Marketplace

Collaborative Marketplace Agreement

Part 2 – Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (I/T/MS Channel Terms) (Standard)

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1. Introduction

1.1 These Channel Terms apply to the following Channels:

(a) the Infrastructure Services Channel (the **IS Channel**);

(b) the Telecommunications Services Channel (the **TS Channel**); and

(c) the Managed Security Services Channel (the **MSS Channel**).

These Channels are part of the New Zealand Government Marketplace as described in, and they are subject to, the terms of the Collaborative Marketplace Agreement (the **Marketplace Agreement**).

These are the standard Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services.

1.2 These Channel Terms apply in relation to your application for the listing of, and your provision of, Infrastructure Services, Telecommunications Services, and Managed Security Services:

(a) for which there is *no* Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure the Services via the Marketplace; and

(b) where we have required you to agree to these terms to list your Services in the Marketplace.

1.3 When we use the terms **you** and **your**, we are referring to any provider that applies to be a Member of, and list services in, the IS Channel, the TS Channel, or the MSS Channel.

1.4 If you apply for the listing of infrastructure, telecommunications, and/or managed security services in any of these Channels, you must also offer Professional Services associated with those services and therefore your application(s) in one or more of these Channels must include an application to list those Professional Services. Providers are not permitted to use these Channels to list only Professional Services associated with infrastructure, telecommunications, and/or managed security services offered by other providers.

1.5 Without limitation to clause 3 (Membership) of Part 1 (General Terms) of the Marketplace Agreement, to become or remain a member of the IS Channel, TS Channel, or MSS Channel, you must already have or obtain organisational endorsement or certification in accordance with paragraph 3 of Schedule 1 (Information Security).

2. Definitions

2.1 Except where the context indicates otherwise, these Channel Terms incorporate all definitions included in the General Terms in Part 1 of the Marketplace Agreement. In addition, for the purposes of these Channel Terms:

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

Administration Fee has the meaning in clause 13.2;

Authorised Third Party means any third party provider we authorise to enter into a Subscription Agreement in accordance with clause 7;

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

Calendar Quarter means any of January to March, April to June, July to September, or October to December (in each case inclusive);

Calendar Year means the period from 1 January to 31 December;

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;

Channel Terms Commencement Date means the date on which you first clicked to accept or otherwise agreed to these Channel Terms;

Cloud Service means a service delivered over the internet on demand in the nature of a platform as a service offering or a software as a service offering that comprises, or is part of, or is provided in connection with, an Infrastructure Service, Telecommunications Service, or Managed Security Service, including if relevant a support plan;

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;

Core I/T/MS Services Terms means the terms by that name set out in Annexure B;

Disengagement Services means services to assist a Purchasing Agency in transitioning Services from you to itself or an alternative service provider and/or a partial termination or a phased reduction or cessation of Services in accordance with the Purchasing Agency's Subscription Agreement;

Downloadable Software means software that can be downloaded or otherwise obtained in digital form and that is provided in connection with an Infrastructure Service, Telecommunications Service, or Managed Security Service;

Eligible Agency has the meaning in clause 24 of the General Terms but includes, for the purposes of the IS Channel, the TS Channel, and the MSS Channel, any Authorised Third Party;

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

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

Fees means the fees set out or cross-referred to in a Subscription Agreement for the provision of Services;

First Anniversary means the date that is 12 months after the Channel Terms Commencement Date;

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) epidemic or pandemic;

(b) earthquake, tsunami, volcanic eruption, flooding or other natural disaster;

(c) an act of public enemy, or declared or undeclared war or threat of war; or

(d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party),

but not including:

(e) any event or circumstance, or any failure to comply with any term of the Subscription Agreement arising from such event or circumstance, that:

    (i) is constituted or caused by the insolvency of either party or a Subcontractor or contractor of the party seeking to rely on an exculpatory provision or lack of funds for any reason; or

    (ii) could have been avoided by the Affected Party's exercise of reasonable business continuity or other reasonable business practices; or

    (iii) is constituted or caused by any failure of a Subcontractor or contractor of the party seeking to rely on an exculpatory provision unless and to the extent that the Subcontractor or contractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event;

(f) cyber incidents, hacking events, or other cybersecurity-related occurrences unless they could not have been prevented by commercially reasonable and industry-standard cybersecurity measures or protocols; or

(g) failure or non-performance of the Services arising from the unavailability or malfunction of geographically separate or redundant infrastructure to which services at an adversely affected primary location should fail over, unless the unavailability or malfunction is itself caused by a Force Majeure Event;

General Company Overheads means corporate premises, general IT systems, administrative staff, financing, and other indirect costs that are not specific to a particular Service;

General Terms means the terms in Part 1 of the Collaborative Marketplace Agreement;

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

Infrastructure Services means the service establishment services, transition services, data centre services, utility compute services, storage services, backup/restore services, professional services, and/or any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Infrastructure Services Channel;

Initial Term means the initial term set out in a Subscription Form;

Local Fibre Company means any person or organisation:

(a) that owns, controls, or operates a fixed access fibre network in New Zealand used to provide fibre-based telecommunications or data connectivity services; and

(b) that provides access to that network on a wholesale or access basis to telecommunications service providers; and

(c) whose network you unavoidably rely upon as part of the fibre access component of your own telecommunications or data connectivity Services, in order to deliver those Services to or at one or more particular Sites,

whether or not that person or organisation is subject to regulation under the Telecommunications Act 2001 in respect of fibre access services;

Managed Security Services means the secure gateway services, secure application delivery services, device security services, identity and authentication management services, certificate

management and cryptography services, secure cloud access services, secure filtering services, security operations and monitoring services, professional services, and/or any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Managed Security Services Channel;

Material Breach has the meaning in Part 1 (General Terms);

Material Foreign Exchange Fluctuation means a fluctuation in the exchange rate between the New Zealand dollar and the currency in which a Third Party Input is charged that has been sustained over at least a six-month period and remains at or near that level when you make your price adjustment;

Materiality Threshold has the meaning in clause 12.7(b)(i);

Minimum Initial Term means a term that you and a Purchasing Agency have agreed in a Subscription Form is a term during which the Purchasing Agency will procure Services and which may be part or all of the Initial Term;

Non-Member means any entity that is not a Member of one or more of the Channels to which these Channel Terms apply;

Order, except when used in the General Terms' definition of Ordering Process (in which case the definition in clause 24 of Part 1 applies), means an order for specified Services, described in a Subscription Form (or attachment to it) or in documentation that forms part of your Provider Standard Terms (when the parties to a Subscription Agreement agree they apply) or in some other documentation upon which you and a Purchasing Agency agree but, to avoid doubt, does not include the contractual rights and obligations contained in such Provider Standard Terms;

Parent Company means a company or other legal entity that is able, directly or indirectly, to Control you;

Participating Agency has the meaning in clause 24.1 of Part 1 (General Terms);

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

Price means a price you charge for particular Infrastructure Services, Telecommunications Services, or Managed Security Services;

Professional Services means one or more of design services, transition services, development services, implementation services, and other services you provide in association with or relating to your primary Services in the IS Channel, TS Channel, and/or MSS Channel;

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

Provider Standard Terms means your own terms relating to access to and use of your own Cloud Services or to the licensing of your own Downloadable Software that, if agreed to apply, are:

(a) referred to in the 'Provider Standard Terms' section of Schedule 1 to the Subscription Form and/or in an Order or Statement of Work, as applicable; and

(b) incorporated with a Purchasing Agency's consent into a Subscription Agreement (subject to its precedence provisions unless otherwise agreed);

PSC means the Public Service Commission;

Purchasing Agency has the meaning in clause 24.1 of Part 1 (General Terms) and, for the purposes of the IS Channel, TS Channel, and MSS Channel, includes any Authorised Third Party that enters into a Subscription Agreement;

Purchasing Agency Data means all data, information, records, lists and configurations (including compilations of the foregoing) that a Purchasing Agency, any Purchasing Agency Personnel, Users, or you on behalf of a Purchasing Agency, input into the Services or that arise from their use of the Services and, to avoid doubt:

(a) includes (subject to (b)(ii)) data you or your systems generate solely in connection with your performance of Services under a Subscription Agreement; but

(b) does not include:

    (i) aggregated and fully de-identified statistics that you or your Services generate relating to customers' use of your Services; and

    (ii) administrative data created or collected by you in your systems for the purposes of managing a Subscription Agreement, and legal, financial, contract administration, planning, and purchasing information (other than any information copied from a Purchasing Agency Environment)

(and, to avoid doubt, this definition applies to these Channel Terms instead of the definition in Part 1 of the Marketplace Agreement);

Purchasing Agency Environment means a Purchasing Agency's:

(a) business, organisational, technical and commercial processes and procedures; and

(b) information technology and telecommunications infrastructure and environment,

as they exist from time to time, which interface with the Services or the Provider Infrastructure;

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

Service Level Credits means the credits that are payable by you to a Purchasing Agency upon the occurrence of a Service Level Default, as specified in a Services Listing, the Subscription Form, an Order or Statement of Work (if any), applicable Provider Standard Terms (if any), or any Extra Terms that may apply;

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

Service Levels means:

(a) any Base Service Levels PSC prescribes and/or, to the extent you offer them and include them in a Subscription Agreement, any Superior Service Levels (see clause 8.2);

(b) the Incident Management Service Levels specified in paragraph 9 of Schedule 2 (Governance Requirements); and

(c) any other service levels specified in your Services Listings, the Subscription Form, or an Order or Statement of Work, including in applicable Provider Standard Terms (if any);

Services means:

(a) Infrastructure Services, Telecommunications Services, and/or Managed Security Services, as applicable;

(b) Transition Services;

(c) Disengagement Services; and

(d) any Third Party Service resold by a provider under a Services Listing,

and, for the purposes of clause 20.1(i), includes services of the kinds listed in (a) and (d) above notwithstanding that the Services Listings for those services may have been suspended or withdrawn;

Services Rates means the rates charged for Services, when you charge on a time and materials and/or other unit-based basis;

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

Statement of Work means a statement of work for Services, based on a template in the Schedule to the Core I/T/MS Services Terms or otherwise available on marketplace.govt.nz, or as otherwise agreed between you and a Purchasing Agency;

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

your Services under one or more Subscription Agreements, but does not include:

(a) 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 have any access to PSC's Confidential Information or Purchasing Agency Data); or

(b) in relation to any Third Party Service resold in accordance with clause 5 where Third Party Service Provider Terms apply to the Purchasing Agency's consumption of the Third Party Service, the relevant Third Party Service Provider; or

(c) Local Fibre Companies;

Subscription Agreement has the meaning in clause 4.1 below;

Subscription Form means the form that a Participating Agency and you complete to create a Subscription Agreement, using the template set out in Annexure A;

Sunk Costs means costs specified in an Order or Statement of Work that are:

(a) upfront costs you have incurred directly and reasonably in performing the terminated Services, the recovery of which has been deferred or spread over the Minimum Initial Term; and/or

(b) non-cancellable third-party costs you have incurred directly and reasonably in performing the terminated Services,

to the extent not previously recovered as part of the Fees paid or payable by the Purchasing Agency, but excluding any amounts or costs that could have been reduced or avoided by taking reasonable mitigation steps;

Telecommunications Services means the service establishment services, transition services, telecommunications services, technology services, professional services, and/or any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Telecommunications Services Channel;

Third Party Component means any product, service, network element, software, infrastructure, or other input you use in providing your own Services, where the Purchasing Agency does not receive the component as a standalone service and does not contract for it directly as a separate Third Party Service;

Third Party Cost means the price you pay a third party for a Third Party Input (including, to avoid doubt, the NZD equivalent you pay for a Third Party Input charged to you in a foreign currency);

Third Party Input means a third party-provided input into a Service, such as, but not limited to, software licensing, cloud service access, third party hosting, or fibre links, including inputs provided by Subcontractors and Third Party Service Providers but excluding your General Company Overheads;

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;

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

Transition Services means the transition services described as such in a Statement of Work (Transition Services) under a Purchasing Agency's Subscription Agreement.

Further terms used in the Core I/T/MS Services Terms in Annexure B are defined in those Core I/T/MS Services Terms.

3. Ordering Services

3.1 If a Participating Agency wishes to purchase Services, it will select the relevant Service(s) and provider(s) and, where and to the extent relevant:

(a) request from relevant provider(s) any additional information it may require;

(b) have any discussions with provider(s) it may require; and

(c) submit a Subscription Form to the relevant provider(s) or request a Subscription Form from the relevant provider(s).

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

3.2 PSC, in its lead role, or a Participating Agency (in either case, the **Cluster Lead**) may form a cluster of agencies (the **Cluster**) to procure Services from one or more providers. The Cluster Lead may undertake some or all of the activities referred to in clause 3.1 on behalf of the Cluster and may negotiate with providers on behalf of the Cluster provided that, unless otherwise agreed with the relevant provider(s), each member of the Cluster would have its own Subscription Agreement with the relevant provider(s).

PSC or a Participating Agency may procure Services on behalf of a cluster of agencies.

3.3 PSC, in its lead role, or a Participating Agency that PSC nominates (in either case the **Government Solution Lead**) may seek to:

(a) procure Services from one or more providers pursuant to a Subscription Agreement between the Government Solution Lead and each provider under which the Services may be consumed by the Government Solution Lead and/or other group(s) of Eligible Agencies; and

PSC or a nominated Participating Agency may procure Services in the role of Government Solution Lead. Additional terms may need to be negotiated in the Subscription Agreement to accommodate such an arrangement, including provisions relating to risk allocation and liability.

(b) negotiate additional provisions in its Subscription Agreement to facilitate that approach (pursuant to which, for example, the Eligible Agencies might consume Services under arrangements between the Government Solution Lead and those Eligible Agencies, with the Government Solution Lead ordering them from the provider(s), or under orders that the Eligible Agencies put in place with the provider(s)).

4. Agreements with Purchasing Agencies for Services

4.1 Components of Subscription Agreement

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

Subject to clause 6 below, the contract that applies between you and a Purchasing Agency for the Purchasing Agency's consumption of Services shall be an agreement (the **Subscription Agreement**) that comprises:

(a) the Subscription Form, including any Order attached to it;

(b) the Core I/T/MS Services Terms;

(c) any applicable Extra Terms;

(d) in relation to Cloud Services or Downloadable Software only, and also subject to clause 4.4, Provider Standard Terms if and to the extent that the application of such Provider Standard Terms is agreed to by the Purchasing Agency in Schedule 1 to the Subscription Form or in a separate Order or Statement of Work. Unless you and a Purchasing Agency agree otherwise in accordance with clause 4.5, any applicable Provider Standard Terms will apply subject to and as modified by:

Provider Standard Terms can only relate to access to and use of your Cloud Services or the licensing of your Downloadable Software. See the definition of 'Provider Standard Terms'.

(i) the Core I/T/MS Services Terms; and

(ii) any Extra Terms that apply (if any); and

(e) once executed by both parties, each subsequent Order and Statement of Work (if any).

The Subscription Agreement is a type of Agency Purchase Agreement. To avoid doubt, a Purchasing Agency may enter into more than one Subscription Agreement with a single provider, if the provider agrees to enter into multiple Subscription Agreements instead of amending an existing Subscription Agreement for the additional Services the Purchasing Agency requires.

4.2 Subscription Agreements' Initial Term and Permitted Renewals

(a) You and a Purchasing Agency may agree an initial term in the Purchasing Agency's Subscription Form of up to 5 years.

(b) By default, Purchasing Agencies have two rights of renewal, each for a period of up to 3 years. However, you and a Purchasing Agency may agree in a Subscription Form to different renewal provisions, provided that no single renewal period exceeds 3 years and the total of all renewal periods does not exceed 6 years.

(c) You will use reasonable endeavours to give Purchasing Agencies 12 months' written notice of the expiry of the then current term of their Subscription Agreements.

Subscription Agreements can have an initial term of up to 5 years. Purchasing Agencies have two rights of renewal of up to 3 years each but the parties can agree to a different renewal structure as long as a couple of conditions are met.

4.3 Provider Standard Terms must be specified in Services Listings

If you wish to seek a Purchasing Agency's agreement that Provider Standard Terms are to apply to particular Cloud Services or Downloadable Software, those terms must be named and either reproduced in, or linked to from, your Services Listing(s), and a full electronic copy of the terms must be given to the Purchasing Agency promptly upon your becoming aware that the Purchasing Agency is proposing to procure the Cloud Services or Downloadable Software.

Any Provider Standard Terms that you want to apply to particular Cloud Services or Downloadable Software must be in your Services Listings.

4.4 Provider Standard Terms (if any) deemed amended

Without limitation to clause 4.5, if any Provider Standard Terms are agreed to apply in relation to particular Cloud Services or Downloadable Software, those terms are deemed to be amended by the Subscription Agreement, as set out in clause 1.2 of the Subscription Form. No other standard conditions of sale, invoices, standard terms of use, standard form licences or similar apply to such Cloud Services or Downloadable Software or any other Services the Purchasing Agency procures.

Even if a Purchasing Agency agrees that your Provider Standard Terms can apply to a particular Cloud Service or some Downloadable Software, those terms are deemed amended by a small number of government term overrides. That's the case even when Provider Standard Terms are agreed to apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms.

4.5 Any non-application of Core I/T/MS Services Terms and Extra Terms must be agreed

If any applicable Provider Standard Terms are to regulate your and a Purchasing Agency's rights and obligations in relation to the Cloud Services and/or Downloadable Software to which they apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (whether wholly or in part), that must be agreed and specified in the Subscription Form or applicable Order or Statement of Work, otherwise those core and extra terms and the order of precedence set out in the Subscription Form will apply.

There will be no complete override of the Core I/T/MS Services Terms and any Extra Terms unless expressly agreed.

4.6 Professional Services

(a) If you are providing Professional Services to a Purchasing Agency in association with your Infrastructure Services, Telecommunications Services, and/or Managed Security Services that a Purchasing Agency is procuring, 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.

If you're providing professional services on top of your technical services, you need to provide them under this Subscription Agreement.

(b) If a Purchasing Agency requires Professional Services relating to but prior to deciding to procure your Infrastructure Services, Telecommunications Services, and/or Managed Security Services, you may provide them under the Subscription Agreement referred to in clause 4.1 or under a Subscription Agreement formed via another Marketplace Channel in which you have a relevant Services Listing.

If you're providing professional services relating to your technology services before an agency has decided to procure them, you can provide those professional services under a Subscription Agreement in any relevant Marketplace Channel.

4.7 Formation

The Subscription Agreement is formed when you and the Purchasing Agency fill out and sign (physically or electronically) a Subscription Form.

Signing the Subscription Form creates the Subscription Agreement.

4.8 Engagement notices

You agree to submit to us an engagement notice within 15 Business Days of:

(a) entering into a Subscription Agreement with a Purchasing Agency; and

(b) entering into an additional Order or a Statement of Work with a Purchasing Agency,

in accordance with instructions we publish from time to time on marketplace.govt.nz which may include a requirement to submit them through an online means we specify.

You need to submit engagement notices to us to help us administer these Channels.

4.9 Third party benefit

This clause 4 is intended to confer a benefit on and to be enforceable by all Purchasing Agencies that submit a Subscription Form to you for Services.

5. Resale of Third Party Services

5.1 Application

(a) This clause 5 applies where you resell or propose to resell a Third Party Service to Purchasing Agencies, either as:

(i) a discrete Service offering (such as a complete Service in a Services Listing); or

This clause applies to Third Party Services you resell as discrete Service offerings or identifiable Third Party Services forming part of an overall Service offering.

(ii) an identifiable Third Party Service forming part of an overall Service offering where the Purchasing Agency is granted a direct contractual entitlement by the Third Party Service Provider, or any other practical or technical ability, to access or use that Third Party Service as a service in its own right.

(b) To avoid doubt:

(i) for the purposes of this clause 5, to **resell** a Third Party Service includes promoting and making it available via a Services Listing, even if Purchasing Agencies pay the Third Party Service Provider directly; but

(ii) your use of Third Party Components solely as inputs to your own Services does not constitute resale of a Third Party Service, and clause 5 does not apply to such use.

5.2 Conditions for resale of Third Party Services

(a) You may only resell a Third Party Service (such as a Cloud Service or the provision of Downloadable Software) via a Services Listing in the Marketplace if:

(i) you have a contract with the Third Party Service Provider that entitles you to:

(A) resell the Third Party Service to Eligible Agencies in accordance with this clause 5; and

(B) unless the Third Party Service Provider will be invoicing Purchasing Agencies directly, collect payments from Purchasing Agencies for the Third Party Service received from the Third Party Service Provider; and

(ii) the Third Party Service Provider is not one of your Related Companies (you can subcontract to Related Companies if PSC approves the Subcontractor, but not resell a Related Company's Third Party Services).

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 PSC approves the Subcontractor).

(b) You must notify PSC 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 5;

(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

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

(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 5.2(b) occurs and the event:

(i) results in the conditions in clause 5.2(a) not being met; or

(ii) raises significant security, performance, or reputational concerns for us or one or more Purchasing Agencies,

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

5.3 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 be 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 Core I/T/MS Services 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 Core I/T/MS Services Terms and any Extra 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 Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (whether wholly or in part).

5.4 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 you are reselling on the basis that the Purchasing Agency contracts directly with the Third Party Service Provider, either:

(a) the mechanism or a prior entry point or online notice page (or a combination of these things); or

(b) your relevant Services Listing(s); or

(c) some other document or notification you have provided to the Purchasing Agency,

must:

(d) describe the establishment of the direct contract; and

(e) notify 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) PSC's Collaborative Marketplace Agreement does not permit the Purchasing Agency to procure any Out of Scope Service under its Marketplace Subscription

If you provide agencies with a mechanism to select and de-select Third Party Services, the mechanism or a prior entry point or your Services Listings or some other notification needs to explain 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.

Agreement and PSC does not provide any assurance in relation to the Out of Scope Service; and

(ii) 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.

To avoid doubt, if, despite the notifications in clause 5.4(e), a Purchasing Agency does procure an Out of Scope Service, you are not required to collect any Administration Fee in relation to the Out of Scope Service.

5.5 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:

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

(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 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.

6. Amending and supplementing the Core I/T/MS Services Terms, any applicable Extra Terms, and Provider Standard Terms

6.1 To avoid doubt, subject to clause 6.2, you and a Purchasing Agency may agree to amend or supplement any forms, terms or templates referred to in clause 4.1 above, in either the Subscription Form, an Order, a Statement of Work, or otherwise in writing.

You and a Purchasing Agency may agree to amend the default terms of a Subscription Agreement, subject to certain constraints.

6.2 When:

(a) negotiating and entering into a Subscription Agreement, Order, or Statement of Work with a Purchasing Agency; or

(b) varying a Subscription Agreement (including its Subscription Form and any Order or Statement of Work),

you are not permitted to amend or delete the following default provisions of the prescribed form of Subscription Agreement without PSC's prior written approval (which PSC may grant or withhold at its absolute discretion):

You're not permitted to amend or delete the terms listed here.

(c) clause 1 (Content and formation of Subscription Agreement) of the Subscription Form;

(d) the 'Administration Fee' paragraphs in Schedule 1 to the Subscription Form;

(e) the 'Price decreases and increases' paragraphs in Schedule 1 to the Subscription Form;

(f) clauses 1.1-1.3 (Term) of the Core I/T/MS Services Terms;

(g) clause 2 (Application of terms in Part 1 (General Terms) and Part 2 (Channel Terms)) of the Core I/T/MS Services Terms, and all individual clauses listed in that clause 2 that are incorporated by reference into each Subscription Agreement;

(h) clause 3 (Orders and Statements of Work) of the Core I/T/MS Services Terms;

(i) clause 5 (Services) of the Core I/T/MS Services Terms;

(j) clause 6 (Cooperation with other providers) of the Core I/T/MS Services Terms;

(k) clause 8 (Personnel) of the Core I/T/MS Services Terms;

(l) clause 9 (Subcontracting) of the Core I/T/MS Services Terms;

(m) clause 10 (Service Delivery Assets) of the Core I/T/MS Services Terms;

(n) clause 13 (Change Procedure) of the Core I/T/MS Services Terms;

(o) clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms;

(p) clause 17 (Confidentiality, security, and privacy) of the Core I/T/MS Services Terms;

(q) clauses 20.1-20.4 (Liability) of the Core I/T/MS Services Terms, except that you and a Purchasing Agency may negotiate increases in the liability caps in clauses 20.1, 20.2(b), and 20.3(b), (c) and (d);

(r) clauses 16.8 (Intellectual Property Rights indemnity) and 21 (General indemnities) of the Core I/T/MS Services Terms;

(s) clause 24.3 of the Core I/T/MS Services Terms (right to terminate following direction from Public Service Commissioner); and

(t) the ‘Administration Fee’ rows in the Statement of Work templates in the Schedule to the Core I/T/MS Services Terms.

6.3 To avoid doubt, if any clause listed in clause 6.2 states that the parties may agree a different position in the Subscription Form, an Order, a Statement of Work, or otherwise, then this clause 6 does not prevent the parties from doing that.

7. Agents and Authorised Third Parties

7.1 Agents

A Purchasing Agency other than an Authorised Third Party may, by notice to you, appoint one or more third parties (including any other Member of the Marketplace) to procure or manage the performance of Services on its behalf, as if that third party was the Purchasing Agency, provided the Purchasing Agency complies with the conditions on such appointment set out in the Subscription Agreement.

A Purchasing Agency can appoint an agent to procure or manage performance of the Services on its behalf as long as it complies with conditions on appointment in the Subscription Agreement.

7.2 Authorised Third Parties

(a) Subject to clause 7.2(b), we may authorise a third party provider (**Authorised Third Party**) to enter into a Subscription Agreement with you to procure Services for public sector purposes:

(i) for the benefit of any Eligible Agency or Eligible Agencies; or

(ii) to enable the Authorised Third Party to access Services for the sole purpose of providing infrastructure, telecommunications, managed security, or other technology services to Eligible Agencies or to other Authorised Third Parties under a syndicated, all-of-government, common capability ICT or similar collaborative contract,

(the **Permitted Purposes**).

We can allow a third party provider to enter into a Subscription Agreement with you for public sector purposes, but only after consulting you.

(b) We will only grant such authorisation if we have consulted you on the third party provider's proposed use of the Services, and the authorisation may be subject to such conditions on the third party provider as we may stipulate.

(c) We will not disclose your Confidential Information (including your Services Listings) to a third party provider before consulting you in accordance with clause 7.2(b).

(d) If, in our sole discretion, we do grant such authorisation, the third party provider becomes an Authorised Third Party and may enter into a Subscription Agreement with you to procure Services for the Permitted Purposes. To avoid doubt, you are not required to enter into a Subscription Agreement with an Authorised Third Party.

(e) If we grant authorisation and the Authorised Third Party is a competitor of yours, we will only disclose your Services Listings (or parts of Services Listings) to the Authorised Third Party with your written consent. In all cases, if we disclose your Services Listings (or parts of Services Listings) to an Authorised Third Party, we will inform the Authorised Third Party that those Services Listings (or parts of Services Listings) are your Confidential Information, must be stored securely, and must not be used or disclosed for any purpose unrelated to the Subscription Agreement without your written consent unless required by law.

(f) An Authorised Third Party that enters into a Subscription Agreement in accordance with clause 7.2(a) must pass through the cost of the Services, without any mark-up, to its Eligible Agency or Authorised Third Party customers of its services that incorporate the Services, unless we consent otherwise in writing.

8. Service Levels

8.1 Monitoring and management tools and procedures

You will implement measurement, monitoring and management tools and procedures that are sufficient to enable you to:

(a) measure and report on the Service Levels; and

(b) detect and either prevent or minimise any reasonably foreseeable failure to meet the Service Levels.

You need to have Service Level monitoring and management tools and procedures in place, we can require you to offer Base Service Levels and other Service Level-related options to agencies, and you need to be clear about these matters in your Services Listings.

8.2 Base Service Levels, Superior Service Levels, and other Service Levels

(a) Subject to clause 8.9, if these Channel Terms or a Services Listing template or other onboarding documentation require you to offer specified Base Service Levels for services you wish to list, your Services Listings must (unless PSC otherwise agrees) specify:

(i) those Base Service Levels; and/or

(ii) Superior Service Levels,

in either case following any service level format PSC may prescribe. Where this clause 8.2(a) applies, you may include in your descriptions of the prescribed Base Service Levels (and any Superior Service Levels if you offer them) industry-standard exclusions from service level calculations, such as scheduled maintenance, Force Majeure Events as defined in these Channel Terms and the Core I/T/MS Services Terms (not your own definition), Purchasing Agency default events, and/or upstream Third Party Service Provider failures outside your direct control (but not including failures by Subcontractors or, in relation to relevant Services, by Local

If we require you to offer Base Service Levels, you are free to offer Superior Service Levels.

You can include industry-standard exclusions from service level calculations.

Fibre Companies), as applicable. If we consider, acting reasonably, that any such exclusions you include are not industry-standard or are otherwise unreasonable, we may ask you to amend or remove them and may refuse to publish your Services Listing until you do so.

(b) For the purposes of this clause 8.2:

(i) **Base Service Level** means a service level with prescribed description and performance metrics; and

(ii) **Superior Service Level** means a service level with performance metrics that are superior to those of the corresponding Base Service Level.

(c) You and a Purchasing Agency may:

(i) agree upon improvements to any Base Service Levels or Superior Service Levels;

(ii) if you only offer Superior Service Levels instead of Base Service Levels, agree upon Base Service Levels in exchange for reduced pricing or other consideration;

(iii) agree that one or more Base Service Levels do not apply to particular Services; and/or

(iv) agree to performance metrics that are lower than those PSC has specified for the Base Service Levels.

You and a Purchasing Agency can agree to vary or disapply Base Service Levels.

(d) You may in your Services Listings offer Service Levels in addition to any Base Service Levels (or Superior Service Levels) and, regardless of whether you do, a Purchasing Agency may seek to negotiate additional Service Levels in its Subscription Agreement (in each case, **Additional Service Levels**).

You may offer additional service levels and agencies may seek to negotiate additional service levels.

8.3 SLC Service Levels

(a) In this clause 8, **SLC Service Level** means a Service Level that Purchasing Agencies may elect to treat as a Service Level to which Service Level Credits are payable on Service Level Default.

(b) Subject to clause 8.9, if these Channel Terms, or a Services Listing template, or other onboarding documentation requires you to describe Base Service Levels (or, if offered, Superior Service Levels) as SLC Service Levels, your Services Listings must describe those Base Service Levels (or Superior Service Levels) as SLC Service Levels, in accordance with any reasonable format PSC may prescribe.

(c) If there is no requirement for Base Service Levels (or, if offered, Superior Service Levels) to be described as SLC Service Levels, you may in your Services Listings offer to treat

Sometimes we'll require you to describe Base Service Levels (or Superior Service Levels) as SLC Service Levels. If we don't, you can do that of your own accord or you and an agency can agree to do so.

those Base Service Levels (or Superior Service Levels) as SLC Service Levels or you and a Purchasing Agency may otherwise agree to treat them as SLC Service Levels.

(d) If in your Services Listings you offer Additional Service Levels or if you and a Purchasing Agency otherwise agree on Additional Service Levels, you may elect to describe those Additional Service Levels as SLC Service Levels or you and the Purchasing Agency may otherwise agree in a Subscription Agreement to treat them as SLC Service Levels.

8.4 Selected SLC Service Levels and applicable Service Level Credits to be specified in Subscription Agreement

If any applicable Service Levels are SLC Service Levels, and a Purchasing Agency elects to treat those Service Levels as Service Levels to which Service Level Credits are payable on Service Level Default (**Selected SLC Service Levels**), that election and the applicable Service Level Credits payable on default of the Selected SLC Service Levels or the means of calculating them must be described in the Purchasing Agency's Subscription Agreement.

Selected SLC Service Levels and the applicable Service Level Credits need to be described in the agency's Subscription Agreement.

8.5 SLC Pool per Channel

(a) For each applicable Channel, the aggregate amount of Service Level Credits payable for each month is limited to an amount that equals 20% of the Fees payable by the Purchasing Agency for that month in relation to all Services purchased by the Purchasing Agency in the applicable Channel that month (or such higher percentage as you may agree with a Purchasing Agency), excluding any fees for resold Third Party Services, transition services, and professional services, provided pursuant to the Subscription Agreement (the **SLC Pool**).

(b) The SLC Pool for each Channel from which Services are being procured must be specified in the Subscription Form or applicable Order or Statement of Work.

There is an SLC Pool per Channel of 20% of the Fees payable by the agency for the month (with some exclusions). You and an agency can agree to a higher SLC Pool percentage, but not a lower percentage. The SLC Pool per Channel needs to be specified in the Subscription Form or applicable Order or SOW.

8.6 Applicable Service Level Credits

The applicable Service Level Credits or the means of calculating them referred to in clause 8.4 will be either:

(a) if the Purchasing Agency is entitled to select SLC Weights in accordance with clause 8.7(a), the amount calculated in accordance with clause 8.7(b) based on the SLC Weights assigned in accordance with clause 8.7(a)(iv); or

(b) if the Purchasing Agency is not entitled to select SLC Weights and the parties do not otherwise agree to such entitlement, the amount agreed in the Subscription Agreement.

Service Level Credits will be based on allocations of SLC Weights or, where there's no entitlement to select SLC Weights, some other amount or calculation.

8.7 SLC Weights

(a) If:

(i) these Channel Terms, or a Services Listings template, or other onboarding documentation require you to allow Purchasing Agencies to apportion percentage weightings (**SLC Weights**) to Selected SLC Service Levels for the purpose of determining the relevant extent to which Service Level Credits are payable in the event of Service Level Default; or

(ii) you offer this method in your Services Listings or otherwise agree upon this method with a Purchasing Agency,

then:

(iii) you must allow each Purchasing Agency to select SLC Weights in their Subscription Form or applicable Order or Statement of Work in accordance with any reasonable format we may prescribe, provided that the sum of the SLC Weights must total 100% per Channel; and

(iv) the Purchasing Agency will assign an SLC Weight of no less than 0% and no greater than 25% to each Selected SLC Service Level, except that:

(A) where there are less than four Selected SLC Service Levels, the maximum percentage weighting per Selected SLC Service Level shall be 100 divided by the number of Selected Service Levels;

(B) SLC Weights of up to 50% may be assigned to any Selected SLC Service Level relating to compliance with security requirements; and

(C) you and a Purchasing Agency may agree that SLC Weights of more than 25% may be assigned to non-security-related SLC Service Levels,

and each SLC Weight will be expressed as a percentage of the total SLC Pool for the relevant Channel.

(b) For each Service Level Default of a Service Level to which an SLC Weight has been apportioned, the amount of the Service Level Credit will be calculated by multiplying the SLC Weight for the applicable Service Level by the dollar value of the SLC Pool for the Channel.

Where SLC Weights are used, agencies select the SLC Weights in their Subscription Form or applicable Order or SOW. SLC Weights must total 100% per Channel.

SLC Weights can be between 0-25%, or up to 50% for security-related SLC Service Levels. You and an agency can agree to higher percentage caps than these, but the selected SLC Weights still need to total 100% per Channel.

A Service Level Credit is calculated by multiplying the SLC Weight for the Service Level that has not been met by the dollar value of the SLC Pool for the Channel.

(c) Where the weighting method under this clause 8.7 applies, the Purchasing Agency may:

(i) by 20 Business Days' notice to you, adjust any of the SLC Weights (subject to clauses 8.7(a)(iii) and (iv) above), provided that the Purchasing Agency may only do this once per Calendar Quarter or upon or following the Purchasing Agency removing or adding Services to which SLC Service Levels apply; and

(ii) you will, as part of your monthly reporting described in paragraph 7 of Schedule 2 (Governance Requirements):

(A) provide PSC with the Purchasing Agency's original allocation of SLC Weights; and

(B) if the Purchasing Agency changes its SLC Weights, provide PSC with the updated SLC Weights,

in the form and by the means PSC may prescribe for that reporting.

Where the SLC Weight method applies, agencies can adjust their SLC Weights once a quarter and you need to tell us about their original and changed SLC Weights.

(d) You acknowledge that, where applicable, SLC Weights are approximations of relative importance and impact upon the Purchasing Agency's business and operations if a Selected SLC Service Level is not met, and do not limit the Purchasing Agency's right to contend that one or more failures to meet one or more of the Service Levels may constitute a material breach.

8.8 Base Service Levels prescribed by Channel Terms

(a) These Channel Terms prescribe one set of Base Service Levels: the Incident Management Service Levels for Priority 1 and Priority 2 incidents set out in paragraph 9 of Schedule 2 (Governance Requirements).

These Channel Terms prescribe a set of Incident Management Service Levels.

(b) The Incident Management Service Levels:

(i) are, as between providers and Purchasing Agencies, SLC Service Levels to which (if a Purchasing Agency elects to treat them as Service Levels to which Service Level Credits are payable on Service Level Default) SLC Weights can be applied; and

(ii) apply in addition to:

(A) any other Base Service Levels (which, if prescribed, will be set out in Services Listing templates or other onboarding documentation) or (if and to the extent offered) Superior Service Levels; and

These Base Service Levels are, as between you and agencies, SLC Service Levels.

(B) any other applicable Service Levels (for example, that you offer in your Services Listings or negotiate with Purchasing Agencies).

8.9 Service Levels, Service Level Credits, and resold Third Party Services

(a) If a Service provided to the Purchasing Agency is a resold Third Party Service and you are not assuming responsibility for the Third Party Service itself (see clause 5.3), the service levels that apply to the Purchasing Agency's consumption of that Third Party Service and Services associated with that Third Party Service will be:

(i) the service levels that the Third Party Service Provider is required to comply with or aim to meet under the contract between the Third Party Service Provider and you or the Purchasing Agency rather than any Base Service Levels that would otherwise apply (the Third Party Service Provider is responsible (if at all) to the Purchasing Agency in the event of Service Level Default unless you have agreed otherwise with the Purchasing Agency); and

(ii) any additional Service Levels relating to the Third Party Service and/or to the Services that you provide in connection with the Third Party Service for which you accept responsibility or that you are required to offer and that form part of the Subscription Agreement with the Purchasing Agency.

Where a Third Party Service is being resold, usually the applicable Service Levels in relation to that service will be determined by the Third Party Service Provider's terms. You may offer or be required to offer additional service levels in relation to the services you provide on top.

(b) Without limitation to clause 8.9(c), no service level credits will apply to resold Third Party Services if:

(i) the Third Party Service Provider does not offer service level credits and you cannot reasonably be expected to secure a right to service level credits from the Third Party Service Provider; or

(ii) the Third Party Services are subject to Third Party Service Provider Terms to the exclusion of the Core I/T/MS Services Terms and any Extra Terms set out in Annexure C (in which case the Purchasing Agency's entitlement to service level credits, if any, will be governed by those Third Party Service Provider Terms).

In some situations there will be no Service Level Credits for resold Third Party Services.

(c) This clause 8.9(c) applies where, under your contractual arrangements with a Third Party Service Provider, service level credits or other financial remedies to address the Third Party Service Provider's default of obligations owed to the Purchasing Agency (together, **Third Party Credits**) become payable to you rather than directly to the Purchasing Agency. When clause 8.9(c) applies:

But if a remedy for default of obligations owed to the Purchasing Agency is payable by the Third Party Service Provider to you instead of the agency, you need to pass it through to the agency without deduction.

(i) you must pass those Third Party Credits through to the Purchasing Agency, but only to the extent that they arise from, and relate to, the Third Party Service Provider's default of obligations owed to the Purchasing Agency; and

(ii) pass-through must occur reasonably promptly after you receive the benefit of the Third Party Credits, and without deduction, by deducting the relevant amount from your next invoice to the Purchasing Agency or, if deduction is not practicable (for example, where the credit takes the form of subscription credits), by applying an equivalent benefit for the Purchasing Agency,

provided that:

(iii) this clause does not require you to pass through rebates, discounts, volume-based incentives, general commercial settlements, or any other amounts that do not arise from a default by the Third Party Service Provider of obligations owed to the Purchasing Agency; and

(iv) no pass-through is required to the extent that it would result in the Purchasing Agency receiving compensation twice for the same Service failure.

9. Changes to Services Listings

9.1 Rules relating to changes

You may amend your Services Listings from time to time, subject to the following requirements and limitations and clause 9.2:

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

(a) You must update the Services descriptions in your Services Listings from time to time to keep them current, in accordance with clause 4 of Part 1 (General Terms) of the Collaborative Marketplace Agreement.

(b) You will ensure that no update to a Services description in a Services Listing will, by itself, have the effect of reducing the scope of services or otherwise adversely affect the services that are already the subject of executed Orders or Statements of Work. 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.

(c) You are not permitted to change a Services Listing in a manner that would result in your non-compliance with clause 8 (Service Levels).

(d) You may only withdraw an Obsolete Service from the Marketplace in accordance with clause 11 (Withdrawal of Obsolete Services).

(e) Changes to the pricing in your Services Listings are subject to and must be consistent with clause 12 (Additional pricing terms).

(f) No increase in Purchasing Agency responsibilities described in your Services Listings will be effective for any executed Subscription Form, Order or Statement of Work unless the relevant Purchasing Agencies agree.

(g) If impact statement requirements arise under clause 9.2, you must comply with them.

(h) All changes to Services Listings are subject to PSC review and acceptance before publication to Participating Agencies. PSC may reject changes where, acting reasonably, it considers that the changes:

(i) do not comply with this clause 9;

(ii) do not comply with minimum requirements we do or may prescribe for Services Listings;

(iii) are difficult to understand or contain errors;

(iv) do not comply with clause 12 (Additional pricing terms);

(v) would result in unreasonable fees, conditions, or responsibilities being imposed on Purchasing Agencies;

(vi) seek to lower or otherwise weaken existing published service levels or security measures;

(vii) 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

(viii) are otherwise, in PSC's reasonable opinion, materially detrimental to the operation of the Marketplace, the security of Purchasing Agency Data, or the reasonable interests of Participating Agencies.

(i) We aim to review a provider's proposed changes to Services Listings and notify the provider of our decision within 20 Business Days of our receipt of the amended Services Listings. Our ability to meet this target:

(i) depends on our having received all inputs required from you in complete and accurate form and, if relevant,

having received relevant inputs from relevant government agencies; and

(ii) may be subject to spikes in processing demands at certain points during the year.

We will not be in breach of this clause if, for whatever reason, we are unable to meet the 20 Business Day target.

(j) If we reject proposed changes in accordance with clause 9.1(h):

(i) we will provide written reasons for the rejection; and

(ii) unless we state otherwise given security concerns that we consider cannot be overcome, you may (but are not required to) resubmit amended changes for further consideration.

(k) 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.

9.2 Impact statement requirements

(a) If your proposed changes to a Services Listing will or are likely to have a Qualifying Impact or Risk you must, when submitting the proposed changes to us for review, provide us with an impact statement using the impact statement template we prescribe (available on marketplace.govt.nz).

Sometimes we require an impact statement from you when you're proposing changes to a Services Listing. We require an impact statement when proposed changes could have the kinds of impacts on the Services or on Purchasing Agencies that are described here.

(b) Proposed changes have a **Qualifying Impact or Risk** if, when implemented, the changes:

(i) will adversely affect the security or other controls, your compliance with any standards, and/or the ongoing validity of any certifications you have for the Service(s), that you notified to us when applying for inclusion of the Services in the Marketplace or when undergoing any process with us for obtaining a particular level of certification or assurance for the Service(s);

(ii) will result in an increase in applicable Price(s) and/or Services Rates set out in the Services Listing (as to which, see clause 12 (Additional pricing terms)); and/or

(iii) will, despite clause 9.1(b), reduce the scope of the Services or otherwise adversely affect the Services for Purchasing Agencies already consuming the Services (which could be the case if, for example, a Purchasing Agency had procured the Services by reference, in an Order or Statement of Work, to 'the Service as

described in the Services Listing as may be updated from time to time').

(c) If you propose changes to a Services Listing and do not provide an impact statement to us but we consider on reasonable grounds that the changes will or are likely to have a Qualifying Impact or Risk, we may reject the proposed changes and/or require you to submit an impact statement. If we do require you to submit an impact statement, we will not continue our review of the proposed changes until we receive the impact statement.

(d) You must follow our reasonable directions to address any adverse impact described in an impact statement. If you do not we may reject the proposed changes and/or, if relevant, elect to downgrade the applicable certification or assurance level for the affected Service(s) (if any, and if greater than the base level) or require you to withdraw the Services Listing (or relevant part of the Services Listing) from the Marketplace.

(e) If we consider, acting reasonably, that proposed changes to a Services Listing would fundamentally change the nature or risk profile of the relevant Service(s) or comprise or include a new service for which we consider a separate Services Listing is required, we may reject the proposed changes and require you to apply for a new Services Listing.

10. Changes in requirements for Services Listings

10.1 Requirements Changes

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.

(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 the Infrastructure Services Channel, Telecommunications Services Channel, and/or Managed Security Services 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 10.4:

(i) we may exercise the power in this clause 10.1 in relation to providers who already have Services Listings that cover the affected 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 10.1 may result in changes to, without limitation, services listings templates, onboarding criteria, and/or prescribed Base Service Levels.

10.2 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.

Before finalising a proposed Requirements Change, we need to seek feedback.

(b) When we seek feedback under clause 10.2(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.

When we seek feedback, we need to ask for feedback on certain topics.

(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.

10.3 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 10.3(d), if you have Services Listings covering the affected services:

(A) we may by written notice (**Updating Notice**) require you to send us updated Services Listing(s) within 20 Business Days (or such longer period as we may specify) that incorporate the Requirements Changes (for example, to state your Service(s) meet the affected requirements or will do so from a specified date), provided that where you have notified us of a proposed pricing

If we implement a Requirements Change, we'll update relevant documentation and may ask you to update relevant Services Listings.

adjustment under clause 10.3(b), the obligation to update the Services Listing(s) will be suspended until completion of the process under clause 10.3(c) (if applicable), upon which you will have 10 Business Days to send us updated Services Listing(s); and

(B) we will, subject to clause 10.3(c), aim to review your updated Services Listings and notify you as to whether we approve the updated Services Listings or request reasonable changes, within 20 Business Days of our receipt of the updated Services Listings. Our ability to meet this target is subject to the factors listed in clause 9.1(i), and we will not be in breach of this clause if, for whatever reason, we are unable to meet the target.

(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 10.3(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.

If you update your Services Listings and the Requirements Change will increase your costs, you can adjust your pricing. We can ask you to justify such adjustments.

(c) If you make pricing adjustments in accordance with clause 10.3(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 20 Business Days of our request. If we are not satisfied with your justification (acting reasonably), we may request additional information from you. If we are still not satisfied, we will notify you of that in writing and you may either revise your pricing adjustments and resubmit them to us for our consideration or issue an Objection Notice to us, in either case within 10 Business Days of our notification.

(d) You may object to an Updating Notice by notice to us in writing (**Objection Notice**), within 20 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 10.3(e)(ii) or (iii) we will give you at least 5 Business Days' notice before taking those steps.

(f) If:

(i) you do not send us updated Services Listing(s) in accordance with clause 10.3(a), including (where applicable) within the timeframe following completion of the process under clause 10.3(c); and

(ii) you do not issue an Objection Notice under clause 10.3(c) or (d) within the applicable timeframe,

you will be deemed to have issued an Objection Notice, and clause 10.3(e) will apply.

10.4 Existing Subscription Agreements not affected

No Requirements Change will apply to your existing provision of the affected 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).

Requirements Changes don't apply to Services already being provided under a Subscription Agreement unless agreed between you and an agency.

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

This clause 10 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 10 prevails.

11. Withdrawal of Obsolete Services

11.1 If you determine, or we reasonably consider, that a Service in your Services Listing(s):

(a) has or will become obsolete or redundant; or

(b) is no longer commercially viable for you to provide; or

(c) is no longer consistent with the strategic direction of your organisation,

(the **Obsolete Service**), you may notify us in writing that you wish to

We understand that some kinds of services may become obsolete over time. This clause sets out the processes to be followed where either party considers a Service is obsolete, no longer viable, or no longer consistent with your strategic direction, and so may need to be withdrawn from the Marketplace.

discontinue the Service and remove it from the Marketplace, or we may propose, by notice in writing, that the Service be discontinued and removed from the Marketplace.

11.2 If you are providing such notice to us, your notice must include details of:

(a) any alternative or equivalent service which is or may be made available to replace the Obsolete Service (if any), unless no Purchasing Agency is consuming the Obsolete Service in which case this clause 11.2(a) does not apply;

(b) if clause 11.2(a) applies, where the alternative or equivalent service (if any) is not already available and included in your Services Listing(s):

(i) the proposed terms and price at which such service will be available;

(ii) a timetable for the introduction of such service, including when you are likely to be submitting and seeking our approval to either an updated Services Listing or a new Services Listing; and

(iii) the names of all Purchasing Agencies consuming the Obsolete Service.

11.3 If we are providing such notice to you, we may ask you to provide some of or all the information listed in clause 11.2 and, if we do, you will provide the information we reasonably request within 15 Business Days.

11.4 Following receipt of a notice under clause 11.1, the parties will meet to discuss the contents of the notice in good faith within 20 Business Days of receipt of the notice, unless you notified us under clause 11.1 and we consider such a meeting is unnecessary.

11.5 If you notified us under clause 11.1 and, after the meeting (if any), you still wish to withdraw the Obsolete Service, then:

(a) if the Obsolete Service is a subset of Services in a single Services Listing, you will provide to us an updated version of the Services Listing with the Obsolete Service removed, and we will review and publish it reasonably promptly; or

(b) if the Obsolete Service is the only Service in the Services Listing, we will remove the Services Listing from the Marketplace reasonably promptly.

11.6 If we notified you under clause 11.1 and, after the meeting, the parties agree to discontinue the Obsolete Service, such decision (including the timing of removal of the relevant Services Listing or part of such listing from the Marketplace and any conditions or terms relating to the discontinuance) shall be documented in writing (which may comprise an exchange of email). You will not unreasonably

Note that withdrawal of a Services Listing from the Marketplace does not mean cessation of service to Purchasing Agencies that are already purchasing the service under their Subscription Agreements. Protections for agencies and processes for discontinuing the provision of an obsolete service to Purchasing Agencies are set out in clause 5.11 (Discontinuance of Obsolete Service) of the Core I/T/MS Services Terms that form part of each Subscription Agreement.

withhold or delay consent to a proposed discontinuance of an Obsolete Service.

11.7 To avoid doubt:

(a) this clause 11 prevails over and to the exclusion of clause 4.7 of Part 1 (General Terms) of the Marketplace Agreement; and

(b) discontinuance of an Obsolete Service and withdrawal of the relevant Services Listing or part of such listing from the Marketplace does not limit any obligations you may have under a Subscription Agreement to provide the discontinued Service in accordance with the terms of that Agreement (the Core I/T/MS Services Terms contain a separate 'Discontinuance of Obsolete Service' provision).

12. Additional pricing terms

12.1 Pricing methods

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

(a) subscription or licensing fees;

(b) unit or fixed pricing;

(c) Services Rates; or

(d) other context-dependent pricing mechanisms or formulae,

in each case as agreed with a Purchasing Agency in a Subscription Form, Order, or Statement of Work.

Your charges may be determined in various ways. Standard Prices or Services Rates for government or reduced Prices or Services Rates for agencies procuring through the Marketplace need to be published in your Services Listings.

12.2 Inclusion of pricing in Services Listing(s)

(a) You agree to publish any standard Prices and Services Rates you have for government (or reduced pricing for Participating Agencies purchasing through the Marketplace) in your Services Listing(s).

(b) We acknowledge that full details of fixed pricing and other pricing mechanisms and formulae (such as discounted pricing for minimum term commitments and bundled pricing arrangements) may be context-dependent and therefore not capable of being published in your Services Listing(s).

12.3 Initial Prices and Services Rates

(a) When you first add your Services Listings to the relevant Marketplace Catalogue, your Prices and Services Rates and the currency in which they are charged will be the prices and rates and currency notified to us during the Services Listing application process or otherwise agreed with us during that process. These initial Prices and Services Rates (and any

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

Prices and Services Rates increased in accordance with clauses 12.5, 12.7, 12.7A and 12.12) must be, and you will be required during the Services Listing application process to attest that they are:

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

(ii) reduced prices and rates for Participating Agencies (which, to avoid doubt, may be further discounted on a case-by-case basis for individual Purchasing Agencies).

(b) Where your charges for a Purchasing Agency's consumption of your Services are based on set Prices or Services Rates, the Prices or Services Rates stated in your Services Listings at the time the Purchasing Agency signs a Subscription Form shall apply to the Subscription Form and first contemporaneous Order and/or Statement of Work, unless you have agreed to:

(i) reduced prices or rates or some other more favourable pricing package for that Purchasing Agency or one more groups of Eligible Agencies; or

(ii) improvements requested by the Purchasing Agency to the standard offerings described in your Services Listing(s) for which it is reasonable to apply alternative pricing (which itself must be reasonable) with which the Purchasing Agency agrees,

either in the Subscription Form, an Order, or a Statement of Work. For subsequent Orders and Statements of Work priced on the basis of your Prices or Services Rates, you will charge your then current Prices and Services Rates as stated in your Services Listings, unless the circumstances described in 12.3(b)(i) or (ii) apply.

If you're charging on the basis of set Prices or Services Rates, your Services Listing Prices and Services Rates apply unless you agree with a Purchasing Agency to reduced rates or some other more favourable pricing package. If an agency requests improvements to your standard offerings, you can agree to that and the parties can agree on reasonable alternative pricing.

(c) If, after a Purchasing Agency enters into a Subscription Form or an Order or Statement of Work, the Purchasing Agency requests improvements to a standard offering described in your Services Listing(s) it is procuring, the parties may agree to alternative pricing as per clause 12.3(b)(ii).

12.4 Minimum commitments

To avoid doubt, you and a Purchasing Agency may agree in a Subscription Form to any workable combination of:

(a) a Minimum Initial Term of the Subscription Agreement (which may be all or part of the Initial Term);

This clause confirms that you and a Purchasing Agency may agree to minimum commitment arrangements in a Subscription Form.

(b) a minimum committed volume of Services during such Minimum Initial Term;

(c) reduced pricing for Services and/or the waiving of particular fees that would otherwise apply, on the stated basis that the Purchasing Agency has agreed to the minimum committed volume of Services during the Minimum Initial Term;

(d) non-application of the termination for convenience right in clause 24.2 of the Core I/T/MS Services Terms during the Minimum Initial Term;

(e) provisions enabling you to make pricing adjustments if Service Volume Changes are made during the Minimum Initial Term that take the consumed volume below the minimum committed volume for the Minimum Initial Term; and/or

(f) provisions enabling you to recover certain Sunk Costs where a termination for convenience right is exercised during the Minimum Initial Term,

and you acknowledge that an optional clause 4 has been included in the Subscription Form template addressing these matters and that you and a Purchasing Agency may agree to inclusion of that clause in a Subscription Agreement. To avoid doubt, this clause 12.4 does not contain an exhaustive list of the kinds of commitments to which a Purchasing Agency may agree.

Minimum commitment arrangements may include a minimum term, minimum service volumes, price reductions or fee waivers tied to those commitments, limits on early termination rights, and pricing or cost-recovery mechanisms if usage drops below the committed level or the agreement is terminated early. There is optional drafting in the Subscription Form that addresses these matters.

12.5 Price adjustment – overarching rules

(a) *General limitations on price increases*: Except as stated in clauses 10.3(b) and 10.4 above (price adjustment due to Requirements Change(s)), and paragraphs 2.4 and 2.5 of Schedule 1 (price adjustment due to changed or new Security Standards), you may only increase the Prices and Services Rates:

(i) in a Services Listing; or

(ii) that you otherwise charge Purchasing Agencies as per clause 12.3(b) or (c),

in accordance with this clause 12.5 and clauses 12.4 (Minimum commitments), 12.7 (Price adjustment – permissible annual change), 12.7A (Price adjustment for Third Party Hardware in Volatile SKUs), 12.9 (Volume discounts), and 12.12 (Price adjustment – Out-of-cycle increases).

Pricing adjustments are permitted but they are subject to several rules designed to limit the frequency of adjustments, to regulate the bases on which pricing may be increased, and to mitigate the risk of 'bill shocks' to Purchasing Agencies.

(b) *Decreases may be made at any time*: You may decrease your Prices and Services Rates at any time in accordance with clause 12.6.

You can decrease pricing at any time.

(c) *No increases in first year:* Subject to clauses 12.5(a) and 12.7A, you will not increase Prices or Services Rates for any Service before the first anniversary of the publication on the Marketplace of the Services Listing for that Service.

(d) *Only once in any 12-month period*: Subject to clauses 12.5(a)-(c), 12.7A, and 12.12, you may only increase the Prices and Services Rates in your Services Listings for a Service once in any 12-month period (meaning at least 12 months must have elapsed between the effective dates of any two increases to your Prices or Services Rates for that Service), in accordance with clause 12.7. To avoid doubt, Volatile SKU Price Book Updates are made in accordance with clause 12.7A, not clause 12.7, and this clause 12.5(d) does not apply to them.

(e) *Same or better pricing*: Any permitted increase in Prices and Services Rates in your Services Listings may only be made if and to the extent that any updated Prices and Services Rates in those Services Listings are either the same as or lower than the standard prices and rates you usually offer to equivalent New Zealand customers (or tiers of customers) for the Services, taking into account where relevant the nature of the Services, terms of supply, recoverability of your expenditure or investment, committed spend volumes, and contractual periods.

You cannot increase pricing during the first year of your Services Listing. After that, you may only increase pricing for a Service once in any 12-month period under the annual price-adjustment rules. When you make that annual adjustment, you must offset any material and sustained third party cost decreases against material cost increases for that Service (as described in more detail below). Your Services Listing pricing must also continue to comply with the 'same or better pricing' rule. The limits here on timing and frequency do not apply to updates to the pricing for Third Party Hardware in Volatile SKUs under clause 12.7A, and those updates do not count towards the once-a-year limit.

(f) *Changes to Services Listing pricing need approval*: No adjustment to Prices or Services Rates in Services Listings will be effective until you have provided to PSC updated Services Listing(s) with the adjusted pricing and PSC has approved the updated Services Listing(s). Without limiting clause 12.5(g):

(i) PSC will not unreasonably withhold approval to price adjustments that comply with applicable provisions of this clause 12; and

(ii) subject to clause 12.7A(i), clause 9.1(i) applies to PSC's processing of your updated Services Listings.

Changes to your Services Listing pricing need to be approved by PSC but PSC is expected to approve adjustments that comply with this clause 12 and to endeavour to process Services Listing updates with your pricing adjustments in a reasonable timeframe.

(g) *Substantiating price increases*:

(i) If you submit an updated Services Listing with increased pricing for a Service in reliance on clause 12.7, you will explain to PSC when submitting the updated Services Listing the elements of clause 12.7(a) on which you are relying to make the increase(s), the Materiality Threshold you have applied, and why the increases are being made.

(ii) PSC may, by notice in writing, request further information from you to substantiate any price increases made or proposed to be made in reliance on clause 12.7. You will promptly provide such information

When you increase your pricing, you need to explain why you're doing so. PSC can ask for further information from you to substantiate the increases. If it does and you think it would help, you can ask PSC to accept a statement from an external accountant or auditor.

reasonably requested by PSC. In support of the information you provide, you may ask PSC to accept a statement provided and signed by an external accountant or auditor explaining why, in their professional opinion, the price increase(s) comply with clauses 12.5 and 12.7 (**External Statement**) and, if you do, PSC will not unreasonably deny that request.

(iii) If:

(A) PSC has sought and received further information under clause 12.5(g)(ii); and

(B) an External Statement has not yet been provided to PSC; and

(C) having considered the further information, PSC considers, acting reasonably, that a pricing increase for a Service may not be consistent with and permitted by clauses 12.5 and 12.7; and

(D) PSC considers, acting reasonably, that the pricing increase would have a material impact on Purchasing Agencies,

PSC may, by notice in writing, require you to provide PSC with an External Statement (and if PSC does so, it will explain why it considers the pricing increase may not be consistent with and permitted by clauses 12.5 and 12.7 and why it considers the pricing increase would have a material impact on Purchasing Agencies).

In the limited circumstances described here, PSC may require you to provide a statement from an external accountant or auditor. PSC does not intend to exercise this power on a routine basis.

(iv) To avoid doubt:

(A) the power in clause 12.5(g)(iii) is intended to facilitate resolution of uncertainty and potential disputes, thereby minimising the likelihood of the parties needing to invoke clause 18 (Disputes); and

(B) PSC does not intend to exercise that power on a routine basis.

(v) If you provide an External Statement under clause 12.5(g)(ii) or (iii), PSC will not unreasonably withhold approval to the pricing increase.

(vi) If PSC, acting reasonably, does not agree with such an External Statement, PSC will, within 10 Business Days of receipt of the External Statement, explain in writing why it disagrees and does not propose to accept the pricing increase. If you disagree with PSC's explanation, there will be a deemed dispute to be resolved in accordance with clause 18 (Disputes).

(vii) To avoid doubt, this clause 12.5(g) does not limit clause 9.1(h).

(h) *Existing Orders and Statements of Work not affected*:

(i) No increase in your Prices or Services Rates will apply to any Order or Statement of Work that was entered into between you and a Purchasing Agency prior to the increase being reflected in your Services Listings or otherwise made unless (and then only to the extent that) the Subscription Form or relevant Order or Statement of Work expressly accommodates such increases or the Purchasing Agency otherwise agrees. You acknowledge that the purpose of this clause 12.5(h) is to ensure that, when entering into the Subscription Agreement or relevant Order or Statement of Work, the Purchasing Agency is aware of, agrees to, and can budget for pricing increases. This clause 12.5(h)(i) is subject to paragraph 2.5(a)(ii) of Schedule 1 (under which, in a specific situation, increased pricing as a result of the required implementation of changed or new Security Standards can flow through to agencies without their agreement) and clauses 12.5(h)(iii) and (vi) below.

