



## 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](http://marketplace.govt.nz).

#### Contents

1.	Term .....	187
2.	Application of terms in Part 1 (General Terms) and Part 2 (Channel Terms) .....	188
3.	Orders and Statements of Work .....	190
4.	Governance .....	191
5.	Services .....	192
6.	Cooperation with other providers .....	203
7.	Purchasing Agency assistance .....	203
8.	Personnel .....	204
9.	Subcontracting .....	206
10.	Service Delivery Assets .....	206
11.	General responsibilities .....	207
12.	Records .....	209
13.	Change Procedure .....	209
14.	Payment .....	211
15.	Warranties .....	216
16.	Intellectual Property Rights .....	218
17.	Confidentiality, security, and privacy .....	226
18.	General audit .....	230
19.	Security audit .....	231
20.	Liability .....	234
21.	General indemnities .....	237
22.	Performance issues .....	238
	Marketplace – Infrastructure Services – Telecommunications Services – Managed Security Services	185
	Core I/T/MS Services Terms	

23.	Disputes .....	239
24.	Termination .....	241
25.	Disengagement .....	245
26.	General.....	249
27.	Definitions and interpretation.....	251
	Schedule: Statement of Work templates.....	265

## 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**).

### 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

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.

- (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)**

- 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);

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

- (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 DIA;
  - (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**

- 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.

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.

- 3.5 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 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 DIA/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.

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.

## 5.2 Transition

- (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.

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.

## 5.3 User Documentation

- (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

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.

Purchasing Agency by reference to its particular circumstances.

#### 5.4 Milestones

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.

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.

- (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.
- (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):
- (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.

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.

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

## 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) 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;

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.

- (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

- (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

There are default terms as to reviewing/testing of Deliverables. The parties can agree to take a different approach if they wish.

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

- (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

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

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).

You need to report on your performance against Service Levels and, if you don't, you will be deemed not to have met them.

- (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.
- (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

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.

(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

(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

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.

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**

- 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.

You need to work co-operatively and collaboratively with other service providers.

## **7. Purchasing Agency assistance**

- 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

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.

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

- (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.

Your Personnel need to pass security checks, be capable, comply with agency policies, carry ID, and comply with confidentiality and security requirements.

## 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.
- (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.

If you agree to use Key Personnel, they need to undertake specified roles except in the circumstances described here.

## 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:

- (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.

You need to remove access rights when Personnel with access are no longer involved in providing Services to the Purchasing Agency.

## 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 DIA; and
  - (b) if you first propose to use a particular Subcontractor after your relevant Services Listing(s) are published, and DIA 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 DIA's approval) of the new Subcontractor.
- 9.2 You do not need to obtain DIA'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.

Subcontractors need to be approved by DIA 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 DIA'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.

## 10. Service Delivery Assets

### 10.1 Service Delivery Assets

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

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.

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 Purchase 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

- (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;

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.

- (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

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.

This is the simple change procedure.

### 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, 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

You must not unreasonably refuse a Change Request.

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 DIA, provided any such fee is clearly specified in your invoices.
- (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 submits 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.
- (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).

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.

All Fees are in NZD unless stated otherwise.

## 14.2 Invoices

- (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

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.

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.

The Purchasing Agency needs to pay your invoices within the timeframes stated here.

#### 14.4 Dispute over invoice

If the Purchasing Agency disputes in good faith the whole or any portion of a Valid Tax Invoice:

There's a process for dealing with invoicing disputes.

- (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

Unless stated otherwise in the Subscription Form or an Order or Statement of Work, your Fees:

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.)

- (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

- (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.

You're responsible for expenses you incur unless the Purchasing Agency agrees to pay them.

- (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 12.8 (Reservation of right to require price reduction in event of extraordinary exchange rate change) of the Channel Terms; or
  - (iv) 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;
  - (ii) clauses 12.3(b)(ii) and (c) (improvements to standard offerings in Services Listings) 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.

- (iii) clauses 12.5 (price adjustment rules), 12.7 (permissible annual change) 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 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 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:
  - (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.

The Purchasing Agency can ask you to clarify how your Usage Metrics work and how Fees are incurred.

### 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 Form or an Order or Statement of Work (but, to avoid doubt, occasional Service Level Defaults or software bugs do not

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.

mean the Services are not fit 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;
- (b) enhancement or modification of any Existing Material, all Intellectual Property Rights in that enhancement or modification will:

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.

- (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

- (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

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.

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.
- (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.

You need to tell the Purchasing Agency if you become aware of IP problems.

## 16.5 Licences to you

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

The Purchasing Agency grants you the licences described here.

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.
- (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,

Each party grants an IP-related warranty to the other.

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

- (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:

You grant an IP indemnity to the Purchasing Agency.

- (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

### 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.

(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 DIA, either as part of your obligation under clause 4.8 of the Channel Terms to submit engagement notices or

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

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.

otherwise on written request by DIA. This clause 17.1(c) is intended to confer a benefit on and to be enforceable by DIA.

## 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**).
- (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) DIA 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

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 DIA-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.

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;

- (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

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.

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 DIA and NCSC

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

### 18. General audit

#### 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

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.

- (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 DIA 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.

### 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).

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 DIA for its reasonable costs.

## 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) DIA 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 DIA or the other purchasing agency in relation to that audit; and/or
  - (iv) request the Purchasing Agency to seek from DIA or that other purchasing agency all relevant information relating to that security audit that you provided to DIA or the other agency or that DIA or that other agency otherwise holds.
- (b) If you exercise the rights in clause 19.5(a):
- (i) you must, where (a)(iv) applies, grant all consents to DIA 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, DIA or the other agency.

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.

## 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.

### 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

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).

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

- (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.

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.

#### 20.5 Direct loss

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.

The categories of losses, costs and damage listed here are deemed to be direct.

## 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

- 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.

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

## 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**

### **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:

- (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

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

Clause 24.1 lists the grounds on which the Purchasing Agency can terminate for cause, such as material breach.

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:

The Purchasing Agency can also terminate if it receives a direction from the Public Service Commissioner under the Public Service Act.

- (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.

#### 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:
- (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 can terminate if the Purchasing Agency doesn't pay applicable Fees and for unremedied material breach.

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:
- (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),

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

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

- (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

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

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

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:

If the Purchasing Agency needs disengagement services, you'll need to provide them. This clause explains how that will work.

- (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 DIA agree to a longer period.
- (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.

The Disengagement Period cannot exceed 24 months unless the Provider and DIA agree. DIA 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.

