

TTCC Guidance Notes

GENERAL CONTRACT

JULY 2021



TTCC Guidance Notes - General Contract

This document is an adaptation of the [QITC Guidance Note for General Contract Details](#) created in 2017 by the Department of Science, Information Technology and Innovation, Queensland Government and is licensed under Creative Commons license [CC BY 4.0](#).

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I. Introduction

The General Contract is a contract type available under the Tasmanian Technology Contract Conditions (TTCC) framework.

These Guidance Notes are to help Customers complete the *Tasmanian Technology Contract Conditions - General Contract Details*.

The Guidance Notes are to be read in conjunction with the *Tasmanian Technology Contract Conditions - General Conditions*. Further guidance can be found in the [TTCC Toolkit](#).

The Guidance Notes provide general and guidance information only and should not be relied upon in place of legal advice. The Guidance Notes is not a legally binding document and does not form part of, or affect the interpretation of, any contract established under the TTCC framework.

If you have any questions about preparing a particular contract, contact your agency procurement team or the Office of the Crown Solicitor (OCS) for advice.

I.1 INTERPRETATION

For the purposes of the Guidance Notes:

- 'General Conditions' refers to the *Tasmanian Technology Contract Conditions - General Conditions*;
- 'Details' refers to the *Tasmanian Technology Contract Conditions - General Contract Details*;
- a 'General Contract' means a contract created using the General Conditions, and the Details;
- all other capitalised terms are defined in the General Conditions.

*Where these Guidance Notes refer to an item or section, for example item 25 or section 9.2, this means an item or section of the **Details** or **Module Order Forms**.*

*Where these Guidance Notes refer to a clause, for example clause 21, this means a clause of the **General Conditions** or **Modules**.*

Both are referenced in these Guidance Notes, because some clauses of the General Conditions rely on the information you provide in certain items or sections of the Details.

*In practice, a **Customer** is you or your agency (this will be defined in the **Details** and **General Conditions**).*

When to use?

Under the TTCC framework, a General Contract is designed for use in ICT procurements that are assessed as low risk and valued at less than \$1 million.

Comprehensive Contract Templates

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

- General Conditions
- Details
- *Schedule 1 – Price and Payment Terms*, which is attached to the Details.

The General Conditions are accepted by government and industry as balanced, standardised terms to be used, without any amendment, for low risk ICT procurements valued at less than \$1 million.

2. General Contract Documents

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

- any Additional Provisions;
- the General Conditions;
- the Details (excluding any Additional Provisions and any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference in the Contract);
- any statement of work formed under clause 7;
- any schedules (excluding documents which the Details state will form part of the Contract or are otherwise expressly incorporated by reference in the Contract); and
- any document which the Details state 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 General Contract, the order of priority of the documents is as set out above from highest to lowest.

2.1 CREATION OF A GENERAL CONTRACT

A General Contract is entered into when the Supplier and Customer execute section 9.2 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 General Contract and the Customer accepts the Supplier's offer.

2.2 PREPARATION AND EXECUTION OF A GENERAL CONTRACT

Step 1: Details

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

Schedules

Refer to and attach relevant schedules to the Details. You may want to consider using some of the Schedules which have been developed for the Comprehensive Contract, with appropriate amendments, where required.

Additional Provisions

Identify in item 6 of the Details any Additional Provisions to be included. Additional Provisions that amend the General Conditions are required to be approved by the relevant Accountable Authority and the Office of the Crown Solicitor in accordance with Treasurer's Instruction PP-3 *Procurement processes - Goods and services procurement*.

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

Attach documents to the Details

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

- specified in the Details; 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 General Contract.

It is strongly recommended that:

- all documents which the Details state form part of the Contract; and
- all documents which are otherwise incorporated by reference in the Contract which fall under clause 1.3(f),

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 General Contract under clause 1.3(f) will be specified in the one location, rather than throughout the various documents making up the General Contract.

It is also recommended that the Details stipulate a document hierarchy to identify which of those documents in clause 1.3(f) 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 General Contract, rather than simply incorporating them by reference, as this will increase certainty as to the terms of the General Contract.

