



Marketplace

Collaborative Marketplace Agreement

Part 2 – Channel Terms for Digital Identity Services

Contents

Channel Terms	1
Subscription Agreement components.....	18
Annexure A: Subscription Form template	19
Annexure B: DI Consultancy and Professional Services and DI Managed Services Terms (and Statement of Work templates)	28
Annexure C: Extra Terms and (if any).....	94
Annexure D: DI SaaS and Product Terms and (Order Form template)	95

Channel Terms

1. Introduction	2
2. Definitions	2
3. Purchasing Services	4
4. Agreements with Purchasing Agencies for Digital Identity Services	5
5. Amending and supplementing the DI Consultancy and Professional Services and DI Managed Services Terms and any applicable Extra Terms.....	5
6. Changes to Services Listings	5
7. Changes in requirements for Service Listings	8
8. Additional pricing terms	10
9. Reporting	11
10. Administration Fee	11
11. Subcontractor field in Services Listings not to be publicly available.....	13
12. Tier 1 Security Assurance and Risk Rating	13
13. Resale of Third Party Services	13

1. Introduction

- 1.1 The General Terms (Part 1) and these Channel Terms (Part 2) apply to the Digital Identity Services Channel (**Channel**). This Channel is part of the New Zealand Government Marketplace as described in, and is subject to, the terms of the Collaborative Marketplace Agreement (the **Marketplace Agreement**).
- 1.2 The DI Consultancy and Professional Services and DI Managed Services Terms in Annexure B apply specifically to DI Consultancy and Professional Services and DI Managed Services that are procured under this Channel. To procure DI Consultancy and Professional Services or DI Managed Services, the parties must execute a Statement of Work.
- 1.3 In addition, the Extra Terms in Annexure C may apply to certain categories of Digital Identity Services. A list of categories of Digital Identity Services to which Extra Terms apply, together with the Extra Terms, can be found at marketplace.govt.nz.
- 1.4 The DI SaaS and Product Terms in Annexure D apply specifically to DI SaaS Services or Product offerings procured under this Channel. To procure DI SaaS Services or Products, the Eligible Agency must submit an Order Form.
- 1.5 Whether a Digital Identity Service is a DI Consultancy and Professional Service, DI Managed Service, or DI SaaS Service or Product is specified in the relevant Service Listing, and the terms of Annexure B or Annexure D as applicable will apply to the procurement of the relevant Digital Identity Service as specified in the Service Listing whether the parties have used a Statement of Work or Order Form (or other document) to record the purchase.
- 1.6 If you are providing DI SaaS Services or Products that will, for example, be implemented, configured and/or managed by other organisations that have applicable listings in the Marketplace, then these Channel Terms apply to you, and the applicable Channel Terms will apply as between us and those other organisations.
- 1.7 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 this Channel.

These are the Channel Terms for Digital Identity Services.

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:

DIA means the Department of Internal Affairs;

DI Consultancy and Professional Services and **DI 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 this Channel;

DI Consultancy and Professional Services and DI Managed

The terms defined here have special meaning. Further terms are defined in the DI C&P Services and DI Managed Services Terms in Annexure B and in the DI SaaS and Product Terms in Annexure D.

Services Terms means the general terms that apply to the procurement of DI C&P Services and DI Managed Services that are governed by these Channel Terms, as set out in Annexure B;

DI 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 this Channel;

DI SaaS and Product Terms means the general terms that apply to the procurement of DI SaaS Services or Products that are governed by these Channel Terms, as set out in Annexure D;

DI Software as a Service or Products(or DI SaaS Services or Products) means the digital identity software or products (including cloud licensing, access or other related services or products) in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for this Channel;

Digital Identity Services means DI C&P Services, DI Managed Services and/or DI SaaS Services or Products, as applicable;

Extra Terms means terms that apply by default to certain categories of DI C&P Services and DI Managed Services 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 DI Consultancy and Professional Services and DI Managed Services Terms and, if applicable to the Services you have sought to have listed in the Marketplace, will be attached in Annexure C;

Order means an order for DI SaaS Services or Products;

Order Form means an order form that Participating Agencies may need to complete to submit an Order, based on one of the templates in the Schedule to the DI SaaS and Product Terms or otherwise available on marketplace.govt.nz;

Ordering Date means the date on which the Purchasing Agency submits an Order;

Related Company has the meaning given in section 2(3) of the Companies Act 1993;

Services Rates means the rates charged for Digital Identity 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 DI C&P Services or DI Managed Services, based on one of the templates in the Schedule to the DI Consultancy and Professional Services and DI Managed Services Terms or otherwise available on marketplace.govt.nz;

Subcontractor means a person, business, company or organisation that you contract or propose to contract to deliver or perform part of your Digital Identity 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 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;

Third Party Service means a Digital Identity Service provided by a Third Party Service Provider;

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

Third Party Service Provider Terms means the standard terms set by a Third Party Service Provider that govern customers' use of that provider's Third Party Service; 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 DI Consultancy and Professional Services and DI Managed Services Terms in Annexure B and the DI SaaS and Product Terms in Annexure D are defined in those respective terms.

3. Purchasing Services

3.1 If an Eligible Agency decides to purchase Digital Identity 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;
- (c) submit a Subscription Form to the relevant provider(s); and
 - (i) for DI C&P Services or DI Managed Services, execute a Statement of Work; and
 - (ii) for DI SaaS Services or Products, submit an Order Form to the relevant service provider(s),

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

3.2 Subsequent purchases of Digital Identity Services by the Purchasing Agency from the same provider can be made by:

- (a) executing Statements of Work for DI C&P Services or DI Managed Services; or
- (b) submitting Order Forms for DI SaaS Services or Products to the provider(s).

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 Digital Identity 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. Agreements with Purchasing Agencies for Digital Identity Services

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

- (a) the Subscription Form (the template for which is in Annexure A);
- (b) for DI C&P Services or DI Managed Services:
 - (i) the DI Consultancy and Professional Services and DI Managed Services Terms (in Annexure B);
 - (ii) any additional Extra Terms that apply to the category/ies of DI Managed Services being procured (in Annexure C); and
 - (iii) each Statement of Work once executed by both parties; and
- (c) for DI SaaS Services or Products:
 - (i) your Standard Terms applying on the Ordering Date; and
 - (ii) each Order Form once executed by both parties,but subject to and as modified by the DI SaaS and Product Terms (in Annexure D).

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

4.3 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.

4.4 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 Digital Identity Services.

4.5 If you are providing DI C&P Services to a Purchasing Agency in association with your DI Managed Services or DI SaaS Services or Products, you must provide them under the Subscription Agreement referred to in clause 4.1, and not under another Marketplace Channel or a contract outside of the Marketplace.

5. Amending and supplementing the DI Consultancy and Professional Services and DI Managed Services Terms and any applicable Extra Terms

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

6. Changes to Services Listings

6.1 You acknowledge that Marketplace Catalogue Services Listings for

Different terms will apply depending on the services that you are supplying eg if providing DI SaaS Services and Products, or DI Consultancy and Professional Services and DI Managed Services, or both.

Digital Identity Services can contain both descriptions of services (and their pricing) and, for some kinds of services, Purchasing Agency responsibilities. You may amend your Digital Identity 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 or Order Forms (unless the relevant Purchasing Agencies agree). Any such reduction or adverse effect may only be made in accordance with the Subscription Agreements under or in connection with which they are provided or otherwise with a Purchasing Agency's agreement.
- (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 or Order Forms unless the relevant Purchasing Agencies agree.
- (d) Subject to clause 6.4, all changes to Services Listings are subject to DIA review and acceptance before publication to Eligible Agencies. DIA may reject changes that:
 - (i) do not comply with this clause 6;
 - (ii) do not comply with minimum requirements we do or may prescribe for Service Listing;
 - (iii) are difficult to understand or contain errors;
 - (iv) would result in unreasonable fees, conditions, or responsibilities being imposed on Purchasing Agencies;
 - (v) seek to lower or otherwise weaken existing published service levels or security measures;
 - (vi) seek to permit you to process or store Purchasing Agency Data in one or more offshore territories, or use one or more Subcontractors or offshore cloud services or other Third Party Service Providers, that we consider would pose an unacceptable level of risk to Purchasing Agency Data, Purchasing Agencies, or individuals; or
 - (vii) are otherwise, in DIA's reasonable opinion, unacceptable.
- (e) If we reject proposed changes in accordance with clause 6.1(d), we may ask you to resubmit your proposed changes with amendments or reject the proposed changes outright.
- (f) If you have submitted changes to a Services Listing but those

changes have not yet been approved and published, and you are discussing or negotiating a proposed Order or Statement of Work with a Purchasing Agency to which the changes are relevant, you will inform the Purchasing Agency in writing of the submitted changes.

- 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:
- (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 Digital Identity 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 Digital Identity 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.

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

7. Changes in requirements for Services Listings

7.1 Requirements Changes

- (a) From time to time we may elaborate on, supplement, or otherwise modify requirements (each a **Requirements Change**) for the listing of particular services in this Channel:
 - (i) to reflect changes in technology or technical developments;
 - (ii) to address security risks; or
 - (iii) in the light of experience or feedback from Purchasing Agencies, subject matter experts, and/or providers.
- (b) Subject to clause 7.4:
 - (i) we may exercise the power in this clause 7.1 in relation to providers who already have Services Listings that cover the affected Digital Identity Services, or providers who apply in the future for Services Listings covering such services, or both; and
 - (ii) our exercise of the power this clause 7.1 may result in changes to, without limitation, services listings templates, and/or onboarding criteria.

Sometimes we may need to change requirements for Services Listings. This clause sets out the procedures we must follow and the rights you have when we propose to make such changes.

7.2 Notification and feedback

- (a) Before finalising any proposed Requirements Change, we will notify and seek feedback from:
 - (i) all or a representative sample of Purchasing Agencies procuring the affected Services (if any); and
 - (ii) Marketplace providers that have Services Listings covering the affected services (if any).

We may also seek feedback from the wider market.

- (b) When we seek feedback under clause 7.2(a)(ii), we will ask for feedback on implications for affected Marketplace providers in terms of:
 - (i) feasibility and costs for providers of meeting the Requirements Change;
 - (ii) whether the affected Marketplace providers would need to increase their Fees; and
 - (iii) any lead time required to meet the Requirements Change.
- (c) Having reviewed feedback received (if any), we may elect to implement the Requirements Change (with or without amendment) or abandon it and will notify affected Purchasing Agencies and affected providers of our decision.

