

## Module 11 – Telecommunications as a Service

Procure IT Framework version 3.2

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## USE GUIDELINES

This Module 11 Telecommunications as a Service should be used when buying telecommunications carriage services with or without bundled services. Hardware (and its maintenance), contact centre services, managed services and consulting services purchased as a service in association with telecommunications carriage services should also be covered by this Module.

The Procure IT Framework version 3.2 Modules for sourcing other telecommunications requirements are:

- Module 1 Hardware acquisition and installation - for telecommunication equipment purchased outright (separately from carriage services);
- Module 2 Hardware maintenance services - for telecommunication hardware maintenance purchased outright (without carriage services) eg device lifecycle maintenance services;
- Module 3 Licensed software;
- Module 7 Professional services;
- Module 8 Training Services;
- Module 12 Managed Services - eg contact centre services; and
- Module 13 System Integration.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.

## 1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 11 form part of the Customer Contract when the Parties state that the Telecommunications as a Service Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **ACMA** means the Australian Communication and Media Authority.
- 1.2 **ACMA Standard** means a telecommunications, technical or radiocommunications standard published by the ACMA from time to time.
- 1.3 **Back Billing Period** means a period of three (3) months from the date that charges are incurred by the Customer.
- 1.4 **Benchmark** means a benchmarking exercise of Telecommunications Services conducted pursuant to, and for the purposes specified in, clause 14 of this Module 11.
- 1.5 **Benchmarker** means an independent consultant agreed by the Parties to undertake the benchmarking.
- 1.6 **Benchmarking Report** means a report prepared by a Benchmarker setting out the result of a Benchmark.
- 1.7 **Commencement Date** means the later of either the date:
  - (a) specified in the relevant Module Order Form from which the Customer requires the Contractor to provide the Telecommunications Service; or
  - (b) the Telecommunications Service has been provisioned and is available for use by the Customer.
- 1.8 **Contractor Software** means all software:
  - (a) in which the Intellectual Property Rights are owned by the Contractor;
  - (b) which are developed by or for the Contractor independently of the Customer Contract;
  - (c) which the Contractor can reasonably demonstrate was developed at its sole cost; or
  - (d) in which the Intellectual Property Rights are owned by a third party and used by the Contractor and/or any of its subcontractors under licence.
- 1.9 **Contractor Tools and Methodologies** means all methodologies, tools, ideas, processes, reports, concepts, techniques and other material used by or for the Contractor in performing the Telecommunications Services:
  - (a) in which the Intellectual Property Rights are owned by the Contractor, its subcontractors or any other third party prior to their use in performing the Telecommunications Services; or
  - (b) which are developed by or for the Contractor, its Subcontractors or any other third party independently of the Customer Contract.
- 1.10 **Customer Content** means data or information which is transmitted and/or received using Telecommunications Services provided to the Customer.

- 1.11 **Customer Works** means:
- (a) all information provided to the Contractor by the Customer under this Module;
  - (b) any Confidential Information of the Customer or other information proprietary to it;
  - (c) all reports, diagrams (including network diagrams), Documents, cable records and all other material (including, for the avoidance of doubt, any business processes, tools or methodologies) created by the Contractor for the exclusive purpose of providing the Telecommunications Services to that Customer; and
  - (d) all information and records (including all monitoring information and records) relating to the supply of the Telecommunications Services by Contractor to that Customer, including without limitation all details relating to utilisation levels and traffic data, but excluding Contractor Network Data (as described in clause 20.2(a)).
- 1.12 **Data Service** means a service for the transmission of data identified in the relevant Module Order Form.
- 1.13 **Emergency** means an event involving a threat to, and requiring prompt action to protect, property, health or safety of persons.
- 1.14 **Expiry Date** means the expiry date specified in the relevant Module Order Form, but despite that, or where no expiry date is specified in the relevant Module Order Form, the date when either Party cancels the Telecommunications Service by providing prior written notice to the other Party of not less than thirty (30) days, unless an alternative period is agreed in writing between the Parties.
- 1.15 **Fixed Voice Service** means a service for the carriage of voice communications identified in the relevant Module Order Form.
- 1.16 **Incident** means an interruption to the Telecommunications Service (other than a Scheduled Maintenance), a reduction in the quality of the Telecommunications Service or any failure of the Contractor to provide the Telecommunications Service in accordance with the Customer Contract, including the Service Levels or Service Specifications.
- 1.17 **Mobile Device** means a device provided by the Contractor to the Customer for use with the Mobile Service, including handsets, dongles, tablets and other equipment, for use with the Mobile Service.
- 1.18 **Mobile Service** means a service for the carriage of data and/or voice services via a cell based digital mobile radio network identified in the relevant Module Order Form.
- 1.19 **Module Order Form** means a document that includes the Order Details that are relevant to Module 11.
- 1.20 **Network** means a telecommunications network that is used by the Contractor to provide Telecommunications Services to the Customer.
- 1.21 **Port Out Date** means the date the Parties have agreed in writing that the Telecommunications Service is to be transferred by the Contractor to another telecommunications service provider.
- 1.22 **Scheduled Maintenance** means maintenance, modification or an upgrade of a Network:
- (a) where the affected Customer has been given adequate prior notice of the Scheduled Maintenance; and

- (b) which shall result in all or part of the Telecommunications Service being temporarily impaired or unavailable.
- 1.23 **Service Credit** means a credit, calculated in accordance with the relevant Module Order Form, which is provided by the Contractor to the Customer as a result of the Contractor's failure to meet the relevant Service Levels.
- 1.24 **Service Levels** means a standard of performance relating to the provision of the Telecommunications Service against which the Contractor's performance is to be assessed in accordance with the method specified in the Service Level Agreement (if any) and the relevant Module Order Form.
- 1.25 **Service Period** means the period during which the Contractor provides the Telecommunications Service, commencing on the Commencement Date and ceasing on the Expiry Date.
- 1.26 **Service Description** means the detailed description of the Telecommunications Service to be provided by the Contractor which will form part of the relevant Module Order Form.
- 1.27 **Service Specifications** means the agreed specifications relevant to the delivery of the Telecommunications Service.
- 1.28 **SIM card** means a Subscriber Identity Module card.
- 1.29 **Standard Form of Agreement** means the Contractor's standard form of agreement formulated for the purposes of Part 23 of the *Telecommunications Act 1997* (Cth).
- 1.30 **Standard Telephone Service** means local, national and international calls, twenty-four (24) hour access to the emergency service number operator assisted services, freecall, information services, service maintenance services and directory assistance.
- 1.31 **Telecommunications Equipment** means the equipment that will be sold, licensed, leased or otherwise provided by the Contractor to the Customer as part of the Telecommunications Service.
- 1.32 **Telecommunications Service** means a telecommunications service identified in the relevant Module Order Form.
- 1.33 **Transition-In Plan** means a plan to facilitate the orderly, prompt and efficient transition of a Telecommunications Service to the Contractor from another provider of telecommunications services, as described in the relevant Module Order Form (if any).
- 1.34 **Transition-Out Period** means a period of up to six months as agreed between the Contractor and the Customer.
- 1.35 **Transition-Out Services** means Telecommunications Services disengaged in accordance with clause 18 (whether encompassing all or part of the Telecommunications Services), and any additional services which the Contractor is required to provide under clause 18.
- 1.36 **User** means any person who has been given the authority by the Customer to use a Telecommunications Service or some or all of the functionality provided by a Telecommunications Service or by the Customer's system.

## INTERPRETATION

Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

A reference to a clause or sub-clause only is a reference to a clause or sub-clause in this Module.

