Module 10 – As a Service

Version 3.2

TABLE OF CONTENTS

1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 10 form part of the Customer Contract and apply when the Parties state that the As a Service Module forms part of the Customer Contract.

In this Module, unless the contrary intention appears:

1.1 **Application** means any application software which may or may not be delivered as an Online Service, for use by Permitted Users.

1.2 **Approved Purpose** means the purpose agreed in the Order Documents for which the Customer and Permitted Users shall use the Service.

1.3 **As a Service** means Infrastructure as a Service, Platform as a Service and/or Software as a Service that is being supplied in accordance with the Order Documents, and each such As a Service is a Service for the purposes of the Customer Contract.

1.4 **Consolidation Period** means the first month of the provision of the As a Service (commencing on the Service Commencement Date of the relevant As a Service), or such other period, or no such period, stated in the Order Documents.

1.5 **Customer Access Facilities** means telecommunications, networks, systems and other facilities used, or required by, or on behalf of the Customer for accessing and making use of the Service.

1.6 **Customer Data** means data or information, including Personal Information, that is submitted by the Customer or Permitted Users into the As a Service to be stored or processed and made accessible from the As a Service in any form, regardless of the format, location or medium.

1.7 **Cutover Date** means the date when the Contractor advises the Customer that the Customer can commence loading Customer Data into the As a Service following the completion of the Transition In Services.

1.8 **Data Access** means the ability to retrieve, view, edit, transmit or otherwise make use of, Customer Data.

1.9 **Data Centre Region** means the physical location, by country or region, of the Contractor's computing Hardware and software, including any back-ups used to store, host and process Customer Data.

1.10 **Environment** means the entire set of technology components required for the provision of the As a Service.

1.11 **Infrastructure as a Service** means a computing data centre with the equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.

1.12 **Online Service** means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Contractor to the Customer over an IP network (including the Internet), rather than provided locally or on-site. Typically, the software and hardware assets are owned by the Contractor and the Customer is billed for usage.

1.13 **Permitted User** means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users.

1.14 **Platform as a Service** means a hosted Environment for configuring and running Applications that is delivered as an Online Service.

1.15 **Service Commencement Date** means the date that the Contractor states it is ready to commence the Services or such date that the Parties agree that the Contractor must commence the Services.

1.16 **Service Definition** means the Contractor's description of the As a Service as specified in the Order Documents and may include details of specific inclusions, exclusions, limitations and costs.

1.17 **Services** means the As a Service, any Support Services, Transition In Services, Transition Out Services, Training Services provided under clause 10.3 in this Module and any other Deliverables specified in the Order Documents.

1.18 **Software as a Service** means software or an Application that is delivered as an Online Service.

1.19 **Support Services** means any services specified in the Service Definition or Order Documents that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.

1.20 **Technical Specifications** means any defined characteristics of the Environment or Services in terms of functionality, performance, availability or dependencies.

1.21 **Third Party Application** means an Application supplied, licensed from or owned by a third party which is used by the Customer.

1.22 **Transition In Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor prior to the Cutover Date that may include, data migration, business continuity plans, testing of the As a Service, handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Services and may also include development of a Transition Out Services plan.

1.23 **Transition Out Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor after the cessation of the As a Service to enable the Customer's operations and Customer Data to be removed from the As a Service and may include treatment of Customer's documents or materials, transitioning the As a Service to a new service provider or to the Customer, resolving issues relating to technological parity and current industry standards with other service providers and provision of technical documentation for the transfer of Customer Data, and procedures for the return/transfer or deletion of Customer Data.

1.24 **User Documentation** means the user manuals, installation instructions, reference material and other relevant publication and aids and any updates, replacements, revisions and additions (if any) provided or made available by the Contractor from time to time in a hard copy, electronic or online format. User Documentation excludes any document that is training material.

INTERPRETATION

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

2. TERM OF SERVICES

2.1 The Contract Period:

(a) commences from the Services Commencement Date of the first of the Services to be provided under the Customer Contract; and

(b) continues for the period of time stated in the Order Documents, including any period or periods of extension of the Customer Contract,

unless the Customer Contract is terminated sooner in accordance with the Customer Contract and this Module.

2.2 The Contract Period may be extended by agreement between the Parties using the procedure in Schedule 4 – Variation Procedures.

