



Collaborative Marketplace Agreement

Part 2 – Channel Terms for Consultancy and Professional Services and Managed Services (C&PS/MS Terms) (Standard)

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Channel Terms

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1. Introduction

1.1 These Channel Terms apply to the Consultancy and Professional Services Channel (the **C&PS Channel**) and the Managed Services Channel (the **MS Channel**). These Channels are part of the New Zealand Government Marketplace as described in, and are subject to, the terms of the Collaborative Marketplace Agreement (the **Marketplace Agreement**).

These are the standard channel terms for Consultancy and Professional Services and for Managed Services.

- 1.2 These particular terms apply in relation to Services:
- (a) for which there is *no* Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure the Services; and
 - (b) for which we have not expressly permitted industry standard contract templates to be used.
- 1.3 When we use the terms **you** and **your**, we are referring to any provider that applies to be a Member of and list services in either the C&PS Channel or the MS Channel.

2. Definitions

- 2.1 These Channel Terms incorporate all definitions included in the General Terms in Part 1 of the Marketplace Agreement. In addition, for the purposes of these Channel Terms:

The terms defined here have special meaning. Further terms are defined in the Core Services Terms in Annexure B.

Consultancy and Professional Services and **C&P Services** mean the consultancy and professional services in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the C&PS Channel;

Core Services Terms means the general terms that apply to the procurement of all services within the C&PS Channel and the MS Channel that are governed by these Channel Terms, as set out in Annexure B;

Eligible Pre-existing Agreement has the meaning in clause 24 of the General Terms;

Extra Terms means terms that apply by default to certain categories of services within the C&PS Channel and/or the MS Channel to which these Channel Terms apply, and form part of a Subscription Agreement when a Purchasing Agency procures these categories of Services. They apply in addition to the Core Services Terms and, if applicable to the Services you have sought to have listed in the Marketplace, will be attached in Annexure C;

Managed Services means the managed services in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the MS Channel;

Pre-existing Agreement has the meaning in clause 24 of the General Terms;

Services means C&P Services and/or Managed Services, as applicable;

Services Rates means the rates charged for Services, when a Provider charges on a time, materials and/or other unit-based basis, as set out in the applicable Marketplace Catalogue;

Statement of Work means a statement of work for Services, based on one of the templates in the Schedule to the Core Services Terms or otherwise available on marketplace.govt.nz;

Subscription Form means the form the parties complete to create a Subscription Agreement, as set out in Annexure A;

Subscription Agreement has the meaning in clause 4.1 below; and

Tier 1 Security Assurance and Risk Rating means the highest level of security assurance that a provider can obtain for a Services Listing in the Marketplace.

Further terms used in the Core Services Terms in Annexure B are defined in those Core Services Terms.

3. Ordering Services

3.1 If an Eligible Agency decides to purchase Services, it will select the relevant service(s) and provider(s) and, where relevant:

- (a) request from relevant providers any additional information it may require;
- (b) have any discussions with providers it may require; and
- (c) submit a Subscription Form to the relevant provider(s),

as further described in the applicable Ordering Process for the Services on marketplace.govt.nz.

4. Agreements with Purchasing Agencies for Services

4.1 The contract that applies between you and a Purchasing Agency for the Purchasing Agency's consumption of your Services shall be an agreement that comprises:

- (a) the Subscription Form (the template for which is in Annexure A to these C&PS/MS Terms);
- (b) the Core Services Terms (in Annexure B to these C&PS/MS Terms);
- (c) any additional Extra Terms that apply to the category/ies of Services being procured (in Annexure C to these C&PS/MS Terms); and
- (d) each Statement of Work once executed by both parties.

We call this agreement a **Subscription Agreement**. It is a type of Agency Purchase Agreement.

4.2 The Subscription Agreement is formed when you and the Purchasing Agency fill out and sign (physically or electronically) a copy of the Subscription Form template found in Annexure A.

Agencies can compare competing services on offer in the relevant Marketplace Catalogue, seek further information from you if required, and then proceed.

If an Eligible Agency wishes to procure Services, it does so through an Ordering Process that creates a Subscription Agreement between you and the relevant Eligible Agency. When that Subscription Agreement is formed, the Eligible Agency becomes a Purchasing Agency.

4.3 This clause 4 is intended to confer a benefit on and to be enforceable by all Purchasing Agencies that submit a Subscription Form to you for Services (for which there is no Eligible Pre-existing Agreement).

5. Amending and supplementing the Core Services Terms and any applicable Extra Terms

5.1 To avoid doubt, you and a Purchasing Agency may agree to amend or supplement the Core Services Terms in Annexure B and any applicable Extra Terms in Annexure C, in either your Subscription Form or a Statement of Work.

You and a particular Purchasing Agency may agree to amend the default terms of a Subscription Agreement.

6. Changes to Services Listings

6.1 You acknowledge that Marketplace Catalogue Services Listings for Services can contain both descriptions of services (and their pricing) and, for some kinds of services, Purchasing Agency responsibilities. You may amend your Services Listings from time to time, subject to clause 6.2 and the following:

You can make changes to your Services Listings, subject to some controls.

- (a) You must update your service descriptions from time to time to keep them current, in accordance with clause 4 of Part 1 (General Terms) of the Collaborative Marketplace Agreement, provided you do not seek to reduce the scope of services or otherwise adversely affect the services that are already the subject of executed Statements of Work (unless the relevant Purchasing Agencies agree).
- (b) Changes to the pricing in your Services Listings are subject to clause 7 immediately below.
- (c) No increase in Participating Agency responsibilities described in your Services Listings will be effective for any executed Statement of Work unless the relevant Purchasing Agencies agree.
- (d) Subject to clause 6.4, all changes to Services Listings are subject to DIA review before publication to Eligible Agencies. DIA may reject changes that do not comply with this clause and may discuss and require amendment to changes that are difficult to understand or that contain errors.

6.2 When you're proposing to make changes to a Service as described in the relevant Marketplace Catalogue, you need to consider whether the changes will adversely affect:

If you're changing a Service, you need to think about some security and related matters.

- (a) the security or other controls;
- (b) your compliance with any standards; and/or
- (c) the ongoing validity of any certifications you have in relation to the Services,

that you notified to us when applying for inclusion of the Service in the Marketplace and, if applicable, obtaining the level of assurance for which the Service is listed in the Marketplace Catalogue. If there will be an adverse effect:

- (d) you must inform us of the adverse effect with sufficient information to enable us to understand the potential risk and impact; and
- (e) you must follow our reasonable directions to address the adverse impact; if you do not, we may elect to downgrade the applicable assurance level for the affected Service (if any, and if greater than the base level) or require you to withdraw the Service from the Marketplace.

6.3 If required, you will confirm to us in writing periodically that you continue to meet any applicable controls, standards and certifications referred to in clause 6.2. The frequency of any applicable confirmation and the means of confirming will be notified to you on the Marketplace or via email.

6.4 You may cease providing all or any part of a Service if:

- (a) a material element of the Service becomes:
 - (i) obsolete; or
 - (ii) unsupported by the party that supplies that element to you,and there is no reasonable alternative; or
- (b) you are withdrawing a Service that is no longer viable or is to be withdrawn from general availability.

6.5 You will use all reasonable endeavours to give Purchasing Agencies at least 1 month's notice of any intended cessation under clause 6.4.

7. Additional pricing terms

7.1 The parties acknowledge that the charges for your Services may be determined in various ways, including on the basis of one or a combination of:

- (a) Services Rates that are published in the relevant Marketplace Catalogue(s) (which are visible only to registered Eligible Agencies);
- (b) fixed pricing; or
- (c) other context-dependent pricing mechanisms or formulae,

in each case as agreed with a Purchasing Agency in a Statement of Work for particular Services.

Your charges may be determined in various ways. Where your charges are based on standard Services Rates, those rates need to be published in the relevant Marketplace Catalogue.

7.2 You agree to publish any standard Services Rates you have for government in the relevant Marketplace Catalogue(s) but we acknowledge that fixed pricing and other pricing mechanisms and formulae may be context-dependent and therefore not capable of being published in the Marketplace Catalogues.

7.3 When you first add your Services Listings to the relevant Marketplace Catalogue, your standard Services Rates and the currency in which they are charged will be the rates and currency notified to us during the On-boarding Process for the applicable Channel or otherwise agreed with us during that On-boarding Process. These initial Services Rates (and any Services Rates increased pursuant to clause 7.5) must be either:

(a) the standard rates you usually offer to equivalent New Zealand customers (or tiers of customers) for those Services, taking into account where relevant the nature of the Services, terms of supply, recoverability of your expenditure or investment, committed spend volumes and contractual periods; or

(b) reduced rates for Eligible Agencies.

Services Rates need to be the same as or better than the standard rates you offer other equivalent New Zealand customers.

7.4 Where your charges for a Purchasing Agency's consumption of your Services are based on Services Rates, the Services Rates stated in your Services Listings at the time the Purchasing Agency submits a Subscription Form shall apply to the first Statement of Work, unless you have agreed to reduced rates for that Purchasing Agency, either in the Subscription Form or a Statement of Work. For subsequent Statements of Work priced on the basis of your Services Rates, you will charge your then current Services Rates as stated in your Services Listings, unless you have agreed to reduced rates for that Purchasing Agency.

If you're charging on the basis of Services Rates, your published Services Rates apply unless you agree with a Purchasing Agency to reduce them.

7.5 You may only increase your Services Rates once in any 12 month period.

7.6 To avoid doubt, no increase in your Services Rates will apply to any Statement of Work entered into prior to the increase being reflected in your Services Listings in the relevant Marketplace Catalogue unless the Statement of Work expressly accommodates such increases or the Purchasing Agency otherwise agrees.

Price increases don't apply to existing Statements of Work unless expressly contemplated by them.

7.7 Your charges for your Services will be processed in accordance with clause 11 (Payment) of the Core Services Terms in Annexure B.

8. Reporting

8.1 You agree to comply with our reasonable reporting requirements relating to your provision of Services to Purchasing Agencies that we may describe from time to time on marketplace.govt.nz (if any).

We may specify reporting requirements. If we do, you'll need to comply with them.

8.2 If we change our reporting requirements we will notify you of the change, through a posting on marketplace.govt.nz and/or other

electronic means, at least 15 days before the change is due to take effect.

9. Administration Fee

- 9.1 This clause 9 applies except to the extent (if any) that we have agreed with you that this clause 9 does not apply to you.
- 9.2 You agree to collect, through each invoice to each Purchasing Agency, a fee that is charged to Purchasing Agencies that contributes to the costs of providing and administering the Marketplace (the **Administration Fee**). You will have been informed of the applicable Administration Fees and how they are calculated during the On-boarding Process, and a table of the current Administration Fees and methods of calculation for each Marketplace Catalogue or category of Service can be found on marketplace.govt.nz.
- 9.3 You will include the applicable Administration Fee in all invoices to each Purchasing Agency as a separate line item. The Administration Fee must not be bundled into your rates or other fees.
- 9.4 We may adjust the Administration Fees and, if we do so, we will provide you with at least one month's written notice of the adjustment before it takes effect.
- 9.5 You will provide us with periodic statements that contain details of:
- (a) the amounts invoiced under Agency Purchase Agreements in the previous applicable period; and
 - (b) the Administration Fees invoiced to Purchasing Agencies during that period,
- using the method and following the instructions we provide on marketplace.govt.nz. The instructions will specify the frequency and periods of reporting and the dates by which you must provide your reports to us.
- 9.6 Following receipt of your statement we will, reasonably promptly, examine the statement to identify any manifest error. If there is manifest error, we will inform you and you will remedy the error by re-issuing the statement within three Business Days of our written request.
- 9.7 We will:
- (a) if you agreed that we may direct debit a bank account you nominated during the Onboarding Process and for which you have given us a direct debit authority, debit the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable) from that bank account, and send you an invoice that records that you have paid the debited amount; or

Except where we agree to an alternative arrangement, you agree to collect an Administration Fee from Purchasing Agencies which is then paid to us.

- (b) if you did not agree that we may direct debit a bank account, render an invoice to you for an amount equal to the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable), in which case you will pay our invoice on or before the 20th day of the month following the date that invoice was received.

9.8 If you, of your own volition or following resolution of a dispute, reduce the quantum of an invoice previously rendered to a Purchasing Agency (including writing it off) following payment to us of the Administration Fee for that invoice, you may inform us of the reduction. If you do, you will provide us with such supporting evidence as we may reasonably request. If we are satisfied with the information you provide, we will credit the amount of the relevant Administration Fee to you when we issue the next invoice to you or debit the next period's Administration Fees from your nominated bank account and issue the next invoice to you (as applicable).

10. Subcontractor field in Services Listings not to be publicly available

10.1 Without limitation to our obligations in clause 4.6 of the General Terms, we will ensure that the subcontractor field in the Services Listings is not publicly available and Participating Agencies will be informed that the field content is confidential.

11. Tier 1 Security Assurance and Risk Rating

11.1 If you wish to apply for a Tier 1 Security Assurance and Risk Rating for a Service for which you already have a Services Listing or for which you are seeking a Services Listing, you will be required, as part of the application process, to agree to our Tier 1 Security Assurance Terms.

11.2 We reserve the right to make your membership of this Channel, or your ability to add or maintain a Services Listing for a particular Service in this Channel, subject to your:

- (a) first applying for and obtaining a Tier 1 Security Assurance and Risk Rating; or
- (b) applying for and obtaining a Tier 1 Security Assurance and Risk Rating within a specified period after your Services Listing is added to the Marketplace with a lower rating.

We may exercise this right if, given the nature or risk profile of one or more of your Services, we consider it necessary or desirable to do so. If we do, you will be required, as part of the application process, to agree to our Tier 1 Security Assurance Terms.

Under clause 7.5 of the Core Services Terms, if you list the Subcontractors you use in your Services Listings, those Subcontractors are deemed to be approved when a Purchasing Agency enters into a SOW. Given potential sensitivities about openly publishing such details, we will not make the subcontractor field publicly available.

If you apply for a Tier 1 Security Assurance and Risk Rating or we require you to do so, you will be required to agree to our Tier 1 Security Assurance Terms.

Published version history

| Version number | Date | Comment (if any) |
|----------------|-----------------|---|
| 2 | 6 November 2020 | <p>Channel Terms:</p> <ul style="list-style-type: none"> • Clarification to clause 6.3 • New clauses 6.4-6-5 re Provider cessation of Services and consequential amendment to clause 6.1(d) • Insertion of “reasonable” into clause 8.1 on reporting • New clause 11 (Tier 1 Security Assurance and Risk Rating) and associated definition of Tier 1 Security Assurance and Risk Rating <p>Core Services Terms:</p> <ul style="list-style-type: none"> • Addition of clause 2.1(l) to incorporate the new clauses 6.4-6.5 of the Channel Terms • Clarification to clause 7.1 on subcontracting • Deletion of former clause 7.7 • Amendment to clause 13.2 re ownership of IP in deliverables and associated new definition of New Intellectual Property Rights • Clarification to clause 13.5 on licences to Purchasing Agency • New clause 13.6(a)(ii) to ensure Provider fully licensed in respect of certain IP that could be owned by Purchasing Agency • New clause 13.6(b) to clarify that Provider must not exercise licences to Provider in a way that breaches clause 14 on confidentiality and security • New termination right for Provider where Provider can and is relying on the new clause 6.4 of the Channel Terms re cessation of Services <p>Statement of Work (General) – Managed Services</p> <ul style="list-style-type: none"> • Deletion of ‘disengagement’ row given change to Disengagement clause in Extra Terms for Managed Services |

Subscription Agreement components

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Annexure A: Subscription Form template

Attached. A Word version of the template can be found at marketplace.govt.nz



Subscription Form for Consultancy and Professional Services and/or Managed Services

Parties

| | |
|-------------------|---|
| Purchasing Agency | [Insert full legal name of Eligible Agency, e.g. The Sovereign in Right of New Zealand acting by and through [the Chief Executive] of [insert government department]; or, if not a department, e.g., The Commerce Commission] (the Purchasing Agency, we, our, us) |
| Provider | [Insert full company name, company number and registered office (or name if not a company) (the Provider, you, your) |

Background

This is a Subscription Form for our procurement of Consultancy and Professional Services and/or Managed Services, as defined in the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) (the **Channel Terms**).

Those Channel Terms are Part 2 of the Collaborative Marketplace Agreement between the New Zealand Government and you. They prescribe the form of the Subscription Agreement that applies to our procurement of Consultancy and Professional Services and/or Managed Services via the Marketplace.

Notes in blue boxes are for your convenience but are not part of the Subscription Agreement.

Agreement

1. Content and formation of Subscription Agreement

1.1 You and we agree that, as explained in clause 4 of the Channel Terms, the Subscription Agreement:

- (a) comprises:
 - (i) this Subscription Form;
 - (ii) the Core Services Terms set out in Annexure B to the Channel Terms;
 - (iii) any Extra Terms that apply to the category/ies of Services being procured; and
 - (iv) each Statement of Work once executed by both parties (based on a template statement of work in the Schedule to the Core Services Terms or otherwise available on marketplace.govt.nz); and
- (b) is formed when you and we sign (physically or electronically) this Subscription Form.

Execution of the Subscription Form creates an agreement – a Subscription Agreement – that comprises sets of applicable terms, and SOWs once agreed.

2. Interpretation

- 2.1 In this Subscription Form, unless the context otherwise requires:
 - (a) a reference to a party is to a party to this Subscription Form; and
 - (b) capitalised terms have the meanings given to them in the Core Services Terms.

Terms defined in the Core Services Terms have the same meaning when used in this Subscription Form.

3. Provision of Services

- 3.1 As described in more detail in clause 3 of the Core Services Terms, your provision of Services to us needs to be agreed in one or more Statements of Work.

Services to the Purchasing Agency need to be agreed in a Statement of Work.

4. Application of Subscription Agreement to various kinds of Services

- 4.1 You and we acknowledge that:
 - (a) this Subscription Agreement applies to our procurement of any Consultancy and Professional Services and Managed Services for which you have Service Listings in the Marketplace (**In-Scope Services**); and, therefore
 - (b) if, during the term of the Subscription Agreement (as defined in clause 1 of the Core Services Terms), we select you to provide additional In-Scope Services, you and we may enter into Statements of Work for those additional In-Scope Services without needing to complete a further Subscription Form.

The Subscription Agreement that this form creates (once signed) can be used, during its term, for all in-scope Consultancy and Professional Services and Managed Services.

5. Contract Managers

- 5.1 The Contract Managers referred to in clause 4.1(a) of the Core Services Terms are as follows:

| | | |
|--|--------|--|
| Contract Manager for Purchasing Agency | Name: | |
| | Email: | |
| | Phone: | |
| Contract Manager for Provider | Name: | |
| | Email: | |
| | Phone: | |

These are the parties' Contract Managers

6. Address for Notices

6.1 The parties' addresses for notice referred to in clause 21.7(d) of the Core Services Terms are as follows:

| | | |
|---------------------------------------|-------------------|--|
| Purchasing Agency Address for Notices | Physical address: | |
| | Postal address: | |
| | Email: | |
| | Attention: | |
| Provider's Address for Notices | Physical address: | |
| | Postal address: | |
| | Email: | |
| | Attention: | |

These are the parties' addresses for notice

7. Security clearances and probity checks

7.1 You must, in accordance with clause 6.1(b) of the Core Services Terms, ensure that all of your Personnel engaged in providing the Services have obtained the security clearances and passed the probity checks specified below (if any):

| | |
|--------------------------------------|--|
| [insert name of clearance or check] | [insert details of clearance or check] |
| [insert additional rows as required] | [insert additional rows as required; if no clearances or checks are required, clause 7 and this table can be deleted; note that clearance and check requirements may also be stated in SOWs if the parties prefer] |

If security clearances or probity checks are required in this table, you need to obtain them for Personnel providing the Services

8. Changes to Core Services Terms and any applicable Extra Terms

8.1 You and we may agree to amend and supplement the Core Services Terms and any applicable Extra Terms, in either this Subscription Form or a Statement of Work.

8.2 Subject to clause 8.3, if the Collaborative Marketplace Agreement is changed in accordance with clause 21 (Amendments) of Part 1 (General Terms) of that Agreement in a manner that affects or supplements the terms of the Subscription Agreement, that change

The parties can agree to amend and supplement the Core Services Terms and any applicable Extra Terms.

will apply automatically to the Subscription Agreement from a date that is 15 days after the effective date stated in DIA or MBIE's notice under clause 21, unless:

- (a) the change is contrary to an amendment or supplement to the Core Services Terms or any applicable Extra Terms that we and you have already agreed; or
- (b) in the case of existing Statements of Work, the change increases your costs or risks, and you inform us of this reasonably promptly; or
- (c) we and you otherwise agree that the change will not apply.

With some exceptions, amendments to the Collaborative Marketplace Agreement that affect the terms of the Subscription Agreement apply to the Subscription Agreement.

8.3 If the Collaborative Marketplace Agreement is amended in accordance with clause 21 of Part 1 (General Terms) of that Agreement and you elect to terminate your membership in the Marketplace in accordance with clause 21.4 of Part 1, amendments to the Collaborative Marketplace Agreement that would otherwise have applied automatically to this Subscription Agreement will not apply (and this Subscription Agreement will remain in place in accordance with its terms).

9. Other terms

9.1 [If other terms are required and agreed, they can be inserted here. If there are no other terms, this clause 9 can be deleted. Note that other terms can be specified in SOWs instead, which may be the more natural place for them if they are SOW-specific.]

The parties can record additional terms here if they wish.

Execution

In signing this Subscription Form, each party acknowledges that it has read all applicable terms and agrees to be bound by them.

For and on behalf of the **Purchasing Agency**
named above:

For and on behalf of the **Provider** named
above:

(signature)

(signature)

Name:

Name:

Position:

Position:

Date:

Date:

Annexure B: Core Services Terms

Attached.



Consultancy and Professional Services and Managed Services

Core Services Terms

Background

These are the Core Services Terms referred to in clause 4 of the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) and clause 1.1(a)(ii) of the Subscription Form for Consultancy and Professional Services and/or Managed Services. Together with the Subscription Form, any applicable Extra Terms and any executed Statement of Work, they comprise the Subscription Agreement between the Provider of the Services named in the Subscription Form (**you, your**) and the Purchasing Agency named in the Subscription Form.

If you are providing a category of Services to which Extra Terms apply, those Extra Terms will apply in addition to these Core Services Terms. You can find a list of the categories of Services to which Extra Terms apply, together with the Extra Terms, at marketplace.govt.nz.

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1. Term

1.1 The Subscription Agreement:

- (a) commences when both parties have signed (physically or electronically) the Subscription Form (the **Commencement Date**); and
- (b) unless terminated earlier under clause 20 (Termination), ends upon the later of (i), (ii) and (iii) below:
 - (i) 2 years after the Commencement Date or, if the parties elect to state a shorter initial duration in their first Statement of Work, that shorter period (in either case, the **Initial Term**);
 - (ii) any period of extension under clause 1.2; and
 - (iii) the termination or expiry of all Statements of Work.

The Subscription Agreement has an initial term of 2 years (or less if agreed in the first SOW) and a maximum term of 6+ years.

1.2 At any time before expiry of the Initial Term or the first Extension, the parties may agree to extend the Subscription Agreement by a further period of up to 2 years (each an **Extension**). To avoid doubt:

- (a) whilst a Subscription Agreement may be extended under this clause to have an apparent term of up to 6 years, under clause 1.1(b) that term may exceed 6 years if one or more Statements of Work remain on foot at the 6 year mark; and
- (b) this clause 1 has no impact on the ongoing validity of your Services Listings in the relevant Marketplace Catalogue(s). If, when a Subscription Agreement comes to an end, your Services Listings remain in a Marketplace Catalogue, the Purchasing Agency and you may enter into a further Subscription Agreement.

1.3 Each Statement of Work will:

- (a) commence on the SOW Start Date specified in the Statement of Work; and
- (b) unless terminated in accordance with clause 20 (Termination), end on the SOW End Date specified in the Statement of Work,

(the **Statement of Work Term**). The Statement of Work Term may be extended by written agreement between the parties, whether by way of variation to the Statement of Work itself or an exchange of emails by the parties' authorised personnel.

2. Application of terms in Part 1 (General Terms) and Part 2 (Channel Terms)

2.1 You agree that the following clauses in Part 1 (General Terms) and Part 2 (Channel Terms for Consultancy and Professional Services and Managed Services (Standard)) of the Collaborative Marketplace

To minimise repetition, some terms of Part 1 and Part 2 of the Marketplace Agreement are incorporated into the Subscription Agreement by reference.

Agreement are incorporated by reference into the Subscription Agreement:

- (a) 3.4 of Part 1 (no exclusivity or minimum purchasing requirement);
- (b) 3.11 of Part 1 (withdrawal, suspension or termination of your membership in the Marketplace does not affect existing Agency Purchase Agreements);
- (c) 4.8 of Part 1 (removal of Services Listing does not affect existing Agency Purchase Agreements);
- (d) 10 of Part 1 (Warranties);
- (e) 13 of Part 1 (Pricing and Administration Fee) and 7 of Part 2 (Additional pricing terms);
- (f) 15 of Part 1 (Confidentiality);
- (g) 17 of Part 1 (Purchasing Agency Data);
- (h) 18 of Part 1 (Personal information);
- (i) 21 of Part 1 (Amendments);
- (j) to the extent relevant to any of the clauses listed above, 24 of Part 1 (Defined terms and interpretation);
- (k) 5 of Part 2 (Amending and supplementing the Core Services Terms and any applicable Extra Terms); and
- (l) 6.4 and 6.5 of Part 2 (Changes to Services Listings).

3. Statements of Work

- 3.1 Your provision of particular Services to the Purchasing Agency needs to be agreed in one or more Statements of Work. This clause 3 specifies the process that applies to getting a Statement of Work in place.
- 3.2 From time to time the Purchasing Agency may seek proposals from you for the provision of Services. The Purchasing Agency will provide sufficient details of the services it seeks to enable you to evaluate the request and provide a response in accordance with clause 3.3.
- 3.3 You agree to respond to the Purchasing Agency's requests under clause 3.2 within a reasonable time and, subject to clause 3.5, in each case to provide a succinct proposal containing:
 - (a) a description of the Services you will provide and, if requested, curricula vitae for proposed Personnel;
 - (b) details of your charges for those Services; and

Services to agencies need to be set out in one or more Statements of Work. This clause describes the process for getting one in place.

(c) all other information reasonably requested by the Purchasing Agency relating to those Services.

- 3.4 Your proposal may cross-refer to relevant Services Listings.
- 3.5 You may decline a request under clause 3.2 if you (acting reasonably and in good faith) consider that you will not have sufficient resources to provide the requested Services in the requested timeframe.
- 3.6 Following receipt of your proposal under clause 3.3 (if any), the Purchasing Agency may accept, reject or request changes to the proposal. If the Purchasing Agency proposes changes, the parties will (acting reasonably and in good faith) negotiate the proposed changes with a view to agreeing the relevant statement of work.
- 3.7 Once the parties have agreed the terms on which you will provide the Services sought by the Purchasing Agency under clause 3.2, the parties will enter into a Statement of Work for those Services, following the general format of an applicable template in the Schedule to these Core Services Terms or otherwise available on marketplace.govt.nz.
- 3.8 The Purchasing Agency will not be obliged to pay any charges for the Services and you will not be obliged to start providing the Services until the Statement of Work is signed (whether physically or electronically) by both parties.
- 3.9 To avoid doubt, clause 3.7 does not prevent the parties from agreeing to adapt a form of statement of work in the Schedule to these Core Services Terms or otherwise available on marketplace.govt.nz (for example, to accommodate the nature of the work or the Purchasing Agency's standard internal business requirements for statements of work).

4. Governance

4.1 Contract Managers

- (a) The parties' Contract Managers are set out in the Subscription Form. The Contract Managers are responsible for managing the Subscription Agreement, including:
- (i) managing the relationship between the parties;
 - (ii) overseeing the effective implementation of the Subscription Agreement; and
 - (iii) acting as a first point of contact for any issues that arise.
- (b) If a party changes its Contract Manager it must inform the other party in writing of the name and contact details of the replacement, reasonably promptly after the change.

The parties' Contract Managers deal with day-to-day contract management issues. Other key contacts can be specified in a SOW.

4.2 Other key contacts

Other key contacts relating to the provision of particular Services, and any other governance-related matters required by the Purchasing Agency, are specified in the Statements of Work for those Services.

5. Performance of the Services

5.1 General

You will perform the Services:

- (a) from the date(s) specified in the relevant Statement of Work;
- (b) in accordance with the terms of the Subscription Agreement, including so as to:
 - (i) meet any requirements and specifications set out in the Statement of Work; and
 - (ii) achieve any Milestones by their corresponding Milestone Dates, and to meet any other timeframes, specified in the Statement of Work;
- (c) with due care, skill and diligence and in a high quality, timely and efficient manner; and
- (d) using techniques, methodologies, processes and materials that accord with Good Industry Practice.

5.2 Service Levels

- (a) You will provide the Services in a manner that meets or exceeds all Service Levels (if any) specified in your Services Listings in the relevant Marketplace Catalogue or otherwise agreed with the Purchasing Agency in a Statement of Work.
- (b) If a Service Level Default occurs, you will:
 - (i) notify the Purchasing Agency in writing of the Service Level Default;
 - (ii) where possible, remedy the Service Level Default as soon as reasonably practicable;
 - (iii) keep the Purchasing Agency informed of progress in remedying the Service Level Default; and
 - (iv) if your Services Listings or the relevant Statement of Work require payment to the Purchasing Agency of Service Level Credits upon the occurrence of Service Level Defaults, deduct those Service Level Credits from your next invoice or, if there are no more invoices, pay the Purchasing Agency the amount of the Service Level Credits upon receipt of an invoice for them.

You need to provide the Services in a high quality manner, meet Milestones, and manage project delays sensibly. This clause details what's involved.

You need to meet Service Levels you've agreed to in your Services Listings or a Statement of Work and pay any Service Level Credits due (if any).

5.3 Milestones

Unless otherwise agreed in a Statement of Work, the following provisions apply in relation to any Milestones specified in the Statement of Work:

- (a) Each Milestone will be deemed complete when the Purchasing Agency has notified you in writing that it is satisfied (acting reasonably) that you have successfully completed that Milestone in accordance with the relevant part of the Statement of Work, such notification not to be unreasonably withheld or delayed.
- (b) Without limiting the Purchasing Agency's other rights, but subject to clause 5.3(d), if you fail or are likely to fail to complete a Milestone by the relevant Milestone Date (a **Project Delay**):
 - (i) you will provide full written details of the Project Delay to the Purchasing Agency as soon as practicable;
 - (ii) you will take all steps reasonably available to you to avoid and minimise the effects of the Project Delay;
 - (iii) the parties will, if requested by the Purchasing Agency, meet to review in good faith the reasons for the Project Delay;
 - (iv) you will, if requested by the Purchasing Agency, promptly prepare a rectification plan setting out how you intend to complete the relevant Milestone, the relevant timeframes for such completion and any other details reasonably required by the Purchasing Agency, and will submit such plan to the Purchasing Agency for approval (such approval not to be unreasonably withheld, delayed or conditioned); and
 - (v) you will comply with any rectification plan submitted under clause 5.3(b)(iv), together with any reasonable modifications to it requested by the Purchasing Agency.
- (c) Subject to clause 5.3(d)(v), if the Statement of Work specifies that liquidated damages are payable when a particular Milestone is not achieved by its corresponding Milestone Date, you will be liable to pay the Purchasing Agency the liquidated damages at the rates specified in the Statement of Work. Upon entering into the Statement of Work, you accept that the liquidated damages reflect the Purchasing Agency's legitimate interests in performance and are not a penalty. You will not seek to argue otherwise in any dispute or proceedings.
- (d) Where a Project Delay is caused by the Purchasing Agency or a third party (excluding your own subcontractors):

Any Milestones you need to meet will be set out in the relevant Statement(s) of Work and there's a process for dealing with delays or potential delays.

Liquidated damages for not meeting a Milestone, if any, need to be agreed in a Statement of Work. They are not payable unless agreed in a Statement of Work.

There's also a process for addressing project delays that are not your fault.

- (i) the Purchasing Agency will provide you with details of the Project Delay in writing, to the extent the Purchasing Agency has such details;
 - (ii) the parties will, if either party requests, meet to review in good faith the reasons for the Project Delay;
 - (iii) you will, if requested by the Purchasing Agency, cooperate with the Purchasing Agency in relation to the Project Delay and will use reasonable efforts to rectify the Project Delay and ensure future Milestone Dates are met;
 - (iv) you may raise a Change Request to obtain a reasonable extension of time and to recover reasonable costs incurred as a result of the Purchasing Agency's delay; and
 - (v) if, despite your compliance with sub-clauses (d)(i)-(iii), you do not complete the relevant Milestone by the relevant Milestone Date, you will not be liable for that failure to the extent the failure was caused by the Purchasing Agency or a third party.
- (e) Without limitation to the other provisions of this clause 5, where there is a Project Delay, each party will use reasonable endeavours to limit its effects.

5.4 Delivery responsibility

- (a) Except for Purchasing Agency responsibilities (if any) set out in applicable Services Listings, a Subscription Form or a Statement of Work, you will have sole responsibility for delivery of the Services.
- (b) The Purchasing Agency's acceptance or commissioning of any Services, or approval of any relevant documents, will not limit your responsibility to provide the Services in accordance with the Subscription Agreement, or prejudice any right or remedy the Purchasing Agency may have under that Subscription Agreement or at law.
- (c) You will, as soon as is practicable, notify the Purchasing Agency of problems that arise that prevent you from meeting your obligations under the Subscription Agreement.

If you're having trouble meeting your obligations, you need to tell the Purchasing Agency.

5.5 Acceptance of Deliverables

- (a) Clauses 5.5(b)-(d) apply to the review or testing of Deliverables specified in a Statement of Work unless:
 - (i) the parties have agreed upon an alternative approach to review or testing in the Statement of Work; or

- (ii) Extra Terms that apply to provision of the Deliverables contain a different approach to review or testing that is expressed as prevailing over this clause 5.5; or
 - (iii) the parties agree that this clause 5.5 will not apply.
- (b) The Purchasing Agency may, at its election, perform any review or testing it considers necessary to determine whether a Deliverable conforms to the requirements of the Subscription Agreement. The Purchasing Agency will have 10 Business Days from the date of supply of a Deliverable within which to perform such review or testing (the **Initial Test Period**). If a Deliverable does not conform to the requirements of the Subscription Agreement, the Purchasing Agency will deliver to you, on or before the expiration of the Initial Test Period, a written notice specifying each non-conformity in reasonable detail (a **Non-Conformity Notice**).
- (c) You will correct, at no additional cost to the Purchasing Agency, the non-conformities stated in the Non-Conformity Notice within a reasonable period of time. After you make the relevant corrected Deliverable available to the Buyer, the Buyer will have 10 Business Days to re-review or re-test the Deliverable (**Additional Test Period**). If any non-conformities remain, the process stated in this clause 5.5 will be repeated to the extent reasonably required by the Purchasing Agency.
- (d) The Purchasing Agency's failure to deliver a Non-Conformity Notice prior to the expiration of the applicable Initial Test Period or Additional Test Period does not limit any other rights that the Purchasing Agency may have under the Subscription Agreement.

5.6 Meetings and reporting

You will:

- (a) meet with the Purchasing Agency's nominated representatives as specified in each Statement of Work (if at all) and as otherwise agreed; and
- (b) provide the Purchasing Agency with the reports referred to in your Services Listings or relevant Statements of Work, with the content and at the intervals specified in your Services Listings or those Statements of Work.

You need to meet with the Purchasing Agency as stated in SOWs or as otherwise agreed and provide reports referred to in your Service Listings or Statements of Work.

6. Personnel

6.1 You must ensure that all of your Personnel engaged in providing the Services:

- (a) are suitably qualified and experienced;
- (b) have obtained all security clearances and passed all probity checks reasonably required by the Purchasing Agency

Your Personnel need to be capable, have security clearances required by the Purchasing Agency, comply with agency policies, and carry ID.

(including, if required, a check for criminal convictions), as specified in a Subscription Form or Statement of Work;

- (c) comply with the Purchasing Agency's health and safety policies when on its premises and with any other policies notified to you under clause 8.1(b) below;
- (d) do not represent in any way that they are employees of the Purchasing Agency; and
- (e) carry and display appropriate company identification when attending any Purchasing Agency Site.

6.2 The Purchasing Agency may require the immediate removal of any member of your Personnel from performance of your Services for the Purchasing Agency if the Purchasing Agency, acting reasonably and following prior consultation with you, determines that the individual has acted, or failed to act, in a manner that results in your breaching clause 6.1.

7. Subcontracting

- 7.1 Subject to clauses 7.5 and 7.6, you must not enter into a contract with a Subcontractor to deliver part of the Services without the Purchasing Agency's prior written approval (which the Purchasing Agency will not unreasonably withhold).
- 7.2 The Purchasing Agency may pre-approve the use of particular named Subcontractors in a Statement of Work or it may approve the use of particular Subcontractors subsequently.
- 7.3 You are responsible for ensuring the capability and capacity of any approved Subcontractor to deliver the aspect of the Services being subcontracted. You also continue to be responsible for delivering the Services even if aspects of the Services are subcontracted.
- 7.4 You will, unless otherwise agreed in writing by the Purchasing Agency on a case by case basis, use reasonable efforts to include in any subcontract obligations on the Subcontractor that are consistent with your delivery obligations under this Agreement (to the extent relevant to the subcontracted Services) and clauses 14 (Confidentiality and security) and 20.7 (Return of property).
- 7.5 Clause 7.1 does not apply in relation to Subcontractors clearly specified in your Services Listings when the Purchasing Agency is agreeing the terms of the relevant Statement of Work with you, as long as the Services Listings state who the Subcontractors are (full legal names), where they are located, and whether they will have access to Purchasing Agency Data. If the Purchasing Agency elects to enter into the Statement of Work, these Subcontractors will be deemed to be approved Subcontractors.
- 7.6 You do not need to obtain the Purchasing Agency's written approval to use, in provision of the Services, a contractor under a contract for services who, in substance, is acting as a member of your staff,

An unfettered ability to subcontract your obligations would create undue risk to the Purchasing Agency so there are some controls on subcontracting.

when that contractor is based in New Zealand. To avoid doubt, this clause 7.6 does not limit clauses 6 or 7.3-7.4.

8. General responsibilities

8.1 In addition to your other obligations, you will:

- (a) respond promptly, accurately and adequately to reasonable requests for information made by the Purchasing Agency in relation to the Services;
- (b) comply with Purchasing Agency policies notified to you in writing that have a bearing on provision of the Services (to the extent those policies are capable of applying to you and with the proviso that, if you are notified of a policy after entering into a relevant Statement of Work and compliance materially increases your costs or materially affects an aspect of the Services then compliance is subject to agreement between the parties);
- (c) ensure that those of your Personnel involved in provision of the Services comply with the policies mentioned above, obtain acknowledgements to this effect from those Personnel if required by the Purchasing Agency and provide copies of those acknowledgements to the Purchase Agency, and inform the Purchasing Agency promptly in writing if you become aware of a breach of any such policy;
- (d) comply with all applicable law relevant to provision of the Services;
- (e) use your best endeavours to avoid damaging or adversely affecting the Purchasing Agency's reputation, systems or infrastructure;
- (f) not insert or permit to be inserted any Disabling Code into the Purchasing Agency Environment; and
- (g) not engage in any activity that would give rise to a Conflict of Interest and notify the Purchasing Agency promptly in writing if you become aware of any Conflict of Interest.

You have a range of general responsibilities relating to providing information, complying with agency policies, complying with law, not damaging the Purchasing Agency's reputation or systems, avoiding the insertion of Disabling Code, and not getting caught up in conflicts of interest.

9. Records

9.1 You will, at all times during the term of the Subscription Agreement, maintain, store and archive, in electronic form, true, up to date, accurate and complete records of all invoices, reports, operating processes and procedures and other records relating to your performance of the Services (including in relation to any subcontracted elements of the Services).

You need to maintain and store complete records and allow the Purchasing Agency to inspect and copy them if requested.

- 9.2 The Purchasing Agency may inspect:
- (a) any and all of the records required to be maintained under clause 9.1; and
 - (b) any other information relevant to your performance and compliance with the terms of the Subscription Agreement,
- on at least three Business Days' notice, and may take copies of such records and information.

10. Change Procedure

- 10.1 Either party may request changes to the Services or Deliverables (**Change Request**) by delivering a written change order request to the other party. If you receive a Change Request, you will determine the impact of the requested change(s) on (as applicable) costs, timeframes, technology systems and interfaces, if any, and provide the Purchasing Agency with a proposal for a change order (**Change Order**). To avoid doubt, unless otherwise agreed in a Subscription Form or Statement of Work, you are not entitled to charge the Purchasing Agency for the time you spend in determining such impact and preparing such a proposal.
- 10.2 The Purchasing Agency will not be liable for any charges under the Change Order and you will not be obliged to perform the requested changes unless the applicable Change Order has been signed or otherwise authorised in writing (whether physically or electronically) by the parties.

There's a simple change procedure to follow where a party wishes to request changes to Services or Deliverables.

11. Payment

- 11.1 Fees
- (a) The Purchasing Agency will pay you:
 - (i) the Fees and GST (if any) in consideration of your Services, in accordance with this clause 11 and the relevant Statement of Work; and
 - (ii) the Administration Fee, if you are required by the Collaborative Marketplace Agreement to collect such fees to purchasing agencies and pay them periodically to DIA or MBIE, provided any such fee is clearly specified in your invoices.
 - (b) Where Fees are charged on a time and materials basis they shall be charged at the Services Rates set out in the relevant Marketplace Catalogue, unless the parties agree otherwise in the Statement of Work (as applicable).
 - (c) All Fees shall be in New Zealand dollars unless stated otherwise in the relevant Statement of Work.

Fees are set out or cross-referred to in Statements of Work and are to be paid in accordance with this clause and the Statements of Work.

- (d) The only Fees payable to you are the Fees set out or cross-referred to in the Statement of Work or otherwise agreed under the Change Procedure.

11.2 Invoices

You will issue the Purchasing Agency with invoices for the Fees on the dates or at the times specified in the relevant Statement of Work. Each invoice must:

- (a) be a valid tax invoice for the purposes of the GST Act;
- (b) include any applicable Administration Fee as a separate line item;
- (c) be accompanied by such information reasonably requested by the Purchasing Agency from time to time to support the Services being invoiced; and
- (d) comply with any other invoicing requirements set out in a Statement of Work,

(Valid Tax Invoice). You will send your invoices by the means and to the address specified in the Statement of Work.

11.3 Date for Payment

Subject to clause 11.4 and the terms of the applicable Statement of Work, if the Purchasing Agency receives a Valid Tax Invoice:

- (a) on or before the 3rd Business Day of the month, the Purchasing Agency must pay that Valid Tax Invoice by the 20th calendar day of that month; or
- (b) after the 3rd Business Day of the month, the Purchasing Agency must pay that Valid Tax Invoice on or before the 20th calendar day of the month following the month it is received.

11.4 Dispute over invoice

If the Purchasing Agency disputes in good faith the whole or any portion of a Valid Tax Invoice, the Purchasing Agency will pay the portion of the Valid Tax Invoice that is not in dispute, but may withhold payment of the disputed portion until the dispute is resolved. The dispute will be resolved in accordance with clause 19.

11.5 Payment terms

Unless stated otherwise in a Statement of Work, your Fees:

- (a) are exclusive of GST which, where applicable, will be added to your invoices and payable by the Purchasing Agency; and
- (b) will be paid to your nominated bank account.

11.6 Expenses

- (a) You are responsible for all expenses you incur in connection with the Subscription Agreement, unless otherwise expressly specified in the relevant Statement of Work.
- (b) If a Statement of Work specifies that you will be reimbursed for any particular expenses you incur, you must:
 - (i) produce receipts or other reasonable evidence of such expenses on request;
 - (ii) provide a Valid Tax Invoice for the expenses; and
 - (iii) follow all of the Purchasing Agency's expense guidelines and policies notified in writing to you from time to time when incurring the expenses, provided that such guidelines and policies are not inconsistent with the terms agreed by the parties as to the payment of expenses by the Purchasing Agency.

11.7 Set off

The Purchasing Agency may set-off any refund or other amount that you owe to it under the Subscription Agreement against any amount payable by the Purchasing Agency under that Agreement.

12. Warranties

12.1 Mutual warranties

The parties warrant and represent that they have full power, capacity and authority to execute, deliver and perform their obligations under the Subscription Agreement and that they have and will continue to have all the necessary consents, licences and rights to enter into and perform their obligations under the Subscription Agreement.

12.2 Your warranties

You warrant and represent that:

- (a) in offering your Services, listing them in the Marketplace and setting your prices, you have not infringed any applicable law (including the Commerce Act 1986 and Fair Trading Act 1986);
- (b) when supplied, the documentation and other information you provide to the Purchasing Agency is accurate and complete and suitable for the purpose for which it is provided; and
- (c) all Software your organisation itself uses in performing your obligations under the Subscription Agreement will be currently supported.

Both parties represent they can enter into the Subscription Agreement and perform their obligations, and you make representations relating to compliance with trading laws, the documentation and other information you provide, and the software you use.

12.3 Continuous application

The warranties and representations set out in clause 12.2, and any additional warranties and representations in any applicable Extra Terms, will be deemed to be given continuously throughout the Term of the Subscription Agreement, unless otherwise agreed.

12.4 Notification

You will promptly notify the Purchasing Agency of any non-compliance with any of the warranties in this clause 12 or in any applicable Extra Terms.

12.5 Other warranties excluded

All representations and warranties (statutory, express or implied) that are not expressly referred to above or otherwise in the Subscription Agreement are excluded to the fullest extent permitted by law.

13. Intellectual Property Rights

13.1 Existing Material

Each party retains ownership of all Intellectual Property Rights in Existing Material belonging to that party.

13.2 Deliverables

Unless otherwise agreed in writing (including in a Statement of Work), to the extent that any Deliverable comprises or incorporates any:

- (a) Existing Material, Intellectual Property Rights in that Existing Material will remain with the owner of those Intellectual Property Rights;
- (b) enhancement or modification of any Existing Material, all Intellectual Property Rights in that enhancement or modification will:
 - (i) where a party to this Agreement owns the Intellectual Property Rights in that Existing Material, vest in that party on creation; and
 - (ii) where a third party owns the Intellectual Property Rights in that Existing Material, vest in the party to this Agreement that provided or arranged the provision of that Existing Material (subject to any agreement to the contrary between that party and the applicable third party);
- (c) Developed Software, subject to sub-clauses (a) and (b) above, all Intellectual Property Rights in that Developed Software will vest in you; and

Intellectual Property Rights are important and ensuring all bases are covered requires comprehensive drafting. In a nutshell, though, you own your existing IP, the Purchasing Agency owns its existing IP, you own the new IP in software you develop for the Purchasing Agency, the Purchasing Agency owns new IP in other materials you develop for it, you won't include your or a third party's existing material in deliverables without the Purchasing Agency's consent, each party grants licences to the other, and you make an IP-related warranty and grant an IP indemnity (with some carve-outs to protect you in relation to Third Party Material and certain other things).

- (d) other material, subject to sub-clauses (a), (b) and (c) above, all Intellectual Property Rights in that other material will vest in the Purchasing Agency on creation.

The above sub-clauses are listed in descending order of priority so that, to the extent there is any conflict between any sub-clauses, sub-clause (a) will prevail over sub-clauses (b), (c) and (d), sub-clause (b) will prevail over sub-clauses (c) and (d) and sub-clause (c) will prevail over sub-clause (d). To avoid doubt, unless agreed otherwise (including in a Statement of Work), where this clause 13.2 does not confer ownership of New Intellectual Property Rights in Deliverables or arising from your provision of the Services in the Purchasing Agency, those New Intellectual Property Rights will be owned by you (or, if applicable, your subcontractor or licensor).

13.3 Further actions

If ownership of any Intellectual Property Rights described in clause 13.2 does not vest in the party entitled to ownership under the applicable sub-clause (the **Entitled Party**), the other party shall take all actions necessary (including, upon request of the Entitled Party, executing confirmatory documentation) to ensure that ownership vests in the Entitled Party.

13.4 Inclusion of Existing Material

You will obtain the Purchasing Agency's written consent before providing, incorporating, enhancing or modifying any Existing Material as part of or within any Deliverable other than where the:

- (a) Purchasing Agency provides, or arranges for the provision of, that Existing Material to you for that purpose (**Purchasing Agency Contributed Material**);
- (b) use of that Existing Material has been agreed in a Statement of Work; or
- (c) use of that Existing Material as part of or within any Deliverable is clear from the relevant Services Listing.

13.5 Licences to Purchasing Agency

- (a) Unless otherwise agreed in writing (including in a Statement of Work), to the extent that any Deliverable comprises or incorporates, or the use of any Deliverable relies on the use of any:

- (i) Existing Material;
- (ii) enhancement or modification of any Existing Material; or
- (iii) Developed Software,

in which you own or co-own the Intellectual Property Rights, you grant the Purchasing Agency, and contractors acting on

its behalf, a non-exclusive, perpetual, irrevocable and royalty free licence to exercise for the Purchasing Agency's business purposes (excluding resale), those Intellectual Property Rights.

- (b) The licence in clause 13.5(a) survives termination or expiry of the Subscription Agreement for any reason.
- (c) Unless otherwise agreed in writing (including in a Statement of Work):
 - (i) to the extent that any Deliverable incorporates or the use of any Deliverable relies on the use of any Third Party Material (that is not Purchasing Agency Contributed Material), or any enhancement or modification to that Third Party Material the Intellectual Property Rights in which are not owned by you, you:
 - (A) must ensure that the Purchasing Agency and contractors acting on its behalf have, are granted or can be granted (either directly by the applicable third party owner or by a sub-licence from you) a licence to exercise the Intellectual Property Rights in such Third Party Material or such enhancement or modification; and
 - (B) will, subject to clause 13.5(d), notify the Purchasing Agency of the terms of any direct licence or sub-licence applicable to use of the Third Party Material or enhancement or modification to the Third Party Material before incorporating it into the Deliverable (to enable the Purchasing Agency to decide whether to grant consent under clause 13.4); and
 - (ii) you must promptly notify the Purchasing Agency on becoming aware of any existing or potential claim that the receipt of a Service, any Deliverable, or the possession or use of any Deliverable, infringes any third party Intellectual Property Right or other right.
- (d) Clause 13.5(c)(i)(B) does not apply in relation to any direct licence or sub-licence applicable to use of the Third Party Material or enhancement or modification to the Third Party Material referred to in that clause where the relevant Services Listing specifies the direct licence or sub-licence and either contains the licence terms or indicates where they can be found.

13.6 Licences to you

- (a) Unless otherwise agreed in writing (including in a Statement of Work):

- (i) the Purchasing Agency grants you a non-exclusive licence to exercise, to the extent necessary to provide the Services and Deliverables and to allow you to meet your back-up, business continuity, record-keeping and archiving requirements and obligations, all Intellectual Property Rights in the Purchasing Agency's Existing Material, and any enhancement or modification to that Existing Material owned by the Purchasing Agency, provided to you by or on behalf of the Purchasing Agency under this Agreement; and
 - (ii) to the extent that any Deliverable comprises or incorporates other material referred to in clause 13.2(d), the Intellectual Property Rights in which are owned by the Purchasing Agency, the Purchasing Agency grants you a non-exclusive, perpetual, irrevocable and royalty free licence to exercise those Intellectual Property Rights for your own business purposes.
- (b) You must not exercise the rights conferred by the licences in clause 13.6(a) in a manner that breaches clause 14 (Confidentiality and security).

13.7 Title and risk

The parties agree that title to, and risk in, any media on which any Deliverable is recorded, will pass to the Purchasing Agency on delivery to the Purchasing Agency, unless otherwise agreed in writing by the parties.

13.8 Warranty

- (a) You warrant that, subject to clause 13.8(b), the Purchasing Agency's and its Personnel's receipt or use of any Service in accordance with the Subscription Agreement or use or possession of any Deliverable (in accordance with any applicable restrictions on use or possession) will not infringe any Intellectual Property Rights of any person.
- (b) The warranty in clause 13.8(a) will not apply to any Intellectual Property Rights in any Third Party Material used in providing the Service or incorporated in any Deliverable where:
 - (i) the Third Party Material is Purchasing Agency Contributed Material;
 - (ii) the Third Party Material has been provided by a Third Party Service Provider; or
 - (iii) the use or incorporation of the Third Party Material was agreed to in writing (including in any Statement of Work) or otherwise consented to under clause 13.4, provided that the Provider meets its obligations under clause 13.5(c) in relation to that Third Party Material.

- (c) The parties may agree in a Statement of Work to modify the application of clause 13.8(a) or (b) for Services or Deliverables covered by that Statement of Work.

13.9 Intellectual Property Rights indemnity

- (a) You will fully indemnify and defend the Purchasing Agency against all Losses suffered or incurred by the Purchasing Agency as a result of any third party Intellectual Property Right infringement claim resulting from a breach of the warranty under clause 13.8(a) (**IP Claim**).
- (b) Each party will promptly notify the other party in writing upon becoming aware of any IP Claim.
- (c) Unless and to the extent otherwise required by a Purchasing Agency that is a department of the Crown (given the Cabinet Directions for the Conduct of Crown Legal Business), you will control the conduct of any IP Claim and all negotiations for its settlement or compromise but in all cases will:
 - (i) consult with the Purchasing Agency and keep it fully informed of such matters;
 - (ii) obtain the Purchasing Agency's prior written approval to any proposed settlement or compromise (such approval not to be unreasonably withheld or delayed); and
 - (iii) use all reasonable endeavours to ensure that the Purchasing Agency's name and business reputation are not adversely affected by any such steps taken.
- (d) The Purchasing Agency will co-operate with you in defending or settling any IP Claim under this clause 13.9 and will endeavour to make its employees available to give statements, information and evidence as you may reasonably request.
- (e) If any Deliverables or Services, or the Purchasing Agency's use or possession of any of them, infringe the Intellectual Property Rights of any person, or if the Purchasing Agency is otherwise unable to enjoy the full benefit of the Services and Deliverables as a result of an IP Claim, you will, at your expense and without limiting the Purchasing Agency's other rights and remedies:
 - (i) replace or modify the Deliverables or Services so they no longer infringe but still comply with the Subscription Agreement; or
 - (ii) obtain a licence to enable the Purchasing Agency to use the relevant Deliverables or Services on terms acceptable to the Purchasing Agency, and pay all fees for that licence.

- (f) The indemnity in clause 13.9(a) does not apply to the extent that the IP Claim is caused by:
 - (i) the Purchasing Agency's breach of the Subscription Agreement;
 - (ii) either Party's authorised use of Intellectual Property Rights or Purchasing Agency Data, supplied by the Purchasing Agency;
 - (iii) modifications to the Deliverables that have not been made by you; or
 - (iv) the combination, operation or use of the Deliverables with any other software, equipment or other item that has not been specifically approved by you.

13.10 Source Materials

Unless specified otherwise in a Statement of Work, you must provide all Developed Software (if any) to the Purchasing Agency in object code form and you must also provide the Purchasing Agency with the Source Materials for that Software at the same time.

13.11 Know how

Nothing in the Subscription Agreement restricts the Purchasing Agency or you from using any general ideas, concepts, know-how or techniques which either party, individually or jointly, develops or discloses under the Subscription Agreement, except to the extent such use infringes the Intellectual Property Rights of the other party or any confidentiality obligations under clause 14.

14. Confidentiality and security

14.1 Protection of confidential information, use of Purchasing Agency Data, and personal information

The protection of Confidential Information and the use of Purchasing Agency Data and Personal Information are addressed in clauses 15, 17 and 18 of Part 1 (General Terms) of the Collaborative Marketplace Agreement and those clauses are incorporated into the Subscription Agreement by clause 2.1 of these Core Services Terms. The remainder of this clause 14 applies in addition to those clauses.

This clause addresses a range of important matters relating to confidentiality and security.

14.2 Purchasing Agency Data

- (a) You will:
- (i) not use any of the Purchasing Agency Data for your own purposes or for any other purposes different from those contemplated by the Subscription Agreement;
 - (ii) not, subject to sub-clause (b), permit any of the Purchasing Agency Data to be:
 - (A) transferred or stored outside of New Zealand, and any Additional Territory specified in a Statement of Work; or
 - (B) processed or stored by Subcontractors, offshore cloud services or other Third Party Service Providers other than those specified in a Statement of Work,unless:
 - (C) specific details of the relevant offshore territories, Subcontractors, offshore cloud services or other Third Party Service Providers (including where they would store and process Purchasing Agency Data) are contained in the relevant Services Listing(s); or
 - (D) authorised by the Purchasing Agency in writing in relation to specific named territories, Subcontractors, offshore cloud services or other Third Party Service Providers (as applicable); and
 - (iii) ensure that all Purchasing Agency Data (and any backup archives of Purchasing Agency Data) in your possession or control are kept secure and are managed and protected and only disclosed or otherwise dealt with in accordance with the Subscription Agreement.
- (b) To avoid doubt, clause 14.2(a)(ii) shall not, subject to any express restriction in a Statement of Work, be read as preventing you from using telecommunications networks (which by their nature may involve international routing via the Internet) to communicate with or provide the Services, as long as:
- (i) any transfer of the Purchasing Agency Data outside of the territories and cloud services permitted by clause 14.2(a)(ii) is only for Internet routing purposes; and
 - (ii) the Purchasing Agency Data is encrypted and not accessible by persons who are not authorised to access the data.

Purchasing Agency Data is not to be used for unauthorised purposes, and there are controls around transferring it to other service providers and offshore. At the same time, the parties can agree to such transfers in their SOWs and, if you've been clear about such transfers in your Services Listings when a SOW is entered into, the transfers are permissible unless stated otherwise in the SOW.

14.3 Security risk

If either party becomes aware or suspects that:

- (a) there is a material vulnerability in the Services;
- (b) any unauthorised person has obtained access to the technology systems or any Confidential Information of the other party or the Purchasing Agency Data;
- (c) any person has used any Confidential Information or Purchasing Agency Data for purposes not authorised or permitted by the Subscription Agreement; or
- (d) any other unauthorised access or other incident (including compromise or unauthorised exfiltration of Purchasing Agency Data) has occurred that threatens the security or integrity of the Services or any Confidential Information or Purchasing Agency Data,

the following steps shall be taken, as applicable:

- (e) it will notify the other party as soon as possible;
- (f) where the incident concerns unauthorised access, promptly take such steps as are reasonably available to it to identify the person or persons who have gained access and, in your case, provide the Purchasing Agency with such information to assist with investigation of the incident as the Purchasing Agency reasonably requests; and
- (g) take all reasonable steps to stop such unauthorised access or incident and prevent its reoccurrence.

If a party becomes aware of or suspects a security risk, it needs to take the steps specified in this clause.

15. Liability

15.1 Purchasing Agency liability

Subject to clause 15.3 and unless agreed otherwise in a Subscription Form or Statement of Work, the maximum aggregate liability of the Purchasing Agency to you for all Losses under or in connection with the Subscription Agreement or its formation (in addition to the Fees) is \$100,000.

Both parties' liability is subject to specified caps, subject to some carve-outs for things like the indemnities you grant, and each party's liability for breaching the confidentiality and security obligations (to which a different cap applies).

15.2 Your liability

- (a) Despite any other provision of the Subscription Agreement, you will not be liable for any failure to meet your obligations under the Subscription Agreement (including any Milestones or Service Levels) to the extent such failure is caused by:
 - (i) any breach of the Agreement by the Purchasing Agency; or
 - (ii) any act or omission of the Purchasing Agency's other contractors or suppliers (excluding your Subcontractors)

involved with the subject matter of the relevant Statement(s) of Work.

- (b) Subject to clause 15.3 and unless agreed otherwise in a Subscription Form or Statement of Work, your total aggregate liability under or in connection with the Subscription Agreement in any 12 month period, whether in contract or tort (including negligence) or otherwise, is limited to an amount equal to the greater of:
 - (i) \$500,000; or
 - (ii) two times the total amount of Fees paid to the Provider by the Purchasing Agency in the preceding 12 months.

15.3 Exclusions and expanded maximum liability

Unless agreed otherwise in a Subscription Form or Statement of Work, clauses 15.1 and 15.2(b) will not apply to, and will not limit:

- (a) your liability for any claim made under clause 13.9 (Intellectual Property Rights Indemnity) or 16 (General indemnities); or
- (b) either party's liability for a breach of clause 14 (Confidentiality and security), for which the maximum aggregate liability of either party for all Losses in relation to all claims in any 12 month period will be \$1,000,000.

15.4 Loss of profits and revenue and indirect loss

Subject to clauses 13.9 (Intellectual Property Rights Indemnity) and 16 (General indemnities) and the Purchasing Agency's obligation to pay Fees that are properly due, neither party will be liable under or in connection with the Subscription Agreement for any:

- (a) loss of profits or revenue; or
- (b) Indirect or Consequential Loss,

arising out of or in connection with the performance or non-performance of the Subscription Agreement.

15.5 Source of liability

The limitations and exclusions of liability in this clause 15 will apply however liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.

15.6 Mitigation

Each party will take reasonable steps to mitigate any claim or loss sustained or incurred as a result of any breach or default of the other party.

Except for recovery under an indemnity, liability for loss of profits or revenue and indirect or consequential loss is excluded.

15.7 Force Majeure Event

Neither party will be liable to the other for any failure to perform any of its obligations under the Subscription Agreement to the extent the failure is caused by a Force Majeure Event, provided that the party seeking to rely on this clause has:

- (a) notified the other party as soon as practicable after the Force Majeure Event occurs and provided full information concerning the Force Majeure Event, including an estimate of the time likely to be required to overcome it;
- (b) used all reasonable endeavours to overcome the Force Majeure Event and minimise the loss to the other party; and
- (c) continued to perform its obligations under this Agreement as far as practicable.

Neither party is liable for performance failures to the extent they're caused by Force Majeure Events, as long as certain steps are followed.

16. General indemnities

16.1 You will at all times indemnify the Purchasing Agency and its officers, employees and agents from and against any and all Losses awarded against, incurred or suffered by them, caused by any:

- (a) unlawful or malicious act or omission by you or your Personnel; or
- (b) personal injury, death, or loss of or damage to tangible property (which, to avoid doubt, excludes software), due to an act or omission of you or your Personnel.

You grant a small number of indemnities relating to unlawful or malicious conduct, personal injury or death, and damage to property.

17. Insurance

17.1 During the Term and for a period of two years following the effective date of expiry or termination of the Subscription Agreement, you will, at your own expense, ensure that you maintain adequate insurance in respect of your potential liability under the Subscription Agreement. If specific insurance requirements are specified in a Statement of Work, you must comply with those requirements. You will, at the Purchasing Agency's request, promptly provide satisfactory evidence that you have complied with this clause.

You need to maintain insurance.

18. Performance issues

18.1 Without limiting the Purchasing Agency's other rights, if at any time you breach the Subscription Agreement or you have notified the Purchasing Agency of a likely breach (a **Performance Issue**):

- (a) you will immediately take all reasonable steps to minimise or mitigate the Performance Issue and its impact on the Purchasing Agency; and
- (b) the Purchasing Agency may, by notice to you setting out its grounds (**Performance Notice**), require you to prepare a plan to remedy the Performance Issue (**Remedial Plan**) in accordance with clause 18.2.

There's a process to help address performance issues before matters get out of hand.

- 18.2 As soon as possible after receipt of a Performance Notice (and in any event within five Business Days) you will, in consultation with relevant Purchasing Agency Personnel, prepare and provide to the Purchasing Agency a proposed Remedial Plan setting out:
- (a) details of the Performance Issue;
 - (b) a plan setting out the steps you will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from recurring, as applicable; and
 - (c) success criteria to determine whether the Performance Issue has been rectified.
- 18.3 You will promptly and, in any event, within two Business Days of a request by the Purchasing Agency, make such amendments to the proposed Remedial Plan as the Purchasing Agency may reasonably require, provided you receive the Purchasing Agency's reasonably required amendments within 10 Business Days of the Purchasing Agency's receipt of the proposed Remedial Plan from you.
- 18.4 Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 19.
- 18.5 Once the Purchasing Agency has approved the Remedial Plan in writing it will be effective for the purposes of the Subscription Agreement and you will implement it in accordance with its terms and the Subscription Agreement.

19. Disputes

- 19.1 Subject to clause 19.4, if a dispute arises in relation to the Subscription Agreement or its formation, the parties will attempt to resolve the dispute using the dispute resolution process set out below before pursuing any other remedies available at law or otherwise.
- 19.2 If either party receives notice of a dispute, the parties will work together in good faith to resolve the dispute via negotiation and will escalate the dispute to appropriate levels within their respective organisations.
- 19.3 If the dispute is not resolved under clause 19.2 within 20 Business Days of a party receiving a notice under that clause, then either party may, by written notice to the other party (**Mediation Notice**), require the dispute to be submitted to mediation in New Zealand in accordance with the provisions of the then-current Resolution Institute Agreement to Mediate (New Zealand Version) (**Mediation**). The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Business Days following the date of the delivery of the Mediation Notice, the Chair for the time being of the Resolution Institute will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee. The Purchasing

If a dispute arises, the parties need to try to resolve it sensibly, and if necessary through mediation, before approaching the courts.

Agency may, but is not required, to allow your representatives to participate in the Mediation from outside New Zealand via online means.

- 19.4 Nothing in this clause 19 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under the Subscription Agreement.
- 19.5 Subject to clause 19.4, a party to the dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 20 Business Days after commencement of the Mediation.
- 19.6 In the event of a dispute between the parties concerning the Subscription Agreement, you will continue to provide the Services unless the Purchasing Agency requires otherwise in writing.

20. Termination

20.1 Termination by Purchasing Agency for cause

The Purchasing Agency may immediately terminate its Subscription Agreement or one or more Statements of Work, at any time by notice in writing to you if:

- (a) you are in material breach of the Subscription Agreement, the breach is capable of remedy and the breach is not remedied within 20 Business Days of your receiving written notice specifying the material breach and requiring its remedy;
- (b) you are in material breach of the Subscription Agreement and the material breach is not capable of remedy;
- (c) you undergo a Change of Control that you are reasonably able to notify the Purchasing Agency of before it occurs but you fail to do so;
- (d) you undergo a Change of Control and the Purchasing Agency believes on reasonable grounds that either, as a result of such change, you are unlikely to be able to perform your obligations under the Subscription Agreement, or the Change of Control raises significant security concerns for the Purchasing Agency, provided that before terminating under this clause 20.1(d) the Purchasing Agency must raise its concerns with you and give you a reasonable opportunity to address those concerns;
- (e) you cease or threaten to cease to carry on all or substantially all of your business or operations;
- (f) you are declared or become bankrupt or insolvent, are unable to pay your debts as they fall due, enter into a general assignment of your indebtedness or a scheme of arrangement

Both parties have various termination rights, in relation to the Subscription Agreement and particular Statements of Work.

or composition with creditors, or take or suffer any similar or analogous action in consequence of debt; or

- (g) you have a trustee, manager, administrator, administrative receiver, receiver, inspector under legislation or similar officer appointed in respect of the whole or any part of your assets or business, or an order is made or a resolution is passed for your liquidation.

20.2 Termination by Purchasing Agency for convenience

The Purchasing Agency may terminate:

- (a) any Statement of Work at any time by giving you at least 10 Business Days' written notice (or such other period of notice, if any, as may be specified in the Statement of Work); or
- (b) its Subscription Agreement at any time by giving you at least 20 Business Days' written notice.

20.3 Termination for Force Majeure

The Purchasing Agency may terminate its Subscription Agreement or any Statement of Work by notice in writing to you, with immediate effect on the date specified in that notice, if you have been unable to provide all, or a substantial part, of the Services in accordance with the Subscription Agreement as a result of a Force Majeure Event for a continuous period of 20 Business Days.

20.4 Termination by Provider

- (a) You may immediately terminate the Subscription Agreement or a Statement of Work at any time by written notice to the Purchasing Agency if:
 - (i) the Purchasing Agency fails to pay any Fees that are not the subject of a dispute under clause 11.4 by the due date and if the failure to pay is not remedied within 20 Business Days of the Purchasing Agency receiving written notice from you specifying the failure to pay, requiring payment and specifying that failure to pay within 20 Business Days of receipt of the notice may result in your terminating the Subscription Agreement; or
 - (ii) the Purchasing Agency is in material breach of the Subscription Agreement, other than a failure to pay any Fees, and the material breach is not remedied within 20 Business Days of the Purchasing Agency receiving notice specifying the material breach, requiring its remedy and specifying that failure to remedy may result in termination.
- (b) You may terminate the Subscription Agreement or all or the material part of a relevant Statement of Work if:

- (i) you are ceasing to provide a Service in reliance on clause 6.4 of Part 2 (Channel Terms for Consultancy and Professional Services and Managed Services (C&PS/MS Terms) (Standard)) of the Collaborative Marketplace Agreement (which is incorporated into this Subscription Agreement by clause 2.1(l) of the Core Services Terms); and
- (ii) you are providing that Service to the Purchasing Agency under the relevant Statement of Work,

provided you comply with the notice requirements of clause 6.5 of Part 2. To avoid doubt, this clause 20.4(b) only entitles you to terminate the Subscription Agreement, or all of a Statement of Work, if the only Service you are providing to the Purchasing Agency is the Service that you are ceasing to provide.

20.5 Effect of termination

- (a) Except as is otherwise provided in the Subscription Agreement, termination or expiry of the Subscription Agreement will not affect:
 - (i) any rights and remedies available to a party under the Agreement which have accrued up to and including the date of termination or expiry; and
 - (ii) the provisions of the Agreement which expressly, or by their nature, survive termination or expiry, including clauses 13 (Intellectual Property Rights), 14 (Confidentiality and security), 15 (Liability), 16 (General indemnities), 17 (Insurance), 19 (Dispute) and 20 (Termination).

Termination or expiry doesn't affect accrued rights or provisions that survive termination or expiry.

20.6 If the Purchasing Agency terminates its Subscription Agreement or a Statement of Work for convenience under clause 20.2, you will be entitled to recover your reasonable fees for time spent providing the Services up to the date of effective termination, even if:

- (a) under the relevant Statement of Work payment for a given Milestone is tied to completion of the Milestone and the Milestone will not be met due to the date of effective termination; or
- (b) the Statement of Work is for an overall fixed price,

unless the parties have expressly agreed otherwise in the applicable Statement of Work.

If the Purchasing Agency terminates for convenience, you can recover reasonable fees already incurred.

20.7 Return of property

After expiry or termination of the Subscription Agreement, each party will, within five Business Days of written request from the other party, return to the other party (or if requested securely destroy) all of the other party's:

- (a) property; and
- (b) Confidential Information,

except to the extent that such property or Confidential Information:

- (c) is required to comply with any disengagement process;
- (d) is licensed under clause 13 (Intellectual Property Rights);
- (e) is required to be retained by the Public Records Act 2005 or any other law;
- (f) is required to be retained by a party to enable it to defend itself in a dispute; or
- (g) in your case, is required by law or regulation to be retained or is required to be retained for the purposes of your internal auditing policy.

On termination or expiry, property and Confidential Information needs to be returned or destroyed on request (subject to some listed exceptions).

21. General

21.1 Assignment

- (a) You may not assign, transfer, novate, charge, pledge or otherwise encumber the Subscription Agreement, or any of your rights or obligations under it, without first obtaining the Purchasing Agency's written consent.
- (b) The Purchasing Agency may assign, transfer or novate any or all of its rights and obligations under the Subscription Agreement to any Eligible Agency by giving at least 10 Business Days' notice in writing to you. If, during that 10 Business Day period, you raise concerns about the proposed assignment, transfer or novation that cannot be resolved to both parties' satisfaction, you may terminate the Subscription Agreement on written notice to the Purchasing Agency. Otherwise, you will execute any documentation the Purchasing Agency reasonably requires to record or complete such assignment, transfer or novation.

This clause contains a range of standard provisions relating to assignment, waiver, invalidity, the nature of the parties' relationship, the entirety of the Subscription Agreement, remedies, notices, governing law, electronic signatures and contract document counterparts, and further assurances.

21.2 No waiver

- (a) A delay, neglect or forbearance by a party in enforcing any provision of the Subscription Agreement against the other will not waive or limit any right of that party.

- (b) No provision of the Subscription Agreement will be considered waived by a party unless that party waives the provision in writing.
- (c) The parties will not treat a waiver by a party of any breach as a waiver of any continuing or re-occurring breach, unless the parties have expressly agreed to do so in writing.

21.3 Invalid clauses

If any part of the Subscription Agreement is held to be invalid, unenforceable or illegal for any reason, the Subscription Agreement will be deemed to be amended by the addition or deletion of wording necessary to remove the invalid, unenforceable or illegal part, but otherwise to retain the provisions of the Agreement to the maximum extent permissible under applicable law.

21.4 Relationship

The Subscription Agreement will not create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, except to the extent expressly stated otherwise (including in a Statement of Work). Except to the extent expressly permitted, neither party may make or allow anyone to represent that any such relationship exists between the parties.

21.5 Entire agreement

The Subscription Agreement contains the whole of the contract and understanding between the parties in respect of the matters covered by it and supersedes all prior representations, agreements, statements and understandings between the parties in respect of those matters, whether verbal or in writing.

21.6 Remedies cumulative

The rights of the parties under the Subscription Agreement are cumulative. The parties do not exclude any rights provided by law, unless otherwise expressly stated in the Agreement.

21.7 Notices

- (a) Every notice or other formal communication expressly contemplated in this Agreement (**Notice**) shall:
 - (i) be in writing (which can include email); and
 - (ii) be delivered in accordance with clause 21.7(b).
- (b) A Notice may be given by:
 - (i) delivery to the physical address of the relevant party;
 - (ii) email to the email address of the relevant party; or

- (iii) posting it by pre-paid post to the postal address of the relevant party.
- (c) A Notice given in the manner specified in:
 - (i) clause 21.7(b)(i) is deemed received at the time of delivery;
 - (ii) clause 21.7(b)(ii) is deemed received upon actual receipt and acknowledgment by the recipient; and
 - (iii) clause 21.7(b)(iii) is deemed received 3 Business Days after (but exclusive of) the date of posting.
- (d) For the purposes of this clause 21.7 your and the Purchasing Agency's address details are set out in the Subscription Form.

21.8 Governing Law

The Subscription Agreement is governed by New Zealand law. Without limiting clause 19.4, the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Subscription Agreement and its formation.

21.9 Electronic signatures and counterparts

The Subscription Form and any Statement of Work may be signed:

- (a) electronically, using any technological means acceptable to the Purchasing Agency; and
- (b) in any number of counterparts (including scanned PDF copies) all of which, when taken together, will constitute one and the same agreement. A party may enter into the Subscription Agreement or a Statement of Work by signing any counterpart.

21.10 Further assurances

Each party will do all things and execute all documents reasonably necessary to give effect to the terms of the Subscription Agreement.

22. Definitions and interpretation

- 22.1 In the Subscription Agreement, the following terms have the following meanings and references to clauses are to clauses in these Core Services Terms, unless the context requires otherwise:

These terms have the particular meanings given to them.

Administration Fee means a fee that may be charged to purchasing agencies that contributes to the costs of providing and administering the Marketplace (and may be collected by the provider for payment to DIA or MBIE) when purchasing agencies procure services through or via the Marketplace;

Business Day means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington, New Zealand;

Cabinet Directions for the Conduct of Crown Legal Business means the directions by that or similar name available at <https://dpmc.govt.nz>;

Change of Control means in relation to a body corporate, where a person acquires Control of the body corporate or where a person who Controls the body corporate ceases to do so;

Change Order has the meaning in clause 10.1;

Change Procedure means the procedure for changes specified in clause 10;

Change Request has the meaning in clause 10.1;

Commencement Date has the meaning in clause 1.1(a);

Confidential Information means, in relation to a party, all information of a confidential or otherwise sensitive nature, whether written, electronic or otherwise, and whether marked or identified as being confidential, relating to that party or its business operations and, in relation to the Purchasing Agency, includes the Purchasing Agency Data and any information relating to any Eligible Agency or its business operations;

Conflict of Interest means a situation where a party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under the Subscription Agreement;

Consultancy and Professional Services and **C&P Services** mean the consultancy and professional services in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the C&PS Channel;

Contract Managers means the personnel named as such in the Subscription Form with the responsibilities listed in clause 4.1;

Control means, in relation to a body corporate, the ability of a person to ensure that the activities and business of the body corporate are conducted in accordance with the wishes of that person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting shares of a body corporate is deemed to constitute Control;

C&PS Channel means the Consultancy and Professional Services Channel;

Deliverable means all documentation, software, applications and other materials provided, or to be provided, by you under or in connection with the Subscription Agreement, as specified in each Statement of Work or otherwise arising from performance of the Services (but, to avoid doubt, does not include your separate working papers);

Developed Software means the Software developed, created or commissioned by you under or in connection with the Subscription Agreement as specified in a Statement of Work;

DIA means the Department of Internal Affairs;

Disabling Code means any program code or programming instructions, or any thing or device, which is designed to damage or otherwise adversely affect the operation of the Services or the security or integrity of Confidential Information or Purchasing Agency Data, including malicious code, trojan horses, worms, spyware, malware, computer viruses, logic bombs, backdoors, disabling code and other similar things;

Eligible Agency has the meaning in clause 24 of Part 1 (General Terms) of the Collaborative Marketplace Agreement, available at marketplace.govt.nz;

Existing Material means all software, applications, documentation and other material (including any data or dataset accompanying or included in any such material) that existed prior to the Commencement Date or was developed or acquired outside of the Subscription Agreement;

Extra Terms means terms that apply by default to certain categories of services within the C&PS Channel and/or the MS Channel, and form part of a Subscription Agreement when a Purchasing Agency procures these categories of Services;

Fees means the fees set out or to be set out in any or all Statements of Work (including where relevant by way of cross-referencing to the applicable Marketplace Catalogue);

Force Majeure Event means, in relation to either party (**Affected Party**), an event or circumstance beyond the reasonable control of the Affected Party, including:

- (a) earthquake, tsunami, volcanic eruption, flooding or other natural disaster;
- (b) an act of public enemy, or declared or undeclared war or threat of war; or
- (c) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party),

but not including any event or circumstance, or any failure to comply with any term of the Subscription Agreement arising from such event or circumstance, that is constituted by the insolvency of either party or lack of funds or that could have been avoided by the Affected Party's exercise of business continuity or other reasonable business practices;

Good Industry Practice means, in relation to your performance of the Services, the exercise of the skill, diligence, prudence, foresight and judgement that would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

GST means goods and services tax payable under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Indirect or Consequential Loss means loss that does not arise as a direct, natural and/or probable result of the act or omission complained of;

Infrastructure and **Provider Infrastructure** mean the information technology and telecommunications infrastructure and environment you use to provide the relevant Services;

Initial Term has the meaning in clause 1.1(b)(i);

Intellectual Property Rights means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, rights in relation to inventions (including all patents and patent applications), trade secrets, rights in relation to designs, rights in relation to trade marks, business names and domain names;

Losses means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis);

Managed Services means the managed services in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the MS Channel ;

Marketplace means the Government's marketplace at marketplace.govt.nz;

Marketplace Catalogues has the meaning in clause 24 of Part 1 (General Terms) of the Collaborative Marketplace Agreement;

MBIE means the Ministry of Business, Innovation & Employment;

MS Channel means the Managed Services Channel;

New Intellectual Property Rights means Intellectual Property Rights that you (or, if applicable, your subcontractor or licensor) create in the course of providing the Services;

Personnel includes employees, agents, officers, independent individual contractors and Subcontractors;

Purchasing Agency has the meaning in the Subscription Form;

Purchasing Agency Contributed Material has the meaning in clause 13.4(a);

Purchasing Agency Data means any content, materials, data and information that:

- (a) a Purchasing Agency provides to you in the context of using or receiving your Services;
- (b) Users provide to you or enter into your products or services (such as a website or other online platform) solely for the purposes of using your Services for or in connection with roles performed by the Purchasing Agency; and
- (c) you collect, process, transmit, access, create or use solely in connection with, or solely in the course of your performance under, this Marketplace Agreement or an Agency Purchase Agreement;

Purchasing Agency Environment means a Purchasing Agency's:

- (a) business, organisational, technical and commercial processes and procedures; and
- (b) information technology and telecommunications infrastructure and environment,

as they exist from time to time, which interface with the Services or the Provider Infrastructure and are necessary for the Purchasing Agency and Users to receive the full benefit of the Services;

Service Level Credits means the credits that are payable by you to the Purchasing Agency upon the occurrence of a Service Level Default, as specified in a Statement of Work (if any);

Service Level Default means a failure to meet a Service Level;

Service Levels means the standards of service described as service levels and specified in your Services Listings in the Marketplace Catalogue or in a Statement of Work;

Services means C&P Services and/or Managed Services, as applicable;

Services Listings means entries in the Marketplace Catalogues for particular Services available for purchase, subscription or consumption by Eligible Agencies;

Services Rates means the rates charged for Services, when you charge on a time, materials and/or other unit-based basis, as set out in the applicable Marketplace Catalogue;

Site means each location at which your obligations under the Subscription Agreement are to be performed;

Software means:

- (a) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
- (b) recorded information comprising source code, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled;

Source Materials means the source code, algorithms and all other information, materials and documents necessary to enable a reasonably skilled person to maintain, amend and enhance the relevant software without reference to any other person or document and whether in eye-readable or machine-readable form;

Statement of Work means a statement of work entered into under a Subscription Agreement in accordance with clause 3 of these Core Services Terms;

Subcontractor means a person, business, company or organisation that you contract or propose to contract to deliver or perform part of your Services under the Subscription Agreement but, to avoid doubt, does not include a provider to you of goods or services that are incidental to, or which otherwise represent an immaterial part (in quantity or significance) of, your obligations under the Subscription Agreement (as long as they do not obtain Purchasing Agency Data);

Subscription Agreement means the agreement under which the Purchasing Agency is able to purchase Services listed in the C&PS Channel and MS Channel of the Marketplace, comprising a Subscription Form, these Core Services Terms, any Extra Terms that apply and all Statements of Work;

Subscription Form means the form the parties complete to create a Subscription Agreement;

Term has the meaning described in clause 1;

Third Party Material means any Existing Material, the Intellectual Property Rights in which are owned by a third party;

Third Party Service Provider means any service provider other than you or your Subcontractors; and

User means any person using, or interacting with, the relevant Services and Provider Infrastructure in the course of employment or other work for, or to receive a service from, the Purchasing Agency, including Purchasing Agency Personnel.

22.2 The Background section of these Core Services Terms forms part of the Terms and has legal effect.

22.3 In the Subscription Agreement, unless the context requires otherwise:

- (a) references to the singular include the plural and vice versa;
- (b) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (e) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;
- (f) wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation";
- (g) except as otherwise expressly stated, monetary references are references to New Zealand currency; and
- (h) if there is any conflict between the terms of the Subscription Agreement, the following order of precedence will, unless expressly stated otherwise, apply:
 - (i) executed Statements of Work;
 - (ii) the Subscription Form;
 - (iii) any applicable Extra Terms;
 - (iv) the Core Services Terms.

Schedule: Statement of Work templates

Introduction

Two Statement of Work templates are attached:

- **Statement of Work (General) – Consultancy and Professional Services:** This template should be used when a Purchasing Agency is procuring Services from a Provider in the Consultancy and Professional Services Channel.
- **Statement of Work (General) – Managed Services:** This template should be used when a Purchasing Agency is procuring Services from a Provider in the Managed Services Channel.

The core of each Statement of Work template is the same but the template for the Managed Services Channel builds upon the other template, in that it includes fields for additional matters contemplated by the Extra Terms for Managed Services that are not contemplated by the Core Services Terms that apply to both Channels.

As the Government adds further service categories to these two Channels, it may add further Statement of Work templates. For example, it may add a "Statement of Work (Agile) – Consultancy and Professional Services Channel".

Drafting notes

- The attached templates are intended to provide helpful starting points for Purchasing Agencies and Providers but may need amending to suit the particular circumstances.
- As noted in clause 3.9 of the Core Services Terms, the parties may agree to adapt the form of the provided templates (for example, to accommodate the nature of the work or the Purchasing Agency's standard internal business requirements for statements of work). Note, however, that the templates have been designed to fit in with the Subscription Agreement and that the parties must not remove the row relating to the Administration Fee.
- All matters inside square brackets need to be considered and amended as appropriate and all instruction text and square brackets need to be removed prior to signing a Statement of Work.



Statement of Work (General) – Consultancy and Professional Services

Introduction

This is a Statement of Work (SOW) under the Subscription Agreement referred to below. The Subscription Agreement was formed pursuant to the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) which are part of the Collaborative Marketplace Agreement at marketplace.govt.nz. The SOW records the terms on which the Provider named below will provide the specified Services to the Purchasing Agency stated below. Unless the context requires otherwise, terms defined or referred to in the Subscription Agreement have the same meaning in this SOW and the rules of interpretation in the Subscription Agreement apply to this SOW.

Parties and Subscription Agreement / Statement of Work details

| | |
|---|--|
| Provider: | [insert full name of Provider and, if a company, the company number or NZ business number] (Provider, you, your) |
| Purchasing Agency: | [Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (Purchasing Agency, we, us) |
| SOW for: | [insert short description] |
| SOW #: | [insert number] |
| Under Subscription Agreement dated: | [insert date] |
| Initial Term of Subscription Agreement <small>(Ref: Clause 1.1(b) Core Services Terms)</small> | [Under clause 1.1(b) of the Core Services Terms, Subscription Agreements have an initial term of 2 years, unless the parties agree to a shorter initial term in their first SOW. Parties may wish to agree to a shorter initial term where an agency is clear that it is only seeking a contained set of Services in a single SOW that will last less than 2 years. They may want the whole Subscription Agreement to end at the end of the SOW. If so, the parties can enter in an initial term here that is less than 2 years. If not, this row can be deleted.] |
| SOW Start Date <small>(Ref: Clause 1.3 Core Services Terms)</small> | [Insert commencement date of work under SOW] |
| SOW End Date <small>(Ref: Clause 1.3 Core Services Terms)</small> | [Insert end date of work under SOW] |

Service description and related matters

| 1. | <p>Services</p> | <p>The Provider will provide the following Services to the Purchasing Agency and in accordance with the following timeframes.</p> <p>(Specific Milestones/Deliverables and Milestone Dates (if any) are specified further below.)</p> <table border="1" data-bbox="448 360 1471 573"> <thead> <tr> <th data-bbox="448 360 1166 461">Service (Attach a more detailed Service description and statement of requirements if required)</th> <th data-bbox="1166 360 1471 461">Timeframe</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 461 1166 517"></td> <td data-bbox="1166 461 1471 517"></td> </tr> <tr> <td data-bbox="448 517 1166 573"></td> <td data-bbox="1166 517 1471 573"></td> </tr> </tbody> </table> | Service (Attach a more detailed Service description and statement of requirements if required) | Timeframe | | | | | | | |
|---|---|---|---|--|---------|---|--|---|----------|--|--|
| Service (Attach a more detailed Service description and statement of requirements if required) | Timeframe | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| 2. | <p>Key contacts (Ref: Clause 4.2 Core Services Terms)</p> | <p>The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the Core Services Terms. Other key contacts for this SOW (if any) are as stated below.</p> <table border="1" data-bbox="448 696 1471 891"> <thead> <tr> <th data-bbox="448 696 786 763"></th> <th data-bbox="786 696 1129 763">Contact(s)</th> <th data-bbox="1129 696 1471 763">Role(s)</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 763 786 831">Purchasing Agency</td> <td data-bbox="786 763 1129 831"></td> <td data-bbox="1129 763 1471 831"></td> </tr> <tr> <td data-bbox="448 831 786 891">Provider</td> <td data-bbox="786 831 1129 891"></td> <td data-bbox="1129 831 1471 891"></td> </tr> </tbody> </table> | | Contact(s) | Role(s) | Purchasing Agency | | | Provider | | |
| | Contact(s) | Role(s) | | | | | | | | | |
| Purchasing Agency | | | | | | | | | | | |
| Provider | | | | | | | | | | | |
| 3. | <p>Service Levels (if any) (Ref: Clause 5.2 Core Services Terms)</p> | <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>You will meet or exceed the Service Levels specified in the Services Listings for the Services in the relevant Marketplace Catalogue.</p> <p>or</p> <p>You will meet or exceed the following Service Levels:</p> <p>[insert details of Service Levels; make sure they're specific and measurable]</p> <table border="1" data-bbox="448 1167 1471 1368"> <thead> <tr> <th data-bbox="448 1167 844 1223">Name of Service Level</th> <th data-bbox="844 1167 1471 1223">Details of Service Level</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1223 844 1267"></td> <td data-bbox="844 1223 1471 1267"></td> </tr> <tr> <td data-bbox="448 1267 844 1312"></td> <td data-bbox="844 1267 1471 1312"></td> </tr> <tr> <td data-bbox="448 1312 844 1368"></td> <td data-bbox="844 1312 1471 1368"></td> </tr> </tbody> </table> <p>or</p> <p>There are no Service Levels beyond what is already stated in the Subscription Agreement.</p> | Name of Service Level | Details of Service Level | | | | | | | |
| Name of Service Level | Details of Service Level | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| 4. | <p>Service Level Credits (if any) (Ref: Clause 5.2 Core Services Terms)</p> | <p>[Choose one option, insert relevant details and delete remainder. The drafting is only an example and may need to be amended to suit your circumstances.]</p> <p>The Service Level Credits that are payable to us upon a Service Level Default are as specified in your Services Listings.</p> <p>or</p> <p>If you fail in a given month to meet the Service Levels referred to or specified above (a Service Level Default), we shall become entitled to the credits (Service Level Credits) specified in the table below:</p> <table border="1" data-bbox="448 1861 1471 2063"> <thead> <tr> <th data-bbox="448 1861 847 1917">Service Level</th> <th data-bbox="847 1861 1471 1917">Service Level Credits for Service Level Defaults</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1917 847 1984"></td> <td data-bbox="847 1917 1471 1984">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="448 1984 847 2063"></td> <td data-bbox="847 1984 1471 2063">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> </tbody> </table> | Service Level | Service Level Credits for Service Level Defaults | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | |
| Service Level | Service Level Credits for Service Level Defaults | | | | | | | | | | |
| | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | | | | | | | |
| | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | | | | | | | |

| | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | |
|---|--|---|-------------------------|----------------|---|--|
| | | <p>If a Service Level Default occurs for which Service Level Credits are payable, you will credit the applicable Service Level Credits against the Fees under this SOW that are next due to be paid.</p> <p>Service Level Credits are agreed to reflect the reduced value of the relevant Services affected by the Service Level Default(s) and are acknowledged to be neither liquidated damages nor our sole and exclusive remedy in respect of Service Level Defaults or the consequences of such defaults.</p> <p>In no event will the amount of all Service Level Credits credited against the Fees in each calendar month exceed, in total, [XX]% of the Fees payable in that month.</p> <p>or</p> <p>There are no Service Level Credits.</p> | | | | |
| 5. | <p>Deliverables, Milestones, and Milestone Dates (if any)</p> <p>(Ref: Clause 5.3 Core Services Terms)</p> | <table border="1"> <thead> <tr> <th>Deliverable / Milestone</th> <th>Milestone Date</th> </tr> </thead> <tbody> <tr> <td colspan="2">[Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're contracting for a design document, does it need to be a detailed design (and in what respects) or a high level design?]</td> </tr> </tbody> </table> | Deliverable / Milestone | Milestone Date | [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're contracting for a design document, does it need to be a detailed design (and in what respects) or a high level design?] | |
| Deliverable / Milestone | Milestone Date | | | | | |
| [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're contracting for a design document, does it need to be a detailed design (and in what respects) or a high level design?] | | | | | | |
| 6. | <p>Liquidated damages</p> <p>(Ref: Clause 5.3(c) Core Services Terms)</p> | <p>[Complete the drafting below if liquidated damages will be payable upon a failure to meet one or more Milestones. If no liquidated damages will be payable, this row can be deleted]</p> <p>If you fail to meet [a Milestone] or [insert details of particular Milestones] specified above by [its / their] corresponding Milestone Date[s] then, except to the extent that such failure has been caused by us or our Personnel or a failure in equipment (software or hardware) for which you are not responsible or a Force Majeure Event:</p> <p>(a) we may withhold payment of Fees for the relevant Services until the Milestone is achieved; and</p> <p>(b) you shall pay \$[] in liquidated damages for each [day / week / month] that the completion of the Milestone is delayed, provided that the maximum liquidated damages payable shall not exceed []% of the Fees paid and payable under this SOW.</p> <p>You accept that the liquidated damages referred to above reflect our legitimate interests in performance and are not a penalty, and you will not seek to argue otherwise in any dispute or proceedings.</p> <p>Your obligation to pay these liquidated damages is without limitation to any other remedy we may have under or in relation to the Subscription Agreement.</p> <p>Provided you have complied with clause 5.3(d) (Project Delay caused by us or a third party) of the Core Services Terms, you will not be liable to pay liquidated damages where a Milestone Date has not been met due to a Project Delay caused by us or a third party (excluding your subcontractors).</p> | | | | |
| 7. | <p>Purchasing Agency responsibilities</p> <p>(Ref: Clause 5.4 Core Services Terms)</p> | <p>[If the Purchasing Agency is to have any specific responsibilities in relation to provision of the Services, beyond what may already be specified in the relevant Services Listings in the Marketplace or in the Subscription Form, state them here. If there are none, you can delete this row.]</p> | | | | |

| 8. | Acceptance of Deliverables (Ref: Clause 5.5 Core Services Terms) | [A default approach to acceptance of Deliverables is specified in clause 5.5 of the Core Services Terms but that clause recognises that the parties may agree upon an alternative approach. If the parties agree on an alternative approach for this SOW, the alternative approach can be specified here. Note that, as further kinds of services are added to the Marketplace, DIA expects to offer additional SOW template variants, including a SOW (Agile).] | | | | |
|----------------------------|---|---|----------------------------|--|--|--|
| 9. | Security clearances and probity checks (Ref: Clause 6.1(b) Core Services Terms) | [If Provider Personnel are required to obtain security clearances or if the Provider is required to undertake probity checks for Personnel engaged in providing the Services, specify those clearances or checks here] | | | | |
| 10. | Pre-approved Subcontractors (Ref: Clause 7.2 Core Services Terms) | <p>[If the Purchasing Agency pre-approves the Provider's use of particular Subcontractors, state the names and the roles they are authorised to perform below. If there are none, this row can be deleted.]</p> <p>We authorise you to subcontract parts of the Services as described below:</p> <table border="1" data-bbox="461 745 1453 846"> <thead> <tr> <th data-bbox="461 745 882 790">Full name of Subcontractor</th> <th data-bbox="882 745 1453 790">Role(s) Subcontractor is authorised to perform</th> </tr> </thead> <tbody> <tr> <td data-bbox="461 790 882 846"> </td> <td data-bbox="882 790 1453 846"> </td> </tr> </tbody> </table> | Full name of Subcontractor | Role(s) Subcontractor is authorised to perform | | |
| Full name of Subcontractor | Role(s) Subcontractor is authorised to perform | | | | | |
| | | | | | | |
| 11. | Purchasing Agency policies (Ref: Clause 8.1(b) Core Services Terms) | [Insert the names of any Purchasing Agency policies that the Provider must comply with. Be sure to provide copies to the Provider. If there are none, this row can be deleted.] | | | | |
| 12. | Fees (Ref: Clause 11.1 Core Services Terms) | <p>The Provider's Fees will be calculated as follows (all Fees are in NZD unless expressly stated otherwise):</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>Fixed fee</p> <p>A fixed Fee of \$[] excluding GST.</p> <p>or</p> <p>Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with your Services Rates set out in your Service Listings (as at the date of this SOW) in the Marketplace Catalogue, as [stated/summarised] below:</p> <p>[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.]</p> <p>or</p> <p>Discounted Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with the discounted Services Rates (i.e., lower than the standard Services Rates in the relevant Services Listings in the Marketplace Catalogue), as stated below:</p> <p>[insert details of discounted Services Rates]</p> <p>or</p> <p>Daily fee rate</p> <p>For each day worked a daily fee rate of \$[] excluding GST[, up to a total maximum of \$[] excluding GST]. One day's work is defined as 8 hours. If you work less than a full day the Fee shall be calculated based on the time worked at the agreed daily fee rate i.e. (daily fee rate ÷ 8) x hours worked. If you work more</p> | | | | |

| | | <p>than 8 hours in a given day, the specified daily rate will still apply, i.e., you are not entitled to charge more for the additional time spent.</p> <p>or</p> <p>[Some other pricing/fees mechanism]</p> <p>[insert details as required]</p> | | | | | | | | | |
|-------------------------|---|--|-------------------------|----------|-----------------------|--|--|--|--|--|--|
| 13. | <p>Invoicing</p> <p>(Ref: Clause 11.2 Core Services Terms)</p> | <p>[Choose one option for invoicing, insert relevant wording and delete remainder. Make sure all Fees are captured. Also, if relevant, make sure you are clear on when invoicing commences.]</p> <p>You will invoice the Fees at the end of each month for Services and Deliverables provided during that month in accordance with the Subscription Agreement.</p> <p>or</p> <p>You will invoice the Fees on completion of the Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement.</p> <p>or [for fixed Fees]</p> <p>You will invoice the Fees in instalments on the dates set out below, subject to completion of the relevant Milestones, in accordance with the Subscription Agreement:</p> <table border="1"> <thead> <tr> <th>Deliverable / Milestone</th> <th>Due date</th> <th>Amount due (excl GST)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>In addition to the matters set out in clause 11.2 of the Core Services Terms, each invoice must contain [insert any specific requirements, such as responsibility codes or purchase order numbers] and be sent by email to [insert email address]</p> | Deliverable / Milestone | Due date | Amount due (excl GST) | | | | | | |
| Deliverable / Milestone | Due date | Amount due (excl GST) | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| 14. | <p>Expenses</p> <p>(Ref: Clause 11.6 Core Services Terms)</p> | <p>[Delete this entire row if not applicable]</p> <p>You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:</p> <ul style="list-style-type: none"> • we have given our prior written consent to you incurring the expenses; and • the expenses are charged at cost. | | | | | | | | | |
| 15. | <p>Administration Fee</p> <p>(Ref: Clause 11.1(a)(ii) Core Services Terms and clause 9 Channel Terms. Do not delete this row.)</p> | <p>The parties acknowledge that you may be required, under clause 11.1(a)(ii) of the Core Services Terms and clause 9 of the Channel Terms for Consultancy and Professional Services and Managed Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz. If you are required to collect this Administration Fee, you must add the fee as a separate line item to your invoices for the Services provided under this SOW.</p> | | | | | | | | | |
| 16. | <p>Intellectual Property Rights</p> <p>(Ref: Clause 13 Core Services Terms)</p> | <p>[If the parties agree to change the default ownership and licensing provisions in clauses 13.2 and 13.5-13.6 of the Core Services Terms, those changes should be recorded here.]</p> <p>[If the Purchasing Agency agrees that the Provider may use certain kinds of Existing Material in the Deliverables, without needing separate prior consent under clause 13.4, relevant details should be specified here (unless those details are already in the relevant Services Listings).]</p> | | | | | | | | | |

| | | <p>[If the parties wish to amend any other aspect of the default provisions of clause 13 of the Core Services Terms, that should be specified here.]</p> <p>[If no such changes are required, this row can be deleted.]</p> | | | | | | | | |
|---|---|---|--|--|--|---|----------------|---|--|--|
| 17. | Purchasing Agency Data (Ref: Clause 14.2 Core Services Terms) | <p>[Clause 14.2 contemplates that a Purchasing Agency may agree to the Provider transferring or storing Purchasing Agency Data in 'Additional Territories' when specified in a SOW, or agree to Purchasing Agency Data being processed or stored by Subcontractors, offshore cloud services or other Third Party Service Providers. If that is the case for this SOW, enter relevant details below. This isn't required if specific details are already contained in the Provider's Service Listings. If not relevant, this row can be deleted.]</p> <p>You may transfer Purchasing Agency Data to and store it in the Additional Territories named below, and Purchasing Agency Data may be processed or stored by the Subcontractors, offshore cloud services or other Third Party Service Providers named below:</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored</td> <td colspan="2"></td> </tr> <tr> <td>Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers</td> <td colspan="2"></td> </tr> </table> | | | Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored | | | Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers | | |
| Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored | | | | | | | | | | |
| Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers | | | | | | | | | | |
| 18. | Liability (Ref: Clause 15 Core Services Terms) | <p>[If there are to be any agreed changes to the default liability provisions in clause 15 of the Core Services Terms for this SOW that have not already been covered off in the Subscription Form, then the changes should be recorded here. Otherwise, delete this row.]</p> | | | | | | | | |
| 19. | Insurance (Ref: Clause 17 Core Services Terms) | <p>[Under clause 17 of the Core Services Terms, the Provider needs to maintain adequate insurance. If specific insurance requirements are needed beyond this general obligation, the requirements should be stated here. If not, this row can be deleted.]</p> | | | | | | | | |
| 20. | Meetings (Ref: Clause 5.6(a) Core Services Terms) | <p>[If there are any particular meeting requirements, specify them here. Otherwise delete this row.]</p> <p>Your designated representatives will attend the following meetings at the following times:</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 33%;">Meeting details</th> <th style="width: 33%;">Designated representatives of the Provider required to attend</th> <th style="width: 33%;">Frequency/Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | | | Meeting details | Designated representatives of the Provider required to attend | Frequency/Date | | | |
| Meeting details | Designated representatives of the Provider required to attend | Frequency/Date | | | | | | | | |
| | | | | | | | | | | |
| 21. | Reports (Ref: Clause 5.6(b) Core Services Terms) | <p>[If there are any particular reporting requirements (e.g., monthly status reports), specify them here. Otherwise delete this row.]</p> <p>You will provide us with the following reports at the following times, by emailing them to our Contract Manager:</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 66%;">Report details</th> <th style="width: 33%;">Frequency/date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table> | | | Report details | Frequency/date | | | | |
| Report details | Frequency/date | | | | | | | | | |
| | | | | | | | | | | |
| 22. | Amendments to Core Services | <p>[Insert any other amendments or additional terms that are to apply to the SOW.]</p> | | | | | | | | |

| | |
|---|--|
| Terms and to Extra Terms (if any), and any additional terms | |
|---|--|

Execution

Signed as part of the Subscription Agreement

Signed by the [insert name of Purchasing Agency] by

Signed by the [insert name of the Provider] by

Signature

Signature

Name

Name

Position

Position

Date

Date



Statement of Work (General) – Managed Services

Introduction

| |
|--|
| <p>This is a Statement of Work (SOW) under the Subscription Agreement referred to below. The Subscription Agreement was formed pursuant to the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) which are part of the Collaborative Marketplace Agreement at marketplace.govt.nz. The SOW records the terms on which the Provider named below will provide the specified Services to the Purchasing Agency stated below. Unless the context requires otherwise, terms defined or referred to in the Subscription Agreement have the same meaning in this SOW and the rules of interpretation in the Subscription Agreement apply to this SOW.</p> |
|--|

Parties and Subscription Agreement / Statement of Work details

| | |
|---|--|
| Provider: | [insert full name of Provider and, if a company, the company number or NZ business number] (Provider, you, your) |
| Purchasing Agency: | [Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (Purchasing Agency, we, us) |
| SOW for: | [insert short description] |
| SOW #: | [insert number] |
| Under Subscription Agreement dated: | [insert date] |
| Initial Term of Subscription Agreement <small>(Ref: Clause 1.1(b) Core Services Terms)</small> | [Under clause 1.1(b) of the Core Services Terms, Subscription Agreements have an initial term of 2 years, unless the parties agree to a shorter initial term in their first SOW. Parties may wish to agree to a shorter initial term where an agency is clear that it is only seeking a contained set of Services in a single SOW that will last less than 2 years. They may want the whole Subscription Agreement to end at the end of the SOW. If so, the parties can enter in an initial term here that is less than 2 years. If not, this row can be deleted.] |
| SOW Start Date <small>(Ref: Clause 1.3 Core Services Terms)</small> | [Insert commencement date of work under SOW] |
| SOW End Date <small>(Ref: Clause 1.3 Core Services Terms)</small> | [Insert end date of work under SOW] |

Service description and related matters

| 1. | Transition (Ref: Clause 1 Extra Terms for Managed Services) | [If any changes are required to the default transition provisions in clause 1 of the Extra Terms, enter them here. For example, clause 1.1(c) states that if you're transitioning or migrating services from the Purchasing Agency or an incumbent service provider to yourself, upon which you will then provide Services, you will not start charging the Purchasing Agency for those Services (distinct from your transition charges) until the later of the date when the transfer or migration is complete and the commencement date for those Services specified in the SOW. Sometimes, however, transitions or migrations are implemented in stages, with increasing levels of functionality over time. If that warrants an agreed change to the default charging position in clause 1, the agreed change can be stated here. If no changes are required, this row can be deleted.] | | | | | | | |
|-------------------|---|--|--|------------|---------|-------------------|--|----------|--|
| 2. | Services (Ref: Clauses 3 and 5 Core Services Terms) | The Provider will provide the following Services to the Purchasing Agency and in accordance with the following timeframes. (Specific Milestones/Deliverables and Milestone Dates (if any) are specified further below.) | | | | | | | |
| | | Service (Attach a more detailed Service description and statement of requirements if required) | Timeframe | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| 3. | Key contacts (Ref: Clause 4.2 Core Services Terms) | The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the Core Services Terms. Other key contacts for this SOW (if any) are as stated below. | | | | | | | |
| | | | <table border="1"> <thead> <tr> <th>Contact(s)</th> <th>Role(s)</th> </tr> </thead> <tbody> <tr> <td>Purchasing Agency</td> <td></td> </tr> <tr> <td>Provider</td> <td></td> </tr> </tbody> </table> | Contact(s) | Role(s) | Purchasing Agency | | Provider | |
| Contact(s) | Role(s) | | | | | | | | |
| Purchasing Agency | | | | | | | | | |
| Provider | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| 4. | Interfaces (Ref: Clauses 2.1(b) and 6 Extra Terms for Managed Services) | [If the Provider is to be responsible for implementing, operating and maintaining Interfaces (as defined in clause 11 of the Extra Terms), the Interfaces for which the Provider is to be responsible need to be specified here. The Interfaces could be interfaces between its own infrastructure and either the Purchasing Agency's infrastructure or the services and deliverables of Third Party Service Providers. If the Provider's responsibilities are to differ from the responsibilities in clauses 2.1(b) and 6 of the Extra Terms, the differences need to be stated here too. If Interfaces are not relevant, this row can be deleted.] | | | | | | | |
| 5. | Principal-agent arrangements – Authorisations Schedule (Ref: Clauses 3 and 8.1(e) Extra Terms for Managed Services) | [This row is required if clause 3 or 8.1(e) of the Extra Terms for Managed Services applies. If not, this row can be deleted.] Our Authorisations Schedule, that you may provide to Third Party Service Providers as evidence of your authority to act on our behalf, is attached to this SOW. It contains specific authorisation(s) for you to act as our agent for the specific purposes set out in the Schedule. Both parties are required to sign it. If relevant, the Authorisations Schedule also refers to specific Software, Equipment or other items that we authorise you to purchase from third parties, in our name, without a need for further consent under clause 8.1(e) of the Extra Terms for Managed Services. | | | | | | | |

| 6. | <p>Service Levels (if any)</p> <p>(Ref: Clause 5.2 Core Services Terms)</p> | <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>You will meet or exceed the Service Levels specified in the Services Listings for the Services in the relevant Marketplace Catalogue.</p> <p>or</p> <p>You will meet or exceed the following Service Levels:</p> <p>[insert details of Service Levels; make sure they're specific and measurable]</p> <table border="1" data-bbox="459 434 1458 636"> <thead> <tr> <th data-bbox="459 434 847 483">Name of Service Level</th> <th data-bbox="847 434 1458 483">Details of Service Level</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 483 847 533"></td> <td data-bbox="847 483 1458 533"></td> </tr> <tr> <td data-bbox="459 533 847 582"></td> <td data-bbox="847 533 1458 582"></td> </tr> <tr> <td data-bbox="459 582 847 631"></td> <td data-bbox="847 582 1458 631"></td> </tr> </tbody> </table> <p>or</p> <p>There are no Service Levels beyond what is already stated in the Subscription Agreement.</p> | | Name of Service Level | Details of Service Level | | | | | | |
|---|---|---|-------------------------|-----------------------|---|--|---|----------------|---|--|---|
| Name of Service Level | Details of Service Level | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| 7. | <p>Service Level Credits (if any)</p> <p>(Ref: Clause 5.2 Core Services Terms)</p> | <p>[Choose one option, insert relevant details and delete remainder. The drafting is only an example and may need to be amended to suit your circumstances.]</p> <p>The Service Level Credits that are payable to us upon a Service Level Default are as specified in your Services Listings.</p> <p>or</p> <p>If you fail in a given month to meet the Service Levels referred to or specified above (a Service Level Default), we shall become entitled to the credits (Service Level Credits) specified in the table below:</p> <table border="1" data-bbox="459 1126 1458 1411"> <thead> <tr> <th data-bbox="459 1126 847 1176">Service Level</th> <th data-bbox="847 1126 1458 1176">Service Level Credits for Service Level Defaults</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 1176 847 1252"></td> <td data-bbox="847 1176 1458 1252">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="459 1252 847 1328"></td> <td data-bbox="847 1252 1458 1328">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="459 1328 847 1404"></td> <td data-bbox="847 1328 1458 1404">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> </tbody> </table> <p>If a Service Level Default occurs for which Service Level Credits are payable, you will credit the applicable Service Level Credits against the Fees under this SOW that are next due to be paid.</p> <p>Service Level Credits are agreed to reflect the reduced value of the relevant Services affected by the Service Level Default(s) and are acknowledged to be neither liquidated damages nor our sole and exclusive remedy in respect of Service Level Defaults or the consequences of such defaults.</p> <p>In no event will the amount of all Service Level Credits credited against the Fees in each calendar month exceed, in total, [XX]% of the Fees payable in that month.</p> <p>or</p> <p>There are no Service Level Credits.</p> | | Service Level | Service Level Credits for Service Level Defaults | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. |
| Service Level | Service Level Credits for Service Level Defaults | | | | | | | | | | |
| | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | | | | | | | |
| | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | | | | | | | |
| | An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default. | | | | | | | | | | |
| 8. | <p>Deliverables, Milestones, and Milestone Dates (if any)</p> | <table border="1"> <thead> <tr> <th data-bbox="448 1861 1166 1924">Deliverable / Milestone</th> <th data-bbox="1166 1861 1469 1924">Milestone Date</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="448 1924 1166 2063">[Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're</td> </tr> </tbody> </table> | Deliverable / Milestone | Milestone Date | [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're | | <table border="1"> <thead> <tr> <th data-bbox="1166 1861 1469 1924">Milestone Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="1166 1924 1469 2063"></td> </tr> </tbody> </table> | Milestone Date | | | |
| Deliverable / Milestone | Milestone Date | | | | | | | | | | |
| [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're | | | | | | | | | | | |
| Milestone Date | | | | | | | | | | | |
| | | | | | | | | | | | |

| | (Ref: Clause 5.3 Core Services Terms) | contracting for a design document, does it need to be a detailed design (and in what respects) or a high level design?] | | | | | |
|----------------------------|---|---|----------------------------|--|--|--|--|
| 9. | Liquidated damages (Ref: Clause 5.3(c) Core Services Terms) | <p>[Complete the drafting below if liquidated damages will be payable upon a failure to meet one or more Milestones. If no liquidated damages will be payable, this row can be deleted]</p> <p>If you fail to meet [a Milestone] or [insert details of particular Milestones] specified above by [its / their] corresponding Milestone Date[s] then, except to the extent that such failure has been caused by us or our Personnel or a failure in equipment (software or hardware) for which you are not responsible or a Force Majeure Event:</p> <p>(a) we may withhold payment of Fees for the relevant Services until the Milestone is achieved; and</p> <p>(b) you shall pay \$[] in liquidated damages for each [day / week / month] that the completion of the Milestone is delayed, provided that the maximum liquidated damages payable shall not exceed []% of the Fees paid and payable under this SOW.</p> <p>You accept that the liquidated damages referred to above reflect our legitimate interests in performance and are not a penalty, and you will not seek to argue otherwise in any dispute or proceedings.</p> <p>Your obligation to pay these liquidated damages is without limitation to any other remedy we may have under or in relation to the Subscription Agreement.</p> <p>Provided you have complied with clause 5.3(d) (Project Delay caused by us or a third party) of the Core Services Terms, you will not be liable to pay liquidated damages where a Milestone Date has not been met due to a Project Delay caused by us or a third party (excluding your subcontractors).</p> | | | | | |
| 10. | Purchasing Agency responsibilities (Ref: Clause 5.4 Core Services Terms) | [If the Purchasing Agency is to have any specific responsibilities in relation to provision of the Services, beyond what may already be specified in the relevant Services Listings in the Marketplace or in the Subscription Form, state them here. If there are none, you can delete this row.] | | | | | |
| 11. | Acceptance of Deliverables (Ref: Clause 5.5 Core Services Terms) | [A default approach to acceptance of Deliverables is specified in clause 5.5 of the Core Services Terms but that clause recognises that the parties may agree upon an alternative approach. If the parties agree on an alternative approach for this SOW, the alternative approach can be specified here. Note that, as further kinds of services are added to the Marketplace, DIA expects to offer additional SOW template variants, including a SOW (Agile).] | | | | | |
| 12. | Security clearances and probity checks (Ref: Clause 6.1(b) Core Services Terms) | [If Provider Personnel are required to obtain security clearances or if the Provider is required to undertake probity checks for Personnel engaged in providing the Services, specify those clearances or checks here] | | | | | |
| 13. | Pre-approved Subcontractors (Ref: Clause 7.2 Core Services Terms) | <p>[If the Purchasing Agency pre-approves the Provider's use of particular Subcontractors, state the names and the roles they are authorised to perform below. If there are none, this row can be deleted.]</p> <p>We authorise you to subcontract parts of the Services as described below:</p> <table border="1" data-bbox="459 1861 1458 1962"> <thead> <tr> <th data-bbox="459 1861 884 1906">Full name of Subcontractor</th> <th data-bbox="884 1861 1458 1906">Role(s) Subcontractor is authorised to perform</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 1906 884 1962"></td> <td data-bbox="884 1906 1458 1962"></td> </tr> </tbody> </table> | Full name of Subcontractor | Role(s) Subcontractor is authorised to perform | | | |
| Full name of Subcontractor | Role(s) Subcontractor is authorised to perform | | | | | | |
| | | | | | | | |

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| 14. | Purchasing Agency policies (Ref: Clause 8.1(b) Core Services Terms) | [Insert the names of any Purchasing Agency policies that the Provider must comply with. Be sure to provide copies to the Provider. If there are none, this row can be deleted.] |
| 15. | Fees (Ref: Clause 11.1 Core Services Terms) | <p>The Provider's Fees will be calculated as follows (all Fees are in NZD unless expressly stated otherwise):</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>Fixed fee</p> <p>A fixed Fee of \$[] excluding GST.</p> <p>or</p> <p>Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with your Services Rates set out in your Service Listings (as at the date of this SOW) in the Marketplace Catalogue, as [stated/summarised] below:</p> <p>[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.]</p> <p>or</p> <p>Discounted Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with the discounted Services Rates (i.e., lower than the standard Services Rates in the relevant Services Listings in the Marketplace Catalogue), as stated below:</p> <p>[insert details of discounted Services Rates]</p> <p>or</p> <p>Daily fee rate</p> <p>For each day worked a daily fee rate of \$[] excluding GST[, up to a total maximum of \$[] excluding GST]. One day's work is defined as 8 hours. If you work less than a full day the Fee shall be calculated based on the time worked at the agreed daily fee rate i.e. (daily fee rate ÷ 8) x hours worked. If you work more than 8 hours in a given day, the specified daily rate will still apply, i.e., you are not entitled to charge more for the additional time spent.</p> <p>or</p> <p>[Some other pricing/fees mechanism]</p> <p>[insert details as required]</p> |
| 16. | Invoicing (Ref: Clause 11.2 Core Services Terms) | <p>[Choose one option for invoicing, insert relevant wording and delete remainder. Make sure all Fees are captured. Also, if relevant, make sure you are clear on when invoicing commences.]</p> <p>You will invoice the Fees at the end of each month for Services and Deliverables provided during that month in accordance with the Subscription Agreement.</p> <p>or</p> <p>You will invoice the Fees on completion of the Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement.</p> <p>or [for fixed Fees]</p> <p>You will invoice the Fees in instalments on the dates set out below, subject to completion of the relevant Milestones, in accordance with the Subscription Agreement:</p> |

| | | Deliverable / Milestone | Due date | Amount due (excl GST) | | | | |
|--|--|---|----------|-----------------------|--|--|---|--|
| | | | | | | | | |
| | | In addition to the matters set out in clause 11.2 of the Core Services Terms, each invoice must contain [insert any specific requirements, such as responsibility codes or purchase order numbers] and be sent by email to [insert email address] | | | | | | |
| 17. | Expenses <small>(Ref: Clause 11.6 Core Services Terms)</small> | <p>[Delete this entire row if not applicable]</p> <p>You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:</p> <ul style="list-style-type: none"> • we have given our prior written consent to you incurring the expenses; and • the expenses are charged at cost. | | | | | | |
| 18. | Administration Fee <small>(Ref: Clause 11.1(a)(ii) Core Services Terms and clause 9 Channel Terms. Do not delete this row.)</small> | The parties acknowledge that you may be required, under clause 11.1(a)(ii) of the Core Services Terms and clause 9 of the Channel Terms for Consultancy and Professional Services and Managed Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz. If you are required to collect this Administration Fee, you must add the fee as a separate line item to your invoices for the Services provided under this SOW. | | | | | | |
| 19. | Intellectual Property Rights <small>(Ref: Clause 13 Core Services Terms)</small> | <p>[If the parties agree to change the default ownership and licensing provisions in clauses 13.2 and 13.5-13.6 of the Core Services Terms, those changes should be recorded here.]</p> <p>[If the Purchasing Agency agrees that the Provider may use certain kinds of Existing Material in the Deliverables, without needing separate prior consent under clause 13.4, relevant details should be specified here (unless those details are already in the relevant Services Listings).]</p> <p>[If the parties wish to amend any other aspect of the default provisions of clause 13 of the Core Services Terms, that should be specified here.]</p> <p>[If no such changes are required, this row can be deleted.]</p> | | | | | | |
| 20. | Purchasing Agency Data <small>(Ref: Clause 14.2 Core Services Terms)</small> | <p>[Clause 14.2 contemplates that a Purchasing Agency may agree to the Provider transferring or storing Purchasing Agency Data in 'Additional Territories' when specified in a SOW, or agree to Purchasing Agency Data being processed or stored by Subcontractors, offshore cloud services or other Third Party Service Providers. If that is the case for this SOW, enter relevant details below. This isn't required if specific details are already contained in the Provider's Service Listings. If not relevant, this row can be deleted.]</p> <p>You may transfer Purchasing Agency Data to and store it in the Additional Territories named below, and Purchasing Agency Data may be processed or stored by the Subcontractors, offshore cloud services or other Third Party Service Providers named below:</p> <table border="1" data-bbox="459 1787 1455 2009"> <tr> <td>Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored</td> <td></td> </tr> <tr> <td>Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud</td> <td></td> </tr> </table> | | | Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored | | Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud | |
| Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored | | | | | | | | |
| Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud | | | | | | | | |

| | | services or other Third Party Service Providers | | | | | | | |
|--------------------|--|--|--|--------------------|---|----------------|--|--|--|
| 21. | Service Delivery Assets (Ref: Clause 5 Extra Terms for Managed Services) | [If the parties need to agree to any changes to the default provisions relating to Service Delivery Assets in clause 5 of the Extra Terms for Managed Services, those changes should be recorded here. For example, if a Purchasing Agency were leasing a Provider Asset (which is a type of Service Delivery Asset) but the lease had an option to buy, or was akin to a hire purchase arrangement, additional provisions would be needed here to reflect that arrangement. If no changes are required, this row can be deleted.] | | | | | | | |
| 22. | Security (Ref: Clause 9 Extra Terms for Managed Services) | [If specific security requirements relating to ICT Systems and other matters referred to in clause 9 of the Extra Terms for Managed Services are needed for this SOW, or if changes to existing requirements are needed, they can be stated here (if not already addressed in the Services description in row 2). The drafting that follows can be used to the extent required. If there are no specific security requirements beyond what's already in clause 9 of the Extra Terms and clause 14 of the Core Services Terms, and no changes to those requirements are needed, this row can be deleted] [You will maintain a Risk Register in accordance with clause 9.2 of the Extra Terms for Managed Services.] [You will ensure that the ICT Systems specified below comply with the standards and controls specified below: <table border="1" data-bbox="459 947 1453 1070"> <thead> <tr> <th>Name of ICT System</th> <th>NZISM / PSR standards and controls with which it must comply</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table> | | Name of ICT System | NZISM / PSR standards and controls with which it must comply | | | | |
| Name of ICT System | NZISM / PSR standards and controls with which it must comply | | | | | | | | |
| | | | | | | | | | |
| 23. | Liability (Ref: Clause 15 Core Services Terms) | [If there are to be any agreed changes to the default liability provisions in clause 15 of the Core Services Terms for this SOW that have not already been covered off in the Subscription Form, then the changes should be recorded here. Otherwise, delete this row.] | | | | | | | |
| 24. | Insurance (Ref: Clause 17 Core Services Terms) | [Under clause 17 of the Core Services Terms, the Provider needs to maintain adequate insurance. If specific insurance requirements are needed beyond this general obligation, the requirements should be stated here. If not, this row can be deleted.] | | | | | | | |
| 25. | Meetings (Ref: Clause 5.6(a) Core Services Terms) | [If there are any particular meeting requirements, specify them here. Otherwise delete this row.] Your designated representatives will attend the following meetings at the following times: <table border="1" data-bbox="446 1608 1469 1809"> <thead> <tr> <th>Meeting details</th> <th>Designated representatives of the Provider required to attend</th> <th>Frequency/Date</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table> | | Meeting details | Designated representatives of the Provider required to attend | Frequency/Date | | | |
| Meeting details | Designated representatives of the Provider required to attend | Frequency/Date | | | | | | | |
| | | | | | | | | | |
| 26. | Reports (Ref: Clause 5.6(b) Core Services Terms) | [If there are any particular reporting requirements (e.g., monthly status reports), specify them here. Otherwise delete this row.] You will provide us with the following reports at the following times, by emailing them to our Contract Manager: <table border="1" data-bbox="446 1982 1469 2040"> <thead> <tr> <th>Report details</th> <th>Frequency/date</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table> | | Report details | Frequency/date | | | | |
| Report details | Frequency/date | | | | | | | | |
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| 27. | Amendments to Core Services Terms and to Extra Terms, and any additional terms | [Insert any other amendments or additional terms that are to apply to the SOW.] | |

Execution

Signed as part of the Subscription Agreement

Signed by the [insert name of Purchasing Agency] by

Signed by the [insert name of the Provider] by

Signature

Signature

Name

Name

Position

Position

Date

Date

Authorisations Schedule

| | |
|-------------------------------------|---|
| Provider: | [insert full name of Provider and, if a company, the company number or NZ business number] (Provider, you, your) |
| Purchasing Agency: | [Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (Purchasing Agency, we, us) |
| Statement of Work for: | [insert short description] |
| Statement of Work #: | [insert number] |
| Under Subscription Agreement dated: | [insert date] |

Introduction

This Authorisations Schedule is a schedule to the Statement of Work between the parties named above, put in place under a Subscription Agreement between those parties. The Subscription Agreement was formed pursuant to the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) which are part of the Collaborative Marketplace Agreement at marketplace.govt.nz.

The purpose of this Schedule is to:

- record the Purchasing Agency's authorisations for the Provider named above to procure, manage, configure or otherwise interact with the services or deliverables of Third Party Service Providers, on the Purchasing Agency's behalf (i.e., as its agent); and
- enable the Provider to have a document recording the authorisations that it can give to Third Party Service Providers as evidence of the Provider's authority to act on the Purchasing Agency's behalf.

Authorisations

The Provider is authorised to act as the Purchasing Agency's agent as specified in the attached Authorisations table.

Execution

Signed by the [insert name of Purchasing Agency] by

Signed by the [insert name of the Provider] by

Signature

Signature

Name

Name

Position

Position

Date

Date

Authorisations table

| Third Party Service Provider(s) (in relation to whom Provider may act as agent; where possible, include full legal names) | Scope of authority (how and why Provider may act as Purchasing Agency's agent) | Financial or other limits (if applicable) | Duration of authority (to act as agent) | Level / tier of authorised Provider personnel (i.e., who are permitted to undertake the authorised acts on the Purchasing Agency's behalf) | Contractual basis in existing contracts (between Purchasing Agency and Third Party Service Provider, if applicable) |
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Annexure C: Extra Terms (if any)

If Extra Terms apply, they are attached. If none are attached, none apply.