7.3 Updating Notices and Objection Notices

- (a) If we elect to implement one or more Requirements Changes:
 - (i) we will update relevant notices of procurement, services listing templates, and/or other onboarding documentation, to reflect the Requirements Changes; and
 - (ii) subject to clause 7.3(d), if you have Services Listings covering the affected services, we may by written notice (**Updating Notice**) require you to update those Services Listing(s) within 20 Business Days (or such longer period as we may specify) to incorporate the Requirements Changes (for example, to state your Service(s) meet the affected requirements or will do so from a specified date).
- (b) If you update your Services Listing(s) in accordance with the Updating Notice and a Requirements Change will increase your costs of providing the affected Service(s), you may, subject to clause 7.3(c), adjust the pricing in your Services Listing(s) but only to the extent necessary to reflect that increase in costs and you may also make other changes to the Services Listing(s) you consider necessary to reflect the Requirements Change.
- (c) If you make pricing adjustments in accordance with clause 7.3(b) you will, if we request in writing before accepting the changes to your Services Listing(s), provide us with written and verifiable justification for the adjustments within 10 Business Days of our request. If we are not satisfied with your justification, we may request additional information from you.
- (d) You may object to an Updating Notice by notice to us in writing (**Objection Notice**), within 10 Business Days of the date of the Updating Notice, stating that you cannot or will not meet the affected requirements.
- (e) If we receive an Objection Notice, you will not be required to update your Services Listing(s) to incorporate the Requirements Changes, and we may at our absolute discretion elect to:
 - (i) leave your Services Listing(s) as is; or
 - (ii) amend your Services Listing(s) to note the affected Service(s) do not meet the Requirement Change(s) (including by referring to the Service(s) as legacy service(s)); or
 - (iii) remove your affected Services Listing(s) from the Marketplace (removal will not affect your existing provision of affected Services under existing Subscription Agreements but, from the date of removal, you will not be able to sell the affected Service(s) via the Marketplace, including to existing customer Purchasing Agencies that are not already purchasing the affected Service(s)),

provided that if we elect to take the steps in clause 7.3(e)(ii) or 7.3(e)(iii) we will give you at least 5 Business Days' notice before taking those steps.

7.4 Existing Subscription Agreements not affected

No Requirements Change will apply to your existing provision of the affected Digital Identity Services to Purchasing Agencies under existing Subscription Agreements unless agreed between you and the Purchasing Agencies (including as to any Fee increases that may apply).

7.5 Relationship with clause 21 of Part 1 (General Terms)

This clause 7 does not limit our powers under clause 21 (Amendments) of Part 1 (General Terms) but, to the extent there is any inconsistency between them, this clause 7 prevails.

8. Additional pricing terms

8.1 The parties acknowledge that the charges for your Digital Identity 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;
- (c) subscription or licensing fees; or
- (d) other context-dependent pricing mechanisms or formulae,

in each case as agreed with a Purchasing Agency in a Statement of Work or Order Form for particular Digital Identity Services.

8.2 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.

8.3 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 and Prices increased pursuant to clause 8.5) must be either:

- (a) the standard rates you usually offer to equivalent New Zealand customers (or tiers of customers) for those Digital Identity Services, taking into account where relevant the nature of the Digital Identity Services, terms of supply, recoverability of your

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

expenditure or investment, committed spend volumes and contractual periods; or

(b) reduced rates for Eligible Agencies.

8.4 Where your charges for a Purchasing Agency's consumption of your Digital Identity 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 or Order Form, unless you have agreed to reduced rates for that Purchasing Agency, either in the Subscription Form, Order Form or a Statement of Work. For subsequent Statements of Work or Order Forms 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.

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

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

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

8.7 Your charges for your DI C&P Services or DI Managed Services will be processed in accordance with clause 11 (Payment) of the DI Consultancy and Professional Services and DI Managed Services Terms in Annexure B and your charges for your DI SaaS Services or Products will be processed through the Marketplace, as described in more detail on marketplace.govt.nz.

9. Reporting

9.1 You agree to comply with our reasonable reporting requirements relating to your provision of Digital Identity 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.

9.2 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.

10. Administration Fee

10.1 This clause 10 applies except to the extent (if any) that we have agreed with you that this clause 10 does not apply to you.

10.2 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

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

marketplace.govt.nz.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 We will:

- (a) if you agreed that we may direct debit a bank account you nominated during the On-boarding 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
- (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.

10.8 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).

Under clause 7.5 of the DI C&P Services and DI Managed 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.

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

- 11.1 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.

12. Tier 1 Security Assurance and Risk Rating

- 12.1 If you wish to apply for a Tier 1 Security Assurance and Risk Rating for a Digital Identity 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.

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.

- 12.2 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 Digital Identity 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.

13. Resale of Third Party Services

- 13.1 Conditions for resale of Third Party Services

- (a) You may only resell a Third Party Service via a Services Listing in the Marketplace if:
 - (i) you have a contract with the Third Party Service Provider that entitles you to:
 - resell the Third Party Service to Eligible Agencies in accordance with this clause 13; and
 - collect payments from Purchasing Agencies for the Third Party Service received from the Third Party Service Provider;
 - (ii) you have reviewed any applicable Third Party Service Provider Terms and are confident that a Purchasing Agency consuming the Third Party Service will have a reasonable period of time to disengage from the Third Party Service if the Third Party Service Provider proposes to withdraw the

You can only resell Third Party Services if certain conditions are met. You can't resell a Related Company's services (you can subcontract to it though if DIA approves the Subcontractor).

Third Party Service or terminate its contractual arrangements (if applicable) with the Purchasing Agency; and

- (iii) the Third Party Service Provider is not one of your Related Companies (you can subcontract to Related Companies if DIA approves the Subcontractor, but not resell a Related Company's Third Party Services).
- (b) You must notify DIA and relevant Purchasing Agencies promptly if:
- (i) your contract with the Third Party Service Provider is amended in a manner that conflicts with this clause 13;
 - (ii) your contract with the Third Party Service Provider terminates or expires;
 - (iii) enforcement action is taken by the Third Party Service Provider against you;
 - (iv) there is a Change of Control of the Third Party Service Provider; or
 - (v) there is any material change to the functionality or availability of any Third Party Service you resell or to ongoing support for any such Third Party Service that may impact your ability to list the Third Party Service in your Services Listing and/or that you reasonably consider will adversely affect a Purchasing Agency's use of the Third Party Service.
- (c) If an event listed in clause 13.1(b) occurs and the event:
- (i) results in the conditions in clause 13.1(a) not being met; or
 - (ii) raises significant security, performance, or reputational concerns for us or one or more Purchasing Agencies,

You need to tell DIA and agencies if certain events occur in relation to the Third Party Service Provider that could interfere with the reselling arrangements.

we may, in our sole discretion and without limitation to our other rights:

- (iii) inform relevant Purchasing Agencies of the event;
- (iv) exercise our powers under clause 6 (Assurance) of Part 1 (General Terms) of the Collaborative Marketplace Agreement; and/or
- (v) suspend or remove your affected Services Listing(s) from the Marketplace.

If one of those events occurs, we may need to take steps to safeguard agencies or their service users or customers.

- (d) You acknowledge that DIA may negotiate amendments to, or a replacement of, the Third Party Service Provider Terms to improve the position of Purchasing Agencies. To the extent necessary, you will take such steps as are reasonably required for those amended or replacement terms to apply to the Third Party Service resold via your Services Listing (provided such amendments or the replacement terms do not prejudice or impose costs on you).

If DIA negotiates better terms with a Third Party Service Provider, you need to take reasonable steps to make them apply.

13.2 Resale of Third Party Services and Third Party Service Provider Terms

If the Services a Purchasing Agency procures from you include your resale or other provision of a Third Party Service, you will assume responsibility for the Third Party Service, and as between you and the Purchasing Agency the Subscription Agreement will apply in its entirety to the Third Party Service as if you were providing it yourself, unless the agreed Subscription Form or applicable Order or Statement of Work:

You need to clear about the contractual nature of any reselling arrangement.

- (a) identifies the Third Party Service and the Third Party Service Provider;
- (b) identifies the Third Party Service Provider Terms that apply to the Purchasing Agency's use of the Third Party Service and the scope of overall procured Services to which those terms apply (the **Covered Scope**);
- (c) indicates whether the Purchasing Agency is entering into the Third Party Service Provider Terms with the Third Party Service Provider or yourself; and
- (d) if the Purchasing Agency is entering into the Third Party Service Provider Terms with the Third Party Service Provider, indicates the extent to which, in relation to the Covered Scope, they apply to the exclusion of the DI Consultancy and Professional Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms that would otherwise apply (the purpose of such indication being to avoid any doubt on this issue); or
- (e) if the Purchasing Agency is entering into the Third Party Service Provider Terms with you, indicates whether, in relation to the Covered Scope:
 - (i) the DI Consultancy and Professional Services and DI Managed Services Terms, DI SaaS and Product Terms, and the order of precedence set out in the Subscription Form, apply to the Purchasing Agency's consumption of the Third Party Service in addition to the Third Party Service Provider Terms; or
 - (ii) the Third Party Service Provider Terms apply to the exclusion of the DI Consultancy and Professional Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms that would otherwise apply (whether wholly or in part).

13.3 Select and de-select mechanism

If you provide Purchasing Agencies with or access to a digital mechanism (such as a service management portal) under which they are able to select and de-select a Third Party Service on the basis that the Purchasing Agency contracts directly with the Third Party Service Provider, the mechanism or a prior entry point or online notice page (or a combination of these things) must:

- (a) provide for or describe the establishment of the direct contract;
- (b) advise the Purchasing Agency that, by selecting a Third Party Service under that mechanism, the Purchasing Agency will be contracting directly with the Third Party Service Provider for the Third Party Service; and
- (c) warn the Purchasing Agency that, in interacting with the Third Party Service Provider, the Purchasing Agency may be exposed to offers of services that do not form part of your Services Listings (**Out of Scope Services**) and that:
 - (i) the Purchasing Agency is not permitted to procure any Out of Scope Service under its Marketplace Subscription Agreement;
 - (ii) if the Purchasing Agency wishes to procure any Out of Scope Service it will need to do so outside of its Subscription Agreement with you and DIA will not be providing any assurance in relation to the Out of Scope Service;
 - (iii) if the Purchasing Agency does procure an Out of Scope Service through the mechanism, the Out of Scope Service will not be treated as having been resold under the Purchasing Agency's Subscription Agreement and you will not invoice for the Out of Scope Service under the Subscription Agreement; and
 - (iv) you are not responsible for ensuring the Purchasing Agency does not procure any Out of Scope Service.

