calculated from percentage of calls abandoned / calls offered
Daily tally of calls offered and daily tally of calls answered</td><td>To be provided every business day in the morning between 9am and 10am</td></tr>
<tr><td>2</td><td>Monthly Report - detailed phone metrics.</td><td>To be provided the first day of each month</td></tr>
<tr><td>3</td><td>Other relevant reporting during abnormal circumstances</td><td>To be provided under exceptional circumstances, such as, an abnormal increase in the number of enquiries received - triggered by specific issues impacting the financial system, APRA and/or the institutions APRA regulates</td></tr>
</table>
</td></tr>
<tr><td>Performance management framework
(Clause 16)</td><td>Refer to Reporting and Governance

Service Credits are not applicable.</td></tr>
<tr><td>Key Personnel
(Clause 28)</td><td>There are no Key Personnel specified in this Contract. However, the contract does impose that at least 2 resources are available at all times to answer telephone enquiries Monday to Friday 9AM until 5PM AEST/AEDT except for Public Holidays.</td></tr>
</table>

Description	Details
Named resources *(Clause 28)*	There are no Named Resources specified in this Contract. However, the contract does impose that at least 2 resources are available at all times to answer telephone enquiries Monday to Friday 9AM until 5PM AEST/AEDT except for Public Holidays.
Subcontractors *(Clause 30)*	Not Applicable
Charges (inc. Contract Value) *(Clause 25)*	-Supplier to invoice monthly s 47G [redacted]
Limitation on Seller's Liability *(Clause 47)*	s 47G [redacted]
Insurance *(Clause 48)*	There are no additional insurance requirements
Buyer assistance *(Clause 18)*	Not applicable
Buyer Supplied Items and Buyer Supplied Facilities *(Clause 19)*	Not Applicable

Description	Details
Acceptance *(Clause 21)*	Not Applicable
Intellectual Property *(Clause 38)*	Subject to any license terms for third party software, and clause 38.3, all Intellectual Property Rights in New Material vest in the Buyer upon its creation; and to the extent that the Seller needs to use any New Material or Existing Material to deliver the Offerings (including all components of the Offerings and New Material), the Buyer grants to the Seller an irrevocable, perpetual, non-exclusive, world–wide, paid–up licence to hold, use, execute, reproduce, upload, display, perform, communicate, produce derivative works, alter, enhance, and sublicense the New Material and Existing Material, provided that the Seller may not exploit that Existing Material or New Material for commercial purposes. For the avoidance of doubt this excludes third party software.

Description	Details
Security *(Clause 41)*	APRA uses the Government Information Security Manual to determine how it approaches work The Supplier must implement governance arrangements to manage ongoing protective security requirements, including to notify APRA of any actual or suspected security incidents and to follow reasonable directions from APRA arising from incident investigations. At the completion or termination of the Contract, APRA will apply appropriate security arrangements. This may include the recovery of records, deletion of APRA information from the Supplier's ICT systems and/or formal acknowledgement from the Supplier and their personnel of their continuing obligations to maintain confidentiality. **Eligible Data Breach** Eligible Data Breach means an 'Eligible Data Breach' as defined in the Privacy Act 1988 (Cth). Personal Information means 'Personal Information' as defined in the Privacy Act 1988 (Cth). a) If the Supplier 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 Supplier as a result of this Contract or its provision of the Goods and/or Services, the Supplier agrees to: (i) notify APRA in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and (ii) unless otherwise directed by APRA, carry out an assessment in accordance with the requirements of the Privacy Act 1988 (Cth). b) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where APRA notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Contract or its provision of the Goods and/or Services, the Supplier must: (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates; (ii) unless otherwise directed by APRA, take all other action necessary to comply with the requirements of the Privacy Act 1988 (Cth); and (iii) take any other action as reasonably directed by APRA.
Data Mining *(Clause 42)*	As per clause 42/not applicable.

Description	Details
Buyer Material *(Clause 45)*	As per clause 45
Transition In and Disengagement Assistance *(Clause 14)*	Not Applicable
Migration *(Clause 12)*	The Seller will provide reasonable notice of all migrations, which may be less than 12 months.
Building Work *(Clause 53)*	Not Applicable
Termination and reduction for convenience *(Clauses 50.5, 50.6)*	The Buyer will provide a minimum notice period of 90 days. The Seller can recover costs in accordance with clauses 50.6-50.8
Audit and Access *(Clause 36)*	Any audit conducted under this Contract may not be conducted more than once every 12 months, unless otherwise required by law (or more often if pursuant to law, lawsuit, legal process, or governmental inquiry). The Buyer will ensure that the Buyer and its personnel and any nominees, who are exercising any Audit and access rights under this Contract, and when on the Seller's premises or when accessing Seller's facilities and information (including any access to Seller's site) will comply with: (i) the Seller's normal security, confidentiality and health & safety requirements, or any obligation imposed on the Seller by law, (including signing a confidentiality agreement as required); and (ii) with the reasonable requirements and directions of the Seller with regard to conduct, behaviour, safety and security.
Additional Terms *(Schedule 1)*	There are no Additional Terms
Additional Requirements *(Schedule 2)*	Please refer to additional requirements in schedule 2.

1. Contract Period

1.1 This Contract begins on the Contract Start Date and continues for the Contract Period unless this Contract is terminated.

1.2 This Contract may be extended by Notice issued by the Buyer for the period or periods specified in the Contract Details. Any such Notice must be provided within the period specified in the Contract Details.

1.3 Any extension of the Contract Period is on the terms and conditions of this Contract then in effect unless otherwise agreed by the Buyer and Seller and takes effect from the end of the then current Contract Period.

1.4 The Seller must comply with any procedural requirements Notified by DTA from time to time about when and how this Contract may be extended (including to comply with clause 16.3 of the Head Agreement).

1.5 If the Contract Period extends beyond the term of the Head Agreement, the terms of the Head Agreement (including the relevant Category Terms) continue to apply to this Contract for the entire Contract Period.

2. Terms and conditions of a Contract

2.1 The terms and conditions that apply to this Contract are:

2.1.1 the terms of the Head Agreement that apply to a contract, but only to the extent that:

(a) they are expressed to apply to a contract; or

(b) they provide for a right or obligation of the Buyer or the Seller (or both) in relation to a contract;

2.1.2 the Category Terms applicable to the Offerings;

2.1.3 the terms specified in the executed Order (including any Additional Terms specified in the Order); and

2.1.4 any Specifications for the Offerings.

2.2 Some of the terms of the Head Agreement, and some of the Category Terms, are expressed to give rights to DTA, and some are expressed to give rights to the Buyer or a third party (or one or more of DTA, a Buyer and a third party). Unless Notified to the Seller by DTA:

2.2.1 any right or benefit given to the Buyer under the Head Agreement may be exercised by the Buyer in respect of this Contract; and

2.2.2 DTA can exercise any right or benefit given to the Buyer or the applicable third party on behalf of the Buyer or applicable third party, or the Buyer of applicable third party can exercise that right or benefit for itself.

2.3 The terms of the Head Agreement that apply to this Contract cannot be amended by the Buyer or the Seller under this Contract, except to the extent specified in the Head Agreement.

2.4 The terms that apply in accordance with clause 2.1 are the terms that apply as at the Contract Start Date unless otherwise agreed or determined by the Parties in accordance with this Contract.

3. Additional Terms in a Contract

3.1 Clause 15 of the Head Agreement applies.

4. Applicable Category Terms

4.1 The applicable Category Terms the Seller must comply with under this Contract are specified in the Contract Details.

5. Directions and Buyer requirements

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

5.2 If the Seller incurs (or will incur) any material expenses under this Contract which are directly related to complying with any new or amended Buyer direction, condition or other requirement imposed by the Buyer under clause 5.1 or any other clause of this Contract, the Buyer and the Seller may negotiate a variation to the Contract to reflect the Seller's reasonable and substantiated costs of complying with the direction, condition or other requirement (approval of which will not be unreasonably refused by the Buyer).

6. Cooperation and Collaboration

6.1 In addition to the requirements in clause 21 of the Head Agreement, each Party must comply with their respective cooperation and collaboration obligations specified in the Contract Details.

6.2 Without limiting clause 6.1, each Party must:

6.2.1 act reasonably, diligently, and in good faith in performing their obligations and exercising their rights under this Contract; and

6.2.2 work together in a collaborative and co-operative manner (including with each other's Personnel) in the performance of this Contract.

6.3 The Seller must provide all reasonable information and assistance required by the Buyer (including to cooperate with other contractors nominated by the Buyer from time to time). If during the Seller's performance of its obligations under this Contract, any defect, incident or problem arises in relation to the Offerings that is caused by another contractor(s), the Seller must, unless specified in the Contract Details, work with the other contractor(s) as required to promptly resolve the defect, incident or problem.

6.4 Subject to this clause 6.4, no additional amounts are payable to the Seller in respect of the Seller complying with its obligations under this clause 6. If the Seller incurs additional costs that result from a defect, incident or problem arising in relation to the Offerings that is caused by the Buyer or Buyer nominee(s), the Seller may request a variation of this Contract to the extent necessary to reflect the Sellers reasonable and substantiated additional costs or time required to provide the Offerings (approval of which will not be unreasonably refused by the Buyer).

7. Relationship of Parties

7.1 This Contract does not create a relationship of employment, agency or partnership between the Parties or their respective Personnel. Neither the Buyer or the Seller may represent themselves as being an officer, employee, partner or agent of another Party, or as otherwise able to bind or represent that other Party.

8. Contract Representatives

8.1 The Seller Contract Representative and Buyer Representative for this Contract are specified in the Contract Details.

8.2 The Seller Contract Representative and the Buyer Representative may each delegate their functions or authorise that their functions be carried out on their behalf (including by a third party) by Notifying the other Party.

9. Notices and Other Communications

9.1 A Notice must be in writing and in English.

9.2 Subject to clause 9.3, a Notice must be hand delivered or sent by prepaid post or electronic mail to the recipient's address for Notices set out in the Contract Details (or as Notified to the other party from time to time).