Step 2: Supplier execution

Once the terms of the documents which make up the General Contract are agreed between the parties, it is recommended that the Supplier executes section 9.2 in the Details headed “Forming the Contract” first. This is because, once executed, the Supplier is offering to enter the General 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 3: 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 9.2 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 4: Save contract documents

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

Any future agreed statements of work and contract variations should also be referenced to and stored with the original Contract documents.

3. General Contract Details

3.1 CUSTOMER

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 Tasmanian Government department does not have a separate legal existence from the State of Tasmania. Accordingly, the Customer should be described as “*The Crown in Right of the State of Tasmania, represented by the Department of xxxx*”.

For a statutory body, use the name which is established by legislation.

3.2 CUSTOMER CONTACT DETAILS

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 21).

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 their 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.

3.3 SUPPLIER

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); and
- 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.

3.4 SUPPLIER CONTACT DETAILS

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 21).

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.

3.5 PRODUCTS AND SERVICES AND DOCUMENTS THAT FORM PART OF THE CONTRACT (clauses 1.3 and 5)

Applicable Products and Services

In this item, select the Products and/or Services which will apply to the Contract.

Documents

In this item, the Customer can also identify all documents which fall within clause 1.3(f), being *'any document which the Details state 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(f) if their terms conflict with terms in documents which are higher in the hierarchy.

To the extent possible, it is recommended that all documents which fall within the meaning of clause 1.3(f) 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(f), so that it is clear which document takes priority if there is an inconsistency between their terms.

3.6 ADDITIONAL PROVISIONS (clause 1.4)

The General Conditions are accepted by government and industry as balanced, standardised terms to be used, without any amendment, for low risk ICT procurements which are valued at less than \$1 million.

However, the General Conditions permit the parties to include Additional Provisions for a particular Contract.

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

Additional Provisions that amend the General Conditions are required to be approved by the relevant Accountable Authority and the Office of the Crown Solicitor in accordance with TI PP-3.

3.7 TERM (clause 3)

Start Date

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

The Start Date may coincide with one or more of the start dates specified in the Details for the particular Products and/or Services. For example:

- Hardware (clause 5.1), Developed Software (clause 5.5) and ICT Professional Services (clause 5.7) require a Delivery Date to be specified in the Details (where applicable);
- Software Support Services (clause 5.4) require a support period to be stipulated;
- ICT Professional Services (clause 5.7) require a service period to be specified;
- Licensed Software (clause 5.3) requires a licence period to be stipulated;
- Hardware Maintenance Services (clause 5.2) requires a maintenance period to be stipulated; and
- As a Service (clause 5.6) requires a Subscription Period to be specified, which automatically renews unless otherwise notified.

You should ensure you comply with the requirements set out in TI PP-3 regarding the use of the TTCC framework, particularly in relation to the contract management of subscription periods and automatic renewals.

End Date

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

- all support periods, service periods, licence periods, maintenance periods and Subscription Periods and Delivery Dates specified for the particular Products and/or Services; and
- the duration of any applicable Warranty Period/s.

It should not include any of the extension options for the Products and/or 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 your agency 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.

If the Price will change during an extended period if an option is exercised, this will need to be specified in item 19 of these Details or in *Schedule 1 – Price and Payment Terms* if used. The Price review mechanism will also need to be specified.

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)”.

3.8 POLICIES, CODES OF CONDUCT, RULES, STANDARDS AND PROCEDURES (clause 4(h))

Clause 4(h) 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”, 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 this clause, 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.

3.9 CUSTOMER INPUTS (clause 4(k))

In this item, specify 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. This can include the Customer’s Personnel which a Customer will make available.

3.10 DOCUMENTATION (clause 4(n))

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

Documentation is defined to mean any training manuals, user manuals, operating manuals, technical manuals or other documentation specified in the Details.

Under clause 4(n), the Supplier must supply all Documentation to the Customer and at no additional cost, any revisions replacements or additions to the Documentation so that it includes the most current and up-to-date versions generally available to customers of the Supplier.

The Documentation may constitute, or contain Supplier’s Pre-Existing Material or Third Party Material. If so, item 21 and/or 23 should be completed to specify the licence which the Customer requires in relation to the Supplier’s Pre-Existing Material or Third Party Material incorporated in the Documentation.

If the Documentation includes any New Material which is created by the Supplier, it will be necessary to determine which party owns the Intellectual Property Rights in that New Material. This should be specified in item 22.

3.11 TRAINING (clause 4(o))

Training Requirements

In this item, you need 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 item 19 or *Schedule 1 – Price and Payment Terms*, if used.

3.12 INSURANCE (clause 4(q))

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

You 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 you are not sure what insurances are necessary for the Products and/or Services supplied under the Contract, seek advice from:

- your agency procurement team; or
- the Government's insurance broker.

Contact details for the Government's insurance broker are:

Jardine Lloyd Thomson (JLT)

GPO Box 126

Hobart Tasmania 7001

Ph: (03) 6220 7401

Email: Andrew.ralph@jlta.com.au

3.13 AUTHORISATIONS (clause 4(r))

Clause 4(r) 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.

3.14 SECURITY (clause 4(s))

In this item, the parties will need to specify whether security, such as a performance guarantee or a financial security, is required, and, if so, specify any additional conditions with which the security must comply in accordance with clause 4(s).

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

3.15 ACCEPTANCE TESTING (clause 6)

Acceptance Testing can be required for any Deliverable.

If Acceptance Testing is required for one or more Deliverables, you should specify in this item:

- the Deliverables which require Acceptance Testing; and
- the tests to be performed by the parties and the relevant testing process, which should include:
 - details of each party's responsibilities in relation to the testing, including the party responsible for conducting the tests
 - the acceptance criteria to be used to test whether the Deliverable meets the Requirements; and
 - the period for performing the tests.

Schedule 9 – Acceptance Testing, which has been developed for use with the Comprehensive Conditions, could be modified and used for a General Contract.

3.16 SUBCONTRACTOR(S) (clause 8.1)

Clause 8.1 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.

You should critically assess the extent to which the Supplier's contractual obligations will be subcontracted to a third party. Your agency may have evaluated a Supplier's offer on the assumption that it 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, 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.

You 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 *Schedule 3 - Subcontractor Statutory Declaration* of the Comprehensive Contract, and if so, this should be specified in this item.

The Customer may also want the Subcontractor to sign, and ensure that its officers, directors, employees and agents also sign a privacy, confidentiality and conflicts of interest deed. (See *Schedule 4 -Confidentiality, Privacy and Conflicts of Interest Deed* which has been developed for a Comprehensive Contract and which would need modification for a General Contract). If so, this should be specified in item 25.

3.17 BACKGROUND CHECKS (clause 8.2(d))

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 or other types of checks.

You 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.

You 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(d), the Customer can reasonably request, at any time during the Term, such checks prior to permitting any Personnel to be involved in the supply of any Deliverables.

3.18 KEY PERSONNEL (clause 8.3)

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.

3.19 PRICE AND PAYMENT (clause 9)

In this item, specify the maximum total Price to be payable or refer to *Schedule 1 – Price and Payment Terms*.

Price is defined to mean the price/s in the Details or *Schedule 1 – Price and Payment Terms* or calculated using a calculation method in the Details or Schedule 1.

Under clause 9, the default position is that Price includes all charges, expenses and overheads, and taxes and duties, except GST, unless otherwise stated in Schedule 1.

3.20 CAP ON LIABILITY (clauses 12 and 13)

In this item, it will be necessary to specify:

- the Supplier's general liability cap for the purposes of clause 12(c); and
- the Supplier's liability cap for loss of or damage to Customer Data in the Supplier's provision of the As a Service, for the purposes of clause 13.

The Customer's liability cap, for the purposes of clause 12(d), will also need to be specified in this item.

See Part B of the TTCC User Guide for guidance on Liability Caps.

3.21 INTELLECTUAL PROPERTY RIGHT IN PRE-EXISTING MATERIALS (clause 15.1)

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

If a Customer wants to:

- use the Pre-Existing Material for purposes 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 Pre-Existing Material; or
- sub-licence its rights in the Pre-Existing Material to an entity other than an Agency or a contractor described in clause 15.1(c)(ii)(B),

this should be specified in the Details.

Also, if a Customer's right to sub-licence to entities under clause 15.1(c) will be at a cost, this should be specified in this item. 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.

It is possible that a Deliverable (e.g. a procedures document) may incorporate Pre-Existing 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.

3.22 INTELLECTUAL PROPERTY RIGHTS IN NEW MATERIAL (clauses 15.2 and 15.3)

See Part B of the TTCC User Guide for guidance on which party should own IPR in any New Material.

The General 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 in this item. For example, IPR in document A will be owned by the Customer but IPR in document B will be owned by the Supplier.

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 could include:

- Documentation under clause 5.3; and
- any Developed Software and Design Specifications.

It is possible that a Deliverable (e.g. a procedures document) 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 purposes 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 an agency or a contractor described in clause 12.3(c)(ii)(D).

If so, this will need to be specified in this item.

Note that under clause 5.5(d), if the Supplier owns the IPR in New Material in the Developed Software, the Developed Software will be treated as Licensed Software.

If a Customer's right to sub-licence to the entities in clause 15.3(c) will be at an additional cost, that cost should be specified here. If it is to be at no cost, specify "Not Applicable".

3.23 INTELLECTUAL PROPERTY RIGHTS IN THIRD PARTY MATERIALS (clause 15.4)

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 the 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”.

While 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 15.4(a). 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 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.

3.24 CUSTOMER DATA (clause 16)

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

- 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
- 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 16 sets out the Supplier’s obligations with respect to Customer Data. Under clause 16(d), for Customer Data that is Metadata but not Personal Information:

- 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
- 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 17 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 17) and Privacy (clause 18), among others.

3.25 CONFIDENTIAL PROVISIONS (clause 17(d))

If no confidential provisions have been approved by the Accountable Authority in accordance with TI C-1 *Disclosure and confidentiality in government contracting*, then the sentence stating this should be used.

If any content in the Contract has been approved by the Accountable Authority as confidential in accordance with TI C-1, then the sentence to this effect should be used and the relevant provisions listed.

3.26 CONFIDENTIALITY AND PRIVACY DEED (clause 17g)

You 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 and privacy deed. In the case of the Supplier, 'Personnel' is defined to include the Subcontractor's officers, directors, employees and agents.

It is not necessary for the Supplier to sign a deed as it will be contractually bound to comply with obligations in relation to confidentiality and privacy in the Contract itself. See *Schedule 4 - Confidentiality, Privacy and Conflicts of Interest Deed* which has been developed for use with the Comprehensive Conditions and which would need modification for use in a General Contract.

3.27 CONFLICT OF INTEREST (clause 19.2)

In this item, the Supplier will need to insert any details of any Conflict of Interest which it is required to declare under clause 19.

Clause 19.2 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 19.2(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 conflicts of interest deed (see the *Schedule 4 - Confidentiality, Privacy and Conflicts of Interest Deed* template designed for use with the Comprehensive Conditions and which would need to be modified for use in a General Contract), 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 25 of the Details.

3.28 TERMINATION FOR CONVENIENCE (clause 21.3)

Under clause 21.3(b), 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:

- the Supplier's reasonable and documented expenses incurred directly relating to the termination (clause 21.3(b)(ii)(A)); or
- any amount specified in the Details (clause 21.3(b)(ii)(B)).

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 you 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).

3.29 BUSINESS HOURS (clause 24.1)

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

3.30 DESIGNATED ENVIRONMENT (clause 24.1)

The Designated Environment is defined in the General 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 which relate to the Designated Environment.

- For Hardware, the Designated Environment is relevant to clause 5.1(h)(ii), in which 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 Documentation.
- For Licensed Software, Designated Environment is relevant to:
 - clause 5.3(a)(ii) – under which 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 5.3(g)(ii) – under which the Supplier must install the Licensed Software on the Designated Environment, if required by the Customer; and
 - clause 5.3(k)(ii) – under which 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 when used in accordance with the Documentation.
- For Developed Software, Designated Environment is relevant to
 - clause 5.5(c)(ii) – under which the Supplier must, if specified in the Details, install the Developed Software on the Designated Environment in accordance with the requirements set out in the Details; and
 - clause 5.5(f)(ii) – under which 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 Documentation.

4. Hardware

4.1 HARDWARE (clause 5.1)

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 (clause 5.1(d))

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

4.2 REQUIREMENTS

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.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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.

4.3 DELIVERY REQUIREMENTS (clause 5.1(a))

In this item, it is necessary to specify:

- the Site/s;
- the Delivery Date and any time (if applicable) by which the Hardware must be delivered to the Site; and
- 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.

4.4 TITLE (clause 5.1(f))

Clause 5.1(e) and (f) deal with the passing of risk and title separately.

Clause 5.1(e) stipulates that risk transfers to the Customer when the Hardware is delivered to the Site in accordance with the Details 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 5.1(f) 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.

4.5 INSTALLATION REQUIREMENTS (clause 5.1(c))

Hardware installation requirements will need to be specified here.

4.6 ANCILLARY SERVICES (clause 5.1(g))

Ancillary Services could include additional services such as training or tailored support. Note, however, that Hardware Maintenance Services in clause 5.2 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 clause 5.7 (ICT Professional Services), rather than in this item, to ensure that the Customer obtains the benefit of that clause, including the warranties and defect rectification obligations, in relation to those services.

4.7 WARRANTY PERIOD

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 clause 5.2.

Each item of Hardware can have a different Warranty Period.

The Warranty Period is relevant to a number of provisions in the General Contract.

- Under clause 5.1(h), the Supplier must warrant that the Hardware will, during the Warranty Period:
 - comply with and perform in accordance with the Requirements
 - be compatible and inter-operate with, and not detrimentally affect the operation or performance of, the Designated Environment, when used in accordance with the Documentation.
- Clause 5.1(j) imposes a number of Defect rectification obligations on the Supplier during the Warranty Period.

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

5. Hardware Maintenance Services

5.1 SUPPORTED HARDWARE

In this item, describe the hardware to be supported. The Supported Hardware may or may not be Hardware supplied under clause 5.1.

5.2 REQUIREMENTS

In this item, specify or annex a detailed description of the Hardware Maintenance Services.

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, there is no certainty as to the scope of the services. If the Supplier fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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 Maintenance Services and how it is to operate.

5.3 MAINTENANCE PERIOD (clause 5.2(a))

Start 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 General Information in the Details. However, if additional Products and/or Services will be procured under a different clause, the Term start and end dates for the Contract in item 7 may be different.

5.4 REPLACEMENT PARTS (clauses 5.2(c) and 5.2(f))

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 5.2(f)(ii) 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.

5.5 GENERAL SUPPORT (clause 5.2(d))

In this item, set out the general support services to be provided by the Supplier in relation to operating or using the Hardware. 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 8 below.

The Customer could 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.

5.6 PREVENTATIVE MAINTENANCE SERVICES (clause 5.2(e))

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.

If the description is set out in this item, it will, as a result of clause 1.3(c), be given the third highest priority if there is an inconsistency with terms in other documents which are lower

in the hierarchy. If 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).

5.7 REMEDIAL MAINTENANCE (clause 5.2(f))

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 third highest in the contractual hierarchy pursuant to clause 1.3(c) if there is an inconsistency with terms in other documents which are lower in the hierarchy. If the description of the remedial maintenance is 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).

5.8 SERVICE LEVELS (clause 5.2(g))

The Service Levels can be set out here, or in another document (see *Schedule 8 – Service Levels* which has been developed for use with the Comprehensive Conditions and which would need modification for a General Contract).