If you provide agencies with a mechanism to select and de-select Third Party Services, the mechanism or a prior entry point needs to do the things listed here. The mechanism could be your own mechanism or the Third Party Service Provider's mechanism. The obligations here apply to both. If the mechanism is the Third Party Service Provider's mechanism, you may wish to comply with this clause by setting up your own entry page that links to the Third Party Service Provider's mechanism. The clause permits that.

13.4 Interface Components

In relation to any network, interface components, hardware or software (**Components**) you use to enable interoperability between your own Services and any Third Party Service you resell that is procured by a Purchasing Agency (including the establishment of any Third Party Service or the import or export of any data from or to any Third Party Service), you will:

- (a) take all necessary steps within your power to ensure the ongoing operability of those Components and to resolve any problems or incidents with them;
- (b) be primarily responsible for managing the resolution of any

You need to take care of Components you use to enable interoperability between your own Services and Services that are resold Third Party Services.

problems or incidents with any such Components, including by taking action as may be required as part of your own Services; and

- (c) take steps to ensure those Components are reasonably secure in accordance with Good Industry Practice, and are effectively implemented, operated, and maintained.

Subscription Agreement components

Annexure A: Subscription Form template..... 19

Annexure B: DI Consultancy and Professional Services and DI Managed Services Terms (and Statement of Work templates) 29

Annexure C: Extra Terms (if any) 94

Annexure D: DI SaaS and Product Terms (and Order Form template) 95

Annexure A: Subscription Form template

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



Subscription Form for Digital Identity 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 Digital Identity Services, as defined in the Channel Terms for Digital Identity Services (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 Digital Identity Services via the Marketplace.

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 of:
 - (i) this Subscription Form;
 - (ii) for DI Consultancy and Professional Services and DI Managed Services:
 - A. the DI Consultancy and Professional Services and DI Managed Services Terms set out in Annexure B to the Channel Terms;
 - B. any Extra Terms that apply to the category/ies of Digital Identity Services being procured; and
 - C. each Statement of Work once executed by both parties (based on a template statement of work in the Schedule to the DI Consultancy and Professional Services and DI Managed Services Terms or otherwise available on marketplace.govt.nz);

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

(iii) for DI SaaS Services or Products:

A. the DI SaaS and Product Terms; and

B. each Order Form once executed by both parties;
and

(b) is formed when you and we sign (physically or electronically)
this Subscription Form.

1.2 Each Service Listing specifies whether a Digital Identity Service is a DI Consultancy and Professional Service, DI Managed Service, or DI SaaS Service or Product. In the event of any conflict between the Service Listing and the Purchase Agreement regarding the categorisation of a Digital Identity Service, and the terms that apply to such Digital Identity Service in accordance with subclause 1.1(a)(ii) or 1.1(a)(iii), the Service Listing will prevail. For example, if the parties execute an Order for DI Managed Services, rather than a Statement of Work, the DI Consultancy and Professional Services and DI Managed Services Terms will apply.

1.3 Clauses 7 to 13 of this Subscription Form only apply to DI Consultancy and Professional Services and DI Managed Services.

If the Purchasing Agency is procuring only DI SaaS Services or Products at the time of executing the Subscription Form, clauses 7 – 13 can be either completed, in which case they won't apply until DI C&P Services or DI Managed Services are purchased, or left blank. If left blank, these provisions will need to be completed by way of amendment to this form when executing the first Statement of Work.

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 DI Consultancy and Professional Services and DI Managed Services Terms and the DI SaaS and Product Terms.

Clause 2 Terms defined in the DI C&P Services and DI Managed Services Terms and the DI SaaS and Product Terms have the same meaning when used in this Subscription Form.

2.2 Subject to clause 1.2, if there is any conflict between the terms of the Subscription Agreement, the following order of precedence will, unless expressly stated otherwise, apply:

- (a) executed Statements of Work or Order Forms;
- (b) the Subscription Form;
- (c) any applicable Extra Terms;
- (d) the DI Consultancy and Professional Services and DI Managed Services Terms or the DI SaaS and Product Terms;
and
- (e) your Standard Terms that are agreed to apply.

2.3 The following terms have the following meanings:

Major Security-Related Service Impacting Event means a Digital Identity Service outage or impairment caused or probably caused by a security related incident that results in complete or substantial availability of a Digital Identity Service that is critical to Purchasing Agencies/ business operations for a period of 2 hours or more;

NCSC means the National Cyber Security Centre which is part of the Government Communications Security Bureau;

Privacy Breach means:

- (a) unauthorised or accidental access to, or disclosure, alteration, loss or destruction of, the Personal Information; or
- (b) an action not contemplated by the Subscription Agreement that prevents access to Personal Information on either a temporary or permanent basis;

Privacy Laws means the Privacy Act 2020, codes of practice under that Act, and any other laws that are applicable to the processing of Purchasing Agency Data;

Security Incidents means:

- (a) any unauthorised person or entity has obtained access to the technology systems you use for the Services or to any Purchasing Agency Data;
- (b) any person or entity has used any Purchasing Agency Data for purposes not authorised or permitted by the Subscription Agreement;
- (c) a Major Security-Related Service Impacting Event affecting one or more of your Services has occurred due to what is known or suspected to be a security-related incident;
- (d) any other unauthorised access or other incident has occurred in relation to your organisation (such as your organisation having been hacked), systems or the Services that:
 - (i) threatens the security or integrity of the Services or any Purchasing Agency Data, or that has resulted in unauthorised use, modification, disclosure, loss, or destruction of Purchasing Agency Data; or
 - (ii) if the unauthorised access or incident is publicly known, may cause a reasonable member of the public to wonder whether Purchasing Agency Data is at risk; or
 - (iii) suggests such a degree of persistence or malicious intent that impacts described above may ensue; and

Third Party Service means a Digital Identity Service provided by a Third Party Service Provider.

3. Changes to the Collaborative Marketplace Agreement

- 3.1 Subject to clause 3.2, 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 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 DI Consultancy and Professional Services and DI Managed Services Terms, any applicable Extra Terms or DI SaaS and Product Terms that we and you have already agreed; or
 - (b) in the case of existing Statements of Work and Order Forms, 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.
- 3.2 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).

4. Term

- 4.1 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 4.2; and
 - (iii) the termination or expiry of all Statements of Work or Order Forms.
- 4.2 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 4.1(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 4 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.

5. **Provision of Services**

- 5.1 As described in more detail in clause 3 of the DI Consultancy and Professional Services and DI Managed Services Terms and clause 3 of the DI SaaS and Product Terms, your provision of Services to us needs to be agreed in one or more Statements of Work or Order Forms.

Digital Identity Services to be supplied to the Purchasing Agency need to be agreed in a Statement of Work or Order Form.

6. **Application of Subscription Agreement to various kinds of Services**

- 6.1 You and we acknowledge that:
 - (a) this Subscription Agreement applies to our procurement of any Digital Identity 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 4), we select you to provide additional In-Scope Services, you and we may enter into Statements of Work or Order Forms, as applicable, 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 Digital Identity Services.

7. **Contract Managers**

- 7.1 The Contract Managers referred to in clause 4.1(a) of the DI Consultancy and Professional Services and DI Managed Services Terms are as follows:

These are the parties' Contract Managers

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

8. Address for Notices

- 8.1 The parties' addresses for notice referred to in clause 21.7(d) of the DI Consultancy and Professional Services and DI Managed Services Terms are as follows:

These are the parties' addresses for notice

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

9. Security clearances and probity checks

- 9.1 You must, in accordance with clause 6.1(b) of the DI Consultancy and Professional Services and DI Managed 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):

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

[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 9 and this table can be deleted; note that clearance and check requirements may also be stated in SOWs if the parties prefer]
--------------------------------------	--

10. Changes to terms

- 10.1 You and we may agree to amend and supplement the DI Services and DI Services Terms, Hardware Terms, any applicable Extra Terms and the DI SaaS and Product Terms, in either this Subscription Form, a Statement of Work or an Order Form.

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

11. Change of reseller

- 11.1 Subject to clause 11.2, if:

- (a) you are reselling a Third Party Service to the Purchasing Agency; and
- (b) the Purchasing Agency wishes to terminate its Order, Statement of Work or Subscription Agreement with you for or in relation to that Third Party Service in accordance with termination rights in the Subscription Agreement; and
- (c) the Purchasing Agency wishes to procure the Third Party Service from or through another provider that resells the Third Party Service through the Marketplace, and notifies you of that wish in writing (a **Reseller Switch**), you will use all reasonable endeavours to facilitate the Reseller Switch, including by:
 - (i) informing the Third Party Service Provider;
 - (ii) seeking consent from the Third Party Service Provider (if consent is required);
 - (iii) providing information to the alternative reseller; and
 - (iv) updating relevant records with the Third Party Service Provider

If you're reselling a Third Party Service and the Purchasing Agency wishes to switch to a different reseller, you'll use reasonable endeavours to facilitate the switch, in accordance with but subject to the constraints in this clause.

- 11.2 To avoid doubt:

- (a) clause 11.1 does not require you to share information with the alternative reseller that is confidential as between you and the Third Party Service Provider;
- (b) clause 11.1 does not entitle the Purchasing Agency to avoid any minimum term and/or minimum volume commitments you have negotiated with the Purchasing Agency in relation to your resale of the Third Party Service to the Purchasing

Agency; but

- (c) the obligations in clause 11.1 do apply if the Purchasing Agency is entitled to terminate its relevant Order, Statement of Work, or Subscription Agreement with you, whether for convenience or (despite any minimum term commitment) for cause, in accordance with the termination rights in the Subscription Agreement.

- 11.3 If the Purchasing Agency is entitled to terminate the relevant Order, Statement of Work, or Subscription Agreement with you for cause, you shall meet your own costs of taking the steps in clause 11.1. If the Purchasing Agency is not so entitled, you may charge the Purchasing Agency at your applicable Services Rates (or such other rates agreed with the Purchasing Agency under the Subscription Agreement) for taking those steps, and you must use all reasonable endeavours to take those steps swiftly.

12. Privacy

12.1 Privacy Law compliance

To the extent relevant to performance of the Services, you will:

- (a) comply with all applicable Privacy Laws; and
- (b) not act or omit to act in a manner that causes the Purchasing Agency to breach any Privacy Law.