9.3 Notices:

9.3.1 from the Buyer must be signed by, or on behalf of, the Buyer Representative; and

9.3.2 from the Seller must be signed by, or on behalf of, the Seller Contract Representative. `

9.4 A Notice given in accordance with this clause 9 takes effect when it is taken to be received (or at a later time specified in it). Notices are taken to be received:

9.4.1 if hand delivered, on delivery;

9.4.2 if sent by prepaid post, on the fifth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia); and

9.4.3 if sent by electronic mail, on the day of dispatch providing the sender receives an acknowledgement or read receipt to the correct email address from the sender's machine.

9.5 If the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

9.6 Each Party must Notify the other of any change in its representative or address for Notices.

10. Variation to this Contract

10.1 No variation (other than as referenced by Our Customer Terms) of this Contract is binding unless it is in writing and signed by both the Buyer and the Seller. The Buyer is not liable to the Seller for any additional work undertaken or expenditure incurred by the Seller unless the variation has been agreed by the parties to this Contract or as otherwise agreed by the parties.

11. Offerings

11.1 The Seller must provide the Offerings specified in the Contract Details and in accordance with:

11.1.1 the applicable Category Terms; and

11.1.2 this Contract (including the Specifications and any other functional, performance and other requirements, specified in this Contract).

12. Migration

12.1 Unless otherwise specified in the Contract Details and without limiting clause 65 of the Head Agreement, if the Seller decides to modify or exit any Offering which is required to be provided under this Contract from the market or part of the market (because it is doing so generally and not because it is required to do by Law) (**Affected Offering**), the Seller must:

12.1.1 provide prior reasonable Notice to the Buyer (Sellers should use all reasonable efforts to provide notice of not less than 12 months);

12.1.2 Notify the Buyer of all relevant details of the modification or exit and of any alternative Offering (including proposed timing and any changes to the Charges) and inform the Buyer of any impacts to the Buyer; and

12.1.3 provide to the Buyer any information reasonably requested by the Buyer.

12.2 The Buyer may elect to:

12.2.1 migrate to a modified or an alternative Offering (and the Buyer and the Seller must provide reasonable assistance to each other to enable the Seller to migrate the Buyer (within the timeframes agreed with the Seller in writing; or

12.2.2 cancel the Affected Offering.

12.3 If the modified or alternative Offering to which the Seller proposes the Buyer migrates to is materially detrimental to the Buyer, there are material changes to the Offering, or the Buyer does not agree with any proposed change in the Charges, then the Buyer may cancel the Offering without the payment of any early termination charges.

12.4 Any changes to this Contract must be in accordance with clause 10 unless otherwise agreed by the Parties.

13. Transfer of title and risk

13.1 Title in physical components of any items provided to the Buyer under this Contract passes to the Buyer on Acceptance (if the Offerings must be Accepted) or on delivery to the Buyer (if the Offerings do not need to be Accepted).

13.2 The Buyer accepts risk for Loss of or damage to physical components of the Offerings from the time the Buyer or its nominee takes delivery, except to the extent that the Loss or damage is caused or contributed to by the Seller or its Personnel.

14. Transition In and Disengagement Assistance

14.1 The Seller must undertake all Transition-In and Disengagement activities specified in the Contract Details.

15. Reporting and governance

15.1 The Seller must comply with the Buyer's reporting and governance requirements specified in the Contract Details.

16. Performance management framework

16.1 The Seller must meet any Services Levels specified in, and pay any Service Credits calculated in accordance with, the Contract Details.

17. Standards and codes

17.1 The Seller must, in providing the Offerings:

17.1.1 comply with all applicable regulations, standards, industry codes and methodologies and any Commonwealth or Buyer policies; and

17.1.2 obtain, maintain and comply with all legislative licences and authorisations (including any Carrier Licences),

17.1.3 specified in the Head Agreement, the applicable Category Terms, this Contract, or as required by Law, as amended from time to time.

17.2 The Seller must, if requested in writing by the Buyer, provide evidence of its compliance with any applicable regulations, standards, industry codes, methodologies, licences and authorisations required to be held and maintained by the Seller.

17.3 If the Seller considers that compliance with any new or amended Law, policy, standard, or industry code or methodology will cause it to incur material additional costs or require additional time in order to provide the Offerings under the Contract the Seller may request an appropriate variation to the Contract to reflect the Seller's reasonable and substantiated costs of compliance (approval of which will not be unreasonably refused by the Buyer).

18. Buyer assistance

18.1 The Buyer must provide any assistance specified in the Contract Details. The Seller must comply with all conditions regarding the Buyer assistance specified in the Contract Details or Notified by the Buyer to the Seller from time to time.

19. Buyer Supplied Items and Buyer Supplied Facilities

19.1 The Buyer must provide any Buyer Supplied Items and Buyer Supplied Facilities specified in the Contract Details.

19.2 Buyer Supplied Items and Buyer Supplied Facilities remain the property of the Buyer and the Seller must return all Buyer Supplied Items and Buyer Supplied Facilities that are no longer required for the purposes of this Contract to the Buyer as soon as practicable (unless other arrangements are agreed in writing by the Parties).

19.3 The Seller must comply with all conditions regarding the Buyer Supplied Items and Buyer Supplied Facilities specified in the Contract Details and any reasonable conditions Notified by the Buyer to the Seller from time to time.

19.4 The Seller acknowledges that the Buyer may at any time refuse access to its premises to any individual. The Buyer will use reasonable endeavours to inform the Seller of any such refusal but is not obliged to do so for security reasons. The Seller is not relieved of any of its obligations under this Contract because of the exercise of any of the Buyer's rights under this clause. Where a delay occurs that is not caused by the Seller, the Seller may request a variation to the Contract to reflect the Seller's material and reasonable costs incurred, the Buyers approval of which will not be unreasonably withheld.

19.5 The Buyer warrants that the Buyer Supplied Items are free from defects and fit for the purposes they are provided to the Seller.

20. Access to Buyer's site

20.1 The Seller must, and must ensure Seller Personnel, if using or accessing the Buyer's premises and facilities, comply with all reasonable requirements, directions, policies, and procedures given by the Buyer, or as might reasonably be inferred from the circumstances.

20.2 Access to the Buyer's premises and facilities may be denied or suspended by the Buyer, at its sole discretion. The Buyer must, following any denial or suspension of access, permit a resumption of access as soon as practicable.

20.3 The Seller is relieved of its obligations under this Contract to the extent that the Seller is unable to perform its obligations because the Buyer denies or suspends the Seller's access in accordance with clause 20.2. This clause 20.3 does not apply to the extent that the Buyer denies or suspends the Seller's access because of an act or omission by the Seller, or because of any security risk related to the Seller.

20.4 To the extent specified in this Contract, the Buyer is responsible for the preparation of its premises and facilities to enable the Seller to perform or provide the Offerings.

20.5 The Seller must ensure that Seller Personnel engaged in providing the Offerings comply with the APS Values and Code of Conduct (to the extent reasonably practical, applicable and appropriate) while at Buyer's premises and while liaising with the Buyer Personnel or members of the public in connection with the provision of the Offerings. In this clause 'APS Values' and 'Code of Conduct' have the same meaning as they have in the *Public Service Act 1999* (Cth).

21. Acceptance

21.1 If specified in the Contract Details, the Offerings are also subject to Acceptance by the Buyer in accordance with the Acceptance Criteria (if any) specified in the Contract Details.

21.2 The Seller must notify the Buyer when the relevant Offerings are ready for Acceptance Testing. If the Offerings do not conform to the Acceptance Criteria in this Contract when delivered:

21.2.1 the Buyer may notify the Seller that some or all of the Offerings are not Accepted (along with the reasons for rejection);

21.2.2 the Seller must, at its own cost, remedy the non-Accepted Offerings to meet the Acceptance Criteria in this Contract within a timeframe specified in the Notice (or such other time agreed by the parties in writing); and

21.2.3 allow the Buyer to repeat the Acceptance Tests for all or part of the Offerings.

22. Reperformance of Offerings

22.1 For any Offerings which are services required to be provided by the Seller, if those Offerings do not conform to the requirements of this Contract, the Buyer may (within a reasonable time of the Offering being performed) issue a direction:

22.1.1 requiring the Seller to perform or re-perform (as the case may be) the Offerings;

22.1.2 requiring the Seller to take all steps reasonably necessary to:

(a) mitigate the effect on the Buyer of the failure to perform the Offerings in accordance with this Contract; and

(b) put the Buyer (as closely as possible) in the position in which it would have been if the Seller had performed the Offerings in accordance with this Contract, provided that the cost of doing so does not exceed twice the Total Contract Value of this Contract; and

22.1.3 stating the reasonable time within which the Seller must commence and complete (as the case may be):

(a) performance or re-performance of the Offerings; and

(b) any mitigating activities.

22.2 The Seller must comply with a direction under clause 22.1 and is responsible for all of the Seller's costs involved in complying with a direction under clause 22.1.

23. Warranties

23.1 The Seller must ensure the Buyer receives all standard manufacturer and other relevant third party warranties in respect of Offerings provided under this Contract. The Seller must also comply with any warranty obligations specified in the Specifications, in this Contract, and in the applicable Category Terms.

24. Documentation

24.1 The Seller must provide the Documentation (which must be up to date, complete and accurate) that the Seller or manufacturer of any Offering usually makes available to its customers for the Offerings required to be supplied under this Contract and in accordance with the Contract Details.

25. Charges

25.1 The Charges are set out in the Contract Details. Subject to the Seller's compliance with this Contract, the Charges are payable by the Buyer in accordance with this Contract, subject to the provision of a correctly rendered Tax Invoice.

25.2 The Seller must submit a correctly rendered Tax Invoice to the Buyer within 60 days of the date the Offerings were delivered, or such other period specified in the Contract Details. Subject to this clause 25, the Buyer will make electronic payment within 20 Business Days of receipt of a correctly rendered Tax Invoice.

25.3 The Seller acknowledges that the Charges include all costs and resources required by the Seller to perform this Contract.

25.4 The payment of an amount by the Buyer is deemed to be payment on account only and any such payment is not to be taken as evidence against or an admission by the Buyer:

25.4.1 of the value of any Offerings; or

25.4.2 of any Offerings having been supplied in accordance with this Contract.

