



Queensland Information Technology Contracting (QITC) Framework - Guidance Notes for Comprehensive Contract Details and Module Order Forms

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INTRODUCTION

These Guidance Notes are to help Customers to complete the *Comprehensive Contract Details – ICT Products and Services* ('Details') and the Module Order Forms under the Queensland Information Technology Contract (QITC) framework.

These are to be read in conjunction with the *Comprehensive Contract Conditions – ICT Products and Services*, Modules and Schedules.

The Guidance Notes provide general information and guidance only and should not be relied upon in place of legal advice. If the Customer has any questions regarding the Guidance Notes or preparing a particular contract, the Customer should contact its procurement or legal team for advice. The Guidance Notes do not constitute a legally binding document and do not form part of, or affect the interpretation of, any contract established under the QITC framework.

Interpretation

For the purposes of the Guidance Notes:

- 'Comprehensive Contract Conditions' refers to the *Comprehensive Contract Conditions – ICT Products and Services*
- 'Details' refers to the *Comprehensive Contract Details – ICT Products and Services*
- a 'Comprehensive Contract' means a contract created using the Comprehensive Contract Conditions, the Details and relevant Modules and Schedules
- all other capitalised terms are defined in the Comprehensive Contract Conditions or the Modules.

When to use?

Under the QITC framework, a Comprehensive Contract is designed for use in:

- procurements over \$1 million and which are assessed as low risk and
- procurements assessed as moderate or high risk regardless of value.

Comprehensive Contract Templates

The following templates have been developed for the establishment of a Comprehensive Contract:

- Comprehensive Contract Conditions
- Details
- Modules and Module Order Forms 1 – 7
- Schedules 1 - 11.

The Modules and Module Order Forms address particular types of transactions:

- *Module 1 - Hardware*
- *Module 2 - Software*
- *Module 3 - As a Service*
- *Module 4 - Systems Integration*
- *Module 5 - Telecommunications Services*
- *Module 6 - Managed Services*
- *Module 7 - ICT Professional Services.*

The Schedules are a collection of optional documents and templates that may be required for a particular procurement. These are:

- *Schedule 1 – Price and payment terms*
- *Schedule 2 – Project implementation and payment plan*
- *Schedule 3 – Statutory declaration by subcontractor*

- *Schedule 4 – Confidentiality, privacy and conflict of interest deed*
- *Schedule 5 – Escrow agreement*
- *Schedule 6 – Financial security*
- *Schedule 7 – Performance guarantee*
- *Schedule 8 – Service levels*
- *Schedule 9 – Acceptance testing*
- *Schedule 10 – Statement of work template*
- *Schedule 11 – Change request template*

Schedules 1, 2, 8, 9, 10 and 11 can be used as a starting point for a Customer to develop documents which are tailored to suit an individual procurement.

Schedules 3 – 7 are purpose-specific legal agreements, deeds or declarations. These documents provide a base level of coverage on the subject matters dealt with in the schedules. Legal advice is recommended where amendments are proposed to be made to these legal documents.

The Comprehensive Contract Conditions and Modules are accepted by government and industry as balanced, standardised terms to be used, without any amendment, for ICT procurements over \$1 million which are assessed as low risk, as well as moderate or high-risk procurements of any value.

Documents making up the Comprehensive Contract

According to clause 1.3 of the Comprehensive Contract Conditions, a Comprehensive Contract between the Supplier and Customer consists of the following documents:

- (a) the Modules which are stated as forming part of the Contract in the Details
- (b) the Comprehensive Contract Conditions
- (c) the Module Order Forms which correspond to the Modules which are stated as forming part of the Contract in the Details (excluding any Additional Provisions and any document which the Details or a Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract)
- (d) the Details (excluding any Additional Provisions and any document which the Details or a Module Order states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract)
- (e) any Additional Provisions
- (f) any Statement of Work
- (g) any schedules (excluding documents which the Details or a Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract) and
- (h) any documents which the Details or a Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract.

In case of conflict between the documents comprising the Comprehensive Contract, the order of priority of the documents is as set out above from highest to lowest.

Creation of a Comprehensive Contract

A Comprehensive Contract is entered into when the Supplier and Customer execute section 1.2 of the Details headed 'Forming the Contract'.

By executing the Details, the Supplier is offering to enter the Contract on the terms set out in the Comprehensive Contract and the Customer accepts the Supplier's offer.

Preparation and Execution of a Comprehensive Contract

In preparing a Comprehensive Contract, the Customer may want to complete the documents in the order set out below. The steps are a suggestion only. It is possible that the Customer may wish to start preparing the Contract at Step 2, rather than Step 1. It is also possible that Steps 1 and 2 may need to be developed at the same time.

Where the Customer issues an Invitation to Offer, the Customer should complete the Details, Module Order Forms and Schedules, together with the other Contract documents (to the extent possible) before issuing the documents to potential offerors as part of the Invitation to Offer. Where the Customer does not issue an Invitation to Offer, the Customer should complete and submit the documents to the Supplier at the start of contract negotiations.

Step 1: Module Order Form

Complete all yellow highlighted sections of the applicable Module Order Forms, following the instructions in the Module Order Forms and these Guidance Notes.

Make sure to refer to the applicable Modules in item 5 of the Details and attach the Modules and Module Order Forms to the Details.

Delete all instructions in the Module Order Forms once completed.

Ensure that any document which the Module Order Form states will form part of the Contract is attached to the Module Order Form. This may include any Specifications which are to be attached.

Step 2: Details

Complete all highlighted sections of the Details, following the instructions in those Details and these Guidance Notes. Delete all highlighted instructions in the Details once completed.

Modules and Schedules

Ensure that all applicable Modules and Schedules are identified or referred to in item 5 of the Details.

Additional Provisions

Identify in item 6 of the Details any Additional Provisions to be included. Ensure they do not detract from any of the parties' rights or obligations as set out in the Comprehensive Contract Conditions or Modules. If they do, they will not form part of the Contract. However, terms included to enable the Customer to comply with applicable legislation or policy requirements are deemed to not detract from the parties' rights or obligations.

It is expected that there will be minimal circumstances in which the parties will need to include Additional Provisions.

Incorporated Documents

Any document which is to be incorporated by reference must either be:

- specified in the Details (in item 5) or a Module Order Form or
- otherwise expressly incorporated by reference in one of the other documents which form part of the Contract.

If not, that document will not form part of the Comprehensive Contract.

It is recommended that:

- all documents which the Details or a Module Order Form state form part of the Contract and
- all documents which are otherwise incorporated by reference in the Contract which fall under clause 1.3(h) of the Comprehensive Contract Conditions,

are stipulated in item 5 of the Details, even if they are also referred to in other documents which make up the Contract. This will increase certainty as all documents which constitute the Comprehensive Contract under clause 1.3(h) will be specified in the one location, rather than throughout the various documents making up the Comprehensive Contract.

It is also recommended that the Details stipulate a document hierarchy to identify which of those documents in clause 1.3(h) should govern if there is inconsistency between the terms of those documents. This can be set out in item 5.

It is best practice to attach a copy of all, or as many as possible, of the documents which are intended to form part of the Comprehensive Contract, rather than simply incorporating them by reference.

Step 3: Schedules

Complete all highlighted instructions in the relevant Schedules. Make sure to refer to the applicable Schedules in item 5 of the Details and attach them to the Details.

Delete all highlighted instructions in those Schedules once completed. If changes need to be made to the Schedules before using them in a Contract, the Customer may want to consider obtaining legal advice.

Step 4: Supplier execution

Once the terms of the documents which make up the Comprehensive Contract are agreed between the parties, it is recommended that the Supplier executes section 1.2 in the Details headed "Forming the Contract" first. This is because, once executed the Supplier is offering to enter the Comprehensive Contract on the terms set out in the document, which is capable of acceptance by the Customer.

It is recommended that the Customer prepares two identical copies of the Details and all documents which form part of the Contract and sends them to the Supplier for execution and return to the Customer.

Step 5: Customer execution

Customer execution

Upon receipt of the Details which are signed by, or on behalf of the Supplier, the Customer's authorised representative may sign in section 1.2 of the Details headed "Forming the Contract".

The individual executing the Details on behalf of the Customer should also have the necessary authority to do so, including the appropriate delegation.

Once executed, a copy of the executed Contract should be provided to the Supplier.

Step 6: Save contract documents

Save all Comprehensive Contract documents, preferably using a contract management system. This ensures there is a complete record of the Comprehensive Contract.

Any future agreed Statements of Work and Change Requests should also be referenced to and stored with the original Contract documents.

COMPREHENSIVE CONTRACT DETAILS

General information

1. Customer



Guidance:

Insert the correct full legal name of the Customer and include the Australian Business Number (ABN) or Australian Company Number (ACN), if there is one.

A Queensland Government department does not have a separate legal existence from the State of Queensland. Accordingly, the Customer should be described as “*The State of Queensland, acting through the Department of xxxx*”.

For a statutory body, use the name which is established by legislation. For example, the legal name of the State Library of Queensland is the ‘*Library Board of Queensland established pursuant to the Libraries Act 1988 (Qld)*’.

2. Customer contact details



Guidance:

The Supplier will use these details to contact the Customer for all communications relating to the Contract. This includes formal notices as well as informal day-to-day notices.

However, notices about disputes, termination or suspension that are sent by email must also be sent by post, hand delivery or another way permitted by Law (clause 22.7).

The Authorised Representative has the authority to provide the required consents and approvals, issue instructions and directions and receive notices under the Contract.

It is important that the email address and contact details nominated are accessible and monitored by staff within the relevant service area to ensure coverage at times when the Authorised Representative may be unavailable or on leave.

A Customer may appoint more than one Authorised Representative or specify that different Authorised Representatives have different functions. If this is the case, those functions would need to be clearly specified here.

3. Supplier



Guidance:

Ensure the full legal name of the Supplier is inserted.

Check:

- the Supplier's name matches the legal entity which responded to the invitation to offer (if applicable)
- the ACN and ABN (or ABRN) are accurate.

A business name is not the legal entity which owns the business. Rather it is the trading name which is owned by a legal entity (e.g. a natural person or a corporate entity). Conduct business name and company searches if necessary.

4. Supplier Contact Details



Guidance:

The Customer will use these details to contact the Supplier for all communications relating to the Contract. This includes issuing formal notices (for example, the Customer issuing a notice to remedy a breach or to exercise an extension option) as well as informal day-to-day notices.

However, notices about disputes, termination or suspension that are sent by email must also be sent by post, hand delivery or another way permitted by Law (clause 22.7)

It is important that the email address and contact details nominated for the Supplier's Authorised Representative are accessible and monitored by staff to ensure coverage at times when the Authorised Representative is unavailable (e.g. on leave or away due to illness).

A Supplier may appoint more than one Authorised Representative or specify that different Authorised Representatives have different functions. If this is the case, make sure the functions are clearly specified here.

5. Modules and documents that form part of the Contract

Clause 1.3



Guidance:

Modules

It is important to specify in this item the Modules which will apply to the Contract. It is recommended that the Modules and completed Module Order Forms be attached to the Details for certainty.

Documents

In this item, the Customer can also identify all documents which fall within clause 1.3(h) of the Comprehensive Contract Conditions, being '*any document which the Details or Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract*'.

These documents are lowest in the contractual hierarchy set out in clause 1.3(h) of the Comprehensive Contract Conditions.

To the extent possible, it is recommended that all documents which fall within the meaning of clause 1.3(h) of the Comprehensive Contract Conditions are stipulated in this item, even if they are also referred to in another document which forms part of the Contract. This will ensure there is certainty as to the precise documents which make up the Contract as all documents can be quickly and clearly identified in one location.

It is also recommended that a document hierarchy is specified for documents which fall under clause 1.3(h), so that it is clear which document takes priority if there is an inconsistency between their terms.

6. Additional Provisions

Clause 1.4



Guidance:

The Comprehensive Contract Conditions and Modules are accepted by government and industry as balanced, standardised terms to be used, without any amendment, for ICT procurements which are low to high risk. However, the Comprehensive Contract Conditions permit the parties to include Additional Provisions for a particular Contract with specific limitations.

It is expected that there will be minimal circumstances in which the parties will need to include Additional Provisions.

Under clause 1.4 of the Comprehensive Contract Conditions, any Additional Provisions take effect only to the extent that they are additional to, and do not detract from, the parties' rights and obligations under the terms and conditions of the Comprehensive Contract Conditions and the Modules. If they do, they will not form part of the Contract.

However, under clause 1.4, any Additional Provisions included to enable the Customer to comply with applicable legislative and policy requirements are deemed not to detract from the parties' rights and obligations. This would mean, for example, if a Customer needs to comply with a policy developed for the benefit of small to medium enterprises, which required it to introduce SME reporting and associated obligations on the Supplier in the Contract, those additional obligations on the Supplier would not be regarded as detracting from the Supplier's rights or obligations.

7. Term

Clause 3



Guidance:

Start Date

The start date of the Term should be inserted in this item. This may or may not be the date that the Contract is signed under clause 1.1 of the Comprehensive Contract Conditions.

The Start Date may coincide with the start dates specified in one or more of the Modules for the provision of particular Products and/or Services.

The Modules require various periods and dates to be specified:

- *Software Support Services (Module 2)* require a Support Period to be specified
- *Telecommunications Services (Module 5), Managed Services (Module 6) and ICT Professional Services (Module 7)* each require a Service Period to be specified
- *Licensed Software (Module 2)* requires a Licence Period to be stipulated
- *Hardware Maintenance Services (Module 1)* requires a Maintenance Period to be stipulated
- *As a Service (Module 3)* refers to Subscription Periods, which automatically renew unless otherwise notified
- *Hardware (Module 1), Developed Software (Module 2) and Systems Integration (Module 4) and ICT Professional Services (Module 7)* allow for a Delivery Date to be specified.

The start date for the Term will need to take into account these periods, as well as account any Transition-In Services which are required, in the case of *As a Service (Module 3)*, *Telecommunications Services (Module 5)* and *Managed Services (Module 6)*.

End Date

The End Date for the Term of the Contract will need to take into account the duration of:

- all Service Periods, Support Periods, Licence Periods, Maintenance Periods and Subscription Periods and Delivery Dates from the relevant Modules
- any Transition-Out Services which are required, in the case of *As a Service (Module 3)*, *Telecommunications Services (Module 5)* and *Managed Services (Module 6)* and
- the duration of any applicable Warranty Period/s.

It should not include any of the extension options for the Products and Services.

Extension Options

This item sets out the Customer's option (if any) to extend the Term. If the Customer requires the ability to extend the initial Term for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. 1 year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as “two extension options of 12 months each”.

If the Customer does not require the ability to extend the Term, this item should be specified as “Not applicable”. If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Term, this will need to be negotiated with the Supplier.

A Customer may want to consider specifying a number of optional extension periods, rather than specifying an excessively long initial Term. This would give the Customer greater flexibility to decide whether to continue to procure from the Supplier in the long term.

It is recommended that the Customer has a contract management system in place which alerts it in advance of the Term expiry date and the date by which it must issue an extension notice if it wishes to extend the Term. Care should be taken to ensure there is time for the Customer to liaise with the relevant stakeholders and determine whether there is an ongoing requirement for the Products and/or Services.

In stipulating any general extension option period in the Details, it will be necessary to consider the applicable Modules to take into account any of the Customer’s optional extension period/s stipulated in the Modules. If there is any inconsistency, the Modules will take precedence over the terms stipulated in the Details.

Optional extension periods can be stipulated for:

- the Maintenance Period in the *Hardware Maintenance Services (Module 1B)*
- the Licence Period in the *Licensed Software (Module 2A)*
- the Support Period in the *Software Support Services (Module Order 2B)*
- the Service Periods in the *Telecommunications Services (Module 5), Managed Services (Module 6)* and *ICT Professional Services (Module 7)*.

If the Price will change during an extended period if an option is exercised, this will need to be specified in Schedule 1 or 2. The Price review mechanism will need to be specified in the applicable Schedule as well.

Notice Period for extensions

If the Customer has extension options, the item must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Term. For example, this may be specified as “30 days prior to the expiry of the Term or applicable extension period (if applicable)”.

8. Authorisations

Clause 4.2



Guidance:

Clause 4.2 requires the Supplier to obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for it to perform the Contract. If there are any specific authorisations which the Customer wants the Supplier to have when performing the Services, these can be specified in this item.

9. Documentation

Clause 5



Guidance:

Documentation can be a key Deliverable to be provided by the Supplier.

User Documentation

'User Documentation' is defined in the Comprehensive Contract Conditions to mean the Supplier's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided to the Customer.

In this item, specify the details of any User Documentation to be provided, the format in which it must be provided and when the Supplier must supply it.

Training material is not to be specified in this item. All aspects associated with Supplier training is to be dealt with in item 19 of the Details, as per clause 7.10 of the Comprehensive Contract Conditions.

Bespoke Documentation

'Bespoke Documentation' is defined to mean the documents created for the Customer as a Deliverable that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under the Contract, in a hard copy, electronic or online format as stated in the Details.

In this item, specify any Bespoke Documentation to be developed by the Supplier, including under a Module and the format in which it is to be provided and when it must be provided.

Clause 5.3 of the Comprehensive Contract Conditions enables the Customer to approve or reject Bespoke Documentation. Clause 5.3(b) permits the Customer to stipulate the procedures which the Supplier must follow in submitting draft Bespoke Documentation (e.g. the number of review cycles) in this item in the Details.

Some Bespoke Documentation has its own approval mechanism specified in the Module. For example, a Design Specification is required to be developed by the Supplier under clause 5.1 of *Module 2 – Software* and Detailed Specifications are to be developed by the Supplier under clause 3.5 of *Module 4 – Systems Integration*.

The parties will need to consider which party owns the Intellectual Property Rights in the Bespoke Documentation. This can be specified in item 29 or 30 of the Details, depending on whether the Bespoke Documentation will incorporate the Supplier's Pre-Existing Material and/or constitute New Material.

See *Part B of the User Guide* for more guidance in relation to Intellectual Property Rights.

10. Policies, codes of conduct, rules, standards and procedures Clause 6.1



Guidance:

Clause 6.1(a) of the Comprehensive Contract Conditions requires the Supplier to comply with Customer policies, codes of conduct, rules, standards and procedures “*where relevant to the Supplier’s obligations under the Contract*”, as listed in the Details. It is therefore important that the Customer lists all of the policies, codes of conduct, rules, standards and procedures which are relevant. These might be related to a Supplier’s access to the premises or privacy or security requirements.

Be aware that under clause 6.1(b) of the Comprehensive Contract Conditions, if a policy, code of conduct, rule, standard or procedure changes or a new one is developed, the Customer will need to notify the Supplier of the change or new policy, code, rule, standard or procedure.

11. Customer Inputs Clause 6.4



Guidance:

‘Customer Inputs’ is defined in the Comprehensive Contract Conditions to mean the Customer’s equipment, premises, documents, access and other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables as set out in the Details.

A number of clauses of the Comprehensive Contract Conditions should be considered in specifying the requirements and specifications for the Customer Inputs in this item. These include:

- Under clause 6.1(a)(i), the Supplier must comply with the Customer’s policies, codes of conduct, rules, standards and procedures which apply to the use of the Customer Inputs, among other things
- Under clause 6.4(a), the Customer must provide and maintain Customer Inputs at the times and in accordance with the requirements specified in the Details.
- Under clause 6.4(b), the Supplier must take care of the Customer Inputs and only use them for the purpose of performing the Contract, to the extent necessary to perform the Contract and in accordance with the requirements specified in the Details.
- Under clause 6.4(e), provided the Supplier complies with its obligations under clause 6.4(b), the Customer must repair or replace Customer Inputs within a reasonable time of becoming aware that the Customer Inputs no longer comply with the specifications, if any specified in the Details.

Specify the Customer’s Personnel which a Customer will make available in item 25 below.

12. Customer Assistance

Clause 6.5



Guidance:

In this item, specify whether the Customer must make available to the Supplier material (such as instructions, information, data, documents, specifications, plans, drawings or other material) in addition to the Customer Inputs. If nothing additional to the Customer Inputs described in item 11 above will be provided, state 'Not Applicable'.

13. Management committee

Clause 7.1



Guidance:

Under clause 7.1(f) of the Comprehensive Contract Conditions, the management committee must review and monitor progress under the Contract but can also '*carry out such other functions set out in the Details or agreed in writing between the parties*'. If this is relevant, the other functions of the management committee should be specified here.

14. Performance reviews

Clause 7.2



Guidance:

If service and performance reviews are required under the Contract, they should be specified here as well as the intervals for those reviews.

Good contract management requires regular monitoring of the Supplier's performance of its obligations, both minor (e.g. timely delivery of invoices and reports) and major (such as the on-time provision of the Deliverables). It is recommended that regular reviews be stipulated in this item as required to enable the Customer to promptly identify and seek to resolve any performance issues.

15. Site Specification

Clause 7.3



Guidance:

In this item, the Customer can specify whether the Supplier must inspect the Site and provide the Customer with a Site Specification, within a reasonable time after the inspection, for the Customer's approval.

A 'Site Specification' is defined in the Comprehensive Contract Conditions to mean a document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverables.

16. Project Implementation and Payment Plan

Clause 7.4



Guidance:

A Project Implementation and Payment Plan (PIPP) includes the details relating to the implementation of a project and associated payment arrangements, substantially in the form of Schedule 2 or such other form reasonably acceptable to the Customer which is included in the Contract if stated in the Details.

Clause 7.4 of the Comprehensive Contract Conditions provides that if the Details state a PIPP is required, the parties need to perform their obligations at the times and in the manner set out in that document.

17. Staged Implementation

Clause 7.5



Guidance:

A 'Stage' is defined in the Comprehensive Contract Conditions to mean one or more milestones that are identified as a stage in the PIPP. If there is to be a staged implementation, this should be specified here and further detailed in the PIPP.

Under clause 7.5(c) of the Comprehensive Contract Conditions, the Customer must give the Supplier written notice within the period specified in the Details at the end of each Stage as to whether it wishes the Supplier to commence the next Stage. The period by which the Customer needs to give written notice should be specified here. In determining what the notice period should be, the Customer will need to allow a sufficient time to assess the Deliverables and determine whether it wants the Supplier to proceed to the next Stage.

The Supplier is prohibited from proceeding to the next Stage unless it receives that notice.

18. Liquidated Damages

Clause 7.7



Guidance:

See Part B of the User Guide for general guidance on Liquidated Damages.

If Liquidated Damages are specified to apply to the Contract, it will be necessary to:

- identify those obligations which are LD Obligations for which the Supplier's late completion may require the payment of Liquidated Damages
- identify the LD Due Date, being the date by which an LD Obligation must be met
- specify the amount of Liquidated Damages for each LD Obligation as well as the method by which the Customer has calculated the Liquidated Damages
- specify the LD Cap which will be the total monetary cap that may be payable by way of Liquidated Damages.

To be enforceable, Liquidated Damages must be a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which Liquidated Damages are payable as a result of the Supplier not completing the LD Obligation by the LD Due Date.

The method for calculating Liquidated Damages is important in demonstrating that they are based on a genuine pre-estimate. If the amount bears little resemblance to the loss that could occur, it is likely to be regarded as a penalty, which will not be enforced by the courts.

It is recommended that specialist procurement, financial and legal advice be obtained if assistance is required in calculating Liquidated Damages.

19. Training

Clause 7.10



Guidance:

Training Requirements

In this item, the Customer needs to specify the training to be provided by the Supplier. This could include:

- the type of training, such as user training or train the trainer
- the name of the training course and course content
- the number of training sessions and duration of each training session
- the number of attendees for each course
- how the training will be delivered and the location of training
- the training materials to be prepared and provided by the Supplier
- the method of delivery of the training (i.e. face-to-face or online) and
- the minimum skills, experience or expertise which must be held by the trainers.

Rates for additional training

If there is pricing to be charged for additional training which the Customer may require from time to time, this should be referred to here or otherwise reference should be made to the pricing details specified in Schedules 1 or 2 (whichever is applicable).

20. Subcontractor(s)

Clause 8



Guidance:

Clause 8.1(a) of the Comprehensive Contract Conditions provides that the Supplier can only subcontract its obligations under the Contract to Subcontractors identified in the Details or with the Customer's prior written consent.

If a Supplier proposes to use a Subcontractor, the Supplier should provide the names, legal entity type and contact details of the Subcontractor and the obligations that will be subcontracted to that Subcontractor.

The Customer should critically assess the extent to which the Supplier's contractual obligations will be subcontracted to a third party. The Customer may have evaluated a Supplier's offer on the assumption that will be providing the Products and/or Services. However, if the entity providing a significant proportion of the Products and/or Services is one or more Subcontractor(s), this may alter the risk profile of the procurement.

It is generally recommended that a Customer undertake due diligence on each proposed Subcontractor to a level which is proportionate to the risk of the procurement and the activity which is to be conducted by the Subcontractor. The Customer may need to conduct company searches as well as checks on a Subcontractor's financial viability, how long it has been in business and its past track record.

The Customer should also check where the Subcontractor is located. If the Subcontractor is located overseas, it generally increases the risk of the procurement, particularly where the Subcontractor will be responsible for significant parts of the Deliverables or will handle Customer Data or Personal or Confidential Information.

The Customer may want to require the Subcontractor to sign the *Schedule 3 - Subcontractor Statutory Declaration*. If so, this should be specified in item 21 below. The Customer may also want the Subcontractor to sign, and ensure that its officers, directors, employees and agents also sign the *Schedule 4 - Privacy, Confidentiality and Conflicts of Interest Deed*. If so, this should be specified in item 23 below.

21. Subcontractor(s) statutory declaration

Clause 8.1(d)



Guidance:

There is no privity of contract between the Customer and the Subcontractor, which means that the Customer does not have a direct right of action against the Subcontractor in relation to its performance of the Deliverables. The Customer can only enforce its obligations against the Supplier under the Contract.

A Customer can require the Supplier to obtain from the Subcontractor a signed statutory declaration in the form of Schedule 3 or other form reasonably acceptable to the Customer.

Schedule 3 requires the Subcontractor to provide a statutory declaration under the *Oaths Act 1867 (Qld)*, in which it declares that:

- it has entered or will enter an agreement with the Supplier on terms that will not be inconsistent with the terms of the Contract between the Supplier and Customer in so far as those terms are relevant to the Subcontractor and
- it is not aware of any reasons that prevent the Subcontractor's agreement with the Supplier from being performed in a manner that would allow the satisfactory and timely performance of the subcontract.

