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# **Notification of collective bargaining**

## CAUDIT

29 August 2019

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## 1 Notifying party

### 1.1 Details

Name: Council of Australasian University Directors of Information Technology Incorporated (**CAUDIT**)

Registered Office: Building 9, Wilf Crane Crescent  
YARRALUMLA ACT 2600

Telephone no: +61 2 6222 7576

ABN: ABN 39 514 469 351

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For service, please email: Jennifer Barron and Cherrie Fung, Gilbert + Tobin Lawyers at [jbarron@gtlaw.com.au](mailto:jbarron@gtlaw.com.au) and [cfung@gtlaw.com.au](mailto:cfung@gtlaw.com.au).

### 1.2 Business activities

CAUDIT is a not-for-profit association incorporated under the *Associations Incorporation Act (NSW)*. CAUDIT's role includes the promotion and advancement of the use and support of computing information technology in University teaching, research and administration. A key part of that role is assisting members with their IT procurement through negotiating offers that IT vendors will make available to CAUDIT members. More information on CAUDIT is available on its website: <https://www.caudit.edu.au/>

CAUDIT is not a trade union, an officer of a trade union or acting at the direction of a trade union.

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## 2 Details of notified conduct

### 2.1 Notification

The notified conduct is for collective bargaining (without collective boycott) (s. 93AB). The notified conduct was previously notified.<sup>1</sup>

Pursuant to the arrangements, CAUDIT negotiates directly (on behalf of its members) with companies that generally sell (whether producing and selling, or distributing in Australia) computing information technology products and services (**Targets**). The notified conduct therefore impacts the members and the Targets.

A list of current CAUDIT members is at **Attachment A**.

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<sup>1</sup> See Collective Bargaining Notifications CB00328-C00402 and CB00404-CB00431 – CAUDIT.

Membership with CAUDIT is available to organisations and institutions which undertake or support education, research or research and development, including:

- universities;
- publicly funded research institutions; and
- other entities with demonstrable linkages recommended by the Executive Committee and agreed by a resolution of the Full Members.

Other such entities may therefore become contracting parties in the future, on whose behalf the notification is lodged.

The current list of Targets is set out in **Attachment B**.<sup>2</sup>

Negotiated offers are typically for contract terms between 1-3 years. CAUDIT therefore submits that a 3-year period for validity of the notification would be appropriate.

## 2.2 Notified conduct - collective bargaining arrangement

CAUDIT negotiates with each Target in question with a view to coming to a set of terms and conditions which will be available to any of its members who decide they wish to accept the offer. The negotiation will cover terms and conditions, which may include the products and/or services to be provided, the term for which the products/services will be provided, technical capabilities and performance, jurisdiction and limitations on liability. CAUDIT will also negotiate, in some instances, the final price that will be offered.

Members will then independently determine whether to accept the offer and/or may negotiate or finalise their own agreement with the Target. Even where CAUDIT negotiates terms (including price) to be offered, members and the Targets will routinely negotiate alternative terms and contract, rather than relying solely on the terms offered through CAUDIT. As all offers negotiated by CAUDIT on behalf of its members are not binding and members and Targets remain free at all times not to deal with CAUDIT or to negotiate directly, the notified conduct does not involve collective boycott.

CAUDIT is engaging in this arrangement because CAUDIT considers that through this arrangement, its members are likely to access more beneficial terms, including price, and transactional efficiencies in terms of reduced costs in negotiating procurement contracts through the activities of CAUDIT. Given that the conduct is ongoing, the Board has not recently needed to make a decision in relation to the notified conduct.