2.3 During the Contract Period, the Customer engages the Contractor to be the provider of the Services.

3. SCOPE

3.1 The Contractor shall provide all Services to the Customer for the Contract Period.

3.2 Should the Contractor employ an agent, subcontractor or third party to perform or carry out any part of the Services, the Contractor is not relieved of its liabilities and obligations arising out of, or in connection with, the Customer Contract by such employment.

4 CUSTOMER USE AND ACCESS TO THE AS A SERVICE

4.1 The Customer agrees that the access rights of any Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the As a Service.

4.2 The Customer acknowledges and agrees that it is the Customer's and/or Permitted Users' responsibility (unless otherwise stated in the Order documents) to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification or the Service Definition change during the Contract Period.

4.3 The Customer acknowledges and agrees that the As a Service may be provided on a shared service basis to the Customer and other clients of the Contractor from a common code base and/or common Environment and the Contractor may from time to time:

(a) change add or delete the functions, features, performance, or other characteristics of the As a Service, and if such change, addition or deletion is made, the specifications of the As a Service shall be amended accordingly; and

(b) correct errors or upgrade the As a Service,

provided that the functionality or availability of the As a Service used by the Customer shall not materially decrease during the Contract Period.

4.4 The Contractor will provide prior written notice via its website or email of major changes or new versions of the Service (if relevant). The Contractor does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the As a Service that has been made by or on behalf of the Customer.

4.5   The Contractor will identify any additional guidelines and usage restrictions (if any) that may apply to the As a Service in each Customer Contract. The Customer must use the As a Service in accordance with any such guidelines and restrictions (as updated from time to time) provided that such guidelines and restrictions do not result in a material reduction in the level of performance or availability of the As a Service during the Contract Period.

4.6   If the Contractor's changes under clauses 4.3, 4.4,or 4.5 result in a material reduction in the level of performance or availability of the As a Service during the Contract Period the Customer may exercise its rights to terminate the Customer Contract.

4.7   The Customer is solely responsible for all Customer Data and it, and its Permitted Users, are solely responsible for entering Customer Data into the As a Service, maintaining Customer Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading or deceptive nor likely to mislead or deceive.

4.8   The Customer will comply with all applicable laws in connection with access to or use of the As a Service or the Customer Contract.

5   DATA CONTROL AND AUDIT

5.1   This clause 5 operates during the Contract Period and (where relevant) such period thereafter as the Contractor (including any person on the Contractor's behalf) has access to anything which embodies the Customer Data.

5.2   The Contractor agrees:

(a)   it shall ensure that the As a Service materially complies with the Service Definition;

(b)   it will not vary the Data Centre Region(s) specified in the Order Documents without the prior written consent of the Customer, such consent not to be unreasonably withheld;

(c)   to apply to the Customer Data the level of security and encryption that is specified in the Order Documents;

(d)   it shall implement and comply with any business continuity plan that may be specified in the Order Documents;

(e)   it shall implement and comply with the retention and disposal requirements specified in the Order Documents; and

(f)   it shall ensure the accessibility, usability and preservation of Customer Data does not change detrimentally in any material respect as a result of any changes made by the Contractor to the As a Service and subject to any agreed downtime of the As a Service.

5.3   The Customer agrees that:

(a)   it shall use only the Customer Access Facilities to access the As a Service;

(b)   it shall ensure that the Customer Access Facilities meet the security standards specified in the Order Documents; and

(c)   it shall use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.

5.4   The parties agree that the Customer and/or its representative who may not be a competitor of the Contractor (including a supervisory authority of the Customer) may conduct an audit, at the Customer's cost and up to one time per year. This number of audits may be exceeded

where additional audits are required by any lawful authority. The audit shall solely involve access to Customer Data, access to all relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of the As a Service, the Contractor's architecture, systems and procedures, independent certifications or interviews.

5.5   If expressly agreed in the Order Documents, the Contractor shall facilitate an on-site visit to the facilities from where the Service is provided at the Customer's cost up to one time per year. The Customer shall give the Contractor reasonable advance written notice of not less than 14 days of any request for an on-site visit. During any on-site visit the Customer and its representatives shall observe the security procedures which the Contractor reasonably requires and ordinarily obtains from third parties. If the Customer conducts an on-site visit through a third party independently appointed representative, such representative shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Customer Contract to protect the Contractor's proprietary information. Any on-site visits described in this clause shall be conducted during reasonable times and shall be of reasonable duration and shall not unreasonably interfere with the Contractor's day-to-day operations.