12.2 Privacy Breach

If you become aware of an actual or suspected Privacy Breach involving Personal Information in Purchasing Agency Data or Users' Personal Information held or processed by you or your Subcontractors or any Third Party Service Provider whose Third Party Service you resell or otherwise provide to the Purchasing Agency as part of the Services then,

- (a) you must notify the Purchasing Agency of the actual or suspected Privacy Breach as soon as possible and in all cases within 24 hours;
- (b) you must co-operate with any investigation of the Privacy Breach the Purchasing Agency undertakes, including investigating and reporting to it on the background and causes of the Privacy Breach (if something has happened that was your responsibility or within your control) and on what Purchasing Agency Data or User Personal Information was or may have been affected;
- (c) the Purchasing Agency may take any steps it believes in good faith are necessary to protect the security of any affected Purchasing Agency Data or any affected User Personal

If a relevant Privacy Breach occurs, you need to follow the processes set out here.

Information, which may include suspending the Services or requiring you to suspend the access that Users have to the Services or an output of the Services; and

- (d) if, under the Privacy Act 2020, it is necessary to notify the Privacy Commissioner or affected individuals of the Privacy Breach and the Privacy Breach involves Personal Information that, under that Act, is deemed to be held by the Purchasing Agency alone rather than by you or your Subcontractors, then:
 - (i) the Purchasing Agency will be responsible for making the notification; and
 - (ii) you will not make such notification on the Purchasing Agency's behalf without its prior written consent.

12.3 Sharing of security incident information with DIA and NCSC

The Purchasing Agency agrees that you may share with DIA and NCSC, on a confidential basis, information relating to Security Incidents associated with or affecting your Services that have an impact on the Purchasing Agency.

13. Other terms

- 13.1 [If other terms are required and agreed, they can be inserted here. If there are no other terms, this clause 13 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)

Name:

Position:

Date:

(signature)

Name:

Position:

Date:

Annexure B: DI Consultancy and Professional Services and DI Managed Services Terms

Attached.



DI Consultancy and Professional Services and DI Managed

Services Terms

Background

These are the DI Consultancy and Professional Services and DI Managed Services Terms referred to in clause 4 of the Channel Terms for Digital Identity Services and clause 1.1(a)(ii) of the Subscription Form for DI Consultancy and Professional Services and/or DI Managed Services.

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

Contents

1. Statement of Work Term.....	31
2. Application of terms in Part 1 (General Terms), Part 2 (Channel Terms), and Hardware Terms.....	31
3. Statements of Work	32
4. Governance	33
5. Performance of the Services.....	33
6. Personnel	37
7. Subcontracting.....	38
8. General responsibilities.....	38
9. Records	39
10. Change Procedure.....	40
11. Payment	40
12. Warranties	42
13. Intellectual Property Rights	43
14. Confidentiality and security	49
15. Liability	52
16. General indemnities	53
17. Insurance.....	54
18. Performance issues	54
19. Disputes	55
20. Termination.....	55
21. General.....	59
22. Definitions and interpretation	61
Schedule 1: Hardware Terms	68
Schedule 2: Statement of Work templates	73

1. Statement of Work Term

1.1 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.

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.

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

2.1 You agree that the following clauses in Part 1 (General Terms) and Part 2 (Channel Terms for Digital Identity Services) of the Collaborative Marketplace Agreement are incorporated by reference into the Statement of Work:

- (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 DI Consultancy and Professional Services and DI Managed Services Terms and any applicable Extra Terms);

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

- (l) 6.4 and 6.5 of Part 2 (Changes to Services Listings); and
- (m) 13 of Part 2 (Resale of Third Party Services).

2.2 Where the Digital Identity Services purchased by the Purchasing Agency under a Statement of Work include the provision of Hardware by you, the Hardware Terms in Schedule 1 are incorporated into the Statement of Work.

3. Statements of Work

3.1 Your provision of particular Digital Identity 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 Digital Identity 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 Digital Identity Services you will provide and, if requested, curricula vitae for proposed Personnel;
- (b) details of your charges for those Digital Identity Services; and
- (c) all other information reasonably requested by the Purchasing Agency relating to those Digital Identity 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 Digital Identity 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 Digital Identity Services sought by the Purchasing Agency under clause 3.2, the parties will enter into a Statement of Work for those Digital Identity Services, following the general format of an applicable template in the Schedule to these DI Consultancy and

DI C&P Services and DI Managed 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.

Professional Services and DI Managed Services Terms or otherwise available on marketplace.govt.nz.

- 3.8 The Purchasing Agency will not be obliged to pay any charges for the Digital Identity Services and you will not be obliged to start providing the Digital Identity 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 DI Consultancy and Professional Services and DI Managed 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 Digital Identity Services, and any other governance-related matters required by the Purchasing Agency, are specified in the Statements of Work for those Digital Identity Services.

5. Performance of the Services

5.1 General

You will perform the Digital Identity 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

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

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 Digital Identity 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 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

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.

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):
- (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

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.

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 Digital Identity Services.
- (b) The Purchasing Agency's acceptance or commissioning of any Digital Identity Services, or approval of any relevant documents, will not limit your responsibility to provide the Digital Identity 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 Digital Identity Services:

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

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

6.2 The Purchasing Agency may require the immediate removal of any

member of your Personnel from performance of your Digital Identity 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 Digital Identity 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 Digital Identity Services being subcontracted. You also continue to be responsible for delivering the Services even if aspects of the Digital Identity 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 Digital Identity 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 Digital Identity Services, a contractor under a contract for services who, in substance, is acting as a member of your staff, 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 Digital Identity Services;

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

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.

- (b) comply with Purchasing Agency policies notified to you in writing that have a bearing on provision of the Digital Identity 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 Digital Identity Services then compliance is subject to agreement between the parties);
- (c) ensure that those of your Personnel involved in provision of the Digital Identity 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 Digital Identity 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.

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 Digital Identity Services (including in relation to any subcontracted elements of the Digital Identity Services).

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.

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

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 Digital Identity 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.
- (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.

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.

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.

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.

12.2 Your warranties

You warrant and represent that:

- (a) in offering your Digital Identity 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.

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

- (a) Each party retains ownership of all Intellectual Property Rights in Existing Material belonging to that party.
- (b) The Purchasing Agency owns and will own all Purchasing Agency Data (including all Intellectual Property Rights in such data), regardless of when it is created and whether or not it comprises or is contained within a Deliverable.

13.2 Deliverables

Subject to clause 13.1(b) and 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
- (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

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).

(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 Digital Identity 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 in relation to Deliverables and Digital Identity Services

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

- (i) are not owned by the Purchasing Agency;
- (ii) do not comprise and are not contained in Third Party Services or Third Party Materials that are licensed in accordance with clause 13.5(c),

you grant the Purchasing Agency, and contractors acting on its behalf:

- (iii) in relation to Deliverables: a non-exclusive, perpetual, irrevocable and royalty free licence to exercise for the Purchasing Agency's business purposes (excluding

resale), the Intellectual Property Rights in the Deliverables (the **Deliverables Licence**);

- (iv) in relation to Digital Identity Services: a non-exclusive and royalty free licence to exercise for the Purchasing Agency's business purposes (excluding resale) and for the term of the relevant Statement of Work under which the Digital Identity Services are provided, the Intellectual Property Rights in the Digital Identity Services to the extent necessary for the Purchasing Agency to receive the full benefit of the Digital Identity Services (the **Services Licence**).
- (b) The Deliverables Licence survives termination or expiry of the Subscription Agreement for any reason. The Services Licence ends on the termination or expiry, for any reason, of the Subscription Agreement.
- (c) Unless otherwise agreed in writing (including in a Statement of Work):
 - (i) to the extent that any Deliverable or Digital Identity Service incorporates or the use of any such Deliverable or Digital Identity Service relies on the use of any (1) Third Party Service and/or (2) any Third Party Material (that is not Purchasing Agency Contributed Material) and/or (3) any enhancement or modification to that Third Party Service or 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, to the extent that use of any such Third Party Service or Third Party Material is subject to a different licence than that provided by you to the Purchasing Agency in clause 13.5(a), but 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 or Digital Identity Service (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 Digital Identity 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 Service or Third Party Material or enhancement or modification to the Third Party Material referred to in that clause where:
 - (i) the relevant Services Listing specifies the direct licence or sub-licence and either contains the licence terms or indicates where they can be found; or
 - (ii) the direct licence or sub-licence is set out in, or referred to in, the Subscription Form or Statement of Work, or in Third Party Service Provider Terms whose application is agreed in the Subscription Form or Statement of Work.
- (e) To avoid doubt clause 13.5(d) does not limit clause 13 (Resale of Third Party Services) of the Channel Terms which, under clause 2.1(m) of these DI Consultancy and Professional Services and DI Managed Services Terms, is incorporated by reference into these terms (clause 13 regulates the resale of Third Party Services via a Services Listing in the Marketplace).

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 Digital Identity 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 Digital Identity 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. This warranty is deemed to be given continuously throughout the Term of the Subscription Agreement.
- (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 Third Party Material is subject to a separate direct licence or sub-licence (as applicable) which was notified in writing to the Purchasing Agency under clause 13.5(c)(i)B or was referred to in the relevant Services Listing or in the Subscription Form or an Order or Statement of Work.
- (c) The Purchasing Agency represents and warrants that your possession, storage or use, solely in the course of providing the Digital Identity Services, of any Purchasing Agency Data:
 - (i) the Purchasing Agency supplies or licenses to you; or
 - (ii) residing on your infrastructure as a result of the Purchasing Agency's use of the Digital Identity Services,will not infringe any third party Intellectual Property Rights, provided that the Purchasing Agency shall have no liability under this clause 13.8 in relation to any liability you incur to a third party that you could have avoided by taking steps referred to in any of sections 92B, 92C, or 92E of the

Copyright Act 1994 or similar provisions in other legislation.

- (d) The parties may agree in a Statement of Work to modify the application of clause 13.8(a) or (b) or (c) 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 Digital Identity 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 Digital Identity 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 Digital Identity 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 Digital Identity 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 DI Consultancy and Professional Services and DI Managed Services Terms. The remainder of this clause 14 applies in addition to those clauses.

14.2 Purchasing Agency Data

- (a) You will not use or disclose any of the Purchasing Agency Data for your own purposes or for any other purposes different from those contemplated by the Subscription

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

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.

Agreement.