The Customer should stipulate in this item the frequency in which the Supplier must report on its performance against the Service Levels.

5.9 SERVICE CREDITS (clause 5.2(h))

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Credits can be set out here 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 5.2(h) 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 this item. 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.

6. Licensed Software

6.1 LICENSED SOFTWARE

Licensed Software is defined to include (as applicable):

- 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
- Developed Software, where the Details specify the Supplier will own the Intellectual Property Rights in that 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.

6.2 REQUIREMENTS

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.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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 Specification should only contain information which describes the functional, operational and technical and performance specifications for the Licensed Software.

6.3 LICENCE PERIOD (clause 5.3(b))

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 General Information in the Details. It will depend on whether the Customer is procuring other types of Products and/or Services in the Contract.

6.4 USE OF LICENSED SOFTWARE (clause 5.3(a)(i))

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 5.3(a)(i). Any public access or use of the Licensed Software should be described here.

6.5 CLASS OF LICENCE (clause 5.3(a)(i))

A Customer's licence to the Licensed Software is governed by clause 5.3, rather than clause 15 which deals with Intellectual Property Rights in Pre-Existing, New Material and Third Party Material.

'Class of Licence' is defined 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 also check that the rights specified are not limited by the details set out in item 1 (Licensed Software), item 6 (Sublicensing) and item 7 (Additional licence conditions and restrictions).

6.6 SUBLICENSING (clause 5.3(c))

The Customer's licence to the Licensed Software, including its rights to sublicense the Licensed Software, is governed by clause 5.3(c), rather than clause 15 which deals with Intellectual Property Rights in Pre-Existing Material, New Material and Third Party Material.

Under clause 5.3(c), 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 that clause;
- 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, 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".

6.7 ADDITIONAL LICENCE CONDITIONS AND RESTRICTIONS (clause 5.3(e))

Clause 5.3(d) 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 the Contract 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 elsewhere in the Contract or by applicable Law).

Under clause 5.3(e), the Customer must comply with additional licence conditions and restrictions on the Licensed Software's use which are specified in this item. 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".

6.8 COPIES OF LICENSED SOFTWARE TO BE PROVIDED BY SUPPLIER (clause 5.3(f))

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 5.3(f).

6.9 DELIVERY AND INSTALLATION REQUIREMENTS (clause 5.3(g))

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.

6.10 UPDATES AND NEW RELEASES (clause 5.3(h))

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.

6.11 ANCILLARY SERVICES (clause 5.3(i))

The ancillary services may include additional services such as design services or 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 clause 5.7 (ICT Professional Services), rather than in this item, to ensure that the Customer obtains the benefit of the terms of that clause, including the warranties and defect rectification obligations, in relation to those services.

6.12 WARRANTY PERIOD (clause 5.3(k))

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 General Conditions.

- Clause 5.3(k) 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; 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 Documentation.
- Clause 5.3(l) imposes a number of Defect rectification obligations on the Supplier in relation to the Licensed Software during the Warranty Period only.

7. Software Support Services

7.1 SUPPORTED SOFTWARE

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

7.2 REQUIREMENTS

In this item, insert or annex a detailed description of the Software Support Services. This may overlap with the information in item 4.

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, there is no certainty as to the scope of the services. If the Supplier fails to perform as expected, it may be difficult for the Customer to assess whether the Supplier has complied with its performance obligations.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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 Software Support Services and how it is to operate.

7.3 SUPPORT PERIOD (clause 5.4(a))

The start and end of the Support Period may or may not align with the Term start and end date for the Contract in item 7 of the General Information in the Details. It depends on whether the Customer is also procuring other types of Products and/or Services under the Contract.

7.4 GENERAL SUPPORT (clause 5.4(b))

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 5 below.

The Customer may 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.

7.5 UPDATES AND NEW RELEASES (clause 5.4(d))

In this item, specify if Updates and New Releases will need to be provided to the Customer in accordance with clause 5.4(d) or otherwise, and whether training is to be provided by the Supplier in respect of any Updates or New Releases.