### 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.
- (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.

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.

## 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 DIA) when purchasing agencies procure services through or via the Marketplace;

**Authorised Third Party** means any third party provider DIA 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](https://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 DIA 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;

**DIA** means the Department of Internal Affairs;

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

**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](http://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](https://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:

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

**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:

- (c) 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
- (d) 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.



## 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] ( <b>Provider, you, your</b> )
Purchasing Agency:	[Insert full Purchasing Agency name and, if a company, the company number or NZ business number] ( <b>Purchasing Agency, we, us</b> )
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:
----------------	---

	<p><b>Requirements</b> means, as applicable:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) requirements that your Services need to meet that are contained or cross-referenced in, or attached to, your Services Listing(s);</li> <li>(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</li> <li>(d) if acceptance criteria are set out in this Statement of Work or a Transition Plan, those acceptance criteria;</li> </ul> <p><b>Transition Milestone</b> means a milestone identified as such in this SOW or, if applicable, a Transition Plan;</p> <p><b>Transition Milestone Date</b> means each due date for achievement of a Transition Milestone, set out in this SOW or, if applicable, a Transition Plan;</p> <p><b>Transition Period</b> 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;</p> <p><b>Transition Plan</b> 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;</p> <p><b>Transition Services</b> 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</p> <p><b>User</b> means any person using, or interacting with, the Services under the Subscription Agreement, including the Purchasing Agency and its Personnel.</p>
<p>2. General obligations</p>	<p>2.1 You will:</p> <ul style="list-style-type: none"> <li>(a) adopt a high-quality, low-risk transition strategy;</li> <li>(b) comply with our release management (including testing) processes; and</li> <li>(c) adopt a collaborative and constructive approach, including by means of liaison with our specified business owners.</li> </ul> <p>2.2 The objectives of the Transition Services are to:</p> <ul style="list-style-type: none"> <li>(a) successfully transfer services from our existing provider to you with minimal disruption;</li> <li>(b) plan, finalise and implement design and planning documentation in order to meet the Transition Milestone Dates;</li> <li>(c) complete the Transition Services on time and to the agreed scope, quality and cost.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>(a) in accordance with: <ul style="list-style-type: none"> <li>(i) any description of the procured transition services in your Services Listing(s) (if any); and</li> <li>(ii) this Statement of Work (which shall prevail in the event of inconsistency with a description in your Services Listing(s)); and</li> </ul> </li> <li>(b) with minimum disruption to, or material adverse impact on, the</li> </ul>

	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 <i>either</i> as described in [cross-refer to an Order that describes the Services] <i>or</i> as follows: [list or summarise them below] <i>or</i> are listed in the [attachment] to this SOW].
4. Transition Plan	<p>[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'.]</p> <p>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.</p> <p>4.2 Once agreed, you shall provide the Transition Services in accordance with this SOW and the Transition Plan.</p> <p>4.3 The Transition Plan will:</p> <ul style="list-style-type: none"> <li>(a) describe how transition from the Purchasing Agency’s existing services to the Services will occur;</li> <li>(b) include detailed timelines for the Transition Period, including Transition Milestones and Transition Milestone Dates;</li> <li>(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;</li> <li>(d) specify the resources, information, obligations and other inputs on which performance of the Transition Plan is dependent;</li> <li>(e) specify the processes and procedures to give effect to the seamless migration of responsibility for the provision of the Services;</li> <li>(f) include a detailed description of: <ul style="list-style-type: none"> <li>(i) the management structure and roles and responsibilities of the Personnel to be used for the Transition Services;</li> <li>(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;</li> <li>(iii) key dependencies and risks; and</li> <li>(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</li> </ul> </li> <li>(g) identify tools and methodologies to be used when performing the Transition Services.</li> </ul> <p>4.4 The Transition Plan must:</p> <ul style="list-style-type: none"> <li>(a) be complete and in the form of a single document;</li> <li>(b) be realistic in terms of timeframes, tasks and Personnel;</li> <li>(c) be clear and unambiguous;</li> <li>(d) conform to its description and be fit for its purpose;</li> </ul>

	<p>(e) not impose unreasonable obligations or requirements on the Purchasing Agency;</p> <p>(f) be of professional quality; and</p> <p>(g) be factually correct.</p> <p>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.</p> <p>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.</p> <p>4.7 Any Transition Plan must be agreed by the parties in writing.</p>								
<p>5. Transition Services and Deliverables</p>	<p>[Points to note:</p> <p>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.).</p> <p>If you prefer not to use the transition services and deliverables table below, it can be deleted.</p> <p>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'.</p> <p>[Complete/amend/delete as required]]</p> <p><b>Scope</b></p> <p>5.1 Transition Services and Deliverables</p> <p>You will perform the following Transition Services and provide the following Deliverables:</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) ...</p> <p style="text-align: center;"><i>or</i></p> <p>You will perform the following Transition Services and provide the following Deliverables:</p> <table border="1" data-bbox="464 1563 1458 1957"> <thead> <tr> <th data-bbox="464 1563 948 1637">Transition Service (Name and description)</th> <th data-bbox="948 1563 1458 1637">Deliverable (Name and description)</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1637 948 1753">[Transition Service name] [Describe the Service/transition task].</td> <td data-bbox="948 1637 1458 1753">[Deliverable name] [Describe the Deliverable, including any performance or quality measures].</td> </tr> <tr> <td data-bbox="464 1753 948 1870">[Transition Service name] [Describe the Service/transition task].</td> <td data-bbox="948 1753 1458 1870">[Deliverable name] [Describe the Deliverable, including any performance or quality measures].</td> </tr> <tr> <td data-bbox="464 1870 948 1957">[add rows for additional Services/tasks as required]</td> <td data-bbox="948 1870 1458 1957">[add rows for additional Deliverables as required]</td> </tr> </tbody> </table> <p><b>High level timeline</b></p>	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]
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]								

