SourceIT Plus Model Contract

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SourceIT Plus Model Contract

Introduction

Using these notes

These user notes contain a guide to completing the various Schedules of SourceIT Plus.

The explanations in these user notes appear in the same order in which the items and Schedules appear in the model Contract. Capitalised words in these user notes refer to defined terms in the model Contract.

Further advice, additional to that contained in these user notes, can be obtained from the department of finance by email to ictprocurement@finance.gov.au or through the help desk on (02) 6215 1597. Advice can also be sought from your legal or procurement adviser and should be sought on issues particularly relevant to your organisation.

Using the correct version

The most recent version of the SourceIT Plus Contracting framework is available at the SourceIT website. Only the most recent version of the model Contract should be used. Finance advises against modifying or using a modified version of the model Contract without consulting your legal or procurement adviser. To ensure users have the most up-to-date version of the Contracting framework, finance recommends users download the model Contract from the website each time such a Contract is required.

Purpose and structure of the Schedules

Purpose

The purpose of the Schedules to a Contract is to set out the specific requirements for the procurement. The SourceIT Plus terms and conditions (the terms and conditions) have been drafted to be used with minimal or no alteration for the majority of procurements, with any variations to the default positions to be set out in the Schedules. This design allows procurement officers and suppliers to focus on the requirements specific to their particular project rather than the standard terms and conditions.

Priority

The order of priority of the documents which comprise a Contract is set out in clause 4 of the terms and conditions.

Title Page of Contract

On the front page of the SourceIT Plus Contract you will be requested to fill in the Customer name, Contractor name and the title of your Contract, this should be a brief description of the Products and/or Services being purchased through the arrangement. The user will also need to insert a Contract number (usually generated by your finance system). This is for the user’s reference.
Guidance on completing the general items of the Contract Details

Contractor Details

Item 1. Contractor Details (CLAUSE 1.1 AND 22.1)

Insert the name of the Contractor whom will be providing the Products and/or Services.

Insert the Contractor address, this will be the address used for notifications as described in clause 22.1 of the terms and conditions.

Contractor means the party so specified in Item 1 and includes authorised employees, agents and subcontractors of the Contractor.

Insert the Contractors Australian Companies Number (ACN) and Australian Business Number (ABN). These numbers should have been supplied by the Contractor and can be checked via the ABN lookup function on the ASIC website http://abr.business.gov.au/

Item 2. Contractor Representative (CLAUSE 1.1)

Insert the full name of the Contract representative for the Contractor; this will be the person to whom notifications under the Contract are addressed.

Customer Details

Item 3. Customer Details (CLAUSE 1.1 AND 22.1)

Insert the name of the Customer whom will be receiving the Products and/or Services.

Insert the Customer address, this will be the address used for notifications as described in clause 22.1 of the terms and conditions.

Customer means the party so specified in Item 4 and includes any successor body, whether created by machinery-of-government change, legislation or otherwise.

Insert the Customer’s Australian Companies Number (ACN) (if applicable) and Australian Business Number (ABN).

Item 4. Customer Representative (CLAUSE 1.1)

Insert the full name of the Customer representative; this will be the person to whom notifications under the Contract are addressed for the Customer.
Contract Dates

Item 5. **Commencement Date**  
(CLAUSE 3.1)  
Insert a Commencement Date for the Contract (3.1); the Commencement Date may be the date of signing the Contract and in some cases, it may be a date before or after the execution date.

Item 6. **Business Hours**  
(CLAUSE 1.1)  
Business Hours are defined in the terms and conditions as 8am to 6pm on Business Days. If the Business Hours for this Contract are to be different the details will need to be inserted in this item otherwise the user can insert "N/A".

Item 7. **Initial Contract Period**  
(CLAUSE 1.1)  
Insert the initial Contract period (1.1); the initial Contract period might simply be until completion of both parties' obligations or a specific end date.

Item 8. **Option Period**  
(CLAUSE 3.2)  
Insert extension option details (3.2); in the case of some Services, it may be appropriate to contemplate an extension option for a fixed term. For example, managed Services may be contracted for a two-year period with an option of a further one-year period.

Meeting & Reporting

Item 9. **Meeting and Reporting**  
(CLAUSE 6(C))  
The user will need to specify the frequency on which the parties will need to conduct meetings and when reports will be expected from or provided to the Contractor (6(c)).

Transition In

Item 10. **Transition-in Plan Required**  
(CLAUSE 7(A))  
In this section the Customer needs to state whether or not a transition-in plan is required to be provided by the Contractor. The transition in plan should (substantially) take the form of that in Schedule 5.
Specific Responsibilities of the Contractor

Item 11. **Contractor Obligations to Establish and Maintain Facilities**  
(CLAUSE 8.2(A))  
In accordance with the terms and conditions the Contractor is required to establish and maintain all necessary facilities for the effective conduct and management of its responsibilities (8.2(a)).

If the Customer has any specific requirement differing from the above it should state so here or otherwise insert “N/A”.

Item 12. **Requirement to make available the Contractor’s Records**  
(CLAUSE 8.2(B))  
In accordance with the terms and conditions the Contractor is required to record any material changes in relevant facilities or procedures and make this record available to the Customer on request (8.2(b)).

If the Customer has any specific requirement differing from the above it should state so here or otherwise insert “N/A”. For example, the Customer may wish to insert a timeframe in which it expects records to be made available.

Item 13. **Extent that the Contractor is to act as the Customer’s Agent**  
(CLAUSE 8.3)  
The Contract does not create a relationship of employment, Agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being able to bind or represent the other party. If the Customer wishes to have the Contractor act as an agent then the Customer will need to specify in this item the extent to which the Contractor can/will do so.

Item 14. **Requirement to provide Training**  
(CLAUSE 8.5)  
The Customer can request that training is provided as a service under this Contract. The time, length and subject of training will need to be agreed by both parties as charges will be specified in Schedule 3 - Charges.
Insurance Requirements

As insurance is a method of managing risk under a Contract, it is important for Customers to set appropriate levels of insurance for each Contract. The level of insurance required should be based on an assessment of the risk involved with the procurement. It is good practice for the Customer, prior to executing the Contract, to request and review certificates of currency for the insurance policies held by the Contractor.

The parties must specify the amounts of the insurances in the following items of the Contract details; minimum insurance amounts should be detailed against items 15-17. If any insurance is required additional to the listed types then details of the additional requirements should be specified in item 18.

Item 15. Public Liability Insurance  
(CLAUSE 8.11(A)(I))

Item 16. Professional Indemnity Insurance  
(CLAUSE 8.11(A)(II))

Item 17. Product Liability Insurance  
(CLAUSE 8.11(A)(III))

Item 18. Additional Insurance  
(CLAUSE 8.11(A)(IV))

Privacy & Records

Item 19. Specific privacy policies and procedures  
(CLAUSE 8.13(C))

The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act 1988 to the extent relevant to this Contract. The Contractor also agrees to comply with other Commonwealth, state or territory legislation related to privacy which is relevant to this Contract and any directions made by a privacy commissioner relevant to this Contract.

If the Customer deems there are additional policies or procedures that need to be followed by the Contractor in delivering Products and/or Services under this Contract, these additional requirements should be detailed in this item.

Security

Item 20. Additional Security Requirements  
(CLAUSE 9.1(B) AND 9.1(C))

The Contract terms and conditions define the security requirements that must be adhered to including compliance with the Protective Security Policy Framework (PSPF).

If the Customer has additional protective security policies and procedures under the PSPF, these need to be specified in this item along with any additional security requirements of the Customer.
Item 21. **Security Clearance**  
(CLause 9.4(A) AND 9.4(B))  
Under the terms and conditions of the SourceIT Plus Contract it is the responsibility of the Contractor to pay the cost of the security clearances of its personnel and any subcontractors. If the Customer deems that it should be another party's responsibility to pay for the clearances, then the alternative arrangement should be specified in this item.

Specific Responsibilities of the Customer

Item 22. **Special Requirements for a correctly rendered invoice**  
(CLause 10.2(E)(IV))  
If your agency has special requirements for invoices to be deemed correctly rendered these requirements must be listed in this item.

Item 23. **Resources to be provided by the Customer**  
(CLause 10.3)  
If the Customer is to provide resources to assist the Contractor in delivering the Products and/or Services under this Contract, then those resources should be listed in this item.

Examples of supplied resources could include ICT equipment, access to staff resources or physical workspaces.

Item 24. **Customer’s obligations to establish and maintain facilities**  
(CLause 10.4)  
If the Customer is to establish and/or maintain facilities (including items of equipment and software) in regards to this Contract, the specifications and standards that these facilities will meet needs to be described here in this item.

If the Customer is not required to establish or maintain facilitates then this item can be left blank or insert "N/A".

Item 25. **Site preparation requirements**  
(CLause 10.5)  
If the Customer is to be responsible for preparation of the site to enable delivery and implementation of a product and/or the performance of a service, then the details of what preparation will be required should be specified here in this item.

If no site preparation is required then this item can be left blank or insert "N/A".

Item 26. **Details of the Contractor’s access rights to the Customer’s Premises**  
(CLause 10.6)  
If the Customer is to ensure access to its premises to enable the Contractor to fulfil its obligations under the Contract, details regarding the access must be specified in this item. Details should include any restrictions on access and could even provide examples of actions that may result in a suspension of access.

If access is not required then this item can be left blank or insert "N/A".
Licences & Warranties

Item 27. Applicable third party warranties
(CLAUSE 12.1(A))
Sometimes the Contractor will supply Products owned by a third party and these may be accompanied by a third party warranty. Clause 12.1 requires that the Contractor warrant compliance by the product with the third party warranty. It is therefore necessary to include particulars of what those third party warranties may be. Specify in this item any applicable third party warranties.

Item 28. Licences to be granted to the Customer
(CLAUSE 12.1(D))
In this item, all licences that need to be granted to the Customer need to be listed. This should include details such as; term of licence, quantity, permission to transfer licence etc. If licensing does not apply to this particular Contract then this item can be left blank or insert “N/A”.

Item 29. Warranty period
(CLAUSE 12.2(A) AND 12.2(B))
The Contract details will also contain details of the warranty period applicable to a product. Note that there is a default provision of a 90 day warranty period following Acceptance (or if there is no Acceptance procedure, 90 days following supply) of a product. If a warranty period other than 90 days is required, that period should be inserted at this item.

Personnel

Item 30. Names of Specified Personnel and Their Role
(CLAUSE 14.3(A)(I))
Sometimes the Customer will require 'key personnel' to be named. These are employees or subcontractors of the Contractor that the Customer seeks to have personally involved in the provision of Services. The replacement of such personnel requires the express consent of the Customer. It will generally not be practicable for a Customer to insist upon the personal involvement of an individual for the duration of the Contract, as the Contractor cannot offer a guarantee against unavailability, for example due to sickness or retirement.

If specified personnel are to be named for the provision of Products and/or Services under this Contract then those specified personnel should be named in this item.

Item 31. Subcontractors deemed approved
(CLAUSE 14.4(A))
Subcontractors that are approved to participate in the provision of Products and/or Services need to be listed in this item.
Non-Disclosure & Use of Information

Item 32. **Time limit on retention of confidence**  
(CLAUSE 15.1(B)(V))  
If it is suitable to set a time limit after which confidential information is no longer required to be kept as confidential, then that time limit should be specified here in this item.

Item 33. **Prohibitions on certain factual disclosures**  
(CLAUSE 15.3)  
Unless expressly prohibited in this item the Contractor may include the Customer's name and a factual description of the work performed under this Contract. This item allows the parties to agree that this information is not to be disclosed.

Intellectual Property

Item 34. **Ownership Model for Intellectual Property Rights in Contract Material**  
(CLAUSE 17.3 (A) AND 17.3(B) AND 17.5 AND 17.6)  
Three models for ownership of intellectual property rights in Contract material are set out below.

Under the first model the Contractor owns the intellectual property rights in the developed software, associated documentation and associated tools (DCS material) and the Customer owns the intellectual property rights in the remaining Contract material. Accordingly the Contractor provides a licence to the Customer to use the DCS material, and the Customer provides a licence to the Contractor to use the remaining Contract material.

Under the second model, the Customer owns the intellectual property rights in all of the Contract material and provides a licence to the Contractor to use the Contract material.

Under the third model, the Contractor owns the intellectual property rights in all of the Contract material and provides a licence to the Customer to use the Contract material.

Users are to select a model through the Contract details. **If no model is selected, the first model will apply.** The first model is not, however, intended to represent a default position. The Customer should, therefore, not rely on the position set out in the first model without conducting an IP needs analysis and considering the appropriateness of all ownership models and whether other ownership and licensing models would be more suitable.

Principle 8(a) of the statement of IP principles requires Non-Corporate Commonwealth Entities under the PGPA Act to accept the Contractor having ownership of intellectual property rights in developed software, unless exceptional circumstances apply. The first and third models reflect this requirement. If there is an exceptional reason for the Commonwealth to own the intellectual property rights in the developed
software the second model can be used. Guidance on what may be considered exceptional circumstances is available at


Indemnity

Item 35. Contractor’s Indemnity obligations
(CLAUSE 18.1)
The terms and conditions of the Contract state that the Contractor will indemnify the Customer and its personnel in certain scenarios. If this is insufficient or if this obligation needs to be waived in certain scenarios then these changes need to be specified here in this item.

Problem Resolution

Item 36. Selection of a mediator
(CLAUSE 19.3)
The terms and conditions provide for the appointment of a mediator as part of the dispute resolution process. The Contract details (this item) should either record the names of specific individuals who will exercise these roles or, alternatively, the process whereby such individuals will be appointed (e.g. to be appointed by the president of a Law association or dispute resolution body).

Item 37. Selection of an expert for determination
(CLAUSE 19.4)
As above, the terms and conditions provide for the appointment of an expert determinator as part of the dispute resolution process. The Contract details (this item) should either record the names of specific individuals who will exercise these roles or, alternatively, the process whereby such individuals will be appointed (e.g. to be appointed by the president of a Law association or dispute resolution body).

Liability

Item 38. Whether Liability will be limited and if so, the amount to which it is limited
(CLAUSE 20.1 (A) AND 20.2)
Where a limit or cap on liability is appropriate, Customers are encouraged to conduct an assessment of the risks involved with the Contract. Limiting liability restricts the extent to which the supplier will be liable for damages in the event that it infringes the Contract. However, limiting liability allows the supplier to estimate its maximum exposure and this may result in a more favourable Contract price.

The amount of the liability cap is often quantified as a multiple of the Contract value. In this regard, it is more precise to specify a dollar figure than to simply stipulate x times the Contract value.
The user should specify in this item the dollar amount that liability is capped at, or if a dollar amount is not practical then the method for calculating the liability cap (i.e. 1x Contract value).

Users should also avail themselves of the guidance provided by finance in regards to limiting liability in ICT Contracts;

*Finance Circular 2006/03 Limited Liability in Information and Communications Technology Contracts* and the accompanying *Guide to limiting supplier liability in ICT Contracts*;

**Item 39. Whether any limitation on liability is for each single occurrence or for a series of related occurrences**

(CLAUSE 20.1(C))

The liability cap may be expressed as applying on a per occurrence or aggregate basis. Per occurrence means that the Customer can claim damages up to the stipulated cap on each and every occasion, whereas aggregate means that the Customer has no further entitlement to damages once all claims in total reach the level of the cap. Obviously a per occurrence cap is less attractive to Contractors.

Sometimes liability for direct damages is treated differently from liability for indirect (or ‘consequential’) damages. Sometimes, for example, Contractors seek to cap liability in relation to direct losses whilst totally excluding liability in relation to consequential losses. It should be emphasized that the commonly used expression ‘consequential losses’ is legally ambiguous and therefore, in order to ensure enforceability, a party seeking to exclude damages of this nature should stipulate the precise types of loss (e.g. Loss of profit, loss of revenue, loss of opportunity) which it is intending to exclude from any award of damages. This is an issue which must be considered on a case by case basis and in respect of which it may be appropriate to seek legal guidance.

**Communication**

**Item 40. Deemed Service of Notice**

(CLAUSE 22.3)

Clause 21.3 sets out circumstances in which a notice will be deemed to have been received (e.g., three days after being posted to an address within Australia). If the parties wish to vary these provisions, particulars should be included in this item.

**General**

**Item 41. Permissible period for non performance**

(CLAUSE 33.3(C))

The terms and conditions describe, in clause 33.3(c), what constitutes an unforeseen event. In the event of an unforeseen event, the affected party is excused from performing its duties under the Contract. In this item it is possible to specify a period for which this non performance is acceptable without either party gaining the ability to terminate the Contract based on this non-performance. If no new period is specified in this item then the default period of thirty (30) days will be used as specified in the terms and conditions.
Item 42. **Law which governs the Contract**  
*(Clause 33.10)*  
In accordance with the terms and conditions of the Contract (by default) is governed by the Law of the Australian Capital Territory. If another Law is more appropriate it should be specified here in this item.

**Disengagement**

Item 43. **Disengagement Plan required**  
*(Clause 24(A))*  
If the Contractor is required to provide a disengagement plan then the user should specify in this item the timeframe for delivery of the plan to the Customer. This could be a specific date or a period post execution (i.e. within three months of Contract execution or within 1 month of the Commencement Date).

Item 44. **Specified Assistance**  
*(Clause 24(B))*  
If required, the Contractor must provide assistance to the Customer on termination or expiration of this Contract. This assistance includes the following provisions:

1. Transferring or providing access to the Customer to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and

2. Making specified personnel and Contractor personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer, provided that any matter discussed is not considered to reveal any confidential information of the Contractor.

If the above is a requirement for this Contract this needs be specified in this item.
Completing the category specific terms of the Contract Details

Consultancy Services

Item 45.  **Brief Summary of Consultancy Services**  
      (CLAUSE 25)  
      In this item the user should insert brief summary of the service to be provided, if consultancy Services are not to be supplied under this Contract the user leave this item blank or insert “N/A”.

Item 46.  **Resources Required for Consultancy Services**  
      (CLAUSE 25.1(B))  
      In this item the user will need to specify any resources required to be provided to support the delivery of the above consultancy service including which party is to provide the resource (e.g. ‘the Contractor is to provide software for testing performance, the Customer is to provide hardware on which to run the software’).

Item 47.  **Documentation Requirements for Consultancy Services**  
      (CLAUSE 25.2(D))  
      In this item the user will need to specify any corresponding documentation required from the Contractor and the timeframes for provision of documentation. This should include electronic records.

Managed Services

Item 48.  **Brief Summary of Managed Services**  
      (CLAUSE 26)  
      In this item the user should insert brief summary of the service to be provided, if managed Services are not to be supplied under this Contract the user leave this item blank or insert “N/A”.

Item 49.  **Service Commencement Date for Managed Services**  
      (CLAUSE 26.1(A))  
      The Contractor agrees to commence the managed Services on the service Commencement Date specified. The Commencement Date may be the date of signing the Contract and in some cases; it may be a date before or after the execution date.

Item 50.  **Service Delivery Requirements for Managed Services**  
      (CLAUSE 26.2(A)(I))  
      The Contractor agrees to meet the service level required as set out in this item, if the user intends to set these out separately in Schedule 7 service level agreement, then this should be specified here. Otherwise, the user will need to input any particular service levels that must be met by the Contractor in the delivery of the managed service under this Contract.
Item 51.  **Reporting Intervals for Managed Services**  
*(CLAUSE 26.2(A)(II))*

The Contractor is required under the terms and conditions to report at regular intervals. Any specific reporting requirements relating to the supply of managed Services under this Contract should be entered here in this item or alternately the user can reference the statement of work which should include reporting requirements, or, the user can attach an example of the required format as an appendix to this Schedule.

**Hardware**

Item 52.  **Brief Summary of Hardware Required**  
*(CLAUSE 27)*

In this item the user should insert brief summary of the hardware to be provided, if hardware is not to be supplied under this Contract the user leave this item blank or insert "N/A".

Item 53.  **Time for Transfer of Title and Risk**  
*(CLAUSE 27.2)*

In addition to describing the hardware to be supplied, it is necessary to stipulate when title and risk transfers to the Customer. For example, title may not pass until payment is complete yet the hardware may be on the Customer's premises for a lengthy period prior to that time. In such circumstances, the parties may consider it appropriate for the Customer to be responsible for insurance, security and risk of loss in relation to the stored equipment.

Item 54.  **Description of Implementation and Training Services for Hardware**  
*(CLAUSE 27.3)*

In this item the user should specify the requirements for integration and training in regards to the provided hardware. The user should ensure that any requirements listed in this item should match any specified in Schedule 2 (statement of work) or Schedule 4 (project plan).

**Hardware Maintenance Services**

Item 55.  **Brief Description of Hardware Maintenance Services**  
*(CLAUSE 28)*

In this item the user should insert brief summary of the hardware maintenance Services to be provided, if hardware maintenance Services are not to be supplied under this Contract the user leave this item blank or insert "N/A".

Item 56.  **Commencement Date of Hardware Maintenance Services**  
*(CLAUSE 28.2)*

In this item it is necessary to stipulate when hardware maintenance Services are to commence.
Item 57. **Renewal Arrangements for Hardware Maintenance Services**

(CLAUSE 28.2)

In this item it is important for the user to specify a process for agreeing renewal arrangements for the maintenance services. The user can also choose to specify renewal periods e.g., 'upon expiry of the initial maintenance agreement; these arrangements can be renewed for a period of x'.

Item 58. **Whether Hardware Maintenance Service is to Commence prior to the Expiry of a Warranty**

(CLAUSE 28.2)

There may be negotiations as to whether the maintenance period is to commence from the date of delivery or from the expiry of the warranty period. Details of the warranty should be included in this item if applicable.

Item 59. **Whether Preventative Hardware Maintenance is required**

(CLAUSE 28.3)

The user is required to describe in this item whether the maintenance is to be solely remedial, i.e. addressing problems as they are reported, or whether it is also preventative, i.e. routine checks before problems arise. If applicable the details of the preventative maintenance required will be inserted in Schedule 2.

Item 60. **Whether Remedial Hardware Maintenance is required**

(CLAUSE 28.4)

In this item the user must specify whether remedial maintenance will be required i.e. addressing problems as they are reported. If applicable the details of the remedial maintenance required including response times, will be inserted in Schedule 8.

Software Development

The developed software provisions will generally be used where the Contractor is creating a totally new application.

This section should not be used:
- When existing software is licensed (or sub-licensed) direct from the Contractor to the Customer; or
- For modifications to be made to the licensed software in order to meet the Customer's precise requirements.

Item 61. **Brief Summary of Software Development**

(CLAUSE 29)

In this item the user should insert brief summary of the service to be provided, if software development Services are not to be supplied under this Contract the user leave this item blank or insert "N/A".

Item 62. **Resources Required for Software Development**

(CLAUSE 29.1(B))
In this item the user will need to specify any resources required to be provided to support the delivery of the above software development including which party is to provide the resource (i.e. ‘the Contractor is to provide software for testing performance, the Customer is to provide hardware on which to run the software’).

**Item 63. Date for Submission of Software Development Project Plan**

(CLAUSE 29.2)

The Contractor will prepare a project plan, which will become Schedule 4, (including relevant milestones) and submit it to the Customer for approval by the date specified in this item.

**Item 64. Date for Approval of Software Development Project Plan**

(CLAUSE 29.3(C))

Terms and conditions contemplate the approval by the Customer of the Contractor’s project plan by a specific date set out in the Contract details in this item.

**Item 65. Extended period for Approval of Software Development Project Plan**

(CLAUSE 29.3(C))

In addition to the date for approval of software development project plan in the item above, the Contract details also provide for an extended period. The purpose is for the Customer to allow an additional period beyond the deadline for completion of the outstanding work as this will, in many instances, be more in the Customer’s interests than to hold the Contractor in breach. For example, the draft project plan may be due on 1 July but in this item the Contract details will stipulate that there will be an additional 14 days’ leeway after 1 July before a Customer can commence termination proceedings.

**Item 66. Date for Submission of Software Development Design Specification**

(CLAUSE 29.4)

The design specification will give a technical explanation of how the functions in the specifications will be met. To the extent reasonably required, the Customer will assist the Contractor in the preparation of the design specification. In this item of the Contract details, the user should specify a date by which the Contractor must have provided the software development design specification to the Customer for approval.

**Item 67. Date for Approval of Software Development Design Specification**

(CLAUSE 29.5(B))

Terms and conditions contemplate the approval by the Customer of the Contractor’s design specification for developed software by a specific date set out in the Contract details in this item.
**Item 68. Extended Period for Approval of Software Development Design Specification**  
(CLAUSE 29.5(B))
As in above regarding the project plan, this item of the Contract details provides the Customer the ability to allow an extended period for the approval of the software development design specifications. The purpose is for the Customer to allow an additional period beyond the deadline for completion of the outstanding work as this will, in many instances, be more in the Customer’s interests than to hold the Contractor in breach.

**Item 69. Software Development Documentation Requirements**  
(CLAUSE 29.6(D) AND 29.9)
The user should specify in this item what documentation is required to be provided by the Contractor with the provision of the developed software. Documentation to be supplied to the Customer should include up to date technical and operator associated documentation containing sufficient information to enable the Customer to make full use of the developed software at all times.

If required language and format of documentation should be specified here, otherwise the Contractor will provide the documentation in English and in a format that they assume will be acceptable by the Customer.

**Item 70. Whether Software Development Source Code is to be placed in Escrow**  
(CLAUSE 29.7(A))
Escrow of source code is raised for consideration in the context of software development.

Where the ownership of the developed software is to be retained by the Contractor, the Contractor agrees to enter into an escrow arrangement in the form specified in Schedule 14 if so requested by the Customer, unless it is expressly stated in this item that the source code is not to be placed in escrow.

In this item the user should insert whether or not source code is to be placed in escrow, more information on the escrow agreement in Schedule 12 is available further in this document.

**Item 71. Whether Developed Software can be used prior to Acceptance**  
(CLAUSE 29.8(A))
The Customer may not use the developed software in production prior to Acceptance unless specifically permitted in this item. If this is a requirement of the Contract then the user should specify so here in this item to be agreed by the Contractor in executing this agreement.
Licensed Software

Item 72. **Brief Summary of Licensed Software**
(CLAUSE 30)
In this item the user should insert brief summary of the software to be provided, if software is not to be supplied under this Contract the user leave this item blank or insert “N/A”.

Item 73. **Special Licence Conditions of Licensed Software**
(CLAUSE 30.1(B))
The terms and conditions contain basic licence obligations (clause 29.1), but it is acknowledged that sometimes a licensor will insist upon using its own standard terms. If this is the case, they can be incorporated into, or referenced in, the Contract details in this item whereupon they will have priority over the fallback provisions in the terms and conditions.

It is important that the Customer satisfies itself that the agreed licence terms are broad enough to cover everything that the Customer wishes to do with the software and documentation.

Item 74. **Number of Copies of Licensed Software**
(CLAUSE 30.1(D))
In this item the parties need to agree on the maximum number of copies the Customer is permitted to hold of the licensed software. In some cases this will be a hard cap, in other cases this could be user based, or could be without cap.

Item 75. **Whether the Software Licence can be transferred to another Government Entity**
(CLAUSE 30.1(E))
The ability to transfer licences to another government entity is dependent on the Customer providing prior written notice to the Contractor, the receiving government entity agreeing to the terms and conditions of this agreement, and any additional provisions specified in this and the following item of the Contract details. If the ability to transfer licensing to other government entities is a requirement of the Contract the user may wish to alter the above requirements.

Item 76. **Period of Software Licence**
(CLAUSE 30.2)
The user should insert, in this item, the term of the licence that is provided under this Contract. This can be expressed as a beginning and end date for the licence or a period of time post Acceptance.

Item 77. **Customer’s Record Keeping Requirements of Licensed Software**
(CLAUSE 30.3(A))
This item defines the Customers obligation to keep records of the location of copies of the licensed software. This obligation needs to be agreed by both parties prior to execution of the Contract.

The obligation could range from no requirement to keep records, to the upkeep of a spreadsheet with licence units assigned to pc’s or user names or even the prescribed usage of a software asset management system.
Item 78. Implementation and Training Services for Licensed Software  
(CLAUSE 30.4)  
Where implementation and/or training Services are involved, reference may also be made to Schedule 2 (‘specifications and statement of work’) and Schedule 4 (‘project plan’). If these requirements are brief they can be listed here in this item though the user must ensure that they are consistent with any requirements set out in the additional Schedules as Schedule 1 has priority.

Item 79. Requirements for Updates and New Releases of Licensed Software  
(CLAUSE 30.5(A))  
Updates and new releases will be made available by the Contractor to the Customer on the terms specified in this item.  
The Contractor will provide any update or new release at no cost where the Contractor makes such updates or new releases generally available to other government Customers under similar circumstances at no cost.  
Where there is a cost, the charges and level of support applicable to the update or new release will be as specified in Schedule 3 charges.  
If the Customer has a requirement for updates and new release versions above and beyond that which is made generally available to the public then that requirement should be specified here in this item.

Item 80. Period during which Contractor must Maintain Superseded Version (if not 18 Months) of Licensed Software  
(CLAUSE 30.5(B))  
The terms and conditions state that the Contractor must continue to maintain the version of the licensed software which the Customer is using, even if a new version of the software has been released. The Contractor must maintain that previous version for (at least) a period of 18 months from the date upon which the software update or new release was formally offered by the Contractor to the Customer.  
If the Customer has a requirement for the Contractor to maintain superseded versions of software for a period greater than 18 months then that requirement should be detailed, including the new period of support, in this item.

Item 81. Designated Equipment (Processors) for the Licensed Software  
(CLAUSE 30.6(A))  
If use of the licensed software is restricted to a particular processor, that restriction should be detailed in this item.  
If no restriction is required this item can be left blank or marked "N/A".

Item 82. Whether the Customer requires an Archival Copy of Licensed Software  
(CLAUSE 30.8)  
The Customer may require the right to retain a copy of the licensed software and its related documentation for archival purposes, if so that right should be specified in this item. If this is not a requirement of this Contract then the user can either leave the item blank or mark "N/A".
Item 83. **Restrictions of Archival Use of Licensed Software**
(CLAUSE 30.8)
The Customer may have the right to retain a copy of the licensed software and its related documentation for archival purposes (stipulated in the above item 98). Any restrictions on the use of the archival copy of the software and documentation must be specified in this item.

Item 84. **Post Licence period for return or destruction of Licensed Software**
(CLAUSE 30.8)
The terms and conditions require that the Customer will destroy or return to the Contractor all copies of the licensed software and all related documentation within 30 days of termination of the licence. If either party require that the period be changed from 30 days then the new period needs to be specified in this item.

Item 85. **Whether Escrow for Licensed Software Is Required**
(CLAUSE 30.9)
If required the Contractor will enter into an escrow arrangement in respect of the source code of the licensed software, substantially in the form set out in Schedule 14, and with the escrow agent named (if any) in the following item.

Item 86. **Name of Escrow Agent for Licensed Software if One Is Required**
(CLUSE 30.9)
If applicable, and required by the above item 100, enter the name of the escrow agent that will be a party to the escrow agreement for the software source code for this Contract. The user must ensure that the details entered in this item are consistent with those entered in Schedule 14 as this Schedule (Schedule 1 Contract details) takes priority over the remaining Schedules.

**Software Support Services**

Item 87. **Brief Summary of Software Support Services**
(CLAUSE 31)
In this item the user should insert brief summary of the service to be provided, if software support Services are not to be supplied under this Contract the user leave this item blank or insert “N/A”.

Item 88. **Commencement Date for Software Support Services**
(CLAUSE 31.2)
For the removal of doubt, the term of the software support Services will not commence, if the Services relate to software supplied under this Contract, until the expiry of the relevant warranty period. Defect correction, the implementation of updates and new releases and the provision of help desk Services will be provided free of charge during such warranty period unless specified to the contrary in Schedule 3 (charges).

The user should insert a Commencement Date for the Services in this item.
Item 89. Renewal Arrangements for Software Support Services
(CLAUSE 31.2)
In this item it is important for the user to specify a process for agreeing renewal arrangements for the software support Services. The user can also choose to specify renewal periods i.e. 'upon expiry of the initial maintenance agreement; these arrangements can be renewed for a period of x'.

System Integration Services

Item 90. Brief Summary of System Integration Services
(CLAUSE 32)
In this item the user should provide a brief description of the systems integration Services to be provided. Unless otherwise specified, the system will comprise the hardware, software and other components specified in Schedule 2.

The user may wish to refer to other Schedules while describing the systems integration Services.
Guidance on the specific Schedules

Schedule 2 - Specifications & Statement of Work

Purpose

The purpose of this Schedule is to include the description of all Services and Products to be provided by the Contractor under the Contract. It is important that all Services and Products are clearly set out in this Schedule, along with the relevant specifications, milestone dates and Acceptance criteria.

Any Acceptance criteria in Schedule 2 should refer to the Contractor's Services or Products. If testing is required, particularly for hardware or software, testing requirements should be specified in Schedule 8 Acceptance Testing.

Hints for use

This Schedule should be the one of the most important and comprehensive parts of the Contract. Within this Schedule, insert the relevant functional, operational and performance specifications of the service or product.

A description of each service to be provided should be included in this Schedule with additional pages added as an annexure, if required.

If hardware or developed software is to be supplied, the technical, functional and performance specifications for each product should be set out at in this Schedule or attached as an annexure to this Schedule, along with any particular system requirements.

In many instances, the parties will negotiate the specifications to be included in the Contract, based on a combination of:

(i) The statement of functional and technical requirements (or similar) that was released by the Customer in its approach to market; and

(ii) The response received from the Contractor to that statement of requirements.

If payments are to be linked to the achievement of milestones, the milestone dates specified for Services or Products in this Schedule should be the same as those specified in Schedule 3 – Charges.

If reporting is required under item 9 of the Contract details, the format of reporting under the Contract should be specified in this Schedule.

It is important to note that the other Schedules in this Contract support the specifications and statement of requirement. These Schedules should be used as required to expand on the Products and Services listed in Schedule 2.
Schedule 3 - Charges

Purpose

This Schedule is linked to clause 8 (Specific Responsibilities of the Contractor) and clause 10 (Specific Responsibilities of the Customer) and should set out (as required):

(a) a summary of all Charges applicable to the Contract;
(b) Service Rebates (in accordance with clause 8.9 of the Terms and Conditions);
(c) invoicing requirements (in accordance with clause 8.8 of the Terms and Conditions and Item 22 of Schedule 1); and

Hints for use

Each of the sections of this Schedule should be either completed with the appropriate information or removed.

Items which require careful consideration when drafting include:

(i) Training charges (in accordance with clause 8.5 of the Terms and Conditions and as Specified in Item 14 of Schedule 1)
(ii) Licensed Software charges;
(iii) Software support charges;
(iv) Service charges (including Hardware Maintenance charges);
(v) Hardware Charges;
(vi) Hardware Maintenance Services Charges – fixed fee components;
(vii) Hourly and daily rates which may be payable during the Contract Period;
(viii) Milestone payments due on the achievement of a Milestone; and
(ix) Charges in relation to IP licensing (in accordance with clause 17 of the Terms and Conditions).

Hourly and Daily Rates

Where specified personnel are involved in the delivery of the Products or Services, the rates and expected work effort relating to the specified personnel should be recorded in this Schedule.

Any changes to the estimated work effort should be managed through the variation process set out in clause 33.6 of the Contract.
**Example:**

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Daily Rate (ex GST)</th>
<th>Maximum Work Effort (Days)</th>
<th>Charges (ex GST)</th>
<th>GST Component</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project manager</td>
<td>1200</td>
<td>10</td>
<td>12,000</td>
<td>1,200</td>
</tr>
<tr>
<td>Technician</td>
<td>800</td>
<td>17</td>
<td>13,600</td>
<td>1,360</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td></td>
<td></td>
<td><strong>25,600</strong></td>
<td><strong>2,560</strong></td>
</tr>
<tr>
<td><strong>Add GST</strong></td>
<td></td>
<td></td>
<td><strong>2,560</strong></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$28,160</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Milestone payments**

Payment of service charges against milestones is a common way to help ensure that the Contractor delivers the Services and/or Products consistent with the requirements of the Contract. It also has the advantage for the Contractor of knowing precisely what it has to achieve in order to receive payment. If milestone payments are linked to the delivery of particular Services or Products, the milestone dates set out in this Schedule should be consistent with those set out in Schedule 2.

**Example**

<table>
<thead>
<tr>
<th>Milestone date</th>
<th>Milestone/Product</th>
<th>Milestone Payment</th>
<th>GST Component</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 February 2014</td>
<td>Project plan Accepted by Customer</td>
<td>12,000</td>
<td>1,200</td>
</tr>
<tr>
<td>19 March 2014</td>
<td>Hardware Accepted by Customer</td>
<td>30,000</td>
<td>3,000</td>
</tr>
<tr>
<td>26 March 2014</td>
<td>Hardware Installed and operational at all sites</td>
<td>40,000</td>
<td>4,000</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td></td>
<td><strong>82,000</strong></td>
<td><strong>8,200</strong></td>
</tr>
<tr>
<td><strong>Add GST</strong></td>
<td></td>
<td><strong>8,200</strong></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$90,200</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Service Rebates**

This section is linked to clause 8.9 of the terms and conditions. If service rebates are to be applied to this Contract, the methodology for calculating the amount should be set out in this section.

Service rebates are a form of liquidated damages, that is, they are a genuine pre-estimate of damages likely to be suffered by the Customer as a result of a breach by the Contractor. In order to be legally recoverable a Customer must be able to
quantify its foreseeable damages arising out of a failure by the Contractor to comply with its obligations under the Contract. The service rebates can be recovered by a Customer as a debt.

Service rebates may be applicable to the failure of the Contractor to comply with the service levels or to meet certain milestone dates. The advantage of the service rebate provision is that a Customer does not have to prove the loss that is suffered without proof of the actual loss. However, if the amount stipulated bears little resemblance to the loss that could occur, it may be classified as a penalty, which is not enforceable under Contract Law.

If a Customer requires the ability to claim service rebates, it must set the service rebates at level that reflects a genuine estimate of the impact of the failure. To this end, Customers should consider applying service rebates only to those service levels which are critical to business operations.

It is recommended that both parties document how the estimate of the impact of failure was made. If challenged, a Customer must bear the burden of demonstrating that the level of service rebates was based on a reasonable pre-estimate of actual loss.

Customers should seek legal advice or advice from a procurement officer as appropriate prior to drafting the service rebate provisions in this Schedule.

Example:

<table>
<thead>
<tr>
<th>Service Level</th>
<th>Method of Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problems resolved or workaround in place within 2 days of notification of Problem</td>
<td>Service rebates = Daily Rate x number of days in excess of 2 where Problem remains unresolved or a workaround has not been provided; Where: Daily Rate is the charge for each whole day or part thereof, being $YY per day</td>
</tr>
</tbody>
</table>

(d) Invoicing

This section is linked to clause 8.8 of the terms and conditions and Item 22 of Schedule 1. Customers should include in this section any specific requirements they have for invoices.

For example:

(i) The Contractor must provide a single invoice for each month that sets out the, Hardware, Installation charges, Hardware Maintenance Charges and Milestone Payments, and any other amounts payable by or the Customer under this Contract for that month. Each invoice must be in a format that:
(A) is a tax invoice;

(B) Enables the Customer to identify and allocate the amounts invoiced including payments for Services and Milestone payments.

(ii) where the invoice is for variable charges based on daily or hourly rates, include detail of the:

(A) Contractor Personnel who have provided the Services;

(B) the applicable hourly or daily rates; and

(C) The Services performed by those personnel during the invoice period.

(iii) Invoices must be addressed and sent to the Customer Representative at the address set out in the Contract Details.

Schedule 4 - Project Plan

Purpose

This Schedule ensures the Contractor provides a project plan to the Customer to assist in the delivery of the Contract. The Products and Services that are most likely to require a project plan are as follows:

a. Consultancy Services

b. Hardware

c. Software development

d. Licensed software

Hints for use

The user should provide details of the timeframes or key milestones for the delivery of Products or Services. It might be appropriate to append a gantt chart or something similar to facilitate understanding of the agreed time Schedules.

Schedule 5 - Transition-In Plan

Purpose

This section is linked to clause 7 of the terms and conditions. This Schedule ensures the Contractor provides a plan to the Customer that will enable the Customer to begin to use the Products and Services being provided under the Contract by the Contractor.

Hints for Use
This will only be relevant in the case of managed Services or similar where the Contractor will be required to manage a new or existing function on behalf of the Customer.

Details to be inserted include:

- Third party Contracts to be assigned or novated to the new Contractor, or where appropriate, to the Customer;
- Arrangements for the transfer or secondment of the personnel;
- Timeframe for preparation of a procedures or training manual; and
- Particulars of interim service levels during the transition.

Schedule 6 - Disengagement Plan

_Purpose_

This section is linked to clause 24 of the terms and conditions. This Schedule sets out a disengagement plan that could be used for any of the Products and Services purchased under a Contract where the Customer deems it necessary.

_HINTS FOR USE_

It will not always be possible to negotiate a disengagement plan as at the commencement of the Contractual relationship. It is nevertheless worthwhile attempting to agree a framework for disengagement from the outset. It might be possible, for example, to identify equipment which the Customer is entitled to buy back at the conclusion of the Contract term, together with the basis upon the equipment will be priced if the Customer exercises that option.

If a disengagement plan cannot be agreed at the outset of the arrangement it may be prudent to include the completion of the disengagement plan (in the format of Schedule 6) as part of the project plan or as a product in Schedule 2.

Schedule 7 - Service Level Agreement

_Purpose_

Service levels are not an agreement in their own right but rather they form part of the overall Contract.

Service levels are particularly important for managed Services, consultancy Services, and maintenance and support arrangements. They stipulate the level of service to be achieved by the Contractor and, sometimes, the consequences in financial or other terms of the Contractor failing to achieve those levels of performance.

_HINTS FOR USE_
It is important for the Customer to express its service level requirements in sufficient detail to enable the Contractor to adequately cost its obligations.

In some cases it will be appropriate to insert the Contractor's standard service level agreement document into the Contract as Schedule 7.

Schedule 8 - Acceptance Testing

Purpose

This Schedule is linked to clause 11 of the terms and conditions and the contents will vary depending on the specific Products and Services being procured under the Contract.

Hints for use

In some cases, the Products or Services will be deemed to be accepted by the Customer on delivery. If the Customer requires Acceptance testing to occur, the requirements must be identified in this Schedule and may include:

(iv) Any Acceptance criteria which will apply beyond the requirements set out in Schedule 2, should be consistent with any specifications in Schedule 2;

(v) The facilities that the Contractor is required to provide for the purpose of Acceptance testing;

(vi) The timeframes which will apply in relation to the preparation for Acceptance testing; and

(vii) The role of each party in conducting the Acceptance tests.

The above is also applicable for the Acceptance testing of Services.

Example:

<table>
<thead>
<tr>
<th>Service/Product</th>
<th>Acceptance Criteria</th>
<th>Acceptance testing date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project plan</td>
<td>Project plan must meet the requirements set out in item YY of the Statement of Work</td>
<td>5 February 2014</td>
</tr>
<tr>
<td>2. Installation of Hardware</td>
<td>Hardware must be installed at each Delivery Place and set-up tests successfully run</td>
<td>19 March 2014</td>
</tr>
</tbody>
</table>

The Customer may choose to use the attached Acceptance Certificate in this Schedule.
Schedule 9 - Change Order

Purpose

This Schedule is linked to the ‘Variation’ clause 33.6 in the terms and conditions and allows either party to request a change to the Services and/or Products and, subject to agreement of the other party, provides for the Contract to be amended accordingly.

This form has been designed to streamline operational changes minimising the need for legal review. It is important to note that the change order form, once executed by both parties, serves to vary the Contract. This being the case, the change order form should not be used to vary the terms and conditions. If a Customer intends to vary the terms and conditions, legal advice should be sought.

Hints for use

This form should be completed by the parties once the scope of the variation to the Products or Services has been agreed through the process set out in the relevant Contract clause. If a section on the form is not applicable, this should be marked 'not applicable'. Particular care should be taken when completing the following items:

- Details of the change proposal;
- Effect of change on performance; and
- New charges payable to the Contractor or Customer affected by change proposal.

Once a change order is executed by both parties, the Contract is varied to give effect to that change order.

Original signed copies of all change orders should be provided to both parties and kept together in date order in a secure place with the original signed Contract.

Schedule 10 - Agency Order Form

Purpose

This Schedule is linked to clause 5 of the terms and conditions and allows a nominated Agency to procure Services substantially the same as those provided under the Contract on the same terms and conditions set out in the Contract. The Agency order form creates a Contract between the Contractor and the nominated Agency on execution by both parties.

Hints for use

Nominated agencies are required to complete the form set out in this Schedule. Particular care must be taken when completing point 8 of the order to ensure that the Services and/or Products to be delivered under the order are substantially the same as those to be delivered under the Contract.
Schedule 11 - Deed of Confidentiality

**Purpose**

This Schedule is linked to the obligations of personnel clause 15 in the Contract and the definition of confidential information in clause 1.1.

**Hints for use**

The Customer may at any time require the Contractor to arrange for its employees engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified this Schedule.

Each party should consider whether the other party's advisers or employees are likely to have access to confidential or personal information in the course of performing Services under the Contract that requires them to personally sign an undertaking.

The user should ensure that the all of the highlighted sections of this Schedule are considered as there are various fields throughout the Schedule that need to be completed.

Schedule 12 - Escrow Agreement

**Purpose**

Where the ownership of the developed software is to be retained by the Contractor, the Contractor agrees to enter into an escrow arrangement in the form specified in this Schedule if so requested by the Customer, and only if it is expressly stated in item 85 that the source code is to be placed in escrow.

**Hints for use**

The parties will need to agree the appointment of an escrow agent whom will hold the source code for the licensed software as well as any supporting material for the licensed software.

The Contractor will be responsible for ensuring that the code accurately reflects the licensed software including all modifications, amendments, updates and new releases made to, or in respect of, the licensed software.

The user should ensure that the all of the highlighted sections of this Schedule are considered as there are various fields throughout the Schedule that need to be completed.

Schedule 13 - Additional Documents

**Purpose**

Schedule 13 is included to provide users with a space to attach all other relevant documents to the Contract, such as request for tenders and response to request for tenders.
Hints for use

As the priority provisions of the terms and conditions (clause 4) ensure that Schedule 1 has legal precedence over the subsequent Schedules the user is able to include in this Schedule any relevant documentation from the tendering process regardless of inconsistencies (if they exist) between preceding documentation and the eventual Contract.

Schedule 14 - Unconditional Performance Guarantee

Purpose

Customers may seek a guarantee or undertaking in negotiation with the Contractor.

An unconditional performance guarantee is a guarantee by a related corporation (parent or ultimate holding company) to ensure that the Contractor will meet its Contractual obligations. In this instance, if the Contractor defaults on its obligations under a Contract, the related corporation (the guarantor) will complete the Contract or else be liable for the consequences. Note that the liability of the guarantor in this case will be limited in accordance with any limit on the liability of the Contractor under the Contract.

Hints for Use

Common sense must be used in seeking a performance guarantee. A supplier which does not have a parent or ultimate holding company will be unable to provide an unconditional performance guarantee.

The user should ensure that the all of the highlighted sections of this Schedule are considered as there are various fields throughout the Schedule that need to be completed.

Schedule 15 - Conditional Performance Guarantee

Purpose

Customers may seek a guarantee or undertaking in negotiation with the Contractor.

A conditional performance guarantee is a guarantee by the directors of a supplier company to ensure that the Contractor will fulfil its obligations under a Contract. This type of performance guarantee, otherwise known as a director’s guarantee, is limited to a specific amount as stated in the guarantee documentation. Note, however, that these guarantees are joint and several. That is, each director of a company is liable for the total aggregate amount, together and as individuals. A Customer wishing to invoke the conditions contained in the guarantee can sue one or more director severally, or all jointly.

Hints for Use
Careful consideration must be given to an appropriate amount for conditional performance guarantees. It may be unrealistic and unnecessary for the Customer to specify an amount equivalent to its potential losses. It may be more realistic for the Customer to stipulate an amount that, if claimed, would meet its immediate costs of re-tendering for a replacement supplier in the event the Contract is terminated for breach.

The user should ensure that all of the highlighted sections of this Schedule are considered as there are various fields throughout the Schedule that need to be completed.

Schedule 16 - Unconditional Financial Undertaking

Purpose

Customers may seek a guarantee or undertaking in negotiation with the Contractor.

A conditional financial undertaking is a bank guarantee pursuant to which the Contractor arranges for its bank to give an independent guarantee to the Customer that it will make funds available to the Customer in the event the Contractor defaults on its Contractual obligations. Bank guarantees are limited to the amount stated in the guarantee document.

Hints for Use

Conditional financial undertakings can be useful but Customers must bear in mind that the cost to the Contractor of arranging a financial undertaking will most likely be passed through as part of its costs in the Contract.

Careful consideration must be given to an appropriate amount for financial undertakings. It may be unrealistic and unnecessary for the Customer to specify an amount equivalent to its potential losses. It may be more realistic for the Customer to stipulate an amount that, if claimed, would meet its immediate costs of re-tendering for a replacement supplier in the event the Contract is terminated for breach.

The user should ensure that all of the highlighted sections of this Schedule are considered as there are various fields throughout the Schedule that need to be completed.