7.6 SERVICE LEVELS (clause 5.4(f))

Service Levels

In this item, specify the Service Levels, including the severity levels and descriptions, response times and resolution times. This can be set out here or reference could be made to a 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 this item. 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

This item should also specify the frequency in which the Supplier must provide a report to the Customer of 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.

7.7 SERVICE CREDITS (clause 5.4(g))

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Credits should be set out here, 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 5.4(g) 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 Details. 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.

8. Developed Software

8.1 DEVELOPED SOFTWARE AND DESIGN SPECIFICATION

Developed Software

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

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.

See the TTCC User Guide for guidance on Intellectual Property Rights.

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.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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

'Design Specification' is described in clause 5.5 as a detailed specification which provides a technical explanation of how the functions in the Requirements for the Developed Software will be met.

If the Design Specification is approved by the Customer under clause 5.5(b), 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.

See the TTCC User Guide for guidance on Intellectual Property Rights.

8.2 DELIVERY DATES (clauses 5.5(a) and 5.5(c))

Design Specification and Developed Software

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.

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).

8.3 DELIVERY AND INSTALLATION REQUIREMENTS (clause 5.5(c))

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.

8.4 ANCILLARY SERVICES (clause 5.5(e))

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 clause 5.7 (ICT Professional Services), rather than in this item, to ensure that the Customer obtains the benefit of the terms of that clause, including the warranty and defect rectification obligations, in relation to the services.

8.5 WARRANTY PERIOD (clause 5.5(f))

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 General Conditions contain a number of references to the Warranty Period:

- Clause 5.5(f) requires the Supplier to warrant that the Developed Software will, during the Warranty Period, comply with and perform in accordance with the Requirements.
- Clause 5.5(g) imposes a number of Defect rectification obligations on the Supplier during the Warranty Period.

9. As a Service

9.1 SUBSCRIPTION PERIOD (clause 5.6(a))

Start of Subscription Period

In this item, set out the date that the Subscription Period will commence. The Subscription Period is the defined term used to describe the period during which the Customer is provided access to the As a Service.

TI PP-3 includes a number of requirements related to the use and management of TTCC contracts that include subscription periods, automatic renewals or “roll-overs”. You should ensure your agency complies with these requirements.

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 period which the Customer is using the As a Service.

Non-Renewal Notice Period

Under clause 5.6(a), 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.

9.2 DESCRIPTION OF AS A SERVICE

In item 2, specify the type of As a Service being provided by the Supplier. This may be Software as a Service, Infrastructure as a Service, Platform as a Service or some other form.

The General Conditions 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 Details.
- 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 Details.

- 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 Details.

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
 - 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.

9.3 REQUIREMENTS (clause 5.6(b))

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.

You 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 General Conditions.

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

If you wish to ensure that the Specifications are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

If the Customer will rely on the Supplier's Specifications for the As a Service, it is important that you carefully review the Specifications to ensure they describe all the features and functionality of the As a Service. You should also review the Specifications 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.

9.4 MINIMUM SYSTEM REQUIREMENTS AND USAGE REQUIREMENTS (clause 5.6(c))

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 required to access and use 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, or eligible user details.

9.5 INFRASTRUCTURE (clause 5.6(b))

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 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 the 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 General Conditions, and clause 8 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.

9.6 AS A SERVICE LOCATION (Clause 5.6(d))

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:

- 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
- 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.

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 18(c)(iii)(A).

Clause 18(c)(iii)(A) 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 18(c)(iii) before transferring Personal Information outside of Australia. This means the Supplier will need to obtain the Customer's prior written consent.

You will need to consider the requirements of any other policies related to data storage and cybersecurity. This includes the policies managed by the Digital Strategy and Services Division of the Department of Premier and Cabinet.

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

9.7 CUSTOMER DATA (clause 5.6(e))

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 the format (e.g. .CSV) must be specified here.

The Customer will need to ensure that it complies with applicable legislation and policy, including the *Archives Act 1983* (Tas) in relation to the management and disposal of public records.