Increases to your pricing won't apply to Orders and SOWs that were already in place when you make the increases, unless you've agreed with agencies that they will. You and a Purchasing Agency can agree to this in your Subscription Form or relevant Order or SOW, or subsequently. Drafting notes in the Subscription Form template draw this point to your attention. The purpose of this approach is to ensure agency awareness and agreement to circumstances in which your pricing may increase, not to prevent legitimate price increases over potentially long-term contracts.

(ii) Subject to clause 12.7A(l), if the Subscription Form or an Order or Statement of Work does expressly accommodate such increases or the Purchasing Agency otherwise agrees, you will give the Purchasing Agency 90 days' written notice of any increase in your Prices or Services Rates or such other period of written notice agreed with the Purchasing Agency.

If you do have a Purchasing Agency's agreement to pass on price increases, you need to give them 90 days' notice (unless they've agreed to a shorter period). A different notice approach applies where an agency has agreed that Third Party Hardware in Volatile SKUs procured later will be charged at the then-current Price Book price (see clause 12.7A(l)).

(iii) If, prior to increases in Services Listing pricing referred to in clause 12.5(h)(i), you had agreed with a Purchasing Agency:

(A) to pricing that was lower than the then Services Listing pricing; and

(B) that increases in Services Listing pricing in accordance with applicable provisions of these Channel Terms would apply to Fees under existing Orders and Statements of Work,

then, unless you and the Purchasing Agency have expressly agreed otherwise, any increase in Fees charged to the Purchasing Agency may only be applied by increasing those Fees by the same percentage as the increase to the Services Listing pricing from the Services Listing pricing that applied immediately before the increase.

Where you've agreed with an agency to pricing below the Services Listing pricing and to the application of Services Listing price increases to existing Orders and SOWs, any resulting fee increase may only be applied at the same percentage rate as the relevant Services Listing price increase, unless expressly agreed otherwise.

(iv) To avoid doubt, increases in your Prices or Services Rates that are accommodated by the Subscription Form or an Order or Statement of Work or to which the Purchasing Agency otherwise agrees can only be applied once the notice period referred to in clause 12.5(h)(ii) has elapsed and only prospectively in relation to Services delivered from that date. This clause is subject to clause 12.7A(l).

Price increases apply prospectively not retrospectively.

(v) You shall not seek or agree to terms in any Subscription Form, Order, or Statement of Work that:

(A) subject to clause 12.5(h)(vi), permit increases to your Prices or Services Rates that would be greater than increases permitted by and made in accordance with clause 12.7, 12.7A or, if applicable, any of the other provisions referred to in clause 12.5; or

(B) permit you to make increases to your Prices or Services Rates independently of increases to the Prices and Services Rates in your Services Listings (other than in accordance with clauses 12.3(b)(ii) or (c), provisions relating to minimum volume commitments for a Minimum Initial Term, or volume discount provisions).

You can't seek to include terms in a Subscription Agreement that would allow increases that are greater than those made in accordance with these Channel Terms or (with a few exceptions) that permit you to increase pricing independently of increases in Services Listing pricing.

(vi) If, prior to increases in Services Listing pricing for a Service, you had agreed with a Purchasing Agency:

(A) to increased pricing for the Service due to improvements requested by the Purchasing Agency to the standard offering(s) described in your Services Listing, in accordance with clause 12.3(b)(ii) or 12.3(c); and

(B) that the increases in Services Listing pricing in accordance with applicable provisions of these Channel Terms would apply to Fees under existing Orders and Statements of Work,

then you may, when applying the increased pricing in accordance with this clause 12.5(h), increase the applicable pricing by an amount over the Services Listing pricing that reflects the amount by which the increased pricing referred to in clause 12.5(h)(vi)(A) was greater than the Services Listing pricing.

Where an agency has agreed to pay higher prices for requested service improvements and has agreed that Services Listing price increases apply to existing Orders and SOWs, you may, when applying those price increases, preserve the agreed uplift above the Services Listing pricing.

(i) *Adjusting back-end systems*: If you adjust your pricing in accordance with this clause 12, you will make any required adjustments to your back-end systems to ensure Purchasing Agencies are charged the correct amounts.

12.6 Price adjustment – voluntary decreases at any time

You may decrease the:

(a) Prices and Services Rates in your Services Listings at any time, by providing updated Services Listings with the reduced pricing to PSC; and/or

(b) Fees, Services Rates and other pricing agreed in any Subscription Agreement at any time by notifying the Purchasing Agency and, if required by the Purchasing Agency, processing a variation to the relevant Subscription Form, Order, or Statement of Work.

You can decrease at any time your Services Listing pricing and any discounted pricing agreed with a Purchasing Agency.

12.7 Price adjustment – permissible annual change

(a) *Net cost movements*: Subject to clause 12.5 and the terms of this clause 12.7, you may adjust your Services Listing Prices and Services Rates for a Service, no more than once in any 12-month period, to accommodate:

(i) increases in Third Party Costs for Third Party Inputs (including where applicable due to Material Foreign Exchange Fluctuation), in accordance with clause 12.7(c); and

(ii) increases in your labour costs, in accordance with clause 12.7(d),

provided that any increase for a Service must be no greater than net cost movements in the preceding 12 months relating to that Service which, for the purposes of this clause, means:

(iii) after your having considered and offset decreases in Third Party Costs for Third Party Inputs (including where applicable due to Material Foreign Exchange Fluctuation) in accordance with clause 12.7(e).

Clause 12.7 sets the parameters for permissible annual price adjustments. In a nutshell, you're permitted to adjust your Services Listing pricing, but no more than once every 12 months, to reflect actual cost changes. Price increases are limited to sustained rises in third-party input costs and increases in labour costs, over the past 12 months, after off-setting material decreases over the same period. When adjusting a Service's pricing, you must set a single materiality threshold that determines whether increases or decreases in third party input costs are significant enough to warrant inclusion in the adjustment, and you must apply it equally to increases and decreases. Where relevant, forex movements count only if they have been sustained for at least six months and still apply when you make the adjustment. Temporary or minor fluctuations don't need to be passed through. Pricing for Third Party Hardware in Volatile SKUs is adjusted only under clause 12.7A. It's left out of the annual adjustment.

(b) *Materiality Threshold*:

(i) When undertaking a permitted annual price adjustment for a Service under this clause 12.7, you will decide upon and record in writing a materiality threshold for that Service (the **Materiality Threshold**) for the purposes of clauses 12.7(c) and (e), expressed as the percentage impact on the Price(s) or Services Rate(s) in a Services Listing that would result from a change in any individual Third Party Cost (for example, a 5% impact on Services Listing Price(s) or Services Rate(s)).

(ii) You must have only one Materiality Threshold for an annual price adjustment of the Service and you must apply it symmetrically under clauses 12.7(c) and (e).

You need to describe your materiality threshold as the percentage impact on your Services Listing pricing that would result from a change in a Third Party Cost. Let's say you set it at 5%. If an increase in a Third Party Cost would only result in, say, a 2% impact on your Services Listing pricing for the relevant Service, you wouldn't take it into account as part of your price adjustment. Equally, if a sustained favourable forex movement would result in a 3% impact (decrease) on your Services Listing pricing, you wouldn't take that into account either. If, however, you set the threshold at 2%, you would take both impacts into account.

(c) *Increased Third Party Costs*: If:

(i) a Service you are providing is dependent on a Third Party Input the cost of which is factored (partially or fully) into the Prices or Services Rates in your Services Listing(s); and

(ii) the Third Party Cost for that Third Party Input has during the preceding 12 months increased by an amount that equals or exceeds the Materiality Threshold and remains at the increased level when you make your price adjustment,

you may take that increase into account under clause 12.7(a)(i) as part of a permissible annual price adjustment under clause 12.7(a), provided that the increase may only be taken into account to the extent that the Third Party Cost is factored into your Price(s) or Service Rate(s) for the Service.

When you're able to take an increased Third Party Cost into account, you can only do so to the extent that the Third Party Cost is factored into your pricing. So, for example, if the Third Party Cost increases by $100 but only 30% of the Third Party Cost is reflected in your pricing for the Service, you may take only $30 of the increase into account when making your price adjustment.

(d) *Labour cost increases*: You may under clause 12.7(a)(ii) as part of a permissible annual price adjustment under clause 12.7(a), increase your labour cost components of the Prices or Services Rates for your Services (if any) by a percentage that is the lower of:

(i) the actual percentage by which those labour cost components have increased in the preceding 12 months; or

(ii) the percentage increase in the Labour Cost Index (Salary and Wage Rates – Private Sector – Information Media and Telecommunications industry group), or any comparable replacement index or industry grouping, published by Statistics New Zealand (or its successor), over the preceding 12 months.

Labour cost increases are simpler to deal with. You just take the lower of your actual percentage increase in labour costs and the percentage increase in the LCI.

(e) *Reduced Third Party Costs*: If:

(i) you undertake a permissible annual price adjustment for a Service in accordance with clause 12.7(a); and

(ii) the Service is dependent on a Third Party Input the cost of which is factored (partially or fully) into the Prices or Services Rates in your Services Listing(s); and

(iii) the Third Party Cost for the Third Party Input has during the preceding 12 months decreased by an amount that equals or exceeds the Materiality Threshold and remains at the decreased level when you make your price adjustment,

you will take that decrease into account under clause 12.7(a)(iii) as part of the permissible annual price adjustment under clause 12.7(a), provided that you only need to take the decrease into account to the extent that the Third Party Cost

If there has been a decrease in a Third Party Cost for a Third Party Input that meets the Materiality Threshold, you must, when making your price adjustment, offset that decrease against any applicable increases for the Service, to the extent that the Third Party Cost is factored into your pricing.

is factored into your Price(s) or Service Rate(s) for the Service. To avoid doubt, you are not required to track or offset temporary or immaterial decreases, including time-limited promotional discounts, rebates, credits, or other non-standard incentives.

(f) *Third Party Hardware in Volatile SKUs excluded*: This clause 12.7 does not apply to the pricing for Third Party Hardware in Volatile SKUs (as defined in clause 12.7A(b)), which may be adjusted only in accordance with clause 12.7A. When calculating net cost movements for a Service under clause 12.7(a), you will disregard any increase or decrease in the Third Party Cost of Third Party Hardware to the extent that that Third Party Cost is factored into the pricing for Third Party Hardware in Volatile SKUs.

12.7A Price adjustment for Third Party Hardware in Volatile SKUs

(a) *Application*: This clause 12.7A applies only in relation to SKUs in a Price Book for a Service that are categorised as Volatile SKUs in accordance with clauses 12.7A(c)-(d). When this clause 12.7A applies, it applies despite anything to the contrary in clause 12.3(b) and it does not apply to any other SKU or pricing. To avoid doubt:

(i) clause 12.5(f) (including the requirement for PSC's approval) applies to Volatile SKU Price Book Updates, subject to clauses 12.7A(i)-(j); and

(ii) clause 12.7 does not apply to the pricing for Third Party Hardware in Volatile SKUs (see clause 12.7(f)).

(b) *Definitions*: For the purposes of this clause 12:

(i) **Current Price Book Version** means the latest version of the Price Book that PSC has approved and published;

(ii) **Price Book** means the price book for a Service that you submitted to us when applying for or updating your Services Listing for that Service and which forms part of the Services Listing;

(iii) **SKU** means a unique numeric or alphanumeric code assigned by you to a specific product or service;

(iv) **Third Party Hardware** means physical equipment and devices, such as customer premises equipment, switches, routers, physical firewalls, and mobile phone handsets, that are purchased from a Third Party Hardware Provider, including where relevant software and/or support that the Third Party Hardware Provider bundles in with the physical equipment and devices;

This clause lets you adjust pricing for Third Party Hardware where supplier costs are genuinely unpredictable. You may categorise a SKU as a "Volatile SKU" if (1) it covers only hardware of a kind you buy to fulfil agencies' Orders or SOWs and that is used exclusively for the relevant agency, not in shared infrastructure, and (2) if you can't get firm pricing for the 12-month period following your Price Book submission or update, and (3) there is a real risk of a material cost increase. You can categorise SKUs when you first submit your Price Book or later. If a SKU stops qualifying, you need to remove the categorisation in your next Price Book update. You may update Volatile SKU pricing once per calendar quarter by resubmitting your full Price Book, subject to the same-or-better pricing rule. You must also reflect material, non-temporary hardware cost decreases by the end of the following quarter. PSC aims to approve updates within 10 Business Days and won't ask for supporting evidence unless something needs checking. By default, agencies pay the Price Book price when they sign. You and an agency can agree that hardware procured later is charged at the then-current Price Book price, with shorter notice of increases.

(v) **Third Party Hardware Provider** means a provider of Third Party Hardware;

(vi) pricing of Third Party Hardware is **Volatile** if, at the time you submit or update the relevant Price Book:

(A) despite having made reasonable efforts, you cannot obtain from the Third Party Hardware Provider (or, if applicable, the relevant reseller or distributor) firm pricing for the Third Party Hardware, on reasonable commercial terms, for the 12-month period following that submission or update; and

(B) you have reasonable grounds to consider there is a real risk that the cost of the Third Party Hardware during that period will materially increase; and

(vii) **Volatile SKU** means a SKU in a Price Book for a Service categorised as such in accordance with clauses 12.7A(c)-(d).

(c) *Qualifying criteria*: You may only categorise a SKU as a Volatile SKU if:

(i) the SKU solely covers Third Party Hardware of a kind that you purchase from a Third Party Hardware Provider from time to time:

(A) to fulfil an Order or Statement of Work for any particular Purchasing Agency; and

(B) that, when supplied under the SKU, is used exclusively for the particular Purchasing Agency and not in shared infrastructure,

in the context of providing, or to enable you to provide, Services to that Purchasing Agency; and

(ii) the pricing for that Third Party Hardware is Volatile.

(d) *When Volatile SKUs may be categorised in Price Book*: If the requirements of clause 12.7A(c) are met for one or more SKUs in the Price Book for a Service, you may categorise those SKUs as Volatile SKUs:

(i) when first submitting the Price Book to us with your application for a Services Listing; or

(ii) subsequently, by submitting an updated Price Book for the Service to us and explaining that the purpose of the update is to recategorise specified SKUs as Volatile SKUs (and if you change the pricing for those SKUs when doing so that will count as the once-per-Calendar-

Quarter Volatile SKU Price Book Update for the Service for the purposes of clause 12.7A(g)).

(e) *Substantiating Volatile SKU categorisation*: If you wish to categorise SKUs as Volatile SKUs in accordance with clauses 12.7A(c)-(d), PSC may, by notice in writing, request reasonable information from you to substantiate the categorisation of the SKU as a Volatile SKU, and you will promptly provide that information. If, after considering the information you have provided, PSC, acting reasonably, considers that a SKU does not meet the requirements of clause 12.7A(c), PSC may decline to approve the categorisation or withdraw an approval already given, and will explain its reasons in writing. If you disagree with PSC's explanation, there will be a deemed dispute to be resolved in accordance with clause [18] (Disputes). If PSC declines to approve or withdraws its approval, the SKU will not be or will cease to be a Volatile SKU (as applicable) from the date of PSC's written explanation, and (except to the extent otherwise determined as a result of the outcome of the dispute resolution process under clause 18) from then on the pricing for that SKU will be subject to clauses 12.5 and 12.7 in the usual way.

(f) *Keeping SKU categorisations current*: If, when you next submit or update the Price Book for a Service, a Volatile SKU no longer meets the requirements of clause 12.7A(c), you will remove its categorisation as a Volatile SKU. From then on, the pricing for that SKU will be subject to clauses 12.5 and 12.7 in the usual way.

(g) *Volatile SKU Price Book Updates*: You may update the pricing for one or more Volatile SKUs in the Price Book for a Service (**Volatile SKU Price Book Updates**) once per Calendar Quarter, at any time in the Calendar Quarter, to reflect changes in the prices you are required to pay for the Third Party Hardware. To avoid doubt:

(i) you may exercise this right on different dates in different Calendar Quarters but only once per Calendar Quarter for a Service's Price Book;

(ii) if you do exercise this right, you must submit the updated Price Book for the Service to us (not only a communication containing only the updated Volatile SKUs);

(iii) updated pricing in Volatile SKU Price Book Updates must continue to comply with clause 12.5(e) (the same or better pricing rule); and

(iv) a Volatile SKU Price Book Update must not include any increase to the pricing for a SKU that is not a Volatile SKU.

(h) *Reflecting decreases*: If the price you are required to pay for Third Party Hardware in a Volatile SKU has materially decreased below the price on which the pricing in the Current Price Book Version is based, and the decrease is not temporary, you will reflect that decrease in a Volatile SKU Price Book Update, or by decreasing your pricing under clause 12.6, no later than the end of the Calendar Quarter following the Calendar Quarter in which the decrease occurred. To avoid doubt, decreases resulting from time-limited promotional discounts, rebates, credits, or other non-standard incentives are temporary.

(i) *PSC processing of Volatile SKU Price Book Updates*: We will aim to process and publish Volatile SKU Price Book Updates, that are described as such on submission to us and that do not raise concerns prompting further inquiry, within 10 Business Days of receipt (or of receipt of responses sufficient to resolve concerns raised). We will not be in breach of this clause if, for whatever reason, we are unable to meet the 10 Business Day target. To avoid doubt and without limitation, a Volatile SKU Price Book Update could raise concerns if there are pricing changes in SKUs that are not Volatile SKUs or if any process we put in place to compare Price Book versions flags a change as potentially erroneous.

(j) *No detailed evidence by default*: Unless a Volatile SKU Price Book Update raises concerns prompting further inquiry under clause 12.7A(i), we will not seek detailed evidence justifying the Volatile SKU Price Book Update.

(k) *Prices charged to Purchasing Agencies for Third Party Hardware in Volatile SKUs*: Subject to clause 12.7A(l), the price you charge a Purchasing Agency in an Order or Statement of Work for Third Party Hardware in a Volatile SKU will be either:

(i) the price stated in the Current Price Book Version when the Order or Statement of Work is signed (or, for the first Order or Statement of Work entered into contemporaneously with a Subscription Form, when the Subscription Form is signed); or

(ii) any lower price agreed with the Purchasing Agency.

(l) *Agreeing to the then Current Price Book Version pricing when Third Party Hardware procured later*: You and the Purchasing Agency may agree, in an Order or Statement of Work or subsequently, that if one or more of the dates on which you will be procuring Third Party Hardware in a Volatile SKU for the Purchasing Agency is or are at least 30 days (or another agreed period) after the date of the Order or Statement of Work covering that Third Party Hardware, then the price charged to the Purchasing Agency for supplies of that Third

By default, an agency pays the Price Book price in force when the Order or SOW is signed, or any lower agreed price. The Provider and agency may also agree that hardware procured 30 or more days after signing (or another agreed period) is charged at the then-current Price Book price (with any agreed discount carried across as the same percentage reduction, unless agreed otherwise). In that case the Provider must use reasonable endeavours to give advance notice of increases, and the usual notice requirements in clause 12.5(h)(ii) and (iv) are displaced. Increased prices still only apply once PSC has approved them.

Party Hardware will be the price set out in the then Current Price Book Version, subject to clauses 12.5(h)(iii) and (vi) and to any price reduction you may otherwise agree with the Purchasing Agency. Where you and the Purchasing Agency do so agree, you will use reasonable endeavours to provide advance written notice to the Purchasing Agency of price increases for relevant Third Party Hardware in the Volatile SKU but you are not required to comply with clause 12.5(h)(ii), and clause 12.5(h)(iv) shall not apply.

12.8 Reservation of right to require price reduction in event of extraordinary exchange rate change

If, based on 12-month average exchange rates, the NZD-equivalent of a Third Party Input's cost has fallen by 10% or more, and that saving hasn't already been passed through under clause 12.7 or 12.7A, and it would reduce your Services Listing pricing by 10% or more, PSC can require you to reduce your pricing accordingly.

(a) If:

(i) a Third Party Cost for a Third Party Input changes due to the combination of you being charged in a foreign currency and applicable exchange rate fluctuations;

(ii) the exchange rate fluctuations result in a decrease of 10% or more in the NZD equivalent of the Third Party Cost you pay, measured by reference to the arithmetic average NZD exchange rate for the relevant currency over a 12-month period, calculated using business-day indicative exchange-rate data published by the Reserve Bank of New Zealand or, if that data is unavailable, another reputable public source (**Material Decrease**);

(iii) you have not made a permitted annual price adjustment in accordance with clause 12.7, or (where the Third Party Input is Third Party Hardware in a Volatile SKU) a Volatile SKU Price Book Update in accordance with clause 12.7A, either at all or that takes the Material Decrease into account; and

(iv) the Material Decrease would, if factored into your Services Listing Prices or Services Rates for a Service (to the extent that the Third Party Cost is factored into your Price(s) or Service Rate(s) for the Service), result in a decrease in your Prices or Services Rates for the Service of 10% or more,

PSC may, by notice in writing, require you to reduce those Price(s) or Services Rate(s) in your Services Listings for the affected Service(s). If PSC issues a written requirement to you under this clause 12.8, you will submit the relevant updated Services Listings to PSC within 30 days of the date of PSC's notice or within such longer period as PSC may agree.

(b) If PSC requires information from you to determine whether the elements of clause 12.8(a) are met, PSC may by notice in writing request such information from you. If PSC makes such a request, you will provide the information in writing within 30

days of the date of PSC's notice or within such longer period as PSC may agree.

12.9 Volume discounts

If, under a Services Listing and/or Subscription Agreements, one or more Prices or Services Rates being paid under a Subscription Agreement for a Service or group of Services reduce automatically once:

(a) consumption of the Service(s) by the Purchasing Agency under its Subscription Agreement reaches a specified individual Purchasing Agency threshold, and the Purchasing Agency's consumption of the Service(s) reaches that threshold, you will apply the lower Price(s) or Services Rate(s) from the date the threshold is first reached (and, where relevant, you may revert to the prior Price(s) or Services Rate(s) if, subsequently, consumption falls below the threshold); and/or

(b) the aggregate consumption of the Service(s) by a cluster or all Purchasing Agencies through Marketplace Subscription Agreements reaches a specified threshold, and the cluster or all Purchasing Agencies' aggregate consumption of the Service(s) reaches that threshold, you will apply the lower Price(s) or Services Rate(s) from the date the threshold is first reached (and, where relevant, you may revert to the prior Price(s) or Services Rate(s) if, subsequently, aggregate consumption falls below the threshold).

If your Services Listing or a Subscription Agreement includes volume-based price breaks, you must apply the lower price whenever the relevant usage threshold is reached. If the volume-discount arrangement is structured to allow it, you may revert to the previous price if consumption later falls below the applicable threshold.

12.10 Reductions due to regulatory intervention

If, as a result of any Commerce Commission or similar regulatory or other investigation or determination, you decrease the standard prices or rates you usually offer to equivalent New Zealand customers (or tiers of customers) for one or more of the Services (as described in clause 12.3(a)(i)) and those decreased standard prices or rates become lower than the Prices or Services Rates in your Services Listings, you will promptly provide updated Services Listings to PSC with reductions to the relevant Prices or Services Rates that ensure the Prices or Services in your Services Listings are the same as or better than the decreased standard prices or rates referred to above.

If a regulatory ruling causes you to cut your standard prices to New Zealand customers, you must promptly lower your Services Listing pricing to match or beat them.

12.11 Passing through reductions to Subscription Agreements

When your Services Listings are amended with decreased pricing and PSC notifies you of its approval or publication (whichever comes first) of the updated Services Listings, for those Purchasing Agencies procuring the affected Services that are paying Prices or Services Rates that are higher than the decreased Services Listing pricing you must, unless agreed otherwise in the Subscription Form or applicable Order(s) or Statement(s) of Work:

(a) apply the decreased pricing from the beginning of the month that commences after 28 days from the date of PSC's approval or publication;

(b) inform those Purchasing Agencies of the decreases to their Fees and the month from which they will take effect in accordance with clause 12.11(a); and

(c) if a Purchasing Agency requires, agree a variation to the relevant Order(s) or Statement(s) of Work with the Purchasing Agency to reflect the Fees decreases (but, to avoid doubt, neither the absence of a request from the Purchasing Agency nor the parties' failure to execute a variation limits the application of clause 12.11(a)).

When your Services Listing pricing is decreased and approved by PSC, you must automatically apply the lower pricing to any affected Purchasing Agencies that are paying higher prices, unless their contract says otherwise. The lower pricing must take effect from the beginning of the month that starts after 28 days have passed since PSC's approval, and you must tell agencies when it will apply. If an agency asks, you must also agree an update to their Order or SOW to reflect the lower fees, though the reduction applies even if that isn't requested or completed.

12.12 Price adjustment – Out-of-cycle increases for unexpected events

(a) If:

(i) you have already increased your Services Listing Prices or Services Rates for a Service in the last 6 months in reliance on clause 12.7; and

(ii) an unexpected event occurs as a result of which, had you not already increased your Services Listing Prices or Services Rates, you would be permitted to increase your pricing for that Service under clause 12.7 (for example, where a company has acquired the provider of a Third Party Input and increased the Third Party Costs for that Third Party Input); and

(iii) having to wait until the current 12-month period elapses would, for sales at the current Prices or Services Rates in your Services Listings, reduce your Gross Margin on the relevant Service(s) by more than 50% compared with the Gross Margin immediately before the event or force you to provide them at a loss,

you may seek PSC's approval to an out-of-cycle increase (which must be limited to the consequences of the unexpected event). PSC may grant or withhold approval at its discretion and may request information from you to help it determine whether to grant approval.

If you've already increased your Services Listing pricing in the past 6 months and an unexpected event occurs that would otherwise justify an increase under clause 12.7, you may ask PSC to approve an out-of-cycle adjustment instead of waiting for your next permitted change. PSC may grant or refuse approval at its discretion. The event must be so significant that keeping current prices would cut your gross margin by over 50% or cause a loss, and any increase must be limited to that impact. You can request only one such increase in any 12-month period, and it does not apply to existing Orders or SOWs unless an agency has agreed otherwise.

(b) For the purposes of clause 12.12(a), **Gross Margin**, in respect of a Service, means the revenue received for that Service less the direct third-party costs of providing that Service (including software licensing, hosting, infrastructure and other pass-through costs), but excluding General Company Overheads.

(c) You may only seek PSC's approval to an out-of-cycle increase once in any 12-month period.

(d) To avoid doubt, clause 12.5(h) (Existing Orders and Statements of Work not affected) applies to any out-of-cycle price increase approved by PSC.

12.13 Transparency over Subcontractor/Related Company increases in Third Party Costs

If you propose to increase your pricing in reliance on clause 12.7(a)(i) (re increased Third Party Costs) or clause 12.12 (re out-of-cycle increases) and the relevant Third Party Input(s) are provided by a Subcontractor that is a Related Company:

If a proposed price increase is based on higher costs from a Subcontractor that's a Related Company, you must tell PSC about the relationship and, if asked, show that the charges are at genuine market rates and not inflated by related-party arrangements.

(a) you must disclose to PSC the nature of the Related Company relationship and the extent to which the pricing increase is attributable to that Subcontractor;

(b) if requested by PSC, you must confirm in writing and provide reasonable supporting information to demonstrate that the relevant costs:

(i) are consistent with the Subcontractor's arm's-length market rates; and

(ii) are not the result of any internal transfer pricing or other arrangements between Related Companies (whether you and a Related Company or two other Related Companies) that have the effect of inflating Third Party Costs; and

(c) if you do not comply with clause 12.13(a) or, when it applies, (b), PSC may reject your proposed pricing increase.

12.14 Resold Third Party Services

If the Services that Purchasing Agencies procure from you include resold Third Party Service(s) that are subject to Third Party Service Provider Terms:

Price decreases and increases for resold third party services to which the third party's terms apply are governed by those terms. You need to try to give advance notice of any such decreases or increases.

(a) any price decreases and increases for the Third Party Service(s) shall be governed by those terms, or by an order you put in place on behalf of the Purchasing Agency that is subject to those terms, and not by clauses 12.5 and 12.7 (but, to avoid doubt, clause 12 does apply to components of an overall Service, or other Services, that you yourself provide);

(b) you will endeavour to give reasonable advance notice to relevant Purchasing Agencies of price decreases and increases for such Third Party Service(s) and you will, in any event, inform relevant Purchasing Agencies of the actual decreases or increases made by the Third Party Service Provider; and

(c) unless Purchasing Agencies are being invoiced directly by the Third Party Service Provider(s), you will pass through any such price decreases or increases to those Purchasing Agencies.

12.15 Request for Price Review Meeting

(a) Without limitation to the preceding provisions of this clause 12 we may, by giving at least 20 Business Days' written notice at any time after the First Anniversary, but no more than once every 12 months, require you to participate in a meeting to discuss your then current Prices and Services Rates (**Price Review Meeting**).

PSC may require you to participate in a Price Review Meeting in accordance with and for the purposes set out in this clause. No price reductions are binding unless and until recorded in updated Services Listings and/or variations to Subscription Agreements.

(b) No later than 10 Business Days before the Price Review Meeting you must provide to us, if required using a template or online means we may prescribe, written information on:

If we ask you to attend such a meeting, you need to compile some information for us beforehand.

(i) all Prices and Services Rates currently in your Services Listings;

(ii) the number of Purchasing Agencies that have, during the preceding 12 months, purchased any of your Services in any of the Channels to which these Channel Terms apply;

(iii) the number and names of Purchasing Agencies that have purchased each of your Services (excluding Services that have not been purchased by any Purchasing Agency);

(iv) the number, percentage, and names of your Purchasing Agencies procuring Services via these Channels with which you have, during the preceding 12 months, negotiated Prices or Services Rates that are lower than Prices and Services Rates in your Services Listings;

(v) the number, percentage, and names of your Purchasing Agencies procuring Services via these Channels with which you have, during the preceding 12 months, agreed to improvements to the standard offerings described in your Services Listing(s) and alternative pricing (as permitted by clauses 12.3(b)(ii) and 12.3(c));

(vi) the aggregate amounts paid and payable by all Purchasing Agencies, excluding GST and any Administration Fee, in relation to:

(A) each of your Services provided during the preceding 12 months (excluding Services that have not been purchased by any Purchasing Agency); and

(B) all of your Services in aggregate in the preceding 12 months; and

(vii) your projected pipeline of Purchasing Agencies procuring Services in any of the Channels to which these Channel Terms apply, current and anticipated, during the forthcoming 12 months.

(c) At each Price Review Meeting the parties shall in good faith discuss whether, in the light of:

(i) the number of Purchasing Agencies procuring Services from you via the Marketplace;

(ii) the aggregate spend by such Purchasing Agencies over the preceding 12 months;

(iii) your projected pipeline for the next 12 months;

(iv) government fiscal pressures; and

(v) other relevant market conditions,

you can offer lower Prices and/or Services Rates, and if so on what terms, in:

(vi) your Services Listings; and/or

(vii) existing Subscription Agreements with Purchasing Agencies.

At the meeting, we'll discuss whether, given a range of factors such as agency numbers, aggregate spend, pipeline, and other matters, you can offer lower pricing and if so on what terms.

(d) If you can offer lower Prices and/or Services Rates in your Services Listings and/or existing Subscription Agreements:

(i) the parties will use all reasonable endeavours to process the relevant changes to your Services Listings promptly; and/or

(ii) you will use all reasonable endeavours to agree with relevant Purchasing Agencies variations to their Subscription Agreements promptly.

If you can offer lower pricing, Services Listings will need to be updated and you'll try to agree variations with relevant Purchasing Agencies.

(e) No reduction in your Prices and/or Services Rates under this clause 12.15 is binding unless and until recorded in updated Services Listings approved by PSC and/or variations to Subscription Agreements, as applicable.

13. Administration Fee

13.1 This clause 13 applies except to the extent (if any) that we have agreed with you that this clause 13 does not apply to you.

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

13.2 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**) plus any applicable GST. You will have been informed of the applicable Administration Fees and how they are calculated during the On-boarding Process, and a table of the current Administration Fees and methods of calculation for each Marketplace Catalogue or category of Service can be found on marketplace.govt.nz.

13.3 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.

The Admin Fee needs to be a separate line item in your invoices.

13.4 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.

13.5 We will invoice you periodically for the applicable Administration Fees plus GST (where applicable) based on billing data you provide in the contract billing report referred to in the table at paragraph 7.2 of Schedule 2 (Governance Requirements). You will pay our invoice on or before the 20th day of the month following the date that invoice was received (the **Due Date**). If our invoice is not paid by the Due Date, we may charge you interest on the unpaid amount at the rate of 1.5% per month (calculated daily and compounded monthly) from the Due Date until the date you make full payment.

13.6 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.

13.7 To avoid doubt, your obligation in this clause 13 to collect the Administration Fee applies not only in relation to your own Services but also in relation to Third Party Services you resell via your Services Listings, regardless of whether the contractual relationship the Purchasing Agency has in relation to the Third Party Service is with you or the Third Party Service Provider (provided the procured Third Party Service is not an Out of Scope Service as described in clause 5.4).

The Admin Fee obligation applies in relation to resold third party services too.

13.8 Without limitation to clause 13.7, if a Purchasing Agency:

(a) procures a resold Third Party Service listed in your Services Listing(s); and

(b) has a direct contractual relationship with the Third Party Service Provider; and

(c) is invoiced for the Third Party Service by the Third Party Service Provider,

you will:

(d) have reporting arrangements in place with the Third Party Service Provider that enable you to determine the Third Party Service Provider's charges to the Purchasing Agency; and

(e) include the Administration Fee in relation to the Purchasing Agency's consumption of the Third Party Service in your own invoices to the Purchasing Agency.

If an agency procures a third party service you resell and is invoiced by the third party provider, you need to have reporting arrangements in place with the provider so you can understand what's being billed, and you need to invoice the agency for the Administration Fee.

13.9 This clause 13 survives:

(a) expiry or termination of your membership in the Marketplace or in any Channel to which these Channel Terms apply; and

(b) suspension, removal or withdrawal of any Services Listing or any Service in a Services Listing,

and continues in force until the last Subscription Agreement expires or terminates.

14. Services Listings not to be publicly available

14.1 Despite any provision to the contrary in the General Terms, we will ensure that your Services Listings are only made available to Participating Agencies and are not openly published on the Marketplace or any other website.

Services Listings will only be made available to Participating Agencies.

14.2 To avoid doubt:

(a) the reference in clause 14.1 to Services Listings includes any detailed description and architecture, service levels and support, case studies, price books, rate cards, and SKU trackers; and

(b) your Services Listings (including the materials referred to in clause 14.2(a)):

(i) are your Confidential Information to which clause 15 of Part 1 (General Terms) applies (except that we will not disclose them to any Eligible Agency in reliance on clause 15.2(c) unless that Eligible Agency is a Participating Agency); and

(ii) cannot be made publicly available under clause 4.6 of Part 1.

15. Liability to lead agency

15.1 Your maximum aggregate liability to us (PSC and MBIE, in our role as lead agency):

(a) under or in connection with the Marketplace Agreement; and

(b) arising from any breach of your obligations in these Channel Terms or otherwise relating to your Services in any of the Channels to which these Channel Terms apply,

for all Losses that we suffer or incur in any consecutive 12 month period from the Channel Terms Commencement Date is $1,000,000 (1 million).

If you list Services in any of the Infrastructure Services Channel, Telecommunications Services Channel, or Managed Security Services Channel, you are subject to a higher limitation of liability to us than the default in Part 1 (General Terms) of the Marketplace Agreement.

15.2 To avoid doubt, clause 15.1:

(a) prevails over clause 19.1 of Part 1 (General Terms) in relation to the Losses to which clause 15.1 refers; but

(b) all other Losses arising from breach of your obligations under or in connection with the Marketplace Agreement shall remain subject to clause 19.1 of Part 1.

16. Parent company guarantee

16.1 Parent company guarantee

(a) We may state in a notice of procurement or onboarding documentation that if:

(i) you are a company that has a Parent Company; and

(ii) your company and/or the services it provides meet criteria we specify in the notice of procurement or onboarding documentation,

you will need to procure entry by the Parent Company into a parent company guarantee with us, in a form we prescribe or that is otherwise to our satisfaction, within 90 days of your acceptance of these Channel Terms (**PCG Requirement**).

If you are required to provide us with a parent company guarantee, you'll need to do that or your membership may be terminated.

(b) If a PCG Requirement applies to you, we do not receive an executed Parent Company Guarantee within the 90 day period referred to above or within such later date as we may agree with you in writing, and we have not waived the PCG Requirement, we may terminate:

(i) your membership in the Infrastructure Services Channel, Telecommunications Services Channel and/or Managed Security Services Channel (as applicable); or

(ii) if you have no Services Listings in any other Channel of the Marketplace, your membership in the Marketplace (thereby terminating the Collaborative Marketplace Agreement with you),

for irremediable Material Breach, and you will not be entitled to any compensation as a consequence of such termination.

17. Insurance

You need to have the kinds of insurance and with the levels of cover set out in this clause.

17.1 From the time you accept these Channel Terms until two years following your no longer providing any Services to any Purchasing Agency including in the context of Disengagement Services (the **Insurance Period**), you must, at your own expense, maintain kinds of insurance cover appropriate to the nature and volume of the Services you provide through these Channels. Such insurance must include the kinds of insurance listed in clause 17.2 with, at a minimum, the levels of cover described in that clause (unless or to the extent agreed otherwise with PSC).

17.2 Without limiting clause 17.1, and unless or to the extent agreed otherwise with PSC, you must at all times during the Insurance Period maintain:

(a) public liability insurance for a sum of not less than $10,000,000 for any one claim or series of claims arising out of one event;

(b) property insurance on a reinstatement basis for the assets you use in providing the Services, with sums insured appropriate to the nature, scale, and reasonably foreseeable loss scenarios involving those assets (but, to avoid doubt, not including Purchasing Agency equipment in your custody unless you have expressly agreed to that in a Subscription Agreement with a Purchasing Agency);

(c) professional indemnity insurance for a sum of not less than $10,000,000 for any claim or series of claims arising in a policy period; and

(d) cyber insurance for a sum of not less than $10,000,000 for any claim or series of claims arising in a policy period, either as a separate insurance policy or as part of a more general policy that covers cyber-related events.

17.3 If, having made appropriate inquiries, you reasonably determine that taking out cyber insurance in accordance with clause 17.2(d) would be or likely become commercially unviable or that it would be commercially preferable to self-insure against the risk of cyber-related events, you may self-insure against the risk of cyber-related events, provided you:

(a) have and maintain adequate financial resources to cover the relevant risks; and

(b) inform Purchasing Agencies when entering into Subscription Agreements with them that you self-insure against the risk of cyber-related events.

17.4 Upon PSC's or a Purchasing Agency's written request, you must promptly provide evidence of compliance with your obligations in this clause.

17.5 To avoid doubt, this clause 17 does not prevent a Purchasing Agency from seeking to negotiate different kinds or higher levels of insurance in its Subscription Form or in particular Orders or Statements of Work.

18. Disputes

18.1 Process to be followed

Subject to clause 18.4, if a dispute arises in relation to the rights and obligations between PSC and you under or in connection with these Channel Terms, 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.

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

18.2 Good faith negotiations

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.

18.3 Mediation

(a) If the dispute is not resolved under clause 18.2 within 20 Business Days of a party receiving a notice under that clause, 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**).

(b) A Mediation under this clause 18.3 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.

18.4 Nothing in this clause 18 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 or in connection with these Channel Terms.

18.5 Subject to clause 18.4, 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 30 Business Days after commencement of the Mediation.

19. Panel membership

PSC may close or reopen Channels or Catalogues, remove members from a Channel who have not sold any services in that Channel for a period of 24 months or more, and remove a member's Services Listing if the member has had no Purchasing Agency for a period of 24 months or more.

19.1 You acknowledge that the Channels to which these Channel Terms apply comprise panels of providers.

19.2 Subject to clause 19.3, PSC may elect, at any time during your membership in any of these Channels, to:

(a) close or reopen the ability for Non-Members to join one or more of the Channels, in each case either for a defined period, indefinitely, or permanently;

(b) close or reopen the ability for Members to apply for additional Services Listings in one or more of:

(i) the Channels; or

(ii) Marketplace catalogues in one or more of the Channels,

in each case either for a defined period, indefinitely, or permanently;

(c) remove Members from a Channel if they have no Purchasing Agencies for any Services in that Channel for a period of 24 months or more; and/or

(d) remove a Member's Services Listing if the Member has no Purchasing Agency for any Services covered by that Services Listing for a period of 24 months or more.

19.3 PSC will provide at least 30 days' notice:

(a) of any closing or reopening referred to in clause 19.2(a) or (b), by way of a notice on GETS; and

(b) of any proposed removal referred to in clause 19.2 (c) or (d), by written notice to the affected Member(s).

19.4 To avoid doubt, this clause 19 does not limit clause 3 (Membership) of Part 1 (General Terms) of the Marketplace Agreement.

20. Effect of withdrawal, suspension, or termination of Services Listings or membership

This clause sets out the consequences of the withdrawal, suspension, or termination of Services Listings or membership, including restrictions on new Marketplace Subscription Agreements, the continuation of existing agreements, limits on further Services Listings, the ongoing application of the terms, and obligations to return or destroy property and confidential information.

20.1 If, under any applicable provision of either Part 1 (General Terms) or these Channel Terms:

(a) one or more of your Services are withdrawn (for example, in accordance with clause 11 (Withdrawal of Obsolete Services) of the Channel Terms); or

(b) one or more of your Services Listings are suspended or terminated; or

(c) your membership in one or more of the Channels to which these Channel Terms apply is suspended or terminated; or

(d) your membership in the Marketplace is suspended or terminated,

then:

(e) you will not be permitted, from the date of withdrawal, suspension, or termination, to enter into any further Marketplace Subscription Agreements in relation to Services affected by the withdrawal, suspension, or termination, provided that if a suspension is lifted then this clause 20.1(e) will cease to apply in relation to Services affected by the suspension;

(f) the withdrawal, suspension, or termination will not affect the ongoing validity of Subscription Agreements that were in place prior to the date of withdrawal, suspension, or termination (they will continue in force in accordance with their terms);

(g) if your membership in a Channel comes to an end, you will not be able to apply for new or additional Services Listings in that Channel (unless you re-apply for membership in the Channel and we accept that application);

(h) if your membership in the Marketplace comes to an end, all your Services Listings will be withdrawn and you will not be able to apply for any new or additional Services Listings (unless you re-apply for Marketplace membership and we accept that application); and

(i) subject to clauses 20.1(e)-(h), Part 1 (General Terms) and these Channel Terms will remain in full force and effect until the date that is the later of:

(i) the date on which all Subscription Agreements you have with Purchasing Agencies have expired or been terminated; and

(ii) the date on which you are no longer a member of the Marketplace.

20.2 Clause 20.1 prevails over any other term in the Collaborative Marketplace Agreement to the contrary.

20.3 If your membership in the Marketplace comes to an end for any reason, each party will, within 20 Business Days of written notice from the other party, return to the other party (or if requested securely destroy) all of the other party's:

(a) property; and

(b) Confidential Information,

except to the extent that such property or Confidential Information:

(c) needs to be retained to comply with any disengagement process;

(d) needs to be retained by a party to enable it to defend itself in a dispute;

(e) in PSC's case, needs to be retained by the Public Records Act 2005 or any other law; or

(f) 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.

Marketplace

Infrastructure Services, Telecommunications Services, and Managed Security Services

Schedule 1 to Channel Terms – Information Security

Background

As a supplier of Services in one or more of the Infrastructure Services Channel, Telecommunications Services Channel, and/or Managed Security Services Channel to the New Zealand Government and wider public sector agencies, you are trusted to ensure the security of information stored or processed for Purchasing Agencies. We recognise the challenges you face and are committed to supporting you. However, the expectations for your security measures to secure Purchasing Agency Data are now higher than ever. We appreciate your ongoing support. Given the often mission-critical and critical infrastructure nature of Services in these Channels, you must be able to meet the Government's security-related requirements. This Schedule contains the security requirements that apply to Services in these Channels.

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1. Security measures

1.1 You must ensure that your Services are secure by design and that you take an approach to security that is timely, knowledgeable, proactive, agile, and diligent, in order to:

(a) secure the Services;

(b) maintain the confidentiality, integrity, and availability of Purchasing Agencies' Confidential Information;

(c) protect Purchasing Agencies' Confidential Information from unauthorised use, access, or disclosure; and

(d) manage security-related risk on an ongoing basis, including by reference to current and reasonably detailed knowledge of threats, threat attack vectors, vulnerabilities, and likelihood of risk eventuation.

You need to implement appropriate security measures.

1.2 PSC:

(a) acknowledges that the provisions of this Schedule 1 may require you to disclose information that is particularly commercially- and/or security-sensitive;

(b) accepts that this Schedule does not require you to disclose information if doing so would be contrary to law, or your contractual obligations, or stock exchange listing rules; and

(c) agrees to store information that is disclosed securely and, except as stated otherwise in this Schedule or otherwise agreed, to limit access to that information to PSC staff who have a genuine need to see it to perform their roles in relation to the Collaborative Marketplace Agreement.

2. Security Standards compliance

2.1 Compliance

(a) You must ensure, in relation to your organisation and each Service you provide, that the applicable standards and controls set out in paragraph 2.1(b) (together, **Security Standards**) are implemented or otherwise complied with. This paragraph 2.1(a) applies subject to paragraphs 2.2-2.5.

(b) The Security Standards are:

(i) controls relevant to the Services described in the NZISM as "MUST" and "MUST NOT" controls, for all Purchasing Agency Data classified at the level of RESTRICTED, SENSITIVE or below;

(ii) controls relevant to the Services described in the NZISM as "SHOULD" and "SHOULD NOT" controls, for all Purchasing Agency Data classified at the level of RESTRICTED, SENSITIVE or below, where:

You need to ensure that Security Standards applicable to your organisation and Services are complied with. For centralised certifications undertaken by PSC in accordance with paragraphs 3-4 below, the controls against which you can typically expect to be audited are set out in PSC's control validation plan which you can access in the relevant GETS standing notices and/or the Marketplace administrative dashboard (in each case upon logging in).

(A) the controls have a material impact on mitigating risk to the Services; or

(B) the controls are security hygiene controls; or

(C) companies providing such services can reasonably be expected to comply with or implement the controls as a matter of Good Industry Practice; and

(iii) the PSR's PERSEC1 to PERSEC3 and PHYSSEC1 to PHYSSEC 4,

and for the purposes of this paragraph 2.1:

(iv) references in the NZISM and PSR to "agencies" shall be interpreted as including you; and

(v) where reference is made to an "agency" needing to take an action, this will typically now be your responsibility, except for controls which refer to outsourcing or third party management of systems in which case the control should be read as a requirement from the Purchasing Agency on you (as the outsourcer or third party).

2.2 Exceptions

You do not have to implement or otherwise comply with a control in a Security Standard if and to the extent that:

You don't need to implement or comply with a control if the control is objectively not relevant, if PSC grants you an exception or waiver, or if you comply with an equivalent control.

(a) despite paragraphs 2.1(b)(iv)-(v), the control is objectively not relevant to your organisation or the relevant Service (for example, because the subject matter of the control does not arise in any design, delivery, or operation of that kind of service); or

(b) PSC grants you:

(i) an **exception** in relation to the control; or

(ii) a **waiver** in relation to the control,

as those terms are described in the Security Standards, subject to any conditions accompanying the exception or waiver such as a requirement for compensating controls; or

(c) in relation to the provision of the relevant Services to a particular Purchasing Agency, that Purchasing Agency's Chief Information Security Officer and Contract Manager grant you such an exception or waiver, subject to your compliance with any conditions accompanying the exception or waiver; or

A Purchasing Agency can grant an exception or waiver in relation to the Services you provide to it.

(d) you comply with an Equivalent Security Control.

2.3 Amendments to Security Standards

(a) If GCISO amends or supplements the Security Standards after the date of publication of your Services Listing(s) in a manner that results in changes to existing Security Standards or new Security Standards:

(i) paragraphs 2.1 and 2.2 will apply to those changed or new Security Standards;

(ii) unless a ground for non-compliance in paragraph 2.2 applies, you will have a period of six months, or such other period as PSC may agree in writing, to implement them (the **Implementation Period**); and

(iii) there will be no adverse impact during the Implementation Period on any existing security assurance rating or certification of a Service to which the changed or new Security Standards apply.

GCISO may amend or add Security Standards. If so, you'll need to implement them and you'll have 6 months to do so (unless PSC agrees to a longer period), but you don't need to comply if a ground for non-compliance in paragraph 2.2 applies.

(b) If you are unable or do not wish to implement the changed or new Security Standards (including where you disagree with PSC's position on pricing adjustments you make in accordance with paragraph 2.4) and, if you have sought an exception or waiver under paragraph 2.2, we have not granted an exception or waiver, you may within the Implementation Period withdraw your affected Services Listings from the Marketplace in accordance with clause 11 (Withdrawal of Obsolete Services). If you withdraw the affected Services Listings:

(i) you will not be required to implement the changed or new Security Standards and your non-implementation of them will not be in breach of paragraphs 2.1 or 2.3 of this Schedule; and

(ii) you must inform each consuming Purchasing Agency in writing that:

(A) you are withdrawing the affected Services Listings from the Marketplace because you are unable or do not wish to implement the changed or new Security Standards;

(B) that has no effect on your ongoing provision of those Services to the Purchasing Agency under its Subscription Agreement (except that you will not be implementing the changed or new Security Standards); and

(C) any withdrawal or termination of those Services to the Purchasing Agency can only occur in accordance with the Subscription Agreement's terms or by agreement.

2.4 Cost impacts

(a) If your implementation of such changed or new Security Standards will result in your incurring additional costs you may, within 90 days of publication by GCISO of the changed or new Security Standards, but subject to paragraph 2.4(b), adjust the pricing in your Services Listing(s) and submit the amended Services Listing(s) to PSC for approval, but only to the extent necessary to reflect that increase in costs. Such adjustments to pricing may only apply from the date that the changed or new Security Standards are implemented. If PSC receives an amended Services Listing it will, subject to paragraph 2.4(b), endeavour to process it within 20 Business Days. Our ability to meet this target is subject to the factors listed in clause 9.1(i), and we will not be in breach of this clause if, for whatever reason, we are unable to meet the target.

We recognise this may have cost implications for your business. This clause addresses pricing adjustments you may feel you need to make as a result of amended or added controls.

(b) If you make pricing adjustments in accordance with paragraph 2.4(a) you will, if PSC requests in writing before accepting the changes to your Services Listing(s), provide PSC with written and verifiable justification for the adjustments within 10 Business Days of PSC's request. If PSC considers, acting reasonably, that your justification:

(i) is manifestly wrong, there will be a deemed dispute which shall be resolved in accordance with clause 18 (Disputes); or

(ii) is not manifestly wrong, PSC will proceed to publish your updated Services Listing(s).

(c) If there is:

(i) a delay on PSC's part in processing your amended Services Listing(s) under paragraph 2.4(a); or

(ii) a dispute under paragraph 2.4(b),

and the delay or dispute causes your implementation of the changed or new Security Standards to be delayed beyond the Implementation Period, the Implementation Period will extend automatically by an amount commensurate with the delay on PSC's part or until a date that is 90 days after resolution of the dispute, as applicable, and paragraph 2.3(a)(iii) will apply to the extended Implementation Period.

(d) To avoid doubt, clause 12.7 (Price adjustment – permissible annual change) of the Channel Terms does not limit this paragraph 2.4, and an increase in pricing under this paragraph 2.4 does not count as a relevant 'increase' for the purposes of clause 12.5(d) of the Channel Terms.

2.5 Application of pricing increases to existing Subscription Agreements

(a) No increases to the pricing in your Services Listings in accordance with paragraph 2.4 will apply to your existing provision of the affected Services to a Purchasing Agency pursuant to existing Orders or Statements of Work under existing Subscription Agreements unless:

(i) the Subscription Form or relevant Order or Statement of Work expressly accommodates such increases or the Purchasing Agency otherwise agrees; or

(ii) in your reasonable opinion, the nature of the changed or new Security Standard(s) or the Service(s) to which they apply are such that implementation of the changed or new Security Standard(s) can only reasonably be made across the entirety of the Service(s) rather than being implemented selectively for some Purchasing Agencies but not others.

Pricing increases in your Services Listings only flow down to existing Orders and SOWs for the affected Services if a Purchasing Agency has agreed they will or if the changed or new security standards can only be implemented across the entirety of the Service(s). Where neither situation applies, you will not be required to meet the amended or additional controls in relation to that agency.

(b) If paragraph 2.5(a)(i) or (ii) applies:

(i) you will:

(A) give the Purchasing Agency 90 days' written notice of the increase(s) (or such shorter period as the Purchasing Agency may have agreed in writing); and

(B) make any required adjustments to your back end systems to ensure Purchasing Agencies are charged the correct amounts once that notice period has elapsed; and

(ii) to avoid doubt, pricing increases to which paragraph 2.5(a)(i) or (ii) applies can only be applied once the notice period referred to in paragraph 2.5(b)(i)(A) has elapsed and only prospectively in relation to Services delivered from that date.

(c) If:

(i) paragraph 2.5(a)(i) or (ii) applies; and

(ii) your increased Services Listing pricing relates to a Service for which you agreed to lower pricing with a Purchasing Agency,

then, unless the parties have expressly agreed otherwise, any increased pricing charged to the Purchasing Agency in reliance on paragraph 2.5(a)(i) or (ii) may only be applied at the same percentage rate as the increase to the Services Listing pricing, so that the percentage discount from the

Services Listing pricing that applied immediately before the increase is preserved.

(d) If neither paragraph 2.5(a)(i) nor (ii) applies:

(i) you will not be required to meet the changed or new Security Standards in relation to that Purchasing Agency for Services ordered or procured by the Purchasing Agency before the pricing increases in your Services Listings were published;

(ii) you will have no liability to that Purchasing Agency or us for non-implementation of the changed or new Security Standards for that Purchasing Agency in relation to such Services; and

(iii) the Purchasing Agency will be deemed to have waived the need for you to comply with the changed Security Standards (but not the relevant Security Standards as originally stated) or new Security Standards.

(e) To avoid doubt, and subject to the application of paragraph 2.2, if:

(i) GCISO amends or supplements the Security Standards after the date of publication of your Services Listing(s) in a manner that results in changes to existing Security Standards or new Security Standards; and

(ii) you do not:

(A) elect, within 90 days of publication by GCISO of the changed or new Security Standards, to adjust the pricing in your Services Listing(s) and submit the amended Services Listing(s) to PSC for approval; or

(B) withdraw your affected Services Listings from the Marketplace in accordance with paragraph 2.3(b),

you will remain obliged to comply with the changed or new Security Standards for all Purchasing Agencies consuming the affected Service(s) from the earlier of the date you have implemented them and the expiry of the Implementation Period.

If you don't adjust your pricing within 90 days or withdraw your affected Services Listings within the Implementation Period, you'll still need to implement the amended or new controls.

3. Organisational endorsement or certification

3.1 You acknowledge that:

(a) to become or remain a member of any of the Channels to which this Schedule 1 applies, you must either:

To become or remain a member of a Channel to which this Schedule applies, you need to have or be granted organisational endorsement or certification.

(i) already have organisational endorsement or certification; or

(ii) be granted organisational endorsement or certification by PSC, for which you will need to follow the procedures, provide the information, and take the steps specified in the Marketplace Information Security Tiering Standard and Marketplace Security Assurance and Certification Processes;

(b) if you do not already have the requisite organisational endorsement or certification when applying for Services Listings for services with a security assurance tiering of Tier 2 or Tier 1, during onboarding you will need to obtain organisational endorsement;

(c) your organisational endorsement will be sufficient for all Services with a security assurance tiering of Tier 2 or lower;

(d) if any of your Services have a security assurance tiering of Tier 1 and you do not already have organisational certification then, when 2 or more agencies are consuming the first of these Services, you will need to obtain organisational certification which will then cover all your Services; and

(e) your organisational endorsement or certification may need to be refreshed or confirmed periodically in accordance with the Marketplace Security Assurance and Certification Processes and Marketplace Information Security Tiering Standard.

4. Security assurance and certification of Services

4.1 Acknowledgements

The parties acknowledge that this paragraph 4:

(a) relates to the processes that PSC undertakes, on behalf of Purchasing Agencies, for the purpose of:

(i) obtaining, and being able to communicate to Purchasing Agencies and other Participating Agencies, a certain level of security-related assurance in relation to your organisation and the Services; and

(ii) centrally certifying certain Services when two or more Purchasing Agencies have signed up to procure them,

in each case including, where relevant and to avoid doubt, subcontracted Services and Third Party Services you resell; but

(b) does not:

(i) relieve relevant Purchasing Agencies of their own certification and accreditation obligations under NZISM,

PSC conducts centralised security assurance and in some cases certification processes in relation to your organisation and Services. Purchasing Agencies may still be subject to their own certification and/or accreditation responsibilities and may still seek to negotiate additional controls to mitigate residual risk.

provided that where PSC certifies a Service centrally, a Purchasing Agency may be able to rely on that certification and only need to accredit the Service; or

(ii) prevent Purchasing Agencies from seeking to negotiate your implementation of additional controls to address areas of residual risk they are not willing to accept.

4.2 Security assurance of Services during onboarding

(a) You acknowledge that:

(i) when applying for a Services Listing for one or more services (excluding professional services) you will be required to provide certain security assurance documentation to PSC in accordance with the Marketplace Security Assurance and Certification Processes, and Marketplace Information Security Tiering Standard; and

(ii) PSC satisfaction with that documentation will be a prerequisite to acceptance and publication of the Services Listing.

When applying for a Services Listing, you'll need to provide security assurance documentation and PSC will need to be satisfied with that documentation. If you don't provide the required documentation or you do but PSC is not satisfied with it, we may refuse to process your application or reject it.

(b) If:

(i) you do not provide the security assurance documentation referred to in paragraph 4.2(a)(i); or

(ii) PSC, acting reasonably, is not satisfied with the documentation provided,

we may:

(iii) refuse to process your application until you provide the relevant documentation and/or satisfy PSC that you meet the requirements for the applicable security assurance, as applicable; or

(iv) reject your application.

4.3 Certification

You acknowledge and agree that each Service (excluding professional services):

(a) needs to be certified, either:

(i) by the Purchasing Agency who has signed up to consume the Service; or

(ii) centrally by PSC, in accordance with the Marketplace Security Assurance and Certification Processes and Marketplace Information Security Tiering Standard,

Services need to be certified, either by a Purchasing Agency or by PSC, before agency data is used in the Services, unless a Purchasing Agency agrees otherwise.

before Purchasing Agency Data is entered into, routed by, or otherwise used by or in the Service, except where a Purchasing Agency agrees otherwise (whether by words or conduct); and

(b) may, if the Service has been centrally certified by PSC, need to undergo continuous security certification by PSC in accordance with the Marketplace Security Assurance and Certification Processes; or

(c) for as long as the Service is only being consumed by one Purchasing Agency and centralised certification by PSC has not occurred, may need to undergo periodic recertification by the Purchasing Agency.

4.4 Centralised certification by PSC

This paragraph 4.4 applies when two or more Purchasing Agencies have signed up to procure a Service that has a Tier 1 security assurance tiering as defined in the Marketplace Information Security Tiering Standard or when PSC determines it is desirable to assess a Service with such a Tier 1 security assurance rating before two Purchasing Agencies have signed up to procure the Service. When it applies, you agree that:

This paragraph explains what happens when a Service is to be certified centrally. In essence, you need to follow the Marketplace Security Assurance and Certification Processes.

(a) PSC's centralised certification procedures set out in the Marketplace Security Assurance and Certification Processes and Marketplace Information Security Tiering Standard will apply;

(b) you will need to comply with those procedures to have your Service certified centrally;

(c) from the point at which those procedures are triggered, Purchasing Agencies will be deemed to have appointed PSC as a certification authority;

(d) those procedures may involve an audit by PSC, to which paragraph 6.1 (Security audit or inspection) below applies;

(e) if you have existing and reputable third party certifications or attestations for a Service you may, or we may require you to, provide them to us and, in that event, we will take them into account when assessing whether to certify the Service; and

(f) unless agreed otherwise in their Subscription Agreement, each such Purchasing Agency may decide:

(i) whether to await centralised certification, and then their subsequent accreditation, before using the Service in a live production environment or setting; or

(ii) accept the risk of using the Service in a live production environment or setting and proceed to do so, with any accreditation on their part to occur subsequently; or

(iii) undertake their own certification procedures with a view to certifying the Service themselves.

4.5 Centralised certification failure

(a) If, when paragraph 4.4 applies:

(i) you do not comply with applicable procedures and requirements in the Marketplace Security Assurance and Certification Processes or PSC's other reasonable instructions, resulting in non-certification of the relevant Service; or

(ii) PSC does not otherwise certify the relevant Service,

PSC may do one or more of the following:

(iii) inform Participating Agencies of the certification failure;

(iv) require you to take steps to remediate any ineffective or missing applicable controls;

(v) suspend your relevant Services Listing(s) until you do comply and/or have taken steps which satisfy PSC that you meet the requirements for centralised certification of the Service; and/or

(vi) withdraw those Services Listing(s) from the Marketplace,

provided that PSC will not suspend or withdraw a Services Listing before giving you a reasonable opportunity to remediate any ineffective or missing applicable controls.

If PSC decides not to certify a Service, PSC can tell agencies about that, require you to take remedial action, and/or suspend or withdraw the relevant Services Listing(s).

(b) If you are required to remediate any ineffective or missing applicable controls:

(i) you may be required to obtain an independent audit report at your cost on the remedial steps you have taken and provide that report to PSC, upon which the report will be reviewed with a view to determining whether the relevant Service can be certified;

(ii) PSC may recover from you the reasonable additional staffing costs it has incurred as a result of the review referred to in paragraph 4.5(b)(i) (for example, PSC may need to contract additional resource to undertake the review); and

(iii) if the independent audit report does not satisfy PSC (acting reasonably) that the ineffective or missing

If you're required to take remedial action, you may need to obtain an independent audit report and meet the additional costs PSC incurs in reviewing that report.

controls have been remediated, PSC will provide reasons as to why it is not satisfied, and the processes and powers in this paragraph 4.5 may be repeated in relation to any remaining material areas of non-compliance.