## 2. SUPPLY OF TELECOMMUNICATIONS SERVICES

- 2.1 Clauses 1 to 31 (inclusive) in this Module 11 will apply to all Telecommunications Services supplied by the Contractor to the Customer. The provisions in Parts A – C of this Module will only apply to the Telecommunications Services covered by each of those Parts.
- 2.2 The Contractor will supply the Telecommunications Services in accordance with the relevant Module Order Form and the Customer Contract, including the Service Description and Service Specifications (if relevant).
- 2.3 If the relevant Module Order Form specifies that Acceptance Tests must be undertaken in respect of a Telecommunications Service, it will be carried out in accordance with the processes and timeframes specified in clauses 10.3 to 10.16 of the Customer Contract and any requirements included in the applicable Module Order Form.
- 2.4 If the Customer transitions a Telecommunications Service to the Contractor from another service provider of a telecommunications service, the Contractor will provide all reasonably necessary co-operation and assistance to facilitate an orderly, prompt and efficient transition as specified in the relevant Module Order Form. If the relevant Module Order Form requires the Contractor to prepare a Transition-In Plan, it will do so (and will comply with such plan) in accordance with the relevant Module and any requirements specified in the relevant Module Order Form.
- 2.5 The Contractor will provide the Telecommunications Services with sufficient capacity, availability and quality during the Service Period as necessary to comply with the requirements of the Service Levels (if any) and the Service Specifications as specified in the relevant Module Order Form.
- 2.6 The Contractor acknowledges that it has:
  - (a) examined all information relevant to the risks, contingencies and other circumstances which could affect the supply of the Telecommunications Services, obtainable by making reasonable enquiries; and
  - (b) satisfied itself as to the availability of labour, resources and services required to supply the Telecommunications Services.
- 2.7 The Contractor shall provide the Customer with training, as specified in the relevant Module Order Form, in respect of the use of the Telecommunications Services ordered.

## 3. PERIOD OF TELECOMMUNICATIONS SERVICE

- 3.1 The Contractor will supply the Telecommunications Services for the Service Period unless terminated earlier in accordance with the Customer Contract. If no Service Period is specified in the Module Order Form then the Telecommunications Service will be provided from the Commencement Date until either Party cancels the Telecommunications Service by providing 60 days' Notice in Writing.

## 4. CUSTOMER'S USE OF TELECOMMUNICATIONS SERVICES

4.1 The Customer is responsible for all use of a Telecommunications Service and will not, and will use reasonable endeavours to ensure that its Users do not, use or attempt to use the Telecommunications Services:

- (a) for any illegal, fraudulent or defamatory purposes;
- (b) to engage in the bulk transmission of unsolicited electronic mail;
- (c) to send or cause to be sent any computer worms, Viruses, or other similar programs;
- (d) to send or transmit any defamatory, harassing, abusive, knowingly indecent or obscene, offensive, menacing or threatening material;
- (e) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement of any Intellectual Property Rights of a third party in Australia;
- (f) to make any hoax calls;
- (g) in a manner which constitutes a violation or an infringement or any duty or obligation in contract, tort or otherwise to any third party; or
- (h) in conjunction with the commission of an offence against the laws of the Commonwealth, State or Territories.

## 5 STANDARDS

5.1 The Contractor must ensure that the Telecommunications Services conform to any applicable technology and industry standards including, but not limited to:

- (a) all applicable ACMA Standards; and
- (b) any standards specified in the relevant Module Order Form, as updated by agreement from time to time.

## 6. WARRANTIES

6.1 The Contractor warrants that:

- (a) it has sufficient capacity to deliver the Telecommunications Services in accordance with the Service Levels;
- (b) the Telecommunications Services will be provided in accordance with the Module Order Form;
- (c) it will provide the Telecommunications Services and perform all other obligations under this Module with due care and skill and in accordance with industry best practice;
- (d) all Documents and other materials provided by the Contractor are true, correct, complete and accurate and are not misleading or deceptive (including by omission);
- (e) if a Business Contingency Plan is required under this Module, the Business Contingency Plan will comply with the requirements of the Customer Contract and it will maintain and regularly test such plan to ensure continued compliance (and in any event no less often than every six (6) months or other such period as otherwise agreed);



- (f) it has disclosed in writing to the Customer any matters relating to the commercial, technical or financial capacity of the Contractor that might materially affect the Contractor's ability to perform any of its obligations under the Customer Contract or the relevant Module Order Form (as applicable); and
- (g) it will not represent that it is, or hold itself out as, authorised to act on behalf of the Customer, except to the extent that it is authorised to do so in writing by the Customer.

## 7. CONTRACT PRICE

- 7.1 The Contractor warrants that the Contract Price for the Telecommunications Service identifies all charges for all elements of the Telecommunications Service (including any charges for training, provision, licence fees, set up and ongoing access and usage costs) identified in Schedule 1 of the Customer Contract.

## 8. BILLING

- 8.1 A Correctly Rendered Invoice for a Telecommunications Service must:

- (a) identify and itemise the Telecommunications Services to which the invoice relates;
- (b) include the respective charges for the Telecommunications Services; and
- (c) where relevant, include the date and time at which the charges were incurred,

in a manner that is able to be readily understood by the Customer (acting reasonably).

- 8.2 Subject to clause 8.3, charges not invoiced in accordance with clause 8.1 may be included in a subsequent Correctly Rendered Invoice if:

- (a) the charges are listed separately from the current charges; and
- (b) the date and time that the charges were incurred is clearly identified; and
- (c) the invoice is issued within the Back Billing Period.

- 8.3 If the charges are not invoiced within the Back Billing Period, the Customer does not have to pay those charges unless:

- (a) the charges have been withheld for subsequent invoicing with the Customer's agreement;
- (b) the charges are disputed and, with the Customer's knowledge, the Contractor has refrained from invoicing them because of the dispute;
- (c) the delay is attributable to a Force Majeure Event; or
- (d) the Customer caused or contributed to the delay.

- 8.4 The Contractor shall comply with any requirements of the Customer for aggregated or consolidated invoicing (if any) specified in the relevant Module Order Form.

## 9. ISSUE RESOLUTION

- 9.1 For the purposes of clause 24 in the Customer Contract, an Issue Notice in relation to a Telecommunications Service shall include the following information (if it is reasonably available):

- (a) the relevant account number, invoice reference number and invoice date;
- (b) the invoice amount or the amount relating to the relevant account (whichever is applicable);
- (c) the Telecommunications Services and amount in dispute; and
- (d) the reasons for the dispute.

## 10. AUDIT

- 10.1 For this clause 10, "Auditor" means an independent auditor, inspector, regulator or other representative nominated by the Contract Authority or Customer.
- 10.2 The Contractor must maintain records and supporting Documents sufficient to permit a complete audit of the provision of the Telecommunications Services by the Contractor in accordance with this clause 10.
- 10.3 The Parties agree that:
- (a) the Contract Authority or the Customer will be permitted to arrange an audit of any invoices at the Contract Authority's election (limited to those invoices rendered to the Customer within the twelve month period prior to the relevant audit);
  - (b) if an audit under clause 10.3(a) indicates a discrepancy, the Contract Authority or the Customer may request a further audit of any invoices rendered during the entire current Customer Contract;
  - (c) the Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit. Reasonable notice is to be provided of an intended Contract Authority or Customer audit; and
  - (d) the audit is to be carried out by an Auditor (with suitable qualifications and experience and who has entered into a confidentiality agreement reasonably acceptable to the Contractor) during normal business hours (unless the Contractor agrees otherwise), and the Contract Authority or Customer (and its Auditors) shall be required to comply with the Contractor's standard security procedures whilst on the Contractor's premises.
- 10.4 The Parties agree that the Contract Authority or Customer may at its own cost (except where the Contractor is required to bear certain costs under clause 10.4(d)) engage an Auditor (with suitable qualifications and experience, who must not be a competitor of the Contractor) to undertake the billing services audit in accordance with the following terms:
- (a) the Contract Authority or Customer must ensure that the Auditor provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
  - (b) the Contractor must, at no additional cost to the Customer or the Contract Authority:
    - (i) provide all co-operation reasonably required by the Auditor; and
    - (ii) provide the Auditor with access (at reasonable times and on reasonable notice) to all Documents, materials and other information (including information in electronic form) relating to the provision of billing services to the Customer or relating to the Customer Contract for the purposes and to the extent reasonably necessary to enable the conduct of audit of the Contractor's provision of the billing services.