Tools and mechanisms to access and monitor Customer Data

Under clause 5.6(e)(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 Details. 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 secure erasure of Customer Data

In this item specify if, after returning Customer Data or allowing the Customer to extract the Customer Data, the Supplier is required not to destroy or securely erase all Customer Data. The default position is that all Customer Data is to be destroyed or securely erased.

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

9.8 SECURITY (clause 5.6(f))

Clause 5.6(f) 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 which are industry standard for products and services similar to the As a Service and as otherwise specified in the Details.

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).

9.9 GENERAL SUPPORT (clause 5.6(g))

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 10 below.

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;
- the help desk's hours of service; and
- any other requirements.

9.10 SERVICE LEVELS (clause 5.6(j))

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 will apply and if so, specify the severity levels and descriptions, response times and resolution times.

If the Service Levels are set out in another document, that document should be referred to here and attached to the Contract (see the *Schedule 8 – Service Levels* document developed for the Comprehensive Conditions and which would need modification for a General Contract).

The Supplier may seek to attach its standard service level agreement. If so, 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 5.6(l)(vi) provides that the Details may specify whether there are any other circumstances where the Supplier is not required to meet the Service Levels. Clause 5.6(l) 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 5.6(l) specify these in this item. These exclusions may also be set out in 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.

9.11 SERVICE CREDITS (clause 5.6(k))

Service Credits are the amounts payable if the Supplier does not meet the Service Levels. The Service Credits can be set out here or referred to in another document which is annexed to the Contract (see *Schedule 8 – Service Levels* which has been developed for use with the Comprehensive Conditions and would need modification for a General 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 5.6(k) 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 Details. 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.

10. ICT Professional Services

This module should be used for procurements that have been conducted from the Tasmanian Government Technology Services multi-use List.

10.1 ICT PROFESSIONAL SERVICES

Description of ICT Professional Services

The information, communications or technology related services which may be procured could include:

- strategy advice
- writing reports
- reviews or quality assurance activities
- change management services
- project management services
- knowledge transfer 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.

You can either incorporate description of the ICT Professional Services and the Deliverables in this item or refer to an annexed document which contains the description of the ICT Professional Services and the Deliverables.

How the description of the ICT Professional Services and the Deliverables are incorporated will affect the priority which they are given under the contractual hierarchy in clause 1.3 of the General Conditions.

If the description of the ICT Professional Services and the Deliverables are incorporated in this item, they will be third highest in the contractual hierarchy pursuant to clause 1.3(c) and the terms will prevail over any term in a Contract document lower in the hierarchy to the extent of any inconsistency. If the description of the ICT Professional Services and the Deliverables are referred to in an annexed document, they will be lower in the contractual hierarchy.

If you wish to ensure that the description of the ICT Professional Services and the Deliverables are given the highest possible priority in the contractual hierarchy, they should be set out in full in this item.

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 Specifications should only contain information which describes the ICT Professional Services and the Deliverables to be supplied.

10.2 SERVICE PERIOD (clause 5.7(a))

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 General Information in the Details. However, if different types of Products and/or Services will also be procured under the Contract, the Term start and end dates in item 7 of the General Information in the Details may be different.

10.3 DELIVERY DATE (clause 5.7(b)(ii))

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 5.7(d)(i)(A).

10.4 PROFESSIONAL STANDARDS (clause 5.7(b)(iii))

In this item, specify any professional standards which apply to the performance of the ICT Professional Services.

10.5 NOTIFICATION PERIOD (clause 5.7(e)(ii))

Where the supply of the service does not involve the supply of specific Deliverables, clause 5.7(e)(ii) provides that 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.

10.6 WARRANTY PERIOD (clause 5.7(d) and (e))

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 during 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.

Clause 5.7(d)(ii) requires the Supplier to warrant, among other things that, during the Warranty Period, the Deliverables provided under clause 5.7 will comply with the Requirements. This would include any Requirements specified in item 1. In addition, clause 5.7(e) imposes a number of Defect rectification obligations on the Supplier during the Warranty Period.

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