4.6 Continuous security certification

You acknowledge and agree that:

(a) Services certified centrally by PSC are subject to ongoing continuous security certification processes in accordance with the Marketplace Security Assurance and Certification Processes; and

(b) paragraph 4.5 applies to those continuous security certification processes.

Centrally certified services are subject to ongoing continuous security certification.

4.7 Provision of certification status to Participating Agencies

PSC may indicate in Services Listings or another protected area of the Marketplace, and/or in communications to Participating Agencies, which of your Services:

(a) have been certified centrally by PSC (and the duration and/or status of any such certification); and

(b) have not been certified centrally by PSC.

PSC can tell Participating Agencies about the certification status of Services.

4.8 Purchasing Agency accreditation

When a Purchasing Agency is considering whether to accredit a Service, you will use all reasonable endeavours to reply, within a reasonable timeframe, to questions or concerns the Purchasing Agency puts to you in writing relating to the certification of the Service.

If an accrediting agency has questions, you need to try to answer them.

4.9 Provision of existing international certifications

(a) You will provide relevant details of existing international security certifications (including any ISO, SOC, TIA and PCIDSS certifications) to PSC or a Purchasing Agency within 10 Business Days of written request by PSC or the Purchasing Agency.

(b) You agree that PSC may provide the details referred to in paragraph 4.9(a) to Participating Agencies, on the condition that they treat such details as your Confidential Information.

You need to provide details of existing certifications if requested, and PSC may share them with Participating Agencies.

4.10 Change in certification status

If a certification you have for a Service that has been certified by PSC or a Purchasing Agency expires without having been renewed prior to expiry, you will inform PSC and affected Purchasing

You need to tell PSC and Purchasing Agencies about changes in certification status.

Agencies of the change in certification status promptly and in any event within 10 Business Days.

4.11 Code reviews and testing throughout the Term

If, during your membership of any Channel to which this Schedule applies, you commission or undertake a code review or penetration, stress, vulnerability or other security testing of a Service and the results reveal significant vulnerabilities or other problems that cannot or will not be resolved promptly, you will promptly provide PSC and relevant Purchasing Agencies with written results of the review or testing together with an explanation of how you propose to rectify the vulnerabilities or problems.

If you conduct a code review or security testing and it reveals problems that won't be fixed quickly, you'll need to tell PSC and Purchasing Agencies about them and how you'll deal with them.

4.12 Ongoing security assurance

You are responsible, during your membership of any Channel to which this Schedule applies, for undertaking your own security assurance activities to ensure:

You're responsible for ongoing security assurance throughout the term.

(a) that all security-related provisions of this Agreement are and will continue to be met;

(b) the ongoing security of your Services and the security of PSC's Confidential Information and Purchasing Agencies' Purchasing Agency Data that is in your possession or control; and

(c) that the technology you own or lease that is used for provision of the Services is included in your roadmaps or other planning documentation for, as applicable, continuous improvement, upgrade, or replacement.

5. Changes of Control and name changes

5.1 Subject to paragraph 5.2, you must:

(a) notify PSC's Lead Relationship Manager and your Purchasing Agencies' Contract Managers in writing of any proposed Change of Control of your organisation a reasonable period of time before the Change of Control occurs, provided doing so would not contravene any law or stock exchange listing rules or confidentiality obligations you owe to third parties;

(b) promptly notify PSC and your Purchasing Agencies in writing of any Change of Control of your organisation once it occurs; and

(c) promptly notify PSC and your Purchasing Agencies in writing of any proposed change of your legal or trading name, at least 30 days before the change occurs, unless doing so is part of a Change of Control to which the proviso in paragraph 5.1(a) applies, in which case you must promptly notify PSC and your Purchasing Agencies of the change once it is made.

Changes of Control can have significant security implications. In addition, name changes – whether with or without a Change of Control – can create practical problems if we're not aware of them. You need to tell us and your Purchasing Agencies about Changes of Control and name changes as described here.

5.2 You do not need to notify a Change of Control that is a solvent re-organisation with shares being transferred between Related Companies in New Zealand.

5.3 To avoid doubt:

(a) PSC may notify Participating Agencies of any proposed or actual Change of Control and any change of name notified to PSC under paragraph 5.1, provided that any notification to Participating Agencies of a proposed Change of Control that is not already in the public domain is accompanied by a statement that information on the proposed Change of Control (including any associated change of name) is confidential and must not be shared with other parties before the Change of Control occurs; and

PSC can inform Participating Agencies (i.e., any agency that's a member of the Marketplace, even if not a Purchasing Agency) about control and name changes.

(b) non-public information you provide to us relating to any proposed or actual Change of Control and any change of name is your Confidential Information and therefore subject to our confidentiality obligations in the Collaborative Marketplace Agreement.

5.4 You:

(a) accept that, if you undergo a Change of Control, to remain a member of the Channels to which this Schedule 1 applies and in which you have Services Listings, we may require you to:

(i) provide us with information relating to the Change of Control; and

(ii) reapply for certification in accordance with paragraph 4 (Certification and security assurance);

(b) acknowledge that, under clause 3.7 of Part 1 (General Terms) of the Collaborative Marketplace Agreement, PSC may terminate your membership of the Marketplace or any Channel or Marketplace Catalogue (in relation to some or all Services) for Material Breach or if your continued membership is no longer appropriate given security issues as described in that clause;

As a reminder, Changes of Control that give rise to security issues may result in termination by PSC of your Marketplace membership, Purchasing Agencies may terminate their Subscription Agreements, and you may be responsible for disengagement costs. You may also need to meet a Purchasing Agency's costs of transitioning to an alternative provider if the security concerns arise from an entity or shareholder involved in the Change of Control being based in or having offices in a country that is not New Zealand or a Permitted Additional Territory.

(c) acknowledge and agree that:

(i) under clause 24.1(d) of the Core I/T/MS Services Terms that form part of each Purchasing Agency's Subscription Agreement, the Purchasing Agency may terminate its Subscription Agreement if it believes on reasonable grounds that either, as a result of a Change of Control, 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 exercising the termination right the Purchasing Agency

raises its concerns with you and gives you a reasonable opportunity to address those concerns;

(ii) if the Purchasing Agency elects to terminate its Subscription Agreement under clause 24.1(d) of the Core I/T/MS Services Terms, the Purchasing Agency shall have no liability for any termination costs; and

(iii) if a Purchasing Agency decides to terminate under clause 24.1(d) and before doing so notifies you under clause 25 of the Core I/T/MS Services Terms that it requires disengagement services, under clause 25.8 you could be responsible for meeting your costs of providing the Disengagement Services; and

(d) agree that, if:

(i) the Purchasing Agency terminates because the Change of Control raises significant security concerns;

(ii) the cause of those concerns is that an entity or shareholder involved in the Change of Control is based in or has offices in a country that is not New Zealand or a Permitted Additional Territory; and

(iii) the Purchasing Agency raised its concerns with you before terminating and you were unable to address those concerns to the Purchasing Agency's satisfaction,

you will also be responsible for meeting the Purchasing Agency's reasonable costs of finding (including if required through a competitive procurement process) alternative services and transitioning to an alternative provider.

5.5 This paragraph 5.5 applies to Changes of Control and changes in legal or trading names of your Subcontractors, any Third Party Service Provider whose Service(s) you resell via the Marketplace, and Local Fibre Companies on whose services some or all of your Services rely (**Third Party Changes**). You will, within 10 Business Days of your becoming aware of a Third Party Change, provide written notice of the Third Party Change to PSC and relevant Purchasing Agencies (the **Notice Obligation**). If complying with the Notice Obligation would result in your breaching an obligation of confidentiality you owe to a Subcontractor or Third Party Service Provider or Local Fibre Company, you do not need to comply with the Notice Obligation until the confidentiality obligation no longer applies.

If a Subcontractor or Third Party Service Provider whose Service(s) you resell or a Local Fibre Company you rely upon undergoes a Change of Control or name change, you need to tell PSC and relevant Purchasing Agencies about it if you can.

6. Audit

6.1 Security audit or inspection

PSC may carry out an audit or inspection for the purpose of reviewing your compliance with, and/or ability to comply with or perform, your obligations under this Schedule, if:

In certain circumstances we may undertake an audit or inspection.

(a) we have reason to believe you are not complying with your obligations under this Schedule; or

(b) we consider such an audit is necessary or desirable for the purposes of the security assurance and certification processes referred to in paragraphs 4.2-4.6 (Security assurance and certification of Services).

6.2 Audit or inspection requirements

If we conduct an audit or inspection under paragraph 6.1:

An audit or inspection needs to be undertaken during business hours, by PSC Personnel or an independent expert. It might involve security testing your Services. Your reasonable security requirements will be respected, we'll try to minimise disruption, and you'll need to co-operate.

(a) it will be conducted, unless otherwise agreed, during Business Days, during normal business hours, and following at least 15 Business Days' written notice to you, provided that if we consider there is a pressing security-related need to give 10 Business Days' rather that 15 Business Days' notice, we may give you 10 Business Days' written notice;

(b) our written notice under paragraph 6.2(a) will explain the reasons for and scope of the audit, and you will be given at least 10 Business Days to provide us with written comments on the audit scope if you wish, unless we have given you 10 Business Days' notice of the audit or inspection in accordance with paragraph 6.2(a) in which case you will have 5 Business Days to provide such written comments;

(c) it may, at our option, be undertaken by our Personnel, or an independent expert (**Auditor**), with the Auditor to be under a duty of confidentiality;

(d) it may, at our option, include security testing of your Services at an agreed date and time (agreement not to be unreasonably withheld or delayed), subject to our compliance with your service and reasonable security requirements and to any limitations on security testing of Third Party Services or Third Party Components that form part of your Services or on which your Services rely;

(e) we will comply (and will take reasonable steps to ensure any Auditor complies) with your reasonable requirements for the purpose of protecting the security and safety of personnel, information, premises, customers, services, and systems, which may include:

(i) read-only access to records;

(ii) access to facilities and production systems being supervised, logged, and monitored; and

(iii) physical access being subject to compliance with your standard visitor processes;

(f) we will use reasonable endeavours to minimise (including taking reasonable steps to ensure any Auditor minimises) any disruption to your business during the audit or inspection;

(g) you must co-operate in a timely manner in respect of any audit or inspection;

(h) subject to paragraph 6.2(e), you must promptly provide (subject to confidentiality obligations you may owe to third parties):

(i) access and assistance to us or the Auditor in relation to any audit or inspection (including access to you, your Personnel, and your facilities, systems, records and resources used in the provision of the Services); and

(ii) any explanations, information and documentation that we or the Auditor may reasonably require in relation to the audit or inspection; and

(i) if we request existing third party audit reports of relevant Subcontractors or Third Party Service Providers or providers of Third Party Components (including relevant ISO or SOC2 reports), you will use reasonable endeavours to obtain them and provide them to us (subject to confidentiality obligations you may owe to third parties).

6.3 Minimising duplication

To the extent that the scope of an audit or inspection conducted under paragraph 6.1 is the same as or a subset of an audit or inspection conducted by a Purchasing Agency or reputable third party auditor or inspector in the preceding 12 months, you may, for the purpose of minimising duplication, request in writing that we take the report of that audit or inspection into account when conducting, or instead of conducting some or all of, an audit or inspection under paragraph 6.1. If you make such a written request, you must provide us with the report at the same time, and we will endeavour to inform you within 15 Business Days as to whether and the extent to which we are willing to take that report into account. Our decision under this paragraph 6.3 is at our absolute discretion and does not limit our rights under this clause 6.

This paragraph allows you to request that a recent audit or inspection report be relied on to reduce duplicate audits, subject to providing the report and our discretionary decision on whether and to what extent it will be accepted.

6.4 Cost of audit or inspection

PSC will be responsible for its costs and you will be responsible for your costs in relation to any audit or inspection undertaken in accordance with paragraphs 6.1-6.2, unless:

(a) PSC undertakes an audit under paragraph 6.1(a); and

(b) the audit reveals a material breach by you of one or more of your obligations under this Schedule,

in which case you will, within 20 Business Days of PSC's written request, reimburse PSC for its actual and reasonable costs of carrying out the audit or inspection.

Each party will be responsible for its own costs, unless an audit is undertaken in certain circumstances and reveals that you're in material breach, in which case you may need to reimburse PSC for its reasonable costs.

6.5 Outcome of audit

Without limiting any other provision of this Agreement or rights or remedies available to PSC or any Purchasing Agency, if an audit reveals a failure by you to comply with this Agreement or any Subscription Agreement, you will promptly remedy such failure, at your cost and to our reasonable satisfaction. If you dispute any audit findings, the dispute will be resolved in accordance with clause 18 (Disputes) of the Channel Terms.

If an audit reveals a failure on your part to comply with your obligations, you'll need to remedy it promptly.

7. Orders for disclosure of Confidential Information or Purchasing Agency Data

7.1 If you are required by law or a court of competent jurisdiction, or are ordered by a government agency or regulatory body in any jurisdiction, to disclose PSC's Confidential Information or any Purchasing Agency Data, whether directly or through any entity that Controls you, you will use all reasonable endeavours to:

(a) notify PSC and, if Purchasing Agency Data is involved, the relevant Purchasing Agencies, in writing of the requirement or order, before any disclosure occurs;

(b) if practicable, confine the scope of the requirement or order;

(c) where applicable, request the court, government agency or regulatory body to notify PSC or the Purchasing Agency of the requirement or order and give PSC or the Purchasing Agency an opportunity to comment; and

(d) if, despite the steps in paragraph 7.1(c) (where applicable), you are still required to comply with the requirement or order, disclose as little of the Confidential Information or Purchasing Agency Data as possible, and notify PSC and, if applicable, the Purchasing Agency of the Confidential Information or Purchasing Agency Data that has been disclosed.

You need to tell PSC and affected Purchasing Agencies if you're required or ordered to disclose PSC's Confidential Information, or any Purchasing Agency Data, and confine the scope of such requirements or orders if you can. The notice obligations don't apply if applicable law prevents you from notifying.

7.2 The notice obligations in paragraph 7.1 do not apply to the extent that:

(a) providing notice is not permitted under the law of the relevant jurisdiction; and

(b) you are bound by the law of that jurisdiction.

7.3 If you become aware that a Subcontractor, or a Third Party Service Provider whose Services you resell, or a Local Fibre Company on whose services some or all of your Services rely, is subject to a requirement or order of a kind referred to in paragraph 7.1, you will promptly notify PSC and, if Purchasing Agency Data is involved, the relevant Purchasing Agencies, of the requirement or order. The notice obligation in this paragraph 7.3 does not apply to the extent that disclosure would be contrary to applicable law or confidentiality obligations you owe to the Subcontractor or Third Party Service Provider or Local Fibre Company.

8. Staffing

8.1 Staff security checks

(a) *New Zealand Checks*: You must, unless otherwise agreed with the relevant Purchasing Agency, ensure that those of your staff based in New Zealand who are involved in provision of the Services and have or are likely to have any access to:

(i) Purchasing Agency Data; or

(ii) those of your systems used to store, transport, or process such data; or

(iii) Purchasing Agency or other government systems used to store or process such data; or

(iv) the Management Plane of any Third Party Service used to store or process such data,

have:

(v) had their identity verified by in-person independent means (such as physically checking against passport or similar records); and

(vi) passed Ministry of Justice criminal record checks (**MOJ Checks**) or, where relevant, Police checks or NZSIS checks, and continue to pass the MOJ Checks or the other checks that you will repeat every 2 years

(together, **New Zealand Checks**).

Staff who may access government data or systems used to store or process it must have passed security checks.

(b) *Permitted Additional Territory Checks*: You must ensure that those of your staff based in Permitted Additional Territories (if any) who have or are likely to have any of the kinds of access

referred to in paragraph 8.1(a) have passed and continue to pass security checks equivalent to the New Zealand Checks (**Permitted Additional Territory Checks**), and that any country-specific risks that may impact these security checks are managed.

(c) *No use of overseas staff outside the Permitted Additional Territories without prior approval*:

(i) In your provision of Services you must not, without prior approval from the relevant Purchasing Agency, use any staff who:

(A) are located outside New Zealand and Permitted Additional Territories (regardless of whether they are located outside these countries or territories permanently or temporarily, including, to avoid doubt, when they are on leave); and

(B) may have any access of a kind listed in paragraph 8.1(a)(i)-(iv).

(ii) The relevant Purchasing Agency may grant or withhold approval at its absolute discretion and with or without conditions.

(iii) Without limitation to the discretion in paragraph 8.1(c)(ii), prior to granting approval the relevant Purchasing Agency may require:

(A) the staff concerned to have passed security checks that are equivalent to the New Zealand Checks (**Other Offshore Checks**); and/or

(B) evidence that verifiable procedures are in place (**Other Offshore Vetting Procedures**) by which those staff will be required to have been security vetted, and passed that vetting, before being granted any access of a kind listed in paragraph 8.1(a)(i)-(iv) , with such vetting to include, as a minimum, a check for any criminal history; and/or

(C) you to carry out a risk assessment specific to vetting and security check risks in the relevant country or countries, which would require you to have current knowledge of local identity fraud vulnerabilities and threats.

Staff outside New Zealand and Permitted Additional Territories cannot be used if they would have such access unless approved by the Purchasing Agency. Note that the defined term 'Permitted Additional Territories' includes, among other things, countries from which Services may be provided or in which Purchasing Agency Data may be stored or processed on the basis of disclosure in your Offshoring Schedule. Therefore, for all offshore countries covered by your Offshoring Schedule, paragraph 8.1(b) applies, not this 8.1(c).

(d) *Identity verification*: In relation to all Permitted Additional Territory Checks and Other Offshore Checks, you must:

(i) use all reasonable endeavours to understand and consider identity theft and fraud risks in the relevant jurisdictions;

(ii) identify your staff, for whom those checks are required, physically in-person (not virtually) against a suitable government-issued identity credential that has been physically verified by a qualified document assessor;

(iii) use a credible process to ensure that relevant access rights or tokens assigned to these staff are assigned by verifiable means that bind the rights or tokens with the correct individuals; and

(iv) ensure your ICT Security Manager is aware of and has considered risks associated with the processes referred to in this paragraph 8.1(d).

(e) *Confirmation*: You must, within 5 Business Days of PSC's or the Purchasing Agency's written request:

(i) confirm in writing that you have undertaken all security checks required by this paragraph 8.1; and

(ii) if requested in such notice, provide either copies to PSC or the Purchasing Agency of all relevant New Zealand Checks, Permitted Additional Territory Checks, Other Offshore Checks, and Other Offshore Vetting Procedures, as applicable and if lawfully entitled to do so or, to the extent you are not lawfully entitled to provide them, summaries of the relevant New Zealand Checks, Permitted Additional Territory Checks, Other Offshore Checks, and Other Offshore Vetting Procedures.

If we ask for confirmation and details of the applicable checks and vetting procedures, you must provide them.

(f) *Replacement of staff*: You must, as soon as practicable, replace or reject the use of any staff (in relation to their provision of the Services) who fail to pass the security checks required by this paragraph 8.1, and any replacement staff must meet the requirements of this paragraph 8.1.

Staff who fail a security check cannot be used in provision of the Services.

8.2 Subcontractor and Third Party Service Provider staff

(a) This paragraph 8.2 applies in relation to those of your Subcontractors, and Third Party Service Providers whose Third Party Services you resell, whose staff may have any access of a kind listed in paragraphs 8.1(a)(i)-(iv) (regardless of whether those staff are in New Zealand or offshore).

(b) You will use reasonable endeavours to:

(i) ascertain whether; and

(ii) when contracting or renewing relevant contracts, to procure,

that those Subcontractors and Third Party Service Providers undertake security vetting of the staff referred to in paragraph

8.2(a). To avoid doubt, we acknowledge it may not be possible to include such provisions in contracts with Subcontractors and Third Party Service Providers who will only contract on standard terms.

(c) If you become aware that a Subcontractor, or a Third Party Service Provider whose Third Party Services you resell, does not undertake security vetting of the staff referred to in paragraph 8.2(a), you will provide prompt written notice of that situation to PSC and relevant Purchasing Agencies.

8.3 ICT Security Manager

(a) For your Services that are not Professional Services you must, unless agreed otherwise with PSC, have a designated member of your Personnel appointed to the role of ICT security manager (**ICT Security Manager**). That person must have relevant qualifications and experience and maintain advanced knowledge of threats to ICT services.

Unless agreed otherwise with PSC, you need to have a full time ICT Security Manager.

(b) You will provide PSC and Purchasing Agencies with the name and contact details of the ICT Security Manager on request.

(c) If the ICT Security Manager leaves your organisation for any reason or changes roles within your organisation you will, unless agreed otherwise with PSC, reasonably promptly:

(i) appoint a replacement ICT Security Manager in accordance with paragraph 8.3(a); and

(ii) provide PSC and Purchasing Agencies with the name and contact details of the replacement ICT Security Manager.

9. Subcontractors and Third Party Service Providers

9.1 Without limitation to paragraph 9.2, you will exercise reasonable skill and care in the selection, appointment, and reappointment of Subcontractors and Third Party Service Providers that:

You need to take care when appointing and reappointing Subcontractors and Third Party Service Providers.

(a) are involved or that you propose to involve in provision of the Services; and

(b) have or are likely to have access to PSC Confidential Information, Purchasing Agency Data, or Purchasing Agency Environments,

including, to the extent reasonable in the circumstances, consideration of their approach to security, whether their services are secure by design, and whether they have internationally recognised security certifications (such as ISO/IEC 27001 certification) or have been assessed as compliant with internationally recognised security frameworks (such as SOC 2 Type II).

9.2 If you propose to:

(a) use any Subcontractors to perform or deliver any part of the Services; or

(b) resell any Third Party Services provided by Third Party Service Providers,

each such Subcontractor and each such Third Party Service Provider must be approved by PSC:

(c) before publication of your Services Listings; or

(d) if you first propose to use a particular Subcontractor or resell a particular Third Party Service after your Services Listings are published, before the Subcontractor is involved in provision of the Services or before you resell the Third Party Service.

Subcontractors and Third Party Service Providers need to be approved by PSC.

9.3 For each such Subcontractor, each Third Party Service Provider whose Third Party Service(s) you resell, and each Local Fibre Company, you must provide the following information to PSC (in the case of Third Party Service Providers whose Third Party Service(s) you resell and Local Fibre Companies, to the extent you have it or are reasonably able to obtain it):

(a) the name, qualifications and experience of the proposed Subcontractor, Third Party Service Provider, or Local Fibre Company;

(b) a description of the obligations to be subcontracted and the Services affected, or a description of the Third Party Service(s) to be resold, or a description of the Local Fibre Company services relied upon and for which part(s) of your Service(s);

(c) the full legal names of any parent companies (including intermediate holding companies) and all their jurisdictions of incorporation; and

(d) if the proposed Subcontractor or Third Party Service Provider or the Local Fibre Company may process, transport, store or have access to any of PSC's Confidential Information or any Purchasing Agency Data, information on:

(i) any current certifications, accreditations or independent assurance reports the Subcontractor or Third Party Service Provider or Local Fibre Company has in relation to its security and privacy controls;

(ii) the jurisdiction in which the Subcontractor or Third Party Service Provider or Local Fibre Company was incorporated and in which it has its head office;

For each proposed Subcontractor, each Third Party Service Provider whose Service(s) you resell, and each Local Fibre Company upon which you rely to provide your telecommunications or data connectivity Services, you'll need to provide a range of information to PSC.

(iii) all jurisdictions in which the Subcontractor or Third Party Service Provider or Local Fibre Company has offices, and has or leases IT infrastructure that could be used for or in relation to the relevant Services;

(iv) where relevant, all jurisdictions from which the Subcontractor or Third Party Service Provider or Local Fibre Company provides support services in relation to the relevant Services and the nature of such support services;

(v) the pre-employment vetting processes used by the Subcontractor or Third Party Service Provider or Local Fibre Company for staff that may have access to such Confidential Information or Purchasing Agency Data and whether the Subcontractor or Third Party Service Provider or Local Fibre Company provides on-going checks of staff during their employment or retention; and

(vi) whether the proposed Subcontractor or Third Party Service Provider or Local Fibre Company relies on any of its own subcontractors in any way that might entail access by those subcontractors or their staff to such Confidential Information or Purchasing Agency Data and, if so, the information referred to in paragraphs 9.3(d)(i)-(v) above in respect of those subcontractors,

provided that you do not need to provide to PSC the information listed in this paragraph 9.3(d) in relation to any Subcontractor, Third Party Service Provider whose Third Party Service(s) you resell, or Local Fibre Company, that only transports PSC's Confidential Information or any Purchasing Agency Data where such Subcontractor, Third Party Service Provider, or Local Fibre Company cannot access that Confidential Information or Purchasing Agency Data.

9.4 PSC will review the information you provide and will notify you whether it consents to the appointment of the Subcontractor or the resale of Third Party Services from the Third Party Service Provider, such consent not to be unreasonably withheld or delayed (to avoid doubt, PSC consent is not required for use of a Local Fibre Company). PSC may, acting reasonably, impose conditions on such consent. If you first seek PSC's consent to use a particular Subcontractor or resell a particular Third Party Service after your relevant Services Listings are published, PSC will endeavour to process your request for approval within 20 Business Days. Our ability to meet this target is subject to the factors listed in clause 9.1(i), and we will not be in breach of this paragraph if, for whatever reason, we are unable to meet the target.

PSC will review the information and let you know if it consents to your use of the Subcontractor or the resale of Third Party Services from the Third Party Service Provider. Consent is not required in relation to Local Fibre Companies.

9.5 Approved Subcontractors and Third Party Service Providers (whose Service(s) you resell) and Local Fibre Companies must be described in a consolidated schedule of such Subcontractors, Third Party Service Providers and Local Fibre Companies (**Subcontractor/TPSP/LFC Schedule**) that:

(a) is cross-referred to from relevant Services Listings;

(b) lists the Subcontractors, Third Party Service Providers (whose Third Party Service(s) you resell) and Local Fibre Companies and the Services for which or in connection with which they are used; and

(c) is provided to PSC, and made available to Participating Agencies on request.

You need to list approved Subcontractors and Third Party Service Providers, and relevant Local Fibre Companies, in a consolidated schedule of such Subcontractors, Third Party Service Providers, and Local Fibre Companies. PSC can share information you provide about them to Participating Agencies.

9.6 You will need to include the Subcontractor/TPSP/LFC Schedule in the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings, using the template PSC prescribes. PSC may, on request by a Participating Agency, share information you have provided under paragraph 9.3 with the Participating Agency for the purpose of assisting the Participating Agency to decide whether to procure your Services or undertake its own due diligence.

9.7 If you first propose to use a particular Subcontractor or resell a Third Party Service Provider's Third Party Service after your relevant Services Listing(s) are published, and PSC grants approval to your use of the Subcontractor or Third Party Service Provider under paragraph 9.2, you must:

(a) update your Subcontractor/TPSP/LFC Schedule promptly to include the Subcontractor or Third Party Service Provider; and

(b) notify Purchasing Agencies consuming Services for which the Subcontractor or Third Party Service Provider is relevant of your use of the Subcontractor or Third Party Service Provider and of PSC's approval.

If you propose to introduce a new Subcontractor or Third Party Service Provider into the provision of Services under existing Orders and Statements of Work and PSC grants approval, you need to update your consolidated schedule and notify relevant Purchasing Agencies.

9.8 You are responsible for ensuring the capability and capacity of any approved Subcontractor to deliver the aspect of the Services being subcontracted and for managing approved Subcontractors in accordance with Good Industry Practice. You also continue to be responsible for delivering the Services in accordance with the Subscription Agreement even if aspects of the Services are subcontracted.

9.9 You will, unless otherwise agreed in writing by PSC on a case by case basis, include in any subcontract obligations on the Subcontractor that are consistent with your:

(a) delivery obligations under Subscription Agreements (to the extent relevant to the subcontracted Services); and

(b) obligations in this Schedule and each Subscription Agreement relating to, as applicable, confidentiality, security, privacy, and return of property and secure disposal of equipment upon the termination or expiry of a Subscription Agreement.

You're responsible for Subcontractor performance, you need to include some key terms in your subcontracts (unless PSC agrees otherwise), and you don't need PSC approval to use staff members acting under contracts for service if they're in New Zealand or a Permitted Additional Territory.

9.10 You do not need to obtain PSC's written approval to use, in the provision of 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 or a Permitted Additional Territory. This paragraph 9.10 does not limit paragraph 8.1 (Staff security checks).

10. Offshoring of Services or Purchasing Agency Data

10.1 Prohibited locations

You must not provide any Services (including hosting or support), or allow any Subcontractor or Third Party Service Provider to provide such Services, from any country subject to United Nations sanctions, as listed at mfat.govt.nz/en/peace-rights-and-security/un-sanctions or successor URL.

You must not provide Services from a UN-sanctioned country. You can't offshore Services or Purchasing Agency Data unless it's clearly stated in your PSC-approved Offshoring Schedule, or a Purchasing Agency has specifically consented to it in writing. Any changes to offshore locations won't apply to existing Orders and SOWs unless a Purchasing Agency agrees. These restrictions don't prevent the use of international telecommunications networks for secure, encrypted data transmission as long as the transfer is only for routing.

10.2 Offshoring restrictions

Except as permitted in clauses 10.3 and 10.4, neither you nor any Subcontractor or Third Party Service Provider may:

(a) provide any Services (or part of the Services, including support or hosting infrastructure) from outside New Zealand; or

(b) store, process, or make available Purchasing Agency Data to any person located outside New Zealand

(collectively, **Offshoring**).

10.3 Permitted Offshoring when identified in Offshoring Schedule

(a) Offshoring is permitted when:

(i) it is explicitly detailed in a consolidated schedule (**Offshoring Schedule**) that specifies, for each offshore element:

(A) the Service(s), part(s) of Service(s), and/or support roles provided from outside New Zealand, and by whom;

(B) the countries from which those Services or roles are provided; and

(C) any options available to Purchasing Agencies to select or restrict data residency and/or support locations; and

(ii) PSC approves the Offshoring Schedule; and

(iii) you clearly refer to the Offshoring Schedule in all relevant Services Listings.

(b) If you wish to detail Offshoring in an Offshoring Schedule, you will need to include the Offshoring Schedule in the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings (of which the Offshoring Schedule would be a part), using the template PSC prescribes.

10.4 Permitted Offshoring with Purchasing Agency consent

Offshoring is also permitted where a Purchasing Agency consents in writing to the Offshoring (including the specific Permitted Additional Territories beyond those in your Offshoring Schedule) in a Subscription Form, Order, Statement of Work, or subsequently.

10.5 Changes to offshore territories

(a) If your Offshoring Schedule is updated to include new offshore locations for the provision of Services or the storage or processing of Purchasing Agency Data:

(i) you must provide your updated version of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings (of which the Offshoring Schedule is a part) to PSC, for PSC approval and to enable PSC to update its Marketplace records; and

(ii) PSC will endeavour to review the updated version of that Consolidated Schedule within 20 Business Days (our ability to meet this target is subject to the factors listed in clause 9.1(i), and we will not be in breach of this paragraph if, for whatever reason, we are unable to meet the target); but

(iii) the updates will not apply to Orders or Statements of Work agreed with Purchasing Agencies before the update is made and you will not be able to rely on paragraph 10.3 in relation to them, unless the Purchasing Agencies agree in writing to the new offshore locations.

(b) To avoid doubt, paragraph 10.5(a)(iii) does not limit any broad or generic consents you may have agreed with Purchasing Agencies in their Subscription Agreements.

10.6 Legal requirements and risk disclosure

You will notify PSC and relevant Purchasing Agencies in writing of changes in legal requirements in any country:

(a) from which you operate; or

(b) in which you have a parent company,

that could affect your ability to provide the Services, comply with this Agreement or Subscription Agreements, or protect the confidentiality and security of PSC's Confidential Information or any Purchasing Agency Data (including potential access by foreign governments, courts, or regulators).

You need to tell PSC and relevant Purchasing Agencies about legal changes that could affect your ability to provide the Services or protect government data.

10.7 Clarifications

To avoid doubt:

(a) subject to any express restriction in a Subscription Form, Order, or Statement of Work, nothing in this paragraph 10 prevents you from using telecommunications networks (which by their nature may involve international routing via the Internet) to communicate with or provide the Services, provided that:

(i) any transfer of Purchasing Agency Data outside of New Zealand (or Permitted Additional Territories) is only for Internet routing purposes; and

(ii) the Purchasing Agency Data is encrypted and not accessible by persons who are not authorised to access the data;

(b) nothing in this paragraph 10 prevents a 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

Agencies can seek to negotiate additional limitations on offshoring.

(c) if you have represented in your Services Listings or Offshoring Schedule when an Order or Statement of Work is entered into, or otherwise agreed with a Purchasing Agency:

(i) that your Services (including support) are provided from named countries (**Service Locations**); and/or

(ii) that Purchasing Agency Data will only be stored or processed in specific data residency countries (**Data Locations**),

You can’t make changes to represented or agreed service and data locations without a Purchasing Agency’s consent.

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

11. Supply chain and National Security Risk

11.1 In this paragraph 11, **National Security Risk** means a risk that could reasonably be expected to:

(a) compromise the confidentiality, integrity, or availability of government information, systems, or services; or

(b) otherwise adversely affect New Zealand's national security interests,

arising from the ownership, control, sourcing, place of manufacture or development, or operation of critical software or hardware used in your Services and including threats in the nature of espionage, sabotage, coercion, or foreign interference.

PSC can assess your organisation and services for potential national security risks at any time (for example, risks linked to who owns, controls, develops, or manufactures key software or hardware). You must take reasonable steps to identify and minimise these risks, provide PSC with information about critical components when asked, and notify PSC if your supply chain changes in a way that could create a national security risk. If PSC has concerns or you don't cooperate, it may refuse, suspend, or remove your Marketplace listing, or not grant or withdraw certification (after giving you a chance to comment). Any information you share with PSC will be treated as confidential.

11.2 PSC may assess your organisation and Services for potential National Security Risks at the time of onboarding to the Marketplace, when you apply for a Services Listing, and at any time during the lifecycle of your Services.

11.3 You must use all reasonable endeavours to understand and manage the supply chain for your Services with a view to avoiding National Security Risks or, where they cannot be avoided, minimising them to the greatest extent reasonably possible.

11.4 Where requested by PSC in writing, you will provide PSC reasonably promptly with available information that you hold or can reasonably obtain in the ordinary course of business about critical software or hardware components that are integral to the delivery of your Services, including the ownership and primary country of development or manufacture of those components. To avoid doubt, nothing in this paragraph 11.4 requires you to disclose information to the extent that doing so would breach any legal or regulatory obligation (including stock exchange requirements), or any contractual obligation, including but not limited to confidentiality obligations you owe to third parties.

11.5 You must notify PSC in writing if you become aware of a material change or issue in your supply chain that could reasonably be expected to give rise to National Security Risk(s).

11.6 If:

(a) PSC has reasonable concerns about National Security Risks in relation to your organisation or Services, from:

(i) information in its possession;

(ii) supply chain information you provide;

(iii) a material change you notify; and/or

(iv) information PSC otherwise obtains; or

(b) you do not provide information reasonably requested by PSC to support an assessment of National Security Risk,

PSC may decline your application for membership or a Services Listing, or (where relevant) not grant or withdraw certification, or suspend or remove you and/or your Services Listings from the Marketplace. Before taking such action, PSC will give you an opportunity to comment. Suspension or withdrawal will not affect your existing Subscription Agreements, but PSC may inform Purchasing Agencies of its concerns and Purchasing Agencies may choose to exercise rights available to them under those Subscription Agreements.

11.7 Any supply chain information you provide under this clause will be treated as Confidential Information and will not be disclosed except in accordance with the Marketplace Agreement.

11.8 To avoid doubt, this paragraph 11 does not apply to back-office productivity software or cloud services you use for your day-to-day operations that are not a technical part of any particular Service.

12. Business continuity and disaster recovery

12.1 Application and definitions

In most cases you will need to have and maintain a BC Plan and a DR Plan.

(a) This paragraph 12 applies to you if you have one or more Services categorised as Tier 1 under the Marketplace Information Security Tiering Standard.

(b) In this paragraph 12:

BC Plan means the business continuity plan you are required to maintain under paragraphs 12.2 and 12.3;

Continuity Event means a serious interruption, crisis or other business-impacting incident, other than a Disaster Event, that could reasonably be expected to hinder or prevent provision of the Services unless additional continuity measures are applied (such as sustained loss of key personnel, failure of a critical supplier, civil unrest near an operations centre, or denial of access to essential premises);

Disaster Event means a catastrophic incident or event in which one or more of your places of operation, production sites, cloud regions, essential platforms, databases, or other fundamental resources are destroyed, damaged, or otherwise made unavailable;

DR Plan means the disaster recovery plan you are required to maintain under paragraphs 12.2 and 12.4; and

Trigger Event means a Continuity Event or a Disaster Event.

12.2 Provider obligations

You shall, during your membership of any of the Channels to which this Schedule applies, have, maintain, periodically review, and comply with a BC Plan and a DR Plan that meet the requirements of this paragraph 12 and accord with Good Industry Practice.

12.3 Business continuity plan

The BC Plan needs to cover at least the things set out here.

Your BC Plan shall, as applicable to the nature of the Services and without limitation:

(a) set out the continuity chain of command and roles so everyone knows who does what when the Plan is activated;

(b) summarise your business impact analysis, listing the activities essential to the Services and the order in which they must be stabilised or resumed;

(c) explain how key staff are contacted, redeployed or replaced, including any succession plans;

(d) identify alternate work locations (or remote-working arrangements), the triggers for switching to them, and the controls for site access and security;

(e) name critical third parties and where feasible outline the safeguards that will keep their failure from stopping the Services;

(f) list the day-to-day measures already in place to reduce the likelihood or impact of a Continuity Event;

(g) include concise, step-by-step procedures that let staff keep critical activities going, even if in reduced form, until full service is restored; and

(h) require the Plan to be reviewed and tested annually, with any lessons learned built into the next version.

12.4 Disaster recovery plan

The DR Plan needs to cover the things set out here.

Your DR Plan must be fit for purpose and appropriate to the nature of each Service. Without limiting this general obligation, your DR Plan shall, as applicable to the nature of the Services and without limitation:

(a) describe the recovery architecture, including if applicable geographically separate primary and secondary sites or cloud regions, replication methods, and a backup regime that accords with Good Industry Practice and that is designed to ensure no loss of data beyond the RPO mentioned below;

(b) specify, for every critical system and dataset, a recovery time objective (**RTO**) and recovery point objective (**RPO**) that are consistent with the best RTO and RPO Service Levels you offer Purchasing Agencies;

(c) provide step-by-step procedures for fail-over, data-integrity verification, and fallback to the primary environment;

(d) list all hardware, licences, cloud resources and third-party services required to execute recovery; and

(e) assign roles, escalation paths, and contacts.

12.5 Review of plans

(a) Within 60 days of the Channel Terms Commencement Date, and from time to time on request by PSC (but no more than once in any 12 month period), you will submit the BC Plan and DR Plan to PSC for review. If either plan contains information that is:

(i) confidential to third parties; or

(ii) not relevant to the Services you are providing,

you may redact that information from the plan before submission to PSC, provided you give reasons for any such redaction (that is, state for each redaction that the redacted information is confidential to a third party or is not relevant to the Services you are providing).

You need to submit the BC Plan and DR Plan to PSC for review, and PSC may ask you to amend them (any such requests need to be reasonable).

(b) Each time you make a material alteration to the BC Plan or DR Plan, you will resubmit the Plan to PSC for review.

(c) You will make such amendments to the BC Plan and DR Plan as are reasonably requested by PSC following any review undertaken in accordance with paragraph 12.5(a) or (b), provided that:

(i) you are not required to make requested amendments to the extent that:

(A) they relate to aspects of a BC Plan or DR Plan that apply to an entire facility used for other purposes and/or other customers; and

(B) it is not reasonably feasible for you to make those amendments without adversely affecting the wider facility operations; and

(ii) if the parties disagree as to whether amendments requested by PSC are reasonable, there will be a deemed dispute which shall be resolved in accordance with clause 18 (Disputes).

(d) You agree to release such additional information as may be reasonably required to allow each Purchasing Agency to develop its own business continuity and disaster recovery plans to work in concert with your BC Plan and DR Plan, at no additional cost to any Purchasing Agency.

(e) To avoid doubt, your BC Plan and DR Plan, and any information provided to PSC and any Purchasing Agency in connection with the BC Plan and DR Plan, shall be considered and treated as your Confidential Information.

12.6 Event assessment and plan activation

(a) Whenever you become aware of a Trigger Event or a circumstance that might qualify as a Trigger Event you will, without undue delay, carry out an assessment in accordance with your incident management procedures to decide whether normal measures are sufficient or whether the BC Plan or DR Plan should be activated.

If a Trigger Event occurs, you need to assess whether to activate the BC Plan or DR Plan and inform PSC's Lead Relationship Manager as soon as possible.

(b) You will inform PSC's Lead Relationship Manager of the outcome of that assessment as soon as reasonably practicable. Having consulted PSC (except where communications are impossible or delay would aggravate the situation) you may, acting reasonably, decide to:

(i) continue to manage the matter through normal incident management procedures;

(ii) invoke relevant sections of the BC Plan to safeguard continuity of the Services; or

(iii) where the circumstance amounts to a Disaster Event, invoke the DR Plan.

After consulting PSC, you may decide to continue applying normal incident management procedures, or invoke the BC Plan or DR Plan.

(c) You will promptly provide written notice to PSC's Lead Relationship Manager of your decision under paragraph 12.6(b). If your decision is to invoke either plan, your notice must identify the sections being activated and outline the next steps. While a plan remains active you will issue situation reports at intervals agreed with PSC's Lead Relationship Manager.

(d) If you decide to continue to manage the matter through normal incident management procedures in accordance with paragraph 12.6(b)(i), and PSC considers that, if you were acting reasonably, you should have invoked the BC Plan or DR Plan (as applicable), PSC may notify you in writing of its concerns. If PSC makes such a notification, your chief executive and the Secretary for Internal Affairs, or their nominated delegates, will meet as soon as possible and in any event within 48 hours of PSC's written notice to attempt to resolve the parties' competing views.

If you don't invoke the BC Plan or DR Plan but PSC thinks you should, the Secretary for Internal Affairs and your chief executive or their nominated delegates will need to meet to resolve the competing views.

(e) Within 20 Business Days of full restoration of the affected Services, you will provide to PSC's Lead Relationship Manager a written post-incident report covering root cause, actions taken, performance against any applicable RTO/RPO, and any lessons learned.

You need to provide post-incident reporting too.

(f) PSC may inform relevant Purchasing Agencies of all matters referred to in this paragraph 12.6.

12.7 Testing of plans

(a) Paragraphs 12.7(b)-(d) apply unless you and PSC have agreed to an alternative approach to testing your BC Plan and DR Plan.

(b) You will:

The BC Plan and DR Plan need to be tested periodically, and the DR Plan may need to be tested when, for example, you upgrade or install new hardware.

(i) review, test and, where appropriate, update the procedures set out in the BC Plan at least once every 12 months; and

(ii) in relation to the DR Plan, undertake:

(A) at least one tabletop DR Plan test every 12 months (discussion-based scenario testing); and

(B) at least one full DR Plan test every 12 months (simulation or execution-based testing),

and, where appropriate, update the procedures in the DR Plan as a result of that testing.

You must provide a report to PSC's Lead Relationship Manager detailing the results of each test within 30 days of its completion.

(c) You will also conduct a test of the DR Plan or relevant parts of it if you:

(i) upgrade or install new hardware or other components; or

(ii) make other changes to your technical architecture or infrastructure,

and the upgrade, installation, or other changes could adversely affect your disaster recovery processes (for example, by breaking scripts or replication paths). You will provide a report to PSC's Lead Relationship Manager on the results of such testing within 30 days of its completion.

(d) You will give at least 10 Business Days' notice to PSC's Lead Relationship Manager and Purchasing Agencies' Contract Managers on the timing and nature of the testing referred to in paragraphs 12.7(b)(i) and (ii)(B) to enable PSC and each

Purchasing Agency to manage any impact of such testing and, where feasible, to co-ordinate the testing of each Purchasing Agency's own plans, where appropriate.

(e) PSC may issue and notify you of guidance in relation to the testing of your BC Plan and/or DR Plan and, where practicable, will give you an opportunity to comment on it. You will use reasonable endeavours to comply with such guidance.

(f) To avoid doubt, the testing of the BC Plan and DR Plan referred to in paragraph 12.7(b) must be a planned activity that occurs independently of a Continuity Event or Disaster Event. Activating the DR Plan in response to an incident is not 'testing' the DR Plan for the purposes of paragraph 12.7(b).

12.8 Crisis manager

(a) Within 60 days of the Channel Terms Commencement Date, you shall appoint a crisis manager (and alternate) and provide their 24 × 7 contact details to PSC's Lead Relationship Manager.

You need to appoint a crisis manager and alternate and give their details to PSC.

(b) If the crisis manager or alternate leaves your organisation for any reason or is no longer fulfilling the role you will, reasonably promptly:

(i) appoint a replacement crisis manager or alternate, as applicable; and

(ii) provide their name and contact details to PSC's Lead Relationship Manager.

12.9 Resold Third Party Services

Where the Services include Third Party Services that you resell and for which you do not control the underlying business continuity or disaster recovery arrangements:

(a) your obligations under this paragraph 12 are limited to maintaining BC/DR arrangements for the elements of the Services that are within your control (including your integration, configuration, and support activities); and

(b) nothing in this paragraph 12 requires you to create or test business continuity or disaster recovery plans for the underlying Third Party Services.

13. Security planning

13.1 You agree to create, maintain, and apply, for each relevant Service that you provide (excluding where relevant Third Party Services you resell):

You need to have response plans for DDOS and ransomware attacks, and a data disposal plan.

(a) a distributed denial of service (**DDOS**) response plan;

(b) a ransomware response plan; and

(c) a data sanitisation, disposal and destruction plan that accords with NZISM requirements and Good Industry Practice.

13.2 You will provide a copy of such plans:

(a) to PSC within 10 Business Days of PSC's written request; and

(b) if and to the extent a Purchasing Agency is procuring Services to which the plans relate, to the Purchasing Agency within 10 Business Days of the Purchasing Agency's written request.

13.3 The data sanitisation, disposal and destruction plan referred to in paragraph 13.1(c) must include provisions on what must happen to non-virtualised hardware and virtualised environments on termination or discontinued use by a Purchasing Agency, as follows:

Your data sanitisation, disposal and destruction plan needs provisions which state that, when a Purchasing Agency's Subscription Agreement ends or the hardware or environments are no longer being used, you must undertake sanitisation, destruction or deletion processes, as applicable.

(a) For non-virtualised hardware, the provisions must be to the effect that, upon the sooner of:

(i) the termination or expiry of a Purchasing Agency's Subscription Agreement; and

(ii) discontinued use by you of any non-virtualised hardware (such as servers, hard drives and flash drives) that holds or held Purchasing Agency Data,

you must:

(iii) sanitise the hardware in accordance with applicable provisions of the NZISM; or

(iv) if the hardware cannot be appropriately sanitised, destroy the hardware in accordance with applicable provisions of the NZISM.

(b) For virtualised environments, the provisions must be to the effect that, upon the sooner of:

(i) the termination or expiry of a Purchasing Agency's Subscription Agreement; and

(ii) discontinued use by you of virtualised server instances of environments for the Purchasing Agency,

you must ensure that all such instances are securely deleted.

13.4 You must have processes in place to ensure that you keep full records of all sanitisation, destruction and deletion processes contemplated by paragraph 13.3 to enable those processes to be audited if required.

14. Security risks

14.1 Subject to paragraph 14.2, if you become aware of, or suspect the existence of, a material vulnerability in any of your Services used to store, transport, or process Purchasing Agency Data (**Security Risk**), you must:

(a) investigate the Security Risk;

(b) promptly take appropriate measures to remediate or mitigate the Security Risk; and

(c) unless you have addressed the risk promptly and are highly confident there has been no compromise of Purchasing Agency Data, notify PSC and relevant Purchasing Agencies of the Security Risk as soon as possible.

You are responsible for investigating and remediating security risks and notifying PSC and relevant Purchasing Agencies about them.

14.2 If a Security Risk that you become aware of or suspect relates to a Third Party Service you resell, your obligations under this paragraph 14 are limited to:

(a) promptly investigating the Security Risk to the extent reasonably within your control, including by seeking information from the relevant Third Party Service Provider;

(b) taking reasonable steps available to you (if any) to facilitate the Third Party Service Provider to remediate or mitigate the Security Risk; and

(c) unless, based on communications from the Third Party Service Provider, you understand the Security Risk has been addressed promptly and the Third Party Service Provider is highly confident there has been no compromise of Purchasing Agency Data, notifying PSC and relevant Purchasing Agencies of the Security Risk as soon as possible, including (to the extent known to you) the Third Party Service Provider's position and remediation measures. You are not required to notify if, to your knowledge, the Third Party Service Provider has already done so or has represented to you that it will do so promptly.

If you become aware of or suspect a Security Risk involving a Third Party Service you resell, you need to promptly investigate it to the extent reasonably within your control, take reasonable steps (if any) to facilitate remediation or mitigation, and you may need to notify PSC and relevant Purchasing Agencies.

15. Security incidents

15.1 Application

Subject to paragraph 15.3, if you become aware of, or suspect, any of the following incidents (together, **Security Incidents**), you must comply with the applicable obligations set out in paragraph 15.2 below:

(a) any unauthorised person or entity has obtained access to the technology systems you use for the Services or has, in connection with your provision of the Services, obtained access to any Purchasing Agency Data or Purchasing Agency Environment;

(b) any person or entity has, in connection with the Services or through the systems you use for the Services, used, disclosed, or modified any Purchasing Agency Data for purposes not authorised or permitted by this Agreement or a Subscription Agreement (as applicable); or

(c) a Major Security-Related Service Impacting Event affecting one or more of the Services has occurred due to what is known or suspected to be a security-related incident.

You are responsible for addressing Security Incidents. That includes investigating them, notifying PSC and relevant Purchasing Agencies, and in some cases notifying NCSC. You also need to assist and provide information to PSC, NCSC and relevant Purchasing Agencies, and provide post-incident reporting. These provisions do not limit your incident-related obligations to Purchasing Agencies under their Subscription Agreements.

15.2 Obligations in relation to Security Incidents

(a) If you become aware of, or suspect, a Security Incident, you must:

(i) investigate the actual or suspected Security Incident as soon as possible; and

(ii) provide written notice of the actual or suspected Security Incident to PSC and relevant Purchasing Agencies as soon as possible, with such notice containing reasonably detailed information on the Security Incident, its impacts or potential impacts to Purchasing Agencies and, if known, root cause (and if a Security Incident has occurred and qualifies as a P1 incident as described in the table at paragraph 9.3 of Schedule 2, the P1 incident notification timeframes and content requirements will apply);

(b) If a Security Incident occurs, you must:

(i) if the Security Incident:

(A) could affect Service delivery for one or more Purchasing Agencies; or

(B) could trigger a need for a Purchasing Agency to brief its responsible Minister (on the basis that its

consequences are or could be major or catastrophic); or

(C) would trigger an investigation on your part,

provide written notice to the NCSC as soon as possible, with such notice containing reasonably detailed information on the Security Incident, its impacts or potential impacts to Purchasing Agencies, the Purchasing Agencies affected and, if known, root cause, and copy your communication to PSC's Lead Relationship Manager;

(ii) take reasonable steps to mitigate any harm to Purchasing Agencies and their Purchasing Agency Data caused by the Security Incident and to preserve evidence relating to the Security Incident (such evidence will constitute 'records' for the purposes of, and will be subject to, paragraph 5 (Records) of Schedule 2);

(iii) provide all assistance and information reasonably requested by PSC, NCSC, and relevant Purchasing Agencies to enable them to understand, mitigate the impacts of, and preserve evidence relating to the Security Incident; and

(iv) within a reasonable period following the Security Incident but no later than 10 Business Days after Resolution of the incident, provide:

(A) PSC and affected Purchasing Agencies; and

(B) if under paragraph 15.2(b)(i) you were required to notify the NCSC, the NCSC,

with post-incident reporting addressing root cause analysis, lessons learned, and the steps you have taken and/or will take to prevent similar incidents.

15.3 Security Incidents relating to Third Party Services

If you become aware of or suspect a Security Incident relating to a Third Party Service that you resell:

(a) you are not responsible for investigation, remediation or evidence-preservation activities carried out by the Third Party Service Provider or within the Third Party Service Provider's systems, but must as soon as possible notify PSC, NCSC (where applicable) and affected Purchasing Agencies of Security Incidents of which you are aware, and must use reasonable efforts to obtain and pass through relevant information made available by the Third Party Service Provider; and

(b) you will use reasonable endeavours to ensure that your agreements with Third Party Service Providers contain obligations requiring them to notify you of Security Incidents affecting their Third Party Services.

15.4 Sharing of information on Security Incidents affecting Purchasing Agencies with PSC and NCSC

To avoid doubt, under clause 17.6 of the Core I/T/MS Services Terms that form part of each Subscription Agreement, each Purchasing Agency authorises you to share with PSC 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.

You are authorised to share, with PSC and NCSC, information on Security Incidents affecting Purchasing Agencies.

15.5 No limitation

Nothing in this paragraph 15 limits your incident management and reporting obligations to Purchasing Agencies in accordance with their Subscription Agreements.

16. Sanitisation and disposal

16.1 You must sanitise, destroy, or dispose of non-virtualised hardware and virtualised environments in accordance with the sanitisation, disposal and destruction plan referred to in paragraph 13.1(c).

Sanitisation, destruction or disposal of hardware and environments needs to follow the plan referred to above.

16.2 This paragraph 16 does not apply to hardware and virtualised environments controlled by Third Party Service Providers, provided that, if you are responsible to the Purchasing Agency for managing the lifespan of virtualised environments in a Third Party Service and the Purchasing Agency's use of those environments comes to an end before expiry or termination of the Subscription Agreement, you will, if required by the Purchasing Agency, securely delete those environments in accordance with NZISM requirements.

17. Malware Free Networks

17.1 To the extent relevant to the Services and where reasonably practicable, you will make use of the National Cyber Security Centre's Malware Free Networks service (**MFN**), whether by integrating MFN into your network or relevant Services, by consuming MFN through an MFN-enabled third-party service, or by applying MFN intelligence through another technically appropriate method that delivers materially equivalent protective effect.

To the extent relevant and practicable, you need to make use of NCSC's Malware Free Networks service.

18. AI Tools

18.1 Compliant use of AI Tools

If you use AI Tools in connection with, as part of, or embedded within any of the Services:

(a) you must ensure that your use of the AI Tools is consistent with your responsibilities and will not cause you to breach your obligations under this Agreement or any Subscription Agreement, including without limitation:

(i) clause 15 (Confidentiality) of Part 1 (General Terms) of the Collaborative Marketplace Agreement;

(ii) paragraph 1.1 (Security measures) of Schedule 1 to these Channel Terms;

(iii) paragraph 10 (Offshoring of Services or Purchasing Agency Data) of Schedule 1 to these Channel Terms;

(iv) clause 16 (Intellectual Property Rights) of the Core I/T/MS Services Terms; and

(v) clause 17 (Confidentiality, security, and privacy) of the Core I/T/MS Services Terms; and

(b) without limiting your obligations referred to in paragraph 18.1(a), you are responsible for:

(i) undertaking due diligence and risk management to the extent appropriate in the circumstances to be confident the AI Tools and your use of them are and remain sufficiently secure;

(ii) ensuring Purchasing Agency Originating Data is not used to train any large language or other artificial intelligence model without the Purchasing Agency's written consent;

(iii) ensuring outputs created by the AI Tools that form part of the Services or Deliverables are subject to a level of human testing, review, oversight, or validation (as applicable), appropriate to the nature of the output; and

(iv) keeping up to date on evolving New Zealand Government standards, policies, and strategies on the use of AI Tools.

18.2 Restrictions

You must not, in performing the Services, use an AI Tool where that use has been restricted or prohibited by the GCDO, GCISO, the Public Service Commissioner, or New Zealand law.

You may use AI Tools, but you must ensure that doing so does not cause you to breach your existing obligations, including those relating to confidentiality, agency data, security, offshoring, and intellectual property. You must carry out appropriate due diligence, manage security risks, make sure Purchasing Agency Originating Data isn't used to train AI models without written consent, and keep up to date with evolving government approaches. Where AI outputs form part of the Services or Deliverables, you also need to apply appropriate human oversight to those outputs. In exceptional circumstances, GCDO, GCISO or the Public Service Commissioner might restrict or prohibit use of an AI Tool. If that were to happen, you could not, in performing the Services, use the AI Tool. PSC or a Purchasing Agency can request information on the AI Tools you're using that process Purchasing Agency Originating Data. If they do, you need to provide it.

18.3 Transparency

PSC or a Purchasing Agency may, by notice to you in writing, request a list of the AI Tools you are using in connection with the Services that process Purchasing Agency Originating Data (in the Purchasing Agency's case, limited to Services the Purchasing Agency is procuring or proposing to procure) and information on how you are using those AI Tools. If you receive such a request, you will provide the information reasonably requested by PSC or the Purchasing Agency within 20 Business Days of your receipt of the notice. PSC or the Purchasing Agency, as applicable, will treat the information you provide as your Confidential Information.

19. Asset documentation

You need to maintain detailed technical design documentation that covers the assets listed here.

19.1 You must have, at all times maintain, and update on Major Changes, a detailed technical design document relating to your Services (excluding Third Party Services you resell) that includes:

(a) security architecture;

(b) physical locations;

(c) data centre names;

(d) local or cloud service names;

(e) network segments;

(f) IP addressing;

(g) major security component manufacturer(s) and the current version(s) of those components, major software manufacturer(s) and the current version(s) of that software, and major telecom and infrastructure component manufacturer(s) and the current model(s) and version(s) of those components;

(h) user access vectors and origin locations; and

(i) privileged access and system administrator access vectors and origin locations.

19.2 Subject to paragraph 19.3, you will provide a copy of this documentation to PSC within 10 Business Days of receiving its written request.

19.3 If, upon receipt of a request from PSC under paragraph 19.2, you have security-related concerns about disclosing some of the information listed in paragraph 19.1, you will within 5 Business Days of receiving PSC's request inform PSC in writing of your concerns and steps you suggest can be taken to address them (which could, for example, comprise granting PSC controlled remote online access to or viewing of the information within the 10 Business Days referred

to in paragraph 19.2). PSC will consider your concerns and suggested steps and inform you in writing reasonably promptly:

(a) whether and, if so, the extent to which you may withhold certain information; and/or

(b) subject to paragraph 19.4, the specific steps PSC will take to safeguard the relevant information.

19.4 If you have offered to grant PSC controlled remote online access to or viewing of the information as described in paragraph 19.3, PSC will agree to that form of access rather than requiring you to provide a copy of the documentation in accordance with paragraph 19.2.

19.5 To avoid doubt, this paragraph 19 does not require you to disclose or share information where doing so would be prohibited by law, stock exchange requirements, or existing contractual obligations.

20. Multifactor authentication

20.1 Multifactor authentication must be implemented for all users accessing any internet-facing Service components (including, where relevant, Service components of resold Third Party Services) that require user authentication, including remote access.

Multifactor authentication is to be used for Internet-facing Service components.

21. Configuration, vulnerability, and patch management

21.1 Application of provision

This paragraph 21 applies to all systems and cloud assets, used in the provision of the Services, that you control.

You need to comply with a range of requirements relating to configuration, vulnerabilities, and patch management.

21.2 Critical infrastructure configuration management

You will, in relation to all critical infrastructure used in provision of the Services:

(a) deploy the critical infrastructure in accordance with a documented standard configuration;

(b) maintain, for each platform used in provision of the Services, a technical specification that defines all required security controls;

(c) review and update the standard configuration documentation for each system type and version whenever relevant changes occur; and

(d) install up-to-date patching for software and hardware.

You must deploy critical infrastructure to documented standard configurations, maintain technical specifications with required security controls, review and update configurations when changes occur, and keep all software and hardware patched.

21.3 User privileges

You will, where feasible, prevent system users from installing or disabling software in infrastructure or platforms used to provide the Services without your approval.

Users may not install or disable software without your approval.

21.4 Monitoring and version control

You will:

(a) monitor and record versioning information for all relevant Service components;

(b) deploy scanning and monitoring tools to provide coverage over all relevant Service components; and

(c) install the latest software and firmware updates on all relevant Service components, using fit-for-purpose tools and processes, unless there is a compelling reason not to, or to delay such installation, that does not materially increase risk associated with the relevant Service component(s).

You must record versions of all Service components, monitor them, and use fit-for-purpose tools and processes to install updates.

21.5 Vulnerability management

You will:

(a) establish and maintain processes and procedures to identify, track, and remediate vulnerabilities in all systems and cloud assets that comprise or are used to provide the Services;

(b) assign a risk rating to each newly detected vulnerability using a reputable standard (for example, CVE/CVSS, manufacturer-recommended, or an equivalent framework), which may be applied through automated tools and business rules;

(c) prioritise patching and remediation activities based on the risk ratings of the affected Service components, with critical and high-risk vulnerabilities addressed promptly and lower-risk vulnerabilities managed through planned remediation cycles; and

(d) continuously maintain Service components through appropriate patching and vulnerability remediation in accordance with these priorities.

You must identify, assess, and remediate vulnerabilities in all Service systems, risk-rate them using a recognised standard, prioritise fixes accordingly, and maintain components through ongoing patching.

