

Module 8 – Training Services

Version 3.2

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[Use Guidelines

This Module should be used when the Customer is buying the training services, including user training, train the trainer training and awareness training. This type of training is often associated with IT projects.

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

AGREED TERMS

The terms and conditions included in this **Module 8** form part of the Customer Contract when the Parties state that the Training Services 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 Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 Training Services** means the services described in clause 3.1.

INTERPRETATION

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

2. Training Services Period

- 2.1** Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Training Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2** If no Contract Period is specified in the Order Documents and the Training Services are provided on a time and materials basis, then the Training Services will be provided from the Commencement Date until either Party cancels the Training Services by providing 30 days prior Notice in Writing to the other.

3. Scope of Training Services

SCOPE

- 3.1** The Parties will set out in the Module Order Form or a PIPP the details of the Training Services, which may include:
- (a) the Contract Period;
 - (b) whether the training is:
 - (i) User training - training to be provided to users of Deliverables to enable them to develop the requisite skills to use Deliverables;
 - (ii) "Train-the-Trainer" training – training to be provided to the Customer's nominated trainers who will provide user training in the future; and
 - (iii) Awareness training – training to be provided to the Customer's Personnel who are affected by the Deliverables and therefore need to be aware of:
 - (A) how the Deliverables work;
 - (B) their roles, if any; and

- (C) how they benefit from the changes;
- (c) a description of the Training Service, including the
 - (i) name of the course;
 - (ii) course content overview;
 - (iii) any pre-requisites for course attendees;
 - (iv) number of attendees per course;
 - (v) the cancellation arrangements for non-attendance at any training course, including notice arrangements, arrangements for substitutions and cancellation fees; and
 - (vi) how the Training Services will be delivered;
- (d) whether the Training Services will be provided at the Customer's premises;
- (e) the items that the Party that is providing the premises for the Training Services is responsible for providing and ensuring that they are set up and/or otherwise made available for the training, including:
 - (i) the venue, furniture, projectors, flip charts, pens, pencils and other presentation equipment for the trainer and the attendees;
 - (ii) refreshments and catering for the trainer and the attendees;
 - (iii) any Hardware, software and technical infrastructure needed for the trainer and each attendee; and
 - (iv) who is to pay the costs associated with any of these items;
- (f) the details of any the presentation materials and any handouts for the attendees, and who is to provide them;
- (g) where "Train-the-Trainer" services are to be provided, the qualifications and competencies that each of the Customer's trainers must have in order to deliver a training course using the training materials; and
- (h) where the Contractor is providing training materials, the licence that the Contractor provides to the Customer relating to the use of the training materials and the Price and payment arrangements for that licence. If the Parties do not include a licence to use the training materials in the Order Documents:
 - (i) the Contractor grants the Customer and its Personnel a non-exclusive licence to permit each attendee of the training course to use the training materials for the benefit of the Customer;
 - (ii) where "Train-the-Trainer" services are to be provided, the Contractor also grants the Customer a non-exclusive licence to:
 - (A) allow the Customer's Personnel who have the agreed qualifications and competencies to train other Customer Personnel, to copy and use the "trainer version" of the training materials to train other Customer Personnel during the Contract Period; and
 - (B) allow the Customer to copy the "student version" of the training materials and provide a copy of the student version of the training

materials to each Customer Personnel who attend such training courses during the Contract Period; and

- (iii) the Customer is not granted any other right to use or exploit the training materials, including any right to reproduce or adapt any training materials;
 - (i) the Price, expenses and any other charges that apply in respect of the Training Services; and
 - (j) how the Prices, expenses and charges will be paid.
- 3.2** For the purposes of this Module 8, it is agreed by the Parties that clause 5.4 of the Customer Contract is subject to clause 3.1(h).

PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 3.3** If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Training Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:
- (a) approve the PIPP; or
 - (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.
- 3.4** Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

REPORTING

- 3.5** The Contractor must monitor the progress of the Training Services and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:
- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
 - (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Training Services in accordance with the requirements of the Customer Contract, including any PIPP;
 - (c) the progress of the work against any project plan;
 - (d) the amounts charged, and amount of work in progress against the budget;
 - (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
 - (f) any other issues that the Parties agree should be included in the reports.

CUSTOMER DIRECTIONS

- 3.6** The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Training Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:
- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using

the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and

- (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Training Services.

3.7 Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.

3.8 Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Training Services and satisfying the Contractor's obligations under this Customer Contract.

EMPLOYEE RELATIONSHIP

3.9 The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.

3.10 The Contractor acknowledges and agrees that:

- (a) it is solely responsible for the obligations in clause 3.8; and
- (b) neither it, nor its Personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

4. Acceptance Tests and Use

4.1 Where the Training Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:

- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of the Customer Contract; and
- (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of the Customer Contract (as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

5. Restraint

5.1 The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:

- (a) encourage any of individual who has performed any Training Services, to:
 - (i) stop working for or providing services to the Contractor; or

- (ii) work for or provide services to the Customer, any Agency or Department or any other person; or
- (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Training Services,

for the following restraint periods:

- (c) during the period that the individual performed the Training Services and a period of 12 months thereafter;
- (d) during the period that the individual performed the Training Services and a period of 9 months thereafter;
- (e) during the period that the individual performed the Training Services and a period of 6 months thereafter;
- (f) during the period that the individual performed the Training Services and a period of 3 months thereafter; and
- (g) during the period that the individual performed the Training Services.

5.2 Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a) and (b) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.

5.3 The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.

5.4 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.

5.5 The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

6. Specific Warranties

SCOPE

6.1 Where the Training Services are provided on a fixed Price basis:

- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
- (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

- 6.2** Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (a) any Deliverable will be error free;
 - (b) any person will learn or understand any information or training materials provided by the Contractor; and
 - (c) any Deliverable will meet the Customer's requirements.
- 6.3** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect.
- 6.4** The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Training Services that the Contractor will provide the Training Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

7. Exceptions

- 7.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;
 - (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (f) improper use or mismanagement by the Customer; or
 - (g) a Force Majeure Event.
- 7.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.