Enclosed in **Attachment C** are the latest written offers that CAUDIT has negotiated for its members with certain Targets listed in Attachment B. These offers are commercially sensitive to the Targets, CAUDIT members and CAUDIT. Disclosure of these offers would unreasonably and adversely affect the Targets, CAUDIT members and CAUDIT in

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<sup>2</sup> Please note that some of the Targets are listed as a result of CAUDIT's contract with the software provider. In particular:

- CAUDIT has negotiated an offer from Microsoft to CAUDIT members, which expires 28 February 2021. However, Microsoft does not distribute its own products. As a result, a number of providers are listed in Attachment B as distributors of Microsoft software. These distributors offer Microsoft products at a rate that reflects the software price negotiated as between CAUDIT and Microsoft and a distribution amount negotiated separately as between each distributor and CAUDIT.
- CAUDIT has negotiated a similar arrangement with VMware, which expires 28 February 2020.

respect of their lawful business, commercial and financial affairs. Therefore, confidentiality is claimed with respect to all the enclosures in **Attachment C**.

### 2.3 Expectations in relation to the proposed contracts

CAUDIT and its members expect that CAUDIT members will make one or more contracts with the Targets for the acquisition of computing information technology products and services.

CAUDIT's members, including Australian universities, will have a continued need to access computing information technology products and services for the purposes of conducting their activities, including teaching, research and administration in relation to members which are universities and administration and research activities in relation to members which are research organisations (such as the CSIRO). Each of the Targets listed in Attachment B currently has a contract for the provisions of computing information technology or services to one or more CAUDIT members pursuant to an offer negotiated by CAUDIT, or is working with CAUDIT in relation to the potential provision of goods or services to CAUDIT members.

CAUDIT and its members also expect that the contractual payments between each Target and each participant will not exceed \$3 million in any 12-month period at present. There are no current, and have been no historic, relationships between a Target and a CAUDIT member for which yearly contractual payments between those parties exceed \$3 million, including for the largest IT providers (e.g. Microsoft).

Given the structure of the arrangements, CAUDIT is not privy to the details of the commercial arrangements and contractual payments between its members and the relevant Target(s). However, CAUDIT has confirmed that the highest level of contractual payments between a Target and a CAUDIT member in a 12-month period is currently approximately \$2.0 million.

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## 3 Market information and concentration

CAUDIT considers that the markets affected by the arrangements are the markets in which computing information technology products and services are provided to the higher education and research and development sectors.

Given the nature of the products supplied by the Targets, CAUDIT considers the market is appropriately characterised as a broad market for computing information technology products and services, the geographic scope of which is most likely global, or at its narrowest national.

There are approximately 600 IT vendors in Australia, including several very large global players. While the Targets listed include Cisco, Microsoft, Oracle and Amazon Web Services, there are a number of software providers that supply services in Australia and are not listed in Attachment B. [REDACTED]

Potential acquirers include a vast array of customers. These span government bodies, all large, medium and small businesses, and individual end-users. CAUDIT's members

are a very small proportion of those potential acquirers. All of the listed Targets are companies that sell to a wide range of customers, not limited to CAUDIT's members, nor to the education sector generally.

There are no restrictions on the supply or acquisition of the relevant goods or services. Computing information technology products and services typically have no limitations on the number of licences that can be issued and no physical restraints on production. The potential volume of supply and acquisition is infinite and unrestrained by geographic or legal limitations. CAUDIT's members also remain free to negotiate with the Targets outside of the CAUDIT arrangements. CAUDIT does not consider that any aspect of its conduct will reduce quality of the products/services, choice for IT vendors or members, or reduce innovation.

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## 4 Public benefit

As noted above, the arrangements offer significant public benefits. Those benefits are:

- More beneficial terms and conditions, including price, for CAUDIT members, which include all of Australia's universities (many of which are not for profit organisations), than they would be able to achieve on their own, particularly given the small fraction of the Targets' business they represent;
- Promotion of cost savings for CAUDIT members as well as the Targets by way of decreased transaction costs associated with negotiating with each member on an individual basis; and
- Increased opportunity for higher education institutions to have input into the terms and conditions which vendors will apply (for example in relation to appropriate levels of support for institutions of their kind), given their otherwise relatively weak negotiating position on an individual basis.