- (c) the Auditor is not entitled to have access to:
  - (i) the Contractor's network;
  - (ii) any information that would enable the Auditor to determine the costs of the Contractor; or
  - (iii) the Contractor's core billing systems.
- (d) the Customer and/or the Contract Authority shall pay for the audit unless the audit discloses:
  - (i) a discrepancy between the charges invoiced during the period audited and the Auditor's assessment of the applicable charges for that period; and
  - (ii) that any amount invoiced during the period audited is found by the Auditor to be overcharged in error by more than five (5) per cent, in which case the Customer may recover:
    - (A) the overcharged amount; and
    - (B) the costs of the audit conducted, subject to the following limitations:
      - (I) limited to a maximum of 50% of the costs of the audit in those circumstances where the discrepancy is 5% or more, but less than 10%;
      - (II) limited to a maximum of 75% of the costs of the audit in those circumstances where the discrepancy is 10% or more, but less than 20%; and
      - (III) 100% of the costs of the audit in those circumstances where the discrepancy is 20% or greater,

in accordance with clause 11.4 of the Customer Contract.

- 10.5 The Parties agree that the Contract Authority or Customer may request an audit of the Contractor's performance of the Telecommunications Services (other than billing services), including the Contractor's compliance with the Service Levels, no more than once annually unless a second or subsequent audit during that period is required to be conducted:
- (a) at the request of the internal audit department of the Contract Authority or the Customer in the course of conducting an agency-wide audit;
  - (b) for the purpose of verifying the accuracy of any incident report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to the Telecommunications Services;
  - (c) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that the Contract Authority cannot reasonably achieve that purpose without conducting an audit; or
  - (d) at the request or direction of a regulator.
- 10.6 The Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit of the Telecommunications Services. Reasonable notice is to be provided of an intended Contract Authority audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) at a time and date mutually agreed between the Contract Authority and the Contractor and in a manner that does not unduly interfere with the

Contractor's normal business activities. The Contract Authority or Customer (and its Auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises. Any audit will be conducted subject to the confidentiality provisions set out in the Customer Contract.

- 10.7 The Parties agree that the Contract Authority or Customer may at its own cost engage an Auditor (with suitable qualifications, experience, and not a competitor of the Contractor) to undertake the audit of the Telecommunications Services in accordance with the following terms:
- (a) The Contract Authority or Customer must ensure that the Auditor provides a confidentiality undertaking in a form reasonably acceptable to the Contractor.
  - (b) The Contractor must, at no additional cost to the Customer or the Contract Authority:
    - (i) provide all co-operation reasonably required by the Auditor; and
    - (ii) provide the Auditor with access (at reasonable times and on reasonable notice) to Sites only to the extent reasonably necessary to enable the Auditor to audit the provision of the Telecommunications Services (other than billing services) at those Sites under the Customer Contract, provided that such access shall be limited as follows:
      - A. in relation to disaster recovery, to be limited to access to a copy of the Contractor's disaster recovery plan to the extent relevant to the Telecommunications Services at those Sites; and
      - B. in relation to the network, to be limited to access to the monitoring tools applicable to the Telecommunications Services provided at those Sites (any such access to be in the presence of, and under the supervision of, the Contractor's nominated personnel).

The audit rights under this clause 10.7 extend to audits or practices, procedures, systems and general controls relating to the Telecommunications Services (including security), but do not include audits of all or part of the Contractor's network or the Contractor's billing systems.

## 11. SERVICE LEVELS

- 11.1 The Contractor warrants that the Customer will have access to the Telecommunications Services in accordance with the Service Levels throughout the Service Period.
- 11.2 The Contractor shall promptly notify the Customer of the occurrence of, or the pending or threatened occurrence of, any event that may materially adversely affect the Contractor's ability to provide the Telecommunications Services in accordance with the Service Levels or the Service Specifications.
- 11.3 If the Contractor fails to supply a Telecommunications Service in accordance with the Service Levels on a minimum of three or more consecutive occasions, or other period as specified in the relevant Module Order Form, during a three month rolling period, the Contractor will identify and implement steps to address the cause of the repeated failures. Such steps must be notified to and agreed with the Customer within five (5) days of the third Service Level failure.

## 12. PAYMENT AND INVOICING

- 12.1 The Contractor must, at its own cost, implement and maintain processes and/or tools to measure, and where possible identify and eliminate potential incidents before they occur, and report on the performance of the Telecommunications Services against the Service Levels (Monitoring Tools) at all times during the Service Period.

## 13. APPLICATION OF SERVICE CREDITS

- 13.1 If in any calendar month or such other agreed period referred to in the relevant Module Order Form:
- (a) the Contractor fails to meet any Service Level for a Telecommunications Service; and
  - (b) the relevant Module Order Form provides for Service Credits to accrue in respect of such failure,
- the Customer will be entitled to a Service Credit, to be calculated in accordance with the relevant Module Order Form or the Service Level Agreement (if any).
- 13.2 Service Credits available to the Customer will be totalled for the relevant period in respect of which they are incurred. The Contractor must deduct the aggregate Service Credits from the Contract Price payable by the Customer for Telecommunications Services within the following three calendar months.
- 13.3 Unless Service Credits are specified to be the Customer's sole remedy in the Module Order Form and/or the Service Level Agreement, the Customer's entitlement to a Service Credit:
- (a) is in addition to, and does not limit or affect, any other right or remedy the Customer may have in connection with the Contractor's failure to meet a Service Level; and
  - (b) does not relieve the Contractor from its obligation to provide the Telecommunications Service in any calendar month or period during the Service Period and the Contractor must ensure ongoing compliance with the Service Levels throughout any such period.
- 13.4 The Contractor agrees that, upon termination or expiration of the Service Period, any remaining accumulated Service Credits will be applied to adjust the final invoice using the same method described above in clause 13.2 or, if no final invoice is prepared, the amount of the resultant accumulated Service Credit will be paid by the Contractor within 30 days of termination or expiration.
- 13.5 If required by the relevant Module Order Form, the Parties will enter into a Service Level Agreement in respect of the Service Levels that apply to the supply of the Telecommunications Service.

## 14. BENCHMARKING OF TELECOMMUNICATIONS SERVICE

- 14.1 The Customer or the Contract Authority, where applicable, may, at the written request of either the Customer or Contract Authority, require a Benchmark to be undertaken after the expiry of the initial contract term of the Customer Contract, provided that a Benchmark may only be conducted once each year thereafter and if the Contract Authority has not required a Customer of the Contractor to conduct a Benchmark pursuant to a different Customer Contract for Telecommunications Services entered into pursuant to the Head Agreement in the 12 months immediately preceding the proposed Benchmark. In this case the Customer must appoint the Contract Authority to perform the Benchmark on behalf of the Customer.
- 14.2 Subject to clause 14.1, the Customer or the Contract Authority may undertake a Benchmark no more than annually for the purposes and scope specified below:
- (a) to compare:
    - (i) the Contract Prices the Customer is paying to the Contractor for the Telecommunications Services; and
    - (ii) the quality and standard of performance of the Telecommunications Services (as reflected in, among other things, the Service Levels),

against prices being paid by, and the quality and standard of performance of services being provided to, the Customer's peer organisations for the same or similar services at similar volumes, functionality and in similar geographic regions; and