25.5 The Buyer may, in respect of any amounts owing to it under this Contract, require the Seller to pay the amount, adjust the next invoice to reflect the amount owing (and the Seller must comply with the request), or the Buyer may set-off the amount against any amounts owing to the Seller.

25.6 The Buyer is only required to pay the Seller for any pass-through expenses or time and material costs to the extent those expenses or costs were actually incurred by the Seller and are payable in accordance with this Contract.

25.7 If requested by the Buyer, the Seller must provide sufficient evidence of any pass-through expenses or time and material costs the Seller has incurred and for which the Seller is claiming payment from the Buyer.

25.8 If there is a dispute about whether an amount is payable under this Contract, the Buyer may withhold the disputed amount until the dispute is resolved but must pay the undisputed amount within the period specified in this clause 25.

26. GST

26.1 The Parties must comply with clause 31 of the Head Agreement.

27. Procurement on-time payment policy

27.1 Clauses 27.2 to 27.10 only apply if:

27.1.1 the value of this Contract is less than A$1 million (GST inclusive); and

27.1.2 the amount of the interest payable exceeds A$100.

27.2 For payments made by the Buyer more than 20 days after the amount is due, the Buyer must pay the interest on the payment provided that the Seller has issued a correctly rendered invoice for the interest.

27.3 Interest payable under clause 27.2 will be calculated as follows:

27.4 SI = UA x GIC x D

27.5 Where:

27.6 SI = simple interest amount;

27.7 UA = the unpaid amount;

27.8 GIC = General Interest Charge Rate daily rate; and

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

27.10 In this clause 27, 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

28. Personnel

28.1 The Seller must use such Personnel as are necessary to enable it to fulfil its obligations under this Contract.

28.2 The Seller must ensure that the Seller Personnel that it uses to perform this Contract have the requisite skills, qualifications, and experience necessary to provide the Offerings:

28.2.1 in a skilful, diligent, responsive, professional, efficient and controlled manner, and with a high degree of quality; and

28.2.2 to a standard that complies with this Contract.

28.3 The Seller must:

28.3.1 provide any information reasonably requested by the Buyer about the Seller's Personnel to the extent the Seller's Personnel are undertaking any activities in relation to this Contract;

28.3.2 ensure Seller Personnel do not do anything which would breach the Seller's obligations under this Contract; and

28.3.3 ensure that those Seller Personnel comply with any reasonable direction given by the Buyer in relation to conduct, health and safety, or security.

28.4 The obligation in clause 28.3.1 is limited to information about Key Personnel and Named Resources, unless otherwise agreed by the parties.

28.5 If the Contract Details specify any Key Personnel, the Seller agrees that those Key Personnel will undertake work in respect of the Offerings in accordance with the terms of this Contract.

28.6 If any Key Person is unable to perform the relevant work, the Seller must Notify the Buyer immediately.

28.7 The Buyer may, acting reasonably, give Notice requiring the Seller to remove Key Personnel from work in respect of the provision of this Contract. The Buyer will consult the Seller where possible before issuing such a Notice.

28.8 If clause 28.6 or 28.7 applies, the Seller must provide a replacement Key Person reasonably acceptable to the Buyer at no additional cost and at the earliest opportunity.

29. Illegal Workers

29.1 The Seller must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract.

29.2 If it becomes aware of the involvement of an Illegal Worker, the Seller must:

29.2.1 promptly Notify the Buyer; and

29.2.2 immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for their replacement at no cost to the Buyer.

30. Subcontracting

30.1 The Seller must:

30.1.1 not Subcontract any part of this Contract without the prior written approval of the Buyer, which will not be unreasonably withheld;

30.1.2 not Subcontract on terms that would permit the Subcontractor to do (or not do) something that would, if done (or not done) by the Seller, constitute a breach of this Contract;

30.1.3 not Subcontract with an entity that:

(a) has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;

(b) is on, or which has any employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; or

(c) is named by the Workplace Gender Equality Agency as a supplier that is currently not complying with the Workplace Gender Equality Act 2012 (Cth) (WGE Act).

30.2 The Seller must ensure that there are no provisions in any Subcontracts, that if observed, would cause the Seller not to comply, or be able to not comply, with any requirement under this Contract.

30.3 The Seller must provide the Buyer with details of any Subcontracts (excluding pricing) between the Seller and the Subcontractor (including any information related to the security processes, systems and controls used by the Subcontractor and any security risks in relation to the Subcontractor or the subcontracted Offerings) within 10 Business Days after the Buyer's request.

30.4 At the Contract Start Date, the Subcontractors identified in the Contract Details are approved Subcontractors under this Contract.

30.5 The Seller must inform its Subcontractors that the Subcontractor's provision of any Offerings under the Contract may be disclosed publicly.

31. Responsibility for providing the Offerings

31.1 The Seller is responsible for all aspects of the provision of Offerings under this Contract, regardless of whether it is a reseller of those Offerings or engages Subcontractors for the provision of those Offerings.

31.2 Without limiting clause 47, the Seller is not relieved of its obligations because of any:

31.2.1 involvement by the Buyer in the provision of the Offerings;

31.2.2 payment made to the Seller; or

31.2.3 subcontracting of the Seller's obligations.

32. Confidentiality

32.1 Clause 32 of the Head Agreement applies.

32.2 The Buyer may at any time request the Seller to arrange for any of the Seller's Personnel to whom Confidential Information of the Buyer will be disclosed to give a written undertaking in the form acceptable to the Buyer and Seller. If the Seller receives a request under clause 32.2, it must promptly arrange for all such undertakings to be given and must provide copies to the Buyer.

33. Privacy

33.1 Clause 33 of the Head Agreement applies.

34. Notifiable Data Breaches

34.1 If the Seller becomes aware of an event in connection with this Contract that could amount to an Eligible Data Breach, the Seller must:

34.1.1 promptly (and in any event within 48 hours) notify the Buyer and provide the Buyer with all information that the Buyer requests in relation to that event; and

34.1.2 if notification of that event is required to be given under the Privacy Act, notify the Buyer promptly, within 48 hours, before giving any such notification and take any comments provided by the Buyer about the proposed notification into account before issuing the notification.

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

35. Books and Records

35.1 Clause 34 of the Head Agreement applies.

36. Audit and Access

36.1 Clause 35 of the Head Agreement applies.

37. Conflicts of Interest and Improper Conduct

37.1 The Seller must not engage in any Improper Conduct.

37.2 If, during the performance of this Contract any Conflict of Interest arises or appears likely to arise or Improper Conduct occurs, or appears likely to occur, the Seller must Notify the Buyer immediately in writing and take all steps that the Buyer reasonably requires the Seller to take in order to resolve or otherwise deal with the Conflict of Interest or Improper Conduct.

38. Intellectual Property Rights

38.1 This clause 38 applies except to the extent specified in the Contract Details.

38.2 Subject to clause 38.3, the Seller grants the Buyer all Intellectual Property Rights necessary to use the Offerings in accordance with this Contract (whether the Seller or a third party owns those Intellectual Property Rights).

38.3 Commercial off-the-shelf software and related documentation obtained from a third-party vendor is licensed to the Buyer on the terms generally available from the software vendor.

38.4 The Buyer retains Intellectual Property Rights in data and other Buyer Material stored in, transmitted, or processed by, or accessed from, the Offerings.

38.5 The Seller owns Intellectual Property Rights in any New Material developed for this Contract, from the date of creation, unless otherwise specified in the Contract Details.

38.6 Where the Buyer owns the Intellectual Property Rights in New Material, the Buyer grants to the Seller an irrevocable, perpetual, non-exclusive, world-wide and paid up licence to hold, use, execute, copy, reproduce, and adapt the New Material (and any Buyer Material incorporated in the New Material) for any purpose.

38.7 Each Party warrants that it has the necessary rights to grant the Intellectual Property Rights in accordance with this Contract and that the other Party's use of the Offerings (including any material provided under this Contract or supplied with the Offerings) will not infringe any third party's intellectual property rights or other third party restrictions.

38.8 Nothing in this Contract affects the ownership of Intellectual Property Rights in any Existing Material.

39. Warranties

Application of warranties

39.1 The warranties provided under this clause 39:

39.1.1 survive the termination or expiry of this Contract; and

39.1.2 are in addition to, do not limit and are not limited by:

(a) any warranties specific to a certain Offering or type of Offering specified in the applicable Category Terms, the Telecommunications Services Catalogue or this Contract; and

(b) any other warranty provided by the Seller under the Head Agreement or this Contract.

39.2 Nothing in this Contract:

39.2.1 restricts the effect of any conditions or warranties which may be implied by the Competition and Consumer Act, any sale of goods or fair trading legislation or other applicable legislation; or

39.2.2 limits the Buyer's right to take action on the basis of the Law that would be applied by the High Court of Australia in respect of a breach of this Contract, tort or any other Law.

Seller warranty – Seller has informed itself

39.3 The Seller warrants, on the Contract Start Date, that:

39.3.1 it has done all things necessary to understand and inform itself about the requirements of this Contract (including the Law and all other factors which may affect the performance of its obligations under this Contract);

39.3.2 it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;

39.3.3 it does not rely on any representation, warranty, condition or other conduct, information, statement or Document given by the Buyer or any person purporting to act on behalf of the Buyer in entering into this Contract, other than an express warranty contained in this Contract;

39.3.4 it has all rights, power, consents, and authority to enter into, lawfully perform its obligations under, and grant all licences required under this Contract;

39.3.5 to the best of its knowledge, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Contract;

39.3.6 it will have and make available the necessary resources to provide the Offerings and will use those resources to provide the Offerings; and

39.3.7 at all times during the Contract Period, it will maintain in good operating condition all tangible resources used or required to provide the Offerings.

Seller warranty – capacity and ability

39.4 The Seller warrants that, to the best of its knowledge after diligent investigation, it has disclosed any relevant circumstances that materially affect the Seller's capacity or ability to perform and fulfil its obligations under this Contract or materially affect the Seller's reputation in writing to the Buyer prior to entering into this Contract, and that it will promptly disclose any changes in those circumstances to the Buyer.