- (b) Except as permitted in clause 14.2(c), neither you nor any Subcontractor or Third Party Service Provider may:
 - (i) provide any Digital Identity Services (or party of the Digital Identity Services, including support or hosting infrastructure) from outside New Zealand; or
 - (ii) store, process, or make available Purchasing Agency Data to any person located outside New Zealand(collectively, **Offshoring**).
- (c) Subject to clause 14.2(f), Offshoring is permitted when:
 - (i) 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
 - (ii) 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
- (d) You will 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.
- (e) If your Services Listing(s) are updated to include new offshore locations for the provision of Digital Identity Services or the storage or processing of Purchasing Agency Data, those changes will not apply to Orders or Statements of Work agreed with the Purchasing Agency before the update is published, unless the Purchasing Agency agrees in writing to the changes.
- (f) To avoid doubt:
 - (i) clause 14.2(b)(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:
 - A. any transfer of the Purchasing Agency Data outside of the territories and cloud services permitted by clause 14.2(b)(ii) is only for Internet routing purposes; and

- B. the Purchasing Agency Data is encrypted and not accessible by persons who are not authorised to access the data;
- (ii) nothing in this clause 14.2 prevents the Purchasing Agency from seeking to negotiate additional limitations on the countries from which the Services (including support) are provided and/or specific data residency countries; and
- (iii) if you have represented in your Services Listings when a Statement of Work is entered into, or otherwise agreed with the Purchasing Agency:
 - A. that your Digital Identity Services (including support) are provided from named countries (**Service Locations**); and/or
 - B. that Purchasing Agency Data will only be stored or processed in specific data residency countries (**Data Locations**),

you are not permitted to change those Services Locations or Data Locations without the Purchasing Agency's written consent.

14.3 Security risk

If either party becomes aware or suspects that:

- (a) there is a material vulnerability in the Digital Identity 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 Digital Identity 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

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

reasonably requests; and

- (g) take all reasonable steps to stop such unauthorised access or incident and prevent its reoccurrence.

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.

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

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.

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

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

act or omission of you or your Personnel.

17. Insurance

You need to maintain 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.

18. Performance issues

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

- 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.
- 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 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 Digital Identity Services unless the Purchasing Agency requires otherwise in writing.

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

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

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

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 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 Digital Identity Services) of the Collaborative Marketplace Agreement (which is incorporated into this Subscription Agreement by clause 2.1(l) of the DI Consultancy and Professional Services and DI Managed Services Terms); and
 - (ii) you are providing that Digital Identity 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 terminate the Subscription Agreement, or all of a Statement of Work, if the only Digital Identity Service you 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

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

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).

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:

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

- (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.

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:

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

- (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.

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 Statement of Work against the other will not waive or limit any right of that party.
- (b) No provision of the Statement of Work 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 Statement of Work is held to be invalid, unenforceable or illegal for any reason, the Statement of Work 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 Statement of Work 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 Statement of Work 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 Statement of Work 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

Each Statement of Work 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 a Statement of Work 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 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 Statement of Work.

22. Definitions and interpretation

- 22.1 In addition to the terms defined in the Subscription Form, the following terms have the following meanings and references to clauses are to clauses in these DI Consultancy and Professional Services and DI Managed 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 4.1(a) of the Subscription Form;

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;

DI Consultancy and Professional Services and **DI 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 this 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;

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 Digital Identity 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;

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

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 DI C&P Services and DI Managed Services, and form part of a Subscription Agreement when a Purchasing Agency procures these categories of Digital Identity 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 Digital Identity 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;

Hardware means physical equipment supplied by you to a Purchasing Agency under a Subscription Agreement;

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 4.1(b);

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);

DI 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 this 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;

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

Personal Information has the meaning given to it in the Privacy Act 2020;

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 Digital Identity 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 Digital Identity 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,

but, to avoid doubt, does not include aggregated and fully de-identified statistics that you or your Digital Identity Services generate relating to customers' use of your Services;

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 Digital Identity 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 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 Digital Identity 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 DI Consultancy and Professional Services and DI Managed Services Terms;

Subcontractor means a person, business, company or organisation that you contract or propose to contract to deliver or perform part of your Digital Identity 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 Digital Identity Services listed in this Channel of the Marketplace, comprising a Subscription Form, these DI Consultancy and Professional Services and DI Managed 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 4;

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

Third Party Service means a Service provided by a Third Party Service Provider;

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 Digital Identity 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 section of these DI Consultancy and Professional Services and DI Managed 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”; and
- (g) except as otherwise expressly stated, monetary references are references to New Zealand currency.

Schedule 1: Hardware Terms

1. Incorporation into Statements of Work

- 1.1 Where a Statement of Work includes the provision of Hardware by you to a Purchasing Agency, these terms apply, unless expressly agreed otherwise in the relevant Statement of Work.

2. Provision of Hardware

- 2.1 You will provide the Hardware to the Purchasing Agency on the terms set out in the Statement of Work, including for the period specified in the Statement of Work.
- 2.2 The Hardware shall at all times remain your property, and the Purchasing Agency shall have no right, title or interest in or to the Hardware (save the right to possession and use of the Hardware subject to the terms and conditions of the Subscription Agreement).
- 2.3 The risk of loss, theft, damage or destruction of the Hardware shall pass to the Purchasing Agency on completion of delivery in accordance with paragraph 3.1. The Hardware shall remain at the sole risk of the Purchasing Agency while the Hardware is in the possession, custody or control of the Purchasing Agency until the time when the parties have agreed you will collect the Hardware from the Purchasing Agency. During such period, the Purchasing Agency shall, at its own expense, obtain and maintain adequate insurances for the Hardware to a value not less than its replacement value that respond to usual risks of loss, damage or destruction, theft or accident.

When Hardware is procured under these terms, it is always owned by the provider.

3. Delivery and installation

- 3.1 You will deliver the Hardware to the Purchasing Agent at the address and time agreed.
- 3.2 You must ensure that the Hardware;
- (a) is properly packed and secured in such a manner as to enable it to be delivered in good condition;
 - (b) is accompanied by a delivery note which shows special usage and storage instructions (if any).
- 3.3 If specified in the Statement of Work, you will install the Hardware at the relevant locations agreed in the Statement of Work.

4. Quality

- 4.1 You must ensure that the Hardware:

- (a) corresponds with its description;
- (b) is fit for any purpose held out by you or made known to you by the Purchasing Agency expressly, and in this respect the Purchasing Agency relies on your skill and judgement;
- (c) is free from defects in design, material and workmanship and remain so; and
- (d) complies with all applicable statutory and regulatory requirements.

You need to make sure the Hardware is of good quality, and meets the description you have provided.

5. Inspection and testing

5.1 You must:

- (a) carefully inspect and test the Hardware before delivery to ensure that it complies with the requirements; and
- (b) if requested by the Purchasing Agency, give the Purchasing Agency reasonable advance notice of such tests, which the Purchasing Agency shall be entitled to attend.

5.2 The Purchasing Agency may inspect and test the Hardware on or following delivery.

The Purchasing Agency can inspect the Hardware following delivery to check it complies with the requirements.

5.3 If, as a result of any inspection or test of the Hardware, it is found that the Hardware or any components comprised within it do not comply with the requirements, you must take such steps as are necessary to ensure compliance.

5.4 The Purchasing Agency may conduct further inspections and tests after you have carried out remedial actions and may require you to carry out further remedial actions, if necessary, to ensure the Hardware complies with the requirements.

5.5 Notwithstanding any such inspection or testing, you remain fully responsible for the Hardware and any such inspection or testing shall not reduce or otherwise affect your obligations under the Subscription Agreement.

6. Remedies

6.1 If the Hardware is not delivered by the delivery date, or if there is a breach of any of the provisions set out in paragraph 4, then, without limiting any of its other rights or remedies, the Purchasing Agency may exercise any one or more of the following remedies:

If Hardware is late, or defective, The Purchasing Agency can refuse further delivery or require the Hardware to be replaced.

- (a) refuse to accept any subsequent attempted delivery of the Hardware;
- (b) require you to repair or replace the Hardware at your risk and expense within 20 Business Days of being requested by the Purchasing Agency to do so;

- (c) require you to collect the defective Hardware from the premises where the Hardware may be located;
 - (d) obtain substitute Hardware or components from another supplier and recover from you any reasonable costs and expenses reasonably incurred by the Purchasing Agency in obtaining such substitute Hardware or components; and/or
 - (e) terminate the Statement of Work with immediate effect,
- 6.2 provided that you shall have no liability for any failure to deliver the Hardware by the delivery date to the extent that such failure is caused by the Purchasing Agency's failure to comply with its obligations under the Subscription Agreement.
- 6.3 The Purchasing Agency shall not be liable for payments for the Hardware in respect of the period between notifying you that the Hardware is defective and requires repair or replacement and you completing the delivery (and installation, if required by the Statement of Work) of the repaired or replacement Hardware at the relevant site.
- 6.4 The terms of this Schedule shall apply to any repaired or replacement Hardware.
- 6.5 The Purchasing Agency's rights and remedies under this paragraph 6 are in addition to its rights and remedies.

7. Purchasing Agency's obligations

- 7.1 The Purchasing Agency shall:
- (a) ensure that the Hardware is kept and operated in a suitable environment and operated in a proper manner by competent staff in accordance with any operating instructions provided in writing by you;
 - (b) provide you reasonable notice of when the Hardware requires maintenance or repair;
 - (c) bear the reasonable cost of the repair or rectification of any damage to the Hardware resulting from misuse, neglect, alteration, mishandling or unauthorised manipulation by any person permitted by the Purchasing Agency to use the Hardware;
 - (d) permit you or your authorised representative to inspect the Hardware at reasonable times and on reasonable notice and for such purpose to enter the premises at which the Hardware may be located, and shall grant reasonable access and facilities for such inspection;
 - (e) not, without your prior written consent, part with control of (including for the purposes of repair or maintenance), sell

The Purchasing Agency must take good care of the Hardware while in its possession.

or offer for sale, underlet or lend the Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

- (f) not without your prior written consent, attach the Hardware to any land or building so as to cause the Hardware to become a permanent or immovable fixture on such land or building. If the Hardware does become affixed to any land or building then the Hardware must be capable of being removed without material injury to such land or building and the Purchasing Agency shall repair and make good any damage caused by the affixation or removal of the Hardware from any land or building;
- (g) not do or permit to be done any act or thing which will or may jeopardise your right, title or interest in the Hardware and, where the Hardware has become affixed to any land or building, the Purchasing Agency must take all necessary steps to ensure that you may enter such land or building and recover the Hardware both during the term of the Subscription Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of you of any rights such person may have or acquire in the Hardware and a right for the Lessor to enter onto such land or building to remove the Hardware;
- (h) not use the Hardware for any unlawful purpose;
- (i) ensure that at all times the Hardware remains identifiable as your property;
- (j) at the end of the period for which the Purchasing Agency is entitled to possess the Hardware, allow you or your representatives access to the premises where the Hardware is located for the purpose of removing the Hardware; and
- (k) not do or permit to be done anything which could invalidate the insurances the Purchasing Agency is required by this Schedule to hold.

