



Australian Government

Digital Transformation Agency

Fact sheet for buyers

Digital Marketplace Master Agreement version 1 July 2019

Where can I find a copy of the current Master Agreement?

The new Master Agreement (version dated 1 July 2019) is available at <http://marketplace.service.gov.au/2/r/master-agreement-2019-07-01.pdf>.

The previous Master Agreement (version dated 18 June 2018) is available at <https://marketplace.service.gov.au/static/media/documents/digital-marketplace-master-agreement.pdf>.

Read the [marked-up version of the new Master Agreement](#) (showing the difference between the two versions).

Which version of the Master Agreement will apply to my work order?

Unless the parties agree otherwise:

- the previous Master Agreement (version dated 18 June 2018) will apply to all work orders entered into before 1 July 2019; and
- the new Master Agreement (version dated 1 July 2019) will apply to all work orders entered into from 1 July 2019.

You may choose to apply the previous version of the Master Agreement to work orders entered into after 1 July 2019. You will need to expressly state this in the opportunity and in the work order.

Why did the DTA amend the Master Agreement?

Buyers have informed us that they are looking to use the Marketplace to do more complex sourcing and offer higher-value contracts. This includes an option to apply stronger legal terms to Marketplace work orders.

To support this, we are introducing more comprehensive terms for complex, high-value and high-risk sourcing requirements.

The [guide to changes to the Master Agreement](#) contains further detail about the changes to the Master Agreement.

Where can I find a copy of the Comprehensive Terms?

Read the current version of the [Comprehensive Terms](#).

The DTA may make changes to the Comprehensive Terms.

When will the Comprehensive Terms apply?

The Comprehensive Terms are referred to in clause 2 of the new Master Agreement. They will only apply where they are expressly incorporated in a work order.

When buyers create an opportunity on the Digital Marketplace they will be asked whether or not they want to use the Comprehensive Terms.

This choice will be reflected in the work order.

When should I use the Comprehensive Terms?

The Comprehensive Terms are designed for higher value and / or higher risk procurements. Different agencies may have their own policies as to which procurements should use the Comprehensive Terms. However, the DTA encourages Commonwealth agencies to use the Comprehensive Terms for procurements valued over \$80,000 (or \$400,000 for Corporate Commonwealth Entities). This is because the Comprehensive Terms include policy requirements that apply to procurements over the threshold.

The labour hire template is drafted on the basis that the comprehensive terms will apply. This is because the comprehensive terms contain additional terms which address some of the common risk areas for labour hire arrangements.

Some of the other circumstances where the Comprehensive Terms may be more appropriate include where:

- the seller is a trust;
- the seller is providing third party hardware;
- seller will be providing or modifying existing software;
- you are providing material to the seller to undertake the services;
- the seller will have access to government databases or other personal information or official information;
- the seller could introduce harmful code into your systems;
- you are concerned about offshoring;
- the seller may engage subcontractors;
- you (or the seller) needs to share confidential information with third parties;
- you want the seller to transfer skills and knowledge to your staff;
- you want the agreement to include a specific indemnity by the seller;
- you want to include a liability cap;
- you need more detailed audit and access rights;
- your contract is for a long term; or
- the seller is dependent on materials or other inputs from you.

The [guide to the Comprehensive Terms](#) contains further detail about the Comprehensive Terms and each of these scenarios.

Can I change the Comprehensive Terms and Master Agreement?

The Comprehensive Terms are set out on the DTA's website and can only be amended by the DTA.

However, the amendments made to the Master Agreement clarify that additional terms contained in work orders can override the Master Agreement and the Comprehensive Terms.

This means that you can choose to apply the Comprehensive Terms but still include additional terms in your work order that override some or all of the Comprehensive Terms.

Similarly you can override some or all of the Master Agreement.

These changes will only apply to your work order with the seller. They will not change the agreement between the seller and the DTA.

Which work order should I use?

The DTA has issued three work order templates:

- Specialist work order template – used for all specialist opportunities
- Comprehensive work order template – used for all ‘seek proposals and quotes’ opportunities with Comprehensive Terms applied
- Simple work order template – used for all ‘seek proposals and quotes’ opportunities where Comprehensive Terms are NOT applied

Can I change the work order?

Absolutely!

All the templates are in Word and you can delete any rows you do not need. You can also add clauses that are specific to your agency as additional rows.

You can tailor the templates provided to suit your needs and policies, or create or use your own template.

How will I know if sellers have agreed to the Comprehensive Terms?

Sellers are not required to agree to the Comprehensive Terms in order to be part of the Digital Marketplace. Sellers may also decide to agree to the Comprehensive Terms for some procurements but not others.

Buyers can choose to issue a draft work order incorporating the Comprehensive Terms with their opportunity and ask sellers to notify any non-compliances in their response.

If the agency agrees to the seller's changes, it can include additional terms in the final work order that override the Comprehensive Terms.

These changes will only apply to that work order.

Why are the Comprehensive Terms separate to the Master Agreement?

There are around 1,300 registered sellers on the Digital Marketplace. More than 70% of these are SMEs and so far over 70% of the opportunities on the Digital Marketplace have been awarded to SMEs.

If the Comprehensive Terms had been added to the Master Agreement:

- they would apply to all procurements, including low value and low risk procurements; and
- all registered sellers would be required to agree to them to remain a part of the Digital Marketplace.

By keeping the Comprehensive Terms separate:

- buyers can choose terms that are appropriate for their procurement;
- SMEs do not need to review the Comprehensive Terms unless they want to respond to opportunities that incorporate the Comprehensive Terms;
- sellers can decide whether to accept the Comprehensive Terms in the context of a specific procurement; and
- the DTA can make more frequent updates to the Comprehensive Terms to take into account stakeholder feedback. (While the DTA can make unilateral changes to the Master Agreement, it must give 20 business days' notice.)

How were the Comprehensive Terms developed?

The Comprehensive Terms were drafted having regard to the Department of Human Services ICT Services – Deed of Standing Offer and the Department of Infrastructure and Regional Development – IT Services – Panel deed.

However, they have been designed to have the same 'look and feel' as the Master Agreement. This means that they are drafted in plain English and use minimal definitions and numbering.

The DTA also took into account feedback from the stakeholder group and the Australian Information Industry Association.