Seller warranty – Australian Government policy

39.5 The Seller warrants on the Contract Start Date that:

39.5.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the WGE Act;

39.5.2 it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount;

39.5.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list; and

39.5.4 in relation to any first tier Subcontractor it has engaged to deliver goods or services (or both) with an estimated value of over $4 million (GST inclusive) under this Contract that the Seller either:

39.5.5 provided a Valid and Satisfactory Statement of Tax Record for the Subcontractor as part of its response for the approach to market that resulted in the entry of the Head Agreement; or

39.5.6 holds a Satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the Subcontract by the Seller and the Subcontractor.

Seller warranty – Delivery Warranties

39.6 The Seller warrants that on delivery to the Buyer:

39.6.1 the Offerings will:

(a) if the Offering is hardware and required to be provided to the Buyer, be newly manufactured (unless otherwise agreed in writing by the Buyer);

(b) be free from any material Defect in workmanship, design, and materials;

(c) be free from any encumbrances;

(d) be compliant with the Specifications and Documentation.

39.7 The Seller warrants that any Documentation provided by the Seller to the Buyer is in all material respects true, correct, complete, accurate and are not misleading or deceptive (including by omission).

39.8 The warranties set out in clause 39.6 also apply to any replacement or re-performance of any Offerings at the date of delivery or reperformance.

Effect of warranties

39.9 Nothing in this Contract:

39.9.1 excludes, restricts or modifies any condition, warranty, right or remedy which may be implied by Law unless specified in this Contract (but only to the extent that the exclusion, restriction or modification specified in this Contract is permitted by Law); or

39.9.2 limits the Buyer's right to take action on the basis of any other Laws.

40. Removal of Offerings

40.1 The Seller must not remove or cease to provide any Offerings purchased by the Buyer from or to the Buyer's premises without the Buyer's consent, except as provided in Clause 12.

41. Security

41.1 The Seller must comply with clause 49 of the Head Agreement and with any security requirements specified in the Contract Details.

41.2 The Seller must ensure that its Personnel provide any identification required by the Buyer when arriving at the Buyer's premises or at any time when at those premises.

42. Data mining

42.1 Unless specified in the Contract Details, the Seller must not at any time conduct Data Mining activities in respect of the Offerings or any Buyer Material.

42.2 The prohibition on Data Mining applies even if a user is required to click through and accept Seller terms permitting Seller to conduct Data Mining on a user, or a collection of user accounts. Such terms have no effect whatsoever. If Data Mining is ordinarily conducted by Seller by means of an automated process Seller must disable it for the Offerings.

43. Harmful Code

43.1 The Seller must take all reasonable endeavours to not, and must take all reasonable endeavours to ensure Seller Personnel do not, introduce any Harmful Code into the Buyer's systems (including by implementing systems and security measures that are no less rigorous than accepted industry standards).

43.2 If any Harmful Code is introduced by the Seller or Seller Personnel, the Seller must:

43.2.1 use best endeavours to promptly report that introduction to the Buyer;

43.2.2 use best endeavours to:

(a) eliminate the Harmful Code; and

(b) repair any harm or destruction caused by that Harmful Code

in accordance with best industry practice (subject to any directions of the Buyer).

43.3 If the Seller is not in breach of this clause 43.1, if directed by the Buyer in a Notice and at the Buyer's cost, it must repair any harm or destruction caused by that Harmful Code in accordance with best industry practice (subject to any directions of the Buyer).

43.4 If the Seller is in breach of clause 43.1, the Seller must perform its obligations under clause 43.2 at its own cost. Otherwise, the Seller must perform those obligations at the Buyer's cost.

44. Fraud

44.1 The Seller must comply with:

44.1.1 the Commonwealth Fraud Control Framework; and

44.1.2 any applicable State or Territory fraud control guidelines or policies if it is providing Offerings to the Buyer if the Buyer is a State or Territory.

44.2 The Seller must take reasonable steps to prevent, detect and respond to any actual or perceived fraud or corruption that has occurred or is likely to occur in relation to this Contract (including by the Seller or its Personnel).

45. Protection of Buyer Material

45.1 Unless specified in the Contract Details, and only to the extent the Buyer requires the Seller to develop and deliver the Offering that is bespoke to the Buyer and not used by other customers of the Seller, the Seller must not, and must ensure that Seller Personnel do not, without the Buyer's prior written consent:

45.1.1 remove Buyer Material or allow Buyer Material to be removed from the Buyer's premises or Seller's premises; or

45.1.2 transmit, store, or take Buyer Material or allow Buyer Material to be transmitted, stored, or taken by any means outside of Australia, unless that transmission, storage, or taking of any Buyer Material is required for the proper performance of the Offerings in accordance with this Contract (such as the transmission of data using satellite services or in order to provide international or mobile roaming services).

45.2 The Buyer may reject any request to transmit, store, or take Buyer Material or allow Buyer Material to be transmitted, stored, or taken outside of Australia for any reason.

45.3 Where the Buyer provides consent under clause 45.1, the Seller must ensure that:

45.3.1 any Buyer Material permitted to be sent or processed outside of Australia is encrypted with Buyer-approved cryptography; and

45.3.2 the private key required to decrypt the Buyer Material is kept in Australia in accordance with the processes specified in the Contract Details.

45.4 Where the Buyer provides consent under clause 45.1, the Seller must ensure that:

45.4.1 all databases on which any Buyer Material is stored are physically and logically independent from all other databases, unless those databases are located in Australia (or in another jurisdiction approved by the Buyer in writing) and otherwise meet the requirements of this Contract;

45.4.2 all Buyer Material is accessed and processed only in Australia or in another jurisdiction approved by the Buyer in writing; and

45.4.3 all domestic network traffic is routed exclusively through Australia, unless otherwise approved by the Buyer in writing.

46. Indemnity

Seller's Indemnity

46.1 The Seller indemnifies the Buyer and Buyer Personnel (each being **Indemnified Persons**) in respect of any Loss suffered or incurred by an Indemnified Person which is caused by or arises from:

46.1.1 any breach of this Contract by the Seller or Seller Personnel where:

(a) that breach is not capable of remedy; or

(b) that breach is not remedied by the Seller within 20 Business Days (or such other period agreed in writing by the Parties) after receiving Notice requiring it to remedy the breach;

46.1.2 any breach of any Law by the Seller or Seller Personnel in the performance of this Contract;

46.1.3 any negligent or unlawful act or omission of the Seller or Seller Personnel in relation to this Contract; or

46.1.4 a claim made by a third party arising out of or in connection with an allegation that any Offerings (including the use of any Offerings by the Indemnified Persons) infringes the Intellectual Property Rights or Moral Rights of the third party, except to the extent that such infringement was caused by an act or omission of the Buyer.

46.2 The indemnity in clause 46.1 is reduced proportionately to the extent that such Loss was caused by:

46.2.1 the Indemnified Person's failure to comply with its obligations and responsibilities under this Contract; or

46.2.2 the act or omission of the Indemnified Person.

Rights not exclusive

46.3 The rights of the Indemnified Persons pursuant to the indemnity in clause 46.1 are in addition to, and not exclusive of, any other right, power, or remedy provided by Law, but the Indemnified Persons are not entitled to be compensated in excess of the amount of the relevant Loss they have incurred.

Indemnified Person's obligations

46.4 If an Indemnified Person wishes to enforce an indemnity under clause 46.1, it must:

46.4.1 give written Notice to the Seller as soon as practicable;

46.4.2 subject to the Seller agreeing to comply at all times with clause 46.5 of this Contract, permit the Seller, at the Seller's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and

46.4.3 in the event that the Seller is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, provide all reasonable assistance to the Seller in the handling of any negotiations and litigation at the Seller's cost.

Seller's obligations

46.5 Unless otherwise agreed in writing by the Indemnified Person, if the Seller is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, the Seller must:

46.5.1 comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiations as if the Seller was the Indemnified Person (including the Legal Services Directions and any direction issued by the Attorney–General);

46.5.2 keep the Indemnified Person informed of any significant developments relating to the conduct of the defence or settlement of any claim;

46.5.3 provide to the Indemnified Person all information and Documents reasonably requested by the Indemnified Person, to enable the Indemnified Person to determine whether the defence or settlement by the Seller of any claim is being conducted in accordance with applicable government policy and obligations (including any requirements relating to legal professional privilege and confidentiality); and

46.5.4 comply with any reasonable conditions imposed by the Indemnified Person.

Rights held on trust

46.6 If an indemnity provides a benefit to a person who is not a Party to this Contract, that benefit is held on trust for that person by the Buyer, through whom those rights are obtained, and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by the Buyer as trustee.

Mitigation

46.7 Each Party must use all reasonable endeavours to mitigate its Loss arising under or in connection with this Contract.

47. Liability

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

47.2 Subject to clauses 47.3 and 47.4, each party's liability arising out of or in connection with this Contract, whether for breach of contract, tort (including negligence) or for any other common law or equitable cause of action (including under an indemnity), is limited to:

47.2.1 the amount specified in the Contract Details; or

47.2.2 if no amount is specified in the Contract Details:

(a) if the Total Contract Value of this Contract is less than or equal to $10 million, an amount equal to three times the total value of the Contract;

(b) if the Total Contract Value of this Contract is more than $10 million equal to two times the Total Contract Value.

47.3 Unless otherwise specified in the Contract Details, subject to clause 47.4, the Seller's liability arising out of or in connection with this Contract, whether for breach of contract, tort (including negligence) or for any other common law or equitable cause of action (including under an indemnity), for any:

47.3.1 loss of or damage to data; or

47.3.2 breach of confidentiality or privacy obligations,

is limited to $50 million in aggregate for any and all claims relating to matters referred to in clause 47.3.

47.4 Unless otherwise specified in the Contract Details, any limitation of liability does not apply to any Loss arising out of:

47.4.1 personal injury (including sickness or death of a person);

47.4.2 loss of, or damage to, tangible property;

47.4.3 any infringement of Intellectual Property Rights;

47.4.4 any breach of security obligations in this Contract or at Law;

47.4.5 any breach of any Law, fraud or any unlawful act or omission; or

47.4.6 liability for taxes (and any related penalties or interest) in respect of the Contract payable by the Seller or payable by the Buyer but recoverable from the Seller.

