



Australian Government
Department of Finance

SourceIT User Notes Schedules

IT Consultancy Services Contract

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SourceIT User Notes - Schedules

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IT Consultancy Services Contract

Introduction

1. Using these notes

These User Notes contain an explanation of the purpose of the Schedules to the IT Consultancy Services model Contract (**model Contract**). Where relevant, hints for the use of Schedules are also included. For guidance on the 'Specific clauses' and 'General requirements' sections of the model Contract, please see the [SourceIT website](#) for the corresponding User Notes (**User Notes – Specific Clauses** and **User Notes - General Requirements**).

The explanations in these User Notes appear in the same order in which the 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.

2. Using the correct version

The most recent version of the model Contract 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. Finance recommends that users download the model Contract from the website each time such a contract is required, to ensure users have the most up-to-date version of the model Contract.

3. Purpose and structure of the Schedules

3.1 Purpose

The purpose of the Schedules to a Contract is to set out the specific requirements for the procurement. The Agreed Terms of the Contract have been drafted to be used with minimum 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.

3.2 Priority

The order of priority of the documents which comprise a Contract is set out in clause 2 of the Agreed Terms (for further information, refer to the User Notes – Specific Clauses). The Agreed Terms of this model Contract override the Schedules, to the extent of any inconsistency.

Guidance on the specific Schedules

4. Schedule 1 – Contract Details

Purpose

This Schedule sets out the variables for the Contract, including any variation from the default position set out in the Agreed Terms. Each item in the Contract Details refers to a specific clause in the Contract and has brief user notes to assist parties to complete the items appropriately.

Hints for use

Customers should carefully consider the default position of each clause before agreeing to vary the clause, and be mindful of the fact that a variation agreed to for one project or purchase may not be appropriate for another. The variation of the default position of a clause may have a significant impact on a project and should be considered in the context of the business requirements of the Customer in respect of that project. Please also refer to the User Notes for each of the clauses referenced in the Contract Details.

Items which require careful consideration prior to amending include:

(a) Intellectual property rights in Contract Material (items 16 to 19)

Refer to User Notes - Specific Clauses for further guidance in relation to Intellectual Property Rights.

Customers are encouraged to seek advice from their legal or procurement advisers before deciding on appropriate Intellectual Property Rights clauses.

The Statement of Intellectual Property Principles for Australian Government agencies is a whole of government approach to the management of intellectual property by government agencies. Further information on the Statement of Intellectual Property Principles can be found at the [Attorney General's Department website](#).

(b) Capping of Liability (items 21 to 23)

These items are linked to clause 18 (refer to the relevant section of the User Notes – General Requirement). Before setting a cap on liability through item 21, Customers should have regard to the guidance on this issue provided in:

- (i) [A guide to limiting supplier liability in ICT contracts with Australian Government agencies](#);
- (ii) [Commonwealth Procurement Rules](#);
- (iii) *Commitments to spend public money (PGPA Rule Sections 18, 23 and 71); and*
- (iv) [Contingent liabilities: indemnities, guarantees, warranties on behalf of the Commonwealth](#) at the Finance web site.

Users should also seek advice from their legal and procurement advisers prior to agreeing to limit liability through item 22 of the Contract Details, in relation to:

- (i) personal injury;
- (ii) loss or, or damage to, tangible property;
- (iii) infringement of Intellectual Property Rights;
- (iv) a breach of any obligation of confidentiality, security matter or privacy; or
- (v) unlawful or wilfully wrong acts or omissions

Through the Contract Details, users can make choices in relation to whether the limitation on liability should apply on an aggregate basis or per occurrence. Again, it is recommended that you seek advice on this issue.

(c) Insurance (items 24 and 25)

A Customer cannot directly access the insurance monies payable under a contract of insurance held by the Contractor. The Contract requires the Contractor to hold certain types of insurance against which the Contractor can claim if the Customer makes a successful claim against the Contractor. The amount of insurance required to be held under each policy is dependent on the level of risk that the Customer assesses for a particular contract.

5. Schedule 2 – Statement of Work

Purpose

The purpose of this Schedule is to include the details of all Services and Deliverables to be provided by the Contractor under the Contract. It is important that all Services and Deliverables are clearly set out in this Schedule, along with the relevant Milestone dates and Acceptance Criteria to help to ensure that both parties have a shared understanding of each other's obligations under the Contract.

Hints for use

This Schedule is divided into sections for ease of use and general guidance. However, the format of this Schedule is provided as an example only and may be varied to suit the requirements of each project. Customers may need to attach additional pages to the Schedule, which can be done by way of an Annexure. It is not recommended that documents are incorporated into a Contract by reference.

If payments are to be linked to the achievement of Milestones, the Milestone dates specified for Services or Deliverables in this Schedule should be the same as those specified in Schedule 3 – Payment.

As this is a contract for the procurement of simple IT Consultancy Services, there is no formal process to Acceptance test Services or Deliverables. This is not to say however, that the Contractor does not have to meet certain standards when supplying the Services or Deliverables. In addition to the general standards set out in clause 5 of the Contract, the Customer may determine Performance Criteria

which will apply to the Services and/or Deliverables. These Performance Criteria should be set out in item 5 of this Schedule, including as much detail as possible.

Example:

	Service/Deliverable	Performance Criteria	Assessment date
1.	Review Customer intranet site and provide advice as to improvement	Conduct survey across Customer of at least 50 personnel, using the methodology and covering the topics set out in the SOW	5 February 2016
2.	Report	Written report (to be provided in both hard copy and in Word on CD) detailing the survey results, problems with current website, proposed solutions and estimated costing of proposed solution	19 March 2016
3.	Presentation	Presentation on findings and proposals to senior executives not to exceed 1 hour	25 March 2016

6. Schedule 3 – Payment

Purpose

This Schedule is linked to clause 15 (Payment) and clause 16 (GST) and sets out the:

- (a) Service Charges - fixed fee components;
- (b) hourly and daily rates which may be payable during the Contract Period;
- (c) Milestone payments due on the achievement of a Milestone;
- (d) invoicing requirements; and
- (e) the basis on which expenses will be paid.

Hints for use

Each of the sections of this Schedule should be either completed with the appropriate information or marked as 'Not Applicable'.

Items which require careful consideration when drafting include:

(a) GST

All Service Charges and rates are expressed to be GST exclusive. If payments are to be made on a GST inclusive basis, tax advice should be sought as clause 16 is not appropriate (refer to the relevant User Notes – General Requirements for this clause).

(b) Fixed charges

The table in section 1 should be used if the parties have agreed a fixed charge for the Services. A fixed charge for particular Services will not change unless the scope of the Services changes. This type of charge arrangement is appropriate where Services or components of Services are clearly definable.

A fixed charge arrangement has the advantage of enabling both parties to understand the level of charges payable under the Contract. If a fixed charge arrangement is agreed, both parties are responsible for managing the scope of the Services and any dependencies. Any variation to the Services (and to the fixed charge) should be agreed through the change control process set out in clause 8 of the Contract.

Fixed charges may be broken down into Milestone payments and set out in section 4 of this Schedule.

(c) Hourly and daily rates

Time and materials arrangements are appropriate where the scope of the Services or components of Services required are not readily definable at the time of signing the Contract. A Contract may contain both fixed fee and time and materials components.

If the parties have agreed that the Services will be provided on a time and materials basis, relevant hourly and/or daily rates for each personnel category (or for all Key Personnel) should be included in the tables in sections 2 and 3, as appropriate.

Where time and materials is agreed as the payment basis, it is in the interests of both parties that expectations as to costs are managed. This can be achieved in part by including in both tables a maximum work effort for each personnel category or Key Personnel member.

Example:

Personnel	Daily Rate (ex GST)	GST Component	Maximum Work Effort (Days)	Charges (ex GST)	GST Component
K Smith	500	50	100	50,000	5,000
L Jones	300	30	50	15,000	1,500
Sub total				65,000	6500

TOTAL	\$71,500	
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Any changes to the estimated work effort should be managed through the change control process in clause 8 of the Contract.