7.2 The Purchasing Agency acknowledges that you are not be responsible for any loss of or damage to the Hardware arising out of or in connection with any misuse, neglect, alteration, mishandling or unauthorised manipulation of the Hardware by any person permitted by the Purchasing Agency to use the Hardware or otherwise caused by the Purchasing Agency or its officers, employees, agents, contractors and subcontractors.

8. Maintenance services

8.1 You shall ensure that the Hardware remains compliant with the requirements for the Hardware specified in the Statement of

Work, paragraph 4 of this Schedule, and all security requirements in accordance with Good Industry Practice, for the duration of the period for which the Purchasing Agency is entitled to possession of the Hardware, including:

- (a) making available software and / or firmware updates and patches; and
- (b) replacing the Hardware periodically, in consultation with the Purchasing Agency, if required to ensure compliance with this paragraph 8.1.

You need to keep the Hardware in compliance with the Agreement while the Purchasing Agency is using it, including in some situations providing software updates and hardware updates.

Schedule 2: Statement of Work templates

1. Introduction

Two Statement of Work templates are attached:

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

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

2. 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 DI Consultancy and Professional Services and DI Managed 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) – DI 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 Digital Identity Services 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 Digital Identity 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.

This form should be used only for DI Consultancy and Professional Services. However, if DI SaaS Services or Products are purchased using a SOW, the DI SaaS and Product Terms apply, in accordance with clause 1.2 of the Subscription Form.

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 (Ref: Clause 4.1 Subscription Form)	[Under clause 4.1 of the Subscription Form, 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 Digital Identity 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 (Ref: Clause 1.1 DI Consultancy and Professional Services and DI Managed Services Terms)	[Insert commencement date of work under SOW]
SOW End Date (Ref: Clause 1.1 DI Consultancy and Professional Services and DI Managed Services Terms)	[Insert end date of work under SOW]

Service description and related matters

1.	Digital Identity Services	<p>The Provider will provide the following Digital Identity 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="453 398 1460 591"> <thead> <tr> <th data-bbox="453 398 1166 488">Digital Identity Service (Attach a more detailed Service description and statement of requirements if required)</th> <th data-bbox="1166 398 1460 488">Timeframe</th> </tr> </thead> <tbody> <tr> <td data-bbox="453 488 1166 539"></td> <td data-bbox="1166 488 1460 539"></td> </tr> <tr> <td data-bbox="453 539 1166 591"></td> <td data-bbox="1166 539 1460 591"></td> </tr> </tbody> </table>			Digital Identity Service (Attach a more detailed Service description and statement of requirements if required)	Timeframe							
Digital Identity Service (Attach a more detailed Service description and statement of requirements if required)	Timeframe												
2.	Hardware (Ref: Clause 2.2 DI Consultancy and Professional Services and DI Managed Services Terms)	<p>The Provider will provide the following Hardware to the Purchasing Agency in accordance with the following delivery dates and quantities.</p> <table border="1" data-bbox="453 678 1460 815"> <thead> <tr> <th data-bbox="453 678 943 723">Hardware</th> <th data-bbox="943 678 1190 723">Quantity</th> <th data-bbox="1190 678 1460 723">Delivery Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="453 723 943 768"></td> <td data-bbox="943 723 1190 768"></td> <td data-bbox="1190 723 1460 768"></td> </tr> <tr> <td data-bbox="453 768 943 815"></td> <td data-bbox="943 768 1190 815"></td> <td data-bbox="1190 768 1460 815"></td> </tr> </tbody> </table>			Hardware	Quantity	Delivery Date						
Hardware	Quantity	Delivery Date											
3.	Key contacts (Ref: Clause 4.1 DI Consultancy and Professional Services and DI Managed Services Terms)	<p>The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the DI Consultancy and Professional Services and DI Managed Services Terms. Other key contacts for this SOW (if any) are as stated below.</p> <table border="1" data-bbox="453 958 1460 1099"> <thead> <tr> <th data-bbox="453 958 943 1010"></th> <th data-bbox="943 958 1190 1010">Contact(s)</th> <th data-bbox="1190 958 1460 1010">Role(s)</th> </tr> </thead> <tbody> <tr> <td data-bbox="453 1010 943 1055">Purchasing Agency</td> <td data-bbox="943 1010 1190 1055"></td> <td data-bbox="1190 1010 1460 1055"></td> </tr> <tr> <td data-bbox="453 1055 943 1099">Provider</td> <td data-bbox="943 1055 1190 1099"></td> <td data-bbox="1190 1055 1460 1099"></td> </tr> </tbody> </table>				Contact(s)	Role(s)	Purchasing Agency			Provider		
	Contact(s)	Role(s)											
Purchasing Agency													
Provider													
4.	Service Levels (if any) (Ref: Clause 5.2 DI Consultancy and Professional Services and DI Managed Services Terms)	<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="464 1379 1455 1581"> <thead> <tr> <th data-bbox="464 1379 847 1424">Name of Service Level</th> <th data-bbox="847 1379 1455 1424">Details of Service Level</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1424 847 1480"></td> <td data-bbox="847 1424 1455 1480"></td> </tr> <tr> <td data-bbox="464 1480 847 1536"></td> <td data-bbox="847 1480 1455 1536"></td> </tr> <tr> <td data-bbox="464 1536 847 1581"></td> <td data-bbox="847 1536 1455 1581"></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												
5.	Service Level Credits (if any) (Ref: Clause 5.2 DI Consultancy and Professional Services and DI Managed Services Terms)	<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>											

		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.
		<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>	
6.	Deliverables, Milestones, and Milestone Dates (if any) (Ref: Clause 5.3 DI Consultancy and Professional Services and DI Managed Services Terms)	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?]	
7.	Liquidated damages (Ref: Clause 5.3(c) DI Consultancy and Professional Services and DI Managed 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 DI Consultancy and Professional Services and DI Managed 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>	
8.	Purchasing Agency responsibilities (Ref: Clause 5.4 DI Consultancy and Professional Services and DI Managed Services Terms)	<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>	

	Services Terms)					
9.	Acceptance of Deliverables (Ref: Clause 5.5 DI Consultancy and Professional Services and DI Managed Services Terms)	[A default approach to acceptance of Deliverables is specified in clause 5.5 of the DI Consultancy and Professional Services and DI Managed 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).]				
10.	Security clearances and probity checks (Ref: Clause 6.1(b) DI Consultancy and Professional Services and DI Managed 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]				
11.	Pre-approved Subcontractors (Ref: Clause 7.2 DI Consultancy and Professional Services and DI Managed 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"> <thead> <tr> <th>Full name of Subcontractor</th> <th>Role(s) Subcontractor is authorised to perform</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </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					
12.	Purchasing Agency policies (Ref: Clause 8.1(b) DI Consultancy and Professional Services and DI Managed 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.]				
13.	Fees (Ref: Clause 11.1 DI Consultancy and Professional Services and DI Managed 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] [insert details as required]</p>									
14.	<p>Invoicing</p> <p>(Ref: Clause 11.2 DI Consultancy and Professional Services and DI Managed 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 Digital Identity 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 Digital Identity 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 DI Consultancy and Professional Services and DI Managed 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)									
15.	<p>Expenses</p> <p>(Ref: Clause 11.6 DI Consultancy and Professional Services and DI Managed 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 Digital Identity 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. 									
16.	<p>Administration Fee</p> <p>(Ref: Clause 11.1(a)(ii) DI Consultancy and Professional Services and DI Managed Services Terms and clause 10 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 DI Consultancy and Professional Services and DI Managed Services Terms and clause 10 of the Channel Terms for Digital Identity 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>									
17.	<p>Intellectual Property Rights</p> <p>(Ref: Clause 13 DI</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 DI Consultancy and Professional Services and DI Managed Services Terms, those changes should be recorded here.]</p>									

	Consultancy and Professional Services and DI Managed Services Terms)	<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 DI Consultancy and Professional Services and DI Managed Services Terms, that should be specified here.]</p> <p>[If no such changes are required, this row can be deleted.]</p>								
18.	Purchasing Agency Data (Ref: Clause 14.2 DI Consultancy and Professional Services and DI Managed 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><tr><td>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										
19.	Liability (Ref: Clause 15 DI Consultancy and Professional Services and DI Managed Services Terms)	<p>[If there are to be any agreed changes to the default liability provisions in clause 15 of the DI Consultancy and Professional Services and DI Managed 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>								
20.	Insurance (Ref: Clause 17 DI Consultancy and Professional Services and DI Managed Services Terms)	<p>[Under clause 17 of the DI Consultancy and Professional Services and DI Managed 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>								
21.	Meetings (Ref: Clause 5.6(a) DI Consultancy and Professional Services and DI Managed 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><tr><td>Meeting details</td><td>Designated representatives of the Provider required to attend</td><td>Frequency/Date</td></tr></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								

22.	Reports (Ref: Clause 5.6(b) DI Consultancy and Professional Services and DI Managed 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:		
		Report details	Frequency/date	
23.	Resold Third Party Services and Third Party Service Provider Terms (Ref: Clause 13 Channel Terms)	[Under clause 13.2 of the Channel Terms, if any of the Digital Identity Services that your agency is procuring from the provider at the commencement date is a resold Third Party Service and the Third Party Service Provider's Terms are to apply to your agency's consumption of that service (instead of all the DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms that may apply), the table below should be completed. Note that Third Party Services can only be resold if the conditions in clause 13.1 of the Channel Terms are met.] The following resold Third Party Services and the Third Party Service Provider Terms to apply to the provision of the Digital Identity Services are:		
		Name of Third Party Service and Third Party Service Provider	Applicable Third Party Service Provider Terms, where they can be found, and scope of Services to which they apply	Entity with whom Purchasing Agency is contracting (Third Party Provider or Provider)
				Extent to which Third Party Service Provider Terms apply to exclusion of DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms
		[For example: XYZ Contact Centre Service provided by Acme Limited]	[Name terms and either attach them to Subscription Form or link to where they can be found. Also state scope of Digital Identity Services to which they apply, e.g., These terms only apply to XYZ Contact Centre Service. The DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms, any Extra Terms, and any applicable Order or SOW, apply to Services provided by the Provider in connection with XYZ Contact Centre Service.]	[Enter 'Third Party Provider' or 'Provider']
				[State extent to which Third Party Service Provider Terms apply to the exclusion of DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and Extra Terms do not apply' or 'Except for the invoicing and payment terms, the DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms do not apply']

24.	Amendments to DI C&P Services	[Insert any other amendments or additional terms that are to apply to the SOW.]
25.	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) – DI Managed 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 Digital Identity Services 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 Digital Identity 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.