	<p>5.2 Unless otherwise agreed during the course of the transition, you must:</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) ...</p> <p><b>Out of scope [optional]</b></p> <p>[If it is helpful to state clearly what is <i>out</i> of scope, set that out here. If not, delete this 'Out of scope' section.]</p> <p>5.3 The following [activities/services/deliverables] are out of scope:</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) ...</p> <p><b>Involvement of other providers [optional]</b></p> <p>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.]</p>			
<p>6. Interfaces</p> <p>(Ref: Clause 5.5 Core I/T/MS Services Terms)</p>	<p>[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.]</p>			
<p>7. Transition Milestones</p> <p>(Ref: Clause 5.4 Core I/T/MS Services Terms)</p>	<p>[Insert relevant Transition Milestones and their corresponding Transition Milestone dates. Points to note:</p> <ul style="list-style-type: none"> <li>• 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).</li> <li>• 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?</li> <li>• 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.</li> <li>• 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.</li> <li>• If user training and/or training materials are required, specify who is responsible for that and by when.</li> <li>• Consider whether operational handover documentation is required and, if so, the responsibilities for preparing it.]</li> </ul> <p>You will meet the following Transition Milestones by their corresponding Transition Milestone Dates.</p> <table border="1" data-bbox="464 2033 1461 2072"> <thead> <tr> <th>No.</th> <th>Transition Milestone</th> <th>Transition Milestone Date</th> </tr> </thead> </table>	No.	Transition Milestone	Transition Milestone Date
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]								
<p>[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.]</p> <table border="1"> <thead> <tr> <th>Site</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>[insert date]</td> <td>By [insert date]</td> </tr> <tr> <td>[insert date]</td> <td>By [insert date]</td> </tr> <tr> <td>[insert date]</td> <td>By [insert date]</td> </tr> </tbody> </table> <p>Or</p> <p>You will meet the Transition Milestones recorded in the Transition Plan by the corresponding Transition Milestone Dates set out in the Transition Plan.</p>				Site	Date	[insert date]	By [insert date]	[insert date]	By [insert date]	[insert date]	By [insert date]
Site	Date										
[insert date]	By [insert date]										
[insert date]	By [insert date]										
[insert date]	By [insert date]										
<p>8. Testing and acceptance</p> <p>(Ref: Clause 5.8 Core I/T/MS Services Terms)</p>	<p>[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.]</p> <p><b>Provider testing</b></p> <p>8.1 You will perform:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) any other testing required to satisfy you that: <ul style="list-style-type: none"> <li>(i) the Services will meet the Requirements and the applicable Service Levels; and</li> <li>(ii) the Purchasing Agency's testing may proceed.</li> </ul> </li> </ul> <p>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.</p> <p>8.3 At the completion of your testing you will deliver to the Purchasing Agency:</p> <ul style="list-style-type: none"> <li>(a) the documentation and other materials providing objective evidence that the purposes of your testing have been met;</li> <li>(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</li> <li>(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).</li> </ul>										

### **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

	<p>(iii) shall pay us those liquidated damages within 20 Business Days following the relevant Transition Milestone Date.</p> <p>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.</p> <p>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).</p>								
<p>10. Liquidated damages</p> <p>(Ref: Clause 5.4(d) Core I/T/MS Services Terms)</p>	<p>[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']</p> <p>10.1 If you fail to meet [a Transition Milestone] <i>or</i> [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:</p> <p>(a) we may withhold payment of Fees for the relevant Transition Services until the Transition Milestone is achieved; and</p> <p>(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.</p> <p>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.</p>								
<p>11. Purchasing Agency responsibilities</p> <p>(Ref: Clause 5.6(a) Core I/T/MS Services Terms)</p>	<p>[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.]</p>								
<p>12. Dependencies</p>	<p>[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.]</p> <p>12.1 The parties acknowledge that the scope of the Transition Services and the timetable for them is based on certain dependencies.</p> <p>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:</p> <table border="1" data-bbox="525 1619 1457 1821"> <thead> <tr> <th>Dependency</th> <th>Impact</th> </tr> </thead> <tbody> <tr> <td>[describe impact]</td> <td>[describe impact]</td> </tr> <tr> <td>[describe impact]</td> <td>[describe impact]</td> </tr> <tr> <td>[describe impact]</td> <td>[describe impact]</td> </tr> </tbody> </table>	Dependency	Impact	[describe impact]					
Dependency	Impact								
[describe impact]	[describe impact]								
[describe impact]	[describe impact]								
[describe impact]	[describe impact]								

## Performance Management

<p>13. Contract Managers and other performance</p>	<p>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.</p>
--	--

<p>management personnel (Ref: Clause 4 Core I/T/MS Services Terms)</p>	<p>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).</p> <table border="1" data-bbox="464 353 1453 1077"> <thead> <tr> <th data-bbox="464 353 619 488">Party</th> <th data-bbox="619 353 943 488">Role(s) (and no. of years' experience in role if required)</th> <th data-bbox="943 353 1267 488">Initial appointee</th> <th data-bbox="1267 353 1453 488">Key Personnel? (Yes / No)</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 488 619 781" rowspan="2">Purchasing Agency</td> <td data-bbox="619 488 943 633">[Transition Manager]</td> <td data-bbox="943 488 1267 633">[Name] [Email] [Phone]</td> <td data-bbox="1267 488 1453 781" rowspan="2">(Not applicable to Purchasing Agency)</td> </tr> <tr> <td data-bbox="619 633 943 781">[Role]</td> <td data-bbox="943 633 1267 781">[Name] [Email] [Phone]</td> </tr> <tr> <td data-bbox="464 781 619 927" rowspan="2">Provider</td> <td data-bbox="619 781 943 927">[Transition Manager] [[X] years' experience]</td> <td data-bbox="943 781 1267 927">[Name] [Email] [Phone]</td> <td data-bbox="1267 781 1453 927"></td> </tr> <tr> <td data-bbox="619 927 943 1077">[Role] [[X] years' experience]</td> <td data-bbox="943 927 1267 1077">[Name] [Email] [Phone]</td> <td data-bbox="1267 927 1453 1077"></td> </tr> </tbody> </table>	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]	
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]																
<p>14. Meetings (Ref: Clause 5.10(a) Core I/T/MS Services Terms)</p>	<p>[If there are any particular meeting requirements for this SOW, specify them here. Otherwise delete this row.]</p> <p>You will attend the following meetings at the following times:</p> <table border="1" data-bbox="464 1249 1453 1435"> <thead> <tr> <th data-bbox="464 1249 884 1328">Meeting details</th> <th data-bbox="884 1249 1169 1328">Attendees</th> <th data-bbox="1169 1249 1453 1328">Frequency/date and location</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1328 884 1384"></td> <td data-bbox="884 1328 1169 1384"></td> <td data-bbox="1169 1328 1453 1384"></td> </tr> <tr> <td data-bbox="464 1384 884 1435"></td> <td data-bbox="884 1384 1169 1435"></td> <td data-bbox="1169 1384 1453 1435"></td> </tr> </tbody> </table>	Meeting details	Attendees	Frequency/date and location														
Meeting details	Attendees	Frequency/date and location																
<p>15. Reports (Ref: Clause 5.10(b) Core I/T/MS Services Terms)</p>	<p>[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'.]</p> <p>You will report to us as follows:</p> <table border="1" data-bbox="464 1637 1453 1794"> <thead> <tr> <th data-bbox="464 1637 884 1688">Report details</th> <th data-bbox="884 1637 1169 1688">Recipients</th> <th data-bbox="1169 1637 1453 1688">Frequency/date</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1688 884 1740">[Eg Transition status report]</td> <td data-bbox="884 1688 1169 1740">[Eg Transition Manager]</td> <td data-bbox="1169 1688 1453 1740">[Eg Weekly]</td> </tr> <tr> <td data-bbox="464 1740 884 1794"></td> <td data-bbox="884 1740 1169 1794"></td> <td data-bbox="1169 1740 1453 1794"></td> </tr> </tbody> </table>	Report details	Recipients	Frequency/date	[Eg Transition status report]	[Eg Transition Manager]	[Eg Weekly]											
Report details	Recipients	Frequency/date																
[Eg Transition status report]	[Eg Transition Manager]	[Eg Weekly]																
<p>16. Escalation</p>	<p>[If specific escalation contacts are required for performance and technical issues and risks, complete this row to the extent required. If not, delete it.]</p> <p>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:</p>																	