47.5 The limitation of liability specified in the Contract Details or determined in accordance with clause 47 applies in the aggregate.

47.6 The liability of a party for Loss sustained by the other party is reduced proportionately to the extent that such Loss has been caused by:

47.6.1 the other party's failure to comply with its obligations and responsibilities under this Contract; or

47.6.2 the negligent act or omission of the other party.

47.7 Each of the limitations of liability amounts specified in the Contract Details or determined in accordance with this clause 47 are separate limitations of liability and apply in the aggregate.

47.8 Despite clause 47.7, if more than one limitation of liability specified in this clause 47 is capable of applying to a particular liability, and the limit under one limitation of liability is reached, a party may recover from the other party for the remainder of that liability under the other limitation or liability up to the other limitation

47.9 Without limiting this Contract, to the extent permitted by Law, neither party is liable for any:

47.9.1 loss of actual or anticipated business, profits or opportunities; or

47.9.2 failure to achieve anticipated savings,

47.9.3 arising out of or in connection with this Contract, whether for breach of contract, tort (including negligence) or for any other common law or equitable cause of action (including under an indemnity).

47.10 Clause 47.9 does not prevent a party recovering from the other party any loss or damage of the following type:

47.10.1 additional internal or project costs;

47.10.2 the cost of repairing or replacing Offerings;

47.10.3 the cost of having additional services performed by a third party; or

47.10.4 legal fees.

47.11 The limitations on liability in this clause 47 also apply to any resulting liability of the Seller under the Head Agreement by the Seller arising out of the performance (or non-performance) of this Contract. The parties acknowledge and agree that the DTA has approved this Additional Term for the purposes of clause 15.2.1 of the Head Agreement.

47.12 The liability of a party for Loss sustained by the other party is reduced proportionately to the extent that such Loss has been caused by:

47.12.1 the other party's failure to comply with its obligations and responsibilities under this Contract; or

47.12.2 the negligent act or omission of the other party.

48. Insurance

48.1 The Seller must at all times have and maintain the type and amounts of insurance:

48.1.1 specified in clause 38 of the Head Agreement; and

48.1.2 as specified in the Contract Details.

48.2 The Seller must comply with clause 38 of the Head Agreement.

49. Circumstances Beyond Control

49.1 If the Seller cannot perform its obligations under this Contract (including meeting any timeframes) due to:

49.1.1 circumstances beyond the Seller's reasonable control (for example, but not limited to, acts of God, natural disasters, acts of war, riots and strikes outside that Party's organisation); or

49.1.2 circumstances caused by the Buyer,

the Seller must Notify the Buyer Representative as soon as possible. The Notice must describe the circumstances, how they have or will affect the Seller's obligations under this Contract and explain the Seller's proposed way to manage the circumstances.

49.2 The Seller must make all reasonable efforts to minimise the effects of any circumstances beyond the Seller's reasonable control on this Contract.

49.3 The Seller may request an extension of time for the performance of its obligations under this Contract together with any other related amendments. If the Buyer agrees to an extension of time under this Contract (which must not be unreasonably withheld) or agrees to any other amendments, the parties must amend this Contract accordingly.

49.4 Where the Seller is unable to, or is delayed in, performing an obligation under a Contract due to the acts or omissions of the Buyer, Buyer Personnel or Other Provider, then the Seller may request a variation of this Contract to the extent necessary to reflect the Seller's reasonable and substantiated additional costs or time incurred (approval of which will not be unreasonably refused by the Buyer).

50. Termination

Termination for default

50.1 Without limiting any other rights or remedies the Buyer may have against the Seller arising out of or in connection with this Contract, the Buyer may terminate this Contract, effective immediately by giving Notice to the Seller if:

50.1.1 the Seller breaches a material provision of this Contract, where that breach is not capable of remedy;

50.1.2 the Seller breaches any provision of this Contract that is capable of remedy, and fails to remedy the breach within 20 Business Days (or such other period agreed in writing by the Parties) after receiving Notice requiring it to remedy the breach;

50.1.3 subject to applicable Laws, an event listed in clause 50.3 happens to the Seller and the Buyer reasonably considers that such an event will adversely impact on the Seller's ability to provide the Offerings; and

50.1.4 the Seller commits any breach, or any circumstances arise, for which this Contract provides that a Notice of termination may be given.

50.2 This Contract can be terminated in whole or in part.

50.3 The Seller must Notify the Buyer in writing immediately if one or more of the following occurs:

50.3.1 the Seller ceases to hold any applicable licences or authorisations required to provide the Offerings including under any Telecommunications Legislation or if any such licence or authorisation is suspended;

50.3.2 the Seller breaches any of the conditions of, or obligations in, any Carrier Licence held by the Seller;

50.3.3 there is a Change in Control of the Seller;

50.3.4 the Seller disposes of the whole or any substantial part of its assets, operations or business other than in the ordinary course of business or ceases to carry on business;

50.3.5 the Seller becomes an Insolvent Under Management or is the subject of any related application or proceedings;

50.3.6 if the Seller is a partnership, any step is taken to dissolve that partnership; or

50.3.7 the Seller is a trustee and the trust is terminated or an event occurs for vesting the trust property.

50.4 The Seller may terminate this Contract by issuing a notice to the Buyer if the Buyer has breached a material provision of the Contract, where the breach is capable of remedy, and the Buyer fails to remedy the breach within 40 Business Days (or such other period agreed in writing by the Parties).

Termination and reduction for convenience

50.5 The Buyer may, by Notice, at its absolute discretion, terminate or reduce the scope of this Contract for any reason, including as a result of a machinery of government change.

50.6 If this Contract is terminated or reduced in scope pursuant to clause 50.5:

50.6.1 the Seller must comply with reasonable directions given by the Buyer;

50.6.2 the Seller must mitigate any Loss; and

50.6.3 the Buyer is only liable for:

(a) Charges for work conducted before the effective date of termination or reduction; and

(b) any:

(i) cancellation fees specified in the Contract (whether for termination of individual offerings, reduction in scope or termination of the Contract); and

(ii) to the extent not already covered under clause 50.6.3(b)(i), any other unavoidable costs suffered by the Seller in direct consequence of a termination or reduction under clause 50.5 which the Seller substantiates to the reasonable satisfaction of the Buyer up to any maximum amount specified in the Contract Details (or if no amount is specified, the total Charges payable under this Contract.

50.7 Except for payments in respect of work conducted before the effective date of termination or reduction and any cancellation fees specified in this Contract, the Seller is not entitled to compensation for Loss including of prospective profits or any other indirect or consequential Losses.

50.8 For the purposes of, and without limiting clause 50.6.3(b)(ii), unavoidable costs may include:

50.8.1 the Seller's reasonable disengagement costs;

50.8.2 any Charges for Offerings already supplier by the Seller which remain unamortised at the date of termination; and

50.8.3 any loss incurred by the Seller in relation to assets of the Seller which become stranded because of the Buyer's termination.

After termination

50.9 On termination (in whole or in part) of this Contract, the Seller must:

50.9.1 take all available steps to protect Intellectual Property Rights, Confidential Information, and Personal Information relating to or provided or accessed in connection with this Contract;

50.9.2 if required by the Buyer, destroy or return to the Buyer all of the Buyer's Confidential Information in respect of this Contract (other than one copy, which the Seller may retain for its internal record keeping purposes), unless otherwise agreed in writing with the Buyer;

50.9.3 follow any reasonable direction of the Buyer; and

50.9.4 continue to perform any part of this Contract not affected by or which survive the termination.

Consequences of termination

50.10 If this is Contract is terminated (in whole or in part):

50.10.1 subject to the terms of this Contract, the Parties are relieved from future performance of this Contract (or relevant part of it);

50.10.2 subject to this Contract, all licences and authorisations relating to or concerning this Contract granted to the Seller by DTA terminate immediately despite anything to the contrary contained in the licence or authorisation (except to the extent necessary for the Seller to continue to perform any scope that has not been terminated); and

50.10.3 each Party must comply with all surviving terms of this Contract.

50.11 Termination does not affect the accrued rights of either Party.

51. Dispute resolution

No arbitration or court proceedings

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

Dispute Notice

51.2 A Party claiming there is a Dispute must give the other Parties to the Dispute a Notice setting out details of the Dispute.

Parties to resolve Dispute

51.3 During the 10 Business Days after a Notice is given under clause 51.2 (or a longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute.

51.4 If the Parties cannot resolve the Dispute in accordance with clause 51.3, they must refer the Dispute to the Seller Contract Representative and Buyer Representative at the request of one of the Parties to the Dispute.

51.5 If the matter remains in Dispute 10 Business Days (or longer period if the Parties to the Dispute agree in writing) after referral to the Seller Contract Representative and the Buyer Representative under clause 51.4, the Parties must refer the Dispute to alternative dispute resolution at the request of one of the Parties to the Dispute.

Costs

51.6 Each Party to a Dispute must pay its own costs of complying with this clause 51. The Parties to the Dispute must equally pay the costs of any alternative dispute resolution.

Termination of process

51.7 A Party to a Dispute may terminate the Dispute resolution process by giving Notice to each other Party after it has complied with clauses 51.1 to 51.5 and any alternative dispute resolution process undertaken by the Parties.

Breach of this clause

51.8 If a Party to a Dispute breaches any of clauses 51.1 to 51.7, the other Party does not have to comply with those clauses in relation to the Dispute.

52. Work Health and Safety

52.1 Clause 57 of the Head Agreement applies.

53. Building Work

53.1 Subject to clause 53.2, if any Building Work is required under this Contract, the Seller must comply with clause 60 of the Head Agreement and any other requirements specified in the Contract Details.

53.2 The parties acknowledge that if the Seller holds an exemption from application of the Building Code 2016, clause 60 of the Head Agreement does not apply to this Contract. The Seller must promptly provide evidence of any exemption to the Buyer on request.

54. Black Economy Procurement Connected Policy

54.1 The Parties acknowledge and agree that the Seller:

54.1.1 holds a Valid and Satisfactory Statement of Tax Record as at the Contract Start Date in accordance with clause 61 of the Head Agreement; and

54.1.2 must ensure that any first tier Subcontractor it has engaged under this Contract to deliver goods or services (or both) with an estimated value of over $4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record for the Subcontractor at all times during the term of the relevant Subcontract in accordance with clause 61 of the Head Agreement.

