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**Subscription Form for Enterprise Software**

**Parties**

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

**Background**

This is a Subscription Form for our procurement of Enterprise Software and/or, where relevant, Associated Services, as defined in the Channel Terms for Enterprise Software (Standard) (the **Channel Terms**).

Those Channel Terms are Part 2 of the Collaborative Marketplace Agreement between the New Zealand Government and you. They prescribe the form of the Subscription Agreement that applies to our procurement of Enterprise Software and, where relevant, Associated Services, via the Marketplace.

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

**Agreement**

1. Content and formation of Subscription Agreement

Execution of the Subscription Form creates an agreement – a Subscription Agreement – that comprises sets of applicable terms, including Provider Standard Terms and, once agreed, Orders and/or SOWs (if any).

* 1. Content and formation

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

* + 1. comprises:
       1. this Subscription Form, including any attached Order documentation or form;
       2. the Core Enterprise Software Terms set out in Annexure B to the Channel Terms;
       3. any Extra Terms that apply to the category/ies of Services being procured (if any);
       4. your Provider Standard Terms referred to in clause 4 below, subject to and as modified by clause 1.2 and the Core Enterprise Software Terms and any Extra Terms that apply (if any); and
       5. each Statement of Work (if any) once executed by both parties (using either a template in the Schedule to the Core Enterprise Software Terms or otherwise available on marketplace.govt.nz, or a template provided as part of your Provider Standard Terms, if the Purchasing Agency agrees to use that template); and
    2. is formed when you and we sign (physically or electronically) this Subscription Form.
  1. Application of certain Provider Standard Terms

The parties agree that, despite any provision to the contrary in your Provider Standard Terms (or any policy to which they refer):

* + 1. **indemnities**: we shall not be under any obligation to indemnify or grant any guarantee to you or any other person or entity (and for this purpose “indemnify” includes any obligation in the nature of an indemnity);
    2. **entire agreement:** the Subscription Agreement (as described in clause 1.1) constitutes the entire agreement between you and us, as further described in clause 30.5 of the Core Enterprise Software Terms; any entire agreement or similar clause in your Provider Standard Terms to the contrary shall not apply; and no Provider Standard Terms apply unless they are stated to apply in either Schedule 1 to this Subscription Form, an Order, or a Statement of Work;
    3. **control of claims:** any reference in your Provider Standard Terms to your having any form of control over the defence or settlement of any third party claim against us (in relation to which you have an obligation such as an indemnity vis-a-vis us) is subject to any applicable directions provided to the Purchasing Agency pursuant to the New Zealand Government's "[Cabinet Directions for the Conduct of Crown Legal Business 2016](https://www.dpmc.govt.nz/publications/co-16-2-cabinet-directions-conduct-crown-legal-business-2016)" or their successor;

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

* + 1. **no exclusive remedy**: any reference in your Provider Standard Terms to a remedy being the sole or exclusive remedy, including but not limited in relation to the remedying of defects, does not apply, unless the parties agree in this Subscription Form or an Order or a Statement of Work that it does apply;
    2. **unilateral changes**: except as required by law, if you make a unilateral change to your Provider Standard Terms from the Commencement Date that is prejudicial to our or our Users’ rights or interests, that change shall be unenforceable against us and our Users (this clause does not prevent you from amending your Provider Standard Terms for all or relevant groups of your customers or adapting and evolving your Services as you see fit and it doesn’t require you to issue bespoke communications to purchasing agencies and their Users if you amend your Provider Standard Terms for all or relevant groups of your customers; it only limits the enforceability of unilateral changes that are prejudicial to us or our Users’ rights or interests). This clause is intended to benefit Users and be enforceable by them under the Contract and Commercial Law Act 2017 and you agree not to assert in any communications or proceedings, whether in New Zealand or elsewhere, that we or our Users are bound by such unilateral changes;
    3. **precedence of documents**: the precedence of documents comprising the Subscription Agreement is the precedence described in clause 1.3; and
    4. **governing law and jurisdiction:**
       1. New Zealand law governs all matters relating to the Subscription Agreement and its formation, including interpretation of its terms and any disputes relating to them;
       2. you agree to submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute regarding the Subscription Agreement or its formation and you agree that the New Zealand courts are an appropriate forum for such disputes and that you will not seek to argue to the contrary;
       3. you and any Purchasing Agency will be entitled to seek interim relief in any relevant jurisdiction.
  1. Precedence