5.6   The Contractor will provide production, test, and backup environments in the Data Centre Regions specified in the Order Documents. All activities or services which involve Data Access, storage, hosting or processing of Customer Data will be carried out in the Data Centre Region(s) specified in the Order Documents. The Contractor and its Related Companies may perform certain aspects of the Services from locations and/or through use of subcontractors worldwide, and those services may require access to the Customer's account details or the Contractor's logs and data relating to the Customer's use of the As a Service, but will exclude any use or retrieval of Customer Data.

6.   SERVICE LEVELS

6.1   From the day after the Consolidation Period the Contractor must comply with the terms of the Service Level Agreement, subject to any:

(a)   Force Majeure Event;

(b)   act or omission of the Customer or its Personnel; and

(c)   act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer.

7.   RESTRICTIONS

7.1   The Customer shall not:

(a)   remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the As a Service on a screen or any print out from the As a Service;

(b)   allow access to or use of the As a Service for any purpose other than the Approved Purpose;

(c)   copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the As a Service or the User Documentation, unless expressly permitted by the Customer Contract or the law;

(d)   reverse engineer, reverse compile, decompile or disassemble the object code of any part of the As a Service or otherwise attempt to derive the source code of the As a Service, except to the extent permitted by law; or

(e)   use or permit the use of the As a Service for any purpose that may cause damage or injury to any person or property or breach any law.

8.   LIABILITY

8.1   The Contractor and the Customer agree that, for the purposes of the Services provided under this Module, clause 18.5 of the Customer Contract is replaced with the following:

The Contractor has:

(a)   subject to paragraph (b) below, no financial cap on its legal liability where that liability arises from:

    (i)   bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b); or

    (ii)   loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);

    (iii)   breach of the Contractor's obligation of confidence under or pursuant to clause 14; or

    (iv)   the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); and

(b)   a financial cap on its legal liability for all claims in the aggregate arising from:

    (i)   the Contractor's indemnity for IP Claims under clause 19.1(c); or

    (ii)   liability arising from or in relation to Customer Data,

the greater of $100,000 or three times the annual Contract Value of the affected Service provided under this Module unless a greater amount is specified in the Order Documents.

9.   INFORMATION OWNERSHIP, INTEGRITY AND PRIVACY

9.1   The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in this Module or the Customer Contract.

9.2   The Customer grants to the Contractor or to any third party associated with the Contractor, a non-exclusive, non-transferable licence over the Customer Data for the sole purpose of the Contractor performing its obligations under the Customer Contract and enabling the Customer's use of the As a Service including handling Customer Data in accordance with the Customer's instructions.

9.3   The Contractor will ensure continuity of accessibility and usability (in each case, in material compliance with the Service Definition) of all Customer Data regardless of any migration of data to other formats during the Contract Period. The Contractor will notify the Customer of any proposed migration and will allow the Customer to verify data integrity.

9.4   The Contractor may delete, purge and/or disclose Customer Data where it is required to do so under any applicable law. Where the Contractor receives a request to delete, purge and/or disclose any part of the Customer Data, if legally permitted to do so, it shall promptly notify the Customer of the request to enable the Customer to respond.

9.5   Subject to clause 9.4, the Contractor and any third party associated with the Contractor will not access, disclose, delete, process or otherwise use Customer Data for any purpose other than in accordance with the Customer Contract or as expressly authorised by the Customer.

9.6   Without limiting this clause, the Contractor agrees that, in respect of Personal Information it shall comply with Privacy Laws applicable to its provision of the As a Service.

10. ADDITIONAL SERVICES

Transition in services

10.1 Any Transition In Services shall be provided by the Contractor in accordance with the Order Documents.

Transition out services

10.2 Any Transition Out Services shall be provided by the Contractor in accordance with the Order Documents.

Training services

10.3 The Contractor will provide the Customer with requested training services at the time, and for the Price, set out in the Order Documents. The details of the courses, number of attendees, location for training, and which party is responsible for providing the equipment and the Price must be set out in the Order Documents.

Documentation

10.4 The Contractor will provide or make available to the Customer, upon request and at no cost to the Customer:

(a) all necessary User Documentation; and

(b) any other Contractor documents listed in the Order Documents to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

11. WARRANTIES

11.1 The Contractor warrants to the Customer that the Services will perform in accordance with the Service Definition and Technical Specifications in all material respects during the Contract Period. The Contractor does not guarantee that access to and use of the Service will be uninterrupted or error free.