55. Archives Act

55.1 The Seller must not dispose of any Commonwealth Records unless directed in writing to do so by the Buyer.

55.2 The Seller must comply with and follow any reasonable directions of the Buyer which are relevant to any applicable Laws or policies relating to archival and information management requirements. This may include directions in relation to the ICT requirement under the Digital Continuity 2020 policy (issued under the *Archives Act 1983*) to ensure all business systems have appropriate information management functionality.

56. Freedom of Information

56.1 In this clause, 'document' and 'Commonwealth Contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

56.2 The Seller acknowledges and accepts that this Contract may be a Commonwealth Contract.

56.3 If the Buyer has received a request for access to a document created by, or in the possession of, the Seller or any Subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Buyer may at any time by Notice require the Seller to provide the document to the Buyer and the Seller must, at no additional cost to the Buyer promptly comply with the Notice.

56.4 The Seller must include in any Subcontract relating to the performance of this Contract provisions that will enable the Seller to comply with its obligations under this clause56.

56.5 If an application is made to the Buyer under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Seller, the Buyer may, before making a decision, consult with the Seller, without prejudice to any decision to release the information.

57. Workplace Gender Equality

57.1 This clause applies only to the extent that the Seller is a 'relevant employer' for the purposes of the WGE Act.

57.2 The Seller must comply with its obligations, if any, under the WGE Act. If the Seller becomes non-compliant with the WGE Act, the Seller must Notify the Buyer.

57.3 If the Contract Period exceeds 18 months, the Seller must provide a current letter of compliance within 18 months from the Contract Start Date and following this, annually, to the Buyer.

58. Indigenous Procurement

58.1 The Seller must use its reasonable endeavours to increase its purchasing from Indigenous Enterprises and employment of Indigenous Australians, in the provision of the Offerings under this Contract.

59. Carrier Specific Terms

59.1 The Parties acknowledge that the Carrier Specific Terms in the Head Agreement apply to this Contract to the extent the Seller, or a Subcontractor engaged by the Seller for the provision of Offerings under this Contract, is or is required to be a Carriage Service Provider.

60. General

Interpretation

60.1 In this Contract, except where the contrary intention is expressed:

60.1.1 a reference to this Contract is to clauses 1 to 60, and includes the applicable provisions of the Head Agreement, applicable Category Terms, and schedules (and any attachments to the schedules) to this Contract as the context requires;

60.1.2 a reference to the Buyer means the Buyer as a Party to this Contract;

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

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

60.1.5 a reference to a clause, paragraph, schedule or attachment is to a clause or paragraph of, or schedule or attachment to, the Head Agreement or this Contract and a reference to the Head Agreement or this Contract includes any schedule or attachment to the Head Agreement or this Contract, as the context requires;

60.1.6 a reference to a clause, section or paragraph includes a reference to a subclause of that clause; subsection of that section or subparagraph of that paragraph;

60.1.7 a reference to a Document, publication, standard, Commonwealth policy or instrument is a reference to the Document, publication, standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;

60.1.8 a reference to A$, $A, AUD, dollar or $ is to Australian currency unless stated otherwise;

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

60.1.10 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

60.1.11 a reference to a Law includes consolidations, amendments, re-enactments or replacements of that Law;

60.1.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

60.1.13 any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

60.1.14 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;

60.1.15 a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of this Contract;

60.1.16 if a day on or by which an obligation must be performed or an event must occur is not a Business Day in the relevant location, the obligation must be performed or the event must occur on or by the next Business Day in that location;

60.1.17 headings are for ease of reference only and do not affect interpretation; and

60.1.18 a reference to a matter being to the knowledge of a person means that the matter is the best of the knowledge and belief of that person after proper inquiry including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

60.2 To the extent that the Parties have not completed items in this Contract, unless otherwise stated in this Contract, that item will be taken to be 'not applicable' for the purpose of this Contract.

Order of precedence for this Contract

60.3 To the extent of any conflict between the provisions contained or referred to in this Contract, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):

60.3.1 the Seller's Enrolment Letter; then

60.3.2 the terms of the Head Agreement to the extent they apply to this Contract or provide for a right or obligation in relation to this Contract; then

60.3.3 (Interpretation and Definitions) of the Head Agreement to the extent it applies to this Contract; then

60.3.4 The applicable Category Terms; then

60.3.5 clauses 1 to 60 of this Contract; then

60.3.6 Schedule 3 (Definitions) of this Contract

60.3.7 the other schedules to the Head Agreement to the extent they apply to this Contract; then

60.3.8 any attachments, annexures, or schedules to the Contract; and then

60.3.9 any Documents incorporated by reference in this Contract.

Language and Measurement

60.4 All information and Documentation provided by the Seller as part of the Offerings must be written in English.

Approvals and Consents

60.5 Except where this Contract states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

Costs

60.6 Each Party must pay its own costs of negotiating, preparing and executing this Contract.

Further Action

60.7 Each Party must do, at its own expense, everything reasonably necessary (including executing all Documents) to give full effect to this Contract and any transaction contemplated by it.

Assignment and Novation

60.8 Subject to clause 60.9, a Party may only assign its rights or novate its rights and obligations under this Contract (in whole or part) with the prior written consent of the other Party (which must not be unreasonably withheld).

60.9 The Buyer may assign its rights or novate its rights and obligations under this Contract to another Buyer without obtaining the Seller's consent if its functions in relation to this Contract are transferred to another Commonwealth entity as part of a machinery of government change.

Waiver

60.10 Any waiver of any provision of, or right under, this Contract must be by Notice from the Party entitled to the benefit of that provision or right and is effective only to the extent set out in such Notice.

Severability

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

Entire Agreement

60.12 The Head Agreement and this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

Rights are cumulative

60.13 The rights, powers and remedies provided in this Contract are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

No merger

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

Survival

60.15 The following clauses survive the termination and expiry of this Contract:

60.15.1 clause 25 (Charges);

60.15.2 clause 32 (Confidentiality);

60.15.3 clause 33 (Privacy);

60.15.4 clause 35 (Books and Records);

60.15.5 clause 36 (Audit and Access);

60.15.6 clause 39 (Warranties);

60.15.7 clause 38 (Intellectual Property Rights);

60.15.8 clause 46 (Indemnity);

60.15.9 clause 47 (Liability); and

60.15.10 clause 50 (Termination) in respect of the rights and obligations arising on termination,

and any clauses that are expressed to or which by their nature survive termination or expiry or are required to give effect to this clause 60.15.

Electronic signatures and acceptance

60.16 If a Document is required to be signed or otherwise accepted in accordance with, or for purposes related to, this Contract, that Document may be signed or otherwise accepted electronically, unless otherwise Notified by the Buyer.

Counterparts

60.17 This Contract may be executed in counterparts. All executed counterparts constitute one Document.

Governing Law and jurisdiction

60.18 This Contract is governed by the Laws of the Australian Capital Territory. Each Party irrevocably and unconditionally submits to the non–exclusive jurisdiction of the courts of the Australian Capital Territory.

Compliance with Laws

60.19 Each Party must comply with all applicable Laws in carrying out its obligations under this Contract.

EXECUTED AS A CONTRACT

Executed as a contract for and on behalf of the **Commonwealth of Australia** as represented by the **Australian Prudential Regulation Authority** (ABN) **79 635 582 658** by its duly authorised delegate:

s 47F

Signature of delegate

s 47F COO

Name of delegate (print)

24/4/23

Date

In the presence of:

s 47F

Name of witness (print)

24/4/23

Date

Executed as a contract for and on behalf of **Datacom Systems (Au) Pty Ltd** (ABN) **39 135 427 075**) by its duly authorised representative:

s 47F

Signature of representative

s 47F

Name of representative (print)

Date

In the presence of:

s 47F

Signature of witness

s 47F y

Name of witness (print)

Date

Schedule 1 Additional Terms

To the extent that additional terms are not inconsistent with the Contract or Head Agreement terms, you may insert additional terms pertaining to this Contract here. In all cases, clause 1.1 should specify that the above terms of this contract prevail, as per the below example.

1.1 The Seller's Customer Terms provide additional terms and conditions on how the Offerings will be provided. If there is any inconsistency between the terms of this Contract and Our Customer Terms, the terms of this Contract prevail to the extent of the inconsistency (unless otherwise specified in this Contract).

Schedule 2 Additional Requirements

You may include requirements in addition to the Category Terms that apply to this offering. This schedule may also be used to document any category or sub-category terms that you specifically wish to exclude from the Offerings.

In the event of a conflict, the terms specified in Schedule 2 Additional Requirements take precedent over terms in the remainder of the contract.

4.2 Volume Forecast

The average call volume per month is 453 throughout a normal working week within the hours of operation.

The parties agree that the pricing/charges are based on this volume forecast.

Volume fluctuations will be priced effective 1 May 2023 according to the below, and are subject to annual CPI increases as detailed in this contract:

APRA and Datacom agree to the following terms:

- Pricing is in AUD and excludes GST
- s 47G
- No service level credits apply
- Service delivery is performed under a work from anywhere model.

Schedule 3 Definitions

This Schedule 3 sets out the meaning of the key terms used in this Contract. These definitions apply in addition to any applicable definitions used in the Head Agreement.