	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]

  

<p>17. Conflicts of Interest (Ref: Clause 11.2 Core I/T/MS Services Terms)</p>	<p>17.1 You declare the following Conflicts of Interest in entering into this SOW and providing the Services described in this SOW:</p> <p>[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.]</p> <p>[Conflict management plan: Insert details of the Purchasing Agency's conflict management plan or such a plan that has been agreed with the Provider]</p> <p>[Or, if there are no Conflicts of Interest, state None]</p> <p>[None]</p> <p>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:</p> <p>[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.]</p> <p>[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)]</p> <p>[Or, if there are no Conflicts of Interest, state None]</p> <p>[None]</p>
--	--

## Fees

<p>18. Fees (Ref: Clause 14.1 Core I/T/MS Services Terms)</p>	<p>[Insert details of the Fees payable for the Transition Services]</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p><b>Fixed fee</b></p> <p>A fixed Fee of \$[ ] excluding GST.</p> <p><b>or</b></p> <p><b>Services Rates</b></p> <p>Time-based Fees[, up to a total maximum of \$[ ] excluding GST], in accordance with your Services Rates set out in your Service Listings (as at the date of this SOW) in the Marketplace Catalogue, as [stated/summarised] below:</p>
---	---

	<p>[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.]</p> <p>or</p> <p><b>Discounted Services Rates</b></p> <p>Time-based Fees[, up to a total maximum of \$[ ] excluding GST], in accordance with the discounted Services Rates (i.e., lower than the standard Services Rates in the relevant Services Listings in the Marketplace Catalogue), as stated below:</p> <p>[insert details of discounted Services Rates]</p> <p>or</p> <p><b>Daily fee rate</b></p> <p>For each day worked a daily fee rate of \$[ ] excluding GST[, up to a total maximum of \$[ ] excluding GST]. One day's work is defined as 8 hours. If you work less than a full day the Fee shall be calculated based on the time worked at the agreed daily fee rate i.e. (daily fee rate ÷ 8) x hours worked. If you work more than 8 hours in a given day, the specified daily rate will still apply, i.e., you are not entitled to charge more for the additional time spent.</p> <p>or</p> <p><b>[Some other pricing/fees mechanism]</b></p> <p>[insert details as required]</p> <p>[always include the line below]</p> <p>(Plus any Administration Fee as per row 22 below.)</p>												
<p>19. Invoicing</p> <p>(Ref: Clause 14.2 Core I/T/MS Services Terms)</p>	<p><b>When to invoice</b></p> <p>[Choose one option for invoicing, insert relevant wording and delete remainder. Make sure all Fees are captured. Also, if relevant, make sure you are clear on when invoicing commences.]</p> <p>monthly in arrears</p> <p>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.</p> <p>or, for payment on completion</p> <p>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.</p> <p>or, for Transition Milestone-based Fees</p> <p>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:</p> <table border="1" data-bbox="464 1637 1457 1839"> <thead> <tr> <th>Transition Milestone</th> <th>Due date</th> <th>Amount due (excl GST)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>[Include section below if Retention Amount approach is desired. Delete if not]</p> <p><b>Retention Amount</b></p> <p>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 <b>Retention Amount</b>).</p>	Transition Milestone	Due date	Amount due (excl GST)									
Transition Milestone	Due date	Amount due (excl GST)											

	<p>19.5 The Retention Amount shall be held by the Purchasing Agency until the release event specified below (<b>Release Event</b>).</p> <p>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.</p> <p>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.</p> <p>19.8 Any undisputed portion of the Retention Amount shall be promptly released to you after termination.</p> <p>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.</p> <table border="1" data-bbox="523 629 1457 734"> <thead> <tr> <th data-bbox="523 629 981 680">Retention Amount (%)</th> <th data-bbox="981 629 1457 680">Release Event</th> </tr> </thead> <tbody> <tr> <td data-bbox="523 680 981 734"></td> <td data-bbox="981 680 1457 734"></td> </tr> </tbody> </table> <p><b>Additional invoicing requirements</b></p> <p>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].</p>	Retention Amount (%)	Release Event		
Retention Amount (%)	Release Event				
<p>20. Expenses</p> <p>(Ref: Clause 14.6 Core I/T/MS Services Terms)</p>	<p>[Delete this entire row if not applicable]</p> <p>You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:</p> <ul style="list-style-type: none"> <li>we have given our prior written consent to you incurring the expenses; and</li> <li>the expenses are charged at cost.</li> </ul>				
<p>21. Prices decreases and increases</p> <p>(Ref: Clause 14.8 Core I/T/MS Services Terms)</p>	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>a Requirements Change (see clauses 10.3(b) and 10.4 of the Channel Terms);</li> <li>permissible price adjustments set out in clauses 12.7 and 12.12 of the Channel Terms; or</li> <li>changed or new Security Standards (see paragraphs 2.4-2.5 of Schedule 1 to the Channel Terms),</li> </ul> <p>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).</p> <p>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.]</p>				
<p>22. Administration Fee</p> <p>(Ref: Clause 14.1(a)(ii) Core I/T/MS Services)</p>	<p>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</p>				