Indeed, over the last 3 years, CAUDIT's procurement activities have reduced costs and simplified processes associated with engagement (lower bureaucratic burden and effort required with respect to quotations, purchase orders, invoices, statement and support), achieved lower prices charged to CAUDIT members for products and services, and improved communication between vendors and the CAUDIT membership (e.g., in terms of technology roadmaps and support and process information).

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## 5 Public detriment

The notified conduct is unlikely to have any effect on prices of the relevant goods or services or goods or services supplied in any other markets.

CAUDIT does not consider that any public detriments will arise from the notified conduct because:

- the current level of individual bargaining power of CAUDIT's members is very low;
- CAUDIT's members represent a very small proportion of the vendors' sales (most suppliers operate in a global market for which Australian sales represent

approximately 1-2%, of which only a further 1-2% is made up of sales to higher education end users); and

- neither CAUDIT's members nor the Targets are in any way obliged to participate in any negotiations conducted by CAUDIT (members can elect to accept an offer made or can negotiate directly with a Target; a Target can approach a member directly whether or not it also makes an offer through CAUDIT).

CAUDIT does not consider that any other detriments could arise from the notified conduct.

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## 6 Contact details of relevant market participants

Contact details for the Targets are set out in **Attachment B**.

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## 7 Any other information

We note that the ACCC had no objections to the notified conduct in October 2016. In its letter, the ACCC assessed that the collective bargaining arrangements were likely to result in public benefits in the form of transaction cost savings and greater input by CAUDIT members into contracts, which was likely to result in more efficient contracts. The ACCC also considered that the potential for the arrangements to result in public detriments was limited given the voluntary nature of the arrangements and the fact that in many instances, CAUDIT members have limited bargaining power and/or CAUDIT members represent a relative small proportion of the vendor's sales.

These factors continue to apply.

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## Declaration by notifying party

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code (Cth)*.



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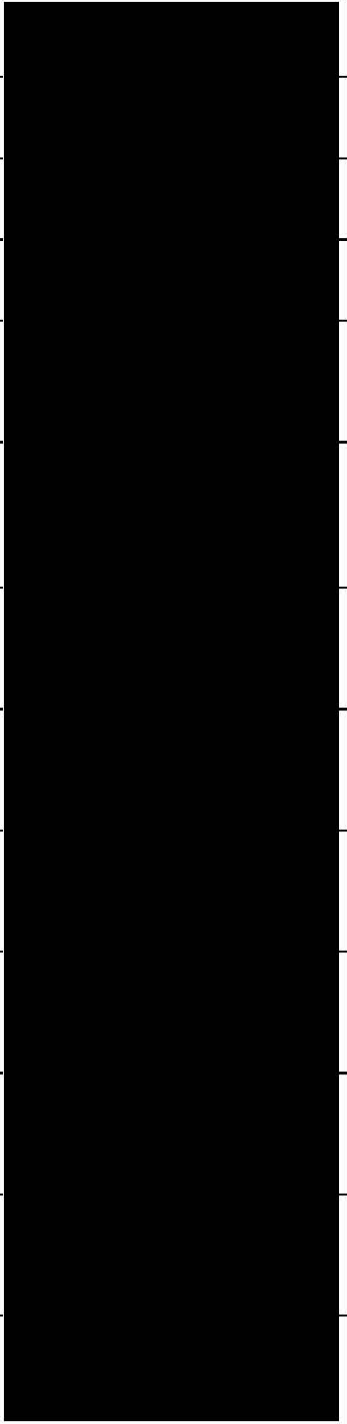
Signature of authorised person