- (b) to implement the results of the Benchmarking Report in accordance with clause 14.9.
- 14.3 The Customer or Contract Authority may at its own cost engage a Benchmarker, provided that it is not a competitor of the Contractor. The Parties agree that the Customer may disclose to the Benchmarker any provisions of this Module 11, the Head Agreement and the Customer Contract that are relevant to the Telecommunications Services, and that the Benchmarker will be required to comply with the Customer's and the Contractor's reasonable confidentiality and security requirements.
- 14.4 For clarity, the restrictions listed in clause 10.4 apply to the Benchmarker. The Parties must give the Benchmarker:
- (a) access to any premises, equipment, personnel, records or documents; and
- (b) any reasonable assistance,
- but only so far as is reasonably required by the Benchmarker to conduct the Benchmark. Without limiting the foregoing, the Contractor must provide the Benchmarker with reasonable access to its prices (excluding the Contractor's costs and profit margins), staffing and configuration information on request, but may require this to be in confidence. The Contractor is under no obligation to disclose information dealing with customer-specific internal costs, profit margins or confidential customer information if that information identifies an individual customer of the Contractor.
- 14.5 Each Party will bear its own internal costs of complying with its obligations under this clause 14.
- 14.6 Any Benchmark will be based on average data for the same type of services in Australia for the immediately preceding 12 month period. The Customer or the Contract Authority must instruct the Benchmarker to Benchmark the Telecommunications Services on the basis of the following measures:
- (a) the Contract Prices paid by the Customer for the Telecommunications Services; and
- (b) the quality of performance of the Telecommunications Services, including Service Levels,
- taking into account the specifications, volume, geographic service coverage, service levels and quality of the same type of services.
- 14.7 The Benchmarker will prepare a Benchmark Report which sets out the results of the Benchmark. The Benchmarker will prepare the Benchmark Report in draft form and provide this to the Parties for review prior to finalising the Benchmark Report.
- 14.8 The Customer or the Contract Authority will ensure that the Contractor has an opportunity to provide input into the Benchmark and that any comments provided by the Contractor within a reasonable timeframe on a draft Benchmarking Report provided by the Benchmarker under clause 14.7 will be considered in good faith before it is issued in final form.
- 14.9 Where the Benchmarker finds that the Contract Prices charged by the Contractor for any Telecommunications Services are higher than the comparable prices identified in the Benchmarking Report the Contractor must adjust the Contract Prices to match price or such alternative prices that may be agreed by the Customer and Contractor with effect from two months following the date of the issue of the final Benchmarking Report, provided that the final Benchmarking Report is not materially different from the draft report reviewed in clause 14.8.

- 14.10 If the Contractor fails to implement the results of a Benchmark as required and identified in clause 14.9, the Contractor will be in material breach of the Customer Contract and the Customer may by giving at least 30 days' Notice in Writing:
- (a) terminate the Customer Contract, in whole or in part, without having to pay any compensation to the Contractor (subject to the obligations of the Customer in relation to Contract Prices due and payable under the Customer Contract in respect of Telecommunications Services provided up until the date of termination, and subject to the Parties' obligations in relation to the Transition-Out Services under clause 18); and
  - (b) cease to acquire the whole or any specified part of the Telecommunications Services affected by the Benchmark, and in such case the Customer will have no obligation to pay any Contract Prices in respect of those Telecommunications Services, following the date of termination.
- 14.11 The Customer or the Contract Authority will include in its agreement with the Benchmark obligations on the Benchmark to destroy or return to the Customer or Contractor, as appropriate, any copies of the information provided by the Contractor to the Benchmark and any Contract Prices used or accessed by the Benchmark, in each case, and to provide written confirmation that it has complied with this obligation after the completion of the Benchmark that was conducted under this clause 14. The Benchmark is not able to make use of the information provided for any other purpose than the Benchmark of the Customer Contract for Telecommunications Services.

## 15. REPORTS AND RECORDS

- 15.1 The Contractor must provide to the Customer the Customer Works and reports:
- (a) as reasonably required by the Customer; or
  - (b) as stated in the relevant Module Order Form.
- 15.2 The Contractor must maintain records as required to enable it to comply with its obligations under this Module 11.

## 16. CHANGES TO TELECOMMUNICATIONS SERVICES

- 16.1 The Contractor may exit a Telecommunications Service or make changes to a Telecommunications Service but only where it intends to withdraw or retire the underlying technology supporting the Telecommunications Service and provided that:
- (a) the Contractor provides a Notice in Writing to the Customer at least nine (9) months prior to the exit or change;
  - (b) the Contractor provides a written report to the Customer setting out details of any modified or alternative service that it proposes to make available to the Customer and the proposed migration to that service; and
  - (c) the Contractor consults with the Customer prior to the implementation of the proposed changes and co-operates with the Customer in good faith to achieve a smooth and uninterrupted transition (at no cost to the Customer) in relation to the exit of a Telecommunications Service or transformation to a modified or alternative service.
- 16.2 If, in the Customer's reasonable opinion, the features and functionality of any proposed modified or alternative Telecommunications Service are not substantially the same or better than the existing Telecommunications Service that is being provided by the Contractor, or proposed changes are otherwise materially detrimental to the Customer, the Customer may cancel the relevant Telecommunications Service without the payment of any early termination fee for that cancellation.

- 16.3 During the Service Period, the Contractor shall offer the Customer new telecommunications services, which may include new technologies, when the Contractor makes such new telecommunications services generally commercially available in Australia.
- 16.4 The Parties agree to co-operate in good faith to identify opportunities for the Contractor to propose new Telecommunications Services for the purpose of creating technology enabled business value for the benefit of the Customer.

## 17. CANCELLATION, TRANSFER AND SUSPENSION OF TELECOMMUNICATIONS SERVICES

- 17.1 For this clause 17, “State Owned Corporation” means a state owned corporation as defined in the *State Owned Corporations Act 1989*.
- 17.2 The Customer may cancel a Telecommunications Service by giving at least 30 days’ Notice in Writing to the Contractor.
- 17.3 The Customer may, by giving at least 60 days’ Notice in Writing (or otherwise agreed time period in the relevant Module Order Form) to the Contractor:
- (a) transfer or redeploy any Telecommunications Services so that the Telecommunications Service is provided to:
    - (i) a different User of the Customer under this Customer Contract; or
    - (ii) another Department, Agency, State Owned Corporation, or other government organisation under a different Customer Contract nominated by the Contracting Authority, but only where the Parties, using reasonable endeavours, have agreed a plan to facilitate an orderly, prompt and efficient transition of that Telecommunications Service from the Customer to that other party.
- 17.4 If Telecommunications Services are transferred or redeployed in accordance with clause 17.3(a), the Contractor must promptly notify the affected Customers of any proposed changes in service costs which may occur as a result of the transfer or redeployment.
- 17.5 For the avoidance of doubt, no early termination fee is payable by the Customer for the transfer of a Telecommunications Service in accordance with clause 17.3(a), provided the term is at least equal to the remainder of the term under the original Customer Contract and all other conditions (including volume) continue to apply after the relevant transfer. The Contractor may charge a reasonable service relocation charge for a transferred service.
- 17.6 The Contractor is entitled to suspend the Telecommunications Service in the event of an Emergency or to comply with the binding order or direction of a regulator, emergency services organisation or other competent authority, but only to the extent and only for so long as is necessary to enable the Contractor to address the Emergency or to comply with such order or direction. The Contractor must resume provision of the affected Telecommunications Service as soon as practicable after the reason for the suspension has been removed or addressed.
- 17.7 In addition to the Customer’s right to terminate the Customer Contract in accordance with clause 25 of the Customer Contract and clause 3.1 of this Module, the Customer may immediately terminate the Customer Contract in respect of this Module for cause by providing the Contractor Notice in Writing, if the Contractor persistently breaches the warranties contained in this Module (but only where such breaches collectively constitute a Substantial Breach) in which event the Contractor will be liable for the Customer’s reasonable direct costs and expenses associated with the breach including all reasonable direct costs associated with changing Contractors, subject to the applicable exclusions and limitations of liability set out in this Module and the Customer Contract.