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 DIA, 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

<p>23. Security clearances and probity checks</p> <p>(Ref: Clause 8.1(b)(i) Core I/T/MS Services Terms)</p>	<p>[If Provider Personnel are required to pass any additional security, probity, tax, or beneficiary checks (i.e., additional to those that DIA 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.]</p>
<p>24. Purchasing Agency policies</p> <p>(Ref: Clause 11.1(b) Core I/T/MS Services Terms)</p>	<p>[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'.]</p>
<p>25. Intellectual Property Rights</p> <p>(Ref: Clause 16 Core I/T/MS Services Terms)</p>	<p>[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'.</p> <p>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 <i>internal</i> 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.</p> <p>25.1 [Licences to Purchasing Agency in relation to Deliverables and Services</p> <p>(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.</p> <p>(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.]</p>
<p>26. Service and Purchasing Agency Data locations</p> <p>(Ref: Clause 17.2 Core I/T/MS Services Terms)</p>	<p>[Clause 17.2 of the Core I/T/MS Services Terms:</p> <ul style="list-style-type: none"> <li>• 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 DIA-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</li> <li>• 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).</li> </ul>

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 DIA-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.

<b>Permitted Additional Territories (in addition to those in the Offshoring Schedule)</b>	
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'.]]
<b>Service Location or Data Location restrictions</b>	
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



## 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] ( <b>Provider, you, your</b> )
Purchasing Agency:	[Insert full Purchasing Agency name and, if a company, the company number or NZ business number] ( <b>Purchasing Agency, we, us</b> )
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
---	---

	<p>Terms are required, they can be entered here as well. If there are no transition services, enter "Not applicable", or delete this row.</p> <p>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.]</p>																		
<p>2. Services</p>	<p>You will perform the Services and provide the Deliverables set out below.</p> <p>[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.]</p> <table border="1" data-bbox="464 678 1458 960"> <thead> <tr> <th data-bbox="464 678 948 757"><b>Service</b> (Name and description)</th> <th data-bbox="948 678 1458 757"><b>Deliverable</b> (Name and description)</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 757 948 875"> <p><b>[Service name]</b></p> <p>[Describe the Service/project task].</p> </td> <td data-bbox="948 757 1458 875"> <p><b>[Deliverable name]</b></p> <p>[Describe the Deliverable, including any performance or quality measures].</p> </td> </tr> <tr> <td data-bbox="464 875 948 960"> <p>[add rows for additional Services as required]</p> </td> <td data-bbox="948 875 1458 960"> <p>[add rows for additional Deliverables as required]</p> </td> </tr> </tbody> </table>	<b>Service</b> (Name and description)	<b>Deliverable</b> (Name and description)	<p><b>[Service name]</b></p> <p>[Describe the Service/project task].</p>	<p><b>[Deliverable name]</b></p> <p>[Describe the Deliverable, including any performance or quality measures].</p>	<p>[add rows for additional Services as required]</p>	<p>[add rows for additional Deliverables as required]</p>												
<b>Service</b> (Name and description)	<b>Deliverable</b> (Name and description)																		
<p><b>[Service name]</b></p> <p>[Describe the Service/project task].</p>	<p><b>[Deliverable name]</b></p> <p>[Describe the Deliverable, including any performance or quality measures].</p>																		
<p>[add rows for additional Services as required]</p>	<p>[add rows for additional Deliverables as required]</p>																		
<p>3. Interfaces (Ref: Clause 5.5 Core I/T/MS Services Terms)</p>	<p>[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.]</p>																		
<p>4. Milestones (Ref: Clause 5.4 Core I/T/MS Services Terms)</p>	<p>[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?]</p> <p>You will meet the following Milestones by their corresponding Milestone Dates.</p> <table border="1" data-bbox="464 1671 1458 1973"> <thead> <tr> <th data-bbox="464 1671 549 1727"><b>No.</b></th> <th data-bbox="549 1671 1131 1727"><b>Milestone</b></th> <th data-bbox="1131 1671 1458 1727"><b>Milestone Date</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1727 549 1771">1</td> <td data-bbox="549 1727 1131 1771"></td> <td data-bbox="1131 1727 1458 1771">By [insert date]</td> </tr> <tr> <td data-bbox="464 1771 549 1816">2</td> <td data-bbox="549 1771 1131 1816"></td> <td data-bbox="1131 1771 1458 1816">By [insert date]</td> </tr> <tr> <td data-bbox="464 1816 549 1861">3</td> <td data-bbox="549 1816 1131 1861"></td> <td data-bbox="1131 1816 1458 1861">By [insert date]</td> </tr> <tr> <td data-bbox="464 1861 549 1906">4</td> <td data-bbox="549 1861 1131 1906"></td> <td data-bbox="1131 1861 1458 1906">By [insert date]</td> </tr> <tr> <td data-bbox="464 1906 549 1973">5</td> <td data-bbox="549 1906 1131 1973"></td> <td data-bbox="1131 1906 1458 1973">By [insert date]</td> </tr> </tbody> </table>	<b>No.</b>	<b>Milestone</b>	<b>Milestone Date</b>	1		By [insert date]	2		By [insert date]	3		By [insert date]	4		By [insert date]	5		By [insert date]
<b>No.</b>	<b>Milestone</b>	<b>Milestone Date</b>																	
1		By [insert date]																	
2		By [insert date]																	
3		By [insert date]																	
4		By [insert date]																	
5		By [insert date]																	