This form should be used only for DI Managed Services. However, if DI SaaS Services or Products are purchased using a SOW, the DI SaaS and Product Terms apply, in accordance with clause 1.2 of the Subscription Form.

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 (Ref: Clause 4.1(b) Subscription Form)	[Under clause 4.1(b) of the DI Consultancy and Professional Services and DI Managed 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 Digital Identity 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 (Ref: Clause 1.1(a) DI Consultancy and Professional Services and DI Managed Services Terms)	[Insert commencement date of work under SOW]
SOW End Date (Ref: Clause 1.1(b) DI Consultancy and Professional Services and DI Managed Services Terms)	[Insert end date of work under SOW]

Service description and related matters

1.	Transition (Ref: Clause 1 Extra Terms for DI 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 Digital Identity Services, you will not start charging the Purchasing Agency for those Digital Identity 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 Digital Identity 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.	Hardware (Ref: Clause 2.2 DI Consultancy and Professional Services and DI Managed Services Terms)	The Provider will provide the following Hardware to the Purchasing Agency in accordance with the following delivery dates and quantities.		
		Hardware	Quantity	Delivery Date
3.	Digital Identity Services (Ref: Clauses 3 and 5 DI Consultancy and Professional Services and DI Managed Services Terms)	The Provider will provide the following Digital Identity Services to the Purchasing Agency and in accordance with the following timeframes. (Specific Milestones/Deliverables and Milestone Dates (if any) are specified further below.)		
		Digital Identity Service (Attach a more detailed Service description and statement of requirements if required)	Timeframe	
4.	Key contacts (Ref: Clause 4.2 DI Consultancy and Professional Services and DI Managed Services Terms)	The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the DI Consultancy and Professional Services and DI Managed Services Terms. Other key contacts for this SOW (if any) are as stated below.		
			Contact(s)	Role(s)
		Purchasing Agency		
		Provider		
5.	Interfaces (Ref: Clauses 2.1(b) and 6 Extra Terms for DI 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.]		
6.	Principal-agent arrangements – Authorisations Schedule (Ref: Clauses 3 and 8.1(e) Extra Terms for DI Managed Services)	[This row is required if clause 3 or 8.1(e) of the Extra Terms for DI 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 DI Managed Services.		

7.	Service Levels (if any) (Ref: Clause 5.2 DI Consultancy and Professional Services and DI Managed Services Terms)	<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="427 421 1420 618"> <thead> <tr> <th data-bbox="427 421 810 465">Name of Service Level</th> <th data-bbox="810 421 1420 465">Details of Service Level</th> </tr> </thead> <tbody> <tr> <td data-bbox="427 465 810 517"></td> <td data-bbox="810 465 1420 517"></td> </tr> <tr> <td data-bbox="427 517 810 568"></td> <td data-bbox="810 517 1420 568"></td> </tr> <tr> <td data-bbox="427 568 810 618"></td> <td data-bbox="810 568 1420 618"></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										
8.	Service Level Credits (if any) (Ref: Clause 5.2 DI Consultancy and Professional Services and DI Managed Services Terms)	<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="427 1133 1420 1415"> <thead> <tr> <th data-bbox="427 1133 810 1178">Service Level</th> <th data-bbox="810 1133 1420 1178">Service Level Credits for Service Level Defaults</th> </tr> </thead> <tbody> <tr> <td data-bbox="427 1178 810 1258"></td> <td data-bbox="810 1178 1420 1258">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="427 1258 810 1339"></td> <td data-bbox="810 1258 1420 1339">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="427 1339 810 1415"></td> <td data-bbox="810 1339 1420 1415">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.										
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	An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.										
9.	Deliverables, Milestones, and Milestone Dates (if any)	<table border="1"> <thead> <tr> <th data-bbox="424 1845 1145 1890">Deliverable / Milestone</th> <th data-bbox="1145 1845 1449 1890">Milestone Date</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="424 1890 1145 1995"> [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you </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						
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											

	(Ref: Clause 5.3 DI Consultancy and Professional Services and DI Managed Services Terms)	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?]	
10.	Liquidated damages (Ref: Clause 5.3(c) DI Consultancy and Professional Services and DI Managed 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 DI Consultancy and Professional Services and DI Managed 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>	
11.	Purchasing Agency responsibilities (Ref: Clause 5.4 DI Consultancy and Professional Services and DI Managed 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.]	
12.	Acceptance of Deliverables (Ref: Clause 5.5 DI Consultancy and Professional Services and DI Managed Services Terms)	[A default approach to acceptance of Deliverables is specified in clause 5.5 of the DI Consultancy and Professional Services and DI Managed 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).]	
13.	Security clearances and probity checks (Ref: Clause 6.1(b) DI Consultancy and Professional Services and DI Managed 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]	
14.	Pre-approved Subcontractors (Ref: Clause 7.2 DI Consultancy and Professional Services and DI Managed 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 Digital Identity Services as described</p>	

	Services Terms)	below:	
		Full name of Subcontractor	Role(s) Subcontractor is authorised to perform
15.	Purchasing Agency policies (Ref: Clause 8.1(b) DI Consultancy and Professional Services and DI Managed 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.]	
16.	Fees (Ref: Clause 11.1 DI Consultancy and Professional Services and DI Managed 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>	
17.	Invoicing (Ref: Clause 11.2 DI Consultancy and Professional Services and DI Managed 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 Digital Identity 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 Digital Identity 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>		
18.		Deliverable / Milestone	Due date	Amount due (excl GST)
		<p>In addition to the matters set out in clause 11.2 of the DI Consultancy and Professional Services and DI Managed 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>		
19.	Expenses (Ref: Clause 11.6 DI Consultancy and Professional Services and DI Managed Services Terms)	<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 Digital Identity 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. • 		
20.	Administration Fee (Ref: Clause 11.1(a)(ii) DI Consultancy and Professional Services and DI Managed Services Terms and clause 10 Channel Terms. Do not delete this row.)	<p>The parties acknowledge that you may be required, under clause 11.1(a)(ii) of the DI Consultancy and Professional Services and DI Managed Services Terms and clause 10 of the Channel Terms for Digital Identity 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 Digital Identity Services provided under this SOW.</p>		
21.	Intellectual Property Rights (Ref: Clause 13 DI Consultancy and Professional Services and DI Managed Services Terms)	<p>[If the parties agree to change the default ownership and licensing provisions in clauses 13.2 and 13.5-13.6 of the DI Consultancy and Professional Services and DI Managed 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 DI Consultancy and Professional Services and DI Managed Services Terms, that should be specified here.]</p> <p>[If no such changes are required, this row can be deleted.]</p>		
22.	Purchasing Agency Data (Ref: Clause 14.2 DI Consultancy and Professional Services and DI Managed 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"> <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 services or other Third Party Service Providers</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 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						
23.	Service Delivery Assets (Ref: Clause 5 Extra Terms for DI 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 DI 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.]				
24.	Security (Ref: Clause 9 Extra Terms for DI Managed Services)	<p>[If specific security requirements relating to ICT Systems and other matters referred to in clause 9 of the Extra Terms for DI 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 DI Consultancy and Professional Services and DI Managed Services Terms, and no changes to those requirements are needed, this row can be deleted]</p> <p>[You will maintain a Risk Register in accordance with clause 9.2 of the Extra Terms for DI Managed Services.]</p> <p>[You will ensure that the ICT Systems specified below comply with the standards and controls specified below:</p> <table border="1"> <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> <p>]</p>	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					
25.	Liability (Ref: Clause 15 DI Consultancy and Professional Services and DI Managed Services Terms)	[If there are to be any agreed changes to the default liability provisions in clause 15 of the DI Consultancy and Professional Services and DI Managed 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.]				
26.	Insurance (Ref: Clause 17 DI Consultancy and Professional Services and DI Managed Services Terms)	[Under clause 17 of the DI Consultancy and Professional Services and DI Managed 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.]				
27.	Meetings (Ref: Clause 5.6(a) DI Consultancy and Professional Services and DI Managed 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>				

		Meeting details	Designated representatives of the Provider required to attend	Frequency/Date
28.	Reports (Ref: Clause 5.6(b) DI Consultancy and Professional Services and DI Managed 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:		
		Report details	Frequency/date	
29.	Resold Third Party Services and Third Party Service Provider Terms (Ref: Clause 13 Channel Terms)	[Under clause 13.2 of the Channel Terms, if any of the Digital Identity Services that your agency is procuring from the provider at the commencement date is a resold Third Party Service and the Third Party Service Provider's Terms are to apply to your agency's consumption of that service (instead of all the DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms that may apply), the table below should be completed. Note that Third Party Services can only be resold if the conditions in clause 13.1 of the Channel Terms are met.] The following resold Third Party Services and the Third Party Service Provider Terms to apply to the provision of the Digital Identity Services are:		
		Name of Third Party Service and Third Party Service Provider	Applicable Third Party Service Provider Terms, where they can be found, and scope of Services to which they apply	Entity with whom Purchasing Agency is contracting (Third Party Provider or Provider)
				Extent to which Third Party Service Provider Terms apply to exclusion of DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms
		[For example: XYZ Contact Centre Service provided by Acme Limited]	[Name terms and either attach them to Subscription Form or link to where they can be found. Also state scope of Digital Identity Services to which they apply, e.g., These terms only apply to XYZ Contact Centre Service. The DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms, any Extra Terms,	[Enter 'Third Party Provider' or 'Provider']
				[State extent to which Third Party Service Provider Terms apply to the exclusion of DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and any Extra Terms. For example: 'DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms and Extra Terms do not apply' or

			and any applicable Order or SOW, apply to Services provided by the Provider in connection with XYZ Contact Centre Service.]		'Except for the invoicing and payment terms, the DI C&P Services and DI Managed Services Terms, DI SaaS and Product Terms do not apply']
30.	Amendments to DI Consultancy and Professional Services and DI Managed 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]

1. 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 Digital Identity Services 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.