## 18. TRANSITION OUT ARRANGEMENTS

- 18.1 On termination or expiry of the Customer Contract or part of the Customer Contract by the Customer, the Contractor will provide such assistance as is reasonably necessary for the Telecommunications Services to continue without interruption for the Transition Out Period on the same terms as the Customer Contract to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer (except in those circumstances where termination arises as a result of the Customer's failure to pay moneys owing in accordance with clause 25.6 of the Customer Contract).
- 18.2 The Contractor must, in relation to the Telecommunications Services disengaged under this clause 18:
- (a) continue to provide such Telecommunications Services (including any associated monitoring, reporting and other related services required under the Customer Contract) during the Transition-Out Period in accordance with the terms of the Customer Contract;
  - (b) do everything within its control to ensure that there is no disruption to such Telecommunications Services during the Transition-Out Period; and
  - (c) provide for the orderly hand over of such Telecommunications Services to a third party supplier nominated by the Customer.
- 18.3 The Customer may terminate the Transition-Out Services, in whole or in part, at any time by giving the Contractor ten (10) Business Days' Notice in Writing of such termination.
- 18.4 On request by a Customer, the Contractor must prepare a plan for the disengagement of Telecommunications Services in accordance with the specific requirements set out in relevant Module Order Form within 30 days.
- 18.5 The Customer must pay the Contractor:
- (a) for any Telecommunications Services provided during the Transition-Out Period in accordance with the Prices specified in the Customer Contract in effect immediately prior to the commencement of the Transition-Out Period; and
  - (b) if the Customer is transitioning to an alternative service provider, a reasonable amount for any additional services, costs and expenses incurred in the provision of the Transition-Out Services calculated to the extent practicable in a manner consistent with the Prices, such amount to be agreed and specified in the Transition-Out Plan.

## 19. ACCESS TO CUSTOMER'S SITE

- 19.1 Where, for the purposes of providing a Telecommunications Service to the Customer, the Contractor requires access to the Customer's Site, such access will be provided in accordance with and subject to the requirements in clause 7 of the Customer Contract and any other requirements specified in the relevant Module Order Form.

## 20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 For the purposes of this Module 11, clause 13 of the Customer Contract is replaced with this clause 20.
- 20.2 For the purposes of this clause 20:
- (a) "Contractor Network Data" means any network data and network information (including statistical data and configuration information, and any other such data necessary for administrative, corporate governance, network operations, facilities

management and related purposes) relating directly to the Contractor's provision of the Telecommunications Services in accordance with this Agreement which is generated by the Contractor, by the Contractor's network, or by the Contractor's software, systems or equipment which monitor the operation or performance of its network, and includes:

- (i) any Documents or records related to such data or information;
  - (ii) any products resulting from the use or manipulation of such data or information; and
  - (iii) any and all copies of any of the above.
- (b) "Contractor Works" means all Works other than Customer Works, including Contractor Software and Contractor Tools and Methodologies and Contractor Network Data and any other Works which relate to the Contractor's Network or any development, improvement, modification to or extension of the Contractor's Network; and
- (c) "Generic Third Party Documentation" means Documents provided to the Contractor's customers generally, to the extent that such generic Documents incorporates Contractor Works in which Intellectual Property Rights are owned by a third party.
- 20.3 The Customer will own all Intellectual Property Rights in the Customer Works immediately from creation (including part creation), regardless of whether the Intellectual Property Rights arise during or after termination of the Customer Contract.
- 20.4 The Contractor assigns to the Customer all Intellectual Property Rights in all Customer Works created or developed by the Contractor. This assignment will be effected on the creation of such Intellectual Property Rights (including as a present assignment of future copyright) without the need for further consideration.
- 20.5 The Customer grants to the Contractor, for the effective period of the Customer Contract, to the extent necessary and for the sole purpose of providing the Telecommunications Services, a royalty-free, non-exclusive, non-transferable licence to use the Customer Works in Australia.
- 20.6 The Contractor retains all Intellectual Property Rights in the Contractor Works immediately from creation (including part creation) regardless of whether the Intellectual Property Rights arise during or after termination of the Customer Contract.
- 20.7 The Contractor grants to the Customer a royalty-free, irrevocable, non-transferable and non-exclusive right and licence to use:
- (a) during the Contract Period and any Transition-Out Period: the Contractor Works (including Contractor Works in which the Intellectual Property Rights are owned by a third party, or which relate to the Contractor's network) and all Generic Third Party Documentation, but excluding the Contractor Network Data which is governed by clause 20.7(b); and
  - (b) in perpetuity: the Documents (other than Generic Third Party Documentation) and the Contractor Network Data, such use to be limited to the Customer's internal operational purposes.

## 21. THIRD PARTY SERVICE PROVIDERS

- 21.1 The Contractor agrees to comply with the Customer's reasonable requests for co-operation and assistance for the Customer and its third party suppliers (if any) in connection with the Telecommunications Services. Such co-operation and assistance must, at a minimum,

include providing all reasonable co-operation and assistance in relation to the following matters:

- (a) delivering the Telecommunications Services in conjunction with other relevant projects and services in a coordinated, effective and timely manner;
- (b) providing connection to any infrastructure, facilities or equipment, or access to the relevant Documents or materials necessary for providing the Telecommunications Services; or
- (c) agreeing on procedures with the Customer and any third party suppliers for the division of responsibilities in relation to services and functions that may overlap between the Contractor and third party suppliers.

21.2 If the Contractor is required to provide a connection to any infrastructure, facilities, equipment or access to any Documents under this clause 21, this connectivity or access is subject to the Contractor's reasonable security requirements and procedures. If the Contractor provides information to a third party supplier under this clause 21, that third party supplier must, if required by the Contractor, sign a non-disclosure undertaking in a form reasonably requested by the Contractor and affording no less protection than those standards applied by the Contractor to the protection and disclosure of its own confidential information.

## 22. CO-OPERATIVE PROBLEM SOLVING PROCEDURES

- 22.1 Where the Contractor in good faith believes, and has taken reasonable steps to confirm, that a problem relating to the Telecommunications Services is not the responsibility of the Contractor under the Customer Contract but is the responsibility of a third party provider, the Contractor must promptly notify the Customer, and the Customer is responsible for ensuring that such third party provider rectifies the problem.
- 22.2 The Contractor may only hand over responsibility for the resolution of a problem referred to in this clause 22 to a third party provider where the Contractor:
- (a) has investigated the problem in accordance with this clause 22;
  - (b) has reasonable grounds to believe that the cause of the problem is one or more factors for which the third party provider is responsible; and
  - (c) has given the Customer and the third party provider:
    - (i) notice that it has investigated the problem;
    - (ii) a description of the factor or factors which the Contractor considers to have caused the problem; and
    - (iii) a copy of any network or service reports and such other data as reasonably necessary to establish that the cause of the problem is a factor or factors for which the third party provider is responsible.
- 22.3 If, after handing over responsibility for the resolution of a problem to the third party provider in accordance with this clause 22, the third party provider subsequently notifies the Contractor that it believes that the Contractor is responsible for the resolution of the problem, the matter will be resolved in accordance with the resolution procedures in clause 24 of the Customer Contact.

## 23. SECURITY

- 23.1 The Customer will implement and maintain appropriate security measures to protect its operational environment and data in accordance with the requirements specified in the relevant Module Order Form.

23.2 The Contractor must use all reasonable endeavours to:

- (a) implement and maintain appropriate security measures relating to the Telecommunications Services with the purpose of the prevention of unauthorised access:
  - (i) by any third party to a Network; and
  - (ii) by any Customer to the data or Confidential Information of another Customer;
- (b) ensure that all its software deployed in the delivery of the Telecommunications Services incorporates industry best practice in relation to the implementation of (if applicable to the Telecommunications Service) encryption systems and anti-virus protection, patches, updates and upgrades for security purposes;
- (c) implement and maintain appropriate measures to maintain the confidentiality and integrity of data in a Network;
- (d) provide an applicable Information Security Management System in accordance with AS/NZS ISO/IEC 17799:2001 Information Technology – Code of Practice for Information Security Management (as updated from time to time) and, as relevant, AS 13335 Parts 1 to 5 Information Technology – Guidelines for the Management of IT Security (as updated from time to time) or equivalent;
- (e) meet the standards set out in the relevant Module Order Form, as amended from time to time; and
- (f) address any specific security needs of the Customer in relation to the Telecommunications Services, as notified to the Contractor in writing from time to time, provided that to the extent such request is in addition to the requirements for compliance with this clause 23, the Customer must bear the cost of such additional requirements.

23.3 The Contractor must provide to the Customer:

- (a) as soon as reasonably practicable following a request by the Customer:
  - (i) a statement of the types and severity of any security risks to confidentiality and integrity against which the Contractor's network is safeguarded from time to time;
  - (ii) a copy of the Contractor's then current security policy; and
  - (iii) the details of any changes made to the security policy since the last time a copy was provided to that Customer; and
- (b) following any security incident affecting the Contractor in respect of the Telecommunications Services:
  - (i) notification of the security incident within one (1) Business Day; and
  - (ii) a detailed security incident report within three (3) Business Days.

## 24 MANAGEMENT OF NETWORKS

24.1 The Contractor must:

- (a) use all reasonable endeavours to undertake all maintenance of a Network during the times specified in the relevant Module Order Form or other times as are agreed with the Customer;

- (b) use all reasonable endeavours to undertake all maintenance of a Network in such manner as to avoid any impact on the provision of Telecommunications Services to the Customer in accordance with the Customer Contract; and
- (c) use all reasonable endeavours to continue to meet or exceed the Service Levels and comply with the Service Specifications while undertaking any maintenance of a Network. The Contractor must ensure that a Network is designed, constructed and maintained in such a manner as to enable the Contractor to comply with its obligations in relation to the Service Levels and Service Specifications.

24.2 Without limiting its obligation under clause 24.1, where the Contractor reasonably anticipates that:

- (a) any maintenance (including modifications and upgrades, but excluding Emergency maintenance) of a Network will or might have an impact on the provision of Telecommunications Services to the Customer; and
- (b) the Contractor may not be able to meet or exceed the Service Levels or comply with the Service Specifications while undertaking such maintenance (Scheduled Maintenance),

the Contractor must provide notice of such Scheduled Maintenance to the Customer as soon as reasonably practicable, but not less than five (5) Business Days in advance of such Scheduled Maintenance, including details of:

- (c) the reasons for the proposed Scheduled Maintenance;
- (d) a date, start time and end time for the proposed Scheduled Maintenance;
- (e) a list of all Telecommunications Services likely to be affected by the proposed Scheduled Maintenance;
- (f) mobile phone contact details for the Contractor Representative in charge of the management of the Scheduled Maintenance for any queries in relation to the Scheduled Maintenance; and
- (g) any other information reasonably requested by the Customer from time to time.

24.3 The Contractor must notify the Customer of the occurrence of, or the pending or threatened occurrence of, any event that may adversely affect the Contractor's ability to provide the Telecommunications Services in accordance with the Customer Contract, including the Service Levels, as soon as practicable upon becoming aware of this event.

## 25. INCIDENT AND PROBLEM MANAGEMENT

25.1 Without limiting any other provision of the Customer Contract, the Contractor must report immediately to the Customer Representative any actual or anticipated Incident as soon as it becomes aware of any actual or anticipated Incident.

25.2 The Contractor must keep a log of each Incident reported to it in a system maintained by the Contractor for this purpose, and allocate a severity code to each Incident. Unless otherwise specified in the relevant Module Order Form, the severity codes have the corresponding level of impact as follows:

- (a) Severity Code 1: Incidents which affect business critical systems that impact on any User and no reasonable or viable alternatives are available.
- (b) Severity Code 2: Incidents which degrade performance of critical systems and which are critical to any User and no reasonable or viable alternatives are available.

- (c) Severity Code 3: Incidents which degrade performance of non-critical systems which may result in such systems being difficult to use or having restricted functionality. There is some operational impact.
  - (d) Severity Code 4: Incidents which have little operational impact. The relevant system is useable, the Incident can be circumvented and deferred maintenance is acceptable.
- 25.3 If the Customer does not agree with the allocation of a severity code with respect to an Incident, the Customer may designate the severity code applicable to that Incident.
- 25.4 The Contractor must use all reasonable endeavours to resolve each Incident in accordance with the timeframes for each severity code level of Incident specified in the relevant Module Order Form.
- 25.5 For the avoidance of doubt, the Parties acknowledge that the obligations of the Contractor under this clause 25 are in addition and without prejudice to the Contractor's other obligations under the Customer Contract or any entitlement of the Customer to a Service Credit or other rights or remedies.

## **26. DISASTER RECOVERY AND BUSINESS CONTINUITY**

- 26.1 Where the relevant Module Order Form states that the contractor must prepare a Disaster Recovery Plan or Business Continuity Plan in respect of Telecommunications Services, that plan must be prepared by the Contractor, and the Contractor must comply with the plan, in accordance with clauses 6.45 to 6.48 of the Customer Contract.
- 26.2 A Disaster Recovery Plan or Business Continuity Plan prepared by the Contractor under clause 26.1 must deal with any matters specified in the relevant Module Order Form.

## **27. CONTRACTOR'S STANDARD FORM OF AGREEMENT**

- 27.1 The Parties agree that the service descriptions of the Telecommunications Services and those mandatory terms that relate to services on the National Broadband Network, if any and if applicable, as set out in the Contractor's Standard Form of Agreement will apply to the supply of Telecommunications Services by the Contractor to the Customer, but all other provisions of that Standard Form of Agreement will not apply to such supply.

## **28. ORDERING TELECOMMUNICATIONS SERVICES**

- 28.1 If stated in the relevant Module Order Form, the initial establishment of the Telecommunications Services under this Module 11 will be implemented in accordance with an agreed Transition-In Plan.
- 28.2 The Customer may make requests for Telecommunications Services after the initial establishment described in clause 28.1 by issuing a Module Order Form which specifies all details of the request including:
- (a) the Telecommunications Services which are the subject of the request; and
  - (b) the date from which the Customer requires the instructions under the relevant Module Order Form to be implemented.
- 28.3 The Contractor must, within one Business Day of receipt of the relevant Module Order Form, provide written acknowledgement of receipt to the Customer.
- 28.4 Within ten (10) Business Days of receipt of the relevant Module Order Form, the Contractor must:
- (a) confirm that it accepts all of the terms of the relevant Module Order Form; or

- (b) if it reasonably considers that the relevant Module Order Form does not contain sufficient information, notify the Customer in writing and request the further information required, in which case the Customer will submit an amended Module Order Form; or
  - (c) if it reasonably considers that it is not technically or commercially feasible to implement the relevant Module Order Form in accordance with the information or timeframes specified, notify the Customer in writing that this is the case, in which case the Parties will negotiate any necessary amendments to the relevant Module Order Form.
- 28.5 If the Contractor fails to provide a notice under clause 28.4 within the specified timeframe, it will be deemed to have accepted the relevant Module Order Form.
- 28.6 Following the Contractor's acceptance of the relevant Module Order Form, the Contractor must implement the Module Order Form in accordance with the timeframes specified in it.
- 28.7 Except as expressly stated in the relevant Module Order Form, the Customer is not required to purchase any Telecommunications Services for a minimum period.

## 29. USERS

- 29.1 The Contractor will make the Telecommunications Services available to such Users as may be specified by the Customer.
- 29.2 The Contractor must:
- (a) establish and maintain entitlements for Users, based on written directions provided by the Customer from time to time in relation to the blocking of access of any nominated Users to any Telecommunications Services (or features, specified functionality or any other specified component of the Telecommunications Services) nominated by the Customer in writing from time to time ("User Entitlement Directions"); and
  - (b) implement the appropriate encryption and security arrangements, including user names and/or passwords, as required to implement and manage access to the Services and any other online services provided by the Contractor, in accordance with the User Entitlement Directions.
- 29.3 The Customer may at any time, by notice in writing to the Contractor (which notice may be given electronically), change the User Entitlement Directions and the Contractor must comply with such changes.
- 29.4 The Contractor must ensure that:
- (a) Users are not provided with access rights in excess of those specified in the User Entitlement Directions; and
  - (b) all records of User Entitlement Directions are maintained in a safe and secure environment, and are not able to be accessed by any persons except as expressly authorised by the Customer.

## 30. CUSTOMER CONTENT

- 30.1 The Contractor does not obtain any rights in or to Customer Content.
- 30.2 Subject to the provisions of this clause 30, the Customer grants to the Contractor, for the Service Period, a royalty-free, non-exclusive, non-transferable licence to use the Customer Content solely for the purposes of, and to the extent necessary for, the Contractor to provide the Telecommunications Services to the Customer.

- 30.3 The Contractor must not, and warrants that it will not:
- (a) use the Customer Content for any purpose other than:
    - (i) to transmit the Customer Content via the Data Services in accordance with the Customer Contract; or
    - (ii) where obliged to do so under Laws;
  - (b) purport to sell, let for hire, assign rights in or otherwise transfer title to any of the Customer Content;
  - (c) except as expressly provided otherwise in the Customer Contract, make any of the Customer Content available to any third party, other than where the Contractor is required to do so by Law; or
  - (d) commercially exploit the Customer Content.
- 30.4 The Contractor must:
- (a) maintain safeguards against the destruction, loss or alteration of the Customer Content in the course of delivering the Data Services that are no less rigorous than the safeguards that can reasonably be expected in relation to similar services in telecommunications networks employing best industry practices; and
  - (b) not disclose, give, buy, sell or exchange the Customer Content to any third party, including when Customer Content is in transit within the Contractor's Network (except where and to the extent permitted under the Customer Contract or as otherwise permitted under any applicable Laws).

## 31. TELECOMMUNICATIONS EQUIPMENT SUPPLY AND MAINTENANCE

- 31.1 If the relevant Module Order Form indicates that the Customer requires Telecommunications Equipment (including, in the case of Mobile Services, Mobile Devices) for or in relation to Telecommunications Services provided under this Module 11, subject to this clause 31, such Telecommunications Equipment will be provided by the Contractor in accordance with and subject to the terms of Module 1 unless otherwise set out in the Module Order Form.
- 31.2 Unless otherwise specified in the relevant Module Order Form, Telecommunications Equipment provided under this Module 11 will be maintained by the Contractor in accordance with Module 2. The Contractor will provide such Hardware Maintenance and Support Services under Module 2 as are specified in the relevant Module Order Form.
- 31.3 The Contractor will provide the Hardware Maintenance and Support Services specified in the relevant Module Order Form in relation to the Telecommunications Equipment specified in that Module Order Form, regardless of whether the Telecommunications Equipment is owned by the Contractor, the Customer or a third party.

## PART A FIXED VOICE SERVICES

### 32. PROVISION OF FIXED VOICE SERVICE

- 32.1 The Contractor will provide the Fixed Voice Services:
- (a) at the Site(s) specified in the relevant Module Order Form in accordance with the Customer Contract, including, but not limited to, the Contract Specifications;
  - (b) within the timeframes specified in the Module Order Form;



- (c) with sufficient capacity, availability, reliability and quality throughout the Service Period to meet the requirements of the Service Levels; and
  - (d) in accordance with all other applicable requirements contained in the Customer Contract.
- 32.2 The Contractor must maintain and keep updated a list of all Sites to which the Contractor is obliged to provide Fixed Voice Services, incorporating details regarding each Site and the Fixed Voice Services provided at each Site.
- 32.3 Where a Fixed Voice Service is provided by the Contractor pursuant to applicable Universal Service Obligations, the Contractor must ensure that the Fixed Voice Service has all the functionality of a Standard Telephone Service.
- 32.4 If requested by the Customer, the Contractor shall promptly provide the Customer with information relevant to the compatibility requirements of any Telecommunications Equipment with the Fixed Voice Service.

### 33. FIXED VOICE TELEPHONE NUMBERS AND ADDRESSES

- 33.1 Subject to any contrary direction of the ACMA and subject to the matters specified in the relevant Module Order Form:
- (a) the Contractor shall not, unless it is reasonably necessary to do so or the Customer requests or agrees, deprive the Customer of the telephone numbers allocated to the Customer; and
  - (b) the Contractor shall, to the extent that it is reasonably practical or possible to do so, allow the Customer to retain the telephone numbers allocated to the Customer on any change of address by the Customer or any transfer to another service provider.
- 33.2 The Customer must comply with the requirements of any regulator or other body which administers telephone numbering. The Customer acknowledges and agrees that:
- (a) the Contractor does not control the allocation of telephone numbers;
  - (b) the Contractor is not liable to the Customer if the Contractor is required to change any telephone number as a result of any direction given by a regulator or other body which administers telephone numbering; and
  - (c) on cancellation of the applicable Fixed Voice Service, the Contractor will use best endeavours to procure for the Customer the right to use any related telephone number where technically feasible and where commercial arrangements exist for porting of the telephone numbers.

### 34. PORTING OF TELEPHONE NUMBERS

- 34.1 Unless otherwise specified in the relevant Module Order Form, the Contractor agrees to allow the Customer to keep its existing telephone number upon the Customer transferring its Fixed Voice Service to and from the Contractor.
- 34.2 Upon receipt of a relevant and accurately completed number portability authorisation form, the Contractor shall use all reasonable efforts to transfer the Customer's telephone number on or before the requested Port Out Date.
- 34.3 The Customer shall be responsible for any amounts payable prior to the Port Out Date.

## 35. DOCUMENTS

- 35.1 The Contractor must provide Documents in relation to the Fixed Voice Services in accordance with clauses 5.4 to 5.7 of the Customer Contract.

## 36. NETWORK REDUNDANCY

- 36.1 The Contractor must use reasonable endeavours to minimise, in accordance with its network design, the single points of failure in the infrastructure of the Network used to provide the Fixed Voice Services.
- 36.2 The Contractor acknowledges that it is responsible for the supply of Fixed Voice Services in accordance with this Module, but the parties acknowledge that the Contractor may require services from third party suppliers to enable the Contractor to supply such Fixed Voice Services.

## 37. LIMITATIONS OF FIXED VOICE SERVICE

- 37.1 The Contractor may suspend or limit a Fixed Voice Service if:
- (a) the Customer vacates (except on a temporary basis) the premises to which the Fixed Voice Service is provided;
  - (b) there is an Emergency or anticipated Emergency;
  - (c) it is reasonable to do so in circumstances where the Contractor is not able to enter premises to which the Fixed Voice Service is provided in order to inspect, repair or maintain any equipment belonging to the Contractor and connected with the Fixed Voice Service;
  - (d) the continued provision of the Fixed Voice Service by the Contractor is unlawful;
  - (e) it reasonably suspects fraud, the commission of an offence against any law or interference with the Contractor's telecommunications network;
  - (f) it is required to do so by the ACMA; or
  - (g) it is unable to continue to supply the Fixed Voice Service due to a failure of any other network that is interconnected to the Contractor's network used to provide the Telecommunications Service,

provided that the Contractor must resume supply of the Fixed Voice Service as soon as practicable after the reason for the suspension is removed or addressed.

- 37.2 The Contractor shall notify the Customer of any suspension or limitation of a Fixed Voice Service pursuant to clause 37.1 as soon as it is reasonably practical to do so. The Contractor shall continue to keep the Customer informed of any progress relating to the Fixed Voice Service. While the Fixed Voice Service is suspended under this clause 37 (excluding clauses 37.1(a), (c) and (e)), the Customer is relieved of its obligation to pay for such Fixed Voice Service.

## PART B MOBILE SERVICES

### 38. PROVISION OF MOBILE SERVICE

- 38.1 The Contractor using best endeavours will provide the Mobile Services:
- (a) to the SIM cards specified in the relevant Module Order Form in accordance with the Customer Contract, including, but not limited to, the Service Description and Service Specifications;

- (b) within the timeframes specified in the Module Order Form;
  - (c) with sufficient capacity, availability, reliability and quality throughout the Service Period to meet the requirements of the Service Levels; and
  - (d) in accordance with all other applicable requirements contained in the Customer Contract.
- 38.2 The Contractor must maintain and keep updated a list of all SIM cards to which the Contractor is obliged to provide Mobile Services, incorporating details regarding each SIM card and the Mobile Services provided to each SIM card.
- 38.3 If requested by the Customer, the Contractor shall promptly provide the Customer with information relevant to the compatibility requirements of any Mobile Devices with the Mobile Service.

## 39. TELEPHONE NUMBERS

- 39.1 Subject to any contrary direction of the Australian Communications Authority and subject to the matters specified in the relevant Module Order Form:
- (a) the Contractor shall not, unless it is reasonably necessary to do so or the Customer requests or agrees, deprive the Customer of the telephone numbers allocated to the Customer; and
  - (b) the Contractor shall, to the extent that it is reasonably practical or possible to do so, allow the Customer to retain the telephone numbers allocated to the Customer on any change of address by the Customer or any transfer to another service provider.
- 39.2 The Customer must comply with the requirements of any regulator or other body which administers telephone numbering. The Customer acknowledges and agrees that:
- (a) the Contractor does not control the allocation of telephone numbers;
  - (b) the Contractor is not liable to the Customer if the Contractor is required to change any telephone number as a result of any direction given by a regulator or other body which administers telephone numbering; and
  - (c) on cancellation of the applicable Mobile Service, the Contractor will use best endeavours to procure for the Customer the right to use any related telephone number, where technically feasible and where commercial arrangements exist for porting of the telephone numbers.

## 40. PORTING OF TELEPHONE NUMBERS

- 40.1 Unless otherwise specified in the Module Order, the Contractor agrees to allow the Customer to keep its existing telephone number upon the Customer transferring its Mobile Service to and from the Contractor.
- 40.2 Upon receipt of a relevant and accurately completed number portability authorisation form, the Contractor shall use all reasonable efforts to transfer the Customer's telephone number on or before the requested Port Out Date.
- 40.3 The Customer shall be responsible for any amounts payable prior to the Port Out Date.

## 41. SIM CARDS

- 41.1 The Contractor must:
- (a) maintain and provide ongoing supplies of SIM cards in accordance with the relevant Module Order Form and requests received from the Customer from time to time;
  - (b) distribute the SIM cards to any nominated Customer Sites (as specified in the relevant Module Order Form); and
  - (c) activate the SIM cards in accordance with the processes set out in the relevant Module Order Form.
- 41.2 SIM cards remain the property of the Contractor.
- 41.3 The Customer shall follow any reasonable procedures to protect SIM cards against unauthorised use.
- 41.4 The Customer shall promptly notify the Contractor if a SIM card is lost or stolen. The Customer shall be liable for all charges relating to any lost or stolen SIM card until the date and time the Contractor is notified of the loss.
- 41.5 If the SIM card contains a defect, then upon the Contractor's receipt of notice from the Customer of the defect, the Contractor shall promptly provide the Customer with a replacement SIM card at no additional cost to the Customer. Where the defect renders the mobile service unusable, the Customer will not be charged for the Mobile Service from the time the Customer has notified the Contractor of the SIM card's defect until the Customer receives a replacement SIM card.
- 41.6 Subject to clause 41.5, if reasonably instructed by the Contractor, the Customer will either promptly:
- (a) return the SIM card containing the Defect to the Contractor; or
  - (b) destroy the SIM card containing the Defect and provide reasonable evidence to that fact.

## 42. MOBILE SERVICES COVERAGE COMMITMENTS

- 42.1 The Contractor must:
- (a) use reasonable endeavours to identify and, where commercially feasible, minimise the incidents of coverage black spots;
  - (b) establish and implement processes for systematically assessing the quality of mobile coverage impacting on the Customer's Sites (including the identification of any mobile coverage black spots) and reporting to the Customer on a timely basis in respect of the same; and
  - (c) provide rectification plans on an agreed basis as set out in the relevant Module Order Form in relation to those Customer Sites identified.

## 43. NETWORK REDUNDANCY

- 43.1 The Contractor must use reasonable endeavours to minimise, in accordance with its network design, the single points of failure in the infrastructure of the Network used to provide the Mobile Services.

- 43.2 The Contractor acknowledges that it is responsible for the supply of Mobile Services in accordance with this Module, but the Parties acknowledge that the Contractor may require services from third party suppliers to enable the Contractor to supply such Mobile Services.
- 43.3 The Contractor must ensure that the infrastructure of the Network used to provide the Mobile Services is capable of supporting the delivery of the Mobile Services to meet or exceed the Service Levels.

## 44. LIMITATIONS OF MOBILE SERVICE

- 44.1 The Contractor may suspend or limit a Mobile Service if:
- (a) the continued provision of the Mobile Service by the Contractor is unlawful;
  - (b) it reasonably suspects fraud, the commission of an offence against any law or interference with the Contractor's telecommunications network; or
  - (c) required to do so by the ACMA,
- provided that the Contractor must resume supply of the Mobile Service as soon as practicable after the reason for the suspension is removed or addressed.
- 44.2 The Contractor shall notify the Customer of any suspension or limitation of a Mobile Service pursuant to clause 44.1 as soon as it is reasonably practical to do so. The Contractor shall continue to keep the Customer informed of any progress relating to the Mobile Service. While the Mobile Service is suspended under this clause 44.1(a), the Customer is relieved of its obligation to pay for such Mobile Service.

## PART C DATA SERVICES

### 45. SUPPLY OF DATA SERVICES

- 45.1 The Contractor will provide the Data Services:
- (a) at the Site(s) specified in the relevant Module Order Form in accordance with the Customer Contract, including, the Contract Specifications;
  - (b) within the timeframes specified in the Module Order Form;
  - (c) with sufficient capacity, availability, reliability and quality throughout the Service Period to meet the requirements of the Service Levels; and
  - (d) in accordance with all other applicable requirements contained in the Customer Contract.
- 45.2 The Contractor must maintain and keep updated a list of all Sites to which the Contractor is obliged to provide Data Services, incorporating details regarding each Site and the Data Services provided at each Site.
- 45.3 If requested by the Customer, the Contractor shall promptly provide the Customer with information relevant to compatibility requirements of any Telecommunications Equipment with the Data Service.

### 46. PUBLIC ADDRESSING IDENTIFIERS

- 46.1 Where, and to the extent that the Data Services involve, the delivery of IP-based services, the Contractor must use those IP addresses assigned to the Customer (unless otherwise agreed by the Customer in writing).

- 46.2 The Data Service may use one or more identifiers such as an IP address or a domain name ("Public Addressing Identifiers"). The Customer must comply with the requirements of any regulator or other body which administers Public Addressing Identifiers. The Customer acknowledges and agrees that:
- (a) the Contractor does not control the allocation of Public Addressing Identifiers;
  - (b) the Contractor is not liable to the Customer if the Contractor is required to change any Public Addressing Identifier as a result of any direction given by a regulator or other body which administers Public Addressing Identifiers; and
  - (c) on cancellation of the applicable Data Service, the Contractor will use best endeavours to procure for the Customer the right to use any related Public Addressing Identifier where technically feasible and where commercial arrangements exist for porting of the relevant Public Addressing Identifier.

## 47. LIMITATIONS OF DATA SERVICES

- 47.1 The Contractor may suspend or limit a Data Service if:
- (a) the Customer vacates (except on a temporary basis) the premises to which the Data Service is provided;
  - (b) there is an Emergency or anticipated Emergency;
  - (c) it is reasonable to do so in circumstances where the Contractor is not able to enter premises to which the Data Service is provided in order to inspect, repair or maintain any equipment belonging to the Contractor and connected with the Data Service;
  - (d) the continued provision of the Data Service by the Contractor is unlawful;
  - (e) it reasonably suspects fraud, the commission of an offence against any law or interference with the Contractor's telecommunications network; or
  - (f) required to do so by the ACMA,
- provided that the Contractor must resume supply of the Data Service as soon as practicable after the reason for the suspension is removed or addressed.
- 47.2 The Contractor shall notify the Customer of any suspension or limitation of a Data Service pursuant to clause 47.1 as soon as it is reasonably practical to do so. The Contractor shall continue to keep the Customer informed of any progress relating to the Data Service. While the Mobile Service is suspended under this clause 47 (excluding clauses 47.1(a), (c) and (e)), the Customer is relieved of its obligation to pay for such Data Service.