<p>5. Acceptance of Deliverables</p> <p>(Ref: Clause 5.8 Core I/T/MS Services Terms)</p>	<p>[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'.]</p>								
<p>6. Liquidated damages</p> <p>(Ref: Clause 5.4(d) Core I/T/MS Services Terms)</p>	<p>[Complete the drafting below if liquidated damages will be payable upon a failure to meet one or more Milestones. If no liquidated damages will be payable, you can state 'Not applicable']</p> <p>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:</p> <ul style="list-style-type: none"> <li>we may withhold payment of Fees for the relevant Services until the Milestone is achieved; and</li> <li>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.</li> </ul> <p>You accept that the liquidated damages referred to above reflect our legitimate interests in performance and are not a penalty, and you will not seek to argue otherwise in any dispute or proceedings.</p> <p>Your obligation to pay these liquidated damages is without limitation to any other remedy we may have under or in relation to the Subscription Agreement.</p>								
<p>7. Service Levels (if any)</p> <p>(Ref: Clause 5.9 Core I/T/MS Services Terms)</p>	<p>[Choose one option, insert relevant details and delete remainder.]</p> <p><b>Either</b></p> <p>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.]</p> <p><b>or</b></p> <p>You will meet or exceed the following Service Levels:</p> <p>[insert details of Service Levels; make sure they're specific and measurable]</p> <table border="1" data-bbox="464 1395 1458 1597"> <thead> <tr> <th>Name of Service Level</th> <th>Details of Service Level</th> </tr> </thead> <tbody> <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> </tbody> </table> <p><b>or</b></p> <p>There are no Service Levels beyond what is already stated in the Subscription Agreement.</p>	Name of Service Level	Details of Service Level	[insert name]	[insert details of service level]	[insert name]	[insert details of service level]	[insert name]	[insert details of service level]
Name of Service Level	Details of Service Level								
[insert name]	[insert details of service level]								
[insert name]	[insert details of service level]								
[insert name]	[insert details of service level]								
<p>8. Service Level Credits (if any)</p> <p>(Ref: Clause 5.9 Core I/T/MS Services Terms)</p>	<p>[Choose one option, insert relevant details and delete remainder. The drafting is only an example and may need to be amended to suit your circumstances.]</p> <p><b>Either</b></p> <p>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.]</p> <p><b>or</b></p>								

	<p>If you fail in a given month to meet the Service Levels referred to or specified above (a <b>Service Level Default</b>), we shall become entitled to the credits (<b>Service Level Credits</b>) specified in the table below:</p> <table border="1" data-bbox="464 286 1458 571"> <thead> <tr> <th data-bbox="464 286 847 338">Service Level</th> <th data-bbox="847 286 1458 338">Service Level Credits for Service Level Defaults</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 338 847 416"></td> <td data-bbox="847 338 1458 416">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="464 416 847 495"></td> <td data-bbox="847 416 1458 495">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td data-bbox="464 495 847 571"></td> <td data-bbox="847 495 1458 571">An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> </tbody> </table> <p>If a Service Level Default occurs for which Service Level Credits are payable, you will credit the applicable Service Level Credits against the Fees under this SOW that are next due to be paid.</p> <p>Service Level Credits are agreed to reflect the reduced value of the relevant Services affected by the Service Level Default(s) and are acknowledged to be neither liquidated damages nor our sole and exclusive remedy in respect of Service Level Defaults or the consequences of such defaults.</p> <p>In no event will the amount of all Service Level Credits credited against the Fees for this SOW in each calendar month exceed, in total, [XX]% of the Fees payable in that month.</p> <p><b>or</b></p> <p>There are no Service Level Credits.</p>	Service Level	Service Level Credits for Service Level Defaults		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.
Service Level	Service Level Credits for Service Level Defaults								
	An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.								
	An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.								
	An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.								
<p>9. Purchasing Agency responsibilities <small>(Ref: Clause 5.6(a) Core I/T/MS Services Terms)</small></p>	<p>[If the Purchasing Agency is to have any specific responsibilities in relation to provision of the Services, beyond what may already be specified in the relevant Services Listings in the Marketplace or in the Subscription Form, state them here. If there are none, you can delete this row.]</p>								

## Performance Management

<p>10. Contract Managers and other performance management personnel <small>(Ref: Clause 4 Core I/T/MS Services Terms)</small></p>	<p>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.</p> <p>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).</p> <table border="1" data-bbox="464 1637 1458 2060"> <thead> <tr> <th data-bbox="464 1637 619 1771">Party</th> <th data-bbox="619 1637 943 1771">Role(s) (and no. of years' experience in role if required)</th> <th data-bbox="943 1637 1267 1771">Initial appointee</th> <th data-bbox="1267 1637 1458 1771">Key Personnel? (Yes / No)</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1771 619 2060" rowspan="2">Purchasing Agency</td> <td data-bbox="619 1771 943 1917">[Role]</td> <td data-bbox="943 1771 1267 1917">[Name] [Email] [Phone]</td> <td data-bbox="1267 1771 1458 2060" rowspan="2">(Not applicable to Purchasing Agency)</td> </tr> <tr> <td data-bbox="619 1917 943 2060">[Role]</td> <td data-bbox="943 1917 1267 2060">[Name] [Email] [Phone]</td> </tr> </tbody> </table>	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]
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]									