If there is any conflict or inconsistency between the documents which comprise the Subscription Agreement, the order of precedence is (unless expressly agreed otherwise in writing by reference to this clause):

* + 1. the Statement of Work (if any);
    2. the Subscription Form, including any Order but excluding Provider Standard Terms referred to in, or attached to, the form or Order;
    3. any Extra Terms that apply (if any);
    4. the Core Enterprise Software Terms; and
    5. applicable Provider Standard Terms.

1. Interpretation

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

* 1. In this Subscription Form, unless the context otherwise requires:
     1. a reference to a party is to a party to this Subscription Form; and
     2. capitalised terms have the meanings given to them in the Core Enterprise Software Terms.

1. Provision of Enterprise Software and Associated Services

Enterprise Software and Associated Services to the Purchasing Agency need to be agreed in a Subscription Form, Order and/or Statement of Work.

* 1. As described in more detail in clause 3 of the Core Enterprise Software Terms, your provision of Enterprise Software (licensing or access) and/or Associated Services (if any) to us needs to be agreed in this Subscription Form or one or more Orders and/or Statements of Work.

1. Enterprise Software and/or Associated Services ordered at Commencement Date and applicable Provider Standard Terms
   1. The:
      1. Enterprise Software and/or Associated Services (if any) ordered by the Purchasing Agency as at the Commencement Date; and
      2. any Provider Standard Terms that apply to them (such as licensing terms or cloud access terms, or standard support plan terms),

are as described in:

* + 1. Schedule 1 (Order Details and Provider Standard Terms); and
    2. if relevant, one or more Statements of Work attached (or to be attached) to that Schedule.

1. Application of Subscription Agreement to various kinds of Enterprise Software and Associated Services
   1. You and we acknowledge that:

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

* + 1. this Subscription Agreement applies to any Enterprise Software and/or Associated Services for which you have Service Listings in the Marketplace (**In-Scope Services**) that we may order from time to time from the Commencement Date; and, therefore
    2. if, during the term of the Subscription Agreement (as defined in clause 1 of the Core Enterprise Software Terms), we select you to provide additional In-Scope Services, you and we may amend this Subscription Form or enter into Orders or Statements of Work or complete other standard documentation for those additional In-Scope Services without needing to complete a further Subscription Form.

1. Contract Managers
   1. The Contract Managers referred to in clause 4.1(a) of the Core Enterprise Software Terms are as follows:

These are the parties' Contract Managers

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

1. Other key contacts (if any)

Other key contacts (if any) can be stated here if the parties wish. Other key contacts can also be stated in Orders or SOWs if that’s preferable in the circumstances.

* 1. Other key contacts referred to in clause 4.2 of the Core Enterprise Software Terms are as follows: [*If there are no other key contacts, this clause 7 and the table below can be removed*]

|  |  |  |
| --- | --- | --- |
| Purchasing Agency | Role: |  |
| Name: |  |
| Email: |  |
| Phone: |  |
| Provider |  |  |
| Name: |  |
| Email: |  |
| Phone: |  |

1. Address for Notices
   1. The parties' addresses for notice referred to in clause 30.7(d) of the Core Enterprise Software Terms are as follows:

These are the parties' addresses for notice

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

1. Security clearances and probity checks

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

* 1. You must, in accordance with clause 8.1(b) of the Core Enterprise Software Terms, ensure that all of your Personnel engaged in providing the Services have obtained the security clearances and passed the probity checks specified below (if any):

|  |  |
| --- | --- |
| [insert name of clearance or check] | [insert details of clearance or check] |
| [insert additional rows as required] | [insert additional rows as required]  [*if no clearances or checks are required, clause 9 and this table can be deleted; note that clearance and check requirements may also be stated in Orders or SOWs if the parties prefer*] |

1. Changes to Core Enterprise Software Terms, any applicable Extra Terms, and Provider Standard Terms

The parties can agree to amend and supplement the Core Enterprise Software Terms and any applicable Extra Terms and Provider Standard Terms.