Anne Kealley, Chief Executive Officer, CAUDIT

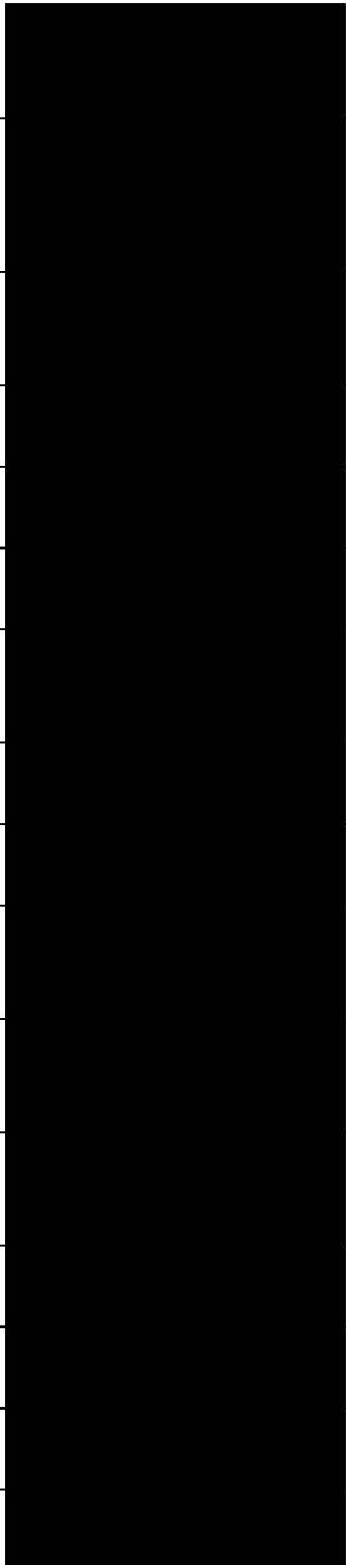
29 August 2019



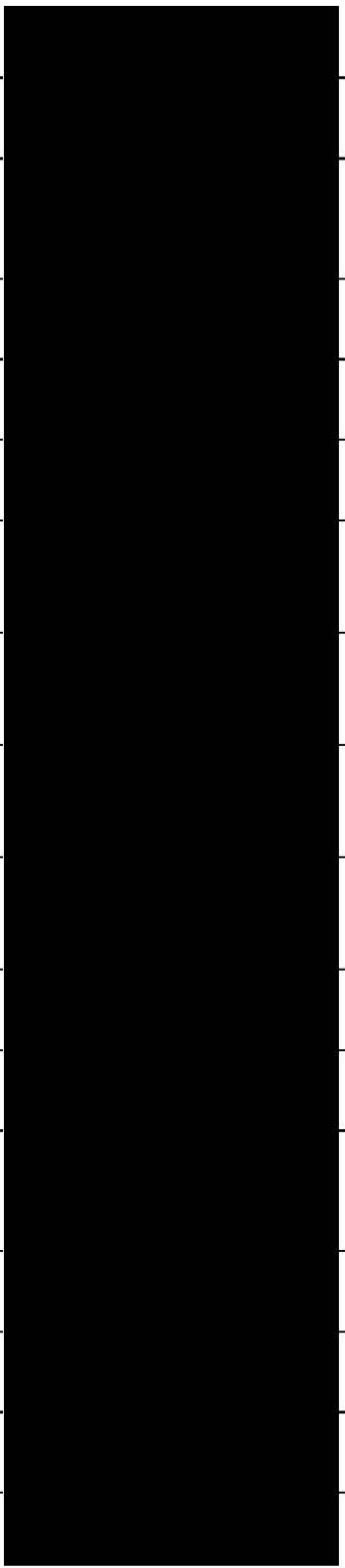
## Attachment A: Current Members

Region	Member	Contact	Contact details
ACT	Defence Science and Technology Group	Mr Peter Lambert Chief Research Services	
ACT	Geoscience Australia	Ms Tanya Whiteway Chief Scientific Information Officer	
ACT	The Australian National University	Ms Karen Hill Director, ITS	
ACT	University of Canberra	Mr David Formica Chief Digital Information Officer	
ACT	UNSW Canberra – Australian Defence Force Academy	Mr Newton Braga Head of Information & Communication Technology	
ACT	Commonwealth Scientific and Industrial Research Organisation (CSIRO)	Mr Brendan Dalton Chief Information Officer	
NSW	Australian Catholic University	Mr Niranjan Prabhu Director of Information Technology	
NSW	Australian Nuclear Science and Technology Organisation (ANSTO)	Ms Marianne Morton Chief Information Digital Officer	
NSW	Charles Sturt University	Mr Tim Mannes Executive Director	
NSW	Garvan Institute of Medical Research	Mr Esteve Mayolas Acting Head of Information Technology	
NSW	Macquarie University	Mr Tim Hume Interim Chief Information Officer	
NSW	Southern Cross University	Ms Gina White Director, Technology Services	
NSW	The College of Law	Ms Jennifer Walbank Director Technology and Information Systems	

Restriction of Publication of Part Claimed

Region	Member	Contact	Contact details
NSW	University of New England	Ms Angie Hendrick Chief Information Officer, Information Technology Directorate	
NSW	University of Newcastle	Mr Anthony Molinia Chief Information Officer	
NSW	University of Sydney	Mr Caroline Hungerford Acting Chief Information Officer	
NSW	University of Technology, Sydney	Mr David O'Connor Acting Chief Information Officer	
NSW	University of Wollongong	Ms Fiona Rankin Director	
NSW	UNSW Sydney	Mr Tim Catley Chief Digital Officer	
NSW	UTS:Insearch	Mrs Sarah Chaloner Head of Information Communication Technology	
NSW	Western Sydney University	Mr Kerry Holling Chief Information & Digital Officer	