12. PAYMENT AND INVOICING

12.1 The Customer must pay the Contractor for the Services in accordance with the Order Documents.

12.2 If any charge owing by the Customer is 30 days or more overdue, and is not in dispute the Contractor will issue a notice to the Customer's Authorised Representative named in Item 3 of the General Order Form requiring payment within a further 14 days of the date the notice before taking any further action including suspension of the As a Service.

13. TERMINATION

13.1 In addition to the Customer's right to terminate the Customer Contract in accordance with clause 25 of the Customer Contract and clause 4.6 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 (irrespective of whether 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.

13.2 On termination of this Customer Contract for any reason:

(a) all licences granted in this Module shall immediately terminate;

(b) other than in respect of Confidential Information which is Customer Data, each Party shall destroy or return and make no further use of any Confidential Information (and all copies of them) of the other Party;

(c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that it has been deleted; and

(d) at the Customer's request made within 60 days of termination, the Contractor must provide the Customer with access to a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor.

14. NO ASSIGNMENT OR NOVATION

14.1 The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, and such consent may be withheld in the Customer's sole discretion except where the novation involves a Contractor Related Company.

15. INFRASTRUCTURE AS A SERVICE

15.1 Additional terms and conditions may be set out in the Order Documents in relation to Infrastructure as a Service.

15.2 Unless otherwise specified in the Order Documents, the Customer is solely responsible for:

(a) configuring, installing, maintaining and obtaining licences to any software, applications or other materials that may be installed, located, hosted or otherwise stored on the Infrastructure as a Service;

(b) ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely;

(c) restoring data or content from back-up media;

(d) implementing and maintaining security measures to protect the data, software, applications or other materials that are installed, located, hosted or otherwise stored on the Infrastructure as Service;

(e) obtaining all third party consents that are necessary to enable the Customer to store the relevant data and content on the Infrastructure as a Service; and

(f) all use of the Infrastructure as a Service by any person.

15.3 The Customer must:

(a) ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit the Contractor (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and

(b) comply with the terms of all licences referred to in paragraph (a) above and clause 15.2(a).

15.4   The Contractor may change the underlying infrastructure used by it to provide the Infrastructure as a Service, provided that any such change does not materially and adversely impact the Customer.

16.   PLATFORM AS A SERVICE

16.1   Additional terms and conditions may be set out in the Order Documents in relation to Platform as a Service.

17.   SOFTWARE AS A SERVICE

17.1   Additional terms and conditions may be set out in the Order Documents in relation to Software as a Service.

17.2   The Contractor or third parties may from time to time make available to the Customer (e.g., through an online exchange) third-party products or services, including but not limited to Third Party Applications. Any acquisition by the Customer of such Third Party Applications, products or services, and any exchange of data between Customer and any Third Party Application provider, is solely between the Customer and the applicable Third Party Application provider. The Contractor is not liable for, and does not warrant or support, third party products or services, whether or not they are designated by Contractor as "certified" or otherwise, except as specified in an Order Documents.

17.3   Any Third Party Applications supplied under Order Documents between Customer and Contractor shall be supplied by the Contractor in accordance with such Order Documents.

17.4   **Third Party Applications and Customer Data**. If the Customer installs or enables Third Party Applications for use with Services, the Customer acknowledges that the Contractor may allow providers of those Third Party Applications to access Customer Data as required for the interoperation and support of such Third Party Applications with the As a Service. The Contractor shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Application providers. The As a Service shall allow the Customer to restrict such access by restricting Permitted Users from installing or enabling such Third Party Applications for use with the As a Service.

17.5   **Reservation of Rights in Service**. Subject to the limited rights expressly granted hereunder, the Contractor reserves all rights, title and interest in and to the As a Service, including all related Intellectual Property Rights. No rights are granted to the Customer hereunder other than as expressly set out in this Module.

17.6   **Customer Applications and Code**. If a Customer, or a third party acting on Customer's behalf, or a Permitted User creates applications or program code using the As a Service, the Customer authorizes the Contractor to host, copy, transmit, display and adapt such applications and program code, solely to enable the Contractor to provide the Service in accordance with the Order Documents. The Contractor acquires no right, title or interest from the Customer or its licensors in or to such applications or program code, including any Intellectual Property Rights therein.