	<table border="1"> <tr> <td data-bbox="448 152 619 302">Provider</td> <td data-bbox="619 152 943 302">[Role] [[X] years' experience]</td> <td data-bbox="943 152 1267 302">[Name] [Email] [Phone]</td> <td data-bbox="1267 152 1476 302"></td> </tr> <tr> <td data-bbox="448 302 619 452"></td> <td data-bbox="619 302 943 452">[Role] [[X] years' experience]</td> <td data-bbox="943 302 1267 452">[Name] [Email] [Phone]</td> <td data-bbox="1267 302 1476 452"></td> </tr> </table>	Provider	[Role] [[X] years' experience]	[Name] [Email] [Phone]			[Role] [[X] years' experience]	[Name] [Email] [Phone]		
Provider	[Role] [[X] years' experience]	[Name] [Email] [Phone]								
	[Role] [[X] years' experience]	[Name] [Email] [Phone]								
<b>11. Meetings</b> (Ref: Clause 5.10(a) Core I/T/MS Services Terms)	<p>[If there are any particular meeting requirements for this SOW, specify them here. Otherwise delete this row.]</p> <p>You will attend the following meetings at the following times:</p> <table border="1"> <thead> <tr> <th data-bbox="448 622 885 698">Meeting details</th> <th data-bbox="885 622 1169 698">Attendees</th> <th data-bbox="1169 622 1476 698">Frequency/date and location</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 698 885 752"></td> <td data-bbox="885 698 1169 752"></td> <td data-bbox="1169 698 1476 752"></td> </tr> <tr> <td data-bbox="448 752 885 806"></td> <td data-bbox="885 752 1169 806"></td> <td data-bbox="1169 752 1476 806"></td> </tr> </tbody> </table>	Meeting details	Attendees	Frequency/date and location						
Meeting details	Attendees	Frequency/date and location								
<b>12. Reports</b> (Ref: Clause 5.10(b) Core I/T/MS Services Terms)	<p>[If there are any particular reporting requirements for this SOW (e.g., monthly status reports), specify them here. Otherwise delete this row.]</p> <p>You will report to us as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="448 981 885 1034">Report details</th> <th data-bbox="885 981 1169 1034">Recipients</th> <th data-bbox="1169 981 1476 1034">Frequency/date</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1034 885 1088">[Eg Status report]</td> <td data-bbox="885 1034 1169 1088">[Eg Contract Manager]</td> <td data-bbox="1169 1034 1476 1088">[Eg Monthly]</td> </tr> <tr> <td data-bbox="448 1088 885 1142"></td> <td data-bbox="885 1088 1169 1142"></td> <td data-bbox="1169 1088 1476 1142"></td> </tr> </tbody> </table>	Report details	Recipients	Frequency/date	[Eg Status report]	[Eg Contract Manager]	[Eg Monthly]			
Report details	Recipients	Frequency/date								
[Eg Status report]	[Eg Contract Manager]	[Eg Monthly]								
<b>13. Escalation</b>	<p>[If specific escalation contacts are required for performance and technical issues and risks, complete this row to the extent required. If not, delete it.]</p> <p>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:</p> <table border="1"> <thead> <tr> <th data-bbox="448 1368 794 1458">Nature of issues and risks</th> <th data-bbox="794 1368 1129 1458">Purchasing Agency escalation</th> <th data-bbox="1129 1368 1476 1458">Provider escalation</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1458 794 1637">Performance issues and risks</td> <td data-bbox="794 1458 1129 1637">Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]</td> <td data-bbox="1129 1458 1476 1637">Provider may escalate to: [insert name/role and contact details of agency escalation contact]</td> </tr> <tr> <td data-bbox="448 1637 794 1816">Technical issues and risks</td> <td data-bbox="794 1637 1129 1816">Purchasing Agency may escalate to: [insert name/role and contact details of provider escalation contact]</td> <td data-bbox="1129 1637 1476 1816">Provider may escalate to: [insert name/role and contact details of agency escalation contact]</td> </tr> </tbody> </table>	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]
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]								
<b>14. Conflicts of Interest</b> (Ref: Clause 11.2 Core I/T/MS Services Terms)	<p>14.1 You declare the following Conflicts of Interest in entering into this SOW and providing the Services described in this SOW:</p> <p>[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.]</p>									

	<p>[Conflict management plan: Insert details of the Purchasing Agency's conflict management plan or such a plan that has been agreed with the Provider]</p> <p>[Or, if there are no Conflicts of Interest, state None]</p> <p>[None]</p> <p>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:</p> <p>[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.]</p> <p>[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)]</p> <p>[Or, if there are no Conflicts of Interest, state None]</p> <p>[None]</p>
--	---

## Fees

<p>15. Fees</p> <p>(Ref: Clause 14.1 Core I/T/MS Services Terms)</p>	<p>[Choose one option, insert relevant details and delete remainder.]</p> <p><b>Fixed fee</b></p> <p>A fixed Fee of \$[ ] excluding GST.</p> <p><b>or</b></p> <p><b>Services Rates</b></p> <p>Time-based Fees[, up to a total maximum of \$[ ] excluding GST], in accordance with your Services Rates set out in your Service Listings (as at the date of this SOW) in the Marketplace Catalogue, as [stated/summarised] below:</p> <p>[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.]</p> <p><b>or</b></p> <p><b>Discounted Services Rates</b></p> <p>Time-based Fees[, up to a total maximum of \$[ ] excluding GST], in accordance with the discounted Services Rates (i.e., lower than the standard Services Rates in the relevant Services Listings in the Marketplace Catalogue), as stated below:</p> <p>[insert details of discounted Services Rates]</p> <p><b>or</b></p> <p><b>Daily fee rate</b></p> <p>For each day worked a daily fee rate of \$[ ] excluding GST[, up to a total maximum of \$[ ] excluding GST]. One day's work is defined as 8 hours. If you work less than a full day the Fee shall be calculated based on the time worked at the agreed daily fee rate i.e. (daily fee rate ÷ 8) x hours worked. If you work more than 8 hours in a given day, the specified daily rate will still apply, i.e., you are not entitled to charge more for the additional time spent.</p> <p><b>or</b></p> <p><b>[Some other pricing/fees mechanism]</b></p> <p>[insert details as required]</p>
--	---