NT	Charles Darwin University	Mr Pat Gould Director	
QLD	Australian Institute of Marine Science	Mr James Smith Manager, Information Technology Services	
QLD	Bond University	Mr Marlon Sayer Director, Information Technology Services	
QLD	Central Queensland University	Mr Roy Pidgeon Director, Information and Digital Technology	
QLD	Griffith University	Mr Thomas King Acting Chief Digital Officer	
QLD	James Cook University	Mr Jonathan Churchill Chief Digital Officer	
QLD	Queensland University of Technology	Mr Cathy Ford Chief Information Officer	
QLD	University of Queensland	Mr Rob Moffatt AM Chief Information Officer	

Restriction of Publication of Part Claimed

Region	Member	Contact	Contact details
QLD	University of Southern Queensland	Mr Scott Sorley Executive Director	
QLD	University of the Sunshine Coast	Mr Andrei Clewett Director, ICT Solutions	
SA	Flinders University	Ms Kerrie Ann Campbell Chief Information Officer	
SA	The University of Adelaide	Mr Bev Wright Chief Information Officer	
SA	University of South Australia	Mr Paul Sherlock Chief Information Officer	
TAS	University of Tasmania	Mr Adrian Dillon Acting Chief Information Officer	
VIC	Deakin University	Mr William Confalonieri Chief Digital Officer	
VIC	Federation University Australia	Mr Sahar Oujil Director, Information Technology Services	
VIC	La Trobe University	Mr Peter Powell Executive Director and Chief Information Officer	
VIC	Monash University	Mr Teresa Finlayson Interim Chief Information Officer and Deputy Chief Information Officer	
VIC	Open Universities Australia	Mr Denver Sansoni Interim Head of Information Technology	
VIC	RMIT University	Mr Paul Oppenheimer Executive Director	
VIC	Swinburne University of Technology	Mr Wendy Andrews Director, Information and Communications Technology	
VIC	The University of Melbourne	Mr Byron Collins Executive Director	
VIC	Victoria University	Mr Zoran Sugarevski Executive Director	
WA	Curtin University	Mr Jason Cowie Chief Information Officer	
WA	Edith Cowan University	Mr Vito Forte Chief Information Officer	