Term	Definition
Acceptable Use Policy	The terms applied by the owner, creator or administrator of a network, website, or service, that restrict the ways in which the network, website or system may be used and sets guidelines as to how it should be used.
Acceptance	Accepted by the Buyer in accordance with this Contract. 'Accept' and 'Accepted' have a corresponding meaning.
Acceptance Criteria	A list of criteria that the Offerings must meet before the Buyer will Accept them, as set out in this Contract.
Acceptance Testing	The testing of Offerings against the Acceptance Criteria.
Black Economy Procurement Connected Policy	The *Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at https://treasury.gov.au/publication/p2019-t369466
Building Work	Has the meaning in the Building Code 2016.
Business Day	a) For receiving a Notice under clause 9 of this Contract, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Offerings are provided or a Notice is to be received; and b) for all other purposes, any day that is not a Saturday or Sunday or a Commonwealth public holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Business Hours	Means 9 am to 5 pm on Business Days.
Buyer Confidential Information	means information relating to or provided by the Buyer, its Personnel or contractors that: a) is by its nature confidential; or b) is designated by the Buyer as confidential; or c) the Seller knows or ought to know is confidential, including: i) information comprised in, or relating to, any of the Buyer's Intellectual Property Rights; ii) information relating to the policies, strategies, practices and procedures of the Buyer and any information in the Seller's possession relating to the Buyer; ii) information relating to other contractors of the Buyer; and iv) Security Classified Information; or, d) is Buyer Material or Buyer Data, but does not include information which: a) is or becomes public knowledge other than by a breach of any confidentiality obligation; or b) has been independently developed or acquired by the Seller as established by written evidence.
Buyer Data	All data and information (including Personal Information) generated by or relating to the Buyer and its functions (including data relating to the Buyer's operations, assets, programs, Buyer Personnel, clients and other entities) in whatever form that data and information may exist.
Buyer Material	Any Material owned, administered or provided by the Buyer, and includes Buyer Data.
Buyer Personnel	Any employee, director, officer, agent, contractor, or professional adviser of the Buyer (not including Seller Personnel).
Buyer Representative	The person appointed by the Buyer to administer this Contract on behalf of the Buyer.

Term	Definition
Buyer Supplied Item	Any items to be provided or made available to the Seller by the Buyer as set out in the Contract Details.
Buyer Supplied Facility	Any accommodation, facilities, equipment, furnishings, and fixtures provided or made available to the Seller by the Buyer as set out in the Contract Details.
Carrier Licence	Has the meaning in the Telecommunications Act.
Carrier Specific Terms	The terms and conditions set out in Part K of the Head Agreement.
Carriage Service Provider	Has the meaning in the Telecommunications Act.
Category	A class of Offerings which are available under the Head Agreement and which have been specified in the Category Terms.
Category Terms	The terms that apply to a Category specified in the Seller's Enrolment Letter (and include the Common Category Terms).
Change in Control	Means: a) the ability to exercise, or control the exercise of, the right to vote in respect of more than 50% of the voting shares or other form of voting or other equity in the Seller; b) the ability to dispose of, or to exercise control over the disposal of, more than 50% of the shares or other form of equity in the Seller; c) the ability to appoint, or to remove, a majority of the directors of the Seller; d) the ability to exercise, or to control the exercise of, the casting of a majority of the votes at the meeting of the board of directors of the Seller; or e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Seller.
Charges	The amount or amounts (excluding GST) payable by the Buyer to the Seller for the Offerings in accordance with this Contract.
Commonwealth	Commonwealth of Australia.
Commonwealth Fraud Control Framework	The document as amended from time to time at: https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/CommonwealthFraudControlFramework2017.PDF
Commonwealth Record	Has the meaning given to it in the *Archives Act 1983* (Cth).
Competition and Consumer Act	The *Competition and Consumer Act 2010* (Cth).
Confidential Information	Buyer Confidential Information or Seller Confidential Information.
Conflict of Interest	Any known actual, potential or perceived conflict between: a) the duty that the Seller, Seller Personnel, and any Related Body Corporate has to the Buyer under this Contract; and b) either: i) the personal interests of the Seller, Seller Personnel or a Related Body Corporate; or ii) the duty of the Seller, Seller Personnel or a Related Body Corporate to another person or entity.
Contract	This Contract and includes all schedules and attachments and Documents incorporated into this Contract.
Contract Period	The period of the Contract as specified in the Contract Details, plus any extension of that period in accordance with this Contract.
Contract Start Date	The date:

Term	Definition
	a) the date specified in the Contract Details; or b) if no date is specified in the Contract Details, the date on which this Contract is executed by the Parties.
Corporations Act	*Corporations Act 2001* (Cth).
Data Mining	Means analysing or searching for patterns in data sets to extract information and transform it into an understandable structure, whether through automated or human means, and includes data dredging, data fishing and data snooping or similar methods.
Defect	A deficiency in design, materials, functional capacity or workmanship which means an Offering does not meet the applicable Specifications or requirements of this Contract.
Document or Documentation	Includes: a) any paper or other Material on which there is words, figures, symbols or perforations having a meaning for persons qualified to interpret them; and b) any article or Material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.
DTA	Commonwealth of Australia represented by the Digital Transformation Agency.
Eligible Data Breach	Has the same meaning as under the Privacy Act.
Enrolment Letter	A letter or other notice issued by DTA to the Seller (which may be issued electronically) in accordance with the Head Agreement.
Existing Material	Material that: a) is in existence prior to the Contract Start Date; or b) is brought into existence after the Contract Start Date other than as a result of the performance of obligations under this Contract, (including any Material in which a third party owns or holds Intellectual Property Rights) and is embodied in, or attaches to, the Offerings or is otherwise necessarily related to the provision of the Offerings and includes Material that is a modification of Existing Material.
GST	Has the meaning defined in the GST Act.
GST Act	*A New Tax System (Goods and Services Tax) Act 1999* (Cth).
Harmful Code	Any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or technical mechanism that is included to manage the proper use any software.
Illegal Worker	A person who: a) has unlawfully entered and remains in Australia; b) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or c) is working in breach of their visa conditions.
Improper Conduct	Any conduct which is anti-competitive, collusive, unethical or illegal or involves a Conflict of Interest which cannot be effectively managed or which may improperly influence or affect the Parties' obligations under this Contract.
Indigenous Enterprise	An organisation that is 50 per cent or more Indigenous owned that is operating a business.
Insolvent Under Management	Any of the following circumstances: a) if the Seller becomes bankrupt or insolvent; b) if the Seller becomes subject to one of the forms of external administration; c) the appointment of a person to administer a scheme or compromise in relation to the Seller occurs;

Term	Definition
	d) the appointment of a controller or managing controller to the whole or any part of the Seller's assets or undertakings occurs; e) the appointment of an administrator or liquidator in relation to the Seller occurs; f) the Seller is wound up by resolution or an order of the court; g) the Seller suffers execution against any of its assets which has an adverse effect on the Seller's ability to perform its obligations under this Contract; h) the Seller makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; i) the Seller becomes insolvent under administration; or j) the Seller becomes subject to any form of administration under the Laws of another country, which is the same as, or substantially equivalent to the circumstances described above.
Intellectual Property Rights	Are: a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered; b) any application or right to apply for registration of any intellectual property; and c) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (b) which may subsist in Australia or elsewhere.
ISM	Australian Government Information Security Manual.
Key Person	A person specified as such in this Contract. 'Key Personnel' has a corresponding meaning
Law	Any applicable law including, without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by–laws, ordinances or any other legislative or regulatory measures in force from time to time in Australia or, as applicable, overseas (including any amendment, modification or re–enactment of them).
Legal Services Directions	The Legal Services Directions made under the *Judiciary Act 1903* (Cth) as amended from time to time.
Loss	All losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
Material	Any tangible thing in which Intellectual Property Rights subsist.
Moral Rights	The right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).
Named Resource(s)	Seller Personnel identified as providing any part of the Offerings to the Buyer under this Contract but does not included Personnel engaged in the provision of goods and services to the Seller's customers generally or in respect of its ordinary course of business and not for the purpose of providing the Offerings to the Buyer specifically.
New Material	Material (other than Existing Material) created by the Seller (or its Subcontractors) on or after the Contract Start Date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required for that purpose (except modifications to Existing Material).
Notice	A Notice under this Contract that is given in accordance with clause 9 of this Contract. Notify and Notified have a corresponding meaning.
Offering	The goods and services that a Seller is entitled to sell under the Telecommunications Marketplace as purchased by the Buyer under this Contract.
Order	An order from the Buyer to a Seller to purchase the Offerings in accordance with clause 12 of the Head Agreement.

Term	Definition
Other Provider	means any ICT supplier or other service provider or Other Panellist that provides ICT services to the Commonwealth, other than the Seller and its Subcontractors.
Our Customer Terms	means the Standard Form of Agreement formulated by the Seller for the purposes of Part 23 of the Telecommunications Act 1997 (Cth) (**Act**), as amended by the Seller from time to time in accordance with the Act.
Party	A reference to a party is to a party to this Contract as the context requires, and includes the party's executors, administrators, successors and permitted assigns and substitutes.
Personal Information	Has the meaning given to it in the Privacy Act.
Personnel	In relation to: a) the Buyer, means Buyer Personnel; and b) the Seller, means Seller Personnel.
Privacy Act	*Privacy Act 1988* (Cth).
Privacy Commissioner	Privacy Commissioner for the Commonwealth or the equivalent State or Territory office holder.
PSPF	Australian Government Protective Security Policy Framework (**PSPF**) as amended from time to time, including the Protective Security Protocols, and the Protective Security Governance Guidelines - Security of outsourced services and functions.
Related Body Corporate	In relation to the Seller, any person which is a related body corporate of the Seller (as defined in section 50 of the Corporations Act).
Satisfactory	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 (as updated from time to time).
Security Classified Information	Information defined as Security Classified Information in accordance with the ISM and PSPF.
Seller Confidential Information	Means: a) information specified in the Enrolment Letter or a Contract as confidential; and b) information relating to or provided by the Seller, its Personnel or Subcontractors that: i) is by its nature confidential; or ii) is designated by the Seller as confidential; or iii) the Buyer knows or ought to know is confidential, but does not include information which: c) is or becomes public knowledge other than by breach of any confidentiality obligation; or d) has been independently developed or acquired by the Buyer as established by written evidence.
Seller Contract Representative	The person appointed by the Seller to administer this Contract on behalf of the Seller.
Seller Personnel	Any individual who is an employee, director, officer, agent, contractor, or professional adviser of the: a) Seller; or b) a Subcontractor.
Service Credit	An amount (if any) payable to the Buyer as a result of a failure by the Seller to achieve a Service Level as specified in this Contract.
Service Level	A metric used to measure and report on performance of the Offerings under this Contract as specified in this Contract.