(d) Milestone payments

Payment of Service Charges against Milestones is a common way to help ensure that the Contractor delivers the Services and/or Deliverables 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 Deliverables, the Milestone dates set out in section 4 should be consistent with those set out in the Statement of Work.

Example:

Milestone date	Milestone/Deliverable	Milestone Payment	GST Component
5 February 2016	Review Customer intranet site and provide advice as to way forward	20,000	2,000
18 March 2016	Acceptance of Report	25,000	2,500
	Sub total	65,000	6,500
	Add GST	6,500	
	TOTAL	\$71,500	

(a) Invoicing

This section is linked to clauses 15.2 and 15.4 of the Contract. 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 Service Charges, 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.*

7. Schedule 4 – Designated Confidential Information

Purpose

This Schedule is linked to the confidentiality and privacy clause 20 in the Contract (refer to the User Note – General Requirements for that clause) and the definition of Confidential Information in clause 1.1.

Hints for use

The parties should set out in this Schedule any information which they require to be designated as 'confidential' and the period of confidentiality applicable to each item. This could include any particular clauses of the Contract or Schedules or any Contract related Material, for example, Customer Data or information relating to Personnel.

Where a Contractor requests certain information to be designated as confidential, Australian Government policy requires Customers which are PGPA Act entities to consider whether that information should be subject to a contractual confidentiality obligation and to apply specified tests. Reference should be made to [*Confidentiality throughout the Procurement Cycle. - Principles*](#) when completing this Schedule.

While the definition of Confidential Information is not exclusively limited to the information set out in this Schedule, the parties should include all information that they specifically require to be treated as confidential in this Schedule to avoid any later uncertainty as to the confidential nature of the information.

8. Schedule 5 – Customer Requirements

Purpose

This Schedule is linked to the 'Provision of Services' clause 6 in the Contract (refer to the User Note – Specific Clauses, for that clause) and allows Customers to set out any particular policies or legislative requirements that apply to contracts they enter, for example, secrecy provisions.

Hints for use

Customers should only set out particular legislative and policy requirements which are applicable to the particular transaction and which are not already covered in the Agreed Terms. Examples could include:

- (a) specific secrecy provisions contained in Customer specific legislation; or

- (b) specific Customer requirements set out in the Customer's Accountable Authority's Instructions.

9. Schedule 6 – Change Order

Purpose

This Schedule is linked to the 'Varying the Services' clause 8 in the Contract (refer to the User Note-Specific Clauses for that clause) and allows either party to request a change to the Services and/or Deliverables 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 Agreed Terms of the Contract. Such changes should be dealt with by way of a formal Deed of Variation.

Hints for use

This form should be completed by the parties once the scope of the variation to the 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 details of the change, effect on Performance Criteria and Service Charges.

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.

10. Schedule 7 – Agency Order Form

Purpose

This Schedule is linked to clause 4 of the Contract (refer to the relevant User Note – Specific Clauses for that clause) 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 item 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:

Example:

Services to be delivered under the Contract	Services to be delivered under the Order	Allowed under clause 4?
20 hours of training, at a per hour rate, regarding use of AA IT equipment	40 hours of training regarding use of AA IT equipment at the same hourly rate	Yes, the products and services have been market tested and have been assessed as representing value for money
Production of a report on review of Customer intranet site	Production of report on Customer's data storage arrangements	No, the consultancy services are different and have not been market tested.

11. Schedule 8 – Confidentiality and Privacy undertaking

Purpose

This Schedule is linked to clause 20 of the Contract (refer to the relevant section of the User Notes – General Requirements) and allows the parties to insert a written confidentiality and privacy undertaking into Schedule 8 to the Contract prior to execution.

Hints for use

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. Insertion of an undertaking in Schedule 8 can provide certainty to the parties and avoid the need for negotiations on the form of an undertaking after execution of the Contract.