Region	Member	Contact	Contact details
WA	Murdoch University	Mr Michael Grant Director, ITS	
WA	University of Notre Dame	Mr Darryl Kefford Chief Information Technology Officer	
WA	University of Western Australia	Mr Warwick Calkin Chief Information Officer	
NZ	Auckland University of Technology	Ms Liz Gosling Chief Information Officer	
NZ	Lincoln University	Ms Fiona Taylor Director, Information Technology Services	
NZ	Massey University	Dr Elizabeth Valentine Chief Information Officer	
NZ	University of Auckland	Mr Jason Mangan Director, Information Technology Services	
NZ	University of Canterbury	Mr Andy Keiller Chief Information Officer	
NZ	University of Otago	Mr Mike Harte Director	
NZ	University of Waikato	Mr Eion Hall Director of Information Technology Services and Facilities Management	
NZ	Victoria University of Wellington	Mr Stuart Haselden Director	
PNG	Divine Word University	Mr Charith Silva Director	
PNG	PNG University of Technology	Mr Gopal Kolapalli Director	
PNG	University of Papua New Guinea	Mr William Tapio Director, Information Communication Technology Services	
Fiji	Fiji National University	Mr Chandr Prakash Anuj Director of Information Communication and Technology	
Fiji	University of the South Pacific	Mr Kisione Finau Director, Information Technology Services	
Timor Leste	National University of Timor Leste	Mr Abel Pires da Silva Director, DNIT	

## Attachment B: Targets

**Please note:** Due to the high turn-over in staff within IT vendor organisations, these details may be out-of-date. Please feel free to contact CAUDIT for updated information as required.

	Company	Address	Name	E-mail	Position	Phone	Products/Services
1	AARNet						Telecommunications (Data Networking)
2	Acer						Desktop/Laptop Computer Hardware
3	Adobe						Computer Software
4	Agilent						Research Management Software and Services
5	Aliva						Software Resales
6	Ammacus Pty Ltd						Video Conferencing
7	Appian						Computer Software
8	Apple						Computer Hardware and Software
9	Arista						Networking Hardware and Software
10	ASI Solutions						Storage Hardware, Software and Services

	Company	Address	Name	E-mail	Position	Phone	Products/Services
11	AusCERT						Cybersecurity Services
12	Australian Access Federation						Identity Management Services
13	AV Technology (AVT)						Audio Visual Technology
14	Amazon Web Services (AWS)						Cloud Computing Services
15	Axios						IT Service Management
16	Bitglass						Cybersecurity Services
17	CAMMS Group						ERP Systems
18	Carbon Black						Cybersecurity
19	CDM						Communications and Electrical Cabling and Services
20	Certero						Software License Management
21	Check Point Software						Cybersecurity
22	Cherwell						IT Service Management Software and Services

	Company	Address	Name	E-mail	Position	Phone	Products/Services
23	Cisco						Computer Hardware and Software
24	Citrix						Computer Software and Services
25	Cloudflare						Cybersecurity
26	Cofense						Cybersecurity Services
27	Corel						Computer Software
28	Crowdicity						Computer Software
29	Cyclone						Computer Software and Hardware
30	Darktrace						Cybersecurity
31	Data #3						Computer Software and Hardware
32	Datacom						IT Consulting Services
33	DataCritical						Datacentre Infrastructure Supply and Service
34	DataDirect Networks						Computer Hardware

	Company	Address	Name	E-mail	Position	Phone	Products/Services
35	Dell <sup>3</sup>						Computer Hardware
36	Dekko Secure						Cybersecurity
37	Denodo Technologies Pty Ltd						Data Virtualisation
38	Dimension Data						Computer Hardware, Software and IT Consulting
39	Dropbox						Cloud Storage
40	DXC Red Rock <sup>4</sup>						Software License Management
41	Enosys Solutions Pty Ltd						Cybersecurity Services
42	Envisian						IT Consultancy
43	eReserve						Copyright Management System
44	Execute Strategy						IT Consulting
45	Exprodo	Research Management Software and Services					

<sup>33</sup> Note: Reference to Dell includes other related entities such as EMC.