21.6 Patch management

You will:

(a) implement and maintain a documented patch management strategy, which will include consistent prioritisation and deployment of patches across all relevant Service components and a formal evaluation and/or testing process prior to deploying patches;

(b) ensure that all patches you install are the latest stable versions available;

(c) provide written notification to PSC and relevant Purchasing Agencies within 1 Business Day of your being notified of or

You must maintain a documented patch management strategy with testing, use the latest stable patches, notify PSC and relevant agencies within 1 Business Day of becoming aware of certain critical internet-accessible vulnerabilities, deploy security patches for Critical Vulnerabilities in internet-facing systems within 2 Business Days of patch release, deploy security patches for other Critical Vulnerabilities within 2 Business Days of patch release subject to limited exceptions and compensating controls, apply non-critical security patches as soon as practicable, and perform secure firmware updates.

otherwise becoming aware of Critical Vulnerabilities that are internet-accessible and that either:

(i) are being exploited in the wild; or

(ii) directly affect a Service component that processes or stores Purchasing Agency Data,

regardless of mitigating circumstances, but subject in each case to any confidentiality obligations you may owe to third parties;

(d) deploy all security patches for:

(i) Critical Vulnerabilities in internet-facing systems, applications, and devices, within 2 Business Days of the release of the patches; and

(ii) other Critical Vulnerabilities, within 2 Business Days of the release of the patches, except where:

(A) immediate patching would cause material service disruption; or

(B) circumstances outside your reasonable control prevent timely deployment,

in which case you must promptly implement effective compensating controls where feasible, apply the patch at the earliest practicable time thereafter, and inform PSC promptly in writing if the patch cannot be or is not deployed within one month of your awareness of the Critical Vulnerability;

(e) apply all non-critical security patches as soon as practicable; and

(f) perform firmware updates in a manner that verifies both the integrity and authenticity of the update source and of the updating utility.

22. Monitoring and logging

22.1 Application of provision

This paragraph 22 applies to all systems and cloud assets, used in the provision of the Services, that you control.

You need to have real-time security monitoring and alerts in place, ensure logs are backed up, actively manage alerts, and provide relevant logs to a Purchasing Agency on request.

22.2 Monitoring

(a) Your systems must provide real-time security monitoring and alerting for all relevant Service components.

(b) You will actively manage the security alerts referred to in paragraph 22.2(a).

22.3 Logging

(a) You must maintain written documentation that addresses:

(i) your logging facility/ies, including log server availability requirements and reliable delivery of log information to the log server or security information and event management solution (**SIEM**);

(ii) the list of events for every system or software component that is to be logged (which must include the events in paragraph 22.3(b)); and

(iii) event log protection and archival processes.

(b) Without limitation to your obligations under paragraph 2 (Security Standards compliance), you must log at least the following events for all components of software under your control that is used to store, transport, process or provide access to Purchasing Agency Data or Purchasing Agency Environments:

(i) login activity or attempts;

(ii) date and time;

(iii) all privileged operations;

(iv) failed attempts to elevate privileges;

(v) security related system alerts and failures;

(vi) software upgrades and/or software patching;

(vii) system recovery activities;

(viii) system user and group additions, deletions and modifications to permissions; and

(ix) unauthorised or failed access attempts to systems and Purchasing Agency Data.

(c) For each event identified under paragraph 22.3(b), the log facility must record, as applicable:

(i) the type of event;

(ii) a description of the event;

(iii) the date and time of the event;

(iv) the location where the event occurred;

(v) the relevant system user(s) or processes;

(vi) whether the event succeeded or failed;

(vii) the event source (e.g., application name); and

(viii) the IT equipment location or identification.

(d) You must:

(i) ensure that all logs are sent to a separate logging server or SIEM;

(ii) implement effective log protection and storage controls; and

(iii) archive log data in a manner that maintains its integrity.

(e) You must log, analyse and review privileged actions within critical service components.

(f) Your audit logs must use time-synchronisation technology to align timestamps across all audit logs, either within the application itself or within a SIEM.

(g) Audit logs generated by service components must record, where applicable:

(i) the type of event;

(ii) the date and time;

(iii) the location where the event occurred;

(iv) the outcome (success or failure); and

(v) the identity of any user or subject associated with the event.

(h) You must retain all logs specified in the NZISM for at least 12 months.

(i) Each component of each relevant Service must generate and send alerts to the appropriate logging server or SIEM.

(j) You will ensure that:

(i) relevant Service components have defined indicators of compromise; and

(ii) behavioural baselines are kept up to date to assist in identifying exceptions.

(k) Except as agreed otherwise in a Subscription Form, Order, or Statement of Work, you will:

(i) provide a copy of the logs referred to in this paragraph 22.3 to a Purchasing Agency, to the extent they are or could be relevant to any security-related issue or incident affecting the Purchasing Agency or its

Purchasing Agency Data, within 5 Business Days of the Purchasing Agency's written request; and

(ii) if required by a Purchasing Agency, provide on-going real-time event logs and audit logs (as described in the NZISM) to the Purchasing Agency CISO's SIEM or equivalent, on reasonable terms and for reasonable Fees agreed in a Statement of Work.

(l) Your obligations in paragraph 22.3(k) do not apply to the extent that any third party restrictions prevent you from providing a copy of the logs, or the on-going real-time event logs and audit logs, referred to in that paragraph.

23. Data Centre Requirements

23.1 Obligations

If you are providing Services that involve the storage, transport, or processing of Purchasing Agency Data in one or more Data Centres, you must:

(a) if you operate such a Data Centre, ensure; or

(b) if such a Data Centre is operated by a Third Party Service Provider, use reasonable endeavours to ensure,

that each Data Centre used to deliver those Services complies with the requirements in paragraph 23.2 (the **Data Centre Requirements**) and, if you are providing Services in the Infrastructure Services Channel, that maintenance plans and maintenance plan compliance reviews are submitted to PSC in accordance with paragraph 23.3 (**Data Centre Maintenance Plan Requirements**).

If you provide Services involving the storage, transport, or processing of Purchasing Agency Data in Data Centres, you must ensure (or, for third-party Data Centres, use reasonable endeavours to ensure) that each Data Centre is TIA-942 Rated-3 or higher (unless PSC approves TIA-942 Rated-2 instead) and complies with the PSR and NZISM (or PSC-accepted equivalent overseas standards, with mapping or gap analysis if requested) and has passed ISO 27001 or SOC2 audits or equivalent. If providing Services in the Infrastructure Services Channel, you also need to submit an annual maintenance plan for each Data Centre and six-monthly compliance review reports to PSC.

23.2 Data Centre Requirements

(a) The Data Centre Requirements are that each Data Centre referred to in paragraph 23.1:

(i) is, subject to paragraph 23.2(b), designed, built, operated, and maintained to meet the requirements for a Data Centre that is TIA-942 Rated-3 (Concurrently Maintainable) or higher;

(ii) complies with:

(A) applicable controls in the PSR and NZISM; or

(B) controls in overseas standards that PSC accepts as equivalent (and you must, if requested by PSC, provide PSC with a written mapping or gap analysis demonstrating such equivalence); and

(iii) has passed ISO 27001 or SOC2 audits or equivalent.

(b) You may, when applying for your relevant Services Listings, request PSC's approval to one of more Data Centres being designed, built, operated, and maintained to meet the requirements for a Data Centre that is TIA-942 Rated-2, instead of Rated-3. PSC will not unreasonably withhold approval but, if such a request is granted, you must specify in your relevant Services Listings that the relevant Data Centres are designed, built, operated, and maintained to meet the requirements for a Data Centre that is TIA-942 Rated-2, instead of Rated-3, and answer questions Purchasing Agencies may put to you as to the practical risk-related implications of the different rating.

23.3 Data Centre Maintenance Plan Requirements

(a) The Data Centre Maintenance Plan Requirements referred to in paragraph 23.1 are:

(i) submission to PSC at least once each Calendar Year of a maintenance plan for each Data Centre; and

(ii) review every six months of, as applicable, your or the Third Party Service Provider's compliance as against the plan and submission of a report to PSC detailing your or the Third Party Service Provider's compliance and any remedial action identified as being required.

23.4 Audit or inspection

We may audit or inspect:

(a) your compliance with paragraph 23.1; and/or

(b) whether a Data Centre referred to in paragraph 23.1 meets the Data Centre Requirements in paragraph 23.2,

in accordance with paragraph 6.1 of this Schedule.

PSC may audit compliance with the Data Centre Requirements. If it transpires that a data centre fails to meet the requirements, remedial action will need to be taken.

23.5 Remedial action

(a) If, at any point:

(i) any report to PSC or a Purchasing Agency identifies; or

(ii) any audit conducted under paragraph 6.1 identifies; or

(iii) you otherwise identify,

that a Data Centre referred to in paragraph 23.1 fails to meet the Data Centre Requirements, you must:

(iv) if you operate the Data Centre, take all remedial action necessary to ensure compliance with that paragraph as quickly as possible; or

(v) if the Data Centre is operated by a Third Party Service Provider, use all reasonable endeavours to have the Third Party Service Provider take such remedial action,

and in each case notify PSC and relevant Purchasing Agencies in writing when compliance with the Data Centre Requirements is achieved.

(b) Subject to clause 23.5(c), if such a Data Centre's compliance with the Data Centre Requirements is not achieved within 90 days of an identification of non-compliance:

(i) you shall:

(A) if you operate the Data Centre, be in Material Breach of this Collaborative Marketplace Agreement and each relevant Subscription Agreement; or

(B) if a Third Party Service Provider operates the Data Centre, be in Material Breach of this Collaborative Marketplace Agreement and each relevant Subscription Agreement if you have not used all reasonable endeavours to have the Third Party Service Provider take the required remedial action; and

(ii) without limitation to PSC's and Purchasing Agencies' other remedies, we may:

(A) suspend or withdraw your relevant Services Listings in the Marketplace (thereby preventing you from selling the affected Services through the Marketplace to Participating Agencies not already consuming them); and

(B) notify Participating Agencies, on a confidential basis, that the affected Data Centre(s) do not comply with the Data Centre Requirements.

If compliance isn't achieved within 90 days, you'll be in Material Breach, PSC may suspend or withdraw your relevant Services Listing(s), and PSC may notify Participating Agencies of the non-compliance. There's an exception process where remediation cannot be completed within 90 days due to factors outside your control.

(c) If remediation required under paragraph 23.5(a)(iv) cannot be completed within 90 days of an identification of non-compliance due to factors outside your control (including, for example, build timelines, global supply chain delays, or specialist contractor availability), you may request in writing that PSC grant an extension of the remediation period. PSC may grant such an extension and may make it subject to conditions, including that:

(i) you continue to take active steps to actively progress remediation; and

(ii) you agree with PSC on clear milestones and provide PSC with a security risk management plan and regular progress updates.

24. Security reporting and documentation

24.1 You will provide to PSC all applicable security reporting and documentation described in the table at paragraph 24.3 below and in accordance with that table. All such reporting and documentation must be accurate, complete, provided by applicable due dates and, other than in exceptional circumstances, signed off or otherwise approved by your ICT Security Manager or that person's appropriately qualified nominee. If we provide templates and/or guidance for the required reporting, you will use those templates and/or follow that guidance. To avoid doubt, nothing in this paragraph 24 requires you to disclose information to the extent that doing so would breach confidentiality obligations you owe to third parties.

You need to provide the security reporting and documentation to PSC listed here.

24.2 The security reporting and documentation is primarily for PSC for the purposes of its centralised security assurance function but, as stated in the table, a Purchasing Agency's Contract Manager may request a copy of any report or document prepared for PSC. If you receive such a request and the report has been prepared for and provided to PSC, you will provide a copy to the Purchasing Agency within 10 Business Days of the Purchasing Agency's request.

24.3 The reports and documentation are as follows:

Report or documentation	Receiver	Frequency and timing
Service detailed design document – Required for Services categorised as Tier 1 under the Marketplace Information Security Tiering Standard and for data centres you operate		
This comprises the detailed technical design document described in paragraph 19 (Asset documentation)* of this Schedule 1 for each Service categorised as Tier 1 under the Marketplace Information Security Tiering Standard and for data centres you operate. * If you have security-related concerns about disclosing some of the information listed in paragraph 19.1, you may inform PSC in accordance with the procedure in paragraph 19.3 and that procedure will then apply. That procedure could result in the application of alternative access arrangements. Note that this documentation is not a 'report' separate to the documentation required for assurance/certification processes.	Where PSC certifies a Service centrally: • PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC. If a Purchasing Agency certifies a Service before PSC: • Purchasing Agency Contract Manager; and • PSC – Lead Relationship Manager.	• Initial certification (whether by PSC or a Purchasing Agency). • If PSC has certified the Service, 12-monthly thereafter to support the continuous certification process.

Report or documentation	Receiver	Frequency and timing
Data Centre maintenance plan and compliance reporting – Required for providers of Services in the Infrastructure Services Channel*		
• Maintenance plan for each Data Centre • Report on review of compliance against maintenance plan for each Data Centre, detailing compliance and any remedial action required * Under paragraph 23.1, your obligation in relation to Data Centres operated by a Third Party Service Provider is to use reasonable endeavours to provide the maintenance plans and compliance reviews. If you have used reasonable endeavours but are unable to provide them, you will not be in breach of this reporting requirement.	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	• Maintenance plans: annually, within 20 Business Days after the end of each 4th Calendar Quarter • Compliance review reports: six monthly
Continuous Security Certification documentation – Required for Services categorised as Tier 1 under the Marketplace Information Security Tiering Standard and for your organisation		
• Audit report • Testing report • Security risk management plan	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	Initial certification (whether by PSC or a Purchasing Agency), then every 3 years
Certification documentation – Required for data centres you operate		
• Audit report • Testing report • Security risk management plan	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	Initial certification, then 12-monthly thereafter
Assurance reporting – Required for Services categorised as Tier 2 under the Marketplace Information Security Tiering Standard		
This report will provide answers to the latest assurance questionnaire provided annually based on Tier. Typically there are less than 15 questions, mostly of a Yes/No nature.	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	Annually, within 20 Business Days of the end of each 4th calendar quarter except for the year in which security assurance is renewed

Report or documentation	Receiver	Frequency and timing
BC Plan test report		
BC Plan test report in accordance with paragraph 12.7(b) of this Schedule 1* * subject to any alternative testing agreed with PSC under paragraph 12.7(a)	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	Every 12 months as per para 12.7(b)
DR Plan test report		
• Tabletop DR Plan test report in accordance with paragraph 12.7(b) of this Schedule 1* • Full DR test report in accordance with paragraph 12.7(b) of this Schedule 1* * subject to any alternative testing agreed with PSC under paragraph 12.7(a)	• PSC – Lead Relationship Manager • Purchasing Agency Contract Manager but only on request to Provider for copy of report prepared for and provided to PSC	Every 12 months as per para 12.7(b)

24.4 To avoid doubt, PSC may share any of the reports and documentation referred to in the table above, on a confidential basis, with Purchasing Agencies that are consuming your Services or Participating Agencies that are considering whether to consume your Services. In the case of the Service detailed design document, this paragraph 24.4 is subject to outcomes following your invocation (if any) of the procedure in paragraph 19.3.

25. Non-compliance with security requirements

This clause sets out an escalation pathway for repeated material failures of defined security obligations: warning → senior-level meeting → financial charges and, by PSC in its lead role, possible suspension or termination from the Marketplace.

25.1 Application

(a) This paragraph 25 applies to:

(i) PSC in its lead role under these Channel Terms; and

(ii) Purchasing Agencies under their Subscription Agreements (through clause 2.1(q)(xxi) of the Core I/T/MS Services Terms which incorporates this paragraph 25 by reference into Subscription Agreements), except to the extent that you and a Purchasing Agency agree to vary it.

(b) When this paragraph 25 is invoked:

(i) by PSC in its lead role, references to “we”, “us” and “our” are to PSC; or

(ii) by a Purchasing Agency under a Subscription Agreement, references to “we”, “us” and “our” are to the Purchasing Agency.

25.2 Thresholds for escalation

If, in respect of Services in a particular Channel, there are:

(a) 3 or more Material Failures in a Calendar Month; or

(b) 5 or more Material Failures in a Calendar Quarter; or

(c) 10 or more Material Failures in a Calendar Year,

we may notify you in writing that your failures have triggered the application of this paragraph 25 and that, if there is a further Material Failure in that Calendar Year, we may call you to a meeting in accordance with paragraph 25.3.

25.3 Meeting

If, after our notice under paragraph 25.2, a further Material Failure occurs in the same Calendar Year, we may by written notice require you to attend a meeting to discuss your non-compliance. If required by our notice, the meeting must be attended by your Chief Executive, ICT Security Manager, or CISO/CTO (or equivalent), or another nominated senior manager.

25.4 Remedies for continued non-compliance

(a) Without limitation to other remedies that may be available to us, if, after that meeting (or if you fail to attend), there is a further Material Failure in the same Calendar Year, we may charge you a fee of $1,000 + GST:

(i) for that Material Failure; and

(ii) for each additional Material Failure that occurs during the remainder of that Calendar Year,

provided that our maximum charges under this paragraph 25.4 in any individual Calendar Year must not exceed $50,000.

(b) If this paragraph 25 is invoked by PSC and if, after the meeting with PSC (or if you fail to attend), there is a further Material Failure in the same Calendar Year, PSC may, in addition to or instead of charging you the fee(s) in paragraph 25.4(a):

(i) suspend your membership in the Marketplace, one or more Channels, or one or more Service Listings until such time as we are confident there will not be further Material Failures; or

(ii) terminate your membership in the Marketplace or one or more of the Channels for Material Breach,

provided that PSC will give you an opportunity to comment

before effecting a proposed suspension or termination under this paragraph 25.4(b).

(c) You agree that any fee charged in accordance with paragraph 25.4:

(i) is a primary contractual obligation in the nature of a contractual debt, not a secondary obligation; and

(ii) even if it were a secondary obligation, that obligation would reflect our legitimate interests in your meeting your obligations referred to in this paragraph 25 and may also contribute to our costs of assessing or dealing with it,

and you agree not to argue otherwise in any dispute or difference arising under or in connection with this Agreement.

25.5 Materiality

In this paragraph 25, **Material Failure** means:

(a) the occurrence of a Security Incident that adversely affects us or, where PSC is invoking this paragraph in its lead role, adversely affects one or more Purchasing Agencies, caused by:

(i) your non-implementation of or non-compliance with a MUST or MUST NOT control referred to in paragraph 2.1(b)(i) (except where, pursuant to paragraph 2.2, implementation of or compliance with the control is not required); or

(ii) a member of your staff falling victim to Social Engineering,

where the cause in (i) or (ii) is the root cause;

(b) an instance of non-compliance with any of the following clauses:

(i) paragraph 4.10 (Change in certification status);

(ii) paragraph 5 (Changes of Control and name changes);

(iii) paragraph 10 (Offshoring of Services or Purchasing Agency Data);

(iv) paragraph 20 (Multifactor authentication),

that either:

(v) causes demonstrable harm to us (or, where PSC is invoking this paragraph in its lead role, to PSC or one or more Purchasing Agencies); or

(vi) creates a materially heightened risk of unauthorised access to, interception of, or loss of control of Purchasing Agency Data, or of unauthorised access to a Purchasing Agency Environment, and remains unrectified for 10 Business Days after the date of non-compliance;

(c) paragraph 21.6(d) (Critical vulnerability remediation);

(d) the combination of a failure to comply with paragraph 15.2(b)(iv) (post-incident reporting following a Security Incident) and then a further failure to provide it to us within 10 Business Days of our written request;

(e) in the case of non-compliance with paragraph 24 (Security reporting and documentation):

(i) the combination of a failure to provide a required security report or document to us by the due date and then a further failure to provide it to us within 30 days of our written request or within such further period as we may at our absolute discretion permit; or

(ii) a particular security report or document you provide to us being materially inaccurate on two or more occasions; or

(iii) each subsequent instance of the particular report or document referred to in paragraph 25.5(e)(ii) being provided to us in a materially inaccurate state; or

(iv) reports or documents of the same kind you provide to us being materially inaccurate on two or more occasions in any Calendar Year; or

(v) each subsequent instance of reports or documents of the same kind referred to in paragraph 25.5(e)(iv) being provided to us in a materially inaccurate state in the same Calendar Year;

(f) a failure to report to PSC on the results of your BC Plan and DR Plan testing within 30 days of completion of the testing in accordance with paragraph 12.7(b) or (c), provided that this kind of failure can only be invoked for the purposes of this paragraph 25 by PSC in its lead role.

25.6 Counting Material Failures

For the purposes of determining the number of Material Failures in any of the periods referred to in paragraphs 25.2(a)-(c):

(a) in relation to events that affect a Purchasing Agency, a single underlying event can only constitute one Material Failure,

even if it gives rise to non-compliance with more than one obligation;

(b) a Material Failure that is the same for multiple Purchasing Agencies (for example, where a Critical Vulnerability in a shared platform is not patched within the required timeframe and increases risk or causes harm) may be counted by each affected Purchasing Agency as a separate Material Failure, but by PSC in its lead role may only be treated as one Material Failure; and

(c) the kind of Material Failure in paragraph 25.5(f) may only be counted by PSC in its lead role.

25.7 No limitation

(a) To avoid doubt, the term 'Material Failure' is defined in this paragraph 25 for the purposes of the remedial regime in this paragraph and is not intended to limit the circumstances in which breaches of obligations in this Schedule may amount to material breaches.

(b) This paragraph 25 does not limit PSC's other rights and remedies under the Collaborative Marketplace Agreement or Purchasing Agencies' other rights and remedies under their Subscription Agreements.

26. Directions restricting or prohibiting the use of your Services

PSC may suspend or withdraw your Marketplace or Channel membership or Service Listings if the Public Service Commissioner directs agencies to restrict or stop using your services. This would not affect Existing Subscription Agreements, but Purchasing Agencies may still terminate them, without affecting their right to require disengagement services.

26.1 If the Public Service Commissioner issues a direction under the Public Service Act 2020 to relevant agencies restricting or prohibiting use by them of:

(a) you as a provider; or

(b) one or more of your services or products,

PSC may, on written notice to you, suspend or withdraw:

(c) your membership in the Marketplace or one or more Channels; and/or

(d) one or more of your Services Listings.

26.2 If, under such a direction, PSC is permitted to give you a period of notice prior to such suspension or withdrawal taking effect and:

(a) the direction specifies a particular period of notice (the **Notice Period**), PSC will provide you with a period of written notice that is not less than the Notice Period; or

(b) the direction does not specify any particular period of notice, PSC will provide you with such period of written notice (if any) as PSC considers appropriate in the circumstances.

26.3 A suspension or withdrawal by PSC under paragraph 26.1 does not affect the ongoing validity of Subscription Agreements that Purchasing Agencies have in place with you.

26.4 If Purchasing Agencies consuming your Services are subject to a direction of the kind referred to in paragraph 26.1:

(a) you may require affected Purchasing Agencies to meet with you with a view to discussing, as applicable:

(i) whether you can transition those Purchasing Agencies to an alternative Service and, if so, any cost implications of doing so; and/or

(ii) if necessary, commencement of Disengagement in accordance with clause 25 of the Core I/T/MS Services Terms; and

(b) those Purchasing Agencies may, on written notice to you, terminate either their Subscription Agreements or particular Orders or Statements of Work with you, for convenience, but without prejudice to their right to require Disengagement Services from you.

26.5 To avoid doubt, paragraph 26.4(b) prevails over any term to the contrary in a Purchasing Agency's Subscription Agreement, including any term recording an agreed minimum term commitment.

27. Defined terms and interpretation

The terms defined here have special meaning. Other capitalised terms used in this Schedule are defined in clause 2 of the Channel Terms.

27.1 Defined terms

For the purposes of this Schedule 1:

AI Tool means any software or technology that utilises machine learning algorithms, natural language processing techniques, neural networks, deep learning models, or similar or more advanced methods, in order to generate or repurpose content, analyse or interpret data, make predictions, or otherwise perform tasks that typically require human intelligence;

Change of Control has the meaning given to that term in clause 2.1 of the Channel Terms;

Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings means a schedule you complete using a template provided by PSC that contains, as applicable, the Subcontractor/TPSP/LFC Schedule, Offshoring Schedule, and potentially other information that may be common across some or all of your Services Listings;

Critical Vulnerability means any security weakness in ICT hardware, firmware, software, infrastructure-as-code, configuration or hosted service provided or fully managed by you and comprising part of or used for delivery of one or more of your Services in a Channel that:

(a) has a Common Vulnerability Scoring System (CVSS) Base (or successor top-level metric) score of 9.0 or greater, as published in the then-current CVSS version adopted by the U.S. National Vulnerability Database (or its successor public repository) or, where an NVD score is not yet available, by another authoritative source; or

(b) is labelled “Critical”, “Severity Critical” or an equivalent top-tier designation in a security advisory issued by you, any upstream provider of elements of your Services, a recognised open-source project, NCSC or the Australian Cyber Security Centre; or

(c) is the subject of confirmed, in-the-wild exploitation reported by any of the authorities listed in paragraph (b) or is listed in the U.S. Cybersecurity and Infrastructure Security Agency’s Known Exploited Vulnerabilities catalogue; or

(d) will, if exploited, enable an unauthenticated attacker or a low-privileged authenticated attacker to execute arbitrary code, escalate privileges, bypass authentication, exfiltrate or destroy data, or otherwise cause a complete loss of confidentiality, integrity or availability and no effective compensating controls are already in place,

and where multiple authorities provide different CVSS scores or severity labels for the same vulnerability, the highest severity prevails;

Data Centre means a physical facility or location that houses computing and storage resources used to collect, process, store, and distribute data;

Equivalent Security Control means:

(a) a control specified under an international standard or a standard of another country that PSC recognises as equivalent to a standard or control referred to in paragraph 2.1; or

(b) a control that GCISO, PSC, or the relevant Purchasing Agency's CISO otherwise approves in writing as equivalent to such a standard or control;

GCISO means the Government Chief Information Security Officer;

Major Change means a change to or affecting a Service that does or could reasonably be expected to impact security, including

changes to the make or model or hardware, 1.0 or greater software changes, changes to physical security controls, changes to locations from which a Service is provided, and changes to support services;

Major Security-Related Service Impacting Event means a Service outage or impairment caused or probably caused by a security-related incident that:

(a) results in complete or substantial unavailability of a Service that is critical to Purchasing Agencies' business operations for a period of 2 hours or more; or

(b) triggers invocation of your BC Plan or DR Plan;

Malware Free Networks means the service by that name provided by the NCSC, information on which can be found at ncsc.govt.nz;

Management Plane means the part of a hosting tenancy for an instance of or access to a service that allows administrative access to the hosting environment and service, analysis of their state and health, and/or their reconfiguration;

Marketplace Information Security Tiering Standard means the PSC standard by that or a similar name, available at marketplace.govt.nz or successor URL, as may be updated from time to time;

Marketplace Security Assurance and Certification Processes means the documented processes by that or a similar name, available from the relevant GETS standing notices and/or the Marketplace administrative dashboard (in each case upon logging in), as may be updated from time to time;

MFA means multi-factor authentication;

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

NZISM means the New Zealand Information Security Manual available at https://nzism.gcsb.govt.nz/ or successor URL, as may be updated from time to time;

NZSIS means the New Zealand Security Intelligence Service;

Offshoring Schedule means the schedule referred to in paragraph 10.3 of this Schedule and which forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings;

Permitted Additional Territory means any country or region other than New Zealand from which the Services or any part of the Services (such as support) may be provided or in which Purchasing Agency Data may be stored or processed, on the basis of:

(a) disclosure in your Offshoring Schedule; or

(b) in relation to a particular Purchasing Agency, the countries or regions being described as further 'Permitted Additional Territories' in the Subscription Form or an Order or Statement of Work,

as described in paragraph 10 (Offshoring of Services or Purchasing Agency Data) of this Schedule 1;

PIR means post-incident report**;**

PSR means the Government's Protective Security Requirements (of which the NZISM is a part) at https://protectivesecurity.govt.nz, as may be updated from time to time;

Purchasing Agency Originating Data means the subset of Purchasing Agency Data that originates from the Purchasing Agency or its customers, end-users, service recipients, beneficiaries, or taxpayers, including any personal information (as defined in the Privacy Act 2020) or health information (as defined in the Health Information Privacy Code 2020), beneficiary information, and taxpayer information, relating to or having a connection with the Purchasing Agency's functions or operations;

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

Resolution has the meaning in the table at paragraph 9.3 of Schedule 2;

Security Incident has the meaning in paragraph 15.1 of this Schedule 1;

Security Risk has the meaning in paragraph 14.1 of this Schedule 1;

Security Standards has the meaning in paragraph 2.1 of this Schedule 1;

Social Engineering means any act intended to manipulate, deceive, or influence a member of Personnel into divulging Confidential Information, granting unauthorised access, or performing actions that compromise the security, confidentiality, integrity, or availability of information systems, networks, or data, including:

(a) deceptive communication such as phishing, vishing, or smishing;

(b) impersonation of trusted persons or entities;

(c) psychological manipulation;

(d) physical behaviours such as tailgating or baiting; and

(e) any other tactic aimed at exploiting human behavior to bypass technical or procedural security controls;

Subcontractor/TPSP/LFC Schedule means the schedule referred to in paragraph 9.5 of this Schedule and which forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings; and

TIA-942 means the Data Centre Infrastructure Standard produced by the Telecommunications Industry Association.

27.2 Other terms

Other capitalised terms have the meanings given to them in clause 2 of the Channel Terms.

Marketplace

Infrastructure Services, Telecommunications Services, and Managed Security Services

Schedule 2 to Channel Terms – Governance Requirements

Background

As a supplier of Infrastructure Services, Telecommunications Services, and/or Managed Security Services to the New Zealand Government and wider public sector, you are required to comply with governance obligations that support effective service delivery, transparency, accountability, and ongoing coordination. This Schedule sets out the specific governance requirements that apply to these Channels, complementing the provisions on pricing in the Channel Terms and the provisions on security in Schedule 1.

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1. Defined terms and interpretation

The terms defined here have special meaning. Other capitalised terms used in this Schedule are defined in clause 2 of the Channel Terms.

1.1 Defined terms

For the purposes of this Schedule 2:

Channels means the Infrastructure Services Channel, Telecommunications Services Channel, and Managed Security Services Channel;

GDSD means Government Digital Services Delivery;

Insolvency Event has the meaning given to that term in Part 1 (General Terms) of the Collaborative Marketplace Agreement;

Issue means an issue under management that you have assessed as having a medium or high adverse impact on the delivery of one or more of the Services or on the performance of your obligations under this Marketplace Agreement or any Subscription Agreement;

PIR means post-incident report;

PSC-Led Collaborative Contracts means all syndicated contracts, common capability ICT agreements (including all channels under the Collaborative Marketplace Agreement, including but not limited to the Channels referred to above), software framework agreements, and cloud framework agreements, for which PSC is the lead agency and to which you are a party;

Purchasing Agency Equipment means any and all tangible assets (including hardware, cables, and other items, materials or devices) owned by or leased to a Purchasing Agency;

Risk means a risk under management that you have assessed as having:

(a) a medium or high likelihood of occurring; and

(b) if it occurs, a medium or high adverse impact on the delivery of one or more of the Services or on the performance of your obligations under this Marketplace Agreement or any Subscription Agreement;

Solvency Test has the meaning in section 4 of the Companies Act 1993, except that “company” shall be read as meaning a company wherever incorporated; and

Subcontractor has the meaning given to that term in clause 2.1 of the Channel Terms.

1.2 Other terms

Other capitalised terms have the meanings given to them in clause 2 of the Channel Terms.

2. Contracting through Marketplace to be preferred

2.1 Subject to paragraphs 2.2 and 2.3 you may not, without the prior written approval of PSC's Lead Relationship Manager, enter into any agreement with any Eligible Agency for services that are the same as or similar to, or are otherwise alternatives to, the Services (**Alternative Services**).

2.2 PSC will:

(a) not unreasonably withhold or delay approval under paragraph 2.1; and

(b) will grant approval under paragraph 2.1 if:

(i) an Eligible Agency is seeking Alternative Services following a notice of procurement published on GETS;

(ii) you have responded to that notice and explained:

(A) the Services you have listed in the Marketplace; and

(B) your responsibility in Part 1 (General Terms) to promote the Marketplace Agreement for your Services in preference to all other alternatives where the Services will reasonably meet the Eligible Agency's requirements; and

(iii) the Eligible Agency has notified you in writing (**Notification**) that the relevant Services will not reasonably meet its needs,

provided you provide PSC with a copy of the Notification if requested.

2.3 Paragraph 2.1 does not:

(a) apply to your entering into:

(i) an agreement or order for the provision of Alternative Services under any Pre-existing Agreement (as defined in clause 24.1 of Part 1); or

(ii) an order or statement of work for the provision of Alternative Services under another form of agreement that was already in place with an Eligible Agency prior to the Channel Terms Commencement Date; or

(b) to avoid doubt, affect the ongoing provision of services provided under any agreement that was entered into between you and an Eligible Agency prior to the Channel Terms Commencement Date.

In relation to your Services (i.e., those with Marketplace Services Listings), you must contract with Eligible Agencies through the Marketplace unless PSC approves otherwise. PSC will not unreasonably withhold or delay approval and must grant it where the agency is procuring Alternative Services via GETS, you have responded and explained your Marketplace Services and obligations, and the agency confirms in writing those Services will not reasonably meet its needs. This restriction does not apply to Alternative Services provided under agreements or orders you enter into pursuant to Pre-existing Agreements (i.e., SFAs, CFAs, CC-ICT agreements, AOG agreements, or other cross-government collaborative agreements with the New Zealand Government).

3. Lead Relationship Managers

3.1 Each party will:

(a) appoint, and maintain during your membership in any of the Channels to which these Channel Terms apply, a suitably qualified and experienced person to lead the overall relationship between the parties (each a **Lead Relationship Manager**); and

(b) notify the other party about any proposed replacement or redeployment of its Lead Relationship Manager.

Each party needs a Lead Relationship Manager who will be the primary point of contact.

3.2 Each Lead Relationship Manager will:

(a) serve as the primary point of contact with the other party; and

(b) have overall responsibility for managing and co-ordinating the performance of their appointing party's obligations under the Collaborative Marketplace Agreement.

3.3 PSC's Lead Relationship Manager may inform you by notice in writing that, in relation to specified notification or reporting obligations, you are required to notify or report to specified PSC roles or personnel either instead of or in addition to the Lead Relationship Manager.

4. Purchasing Agency action

4.1 You agree that where a Purchasing Agency may, or is required to, provide any information, give a notification, make a request or take any action under its Subscription Agreement, either we or the Purchasing Agency may provide that information, give the notification, make the request or take that action.

4.2 Either we or the Purchasing Agency may bring an action against you to enforce any obligation you owe or owed to a Purchasing Agency under the Purchasing Agency's Subscription Agreement. Any recovery by us under this paragraph 4 will be deemed to be on account of the right of the Purchasing Agency and subject to your maximum liability to the Purchasing Agency under its Subscription Agreement.

4.3 To avoid doubt, despite this paragraph 4, Purchasing Agencies and providers are expected to use all reasonable endeavours to address performance and other issues themselves. Our involvement under this paragraph 4 is at our absolute discretion.

Either PSC or a Purchasing Agency may exercise the agency's rights or enforce your obligations under a Subscription Agreement, though agencies and providers are expected to resolve issues themselves and PSC's involvement is discretionary

5. Records

5.1 You must maintain, store and archive, in electronic form and in accordance with Good Industry Practice, up to date, accurate, and complete records of all reports provided to us and such underlying information as is reasonably necessary to verify their accuracy, for a period of 6 years from the creation of each report (whether that falls

You need to maintain and store complete records and allow PSC to inspect and obtain copies of them from you if requested.

before or after expiry or termination of your membership in any of the Channels).

5.2 The records maintained under paragraph 5.1 must provide sufficient detail to enable us to reconcile those records with the contents of the reports you are required to provide to PSC under paragraph 7 of this Schedule and paragraph 24 (Security reporting and documentation) of Schedule 1.

5.3 We may inspect and/or obtain copies from you of:

(a) records required to be maintained under paragraph 5.1; and

(b) any other information relevant to your performance and compliance with the terms of this Agreement,

on at least 5 Business Days' written notice.

5.4 To avoid doubt, paragraph 5.3:

(a) survives the expiry or termination of your membership in the Marketplace and we may exercise the powers in that paragraph during the 2 year period following that expiry or termination; but

(b) does not oblige you to disclose information, at any time, if doing so would breach confidentiality obligations you owe to third parties.

6. Provider Categories

6.1 You acknowledge that:

PSC defines four categories of providers to determine the extent to which reporting and meeting requirements apply to individual providers.

(a) the reporting and meeting requirements that apply to you, as set out in paragraphs 7 and 8 below, depend in part on the category of provider (**Provider Category**) to which you belong;

(b) there are four Provider Categories as set out in paragraph 6.2;

(c) you belong to the highest Provider Category for which you meet the category criteria; and

(d) the Provider Category to which you belong may change if you cease to meet the criteria of your existing Provider Category or if you come to meet the criteria of a higher Provider Category.

6.2 The four Provider Categories are:

Category	Criteria
PC1	• annual revenue from all public sector agencies under all PSC-Led Collaborative Contracts of $40 million or more; *and either* • deliver services under those contracts to 50 or more public sector agencies; *or*

Category	Criteria
	• otherwise notified by PSC that you are to be treated as a Category 1 provider
PC2	• annual revenue from all public sector agencies under all PSC-Led Collaborative Contracts of $5 million or more; *and either* • deliver services under those contracts to 20 or more public sector agencies; *or* • otherwise notified by PSC that you are to be treated as a Category 2 provider
PC3	• deliver Services under any of the 3 Channels to which these Channel Terms apply to between 1-19 Purchasing Agencies
PC4	• not currently delivering any Services under any of the 3 Channels to which these Channel Terms apply to any Purchasing Agency

7. Reporting requirements

7.1 Obligation

(a) You will provide all applicable reports described in the tables at paragraphs 7.2 and 7.3 below and in accordance with those tables, depending where relevant on the Provider Category to which you belong. If we provide templates and/or guidance for the required reporting, you will use those templates and/or follow that guidance.

You need to provide specified reports to PSC and to Purchasing Agencies.

(b) Each report will form the basis of discussions on, as applicable, contract compliance, service delivery, financial performance, and issues and risks relating to the Services.

7.2 Reports to PSC

You need to provide to PSC the reports listed here that are applicable to your Provider Category.

The reports to PSC and, in each case, the providers that must provide them, are as set out below.

Report, required content, and provider categories (PCs) for which report required	Receiver	Frequency
Lead report – Required for PC1, PC2, and PC3 (except to the extent agreed otherwise with PSC)		
This report will, as applicable: • summarise relationship health between PSC and you • summarise overall relationship health between you and Purchasing Agencies • summarise your pipeline of incoming Purchasing Agencies since the previous report • describe your compliance with the Incident Management Service Levels (written notification and PIR requirements – see paragraph 9.2(a)(ii)), listing each Service Level by name and whether you complied during the month	PSC Invoicing Team (to the email address notified to you in writing) Copied to: PSC's Lead Relationship Manager	Monthly, delivered by the 20th of the month

Report, required content, and provider categories (PCs) for which report required	Receiver	Frequency
• summarise all P1/P2 incidents (as described in paragraph 9.3) since the previous report, including delivery of post-incident reports and, if applicable, what Service Level Credits are owed to individual Purchasing Agencies if there has been Service Level Default in relation to the applicable Incident Management Service Levels for the P1/P2 incidents • list documentary deliverables to PSC required by these Channel Terms that are either overdue or due in the next 30 days • report on all Issues and Risks (as defined in paragraph 1.1) • summarise submitted or proposed changes to Services Listings since the previous report • set out each Purchasing Agency's SLC Weights and, if any Purchasing Agency has revised its SLC Weights since the last monthly report, each such Purchasing Agency's revised SLC Weights • confirm you have submitted all required engagement notices for the activities listed in clause 4.8 of the Channel Terms in accordance with that clause, or are on track to do so • describe any proposed sales of your Services to Eligible Agencies outside of the Marketplace and therefore not under Marketplace Subscription Agreements (and if so to which Eligible Agencies unless confidentiality obligations prevent you from doing so), excluding sales under or pursuant to other PSC-Led Collaborative Contracts, MBIE-led All-of-Government Agreements, or under sectoral framework agreements, master services agreements, or similar agreements, that were in place with Eligible Agencies prior to the Channel Terms Commencement Date (for context, see paragraph 2 of this Schedule 2).		
Contract billing report – Required for PC1, PC2, PC3		
This report will, as applicable: • summarise billing, financial and volume information by Channel (Infrastructure Services Channel, Telecommunications Services Channel, Managed Security Services Channel) and Service for each Purchasing Agency • detail any Service Level Credits applicable to each Purchasing Agency and, if relevant, the Service Level Credit Weightings for each Purchasing Agency	PSC Invoicing Team (via the means notified to you in writing) Copied to: PSC's Lead Relationship Manager	Monthly to be delivered by the 15th of the month except for June and December for which to be delivered by the 10th of the month, unless otherwise agreed

Report, required content, and provider categories (PCs) for which report required	Receiver	Frequency
		with PSC (frequency and/or delivery timing)
Capacity and maintenance planning report – Required for PC1, PC2		
This report will discuss: • Service capacity and utilisation trends and future intentions • Service upgrade, maintenance and outage intentions • Service limits and constraints.	PSC's Lead Relationship Manager	Annually, to be delivered at least 2 Business Days before the SSRM Meeting
Market developments report – Required for PC1, PC2		
This report will: • discuss emerging technologies, processes and Services relevant to the Marketplace Agreement • contain an assessment of impacts and recommendations.	PSC's Lead Relationship Manager	Annually, to be delivered at least 2 Business Days before the SSRM meeting
Roadmap report – Required for: • **PC1 and PC2; and** • **PC3 providers whose Services (some or all) have Tier 1 security assurance ratings**		
This report will cover: • service technology component end of life and upgrade or replacement timeframes consistent with detailed design • the Provider's technology/service roadmap over the next 12, 24, and 36 months, including any planned continuous improvement or innovation changes to the Services and associated general technologies.	PSC's Lead Relationship Manager	PC1 and PC2: Annually, to be delivered at least 2 Business Days before the SSRM meeting. PC3: Annually within first week of December.
Strategic Management Plan – Required for PC1		
You will work in good faith with the GCDO to implement a strategic management plan, agreed between the parties, that reflects GCDO objectives.	GCDO / GM	To be presented and/or reviewed annually at one of the GCDO/GM meetings

7.3 Reports to Purchasing Agencies

You need to provide to Purchasing Agencies the reporting listed here, unless a Purchasing Agency agrees otherwise.

The reporting to Purchasing Agencies is as set out below (subject to any agreement to the contrary with individual Purchasing Agencies) and as otherwise described in Purchasing Agencies' Subscription Agreements:

Report, required content, and provider categories (PCs) for which report required	Receiver	Frequency
Billing and usage report		
This report will, as applicable: • summarise billing information by Service • detail any Service Level Credits applicable including the Service Level Credit weightings table, and • detail Service consumption volumes by billing unit and cost centre in a format that can be used for analysis.	Purchasing Agency's Contract Manager	Monthly within the first 5 Business Days of the new month in order to support invoicing

7.4 Reports to be timely, complete, and accurate

Reports need to be delivered on time and be complete and accurate. Failure to report on time or reporting inaccurately creates administrative burdens for PSC. If you do this repeatedly, we may charge you a fee.

Each report you are required to provide to us or Purchasing Agencies must:

(a) be delivered to us or the Purchasing Agency by the due date for the report;

(b) contain all information specified in the tables above to the extent applicable (except as otherwise agreed with PSC or the Purchasing Agency); and

(c) be accurate and verifiable by information in your possession.

7.5 Correcting inaccuracies

If we consider or determine, acting reasonably, that a report to PSC that we receive is materially inaccurate:

(a) we may notify you in writing of the inaccuracy and require you to provide a corrected version of the report; and

(b) if we do, you will provide a corrected version within 3 Business Days of our written notice.

7.6 Repeated lateness

If you:

(a) fail to provide a report to us by the due date specified in the table at paragraph 7.2; and

(b) fail to provide the report to us within 5 Business Days of our written request or within such further period as we may at our absolute discretion permit,

the repeated failure will constitute a Material Breach, and we shall also be entitled to charge you a late fee, per late report, of $500 + GST, which we may add to our next or a subsequent invoice to you for Administration Fees.

7.7 Repeated inaccuracies

If we determine, acting reasonably, that:

(a) a particular report you provide to us is materially inaccurate on two or more occasions; or

(b) a kind of report you provide to us is materially inaccurate on two or more occasions in any Calendar Year (for example, by failing to adjust billing data to reflect a Purchasing Agency's termination of Services),

we shall be entitled to charge you a fee of $500 + GST for:

(c) in the case of (a), the second and each subsequent time the particular report is inaccurate; and

(d) in the case of (b), the second and each subsequent time a report of that kind is inaccurate in that Calendar Year,

which we may add to our next or a subsequent invoice to you for Administration Fees.

7.8 Any disagreement between the parties as to whether a report contains inaccuracies or whether inaccuracies are material will constitute a dispute that is to be resolved in accordance with clause 18 (Disputes).

7.9 Nature of fees

You agree that the fee charged in accordance with paragraph 7.6 and/or 7.7:

(a) is a primary contractual obligation in the nature of a contractual debt, not a secondary obligation; and

(b) even if it were a secondary obligation, that obligation would:

(i) reflect our legitimate interests in your meeting your obligations in this Schedule; and

(ii) contribute to the costs we incur or are likely to incur in addressing your non-compliance,

and you agree not to argue otherwise in any dispute or difference arising under or in connection with this Marketplace Agreement.

7.10 Updating report tables

(a) We may update and/or replace the tables in paragraphs 7.2 and 7.3 from time to time, but not more than once in any 12-month period and provided that:

(i) we give you at least 30 days' notice of any update or replacement becoming effective; and

(ii) if an update or replacement is likely to have a material impact on providers' compliance costs, we consult providers in the relevant Channel(s) on the proposed update or replacement.

(b) To avoid doubt, clause 21 (Amendments) of Part 1 (General Terms) of the Collaborative Marketplace Agreement does not apply to updates or replacements made under this paragraph 7.10.

We may update the reports tables from time to time and will give you advance notice if we do.

8. Meeting requirements

8.1 You will attend all applicable meetings described in the table at paragraph 8.3 below and in accordance with that table, depending on the Provider Category to which you belong.

8.2 You will ensure that the meetings you are required to attend are attended by staff who have:

(a) the roles or level of seniority specified in the table (if any); and

(b) authority to bind your company in relation to the subject matter of the meetings.

You need to attend the PSC meetings listed in the table here that are applicable to your Provider Category. Any meetings with Purchasing Agencies will be as agreed in their Subscription Agreements with you.

8.3 The meetings are:

Meeting, subject-matter, and provider categories (PCs) to which meeting requirement applies	Who must attend	Frequency
GCDO-Provider meetings – Required for PC1		
The purpose of the GCDO-Provider meeting, and the GM-Provider meeting (next row below), is to deepen the relationship between government and strategic providers of ICT services to government, facilitate an executive level forum for discussion, and enhance collaboration through the PC1 Strategic Management Plan (see above). GCDO/GM meetings do not replace or otherwise impact existing engagements, both strategic and operational, between GCDO and Provider officials. The GCDO-Provider meetings focus on: • strategic relationship management	PSC – Various, including GCDO or Deputy GCDO Provider – appropriate members of senior management	Twice yearly (usually May and November, but may vary)

Meeting, subject-matter, and provider categories (PCs) to which meeting requirement applies	Who must attend	Frequency
• GCDO senior leadership communication of strategy, objectives, and priorities • Provider communication of its strategic management plans, and • enhancing collaboration on agreed, shared objectives.		
GM-Provider meetings – Required for PC1		
GM-Provider meetings are held prior to a GCDO-Provider Meeting and allow Provider and GCDO officials to discuss progress on areas of collaboration, identify barriers and issues, and agree how to address them. The meetings will include: • ongoing provider relationship management, and • the provision by each party of interim updates to the other.	PSC – Various, including GM GDSD Provider – appropriate members of management or senior management	Twice yearly (usually February and August but may vary)
GDSD-Provider meetings – Required for PC1 and PC2		
The purpose of the Strategic Supplier Relationship Management meeting (**SSRM Meeting**) is to: • set expectations and objectives for the next year • understand what the Provider is planning for the next year, and • review performance from the previous year, by reference to, for example, the: • Capacity and maintenance planning Report • Market developments report; and • Roadmap report.	PSC – Various, including GM GDSD Provider – appropriate members of management or senior management	Annually
Commercial and/or security governance meeting – If and as required by PSC, for PC1, PC2, and PC3		
The purpose of these meetings is to provide an operational forum for contract management, to track key issues, risks, commercials, monitoring, and performance. You will attend such meetings with us as we may reasonably request and at the locations or by the means that we may reasonably request. If you wish to participate via video or similar means, you may ask to do so and we will not unreasonably deny your request. When you attend such a meeting, you will ensure you are represented by Personnel who have the relevant knowledge, experience, involvement	PSC's Lead Relationship Manager Provider's Lead Relationship Manager and as reasonably required by PSC based on the reason for the meeting	To be agreed with the Provider

Meeting, subject-matter, and provider categories (PCs) to which meeting requirement applies	Who must attend	Frequency
and authority having regard to the purpose of the meeting.		
Ad hoc meetings with Providers – If and as required by PSC for PC1, PC2, PC3, PC4		
Ad hoc meetings could cover matters such as: • management of Provider issues; and/or • opportunities that may exist for the Provider.	PSC – Various depending on reason for meeting Provider – As reasonably required by PSC based on reason for meeting	Ad hoc

9. Incident Management Service Levels

9.1 Obligations

(a) Subject to paragraphs 9.1(b) and (c), you will in relation to all Infrastructure Services, Telecommunications Services, and Managed Security Services that are being consumed by one or more Purchasing Agencies (excluding Professional Services and Transition Services) (**Applicable Services**), comply with the Incident Management Service Levels set out in the table at paragraph 9.3.

You need to comply with the Incident Management Service Levels set out below.

(b) The Incident Management Service Levels set out in the table at paragraph 9.3 are Base Service Levels. You and a Purchasing Agency may:

(i) agree to vary or disapply them in accordance with clauses 8.2(c) of the Channel Terms; and

(ii) agree upon incident management service levels for other priority levels,

provided that no such agreement will affect the enforceability by PSC of the requirements to notify PSC referred to in paragraph 9.2(a)(ii) below.

You and a Purchasing Agency can vary or disapply the Incident Management Service Levels.

(c) The Incident Management Service Levels do not apply to Third Party Services you resell unless your own Services to Purchasing Agencies include incident management in relation to those Third Party Services.

9.2 Enforceability

(a) The Incident Management Service Levels in this paragraph 9 are (subject to paragraphs 9.1(b) and (c)) enforceable by:

(i) Purchasing Agencies under their Subscription Agreements in relation to Applicable Services they are consuming; and

(ii) PSC in its lead role in relation to the Incident Management Service Levels' requirements to provide written notification to PSC and post-incident reporting to PSC (not in relation to their restoration timeframes),

but Service Level Default in relation to an Incident Management Service Level (each **an Incident Management Service Level Default**) may have different consequences in respect of Purchasing Agencies and PSC in its lead role, respectively, in accordance with paragraphs 9.5-9.6 below.

You owe these Incident Management Service Level obligations to both Purchasing Agencies and PSC and, in the event of Service Level Default, your obligations to each may differ.

(b) The Incident Management Service Levels are SLC Service Levels to which SLC Weights can be apportioned by a consuming Purchasing Agency, in accordance with the process set out in clause 8.7 (SLC Weights) of the Channel Terms. Service Level Credits are not payable to PSC in its lead role in the event of Incident Management Service Level Default.

In the event of Incident Management Service Level Default, Service Level Credits may be payable to relevant Purchasing Agencies, but not to PSC in its lead role.

(c) There will be an Incident Management Service Level Default if:

(i) the timeframe for written notification is not met;

(ii) subject to paragraph 9.2(a)(ii), the restoration time is not met; or

(iii) a required post-incident report (PIR) is not provided within the required timeframe,

(each an **SLD Trigger**)

(d) To avoid doubt:

(i) a failure to provide a text or phone notification is not an SLD Trigger (but a failure to provide written notification by email within the specified timeframe is); and

(ii) multiple SLD Triggers may arise in relation to a single incident and each constitutes a separate Service Level Default; but

(iii) no more than one Service Level Credit will be payable in respect of any single incident, regardless of the number of Service Level Defaults arising in relation to it.

9.3 The Incident Management Service Levels are as set out below. Service Level timeframes commence upon your awareness of the incident.

Service Level	Definition	Notification required to	Means and timeframe of notification	Details to be provided	Restoration Time*
IMSL1: Priority 1 Critical (P1)	Any of: • a total failure of the primary functions of an Applicable Service* • a Security Incident (as defined in para 15.1 of Schedule 1) affecting an Applicable Service that is known to have caused or is reasonably likely to cause a compromise of Purchasing Agency Data or unauthorised access to a Purchasing Agency Environment • a high impact environmental incident (fire, gas leak etc.) having a major impact on an Applicable Service • any incident affecting an Applicable Service requiring an incursion response	PSC – Lead Relationship Manager Purchasing Agencies consuming the affected Service(s) – Contract Manager	Text or phone notification: as soon as reasonably possible	• Incident no. • Services impacted • Purchasing Agencies impacted (to PSC only)	4 hours
			Written notification by email: within 2 hours	Further information on the P1 incident, including: • cause or likely cause • current status • confirmation of Purchasing Agencies impacted and how impacted (to PSC only) • potential downstream impacts (if any) • impacts on Provider relevant to provision of the Services • estimated time to resolve	
			Written PIR*: within 10 Business Days after Resolution of the incident.	PIR to cover root cause, actions taken, performance against any applicable RTO/RPO, and any lessons learned	
IMSL2: Priority 2 High (P2)	Any of: • a partial failure or degradation of the primary functions of an Applicable Service • critical failures of an Applicable Service for which an acceptable short-term temporary workaround is in place to mitigate immediate impacts, pending Restoration	Purchasing Agencies consuming the affected Service(s) – Contract Manager PSC – Lead Relationship Manager, but only if the incident is a Qualifying Incident*	Written notification by email: within 4 hours	information on the P2 incident, including the matters set out above for written notification of a P1 incident	8 hours
			Written PIR: only if requested in writing by PSC or Purchasing Agency; if requested, within the later of 10 Business Days after Resolution of the incident or 10 Business Days of PSC's or the Purchasing Agency's request	Information on the P2 incident, covering the matters set out above for a PIR for a P1 incident	

* **Applicable Services** is defined in paragraph 9.1(a) of Schedule 2 as "all Infrastructure Services, Telecommunications Services, and Managed Security Services that are being consumed by one or more Purchasing Agencies (excluding Professional Services and Transition Services)".

PIR means post-incident report.

Qualifying Incident means an incident referred to in the P2 definition that impacts multiple Purchasing Agencies, or impacts a Purchasing Agency's entire business, or is security-related, or has a major organisational impact on the Provider or a Purchasing Agency (e.g., damage to reputation, risk to people's safety, loss of market share, or breach of law).

Resolution means identification and solving of the problem that caused the incident.

Restoration means returning to effective and secure operation, by either a permanent fix or a stable workaround suitable for continued operational use on an interim basis, and **Restore** has a corresponding meaning.

Restoration Time means the time to Restore the affected Service(s).

9.4 Provision of post-incident reporting under paragraph 15.2(b)(iv) of Schedule 1 will satisfy the P1 PIR obligation, and vice versa.

9.5 Incident Management Service Level Default and Purchasing Agencies

Without limitation to paragraph 9.1(b), in relation to Purchasing Agencies:

(a) clause 5.9 (Service Levels) of the Core I/T/MS Services Terms applies to the Incident Management Service Levels; and

(b) if an Incident Management Service Level Default occurs and the Purchasing Agency has apportioned an SLC Weight to the Selected Service Level of more than 0%, you will deduct the applicable Service Level Credits in accordance with clause 5.9(c)(iv) of the Core I/T/MS Services Terms.

If there's an Incident Management Service Level Default, standard provisions in the Core I/T/MS Services Terms describe any Service Level Credit entitlement a Purchasing Agency may have.

9.6 Incident Management Service Level Default and PSC

In relation to PSC in its lead role, without limitation to PSC's other rights and remedies under the Collaborative Marketplace Agreement, Incident Management Service Level Default may result in a Performance Notice under paragraph 11 (Performance issues) of this Schedule 2 or trigger the procedures in paragraph 15 (Non-compliance with governance requirements).

In relation to PSC, Incident Management Service Level Default may result in performance notices or trigger the governance-related escalation procedures in paragraph 15.

9.7 Exclusions

You will not be responsible for an Incident Management Service Level Default, no Service Level Credits will be payable to a Purchasing Agency for an Incident Management Service Level Default, and no Incident Management Service Level Default shall be considered a failure for the purposes of paragraph 15:

(a) to the extent the default was caused by PSC's or a Purchasing Agency's act or omission, a Force Majeure Event, a third party (not including your Subcontractors or, in relation to relevant Services, Local Fibre Companies), or compliance with applicable law;

(b) to the extent that its restoration is delayed by the Purchasing Agency's failure to provide you with timely access, information, or approvals necessary to address the incident; or

(c) where a Service is unavailable due to scheduled or emergency maintenance notified and agreed in advance with the Purchasing Agency.

9.8 No limitation

This paragraph 9 does not limit your obligations relating to Security Risks and Security Incidents set out in paragraphs 14-15 of Schedule 1.

10. Other notifiable events

You need to inform PSC of Criminal or Regulatory Proceedings and Disrepute Events, as described here.

10.1 Subject to paragraph 10.2, you will notify PSC in writing of the other events, by the means, within the timeframes, and providing the details, set out below:

Notifiable event	Means and timeframe	Details to be provided
Any Criminal or Regulatory Proceedings	Written notification as soon as practicable and in any event within 5 Business Days of the Criminal or Regulatory Proceedings having been filed, provided that if the proceedings are subject to a court order preventing notification, notification must occur as soon as possible upon the order ceasing to apply	Outline of proceedings that includes: • nature of proceedings • name(s) of defendants / respondents • alleged offences or contraventions (e.g., section XY of the Crimes Act 1961) • any other comment you wish to make
Any Disrepute Event	Written notification within 2 Business Days of the Disrepute Event becoming publicly-known	Outline of the event, who is involved (names or roles), and steps being taken to address it, except to the extent that disclosure of such information would be confidential or relate to your internal employment-related investigatory or disciplinary processes.

10.2 If you are subject to stock exchange listing rules, you are not required to make a notification under paragraph 10.1:

(a) before you are required to make a public disclosure of the same matter under those listing rules; or

(b) to the extent that making the notification would conflict with those listing rules,

but you must provide the notification to PSC as soon as reasonably practicable after making the relevant market disclosure or once the conflict no longer applies.

10.3 In this paragraph 10:

Criminal or Regulatory Proceedings means any proceedings or prosecutions before any court of competent jurisdiction against you or any of your directors or other officers for any:

(a) criminal offence, including without limitation any offence under the Crimes Act 1961, Financial Markets Conduct Act 2013, Health and Safety at Work Act 2015, Serious Fraud Office Act 1990, or similar legislation in other jurisdictions; or

(b) breach of the Commerce Act 1986, Fair Trading Act 1986, or Health and Safety at Work Act 2015; and

Disrepute Event means any publicly known event involving you or any of your directors that a reasonable person would find materially immoral or objectionable or capable of materially adversely affecting your reputation or the reputation of the relevant directors.

11. Performance issues

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

11.1 Without limiting our other rights and remedies, if at any time you breach the Collaborative Marketplace Agreement or have notified us 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 us and, if applicable, Purchasing Agencies; and

(b) we may, by notice to you setting out our grounds (**Performance Notice**), require you to prepare a plan to remedy the Performance Issue (**Remedial Plan**) in accordance with paragraph 11.2.

11.2 As soon as possible after receipt of a Performance Notice (and in any event within 5 Business Days or such other period as we may agree) you will prepare and provide to us 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.

11.3 You will promptly and, in any event, within 5 Business Days (or such other period as we may agree) of a request by us, make such amendments to the proposed Remedial Plan as we may reasonably require, provided you receive our reasonably required amendments within 10 Business Days of our receipt of the proposed Remedial Plan from you.

11.4 Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 18 (Disputes) of the Channel Terms.

11.5 Once we have approved the Remedial Plan in writing it will be effective for the purposes of the Collaborative Marketplace Agreement and you will implement it in accordance with its terms and the Agreement. A failure to implement the Remedial Plan in accordance with its terms will constitute a breach of the Collaborative Marketplace Agreement.

11.6 PSC may share information relating to Performance Issues, Remedial Plans, and your compliance with Remedial Plans with Participating Agencies, on a confidential basis, if it considers it appropriate to do so in the circumstances.

11.7 PSC will act reasonably when considering any request by you for an alternative response time under paragraph 11.2 or 11.3, having regard to the nature and complexity of the Performance Issue.

12. Financial health

Providers in these Channels deliver important Services that may store, process or route substantial amounts of Purchasing Agency Data, and underpin the ability for government agencies to function and provide services. It is important, therefore, for PSC to be informed of issues that may affect your financial health and ongoing ability to deliver the Services. If you have solvency or other problems that affect your ability to deliver, you need to inform PSC promptly.

12.1 We may from time to time (but no more than once annually) require you to provide either:

(a) the most recent audit certificate you have relating to your financial accounts; or, if your accounts are not audited

(b) a letter from an independent accountant confirming that, as at the date of the letter, you satisfy the Solvency Test.

12.2 If, at any time:

(a) you fail to meet the Solvency Test; or

(b) an Insolvency Event occurs; or

(c) you become aware of any circumstances that would reasonably be expected to have a material adverse impact over the next 12 months on your ability to meet the Solvency Test or otherwise on your ability to perform your obligations under this Agreement or one or more Subscription Agreements; or

(d) you become aware that the circumstances described in any of paragraphs 12.2(a)-(c) apply to or in relation to a Subcontractor or Third Party Service Provider that is providing a material part of the Services,

(each a **Financial Distress Situation**), you must:

(e) promptly provide written notice to our Lead Relationship Manager of the Financial Distress Situation; and

(f) if requested in writing by our Lead Relationship Manager:

(i) provide such additional information in relation to the Financial Distress Situation as our Lead Relationship Manager may reasonably request; and

(ii) meet with our Lead Relationship Manager to discuss the Financial Distress Situation.

If PSC reasonably considers your financial distress risks services or data, we may inform relevant agencies and require you to discuss mitigation measures, supply back-ups of agency data, and give access to agency equipment.

12.3 Without limiting our and Purchasing Agencies' other rights and remedies, if we consider (acting reasonably) that the Financial Distress Situation poses a real risk to your ongoing provision of Services (**Service Risk**) and/or to the security, integrity, or availability of one or more Purchasing Agencies' Purchasing Agency Data (**Data Risk**), we may inform relevant Purchasing Agencies of the Financial Distress Situation and require you to:

(a) enter into discussions with us, within 2 Business Days of our request, with a view to agreeing on measures to mitigate the Service Risk and/or Data Risk;

(b) provide, as soon as possible and in any event within 5 Business Days of our request and in consultation with the relevant Purchasing Agencies, full, current, and tested back-ups of Purchasing Agency Data in your possession or control to the relevant Purchasing Agencies; and/or

(c) if you are in possession of any Purchasing Agency Equipment:

(i) provide the relevant Purchasing Agencies with physical access to that Purchasing Agency Equipment within 2 Business Days of a Purchasing Agency's request (or within such other period as we or the Purchasing Agency may agree); and

(ii) if a Purchasing Agency requires (after your explaining the impacts on ongoing Service provision) permit the Purchasing Agency to obtain possession of its Purchasing Agency Equipment.

12.4 You agree that any failure to comply with the requirements of this paragraph 12 will constitute a Material Breach for which damages would not be an adequate remedy.

13. Annual attestation

As part of PSC's ongoing assurance, your CE or their nominated delegate needs to provide an annual attestation to PSC in respect of the matters listed in this clause.

13.1 Within the first 10 Business Days of February each year during which you have provided Services to one or more Purchasing Agencies, you will provide us with a written attestation (the **Annual Attestation**) signed by your chief executive or their nominated delegate confirming that, to the best of their knowledge and after appropriate inquiry:

(a) during the preceding Calendar Year you have met your obligations under:

(i) clause 12.2(a) (publication of standard Prices and Service Rates for government in Services Listings);

(ii) clause 12.3 (Initial Prices and Services Rates);

(iii) clause 12.5 (Price adjustment – overarching rules);

(iv) clause 12.7 (Price adjustment – permissible annual change); and

(v) clause 12.7A (Price adjustment for Third Party Hardware in Volatile SKUs).

(b) if, during the preceding 12 months, you have decreased or increased your Prices or Services Rates, you have made any

required adjustments to your back end systems to ensure Purchasing Agencies are charged the correct amounts;

(c) the insurance required by clause 17 (Insurance) is in place; and

(d) as at the date of attestation:

(i) the Provider satisfies the Solvency Test;

(ii) no Insolvency Event has occurred; and

(iii) the Provider is not aware of any circumstances that would reasonably be expected to have a material adverse impact over the next 12 months on the Provider's solvency or otherwise on its ability to perform its obligations under this Agreement and each Subscription Agreement.

13.2 If you need to qualify your attestation in relation to matters about which you cannot be certain, you may do so. If you do, PSC may by notice in writing request further information from you in relation to those areas of uncertainty and you will use all reasonable endeavours to provide such information within a reasonable timeframe.

13.3 If we require you to use a specified template for the Annual Attestation, you will use that template.

13.4 We may request supporting evidence for the attestation. If we do, you will provide such evidence within 20 Business Days of our written request.

14. Purchasing Agency satisfaction survey

14.1 From time to time but not more than once annually, we may require you to conduct, with each Purchasing Agency's Contract Manager, a survey of each Purchasing Agency's satisfaction with the Services, covering all aspects of the relationship between you and the Purchasing Agency. If we provide guidance on the questions that should be asked in such a survey, you will use reasonable endeavours to follow that guidance.

We might ask you to conduct a Purchasing Agency satisfaction survey. If we do, you'll need to undertake one and report to us on its findings.

14.2 If we require you to conduct such a survey, you will:

(a) conduct the survey and use reasonable endeavours to obtain survey replies from Purchasing Agencies within 60 days of PSC's written request; and

(b) provide a report to us within a further 14 days, which accurately summarises the findings of the survey.

15. Non-compliance with governance requirements

Non-compliance with our governance requirements can jeopardise our management of the Marketplace and lead to inefficiencies and wasted costs. To minimise these risks, we have implemented a staged approach to addressing non-compliance.

15.1 Thresholds for escalation

Without limitation to our other rights and remedies under the Collaborative Marketplace Agreement, including under this Schedule, if you materially fail to comply with one or more of your obligations under this Schedule:

(a) on 3 or more occasions in a Calendar Month; or

(b) on 5 or more occasions in a Calendar Quarter; or

(c) on 10 or more occasions in a Calendar Year,

we may notify you in writing that your failure(s) have triggered the application of this paragraph 15 and that, if there is a further failure, we may call you to a meeting in accordance with paragraph 15.2.

15.2 Meeting

If, after our notice under paragraph 15.1, you materially fail to comply with one or more of your obligations under this Schedule again in the same Calendar Year, we may, by written notice to you require you to attend a meeting to discuss your non-compliance, which, if required, must be attended by your Chief Executive, or their nominated delegate who must occupy a senior management position.

15.3 Remedies for continuing non-compliance

(a) Without limitation to other remedies that may be available to us, if, after that meeting (or if you fail to attend the meeting), you fail, or continue to fail, to materially comply with one or more of your obligations under this Schedule in the same Calendar Year, we may:

(i) charge you a fee of $1,000 + GST for each failure to comply that occurs after the meeting and during the Calendar Year (unless the failure triggers our entitlement to charge a fee under paragraph 7, in which case the paragraph 7 fee shall apply to the particular failure instead), provided that our maximum charges under this paragraph 15.3 in any individual Calendar Year must not exceed $50,000; and/or

(ii) suspend:

(A) your membership in the Marketplace or one or more of the Channels; or

(B) one or more of your Services Listings in one or more of the Channels,

until such time as you have rectified any non-compliance and we are confident there will not be any further non-compliance; or

(iii) terminate your membership in the Marketplace or one or more of the Channels for Material Breach.

(b) You agree that the fee charged in accordance with this paragraph 15:

(i) is a primary contractual obligation in the nature of a contractual debt, not a secondary obligation; and

(ii) even if it were a secondary obligation, that obligation would:

(A) reflect our legitimate interests in your meeting your obligations in this Schedule; and

(B) contribute to the costs we incur or are likely to incur in addressing your non-compliance,

and you agree not to argue otherwise in any dispute or difference arising under or in connection with this Agreement.

16. Updating templates

We can update Subscription Form and SOW templates, and add new SOW templates, without needing to follow the Part 1 amendments procedure (unless a revised or replacement template would or is likely to have an adverse impact on providers). If we do, we'll notify you and agencies.

16.1 PSC may:

(a) revise the Subscription Form template and Statement of Work templates from time to time in the light of providers' and Purchasing Agencies' experience with the templates; and

(b) introduce new Statement of Work templates,

without needing to follow the process set out in clause 21 (Amendments) of Part 1 (General Terms), provided that if any revision to an existing template or any new template would or is reasonably likely to have a material adverse impact on providers, for example by introducing terms that providers would be contractually bound to accept, PSC will follow the process set out in clause 21 of Part 1 (General Terms).

16.2 If PSC revises the templates or introduces new Statement of Work templates, it will:

(a) notify Participating Agencies and providers of the update via email; and

(b) add the updated templates to the Marketplace website with information on what has changed and why.

Published version history

Version number	Date	Comment (if any)
2	August 2026	Channel Terms, Subscription Form, Core I/T/MS Services Terms, and SOW templates: • Amended references to “Department of Internal Affairs” and “DIA” to “Public Service Commission” and “PSC”.

Subscription Agreement components

Annexure A: Subscription Form template 149
Annexure B: Core I/T/MS Services Terms (and Statement of Work templates) 191
Annexure C: Extra Terms (if any) 300

Annexure A: Subscription Form template

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

Drafting notes

As explained in clause 5 of the Subscription Form, the template "Order for Services at Commencement Date" at Schedule 1 to the Subscription Form is expected to be used to specify the technology Services that are being procured when entering into the Subscription Agreement, and related matters. That initial Order can be varied by Service Volume Changes (including via any specific procedure agreed in the Subscription Form), Change Requests (for changes that are not Service Volume Changes), or simple variations. If, for some reason, the parties wished to agree upon an entirely new Order not using the methods just mentioned, they could use Schedule 1 to the Subscription Form as a starting point, modified as required to reflect the fact that the Services are not the Services ordered at the Commencement Date. The modifications would need to include insertion of a signature block.

Marketplace

Subscription Form for Infrastructure Services, Telecommunications Services, and/or Managed Security 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 Services, as defined in the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (Standard) (the **Channel Terms**).

Those Channel Terms are Part 2 of the Collaborative Marketplace Agreement between the New Zealand Government and you. They prescribe the form of the Subscription Agreement that applies to our procurement of Infrastructure Services, Telecommunications Services, and/or Managed Security Services, via the Marketplace. Notes in blue boxes are for your convenience but are not part of the Subscription Agreement.

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Agreement

1. Content and formation of Subscription Agreement

Execution of the Subscription Form creates an agreement – a Subscription Agreement – that comprises sets of applicable terms, including any agreed Provider Standard Terms and, once agreed, Orders and/or SOWs.

1.1 Content and formation

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

(a) this Subscription Form, including any attached Order;

(b) the Core I/T/MS Services Terms;

(c) any applicable Extra Terms;

(d) in relation only to Cloud Services or Downloadable Software and subject to clause 1.2, Provider Standard Terms if and to the extent that the application of such Provider Standard Terms is agreed in Schedule 1 to this Subscription Form or in a separate Order or Statement of Work. Unless the parties agree otherwise in accordance with clause 1.3, any applicable Provider Standard Terms will apply subject to and as modified by:

(i) the Core I/T/MS Services Terms; and

(ii) any Extra Terms that apply (if any); and

(e) once executed by both parties, each subsequent Order and each Statement of Work,

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

1.2 Modifications to Provider Standard Terms

This clause contains a small number of specific government overrides to any of your Provider Standard Terms that the Purchasing Agency agrees may apply to particular Cloud Services or Downloadable Software you provide. This applies even when your Provider Standard Terms are agreed to apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms. Note that, under the Channel Terms, you are not permitted to amend this clause.

If any Provider Standard Terms apply in accordance with clause 1.1(d) above, the parties agree that, despite any provision to the contrary in your Provider Standard Terms (or in any policy to which they refer):

(a) **indemnities**: we shall not 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:** the Subscription Agreement (as described in clause 1.1) constitutes the entire agreement between you and us, as further described in clause 26.5 of the Core I/T/MS Services Terms; any entire agreement or

similar clause in your Provider Standard Terms to the contrary shall not apply;

(c) **control of claims:** any reference in your Provider Standard Terms to your having any form of control over the defence or settlement of any third party claim against us (in relation to which you have an obligation such as an indemnity vis-a-vis us) 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;

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.

(d) **no exclusive remedy**: any reference in your Provider Standard Terms to a remedy being the sole or exclusive remedy, including but not limited in relation to the remedying of defects, does not apply, unless the parties agree in this Subscription Form or an Order or a Statement of Work that it does apply;

(e) **unilateral changes**: except as required by law, if you make a unilateral change to your Provider Standard Terms from the Commencement Date that is prejudicial to our or our Users' rights or interests, that change shall be unenforceable against us and our Users (this clause does not prevent you from amending your Provider Standard Terms for all or relevant groups of your customers or adapting and evolving your Services as you see fit and it doesn't require you to issue bespoke communications to purchasing agencies and their Users if you amend your Provider Standard Terms for all or relevant groups of your customers; it only limits the enforceability of unilateral changes that are prejudicial to us or our 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 we or our Users are bound by such unilateral changes;

(f) **precedence of documents**: the precedence of documents comprising the Subscription Agreement is the precedence described in clause 1.4; and

(g) **governing law and jurisdiction:**

(i) New Zealand law governs all matters relating to the Subscription Agreement and its formation, including interpretation of its 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 Subscription Agreement or its formation 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; and

(iii) either party will be entitled to seek interim relief in any relevant jurisdiction.

1.3 Any non-application of Core I/T/MS Services Terms and Extra Terms must be agreed

(a) If any applicable Provider Standard Terms are to regulate the parties' rights and obligations in relation to the Cloud Services and/or Downloadable Software to which they apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (whether wholly or in part), that must be agreed and specified in the Subscription Form or applicable Order or Statement of Work, otherwise those core and extra terms and the order of precedence set out in clause 1.4 will apply.

There will be no complete override of the Core I/T/MS Services Terms and any Extra Terms unless expressly agreed.

(b) To avoid doubt, no agreement and specification made in accordance with clause 1.3(a) limits clause 1.2 above or the order of precedence in clause 1.4(a), (b) and (e) below.

1.4 Precedence

Subject to clause 1.3, if there is any conflict or inconsistency between the documents which comprise the Subscription Agreement, the descending order of precedence is (unless expressly agreed otherwise in writing by reference to this clause):

(a) Statements of Work (if any), and Orders entered into after the Subscription Form and any contemporaneous Order;

(b) the Subscription Form, including any attached Order but excluding Provider Standard Terms referred to in, or attached to, the form or Order;

(c) any Extra Terms that apply (if any);

(d) the Core I/T/MS Services Terms;

(e) Provider Standard Terms that are agreed to apply.

2. Interpretation

2.1 In this Subscription Form, unless the context otherwise requires:

(a) a reference to a party is to a party to this Subscription Form; and

(b) capitalised terms have the meanings given to them in the Core I/T/MS Services Terms.

Terms defined in the Core I/T/MS Services Terms have the same meaning when used in this Subscription Form.

3. Initial Term and Permitted Renewals

[Enter a period for the Initial Term below. As stated in clause 1.1(b)(i) of the Core I/T/MS Services Terms, the Initial Term must not exceed 5 years (and under clause 6.2(f) of the Channel Terms, the Provider cannot alter the 5 year cap in clause 1.1(b)(i) without PSC's written consent).]

3.1 The Subscription Agreement has an initial term that:

(a) starts when both parties have signed (physically or electronically) this Subscription Form; and

(b) ends on [enter a date that is no later than 5 years after commencement] (the **Initial Term**).

The Term of the Subscription Agreement comprises the Initial Term and any rights of renewal set out here.

[Rights of renewal need to be set out below. The default position in clause 1 of the Core I/T/MS Services Terms is that the Purchasing Agency has two rights of renewal of up to 3 years each. However, the parties may agree to different renewal provisions, provided that no single renewal period exceeds 3 years and the total of all renewal periods does not exceed 6 years. Select the preferred option and complete as required.]

Either

3.2 The Purchasing Agency has two rights of renewal, each of up to 3 years (each a **Permitted Renewal**). (When exercising a remaining Permitted Renewal, the Purchasing Agency can select any period of renewal up to 3 years, such as 1 year or 2 years or 3 years.)

or

3.3 The Purchasing Agency has [insert number] rights of renewal, [each] of [up to] [x] years ([each a] **Permitted Renewal**). [For example: … 'three rights of renewal, each of 2 years (each a **Permitted Renewal**)' or 'four rights of renewal, each of 1 year (each a **Permitted Renewal**)', or 'one right of renewal of 3 years (**Permitted Renewal**)' etc.]

or

3.4 The Purchasing Agency has [insert number] rights of renewal, the first for [x] years and the second for [y] years (each a **Permitted Renewal**). [For example: … 'the first for 3 years, and the second for 2 years (each a **Permitted Renewal**)']

4. [Minimum commitments]

[This clause 4 is optional. The parties can elect to include it if they are agreeing to a minimum initial term and wish to dis-apply the Purchasing Agency's termination for convenience right during that minimum initial term, or are agreeing upon a minimum committed volume during a minimum initial term on the basis of the provider offering a more favourable deal and the parties agree to the provider

guarding against the consequences of service volume changes and/or termination for convenience, and/or where the parties agree the provider may recover certain Sunk Costs if the Purchasing Agency terminates for convenience during an agreed minimum initial term. If the parties do include the clause, remove the opening and closing square brackets around the clause. It can be amended if required. If the parties do not agree to include this clause, delete it and remember to refresh the Subscription Form table of contents before finalising the document.]

4.1 Application

This clause addresses minimum commitment arrangements to which the parties may agree.

This clause applies if and to the extent that the parties have expressly agreed in the Subscription Form or an Order or Statement of Work:

(a) to a Minimum Initial Term (which the parties may agree is all or part of the Initial Term);

(b) to a minimum committed volume of Services during that Minimum Initial Term;

(c) that you have agreed to:

(i) reduce pricing for Services; and/or

(ii) waive particular fees that would otherwise apply,

on the stated basis that the Purchasing Agency has agreed to the minimum committed volume of Services during the Minimum Initial Term; and/or

(d) that Sunk Costs, as specified in the Subscription Form, Order, or Statement of Work, may be recoverable in accordance with clause 4.4 if, during the Minimum Initial Term, the Purchasing Agency terminates the Subscription Agreement or relevant Order or Statement for convenience (subject to any maximum Sunk Costs specified in the Order or Statement of Work).

4.2 Minimum Initial Term and termination for convenience

If the parties have agreed to a Minimum Initial Term and indicated that during that Minimum Initial Term the Purchasing Agency cannot terminate the Subscription Agreement or relevant Order or Statement of Work for convenience, then clause 24.2 (Termination by Purchasing Agency for convenience) shall not apply in relation to the Subscription Agreement or relevant Order or Statement of Work during the Minimum Initial Term.

4.3 Committed volumes during Minimum Initial Term and Service Volume Changes

If clauses 4.1(a), (b), and (c)(i) and/or (ii) apply and, during the Minimum Initial Term, the Purchasing Agency makes Service Volume Change(s) that reduce the actual volume of Services below

the committed volume, you may, on [20] Business Days' written notice to the Purchasing Agency:

(a) where clause 4.1(c)(i) applies, increase the affected Fees in the applicable Order or Statement of Work to a level that reasonably and proportionately reflects the reduced volume of Services for the period during the remainder of the Minimum Initial Term during which the actual volume is lower than the committed volume, provided that such increase:

(i) does not exceed the pricing you would otherwise have charged (which in no event shall be higher than the pricing in your Services Listings that applied at the relevant time in accordance with the Subscription Agreement, unless the Services Listing pricing has since been increased and the Purchasing Agency has agreed that the increased pricing would apply when this clause 4.3 applies); and

(ii) complies with clause 4.5(a); and/or

(b) where clause 4.1(c)(ii) applies, charge the Purchasing Agency an amount that reasonably and proportionately reflects the value of any expressly waived fees, having regard to the extent of the reduction in the committed volume and the time remaining in the Minimum Initial Term, and provided that:

(i) the amount you charge does not exceed the fees you would otherwise have charged; and

(ii) complies with clause 4.5(a).

4.4 Termination for convenience during Minimum Initial Term

If:

(a) clauses 4.1(a) and (b) apply;

(b) the parties have not agreed to the non-application of clause 24.2 (termination for convenience) during the Minimum Initial Term;

(c) during the Minimum Initial Term the Purchasing Agency terminates the Subscription Agreement or relevant Order or Statement of Work for convenience; and

(d) ongoing payment for the Services at the minimum committed volume comes to an end before expiry of the Minimum Initial Term either because no Disengagement Services are required or because Disengagement Services that involve ongoing provision of the Services at that volume have been completed before expiry of the Minimum Initial Term,

then, where clause 4.1(d) applies, you may recover the Sunk Costs referred to in that clause.

4.5 Recovery safeguards

(a) Any adjustment or recovery under clause 4.3 or 4.4 must not result in your recovering more than the net loss of commercial benefit that you would reasonably have received if the Purchasing Agency had taken the specified committed volume of Services for the full Minimum Initial Term. You will provide reasonable supporting information to the Purchasing Agency on request to substantiate such calculation.

(b) Any disagreement between the parties as to an amount payable under this clause will be resolved in accordance with clause 23 (Disputes) of the Core I/T/MS Services Terms.

5. Provision of Services at Commencement Date

Services to the Purchasing Agency need to be agreed in a Subscription Form, Order and/or Statement of Work.

5.1 As described in more detail in clause 3 of the Core I/T/MS Services Terms, your provision of Services to us needs to be agreed in this Subscription Form or one or more Orders and/or Statements of Work.

5.2 As at the Commencement Date:

(a) the Services we are procuring;

(b) Service Levels and related matters; and

(c) the initial Prices, Fees and/or Services Rates for the Services,

are as set out in [if the Purchasing Agency is purchasing Services via an Order in Schedule 1 alone: Schedule 1 to this Subscription Form or if the Purchasing Agency is purchasing Services via an Order in Schedule 1 and associated professional services: Schedule 1 to this Subscription Form and the Statement of Work executed contemporaneously with this Subscription Form or if the Purchasing Agency is only purchasing professional services to begin with: the Statement of Work executed contemporaneously with this Subscription Form].

[include clause below if the Purchasing Agency is undertaking a significant transition from itself or an incumbent provider to the Provider and putting a Statement of Work (Transition Services) in place when entering into this Subscription Form. A template SOW for transition services can be found in the Schedule to the Core I/T/MS Services Terms. If not, delete.]

5.3 You will transition the Purchasing Agency to the [edit as required: Infrastructure Services / Telecommunications Services / Managed Security Services / Services] by providing the Transition Services in accordance with the Statement of Work (Transition Services) executed contemporaneously with this Subscription Form.

6. Service Volume Changes

[Under clause 13.1 of the Core I/T/MS Services Terms, the Purchasing Agency may require a change to the Services in the nature of: (a) increasing the volume of or selecting additional Services from the Provider's Services Listings; (b) replacing any Services with other Services selected from the Services Listings; or (c) reducing the volume of, or discontinuing, Services (each a 'Service Volume Change'):

- by using the self-service function of the Services (if available); or
- *in the manner (if any) specified in the Subscription Form*; or
- in the manner otherwise agreed between the parties.

Depending on the nature of the services and how agencies can effect Service Volume Changes, the parties may wish to include a process here that works for both parties. For example, one might state that Service Volume Changes are to be made by completing a service request via a self-service portal, or by contacting the Provider's service desk, or by completing an Order for Additional Services, or by entering into a Statement of Work using a template in the Schedule to the Core I/T/MS Services Terms.]

Service Volume Changes will be processed using the process described here. If none is described, they will be processed using the self-service function of the Services (if any) or in the manner otherwise agreed between the parties.

6.1 [Insert any particular method of making Service Volume Changes]

7. Application of Subscription Agreement to various kinds of Services

7.1 The parties acknowledge that:

(a) this Subscription Agreement can apply to any Services for which you have Services Listings in the Marketplace's Infrastructure Services Channel, Telecommunications Services Channel, or Managed Security Services Channel (**In-Scope Services**); and, therefore

(b) if, during the Term of the Subscription Agreement (as defined in clause 1 of the Core I/T/MS Services Terms), we select you to provide additional In-Scope Services, you and we may amend this Subscription Form or enter into Orders or Statements of Work or complete other standard documentation 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 Services in the Infrastructure Services Channel, Telecommunications Services Channel, and Managed Security Services Channel.

8. Contract Managers

8.1 The Contract Managers referred to in clause 4.1(a) of the Core I/T/MS Services Terms are as follows:

These are the parties' Contract Managers

	Name:	
	Email:	

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

9. Other key contacts (if any)

9.1 Other key contacts referred to in clause 4.2 of the Core I/T/MS Services Terms are as set out below. Either party can change who is appointed to its roles, on notice to the other, unless they are Key Personnel (to which clause 8.2 of the Core I/T/MS Services Terms applies).

Other key contacts (if any) can be stated here if the parties wish. Other key contacts can also be stated in Orders or SOWs if that's preferable in the circumstances.

Party	Role(s)	Initial appointee	Key Personnel? (Yes / No)
Purchasing Agency	[Role]	[Name] [Email] [Phone]	(Not applicable to Purchasing Agency)
	[Role]	[Name] [Email] [Phone]	
Provider	[Role]	[Name] [Email] [Phone]	
	[Role]	[Name] [Email] [Phone]	

10. Meetings

[If the Purchasing Agency requires periodic meetings with the Provider, detail those meetings below]

10.1 You will attend the following meetings at the following times:

The parties will meet as described here.

Meeting details	Attendees	Frequency/date and location

11. Reports

You need to provide these reports.

[Paragraph 7.3 of Schedule 2 (Governance Requirements) of the Channel Terms states that the Provider must provide the reporting described below (the Billing and usage report) to Purchasing Agencies, subject to any agreement to the contrary with individual Purchasing Agencies. Purchasing Agencies may also agree other reports with the Provider. The parties may, therefore, agree to amend or even remove the default report below, and add further reports (for example, reports that a Services Listing state come with a Service). Optional wording for a Purchasing Agency report has been included below in case the parties wish to agree to such a report. The parties may also agree that reports will be available or delivered via a portal or other online means if they wish.]

11.1 You will report to us as follows:

Report and required content	Receiver	Frequency
Billing and usage report [required by default; can be amended]		
This report will, as applicable: • summarise billing information by Service • detail any Service Level Credits applicable including the Service Level Credit weightings table, and • detail Service consumption volumes by billing unit and cost centre in a format that can be used for analysis.	Purchasing Agency's Contract Manager	Monthly within the first 5 Business Days of the new month in order to support invoicing
Purchasing Agency report [optional; parties can agree to this if they wish, including as to any cost for provision of the report (if any)]		
This report will, as applicable: • summarise Service performance and availability • provide Service Level metrics and indicate, for each Service Level, whether it has been met and, if not, what Service Level Credits have been credited or are owed • summarise Service incident volume and provide details of each Service incident in a format that can be used for analysis • summarise Security Incidents by type and provide details including mitigation and other actions • summarise Service request volumes and provide details of each Service request in a format that can be used for analysis, and • detail Service usage by billing unit and cost centre.	Purchasing Agency's Contract Manager	Monthly, delivered by the 20th of the following month

Report and required content	Receiver	Frequency
[Enter additional reports if required and agreed]		

12. Escalation

[If specific escalation contacts are required for performance and technical issues and risks, complete the table below to the extent required.]

12.1 Without limitation to clause 22 (Performance issues) of the Core I/T/MS Services Terms, the parties may escalate performance and technical issues and risks as follows:

These are the parties' escalation contacts

Nature of issues and risks	Purchasing Agency escalation	Provider escalation
Performance issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]
Technical issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]

13. Address for Notices

13.1 The parties' addresses for notice referred to in clause 26.7(d) of the Core I/T/MS 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:	

14. Additional security, probity, tax, or beneficiary checks

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

[If Provider Personnel are required to pass additional check (beyond the MOJ criminal record checks or equivalent checks required by paragraph 8.1 (Staffing) of Schedule 1 (Information Security) to the Channel Terms), specify those checks here. If no additional checks are required, the parties can state 'No additional checks beyond those in paragraph 8.1 of Schedule 1 to the Channel Terms are required.']

14.1 You must, in accordance with clause 8.1(b)(i) of the Core I/T/MS Services Terms, ensure that all of your Personnel engaged in providing the Services have obtained the security clearances and passed the probity checks specified below (if any):

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

15. Service and Purchasing Agency Data locations

[Clause 17.2 of the Core I/T/MS Services Terms:

- states that neither the Provider, nor any Subcontractor or Third Party Service Provider it uses, may provide Services from outside New Zealand, or store, process or make available Purchasing Agency Data to any person located outside New Zealand, except as explicitly detailed in a PSC-approved Offshoring Schedule or as permitted by the Purchasing Agency in its Subscription Form, or in an Order or Statement of Work, or subsequently; and
- contemplates that the Provider and Purchasing Agency may agree to additional limitations on the countries from which the Services (including support) are provided and/or specific data residency countries (i.e., more limited than what is said in an Offshoring Schedule).

If not already covered by the Offshoring Schedule that covers the initial Order in Schedule 1, indicate in the table below:

- any country beyond New Zealand from which the Services may be provided (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)); and
- any country beyond New Zealand in which Purchasing Agency Data may be stored or processed (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)).

In addition or alternatively, indicate any constraints on the provision of Services from or the storage or processing of Purchasing Agency Data in countries listed in the Offshoring Schedule.

If no changes to defaults in clause 17.2 are required, you can state 'No changes to default positions'. If an individual row below is not required or applicable, you can state 'Not applicable'.]

15.1 The parties acknowledge that, under clause 17.2 of the Core I/T/MS Services Terms:

(a) you must not provide Services or process Purchasing Agency Data from outside New Zealand (subject to the international routing exception in clause 17.2(f)(i)) unless such provision or processing is detailed in your PSC-approved Offshoring Schedule (which is one limb of the term 'Permitted Additional Territories') or the Purchasing Agency has agreed to further Permitted Additional Territories (the other limb of the term 'Permitted Additional Territories'); and

(b) the parties may agree upon restrictions to Service Locations and/or Data Locations relative to what is specified in your Offshoring Schedule.

This clause sets out any further Permitted Additional Territories (beyond those in the Provider's Offshoring Schedule), and/or Service Location and/or Data Location restrictions.

15.2 Any Permitted Additional Territories (beyond those in your Offshoring Schedule), and/or Service Location and/or Data Location restrictions, are set out below.

Permitted Additional Territories (in addition to those in the Offshoring Schedule)	
The Purchasing Agency agrees that the following additional Services or parts of the Services may be provided from the countries outside New Zealand specified here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert Services and countries and, if relevant, Subcontractors or Third Party Service Providers. Note that if the Services/countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]
The Purchasing Agency agrees that	[Not applicable *or* [insert

Purchasing Agency Data may be stored or processed in these additional countries outside New Zealand (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	countries and, if relevant, by what named Subcontractors or Third Party Service Providers. Note that if the countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]
Service Location or Data Location restrictions	
The parties agree that, despite anything to the contrary in your Offshoring Schedule, the following Services or parts of the Services may be provided only from New Zealand and the countries specified here:	[Not applicable *or* [insert Services and countries]]
The parties agree that, despite anything to the contrary in your Offshoring Schedule, Purchasing Agency Data may only be stored or processed in New Zealand and the countries stated here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert countries and, if relevant, by what named Subcontractors or Third Party Service Providers]]

16. Changes to Core I/T/MS Services Terms, any applicable Extra Terms, and Provider Standard Terms

16.1 Except as prohibited by clause 6.2 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (Standard), you and we may agree to amend and supplement the Core I/T/MS Services Terms, any applicable Extra Terms, and any of your Provider Standard Terms that are agreed to apply, in either this Subscription Form, an Order, a Statement of Work, or other documentation that forms part of or accompanies your Provider Standard Terms.

The parties can agree to amend and supplement the Core I/T/MS Services Terms and any applicable Extra Terms and Provider Standard Terms, subject to the constraints set out in the Channel Terms.

16.2 Subject to clause 16.3, if the Collaborative Marketplace Agreement is changed in accordance with clause 21 (Amendments) of Part 1 (General Terms) of that Agreement in a manner that affects or supplements the terms of the Subscription Agreement, that change will apply automatically to the Subscription Agreement from a date that is 15 days after the effective date stated in PSC or MBIE's notice under clause 21, unless:

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

(a) the change is contrary to an amendment or supplement to the Core I/T/MS Services Terms or any applicable Extra Terms or

any applicable Provider Standard Terms that we and you have already agreed; or

(b) in the case of existing Orders or Statements of Work, the change increases your costs or risks, and you inform us of this reasonably promptly; or

(c) we and you otherwise agree that the change will not apply.

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

17. Invoicing requirements

You need to meet the invoicing requirements stated here.

17.1 In addition to the matters set out in clause 14.2 of the Core I/T/MS 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] [If there are no additional invoicing requirements, state 'There are no additional invoicing requirements'.]

18. Conflicts of interest

Any existing Conflicts of Interest, whether your own or of your Subcontractors, need to be addressed here.

18.1 You declare the following Conflicts of Interest in entering into the Subscription Agreement and providing the Services:

[Insert a description of any Conflicts of Interest the Provider has] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be managed, the Purchasing Agency must put in place an appropriate conflict of interest management plan.]

[Conflict management plan: Insert details of the Purchasing Agency's conflict management plan or such a plan that has been agreed with the Provider]

[Or, if there are no Conflicts of Interest, state None]

[None]

18.2 You declare the following Conflicts of Interest on behalf of your Subcontractors (if any) in your entering into the Subscription Agreement and providing the Services:

[Insert a description of any Subcontractor Conflicts of Interest] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be managed, the Provider will need to work with the Subcontractor(s) to put in place an appropriate conflict of interest management plan. The Provider must provide a copy of the full conflict management plan to the Purchasing Agency, if requested.]

[Conflict management plan: Insert details of the conflict management plan(s) you have or will promptly put in place with the relevant Subcontractor(s)]

[Or, if there are no Conflicts of Interest, state None]

[None]

19. Intellectual Property Rights

This clause deals with any changes to the default IP provisions.

[If the parties agree to change any aspect of the default ownership and licensing provisions in clause 16 of the Core I/T/MS Services Terms, or any other element of that clause, those changes should be recorded here. If no such changes are required, you can state 'No changes to default provisions'.

Note, in particular, that clause 16.4 contains a Default Deliverables Licence to the Purchasing Agency and a Default Services Licence to the Purchasing Agency. However, it also contains an Alternative Deliverables Licence and an Alternative Services Licence that the parties can agree shall apply instead of the default licences. The alternative licences are less permissive than the default licences but some companies seek to negotiate them and for many deliverables and services they will probably suffice (do note, however, that they are revocable for cause (so could be revoked if, for example, the Purchasing Agency did not pay applicable Fees) and use is limited to the agency's *internal* business purposes). The drafting below can be used when the parties agree to the Alternative Deliverables Licence and/or the Alternative Services Licence. If that is not the case, delete the clause.]

19.1 [Licences to Purchasing Agency in relation to Deliverables and Services

(a) The parties agree that, in relation to the licensing of Deliverables described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Deliverables Licence applies instead of the Default Deliverables Licence.

(b) The parties agree that, in relation to the licensing of Services described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Services Licence applies instead of the Default Services Licence.]

20. Other terms

The parties can record additional terms here if they wish.

20.1 [If other terms are required and agreed, they can be inserted here. If there are no other terms, state 'There are no other terms'. Note that other terms can be specified in Orders or SOWs instead, which may be the more natural place for them if they are Order- or SOW-specific.]

Execution

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

For and on behalf of the **Purchasing Agency** named above:	For and on behalf of the **Provider** named above:
_____	_____
(signature)	(signature)
Name:	**Name:**
Position:	**Position:**
Date:	**Date:**

Schedule 1 to Subscription Form – Order for Services at Commencement Date

This Schedule sets out details of the [edit as required: Infrastructure Services, Telecommunications Services, and Managed Security Services], ordered by the Purchasing Agency as at the Commencement Date.

[Complete sections below by reference to what is relevant. Delete the remainder. Amend as required. Please note that sections A, B, and C are essentially duplicates but A relates to Infrastructure Services from the Infrastructure Services Channels, B to Telecommunications Services from the Telecommunications Services Channel, and C to Managed Security Services from the Managed Security Services Channel. Only include the sections that are relevant to the kinds of services being procured. For example, if only Infrastructure Services are being procured, delete sections B and C in their entirety. If Services are being procured from two or more of these three Channels, retain the relevant A/B/C Channel delineation (do not merge them), as that delineation is important for the application of certain contractual terms, such as the terms relating to Service Levels.]]

A. Infrastructure Services [delete section A if not procuring Infrastructure Services]

1. Infrastructure Services ordered at Commencement Date

1.1. [To be completed, by reference to (and incorporating material parts of or attaching) the relevant Services Listing(s) and their version numbers. Cross-refer to Statement(s) of Work if relevant or required. If you are procuring professional services or transition services, the detail of those services would normally be set out in a Statement of Work (General) or Statement of Work (Transition Services), templates for which can be found in the Schedule to the Core I/T/MS Services Terms.]

2. Service Levels

2.1. Base Service Levels (description)

Base Service Levels are Service Levels prescribed by PSC in accordance with clause 8 of the Channel Terms (part of the Collaborative Marketplace Agreement between the Provider and PSC). Base Service Levels can be prescribed in the Channel Terms themselves, or as a requirement for Services Listings.

2.2. Base Service Levels prescribed by Channel Terms – Incident Management Service Levels

The Incident Management Service Levels set out below are Base Service Levels prescribed by paragraph 9 of Schedule 2 of the Channel Terms. Service Level timeframes commence upon your awareness of the incident:

[Under paragraph 9.1(b) of Schedule 2 of the Channel Terms, the provider and a Purchasing Agency may agree to vary or disapply the Incident Management Service Levels below, and agree to incident management service levels for other priority levels. If that is done, the table below, and possibly the preceding text, will need to be amended.]

Service Level	Definition	Notification required to	Means and timeframe of notification	Details to be provided	Restoration Time*
IMSL1: Priority 1 Critical (P1)	Any of: • a total failure of the primary functions of an Applicable Service • a Security Incident (as defined in para 15.1 of Schedule 1) affecting an	PSC – Lead Relationship Manager Purchasing Agencies consuming the affected	Text or phone notification: as soon as reasonably possible	• Incident no. • Services impacted • Purchasing Agencies impacted (to PSC only)	4 hours

Service Level	Definition	Notification required to	Means and timeframe of notification	Details to be provided	Restoration Time*
	Applicable Service that is known to have caused or is reasonably likely to cause a compromise of Purchasing Agency Data or unauthorised access to a Purchasing Agency Environment • a high impact environmental incident (fire, gas leak etc.) having a major impact on an Applicable Service • any incident affecting an Applicable Service requiring an incursion response	Service(s) – Contract Manager	Written notification by email: within 2 hours	Further information on the P1 incident, including: • cause or likely cause • current status • confirmation of Purchasing Agencies impacted and how impacted (to PSC only) • potential downstream impacts (if any) • impacts on Provider relevant to provision of the Services • estimated time to resolve	
			Written PIR*: within 10 Business Days after Resolution of the incident	PIR to cover root cause, actions taken, performance against any applicable RTO/RPO, and any lessons learned	
IMSL2: Priority 2 High (P2)	Any of: • a partial failure or degradation of the primary functions of an Applicable Service • critical failures of an Applicable Service for which an acceptable short-term temporary workaround is in place to mitigate immediate impacts, pending Restoration	Purchasing Agencies consuming the affected Service(s) – Contract Manager PSC – Lead Relationship Manager, but only if the incident is a Qualifying Incident*	Written notification by email: within 4 hours	information on the P2 incident, including the matters set out above for written notification of a P1 incident	8 hours
			Written PIR: only if requested in writing by PSC or Purchasing Agency; if requested, within the later of 10 Business Days after Resolution of the incident or 10 Business Days of PSC's or the Purchasing Agency's request	Information on the P2 incident, covering the matters set out above for a PIR for a P1 incident	

* **Applicable Services** is defined in paragraph 9.1(a) of Schedule 2 of the Channel Terms as "all Infrastructure Services, Telecommunications Services, and Managed Security Services that are being consumed by one or more Purchasing Agencies (excluding Professional Services and Transition Services)".

PIR means post-incident report.

Qualifying Incident means an incident referred to in the P2 definition that impacts multiple Purchasing Agencies, or impacts a Purchasing Agency's entire business, or is security-related, or has a major organisational impact on the Provider or a Purchasing Agency (e.g., damage to reputation, risk to people's safety, loss of market share, or breach of law).

Resolution means identification and solving of the problem that caused the incident.

Restoration means returning to effective and secure operation, by either a permanent fix or a stable workaround suitable for continued operational use on an interim basis, and **Restore** has a corresponding meaning.

Restoration Time means the time to Restore the affected Service(s).

2.3. Provision of post-incident reporting under paragraph 15.2(b)(iv) of Schedule 1 of the Channel Terms (a provision that clause 2.1(q)(xii) of the Core I/T/MS Services Terms incorporates by reference into the Subscription Agreement) will satisfy the P1 PIR obligation, and vice versa.

2.4. [Base Service Levels from Services Listings

[If other Base Service Levels apply to the Services being procured because they are set out and described as such in the relevant Services Listings, they can be set out here in full or by appropriate and trackable reference to the relevant Services Listings. If not, the heading above and paragraph below can be deleted. As at the commencement of the Channels, there were no additional Base Service Levels.]

The following Base Service Levels are prescribed by PSC as a requirement for Services Listings that relate to the following Services being procured:

[insert if/as relevant]]

2.5. Additional Service Levels

[Additional Service Levels are other Service Levels that the Provider voluntarily offers in its Services Listings or that are agreed between the Provider and Purchasing Agency. If there are any such other Service Levels, set them out below.]

Additional Services Levels applicable to the Services are as follows:

[insert if/as relevant]

2.6. Service Level Credits

[A sample Service Level Credit table is set out below. You may need to modify it to suit your circumstances, e.g., depending on the nature of any applicable Service Levels beyond the Base Service Levels prescribed by the Channel Terms which are set out below.]

The table below lists all applicable Service Levels and, for each Service Level, indicates whether it is a SLC Service Level and, if so, what SLC Weight the Purchasing Agency has apportioned to it.

Service Level		SLC Service Level? (Yes/No)	SLC Weight %
1	IMSL1: Priority 1 Critical (P1)	Yes	%
2	IMSL2: Priority 2 High (P2)	Yes	%
3	[Add details for any other Base Service Levels and Additional Service Levels. This table is not meant to imply that there can only be 10 Service Levels.]	[enter Yes or No]	%
4			%
5			%
6			%
7			%
8			%
9			%
10			%
Total of SLC Weights			**100%**

2.7. SLC Pool for Channel

[The SLC Pool is set by clause 8 of the Channel Terms at 20% per Channel, but the parties can agree to increase the SLC Pool if they wish. The parties cannot agree to decrease the SLC Pool (see clause 6.2(g) of the Channel Terms and clause 2.1(m) of the Core I/T/MS Services Terms).]

The aggregate amount of Service Level Credits payable for each month will be limited to an amount equal to 20% of the Fees payable by the Purchasing Agency for that month in relation to all Services in the Infrastructure Services Channel (excluding any Fees payable for resold Third Party Services, transition services, or professional services) pursuant to the Subscription Agreement (the **SLC Pool**).

3. Fees and when payable

3.1. [To be completed. Include all applicable Fees and when they are payable.]

3.2. [If the parties are agreeing to reduced pricing or waived fees in return for a Minimum Initial Term and, if applicable, a minimum committed volume during that term, and/or to the recoverability of certain non-cancellable, third-party charges or costs in the event of termination for convenience during a Minimum Initial Term, and have included the drafting on this issue at clause 4 (Minimum commitments) of the Subscription Form, be sure to expressly describe the relevant commitments and other matters referred to in that clause on which the parties agree. Alternatively, if the parties wish, they can use the table set out below. Only complete the table if the parties wish clause 4 (Minimum Commitments) to apply.]

Minimum commitments (see clause 4 of Subscription Form)

Item	Commitment	Applies? (Yes/No)	If applicable, specify details
4.1(a)	Minimum Initial Term (may be part or all of the Initial Term)	[Yes / No]	Start date: End date: Duration: ____ months
4.1(b)	Minimum committed volume of Services during Minimum Initial Term (specify volume and applicable units, quantities, or metrics)	[Yes / No]	Minimum committed volume: Measurement unit:
4.1(c)(i)	Reduced pricing (reduced pricing on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if both previous items apply)	[Yes / No]	Description of reducing pricing:
4.1(c)(ii)	Waived Fees (that would otherwise apply, on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if the first two items apply)	[Yes / No]	Waived fees:
4.1(d)	Sunk Costs (that may be recoverable if Purchasing Agency terminates for convenience during the Minimum Initial Term; describe the relevant upfront costs and/or non-cancellable third-party costs; you would not select both this item and the next one)	[Yes / No]	Description of the relevant upfront costs and/or non-cancellable third-party costs (including if the parties wish the suppliers or kinds of suppliers): Estimated total: Maximum Sunk Costs payable:

4.2	Termination for convenience restricted during Minimum Initial Term (clause 24.2 of Core I/T/MS Services Terms disapplied; you would not select both this item and the previous one)	[Yes / No]	[If Yes: During the Minimum Initial Term, the Purchasing Agency cannot terminate the Subscription Agreement or relevant Order or Statement of Work for convenience] [If No: The Purchasing Agency's right under clause 24.2 to terminate for convenience is unaffected and still applies.]

]

4. Price decreases and increases

4.1. Price decreases and increases for Services procured through this Order may only be made in accordance with clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms.

[In relation to price increases, clause 14.8(c) of the Core I/T/MS Services Terms sets out the circumstances in which the Provider's Services Listing pricing may be increased. Note that, when a provider's Services Listing pricing is permissibly increased as a result of:

- a Requirements Change (see clauses 10.3(b) and 10.4 of the Channel Terms);
- permissible price adjustments set out in clauses 12.7 (annual price adjustment), 12.7A (price adjustment for Third Party Hardware in Volatile SKUs), and 12.12 (out-of-cycle increases for unexpected events) of the Channel Terms; or
- changed or new Security Standards (see paragraphs 2.4-2.5 of Schedule 1 to the Channel Terms),

the increased pricing will only (with one exception in paragraph 2.5 of Schedule 1) flow through to existing Orders and Statements of Work to the extent this has been agreed with the Purchasing Agency (e.g., in those Orders and Statements of Work).

As such, except in the situation described in paragraph 2.5 of Schedule 1, price increases will not apply to the Services set out in this Order unless the parties agree to that here (see optional paragraph 4.2 below) or at some later point. The purpose of this approach is to ensure Purchasing Agencies have clear visibility of, and agree to, increases to pricing agreed in existing Orders and Statements of Work.

If a Purchasing Agency wishes to agree such increases (other than in relation to Third Party Hardware in Volatile SKUs, which is addressed separately below), it can use the specimen paragraph 4.2 set out below, amending it as required. (Decreased pricing flows through automatically under clause 12.11 of the Channel Terms unless agreed otherwise.)

Third Party Hardware in Volatile SKUs: Under clause 12.7A of the Channel Terms, the Provider may update pricing for Third Party Hardware in Volatile SKUs in its Price Book once per calendar quarter. By default, the price for such hardware under this Order is the price in the Provider's approved Price Book when this Order is signed (or, if this Order is entered into at the same time as the Subscription Form, when the Subscription Form is signed). However, if any of that hardware will be procured at least 30 days (or another agreed period) after this Order is signed, the parties may agree that it will be charged at the price in the Provider's approved Price Book at the time it is procured. Any agreed discount continues to apply proportionately. If the parties agree to this, the Provider must use reasonable endeavours to give advance written notice of increases, but the usual 90-day notice period does not apply. Optional paragraph 4.3 can be used to record this agreement.]

4.2. [Application of Services Listing price increases to this Order (other than pricing for Third Party Hardware in Volatile SKUs):

The parties agree that increases in the Provider's Services Listing pricing made in accordance with [either generally: the Channel Terms (other than increases in pricing for Third Party Hardware in Volatile SKUs)] [or, if the parties wish to limit the increases to specific provisions: [clause 10.3(b) of the Channel Terms] [,] [clause 12.7 of the Channel Terms] [,] [clause 12.12 of the Channel Terms] [and] [paragraph 2.4 of Schedule 1 to the Channel Terms]] will apply to the Fees for the Services under this Order, provided that:

(a) the Provider gives the Purchasing Agency at least [90] days' written notice of the increase; [90 days is the default in clause 12.5(h)(ii) of the Channel Terms but the parties can agree to a different period]

(b) the increase applies only to Services delivered after that notice period has elapsed; [and]

(c) clause 14.8(e) of the Core I/T/MS Services Terms applies to the increase [clause 14.8(e) concerns the situation where the parties have agreed to pricing that's lower than Services Listing pricing; where that is the case, Fees increases permitted by this clause may only be applied by increasing those Fees by the same percentage as the increase to the Services Listing pricing from the Services Listing pricing that applied immediately before the increase][.] [; and

(d) the Fees for any Service under this Order will not increase by more than [ ]% in any 12-month period as a result of this paragraph 4.2]. [(d) is an optional cap on increases that gives agencies wanting a measure of budget certainty a simple way to obtain it (if the Provider agrees).]]

4.3. [Third Party Hardware in Volatile SKUs procured later:

The parties agree that where the Provider procures Third Party Hardware in a Volatile SKU (each as defined in clause 12.7A(b) of the Channel Terms) [if the parties wish to apply this to particular hardware only rather than all Volatile SKUs: listed in [Schedule/Attachment [ ]]] for the Purchasing Agency under this Order on a date that is at least [30] days after this Order is signed, the price charged for that Third Party Hardware will be the price set out in the Current Price Book Version (as defined in clause 12.7A(b) of the Channel Terms) on that date, subject if relevant to clause 14.8(e) of the Core I/T/MS Services Terms [if the parties agree to a (further) price reduction: and to the following agreed price reduction: [ ]]. The Provider will use reasonable endeavours to give the Purchasing Agency advance written notice of any increase in that pricing.]

5. Administration Fee

[The parties must not delete or alter the meaning of the clause below.]

5.1. The parties acknowledge that you are required, under clause 14.1(a)(ii) of the Core I/T/MS Services Terms and clause 13 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz or as otherwise communicated to you by PSC, plus any applicable GST. You must add the fee (exclusive of GST, which is calculated separately) as a separate line item to your invoices. To avoid doubt, this is also the case where the Purchasing Agency agrees that a Service is to be provided pursuant to Provider Standard Terms or Third Party Service Provider Terms.

6. Invoicing requirements

[If you have already set out any additional invoicing requirements in clause 17 of the Subscription Form or you do not have any additional invoicing requirements, this clause can be deleted.]

6.1. In addition to the matters set out in clause 14.2 of the Core I/T/MS 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].

7. [Provider Standard Terms (if any)] [Note that Provider Standard Terms (i.e., your own terms) may only apply to your own Cloud Services and Downloadable Software, they must be specified in the relevant Services Listing, and they will only apply if the Purchasing Agency agrees]

7.1. [Clearly identify / list by full name, any Provider Standard Terms that the Purchasing Agency agrees are to apply to the purchase of specific Cloud Services or Downloadable Software provided by the Provider. The parties wish to link to them (if they're publicly available online) or attach copies of them. The important point is that the parties clearly identify them and what they apply to. As noted above, Provider Standard Terms may only apply to the Provider's Cloud Services and Downloadable Software, and only if the Purchasing Agency agrees. Providers should not seek to have them apply to anything else. If no Provider Standard Terms are to apply, delete this entire paragraph.]

7.2. [As stated in clause 4.5 of the Channel Terms, if any applicable Provider Standard Terms are to regulate the parties' rights and obligations in relation to the Cloud Services and/or Downloadable Software to which they apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (whether wholly or in part), that must be agreed and specified here, otherwise those core and extra terms and the order of precedence set out in the Subscription Form will apply. If the Purchasing Agency is unclear on this issue when completing this part of the Subscription Form, it may be helpful to seek legal advice. For example, the Purchasing Agency may agree to Provider Standard Terms applying and taking precedence to some extent but still want some or all of the warranty, payment/invoicing, dispute resolution, and liability provisions in the Core I/T/MS Services Terms to apply. In that kind of situation it is important to be explicit about precisely which clauses of the Provider Standard Terms take precedence and which parts of the Core I/T/MS Services Terms/Extra Terms continue to apply.]

7.3. [If applicable, the parties may wish to use the table below to capture the details described above.]

Name of the Provider's Cloud Service or Downloadable Software	**Applicable Provider Standard Terms and where they can be found**	**Extent (if any) to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms**
[insert name of cloud service or downloadable software, including if applicable any support plan, that is subject to Provider Standard Terms]	[name terms and either attach them to Subscription Form or link to where they can be found]	[state extent to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms]
[as above]	[as above]	[as above]

8. [Resold Third Party Services and Third Party Service Provider Terms [Note that Third Party Services can only be resold if the conditions in clause 5.1 of the Channel Terms are met]

8.1. [Under clause 5.2 of the Channel Terms, if any of the Services described above that the Purchasing 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 the Purchasing Agency's consumption of that

service (instead of all the default Core I/T/MS Services Terms and any Extra Terms that may apply), then the following details must be clearly set out here:

- the name of the Third Party Service and the Third Party Service Provider;
- 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**);
- whether the Purchasing Agency is entering into the Third Party Service Provider Terms with the Third Party Service Provider or the Provider named in this Subscription Form (usually it will be Third Party Service Provider); and
- if the Purchasing Agency is entering into the Third Party Service Provider Terms with the Third Party Service Provider, the extent to which, in relation to the Covered Scope, they apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (usually they will apply to the complete exclusion of the Core I/T/MS Services Terms and any Extra Terms as there will be a separate contractual relationship with the Third Party Service Provider, but it is helpful to be clear about that to avoid any confusion later on; note also that, even if the Third Party Service Provider Terms apply to the Covered Scope to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply, it may still be the case that the Provider (and not the Third Party Service Provider) will be invoicing the Purchasing Agency for fees relating to the Third Party Service – if that's the case the parties may need to be clear about that by stating that the invoicing and payment obligations in the Core I/T/MS Services still apply in relation to Fees for the Third Party Service); or
- if the Purchasing Agency is entering into the Third Party Service Provider Terms with the Provider (i.e., the Marketplace provider reselling the Third Party Service), whether, in relation to the Covered Scope:
  - the Core I/T/MS Services Terms and any Extra 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
  - the Third Party Service Provider Terms apply to the exclusion of the Core I/T/MS Services Terms and any Extra Terms that would otherwise apply (whether wholly or in part).]

[If the details above are not set out, then the default Core I/T/MS Services Terms (and any Extra Terms that may apply) will apply to the Third Party Service, as if the Provider were providing it itself. See clause 5.2 of the Channel Terms. If a party is unclear on this issue when completing this part of the Subscription Form, it may be helpful to seek legal advice.]

8.2. [If applicable, the parties may wish to use the table below to capture the details described above.]

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 Service Provider or Provider)**	**Extent to which Third Party Service Provider Terms apply to exclusion of Core I/T/MS Services 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 Services to which they apply, e.g., 'These terms only apply to XYZ Contact Centre Service. The Core I/T/MS Services 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 Service Provider' or 'Provider']	[State extent to which Third Party Service Provider Terms apply to the exclusion of Core I/T/MS Services Terms and any Extra Terms. For example: 'Core I/T/MS Services Terms and Extra Terms do not apply' *or* 'Except for the invoicing and payment terms, the Core I/T/MS Services Terms do not apply']

8.3. Fees for the Third Party Service(s) will be invoiced by and payable to [enter either: you, the Provider or: the Third Party Service Provider].

9. Disengagement Period [This paragraph is optional. If neither 9.1 nor 9.2 is required, the paragraph can be deleted in its entirety]

[Under clause 25.2(b) of the Core I/T/MS Services Terms, there is a maximum Disengagement Period of 24 months. If the parties agree to a shorter maximum period, set that out below (there are alternative drafting options below: the first option is where the Disengagement Period is the same for all Services in the Channel, and the second option is where the parties wish to specify different Disengagement Periods for different kinds of Services in the Channel). If not, this subparagraph can be deleted.]

9.1. Either: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for Services in the Infrastructure Services Channel is [6/12/18] months. Or: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for:

(a) [identify relevant Services] is [6/12/18] months; and

(b) [identify relevant Services] is [6/12/18] months [etc., add subparagraphs as needed].

[Under clause 25.2(a)(ii) of the Core I/T/MS Services Terms, if the Purchasing Agency wishes to extend the Disengagement Period, it must give 20 Business Days' notice, and to shorten the Disengagement Period, it must give 10 Business Days' notice. If the parties agree to different notice periods, set them out here. If not, this subparagraph can be deleted.]

9.2. The parties agree that, despite clause 25.2(a)(ii) of the Core I/T/MS Services Terms:

(a) if the Purchasing Agency wishes to extend the Disengagement Period in accordance with that clause, it must give you at least [30/40/50/etc] Business Days' written notice prior to the expiry of the then current Disengagement Period; and

(b) if the Purchasing Agency wishes to shorten the Disengagement Period in accordance with that clause, it must give you at least [20/30/etc] Business Days' written notice.

B. Telecommunications Services [delete section B if not procuring Telecommunications Services]

10. Telecommunications Services ordered at Commencement Date

10.1. [See drafting notes in paragraph 1.1.]

11. Service Levels

11.1. Base Service Levels (description)

Base Service Levels are Service Levels prescribed by PSC in accordance with clause 8 of the Channel Terms (part of the Collaborative Marketplace Agreement between the Provider and PSC). Base Service Levels can be prescribed in the Channel Terms themselves, or as a requirement for Services Listings.

11.2. Base Service Levels prescribed by Channel Terms – Incident Management Service Levels

The Incident Management Service Levels set out below are Base Service Levels prescribed by paragraph 9 of Schedule 2 of the Channel Terms. Service Level timeframes commence upon your awareness of the incident:

[Under paragraph 9.1(b) of Schedule 2 of the Channel Terms, the provider and a Purchasing Agency may agree to vary or disapply the Incident Management Service Levels below, and agree to incident management service levels for other priority levels. If that is done, the table below, and possibly the preceding text, will need to be amended.]

Service Level	Definition	Notification required to	Means and timeframe of notification	Details to be provided	Restoration Time*
IMSL1: Priority 1 Critical (P1)	Any of: • a total failure of the primary functions of an Applicable Service • a Security Incident (as defined in para 15.1 of Schedule 1) affecting an Applicable Service that is known to have caused or is reasonably likely to cause a compromise of Purchasing Agency Data or unauthorised access to a Purchasing Agency Environment • a high impact environmental incident (fire, gas leak etc.) having a major impact on an Applicable Service • any incident affecting an Applicable Service requiring an incursion response	PSC – Lead Relationship Manager Purchasing Agencies consuming the affected Service(s) – Contract Manager	Text or phone notification: as soon as reasonably possible	• Incident no. • Services impacted • Purchasing Agencies impacted (to PSC only)	4 hours
			Written notification by email: within 2 hours	Further information on the P1 incident, including: • cause or likely cause • current status • confirmation of Purchasing Agencies impacted and how impacted (to PSC only) • potential downstream impacts (if any) • impacts on Provider relevant to provision of the Services • estimated time to resolve	
			Written PIR*: within 10 Business Days after Resolution of the incident	PIR to cover root cause, actions taken, performance against any applicable RTO/RPO, and any lessons learned	

IMSL2: Priority 2 High (P2)	Any of: • a partial failure or degradation of the primary functions of an Applicable Service • critical failures of an Applicable Service for which an acceptable short-term temporary workaround is in place to mitigate immediate impacts, pending Restoration	Purchasing Agencies consuming the affected Service(s) – Contract Manager PSC – Lead Relationship Manager, but only if the incident is a Qualifying Incident*	Written notification by email: within 4 hours	information on the P2 incident, including the matters set out above for written notification of a P1 incident	8 hours
			Written PIR: only if requested in writing by PSC or Purchasing Agency; if requested, within the later of 10 Business Days after Resolution of the incident or 10 Business Days of PSC's or the Purchasing Agency's request	Information on the P2 incident, covering the matters set out above for a PIR for a P1 incident	

* **Applicable Services** is defined in paragraph 9.1(a) of Schedule 2 of the Channel Terms as "all Infrastructure Services, Telecommunications Services, and Managed Security Services that are being consumed by one or more Purchasing Agencies (excluding Professional Services and Transition Services)".

PIR means post-incident report

Qualifying Incident means an incident referred to in the P2 definition that impacts multiple Purchasing Agencies, or impacts a Purchasing Agency's entire business, or is security-related, or has a major organisational impact on the Provider or a Purchasing Agency (e.g., damage to reputation, risk to people's safety, loss of market share, or breach of law).

Resolution means identification and solving of the problem that caused the incident.

Restoration means returning to effective and secure operation, by either a permanent fix or a stable workaround suitable for continued operational use on an interim basis, and **Restore** has a corresponding meaning.

Restoration Time means the time to Restore the affected Service(s).

11.3. Provision of post-incident reporting under paragraph 15.2(b)(iv) of Schedule 1 of the Channel Terms (a provision that clause 2.1(q)(xii) of the Core I/T/MS Services Terms incorporates by reference into the Subscription Agreement) will satisfy the P1 PIR obligation, and vice versa.

11.4. [Base Service Levels from Services Listings

[If other Base Service Levels apply to the Services being procured because they are set out and described as such in the relevant Services Listings, they can be set out here in full or by appropriate and trackable reference to the relevant Services Listings. If not, the heading above and paragraph below can be deleted. As at the commencement of the Channels, there were no additional Base Service Levels.]

The following Base Service Levels are Base Service Levels prescribed by PSC as a requirement for Services Listings that relate to the following Services being procured:

[insert if/as relevant]]

11.5. Additional Service Levels

[Additional Service Levels are other Service Levels that the Provider voluntarily offers in its Services Listings or that are agreed between the Provider and Purchasing Agency. If there are any such other Service Levels, set them out below.]

Additional Services Levels applicable to the Services are as follows:

[insert if/as relevant]

11.6. Service Level Credits

[A sample Service Level Credit table is set out below. You may need to modify it to suit your circumstances, e.g., depending on the nature of any applicable Service Levels beyond the Base Service Levels prescribed by the Channel Terms which are set out below.]

The table below lists all applicable Service Levels and, for each Service Level, indicates whether it is a SLC Service Level and, if so, what SLC Weight the Purchasing Agency has apportioned to it.

Service Level		SLC Service Level? (Yes/No)	SLC Weight %
1	IMSL1: Priority 1 Critical (P1)	Yes	%
2	IMSL2: Priority 2 High (P2)	Yes	%
3	[Add details for any other Base Service Levels and Additional Service Levels. This table is not meant to imply that there can only be 10 Service Levels.]	[enter Yes or No]	%
4			%
5			%
6			%
7			%
8			%
9			%
10			%
Total of SLC Weights			**100%**

11.7. SLC Pool for Channel

[The SLC Pool is set by clause 8 of the Channel Terms at 20% per Channel, but the parties can agree to increase the SLC Pool if they wish. The parties cannot agree to decrease the SLC Pool (see clause 6.2(g) of the Channel Terms and clause 2.1(m) of the Core I/T/MS Services Terms).]

The aggregate amount of Service Level Credits payable for each month will be limited to an amount equal to 20% of the Fees payable by the Purchasing Agency for that month in relation to all Services in the Telecommunications Services Channel (excluding any Fees payable for resold Third Party Services, transition services, or professional services) pursuant to the Subscription Agreement (the **SLC Pool**).

12. Fees and when payable

12.1. [To be completed. Include all applicable Fees and when they are payable.]

12.2. [If the parties are agreeing to reduced pricing or waived fees in return for a Minimum Initial Term and, if applicable, a minimum committed volume during that term, and/or to the recoverability of certain non-cancellable, third-party charges or costs in the event of termination for convenience during a Minimum Initial Term, and have included the drafting on this issue at clause 4 (Minimum commitments) of the Subscription Form, be sure to expressly describe the relevant commitments and other matters referred to in that clause on which the parties agree. Alternatively, if the parties wish, they can use the table set out below. Only complete the table if the parties wish clause 4 (Minimum Commitments) to apply.

Minimum commitments (see clause 4 of Subscription Form)

Item	Commitment	Applies? (Yes/No)	If applicable, specify details
4.1(a)	Minimum Initial Term	[Yes / No]	Start date:

	(may be part or all of the Initial Term)		End date: Duration: _____ months
4.1(b)	Minimum committed volume of Services during Minimum Initial Term (specify volume and applicable units, quantities, or metrics)	[Yes / No]	Minimum committed volume: Measurement unit:
4.1(c)(i)	Reduced pricing (reduced pricing on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if both previous items apply)	[Yes / No]	Description of reducing pricing:
4.1(c)(ii)	Waived Fees (that would otherwise apply, on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if the first two items apply)	[Yes / No]	Waived fees:
4.1(d)	Sunk Costs (that may be recoverable if Purchasing Agency terminates for convenience during the Minimum Initial Term; describe the relevant upfront costs and/or non-cancellable third-party costs; you would not select both this item and the next one)	[Yes / No]	Description of the relevant upfront costs and/or non-cancellable third-party costs (including if the parties wish the suppliers or kinds of suppliers): Estimated total: Maximum Sunk Costs payable:
4.2	Termination for convenience restricted during Minimum Initial Term (clause 24.2 of Core I/T/MS Services Terms disapplied; you would not select both this item and the previous one)	[Yes / No]	[If Yes: During the Minimum Initial Term, the Purchasing Agency cannot terminate the Subscription Agreement or relevant Order or Statement of Work for convenience] [If No: The Purchasing Agency's right under clause 24.2 to terminate for convenience is unaffected and still applies.]

]

13. Price decreases and increases

13.1. Price decreases and increases for Services procured through this Order may only be made in accordance with clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms.

13.2. [See drafting notes at paragraph 4 above.]

14. Administration Fee

[The parties must not delete or alter the meaning of the clause below.]

14.1. The parties acknowledge that you are required, under clause 14.1(a)(ii) of the Core I/T/MS Services Terms and clause 13 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz or as otherwise communicated to you by PSC, plus any applicable GST. You must add the fee (exclusive of GST, which is calculated separately) as a separate line item to your invoices. To avoid doubt, this is also the case where the Purchasing Agency agrees that a Service is to be provided pursuant to Provider Standard Terms or Third Party Service Provider Terms.

15. Invoicing requirements

[If you have already set out any additional invoicing requirements in clause 17 of the Subscription Form or you do not have any additional invoicing requirements, this clause can be deleted.]

15.1. In addition to the matters set out in clause 14.2 of the Core I/T/MS 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].

16. [Provider Standard Terms (if any) [Note that Provider Standard Terms (i.e., your own terms) may only apply to your own Cloud Services and Downloadable Software, they must be specified in the relevant Services Listing, and they will only apply if your agency agrees]

16.1. [See drafting notes in paragraphs 7.1-7.2.]

16.2. [If applicable, the parties may wish to use the table below to capture the details.]

Name of the Provider's Cloud Service or Downloadable Software	Applicable Provider Standard Terms and where they can be found	Extent (if any) to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms
[insert name of cloud service or downloadable software, including if applicable any support plan, that is subject to Provider Standard Terms]	[name terms and either attach them to Subscription Form or link to where they can be found]	[state extent to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms]
[as above]	[as above]	[as above]

17. [Resold Third Party Services and Third Party Service Provider Terms [Note that Third Party Services can only be resold if the conditions in clause 5.1 of the Channel Terms are met]

17.1. [See drafting notes in paragraph 8.]

17.2. [If applicable, the parties may wish to use the table below to capture the details.]

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 Service Party Provider or Provider)	Extent to which Third Party Service Provider Terms apply to exclusion of Core I/T/MS Services 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 Services to which they apply, e.g., 'These terms only apply to XYZ Contact Centre Service. The Core I/T/MS Services Terms, any Extra Terms, and any	[Enter 'Third Party Service Provider' or 'Provider']	[State extent to which Third Party Service Provider Terms apply to the exclusion of Core I/T/MS Services Terms and any Extra Terms. For example: 'Core I/T/MS Services

	applicable Order or SOW, apply to Services provided by the Provider in connection with XYZ Contact Centre Service.]		Terms and Extra Terms do not apply' *or* 'Except for the invoicing and payment terms, the Core I/T/MS Services Terms do not apply']

17.3. Fees for the Third Party Service(s) will be invoiced by and payable to [enter either: you, the Provider or: the Third Party Service Provider].

18. Disengagement Period [This paragraph is optional. If neither 18.1 nor 18.2 is required, the paragraph can be deleted in its entirety]

[Under clause 25.2(b) of the Core I/T/MS Services Terms, there is a maximum Disengagement Period of 24 months. If the parties agree to a shorter maximum period, set that out below (there are alternative drafting options below: the first option is where the Disengagement Period is the same for all Services in the Channel, and the second option is where the parties wish to specify different Disengagement Periods for different kinds of Services in the Channel). If not, this subparagraph can be deleted.]

18.1. Either: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for Services in the Telecommunications Services Channel is [6/12/18] months. Or: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for:

(a) [identify relevant Services] is [6/12/18] months; and

(b) [identify relevant Services] is [6/12/18] months [etc., add subparagraphs as needed].

[Under clause 25.2(a)(ii) of the Core I/T/MS Services Terms, if the Purchasing Agency wishes to extend the Disengagement Period, it must give 20 Business Days' notice, and to shorten the Disengagement Period, it must give 10 Business Days' notice. If the parties agree to different notice periods, set them out here. If not, this subparagraph can be deleted.]

18.2. The parties agree that, despite clause 25.2(a)(ii) of the Core I/T/MS Services Terms:

(a) if the Purchasing Agency wishes to extend the Disengagement Period in accordance with that clause, it must give you at least [30/40/50/etc] Business Days' written notice prior to the expiry of the then current Disengagement Period; and

(b) if the Purchasing Agency wishes to shorten the Disengagement Period in accordance with that clause, it must give you at least [20/30/etc] Business Days' written notice.

19. Local Fibre Company end user terms [This paragraph is optional, but a Provider may require it if providing Services (e.g., internet/broadband Services) that depend on the services of Local Fibre Companies. If not required, the paragraph can be deleted in its entirety]

19.1. This paragraph 19 applies if the Purchasing Agency is procuring telecommunications or data connectivity Services from you that incorporate and depend on the services of one or more Local Fibre Companies (as defined in the Core I/T/MS Services Terms).

19.2. The Purchasing Agency agrees to the Local Fibre Company end user terms attached to this [edit if/as required: Part B / Schedule 1].

19.3. The Purchasing Agency's agreement to the Local Fibre Company end user terms referred to in paragraph 19.2 is intended, for the purposes of Subpart 1 (Contractual privity) of Part 2 of the Contract and Commercial Law Act 2017, to be for the benefit of, and to be enforceable by, the relevant Local Fibre Company/ies.

C. Managed Security Services [delete section C if not procuring Managed Security Services]

20. Managed Security Services ordered at Commencement Date

20.1. [See drafting notes in paragraph 1.1.]

21. Service Levels

21.1. Base Service Levels (description)

Base Service Levels are Service Levels prescribed by PSC in accordance with clause 8 of the Channel Terms (part of the Collaborative Marketplace Agreement between the Provider and PSC). Base Service Levels can be prescribed in the Channel Terms themselves, or as a requirement for Services Listings.

21.2. Base Service Levels prescribed by Channel Terms

The Incident Management Service Levels set out below are Base Service Levels prescribed by paragraph 9 of Schedule 2 of the Channel Terms. Service Level timeframes commence upon your awareness of the incident:

[Under paragraph 9.1(b) of Schedule 2 of the Channel Terms, the provider and a Purchasing Agency may agree to vary or disapply the Incident Management Service Levels below, and agree to incident management service levels for other priority levels. If that is done, the table below, and possibly the preceding text, will need to be amended.]

Service Level	Definition	Notification required to	Means and timeframe of notification	Details to be provided	Restoration Time*
IMSL1: Priority 1 Critical (P1)	Any of: • a total failure of the primary functions of an Applicable Service • a Security Incident (as defined in para 15.1 of Schedule 1) affecting an Applicable Service that is known to have caused or is reasonably likely to cause a compromise of Purchasing Agency Data or unauthorised access to a Purchasing Agency Environment • a high impact environmental incident (fire, gas leak etc.) having a major impact on an Applicable Service • any incident affecting an Applicable Service requiring an incursion response	PSC – Lead Relationship Manager Purchasing Agencies consuming the affected Service(s) – Contract Manager	Text or phone notification: as soon as reasonably possible	• Incident no. • Services impacted • Purchasing Agencies impacted (to PSC only)	4 hours
			Written notification by email: within 2 hours	Further information on the P1 incident, including: • cause or likely cause • current status • confirmation of Purchasing Agencies impacted and how impacted (to PSC only) • potential downstream impacts (if any) • impacts on Provider relevant to provision of the Services • estimated time to resolve	
			Written PIR*: within 10 Business Days after Resolution of the incident	PIR to cover root cause, actions taken, performance against any applicable RTO/RPO, and any lessons learned	

IMSL2: Priority 2 High (P2)	Any of: • a partial failure or degradation of the primary functions of an Applicable Service • critical failures of an Applicable Service for which an acceptable short-term temporary workaround is in place to mitigate immediate impacts, pending Restoration	Purchasing Agencies consuming the affected Service(s) – Contract Manager PSC – Lead Relationship Manager, but only if the incident is a Qualifying Incident*	Written notification by email: within 4 hours	information on the P2 incident, including the matters set out above for written notification of a P1 incident	8 hours
			Written PIR: only if requested in writing by PSC or Purchasing Agency; if requested, within the later of 10 Business Days after Resolution of the incident or 10 Business Days of PSC's or the Purchasing Agency's request	Information on the P2 incident, covering the matters set out above for a PIR for a P1 incident	

* **Applicable Services** is defined in paragraph 9.1(a) of Schedule 2 of the Channel Terms as "all Infrastructure Services, Telecommunications Services, and Managed Security Services that are being consumed by one or more Purchasing Agencies (excluding Professional Services and Transition Services)".

PIR means post-incident report.

Qualifying Incident means an incident referred to in the P2 definition that impacts multiple Purchasing Agencies, or impacts a Purchasing Agency's entire business, or is security-related, or has a major organisational impact on the Provider or a Purchasing Agency (e.g., damage to reputation, risk to people's safety, loss of market share, or breach of law).

Resolution means identification and solving of the problem that caused the incident.

Restoration means returning to effective and secure operation, by either a permanent fix or a stable workaround suitable for continued operational use on an interim basis, and **Restore** has a corresponding meaning.

Restoration Time means the time to Restore the affected Service(s).

21.3. Provision of post-incident reporting under paragraph 15.2(b)(iv) of Schedule 1 of the Channel Terms (a provision that clause 2.1(q)(xii) of the Core I/T/MS Services Terms incorporates by reference into the Subscription Agreement) will satisfy the P1 PIR obligation, and vice versa.

21.4. [Base Service Levels from Services Listings

[If other Base Service Levels apply to the Services being procured because they are set out and described as such in the relevant Services Listings, they can be set out here in full or by appropriate and trackable reference to the relevant Services Listings. If not, the heading above and paragraph below can be deleted. As at the commencement of the Channels, there were no additional Base Service Levels.]

The following Base Service Levels are Base Service Levels prescribed by PSC as a requirement for Services Listings that relate to the following Services being procured:

[insert if/as relevant]]

21.5. Additional Service Levels

[Additional Service Levels are other Service Levels that the Provider voluntarily offers in its Services Listings or that are agreed between the Provider and Purchasing Agency. If there are any such other Service Levels, set them out below.]

Additional Services Levels applicable to the Services are as follows:

[insert if/as relevant]

21.6. Service Level Credits

[A sample Service Level Credit table is set out below. You may need to modify it to suit your circumstances, e.g., depending on the nature of any applicable Service Levels beyond the Base Service Levels prescribed by the Channel Terms which are set out below.]

The table below lists all applicable Service Levels and, for each Service Level, indicates whether it is a SLC Service Level and, if so, what SLC Weight the Purchasing Agency has apportioned to it.

Service Level		SLC Service Level? (Yes/No)	SLC Weight %
1	IMSL1: Priority 1 Critical (P1)	Yes	%
2	IMSL2: Priority 2 High (P2)	Yes	%
3	[Add details for any other Base Service Levels and Additional Service Levels. This table is not meant to imply that there can only be 10 Service Levels.]	[enter Yes or No]	%
4			%
5			%
6			%
7			%
8			%
9			%
10			%
Total of SLC Weights			**100%**

21.7. SLC Pool for Channel

[The SLC Pool is set by clause 8 of the Channel Terms at 20% per Channel, but the parties can agree to increase the SLC Pool if they wish. The parties cannot agree to decrease the SLC Pool (see clause 6.2(g) of the Channel Terms and clause 2.1(m) of the Core I/T/MS Services Terms).]

The aggregate amount of Service Level Credits payable for each month will be limited to an amount equal to 20% of the Fees payable by the Purchasing Agency for that month in relation to all Services in the Managed Security Services Channel (excluding any Fees payable for resold Third Party Services, transition services, or professional services) pursuant to the Subscription Agreement (the **SLC Pool**).

22. Fees and when payable

22.1. [To be completed. Include all applicable Fees and when they are payable.]

22.2. [If the parties are agreeing to reduced pricing or waived fees in return for a Minimum Initial Term and, if applicable, a minimum committed volume during that term, and/or to the recoverability of certain non-cancellable, third-party charges or costs in the event of termination for convenience during a Minimum Initial Term, and have included the drafting on this issue at clause 4 (Minimum commitments) of the Subscription Form, be sure to expressly describe the relevant commitments and other matters referred to in that clause on which the parties agree. Alternatively, if the parties wish, they can use the table set out below. Only complete the table if the parties wish clause 4 (Minimum Commitments) to apply.

Minimum commitments (see clause 4 of Subscription Form)

Item	Commitment	Applies? (Yes/No)	If applicable, specify details
4.1(a)	Minimum Initial Term	[Yes / No]	Start date:

	(may be part or all of the Initial Term)		End date: Duration: _____ months
4.1(b)	Minimum committed volume of Services during Minimum Initial Term (specify volume and applicable units, quantities, or metrics)	[Yes / No]	Minimum committed volume: Measurement unit:
4.1(c)(i)	Reduced pricing (reduced pricing on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if both previous items apply)	[Yes / No]	Description of reducing pricing:
4.1(c)(ii)	Waived Fees (that would otherwise apply, on the basis that the Purchasing Agency has agreed to the minimum committed volume of Services in the second row above (4.1(b)) during the Minimum Initial Term; only say this applies if the first two items apply)	[Yes / No]	Waived fees:
4.1(d)	Sunk Costs (that may be recoverable if Purchasing Agency terminates for convenience during the Minimum Initial Term; describe the relevant upfront costs and/or non-cancellable third-party costs; you would not select both this item and the next one)	[Yes / No]	Description of the relevant upfront costs and/or non-cancellable third-party costs (including if the parties wish the suppliers or kinds of suppliers): Estimated total: Maximum Sunk Costs payable:
4.2	Termination for convenience restricted during Minimum Initial Term (clause 24.2 of Core I/T/MS Services Terms disapplied; you would not select both this item and the previous one)	[Yes / No]	[If Yes: During the Minimum Initial Term, the Purchasing Agency cannot terminate the Subscription Agreement or relevant Order or Statement of Work for convenience] [If No: The Purchasing Agency's right under clause 24.2 to terminate for convenience is unaffected and still applies.]

]

23. Price decreases and increases

23.1. Price decreases and increases for Services procured through this Order may only be made in accordance with clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms.

23.2. [See drafting notes at paragraph 4 above.]

24. Administration Fee

[The parties must not delete or alter the meaning of the clause below.]

24.1. The parties acknowledge that you are required, under clause 14.1(a)(ii) of the Core I/T/MS Services Terms and clause 13 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz or as otherwise communicated to you by PSC, plus any applicable GST. You must add the fee (exclusive of GST, which is calculated separately) as a separate line item to your invoices. To avoid doubt, this is also the case where the Purchasing Agency agrees that a Service is to be provided pursuant to Provider Standard Terms or Third Party Service Provider Terms.

25. Invoicing requirements

[If you have already set out any additional invoicing requirements in clause 17 of the Subscription Form or you do not have any additional invoicing requirements, this clause can be deleted.]

25.1. In addition to the matters set out in clause 14.2 of the Core I/T/MS 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].

26. [Provider Standard Terms (if any) [Note that Provider Standard Terms (i.e., your own terms) may only apply to your own Cloud Services and Downloadable Software, they must be specified in the relevant Services Listing, and they will only apply if your agency agrees]

26.1. [See drafting notes in paragraphs 7.1-7.2.]

26.2. [If applicable, the parties may wish to use the table below to capture the details.]

Name of the Provider's Cloud Service or Downloadable Software	Applicable Provider Standard Terms and where they can be found	Extent (if any) to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms
[insert name of cloud service or downloadable software, including if applicable any support plan, that is subject to Provider Standard Terms]	[name terms and either attach them to Subscription Form or link to where they can be found]	[state extent to which Provider Standard Terms apply to exclusion of Core I/T/MS Services Terms and any Extra Terms]
[as above]	[as above]	[as above]

27. [Resold Third Party Services and Third Party Service Provider Terms [Note that Third Party Services can only be resold if the conditions in clause 5.1 of the Channel Terms are met]

27.1. [See drafting notes in paragraph 8.]

27.2. [If applicable, the parties may wish to use the table below to capture the details.]

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 Service Provider or Provider)	Extent to which Third Party Service Provider Terms apply to exclusion of Core I/T/MS Services 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 Services to which they apply, e.g., 'These terms only apply to XYZ Contact Centre Service. The Core I/T/MS Services Terms, any Extra Terms, and any	[Enter 'Third Party Service Provider' or 'Provider']	[State extent to which Third Party Service Provider Terms apply to the exclusion of Core I/T/MS Services Terms and any Extra Terms. For example: 'Core I/T/MS Services

	applicable Order or SOW, apply to Services provided by the Provider in connection with XYZ Contact Centre Service.]		Terms and Extra Terms do not apply' *or* 'Except for the invoicing and payment terms, the Core I/T/MS Services Terms do not apply']

27.3. Fees for the Third Party Service(s) will be invoiced by and payable to [enter either: you, the Provider or: the Third Party Service Provider].

28. Disengagement Period [This paragraph is optional. If neither 28.1 nor 28.2 is required, the paragraph can be deleted in its entirety]

[Under clause 25.2(b) of the Core I/T/MS Services Terms, there is a maximum Disengagement Period of 24 months. If the parties agree to a shorter maximum period, set that out below (there are alternative drafting options below: the first option is where the Disengagement Period is the same for all Services in the Channel, and the second option is where the parties wish to specify different Disengagement Periods for different kinds of Services in the Channel). If not, this subparagraph can be deleted.]

28.1. Either: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for Services in the Managed Security Services Channel is [6/12/18] months. Or: The parties agree that, despite clause 25.2(b) of the Core I/T/MS Services Terms, the maximum Disengagement Period for:

(a) [identify relevant Services] is [6/12/18] months; and

(b) [identify relevant Services] is [6/12/18] months [etc., add subparagraphs as needed].

[Under clause 25.2(a)(ii) of the Core I/T/MS Services Terms, if the Purchasing Agency wishes to extend the Disengagement Period, it must give 20 Business Days' notice, and to shorten the Disengagement Period, it must give 10 Business Days' notice. If the parties agree to different notice periods, set them out here. If not, this subparagraph can be deleted.]

28.2. The parties agree that, despite clause 25.2(a)(ii) of the Core I/T/MS Services Terms:

(a) if the Purchasing Agency wishes to extend the Disengagement Period in accordance with that clause, it must give you at least [30/40/50/etc] Business Days' written notice prior to the expiry of the then current Disengagement Period; and

(b) if the Purchasing Agency wishes to shorten the Disengagement Period in accordance with that clause, it must give you at least [20/30/etc] Business Days' written notice.

Schedule 2 to Subscription Form – Core I/T/MS Services Terms, any Extra Terms, and any applicable Provider Standard terms

This Schedule attaches a copy of the Core I/T/MS Services Terms, any Extra Terms that may apply and, if relevant, applicable Provider Standard Terms, as they stand at the Commencement Date.

[Some agencies and/or providers like to attach a copy of the Core I/T/MS Services Terms, any Extra Terms that may apply (currently none are prescribed by the Channel Terms) and, if relevant, applicable Provider Standard Terms. If so, list the applicable terms below and attach them. If not, this Schedule 2 can be deleted. To be clear, if the Schedule is not used, the Core I/T/MS Services Terms, and any applicable Extra Terms, still apply. This Schedule is only provided to help the parties gather all prescribed terms in one place, and only if they want to do so.]

Annexure B: Core I/T/MS Services Terms

Attached.

Marketplace

Infrastructure Services, Telecommunications Services, and Managed Security Services

Core I/T/MS Services Terms

Background

These are the Core I/T/MS Services Terms referred to in clause 4 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (I/T/MS Channel Terms) (Standard) and clause 1.1(b) of the Subscription Form for Infrastructure Services, Telecommunications Services, and/or Managed Security Services. Together with the Subscription Form, any applicable Extra Terms, any applicable Provider Standard Terms, and any executed Order and Statement of Work, they comprise the Subscription Agreement between the Provider of the Services named in the Subscription Form (**you**, **your**) and the Purchasing Agency named in the Subscription Form.

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

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1. Term

1.1 The Subscription Agreement:

(a) commences on the Commencement Date; and

(b) unless terminated earlier under clause 24 (Termination), ends upon the date that is the later of:

(i) the end of the Initial Term (which must not exceed 5 years) specified in clause 3 of the Subscription Form; and

(ii) the end of the last Permitted Renewal that has been exercised under clause 1.2,

(the **End Date**), provided that if the Purchasing Agency requires Disengagement Services, the Subscription Agreement will continue during Disengagement in accordance with clause 25 and end upon the end of the disengagement services (**Extended End Date**).

The Subscription Agreement has an initial term of up to 5 years as agreed in the Subscription Form. The Purchasing Agency has two rights of renewal of up to 3 years each, unless the parties have agreed in the Subscription Form to different renewal provisions.

1.2 Unless agreed otherwise in the Subscription Form in accordance with clause 1.3, the Purchasing Agency has two rights of renewal, each for a period of up to 3 years (each a **Permitted Renewal**).

1.3 The parties may agree in a Subscription Form to different renewal provisions, provided that:

(a) no single renewal period exceeds 3 years; and

(b) the total duration of all renewal periods does not exceed 6 years in aggregate (each such renewal being a **Permitted Renewal**).

1.4 The Purchasing Agency may exercise any remaining Permitted Renewal by giving you written notice at least 60 days (or such other period as may be agreed in the Subscription Form) before the end of the Initial Term or the then-current renewal term, as applicable.

1.5 Subject to clause 1.6, all Orders and Statements of Work still in effect on the End Date will terminate on the End Date, despite any term within them to the contrary, except to the extent the Services to which they relate are required in connection with Disengagement Services requested under clause 25, for which the termination date shall be the Extended End Date or any earlier date agreed between the parties in a Disengagement Plan or during Disengagement.

1.6 To avoid doubt, any:

(a) Order for Services that is subject to your Provider Standard Terms to the exclusion of these Core I/T/MS Services Terms; and

(b) Order for Third Party Services that is subject to Third Party Service Provider Terms to the exclusion of these Core I/T/MS Services Terms,

shall expire or terminate in accordance with those Provider Standard Terms or Third Party Service Provider Terms and not clause 1.5.

1.7 You will use reasonable endeavours to give the Purchasing Agency 12 months' written notice of the expiry of the Initial Term and any renewal term (except where a renewal term is for 12 months or less) of the Subscription Agreement.

1.8 This clause 1 has no impact on the ongoing validity of your Services Listings in the relevant Marketplace Catalogue(s). If, when a Subscription Agreement comes to an end, your Services Listings remain in a Marketplace Catalogue, the Purchasing Agency and you may enter into a further Subscription Agreement. This clause 1.8 is not intended to limit any secondary procurement and value for money processes the Purchasing Agency may wish or need to follow before deciding whether to enter into a further Subscription Agreement.

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

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

2.1 You agree that the following provisions in Part 1 (General Terms) and Part 2 (Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (Standard)) of the Collaborative Marketplace Agreement are incorporated by reference into the Subscription Agreement:

(a) clause 3.4 of Part 1 (no exclusivity or minimum purchasing requirement);

(b) clause 3.11 of Part 1 (withdrawal, suspension or termination of your membership in the Marketplace does not affect existing Agency Purchase Agreements);

(c) clause 4.8 of Part 1 (removal of Services Listing does not affect existing Agency Purchase Agreements);

(d) clause 10 of Part 1 (Warranties);

(e) clause 13 of Part 1 (Pricing and Administration Fee);

(f) clause 15 of Part 1 (Confidentiality);

(g) clause 17 of Part 1 (Purchasing Agency Data);

(h) clause 18 of Part 1 (Personal information);

(i) clauses 21.1 and 21.4 of Part 1 (Amendments);

(j) to the extent relevant to any of the clauses listed above, clause 24 of Part 1 (Defined terms and interpretation);

(k) clause 5 of Part 2 (Resale of Third Party Services);

(l) clause 6 of Part 2 (Amending and supplementing the Core I/T/MS Services Terms, any applicable Extra Terms, and Provider Standard Terms);

(m) clause 8 of Part 2 (Service Levels);

(n) clause 9.1(b) and (f) of Part 2 (rules relating to changes to Services Listings);

(o) clause 12 of Part 2 (Additional pricing terms);

(p) clause 17 of Part 2 (Insurance);

(q) the following paragraphs of Schedule 1 (Information Security) to Part 2:

(i) paragraph 1 (Security measures);

(ii) paragraph 2 (Security Standards compliance);

(iii) paragraphs 4.3-4.4 and 4.8-4.12 (Security assurance and certification of Services);

(iv) paragraphs 5.1-5.2, 5.4(c)-(d), and 5.5 (Changes of Control and name changes);

(v) paragraph 7 (Orders for disclosure of Confidential Information or Purchasing Agency Data);

(vi) paragraph 8 (Staffing);

(vii) paragraphs 9.1 and 9.5-9.9 (Subcontracting);

(viii) paragraphs 10.1 (Offshoring > Prohibited locations) and 10.6 (Offshoring > Legal requirements and risk disclosure);

(ix) paragraph 12 (Business continuity and disaster recovery);

(x) paragraph 13 (Security planning);

(xi) paragraph 14 (Security Risks);

(xii) paragraph 15 (Security Incidents);

(xiii) paragraph 16 (Sanitisation and disposal);

(xiv) paragraph 17 (Malware Free Networks);

(xv) paragraph 18 (AI Tools);

(xvi) paragraph 20 (Multifactor authentication);

(xvii) paragraph 21 (Configuration, vulnerability, and patch management);

(xviii) paragraph 22 (Monitoring and logging);

(xix) paragraphs 23.1-23.2 and 23.5 (Data Centre Requirements);

(xx) paragraph 24 (Security reporting and documentation) in relation to the Purchasing Agency's right to request reports prepared for and provided to PSC;

(xxi) paragraph 25 (Non-compliance with security requirements);

(xxii) paragraphs 26.3-26.5 (Directions restricting or prohibiting the use of your Services);

(xxiii) paragraph 27 (Defined terms and interpretation) for the purposes of interpreting and applying the paragraphs of Schedule 1 listed above; and

(r) the following paragraphs of Schedule 2 (Governance Requirements) to Part 2:

(i) paragraph 4 of Schedule 2 to Part 2 (Purchasing Agency action); and

(ii) paragraphs 9.1-9.5 and 9.7-9.8 (Incident Management Service Levels).

3. Orders and Statements of Work

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

3.1 Your provision of particular Services to the Purchasing Agency needs to be agreed in Orders (which may form part of the Subscription Form) and/or Statements of Work. This clause 3 specifies the process that applies to getting an Order or Statement of Work in place.

3.2 From time to time the Purchasing Agency may seek proposals from you for the provision of Services. The Purchasing Agency will provide sufficient details of the Services it seeks to enable you to evaluate the request and provide a response in accordance with clause 3.3.

3.3 You agree to respond to the Purchasing Agency's requests under clause 3.2 within a reasonable time and, subject to clause 3.5, in each case to provide a proposal containing:

(a) a description of the Services you will provide;

(b) details of your charges for the Services; and

(c) all other information reasonably requested by the Purchasing Agency relating to the 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) consider that you will not have sufficient resources to provide the requested Services in the requested timeframe.

3.6 Following receipt of your proposal under clause 3.3 (if any), the Purchasing Agency may accept, reject or request changes to the proposal. If the Purchasing Agency proposes changes, the parties will (acting reasonably and in good faith) negotiate the proposed changes with a view to agreeing the relevant order or statement of work.

3.7 Once the parties have agreed the terms on which you will provide the Services sought by the Purchasing Agency under clause 3.2, the parties will enter into an Order or Statement of Work for the Services.

3.8 Statements of Work will follow the general format of a template in the Schedule to these Core I/T/MS Services Terms or otherwise available on marketplace.govt.nz, unless you and the Purchasing Agency agree to:

(a) adapt such a template (for example, to accommodate the nature of the work or the Purchasing Agency's standard internal business requirements for statements of work); or

(b) use another form of statement of work template,

provided that, in circumstances covered by (a) and (b), the statement of work must still record your obligations to collect an Administration Fee, plus any applicable GST, and add the fee (exclusive of GST which is calculated separately) as a separate line item to your invoices for the Services provided under the statement of work.

3.9 The Purchasing Agency will not be obliged to pay any charges for the Services and you will not be obliged to start providing the Services until the Order or Statement of Work is signed (whether physically or electronically) or otherwise executed by both parties.

3.10 Unless agreed otherwise with the Purchasing Agency, there will be no charge for the time you spend contributing to the drafting of an Order or Statement 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

The parties' Contract Managers deal with day-to-day contract management issues. Other key contacts can be specified in the Subscription Form or an Order or SOW.

(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.

4.2 Other key contacts

Other key contacts (if any) relating to the provision of particular Services, and any other governance-related matters required by the Purchasing Agency, are specified in the Subscription Form or relevant Orders or Statements of Work.

5. Services

5.1 General

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

You will provide the Services:

(a) from the date(s) specified in the relevant Order or Statement of Work;

(b) in accordance with the terms of the Subscription Agreement which is deemed to include:

(i) meeting any requirements and specifications set out or referred to in the Subscription Form, and in any applicable Order or Statement of Work, including any requirements or specifications described in applicable Provider Standard Terms and, only to the extent (if any) that you are the contracting party assuming relevant obligations, applicable Third Party Service Provider Terms;

(ii) meeting any requirements and specifications prescribed by PSC/MBIE as a condition of onboarding that are reflected in Services Listings;

(iii) meeting any applicable representations in your Services Listings; and

(iv) achieving any Milestones by their corresponding Milestone Dates, and meeting any other timeframes, specified in any Order or 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 Transition

If the Services involve transition or migration, you need to facilitate a seamless migration of responsibility and, where relevant, the Purchasing Agency will try to get incumbent providers to assist you.

(a) Except to the extent otherwise agreed in a Subscription Form, Order or Statement of Work, this clause 5.2 applies if the Purchasing Agency procures Services that involve the transition or migration of functions or services from the Purchasing Agency or an incumbent service provider to your Infrastructure Services, Telecommunications Services, or Managed Security Services.

(b) During the period of transition or migration, you will do all things reasonably necessary to facilitate a seamless migration of responsibility for the provision of services from the Purchasing Agency or incumbent service provider to you (or, if applicable, another service provider), to the extent that such activities are reasonably contemplated in the Subscription Form or an Order or Statement of Work.

(c) Where services are being migrated from an incumbent service provider, the Purchasing Agency will use all reasonable endeavours to procure the incumbent service provider to provide reasonable assistance to you to enable you to facilitate the migration.

(d) If the parties enter into a Statement of Work specifically for Transition Services (using, for example, the template 'Statement of Work (Transition Services)' set out in the Schedule to these Core I/T/MS Services Terms), that Statement of Work will not limit this clause 5.2, except in the event of inconsistency in which case the Statement of Work will prevail.

5.3 User Documentation

If you say you'll provide User Documentation, you need to do so for no charge (unless it's specific for the Purchasing Agency) and the documentation needs to be well-presented and current.

(a) If you agree or represent that you will provide User Documentation, you must provide that User Documentation to the Purchasing Agency reasonably promptly in either hard copy or electronic format at no charge, and ensure that any such User Documentation:

(i) is of a reasonable standard in terms of its presentation, accuracy and scope;

(ii) provides an explanation of functions, capacity and operation of the relevant Services;

(iii) is, when provided, the most current and up-to-date version available; and

(iv) is in English.

(b) The obligation in clause 5.3(a) to provide such User Documentation at no charge does not apply to the extent that such User Documentation is written specifically for the

Purchasing Agency by reference to its particular circumstances.

5.4 Milestones

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

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

(a) If a Milestone is a Critical Milestone, the requirement to meet that Critical Milestone is a fundamental term of the Subscription Agreement such that, subject to clauses 5.4(e) and 20.8 (Force Majeure Event) and any instruction from the Purchasing Agency to the contrary, a failure to do so is a material breach for the purposes of clause 24.1.

(b) Except where a Milestone has indisputably been met by its corresponding Milestone Date, 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 Subscription Form, Order or Statement of Work, such notification not to be unreasonably withheld or delayed.

(c) Without limiting the Purchasing Agency's other rights, but subject to clause 5.4(e), if you fail or are likely to fail to complete a Milestone by the relevant Milestone Date (a **Project Delay**):

(i) you will provide full written details of the Project Delay to the Purchasing Agency as soon as practicable;

(ii) you will take all steps reasonably available to you to avoid and minimise the effects of the Project Delay;

(iii) the parties will, if requested by the Purchasing Agency, meet to review in good faith the reasons for the Project Delay;

(iv) you will, if requested by the Purchasing Agency, promptly prepare a rectification plan setting out how you intend to complete the relevant Milestone, the relevant timeframes for such completion and any other details reasonably required by the Purchasing Agency, and will submit such plan to the Purchasing Agency for approval (such approval not to be unreasonably withheld, delayed or conditioned); and

(v) you will comply with any rectification plan submitted under clause 5.4(c)(iv), together with any reasonable modifications to it requested by the Purchasing Agency.

(d) Subject to clause 5.4(e)(v), if an Order or 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 Order or Statement of Work. Upon entering into the Order or 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.

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

(e) Where a Project Delay is caused by the Purchasing Agency or a third party (excluding your own Subcontractors and, in relation to relevant Services, Local Fibre Companies):

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

(i) the Purchasing Agency will provide you with details of the Project Delay in writing, to the extent the Purchasing Agency has such details;

(ii) the parties will, if either party requests, meet to review in good faith the reasons for the Project Delay;

(iii) you will, if requested by the Purchasing Agency, cooperate with the Purchasing Agency in relation to the Project Delay and will use reasonable efforts to assist in minimising or rectifying (where possible) the effects of 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 unavoidably incurred as a result of the Purchasing Agency's delay; and

(v) if, despite your compliance with sub-clauses (e)(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.

(f) 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.

5.5 Interfaces

(a) This clause 5.5 only applies if:

(i) under an Order or Statement of Work, you are responsible for specified Interfaces; or

(ii) these Core I/T/MS Services Terms or any applicable Extra Terms state it applies.

(b) Without limiting your other obligations under the Subscription Agreement, when this clause 5.5 applies, you will:

(i) take all preventative and reactive steps reasonably practicable to ensure that those Interfaces are effectively implemented, operated and maintained;

(ii) take all necessary steps within your power to resolve any problems or incidents with those Interfaces; and

(iii) take all reasonable steps to ensure the Services and, if relevant, the Purchasing Agency Environment are not compromised as a result of any of those Interfaces.

If under an Order or Statement of Work you're responsible for Interfaces, they need to be effectively implemented and maintained.

5.6 Delivery responsibility

(a) Except for Purchasing Agency responsibilities set out in the Subscription Agreement or in applicable Services Listings, you will have sole responsibility for delivery of the Services.

(b) The Purchasing Agency's acceptance or commissioning of any Services, or approval of any relevant documents, will not limit your responsibility to provide the Services in accordance with the Subscription Agreement, or prejudice any right or remedy the Purchasing Agency may have under the 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.

5.7 Procurement or management of Services via agent

The Purchasing Agency may, by notice to you, appoint one or more third parties (including any other Member of the Marketplace) to procure or manage the performance of Services on its behalf, as if that third party was the Purchasing Agency, provided that:

A Purchasing Agency can appoint an agent to procure or manage performance of the Services on its behalf as long as it complies with the conditions on appointment set out here.

(a) the notice to you explains the scope of the third party agent's authority to act on the Purchasing Agency's behalf, including the kinds of instructions, approvals, commitments or other acts on which you are entitled to rely;

(b) if such a third party is a direct competitor of yours for those Services, the Purchasing Agency has consulted you on the appointment;

(c) the Purchasing Agency will not provide the third party with the Purchasing Agency's authenticated access to restricted access areas of the Marketplace;

(d) the Purchasing Agency will not disclose your Services Listings (excluding, for the purposes of this subclause, pricing information) to the third party without consulting you first;

(e) the Purchasing Agency will not disclose your pricing information to the third party without your consent;

(f) without limiting clause 5.7(e), the Purchasing Agency will require the third party to agree that any of your Confidential Information that the Purchasing Agency does disclose to it may only be used for the purpose of procuring or managing the performance of Services and for no other purpose; and

(g) the Purchasing Agency will require the third party to comply with obligations in the Subscription Agreement that are relevant to the roles the third party is performing.

5.8 Acceptance of Deliverables specified in Order or Statement of Work

There are default terms as to reviewing/testing of Deliverables. The parties can agree to take a different approach if they wish.

(a) Clauses 5.8(b)-(h) apply to the review or testing of Deliverables specified in an Order or Statement of Work except to the extent that:

(i) the parties have agreed upon an alternative approach to review or testing in the Order or Statement of Work which is stated to apply instead of provisions in this clause 5.8; 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 5.8; or

(iii) the parties otherwise agree that this clause 5.8 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 (or such other period specified in the relevant Order or Statement of Work or otherwise agreed) from the date of supply of a Deliverable within which to perform such review or testing (the **Initial Test Period**).

(c) 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**).

(d) 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 Purchasing Agency, the Purchasing Agency will have 10 Business Days (or such other time period as is agreed between you and them) to re-review or re-test the Deliverable (**Additional Test Period**). If any non-conformities remain, the process stated in

this clause 5.8 will be repeated to the extent reasonably required by the Purchasing Agency.

(e) If:

(i) non-conformities described in a Non-Conformity Notice do in fact constitute non-conformance with the requirements of the Subscription Agreement; and

(ii) after the original Non-Conformity notice you fail to correct the non-conformities within two attempts pursuant to the processes in clause 5.8(d); and

(iii) the Purchasing Agency notifies you in writing of this failure within 5 Business Days after the second Additional Test Period,

the Purchasing Agency may terminate the relevant Order or Statement of Work on written notice to you.

(f) The Purchasing Agency's:

(i) 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; and

(ii) payment for, or use of, a Deliverable does not of itself constitute Acceptance.

(g) For the purposes of achieving a Milestone or an entitlement to invoice Fees that depends on acceptance of a Deliverable (**Acceptance**), Acceptance will occur if:

(i) the Purchasing Agency tells you the Deliverable is accepted (and if criteria for Acceptance of the Deliverable are set out in an Order or Statement of Work or associated document, Acceptance will be based on those criteria); or

(ii) the Purchasing Agency does not notify you of non-conformities within the Initial Test Period or, if applicable, an Additional Test Period, provided that the Deliverable complies with the requirements of the Subscription Agreement or, if criteria for Acceptance are set out in an Order or SOW or associated document, those criteria.

(h) If the parties disagree as to whether the Deliverable complies with the applicable requirements:

(i) there will be a deemed dispute which shall be resolved in accordance with clause 23 (Disputes); and

(ii) the Purchasing Agency may in its discretion withhold payment or a portion of payment for the affected Deliverable until such time as the dispute is resolved in your favour, provided that if the Purchasing Agency is using the Deliverable, the Purchasing Agency may only withhold a retention amount of up to 25% of the amount due.

5.9 Service Levels

You need to meet Service Levels in your Services Listings, Orders or Statements of Work, and in any applicable Provider Standard Terms, and pay any Service Level Credits due (if any).

(a) The parties acknowledge that, under clause 2.1(m) of these Core I/T/MS Services Terms, clause 8 (Service Levels) of the Channel Terms is incorporated into these Core I/T/MS Services Terms by reference.

(b) You will provide the Services in a manner that meets or exceeds all applicable Service Levels prescribed by the Channel Terms or specified in your Services Listings or in applicable Provider Standard Terms or otherwise agreed with the Purchasing Agency in the Subscription Agreement.

(c) 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 the Channel Terms or your Services Listing or the Subscription Form or relevant Order or Statement of Work or applicable Provider Standard Terms 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 (subject to clause 5.9(f) (Apportionment of Service Level Credits)).

(d) Reporting on performance against Service Levels

You need to report on your performance against Service Levels and, if you don't, you will be deemed not to have met them.

Unless agreed otherwise in a Subscription Form, Order, or Statement of Work (including where Service Level reporting is part of a more general monthly report), you will report to the Purchasing Agency on performance of the Services against the Service Levels by the 20th Business Day of each month by email or other electronic or agreed means to the Purchasing Agency's Contract Manager, and will ensure that the report:

(i) accurately describes actual performance; and

(ii) contains sufficient detail to verify your performance against the Service Levels and, if applicable, calculation of the Service Level Credits.

(e) Failure to report

If you do not report on performance against Service Levels, either at all or in a manner that clearly identifies whether the Service Levels are being met (a **Reporting Failure**):

(i) the Purchasing Agency may notify you of your Reporting Failure;

(ii) you will remedy the Reporting Failure promptly, and in any event, within five Business Days following the Purchasing Agency's notice, by providing the report or a compliant report (as applicable) for the same period; and

(iii) if the report is not provided within the period required by clause 5.9(e)(ii), or the report does not remedy the failure identified by the Purchasing Agency, the relevant Service Level(s) will be deemed to have not been met and the Purchasing Agency will be entitled to any applicable Service Level Credits. Such Service Level Credits will not be refundable if you subsequently establish that, despite the failure to report, the relevant Service Levels were met.

(f) Apportionment of Service Level Credits

To the extent that under clause 20.2(a) you are not liable for a failure to meet a Service Level to which Service Level Credits apply, the parties will in good faith negotiate with a view to agreeing the extent to which the Service Level Credits should be fairly and reasonably reduced to reflect the extent to which a Purchasing Agency Default Event has contributed to the failure. If there is a dispute as to the reduction that should apply the dispute will be resolved in accordance with clause 23 and will be subject to expert determination under that clause.

If a Purchasing Agency Default Event contributes to a Service Level failure, Service Level Credits may need to be apportioned.

5.10 Meetings and reporting

You will:

(a) meet with the Purchasing Agency's nominated representatives as specified in the Subscription Form and each Order and 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, the Subscription Form, or relevant Orders or Statements of Work, with the content and at the intervals specified in your Services Listings, the Subscription Form, or those Orders or Statements of Work.

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

5.11 Discontinuance of Obsolete Service

(a) You agree that discontinuance of an Obsolete Service and withdrawal of the relevant Services Listing or part of such listing from the Marketplace under clause 11 of the Channel Terms does not limit your obligations under the Subscription Agreement to provide the discontinued Service to the Purchasing Agency in accordance with the terms of the Subscription Agreement.

Abrupt discontinuance of an Obsolete Service can cause difficulties for a purchasing agency. As such, you can only discontinue such a service in the circumstances set out here.

(b) You may only discontinue provision of a Service to the Purchasing Agency if the Service is an Obsolete Service and either:

(i) you are offering an alternative or replacement service, the Purchasing Agency agrees to transition from the Obsolete Service to that service, and the parties agree upon the timing and any other terms associated with that transition; or

(ii) you provide the Purchasing Agency with 24 months' notice of the discontinuance and that period has elapsed; or

(iii) the Purchasing Agency has agreed in the Subscription Form or an Order or Statement of Work to a shorter period of notice, or otherwise agrees in writing to a shorter period of notice, and that period has elapsed; or

(iv) the term of the Subscription Agreement has expired and any Disengagement Services the Purchasing Agency may require in accordance with clause 25 (Disengagement) that involve continued provision of the Obsolete Service have been completed; or

(v) the Service (or a material component of it) is a Third Party Service that you are reselling or otherwise providing in your own right to the Purchasing Agency, and the Third Party Service Provider discontinues or materially modifies its service in a manner that prevents you from continuing to resell or otherwise provide the Service under the Subscription Agreement, provided that you:

(A) promptly notify the Purchasing Agency in writing upon becoming aware of the discontinuance or modification, where possible giving as much notice as is reasonably practicable before the discontinuance or modification occurs;

(B) use commercially reasonable efforts to identify and propose a suitable alternative or replacement service; and

(C) co-operate with the Purchasing Agency in good faith to minimise disruption to the Purchasing Agency's operations, including continuing to facilitate provision of the Obsolete Service for any limited period the Third Party Service Provider allows or, if reasonably feasible, offering transition assistance to another service.

(c) To avoid doubt, where you are reselling a Third Party Service that is subject to Third Party Service Provider Terms to the exclusion of these Core I/T/MS Services Terms, those Third Party Service Provider Terms (and not these Core I/T/MS Services Terms) govern any discontinuance of the Service and clause 5.11(b)(v) does not apply.

5.12 Change of reseller

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.

(a) Subject to clause 5.12(b), if:

(i) you are reselling a Third Party Service to the Purchasing Agency; and

(ii) 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

(iii) the Purchasing Agency wishes to procure that Third Party Service from or through another provider that resells the same 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:

(iv) informing the Third Party Service Provider;

(v) seeking consent from the Third Party Service Provider (if consent is required);

(vi) providing information to the alternative reseller; and

(vii) updating relevant records with the Third Party Service Provider.

(b) To avoid doubt:

(i) clause 5.12(a) does not require you to share information with the alternative reseller that is confidential as between you and the Third Party Service Provider;

(ii) clause 5.12(a) 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

(iii) the obligations in clause 5.12(a) 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.

(c) If the Purchasing Agency is entitled to terminate the relevant Order, Statement of Work, or Subscription Agreement with you for cause under clause 24.1, you shall meet your own costs of taking the steps in clause 5.12(a). 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.

6. Cooperation with other providers

You need to work co-operatively and collaboratively with other service providers.

6.1 Subject to clause 6.2 and except as stated otherwise in a Subscription Form, Order or Statement of Work, you must where relevant work co-operatively and collaboratively with, and provide reasonable assistance to, third party service providers to the extent relevant to your provision of Services to the Purchasing Agency, both proactively and when reasonably requested by the Purchasing Agency or third party service providers from time to time.

6.2 If any actions the Purchasing Agency requests you to take in accordance with clause 6.1 materially change the scope of the Services or materially increase your cost to provide the Services, such change shall be agreed in accordance with the Change Procedure.

7. Purchasing Agency assistance

The Purchasing Agency needs to do certain basic things to help you provide the services and they are set out in this clause. As noted at clause 5.6 of these Core I/T/MS Services Terms, specific responsibilities beyond these need to be set out in your Service Listings, the Subscription Form or the relevant Order or Statement of Work.

7.1 The Purchasing Agency will:

(a) provide to you, in a timely manner, all information, resources, approvals and authorisations, as you may reasonably request, to enable you to provide the Services;

(b) give you reasonable access to:

(i) the Purchasing Agency's Personnel, to liaise with your Personnel in relation to the Purchasing Agency's ongoing technical and operational requirements in relation to the Services; and

(ii) the Purchasing Agency's premises and systems, to the extent reasonably required to enable you to provide the

Services, subject to any applicable Purchasing Agency policies and security requirements;

(c) co-operate with you in relation to your performance of the Services;

(d) use the Services for lawful purposes only and in accordance with your reasonable operating instructions or advice;

(e) not knowingly insert or permit to be inserted into any part of your infrastructure any Disabling Code; and

(f) where relevant, work collaboratively with you to facilitate your understanding and mitigation of the risks which exist in respect of the Purchasing Agency Environment.

8. Personnel

8.1 Responsibility for and requirements of Personnel

Your Personnel need to pass security checks, be capable, comply with agency policies, carry ID, and comply with confidentiality and security requirements.

(a) You must comply with the staff security check requirements in paragraph 8.1 (Staffing) of Schedule 1 (Information Security) to the Channel Terms (a provision which is incorporated by reference into these Core I/T/MS Services Terms).

(b) You must also ensure that all your Personnel engaged in providing the Services:

(i) have passed any additional security, probity, tax, or beneficiary checks reasonably required by the Purchasing Agency, as specified in the Subscription Form or an Order or Statement of Work (and for which you may charge reasonable Fees or expenses if agreed in the Subscription Form or an Order or Statement of Work);

(ii) are suitably qualified and experienced;

(iii) if based in New Zealand or will be entering New Zealand to perform the Services, have the right to work in New Zealand;

(iv) comply with the Purchasing Agency's health and safety policies when on its premises and with any other policies and codes of conduct notified to you under clause 11.1(b) below;

(v) do not represent in any way that they are employees of the Purchasing Agency;

(vi) carry and display appropriate company identification when attending any Purchasing Agency Site; and

(vii) comply with all confidentiality and security requirements set out or referred to in the Subscription Agreement.

8.2 Key Personnel

(a) If any of your Personnel specified in an Order or Statement of Work are described as Key Personnel, you must ensure that they undertake their roles specified in the Order or Statement of Work, and you may not use other individuals to undertake those roles except to the extent that the Key Personnel are unavailable due to:

(i) significant periods of sickness, incapacity, or authorised leave; or

(ii) ceasing to be employed by, or under contract to, you.

If you agree to use Key Personnel, they need to undertake specified roles except in the circumstances described here.

(b) You must advise the Purchasing Agency of any such unavailability as soon as possible, and propose a similarly qualified and experienced replacement who meets the requirements of this clause 8. If the Purchasing Agency reasonably believes the proposed replacement is unsuitable, it may ask you to propose an alternative replacement who meets the requirements of this clause 8.

(c) If the Purchasing Agency reasonably believes that the proposed alternative replacement is unsuitable, or if you fail to propose a replacement or alternative replacement, the Purchasing Agency may immediately terminate the Order or Statement of Work on written notice to you.

8.3 Removal of Personnel

The Purchasing Agency may require the immediate removal of any member of your Personnel from performance of the 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 8.1.

8.4 Removal of access

You will ensure that, when any of your Personnel involved in providing the Services to the Purchasing Agency:

You need to remove access rights when Personnel with access are no longer involved in providing Services to the Purchasing Agency.

(a) are no longer so involved; or

(b) are subject to removal under clause 8.3; or

(c) breach any other security, confidentiality or privacy obligations in or referred to in the Subscription Agreement,

any access rights those Personnel had in relation to the Services and/or the Purchasing Agency Data are removed as soon as possible.

9. Subcontracting

9.1 You acknowledge that, except as stated in clause 9.2 below, under paragraph 9 (Subcontractors and Third Party Service Providers) of Schedule 1 (Information Security) to the Channel Terms:

(a) any Subcontractor you propose to perform or deliver any part of the Services must first be approved by PSC; and

(b) if you first propose to use a particular Subcontractor after your relevant Services Listing(s) are published, and PSC grants approval to your use of the Subcontractor under paragraph 9.2 of Schedule 1 to the Channel Terms, you must update your Subcontractor/TPSP/LFC Schedule promptly to include the Subcontractor and notify the Purchasing Agency of your use (with PSC's approval) of the new Subcontractor.

Subcontractors need to be approved by PSC and described in a Subcontractor/TPSP Schedule. If a Subcontractor is brought on board after a Purchasing Agency has an Order or SOW in place with you, you need to update your Subcontractor/TPSP Schedule and notify the Purchasing Agency of your use (with PSC's approval) of the Subcontractor. The Subcontractor/TPSP Schedule forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings.

9.2 You do not need to obtain PSC's or the Purchasing Agency's written approval to use, in the provision of 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 or a Permitted Additional Territory.

9.3 You agree that:

(a) you are fully responsible for all work carried out by any Subcontractor, all materials used by a Subcontractor, and any act or omission on the part of any Subcontractor; and

(b) entry into any subcontract will not relieve you from any liability under or in connection with the Subscription Agreement.

10. Service Delivery Assets

10.1 Service Delivery Assets

If one party is in possession of the other party's Service Delivery Assets, the party in possession needs to take care of them and only use them as authorised.

Unless agreed otherwise in an Order, Statement of Work or other document, in relation to any Service Delivery Asset used in performing the Services:

(a) title to the Service Delivery Asset will remain with the owner at all times;

(b) subject to clause 10.1(c), risk in the Service Delivery Asset will pass to a party if and when the party or its Personnel take possession or physical control of it, and will remain with that party until returned to the other party or (if different) the owner of the Service Delivery Asset;

(c) where a Service Delivery Asset of the Purchasing Agency is located in a data centre or other hosting environment that you operate or a Subcontractor operates, the risk of loss or damage to that Service Delivery Asset (and the responsibility to insure against it) will remain with the Purchasing Agency as owner, but you agree that this does not limit your liability for

loss of or damage to the Service Delivery Asset to the extent caused by your or the Subcontractor's negligence, wilful misconduct, or breach of the Subscription Agreement;

(d) if a party has possession or physical control of another party's Service Delivery Asset, that party (the **possessing party**) will:

(i) provide a safe and secure environment for it;

(ii) use it only for authorised purposes and in accordance with the other party's instructions and any stated limitations;

(iii) not make any modifications to it or dispose of, lease or encumber it in any way, without the other party's prior written consent;

(iv) immediately notify the other party if it becomes aware of any damage, or unauthorised access to, or use of, the Service Delivery Asset, and, if you are the possessing party, also if such asset requires maintenance;

(v) subject to any reasonable requirements imposed by it regarding site access and the other party's compliance with such requirements, ensure that the other party's representatives have safe access to the Site (on the provision of reasonable notice) at which the Service Delivery Asset is located, so that the Service Delivery Asset can be inspected, maintained or replaced; and

(vi) on returning the Service Delivery Asset (if it is to be returned), ensure that it is in the same condition (fair wear and tear excepted) as when it was provided.

11. General responsibilities

11.1 Requests for information, policies, general compliance with law etc.

In addition to your other obligations, you will:

(a) respond promptly, accurately and adequately to reasonable requests for information made by the Purchasing Agency in relation to the Services;

(b) comply with Purchasing Agency policies and codes of conduct notified to you in writing that have a bearing on provision of the Services (to the extent those policies and codes are capable of applying to you and with the proviso that, if you are notified of a policy or code after entering into a relevant Order or Statement of Work and compliance materially increases your costs or materially affects any aspect of the Services then compliance is subject to agreement between the parties and either party may make a Change Request in accordance with clause 13.2);

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.

(c) ensure that those of your Personnel involved in provision of the Services comply with the policies and codes of conduct mentioned above, obtain acknowledgements to this effect from those Personnel if required by the Purchasing Agency and provide copies of those acknowledgements to the Purchasing Agency, and inform the Purchasing Agency promptly in writing if you become aware of a breach of any such policy or code;

(d) comply with all applicable law relevant to provision of the Services;

(e) use your best endeavours to avoid damaging or adversely affecting the Purchasing Agency's reputation, systems or infrastructure; and

(f) not knowingly or negligently insert or permit to be inserted any Disabling Code into the Purchasing Agency Environment.

11.2 Conflicts of interest

(a) You:

(i) warrant that, as at the Commencement Date, you have used all reasonable endeavours to ensure that all Conflicts of Interest that you and your Subcontractors have in providing the Services or in relation to your entering into the Subscription Agreement have been declared to the Purchasing Agency in the Subscription Form;

(ii) will, when entering into any subsequent Order or Statement of Work, use all reasonable endeavours to declare to the Purchasing Agency all Conflicts of Interest that you and your Subcontractors have in providing the Services or in relation to your entering into the relevant Order or Statement of Work; and

(iii) will use all reasonable endeavours to avoid situations that may lead to a Conflict of Interest arising.

(b) You must tell the Purchasing Agency promptly, in writing, if any Conflict of Interest arises in relation to the Services or the Subscription Agreement (including in relation to your Subcontractors). If a Conflict of Interest does arise, the parties must discuss, agree, and record in writing whether it can be managed and, if so, how it will be managed.

(c) If you put a conflict management plan in place with relevant Subcontractor(s), you will provide a copy of the plan to the Purchasing Agency within 5 Business Days of the Purchasing Agency's request.

(d) Each party is responsible for its own costs in relation to managing a Conflict of Interest.

11.3 Damage to Sites or other property

You must promptly report any damage that you or your Personnel cause to a Site belonging to or occupied by the Purchasing Agency or to the Purchasing Agency's other property.

Damage to Purchasing Agency property needs to be reported.

11.4 Resolution of problems

The parties acknowledge that problems with the Services may be caused by a variety of factors, including acts or omissions by third parties, not easily identified at the time a problem arises. Without limiting any other obligations under this Agreement:

The parties will seek to resolve problems promptly, without necessarily having allocated responsibility for the cause.

(a) the parties will seek to promptly identify, and assist with the diagnosis of, any problems with the Services, to the extent reasonable in the circumstances, without having first allocated or apportioned responsibility for the cause of the problem or the cost or responsibility for fixing it; and

(b) you will use all reasonable endeavours to assist the Purchasing Agency to resolve any problems which may be connected with, impact on, or be impacted by, the Service,

provided that you shall be entitled to recover your reasonable costs for providing such identification and assistance if it is determined you were not responsible for the problem(s).

12. Records

12.1 You will, at all times during the term of the Subscription Agreement, maintain, securely store and archive, in electronic form, true, up to date, accurate and complete records of all invoices and reports provided to the Purchasing Agency in relation to the Services and any records specifically relating to your provision of the Services to the Purchasing Agency (including operating processes and procedures and configuration data).

You need to maintain and store complete records and allow the Purchasing Agency to inspect and/or obtain copies from you if requested.

12.2 The Purchasing Agency may, at any time during the term of the Subscription Agreement, inspect and/or obtain copies from you of:

(a) records required to be maintained under clause 12.1; and

(b) any other information relevant to your performance and compliance with the terms of the Subscription Agreement,

on at least 5 Business Days' written notice.

13. Change Procedure

13.1 Service Volume Changes

There's flexibility as to how service volume changes are processed, and a simple change procedure to follow where a party wishes to request changes to Services that are not service volume changes.

(a) The Purchasing Agency may require a change to the Services in the nature of:

(i) increasing the volume of or selecting additional Services from your Services Listings;

(ii) replacing any Services with other Services selected from your Services Listings; or

(iii) reducing the volume of, or discontinuing, Services,

(each of clause 13.1(a)(i)-(iii) being a **Service Volume Change**):

(iv) by using the self-service function of the Services (if available); or

(v) in the manner (if any) specified in the Subscription Form; or

(vi) in the manner otherwise agreed between the parties.

(b) All Service Volume Changes shall be:

(i) documented and implemented through the use of the functionality provided in the Services (if applicable), or in accordance with the procedure (if any) set out in the Subscription Form, or as otherwise agreed; and

(ii) authorised by an appropriate individual nominated by the Purchasing Agency for such purpose.

13.2 Change Requests and Change Orders

This is the simple change procedure.

Either party may request changes to the Services or Deliverables (**Change Request**) that are not Service Volume Changes by delivering a written change order request to the other party. If you receive or make 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 that contains this information (**Change Order**). To avoid doubt, unless otherwise agreed in a Subscription Form, Order 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.

13.3 Change Order effective when signed

Each Change Order will be effective when signed by authorised delegates of the parties and will operate as a variation of the Agreement.

13.4 Provider must not unreasonably refuse

You must not unreasonably refuse a Change Request.

You must not unreasonably refuse, whether directly or indirectly, any Change Request the Purchasing Agency submits. Indirect grounds for unreasonably refusing a Change Request include demanding unreasonable fees, imposing unreasonable conditions, specifying an unreasonable impact or consequences of undertaking the change, and imposing an unreasonably long timetable for implementation of the change. It will not be unreasonable to refuse a Change Request if you (acting reasonably and in good faith) consider that you will not

have sufficient resources to provide the requested changes to the Services or Deliverables in the requested timeframe.

14. Payment

14.1 Fees

(a) The Purchasing Agency will pay you:

(i) the Fees and any applicable GST in consideration of your provision of the Services, in accordance with this clause 14 and the relevant Order or Statement of Work; and

(ii) the Administration Fee and any applicable GST you are required by the Collaborative Marketplace Agreement to collect and pay periodically to PSC, provided any such fee is clearly specified in your invoices.

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

(b) Where Fees for the Purchasing Agency's consumption of your Services are based on set Prices (such as subscription or licensing fees for Cloud Services or Downloadable Software) or Services Rates, the Prices or Services Rates stated in your Services Listings at the time the Purchasing Agency signs a Subscription Form shall apply to the Subscription Form and first contemporaneous Order and/or Statement of Work, unless you have agreed to:

(i) reduced prices or rates or some other more favourable pricing package for the Purchasing Agency; or

(ii) improvements requested by the Purchasing Agency to the standard offerings described in your Services Listing(s) for which it is reasonable to apply alternative pricing (which itself must be reasonable) with which the Purchasing Agency agrees,

either in the Subscription Form, an Order, or a Statement of Work. For subsequent Orders and Statements of Work priced on the basis of your Prices or Services Rates, you will charge your then current Prices and Services Rates as stated in your Services Listings, unless the circumstances described in clause 14.1(b)(i) or (ii) apply.

(c) All Fees shall be in New Zealand dollars unless stated otherwise in the Subscription Form or relevant Order or Statement of Work.

All Fees are in NZD unless stated otherwise.

(d) The only Fees payable to you are the Fees set out or cross-referred to in the Subscription Form or Order or Statement of Work or otherwise expressly agreed (under, for example, the Change Procedure).

14.2 Invoices

Your invoices need to comply with the requirements set out here and be sent as required by the Purchasing Agency. If the Purchasing Agency requires you to use eInvoicing, you will do so.

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

(i) be a valid tax invoice for the purposes of the GST Act;

(ii) include any applicable Administration Fee as a separate line item;

(iii) include or be accompanied by such information reasonably requested by the Purchasing Agency from time to time to support the Services being invoiced; and

(iv) comply with any other invoicing requirements set out in the Subscription Form or an Order or Statement of Work,

(**Valid Tax Invoice**). You will send your invoices by the means and to the address specified in the Subscription Form or relevant Order or Statement of Work. If the Purchasing Agency requires you to use eInvoicing for your invoices, you will do so. For the purposes of this clause, **eInvoicing** means the direct exchange of digital invoice information between your and the Purchasing Agency's software or systems using the secure Peppol (Pan-European Public Procurement Online) network and common standard.

(b) The Purchasing Agency will have no obligation to pay any part of the Fees which is invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to clause 14.2(a), except in respect of Fees for Third Party Services where a delay in invoicing was due to your not having been invoiced by, or otherwise advised by, the relevant Third Party Service Provider of an applicable charge or fee, provided that you submit the invoice to the Purchasing Agency within 20 Business Days after becoming aware of that charge or fee.

14.3 Date for Payment

The Purchasing Agency needs to pay your invoices within the timeframes stated here.

Subject to clause 14.4 and the terms of the Subscription Form or applicable Order or 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.

14.4 Dispute over invoice

There's a process for dealing with invoicing disputes.

If the Purchasing Agency disputes in good faith the whole or any portion of a Valid Tax Invoice:

(a) 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 in accordance with clause 23; or

(b) if the Purchasing Agency notifies you in writing that its financial system does not enable part-payment of invoices:

(i) the Purchasing Agency will notify you of the amount of the Valid Tax Invoice that is disputed and the amount that is not disputed;

(ii) within 10 Business Days of receiving that notice, you will either:

(A) issue a credit note cancelling the original invoice and re-issue a replacement Valid Tax Invoice for the undisputed amount only; or

(B) use such other alternative invoicing mechanism as is reasonably acceptable to both parties to enable invoicing and payment of the undisputed amount; and

(iii) the Purchasing Agency will pay that replacement Valid Tax Invoice or invoice issued under the alternative invoicing mechanism in accordance with clause 14.3; and

(iv) the disputed amount will be dealt with in accordance with clause 23 and may only be invoiced once and to the extent the dispute is resolved in your favour.

14.5 Payment terms

Your Fees plus applicable GST are to be paid to your nominated bank account. (Remember your invoices need to include the Administration Fee plus GST too.)

Unless stated otherwise in the Subscription Form or an Order or 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.

14.6 Expenses

You're responsible for expenses you incur unless the Purchasing Agency agrees to pay them.

(a) You are responsible for all expenses you incur in connection with the Subscription Agreement, unless otherwise expressly specified in the Subscription Form or relevant Order or Statement of Work.

(b) If the Subscription Form or an Order or 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.

14.7 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.

14.8 Pricing decreases and increases

(a) You may decrease the Fees in Orders and Statements of Work at any time.

(b) Decreases in pricing in accordance with:

(i) clause 12.6 (Price adjustment – voluntary decreases at any time) of the Channel Terms;

(ii) clause 12.7 (Price adjustment – permissible annual change) of the Channel Terms;

(iii) clause 12.7A (Price adjustment for Third Party Hardware in Volatile SKUs) of the Channel Terms;

(iv) clause 12.8 (Reservation of right to require price reduction in event of extraordinary exchange rate change) of the Channel Terms; or

(v) clause 12.10 (Reductions due to regulatory intervention) of the Channel Terms,

shall be applied to relevant Orders (including in the Subscription Form) and Statements of Work in accordance with clause 12.11 (Passing through reductions to Subscription Agreements) of the Channel Terms.

(c) Pricing in your Services Listings may only be increased in accordance with, as applicable:

(i) clauses 10.3(b) (pricing adjustments upon Requirements Change(s)) of the Channel Terms;

You can decrease your pricing at any time, and pricing decreases in Services Listings need to be passed through to existing Orders and SOWs. Increases to Services Listing pricing can be made under and in accordance with a number of provisions in the Channel Terms, but (with one exception) those increases do not apply to existing Orders and SOWs unless the Purchasing Agency has agreed they will, and if you'd already agreed to reduced pricing for the Purchasing Agency they would apply proportionately. Pricing adjustments for resold Third Party Services that are subject to Third Party Service Provider Terms are governed by those terms and not this clause 14.8.

(ii) clauses 12.3(b)(ii) and (c) (improvements to standard offerings in Services Listings) of the Channel Terms;

(iii) clauses 12.5 (price adjustment rules), 12.7 (permissible annual change), 12.7A (price adjustment for Third Party Hardware in Volatile SKUs) and 12.12 (out-of-cycle increases) of the Channel Terms; and

(iv) paragraph 2.4 (pricing adjustments upon changed or new Security Standards) of Schedule 1 to the Channel Terms.

(d) Fees in Orders and Statements of Work may only be increased to reflect increases in Services Listing pricing in accordance with any of the provisions referred to in clause 14.8(c), if and to the extent the parties have expressly agreed in the Subscription Form or applicable Order or Statement of Work, or subsequently, to some or all of those increases applying. This clause 14.8(d) is subject to paragraph 2.5(a)(ii) of Schedule 1 to the Channel Terms (under which, in a specific situation, increased pricing as a result of the required implementation of changed or new Security Standards can flow through to agencies without their agreement) and clause 14.8(e).

(e) If, prior to increases in Services Listing pricing referred to in clause 14.8(d), you had agreed with the Purchasing Agency:

(i) to pricing that was lower than the then Services Listing pricing; and

(ii) that increases in Services Listing pricing in accordance with some or all of the provisions referred to in clause 14.8(c) would apply to Fees under existing Orders and Statements of Work,

then, unless the parties have expressly agreed otherwise, any increase in Fees charged to the Purchasing Agency may only be applied by increasing those Fees by the same percentage as the increase to the Services Listing pricing from the Services Listing pricing that applied immediately before the increase.

(f) To avoid doubt, you shall not seek or agree to terms in the Subscription Form or any Order or Statement of Work that:

(i) permit increases to your Prices or Services Rates that would be greater than increases permitted by and made under and in accordance with clause 12.7 or 12.7A of the Channel Terms or, if applicable, any of the other provisions referred to in clause 12.5 of the Channel Terms; or

(ii) permit you to make increases to your Prices or Services Rates independently of increases to the Prices and Services Rates in your Services Listings (other than in accordance with clauses 12.3(b)(ii) or (c) of the Channel Terms, provisions relating to minimum volume commitments for a Minimum Initial Term, or volume discount provisions).

(g) If the Services the Purchasing Agency procures from you include Third Party Service(s) you are reselling to the Purchasing Agency that are subject to Third Party Service Provider Terms:

(i) price decreases and increases shall be governed by those terms and not this clause 14.8;

(ii) you will, where reasonably practicable, endeavour to give reasonable advance written notice to the Purchasing Agency of price decreases and increases for such Third Party Service(s); and

(iii) you will pass through any such price decreases or increases to the Purchasing Agency (without any margin or added cost).

14.9 Usage measurement

(a) Where the Purchasing Agency's permitted use of and/or the Fees for a Service it procures are based on Usage Metrics (distinct from, for example, unlimited enterprise-wide access, use, or storage rights for a fixed monthly or other periodic fee), you will, on request, provide information to the Purchasing Agency to assist it in:

The Purchasing Agency can ask you to clarify how your Usage Metrics work and how Fees are incurred.

(i) understanding and if relevant complying with the Usage Metrics for the Service it has procured; or

(ii) understanding the Fees it has incurred or will incur.

(b) You may do so by providing either:

(i) a tool or mechanism (for example, within the Service) allowing the Purchasing Agency to accurately determine actual use of the Service and incurred or likely Fees; or

(ii) a report showing the Purchasing Agency's actual usage of the Service and corresponding Fees.

15. Warranties

15.1 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.

15.2 Your warranties

You warrant and represent that:

(a) in offering your Services, listing them in the Marketplace and setting your prices, you have not infringed any applicable law (including the Commerce Act 1986 and Fair Trading Act 1986);

(b) when supplied, the documentation and other information you provide to the Purchasing Agency is accurate and complete and suitable for the purpose for which it is provided;

(c) all Software your organisation itself uses in performing your obligations under the Subscription Agreement will be currently supported;

(d) any Software you supply under the Subscription Agreement (including Software embedded in or forming an integral part of any hardware you supply) will, at the time of installation, comply with the Subscription Agreement, be currently supported by the Software licensor (unless agreed otherwise in an Order or Statement of Work) and properly installed (where you are responsible for installing it), and be free of all known or reasonably detectable Disabling Code;

(e) all Equipment you supply (if any) that is, or is to be, owned by the Purchasing Agency or its nominee will, on the date of delivery:

(i) conform to the manufacturer's specifications and any product description for the Equipment;

(ii) meet all requirements for the Equipment set out in the relevant Order or Statement of Work;

(iii) be free from defects in materials and workmanship;

(iv) to the extent that such Equipment is purchased by the Purchasing Agency, be:

(A) free from any encumbrance (including by lien or security interest);

(B) new and unused at the time of delivery (unless otherwise agreed); and

(C) if you are required by the relevant Order or Statement of Work to install the Equipment, installed properly at the relevant locations;

(f) the Services will be fit for their intended purposes as expressly set out in your Services Listings or agreed in the Subscription

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, the software you use, any Equipment you supply that is/to be owned by the Purchasing Agency, the fitness of your Services for agreed purposes, and your Provider Assets.

Form or an Order or Statement of Work (but, to avoid doubt, occasional Service Level Defaults or software bugs do not mean the Services are not fit for their intended purposes as described); and

(g) all Provider Assets are operated and supported in accordance with Good Industry Practice.

15.3 Continuous application

The warranties and representations set out in clause 15.2 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.

15.4 Notification

(a) You will promptly notify the Purchasing Agency of any non-compliance with any of the warranties in this clause 15 or in clause 16.7(a) or any relevant warranties in applicable Extra Terms.

(b) The Purchasing Agency will promptly notify you of any non-compliance with the warranty in clause 16.7(c) or any relevant warranties in applicable Extra Terms.

The parties need to inform each other of non-compliance with the warranties they give.

15.5 Other warranties excluded

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

16. Intellectual Property Rights

16.1 Existing Material and Purchasing Agency Data

(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.

16.2 Deliverables and Services

Subject to clause 16.1(b) and unless otherwise agreed in writing, to the extent that any Deliverable or Service comprises or incorporates any:

(a) Existing Material, Intellectual Property Rights in that Existing Material will remain with the owner of those Intellectual Property Rights;

Intellectual Property Rights are important and ensuring all bases are covered requires comprehensive drafting. In a nutshell, though, the Purchasing Agency owns Purchasing Agency Data, you own your existing IP and modifications to it, and the Purchasing Agency owns its existing IP and modifications to it. You generally own the new IP in things you develop under the Agreement, and the Purchasing Agency owns new IP in documentation you develop specifically for it. Each party grants licences to the other and makes an IP-related warranty to the other, and you grant an IP indemnity (with carve-outs protecting you in relation to Third Party Material and certain other matters). Where Third Party Services or Third Party Materials are used, different licences to the Purchasing Agency may apply.

(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) documentation created specifically for the Purchasing Agency and no other customer, subject to sub-clauses (a) and (b) above, all Intellectual Property Rights in that documentation will vest in the Purchasing Agency on creation;

(d) other material (including Developed Software), subject to sub-clauses (a), (b) and (c) above, all Intellectual Property Rights in that other material will vest in you on creation.

The above sub-clauses are listed in descending order of priority so that, to the extent there is any conflict between any sub-clauses, sub-clause (a) will prevail over sub-clauses (b), (c) and (d), sub-clause (b) will prevail over sub-clauses (c) and (d) and sub-clause (c) will prevail over sub-clause (d). To avoid doubt, unless agreed otherwise (including in an Order or Statement of Work), where this clause 16.2 does not confer ownership of New Intellectual Property Rights in Deliverables or arising from your provision of the Services on the Purchasing Agency, those New Intellectual Property Rights will be owned by you (or, if applicable, your subcontractor or licensor).

16.3 Further actions

If ownership of any Intellectual Property Rights described in clause 16.2 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.

16.4 Licences to Purchasing Agency in relation to Deliverables and Services

This clause contains a Default Deliverables Licence to the Purchasing Agency and a Default Services Licence to the Purchasing Agency. However, it also contains an Alternative Deliverables Licence and an Alternative Services Licence that the parties can agree shall apply instead of the default licences. The alternative licences are less permissive than the default licences.

(a) Unless otherwise agreed in writing (including in an Order or Statement of Work), to the extent that any Deliverable or 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; and

(ii) do not comprise and are not contained in Third Party Services or Third Party Materials that are licensed in accordance with clause 16.4(d),

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 **Default Deliverables Licence**); and

(iv) in relation to 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 Order or Statement of Work under which the Services are provided, the Intellectual Property Rights in the Services to the extent necessary for the Purchasing Agency to receive the full benefit of the Services (the **Default Services Licence**).

(b) Without limitation to the alternative kinds of licences the parties may agree in writing, the parties may agree in the Subscription Form or an Order or Statement of Work that:

(i) in relation to Deliverables: the Default Deliverables Licence does not apply and, instead, you grant the Purchasing Agency, and contractors acting on its behalf, a non-exclusive, perpetual, revocable (for cause, unless expressly agreed otherwise), non-sublicensable, non-transferable and royalty free licence to use the Intellectual Property Rights in the Deliverables for the Purchasing Agency's internal business purposes (the **Alternative Deliverables Licence**); and/or

(ii) in relation to Services: the Default Services Licence does not apply and, instead, you grant the Purchasing Agency, and contractors acting on its behalf, a non-exclusive, non-sublicensable, non-transferable and royalty free licence during the term of the relevant Order or Statement of Work under which the Services are

provided, to use the Intellectual Property Rights in the Services for the Purchasing Agency's internal business purposes (the **Alternative Services Licence**).

(c) The Deliverables Licence or, if applicable, the Alternative Deliverables Licence, survives termination or expiry of the Subscription Agreement for any reason (subject, in the case of the Alternative Deliverables Licence, to any applicable revocation for cause). The Services Licence or, if applicable, the Alternative Services Licence, does not.

(d) Unless otherwise agreed in writing (including in an Order or Statement of Work):

(i) to the extent that any Service or Deliverable comprises or incorporates or the use of any such Service or Deliverable 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 use such Third Party Service or 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 16.4(a), but subject to clause 16.4(e), notify the Purchasing Agency of the terms of 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 Service or Third Party Material before providing it or incorporating it into the Service or Deliverable; and

(ii) to the extent that any Service and/or Deliverable comprises, incorporates, or relies on the use of any Third Party Service or Third Party Material, and the use (or enhancement or modification) of such Third Party Service or Third Party Material by the Purchasing Agency is subject to the terms of a direct licence or sub-licence (as notified to the Purchasing Agency under clause 16.4(d)(i)(B) or otherwise referred to in the relevant Services Listing, Subscription Form, Order or Statement of Work), the Purchasing Agency must

comply with the terms of such licence or sub-licence (as applicable).

(e) The notification obligation in clause 16.4(d)(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 an Order or Statement of Work, or in Provider Standard Terms or Third Party Service Provider Terms whose application is agreed in the Subscription Form or an Order or Statement of Work.

(f) You must promptly notify the Purchasing Agency on becoming aware of any existing or potential claim that the receipt of a Service, any Deliverable, or the possession or use of any Service or Deliverable, infringes any third party Intellectual Property Right or other right.

You need to tell the Purchasing Agency if you become aware of IP problems.

(g) To avoid doubt:

(i) clause 16.4(e) does not limit clause 5 (Resale of Third Party Services) of the Channel Terms which, under clause 2.1(k) of these Core I/T/MS Services Terms, is incorporated by reference into these terms (clause 5 regulates the resale of Third Party Services via a Services Listing in the Marketplace); and

(ii) where the parties have agreed in the Subscription Form or an Order or Statement of Work that the parties' rights and obligations in relation to particular Cloud Services or Downloadable Software are regulated by Provider Standard Terms or Third Party Service Provider Terms to the exclusion of these Core I/T/MS Services Terms, clause 16.4 does not apply to the Purchasing Agency's use of the Cloud Services or Downloadable Software.

16.5 Licences to you

(a) Unless otherwise agreed in writing (including in an Order or Statement of Work):

The Purchasing Agency grants you the licences described here.

(i) the Purchasing Agency grants you a non-exclusive licence to exercise, to the extent necessary to provide the Services 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 any other Intellectual Property Rights which are owned by the Purchasing Agency, 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 16.5(a) in a manner that breaches clause 17 (Confidentiality, security, and privacy).

16.6 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.

16.7 Warranties

(a) You warrant that, subject to clause 16.7(b), the Purchasing Agency's and its Personnel's receipt or use of any Service in accordance with the Subscription Agreement or use or possession of any Deliverable (in accordance with any applicable restrictions on use or possession) will not infringe any Intellectual Property Rights of any person. This warranty is deemed to be given continuously throughout the Term of the Subscription Agreement.

Each party grants an IP-related warranty to the other.

(b) The warranty in clause 16.7(a) will not apply to any Intellectual Property Rights in any Third Party Material used in providing the Services or incorporated in any Deliverable where:

(i) the Third Party Material is Purchasing Agency Contributed Material;

(ii) the Third Party Material has been provided to the Purchasing Agency 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 16.4(d)(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 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 Services,

will not infringe any third party Intellectual Property Rights, provided that the Purchasing Agency shall have no liability under this clause 16.7(c) 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 an Order or Statement of Work to modify the application of clause 16.7(a) or (b) or (c) for Services or Deliverables covered by that Order or Statement of Work.

16.8 Intellectual Property Rights indemnity

You grant an IP indemnity to the Purchasing Agency.

(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 16.7(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 16.8 and will endeavour to make its employees available to give statements, information, and evidence as you may reasonably request.

(e) If any Services or Deliverables that the Purchasing Agency procures, or the Purchasing Agency's use or possession of any of them, infringe the Intellectual Property Rights of any person, or if the Purchasing Agency is otherwise unable to enjoy the full benefit of the Services or 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 Services or Deliverables 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 Services or Deliverables on terms acceptable to the Purchasing Agency, and pay all fees for that licence.

(f) The indemnity in clause 16.8(a) and the obligations in clause 16.8(e) do not apply to the extent that the infringement of another person's Intellectual Property Rights or 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 Services or Deliverables that have not been made by you or on your instruction; or

(iv) the combination, operation or use of the Services or Deliverables with any other software, equipment or other item that has not been specifically approved by you.

16.9 Source Materials

Unless specified otherwise in an Order or 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.

16.10 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 17.

17. Confidentiality, security, and privacy

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

17.1 Protection of Confidential Information, use of Purchasing Agency Data, and Personal Information

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

If you need to disclose confidential information to a Subcontractor or Third Party Service Provider or Local Fibre Company, you need to comply with the controls set out here.

(b) Without limiting clause 17.1(a), you may disclose the Purchasing Agency's Confidential Information to any:

(i) approved Subcontractor;

(ii) Local Fibre Company on whose services some or all of your Services rely; or

(iii) Third Party Service Provider providing services to the Purchasing Agency,

who reasonably requires such information for you to provide the Services or to otherwise perform your obligations under the Subscription Agreement, provided you ensure that any such persons to whom the Confidential Information is disclosed are:

(iv) made aware of its confidential nature;

(v) required to comply with confidentiality obligations no less onerous than those contained in the Subscription Agreement; and

(vi) required to return the Confidential Information to you or securely destroy it upon your or our written request, except to the extent that such Confidential Information is contained in their backup, archival, disaster recovery, or similar systems, or that is otherwise not reasonably accessible or practicable to delete or destroy, provided that such Confidential Information shall remain subject to confidentiality and security obligations for so long as it is retained (including obligations relating to the reporting of security incidents) and shall be destroyed in accordance with their standard data retention and deletion policies.

(c) The parties acknowledge and agree that you may be required to share the Subscription Form, Orders, and/or Statements of Work with PSC, either as part of your obligation under clause 4.8 of the Channel Terms to submit engagement notices or

otherwise on written request by PSC. This clause 17.1(c) is intended to confer a benefit on and to be enforceable by PSC.

17.2 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 Agreement or permit any third party to do so.

(b) Except as permitted in clauses 17.2(c)-(d), neither you nor any Subcontractor or any of your Third Party Service Providers may:

(i) provide any Services (or part of the 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**).

Purchasing Agency Data must only be used and disclosed in line with the Subscription Agreement. You must not provide Services or process Purchasing Agency Data from outside New Zealand unless this is detailed in your PSC-approved Offshoring Schedule or the Purchasing Agency has agreed to it in writing. The Offshoring Schedule forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings.

(c) Offshoring is permitted when:

(i) it is explicitly detailed in a consolidated schedule (**Offshoring Schedule**) that specifies, for each offshore element:

(A) the Service(s), part(s) of Service(s), and/or support roles provided from outside New Zealand, and by whom;

(B) the countries from which those Services or roles are provided; and

(C) any options available to Purchasing Agencies to select or restrict data residency and/or support locations;

(ii) PSC has approved the Offshoring Schedule; and

(iii) you clearly refer to the Offshoring Schedule in all relevant Services Listings.

(d) Offshoring is also permitted if the Purchasing Agency consents in writing to the Offshoring (including the specific Permitted Additional Territories beyond those in your Offshoring Schedule) in its Subscription Form, or in an Order or Statement of Work, or subsequently.

(e) If;

(i) your Offshoring Schedule is updated to include new offshore locations for the provision of Services or the storage or processing of Purchasing Agency Data; and

Changes to offshoring in your Offshoring Schedule don't apply to existing Orders or SOWs unless agreed.

(ii) the Purchasing Agency has not already granted consent in relation to those offshore locations (for example in its Subscription Form or an Order or Statement of Work, and either specifically or generally),

those changes will not apply to Orders or Statements of Work agreed with the Purchasing Agency before the update is published or made, unless the Purchasing Agency agrees in writing to the changes.

(f) To avoid doubt:

(i) subject to any express restriction in the Subscription Form or an Order or Statement of Work, nothing in this clause 17.2 prevents you from using telecommunications networks (which by their nature may involve international routing via the Internet) to communicate with or provide the Services, provided that:

(A) any transfer of Purchasing Agency Data outside of New Zealand (or Permitted Additional Territories) 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;

Use of telecommunications networks that involve international routing is allowed, provided data is only transferred for routing purposes and remains encrypted and inaccessible. The Purchasing Agency may seek to negotiate further restrictions on offshore locations.

(ii) nothing in this clause 17.2 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 or Offshoring Schedule when an Order or Statement of Work is entered into, or otherwise agreed with the Purchasing Agency:

(A) that your 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.

(g) 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

You must keep all Purchasing Agency Data (and backups) secure and handle it only as permitted under the Subscription Agreement.

protected and only disclosed or otherwise dealt with in accordance with the Subscription Agreement.

17.3 Security

Without limiting any other provision of the Subscription Agreement, you acknowledge that clause 2.1(q) above incorporates by reference the paragraphs of Schedule 1 (Information Security) to the Channel Terms that are listed in that clause. You will comply with those paragraphs throughout the Term.

You need to comply with a range of provisions in Schedule 1 to the Channel Terms that are incorporated by reference into the Subscription Agreement and are therefore enforceable by the Purchasing Agency.

17.4 Privacy Law compliance

To the extent relevant to their performance or consumption of the Services, each party will:

(a) comply with all applicable Privacy Laws; and

(b) not act or omit to act in a manner that, to their knowledge, would cause the other party to breach any Privacy Law.

Each party needs to comply with privacy laws.

17.5 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, in addition to your obligations described in clause 17.3:

If an actual or suspected Privacy Breach, you need to follow the processes set out here.

(a) you must notify the Purchasing Agency of the actual or suspected Privacy Breach as soon as possible on becoming aware of it and:

(i) in all cases of actual Privacy Breach, within 24 hours; and

(ii) in all cases of suspected Privacy Breach, within 48 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 reasonably necessary to protect the security of any affected Purchasing Agency Data or any affected User Personal 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 or your Third Party Service Providers, 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.

17.6 Sharing of security incident information with PSC and NCSC

The Purchasing Agency agrees that you may share with PSC 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.

18. General audit

The Purchasing Agency has a general audit right that it may exercise if it has reasonable grounds to consider you're not complying with your obligations or are rendering inaccurate invoices.

18.1 Right to audit

The Purchasing Agency may, no more than once in any 12 month period, carry out an audit for the purpose of:

(a) reviewing your compliance with the Subscription Agreement; or

(b) confirming the accuracy of any invoice,

provided:

(c) the Purchasing Agency has reasonable grounds to consider you are not complying with the Subscription Agreement or have rendered or are rendering inaccurate invoices; and

(d) the audit is not a security audit (to which clause 19 applies, not this clause 18).

18.2 Process

If the Purchasing Agency conducts an audit under this clause 18:

(a) it will be conducted on Business Days and following at least 15 Business Days' notice to you;

(b) it may be undertaken by the Purchasing Agency or an independent auditor on its behalf, with any such auditor to be under a duty of confidentiality;

(c) the Purchasing Agency or independent auditor will be required to comply with your reasonable security requirements and to use reasonable endeavours to minimise any disruption to your business during the course of the audit; and

(d) you must co-operate in a timely manner and promptly provide:

(i) access and assistance to the Purchasing Agency or the independent auditor in respect of the audit, including reasonable access to you, your Personnel and, to the extent material to the subject-matter of the audit, your records and resources used in provision of the Services, but excluding your facilities and systems, except where access is strictly necessary for the purposes of the audit and, at your election, subject to your supervised access to those facilities and systems; and

(ii) any explanations, information and documentation that the Purchasing Agency or the independent auditor may reasonably require in relation to the audit,

subject in each case to your confidentiality obligations to third parties.

18.3 Costs of audit

The Purchasing Agency and you will each bear their own costs in relation to any such audit, and the Purchasing Agency will bear the cost of any independent auditor, unless the audit reveals a material breach by you of the Subscription Agreement, in which case you will reimburse the Purchasing Agency for its actual and reasonable costs (including any independent auditor's costs) in carrying out the audit.

19. Security audit

19.1 Security audits

(a) Subject to clauses 19.1(b) and 19.5 (Minimising duplication), the Purchasing Agency may, from time to time, itself or through an agent, notify you in writing that it wishes to conduct a security audit in respect of the Services to determine your compliance with, and/or ability to comply with or perform, your obligations in the paragraphs of Schedule 1 (Information Security) to the Channel Terms referred to in clause 17.3.

(b) The Purchasing Agency may, under clause 19.1(a), conduct:

(i) an initial audit, whether prior to accepting use of the Services it has contracted to purchase, or after commencing use of the Services if it has elected to commence such use before they are certified and accredited; and

(ii) subsequent, updating audits throughout the Term due to:

(A) changes to the ICT system(s) used to provide Services to the Purchasing Agency, including updates to or the release of new versions of

The Government's Protective Security Requirements contain certification and accreditation rules that mandated agencies need to comply with and other agencies should comply with. This clause contains processes that help agencies obtain the information and assistance they need for this and other purposes and it specifies what is to happen when a security audit reveals non-compliance with security requirements.

relevant programming languages, scripts, technologies or technology approaches;

(B) the identification of new threats to the security of the Services;

(C) the Purchasing Agency having reason to believe you are not complying with your obligations described in clause 17.3; and/or

(D) any reasonable need for ongoing assurance in relation to, or certification and accreditation of, the Services,

provided that, unless the Purchasing Agency considers (acting reasonably) that there is a pressing security issue for which an audit is required, the Purchasing Agency will not conduct more than 1 audit in relation to the same Services under this clause 19 in any 12 month period.

19.2 Audit requirements

If the Purchasing Agency conducts an audit under clause 19.1:

(a) the Purchasing Agency will notify you of the reason for the audit under clause 19.1(b);

(b) the audit will be conducted during Business Days, during normal business hours, and following at least 15 Business Days' written notice to you;

(c) it may, at the Purchasing Agency's option, be undertaken by Purchasing Agency Personnel, or an independent expert approved by you (such approval not to be unreasonably withheld or delayed) (**Auditor**), with the Auditor to be under a duty of confidentiality;

(d) it may, at the Purchasing Agency's option, include security testing of your Services at an agreed date and time (agreement not to be unreasonably withheld or delayed), subject to the Purchasing Agency's compliance with your service and reasonable security requirements and to any limitations on security testing of Third Party Services or Third Party Components that form part of your Services or on which your Services rely;

(e) the Purchasing Agency will comply (and will take reasonable steps to ensure any Auditor complies) with your reasonable requirements for the purpose of protecting the security and safety of personnel, information, premises, customers, and systems;

(f) the Purchasing Agency will use reasonable endeavours to minimise (including taking reasonable steps to ensure any

An audit needs to be undertaken during business hours, by PSC Personnel or an independent expert that you approve. It might involve security testing (but we recognise there are limits to that), your reasonable security requirements will be respected, we'll try to minimise disruption, and you'll need to co-operate.

Auditor minimises) any disruption to your business during the audit;

(g) you must co-operate in a timely manner in respect of any audit; and

(h) you must promptly provide:

(i) access and assistance to the Purchasing Agency or the Auditor in relation to the audit, including reasonable access to you, your relevant Personnel, and, to the extent material to the subject-matter of the audit, your records and resources used in provision of the Services, but excluding your facilities and systems, except where access is strictly necessary for the purposes of the audit and, at your election, subject to your supervised access to those facilities and systems; and

(ii) any explanations, information and documentation that the Purchasing Agency or the Auditor may reasonably require in relation to the audit,

in each case subject to your confidentiality obligations to third parties.

19.3 Cost of audit

The Purchasing Agency will be responsible for its costs and you will be responsible for your costs in relation to any audit undertaken in accordance with clauses 19.1-19.2, unless:

(a) the Purchasing Agency undertakes an audit under clause 19.1(b)(ii)(C); and

(b) the audit reveals a material breach by you of your obligations described in clause 17.3,

in which case you will, within 20 Business Days of the Purchasing Agency's written request, reimburse the Purchasing Agency for its actual and reasonable costs of carrying out the audit.

Each party will be responsible for its own costs, unless an audit is undertaken in certain circumstances and reveals that you're in material breach, in which case you may need to reimburse PSC for its reasonable costs.

19.4 Outcome of audit

Without limiting any other provision of the Subscription Agreement or rights or remedies available to the Purchasing Agency, if an audit reveals a failure by you to comply with your obligations in the paragraphs of Schedule 1 (Information Security) to the Channel Terms referred to in clause 17.3, you will promptly remedy such failure, at your cost and to the Purchasing Agency's reasonable satisfaction. If you dispute any audit findings, the dispute will be resolved in accordance with clause 23 (Disputes).

19.5 Minimising duplication

(a) If:

(i) the Purchasing Agency notifies you under clause 19.1 that it wishes to conduct a security audit; and

(ii) PSC or another purchasing agency has conducted the same or a materially similar security audit in the 12 months preceding the Purchasing Agency's notice,

you may:

(iii) to the extent you have the relevant consents to do so, provide to the Purchasing Agency all relevant information relating to that security audit that you provided to and obtained from PSC or the other purchasing agency in relation to that audit; and/or

(iv) request the Purchasing Agency to seek from PSC or that other purchasing agency all relevant information relating to that security audit that you provided to PSC or the other agency or that PSC or that other agency otherwise holds.

If another agency has already undertaken a security audit recently, you may ask the Purchasing Agency to consider information relating to that security audit before proceeding with its own Security Audit.

(b) If you exercise the rights in clause 19.5(a):

(i) you must, where (a)(iv) applies, grant all consents to PSC or the other purchasing agency that it may require to release your information to the Purchasing Agency;

(ii) the Purchasing Agency must consider the information it receives relating to that earlier security audit before proceeding with its own security audit under clause 19.1; and

(iii) if the Purchasing Agency still wishes to proceed with its own security audit under clause 19.1, it may do so but must use reasonable endeavours to limit the scope of the audit by reference to the information already obtained from you, PSC or the other agency.

20. Liability

20.1 Purchasing Agency liability

Subject to clause 20.3 and unless agreed otherwise in a Subscription Form, Order 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, breach by the Purchasing Agency of its IP warranty or your IP rights (to which a different cap applies), each party's liability for breaching their confidentiality and security obligations (to which a different cap applies), and either party's liability for loss of or damage to tangible property (to which a different cap applies).

20.2 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 Order(s) or Statement(s) of Work

(**Purchasing Agency Default Event**).

(b) Subject to clause 20.3 and unless a higher liability cap is agreed in a Subscription Form, Order, or Statement of Work, your total aggregate liability under or in connection with the Subscription Agreement or its formation for all Losses that the Purchasing Agency suffers or incurs in any consecutive 12 month period from the Commencement Date, is limited to an amount equal to the greater of:

(i) $2,000,000 (2 million); or

(ii) two times the total amount of Fees paid to the Provider by the Purchasing Agency in relation to that 12 month period, excluding any fees or charges for resold Third Party Services where the Purchasing Agency is contracting with the Third Party Service Provider on Third Party Service Provider Terms.

20.3 Exclusions and expanded maximum liability

Clauses 20.1 and 20.2(b) will not apply to, and will not limit:

(a) your liability for any claim made under clause 16.8 (Intellectual Property Rights Indemnity) or 21 (General indemnities);

(b) the Purchasing Agency’s liability for breach of clause 16.7(c) (Intellectual Property Rights warranty) or breach of your Intellectual Property Rights, for which the Purchasing Agency’s maximum aggregate liability for all Losses in relation to all claims in any consecutive 12 month period from the Commencement Date will be limited to $1,000,000 (1 million);

(c) either party's liability for a breach of clause 17 (General confidentiality and security obligations), including the clauses and paragraphs referred to in clauses 17.1(a) and 17.3 that are incorporated by reference, for which the maximum aggregate liability of a party to the other party for all Losses in relation to all claims in any consecutive 12 month period from the Commencement Date will (unless a higher liability cap is agreed in a Subscription Form, Order or Statement of Work) be limited to $5,000,000 (5 million); or

(d) either party's liability for loss of or damage to tangible property due to an act or omission of the party or its Personnel (including in your case under the indemnity in clause 21.1(b)), for which the maximum aggregate liability of a party to the other party for all Losses in relation to all claims in any consecutive 12 month period from the Commencement Date will (unless a higher liability cap is agreed in a Subscription Form, Order or Statement of Work) be limited to $2,000,000 (2 million).

20.4 Loss of profits and revenue and indirect loss

Except for recovery under an indemnity and the payment of Fees properly due, liability for loss of profits or revenue and indirect or consequential loss is excluded.

(a) Subject to clauses 16.8 (Intellectual Property Rights Indemnity) and 21 (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:

(i) loss of profits or revenue; or

(ii) Indirect or Consequential Loss,

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

20.5 Direct loss

The categories of losses, costs and damage listed here are deemed to be direct.

The parties agree that the following categories of loss, costs, or damage are deemed to be direct losses that the Purchasing Agency is not prevented by clause 20.4(a)(ii) from recovering:

(a) Service Level Credits and liquidated damages (if any);

(b) any Losses directly caused by your breach of the Agreement that relate to:

(i) implementing and performing workarounds following a Service failure;

(ii) data recovery, including reloading, of Purchasing Agency Data to the last available back-up;

(iii) disaster recovery;

(iv) breach of your security-related obligations described in clause 17.3;

(v) replacement of equipment that is lost, stolen or damaged by you or your Personnel; and

(c) if the Subscription Agreement or an Order or Statement of Work is terminated under clause 24.1 (Termination by Purchasing Agency for cause), the additional cost of running a secondary procurement process to procure the Services from an alternative provider in the Marketplace and of transitioning the Services to that provider.

20.6 Source of liability

The limitations and exclusions of liability in this clause 20 will apply however liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.

20.7 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.

20.8 Force Majeure Event

(a) A party (the **affected party**) will not be liable for any failure or delay in performance of any of its obligations under the Subscription Agreement to the extent the failure or delay is caused by a Force Majeure Event, provided that the affected party:

(i) notifies the other party (**non-affected party**) as soon as practicable after the Force Majeure Event occurs and provides detailed information to the extent it reasonably can in the circumstances about the Force Majeure Event, including if known an estimate of the time likely to be required to overcome it;

(ii) uses all reasonable endeavours to overcome the Force Majeure Event and minimise the loss to the other party; and

(iii) continues to perform its obligations under this Agreement as far as practicable.

(b) The non-affected party shall be relieved of its corresponding obligations to the same extent the affected party is relieved of its obligations due to this clause 20.8 (for example, the Purchasing Agency will not be liable to pay for Services for any period during which you cannot provide them due to a Force Majeure Event).

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

21. General indemnities

21.1 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 in connection with the Subscription Agreement; or

(b) personal injury, death, or loss of or damage to tangible property (which, to avoid doubt, excludes software), due to an act or omission of you or your Personnel in connection with the Subscription Agreement (subject, in the case of loss of or

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

damage to tangible property, to the liability cap in clause 20.3(d)).

22. Performance issues

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

22.1 Without limiting the Purchasing Agency's other rights, if at any time you breach the Subscription Agreement (including repeated breach of Service Levels) 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 22.2.

22.2 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.

22.3 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.

22.4 Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 23.

22.5 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. A failure to implement the Remedial Plan in accordance with its terms will constitute a breach of the Subscription Agreement.

23. Disputes

23.1 Process to be followed

Subject to clause 23.5, 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.

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

23.2 Good faith negotiations

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.

23.3 Expert determination

(a) If the dispute is not resolved under clause 23.2 within 20 Business Days of a party receiving a notice under that clause, then:

(i) if any provision of the Subscription Agreement requires that the dispute will be subject to expert determination, either party may refer the dispute to expert determination by written notice to the other party; or

(ii) the parties may otherwise consent in writing at any time to refer the dispute to expert determination.

(b) The notice referring the dispute to expert determination under clause 23.3(a)(i) or the consent in writing under clause 23.3(a)(ii) must set out the specific matters in dispute to be determined by the expert (the **Disputed Matters**). The Disputed Matters will define the scope of the submissions by the parties and the expert's determination.

(c) If the dispute is subject to expert determination in accordance with clause 23.3(a), the dispute will be conducted in accordance with the following process:

(i) the expert will be appointed by agreement between the parties or, failing agreement within 10 Business Days of the date of referral under clause 23.3(a)(i) or consent under clause 23.3(a)(ii), by the President of the New Zealand Law Society (or their nominee) who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute;

(ii) the expert will be required to act on a confidential basis and as an expert, not as an arbitrator. The referral of the dispute to the expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996

and the provisions of that Act will not govern that referral;

(iii) within 10 Business Days of the expert accepting the appointment, the parties will send written submissions addressing the Disputed Matters to the expert and to each other and, within five Business Days of receiving the other party's submission, will submit any written replies addressing the Disputed Matters they wish to make to the expert and to each other;

(iv) the parties will give the expert all necessary assistance that the expert reasonably requires to determine the dispute;

(v) the expert will, unless the parties otherwise agree, be directed to deliver a written determination addressing the Disputed Matters to the parties within 10 Business Days of having received the parties' written submissions under clause 23.3(c)(iii);

(vi) the expert will have the power to compel either party to produce any information material to the dispute which that party has in its possession and which that party could be required to produce on discovery in a court proceeding to the expert and to the other party;

(vii) the expert's decision will be final and binding and, to the extent it is lawful to do so, the parties waive any right of appeal or review; and

(viii) the expert's fees will be at the parties' cost, and the expert will determine the proportion of those fees that each party will be required to pay, having regard to (amongst other things) the conduct of the parties.

23.4 Mediation

(a) If the dispute:

(i) is not resolved under clause 23.2 within 20 Business Days of a party receiving a notice under that clause; and

(ii) is not subject to expert determination in accordance with clause 23.3(a),

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**).

(b) A Mediation under this clause 23.4 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 (New Zealand) 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.

23.5 Nothing in this clause 23 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.

23.6 Subject to clause 23.5, a party to the dispute will only be entitled to pursue other remedies available to it at law or otherwise if the dispute was not subject to expert determination and the parties have failed to resolve the dispute within 30 Business Days after commencement of the Mediation.

23.7 If a dispute arises in relation to the Subscription Agreement or its formation, you will continue to provide the Services unless the Purchasing Agency requires otherwise in writing.

24. Termination

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

24.1 Termination by Purchasing Agency for cause

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

Clause 24.1 lists the grounds on which the Purchasing Agency can terminate for cause, such as material breach.

(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 or a Subcontractor undergoes or a Local Fibre Company on whose services some or all of your Services relies undergoes 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 24.1(d) the Purchasing Agency must raise its

concerns with you and give you a reasonable opportunity to address those concerns;

(e) you have a Conflict of Interest that in the Purchasing Agency's opinion (acting reasonably) is so material as to impact adversely on the delivery of the Services or the Purchasing Agency, or you fail to declare such a Conflict of Interest;

(f) you cease or threaten to cease to carry on all or substantially all of your business or operations;

(g) 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

(h) 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.

24.2 Termination by Purchasing Agency for convenience

Except to the extent agreed otherwise in the Subscription Form or in an Order or Statement of Work, the Purchasing Agency may terminate for convenience one or more Orders or Statements of Work or the Subscription Agreement as a whole, at any time by giving you at least 20 Business Days' written notice.

The Purchasing Agency can terminate for convenience (unless agreed otherwise).

24.3 Termination by Purchasing Agency due to direction from Public Service Commissioner

If the Purchasing Agency receives a lawful direction from the Public Service Commissioner under the Public Service Act 2020 restricting or prohibiting use by the Purchasing Agency of:

(a) you as a provider; or

(b) one or more of your services or products,

the Purchasing Agency may, by written notice to you, terminate the Subscription Agreement or one or more Orders or Statements of Work, but without prejudice to its right to require Disengagement Services from you.

The Purchasing Agency can also terminate if it receives a direction from the Public Service Commissioner under the Public Service Act.

24.4 Termination for Force Majeure

The Purchasing Agency may terminate its Subscription Agreement or an affected Order or 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 90 days.

The Purchasing Agency can terminate if a Force Majeure Event causes service delivery problems for 90 days.

24.5 Termination by Provider

(a) You may immediately terminate the Subscription Agreement or an Order or Statement of Work at any time by written notice to the Purchasing Agency if:

The Provider can terminate if the Purchasing Agency doesn't pay applicable Fees and for unremedied material breach.

(i) the Purchasing Agency fails to pay any Fees that are not the subject of a dispute under clause 14.4 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, Order or Statement of Work; 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 relevant part of an Order or Statement of Work in relation to any Service that is discontinued in accordance with clause 5.11 (Discontinuance of Obsolete Service). You may only terminate the Order or Statement of Work in its entirety if the only Service being provided under that Order or Statement of Work is the discontinued Service.

The Provider may also terminate relevant parts of an Order or SOW when an obsolete service is discontinued in accordance with the discontinuance clause.

24.6 Minor breaches

For the purposes of clause 24.1, repeated breaches or a series of minor breaches may constitute a material breach.

24.7 Effect of termination

(a) Except as is otherwise provided in the Subscription Agreement, termination or expiry of the Subscription Agreement or an Order or Statement of Work will not affect:

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

(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, including any remaining access to any Cloud Service through to the end of a paid-up period and any remaining licensed period for Downloadable Software; and

(ii) the provisions of the Agreement which expressly, or by their nature, survive termination or expiry, including clauses 12 (Records), 16 (Intellectual Property Rights), 17 (Confidentiality, security, and privacy), 20 (Liability),

21 (General indemnities), 23 (Disputes) and 24 (Termination).

(b) If the Purchasing Agency terminates a Statement of Work for convenience under clause 24.2, you will be entitled to recover your reasonable fees for time spent providing Services up to the date of effective termination, even if:

(i) 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

(ii) the Statement of Work is for an overall fixed price,

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

24.8 Return of property

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

(a) After expiry or termination of the Subscription Agreement, each party will, within 5 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:

(i) property; and

(ii) Confidential Information,

except to the extent that such property or Confidential Information:

(iii) is required to comply with any disengagement process;

(iv) is licensed under clause 16 (Intellectual Property Rights);

(v) is required to be retained by the Public Records Act 2005 or any other law;

(vi) is required to be retained by a party to enable it to defend itself in a dispute;

(vii) 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; or

(viii) is contained in a party's backup, archival, disaster recovery, or similar systems, or that is otherwise not reasonably accessible or practicable to delete or destroy, provided that such property or Confidential Information shall remain subject to relevant confidentiality and security obligations of the Subscription Agreement for so long as it is retained (including paragraph 15 of Schedule 1 of the Channel Terms relating to Security Incidents which is

incorporated into the Subscription Agreement by reference) and shall be destroyed in accordance with the recipient's standard data retention and deletion policies.

(b) You acknowledge your obligation to comply with paragraph 16 (Sanitisation and disposal) of Schedule 1 to the Channel Terms in relation to non-virtualised hardware and virtualised environments.

24.9 Effect of termination provisions in Provider Standard Terms

Where Provider Standard Terms apply to a particular Order or Statement of Work but not to the exclusion of these Core I/T/MS Services Terms:

(a) this clause 24 does not limit any additional and materially different termination rights a party may have under the Provider Standard Terms, but those termination rights (if any) do not apply to the Subscription Agreement as a whole; and

(b) if there is a termination right in Provider Standard Terms that is similar to a termination right in this clause 24, in that it covers the same kind of basis for termination (for example, material breach, force majeure, etc), the termination right in this clause 24 will apply to the exclusion of that termination right.

25. Disengagement

25.1 Notice of Disengagement

If the Purchasing Agency needs disengagement services, you'll need to provide them. This clause explains how that will work.

The Purchasing Agency may, at any time prior to termination or expiry of the Subscription Agreement or a particular Order or Statement of Work, notify you in writing (**Notice of Disengagement**) that it requires disengagement services from you to assist in:

(a) transitioning Services from you to itself or an alternative service provider; or

(b) a phased reduction or cessation of Services in accordance with the Subscription Agreement

(the **Disengagement Services**).

25.2 Contents

(a) The Notice of Disengagement will specify:

(i) the Disengagement Services the Purchasing Agency requires; and

(ii) subject to clause 25.2(b), the period of time for which the Purchasing Agency is likely to need those Disengagement Services (**Disengagement Period**), which the Purchasing Agency may:

(A) extend, by written notice to you at least 20 Business Days prior to the expiry of the then current Disengagement Period, for the time set out in that notice; or

(B) shorten, by 10 Business Days' written notice to you, but not for the purpose of requiring delivery of the required Disengagement Services set out in a Disengagement Plan in a compressed timeframe,

provided that if the parties have agreed in the Subscription Form or an Order or Statement of Work to longer periods of notice for extending or shortening the Disengagement Period, those notice periods shall apply instead of the periods in (A) and (B) above.

(b) The Disengagement Period (including any extension period under clause 25.2(a)(ii)(A)) required by the Purchasing Agency shall not exceed 24 months (or such shorter maximum period as may be agreed between the parties in the Subscription Form or an Order or Statement of Work), unless you and PSC agree to a longer period.

The Disengagement Period cannot exceed 24 months unless the Provider and PSC agree. PSC would be involved in its lead role at this point because 24 months is already a long period of disengagement. In addition, purchasing agencies need to try to complete disengagement as soon as reasonably practicable in the circumstances.

(c) The Purchasing Agency will use reasonable endeavours to complete disengagement as soon as reasonably practicable and will not require disengagement services for longer than is reasonably necessary, taking into account the potential to commence disengagement planning before expiry of the final term, procurement lead times (including accelerated lead times when re-procuring by way of secondary procurement through the Marketplace), and the complexity of the disengagement.

25.3 Limitation on Disengagement Period

The Purchasing Agency acknowledges that if the Services in respect of which Disengagement Services are required include resold Third Party Services for which the Purchasing Agency has a direct contract with the Third Party Service provider, the duration of the Disengagement Period in relation to those Third Party Services may be limited by the applicable Third Party Service Provider Terms or by the period for which the Third Party Service Provider continues to provide the Third Party Service.

25.4 No refusal

You may not refuse a request for Disengagement Services under clause 25.1.

25.5 Disengagement Plan

(a) You will prepare, and submit to the Purchasing Agency within 20 Business Days of the Notice of Disengagement, a draft of a plan which specifies the processes, procedures, tasks, resources and Personnel to be used to effect the seamless migration of responsibility for the provision of the Services and/or the phased reduction or cessation of the Services, as applicable (**Disengagement Plan**). You are entitled to charge for time reasonably spent in preparing the draft Disengagement Plan, at the rates specified in clause 25.8(a)(i)-(iii), provided you have given the Purchasing Agency an estimate of costs before preparing the draft plan.

Following your receipt of a Notice of Disengagement, you need to prepare a Disengagement Plan. You can charge the time you reasonably spend doing so but you need to have given the Purchasing Agency an estimate.

(b) The Purchasing Agency may request changes to the draft Disengagement Plan and the parties will use all reasonable endeavours to agree the Disengagement Plan within 20 Business Days of the Purchasing Agency's receipt of the draft.

(c) If the Disengagement Plan is not agreed within that period (agreement not to be unreasonably withheld or delayed by either party), a position paper is to be prepared by the Purchasing Agency, in consultation with you, outlining the areas of dispute, for submission to expert determination under clause 23.3.

25.6 Contents of Disengagement Plan

Except to the extent the Purchasing Agency agrees otherwise, the draft Disengagement Plan you prepare in accordance with clause 25.5 shall address the following matters to the extent relevant to the nature of the Services for which Disengagement Services are required:

(a) the management structure (including the involvement of a Disengagement Manager you will appoint within 10 Business Days of the Notice of Disengagement) and roles and responsibilities of the Personnel to be used for the Disengagement Services;

(b) the tasks to be performed by you and the Purchasing Agency (with relevant timeframes) to effect Disengagement;

(c) the Services that will continue to be provided during some or all of the Disengagement Period and, if relevant, expected volumes and changes from commencement to cessation of the Disengagement Period;

(d) handover plans (for Disengagement deliverables and for the delivery or return to the Purchasing Agency of any relevant property, materials, or other assets vested in the Purchasing Agency), data migration processes, ramp-down procedures for the Services, and sign-off criteria for specified Disengagement-related tasks;

(e) plans for providing the current configuration of the Services to the Purchasing Agency or a successor provider and for secure migration of any data held (including timeframes, format(s), cost, and activities);

(f) a timetable incorporating staged cutovers of different Services;

(g) if relevant, a description of the assistance you will provide the Purchasing Agency to acquire rights to access and use any third-party software, equipment or documentation used to provide the Services;

(h) key dependencies and risks;

(i) risk mitigation planning, including provision for parallel running (where practicable) and fallback contingency in the event of disruption;

(j) the rights of access to your Personnel to effect Disengagement;

(k) consultancy and training support services to be provided;

(l) the rights of access to, and use of, any premises owned or leased by you and used in providing the Services (if any), subject to any applicable confidentiality, security and health and safety procedures;

(m) any additional requirements (where relevant) for handling security-related data, logs, or credentials to maintain continuity or compliance;

(n) data sanitisation, disposal and destruction processes that accord with NZISM requirements and Good Industry Practice;

(o) post-Disengagement review processes; and

(p) any other matters reasonably required by the Purchasing Agency.

25.7 Continued provision of Services

During the Disengagement Period, you will:

(a) continue providing the Services in accordance with the Subscription Agreement, except to the extent otherwise provided by the terms of the Disengagement Plan; and

(b) provide the Disengagement Services in accordance with the Disengagement Plan, including to meet milestones set out in the plan.

25.8 Payment for Disengagement Services

(a) Subject to clause 25.8(b), and unless otherwise agreed by the parties in writing, the Purchasing Agency will pay you for the Disengagement Services:

(i) at the Services Rates agreed in a current Order or Statement of Work applicable to the type of work being undertaken, either by role or equivalence; or

(ii) if you have not agreed Service Rates in a current Order or Statement of Work, your published Services Rates in your Services Listings applicable to the type of work being undertaken, either by role or equivalence; or

(iii) if you have not published Services Rates in your Services Listings, reasonable rates applicable to the nature of the work.

(b) If the Purchasing Agency has terminated the Subscription Agreement or relevant Order or Statement of Work for cause under clause 24.1 and was entitled to do so, the Purchasing Agency is not required to pay you for the Disengagement Services.

26. General

26.1 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 if it has your written consent to do so (such consent not to be unreasonably withheld or delayed). This clause 26.1(b) does not limit Schedule 9 (Reorganisations in public service) of the Public Service Act 2020.

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, variations, governing law, electronic signatures and contract document counterparts, and further assurances.

26.2 No waiver

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

(b) No provision of the Subscription Agreement will be considered waived by a party unless that party waives the provision in writing.

(c) The parties will not treat a waiver by a party of any breach as a waiver of any continuing or re-occurring breach, unless the parties have expressly agreed to do so in writing.

26.3 Invalid clauses

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

26.4 Relationship

The Subscription Agreement will not create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, except to the extent expressly stated otherwise (including in an Order or 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.

26.5 Entire agreement

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

26.6 Remedies cumulative

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

26.7 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 26.7(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 26.7(b)(i) is deemed received at the time of delivery;

(ii) clause 26.7(b)(ii) is deemed received upon actual receipt and acknowledgment by the recipient (whether by manual or automated means, but excluding automated replies that the email has been blocked or has otherwise not reached the intended recipient); and

(iii) clause 26.7(b)(iii) is deemed received 3 Business Days after (but exclusive of) the date of posting.

(d) For the purposes of this clause 26.7 your and the Purchasing Agency's address details are set out in the Subscription Form.

26.8 Variations

Variations to the terms of the Subscription Agreement not processed in accordance with clause 13 (Change Procedure) must be agreed by the parties and recorded:

(a) in writing and signed by the parties; or

(b) through an exchange of emails,

where the signatories or authors have delegated authority to approve the variation.

26.9 Governing Law

The Subscription Agreement is governed by New Zealand law. Without limiting clause 23.5, the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Subscription Agreement and its formation.

26.10 Electronic signatures and counterparts

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

(a) electronically, using any technological means acceptable to the Purchasing Agency; and

(b) in any number of counterparts (including scanned PDF copies) all of which, when taken together, will constitute one and the same agreement. A party may enter into the Subscription Agreement or an Order or Statement of Work by signing any counterpart.