* 1. You and we may agree to amend and supplement the Core Enterprise Software Terms, any applicable Extra Terms, and any Provider Standard Terms, in either this Subscription Form, an Order, a Statement of Work, or other documentation that forms part of or accompanies your Provider Standard Terms.
  2. Subject to clause 10.3, if the Collaborative Marketplace Agreement is changed in accordance with clause 21 (Amendments) of Part 1 (General Terms) of that Agreement in a manner that affects or supplements the terms of the Subscription Agreement, that change will apply automatically to the Subscription Agreement from a date that is 15 days after the effective date stated in DIA or MBIE's notice under clause 21, unless:

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

* + 1. the change is contrary to an amendment or supplement to the Core Enterprise Software Terms or any applicable Extra Terms or any applicable Provider Standard Terms that we and you have already agreed; or
    2. in the case of existing Orders or Statements of Work, the change increases your costs or risks, and you inform us of this reasonably promptly; or
    3. we and you otherwise agree that the change will not apply.
  1. If the Collaborative Marketplace Agreement is amended in accordance with clause 21 of Part 1 (General Terms) of that Agreement and you elect to terminate your membership in the Marketplace in accordance with clause 21.4 of Part 1, amendments to the Collaborative Marketplace Agreement that would otherwise have applied automatically to this Subscription Agreement will not apply (and this Subscription Agreement will remain in place in accordance with its terms).

1. Other terms

The parties can record additional terms here if they wish.

* 1. [*If other terms are required and agreed, they can be inserted here. If there are no other terms, this clause 11 can be deleted. Note that other terms can be specified in Orders or SOWs instead, which may be the more natural place for them if they are Order- or SOW-specific. Other terms can also be specified in other documentation that forms part of or accompanies your Provider Standard Terms referred to in Schedule 1 to this Subscription Form.*]

**Execution**

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

|  |  |  |  |
| --- | --- | --- | --- |
| For and on behalf of the **Purchasing Agency** named above:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | For and on behalf of the **Provider** named above:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| (signature) | | (signature) | |
| **Name:** |  | **Name:** |
| **Position:** |  | **Position:** |
| **Date:** |  | **Date:** |

**Schedule 1 to Subscription Form: Order Details and Provider Standard Terms**

1. Introduction
   1. This Schedule sets out details of the Enterprise Software and/or Associated Services ordered by the Purchasing Agency as at the Commencement Date that are to be provided by the Provider.

|  |  |
| --- | --- |
| **Enterprise Software** | |
| Enterprise Software ordered | [*Insert details of the Enterprise Software that the Purchasing Agency is ordering, including applicable pricing/fees, date(s) of delivery/access, etc. You may wish to do this through the use of tables and/or free text descriptions. Alternatively, if you are attaching the Provider’s standard ordering tables/form you may wish to state something like “See attached”.*] |
| Provider Standard Terms that apply (if any) | [*Clearly identify / list by full name, any Provider Standard Terms that apply to the Enterprise Software being ordered. You may wish to link to them (if they’re publicly available online) or attach copies of them. The important point is that you identify them clearly.*] |
| **Associated Services** | |
| Associated Services ordered | *[If you’re able to and wish to describe Associated Services here, e.g., by reference to a standard Provider plan that can be summarised and linked to, you can do that here, including applicable pricing/fees, date(s) of delivery etc. You may also wish to attach standard Provider plan details. If the Associated Services need to be described and subject to the terms of a Statement of Work (e.g., with milestones, service levels etc), then you will probably want to complete a separate Statement of Work and refer to the Statement of Work (e.g., “See attached Statement of Work: [Name]”.] This would usually be the case for services like design/configuration, migration, implementation and similar services, where a detailed description in a Statement of Work is desirable. Where that’s the case, it is suggested that you use the Statement of Work template in Annexure C.]* |
| Provider Standard Terms that apply (if any) | *[Clearly identify / list by full name, any Provider Standard Terms that apply to the Associated Services being ordered. You may wish to link to them (if they’re publicly available online) or attach copies of them. The important point is that you identify them clearly.]* |