



Guide to changes to the Master Agreement

Refers to version 1 July 2019

Background

The Master Agreement that applies to work orders entered into on and from 1 July 2019 is available at <http://marketplace.service.gov.au/2/r/master-agreement-2019-07-01.pdf>.

The Master Agreement that applies to work orders entered into prior to 1 July 2019 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).

This guide summarises the changes made to the Master Agreement.

General

References to services and products have been replaced with deliverables.

This is because 'deliverable' is defined in clause 30 as 'the provision of the services, products and order material specified in the work order'.

Clause 2 (Work order)

A new clause 2 has been added which explains the process for entering into work orders.

Buyers can now opt to incorporate the Comprehensive Terms in their work order.

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

Clause 2 has also been amended to clarify that work orders between a buyer and a seller do not override the overarching agreement between the DTA and sellers.

Clause 3 (Priority of documents)

This clause sets out the priority of documents that make up a work order.

The work order is the contract between the buyer and the seller for a particular opportunity.

The terms of the work order document will override:

- any terms of the Master Agreement which relate to the contract between the buyer and the seller; and
- the Comprehensive Terms.

This does not change:

- the overarching agreement between the DTA and sellers; or
- the Comprehensive Terms that apply to other procurements.

Clause 6 (Seller obligations)

This clause has been amended to include obligations that are commonly included in Commonwealth contracts.

These include obligations on the seller to supply services or products:

- With due skill and care and to the best of the seller's knowledge and expertise.
- In accordance with all applicable laws and the professional standards of conduct applying to the relevant industry.
- In accordance with any directions given by the buyer from time to time.
- As required by the buyer, by working closely with the buyer's personnel and enabling the buyer's personnel to observe and collaborate on any aspect of the work undertaken as part of providing the services and products.

It also includes an obligation on the seller to provide all resources and equipment necessary for the provision of the services and products, except as otherwise provided in the work order.

If the seller becomes non-compliant with any of these requirements it must notify the buyer.

Clause 8 (Intellectual property rights)

This clause has been amended to clarify the default intellectual property arrangements that apply to order material – 'order material' is material created by the seller as a result of performing its obligations under a work order, including any modifications.

Under the default position:

- intellectual property rights in new software (and associated standard form documentation) is owned by the seller but is licensed to the world on an open source Creative Commons non-commercial basis

- intellectual property rights in other order material is owned by the buyer but licensed back to the seller for the purposes of providing the services.

Where a work order states that new software will not be open source, the default position is that it will be owned by the seller but the seller will grant the buyer a perpetual, irrevocable, fully paid up, royalty-free, worldwide, nonexclusive licence to reproduce, publish, use, modify, adapt, communicate and reproduce the software (and standard form documentation relating to that software), including the right to engage third parties to modify or adapt the software, and the right to sublicense.

No other software terms (including the seller's standard software licensing terms) apply to the work order unless specifically stated in a work order.

A buyer can also specify in a work order that only parts of the vendor's standard terms apply to that software.

Clause 9 (Delivery, assessment and acceptance)

The DTA found that buyers were commonly manually inserting detail in their work orders about delivery, milestones, assessment and acceptances. This clause was inserted to provide a delivery framework for all work orders. This clause is supported by the work order templates, which prompt drafters to specify deliverables, milestones and acceptance criteria if they choose to do so.

This clause includes:

- a requirement that the seller provide the deliverables by the milestone due dates in the work order;
- provision for the assessment of all deliverables;
- provision for some deliverables to be subject to acceptance against acceptance criteria nominated by the buyer, where specified in a work order; and
- clarification about when delivery and transfer of ownership will occur.

Clause 12 (Payment and expenses)

This clause has been amended to include standard provisions in relation to reimbursable expenses.

Additional amounts allowed by the work order can only be claimed if they:

- are reasonable and directly attributable to the provision of the services and products;
- are approved in writing by the buyer before any cost has been incurred;
- are substantiated by supporting documentation, such as receipts for accommodation costs, to verify the expenditure; and

- do not exceed the rates specified by the buyer or in the buyer's policies.

It has also been amended to:

- require sellers to reduce any expense claims by any input tax credits before applying any GST;
- specify that the buyer's preferred method of payment is electronic fund transfer;
- specify when electronic fund transfers are deemed to have been made; and
- include provisions dealing with a failure of the seller to notify any changes in their bank account in a timely fashion.

Clause 12 (Payment and expenses) and 14 (Taxes)

These clauses have been amended to allow different invoicing arrangements to be specified in a work order. For example, an agency may use recipient created tax invoices.

Clause 15 (Buyer material)

A new paragraph has been added which sets out the terms on which the seller is licensed to use buyer material.

Clause 16 (Confidentiality)

This clause has been amended to clarify that:

- the buyer may require the seller's employees, agents, advisers or any other third party to sign a confidentiality undertaking;
- the undertaking must be provided promptly; and
- the form of undertaking can be attached to the work order or otherwise provided by the buyer.

Clause 19 (Audit, access, review)

This clause has been amended to allow a buyer or the DTA to undertake a review of a seller's performance under the Master Agreement or a work order.

The review can be taken internally or by an external reviewer. The DTA or buyer may seek input from the seller on the proposed external reviewer.

The seller may be required to provide all assistance reasonably requested by the buyer, DTA or the external reviewer.

Any external reviewer is required to comply with appropriate confidentiality obligations as well as the seller's reasonable access and security requirements.

This clause has also been amended to require that material be provided 'promptly'. This is particularly important when buyers receive FOI requests (as they are subject to strict timeframes).

Clause 20 (Complaints)

This is a new clause. It emphasises that if a seller has a complaint about a buyer or a procurement under the panel, the seller should attempt to resolve the complaint with the buyer first.

It also sets out the process that applies if the seller has a complaint about the Master Agreement or the Digital Marketplace Panel or is unable to resolve a complaint with the buyer.

Clause 21 (Alternative dispute resolution)

This clause has been amended to clarify that it applies to both:

- disputes between a seller and the DTA in relation to the Master Agreement or the Digital Marketplace panel; and
- disputes between a seller and a buyer in relation to a work order.

Clause 22 (Termination and suspension)

The previous clause has been split into two provisions.

The first clause relates to:

- a decision by the DTA to terminate or suspend a seller's participation in the Digital Marketplace; and
- a decision by a seller to no longer participate in the Digital Marketplace.

This clause has also been amended to specify that a seller must be inactive for 12 months before the DTA can remove them from the Digital Marketplace for inactivity.

Clause 23 (Termination and suspension of work orders)

This clause relates to termination of a work order in part.

The main change to this provision is to align the default position on costs payable for to termination for convenience with the approach taken in the Commonwealth Contracting Suite.

Unless otherwise specified in a work order, the buyer will pay for:

- deliverables accepted before the date of termination; and
- any reasonable costs incurred by the seller that are directly attributable to the termination, provided that the seller substantiates these costs to the buyer's satisfaction.

This clause has also been amended to:

- allow the buyer to terminate a work order where the seller is removed or suspended from the Digital Marketplace;
- use the defined term 'consequential loss'; and
- require the seller to notify the buyer if it is subject to an 'insolvency event'.

Clause 30 (Definitions)

Definitions of 'business day', 'personal information' and 'law' have been added. These terms are used in the Master Agreement and the Comprehensive Terms.

A definition of 'buyer data' has been added. This term is used in the Comprehensive Terms.

The definition of 'proprietary software' has been deleted. This term was previously used in clause 8 (Intellectual Property).

Clause 31 (Interpretation)

A standard interpretation clause has been added.