26.11 Further assurances

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

27. Definitions and interpretation

27.1 In the Subscription Agreement, the following terms have the following meanings and references to clauses are to clauses in

These terms have the particular meanings given to them.

these Core I/T/MS Services Terms, unless the context requires otherwise:

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 need to be collected by the provider for payment to PSC) when purchasing agencies procure services through or via the Marketplace;

Authorised Third Party means any third party provider PSC authorises to enter into a Subscription Agreement in accordance with clause 7 of the Channel Terms;

Business Day means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003 or any replacement legislation) 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 13.2;

Change Procedure means the procedure for changes specified in clause 13 (including as extended in the context of cooperation with Third Party Service Providers by clause 6.2);

Change Request has the meaning in clause 13.2 (including as extended in the context of cooperation with Third Party Service Providers by clause 6.2);

Channel Terms means the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services (Standard);

Classification System means the information classification system in the PSR available at protectivesecurity.govt.nz/classification or successor URL;

Cloud Service means a service delivered over the internet on demand in the nature of a platform as a service offering or a software as a service offering that comprises, or is part of, or is provided in connection with, an Infrastructure Service, Telecommunications Service, or Managed Security Service, including if relevant a support plan;

Commencement Date means the date on which the Subscription Form is signed by both parties or, if signed on different dates, the later of the two dates;

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:

(a) the Purchasing Agency Data; and

(b) all information with a protective marking under the Classification System in the PSR, from IN-CONFIDENCE to TOP SECRET and/or a policy and privacy endorsement marking under that system;

Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings means a schedule you complete using a template provided by PSC that contains, as applicable, the Subcontractor/TPSP/LFC Schedule, Offshoring Schedule, and potentially other information that may be common across some or all of your Services Listings;

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, such that the party's or its Personnel's independence, objectivity, or impartiality can be called into question;

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;

Critical Milestone means a Milestone agreed in the Subscription Form or an Order or Statement of Work to be a 'Critical Milestone' or 'Key Milestone';

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 agreed and specified in each Order or Statement of Work (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 specifically for and at the request of the Purchasing Agency, as agreed and specified in an Order or Statement of Work, but does not include, if relevant, your Cloud Services or Downloadable Software;

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;

Disengagement means the migration of responsibility for providing the Services from the Provider to a successor provider or the Purchasing Agency and/or a phased reduction or cessation of Services, in accordance with clause 25;

Disengagement Services has the meaning in clause 25.1;

Downloadable Software means software that can be downloaded or otherwise obtained in digital form and that is provided in connection with an Infrastructure Service, Telecommunications Service, or Managed Security Service;

Eligible Agency has the meaning in clause 24.1 of Part 1 (General Terms) of the Collaborative Marketplace Agreement (available at marketplace.govt.nz) but includes, for the purposes of the Infrastructure Services Channel, the Telecommunications Services Channel, and the Managed Security Services Channel, any Authorised Third Party;

End Date has the meaning in clause 1.1(b);

Equipment means any and all tangible assets (including hardware, equipment, cables, fibre and other items, materials or devices) purchased by, or otherwise supplied to, the Purchasing Agency under the Subscription Agreement and that is (or is to be) owned by the Purchasing Agency or its nominee;

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

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

Fees means the fees set out or to be set out in the Subscription Form and/or any or all Orders and Statements of Work (including where relevant by way of cross-referencing to the applicable Services Listing(s));

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) epidemic or pandemic;

(b) earthquake, tsunami, volcanic eruption, flooding or other natural disaster;

(c) an act of public enemy, or declared or undeclared war or threat of war; or

(d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party),

but not including:

(e) any event or circumstance, or any failure to comply with any term of the Subscription Agreement arising from such event or circumstance, that:

  (i) is constituted or caused by the insolvency of either party or a Subcontractor or contractor of the party seeking to rely on clause 20.8 or lack of funds for any reason; or

  (ii) could have been avoided by the Affected Party's exercise of reasonable business continuity or other reasonable business practices; or

  (iii) is constituted or caused by any failure of a Subcontractor or contractor of the party seeking to rely on clause 20.8 unless and to the extent that the Subcontractor or contractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event;

(f) cyber incidents, hacking events, or other cybersecurity-related occurrences unless they could not have been prevented by commercially reasonable and industry-standard cybersecurity measures or protocols; or

(g) failure or non-performance of the Services arising from the unavailability or malfunction of geographically separate or redundant infrastructure to which services at an adversely affected primary location should fail over, unless the unavailability or malfunction is itself caused by a Force Majeure Event;

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

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

GST Act means the Goods and Services Tax Act 1985;

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

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

Infrastructure Services means the service establishment services, transition services, data centre services, utility compute services, storage services, backup/restore services, professional services, and any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Infrastructure Services Channel and which are to be provided to the Purchasing Agency under the Subscription Agreement as specified in the Subscription Form or an Order or Statement of Work;

Initial Term has the meaning in clause 3 of the Subscription Form;

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;

Interface means those interface components used by you to enable interoperability between your Infrastructure and the Purchasing Agency Environment and any other information technology or telecommunications systems with which the Services are to interact or to enable data import or data export (from and to different technical environments or across different data formats);

Local Fibre Company means any person or organisation:

(a) that owns, controls, or operates a fixed access fibre network in New Zealand used to provide fibre-based telecommunications or data connectivity services; and

(b) that provides access to that network on a wholesale or access basis to telecommunications service providers; and

(c) whose network you unavoidably rely upon as part of the fibre access component of your own telecommunications or data connectivity Services, in order to deliver those Services to or at one or more particular Sites,

whether or not that person or organisation is subject to regulation under the Telecommunications Act 2001 in respect of fibre access services;

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

Major Security-Related Service Impacting Event means a Service outage or impairment caused or probably caused by a security-related incident that:

(a) results in complete or substantial unavailability of a Service that is critical to purchasing agencies' business operations for a period of 2 hours or more; or

(b) triggers invocation of your BC Plan or DR Plan;

Managed Security Services means the secure gateway services, secure application delivery services, device security services, identity and authentication management services, certificate management and cryptography services, secure cloud access services, secure filtering services, security operations and monitoring services, professional services, and/or any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Managed Security Services Channel and which are to be provided to the Purchasing Agency under the Subscription Agreement as specified in the Subscription Form or an Order or Statement of Work;

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;

Milestone means a milestone set out in an Order or Statement of Work, including any Transition Milestone set out in a Statement of Work for Transition Services, and any disengagement milestone set out in a Disengagement Plan;

Milestone Date means the date by which a Milestone needs to be met or fulfilled, as set out in the relevant Order or Statement of Work or Disengagement Plan;

Minimum Initial Term means a term that the parties have agreed in the Subscription Form is a term during which the Purchasing Agency will procure Services and which may be part or all of the Initial Term;

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

NZISM means the New Zealand Information Security Manual available at https://nzism.gcsb.govt.nz/ or successor URL, as may be updated from time to time;

Obsolete Service means a Service that you reasonably consider:

(a) has or will become obsolete or redundant; or

(b) is no longer commercially viable for you to provide; or

(c) is no longer consistent with the strategic direction of your organisation;

Order means an order for specified Services, described in a Subscription Form (or attachment to it) or other order documentation agreed from time to time;

Offshoring Schedule means the schedule referred to in paragraph 10.3(a) of Schedule 1 to the Channel Terms and which forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings;

Permitted Additional Territory means any country or region other than New Zealand from which the Services or any part of the Services (such as support) may be provided or in which Purchasing Agency Data may be stored or processed, on the basis of:

(a) disclosure in your Offshoring Schedule; or

(b) in relation to the Purchasing Agency, any further countries or regions being described as 'Permitted Additional Territories' in the Subscription Form or an Order or Statement of Work,

as described in clause 17.2 (Purchasing Agency Data);

Personal Information means information about an identifiable individual;

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

Price means a price you charge for particular Infrastructure Services, Telecommunications Services, or Managed Security Services;

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

Privacy Breach means:

(a) unauthorised or accidental access to, or disclosure, alteration, loss or destruction of, 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;

Provider Assets means all of the tangible and intangible assets (including software, hardware, facilities, equipment, documentation

or other items, materials or devices) owned by or leased to the Provider and used by or for the benefit of the Provider to provide or enable the provision of the Services;

Provider Standard Terms means your own terms relating to access to and use of your own Cloud Services or to the licensing of your own Downloadable Software that, if agreed to apply, are:

(a) referred to in the 'Provider Standard Terms' section of Schedule 1 to the Subscription Form and/or in an Order or Statement of Work, as applicable; and

(b) incorporated with a Purchasing Agency's consent into a Subscription Agreement (subject to its precedence provisions unless otherwise agreed);

PSC means the Public Service Commission;

PSR means the Government's Protective Security Requirements (of which the NZISM is a part) at https://protectivesecurity.govt.nz;

Purchasing Agency has the meaning in the Subscription Form;

Purchasing Agency Assets means all of the tangible and intangible assets (including Software, Equipment, hardware, facilities, equipment, documentation, capacity, cables, fibre or other items, materials or devices) owned by the Purchasing Agency, or leased or licensed to the Purchasing Agency by a third party and used by or for its benefit to receive the Services;

Purchasing Agency Contributed Material means Existing Material that the Purchasing Agency provides to you, or arranges for the provision to you, for inclusion in a Service or Deliverable;

Purchasing Agency Data means all data, information, records, lists and configurations (including compilations of the foregoing) that the Purchasing Agency, any Purchasing Agency Personnel, Users, or you on behalf of the Purchasing Agency, input into the Services or that arise from their use of the Services and, to avoid doubt:

(a) includes (subject to (b)(ii)) data you or your systems generate solely in connection with your performance of Services under the Subscription Agreement; but

(b) does not include:

  (i) aggregated and fully de-identified statistics that you or your Services generate relating to customers' use of your Services; and

  (ii) administrative data created or collected by you in your systems for the purposes of managing this Subscription Agreement, and legal, financial, contract administration, planning, and purchasing information (other than any

information copied from the Purchasing Agency Environment);

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;

Security Incident means:

(a) any unauthorised person or entity has obtained access to the technology systems used for the Services or to any Purchasing Agency Data or has obtained unauthorised access to a Purchasing Agency Environment;

(b) any person or entity has, in connection with the Services or through the systems used for the Services, used, disclosed, or modified any Purchasing Agency Data for purposes not authorised or permitted by the Subscription Agreement; or

(c) a Major Security-Related Service Impacting Event affecting one or more of the Services has occurred due to what is known or suspected to be a security-related incident;

Service Delivery Asset means a Provider Asset or Purchasing Agency Asset, as applicable;

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 Services Listing, the Subscription Form, or an Order or Statement of Work (if any), or applicable Provider Standard Terms (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, the Subscription Form, or an Order or Statement of Work, including applicable Provider Standard Terms (if any);

Service Volume Change has the meaning in clause 13.1;

Services means:

(a) Infrastructure Services, Telecommunications Services, and/or Managed Security Services, as applicable;

(b) Transition Services;

(c) Disengagement Services; and

(d) any Third Party Service resold by the Provider under a Services Listing and which is to be provided to the Purchasing Agency under the Subscription Agreement as specified in the Subscription Form or an Order or Statement of Work;

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

Services Rates means the rates charged for Services, when you charge on a time, materials and/or other unit-based basis;

Site means a 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;

SOW End Date means the expiry date, or the date by an equivalent name, specified in a Statement of Work;

SOW Start Date means the start date, or the date by an equivalent name, specified in a Statement of Work;

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

Subcontractor means a person, business, company or organisation to whom you propose to subcontract or have subcontracted any part of your obligations under the Subscription Agreement in accordance with paragraph 9 (Subcontractors and Third Party Service Providers) of Schedule 1 (Information Security) to the Channel Terms but does not include:

(a) 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); or

(b) in relation to any Third Party Service resold in accordance with clause 5 of the Channel Terms (which is incorporated by reference into these Core I/T/MS Services Terms by clause 2.1(k) above) in circumstances where Third Party Service Provider Terms apply to the Purchasing Agency's consumption of the Third Party Service, the relevant Third Party Service Provider; or

(c) Local Fibre Companies;

Subcontractor/TPSP/LFC Schedule means the consolidated schedule of Subcontractors, Third Party Service Providers and Local Fibre Companies maintained in accordance with paragraphs 9.5 and 9.7 of Schedule 1 to the Channel Terms and which forms part of the Consolidated Schedule of Provider Information Common Across I/T/MS Services Listings;

Subscription Agreement means the agreement under which the Purchasing Agency is able to purchase Services listed in the Infrastructure Services Channel, Telecommunications Services Channel, and/or Managed Security Services Channel of the Marketplace, comprising a Subscription Form, these Core I/T/MS Services Terms, any Extra Terms that apply, any Provider Standard Terms that are agreed to apply, and all Orders and Statements of Work;

Subscription Form means the form the parties complete to create a Subscription Agreement, using the template in Annexure A to the Channel Terms;

Sunk Costs means costs specified in an Order or Statement of Work that are:

(a) upfront costs you have incurred directly and reasonably in performing the terminated Services, the recovery of which has been deferred or spread over the Minimum Initial Term; and/or

(b) non-cancellable third-party costs you have incurred directly and reasonably in performing the terminated Services,

to the extent not previously recovered as part of the Fees paid or payable by the Purchasing Agency, but excluding any amounts or costs that could have been reduced or avoided by taking reasonable mitigation steps;

Telecommunications Services means the service establishment services, transition services, telecommunications services, technology services, professional services, and any other services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the Telecommunications Services Channel and which are to be provided to the Purchasing Agency under the Subscription Agreement as specified in the Subscription Form or an Order or Statement of Work;

Term has the meaning described in clause 1;

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

Third Party Service means a 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;

Transition Services means the transition services described as such in a Statement of Work;

Usage Metrics means the parameters for determining the permitted access and use of, and/or the Fees for the use of, the applicable Service, as described or cross-referred to in the applicable Order, Provider Standard Terms, or Statement of Work;

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

User Documentation means your standard documentation that describes the features and functions and use of particular Services, that you provide to the Purchasing Agency, and that may include release notes, specifications, user guides, and deployment and configuration manuals.

27.2 The Background section of these Core I/T/MS Services Terms forms part of these Core I/T/MS Services Terms and has legal effect.

27.3 In the event of inconsistency between:

(a) terms of the Collaborative Marketplace Agreement that, under clause 2.1 of these Core I/T/MS Services Terms, are incorporated by reference into the Subscription Agreement; and

(b) other provisions in these Core I/T/MS Services Terms;

the other provisions in these Core I/T/MS Services Terms will prevail.

27.4 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 "for example" (or similar words) are used, they are deemed to be followed by the words "without limitation";

(g) except as otherwise expressly stated, monetary references are references to New Zealand currency; and

(h) if there is any conflict between the terms of the Subscription Agreement, the order of precedence stated in clause 1.4 of the Subscription Form will apply.

27.5 Any act, omission or misconduct in connection with the Subscription Agreement by any employee, contractor, Subcontractor or agent of a party to the Subscription Agreement, is deemed to be the act, omission or misconduct of that party.

Schedule: Statement of Work templates

Introduction

This Schedule attaches the following Statement of Work templates that are relevant to the kinds of services Purchasing Agencies can procure under the Infrastructure Services Channel, Telecommunications Channel, and Managed Security Services Channel:

- **Statement of Work template (Transition Services)**: This SOW template can be used when the services a Purchasing Agency procures include services to transition the agency from pre-existing arrangements to services in any of the Channels above.
- **Statement of Work template (General)**: This is a general SOW template that can be used for a wide range of professional services.

The templates have been designed to interface with the Core I/T/MS Services Terms.

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, to accommodate the parties' requirements, and/or to enable the parties to agree to a statement of work. Subject to the next point below, the specimen wording is not intended to be mandatory for all statements of work.
- As noted in clause 3.8 of the Core I/T/MS 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.
- If the parties agree to use an alternative statement of work template, it is their responsibility to ensure it interfaces with the Core I/T/MS Services Terms and includes a paragraph that draws the Purchasing Agency's attention to the requirement to pay any applicable Administration Fee.
- Please note that the Statements of Work in these Channel Terms are intended primarily for professional or similar services, not the core technology services that will be procured. The core technology services are best procured through Orders, the first of which can be found in Schedule 1 to the Subscription Form. That initial order can be varied by Service Volume Changes (including via any specific procedure agreed in the Subscription Form), Change Requests (for changes that are not Service Volume Changes), or simple variations. If, for some reason, the parties wished to agree upon an entirely new Order not using the methods just mentioned, they could use Schedule 1 to the Subscription Form as a starting point, modified as required to reflect the fact that the Services are not the Services ordered at the Commencement Date.

Marketplace

Statement of Work (Transition Services)

Introduction

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

Parties and Subscription Agreement / Statement of Work details

Provider:	[insert full name of Provider and, if a company, the company number or NZ business number] (**Provider**, **you**, **your**)
Purchasing Agency:	[Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (**Purchasing Agency**, **we**, **us**)
SOW for:	[insert short description]
SOW #:	[insert number]
Under Subscription Agreement dated:	[insert date]
SOW Term	The SOW commences on the SOW Start Date and, unless terminated earlier in accordance with the Subscription Agreement, ends on the SOW End Date. The SOW Term may be extended upon written agreement between the parties. If the SOW remains in effect on the Subscription Agreement's End Date, it shall end on that date, unless the Services to which the SOW relates are required for Disengagement in which case the end of the SOW shall be determined in accordance with clause 1.5 of the Core I/T/MS Services Terms.
SOW Start Date	[Insert commencement date of work under SOW]
SOW End Date	[Insert end date of work under SOW or an event upon which the SOW ends such as 'Successful completion of the Transition Services']

Services

1. Definitions	[This row includes definitions the parties may need in this SOW. Amend, delete and/or supplement as required.] 1.1 In this SOW, the terms below have the meanings given to them unless the context requires otherwise:

	Requirements means, as applicable: (a) requirements that your Services need to meet to which you agreed when applying for the relevant Services Listing(s) and/or in one or more Orders or Statements of Work; (b) requirements that your Services need to meet that are contained or cross-referenced in, or attached to, your Services Listing(s); (c) representations by you of a Service's technical attributes and/or performance characteristics or metrics contained or cross-referenced in, or attached to, your Services Listing(s); and (d) if acceptance criteria are set out in this Statement of Work or a Transition Plan, those acceptance criteria; **Transition Milestone** means a milestone identified as such in this SOW or, if applicable, a Transition Plan; **Transition Milestone Date** means each due date for achievement of a Transition Milestone, set out in this SOW or, if applicable, a Transition Plan; **Transition Period** means the period from the SOW Start Date until the date on which all of the Transition Milestones set out in this SOW or a Transition Plan are completed in accordance with this SOW; **Transition Plan** means the operative document which sets out the plan for the conduct of the Transition Services, if the parties elect to prepare a Transition Plan after commencement of this SOW rather than setting out all transition planning matters in this SOW itself; **Transition Services** means the services to be performed by you under this SOW and the terms of the Subscription Agreement during the Transition Period which are [if applicable: described in your Services Listing(s) for [identify the relevant Services Listings]] [and] specified in detail in this SOW and, if applicable, a Transition Plan; and **User** means any person using, or interacting with, the Services under the Subscription Agreement, including the Purchasing Agency and its Personnel.
2. General obligations	2.1 You will: (a) adopt a high-quality, low-risk transition strategy; (b) comply with our release management (including testing) processes; and (c) adopt a collaborative and constructive approach, including by means of liaison with our specified business owners. 2.2 The objectives of the Transition Services are to: (a) successfully transfer services from our existing provider to you with minimal disruption; (b) plan, finalise and implement design and planning documentation in order to meet the Transition Milestone Dates; (c) complete the Transition Services on time and to the agreed scope, quality and cost. 2.3 Without limiting your obligations under the Subscription Agreement, you will provide the Transition Services described in this Statement of Work for the Transition Period: (a) in accordance with: (i) any description of the procured transition services in your Services Listing(s) (if any); and (ii) this Statement of Work (which shall prevail in the event of inconsistency with a description in your Services Listing(s)); and (b) with minimum disruption to, or material adverse impact on, the

	Purchasing Agency Environment (or any part of it) except to the extent expressly agreed in writing with the Purchasing Agency (in this Statement of Work or otherwise).
3. Services to which Transition Services relate	3.1 The [Infrastructure Services / Telecommunications Services / Managed Security Services] we are procuring from you are [*either* as described in [cross-refer to an Order that describes the Services] *or* as follows: [list or summarise them below] *or* are listed in the [attachment] to this SOW].
4. Transition Plan	[Optional: If the parties wish to enter into the SOW before agreeing on detailed elements of transition, such as Transition Milestones and Transition Milestone Dates and other matters (which might be the case if they need to have exploratory meetings and the like first), they can use and if necessary modify the default drafting in this row. By contrast, if they wish to include all relevant matters in this SOW before signing, state 'Not applicable'.] 4.1 You will, within [10/20] Business Days of the parties entering into this SOW, prepare a draft Transition Plan for discussion with the Purchasing Agency. The parties will use all reasonable endeavours to agree and finalise the Transition Plan within [10/20/30] Business Days of the Purchasing Agency receiving the draft Transition Plan. 4.2 Once agreed, you shall provide the Transition Services in accordance with this SOW and the Transition Plan. 4.3 The Transition Plan will: (a) describe how transition from the Purchasing Agency's existing services to the Services will occur; (b) include detailed timelines for the Transition Period, including Transition Milestones and Transition Milestone Dates; (c) specify the tasks, resources, and Personnel to be used to effect the Transition Services, including back-out plans in the event you fail to meet any Transition Milestone by the Transition Milestone Date; (d) specify the resources, information, obligations and other inputs on which performance of the Transition Plan is dependent; (e) specify the processes and procedures to give effect to the seamless migration of responsibility for the provision of the Services; (f) include a detailed description of: (i) the management structure and roles and responsibilities of the Personnel to be used for the Transition Services; (ii) the tasks to be performed to effect transition from the Purchasing Agency's existing services to the Services, including where relevant for each Site; (iii) key dependencies and risks; and (iv) risk mitigation planning, including provision for parallel running (where practicable) of existing and new environments and "fall-back" contingency planning in the event of disruption to Users or the Purchasing Agency Environment during the Transition Period; and (g) identify tools and methodologies to be used when performing the Transition Services. 4.4 The Transition Plan must: (a) be complete and in the form of a single document; (b) be realistic in terms of timeframes, tasks and Personnel; (c) be clear and unambiguous; (d) conform to its description and be fit for its purpose;

(e) not impose unreasonable obligations or requirements on the Purchasing Agency;

(f) be of professional quality; and

(g) be factually correct.

4.5 You will keep the Purchasing Agency informed at regular intervals while preparing the Transition Plan so that the Purchasing Agency's Personnel who are to review the final Transition Plan have reasonable knowledge of its content by the time such Transition Plan is completed.

4.6 You acknowledge that the Purchasing Agency is relying on your professional skill and expertise in preparing the Transition Plan and that any review or comment by the Purchasing Agency shall not be taken as acceptance of the Transition Plan as necessarily suitable or fit for its intended purpose.

4.7 Any Transition Plan must be agreed by the parties in writing.

5. Transition Services and Deliverables

[Points to note:

Describe the Transition Services and Deliverables in reasonable detail. (You may wish to describe a high level timeline here, but specific Transition Milestones and Transition Milestone Dates associated with Deliverables or with other events or processes can be set out in the Transition Milestones table in the row after this one.).

If you prefer not to use the transition services and deliverables table below, it can be deleted.

When considering the scope of the transition services and what should be specified below, consider whether you need to address topics like a 'Proof of concept laboratory', 'Pilot sites', 'Change management', 'Risk and issue management'.

[Complete/amend/delete as required]]

Scope

5.1 Transition Services and Deliverables

You will perform the following Transition Services and provide the following Deliverables:

(a) …

(b) …

(c) …

or

You will perform the following Transition Services and provide the following Deliverables:

Transition Service (Name and description)	**Deliverable** (Name and description)
[**Transition Service name**] [Describe the Service/transition task].	[**Deliverable name**] [Describe the Deliverable, including any performance or quality measures].
[**Transition Service name**] [Describe the Service/transition task].	[**Deliverable name**] [Describe the Deliverable, including any performance or quality measures].
[add rows for additional Services/tasks as required]	[add rows for additional Deliverables as required]

High level timeline

	5.2 Unless otherwise agreed during the course of the transition, you must: (a) … (b) … (c) … **Out of scope** **[optional]** [If it is helpful to state clearly what is *out* of scope, set that out here. If not, delete this 'Out of scope' section.] 5.3 The following [activities/services/deliverables] are out of scope: (a) … (b) … (c) … **Involvement of other providers** **[optional]** 5.4 [If other providers are involved in the transition project, set that out here and describe what is required in terms of co-operation with them. (There is a general co-operation obligation in clause 6 of the Core I/T/MS Services Terms.) If not, delete this 'Involvement of other providers' section.]
6. Interfaces (Ref: Clause 5.5 Core I/T/MS Services Terms)	[If the Provider is to be responsible for implementing, operating and maintaining Interfaces (as defined in clause 27 of the Core I/T/MS Services Terms), the Interfaces for which the Provider is to be responsible need to be specified. 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 clause 5.5 of the Core I/T/MS Services Terms, the differences need to be stated here too. If Interfaces are not relevant, you can say 'Not applicable'. If they are relevant, you may also wish to discuss them in more detail in the Services description in row 5.]
7. Transition Milestones (Ref: Clause 5.4 Core I/T/MS Services Terms)	[Insert relevant Transition Milestones and their corresponding Transition Milestone dates. Points to note: • Milestones are often specific Deliverables but they can also be the holding of meetings or workshops, or the completion of processes (such as acceptance testing). • Remember to include documentary deliverables where relevant, such as any architecture of other design documentation and as-built/configured documentation. 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? • Where an architecture design is required, your agency may need to accept the design before implementation commences; if so, that should be factored into the description of milestones/deliverables. • Where a solution is being developed or configured that will go into production, your agency will most likely need to accept the solution before deployment to production and that should be specified. • If user training and/or training materials are required, specify who is responsible for that and by when. • Consider whether operational handover documentation is required and, if so, the responsibilities for preparing it.] You will meet the following Transition Milestones by their corresponding Transition Milestone Dates. **No.** | **Transition Milestone** | **Transition Milestone Date**

1		By [insert date]
2		By [insert date]
3		By [insert date]
4		By [insert date]
5		By [insert date]

[Depending on the kinds of services your agency is procuring, you might also need a site-specific timetable. If so, you can use/modify the table below, adding introductory text as appropriate.]

Site	Date
[insert date]	By [insert date]
[insert date]	By [insert date]
[insert date]	By [insert date]

Or

You will meet the Transition Milestones recorded in the Transition Plan by the corresponding Transition Milestone Dates set out in the Transition Plan.

8. Testing and acceptance

(Ref: Clause 5.8 Core I/T/MS Services Terms)

[The following testing and acceptance provisions are more detailed than the default provisions in clause 5.8 of the Core I/T/MS Services Terms. That reflects the potentially complex nature of transitioning to new telecommunications or infrastructure services from a previous provider or previous services. If the transition is not complex, or if the parties prefer, they can adapt the provisions below, or rely instead on the default acceptance provisions in clause 5.8 of the Core I/T/MS Services Terms.]

Provider testing

8.1 You will perform:

(a) functional testing to test that each different technical environment required to give Users the full benefit of the Services performs the functions it is intended to perform (as described by the Requirements and any other applicable terms of the Subscription Agreement), by itself and with those other technical environments with which it is to interact (including the Purchasing Agency Environment); and

(b) any other testing required to satisfy you that:

(i) the Services will meet the Requirements and the applicable Service Levels; and

(ii) the Purchasing Agency's testing may proceed.

8.2 You will permit the Purchasing Agency to observe the conduct of your testing and will otherwise keep the Purchasing Agency informed of the progress and conduct of your testing.

8.3 At the completion of your testing you will deliver to the Purchasing Agency:

(a) the documentation and other materials providing objective evidence that the purposes of your testing have been met;

(b) unless not required by the Purchasing Agency, copies of all test plans, test cases, tests scripts (including those concerned with the loading of data or the maintenance of data integrity) and expected results utilised in your testing; and

(c) the actual results of all testing undertaken as part of your testing, including details of all Transition Problems (as defined in paragraph 8.6 below).

Purchasing Agency testing

8.4 The purpose of the Purchasing Agency's testing is to assist the Purchasing Agency to determine whether the Services operate and perform in satisfaction of the Requirements and otherwise in accordance with the Subscription Agreement.

8.5 You will provide assistance, information, and resources to the Purchasing Agency for its testing to the extent reasonably required by the Purchasing Agency.

8.6 If the Purchasing Agency identifies any defect or error (including any deviation from the Requirements) during testing (**Transition Problem**) it shall provide a report to you (**Problem Report**) specifying:

(a) the activities being undertaken during the test(s) and the type of data being used when the Transition Problem occurred;

(b) what occurred when the Transition Problem was encountered; and

(c) the reason(s) why the incident is thought to be a Transition Problem.

8.7 A Problem Report will remain outstanding until the Purchasing Agency confirms in writing that the Problem Report has been resolved by your correction and re-testing of all outstanding Transition Problems which are the subject of that Problem Report.

8.8 You will monitor performance of the Services during the Purchasing Agency's testing and, at the Purchasing Agency's request, provide such support during the Purchasing Agency's testing (including the handling and resolution of Transition Problems) as the Purchasing Agency may reasonably request.

8.9 The Purchasing Agency's testing will only be deemed to be complete when the Purchasing Agency issues a test completion certificate to you, which it will do promptly following successful completion of such testing. The Purchasing Agency will only issue a test completion certificate if the Purchasing Agency's testing is complete, no Problem Reports are outstanding and no Transition Problems remain unresolved.

[If the parties wish to adhere to a specific test plan, set that out below. Otherwise delete.]

Acceptance test plan

8.10 In carrying out the testing responsibilities described above, the parties will adhere to [*either* the following acceptance test plan:

[Insert plan.]

or

an acceptance test plan to be agreed as part of the Transition Plan;

or

an acceptance test plan to be [delivered *or* agreed between the parties] [as Transition Milestone [X] *or* within [X] Business Days of the SOW Start Date]

[If the parties wish to adhere to a specific acceptance criteria, set them out below. Otherwise delete.]

Acceptance criteria

8.11 The Requirements referred to in paragraph 8.4 include the following acceptance criteria:

either list in narrative style

(a) [state criterion]

(b) [state criterion]

(c) [state criterion].

or set out in a table (modified as required; for example you may wish to delete one or more columns)

No.	Acceptance criterion	Expected outcome	Test method / steps	Evidence required
1				
2				
3				

or, if you wish to agree acceptance criteria in a Transition Plan

8.12 The Requirements referred to in paragraph 8.4 include the acceptance criteria set out in the Transition Plan.

9. Failure to achieve Transition Milestone Dates

(Ref: Clause 5.4 Core I/T/MS Services Terms)

9.1 Without limitation to clause 5.4 of the Core I/T/MS Services Terms, if you fail to complete a Transition Milestone on or before the corresponding Transition Milestone Date:

(a) we may:

(i) revise the relevant timeframes in this SOW or, if applicable, the Transition Plan to account for the failure; and/or

(ii) suspend payment of any amount then due in relation to that Transition Milestone until you remedy the relevant failure; and/or

(iii) exercise any of our available rights or remedies under the Subscription Agreement or at law; and

(b) where no liquidated damages have been agreed in this SOW or, if applicable, in the Transition Plan to apply in the event of a failure to achieve a Transition Milestone on or before the corresponding Transition Milestone Date, without limiting our rights and remedies, you will pay to us:

(i) if the Fees payable for the Services that are the subject of the Project Delay are less than the price payable for the equivalent services to be replaced by those Services (**Existing Services**), the difference between those amounts, for the duration of the Project Delay; and

(ii) any other actual costs and expenses we incur as a direct consequence of the Project Delay, including:

(A) disengagement costs payable by us to the provider of the Existing Services, and Personnel costs; and

(B) costs arising from any remedial steps we take to mitigate the impact of the Project Delay where, in our reasonable opinion, that delay threatens any subsequent Transition Milestone Date,

within 20 Business Days following receipt of our invoice supported by audited accounts which reasonably demonstrate such costs and expenses; or

(c) where liquidated damages have been agreed to apply in the event of a failure to achieve a Transition Milestone on or before the corresponding Transition Milestone Date, you:

(i) accept that the liquidated damages reflect our legitimate interests in performance and are not a penalty;

(ii) will not seek to argue otherwise in any dispute or proceedings; and

	(iii) shall pay us those liquidated damages within 20 Business Days following the relevant Transition Milestone Date. 9.2 Where time to complete a Transition Milestone is expressed to be of the essence in a Transition Plan, unless otherwise agreed a failure to meet the relevant Transition Milestone Date shall be deemed to be a material breach of the Subscription Agreement that is incapable of remedy. 9.3 Provided you have complied with clause 5.4(e) (Project Delay caused by us or a third party) of the Core I/T/MS Services Terms, you will not be liable to pay our actual costs and expenses, or liquidated damages, and clause 9.2 will not apply, where a Transition Milestone Date has not been met due to a Project Delay caused by us or a third party (excluding your subcontractors).
10. Liquidated damages (Ref: Clause 5.4(d) Core I/T/MS Services Terms)	[Complete the drafting below if liquidated damages will be payable upon a failure to meet one or more Transition Milestones. If no liquidated damages will be payable, you can state 'Not applicable'] 10.1 If you fail to meet [a Transition Milestone] *or* [insert details of particular Transition Milestones] specified above or, if applicable, in the Transition Plan by [its / their] corresponding Transition 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 third party (excluding your subcontractors) or a Force Majeure Event: (a) we may withhold payment of Fees for the relevant Transition Services until the Transition Milestone is achieved; and (b) you shall pay $[insert] in liquidated damages for each [day / week / month] that the completion of the Transition Milestone is delayed, provided that the maximum liquidated damages payable shall not exceed [insert]% of the Fees paid and payable under this SOW. 10.2 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.
11. Purchasing Agency responsibilities (Ref: Clause 5.6(a) Core I/T/MS Services Terms)	[If the Purchasing Agency is to have any specific responsibilities in relation to provision of the Transition 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, or if you wish to describe them in a Transition Plan, you can delete this row.]
12. Dependencies	[If dependencies need to be included in addition to the description above of any Purchasing Agency responsibilities, set them out below. If not, delete this row.] 12.1 The parties acknowledge that the scope of the Transition Services and the timetable for them is based on certain dependencies. 12.2 The dependencies and the potential impact if they do not occur or are not provided or delivered in a timely manner are as follows: **Dependency** | **Impact** [describe impact] | [describe impact] [describe impact] | [describe impact] [describe impact] | [describe impact]

Performance Management

13. Contract Managers and	The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the Core I/T/MS Services Terms.

other performance management personnel

(Ref: Clause 4 Core I/T/MS Services Terms)

Each party must maintain individuals in the performance management roles below at all times during the term of this SOW. The initial appointees are named below. Either party can change who is appointed to its roles, on notice to the other, unless they are Key Personnel (to which clause 8.2 of the Core I/T/MS Services Terms applies).

Party	Role(s) (and no. of years' experience in role if required)	Initial appointee	Key Personnel? (Yes / No)
Purchasing Agency	[Transition Manager]	[Name] [Email] [Phone]	(Not applicable to Purchasing Agency)
	[Role]	[Name] [Email] [Phone]	
Provider	[Transition Manager] [[X] years' experience]	[Name] [Email] [Phone]	
	[Role] [[X] years' experience]	[Name] [Email] [Phone]	

14. Meetings

(Ref: Clause 5.10(a) Core I/T/MS Services Terms)

[If there are any particular meeting requirements for this SOW, specify them here. Otherwise delete this row.]

You will attend the following meetings at the following times:

Meeting details	Attendees	Frequency/date and location

15. Reports

(Ref: Clause 5.10(b) Core I/T/MS Services Terms)

[If there are any particular reporting requirements for this SOW (e.g., weekly, fortnightly, or monthly status reports), specify them here. Otherwise state 'Not applicable'.]

You will report to us as follows:

Report details	Recipients	Frequency/date
[Eg Transition status report]	[Eg Transition Manager]	[Eg Weekly]

16. Escalation

[If specific escalation contacts are required for performance and technical issues and risks, complete this row to the extent required. If not, delete it.]

Without limitation to clause 22 (Performance issues) of the Core I/T/MS Services Terms, the parties may escalate performance and technical issues and risks as follows:

	Nature of issues and risks	**Purchasing Agency escalation**	**Provider escalation**
	Performance issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]
	Technical issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]
17. Conflicts of Interest (Ref: Clause 11.2 Core I/T/MS Services Terms)	17.1 You declare the following Conflicts of Interest in entering into this SOW and providing the Services described in this SOW: [Insert a description of any Conflicts of Interest] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be managed, the Purchasing Agency must put in place an appropriate conflict of interest management plan.] [Conflict management plan: Insert details of the Purchasing Agency's conflict management plan or such a plan that has been agreed with the Provider] [Or, if there are no Conflicts of Interest, state None] [None] 17.2 You declare the following Conflicts of Interest on behalf of your Subcontractors (if any) in your entering into this SOW and providing the Services described in this SOW: [Insert a description of any Conflicts of Interest] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be managed, the Provider will need to work with the Subcontractor(s) to put in place an appropriate conflict of interest management plan. The Provider must provide a copy of the full conflict management plan to the Purchasing Agency, if requested.] [Conflict management plan: Insert details of the conflict management plan(s) the Provider has or will promptly put in place with the relevant Subcontractor(s)] [Or, if there are no Conflicts of Interest, state None] [None]		

Fees

18. Fees (Ref: Clause 14.1 Core I/T/MS Services Terms)	[Insert details of the Fees payable for the Transition Services] [Choose one option, insert relevant details and delete remainder.] **Fixed fee** A fixed Fee of $[ ] excluding GST. **or** **Services Rates** 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:

	[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.] **or** **Discounted Services Rates** 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: [insert details of discounted Services Rates] **or** **Daily fee rate** 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. **or** **[Some other pricing/fees mechanism]** [insert details as required] [always include the line below] (Plus any Administration Fee as per row 22 below.)
19. Invoicing (Ref: Clause 14.2 Core I/T/MS Services Terms)	**When to invoice** [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.] monthly in arrears 19.1 You will invoice the Fees at the end of each month (or shortly thereafter) for Services and Deliverables provided during that month in accordance with the Subscription Agreement. or, for payment on completion 19.2 You will invoice the Fees on completion of the Transition Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement. or, for Transition Milestone-based Fees 19.3 You will invoice the Fees in instalments on the dates set out below, subject to completion of the relevant Transition Milestones, in accordance with the Subscription Agreement: **Transition Milestone** | **Due date** | **Amount due (excl GST)** | | | | | | | | | [Include section below if Retention Amount approach is desired. Delete if not] **Retention Amount** 19.4 The Purchasing Agency shall be entitled to withhold a retention amount equal to the percentage of each invoice that is specified below (the **Retention Amount**).

	19.5 The Retention Amount shall be held by the Purchasing Agency until the release event specified below (**Release Event**). 19.6 Within [X] Business Days following the satisfaction or occurrence of the Release Event, the Purchasing Agency shall pay the retained funds to you. 19.7 If this SOW or the Subscription Agreement is terminated for any reason before the Release Event, the Purchasing Agency may retain the Retention Amount until the parties reach agreement on any outstanding liabilities and obligations, or until a court issues a final determination of the amounts owed. 19.8 Any undisputed portion of the Retention Amount shall be promptly released to you after termination. 19.9 The Purchasing Agency's withholding of the Retention Amount does not waive any rights or remedies the Purchasing Agency may have nor does it limit your obligations to perform the Transition Services. **Retention Amount (%)** | **Release Event** | | **Additional invoicing requirements** 19.10 In addition to the matters set out in clause 14.2 of the Core I/T/MS 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].
20. Expenses (Ref: Clause 14.6 Core I/T/MS Services Terms)	[Delete this entire row if not applicable] You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that: • we have given our prior written consent to you incurring the expenses; and • the expenses are charged at cost.
21. Prices decreases and increases (Ref: Clause 14.8 Core I/T/MS Services Terms)	21.1 Price decreases and increases for Services procured through this SOW may only be made in accordance with clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms. 21.2 [In relation to price increases, clause 14.8(c) of the Core I/T/MS Services Terms sets out the circumstances in which the Provider's Services Listing pricing may be increased. Note that, when a provider's Services Listing pricing is permissibly increased as a result of: • a Requirements Change (see clauses 10.3(b) and 10.4 of the Channel Terms); • permissible price adjustments set out in clauses 12.7, 12.7A and 12.12 of the Channel Terms; or • changed or new Security Standards (see paragraphs 2.4-2.5 of Schedule 1 to the Channel Terms), the increased pricing will only (with one exception in paragraph 2.5 of Schedule 1) flow through to existing Orders and Statements of Work to the extent this has been agreed with the Purchasing Agency (e.g., in those Orders and Statements of Work). As such, except in the situation described in paragraph 2.5 of Schedule 1, price increases will not apply to the Services set out in this SOW unless the parties agree to that here or at some later point. The purpose of this approach is to ensure Purchasing Agencies have clear visibility of, and agree to, increases to pricing agreed in existing Orders and Statements of Work.]
22. Administration Fee (Ref: Clause 14.1(a)(ii)	The parties acknowledge that you are required, under clause 14.1(a)(ii) of the Core I/T/MS Services Terms and clause 13 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services, to collect

Core I/T/MS Services Terms and clause 13 Channel Terms. Do not delete this row.)	an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz or as otherwise communicated to you by PSC, plus any applicable GST. You must add the fee (exclusive of GST which is calculated separately) as a separate line item to your invoices for the Transition Services provided under this SOW.

Additional provisions

23. Security clearances and probity checks (Ref: Clause 8.1(b)(i) Core I/T/MS Services Terms)	[If Provider Personnel are required to pass any additional security, probity, tax, or beneficiary checks (i.e., additional to those that PSC already requires in paragraph 8.1 (Staffing) of Schedule 1 (Information Security) to the Channel Terms and any additional checks that may have been included in the Subscription Form), specify those checks here.]
24. Purchasing Agency policies (Ref: Clause 11.1(b) Core I/T/MS Services Terms)	[Insert the names of any Purchasing Agency policies that the Provider must comply with. Copies need to be given to the Provider. If there are none, state 'Not applicable'.]
25. Intellectual Property Rights (Ref: Clause 16 Core I/T/MS Services Terms)	[If the parties agree to change any aspect of the default ownership and licensing provisions in clause 16 of the Core I/T/MS Services Terms, or any other element of that clause, those changes should be recorded here. If no such changes are required, you can state 'No changes to default provisions'. Note, in particular, that clause 16.4 contains a Default Deliverables Licence to the Purchasing Agency and a Default Services Licence to the Purchasing Agency. However, it also contains an Alternative Deliverables Licence and an Alternative Services Licence that the parties can agree shall apply instead of the default licences. The alternative licences are less permissive than the default licences but some companies seek to negotiate them and for many deliverables and services they will probably suffice (do note, however, that they are revocable for cause (so could be revoked if, for example, the Purchasing Agency did not pay applicable Fees) and use is limited to the agency's *internal* business purposes). The drafting below can be used when the parties agree to the Alternative Deliverables Licence and/or the Alternative Services Licence. If that is not the case, delete the clause. 25.1 [Licences to Purchasing Agency in relation to Deliverables and Services (a) The parties agree that, in relation to the licensing of Deliverables described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Deliverables Licence applies instead of the Default Deliverables Licence. (b) The parties agree that, in relation to the licensing of Services described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Services Licence applies instead of the Default Services Licence.]
26. Service and Purchasing Agency Data locations (Ref: Clause 17.2 Core I/T/MS Services Terms)	[Clause 17.2 of the Core I/T/MS Services Terms: • states that neither the Provider, nor any Subcontractor or Third Party Service Provider it uses, may provide Services from outside New Zealand, or store, process or make available Purchasing Agency Data to any person located outside New Zealand, except as explicitly detailed in a PSC-approved Offshoring Schedule or as permitted by the Purchasing Agency in its Subscription Form, or in an Order or Statement of Work, or subsequently; and • contemplates that the Provider and Purchasing Agency may agree to additional limitations on the countries from which the Services (including support) are provided and/or specific data residency countries (i.e., more limited than what is said in an Offshoring Schedule).

If not already covered by the Offshoring Schedule and not already addressed in the Subscription Form, indicate in the table below:

- any country beyond New Zealand from which the Services may be provided (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)); and
- any country beyond New Zealand in which Purchasing Agency Data may be stored or processed (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)).

In addition or alternatively, indicate any constraints on the provision of Services from or the storage or processing of Purchasing Agency Data in countries listed in the Offshoring Schedule.

If no changes to defaults in clause 17.2 are required, state 'No changes to default positions'. If an individual row below is not required or applicable, state 'Not applicable'.]

26.1 The parties acknowledge that, under clause 17:

(a) you must not provide Services or process Purchasing Agency Data from outside New Zealand (subject to the international routing exception in clause 17.2(f)(i)) unless such provision or processing is detailed in your PSC-approved Offshoring Schedule (which is one limb of the term 'Permitted Additional Territories') or the Purchasing Agency has agreed to further Permitted Additional Territories (the other limb of the term 'Permitted Additional Territories'); and

(b) the parties may agree upon restrictions to Service Locations and/or Data Locations relative to what is specified in your Offshoring Schedule.

26.2 Any Permitted Additional Territories (beyond those in your Offshoring Schedule), and/or Service Location and/or Data Location restrictions, are set out below.

Permitted Additional Territories (in addition to those in the Offshoring Schedule)	
The Purchasing Agency agrees that the following additional Services or parts of the Services may be provided from the countries outside New Zealand specified here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert Services and countries and, if relevant, Subcontractors or Third Party Service Providers. Note that if the Services/countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]
The Purchasing Agency agrees that Purchasing Agency Data may be stored or processed in these additional countries outside New Zealand (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert countries and, if relevant, by what named Subcontractors or Third Party Service Providers. Note that if the countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]
Service Location or Data Location restrictions	
The parties agree that, despite anything to the contrary in your Offshoring Schedule, the following Services or parts	[Not applicable *or* [insert Services and countries]]

	of the Services may be provided only from New Zealand and the countries specified here:	
	The parties agree that, despite anything to the contrary in your Offshoring Schedule, Purchasing Agency Data may only be stored or processed in New Zealand and the countries stated here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert countries and, if relevant, by what named Subcontractors or Third Party Service Providers]]
27. Amendments to Core I/T/MS Services Terms, or to Provider Standard Terms (if any), and any additional terms	[Insert any other amendments or additional terms that are to apply to the SOW. If none, delete this row.]	

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

Marketplace

Statement of Work (General)

Introduction

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

Parties and Subscription Agreement / Statement of Work details

Provider:	[insert full name of Provider and, if a company, the company number or NZ business number] (**Provider**, **you**, **your**)
Purchasing Agency:	[Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (**Purchasing Agency**, **we**, **us**)
SOW for:	[insert short description]
SOW #:	[insert number]
Under Subscription Agreement dated:	[insert date]
SOW Term	The SOW commences on the SOW Start Date and, unless terminated earlier in accordance with the Subscription Agreement, ends on the SOW End Date. The SOW Term may be extended upon written agreement between the parties. If the SOW remains in effect on the Subscription Agreement's End Date, it shall end on that date, unless the Services to which the SOW relates are required for Disengagement in which case the end of the SOW shall be determined in accordance with clause 1.5 of the Core I/T/MS Services Terms.
SOW Start Date	[Insert commencement date of work under SOW]
SOW End Date	[Insert end date of work under SOW or an event upon which the SOW ends such as 'Successful completion of the Services']

Services

1. Transition (Ref: Clause 5.2 Core I/T/MS Services Terms)	[Clause 5.2 of the Core I/T/MS Services Terms contains obligations that apply where the Purchasing Agency is purchasing Services that involve the transition or migration of functions or services from the Purchasing Agency or an incumbent provider to the Provider's Services. If such transition/migration services are being provided in the context of other services and the Purchasing Agency is not pursuing a major transition of critical services, that can be indicated here. The details of the transition services could be entered here, or a brief entry here could cross-refer to the Services row below. If any changes to clause 5.2 of the Core I/T/MS Services

<table>
<tr><td></td><td>Terms are required, they can be entered here as well. If there are no transition services, enter “Not applicable”, or delete this row.

Please note that, if the Purchasing Agency is embarking on a major transition of critical services, it is preferable to use the template called 'Statement of Work (Transition Services)' as it focuses specifically on major transitions.]</td></tr>
<tr><td>2. Services</td><td>You will perform the Services and provide the Deliverables set out below.

[Describe the Services and Deliverables in reasonable detail. Any Milestones and Milestone Dates associated with Deliverables, and with other events or processes, will be set out in the Milestones table in row 4 (Milestones). If you prefer not to use the services and deliverables table below, it can be deleted. If you wish to rely on Services Listings for the description of the Services, you could copy and paste from those Services Listings here, or refer to attached copies of the Services Listings. Whatever approach you choose, the important thing is to be clear on the services being procured.]

<table>
<tr><th>Service
(Name and description)</th><th>Deliverable
(Name and description)</th></tr>
<tr><td>[Service name]

[Describe the Service/project task].</td><td>[Deliverable name]

[Describe the Deliverable, including any performance or quality measures].</td></tr>
<tr><td>[add rows for additional Services as required]</td><td>[add rows for additional Deliverables as required]</td></tr>
</table>
</td></tr>
<tr><td>3. Interfaces

(Ref: Clause 5.5 Core I/T/MS Services Terms)</td><td>[If the Provider is to be responsible for implementing, operating and maintaining Interfaces (as defined in clause 27 of the Core I/T/MS Services Terms), the Interfaces for which the Provider is to be responsible need to be specified. 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 clause 5.5 of the Core I/T/MS Services Terms, the differences need to be stated here too. If Interfaces are not relevant, you can state 'Not applicable'. If they are relevant, you may also wish to discuss them in more detail in the Services description in row 2.]</td></tr>
<tr><td>4. Milestones

(Ref: Clause 5.4 Core I/T/MS Services Terms)</td><td>[Insert relevant Milestones and their due dates. Milestones are often specific Deliverables but they can also be the holding of meetings or workshops, or the completion of processes (such as acceptance testing). 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?]

You will meet the following Milestones by their corresponding Milestone Dates.

<table>
<tr><th>No.</th><th>Milestone</th><th>Milestone Date</th></tr>
<tr><td>1</td><td></td><td>By [insert date]</td></tr>
<tr><td>2</td><td></td><td>By [insert date]</td></tr>
<tr><td>3</td><td></td><td>By [insert date]</td></tr>
<tr><td>4</td><td></td><td>By [insert date]</td></tr>
<tr><td>5</td><td></td><td>By [insert date]</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><td>5. Acceptance of Deliverables

(Ref: Clause 5.8 Core I/T/MS Services Terms)</td><td>[A default approach to acceptance of Deliverables is specified in clause 5.8 of the Core I/T/MS 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. If not, you can state 'No changes to default acceptance provisions'.]</td></tr>
<tr><td>6. Liquidated damages

(Ref: Clause 5.4(d) Core I/T/MS Services Terms)</td><td>[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, you can state 'Not applicable']

If you fail to meet [either: 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:

• we may withhold payment of Fees for the relevant Services until the Milestone is achieved; and

• you shall pay $[insert amount] 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 [insert percentage amount]% of the Fees paid and payable under this SOW.

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.

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.</td></tr>
<tr><td>7. Service Levels (if any)

(Ref: Clause 5.9 Core I/T/MS Services Terms)</td><td>[Choose one option, insert relevant details and delete remainder.]

Either

You will meet or exceed the Service Levels specified in the Services Listings for the Services in the relevant Marketplace Catalogue. [If you wish, you can reproduce the Service Levels below.]

or

You will meet or exceed the following Service Levels:

[insert details of Service Levels; make sure they're specific and measurable]

<table><tr><th>Name of Service Level</th><th>Details of Service Level</th></tr><tr><td>[insert name]</td><td>[insert details of service level]</td></tr><tr><td>[insert name]</td><td>[insert details of service level]</td></tr><tr><td>[insert name]</td><td>[insert details of service level]</td></tr></table>
or

There are no Service Levels beyond what is already stated in the Subscription Agreement.</td></tr>
<tr><td>8. Service Level Credits (if any)

(Ref: Clause 5.9 Core I/T/MS Services Terms)</td><td>[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.]

Either

The Service Level Credits that are payable to us upon a Service Level Default are as specified in your Services Listings. [If you wish, you can reproduce the Service Level Credits below.]

or</td></tr>
</table>

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:

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.

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.

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.

In no event will the amount of all Service Level Credits credited against the Fees for this SOW in each calendar month exceed, in total, [XX]% of the Fees payable in that month.

or

There are no Service Level Credits.

9. Purchasing Agency responsibilities

(Ref: Clause 5.6(a) Core I/T/MS 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.]

Performance Management

10. Contract Managers and other performance management personnel

(Ref: Clause 4 Core I/T/MS Services Terms)

The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the Core I/T/MS Services Terms.

Each party must maintain individuals in its performance management roles below at all times during the term of this SOW. The initial appointees are named below. Either party can change who is appointed to its roles, on notice to the other, unless they are Key Personnel (to which clause 8.2 of the Core I/T/MS Services Terms applies).

Party	Role(s) (and no. of years' experience in role if required)	Initial appointee	Key Personnel? (Yes / No)
Purchasing Agency	[Role]	[Name] [Email] [Phone]	(Not applicable to Purchasing Agency)
	[Role]	[Name] [Email]	

		[Phone]	
Provider	[Role] [[X] years' experience]	[Name] [Email] [Phone]	
	[Role] [[X] years' experience]	[Name] [Email] [Phone]	

11. Meetings

(Ref: Clause 5.10(a) Core I/T/MS Services Terms)

[If there are any particular meeting requirements for this SOW, specify them here. Otherwise delete this row.]

You will attend the following meetings at the following times:

Meeting details	Attendees	Frequency/date and location

12. Reports

(Ref: Clause 5.10(b) Core I/T/MS Services Terms)

[If there are any particular reporting requirements for this SOW (e.g., monthly status reports), specify them here. Otherwise delete this row.]

You will report to us as follows:

Report details	Recipients	Frequency/date
[Eg Status report]	[Eg Contract Manager]	[Eg Monthly]

13. Escalation

[If specific escalation contacts are required for performance and technical issues and risks, complete this row to the extent required. If not, delete it.]

Without limitation to clause 22 (Performance issues) of the Core I/T/MS Services Terms, the parties may escalate performance and technical issues and risks as follows:

Nature of issues and risks	Purchasing Agency escalation	Provider escalation
Performance issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]
Technical issues and risks	Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]	Provider may escalate to: [insert name/role and contact details of agency escalation contact]

14. Conflicts of Interest

(Ref: Clause 11.2 Core I/T/MS Services Terms)

14.1 You declare the following Conflicts of Interest in entering into this SOW and providing the Services described in this SOW:

[Insert a description of any Conflicts of Interest] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be

	managed, the Purchasing Agency must put in place an appropriate conflict of interest management plan.] [Conflict management plan: Insert details of the Purchasing Agency's conflict management plan or such a plan that has been agreed with the Provider] [Or, if there are no Conflicts of Interest, state None] [None] 14.2 You declare the following Conflicts of Interest on behalf of your Subcontractors (if any) in your entering into this SOW and providing the Services described in this SOW: [Insert a description of any Conflicts of Interest] [If a conflict of interest is declared, and the Purchasing Agency considers that the conflict can be managed, the Provider will need to work with the Subcontractor(s) to put in place an appropriate conflict of interest management plan. The Provider must provide a copy of the full conflict management plan to the Purchasing Agency, if requested.] [Conflict management plan: Insert details of the conflict management plan(s) the Provider has or will promptly put in place with the relevant Subcontractor(s)] [Or, if there are no Conflicts of Interest, state None] [None]

Fees

15. Fees (Ref: Clause 14.1 Core I/T/MS Services Terms)	[Choose one option, insert relevant details and delete remainder.] **Fixed fee** A fixed Fee of $[ ] excluding GST. **or** **Services Rates** 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: [Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.] **or** **Discounted Services Rates** 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: [insert details of discounted Services Rates] **or** **Daily fee rate** 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. **or** **[Some other pricing/fees mechanism]**

[insert details as required]

[always include the line below]

(Plus any Administration Fee as per row 19 below.)

16. Invoicing

(Ref: Clause 14.2 Core I/T/MS Services Terms)

When to invoice

[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.]

monthly in arrears

You will invoice the Fees at the end of each month (or shortly thereafter) for Services provided during that month and for any Deliverables that achieved Acceptance during that month, in accordance with the Subscription Agreement.

or, for payment on completion

You will invoice the Fees on completion of the Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement. Where this SOW specifies Deliverables, invoicing for those Deliverables is conditional on Acceptance in accordance with clause 5.8 of the Core I/T/MS Services Terms.

or, for Milestone-based Fees

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 and the following:

- *Deliverables*: Where a Milestone includes one or more Deliverables, invoicing is conditional on the Deliverables achieving Acceptance in accordance with clause 5.8 of the Core I/T/MS Services Terms.
- *Service readiness* (if applicable): Where a Milestone relates to the readiness of a Service, invoicing is conditional on the Service meeting the readiness criteria specified in this SOW (which may include acceptance testing, go-live confirmation, or other agreed measures).
- *Other Milestones*: Where a Milestone does not include Deliverables or Service readiness criteria, invoicing is conditional on achievement or completion of the Milestone as described in this SOW.

Milestone	**Due date**	**Amount due (excl GST)**	**Type** (Deliverable / Service readiness / other)	**Acceptance or readiness criteria / completion description**
Example: Draft technical design delivered	*5 March 2026*	*$15,000*	*Deliverable*	*Accepted under clause 5.8 or [specify criteria]*
Example: Service desk go-live	*1 June 2026*	*$20,000*	*Service readiness*	*Service desk operational and handling tickets within agreed SLA; Purchasing Agency confirmation received*
Example: Training workshops completed	*15 August 2026*	*$10,000*	*Other*	*All 3 workshops delivered as scheduled or otherwise agreed*

[Include section below if Retention Amount approach is desired. Delete if not]

Retention Amount

The Purchasing Agency shall be entitled to withhold a retention amount equal to the percentage of each invoice that is specified below (the **Retention Amount**).

The Retention Amount shall be held by the Purchasing Agency until the release event specified below (**Release Event**).

Within [X] Business Days following the satisfaction or occurrence of the Release Event, the Purchasing Agency shall pay the retained funds to you.

If this SOW or the Subscription Agreement is terminated for any reason before the Release Event, the Purchasing Agency may retain the Retention Amount until the parties reach agreement on any outstanding liabilities and obligations, or until a court issues a final determination of the amounts owed.

Any undisputed portion of the Retention Amount shall be promptly released to the Service Provider after termination.

The Purchasing Agency's withholding of the Retention Amount does not waive any rights or remedies the Purchasing Agency may have nor does it limit your obligations to perform the Transition Services.

Retention Amount (%)	Release Event

Additional invoicing requirements

In addition to the matters set out in clause 14.2 of the Core I/T/MS Services Terms, each invoice must contain [insert any specific requirements, such as responsibility codes or purchase order numbers] and be sent by email to [insert email address].

17. Expenses

(Ref: Clause 14.6 Core I/T/MS Services Terms)

[Delete this entire row if not applicable]

You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:

- we have given our prior written consent to you incurring the expenses; and
- the expenses are charged at cost.

18. Prices increases and decreases

(Ref: Clause 14.8 Core I/T/MS Services Terms)

18.1 Price decreases and increases for Services procured through this Statement of Work may only be made in accordance with clause 14.8 (Pricing decreases and increases) of the Core I/T/MS Services Terms.

18.2 [In relation to price increases, clause 14.8(c) of the Core I/T/MS Services Terms sets out the circumstances in which the Provider's Services Listing pricing may be increased. Note that, when a provider's Services Listing pricing is permissibly increased as a result of:

- a Requirements Change (see clauses 10.3(b) and 10.4 of the Channel Terms);
- permissible price adjustments set out in clauses 12.7, 12.7A and 12.12 of the Channel Terms; or
- changed or new Security Standards (see paragraphs 2.4-2.5 of Schedule 1 to the Channel Terms),

the increased pricing will only (with one exception in paragraph 2.5 of Schedule 1) flow through to existing Orders and Statements of Work to the extent this has been agreed with the Purchasing Agency (e.g., in those Orders and Statements of Work).

	As such, except in the situation described in paragraph 2.5 of Schedule 1, price increases will not apply to the Services set out in this SOW unless the parties agree to that here or at some later point. The purpose of this approach is to ensure Purchasing Agencies have clear visibility of, and agree to, increases to pricing agreed in existing Orders and Statements of Work.]
19. Administration Fee (Ref: Clause 14.1(a)(ii) Core I/T/MS Services Terms and clause 13 Channel Terms. Do not delete this row.)	The parties acknowledge that you are required, under clause 14.1(a)(ii) of the Core I/T/MS Services Terms and clause 13 of the Channel Terms for Infrastructure Services, Telecommunications Services, and Managed Security Services, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz or as otherwise communicated to you by PSC, plus any applicable GST. You must add the fee (exclusive of GST which is calculated separately) as a separate line item to your invoices for the Services provided under this SOW.

Additional provisions

20. Additional security, probity, tax, or beneficiary checks (Ref: Clause 8.1(b) Core I/T/MS Services Terms)	[If Provider Personnel are required to pass additional check (beyond the MOJ criminal record checks or equivalent checks required by paragraph 8.1 (Staffing) of Schedule 1 (Information Security) to the Channel Terms and any additional checks that may have been included in the Subscription Form), specify those checks here. If no additional checks are required, state 'Not applicable'.]
21. Purchasing Agency policies (Ref: Clause 11.1(b) Core I/T/MS Services Terms)	[Insert the names of any Purchasing Agency policies that the Provider must comply with. Copies need to be given to the Provider. If there are none, state 'Not applicable'.]
22. Intellectual Property Rights (Ref: Clause 16 Core I/T/MS Services Terms)	[If the parties agree to change any aspect of the default ownership and licensing provisions in clause 16 of the Core I/T/MS Services Terms, or any other element of that clause, those changes should be recorded here. If no such changes are required, you can state 'No changes to default provisions'. Note, in particular, that clause 16.4 contains a Default Deliverables Licence to the Purchasing Agency and a Default Services Licence to the Purchasing Agency. However, it also contains an Alternative Deliverables Licence and an Alternative Services Licence that the parties can agree shall apply instead of the default licences. The alternative licences are less permissive than the default licences but some companies seek to negotiate them and for many deliverables and services they will probably suffice (do note, however, that they are revocable for cause (so could be revoked if, for example, the Purchasing Agency did not pay applicable Fees) and use is limited to the agency's *internal* business purposes). The drafting below can be used when the parties agree to the Alternative Deliverables Licence and/or the Alternative Services Licence. If that is not the case, delete the clause. 22.1 [Licences to Purchasing Agency in relation to Deliverables and Services (a) The parties agree that, in relation to the licensing of Deliverables described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Deliverables Licence applies instead of the Default Deliverables Licence. (b) The parties agree that, in relation to the licensing of Services described in clause 16.4 of the Core I/T/MS Services Terms, the Alternative Services Licence applies instead of the Default Services Licence.]
23. Service and Purchasing Agency Data	[Clause 17.2 of the Core I/T/MS Services Terms: • states that neither the Provider, nor any Subcontractor or Third Party Service Provider it uses, may provide Services from outside New Zealand, or store,

locations

(Ref: Clause 17.2 Core I/T/MS Services Terms)

process or make available Purchasing Agency Data to any person located outside New Zealand, except as explicitly detailed in a PSC-approved Offshoring Schedule or as permitted by the Purchasing Agency in its Subscription Form, or in an Order or Statement of Work, or subsequently; and

- contemplates that the Provider and Purchasing Agency may agree to additional limitations on the countries from which the Services (including support) are provided and/or specific data residency countries (i.e., more limited than what is said in an Offshoring Schedule).

If not already covered by the Offshoring Schedule and not already addressed in the Subscription Form, indicate in the table below:

- any country beyond New Zealand from which the Services may be provided (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)); and
- any country beyond New Zealand in which Purchasing Agency Data may be stored or processed (and, if not by the Provider, by whom (i.e., which Subcontractor(s) or Third Party Service Provider(s)).

In addition or alternatively, indicate any constraints on the provision of Services from or the storage or processing of Purchasing Agency Data in countries listed in the Offshoring Schedule.

If no changes to defaults in clause 17.2 are required, state 'No changes to default positions'. If an individual row below is not required or applicable, state 'Not applicable'.]

23.1 The parties acknowledge that, under clause 17:

(a) you must not provide Services or process Purchasing Agency Data from outside New Zealand (subject to the international routing exception in clause 17.2(f)(i)) unless such provision or processing is detailed in your PSC-approved Offshoring Schedule (which is one limb of the term 'Permitted Additional Territories') or the Purchasing Agency has agreed to further Permitted Additional Territories (the other limb of the term 'Permitted Additional Territories'); and

(b) the parties may agree upon restrictions to Service Locations and/or Data Locations relative to what is specified in your Offshoring Schedule.

23.2 Any Permitted Additional Territories (beyond those in your Offshoring Schedule), and/or Service Location and/or Data Location restrictions, are set out below.

Permitted Additional Territories (in addition to those in the Offshoring Schedule)	
The Purchasing Agency agrees that the following additional Services or parts of the Services may be provided from the countries outside New Zealand specified here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert Services and countries and, if relevant, Subcontractors or Third Party Service Providers. Note that if the Services/countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]
The Purchasing Agency agrees that Purchasing Agency Data may be stored or processed in these additional countries outside New Zealand (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert countries and, if relevant, by what named Subcontractors or Third Party Service Providers. Note that if the countries are already in the Offshoring Schedule, they do not need to be listed here as they are already covered by the term 'Permitted Additional Territories'.]]

	Service Location or Data Location restrictions	
	The parties agree that, despite anything to the contrary in your Offshoring Schedule, the following Services or parts of the Services may be provided only from New Zealand and the countries specified here:	[Not applicable *or* [insert Services and countries]]
	The parties agree that, despite anything to the contrary in your Offshoring Schedule, Purchasing Agency Data may only be stored or processed in New Zealand and the countries stated here (and, if relevant, by the Subcontractors or Third Party Service Providers specified):	[Not applicable *or* [insert countries and, if relevant, by what named Subcontractors or Third Party Service Providers]]
24. Amendments to Core I/T/MS Services Terms, and any Provider Standard Terms (if any), 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

Annexure C: Extra Terms (if any)

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

(Note that Extra Terms are a means by which PSC can add additional terms for specific Channels, Catalogues, or Services, either at launch of a Channel or Catalogue or following the amendments process set out in Part 1 of the Collaborative Marketplace Agreement. It is not a means by which Providers can add their own extra terms. As at the launch of the Infrastructures Services Channel, Telecommunications Channel, and Managed Security Services Channel, there were no Extra Terms, for any of these Channels or their Catalogues or Services.)