<sup>44</sup> Note: Reference to DXC Red Rock includes other related entities such as HP and UXC.



	Company	Address	Name	E-mail	Position	Phone	Products/Services
46	Forcepoint						Cybersecurity Services
47	ForeScout Technologies, Inc.						Cybersecurity
48	Forticode Ltd						Cybersecurity
49	Fortinet						Network Security Software and Services
50	FrameGroup						Storage Hardware, Software and Services
51	Fujitsu						Computer Hardware, Software and Services
52	Gartner						IT Consulting Services
53	Google						Cloud Services
54	Huawei						Computer Hardware, Software and Services
55	Hyperscalers						Computer Hardware
56	IBM						Storage Hardware, Software and Services
57	Imperva						Cybersecurity
58	InfoTrust						Cybersecurity

	Company	Address	Name	E-mail	Position	Phone	Products/Services
59	Insight	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Computer Hardware, Software and Services
60	Interactive						IT Services
61	Intersect						IT Consulting Services, Cloud Services
62	iQ3						Computer Hardware, Software and Services
63	Ivanti						IT Management Software
64	Juniper						Network Equipment
65	KnowBe4						Cybersecurity Services
66	Kronos Australia Pty Ltd						Workforce Management Software
67	LabStats						Analysis Software
68	Lenovo						Computer Hardware and Software
69	Lenovo Global Technology (Australia & New Zealand)						IT Hardware & Services
70	LEO Learning						Cybersecurity Services

	Company	Address	Name	E-mail	Position	Phone	Products/Services
71	Macquarie Cloud Services						Cloud Services
72	Microsoft						Computer Software, Hardware and Services
73	Microsoft Services						IT Consulting Services
74	Mimecast						Cloud e-mail management
75	Nectir						Idea Management Software
76	NetApp						Storage Hardware, Software and Services
77	Nexon						Unified Communications
78	Nextthink						Artificial Intelligence Solutions
79	Noveix						Computer Hardware, Software and Services
80	NTT						IT Consultancy, Software Resales
81	Oracle						Computer Hardware, Software and Services
82	Ovum						IT Consulting
83	Pexip						Unified Communications

	Company	Address	Name	E-mail	Position	Phone	Products/Services
84	Platform9						Cloud Services
85	Proficio						Cybersecurity
86	Prog4Biz						Research Management Software and Services
87	Proofpoint						Cybersecurity Services
88	Qirx						Computer Software and Services
89	Qualys						Cybersecurity
90	RecordPoint						Record Management Software and Services
91	Redhat						Computer Software and Services
92	Renew IT						Electronics Disposal
93	Rhipe						Software Resales
94	Rubrik						Backup Services
95	SAP						Computer Software and Services
96	Secure Logic						Cybersecurity

	Company	Address	Name	E-mail	Position	Phone	Products/Services
97	ServiceNow						IT Service Management Software and Services
98	ServiceQuality						IT Service Management Software and Services
99	SoftwareONE						Computer Hardware, Software and Services
100	Spinbackup						Backup Services
101	Splunk						Analysis Software
102	Squiz						Web Hosting Software
103	SurveyMonkey						Cloud Survey Software and Services
104	Tableau Software						Analytics
105	TechSmith Corporation						Software
106	Telstra						Telecommunications and IT Consulting Services
107	Tenable Network Security						Cybersecurity Services
108	Trend Micro						Cybersecurity Services

	Company	Address	Name	E-mail	Position	Phone	Products/Services
109	UpGuard						Cybersecurity
110	Vantage						Unified Communications and AV Products
111	VMware						Computer Hardware, Software and Services
112	WDCi Pty Ltd						Cloud Services
113	Winc						Software resales
114	Xenon						Computer Hardware, Software and Services
115	Yell IT						IT Consulting Services
116	Yubico Australia						Cybersecurity

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## Attachment C: Latest offers negotiated by CAUDIT

Due to their size, these documents have been provided separately. Restriction from publication of offers is sought.