Term	Definition
Specifications	In order of priority: a) any relevant specifications contained in the Telecommunications Service Catalogue established for the purposes of a Category or provided to DTA (including in response to any procurement process); b) the Buyer's functional and technical requirements for any Offering as described or incorporated by reference in this Contract; and c) all applicable manufacturers' or suppliers' (including any resellers') specifications and applicable standards. Specifications may include warranty details.
Statement of Tax Record	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
Subcontract	Any agreement with a third party specifically for the purposes of providing the Offerings to the Buyer under this Contract, but does not include any agreement with a third party for the provision of Seller Personnel to supplement the Seller's general workforce (but this does not include agreements to engage Seller Personnel for the purposes of directly providing the Offerings under this Contract), or agreements to provide goods and services to the Sellers customers generally.
Subcontractor	An entity engaged under a Subcontract and includes that entity's directors, officers, employees, subcontractors, agents and consultants.
Tax Invoice	A tax invoice as defined in the GST Act.
Telecommunications Act	The *Telecommunications Act 1997* (Cth).
Telecommunications Legislation	The: a) *Telecommunications Act 1997* (Cth); and b) *Telecommunications (Interception and Access) Act 1979* (Cth).
Telecommunications Marketplace	A panel of sellers who have been approved by DTA to provide Offerings to Buyers.
Telecommunications Service Catalogue	Any catalogue established and administered by DTA which includes the details of the Offerings that can be purchased by Buyers.
Total Contract Value	Means the aggregate of all Charges payable by the Buyer to the Seller in accordance with this Contract during the Contract Period (including any extension of that period in accordance with this Contract or variations to this Contract).
Valid	Valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy (as updated from time to time).
Warranty Period	Subject to the order of precedence specified in this Contract, the period in which an Offering must be rectified as set out in the Specifications, the Telecommunications Service Catalogue, the applicable Category Terms or this Contract.

Attachment 1 Category Requirement and Compliance

You should prepare a Category Requirement and Compliance schedule for this Contract and incorporate the agreed position here (either by inclusion or reference).

If no Category Requirement and Compliance schedule is incorporated in this Contract, the default Category Terms apply.

***Note to Draftee's**: Unless otherwise agreed in this Attachment 1, Sellers are only obligated to comply with the mandatory requirements included in the Category Requirement and Compliance Schedule (Category Terms).*

If a Category Term is desirable and the offering is included in the published product catalogue, then the agreed catalogue price and associated conditions apply to that item.

If an item is desirable, but not a condition of the agreed catalogue price, Sellers may;

- *add to the standard product pricing,*
- *propose and cost alternatives, or*
- *identify the non-compliance in their response*.

Attachment 2 Technical Requirements

For the provision of Contact Centre Services
Ref: PRQ0003516

1 Background

APRA is seeking the service provider to provide services of a contact centre provider dedicated to the reception, management and recording of all incoming calls from members of the public.

2 Technical Requirements

Technical Requirements		
#	Category	Requirement
1.	Contact Centre	Contact Centre Services

4.1 Overview

Below, you will find a general overview of the main services required:

- Trained personnel (at least 2 resources at all times) available to answer telephone enquiries Monday to Friday 9AM until 5PM AEST/AEDT except for Public Holidays.
- Call centre and human resources located in Australia.
- The services provider must ensure that the personnel involved in the delivery of the services have the necessary expertise, skills and qualifications to provide this service. An initial training on APRA's functions and standard responses needs to be provided and a refresh training performed every 3-6 months along with ad hoc updates when/if required that will be provided by APRA.
- A system that can provide a precise recording and categorisation of the calls received, and divide these in the following categories:
    1) Complaints or queries about APRA-regulated entities – may be of prudential concern[1]
    2) Complaints or queries about APRA-regulated financial entities – not of prudential concern
    3) Complaints or queries about APRA
    4) Request for information (relevant to APRA)
    5) Complaints/queries about non APRA-regulated entities or issues not relevant to APRA
    6) Other (e.g. marketing offers)

[1] As the prudential regulator, APRA is concerned with maintaining the safety and soundness of the institutions it regulates to ensure they can fulfil the financial promises they make to depositors, policyholders and superannuation beneficiaries.

For categories 1, 2 and 4 APRA is interested in a sub-categorisation that can capture the identity of the APRA-regulated entities mentioned by the complainant/enquirer.

Recording of the enquirer/complainant identity (if agreed) and details on the matter(s) raised during their call.

- Provide a daily report of the number of calls received and answered, and basic phone metrics.
    - Service level calculated from percentage of calls answered / the calls offered, **which should be targeted at >80%**
    - Average Handle Time calculated from total of Average Talk + Average Hold + Average Wrap Times
    - Average Speed Answering
    - Abandon rate calculated from percentage of calls abandoned / calls offered
    - Daily tally of calls offered and daily tally of calls answered
- Provide a monthly report with detailed phone metrics.
- The ability to rapidly upscale service provision in the event of a potential financial crisis situation, which might provoke a sharp, substantial increase in the volume and urgency of calls received.

Note: APRA will provide a script with standard responses. However, in the case that the call centre receives a telephone inquiry that it is unable to answer using these standard responses, it will have to ask the enquirer to email their queries to APRAInfo (info@apra.gov.au) for APRA's external communications team to handle.

4.2 Volume Forecast

The average call volume per month is 453 throughout a normal working week within the hours of operation.

4.3 Service level

In terms of service level requirements, APRA expects a minimum of 80% of incoming calls to be answered within 90 seconds.

4.4 Reporting

Id	Item/ Description	Due Date
1	**Daily Report** - number of calls received and answered, and basic phone metrics. o Service level calculated from percentage of calls answered / the calls offered, **which should be targeted at >80%** o Average Handle Time calculated from total of Average Talk + Average Hold + Average Wrap Times o Average Speed Answering o Abandon rate calculated from percentage of calls abandoned / calls offered o Daily tally of calls offered and daily tally of calls answered	To be provided every business day in the morning between 9am and 10am
2	**Monthly Report -** detailed phone metrics.	To be provided the first day of each month
3	Other relevant reporting during abnormal circumstances	To be provided under exceptional circumstances, such as, an abnormal increase in the number of enquiries received - triggered by specific issues impacting the financial system, APRA and/or the institutions APRA regulates

4.5 Organisational experience

Experience and qualifications of personnel

The services provider must ensure that the personnel involved in the delivery of the services have the necessary expertise, skills and qualifications to provide the service. A minimum of 1 year experience is required. An initial training on APRA's functions and standard responses needs to be provided by the vendor and a refresh training performed every 3-6 months to make sure the personnel is at speed and up to date on the key information as well as ad hoc updates regarding APRA and its regulated institutions, that might impact the enquiries received via our call centre.

4.5. Security Requirements

Security requirements

In terms of the secure management of information about APRA and the information received from members of the public, at a high-level APRA requires that its data is handled appropriately and the organisation, its systems and people maintain the confidentiality, integrity and availability of our assets. The providers will need to hold adequate incident capability and security must be a part of their business.

APRA uses the Government Information Security Manual to determine how it approaches work.

A detailed list of the security controls and protocol required by APRA can be found below:

The controls here are to identify that the organisation running the call centre has mature security practices. Once a vendor has been selected, we would also conduct a third-party risk assessment to validate their maturity level.

Organisation of Information Security

Requirements for confidentiality or non-disclosure which reflect the organisation's needs for the protection of information are appropriately defined and reviewed regularly.

The risks to the organisation's information and information security involving external parties must be identified and appropriate controls implemented before granting access.

Agreements with third parties involving accessing, processing, communicating or managing the organisation's information or information processing facilities, or adding products or services to information processing facilities should cover all relevant security requirements.

Human Resources Security

Background verification checks on the vendor must be defined and carried out in accordance with relevant laws, regulations and ethics, and proportional to the

business requirements, the classification of the information to be accessed, and the perceived risks.

Communications and Operations Management

Changes to information processing facilities and systems shall be controlled.

The security controls, service definitions and delivery levels included in the third party service delivery agreement must be implemented, operated, and maintained by the third party.

- Information backup requirements must be defined.
- Media containing organisational data must be disposed of securely and safely when no longer required, using formal procedures.
- Information involved in electronic messaging must be appropriately protected in accordance with the information classification.
- Policies and procedures should be developed and implemented to protect information associated with the interconnection of business information systems.
- Audit logs recording user activities, exceptions, and information security events must be available and kept for an agreed period to assist in future investigations and access control monitoring.
- Logging facilities and log information must be protected against tampering and unauthorised access.
- Data must be secured from malicious code.

Access Management

The allocation and use of privileges must be restricted and controlled.

The allocation of passwords must be controlled through a formal management process. Systems for managing passwords should be interactive and should ensure quality passwords.

Inactive sessions should shut down after a defined period of inactivity.

The system must provide security and control access to those functions based on permissions.

Data isolation and compliance requirements must be defined. User data may reside in a dedicated database in an on-demand environment or it may reside in

shared a database with other tenants.

Business Continuity

The system must support recovery and continuity procedures and be factored into the business process maximum tolerable outage.

Compliance

The system must comply with statutory, regulatory, contractual, and business requirements including (but not limited to):

- Records must be protected from loss, destruction, and falsification, in accordance with statutory, regulatory, contractual, and business requirements (in accordance with the Archives Act 1983).
- Data protection and privacy must be ensured as required in relevant legislation, regulations, and, if applicable, contractual clauses, as per the following acts:

o Privacy Act 1988 (Cth)

o Privacy and Personal Information Protection Act 1998 (NSW)

o Australian Prudential Regulation Authority Act 1998 (Cth)

General

Assess the geographic location of where the data is stored and determine under what legal jurisdiction does the data belong and what laws apply in this country/region.

The contract terms and conditions including limitation of liability, privacy, confidentiality and non-disclosure and non-repudiation must be adequate and commensurate with the data stored.

The behaviours of other client impact upon your service must be assessed. For example, if the service is an electronic marketing service and another client uses

this same service for spamming, assess how this may impact the quality and reputation of your service.

The previous history of the service provider including any security events or incidents and their ability to potentially affect the reliability of the service must be assessed.

The provider should have a third-party audit or assessment report which provides business assurance as to the nature and integrity of their business