The Customer may particularly require the Subcontractor to provide a statutory declaration in the form of Schedule 3 where the Subcontractor will be performing critical obligations.

It is recommended that legal advice be sought:

- if the Subcontractor is a foreign company or

- if the Customer requires further obligations or declarations to be incorporated into the statutory declaration.

22. Background checks

Clause 8.2



Guidance:

If the Customer wishes for checks to be conducted on Supplier's Personnel, prior to allowing them to be involved in supplying any Deliverables, the Customer can specify this in this item. The checks can be criminal background checks and/or other types of checks.

The Customer should specify in this item whether the Supplier must conduct the checks itself or whether the Supplier must obtain the consent of each Personnel to allow the Customer to conduct the checks.

A Customer may want to specify that the checks extend to checks on the Subcontractor's officers, directors, employees and agents which are to be involved in the supply of a Deliverable.

Under clause 8.2(b) of the Comprehensive Contract Conditions, the Customer can reasonably request, at any time during the Term, that checks be conducted prior to permitting any Personnel to be involved in the supply of any Deliverables.

23. Confidentiality, Privacy and Conflict of Interest Deed

Clause 8.2(f)



Guidance:

The Customer should specify any additional entities or individuals (e.g. the Subcontractor's officers, directors, employees and agents) who will be required to sign and provide a confidentiality, privacy and conflicts of interest deed in the form of Schedule 4 or some other form. In the case of the Supplier, 'Personnel' is defined in the Comprehensive Contract Conditions to include the Subcontractor's officers, directors, employees and agents.

It is not necessary for the Supplier to sign a confidentiality, privacy and conflicts of interest deed as it will be contractually bound to comply with obligations in relation to confidentiality, privacy and conflicts of interest in the Contract itself.

24. Key Personnel

Clause 8.4



Guidance:

Key Personnel are named individuals who must perform the Supplier's obligations. The Supplier is not allowed to remove or replace the Key Personnel without the Customer's prior written consent, except in limited circumstances (for example, where they become seriously ill or their employment is terminated). Where Key Personnel need to be replaced, the Customer has a right to veto the proposed replacement on reasonable grounds.

If there are any individuals who are so critical to the provision of the Deliverables that they should be named and committed to the Contract, they should be specified here.

The concept of Key Personnel is not appropriate where the Customer is not concerned as to the Supplier's use of particular individuals to provide the Deliverables.

In addition to the information specified in the item, a Customer may want to also obtain a copy of the Key Personnel's resume and specify the contact hours during which they will be available.

25. Customer's Personnel

Clause 8.5



Guidance:

In this item, the Customer should specify the Customer's Personnel which will work with the Supplier and their roles and responsibilities. The Customer may also want to specify the minimum availability and contact hours of each of the Customer's Personnel.

26. Acceptance Testing

Clause 9



Guidance:

Acceptance Testing can be required for any Deliverable.

The Deliverables which can be subject to Acceptance Testing include any Transition-In Services which may be provided under *Module 3 (As a Service)*, *Module 5 (Telecommunications Services)* and *Module 6 (Managed Services)* before the Supplier provides the As a Service, Telecommunications Services or Managed Services, as applicable.

If Acceptance Testing is required for one or more Deliverables, the Customer should specify which Deliverables require Acceptance Testing in this item and complete *Schedule 9 – Acceptance Testing* setting out the testing for each relevant Deliverable.

Schedule 9 – Acceptance Testing requires the parties to specify:

- the Deliverables that are to undergo Acceptance Testing
- the allocation of each party's responsibilities in relation to testing
- which party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use
- the methodology and process for conducting Acceptance Tests
- the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period
- the Acceptance Criteria used to test whether the Deliverable meets the Requirements
- the Acceptance Test Data required and when it is required.

27. Price and payment

Clause 10



Guidance:

The Comprehensive Contract Conditions provide for two alternative pricing schedules:

- *Schedule 1 - Price and Payment Terms* requires the parties to specify all amounts the Customer is required to pay, as well as price review mechanisms, payment plans as well as any retention of monies regime.
- *Schedule 2 - Project Implementation and Payment Plan* requires the same information to be provided as well as requiring a project implementation plan to be completed and details of the stages of the Contract to be specified.

Only one Schedule is required for a Contract. If the Contract will be procured in stages, Schedule 2 may be more suitable.

28. Most favoured price

Clause 10.4



Guidance:

The Customer may wish to specify in the Details that clause 10.4 of the Comprehensive Contract Conditions applies to the Contract if the Customer wants to ensure that the Price:

- agreed at the time of entering the Contract is and
- continues during the Term to be

the most favourable price available to the Supplier's Australian customers.

The effect of the clause is that the Supplier must ensure that the Price charged is, and continues to be, no less favourable than the price paid or payable by any other Australian customer of the Supplier. Further, if the Supplier offers or has offered a more favourable price to another Australian customer, the Supplier must make the more favourable price available to the Customer. This obligation continues throughout the Term of the Contract.

There are two important limitations to the operation of this clause:

1. the obligations do not apply if the Supplier is a SME under the [ICT SME Participation Scheme Standard](#)
2. the Supplier's obligations only arise where the other Australian customer of the Supplier is purchasing:
 - the same or substantially similar products and/or services and
 - in the same or substantially similar circumstances, including
 - volumes, where Price is volume dependent
 - timing and
 - terms and conditions.

29. Intellectual Property Rights in Pre-Existing Material

Clause 12.1



Guidance:

In determining the Intellectual Property Rights (IPR) in Pre-Existing Material, see further guidance in Part B of the User Guide.

If a Customer wants to:

- use the Supplier's Pre-Existing Material for a purpose other than for '*the purposes of using, supporting and/or modifying the Deliverables incorporating the Pre-Existing Material in the course of the Customer's functions or activities*',
- manufacture, sell or commercially exploit the Supplier's Pre-Existing Material, or
- sub-licence its rights in the Supplier's Pre-Existing Material to an entity other than a Department, Public Service Office, Hospital and Health Service or a contractor described in clause 12.1(c)(ii)(D),

this should be specified in the Details.

Also, if a Customer's right to sub-licence to entities under clause 12.1(c) of the Comprehensive Contract Conditions will be at a cost, this should be specified in the Details. If it is not specified, it is at no cost.

This item does not need to be completed for Licensed Software or As a Service as Pre-Existing Material does not include those materials. A Customer's rights in relation to those materials are dealt with under Module 2 and 3 respectively.

It is possible that a Deliverable (e.g. a procedures document, Transition-In or out plans or any Bespoke Documentation under clause 5.3 of the Comprehensive Contract Conditions) may incorporate Pre-Existing Material as well as New Material. If the Customer wishes to own all IPR in the Deliverable and have full rights to exercise all IPR in that Deliverable, the Customer may wish to require the Deliverable to be developed without reference to any Pre-Existing Material.

30. Intellectual Property Rights in New Material

Clauses 12.2 to 12.4



Guidance:

See Part B of the User Guide for guidance on which party should own Intellectual Property Rights (IPR) in any New Material.

The Comprehensive Contract Conditions give the parties the choice as to which party will own the IPR in New Material. New Material does not include Pre-Existing Material, Third Party Material, Licensed Software or As a Service.

It is best to specify the IPR in relation to each New Material (for example, IPR in document A will be owned by the Customer but IPR in document B will be owned by the Supplier).

IPR in New Material needs to be specified in the Details, rather than in each of the Modules.

A Customer should carefully consider each item of New Material which may be developed and determine which party should own the IPR.

The types of New Material which may be created during a Contract may include:

- Bespoke Documentation under clause 5.3 of the Comprehensive Contract Conditions and any Site Specification developed by the Supplier pursuant to clause 7.3 of the Comprehensive Contract Conditions
- for *Module 2 – Software*, any Developed Software and Design Specifications
- for *Module 3 – As a Service*, any Disaster Recovery Procedures, the Transition-In Plan and the Transition-Out Plan
- for *Module 4 – Systems Integration*, the Detailed Specifications, which includes Detailed Interface Specifications, a Data Migration Plan, Hardware Sizing and a Required Configuration
- for *Module 5 – Telecommunications Services*, the Disaster Recovery Procedures and any Transition-In Plan and Transition-Out Plan and
- for *Module 6 – Managed Services*, the Procedures Manual, the Disaster Recovery Procedures and any Transition-In Plan and Transition-Out Plan.

It is possible that a Deliverable (e.g. a procedures document, Transition-In or out plans or any Bespoke Documentation under clause 5.3 of the Comprehensive Contract Conditions) may incorporate Pre-Existing Material or Third Party Material as well as New Material. If the Customer wishes to own all IPR in the Deliverable and have full rights to exercise all IPR in that Deliverable (as opposed to having a licence) the Customer may wish to require the Deliverable to be developed without reference to any Pre-Existing or Third Party Material.

If the Supplier will own the IPR in the New Material, a Customer will need to consider if it wants to:

- use the New Material for a purpose other than for *'the purposes of using, supporting and/or modifying the Deliverables incorporating the New Material in the course of the Customer's functions or activities'*
- manufacture, sell or commercially exploit the New Material, or
- sub-licence its rights to the New Material to an entity other than a Department, Public Service Office, Hospital and Health Service or a contractor described in clause 12.3(c)(ii)(D).

If so, this will need to be specified in the Details.

Note that under clause 5.4 of Module 2, if the Supplier owns the IPR in New Material in Developed Software, the Developed Software will be treated as Licensed Software.

If a Customer's right to sub-licence to the entities in clause 12.3(c) of the Comprehensive Contract Conditions will be at an additional cost, that cost should be specified here. If it is to be at no cost, specify "Not Applicable".

This clause does not apply to Pre-Existing Material, Third Party Material, Licensed Software or As a Service. The Customer's rights in relation to Licensed Software and As a Service are dealt with in Modules 2 and 3 respectively.

Third Party Material

If a Deliverable will incorporate Third Party Material, ensure the Details:

- specify the relevant Deliverable and the Third Party Material that it incorporates
- insert the terms and conditions which apply to any Third Party Material incorporated into each Deliverable (a Customer will need to consider whether it is agreeable to those terms and conditions) and
- specify any purposes for which the Customer wishes to use the Third Party Material, which are in addition to “for the purposes of using, supporting and/or modifying the Deliverable incorporating the Third Party Material in the course of the Customer’s functions or activities”.

Whilst there may be additional terms and conditions which apply to the Third Party Material, those terms and conditions should be consistent with the licence provided to the Customer as set out in clause 12.4(a) of the Comprehensive Contract Conditions. The licence granted to the Customer is a non-exclusive licence to exercise all IPR in the Third Party Material for the purposes of using, supporting and/or modifying the Deliverable incorporating the Third Party Material, in the course of the Customer’s functions or activities, and for such other purposes which are specified in this item.

The Customer does not need to complete this section for Licensed Software or As a Service as Third Party Material does not include Licensed Software or As a Service. A Customer’s rights in relation to Licensed Software and As a Service are dealt with under Module 2 and 3 respectively.

A Customer may need to consider the extent to which the Supplier can use Third Party Material to develop a Deliverable. The Customer should ensure that the licence that it obtains to use the Third Party Material is broad enough to enable the Customer to adequately use the Deliverable, both immediately on the supply of the Deliverable and into the future. If the Customer is unable to obtain a satisfactory licence or it wishes to own full IPR in the Deliverable, it may require the Supplier to not use any Third Party Material in the Deliverable. However, there may be cost implications associated with this. If the Customer is unable to obtain sufficient IPR in relation to the Deliverable, it may wish to re-consider procurement options.

31. Escrow

Clause 12.6



Guidance:

See Part B of the User Guide for information as to use of an escrow arrangement.

Generally, it is recommended that a Customer seeks legal advice if it is considering using an escrow arrangement.

32. Customer Data

Clause 13(f)



Guidance:

Customer Data is defined in the Comprehensive Contract Conditions as any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in providing the Products or Services and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services,

and includes Metadata but not Pre-Existing Material or New Material owned by the Supplier.

Metadata is defined as any system-generated data that is created or generated in connection with the Customer's use of the Products or Services (including in using, processing, storing or hosting of information, material, data, dataset or database in providing the Products or Services and includes any descriptive, structural and administrative metadata).

Clause 13 of the Comprehensive Contract Conditions sets out the Supplier's obligations with respect to Customer Data. Under clause 13(f), for Customer Data that is Metadata but not Personal Information:

- (a) the Customer grants to the Supplier a perpetual, non-exclusive right to use that Metadata solely for the Supplier's internal business purposes as specified in the Details and
- (b) the Supplier may keep a copy of that Metadata to enable it to exercise the right granted under (a) and otherwise to the extent required by applicable Law (notwithstanding its obligations under clause 14.4 in relation to the return or destruction of material).

In this item, it is necessary to specify the internal business purposes for which the Supplier can use the Metadata during the Term. In using the Metadata, the Supplier will still need to comply with its obligations, including Confidentiality (clause 14) and Privacy (clause 15), among others.

33. Cap on liability

Clause 17.3



Guidance:

See Part B of the User Guide for detailed consideration on Liability Caps

Any liability cap imposed on the Supplier does not apply to its liability for loss or damage to Customer Data in providing As a Service. The Supplier's liability in these circumstances will need to be separately specified in Module 3.

34. Insurance

Clause 19



Guidance:

See Part B of the User Guide for detailed consideration of Insurances

The Customer should consider whether other insurance is necessary in addition to public liability, products liability, and professional indemnity insurance. For example, cyber insurance may be available to cover for data loss or misuse.

If a Customer is not sure what insurances are necessary for the Products and/or Services supplied under the Contract consult:

- the Customer's procurement advisors, legal advisors, finance or insurance advisors or
- [Queensland Government Insurance Fund](#).

35. Security

Clause 20



Guidance:

See Part B of the User Guide for more information about when to use security.

In this item, the parties will need to specify whether security, such as a performance guarantee or financial security, is required, and, if so, specify any additional conditions with which the security must comply in accordance with clause 20.1(b)(iii) of the Comprehensive Contract Conditions.

36. Conflict of Interest

Clause 21.2



Guidance:

In this item, the Supplier will need to insert any details of any Conflict of Interest which it is required to declare under clause 21 of the Comprehensive Contract Conditions.

Clause 21.2 of the Comprehensive Contract Conditions requires the Supplier to warrant that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity or do not have any obligations where a Conflict of Interest is created or might appear to be created in conflict with the Supplier's obligations under the Contract, except as disclosed in this item of the Details. This warranty is provided at the time of entering into the Contract.

However, under clause 21.2(b), the Supplier must notify the Customer if, during the Term, a Conflict of Interest arises or appears likely to arise.

The Customer should only proceed to enter the Contract if it is satisfied that it can adequately manage the Conflict of Interest which is disclosed in this item. If it is of the view that the Conflict of Interest cannot be satisfactorily managed, it should not proceed with the Contract.

Whilst the Supplier does not need to sign a confidentiality, privacy and conflicts of interest deed (see the deed template in *Schedule 4*), a Customer may wish the Supplier's Personnel to do so. This would give a Customer a direct course of action against the Supplier's Personnel in the event that they fail to disclose any Conflict of Interest. If a confidentiality, privacy and conflicts of interest deed must be signed by the Supplier's Personnel, this can be specified in item 23 of the Details.

37. Reports

Clause 22.1



Guidance:

This item should specify the details of any reports the Supplier must provide to the Customer, including what must be included in the report, the format requirements, the frequency and any due dates.

38. Termination for convenience

Clause 24.3



Guidance:

Under clause 24.3(b) of the Comprehensive Contract Conditions, if the Customer exercises its rights to terminate for convenience, it will need to pay the Supplier for work performed and Deliverables supplied in accordance with the Contract but not yet invoiced and either one of the following:

- (A) the Supplier's reasonable and documented expenses incurred directly relating to the termination or
- (B) any amount specified in the Details.

The Customer will need to determine whether it wishes to permit (A) to govern or whether the payment (if any) should be specified under (B) as set out in the Details.

It is open for the parties to specify that (B) applies but that the amount payable will be nil. This means that the only compensation which the Supplier will be entitled to receive will be for work performed and Deliverables supplied in accordance with the Contract but not yet invoiced.

If the amount payable will be specified in (B) above, the Customer may want to consider whether the amount the Customer will be required to pay varies depending on the stage of the Contract reached at the time the termination for convenience right is exercised. For example, a Supplier may have onerous up-front costs (including resources or third party contracts which it is unable to re-direct to other projects), which warrant the need for it to be compensated to a higher degree if the contract was terminated for convenience at that stage. A Supplier's need for compensation may decrease after a few years.

As a Contract can be terminated in whole or part, a Customer may want to give consideration as to whether any payments under (B) are to apply only to a termination of the complete Contract or whether they are to apply to partial terminations (and if so, which parts).

It is important to note that where Connectivity and Carriage Services are being procured under *Module 5 – Telecommunications Services*, the Customer is required to pay the Supplier any amount specified in the Module Order Form if it cancels a Connectivity and Carriage Service. This is an additional amount to any amount specified under clause 24.3 of the Comprehensive Contract Conditions. Accordingly, the Customer should take into account any amounts payable under Module 5 in determining what additional amount (if any) is to be payable under (A) or (B) above.

39. Business Hours

Clause 27.1



Guidance

If the Business Hours are not different from the default position, specify “Not Applicable”.

40. Designated Environment

Clause 27.1



Guidance:

The Designated Environment is defined in the Comprehensive Contract Conditions as the physical and computing environment specified in the Details with which the Deliverables must operate.

It is important to clearly define the environment with which the Deliverables must operate. Without a sufficiently clear description, there may be ambiguity as to whether the Supplier has satisfactorily performed its obligations in connection with the Designated Environment and potentially render the Supplier’s warranties unenforceable.

In specifying the Designated Environment, the Customer may need to consider the parties’ rights and obligations as set out in the Modules which relate to the Designated Environment.

For *Module 1 - Hardware*, the Designated Environment is relevant to the following clauses:

- clause 3.1(c) - the Supplier must install and Integrate the Hardware at the Site, if specified in the Module Order Form. Integrate is defined in that Module to include integrating or implementing the Hardware with or within the Designated Environment so that it is ready for the Customer’s use and complies with the Requirements
- clause 3.9(a)(ii) - the Supplier warrants that the Hardware will, during the Warranty Period, be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment, when used in accordance with the User Documentation and Bespoke Documentation (as applicable).

For *Module 2 – Software*, Designated Environment is relevant to:

- in relation to Licensed Software:
 - clause 3.1(a)(ii) - the Supplier grants the Customer a non-exclusive licence to adapt and modify the Licensed Software to the extent necessary to enable it to be used on the Designated Environment
 - clause 3.8, which sets out the Customer’s rights in relation to the Licensed Software, if the Class of Licence restricts the Customer’s use of the Licensed Software to the Designated Environment
 - clause 3.9(a)(ii) - the Supplier must install the Licensed Software on the Designated Environment, if required by the Customer, and
 - clause 3.15(a)(ii) - the Supplier warrants that, during the Warranty Period, the Licensed Software will be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment (where applicable) when used in accordance with the User Documentation and Bespoke Documentation (as applicable).

- in relation to Software Support Services:
 - clause 4.6(b)(ii) - the Customer can, before accepting or rejecting an Update or New Release, require the Supplier to give information as to any adverse effects that the Update or New Release may be expected to have on the Designated Environment.
- in relation to Developed Software
 - clause 5.3(b) - the Supplier must, if specified in the Module Order Form, install the Developed Software on the Designated Environment in accordance with the requirements set out in the Module Order Form, and
 - clause 5.7(a)(ii) - the Supplier warrants that the Developed Software will be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment when used in accordance with the User Documentation and Bespoke Documentation (as applicable).

For *Module 4 – Systems Integration*, Designated Environment is relevant to:

- clause 3.4(a) - if specified in the Module Order Form, the Supplier must conduct implementation planning in order to assess and define the Designated Environment as part of its implementation planning study and deliver it to the Customer. This means that even if the Designated Environment is defined in the Module, it will need to be further developed by the Supplier, if specified in Module 4
- clause 3.6(a) - the Supplier must ensure that the Detailed Interface Specifications identify all of the Customer Interfaces and Supplier Interfaces that are necessary in order for the System to properly interface with the Designated Environment in accordance with the Requirements
- clause 3.7(b) - the Supplier must install and configure all of the components of the System (including the Software) at those Site(s) and on the Designated Environment in accordance with the Requirements by the Delivery Date(s)
- clause 3.8 - the Supplier must, by the Delivery Date(s), integrate all of the components of the System with each other and the Designated Environment and any Customer Inputs (as applicable) in accordance with the Requirements, and
- clause 3.14(a)(iv) - the Supplier warrants, during the Warranty Period, that the System will be compatible, interoperable and integrate properly with, and will not detrimentally affect the operation or performance of, the Designated Environment, when used in accordance with the User Documentation and Bespoke Documentation (if applicable).

MODULE 1 – HARDWARE

When to use?

This Module Order Form is to be used for the purchase of Hardware and Hardware Maintenance Services.

The *Module Order Form 1A - Hardware* can be used where the Customer requires the Supplier to deliver, install and/or integrate the Hardware.

The *Module Order Form 1B - Hardware Maintenance Services* can be used where the Customer requires the Supplier to provide Hardware Maintenance Services for hardware (called 'Supported Hardware') for a particular time. This hardware may be Hardware purchased under Module Order Form 1A or other hardware.

Note: Reseller– If the Supplier is a Reseller of either the Hardware or the Hardware Maintenance Services, special provisions apply. See item 10 of Module Order Form 1A and item 7 of Module Order Form 1B.

Module Order Form 1A – Hardware

1. Hardware

Clause 3.1 of Module 1



Guidance:

Description of Hardware to be supplied

If the description of the Hardware is set out in the Specifications, instead of setting out the description in item 1, the Customer may instead refer to the Specifications which are set out or referred to in item 2.

Whether Hardware must be new and unused

In this item, the Customer can specify whether the Hardware can be other than new and unused.

2. Requirements



Guidance:

It is very important to provide sufficient details of the Hardware to fully reflect what the Customer is buying. Without a sufficiently detailed description, there is no certainty as to the functional, operational or technical features of the Hardware. If the Hardware fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

A Customer can either incorporate the Specifications in this item or refer to an annexed document which contains the Specifications. How the Specifications are incorporated will affect the priority which they are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract

Conditions. If the Specifications are incorporated in this item in the Module Order Form, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority if there is an inconsistency with terms in other documents which are lower in the hierarchy. If, however, the Specifications are referred to in an annexed document, they are given a lower priority in the contractual hierarchy.

If the Customer wishes to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in the Module Order Form.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations. The Specifications should only contain information which describes the Hardware and how it is to operate.

3. Delivery requirements

Clause 3.1 of Module 1



Guidance:

In this item, it is necessary to specify:

- the Site/s
- the Delivery Date and any time by which the Hardware must be delivered
- if there will be a range of delivery days and/or times, any times and days when the Hardware can be delivered.

If there is more than one Site at which the Hardware must be delivered, the Customer will need to specify each Site.

See Site Specification under clause 7.3 of the Comprehensive Contract Conditions and item 15 of the Details.

4. Installation requirements

Clause 3.1(c) of Module 1



Guidance:

Hardware installation requirements will need to be specified here.

5. Integration requirements

Clause 3.1(c) of Module 1



Guidance:

Under the Module, the Supplier must Integrate the Hardware at the Site in accordance with the requirements specified in the Module Order Form. These requirements should be set out here.

'Integrate' is defined in Module 1 to include the integration and/or implementation of the Hardware with or within the Designated Environment so that it is ready for use by the Customer and complies with the Requirements.

Note - the Designated Environment needs to be specified in item 40 of the Details.

6. Removal of packing materials

Clause 3.1(d) of Module 1



Guidance:

If the parties do not specify in this item that the Supplier must remove the packing materials, the Customer will be responsible for their removal and disposal.

7. Approved Purpose

Clause 3.2 of Module 1



Guidance:

The Customer can either specify the Approved Purposes for which the Customer may use the Hardware, or state "Not applicable", which means that the Customer's future use of the Hardware will not be constrained.

8. Title

Clause 3.3 of Module 1



Guidance:

Clause 3.3 of Module Order 1 deals with the passing of risk and title separately.

Clause 3.3(a) stipulates that risk transfers to the Customer when the Hardware is delivered to the Site in accordance with the Module Order Form and the Customer's delivery instructions. This will be the time at which the Hardware becomes the Customer's responsibility. The Customer may want to make sure it has insurance to cover the Hardware against loss or damage from this time onwards.

However, the parties can determine when title (legal ownership) in the Hardware passes to the Customer. The default position under clause 3.3(b) of Module 1 is that title in the Hardware passes on the earlier of the delivery to the Site or payment of the Price. If the Customer accepts this position, it can specify "Not Applicable" here. However, if title is to pass at a different time, this should be specified here.

It should be noted that as risk in the Hardware passes to the Customer on delivery, if title does not pass until, for example, the Customer pays the Price, it is possible that a gap may arise between the time it bears the risk (when Hardware is delivered) and the time when title passes to the Customer (when it pays the Price). Hardware may be on the Customer's premises for a lengthy period prior to payment being made. The Customer should check that it is able to insure the Hardware on passing of risk even if the title has not passed.

Supply through Reseller

If the Supplier is a Reseller under clause 3.5(b) of the Module, the default position in clause 3.3(b) regarding the passing of title in the Hardware does not apply. Rather, clause 3.5(b)(ii) provides that title in the Hardware will pass to the Customer as specified in the Module Order Form.

The Customer will need to determine when title in the Hardware passes where the Supplier is a Reseller and specify it here.

9. Machine Code

Clause 3.4 of Module 1



Guidance:

'Machine Code' is defined in Module 1 to include any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware and any other code (all subject to any exclusions in the licence provided with it) delivered with the Hardware for the purpose of enabling the Hardware to function as specified in the Requirements.

Under clause 3.4(a) of Module 1, the Supplier grants to the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty free, non-exclusive, worldwide and transferrable licence to exercise all Intellectual Property Rights in the Machine Code on the Hardware to enable the Hardware in which it is loaded to function in accordance with the Requirements. However, the Customer's right to use the Machine Code is subject to the Customer complying with the terms and conditions (if any) which are specified here.

If additional terms and conditions will apply to the Customer's use of the Hardware's Machine Code, it will be necessary to ensure that they are not inconsistent with, or detract from, the licence rights which the Customer is entitled to obtain in the Machine Code under clause 3.4(a), as described above.

The Customer should check whether the additional terms and conditions limit or compromise the licence it receives in relation to the Hardware itself. For example, the Customer may have secured the right to use the Hardware for any purpose (i.e. not just an Approved Purpose). However, if the licence in relation to the Machine Code is restrictive, this may compromise the Customer's ability to use the Hardware.

10. Supply through a Reseller

Clause 3.5 of Module 1



Guidance:

A Reseller of Hardware is an entity who provides, or facilitates the provision of, Hardware but is not the Hardware manufacturer (called the Third Party Provider), or a Related Body of the Hardware manufacturer.

The Module provides for two separate circumstances in which a Supplier can be a Reseller:

- one where the Customer has a primary contractual relationship with the Reseller under the Contract (under clause 3.5(b)), and

- the other, where the Customer also has a separate contract directly with the Third Party Provider (under clause 3.5(c)).

In both cases, the Customer's rights against a Reseller are reduced from those which generally appear in the Comprehensive Contract Conditions and the Module. It is generally recommended that legal assistance be obtained where the Customer is procuring via a Reseller.

The two alternative Reseller arrangements are set out in more detail below:

(a) Clause 3.5(b) – Reseller supplies Hardware

In the first Reseller arrangement, the Reseller is not required to provide the Hardware warranties in clause 3.9 or comply with the Defect rectification obligations in clause 3.10 of Module 1.

However, all other clauses of the Comprehensive Contract Conditions and the Module continue to apply.

Under clause 3.5(b)(i), the Supplier must:

- ensure that the Customer receives or accesses a copy of, and approves the Third Party Provider's warranties before buying the Hardware
- assign any Third Party Provider's warranty to the Customer and
- co-ordinate and manage any warranty claim that the Customer reports to the Supplier and use best efforts to ensure that all benefits of the warranty provided are used for the Customer's benefit (including by providing the assistance set out in this item in the Module Order Form).

It is recommended that the Customer carefully reviews the terms of any proposed warranty to see what they cover.

It is recommended that the Customer attach the warranty to the Contract so it is clear what the warranty terms are.

In this scenario, the Reseller is still contractually obliged to, amongst other things, ensure that the Hardware is of high quality, professional standard and fit for its usual purpose and meets the Requirements (pursuant to clause 4.1(d) of the Comprehensive Contract Conditions).

(b) Clause 3.5(c) – Reseller facilitates the supply of Hardware

In the second Reseller arrangement, the Reseller provides '*reseller services which facilitate the supply of the Hardware*' from the Third Party Provider to the Customer.

Engaging a Reseller under this scenario brings a higher degree of risk because:

- the Customer enters into a separate contract with the Third Party Provider for the supply of the Hardware and
- a number of provisions in the Comprehensive Contract Conditions and Module 1 do not apply where the Supplier is a Reseller of Hardware.

i. Contract with Third Party Provider

The contract which the Customer will need to enter with the Third Party Provider for the supply of the Hardware will be separate from the Contract which the Customer will enter into with the Reseller.

Clause 3.5(c)(iii) of Module 1 stipulates that the terms of that contract with the Third Party Provider will be attached to the Contract and will be deemed accepted by the Customer when the Customer enters the Contract.

It is common in a reseller arrangement that the terms of the contract with the Third Party Provider are not negotiable, and the Supplier is required to pass through the terms of the Third Party Provider's contract to the Customer. The Customer should consider, based on the risk and value of the procurement, whether the Third Party Provider's terms and conditions are acceptable. If not acceptable, negotiation of terms (more aligned with the Comprehensive Contract Conditions and Module 1) or re-assessment of the procurement may need to be considered.

If the terms are not negotiable, the Customer will need to review the standard terms to assess whether they are acceptable for the procurement. It is very important a Customer considers the terms to determine the rights and responsibilities of the Customer and the Third Party Provider. The Customer may wish to consider *The Guidelines for using Supplier Terms and Conditions* which were developed to assist a Customer to determine whether a Supplier's terms and conditions are acceptable for a procurement. It should be noted, however, that these were designed for low value – low risk procurements.

The Customer will need to examine the rights and obligations of the parties under the proposed contract and the terms of any warranty.

It will be necessary to check, among other things, whether the terms of the contract can be unilaterally changed by the Third Party Provider. If that is the case, the Customer will have no certainty as to the terms of its contract.

ii. Contract with Reseller

As mentioned earlier, the Contract which the Customer will enter into with the Reseller will not contain a number of the terms and conditions of Module 1 which would ordinarily apply if the Supplier provided the Hardware as a non-Reseller. This is because the Reseller is only facilitating the supply of the Hardware by the Third Party Provider and so the Reseller cannot be responsible for a number of the operative obligations in the Module for the supply of Hardware.

The terms that do **not** apply in this Reseller arrangement are:

- clause 4.1(d) of the Comprehensive Contract Conditions. This means that the Reseller is not required to ensure that the Hardware is of a high quality, professional standard and is fit for its usual purpose and meets the Requirements.
- the following provisions in Module 1 which relate to the Hardware:
 - Clause 3.1 – Delivery and Installation of Hardware (except for clause 3.1(c))
 - Clause 3.2 – Approved Purpose
 - Clause 3.3 – Risk and Title
 - Clause 3.4 – Machine Code
 - Clause 3.6 – Acceptance Testing

- Clause 3.7 – Ancillary Services
- Clause 3.8 – Continued availability of Hardware
- Clause 3.9 - Warranties
- Clause 3.10 – Defects
- Clause 3.11 - Product Recalls
- Clause 3.12 – Engineering changes

The substantive clauses which **do** apply are:

- Clause 3.1(c) – This clause provides that the Reseller is required, if specified in the Module Order Form, to install and/or Integrate the Hardware at the Site in accordance with the Module Order Form requirements.
- Clause 3.5 - This clause requires, among other things, the Reseller to co-ordinate and manage any warranty claim that is reported by the Customer to the Reseller and must use best efforts to ensure that all benefits of the warranty are used for the Customer's benefit (including by providing such assistance as set out in the Module Order Form) Under clause 3.5(c)(iv), the Reseller is not liable to the Customer for the supply of the Hardware in any way, including the features, capabilities, performance or other characteristics of the Hardware.

It is recommended that the Customer carefully checks to see what warranty (if any) it will be granted in relation to the Hardware.

If a warranty is available, the Customer will need to set out what assistance it wants the Reseller to provide if the Customer claims under the warranty. This should be set out here.

The warranty may be part of the Customer's contract with the Third Party Provider. However, if it is not, the warranty should be attached to the Contract so it is clear what the warranty terms are.

- Clause 3.6 – This clause requires Acceptance Testing to be carried out in accordance with clause 9 of the Comprehensive Contract Conditions (if specified in item 26 of the Details).

It is strongly recommended that legal assistance be obtained if a Supplier is to be a Reseller of Hardware. If the terms are not considered acceptable, the Customer may wish to reconsider its procurement options.

11. Ancillary services

Clause 3.7 of Module 1



Guidance:

Ancillary Services could include additional services, such as training or tailored support. Note, however, that Hardware Maintenance Services in Module 1B provides for general support, which may include help desk support.

If the ancillary services are extensive or particularly complex, the Customer should consider whether it is more appropriate for the Supplier to provide any ancillary services under *Module 7 - ICT*

Professional Services, rather than in this item, to ensure that the Customer obtains the benefit of the terms of that Module, including the warranties and defect rectification obligations, in relation to those services.

12. Warranty Period

Clause 3.9 of Module 1



Guidance:

The Customer should determine the duration of the Warranty Period, taking into account:

- the obligations imposed on the Supplier
- the period during which Defects are most likely to arise or be discovered in the Hardware supplied
- the period in which the Customer requires the Hardware to be free of Defects and
- the Hardware Maintenance Services (if any) which will be provided by the Supplier under Module Order 1B.

Each item of Licensed Hardware can have a different Warranty Period.

The Warranty Period is relevant to a number of provisions in the Module and the Comprehensive Contract.

- Under clause 3.8 of Module 1, the Supplier must, during the Warranty Period, supply the Hardware (including spare parts, replacements, upgrades or attachments) and appropriate substitutes if the Hardware is no longer available.
- Under clause 3.9 of Module 1, the Supplier must warrant that the Hardware will, during the Warranty Period:
 - comply with and perform in accordance with the Requirements (cl 3.9(a)(i)) and
 - be compatible and inter-operate with, and not detrimentally affect the operation or performance of, the Designated Environment, when used in accordance with the User Documentation and Bespoke Documentation (as applicable) (cl 3.9(a)(ii)).
- Clause 3.10 of Module 1 imposes a number of Defect rectification obligations on the Supplier during the Warranty Period.
- Clause 3.12 of Module 1 requires the Supplier to, during the Warranty Period, implement Mandatory Engineering Changes and perform certain tests.
- Clause 10.7 of the Comprehensive Contract Details permits the Customer to keep part of the invoiced amount for any milestones for the due and proper performance and completion of the Supplier's delivery obligations incurred before the end of the Warranty Period (or another period specified in the Pricing Schedule).

These obligations should be taken into account in determining the Warranty Period.

13. Scalability

Clause 3.9(a)(v) of Module 1



Guidance:

The Customer will need to stipulate the extent to which the Hardware is scalable to accommodate the Customer's usage of the Hardware (for example, up to a certain capacity or number of devices or users).

14. Replacement parts

Clause 3.10(c) of Module 1



Guidance:

Whether replacement parts for the Hardware must be new

In this item, stipulate whether the replacement parts must be new.

When title and risk in replacement parts will transfer

The parties can determine when title (legal ownership) and risk in the replacement parts passes to the Customer. The default position under clause 3.10(c)(ii) of Module 1 is that title and risk in the replacement parts passes on installation. If title and risk are to pass at a different time, this should be specified here. If risk is to pass earlier than title is to pass, the Customer will need to check that it is able to insure the parts on the passing of risk.

Module Order Form 1B – Hardware Maintenance Services

1. Maintenance Period

Clause 4.1 of Module 1



Guidance:

Start and end of Maintenance Period

If Hardware Maintenance Services are the only Products and/or Services being procured under the Contract, the start and end dates for the Maintenance Period may align with the start and end dates for the Term of the Contract which are to be specified in item 7 of the Details. However, if additional Products and/or Services will be procured under another Module, the Term start and end dates for the Contract in item 7 of the Details may be different.

Extension options

This section sets out the Customer's option (if any) to extend the Maintenance Period. If the Customer requires the ability to extend the initial Maintenance Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. 1 year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as “two extension options of 12 months each”.

If the Customer does not require the ability to extend the Maintenance Period, this item should be specified as “Not applicable”. If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Maintenance Period, this will need to be negotiated with the Supplier.

A Customer should ensure that the extension option in item 7 of the Details takes into account the Maintenance Period extension options which are specified here. If the Price will vary for the extension periods, this should be specified in Schedule 1 or 2, as well as any Price review mechanism which may apply.

Notice period for extension

If the Customer has extension options, this section must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Maintenance Period. For example, this may be specified as “30 days prior to the expiry of the Maintenance Period or applicable extension period (if applicable)”.

2. Requirements

Clause 4.1 of Module 1



Guidance:

It is very important to provide sufficient details of the Hardware Maintenance Services to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Hardware Maintenance Services, there is no certainty as to the support which the Supplier is to provide. If they

are not adequately specified, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The Specifications can either be incorporated in this item or referred to in an annexed document. How the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations under the Contract. The Specifications should only contain information which describes the Hardware Maintenance Services to be provided.

3. Supported Hardware

Clause 4.2 of Module 1



Guidance:

In this item, describe the hardware to be supported. The Supported Hardware may or may not be Hardware supplied under Module 1.

4. Replacement parts

Clause 4.3 and 4.6 of Module 1



Guidance:

Stock of replacement parts

Requiring the maintenance of stock of frequently required parts for the Supported Hardware (whether by the Supplier itself or its supplier or Supported Hardware manufacturer) will help speed up the provision of the Hardware Maintenance Services. This may be particularly beneficial if the Customer's requirements for the Supported Hardware are critical. It may also help a Supplier meet any Service Levels which are specified for the provision of the Service.

New replacement parts

In this item, the parties can specify whether the replacement parts for Supported Hardware do not need to be new. The default position is that they must be new.

Title and risk in replacement parts

The parties can determine when title (legal ownership) and risk in the replacement parts passes to the Customer. The default position under clause 4.6(e)(ii) of Module 1 is that title and risk in the replacement parts passes on installation. If title and risk are to pass at a different time, this should be specified here. If risk is to pass earlier than title, the Customer will need to check that it is able to insure the parts on the passing of risk.

5. General Support

Clause 4.4 of Module 1



Guidance:

In this item, set out the general support services to be provided by the Supplier in relation to operating or using the Hardware. This section requires a description of the actual support services to be provided. Any Service Levels or key performance indicators in relation to those support services (for example, response times, rectification times and severity levels) must be set out in item 9 below.

The Customer should also set out the agreed mechanism for accessing general support. For example, if this is through a help desk, the following details should be included:

- the help desk phone number and/or email address and
- the help desk's hours of service.

6. Preventative Maintenance Services

Clause 4.5 of Module 1



Guidance:

Description of Preventative Maintenance Services

The Customer can either incorporate the description of the preventative maintenance services in this item or refer to an annexed document which contains the description. How the description is incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the description is set out in this item, it will be relatively high in the contractual hierarchy pursuant to clause 1.3(c) of the Comprehensive Contract Conditions and the terms will prevail over any other Contract document (other than the Module Order and Comprehensive Contract Conditions) to the extent of any inconsistency. If, however, the description of the preventative maintenance services is referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing to a description prepared by a Supplier as they may include terms which affect the parties' rights and obligations. The description should only contain information which describes the preventative maintenance services.

Frequency of Preventative Maintenance Services

When stipulating the frequency of the preventative maintenance services, it is recommended that the Customer clearly specify when the preventative maintenance services must be provided (e.g. 1st of each month).

7. Remedial Maintenance

Clause 4.6 of Module 1



Guidance:

The Customer can either incorporate the description of the remedial maintenance in this item or refer to an annexed document which contains the description.

If the description is set out in this item, it will be the third highest in the contractual hierarchy pursuant to clause 1.3(c) of the Comprehensive Contract Conditions and the terms will prevail over other Contract documents (except for the Module Orders and the Comprehensive Contract Conditions) to the extent of any inconsistency. If, however, the description of the remedial maintenance is referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing to a description prepared by a Supplier as they may include terms which affect the parties' rights and obligations. The description should only contain information which describes the remedial maintenance.

The description of the remedial maintenance may include:

- repair or replacement of the defective Supported Hardware and
- collection of any defective Supported Hardware from the Site (or other location notified by the Customer) and delivery of the repaired or replaced Supported Hardware to the Site (or other location notified by the Customer).

8. Supply through a Reseller

Clause 4.8 of Module 1



Guidance:

In this context, Reseller means an entity who provides, or facilitates the provision of, the Hardware Maintenance Services but is not the Supported Hardware manufacturer (called the Third Party Provider) or a Related Body Corporate of the Third Party Provider.

The Module provides for two separate circumstances in which a Supplier can be a Reseller:

- one where the Customer has a primary contractual relationship with the Reseller under the Contract – clause 4.8(b), and
- the other where the Customer also has a separate contract directly with the Third Party Provider – clause 4.8(c).

In both cases, the Customer's rights against a Reseller are reduced from those which generally appear in the Comprehensive Contract Conditions and the Module. It is generally recommended that legal assistance be obtained where the Customer is procuring via a Reseller.

The two Reseller arrangements are set out in more detail below:

1. **Clause 4.8(b) – Reseller supplies Hardware Maintenance Services**

In the first Reseller arrangement, the Reseller does not give any of the Hardware Maintenance Services warranties in clause 4.10 of Module 1.

All other terms of the Comprehensive Contract Conditions and Module 1 apply.

Under clause 4.8(b), the Reseller must:

- ensure that the Customer receives or has access to a copy and approves the Third Party Provider's warranties before buying the Hardware Maintenance Services
- assign any Third Party Provider's warranty to the Customer and
- co-ordinate and manage any warranty claim that the Customer reports to the Supplier and must use best efforts to ensure that all benefits of the Third Party Provider's warranty provided above are used for the Customer's benefit (including by providing such assistance as set out in this item in the Module Order Form).

It is recommended that the Customer carefully reviews the terms of any proposed warranty to see what it covers.

It is recommended that the Customer attach the warranty to the Contract so it is clear what the warranty terms are.

In this case, the Reseller is still contractually obliged to, amongst other things, ensure that the Hardware Maintenance Services are of high quality, professional standard and fit for their usual purpose and meet the Requirements (pursuant to clause 4.1(d) of the Comprehensive Contract Conditions).

2. Clause 4.8(c) – Reseller facilitates the supply of Hardware Maintenance Services

In the second scenario, the Reseller provides '*reseller services which facilitate the supply of the Hardware Maintenance Services by the Third Party Provider*' to the Customer.

Engaging a Reseller under this scenario brings a higher degree of risk because:

- the Customer enters into a separate contract with the Third Party Provider for the supply of the Hardware Maintenance Services and
- the obligations of the Reseller under the Contract will be reduced from those under the Comprehensive Contract Conditions and Module 1.

i. Contract with Third Party Provider

The contract which the Customer will need to enter with the Third Party Provider for the supply of the Hardware Maintenance Services will be separate from the Contract which the Customer enters into with the Reseller.

Clause 4.8(c)(i) of Module 1 stipulates that the terms of that contract with the Third Party Provider will be attached to the Contract, available for the Customer to accept online from a website nominated by the Reseller or in the form of a shrinkwrap agreement provided with the Supported Hardware. The contract will be deemed accepted by the Customer when it enters the Contract.

It is common in a reseller arrangement that the terms of the contract with the Third Party Provider are not negotiable, and the Supplier is required to pass through the terms of the Third Party Provider's contract to the Customer.

In considering the terms of the contract, the Customer may wish to consider the *Guidelines for Supplier Terms and Conditions* which were developed to assist a Customer to determine whether a Supplier's terms and conditions are acceptable for

a procurement. It should be noted, however, that these were designed for low value – low risk procurements.

The Customer will need to examine the rights and obligations of the parties under the proposed contract, to determine what rights the Customer has against the Third Party Provider for the procurement of the Hardware Maintenance Services and in particular, the terms of any support and maintenance services.

It will be necessary to check, among other things, whether the terms of the Third Party Provider's contract can be unilaterally changed by the Third Party Provider. If that is the case, the Customer will have no certainty as to the terms of its contract.

The Customer should consider, based on the risk and value of the procurement, whether the Third Party Provider's terms and conditions are acceptable. If not acceptable, negotiation of terms (more aligned with the Comprehensive Contract Conditions and Module 1) or re-assessment of the procurement may need to be considered.

If the terms are acceptable, the contract should be attached to this Contract to ensure certainty as to its terms.

ii. Contract with Reseller

As mentioned earlier, the Contract which the Customer will enter into with the Reseller will not contain a number of terms and conditions which would ordinarily apply if the Supplier provided the Hardware Maintenance Services as a non-Reseller. This is because the Reseller is only facilitating the supply of the Hardware Maintenance Services by the Third Party Provider and so the Reseller cannot be responsible for a number of the operative obligations in the Module for the supply of those services.

The terms that will **not** apply in this Reseller arrangement are:

- clause 4.1(d) of the Comprehensive Contract Conditions. This means that the Reseller is not required to ensure that the Hardware Maintenance Services are of a high quality, professional standard and are fit for their usual purpose and meet the Requirements.
- the following provisions in the Module which relate to the Hardware Maintenance Services:
 - Clause 4.3 – Replacement parts. This obliges the Supplier to maintain, or procure that its supplier or the Supported Hardware manufacturer maintains a stock of frequently required Supported Hardware parts.
 - Clause 4.7 – Costs of carriage and reinstallation of Supported Hardware
 - Clause 4.9 – Exclusions from Hardware Maintenance Services
 - Clause 4.10 – Warranties. This requires the Supplier to warrant that the Hardware Maintenance Services will be performed using appropriate materials of high quality, be appropriately qualified and trained Personnel and to a standard that ensures continuity of Performance of the Supported Hardware in accordance with the Service Levels and the Contract.
 - Clause 4.11 – Service Levels and Service Credits
 - Clause 4.13 – Engineering Changes

- Clause 4.15 – Maintenance Records

The substantive clauses which **do** apply are:

- Clause 4.1 – Maintenance Period
- Clause 4.2 – Supply of Hardware Maintenance Services
- Clause 4.4 – General Support
- Clause 4.5 – Preventative Maintenance
- Clause 4.6 – Remedial Maintenance
- Clause 4.8 – Supply of Hardware Maintenance Services through a Reseller

Clause 4.8 requires the Reseller to, among other things:

- co-ordinate and manage any warranty claim reported by the Customer to the Supplier and use best efforts to ensure that the benefits of the Third Party Provider's warranty is used for the Customer's benefit, including by providing such assistance set out in the Module Order Form and
- co-ordinate and manage the provision of any services that are to be provided in respect of any movement, addition, change or substitution of the Supported Hardware.

It is recommended that the Customer carefully checks to see what warranty (if any) it will be granted.

If a warranty is available, the Customer will need to set out what assistance it wants the Reseller to provide if the Customer claims under the warranty. This should be set out in this item.

The warranty may be part of the Customer's contract with the Third Party Provider. However, if it is not, the warranty should be attached to the Contract so it is clear what the warranty terms are.

- Clause 4.12 – Product recalls
- Clause 4.14 – Movement of Hardware

It is strongly recommended that legal assistance be obtained if a Supplier is to be a Reseller of Hardware Maintenance Services. If the terms are not considered acceptable, the Customer may wish to reconsider its procurement options.

9. Service Levels

Clause 4.11 of Module 1



Guidance:

The Customer should specify where the Service Levels are described, which will be either in Schedule 8 or in another document. The Customer should also stipulate the frequency in which the Supplier must report on its performance against the Service Levels (e.g. monthly, quarterly or such other time).

10. Service Credits

Clause 4.11 of Module 1



Guidance:

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The *Schedule 8 – Service Levels* or other Service Level document referred to in the Details can set out the Service Credits as well as how the Service Credits are calculated and the applicable measurement period.

This item also sets out the mechanism for the Customer to apply the Service Credits against Prices if the Supplier fails to meet the Service Levels. The default position in clause 4.11(b) is that Service Credits will be applied against the next invoice issued after the relevant Service Credits accrue. However, depending on the payment terms, the Customer may specify a different arrangement in the Module Order Form. If so, this item should specify:

- when the Service Credits accrue and
- how the Service Credits are applied or charged.

Alternatively, instead of the Service Credits being applied against the Price, the Supplier may provide a Service Credit arrangement which provides the Customer with “credit” in the form of hours to be used for consulting or training services. The parties may also agree to an “earn back” service credit arrangement whereby the Supplier “earns back” service credits in the months after its failure to meet the Service Levels by meeting the Service Levels for a particular period.

If applicable, these types of alternative arrangements should be specified in this item.

MODULE 2 – SOFTWARE

When to use?

Module 2 – Software can be used when the Customer requires:

- the supply of Licensed Software (Module Order Form 2A)
 - support services for particular software (Module Order Form 2B) and/or
 - the development of software (Module Order Form 2C).
- Module Order Form 2A - *Licensed Software* can be used where the Customer wishes to obtain a licence to software. The Customer will not own the Licensed Software, but rather the Intellectual Property Rights in the Licensed Software will either be owned by the Supplier or a third party (see in contrast Developed Software under *Module Order Form 2C*).

Under this Module, the Supplier will make available the Licensed Software to the Customer and, if required, install it on the Customer's IT System.

- *Module Order Form 2B - Software Support Services* can be used where the Customer requires the Supplier to provide Software Support Services to software for a period of time. The support may be for Licensed Software or Developed Software under Module 2, software for which a Supplier has been required to provide Integration Services under *Module 4 – Systems Integration* or other software.
- *Module Order Form 2C - Developed Software* can be used where the Customer requires the Supplier to develop software.

These Products and Services can be provided by the Supplier in the capacity of a Reseller.

Module Order Form 2A – Licensed Software

1. Licensed Software

Clause 3.1 of Module 2



Guidance:

Licensed Software is defined in the Module to include (as applicable):

- (a) any configuration or customisation of the Licensed Software to activate or implement add-ons, features or functionality within the Licensed Software or any adaptations, translations or derivatives of the Licensed Software or
- (b) Developed Software, where the Supplier will own the Intellectual Property Rights in the New Material in the Developed Software.

If the description of the Licensed Software is set out in the Specifications, instead of setting out the description in item 1, the Customer may instead refer to the Specifications which are set out or referred to in item 2.

If a Customer has engaged the Supplier to provide Data Migration Services and Data Cleansing Services under *Module 4 – Systems Integration* and the Customer requires a right to use the Data Tools (such as software tools, object libraries, methodologies or other devices) which a Supplier will use to perform those services, those Data Tools can be licensed under *Module 2 – Software* or

under *Module 3 – As a Service* (as applicable). If the Data Tools will be licensed under Module 2, they should be specified here or in item 2.

2. Requirements



Guidance:

It is very important to provide sufficient details of the Licensed Software to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Licensed Software, there is no certainty as to the functional, operational, technical and performance requirements of the Licensed Software. If the Licensed Software fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The Specifications can either be incorporated in this item or referred to in an annexed document. How the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations under the Contract. The Specifications should only contain information which describes the functional, operational and technical and performance specifications for the Licensed Software.

3. Use of Licensed Software

Clause 3.1 of Module 2



Guidance:

This is where the Customer can specify any purposes which it may want to use the Licensed Software, in addition to '*for the Customer's functions or activities*'. If specified, this would broaden the Customer's rights to the Licensed Software which are granted under the default position in clause 3.1(a)(i).

4. Class of Licence

Clause 3.1 of Module 2



Guidance:

A Customer's licence to the Licensed Software is governed by clause 3 of Module 2, rather than clause 12 of the Comprehensive Contract Conditions which deals with Intellectual Property Rights in Pre-Existing, New Material and Third Party Material.

Class of Licence is defined in Module 2 to mean the specific rights granted by the Supplier to the Customer to use the Licensed Software that are specified in this item.

How broad or restrictive the Class of Licence is will depend on the circumstances.

Make sure that the Class of Licence is set out in sufficient detail. The Customer should ensure that the Class of Licence gives the Customer broad enough rights to be able to adequately use the Licensed Software for the Customer's required purpose. A Customer should check that the rights specified are not limited by details specified in Item 1 (Licenced Software), item 8 (Sublicensing) and item 9 (Restrictions on Use) as well.

5. Copies of Licensed Software to be provided by Supplier Clause 3.1 of Module 2



Guidance:

This is where the parties should specify the number of copies of the Licensed Software which the Supplier will provide. The Customer can make copies in accordance with its rights granted under clause 3.1(a)(i) in Module 2.

6. Licence Period Clause 3.2 of Module 2



Guidance:

A perpetual licence means that the Licence is granted for an indefinite period.

If the Licence will not be perpetual, the Licence Period start and end dates will need to be specified.

The Licence Period may or may not align with the Term start and end dates for the Contract as set out in item 7 of the Details. It will depend on whether the Customer is procuring other Products and/or Services under different Modules in the Contract.

Extension options

This item should set out the Customer's option (if any) to extend the Licence Period. If the Customer requires the ability to extend the initial Licence Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. 1 year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as "two extension options of 12 months each".

If the Customer does not require the ability to extend the Licence Period, this item should be specified as "Not applicable". If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Licence Period, this will need to be negotiated with the Supplier.

When considering the extension options to the Licence Period, the Customer will need to consider how long it may need to have a Licence to use the Licensed Software and ensure that the extension options stipulated here reflect the Customer's requirements.

A Customer should ensure that the extension options in item 7 of the Details take into account the Licence Period extension options which are specified here.

If the Price will vary during the extension periods, this should be specified in Schedule 1 or 2, as well as any Price review mechanism which may apply.

Notice period for extension

If the Customer has extension options, this item must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Licence Period. For example, this may be specified as “30 days prior to the expiry of the Licence Period or applicable extension period (if applicable)”.

7. Supply through a Reseller

Clause 3.3 of Module 2



Guidance:

A Reseller of Licensed Software is an entity who provides, or facilitates the provision of, the Licensed Software but is not the owner of the Intellectual Property Rights in the Licensed Software (called the Third Party Provider), or a Related Body of that Third Party Provider.

The Module provides for two separate circumstances in which a Supplier can be a Reseller:

- one where the Customer’s primary contractual relationship is with the Reseller under the Contract (clause 3.3(b)), and
- the other where the Customer also has a separate contract directly with the Third Party Provider (clause 3.3(c)).

In both cases, the Customer’s rights against a Reseller are reduced from those which generally appear in the Comprehensive Contract Conditions and Module. It is generally recommended that legal assistance be obtained where the Customer is procuring via a Reseller.

The two alternative Reseller arrangements are set out in more detail below:

1. Clause 3.3(b) – Reseller supplies Licensed Software

In the first Reseller arrangement, the Reseller does not provide the Licensed Software warranties in clause 3.15 and is not bound to comply with the Defect rectification obligations in clause 3.16 of Module 2. All other terms of the Comprehensive Contract Conditions and the Module apply.

Under clause 3.3(b), the Supplier must:

- ensure the Customer receives or has access to a copy of, and approves all Third Party Provider’s warranties before buying the Licensed Software
- assign any Third Party Provider’s warranty to the Customer and
- co-ordinate and manage any warranty claim that the Customer reports to the Supplier and must use best efforts to ensure that all benefits of the Third Party Provider’s warranty provided above are used for the Customer’s benefit (including by providing such assistance as set out in this item of the Module Order Form).

However, the risk to a Customer is that it is not predetermined what the warranties are, if any, which will be provided by the Third Party Provider. It is recommended that a Customer carefully reviews the terms of any proposed warranty to ascertain what it will cover. The

Customer may want to compare them against clauses 3.15 and 3.16 of the Module which do not apply.

If there will be a warranty, the Customer will need to specify here what assistance it requires the Reseller to provide. The Customer should compare them against the warranties in clause 3.15 of the Module which do not apply.

It is recommended that the warranty is attached so that there is certainty as to its terms.

In this scenario, the Reseller is still contractually obliged to comply with all other terms of the Comprehensive Contract Conditions and Module, including the obligation to ensure that the Licensed Software is of high quality, professional standard and fit for its usual purpose and meets the Requirements (pursuant to clause 4.1(d) of the Comprehensive Contract Conditions).

2. Clause 3.3(c) – Reseller facilitates the supply of Licensed Software

In the second Reseller arrangement, the Reseller provides '*reseller services which facilitate the supply of the Licensed Software*' from the Third Party Provider to the Customer.

Engaging a Reseller under this scenario brings a higher degree of risk because:

- the Customer enters into a separate contract with the Third Party Provider for the supply of the Licensed Software and
- the obligations of the Reseller under the Contract will be significantly reduced from those under the Comprehensive Contract Conditions and Module 2.

i. Contract with Third Party Provider

The contract which the Customer will enter into with the Third Party Provider will be separate from the Contract which the Customer enters into with the Reseller.

Clause 3.3(c)(iii) stipulates that the terms of that contract with the Third Party Provider will be attached to the Contract, be available for the Customer to accept online for a website nominated by the Reseller or in the form of a shrinkwrap licence or licence document that is provided with the Licensed Software.

It is common in a reseller arrangement that the terms of the contract with the Third Party Provider are not negotiable, and the Supplier is required to pass through the terms of the Third Party Provider's contract to the Customer.

In considering the terms, the Customer may wish to consider the *Guidelines for Supplier Terms and Conditions* which were developed to assist a Customer determine whether a Supplier's terms and conditions are acceptable for the procurement. Note that these have been designed for low risk – low value procurements.

It is very important a Customer considers the terms of the proposed contract to determine the extent of the parties' rights and obligations, including any warranties.

It will be necessary to check, among other things, whether the terms of the contract can be unilaterally changed by the Third Party Provider. If that is the case, the Customer will have no certainty as to the terms of the contract.

The Customer should consider, based on the risk and value of the procurement, whether the Third Party Provider's terms and conditions are acceptable. If not

acceptable, negotiation of terms (more aligned with the Comprehensive Contract Conditions and Module 2) or re-assessment of the procurement may need to be considered.

If the proposed terms are considered acceptable, it is recommended that the Third Party Provider's contract is attached to ensure certainty as to its terms.

ii. Contract with Reseller

As mentioned earlier, the Contract which the Customer will enter into with the Reseller will not contain a number of terms and conditions which would ordinarily apply if the Supplier provided the Licensed Software as a non-Reseller. This is because the Reseller is only facilitating the supply of the Licensed Software by the Third Party Provider and so the Reseller cannot be responsible for a number of the operative obligations which would otherwise apply.

The terms that will **not** apply in the Reseller arrangement are:

- clause 4.1(d) of the Comprehensive Contract Conditions. This means that the Reseller is not required to ensure that the Licensed Software is of a high quality, professional standard and is fit for its usual purpose and meets the Requirements.
- the following provisions in Module 2 which relate to the Licensed Software:
 - Clause 3.1 – Licensed Software (including the grant of the licence)
 - Clause 3.2 – Licence Period
 - Clause 3.4 – Sublicensing
 - Clause 3.5 – Restrictions on Use
 - Clause 3.6 – Third Party Software
 - Clause 3.7 – Open Source Software
 - Clause 3.8 – Changes to Designated Environment
 - Clause 3.10 – Acceptance Testing
 - Clause 3.11 – Back up
 - Clause 3.12 – Updates and New Releases
 - Clause 3.14 – Machinery of Government
 - Clause 3.15 – Warranties
 - Clause 3.16 – Defects
 - Clause 3.17 – Records and audit

The substantive clauses which **do** apply are:

- Clause 3.3 – Reseller. This requires the Reseller to, among other things, coordinate and manage the provision of the Third Party Provider's warranty service, if any, in respect of any Defect or alleged Defect that is reported by the Customer to the Reseller, including by providing such assistance set out in this item.

It will depend on the circumstances as to whether a Third Party Provider provides any warranty service and if so, the terms of the warranty service.

If there are warranties available, the Customer will need to set out here what assistance it wants the Reseller to provide if the Customer makes a warranty claim against the Third Party Provider.

The warranty may be part of the Customer's contract with the Third Party Provider. However, if it is not, the warranty should be attached to the Contract so it is clear what the warranty terms are.

- Clause 3.9 - Delivery and Installation. This means that Reseller is required to deliver or make available the Licensed Software to the Site (if applicable) by the Delivery Date and, if required, install it on the Designated Environment in accordance with the requirements in the Module Order Form (as set out in clause 3.9(a)).
- Clause 3.13 – Ancillary Services. This means that the Reseller can provide ancillary services if specified in the Module Order Form.

It is recommended that legal assistance be obtained if a Supplier is to be a Reseller of Licensed Software. If the Reseller arrangement is not satisfactory to the Customer, it may wish to reconsider its procurement options.

8. Sublicensing

Clause 3.4 of Module 2



Guidance:

The Customer's licence to the Licensed Software, including its rights to sublicense the Licensed Software, is governed by clause 3 of Module 2, rather than clause 12 of the Comprehensive Contract Conditions which deals with Intellectual Property Rights in Pre-Existing Material, New Material and Third Party Material.

Under clause 3.4(a) of the Module, the Customer can sublicense its rights granted under the Licence on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the Licensed Software, as long as:

- the Licensed Software is used solely for use of the Customer as permitted under Module 2
- the sublicense is limited to the period of the outsource arrangement and
- the sublicense automatically terminates at the end of the outsource arrangement.

If there are any other entities to which the Customer wants to sublicense the Licensed Software (e.g. a public service office), these should be specified here.

If there are costs associated with the right to sublicense, they need to be specified here. If there are no costs, specify "Not Applicable".

Under 3.4(b) of the Module, any sublicensing of the rights granted under this clause is included in the Class of Licence. This means that if the Class of Licence is based on the number of users, the number of users of the contractor or other entity which receives the benefit of the sublicense is included within the number of users acquired by the Customer.

9. Additional licence conditions and restrictions

Clause 3.5 of Module 2



Guidance:

Clause 3.5(a) of Module 2 provides that the Customer agrees not to:

- distribute, sublicense or otherwise transfer all or any part of the Licensed Software to any other person or
- attempt to disassemble, decompile or otherwise reverse engineer the Licensed Software

except to the extent permitted by clause 3 of the Module, the Module Order Form or applicable Law.

If the Customer wishes to do any of these things (such as reverse engineer), it will need to specify this in this item (noting that those rights may also arise to the extent permitted by clause 3 of the Module or applicable Law).

Under clause 3.5(b), the Customer must comply with additional licence conditions and restrictions on the Licensed Software's use which are specified in this item of the Module Order Form. These additional conditions or restrictions should be specified here. The Customer will need to check whether any proposed additional conditions or restrictions impact on its ability to fully use the Licensed Software as required.

If there are no additional conditions or restrictions, it is recommended the Customer specify "Not Applicable".

10. Third Party Software

Clause 3.6 of Module 2



Guidance:

'Third Party Software' is defined in Module 2 to mean software components, applications, plug-in or other programs that are owned by third parties and are stated here as being Third Party Software.

Clause 3.6 of Module 2 provides that if any Third Party Software is associated with the Licensed Software, the Third Party Software will be licensed to the Customer:

- (a) as part of the Licensed Software (if so, the Third Party Software will be deemed to be part of the Licensed Software and the Contract applies to the Third Party Software in the same way it applies to the Licensed Software) or
- (b) on such other terms specified in the Module Order Form.

If the Third Party Software is to be licensed under separate terms, they should be set out here. The Customer should be careful to ensure that the licence terms are broad enough to enable it to adequately use the Third Party Software and the Licensed Software as required. If there are significant limitations, it may restrict the Customer's use of the Licensed Software.

It is recommended that the Customer seek legal advice if there are significant terms and conditions which apply to the Third Party Software.

11. Open Source Licence

Clause 3.7 of Module 2



Guidance:

An 'Open Source Licence' is defined in Module 2 to mean the licence that governs the use of open source code, which is included with the open source code, as specified in the Module Order Form.

Where Licensed Software is licensed under an Open Source Licence or any open source code is incorporated into the Licensed Software, it is important to know the terms of the Open Source Licence as they apply to the Licensed Software (pursuant to clause 3.7(a)).

Under clause 3.7(b), the Open Source Licence terms will prevail over the Contract to the extent of any inconsistency as long as any open source code incorporated into the Licensed Software is deemed to be part of the Licensed Software for the purposes of the Supplier's warranties in clause 3.15 of the Module. This means that the warranties in clause 3.15 cannot be overridden by the Open Source Licence terms.

The Open Source Licence that governs the use of the open source software should be specified here to ensure certainty as to the Customer's rights to use the Licensed Software.

12. Delivery and installation requirements

Clause 3.9 of Module 2



Guidance:

In this item, it is necessary to specify the Site, the Delivery Date and whether the Supplier needs to install the Licensed Software (and if so, any installation requirements).

It may not always be necessary for the Licensed Software to be physically delivered. If it is to be made available electronically, there is no need to specify the Site.

In determining whether the Customer requires the Supplier to install the Licensed Software, note that under clause 3.9(b) of the Module, unless the Supplier is responsible for installing, the Customer must install in accordance with any instructions in the User Documentation or other Supplier instructions. Under this clause, provided that the Customer does so, the act of installing will not invalidate any warranty provided by the Supplier.

13. Back-ups

Clause 3.11 of Module 2



Guidance:

If the Supplier is responsible for backups of data loaded into the Licensed Software, the Customer will need to specify how the Supplier will do this (including the frequency and the format in which the data should be backed up and where it will be held).

14. Updates and New Releases

Clause 3.12 of Module 2



Guidance:

The Customer can specify whether the Supplier must make the Update or New Release of the Licensed Software available as part of its Licence, not just as part of any separate Software Support Services which are procured.

If a Customer wants the Supplier to install the Updates and New Releases (as opposed to just making them available), this will need to be specified here. If there are any particular installation requirements, these should be specified here too.

15. Ancillary services

Clause 3.13 of Module 2



Guidance:

The ancillary services may include additional services, such as design services and training.

If the ancillary services are extensive or particularly complex, the Customer should consider whether it is more appropriate for the Supplier to provide any ancillary services under *Module 7 - ICT Professional Services*, rather than in this item, to ensure that the Customer obtains the benefit of the terms of that Module, including the warranties and defect rectification obligations, in relation to those services.

16. Warranty Period

Clause 3.15 of Module 2



Guidance:

The Customer should determine the duration of the Warranty Period, taking into account:

- the obligations imposed on the Supplier under the Contract
- the period during which Defects are most likely to arise or be discovered in the Licensed Software
- the period in which it requires the Licensed Software to be free of Defects and
- the Software Support Services (if any) which are to be provided by the Supplier.

Each Licensed Software may have a different Warranty Period.

The Warranty Period is applicable to a number of provisions in the Module and the Comprehensive Contract.

- Clause 3.15 of Module 2 requires the Supplier to provide a number of warranties in relation to the Licensed Software, two of which are limited to the Warranty Period. They require the Supplier to warrant that the Licensed Software will, during the Warranty Period:
 - comply with and perform in accordance with the Requirements (clause 3.15(a)(i)) and

- be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment (where applicable) when used in accordance with the User Documentation and Bespoke Documentation (as applicable) (clause 3.15(a)(ii)).
- Clause 3.16 imposes a number of Defect rectification obligations on the Supplier in relation to the Licensed Software during the Warranty Period only.
- Under clause 10.7 of the Comprehensive Contract Details, the Customer is entitled to retain a portion of the invoiced amount for any milestones for the due and proper performance and completion of the Supplier's delivery obligations incurred prior to the end of the Warranty Period (or another period specified in the Pricing Schedule).

17. Records of Licensed Software

Clause 3.17 of Module 2



Guidance:

If the Customer will be required to maintain records of the location of all copies of the Licensed Software and its usage as measured against the Class of Licence, this should be specified here.

Under clause 3.17, the Supplier can make investigations to verify the Customer's compliance with the Licence. If the audit shows that the Customer has not used the Licensed Software in accordance with the Licence, resulting in an underpayment to the Supplier, the Customer will need to pay the Supplier's reasonable costs directly incurred in relation to the audit as well as the underpayment.

Module Order Form 2B – Software Support Services

1. Support Period

Clause 4.1 of Module 2



Guidance:

Start and end of Support Period

The start and end of the Support Period may or may not align with the Term start and end date for the Contract. It depends on whether the Customer is also procuring Products and/or Services from other Modules under the Contract.

Extension options

This section sets out the Customer's option (if any) to extend the Support Period. If the Customer requires the ability to extend the initial Service Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. 1 year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as “two extension options of 12 months each”.

If the Customer does not require the ability to extend the Support Period, this item should be specified as “Not applicable”. If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Support Period, this will need to be negotiated with the Supplier.

A Customer should ensure that the extension option in item 7 of the Details takes into account the Support Period extension options which are specified here.

If the Price will vary during the extension periods, this should be specified in Schedule 1 or 2, as well as any Price review mechanism which may apply.

Notice period for extension

If the Customer has extension options, this section must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Support Period. For example, this may be specified as “30 days prior to the expiry of the Support Period or applicable extension period (if applicable)”.

2. Requirements

Clause 4.1 of Module 2



Guidance:

It is very important to provide sufficient details of the Software Support Services to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Software Support Services, there is no certainty as to the support which the Supplier is to provide. If they are not adequately

specified, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The Specifications can either be incorporated in this item or referred to in an annexed document. How the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations under the Contract. The Specifications should only contain information which describes the Software Support Services to be provided.

3. Supported Software

Clause 4.2 of Module 2



Guidance:

If there is more than one software being supported specify each item. This may include for example, the Licensed Software or Developed Software.

4. Remote access

Clause 4.2(c) of Module 2



Guidance:

If the Customer wants to give the Supplier remote access to the Supported Software to provide the Software Support Services, this will need to be specified in this item. Under clause 4.2(b), the Supplier will need to comply with its obligations under the Comprehensive Contract Conditions:

- in clause 6.1 regarding compliance with Customer's policies
- in clause 6.2(b) when accessing the Customer's Site and
- in clause 6.3 when accessing the Customer's IT System.

If there are additional terms which apply to the Supplier's remote access to the Supported Software, these should be specified here.

5. Supply through a Reseller

Clause 4.3 of Module 2



Guidance:

A Reseller of Software Support Services is an entity who provides, or facilitates the provision of, the Software Support Services but is not the owner of the Intellectual Property Rights in the Supported Software (Third Party Provider), or a Related Body of that Third Party Provider.

The Module provides for two separate circumstances in which a Supplier can be a Reseller:

- one where the Customer has a primary contractual relationship with the Reseller under the Contract (clause 4.3(b)), and
- the other where the Customer also has a separate contract directly with the Third Party Provider (clause 4.3(c)).

In both cases, the Customer's rights against a Reseller are reduced from those which generally appear in the Comprehensive Contract Conditions and Module. It is generally recommended that legal assistance be obtained where the Customer is procuring via a Reseller.

The two Reseller arrangements are set out in more detail below:

(a) Clause 4.3(b) – Reseller supplies the Software Support Services

In the first Reseller arrangement, the Reseller is not bound by the Supported Software Defect rectification obligations in clause 4.5 and does not provide the Supported Software Services warranties in clause 4.7 of Module 2.

All other terms of the Contract, including the Comprehensive Contract Conditions and the Module, apply.

Under clause 4.3(b), the Supplier must:

- ensure that the Customer receives a copy and is fully advised of and approves all Third Party Provider's warranties before the Customer buys the Software Support Services
- assign the Third Party Provider's warranty to the Customer and
- co-ordinate and manage any warranty claim that the Customer reports to the Supplier and must use best efforts to ensure that all Third Party Provider's warranty above are used for the Customer's benefit, including by providing such assistance as set out in this item of the Module Order Form.

It is recommended that a Customer carefully reviews the terms of any proposed warranty to ascertain what they will cover.

If there will be a warranty, the Customer will need to specify here what assistance it requires the Reseller to provide.

It is recommended that the warranty be attached to ensure certainty as to its terms.

In this scenario, the Reseller is still contractually obliged to, amongst other things, ensure that the Software Support Services are of a high quality, professional standard and fit for their usual purpose and meet the Requirements (pursuant to clause 4.1(d) of the Comprehensive Contract Conditions).

(b) Clause 4.3(c) – Reseller facilitates the supply of Software Support Services

In the second situation, the Reseller provides '*reseller services which facilitate the supply of the Software Support Services*' by the Third Party Provider to the Customer.

Engaging a Reseller under this scenario brings a higher degree of risk because:

- i. the Customer enters into a separate contract with the Third Party Provider for the supply of the Software Support Services and
- ii. the obligations of the Reseller under the Contract will be significantly reduced from those under the Comprehensive Contract Conditions and Module 2.

i. Contract with Third Party Provider

Clause 4.3(c)(ii) stipulates that the terms of that contract with the Third Party Provider will be attached to the Contract, be available for the Customer to accept online from a website nominated by the Reseller or in the form of a shrinkwrap agreement that is provided with the Supported Software.

It is common in a reseller arrangement that the terms of the contract with the Third Party Provider are not negotiable, and the Supplier is required to pass through the terms of the Third Party Provider's contract to the Customer.

In considering the proposed terms, the Customer may wish to consider the *Guidelines for Supplier Terms and Conditions* which were developed to assist a Customer determine whether a Supplier's terms and conditions are acceptable for the procurement. It should be noted, however, that these have been designed for low risk – low value procurements.

It will be necessary to check, among other things, whether the terms of the Third Party Provider's contract can be unilaterally changed by the Third Party Provider. If that is the case, the Customer will have no certainty as to the terms of the contract.

The Customer should consider, based on the risk and value of the procurement, whether the Third Party Provider's terms and conditions are acceptable. If not acceptable, negotiation of terms (more aligned with the Comprehensive Contract Conditions and Module 2) or re-assessment of the procurement may need to be considered.

If the terms are considered acceptable, it is recommended that the contract be attached to the Contract to ensure certainty as to its terms.

ii. Contract with Reseller

As mentioned earlier, the Contract which the Customer will enter into with the Reseller will not contain a number of terms and conditions which would ordinarily apply if the Supplier provided the Software Support Services as a non-Reseller. This is because the Reseller is only facilitating the supply of the Software Support Services and so the Reseller cannot be responsible for a number of the operative obligations which would otherwise apply.

The terms that will **not** apply in this Reseller arrangement are:

- clause 4.1(d) of the Comprehensive Contract Conditions. This means that the Reseller is not required to ensure that the Software Support Services are of high quality, professional standard and are fit for their usual purpose and meet the Requirements.
- the following provisions in Module 2 which relate to the Software Support Services:
 - Clause 4.5 – Defects
 - Clause 4.6 – Updates and New Releases
 - Clause 4.7 – Warranties
 - Clause 4.8 – Exclusions from Software Support Services
 - Clause 4.9 – Service Levels and Service Credits
 - Clause 4.10 – Services records

The substantive clauses which **do** apply are:

- Clause 4.1 – Support Period. This means that the Reseller is required to provide the Software Support Services for the Support Period.
- Clause 4.2 – Supply of the Software Support Services. This clause requires the Reseller to provide the Software Support Services to a standard that ensures continuity of performance of the Supported Software in accordance with the Contract including Service Levels.

As clause 4.9 regarding Service Levels does not apply to a Reseller, the obligation under clause 4.2 to provide the Software Support Services is limited to ensuring continuity of performance of the Supported Software in accordance with the Contract (and not the Service Levels).

- Clause 4.4 – General support. This means that specified in the Module Order form, the Reseller must provide general support during the hours of support specified.
- Clause 4.3 – Here the Supplier must, among other things, coordinate and manage the provision of any support and warranty services that are to be provided by the Third Party Provider in respect of any Defect or alleged Defect that the Customer reports to the Reseller, including providing such assistance as set out in the Module Order Form.

However, it will depend on the circumstances as to whether a Third Party Provider provides any warranties and if so, the terms of the warranty.

It is strongly recommended that the Customer carefully check to see what warranty (if any) it will be granted in relation to the Software Support Services.

If a warranty will be provided, the Customer will also need to set out what assistance it wants the Reseller to provide if it wants to avail itself of the Third Party Provider's warranty. These should be set out here.

The Customer should attach the warranty to the Contract so that it is clear what the warranty terms are, particularly as the Reseller is required to assist in managing support and warranty services.

It is recommended that legal assistance be obtained if a Supplier is to be a Reseller of Software Support Services. If the Reseller arrangement is not satisfactory to the Customer, it may wish to reconsider its procurement options.

6. General Support

Clause 4.4 of Module 2



Guidance

In this item, set out the general support services to be provided by the Supplier in relation to operating or using the Supported Software. This section requires a description of the actual support services to be provided. Any Service Levels or key performance indicators in relation to those support services (for example, response times, rectification times and severity levels) must be set out in item 8 below.

The Customer should also set out the agreed mechanism for accessing general support. For example, if this is through a help desk, the following details should be included:

- the help desk phone number and/or email address and
- the help desk's hours of service.

7. Updates and New Releases

Clause 4.6 of Module 2



Guidance:

In this item, specify whether:

- The Supplier must make available Updates and New Releases
- If so, whether the Supplier must provide training to help the Customer operate the Updates and New Releases
- If any additional terms will apply to the supply of the Updates and New Releases
- The period of support if the Customer decides not to use the Updates or New Releases.

If the Customer decides not to use the Update or New Release, the Supplier is only obliged to provide Software Support Services for that release of the Supported Software for 18 months (or such other period as stated in the Module Order Form) from the date of the general release of the Update or New Release. The Customer will need to consider whether 18 months support is a sufficient time, or is available in the circumstances.

8. Service Levels

Clause 4.9 of Module 2



Guidance:

Service Levels

In this item specify whether the Service Levels are set out in *Schedule 8 – Service Levels* or another Service Levels document. If the Service Levels are set out in another document, that document should be referred to in this item and attached to the Contract.

The Supplier may seek to attach its standard service level agreement. Ideally, the relevant service levels will be extracted from the Supplier's standard documents and set out in *Schedule 8 – Service Levels*. If the Supplier's standard service level agreement is attached to the Contract, the Customer should carefully review this document as it may contain terms which could limit or qualify the Service Levels.

The Customer will otherwise need to review the Service Levels proposed by the Supplier and determine whether these Service Levels will ensure sufficient continuity and performance of the Software Support Services (particularly where any failure to meet the Service Levels would significantly impact the Customer's core business or functions).

Reporting

In this item, set out how frequently the Supplier must provide a report on its performance against the Service Levels. If the Customer has any particular reporting requirements (for example, formatting requirements or particular matters which must be addressed), then specify these requirements in this item.

9. Service Credits

Clause 4.9 of Module 2



Guidance:

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Levels can be set out in *Schedule 8 – Service Levels* or other Service Level document referred to in this item and annexed to the Contract. The Customer should also specify how the Service Credits are calculated and the applicable measurement period.

This item also sets out the mechanism for the Customer to apply the Service Credits against Prices if the Supplier fails to meet the Service Levels. The default position in clause 4.9(b) is that Service Credits will be applied against the next invoice issued after the relevant Service Credits accrue. However, depending on the payment terms, the Customer may specify a different arrangement in the Module Order Form. If so, this item should specify:

- when the Service Credits accrue and
- how the Service Credits are applied or charged.

Alternatively, instead of the Service Credits being applied against the Price, the Supplier may provide a Service Credit arrangement which provides the Customer with “credit” in the form of hours to be used for consulting or training services. The parties may also agree to an “earn back” service credit arrangement whereby the Supplier “earns back” service credits in the months after its failure to meet the Service Levels by meeting the Service Levels for a particular period.

If applicable, these types of alternative arrangements should be specified in this item.

Module Order Form 2C – Developed Software

1. Developed Software and Design Specification

Clause 5.1 and 5.3 of Module 2



Guidance:

Developed Software

Developed Software is defined in Module 2 to mean any new software or software application that is to be developed and which comprises New Material, as further specified in the Module Order Form.

It does not include any configuration or customisation of the Licensed Software to activate or implement add-ons, features or functionality within such Licensed Software or any adaptations, translations or derivatives of such Licensed Software. These fall within the meaning of Licensed Software.

It is very important to provide a sufficient description of the Developed Software to fully reflect what the Customer is buying. Without a sufficiently detailed description, there is no certainty as to what the Customer requires the Supplier to develop.

A Customer will need to consider which party is to own the Intellectual Property Rights in the Developed Software. It should be specified in the Details. Refer to the User Guide for further assistance.

Requirements

The parties can incorporate the Specifications, which describe the functional, operational and technical specifications for the Developed Software, in this item or in an annexed document which is referred to in this item of the Module Order Form.

The Specifications can either be incorporated in this item or referred to in an annexed document. However, where the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations. The Specifications should only contain information which describes the functional, operational and technical specifications for the Developed Software.

Design Specification

Clause 5.1(a) of the Module stipulates that if specified in the Module Order Form, the Supplier will prepare a Design Specification and submit it for the Customer's approval by the Delivery Date. The Customer has the ability to provide input into the Design Specification and ultimately approve it.

'Design Specification' is described in clause 5.1 of Module 2 as a detailed specification which provides a technical explanation of how the functions in the Requirements for the Developed Software will be met, including, as applicable, details of:

- i. processes

- ii. visual displays
- iii. screen layouts
- iv. system flowcharts
- v. user interfaces
- vi. data flow diagrams
- vii. estimates of transaction and data volumes
- viii. prototypes and
- ix. any associated Data Dictionary

If the Design Specification is approved by the Customer under clause 5.1, it becomes part of the Requirements.

It is recommended that the Customer requires the Supplier to prepare a Design Specification to ensure that it is very clear from the outset how the Requirements for the Design Specifications are to be met.

It will be necessary to consider which party should own the Intellectual Property Rights in the Design Specification. This should be specified in the Details. Refer to the User Guide for guidance on Intellectual Property Rights.

2. Delivery Dates

Clause 5.1 and 5.3 of Module 2



Guidance:

In this item, it is necessary to specify the date that the Supplier is required to supply the Design Specification to the Customer and the date that the Supplier is required to deliver the Developed Software to the Site. The date for the delivery of the Developed Software may be subject to the approval of the Design Specification and/or linked to the completion of Acceptance Testing (if any).

3. Delivery and installation requirements

Clause 5.1 and 5.3 of Module 2



Guidance:

In this item, specify the Site at which the Developed Software needs to be delivered or made available. It may not always be necessary for the Developed Software to be physically delivered. If it is to be made available electronically, there is no need to specify the Site.

In this item, specify whether the Supplier needs to install the Developed Software and if so, the requirements for the installation.

4. Ancillary services

Clause 5.6 of Module 2



Guidance:

Ancillary services may include training.

If the ancillary services are extensive or particularly complex, the Customer may want to consider whether it is more appropriate for the Supplier to provide any ancillary services under *Module 7 - ICT Professional Services*, rather than in this item, to ensure that the Customer obtains the benefit of the terms of that Module, including the warranty and defect rectification obligations, in relation to the services.

5. Warranty Period

Clause 5.7 of Module 2



Guidance:

In determining the duration of the Warranty Period, a Customer should take into account:

- the obligations imposed on the Supplier under the Contract
- the period during which Defects are most likely to arise or be discovered in the Developed Software supplied
- the period in which the Customer requires the Developed Software to be free of Defects and
- the support services which are to be provided by the Supplier.

The Comprehensive Contract Conditions and the Module contain a number of references to the Warranty Period:

- Clause 5.7(a)(i) of Module 2 requires the Supplier to warrant that the Developed Software will, during the Warranty Period, comply with and perform in accordance with the Requirements.
- Clause 5.8 of Module 2 imposes a number of Defect rectification obligations on the Supplier during the Warranty Period.
- Under clause 10.7 of the Comprehensive Contract Details, the Customer can keep a portion of the invoiced amount for any milestones for the due and proper performance and completion of the Supplier's delivery obligations incurred prior to the end of the Warranty Period or another period specified in the Pricing Schedule.

MODULE 3 – AS A SERVICE

When to Use?

The As a Service Module is generally to be used where the Customer wishes to procure a cloud computing based offering which is provided by the Supplier on an “as a service” basis.

The US National Institute of Standards and Technology (NIST) definition of cloud computing is commonly used throughout the ICT industry, and it is the definition adopted by the Queensland Government. It provides:

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

As a Service takes various forms and is constantly changing as technology evolves. Currently, the main forms of As a Service are:

- **Software as a Service (SaaS)** – the Supplier provides the Customer with the capability to access and use software or applications running on the Supplier’s infrastructure and which is accessed by the Customer as an online service, typically through a web browser (rather than being software which is installed on the Customer’s IT System).
- **Platform as a Service (PaaS)** – the Supplier provides the Customer with access to a hosted environment for the Customer to deploy, configure and run applications using programming languages and tools supported by the Supplier. The Customer can control the applications on the PaaS.
- **Infrastructure as a Service (IaaS)** – the Supplier provides processing, storage, networks and other physical or virtual machines, hardware or other data centre components for the Customer to deploy and run software. The Customer can typically control the operating systems, Customer Data and applications stored on the IaaS.

In an As a Service offering, the Supplier is responsible for providing and maintaining the cloud infrastructure used to provide the As a Service, including network, servers, operating systems and storage. The Customer does not have control over the underlying infrastructure.

An As a Service offering may be provided using public, private or a community infrastructure. Public infrastructure generally means that the Supplier’s infrastructure is shared with other customers of the Supplier, whereas private infrastructure is dedicated to the Customer only.

The pricing model for As a Service is typically based on the number of Units consumed, which may be the number of users, devices or storage capacity or by reference to the period during which the Customer is using the As a Service.

Managed Services Module

In contrast, *Module 6 - Managed Services* is to be used where a Customer wishes to engage a Supplier to provide services which the Customer, in the absence of the Supplier, might perform itself or where the Customer needs to retain a high degree of control over the services.

Some common managed services include managed equipment services (such as a managed print service) or the performance of the Customer’s internal IT function (such as a help-desk).

In the *Module 6 - Managed Services*, a Customer is able to require a Supplier to manage the Customer’s particular IT System as well as various contracts which the Customer has in place with third parties. These third party contracts can either be novated to the Supplier to enable it to

manage the contractors, or the Supplier is otherwise provided with management responsibility for those contracts.

The Supplier may be required to use private infrastructure for a Customer, whether managed internally or by a third party and hosted either internally or externally. This may mean that the environment will need to be bought, built and managed exclusively for the Customer, which requires allocation of space, hardware and environmental controls.

Many Managed Services are delivered remotely. However, some services and or equipment necessary to provide the services can be on a Customer's premises.

Policies regarding use of As a Service

The Queensland Government Enterprise Architecture (QGEA)'s *ICT As a Service: Decision Framework* is made up of a range of documents to help a Customer determine whether externally provisioned ICT services are appropriate.

See the User Guide Part B: Data security and Privacy for further information.

1. Subscription Period

Clause 3.1 of Module 3



Guidance:

Start of Subscription Period

Item 1 of the Module Order Form sets out the date that the Subscription Period will commence, the duration of the Subscription Period and the details regarding non-renewal of the Subscription Period. The Subscription Period is the defined term used to describe the period during which the Customer is provided access to the As a Service.

Transition-In Services may be relevant for the As a Service where the Customer is transitioning to the new offering to be provided by the Supplier under this Contract. Transition-In Services may involve the Supplier assisting with migration of data or applications (refer guidance below regarding item 8).

If Transition-In Services are not required:

If no Transition-In Services are required, the start date for the Subscription Period for the supply of the As a Service must be specified in this item. The start date may be a specific calendar date or it may be specified by reference to another milestone. The start date of the Subscription Period may be linked to the date that the As a Service is required to be available for the Customer's use in a live production environment.

If no other Products or Services are being procured under another Module, the start of the Subscription Period may align with the start date for the Term of the Contract, which is to be specified in the Details at item 7. However, if other Products and/or Services are being procured under another Module, the start date for the As a Service and the start date for the Term of the Contract (in item 7 of the Comprehensive Contract Details) may be different.

The start date for the Subscription Period may also be linked to the completion of Acceptance Testing.

The Customer may also require that the production environment for the As a Service does not go live until the Customer notifies the Supplier. If this is required, these details will need to be set out in this item or in the Acceptance Testing schedule (where Acceptance Testing is conducted).

If the Supplier is providing multiple environments (such as a development, testing, and production environments), the Customer may require different start dates for each of the environments. These start dates will need to be set out in this item.

If Transition-In Services are required:

If Transition-In Services are required, the Subscription Period start date will depend on whether or not the Customer requires Acceptance Testing to be conducted on the Transition-In Services performed by the Supplier.

Under clause 3.6(d) of Module 3, if Acceptance Testing is to be conducted for the Transition-In Services, the Subscription Period will commence on the Actual Acceptance Date (AAD) of the Transition-In Services, unless otherwise specified in this item.

It is generally recommended that Acceptance Tests are specified as required for the Transition-In Services where the Customer wishes to assess whether the Transition-In Services have been satisfactorily completed in accordance with agreed acceptance criteria, and verify that the As a Service is ready for use by the Customer in a live production environment. If Acceptance Tests for the Transition-In Services are required, the details of the Acceptance Tests will need to be completed in *Schedule 9 – Acceptance Testing* (including the details of the timing for the Acceptance Tests, responsibilities of the parties and Acceptance Criteria).

Refer to guidance in this document on item 26 of the Details in relation to Acceptance Testing generally.

If Acceptance Testing is not required for the Transition-In Services, clause 3.6(e) of Module 3 provides that once the Supplier has completed Transition-In Services, the Supplier must notify the Customer in writing that the Transition-In Services are complete and the date that the Subscription Period will commence. This means that where Acceptance Testing is not required for the Transition-In Services, the start date for the Subscription Period will be the date which is specified in the Supplier's notice.

Duration of Subscription Period

In this item, the Customer must specify the duration of the Subscription Period. For example the Subscription Period may be specified as a fixed duration (such as weekly, monthly or yearly) or by reference to a specific calendar end date. It is not uncommon for As a Service offering to have a shorter duration than other ICT services.

The duration of the Subscription Period will often be linked to the pricing model for the As a Service whereby the Price is calculated by reference to the period in which the Customer is using the As a Service.

Non-Renewal Notice Period

Under clause 3.1(c) of Module 3, at the end of a Subscription Period, the As a Service will automatically renew for a further Subscription Period of the same duration, unless either party has exercised a right to terminate the As a Service, or a party has notified the other party that it does not wish to renew the As a Service. In this item, the Customer should specify the minimum notice that a party is to give the other party if it does not wish to renew the As a Service. For example, the non-renewal notice period may be 30 days prior to the expiry of the Subscription Period.

Minimum Subscription Period

Under clause 3.1(f) the Supplier is required to provide the As a Service for at least the Minimum Subscription Period. Given that clause 3.1(c) allows the Supplier to notify the Customer that it does not wish to renew the As a Service, this item allows the Customer to specify the minimum period during which it requires the As a Service to be provided. This is to provide the Customer with certainty of the minimum duration that the Supplier will provide the As a Service to the Customer.

The Minimum Subscription Period may be the same length of time as a Subscription Period, or multiple Subscription Periods (for example, if a Subscription Period is three months, the Minimum Subscription Period may be 12 months).

2. Description of As a Service

Clause 3.1 of Module 3



Guidance:

In this item, specify the type of As a Service being provided by the Supplier. Module 3 applies to Software as a Service, Infrastructure as a Service, Platform as a Service or some other form. The Module defines the first three As a Service offerings as follows:

- **Software as a Service (SaaS)** means the provision of software or an application which is delivered as an online service by the Supplier as specified in the Module Order Form.
- **Infrastructure as a Service (IaaS)** means the service provided by the Supplier to the Customer to provision processing storage, networks and other physical or virtual machines, hardware or other data centre components and which allows the Customer to control the operating systems, Customer Data and applications stored on the IaaS, as specified in the Module Order Form.
- **Platform as a Service (PaaS)** means the hosted environment provided by the Supplier to the Customer to configure, deploy and run applications using programming languages and tools supported by the Supplier and which allows the Customer to control the deployed applications on the PaaS as specified in the Module Order Form.

In this item check the applicable box to reflect the type of As a Service being acquired.

Alternatively, the Customer may be acquiring another form of As a Service which does not fall within the above categories for SaaS, IaaS or PaaS. These may include “back-up as a service” or “storage as a service”. If this is required, specify the name of the other As a Service in this item.

Description of As a Service

In this item, the Customer must insert a description of As a Service to be provided. It is very important to provide sufficient details of the As a Service to fully reflect what the Customer is buying. Without a sufficiently detailed description of the As a Service, there is no certainty as to the requirements of the As a Service that the Customer is purchasing. If the As a Service then fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

For example:

- for SaaS, this item should include:
 - the name of the SaaS
 - modules included in the SaaS

- the environments SaaS is to be provided in (for example, production, development, testing)
- the basis on which the SaaS is provided (for example, per user, per device, enterprise wide) and
- how the Customer accesses the SaaS (for example, website link).
- for IaaS, this item should include:
 - the type of Infrastructure provided and
 - how the Customer accesses the IaaS.
- for PaaS, this item should include:
 - the type of platform provided and
 - how the Customer accesses the PaaS.

Alternatively, if the description of the As a Service is set-out in the Specifications, in this item the Customer may instead refer to the Specifications which are set out or referred to in item 3.

3. Requirements

Clause 3.2 of Module 3



Guidance:

In this item set out the Specifications for the As a Service. The Specifications should describe the functionality, operation and features of the As a Service. As noted above in the guidance for item 2, it is very important to provide sufficient details of the As a Service to fully reflect what the Customer is buying. Without a sufficiently detailed description, there is no certainty as to the features and requirements of the As a Service that the Customer is purchasing. If the As a Service fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

A Customer can either incorporate the Specifications in this item 3 or refer to an annexed document which contains the Specifications. How the Specifications are incorporated will affect the priority which they are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions. If the Specifications are incorporated in this item 3 in the Module Order Form, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority if there is an inconsistency with terms in other documents which make up the Contract and which are lower in the hierarchy. If, however, the Specifications are referred to in an annexed document to this Module Order Form, the Specifications will have a lower priority in the contractual hierarchy.

If the Customer wishes to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in the Module Order Form.

If the Supplier provides the Specifications for the As a Service, it is important that the Customer carefully reviews the Specifications to ensure they describe all the features and functionality of the As a Service. The Customer should also review them to ensure that they do not contain any terms which affect the parties' rights and obligations. The Specifications should only contain technical information which describes the features and functionality of the As a Service and how it is to operate.

4. Infrastructure

Clause 3.2 of Module 3



Guidance:

In this item, specify whether the Infrastructure is public or private, whether the As a Service is hosted by a third party and the minimum standards for the Infrastructure.

Infrastructure is defined in the Module to mean the hardware, software, communication services and other resources, services and facilities (whether of the Supplier or a third party provider to the Supplier) for the Supplier's provision of As a Service.

Public vs private infrastructure

As a Service may be provided using 'public' or 'private' infrastructure. Public generally means that the infrastructure is shared with other customers of the Supplier, whereas private is dedicated to the Customer only.

Hosting by a third party

In this item specify whether the Supplier hosts the As a Service itself or whether the Supplier uses a third party to host the As a Service on its behalf (such as a third party data centre or cloud platform provider). If the Customer does not know whether the Supplier hosts the As a Service itself or uses a third party, the Customer should ask the Supplier to confirm this and provide the details of the third party.

This third party will be a Subcontractor under the Comprehensive Contract Conditions, and clause 8 of the Comprehensive Contract Conditions will apply.

Minimum standards

In this item set out any minimum standards which apply to the Infrastructure. These standards will typically be technical requirements such as processing capability, memory and storage for the Infrastructure.

5. Legal and regulatory compliance

Clause 3.2 of Module 3



Guidance:

In this item set out whether there are any additional legal or regulatory standards that the Customer requires the Supplier to comply with in providing the As a Service. These may include legislation or other government standards. There may also be more specific requirements based on the specific As a Service the Customer is acquiring, such as PCI compliance for systems involving the credit card payments or level of compliance with Web Content Accessibility Guidelines.

There is no need to refer to the *Information Privacy Act 2009* (Qld) as the Supplier is already required to comply with relevant provisions of that Act under the Comprehensive Contract Conditions.

6. Supply through a Reseller

Clause 3.4 of Module 3



Guidance:

See User Guide regarding Resellers.

An As a Service Reseller is an entity who provides or facilitates the provision of the As a Service to the Customer under the Contract but is not the owner of the Intellectual Property Rights in the As a Service (called the Third Party Provider), or a Related Body Corporate of the Third Party Provider.

If a Supplier is a Reseller under this Module, it provides '*reseller services which facilitate the supply of the As a Service from the Third Party Provider to the Customer*'.

Engaging a Reseller brings a higher degree of risk because:

- the Customer will need to enter into a separate contract with the Third Party Provider for the supply of the As a Service (which is attached to the Customer's contract with the Supplier) and
- a number of the provisions of Module 3 are deemed not to apply to the supply of the As a Service by the Reseller under the Contract .

Contract with Third Party Provider

The contract which the Customer will need to enter into with the Third Party Provider for the supply of the As a Service will be separate from the Contract which the Customer will enter into with the Reseller. The terms of the contract between the Customer and the Third Party Provider will only apply in respect of the supply of the As a Service by the Third Party Provider.

Clause 3.4(b)(iii) of the Module stipulates that the terms of that contract with the Third Party Provider will be attached to the Contract or be available for the Customer to accept online for a website nominated by the Reseller and will be deemed accepted by the Customer when the Customer enters the Contract.

It is recommended that the contract with the Third Party Provider be attached for certainty.

It is common in a reseller arrangement that the terms of the contract with the Third Party Provider are not negotiable, and the Supplier is required to pass through the terms of the Third Party Provider's contract to the Customer.

The Customer may wish to consider the *Guidelines for using Supplier Terms and Conditions* which were developed to assist a Customer to determine whether a Supplier's terms and conditions are acceptable for a procurement. It should be noted, however, that these were designed for low risk – low value procurements.

It will be necessary to check, among other things, whether the terms of the Third Party Provider's contract can be unilaterally changed by the Third Party Provider. If that is the case, the Customer will have no certainty as to the terms of its contract.

The Customer should consider, based on the risk and value of the procurement, whether the Third Party Provider's terms and conditions are acceptable. If not acceptable, negotiation of terms (more aligned with the Comprehensive Contract Conditions and Module 3) or re-assessment of the procurement may need to be considered.

Contract with Reseller

As mentioned earlier, the Contract which the Customer will enter into with the Reseller will not contain a number of the terms and conditions of Module 3 which would ordinarily apply. This is because the Reseller is only facilitating the supply of the As a Service by the Third Party Provider, so the Reseller cannot be not responsible for a number of the operative obligations in the Module for the supply of the As a Service.

The terms that will **not** apply in this reseller arrangement are:

- clause 4.1(d) of the Comprehensive Contract Conditions. This means that the Reseller is not required to ensure that the As a Service is of a high quality, professional standard and is fit for its usual purpose and meets the Requirements.
- the following provisions in Module 3:
 - Clause 3.1 - Subscription Periods
 - Clause 3.2 – Supply as a Service (which requires, amongst other things, a Supplier to supply the As a Service in accordance with the Requirements and the Service Levels and comply with the legal and regulatory compliance requirements)
 - Clause 3.3 – Additional Provisions
 - Clause 3.5 – Minimum System Requirements
 - Clause 3.6 – Transition-In Services
 - Clause 3.7 – Data Migration and Data Cleansing Services
 - Clause 3.8 – As a Service Location and Customer Data
 - Clause 3.9 – Limitation of Liability for Customer Data
 - Clause 3.10 – Security
 - Clause 3.11 – Electronic Incidents
 - Clause 3.12 – Harmful Code
 - Clause 3.14 – Defects in the As a Service
 - Clause 3.15 – Maintenance and Scheduled Downtime
 - Clause 3.16 – General Support
 - Clause 3.17 – Service Levels and Service Credits
 - Clause 3.18 – Warranties
 - Clause 3.19 – Exclusions from As a Service
 - Clause 3.20 – Disaster Recovery
 - Clause 3.21 – Changes to the level of As a Service
 - Clause 3.22 – Changes to As a Service
 - Clause 3.23 – Audit rights and responsibilities
 - Clause 3.24 – Ownership
 - Clause 3.25 – Transition-Out Services
 - Clause 3.26 – Customer Responsibilities.

The substantive clauses which **do** apply are:

- Clause 3.4 – This clause requires, among other things, the Reseller to co-ordinate and manage any support service that is to be provided by the Third Party Provider in respect of any Defect or alleged Defect that is reported by the Customer to the Supplier including by providing such assistance set out in the Module Order Form.

This does not necessarily mean that the Third Party Provider will provide any support services. It is strongly recommended that the Customer carefully checks to see what support services, if any, it may be able to access in relation to a Defect in the As a Service.

If support services may be provided, the Customer will also need to set out what assistance it wants the Reseller to provide if the Customer wants to avail itself of the Third Party Provider's support services. These should be set out in this item.

The Third Party Provider's contract may contain the terms of the support services. If it does not, the support services terms should be attached to the Contract for certainty.

- Clause 3.13 – Ancillary Services. This means that the Reseller can provide ancillary services if specified in the Module Order Form.

It is strongly recommended that legal assistance is obtained if a Supplier is to be engaged as a Reseller of As a Service. If the terms are not considered acceptable, the Customer may wish to consider its procurement options.

7. Minimum system requirements and usage requirements Clause 3.5 of Module 3



Guidance:

In this item set out the minimum requirements for accessing the As a Service and any usage requirements. If the Customer is unsure whether there are any requirements that apply, the Customer should ask the Supplier to provide these details.

Minimum requirements

In this item, set out the Minimum System Requirements in relation to access and use of the As a Service.

Minimum System Requirements means the minimum requirements for the Customer's IT System and Networks to access and use the As a Service in accordance with the applicable Requirements and Service Levels as specified in this item. Minimum System Requirements may include type of web browser and version.

The Customer will need to confirm that the Customer's IT System and Networks meet the Minimum System Requirements.

Usage requirements

The Customer should also set out any requirements, restrictions or guidelines in relation to the Customer's use of the As a Service. These may be acceptable use requirements, such as agreeing to the Supplier's acceptable use policy.

8. Transition-In Services and Transition-In Plan

Clause 3.6 of Module 3



Guidance:

Transition-In Services are those preparatory services required to be undertaken by the Supplier to transition the Customer to the As a Service.

In this item, specify whether the Supplier must provide Transition-In Services.

Transition-In Plan

If Transition-In Services are required, the specific details must be set out in a Transition-In Plan. This Transition-In Plan may be set out in this item, or attached to the Module Order Form. The Transition-In Plan must set out all services, functions and tasks required to be performed by the Supplier, and any to be performed by the Customer.

If the details of the Transition-In Plan are not known at the date the Contract is entered into, the Transition-In Plan may be Bespoke Documentation which the Supplier is required to prepare for the Customer's approval under clause 5.3 of the Comprehensive Contract Conditions.

Date for completion of Transition-In Services

In this item, specify the date by which the Supplier must use best endeavours to complete the Transition-In Services. This means that the Supplier must take reasonable steps to complete the Transition-In Services by this date. If the Supplier considers it may be delayed in reaching this date, it is required to notify the Customer.

9. Data Migration Services and Data Cleansing Services

Clause 3.7 of Module 3



Guidance:

Data Migration Services

Data migration typically involves moving digital records from one system, storage medium, hardware or software configuration to another, while maintaining the authenticity, integrity, reliability and usability of the records.

If the Supplier is required to perform Data Migration Services, this must be specified in this item. This item must also set out all details of the migration activities, including any relevant formats for the data or environments in which the data is required.

The date for completing the Data Migration Services and any assistance to be provided by the Customer must be specified.

Data Cleansing Services

Data cleansing typically involves the process of standardising data from multiple sources and/or detecting and correcting corrupt or inaccurate data.

If the Supplier is required to perform Data Cleansing Services, this must be specified in this item. This item must also set out all details of the cleansing activities, such as eliminating records that are

clearly duplicates, correcting obvious misspellings and errors, ensuring that there are consistent descriptions, punctuation and syntax and resolving any other accuracy, omission and consistency issues.

The date for completing the Data Cleansing Services and any assistance to be provided by the Customer must be specified.

Data Tools

Data Tools are the software tools, object libraries, methodologies or other devices owned by the Supplier or any other party required to be used to perform the data migration and data cleansing services.

If a Customer has engaged the Supplier to provide Data Migration Services and Data Cleansing Services under *Module 4 – Systems Integration* and the Customer requires a right to use the Data Tools which a Supplier will use to perform those services, those Data Tools will need to be provided to the Customer on the terms of *Module 2 – Software* or under *Module 3 – As a Service* (as applicable). If the Data Tools will be licensed under Module 3, they should be specified here.

10. As a Service Location and Customer Data

Clause 3.8 of Module 3



Guidance:

The details set out in this item only need to be completed if the Supplier will store, process or host any Customer Data. Customer Data is defined as any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Products or Services and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services

and includes Metadata (but not Pre Existing Material or New Material owned by the Supplier).

Data security is a significant issue and should be carefully managed. Data is increasingly considered to have significant value, even where it does not constitute Personal Information or Confidential Information.

As a Service Location

The As a Service Location is the physical location at which the Customer Data will be stored, hosted and processed as part of the As a Service. In most As a Service arrangements, the Customer Data will be stored, hosted and processed at the same existing location as other customers of the Supplier, and the Customer may not be able to specify the location. If the Customer is unsure where the Customer Data will be stored, hosted or processed, the Customer should ask the Supplier to provide these details.

If the Customer is able to specify the As a Service Location and the Customer Data comprises Personal Information or Confidential Information of the Customer, it is recommended that the As a Service Location be specified as Australia, or (if appropriate) another jurisdiction which has a strong privacy and data security legislative regime in place.

If the Customer permits a Supplier to use an As a Service Location outside of Australia, this will constitute Customer's consent to the transfer of Personal Information which is included in the Customer Data outside of Australia for the purposes of clause 15.1(c)(iv) of the Comprehensive Contract Conditions. Clause 15.1(c)(iv) prohibits a Supplier from transferring Personal Information outside of Australia unless it obtains the Customer's prior written consent (unless the information is about the Customer's ordering officer in connection with account management purposes).

If the Customer is not able to specify the As a Service Location, the Supplier will need to comply with clause 15.1(c)(iv) before transferring Personal Information outside of Australia. This means the Supplier will need to obtain the Customer's prior written consent.

Note that under clause 3.8(c), some aspects of the As a Service can be provided from places other than the As a Service Location, so long as those aspects do not relate to Customer Data or Personal Information. For example, support services may be provided from a location other than the As a Service Location.

Note that under the [ICT as a service offshore data storage and processing policy](#) (which is part of the QGEA's *ICT as a Service Decision Framework*), only certain information which is classified under the Queensland Government Information Security Classification Framework can be stored outside of Australia subject to a risk assessment and appropriate approvals. Certain classified information cannot be stored offshore.

Please see Part B of the User Guide in relation to Data Security and Privacy for further guidance.

Storage and back-up of the Customer Data

In this item specify whether the Supplier must provide storage and back-up of Customer Data. Requiring the Supplier to perform regular back up and storage of Customer Data is a risk mitigation measure to minimise the risk of data loss or corruption during the Subscription Period.

If the Customer requires the Supplier to perform storage and back-up, the Customer must set out the procedures and requirements for the storage and back-up. If the Customer requires the Supplier to provide the customer with back-up copies of the Customer Data, the frequency (e.g. daily or weekly) and format (e.g. .CSV) must be specified here.

The Customer will need to ensure that it complies with applicable legislation and policy, including the [Public Records Act 2002 \(Qld\)](#) in relation to the management and disposal of public records.

Tools and mechanisms to access and monitor Customer Data

Under clause 3.8(f)(ii) the Supplier is required to provide the Customer with tools and mechanisms to allow the Customer to access and monitor Customer Data as further specified in the Module Order Form. This is a "self-service" option to allow the Customer to access and monitor its Customer Data. These tools may include reporting tools or a dashboard to monitor usage and data.

The Customer should consider whether these tools and mechanisms provide it with sufficient oversight over the Customer Data in the As a Service.

Return or extraction of Customer Data

In this item specify whether the Supplier must either return the Customer Data to the Customer or allow the Customer to extract the Customer Data on the expiry, non-renewal or termination of the Subscription Period. Whether the Supplier returns the Customer Data to the Customer or allows the Customer to retrieve its Customer Data itself will depend on the procedures and offering of the

Supplier. In any event, the Supplier should either return the Customer Data to the Customer or allow the Customer to retrieve its data.

In each case specify the period after expiry, non-renewal or termination by which the Customer Data is to be returned or extracted (such as within 30 days of expiry or termination).

If the Customer is responsible for extracting its Customer Data, the Customer will need to extract its Customer Data within the time specified. If the Customer fails to do so, the Customer may potentially lose the right to access and extract its Customer Data. As such, the Customer should ensure that the timeframe for extracting the Customer Data is long enough for it to extract that information.

Format for returning Customer Data

In this item specify the format in which the Customer Data will be returned or made available after expiry, non-renewal or termination of the Subscription Period. The Customer should ensure that the specified format of the Customer Data is a format which will ensure the usability of the Customer Data, and is appropriate for fulfilling any record-keeping obligations or transition to a new system.

Permanent destruction or security erasure

Unless otherwise specified, once Customer Data is returned or made available for extraction, the Supplier must destroy or securely erase all Customer Data. In this item specify whether the Customer Data must be retained by the Supplier. This may be appropriate if there is a risk that the Customer cannot extract the Customer Data within the period provided to it.

See Part B of the User Guide regarding Data Security and Privacy

11. Limitation of liability for Customer Data

Clause 3.9 of Module 3



Guidance:

This item requires the parties to set out a separate liability cap which applies to limit the Supplier's liability for any loss of or damage to Customer Data by the Supplier. This cap is separate from the Supplier's liability cap under clause 17.3 of the Comprehensive Contract Conditions.

This cap will not apply to any loss of or damage to Customer Data which was caused by a fraudulent act of the Supplier (in which case the Supplier's liability will be unlimited).

Determining the amount of the Supplier's liability cap for loss of or damage to Customer Data for this item will require the Customer to complete a risk assessment, and the amount of the cap will depend on:

- the nature of the As a Service and what business processes it is used for
- the nature of Customer Data (i.e. whether the Customer Data contains Personal Information or Confidential Information)
- the volume of the Customer Data that is stored, hosted and processed by the Supplier as part of the As a Service
- whether the Customer or the Supplier is required to regularly back-up the Customer Data, or any other risk mitigation measures implemented by either party and/or
- the potential liabilities the Customer may incur as a result of the loss or damage to Customer Data (such as the costs of re-creating the Customer Data or re-keying the Customer Data).

It is important not to confuse risk with contract value. Just because the price payable for As a Service is low does not mean that the risk of loss or damage the Customer may potentially suffer is also low.

The Customer will need to consider any losses or costs it may incur if the Supplier loses or damages any Customer Data (such that the Customer Data is unusable). See Part B of the User Guide for guidance on liability capping.

12. Security

Clause 3.10 of Module 3



Guidance:

Clause 3.10(b)(i) provides that the Supplier must establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to protect the Customer Data from destruction, loss and unauthorised access or alternation which are industry standard for products and services similar to the As a Service and as otherwise specified in the Module Order Form.

This clause means that the Supplier is always required to establish security safeguards which are industry standard for the products and services similar to the As a Service. However, if the Customer has specific security standards and requirements, these can also be specified in this item.

Consider whether there are any applicable standards relevant to the Customer Data hosted on the As a Service which require additional security protection of the Customer Data. These may include:

- physical access controls such as secure swipe card access, biometric or coded access to the As a Service Location
- data security measures such as encryption of data during transit or while at rest and
- level of data centre certification (such as ISO 27001/27002).

Tools and mechanisms – logging Customer Data access and modifications

Clause 3.10(b)(iii) provides that the Supplier is required to provide the Customer with tools and mechanisms to allow the Customer to log access to and modification of Customer Data. This is a “self-service” option to allow the Customer to decide when the controls are activated and what the Customer wishes to monitor at any time.

In this item specify the tools and mechanisms which the Supplier must make available to the Customer to log access to and modification of Customer Data.

13. Ancillary Services

Clause 3.13 of Module 3



Guidance:

In this item, set out any additional services required to be performed by the Supplier in connection with the As a Service. Ancillary Services mean those other than the supply of the As a Service and general support (for example, help desk and Defect rectification) for the As a Service (as set out in item 15).

Ancillary services may include:

- implementation services (such as importing a database into the As a Service)
- training and
- ongoing system administration.

Include all relevant details in relation to the ancillary services in this item, including the time period for providing the services and any requirements in relation to the Supplier's personnel for providing the services.

If the ancillary services are extensive or particularly complex, the Customer should consider whether it is more appropriate for the Supplier to provide any 'ancillary services' under *Module 7 - ICT Professional Services*, rather than in this item, to ensure that the Customer obtains the benefit of all of the terms of that Module in relation to those services, including the warranties and defect rectification obligations in relation to those services.

14. Scheduled Downtime

Clause 3.15 of Module 3



Guidance:

In this item specify whether the Supplier must provide the Customer with notice of any Scheduled Downtime. Scheduled Downtime is a planned period of non-Availability of the As a Service, and is typically used for the Supplier to conduct routine maintenance of the Infrastructure or install patches or updates to the As a Service. As a Service offerings are typically provided to all customers of the Supplier on the same terms (including customers in different jurisdictions), and the Supplier will often conduct this maintenance at the same time for all of its customers. The Supplier may not agree to provide the Customer with notice of any Scheduled Downtime.

It is recommended that the Customer requires the Supplier to provide it with prior notice for any Scheduled Downtime, particularly for critical services.

This item does not allow the Customer to determine what the period of Scheduled Downtime will be. The Supplier is permitted to determine when the periods of Scheduled Downtime take place. However, the Supplier is required under clause 3.15(b)(i) to use best efforts to minimise interruptions to the Customer's use of the As a Service.

15. General Support

Clause 3.16 of Module 3



Guidance:

General support

In this item set out the general support services to be provided by the Supplier in relation to operating or using the As a Service. This item requires a description of the actual support services to be provided. Any Service Levels or key performance indicators in relation to those support services (for example, response times, rectification times and severity levels) must be set out in item 16 below.

Accessing support

In this item set out the agreed mechanism for accessing general support. For example, if this is through a help desk, the following details should be included:

- the help desk phone number and/or email address and
- the help desk's hours of service.

16. Service Levels

Clause 3.17 of Module 3



Guidance:

Many As a Service arrangements require the Supplier to meet certain availability requirements for the As a Service and/or response and rectification times for Defects.

Service Levels

In this item specify whether the Service Levels are set out in *Schedule 8 – Service Levels* or another Service Levels document. If the Service Levels are set out in another document, that document should be referred to in this item and attached to the Contract.

The Supplier may seek to attach its standard service level agreement. Ideally, the relevant service levels will be extracted from the Supplier's standard documents and set out in *Schedule 8 – Service Levels*. If the Supplier's standard service level agreement is referred to here and attached to the Contract, the Customer should carefully review this document as it may contain terms which could limit or qualify the Service Levels.

The Customer will need to review the Service Levels proposed by the Supplier and ensure these Service Levels will ensure sufficient continuity and performance of the As a Service (particularly where any failure to meet the Service Levels would significantly impact the Customer's core business or functions).

Exclusions from Service Levels

Clause 3.19(a)(viii) provides that the Module Order Form may also specify whether there are any other circumstances where the Supplier is not required to meet the Service Levels. Clause 3.19(a) already sets out a number of circumstances of when the Supplier will not be required to meet the Service Levels (such as failure of the Customer to ensure its IT System and Network meets the minimum requirements). If there are any other circumstances which are in addition to the circumstances set out in clause 3.19(a) specify these in this item. These exclusions may also be set out in *Schedule 8 – Service Levels* or another document referred to above.

If there are no other exclusions from the Supplier's Service Level obligations, this item can be specified as "Not applicable".

Reporting

In this item specify whether the Supplier must measure its performance against the Service Levels, or provide tools so the Customer can monitor the Supplier's performance against the Service Levels.

If the Supplier is responsible for measuring its performance, then set out how frequently that the Supplier must provide a report. If the Customer has any particular reporting requirements (for

example, formatting requirements or particular matters which must be addressed), then specify these requirements in this item.

If the Supplier must provide tools for the Customer to measure the Supplier's performance, then this item should specify the tools and functionality which will be made available to the Customer. For example, the Supplier may provide the Customer a dashboard by which the Customer can view, in real time, the availability of the As a Service for a particular period.

17. Service Credits

Clause 3.17 of Module 3



Guidance:

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Credits can be set out in *Schedule 8 – Service Levels* or other Service Level document which is referred to in this item and annexed to the Contract. The Customer should also specify how the Service Credits are calculated and the applicable measurement period.

This item also sets out the mechanism for the Customer to apply the Service Credits against Prices if the Supplier fails to meet the Service Levels. The default position in clause 3.17(b) is that Service Credits will be applied against the next invoice issued after the relevant Service Credits accrue. However, depending on the payment terms, the Customer may specify a different arrangement in the Module Order Form. If so, this item should specify:

- when the Service Credits accrue and
- how the Service Credits are applied or charged.

Alternatively, instead of the Service Credits being applied against the Price, the Supplier may provide a Service Credit arrangement which provides the Customer with "credit" in the form of hours to be used for consulting or training services. The parties may also agree to an "earn back" service credit arrangement whereby the Supplier "earns back" service credits in the months after its failure to meet the Service Levels by meeting the Service Levels for a particular period.

If applicable, these types of alternative arrangements can be specified in this item.

18. Disaster recovery

Clause 3.20 of Module 3



Guidance:

In this item specify whether the Supplier is required to implement, maintain and comply with Disaster Recovery Procedures. Those procedures must ensure that the Supplier's provision of the As a Service continues with minimal interruption if a Disaster occurs or affects the System or the Supplier.

When deciding whether Disaster Recovery Procedures are required, the Customer should consider the purposes for which the As a Service is being used (including the nature of Customer Data being held by the Supplier) and the business impact if a Disaster occurred.

Suppliers will generally have their own Disaster Recovery Procedures. It is recommended that the Customer asks the Supplier to provide a copy of its procedures for the Customer's review and to

see if they are acceptable. If they are acceptable, they can be described here or referred to in this item and attached.

19. Units

Clause 3.21 of Module 3



Guidance:

In this item specify the number of Units initially ordered for the As a Service subscription. For example, the Units for the As a Service may be specified as the number of users, number of devices or storage capacity. However, if the As a Service is not provided by the Supplier for a specified number of Units (i.e. the As a Service may be provided on an enterprise basis), specify “Not applicable” in this item.

In this item also specify the frequency that the Customer can adjust the number of Units ordered. The Customer should consider how often it will need to adjust the number of Units which are required (e.g. each month or annually) so that it does not pay for more than it uses.

The number of Units set out in this item (as the initial order) and updated from time to time is the number of Units for which the Customer will be regularly charged. If the Customer exceeds this number of Units, clause 3.21(b) provides that the Supplier may charge the Customer for the actual number of Units consumed. If the Customer does not use the number of Units ordered, the Supplier may still charge the Customer for the number of Units ordered.

20. Changes to As a Service

Clause 3.22 of Module 3



Guidance:

Clause 3.22(d) lets the Supplier cease providing the As a Service by giving at least six months’ notice (or such other time as specified in this item) if it decides to discontinue the As a Service such that it will no longer be generally available to customers. This may happen where the As a Service is becoming outdated or obsolete and the Supplier no longer wishes to provide or support it.

The Customer will need to consider whether the default six month notice period for the discontinuance provides a sufficient timeframe to find replacement services. To determine whether the length of this notice period is sufficient, the Customer should have regard to the purpose and functions for which the As a Service is used for, the criticality to the Customer’s business process and whether there are readily available replacement services. If this period is too short, the Customer will need to consider what further notice period is available or appropriate, and specify the period in this item.

21. Audit

Clause 3.23 of Module 3



Guidance:

In this item the Customer should specify whether the Supplier must provide, or make available, to the Customer tools and mechanisms on a self-service basis to enable the Customer to monitor and audit the Customer's environment, including the Customer Data, in the As a Service. These self-service tools may include tools which report on and send alerts in relation to access to the Customer Data, structure changes, changes to Customer Data or changes to accounts, roles and permissions. These tools may be built-in to the As a Service offering or they may be provided as additional tools by the Supplier. If there is any other additional assistance that the Customer requires in relation to monitoring and auditing the Customer's environment, this should be specified here. For example, this may include the Supplier conducting audits itself or providing the Customer with access logs and other reports regarding the usage of the As a Service.

22. Transition-Out Services

Clause 3.25 of Module 3



Guidance:

Transition-Out Services are services requested by the Customer to separate from the Supplier and the As a Service and enable the Customer to transition to another provider and/or as-a-service offering.

Requirements for Transition-Out Services

In this item, specify the Transition-Out Services the Supplier must provide to the Customer. For example, the services may include:

- transferring data and documentation to the Customer or a third party as the Customer directs
- continued provision of the As a Service after the Subscription Period ends and
- providing the Customer with cooperation, assistance, advice, access to systems, explanations, information, documentation, training, details of data formats and fields (including database schema), reasonably necessary or desirable in order to ensure the efficient continuity and transition.

These will then be comprehensively described and set out in the Transition-Out Plan.

Transition-Out Plan

If Transition-Out Services are required, the Supplier must prepare a comprehensive Transition-Out Plan which sets out various matters listed in clause 3.25(b)(i) including:

- the period during which the Transition-Out Services will be provided and the extent to which the As a Service will continue to be provided during that period (i.e. any ramp down of the As a Service during the transition-out period)
- all activities and Deliverables to be provided by the Supplier (including due dates for performance)
- all Customer Inputs relevant to transition-out, including all inputs to be provided by the Customer's replacement service provider (if applicable)

- the Price (if applicable) payable for the Transition-Out Services and
- such other matters required by the Customer.

In this item specify the date by which the Supplier must prepare the Transition-Out Plan for the Customer's review and approval. Under clause 3.25(b), the Supplier is required to make all changes to the Transition-Out Plan reasonably requested by the Customer. The Transition-Out Plan will also be reviewed and updated (for the Customer's further approval) on an annual basis or such other period agreed by the parties.

Period of Transition-Out Services

In this item specify the period for which the Supplier must provide Transition-Out Services.

Specifying this period is particularly important if the Transition-Out Services involve the continued provision of As a Service for a period of time. For example, if the Customer anticipates that it will take a new provider three months to transition-in to the provision of a replacement service, the period for the Transition-Out Services should be at least three months.

23. Customer responsibilities

Clause 3.26 of Module 3



Guidance:

This item is for setting out any Customer responsibilities in relation to the use of the As a Service. The check-boxes set out in this item are examples only, and there may be other responsibilities of the Customer which can be specified in this item. The Customer will need to confirm that it is able to meet the requirements specified in this item.

MODULE 4 – SYSTEMS INTEGRATION

When to Use?

This Module is to be used when the Customer wants a Supplier to link together different computing systems, hardware and software, physically or functionally, to act as a coordinated whole. Under the Module, the Supplier is required to implement and integrate components of hardware and software with each other and with the Designated Environment and any Customer Inputs.

In procuring Systems Integration under Module 4, the Customer typically will also engage the Supplier to provide other Deliverables so as to implement the System. These are usually the provision of Hardware or Hardware Maintenance Services (Module 1), Licensed or Developed Software or Software Support Services (Module 2), As a Service (Module 3) and/or ICT Professional Services (Module 7). For each of these additional Deliverables, the applicable Modules Order Forms will need to be completed.

Module Order Form 4 – Systems Integration

1. Commencement of Integration Services

Clause 3.1 of Module 4



Guidance:

The start date of the Integration Services may or may not be the same as the start date of the Term of the Contract in item 7 of the Details. It depends on whether additional Products and/or Services under different Modules are also being purchased under the Contract.

In most cases, a Customer will be engaging the Supplier to provide other Deliverables in respect of the System, such as Hardware or Hardware Maintenance Services in Module 1, Licensed Software, Developed Software and/or Software Support Services in Module 2, As a Service in Module 3 and/or ICT Professional Services in Module 7.

2. Integration Services

Clause 3.2 of Module 4



Guidance:

In this item, specify the Integration Services that the Supplier must supply.

Integration Services is defined in the Module to be the systems integration services specified in the Module Order Form or agreed by the parties in the Detailed Specifications which need to be prepared in accordance with clause 3.5 of Module 4.

3. System



Guidance:

The System is defined in the Module as the system specified in the Module Order Form (or agreed by the parties in the Detailed Specifications in accordance with clause 3.5) comprising the Hardware and Software as integrated with the Designated Environment and any other Customer Inputs (as applicable).

4. Requirements



Guidance:

It is very important to provide sufficient details of the Integration Services to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Integration Services, there is no certainty as to the functional, operational and technical requirements of the Integration Services. If the Integration Services fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its obligations.

The Specifications can either be incorporated in this item or referred to in an annexed document. How the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the rights and obligations of the parties. The Specifications should only contain information which describes the functional, operational and technical and performance specifications for the Integration Services.

5. Implementation planning

Clause 3.4 of Module 4



Guidance:

Clause 3.4 provides that if specified in the Module Order Form, the Supplier must conduct implementation planning to assess and define:

- (a) the Designated Environment
- (b) the Customer's goals, requirements and expectations in respect of the Integration Services
- (c) the complexity of the Integration Services
- (d) the roles and responsibilities of the parties and
- (e) such other items specified in the Module Order Form

and deliver the implementation planning study to the Customer by the Delivery Date.

In this item, a Customer will need to specify:

- whether the Supplier must conduct implementation planning under clause 3.4 and
- any other matters which need to be assessed and defined in the implementation study as per clause 3.4(e).

The Delivery Date for the implementation planning study to be submitted to the Customer can be specified in item 8 of the Module Order Form.

For any integration that is complex or critical in nature, it is recommended that the Supplier be required to conduct the implementation planning and submit to the Customer so as to ensure that what is delivered meets the Customer's requirements.

6. Detailed Specifications

Clause 3.5 of Module 4



Guidance:

Clause 3.5(a) stipulates that, unless otherwise specified in the Module Order Form, the Supplier must prepare drafts of the project documents which comprise the Detailed Specifications.

The Detailed Specifications are defined in that clause as comprising of:

- (i) detailed technical and functional specifications for the System
- (ii) a configuration for the Software and hardware on which the System is to be installed (Required Configuration)
- (iii) a hardware sizing, setting out the hardware on which the Supplier recommends the System is installed in order to meet the Customer's estimate of the likely future capacity requirements of the System (Hardware Sizing)
- (iv) detailed specifications for the Customer and Supplier Interfaces (Detailed Interface Specifications)
- (v) a Data Migration Plan setting out the details in clause 3.9 (if applicable)
- (vi) a quality plan, setting out the quality assurance requirements that the Supplier will meet in performing the Integration Services and
- (vii) other project documents which are specified in the Module Order Form as being included in the Detailed Specifications,

which must be based on and incorporate all of the Requirements for the Integration Services.

If the Customer approves the Detailed Specifications, they become part of the Requirements.

In this item, a Customer will need to:

- specify if one or more of the project documents listed as Detailed Specifications do not need to be provided
- state the 'other project documents' under clause 3.5(a)(vii).

If the Supplier does not need to prepare the Detailed Specifications, this should be specified here.

Ownership of the Intellectual Property Rights in the Detailed Specifications may need to be specified in the Details.

The Date by which the draft documents making up the Detailed Specifications need to be submitted to a Customer for approval can be specified in item 8 of this Module Order Form. The dates could be different for each project document.

7. Interfaces

Clause 3.6 of Module 4



Guidance:

In this item, the Customer can either specify the Supplier Interfaces and Customer Interfaces or reference can be made to “As specified in the Detailed Interface Specifications”.

Supplier Interfaces is defined in the Module as the interfaces specified in the Module Order Form (or as updated and agreed by the parties in the Detailed Interface Specifications in accordance with clause 3.5) to be developed or provided by the Supplier in accordance with the Detailed Interface Specifications.

Customer Interfaces is defined in the Module as the interfaces (if any) specified in the Module Order Form (or as updated and agreed by the parties in the Detailed Interface Specifications in accordance with clause 3.5) to be developed or provided by the Customer in accordance with the Detailed Interface Specifications.

The Detailed Interface Specifications will be developed as part of the Detailed Specifications.

8. Delivery Dates

Clauses 3.4, 3.5, 3.7, 3.8 and 3.9 of Module 4



Guidance:

In this item, the Customer can specify:

- the Delivery Date for the implementation planning study to be delivered to the Customer
- the date by which the draft Detailed Specifications must be first supplied to the Customer and the date the Detailed Specifications must be completed by the Supplier
- the date the Supply must first provide a draft of the Data Migration Plan to the Customer and the date by which the Data Migration Plan must be completed by the Supplier
- the Delivery Date for the Supplier to install and configure all components of the System and
- the Delivery Date for the Supplier to integrate all of the components of the System with each other and the Designated Environment.

9. Site

Clause 3.7 of Module 4



Guidance:

Clause 3.7 requires the Site to be specified for the delivery of all components of the System as well as for the installation and configuration of all components of the System on the Designated Environment. The Site is to be specified in this item.

10. Data Migration Services and Data Cleansing Services Clauses 3.9 - 3.10 of Module 4



Guidance:

Data Migration Services

In this item, specify whether Data Migration Services are required.

Under clause 3.9, if the Module Order Form specifies that Data Migration Services are to be performed by the Supplier, the Supplier must prepare a Data Migration Plan, which includes the matters identified in clause 3.9(a)(i)(A) – (F), in accordance with the Requirements, and perform the Data Migration Services described in that Plan.

It will be necessary to specify:

- the date by which the Plan must be prepared and the Data Migration Services described in the Plan must be performed
- the Requirements with which the Supplier must comply when preparing the plan and
- whether the Customer must extract and provide the Customer Data to the Supplier for data migration and conversion into the production environment in accordance with clause 3.9(c).

There will need to be consideration as to which party is to own the Intellectual Property Rights in the Data Migration Plan which is prepared by the Supplier. This should be specified in the Details.

Extraction of Customer Data

If the Customer is required to extract and provide the Customer Data to the Supplier for data migration and conversion into the production environment by the date specified in the Data Migration Plan, this should be specified in this item.

Data Cleansing Services

In relation to Data Cleansing Services under clause 3.10, the Customer will need to specify:

- whether the Data Cleansing Services are to be performed
- what Data Cleansing Services are to be performed
- the date by which they are to be completed
- any responsibilities or tasks related to the Data Cleansing Services which the Customer must perform.

The Data Cleansing Services may include eliminating records that are clearly duplicates, correcting obvious misspellings and errors, ensuring that there are consistent descriptions, punctuation and syntax and resolving any other accuracy, omission and consistency issues.

11. Data Tools

Clauses 3.11 of Module 4



Guidance:

Clause 3.11 of the Module provides that if specified in the Module Order Form, the Supplier must perform the Data Migration Services and Data Cleansing Services using Data Tools (which are software tools, object libraries, methodologies or other devices owned by the Supplier or any other party).

Under clause 3.11(b), if the Customer needs a right to use these Data Tools, the Data Tools will be provided as Licensed Software in accordance with *Module 2 – Software* or as Software as a Service in accordance with *Module 3 – As a Service* (as applicable). If a Customer needs rights to use the Data Tools, the Customer should specify those rights in Module 2 or 3 (as applicable).

12. Ancillary services

Clause 3.13 of Module 4



Guidance:

If the ancillary services are extensive or particularly complex, the Customer should consider whether it is more appropriate for the Supplier to provide any ancillary services under *Module 7 - ICT Professional Services*, rather than in this item, to ensure that the Customer obtains the benefit of the terms of that Module, including the warranty and defect rectification obligations, in relation to the services.

13. Warranty Period

Clause 3.14 of Module 4



Guidance:

In determining the duration of the Warranty Period, the Customer should take into account:

- the obligations imposed on the Supplier under the Contract
- the period during which Defects are most likely to arise or be discovered in the System
- the period in which the Customer requires the System to be free of Defects and
- any support or maintenance services which are to be provided by the Supplier.

Module 4 imposes a number of obligations on the Supplier which apply only during the applicable Warranty Period. These include the Supplier's warranties in clause 3.14 and its defect rectification obligations in clause 3.15 of Module 4.

It is recommended that a Customer considers the operation of these clauses when determining the appropriate duration of the Warranty Period.

Ordinarily, the Customer's obligation to pay for support services should not commence until the Warranty Period has expired because the Customer should receive the benefit of the support services during the Warranty Period at no additional cost.

MODULE 5 – TELECOMMUNICATIONS SERVICES

When to use?

This Module is to be used when the Customer requires Telecommunications Services, which are either:

- Connectivity and Carriage Services, being:
 - (a) Fixed Voice Services for the carriage of voice communications (other than Mobile Services)
 - (b) Data Services for the transmission of data or
 - (c) Mobile Services for the wireless carriage of data and/or voice services
- Other Telecommunications Services which are telecommunications-related services (other than Connectivity and Carriage Services) that are typically provided over the top of or in connection with Connectivity and Carriage Services, such as videoconferencing, network security and filtering services, domain name services, web site hosting and support as well as messaging services (e.g. bulk SMS).

This Module is not for the purchase of telecommunications equipment, such as mobile devices. If equipment is to be purchased, Module 1 should be completed for the required Hardware and/or Hardware Maintenance Services.

Module Order Form 5 – Telecommunications Services

1. Description of Telecommunications Services

Clause 1 of Module 5



Guidance:

It is very important to provide sufficient details of the Telecommunications Services to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Telecommunications Services, there is no certainty as to the requirements of the Telecommunications Services. If the Telecommunications Services fail to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The description of the Telecommunications Services can either be incorporated in this item or item 3 or one or both of those items could refer to an annexed document. However, where the description is incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the description is set out in this item, it will be third highest in the contractual hierarchy pursuant to clause 1.3(c) of the Comprehensive Contract Conditions and the terms will prevail over any term in a Contract document lower in the hierarchy to the extent of any inconsistency. If, however, the description is referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing descriptions of the Telecommunications Services prepared by a Supplier as they may include terms which affect the rights and obligations of the parties. The description should only contain information necessary to fully describe the Telecommunications Services.

If the description of the Telecommunications Services is set out in the Specifications, instead of setting out the description in item 1, the Customer may instead refer to the Specifications which are set out or referred to in item 3.

2. Service Period

Clause 3.1 of Module 5



Guidance:

Transition-In Services may be relevant for the Telecommunication Services where the Customer is transitioning from an existing telecommunications service to the new offering to be provided by the Supplier under this Contract.

If No Transition-In Services required

If the Contract is solely for the provision of the Telecommunications Services, without any Transition-In Services, the start of the service period can be specified in this item. If no other Products or Services are being procured, the start of the Service Period should align with the start date for the Term of the Contract, which is to be specified in the Details at item 7.

If no Transition-In Services are required, the start date for the Service Period for the supply of the Telecommunications Service must be specified in this item. The start date may be a specific calendar date or it may be specified by reference to another milestone.

If no other Products or Services are being procured under another Module, the start of the Service Period may align with the start date for the Term of the Contract, which is to be specified in the Details at item 7. However, if other Products and/or Services are being procured under another Module, the start date for the Service Period and the start date for the Term of the Contract (in item 7 of the Comprehensive Contract Details) may differ.

The start date for the Service Period may also be linked to the completion of Acceptance Testing.

Transition-In Services required

If Transition-In Services are required, the Start Date for the Telecommunication Services will depend on whether or not the Customer wants Acceptance Testing to be conducted on the Transition-In Services by the Supplier.

If Acceptance Testing is required

It is generally recommended that Acceptance Tests are specified as required for the Transition-In Services where the Customer wishes to assess whether those services have been satisfactorily completed in accordance with agreed acceptance criteria, and verify that the Telecommunications Services are ready for use by the Customer.

Under clause 3.3(d) of Module 5, if Acceptance Testing is specified to be conducted for the Transition-In Services, the Service Period for the Telecommunications Services will commence on the Actual Acceptance Date (AAD) of the Transition-In Services, unless otherwise specified here.

The details of the Acceptance Tests will need to be completed in *Schedule 9 – Acceptance Testing* (including the details of the timing for the Acceptance Tests, responsibilities of the parties and Acceptance Criteria).

If Acceptance Testing is not required

If Acceptance Testing is not required for the Transition-In Services, clause 3.3(e) of Module 3 provides that once the Supplier has completed Transition-In Services, the Supplier must notify the Customer in writing that the Transition-In Services are complete and the date that the Service Period will commence. This means that where Acceptance Testing is not required for the Transition-In Services, the start date for the Service Period will be the date which is specified in the Supplier's notice.

End of Service Period

This item must specify the end date of the Service Period. This may be a specific calendar date or it may be specified as a length of time after the start of the Service Period.

Extension options

This item sets out the Customer's option (if any) to extend the Service Period. If the Customer requires the ability to extend the initial Service Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. one year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as "two extension options of 12 months each".

If the Customer does not require the ability to extend the Service Period, this item should be specified as "Not applicable". If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Service Period, this will need to be negotiated with the Supplier.

A Customer should ensure that the extension option in item 7 of the Details takes into account the Service Period extension options which are specified here. If the Price will vary during the extension periods, this should be specified in Schedule 1 or 2, as well as any Price review mechanism which may apply.

Notice period for extension

If the Customer has extension options, this item must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Service Period. For example, this may be specified as "30 days prior to the expiry of the Service Period or applicable extension period (if applicable)".

3. Requirements

Clauses 3.2 of Module 5



Guidance:

It is very important to provide sufficient details of the Telecommunications Services to fully reflect what the Customer is buying. Without a sufficiently detailed description of the Telecommunications Services, there is no certainty as to the requirements of the Telecommunications Services. If the Telecommunications Services fail to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The Specifications can either be incorporated in this item or referred to in an annexed document. However, where the Specifications are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the Specifications are set out in this item, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority in the contractual hierarchy. If, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing Specifications prepared by a Supplier as they may include terms which affect the parties' rights and obligations. The Specifications should only contain information which describes the specifications for the Telecommunications Services.

4. Delivery Date

Clause 3.2 of Module 5



Guidance:

Most Telecommunications Services are recurrent services, which have a start and end date. If so, the Customer only needs to specify the Service Period start and end date in item 2. However, there may be some services or Deliverables which the Customer is procuring which need to be supplied by a particular Delivery Date.

5. Transition-In Services and Transition-In Plan

Clause 3.3 of Module 5



Guidance:

Transition-In Services are those preparatory services required to be undertaken by the Supplier to transition the Customer to the Telecommunications Services.

In this item, specify whether the Supplier must provide Transition-In Services. If the Telecommunication Services are critical and/or complex, it is recommended that the Customer requires Transition-In Services to be provided by the Supplier.

Transition-In Plan

If Transition-In Services are required, the specific details must be set out in a Transition-In Plan. This Transition-In Plan may be set out in this item, or attached to the Module Order Form. The Transition-In Plan must set out all services, functions and tasks required to be performed by the Supplier, and any to be performed by the Customer.

If the details of the Transition-In Plan are not known at the date the Contract is entered into, the Transition-In Plan may be Bespoke Documentation which the Supplier is required to prepare for the Customer's approval under clause 5.3 of the Comprehensive Contract Conditions.

The parties may wish to consider who will own the Intellectual Property Rights in the Transition-In Plan. This should be specified in the Details.

Date for completion of Transition-In Services

In this item, specify the date by which the Supplier must use best endeavours to complete the Transition-In Services. This means that the Supplier must take reasonable steps to complete the Transition-In Services by this date. If the Supplier considers it may be delayed in reaching this date, it is required to notify the Customer.

It is also recommended that the Customer requires that there be Acceptance Testing of the Transition-In Services, so the Customer can be assured that the Transition-In Services have been satisfactorily performed before the Telecommunications Services commence.

Under clause 3.3, if Acceptance Testing must be conducted for the Transition-In Services, the Telecommunications Services cannot start until the AAD of the Transition-In Services, unless otherwise specified in item 2 of the Module Order Form.

Refer to the guidance for item 26 of the Details for further information on Acceptance Testing.

6. Standards

Clause 3.4 of Module 5



Guidance:

If there are particular technology or industry standards with which the Customer wants the Supplier to comply, these should be specified here. There is no need to refer to the Telecommunications Legislation or the ACMA Standards as those are already specified in clause 3.4 of the Module.

7. Service Levels

Clause 3.6 of Module 5



Guidance:

The parties may use Schedule 8 or some other form to set out the Service Levels.

Many Telecommunication Service arrangements require the Supplier to meet certain availability requirements for the Telecommunication Service and/or response and rectification times for issues or defects with the performance of the Telecommunications Service.

Service Levels Schedule

In this item specify whether the Service Levels Schedule is in the form of *Schedule 8 – Service Levels* or is another Service Levels document. If the Service Levels are set out in another document, that document should be referred to in the Module, and attached to the Contract.

The Supplier may seek to attach its standard service level agreement. Ideally, the relevant service levels will be extracted from the Supplier's standard documents and set out in Schedule 8 – Service Levels. If the Supplier's standard service level agreement is attached to the Contract, the Customer should carefully review this document as it may contain terms which could limit or qualify the Service Levels.

The Customer will otherwise need to review the Service Levels proposed by the Supplier and ensure these Service Levels will ensure sufficient continuity and performance of the

Telecommunications Service (in particular, where any failure to meet the Service Levels would significantly impact the Customer's core business or functions).

Reporting

In this item specify whether the Supplier must measure its performance against the Service Levels, or provide tools so the Customer can monitor the Supplier's performance against the Service Levels.

If the Supplier is responsible for measuring its performance, then set out how frequently the Supplier must provide a report. If the Customer has any particular reporting requirements (for example, formatting requirements or particular matters which must be addressed), then specify these requirements in this item.

If the Supplier must provide tools for the Customer to measure the Supplier's performance, then this item should specify the tools and mechanisms which will be made available to the Customer.

8. Service Credits

Clause 3.6 of Module 5



Guidance:

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Credits should be set out in *Schedule 8 – Service Levels* or another Service Level document annexed to the Contract. The Customer should also specify in that document how the Service Credits are calculated and the applicable measurement period.

This item also sets out the mechanism for the Customer to apply the Service Credits against Prices if the Supplier fails to meet the Service Levels. The default position in clause 3.6(b) is that Service Credits will be applied against the next invoice issued after the relevant Service Credits accrue. However, depending on the payment terms, the Customer may specify a different arrangement in the Module Order Form. If so, this item should specify:

- when the Service Credits accrue and
- how the Service Credits are applied or charged.

Alternatively, instead of the Service Credits being applied against the Price, the Supplier may provide a Service Credit arrangement which provides the Customer with "credit" in the form of hours to be used for consulting or training services. The parties may also agree to an "earn back" service credit arrangement whereby the Supplier "earns back" service credits in the months after its failure to meet the Service Levels by meeting the Service Levels for a particular period.

If applicable, these types of alternative arrangements should be specified in this item.

9. Maintenance of Telecommunications Network

Clause 3.7 of Module 5



Guidance:

In this item, specify whether the Supplier must provide the Customer with notice of any Scheduled Downtime. Scheduled Downtime is a planned period of non-Availability of the Telecommunications Service, and is typically used for the Supplier to conduct routine maintenance.

If the Telecommunications Services to be provided are critical, it is recommended that the Customer requires the Supplier to provide it with reasonable prior notice of any Scheduled Downtime to assist in the Customer's planning.

10. Third party service providers

Clause 3.8 of Module 5



Guidance:

In this item, specify the assistance the Supplier is required to provide the third party service providers (if any) engaged by the Customer in connection with the provision of the Telecommunications Services.

11. Security

Clause 3.9 of Module 5



Guidance:

Under clause 3.9, the Supplier must implement and maintain:

- appropriate security measures with the purpose of preventing unauthorised access by:
 - any third party to a Telecommunications Network and
 - the Customer to the data or confidential information of another customer of the Supplier and
- appropriate security measures to maintain the confidentiality and integrity of data in a Telecommunications Network.

However, if there are any particular security feature for the Telecommunications Services with which the Customer wishes the Supplier to comply, these should be specified here.

12. Disaster Recovery Procedures

Clause 3.13 of Module 5



Guidance:

In this item, specify whether the Supplier is required to implement, maintain and comply with disaster recovery procedures. Those procedures must ensure that the Supplier's provision of the

Telecommunications Service continues with minimal interruption if a Disaster occurs or affects the Telecommunications Network or the Supplier.

When deciding whether Disaster Recovery Procedures are required, the Customer should consider the purposes for which the Telecommunications Service is being used (including the nature of Customer Data being held by the Supplier) and the business impact if a Disaster occurred.

Suppliers will generally have their own Disaster Recovery Procedures. It is recommended that the Customer asks the Supplier to provide a copy of its procedures for the Customer's review and to see if they are acceptable. If they are acceptable, they can be described here or attached.

If this item provides that the Supplier must have and maintain Disaster Recovery Procedures, then the Supplier is required to provide the Customer with a summary of those procedures, annually test those procedures and provide the results of the testing to the Customer on request.

13. Transition-Out Services

Clause 3.14(a) of Module 5



Guidance:

If the Customer will have an ongoing need for similar services or require access to data after the end of the Contract, the Customer may require Transition-Out Services. It is recommended that the Customer sets out what the Transition-Out Services are and include as much detail as possible. Under clause 3.14(b) of the Module, the Customer must review and approve the Transition-Out-Plan.

The Customer may wish to consider which party will own the Intellectual Property Rights in the New Material in the Transition-Out-Plan and specify that in the Details.

Transition-Out Services are services requested by the Customer to “separate” from the Supplier and the Telecommunications Service and enable the Customer to transition to another provider.

Requirements for Transition-Out Services

In this item, specify the Transition-Out Services the Customer requires the Supplier to provide. For example, the services may include:

- transferring data and documentation to the Customer or a third party as the Customer directs
- continued provision of the Telecommunications Service for a specific period after the Service Period ends
- providing the Customer with cooperation, assistance, advice, access to systems, explanations, information, documentation, training reasonably necessary or desirable in order to ensure the efficient continuity and transition.

These will then be comprehensively described and set out in the Transition-Out Plan.

Transition-Out Plan

If Transition-Out Services are required, the Supplier must prepare a comprehensive Transition-Out Plan which sets out various matters listed in clause 3.14(b)(i) including:

- the period during which the Transition-Out Services will be provided and the extent to which the Telecommunications Services will continue to be provided during that period (i.e. any ramp down of the Telecommunications Service during the transition-out period)

- all activities and Deliverables to be provided by the Supplier (including due dates for performance)
- all Customer Inputs relevant to transition-out, including all inputs to be provided by the Customer's replacement service provider (if applicable)
- the Price (if applicable) payable for the Transition-Out Services and
- such other matters required by the Customer (acting reasonably).

In this item specify the date by which the Customer must prepare the Transition-Out Plan for the Customer's review and approval. Under clause 3.14(b), the Supplier is required to make all changes to the Transition-Out Plan reasonably requested by the Customer. The Transition-Out Plan will also be reviewed and updated (for the Customer's further approval) on an annual basis or such other period agreed by the parties.

Period of Transition-Out Services

In this item specify the period for which the Supplier must provide Transition-Out Services.

Specifying this period is particularly important if the Transition-Out Services involve the continued provision of Telecommunications Services for a period of time. For example, if the Customer anticipates that it will take a new provider three months to transition-in to the provision of a replacement service, the period for the Transition-Out Services should be at least three months.

14. Standard Form of Agreement

Clause 3.15 of Module 5



Guidance:

A Standard Form of Agreement is the Supplier's standard form of agreement formulated for the purposes of the *Telecommunications Act 1997* (Cth).

Under clause 3.15, the Standard Form of Agreement will apply and be incorporated into this Module to the extent it is not expressly inconsistent with the Module or the Comprehensive Contract Conditions. As it is an attachment, it will be lower in the contractual hierarchy.

15. Cancellation of Telecommunications Services

Clause 4.1(a) of Module 5



Guidance:

Whilst clause 4.1(a) entitles a Customer to cancel a Connectivity and Carriage Service by giving at least 30 days' notice in writing, the Customer may need to pay an amount for the cancellation if specified here.

When determining the amount of any payment under this clause, it is important to note that this payment is additional to those payments which a Customer may need to make for termination for convenience under clause 24.3 of the Comprehensive Contract Conditions.

16. Transfer of Telecommunications Services

Clause 4.1(b) of Module 5



Guidance:

Clause 4.1(b) lets a Customer transfer or redeploy any Connectivity and Carriage Service to a different User of the Customer under the Contract. The default notice period is at least 60 days prior written notice. If a shorter or longer period of time is required for the notice, this should be stipulated here. A Customer may need a shorter period of time if there are volatilities or uncertainties as to who will use the Connectivity and Carriage Services. A Customer may want, for example, to specify 30 days' prior written notice.

'User' is defined in the Module to mean a person who has been given the authority by the Customer to use a Telecommunications Service or some or all of the functionality provided by a Telecommunications Service.

17. Invoice audit

Clause 4.3 of Module 5



Guidance:

Clause 4.3 of the Module gives a Customer the right to require an audit of any Supplier invoice to be carried out once every 6 months, by default. However, if a different frequency is required, it should be specified here. For example, if a Customer wants to have closer scrutiny, it may want to stipulate more frequent audit rights here.

Clause 4.3(a) provides that the period covered by the audit must not exceed the audit cycle period of 6 months unless otherwise agreed between the parties. If the parties agree that the audit can cover a different period (whether a shorter or longer period), it should also be specified here.

Be aware that the Customer will be responsible for paying the auditor's costs unless the auditor finds that the Customer has been overcharged by an amount greater than the costs of the audit.

18. Benchmarking

Clause 4.4 of Module 5



Guidance:

Under clause 4.4 of the Module, the Customer can undertake Benchmarking once a year to compare the Price it is paying and the quality and standard of performance of the Connectivity and Carriage Services against prices paid by, and the quality and standard of performance of services being provided to, the Customer's peer organisations for the same or similar services in similar circumstances.

A Customer may wish to require Benchmarking if the Customer wants to closely monitor changes to market offerings. This may be particularly important if the Customer is considering entering a Contract for a long duration.

Note that the Customer will be responsible for the Benchmarking's costs.

MODULE 6 – MANAGED SERVICES

When to use?

The Managed Services Module is to be used where a Customer wishes to engage a Supplier to provide services which the Customer, in the absence of the Supplier, might perform itself or where the Customer needs to retain a high degree of control over the services.

Some common managed services include managed equipment services (such as a managed print service) or the performance of the Customer's internal IT function (such as a help desk).

In the Managed Services Module, a Customer is able to require a Supplier to manage the Customer's particular IT System as well as various contracts which the Customer has in place with third parties. These third party contracts can either be novated to the Supplier to enable it to manage the contractors, or the Supplier is otherwise provided with management responsibility for those contracts.

The Supplier may be required to use private infrastructure for a Customer, whether managed internally or by a third party and hosted either internally or externally. This may mean that the environment will need to be bought, built and managed exclusively for the Customer, which requires allocation of space, hardware and environmental controls.

Managed Services may be provided at the Customer's premises or remotely, and may involve the provisions of some services or equipment by the Customer.

As a Service Module

By contrast, the As a Service Module is generally to be used where the Customer wishes to procure a cloud computing based offering which is provided by the Supplier on an "as a service" basis to multiple clients. The Customer has less control over the service offering in an As a Service arrangement.

See the Guidance Notes regarding Module Order 3 for further information.

Module Order Form 6 – Managed Services

1. Service Period

Clause 3 of Module 6



Guidance:

Service Commencement Date

In this item, set out the Service Commencement Date of the Service Period. The Service Period is the defined term used to describe the period during which the Managed Services are provided to the Customer.

Transition-In Services may be relevant for the Managed Services where the Customer is transitioning from an existing managed services offering to the new offering to be provided by the Supplier under this Contract. Transition-In Services may involve the Supplier assisting with migration of data or applications (refer to guidance below on item 6).

If Transition-In Services are not required:

If no Transition-In Services are required, the Service Commencement Date must be specified in this item. This is the start date for the supply of the Managed Services. The Service Commencement Date may be a specific calendar date or it may be specified by reference to another milestone.

If no other Products or Services are being procured under another Module, the Service Commencement Date may be the same as the start date for the Term of the Contract, which is to be specified in the Comprehensive Contract Details at item 7. However, if other Products and/or Services are being procured under another Module, the Service Commencement Date for the Managed Services and the start date for the Term of the Contract (in item 7 of the Comprehensive Contract Details) may be another date.

The Service Commencement Date may also be linked to the completion of Acceptance Testing (refer to guidance in this document on item 26 of the Details in relation to Acceptance Testing generally).

If Transition-In Services are required:

If Transition-In Services are required, the Service Commencement Date will depend on whether or not the Customer requires Acceptance Testing to be conducted for the Transition-In Services performed by the Supplier.

Under clause 6(d) of Module 6, if Acceptance Testing is to be conducted for the Transition-In Services, the Service Commencement Date will be the AAD of the Transition-In Services, unless otherwise specified in this item.

It is generally recommended that Acceptance Tests are specified as required for the Transition-In Services where the Customer wishes to:

- assess whether the Transition-In Services have been satisfactorily completed in accordance with agreed acceptance criteria and
- verify that the Managed Services are ready to be supplied to, and used by, the Customer.

If Acceptance Tests for the Transition-In Services are required, the details of the Acceptance Tests will need to be completed in *Schedule 9 – Acceptance Testing* (including the details of the timing for the Acceptance Tests, responsibilities of the parties and Acceptance Criteria). Refer to guidance in this document on item 26 of the Details in relation to Acceptance Testing generally.

If Acceptance Testing is not required for the Transition-In Services, clause 6(e) of Module 6 provides that once the Supplier has completed Transition-In Services, the Supplier must notify the Customer in writing:

- that the Transition-In Services are complete and
- the Service Commencement Date.

This means that where Acceptance Testing is not required for the Transition-In Services, the Service Commencement Date will be the date specified in the Supplier's notice.

End of Service Period

This item must specify the end date for the provision of the Managed Services. This may be a specific calendar date or it may be specified as a length of time after the Service Commencement Date.

Extension options

This item sets out the Customer's option (if any) to extend the Service Period. If the Customer requires the ability to extend the initial Service Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. 1 year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as "two extension options of 12 months each".

If the Customer does not require the ability to extend the Service Period, this item should be specified as "Not applicable". If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Service Period, this will need to be negotiated with the Supplier.

Notice period for extension

If the Customer has extension options, this item must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Service Period. For example, this may be specified as "30 days prior to the expiry of the Service Period or applicable extension period (if applicable)".

2. Description of Managed Services



Guidance:

This item must set a description of Managed Services to be provided. It is very important to provide sufficient details of the Managed Services which fully reflect the services the Supplier will be performing. Without a sufficiently detailed description of the Managed Services, there is no certainty as to the requirements for the Managed Services that the Customer is purchasing. If the Supplier fails to perform the Managed Services as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

If any assets or equipment of the Supplier will be located on the Customer's premises and used in the provision of the Managed Services (e.g. a printer for managed print services), this item should list each asset and piece of equipment that will be located on the Customer's premises, and stipulate which party will be responsible for the risk and insurance of each item.

If the list of assets or equipment used to supply the Managed Services changes during the Service Period, this item should be updated through the Change process in clause 7.8 of the Comprehensive Contract Conditions. The Change should set out the relevant risk and insurance responsibilities for the changed or additional items.

If the description of the Managed Services is set out in the Specifications, instead of setting out the description in this item, the Customer may instead refer to the Specifications which are set out or referred to in item 3.

3. Requirements

Clause 4 of Module 6



Guidance:

Specifications

This item must set out the Specifications for the Managed Services. The Specifications should describe the detailed responsibilities of the Supplier and the services the Supplier is required to perform.

As noted above in the guidance for item 2, it is very important to provide sufficient details of the Managed Services to fully reflect what the Customer is buying.

A Customer can either incorporate the Specifications in this item 3 or refer to an annexed document which contains the Specifications. How the Specifications are incorporated will affect the priority which they are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions. If the Specifications are incorporated in this item 3 in the Module Order Form, they will, as a result of clause 1.3(c) of the Comprehensive Contract Conditions, be given the third highest priority if there is an inconsistency with terms in other documents which make up the Contract and which are lower in the hierarchy. If, however, the Specifications are referred to in an annexed document to this Module Order Form, the Specifications will have a lower priority in the contractual hierarchy.

If the Customer wishes to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in the Module Order Form.

If the Customer is relying on the Supplier's Specifications for the Managed Services, it is important that the Customer carefully reviews them to ensure they describe all aspects of the Managed Services to be performed by the Supplier. The Customer should also review the Specifications to ensure that they do not contain terms which affect the parties' rights and obligations. The Specifications should only contain information which describes how the Managed Services are to be performed.

Infrastructure, personnel, methodologies and other resources

Clause 4(b) allows the Customer to specify the standard of infrastructure, personnel, methodologies and other resources to be used by the Supplier in the provision of the Managed Services.

If the Customer has any particular requirements for the infrastructure, personnel, methodologies and other resources to be used in the Managed Services, these must be set out in this item. For example, if the Customer requires the personnel to have certain qualifications, this should be detailed here.

4. System



Guidance:

In this item, describe the System used in connection with the Managed Services. The System is defined as either:

- the system used by the Supplier to supply the Managed Services and is dedicated to the provision of the Managed Services to the Customer (i.e. is not used for other customers of the Supplier) or
- the Customer's environment which is in-scope for the provision of the Managed Services.

If the Supplier is responsible for managing a specific environment of the Customer (such as the Customer's standard operating environment), this item should describe, in full, all software, applications and hardware that the Supplier is required to manage (including the specific name and version numbers of software, applications and hardware).

If the Supplier is required to dedicate a specific IT system or facility to perform the Managed Services to the Customer, this should also be described in this item.

This definition of System is relevant to the following clauses in Module 6:

- clause 9(b)(iii), which requires the Supplier to ensure that the Customer has access to the System as and when required by the Customer
- clause 10(a), which requires the Supplier to take reasonable steps to ensure that no unauthorised party is allowed physical or electronic access to the System
- clause 14(e), which requires the Supplier to keep the Customer informed about any proposed alterations to the System which may materially affect its compliance with Service Levels and
- clause 17, which requires the Supplier to have Disaster Recovery Procedures in relation to the System.

It is important that the System used to provide the Managed Services is described in sufficient detail in this item so that the Customer can exercise its rights under these provisions effectively.

Depending on the nature of the Managed Services, this item may not be relevant for all Contracts. For example, the Managed Services may not involve the Supplier using a system solely for the Customer, or the Managed Services may not involve the Supplier managing the Customer's IT environment. If this is the case, insert "Not applicable" in this item.

5. Transition-In Services and Transition-In Plan

Clause 6 of Module 6



Guidance:

Transition-In Services are those preparatory services required to be undertaken by the Supplier to transition the Customer to the Managed Services.

In this item, specify whether the Supplier must provide Transition-In Services.

Transition-In Plan

If Transition-In Services are required, the specific details must be set out in a Transition-In Plan. This Transition-In Plan may be set out in this item, or attached to the Module Order Form. The Transition-In Plan must set out all services, functions and tasks required to be performed by the Supplier, and any to be performed by the Customer.

If the details of the Transition-In Plan are not known at the date the Contract is entered into, the Transition-In Plan may be Bespoke Documentation which the Supplier is required to prepare for the Customer's approval under clause 5.3 of the Comprehensive Contract Conditions.

Date for completion of Transition-In Services

In this item, specify the date by which the Supplier must use best endeavours to complete the Transition-In Services. This means that the Supplier must take reasonable steps to complete the Transition-In Services by this date. If the Supplier considers that it may be delayed in reaching completion by this date, it is required to notify the Customer.

6. Data Migration Services and Data Cleansing Services

Clause 7 of Module 6



Guidance:

Data Migration Services

Data migration typically involves moving digital records from one system, storage medium, hardware or software configuration to another, while maintaining the authenticity, integrity, reliability and usability of the records.

If the Supplier is required to perform Data Migration Services, this must be specified in this item. The item must also set out all details of the migration activities, including any relevant formats for the data or environments in which the data is required.

The date for completing the Data Migration Services and any assistance to be provided by the Customer must be specified.

Data Cleansing Services

Data cleansing typically involves the process of standardising data from multiple sources and/or detecting and correcting corrupt or inaccurate data.

If the Supplier is required to perform Data Cleansing Services, this must be specified in this item. The item must also set out all details of the cleansing activities, such as eliminating records that are clearly duplicates, correcting obvious misspellings and errors, ensuring that there are consistent descriptions, punctuation and syntax and resolving any other accuracy, omission and consistency issues.

The date for completing the Data Cleansing Services and any assistance to be provided by the Customer must be specified.

Data Cleansing Services may or may not be required, depending on the nature of the Managed Services to be provided.

Data Tools

Data Tools are the software tools, object libraries, methodologies or other devices owned by the Supplier or any other party required to be used to perform the Data Migration Services and Data Cleansing Services.

If the Supplier's performance of the Data Migration Services or Data Cleansing Services require it to provide Data Tools to the Customer, this must be set out in this item. These Data Tools will need to be provided:

- if provided as Licensed Software, in accordance with *Module 2 – Software* or
- if provided as As a Service, in accordance with *Module 3 – As a Service*.

As above, Data Tools will not be required if Data Migration Services and Data Cleansing Services are not required.

7. Procedures Manual

Clause 8 of Module 6



Guidance:

Requirement for a Procedures Manual

This item must specify whether a Procedures Manual is required. A Procedures Manual is a document which addresses how the Requirements (including Specifications) for the Managed Services will be met, and describes the operations and procedures to be followed in the provision of the Managed Services.

A Procedures Manual is generally required where the Customer wishes to have greater oversight over the Supplier's methodology for carrying out the Managed Services or where the Managed Services are particularly complex. Under clause 8(a), the Supplier is required to submit the Procedures Manual to the Customer for its review and approval, and then incorporate any changes requested by the Customer (which are consistent with the Requirements).

In the case of inconsistency, the Procedures Manual will prevail over the Requirements (set out in item 3), so when reviewing the Procedures Manual the Customer should satisfy itself that the Procedures Manual accurately captures the Customer's requirements for the provision of the Managed Services.

Details to be included in the Procedures Manual

In this item, include a list of all categories of information that the Procedures Manual must address.

Clause 8(a) sets out suggestions for the details which may be included in the Procedures Manual, but the Customer will otherwise need to set out in this item the information the Customer requires to be set out in the Procedures Manual (the items in clause 8(a) will not automatically apply).

Clause 8(a) sets out the following suggestions for the details which may be included in the Procedures Manual:

- key aspects of how the Managed Services will be provided to the Customer
- how compliance with the Service Levels and other performance factors will be measured and met
- procedures to identify and rectify failures in the quality of the Managed Services
- governance arrangements between the Customer and the Supplier
- governance arrangements dealing with the Supplier and any third parties
- how changes to the Managed Services or method of delivery will be identified and met
- protocols for identifying and managing risks

- proposed audit requirements and
- staffing, reporting, planning and supervision activities normally undertaken in respect of similar services in similar circumstances.

Date for Procedures Manual submission

In this item insert the date by which the Supplier must issue a draft Procedures Manual for the Customer's review and approval.

8. Customer Data

Clause 9 of Module 6



Guidance:

The details set out in item 8 only need to be completed if the Supplier will store, process or host any Customer Data. Customer Data is defined as any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Products or Services and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services

and includes Metadata (but not any Pre-Existing Material or New Material owned by the Supplier).

Data security is a significant issue and should be carefully managed. Data is increasingly considered to have significant value, even where it does not constitute Personal Information or Confidential Information.

If the Supplier will not store, process or host any Customer Data, the details in this entire item do not need to be completed.

Storage and back-up of the Customer Data

This item must specify whether the Supplier must provide storage and back-up of Customer Data. Requiring the Supplier to perform regular back-up and storage of Customer Data is a risk mitigation measure to minimise the risk of data loss or corruption during the Service Period. The Customer may need to consider whether it will be easier or more cost effective for the Customer to perform back-up of the Customer Data. If not, then it is recommended that the Customer requires the Supplier under this item to provide the back-up and storage and to provide frequent back-up copies.

If the Customer requires the Supplier to perform storage and back-up, the Customer must set out the procedures and requirements for the storage and back-up. If the Customer requires the Supplier to provide the customer with back-up copies of the Customer Data, the frequency (e.g. daily or weekly) and format (e.g. .CSV) must be specified here.

The Customer will need to ensure that it complies with applicable legislation and policy, including the *Public Records Act 2002* (Qld) in relation to the management and disposal of public records.

Return or extraction of Customer Data

In this item, specify whether the Supplier must either return the Customer Data to the Customer or allow the Customer to extract the Customer Data on the expiry or termination of the Service Period. Whether the Supplier returns the Customer Data to the Customer or allows the Customer to retrieve

its Customer Data itself will depend on the procedures and offering of the Supplier. In any event, the Supplier should either return the Customer Data to the Customer or allow the Customer to retrieve its data.

In each case, specify the period after expiry or termination of the Service Period by which the Customer Data is to be returned or extracted (such as within 30 days of expiry or termination).

If the Customer is responsible for extracting its Customer Data, the Customer will need to extract its Customer Data within the time specified. If the Customer fails to do so, the Customer may potentially lose the right to access and extract its Customer Data. As such, the Customer should ensure that the timeframe for extracting the Customer Data is long enough for it to extract that information.

Format for returning Customer Data

In this item, specify the format in which the Customer Data will be returned or made available after expiry or termination of the Service Period. The Customer should ensure that the specified format of the Customer Data is a format which will ensure the usability of the Customer Data, and is appropriate for fulfilling any record-keeping obligations or transition to a new system.

Permanent destruction or security erasure

Unless otherwise specified, once Customer Data is returned or made available for extraction, the Supplier must destroy or securely erase all Customer Data. In this item, specify whether the Customer Data must be retained by the Supplier. This may be appropriate if there is a risk that the Customer cannot extract the Customer Data within the period provided to it.

See Part B of the User Guide regarding Data Security and Privacy

9. Security

Clause 10 of Module 6



Guidance:

Specify the security and encryption standards which apply to the Customer Data

Clause 10(b)(i) provides that the Supplier must establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to protect the Customer Data from destruction, loss and unauthorised access or alteration as specified in the Module Order Form.

If the Customer has specific security standards and requirements, these should be specified in this item. These may include:

- the Customer's internal procedures with which it requires the Supplier to comply
- physical access controls such as secure swipe card access, biometric or coded access to the location from which the Managed Services are being provided
- data security measures such as encryption of data during transit or while at rest and
- level of data centre certification (such as ISO 27001/27002).

Access logs

In this item, specify if the Supplier must log access to and modification of Customer Data and provide copies of those logs at the Customer's reasonable request. This may be appropriate for

particular types of Customer Data, where the Customer requires an audit trail of access and use of that data.

10. Managed Third Party Contracts

Clause 12 of Module 6



Guidance:

Some Managed Services arrangements involve the Supplier managing contracts with third parties on behalf of the Customer. This allows the Customer to receive the benefit of those third party contracts, while the Supplier performs contract administration for those arrangements.

This item does not need to be completed if the Supplier is not required to manage any contracts with third parties on behalf of the Customer.

Novation

In this item, the Customer must specify which (if any) Managed Third Party Contracts will be novated to the Supplier.

Novation is the process by which the contract between the Customer (as the contracting party) and third party is transferred to the Supplier (replacing the Customer as the contracting party). Novation allows the Supplier to manage the Customer's entitlements and obligations under the contract by taking the Customer's place as a party to the contract. Novation should be effected by a written agreement between the Customer and the third party, discharging the Customer from its obligations under the Managed Third Party Contract, and transferring those obligations to the Supplier.

This item must list the Managed Third Party Contracts to be novated to the Supplier, or annex a list to the Module Order Form. The list should set out the full name of each Managed Third Party Contract, the date of the Managed Third Party Contract and full legal entity of the third party. This item should also set out whether the novation takes effect earlier than the Service Commencement Date.

Managed Third Party Contracts managed and performed by the Customer

Some third party contracts which will be managed by the Supplier as part of the Managed Services may not be novated to the Supplier. For example, the third party may not provide its consent to the novation or the Customer may require the contract to remain with the Customer.

This item must list the Managed Third Party Contracts (if any) which the Supplier will manage without those contracts being novated to the Supplier. The list should set out the full name and date of each Managed Third Party Contract and full legal entity name of the other party.

In this arrangement, the parties to the Contract will remain the Customer and the other party. The Supplier is required to act as the contract administrator, and is required to use its best efforts to procure the right to assume management responsibility on behalf of the Customer. This means that the Customer still has rights and liabilities to the third party under the Managed Third Party Contract.

Party who bears the costs associated with novation of a Managed Third Party Contract or procurement of management rights

Clause 12(d) provides that, unless specified otherwise, the Customer will bear the costs associated with novating the Managed Third Party Contract or procuring management rights for a Managed Third Party Contract. If the costs will be borne by the Supplier, this must be set out in this item.

Services, functions and tasks to be performed for each Managed Third Party Contract

This item must set out the services, functions and tasks to be performed by the Supplier in relation to each Managed Third Party Contract. This item should be as detailed as possible to thoroughly describe the Supplier's role in administering the contracts.

The services, functions and tasks may include:

- monitoring the third party's performance by reviewing the third party's reports against its service levels
- arranging for payment to the third party in accordance with the Managed Third Party Contract and
- ensuring that the Customer is kept updated about any issue with the Managed Third Party Contract that will have a material impact on the Customer's business or functions.

11. Units

Clause 13 of Module 6



Guidance:

This item applies if the Managed Services are provided on a Unit basis. For example, the Supplier may be responsible for managing a specific number of devices or items of equipment. If the Managed Services are not provided by the Supplier for a specified number of Units or Units are not relevant to the nature of the Managed Services being performed, specify in this item "Not applicable".

If this item applies, specify the number of Units initially ordered for the Managed Services.

This item must also set out the frequency at which the Customer can adjust the number of Units ordered. The Customer should consider how often it will need to adjust the number of Units which are required (e.g. each month or annually) so that it does not pay for more than it uses. This may be the same frequency as the Supplier's invoice, so that the Customer can adjust the number of Units after each invoicing period.

The number of Units set out in this item (as the initial order) and updated from time to time is the number of Units for which the Customer will be regularly charged. If the Customer exceeds this number of Units, clause 13(b) provides that the Supplier may charge the Customer for the actual number of Units consumed. If the Customer does not use the number of Units ordered, the Supplier may still charge the Customer for the number of Units ordered.

12. Consolidation Period

Clause 14 of Module 6



Guidance:

This item must set out the initial period of the Managed Services during which the Supplier is not required to meet the Service Levels. Clause 14 provides the Supplier is required to use best efforts to achieve the Service Levels during this Consolidation Period. After the Consolidation Period, the Supplier has a firm obligation to meet the Services Levels.

The Consolidation Period is defined to commence on the Service Commencement Date. In completing this item, the Customer should carefully consider the period of time for which it can agree that the Supplier does not have a firm obligation to meet the Service Levels, and the Customer should consider the length of the initial set-up period. The Consolidation Period should be aligned with the initial set-up period, and should expire on the date that it is expected the Managed Services have been established.

13. Service Levels

Clause 14 of Module 6



Guidance:

Many Managed Services arrangements require the Supplier to meet certain availability requirements for the Managed Services, and/or response and rectification times for issues with the performance of the Managed Services.

Service Levels Schedule

In this item, specify whether the Service Levels Schedule is in the form of *Schedule 8 – Service Levels* or is another Service Levels document. If the Service Levels are set out in another document, that document should be referred to in this item and attached to the Contract.

The Supplier may seek to attach its standard service level agreement. Ideally, the relevant service levels will be extracted from the Supplier's standard documents and set out in *Schedule 8 – Service Levels*. If the Supplier's standard service level agreement is attached to the Contract, the Customer should carefully review this document as it may contain terms which could limit or qualify the Service Levels.

The Customer will otherwise need to review the Service Levels proposed by the Supplier and ensure these Service Levels will ensure sufficient continuity and performance of the Managed Services (particularly where any failure to meet the Service Levels would significantly impact the Customer's core business or functions).

Reporting

In this item specify the frequency at which the Supplier must provide a report setting out its performance against the Service Levels. If the Customer has any particular reporting requirements (e.g. formatting requirements or particular matters which must be addressed), then these must be specified in this item.

Exclusions from Service Levels

Clause 16(a)(vii) provides that the Module Order Form may also specify whether there are any other circumstances where the Supplier is not required to meet the Service Levels. Clause 16(a) already sets out a number of circumstances in which the Supplier will not be required to meet the Service Levels (such as if a Customer Input fails to comply with requirements specified in the Details). If there are any others, specify them in this item. These exclusions may also be set out in *Schedule 8 – Service Levels* or another document referred to above.

If there are no other exclusions from the Supplier's Service Level obligations, this item can be specified as "Not applicable".

14. Service Credits

Clause 14 of Module 6



Guidance:

Service Credits are the amounts payable if the Supplier does not meet the Service Levels (after the Consolidation Period). The Service Credits can be set out in Schedule 8 – Service Levels or other Service Level document referred to in this item and annexed to the Contract. The Service Levels document should also specify how the Service Credits are calculated and the applicable measurement period.

In this item, the Customer should set out the mechanism for the Customer to apply the Service Credits against Prices if the Supplier fails to meet the Service Levels. The default position in clause 14(d) is that Service Credits will be applied against the next invoice issued after the relevant Service Credits accrue. However, depending on the payment terms, the Customer may specify a different arrangement in the Module Order Form. If so, this item should specify:

- when the Service Credits accrue and
- how the Service Credits are applied or charged.

Alternatively, instead of the Service Credits being applied against the Price, the Supplier may provide a Service Credit arrangement which provides the Customer with "credit" in the form of hours to be used for consulting or training services. The parties may also agree to an "earn back" service credit arrangement whereby the Supplier "earns back" service credits in the months after its failure to meet the Service Levels by meeting the Service Levels for a particular period.

If applicable, these types of alternative arrangements must be specified in this item.

15. Disaster recovery

Clause 17 of Module 6



Guidance:

In this item, specify whether the Supplier is required to implement, maintain and comply with Disaster Recovery Procedures. Those procedures must ensure that the Supplier's provision of the Managed Services continues with minimal interruption if a Disaster occurs or affects the System or the Supplier.

When deciding whether Disaster Recovery Procedures are required, the Customer should consider the nature of the Managed Services (including any Customer Data being held by the Supplier) and the business impact if a Disaster occurred.

The description of the Disaster Recovery Procedures may include a description of the back-up procedures and facilities the Supplier is required to have in place.

Suppliers will generally have their own Disaster Recovery Procedures. It is recommended that the Customer asks the Supplier to provide copy of its procedures for the Customer's review, and to consider whether they are acceptable. If they are acceptable, they can be described here or referred to in this item and attached.

If this item provides that the Supplier must have and maintain Disaster Recovery Procedures, then the Supplier is required to provide the Customer with a summary of those procedures, annually test those procedures and provide the results of the testing to the Customer on request.

16. Audit

Clause 18 of Module 6



Guidance:

This item should specify whether the Supplier must, at least annually, appoint an independent auditor to audit the Supplier's compliance with security, privacy and Customer Data requirements of the Contract. This may be appropriate where the Customer Data held by the Supplier is of particular importance to the Customer's business or functions.

If this item is selected, then the Supplier is required to give the Customer a copy of the audit report at the Customer's request.

17. Transition-Out Services

Clause 19 of Module 6



Guidance:

Transition-Out Services are services requested by the Customer to separate from the Supplier and the Managed Services and enable the Customer to transition to another provider and/or managed services offering.

Requirements for Transition-Out Services

In this item, specify the Transition-Out Services the Customer requires the Supplier to provide. For example, the services may include:

- transferring data and documentation to the Customer or its nominee
- transferring management responsibility for Managed Third Party Contracts to the Customer or its nominee
- continued provision of the Managed Services for a specified period after the Service Period ends and
- providing the Customer with cooperation, assistance, advice, access to systems, explanations, information, documentation, training, details of data formats and fields (including

database schema), reasonably necessary or desirable in order to ensure efficient continuity and transition.

These will then be comprehensively described and set out in the Transition-Out Plan.

Transition-Out Plan

If Transition-Out Services are required, the Supplier must prepare a comprehensive Transition-Out Plan which sets out various matters listed in clause 19(b)(i) including:

- the period during which the Transition-Out Services will be provided and the extent to which any Managed Services will continue to be provided during that period
- all activities and Deliverables to be provided by the Supplier (including due dates for performance) which may include:
 - selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services and the amount payable to the Supplier for such items and
 - if applicable, providing reasonable assistance in procuring novations or assignments of the Managed Third Party Contracts or the transfer of management responsibility in respect of such agreements, to the Customer's replacement service provider or to the Customer
- all Customer Inputs relevant to transition-out, including all inputs to be provided by the Customer's replacement service provider (if applicable)
- the Price payable for the Transition-Out Services and
- such other matters required by the Customer.

In this item specify the date by which the Customer must prepare the Transition-Out Plan for the Customer's review and approval. Under clause 19(b), the Supplier is required to make all changes to the Transition-Out Plan reasonably requested by the Customer. The Transition-Out Plan will also be reviewed and updated (for the Customer's further approval) on an annual basis or such other period agreed by the parties.

Period of Transition-Out Services

In this item specify the period during which the Supplier must provide Transition-Out Services.

Specifying this period is particularly important if the Transition-Out Services involve the continued provision of Managed Services for a period of time after the Service Period. For example, if the Customer anticipates that it will take a new provider three months to transition-in to the provision of a replacement service, the period for the Transition-Out Services should be at least three months.

MODULE 7 – ICT PROFESSIONAL SERVICES

When to Use?

This module is to be used for the procurement of information, communications or technology related services, such as:

- strategy advice
- writing reports
- reviews or quality assurance activities
- change management services
- project management services
- knowledge transfer services.

Modules 1, 2, 3 and 4 allow the Customer to obtain ancillary services in connection with various Products and Services (being Hardware, Licensed Software, Developed Software, As a Service and Systems Integration). Whilst a Customer can choose to buy those ancillary services under those Modules, if the ancillary services are extensive or particularly complex, the Customer should consider using Module 7 to ensure that the Customer obtains the benefit of the terms of this Module, including the Supplier's warranties and defect rectification obligations, in relation to the services.

Module 7 is not intended for contractor services which are provided under the direction, control and supervision of the Customer. The Department of Housing and Public Works has a whole of government resource management panel arrangement for the engagement of [ICT contingent labour hire](#).

Module Order Form 7 – ICT Professional Services

1. ICT Professional Services



Guidance:

Description of ICT Professional Services

It is very important to provide sufficient details of the ICT Professional Services and the Deliverables to be supplied by the Supplier to fully reflect what the Customer is buying. Without a sufficiently detailed description of the ICT Professional Services and the Deliverables, there is no certainty as to the Supplier's performance requirements. If the Supplier and the Deliverables fail to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

The description of the ICT Professional Services and the Deliverables can either be incorporated in this item or referred to in an annexed document. However, where they are incorporated will affect the priority which those terms are given under the contractual hierarchy in clause 1.3 of the Comprehensive Contract Conditions.

If the ICT Professional Services and the Deliverables are set out in this item, it will be third highest in the contractual hierarchy pursuant to clause 1.3(c) of the Comprehensive Contract Conditions

and the terms will prevail over any term in a Contract document lower in the hierarchy to the extent of any inconsistency. If, however, they are referred to in an annexed document, they will be lower in the contractual hierarchy.

There is some risk in referring to or annexing descriptions prepared by a Supplier as they may include terms which affect the rights and obligations of the parties. The description should only contain information which describes the ICT Professional Services and the Deliverables to be supplied.

2. Service Period

Clause 3 of Module 7



Guidance:

If the Contract is exclusively for ICT Professional Services, the start and end dates for the Service Period will align with the start and end dates for the Term of the Contract, which are to be specified in item 7 of the Details. However, if Products or Services under different Modules will also be procured under the Contract, the start and end dates in item 7 of the Term of the Details may be different.

Extension options

This item sets out the Customer's option (if any) to extend the Service Period. If the Customer requires the ability to extend the initial Service Period for a further period (on the same terms and conditions) the Customer should complete this item to set out:

- the period of extension (e.g. one year) and
- the number of options (e.g. the option can be exercised two times).

For example, this could be specified as “two extension options of 12 months each”.

If the Customer does not require the ability to extend the Service Period, this item should be specified as “Not applicable”. If the Customer later (i.e. after the execution of the Contract) requires the ability to extend the Service Period, this will need to be negotiated with the Supplier.

A Customer should ensure that the extension options in item 7 of the Details takes into account the Service Period extension options which are specified here.

If the Price will vary during the extension periods, this should be specified in Schedule 1 or 2, as well as any Price review mechanism which may apply.

Notice period for extension

If the Customer has extension options, this item must set out the period of notice the Customer must give the Supplier to exercise the extension option. This should be expressed as a period of time prior to the end of the then-current Service Period. For example, this may be specified as “30 days prior to the expiry of the Service Period or applicable extension period (if applicable)”.

3. Delivery Date

Clause 4(a)(ii) of Module 7



Guidance:

If there are particular Deliverables that need to be provided by a particular date, the Delivery Date will need to be specified. The Supplier would need to supply those services in a 'timely manner' under clause 4(a)(ii) of the Module.

4. Professional standards

Clause 4(a)(iii) of Module 7



Guidance:

In this item, specify any professional standards which apply to the performance of the ICT Professional Services.

5. Warranty Period

Clause 6 of Module 7



Guidance:

The Customer should determine the duration of the Warranty Period, taking into account:

- the obligations imposed on the Supplier under the Contract
- the period during which Defects are most likely to arise or be discovered in the Deliverables (if any)
- the period in which the Customer requires the Deliverables (if any) to be free of Defects and
- any support or maintenance services which are to be provided by the Supplier.

Module 7 requires the Supplier to warrant, among other things that, during the Warranty Period, the Deliverables provided under this Module will comply with the Requirements. This would include any Requirements which are specified in item 1 in describing the ICT Professional Services. Module 7 also imposes a number of defect rectification obligations on the Supplier during the Warranty Period.

6. Qualifications, admissions and memberships

Clause 6(a)(iii) of Module 7



Guidance:

In this item, specify any qualifications, admissions and memberships required by the Customer of the Personnel providing the ICT Professional Services.

7. Notification Period

Clause 7(a)(ii) of Module 7



Guidance:

Where the supply of the services does not involve the supply of specific Deliverables, clause 7(a)(ii) provides where the services do not meet the requirements specified in the Details, the Supplier must take all necessary steps to ensure that services comply with the requirements in the Details, provided that the Customer notifies the Supplier of any failure of the services to meet those requirements within 30 days of delivery or such other period specified in the Details.

If the notification period will be other than the default period of 30 days, this should be specified here.