	<p>[always include the line below]</p> <p>(Plus any Administration Fee as per row 19 below.)</p>																									
<p>16. Invoicing</p> <p>(Ref: Clause 14.2 Core I/T/MS Services Terms)</p>	<p><b>When to invoice</b></p> <p>[Choose one option for invoicing, insert relevant wording and delete remainder. Make sure all Fees are captured. Also, if relevant, make sure you are clear on when invoicing commences.]</p> <p>monthly in arrears</p> <p>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.</p> <p>or, for payment on completion</p> <p>You will invoice the Fees on completion of the Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement. 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.</p> <p>or, for Milestone-based Fees</p> <p>You will invoice the Fees in instalments on the dates set out below, subject to completion of the relevant Milestones in accordance with the Subscription Agreement and the following:</p> <ul style="list-style-type: none"> <li>• <i>Deliverables</i>: 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.</li> <li>• <i>Service readiness</i> (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).</li> <li>• <i>Other Milestones</i>: 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.</li> </ul> <table border="1" data-bbox="464 1384 1458 2049"> <thead> <tr> <th data-bbox="464 1384 732 1525">Milestone</th> <th data-bbox="732 1384 903 1525">Due date</th> <th data-bbox="903 1384 1074 1525">Amount due (excl GST)</th> <th data-bbox="1074 1384 1227 1525">Type (Deliverable / Service readiness / other)</th> <th data-bbox="1227 1384 1458 1525">Acceptance or readiness criteria / completion description</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 1525 732 1630"><i>Example: Draft technical design delivered</i></td> <td data-bbox="732 1525 903 1630"><i>5 March 2026</i></td> <td data-bbox="903 1525 1074 1630"><i>\$15,000</i></td> <td data-bbox="1074 1525 1227 1630"><i>Deliverable</i></td> <td data-bbox="1227 1525 1458 1630"><i>Accepted under clause 5.8 or [specify criteria]</i></td> </tr> <tr> <td data-bbox="464 1630 732 1872"><i>Example: Service desk go-live</i></td> <td data-bbox="732 1630 903 1872"><i>1 June 2026</i></td> <td data-bbox="903 1630 1074 1872"><i>\$20,000</i></td> <td data-bbox="1074 1630 1227 1872"><i>Service readiness</i></td> <td data-bbox="1227 1630 1458 1872"><i>Service desk operational and handling tickets within agreed SLA; Purchasing Agency confirmation received</i></td> </tr> <tr> <td data-bbox="464 1872 732 2004"><i>Example: Training workshops completed</i></td> <td data-bbox="732 1872 903 2004"><i>15 August 2026</i></td> <td data-bbox="903 1872 1074 2004"><i>\$10,000</i></td> <td data-bbox="1074 1872 1227 2004"><i>Other</i></td> <td data-bbox="1227 1872 1458 2004"><i>All 3 workshops delivered as scheduled or otherwise agreed</i></td> </tr> <tr> <td data-bbox="464 2004 732 2049"></td> <td data-bbox="732 2004 903 2049"></td> <td data-bbox="903 2004 1074 2049"></td> <td data-bbox="1074 2004 1227 2049"></td> <td data-bbox="1227 2004 1458 2049"></td> </tr> </tbody> </table>	Milestone	Due date	Amount due (excl GST)	Type (Deliverable / Service readiness / other)	Acceptance or readiness criteria / completion description	<i>Example: Draft technical design delivered</i>	<i>5 March 2026</i>	<i>\$15,000</i>	<i>Deliverable</i>	<i>Accepted under clause 5.8 or [specify criteria]</i>	<i>Example: Service desk go-live</i>	<i>1 June 2026</i>	<i>\$20,000</i>	<i>Service readiness</i>	<i>Service desk operational and handling tickets within agreed SLA; Purchasing Agency confirmation received</i>	<i>Example: Training workshops completed</i>	<i>15 August 2026</i>	<i>\$10,000</i>	<i>Other</i>	<i>All 3 workshops delivered as scheduled or otherwise agreed</i>					
Milestone	Due date	Amount due (excl GST)	Type (Deliverable / Service readiness / other)	Acceptance or readiness criteria / completion description																						
<i>Example: Draft technical design delivered</i>	<i>5 March 2026</i>	<i>\$15,000</i>	<i>Deliverable</i>	<i>Accepted under clause 5.8 or [specify criteria]</i>																						
<i>Example: Service desk go-live</i>	<i>1 June 2026</i>	<i>\$20,000</i>	<i>Service readiness</i>	<i>Service desk operational and handling tickets within agreed SLA; Purchasing Agency confirmation received</i>																						
<i>Example: Training workshops completed</i>	<i>15 August 2026</i>	<i>\$10,000</i>	<i>Other</i>	<i>All 3 workshops delivered as scheduled or otherwise agreed</i>																						

	<table border="1" data-bbox="464 152 1458 255"> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> <p data-bbox="464 275 1378 304">[Include section below if Retention Amount approach is desired. Delete if not]</p> <p data-bbox="464 320 699 349"><b>Retention Amount</b></p> <p data-bbox="464 367 1458 427">The Purchasing Agency shall be entitled to withhold a retention amount equal to the percentage of each invoice that is specified below (the <b>Retention Amount</b>).</p> <p data-bbox="464 445 1406 506">The Retention Amount shall be held by the Purchasing Agency until the release event specified below (<b>Release Event</b>).</p> <p data-bbox="464 521 1414 582">Within [X] Business Days following the satisfaction or occurrence of the Release Event, the Purchasing Agency shall pay the retained funds to you.</p> <p data-bbox="464 598 1437 719">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.</p> <p data-bbox="464 734 1430 795">Any undisputed portion of the Retention Amount shall be promptly released to the Service Provider after termination.</p> <p data-bbox="464 810 1442 904">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.</p> <table border="1" data-bbox="464 920 1458 1023"> <thead> <tr> <th data-bbox="464 920 979 969">Retention Amount (%)</th> <th data-bbox="979 920 1458 969">Release Event</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 969 979 1023"></td> <td data-bbox="979 969 1458 1023"></td> </tr> </tbody> </table> <p data-bbox="464 1039 898 1068"><b>Additional invoicing requirements</b></p> <p data-bbox="464 1086 1445 1180">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].</p>											Retention Amount (%)	Release Event		
Retention Amount (%)	Release Event														
<p data-bbox="161 1211 323 1240">17. Expenses</p> <p data-bbox="201 1256 432 1308">(Ref: Clause 14.6 Core I/T/MS Services Terms)</p>	<p data-bbox="464 1211 927 1240">[Delete this entire row if not applicable]</p> <p data-bbox="464 1256 1430 1317">You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:</p> <ul data-bbox="464 1335 1398 1395" style="list-style-type: none"> <li data-bbox="464 1335 1398 1366">• we have given our prior written consent to you incurring the expenses; and</li> <li data-bbox="464 1366 916 1395">• the expenses are charged at cost.</li> </ul>														
<p data-bbox="161 1435 403 1496">18. Prices increases and decreases</p> <p data-bbox="201 1512 432 1563">(Ref: Clause 14.8 Core I/T/MS Services Terms)</p>	<p data-bbox="464 1435 1449 1529">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.</p> <p data-bbox="464 1545 1458 1666">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:</p> <ul data-bbox="523 1682 1453 1899" style="list-style-type: none"> <li data-bbox="523 1682 1422 1742">• a Requirements Change (see clauses 10.3(b) and 10.4 of the Channel Terms);</li> <li data-bbox="523 1758 1414 1818">• permissible price adjustments set out in clauses 12.7 and 12.12 of the Channel Terms; or</li> <li data-bbox="523 1834 1453 1899">• changed or new Security Standards (see paragraphs 2.4-2.5 of Schedule 1 to the Channel Terms),</li> </ul> <p data-bbox="523 1915 1458 2036">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).</p>														

	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 DIA, 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)	<p>[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'.</p> <p>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 <i>internal</i> 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.</p> <p>22.1 [Licences to Purchasing Agency in relation to Deliverables and Services</p> <p>(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.</p> <p>(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.]</p>
23. Service and Purchasing Agency Data locations	<p>[Clause 17.2 of the Core I/T/MS Services Terms:</p> <ul style="list-style-type: none"> <li>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</li> </ul>

(Ref: Clause 17.2 Core I/T/MS Services Terms)

outside New Zealand, except as explicitly detailed in a DIA-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:

- 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 DIA-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
- 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.

<b>Permitted Additional Territories (in addition to those in the Offshoring Schedule)</b>	
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'.]]

	<b>Service Location or Data Location restrictions</b>	
	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 <i>or</i> [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 <i>or</i> [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