2. 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

Signature

Name

Position

Date

Signed by the [insert name of the
Provider] by

Signature

Name

Position

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)

Annexure C: Extra Terms (if any)

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

Annexure D: Digital Identity Software as a Service (SaaS) and Product Terms

Attached.



Digital Identity Software as a Service (SaaS) and Product Terms

Background

These are the DI SaaS and Product Terms referred to in clause 4 of the Channel Terms for Digital Identity Services. Together with any executed Order Form, they comprise the Subscription Agreement between the Provider of the Digital Identity Services named in the Subscription Form (**you, your**) and the Purchasing Agency named in the Subscription Form.

Contents

1. Introduction.....	96
2. Definitions.....	96
3. Order Term.....	97
4. Order Forms.....	97
5. Government Terms.....	97
6. Additional provisions relating to services changes.....	100
7. Obligation to keep us informed.....	100
Order Form Template.....	101

1. Introduction

- 1.1 These DI SaaS and Product Terms apply when an Eligible Agency decides to purchase DI SaaS Services or Products and a Subscription Agreement is executed.

2. Definitions

- 2.1 These Channel Terms incorporate all definitions included in the General Terms in Part 1 of the Marketplace Agreement. In addition to the terms defined in the Subscription Form, the following terms have the following meanings:

These terms have the particular meanings given to them.

Downloadable Software means software that can be downloaded or otherwise obtained in digital form and that is provided in connection with a DI SaaS Service or Product;

Order means a request for DI SaaS Services or Products;

Order Form means an ordering form on the Marketplace that Participating Agencies may need to complete to submit an Order;

Ordering Date means the date on which a Purchasing Agency submits an Order;

DI Software as a Service or Products (or DI SaaS Services or Products) means the digital identity software (including Downloadable Software) or products (including cloud licensing, access or other related

services) in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for this Channel; and

Subscription Agreement means an Agency Purchase Agreement formed in accordance with these Channel Terms.

3. Order Term

3.1 Each Order Form will:

- (a) commence on the Commencement Date specified in the Order Form; and
- (b) continue until your Order ends and is not renewed, unless terminated in accordance with its terms.

4. Order Forms

- 4.1 If an Eligible Agency decides to procure DI SaaS Services or Products, it will submit an Order Form to you in accordance with the Ordering Process for DI SaaS Services or Products (which is described on marketplace.govt.nz).

5. Government Terms

- 5.1 Despite any provision to the contrary in your Standard Terms, you agree in relation to every Subscription Agreement that:

- (a) **Indemnities:** no Purchasing Agency shall be under any obligation to indemnify or grant any guarantee to you or any other person or entity (and for this purpose “indemnify” includes any obligation in the nature of an indemnity);
- (b) **Entire agreement:** a Purchasing Agency’s Subscription Agreement constitutes the entire agreement between the Purchasing Agency and you;
- (c) **Control of claims:** any reference in your Standard Terms to your having any form of control over the defence or settlement of any third party claim against the Purchasing Agency (in relation to which you have an obligation such as an indemnity vis-a-vis the Purchasing Agency) is subject to any applicable directions provided to the Purchasing Agency pursuant to the New Zealand Government’s ["Cabinet Directions for the Conduct of Crown Legal Business 2016"](#) or their successor;
- (d) **Unilateral changes:** except as required by law, if you make a unilateral change to your Standard Terms from the Ordering Date that is prejudicial to a Purchasing Agency’s or its Users’ rights or interests, that change shall be unenforceable against the Purchasing Agency and its Users (this clause does not prevent you from amending your Standard Terms for all of your customers or adapting and evolving your Digital Identity Services as you see fit and it doesn’t require you to issue bespoke communications to Purchasing Agencies and their Users if you

These Government Terms modify the application of your Standard Terms.

The Cabinet Directions for the Conduct of Crown Legal Business apply to Ministers and government departments. Under the directions, the Attorney-General and Solicitor-General have specific roles and powers vis-à-vis departments in relation to litigation involving the Crown.

amend your Standard Terms for all of your customers; it only limits the enforceability of unilateral changes that are prejudicial to a Purchasing Agency's or its Users' rights or interests). This clause is intended to benefit Users and be enforceable by them under the Contract and Commercial Law Act 2017 and you agree not to assert in any communications or proceedings, whether in New Zealand or elsewhere, that Users are bound by such unilateral changes;

(e) **Governing law and jurisdiction:**

- (i) New Zealand law governs all matters relating to the Government Terms of each Subscription Agreement and the formation of each Subscription Agreement, including interpretation of the Government Terms and any disputes relating to them;
- (ii) you agree to submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute regarding the Government Terms of each Subscription Agreement or the formation of the Subscription Agreement and you agree that the New Zealand courts are an appropriate forum for such disputes and that you will not seek to argue to the contrary;
- (iii) you and any Purchasing Agency will be entitled to seek interim relief in any relevant jurisdiction; and
- (iv) except as stated in this clause 5.1, the governing law and jurisdiction clauses in your Standard Terms continue to apply.

(f) **Assignment**

- (i) 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; and
- (ii) 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.

5.2 You also agree that, despite any provisions to the contrary in your Standard Terms, the following clauses apply in relation to each Order Form:

- (a) 12 of the Subscription Form (Privacy);
- (b) 3.4 of the General Terms (no exclusivity or minimum purchasing requirement);
- (c) 3.11 of the General Terms (withdrawal, suspension or termination does not affect existing Agency Purchase Agreements);
- (d) 4.8 of the General Terms (removal of Services Listing does not affect existing Agency Purchase Agreements);
- (e) 10 of the General Terms (Warranties);
- (f) 13 of the General Terms (Pricing and Administration Fee) and clause 8 of these Channel Terms (Additional pricing terms);
- (g) 15 of the General Terms (Confidentiality);
- (h) 17 of the General Terms (Purchasing Agency Data);
- (i) 18 of the General Terms (Personal information);
- (j) 21 of the General Terms (Amendments); and
- (k) 24 of the General Terms (Defined terms and interpretation).

5.3 You must:

- (a) name your Standard Terms and your published privacy statements or policies and provide URL(s) to them in the applicable Marketplace Catalogue and upload them to that Marketplace Catalogue; and
- (b) update these names, URLs and uploads in that Marketplace Catalogue if you amend your Standard Terms or your published privacy statements or policies.

You need to add details of your Standard Terms and privacy policies to the Marketplace and keep them up to date.

5.4 You may only amend the terms of the Subscription Agreement for a particular Purchasing Agency:

- (a) if you and the particular Purchasing Agency agree to the amendments outside of the Marketplace Ordering Process (the Ordering Process for DI SaaS Services or Products is standardised and does not accommodate ad hoc amendments); and
- (b) the amendment is not a Prohibited Amendment (defined below).

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

This clause 5.4 does not limit clause 5.1(d) of these DI SaaS and Product Terms.

5.5 For the purposes of clause 5.4, amendments that seek to:

- (a) increase the Price for your DI SaaS Services or Products for a particular Purchasing Agency (unless you are doing so for all or the majority of your customers either worldwide or within a particular country pursuant to a right in your Standard Terms); or

- (b) make changes that are prejudicial to a Purchasing Agency's rights or interests or otherwise detract from the protections, safeguards or entitlements of the Government Terms,

are **Prohibited Amendments** unless you obtain DIA's prior written consent.

6. Additional provisions relating to service changes

6.1 When you are proposing to make changes to a DI SaaS Service or Product, you need to consider whether the changes will adversely affect:

- (a) the security or other controls;
- (b) your compliance with any standards (e.g., coding standards); and/or
- (c) the ongoing validity of any certifications you have for the DI SaaS Service or Product,

that you notified to DIA when applying for inclusion of the DI SaaS Service or Product in the Marketplace and obtaining the level of assurance for which the DI SaaS Service or Product is listed in the applicable Marketplace Catalogue. If there will be an adverse effect:

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

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

7. Obligation to keep us informed

7.1 You may meet your obligation in clause 9 of the General Terms in Part 1 of the Marketplace Agreement (Obligation to keep us informed) either directly or, if you customarily issue information of a kind referred to in that clause to customers in the form of service status updates on your website or other platform, through such updates.

You can meet your obligation to keep us informed through online service status updates.

Schedule: Order Form template

Introduction

This template should be used when a Purchasing Agency is procuring DI SaaS Services or Products from a Provider in the Digital Identity Services Channel.



Order Form for DI SaaS Services or Products

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)
Service Provider	[Insert full company name, company number and registered office (or name if not a company)] (the Service Provider, you, your)

Background

This Order Form (the “Order”) is for our procurement of DI SaaS Services or Products, as defined in the Channel Terms for Digital Identity Services (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 DI SaaS Services or Products via the Marketplace.

This form should be used only for DI SaaS Services or Products. However, if DI Consultancy and Professional Services or DI Managed Services are purchased using an Order Form, the DI Consultancy and Professional Services and DI Managed Services Terms apply, in accordance with clause 1.2 of the Subscription Form.

Agreement

1. Content and formation of this Order Form

You and we agree that, as outlined in clause 4 of the Channel Terms and clause 1 of the Subscription Form, the Subscription Agreement that applies between you and a Purchasing Agency for the Purchasing Agency’s consumption of your DI SaaS Services or Products includes:

- (i). your Standard Terms applying on the Ordering Date; but
- (ii). subject to and as modified by the terms specified in clause 5 of the DI SaaS and Product Terms (the **Government Terms**).

If there is any inconsistency between the Government Terms and your Standard Terms, the **Government Terms prevail**.

2. Subscription/Order Details

Order Subscription:	<i>[Details of tenancy]</i>
Order Subscription Features:	<i>[Specific features if any – Users etc]</i>

Order Subscription Fees:	<i>[Fixed fee of \$X excl. GST per annum]</i>
Order Subscription Period:	<i>[Duration of subscription]</i>
Commencement Date:	<i>[Date of Commencement of Services]</i>
End Date:	<i>[End date of Services]</i>

3. Cancellation

3.1 [Supplier to insert cancellation details]

4. Payment Terms

4.1 [Supplier to insert payment Terms]

Term

4.2 This Agreement will commence on the Commencement Date and will continue until your Order Subscription ends and is not renewed, unless earlier terminated in accordance with its terms.

4.3 **Suppliers to add Standard Terms and Conditions to this Order form.**

Execution

In signing this Order 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:

(signature)

Name:

Position:

Date:

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

(signature)

Name:

Position:

Date: