



Collaborative Marketplace Agreement

Part 2 – Channel Terms for Enterprise Software (ES Terms) (Standard)

Contents

- Channel Terms 1
- Subscription Agreement components..... 13
 - Annexure A: Subscription Form template 14
 - Annexure B: Core Enterprise Software Terms (and Statement of Work template).....23
 - Annexure C: Extra Terms (if any)86

Channel Terms

- 1. Introduction 1
- 2. Definitions2
- 3. Ordering Enterprise Software and Associated Services4
- 4. Agreements with Purchasing Agencies for Enterprise Software and Associated Services5
- 5. Amending and supplementing the Core Enterprise Software Terms, any applicable Extra Terms and the Provider Standard Terms.....6
- 6. Changes to Services Listings.....6
- 7. Additional pricing terms.....8
- 8. Reporting9
- 9. Administration Fee9
- 10. Subcontractor field in Services Listings not to be publicly available 10
- 11. Tier 1 Security Assurance and Risk Rating 11
- 12. Government Back-office Standards 11

1. Introduction

1.1 These Channel Terms apply to the Enterprise Software Channel (the **ES Channel**). This Channel is part of the New Zealand Government Marketplace as described in, and is subject to, the terms of the Collaborative Marketplace Agreement (the **Marketplace Agreement**).

These are the standard channel terms for Enterprise Software.

- 1.2 These particular terms apply in relation to Enterprise Software and Associated Services (each as defined in clause 2):
- (a) for which there is *no* Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure the Enterprise Software and Associated Services; and
 - (b) where we have required you to agree to these terms in order to list your Enterprise Software and any Associated Services in the Marketplace (given, for example, the nature or business-criticality of the software or because we have decided that it is not otherwise appropriate for listing in another Channel).
- 1.3 There are two kinds of Enterprise Software: Provider-Hosted Enterprise Software, and Agency-Hosted Enterprise Software (each as defined in clause 2).
- 1.4 If you are providing Enterprise Software that will, for example, be implemented, configured and/or managed by other organisations that have applicable listings in the Marketplace, then these Channel Terms apply to you, and the Channel Terms for Consultancy and Professional Services and Managed Services will apply as between us and those other organisations.
- 1.5 When we use the terms **you** and **your**, we are referring to any provider that applies to be a Member of and list software and associated services in this ES Channel.

2. Definitions

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

Agency-Hosted Enterprise Software means Enterprise Software that is downloaded or otherwise obtained in digital form, with a view to it being hosted either by the customer (e.g., on-premise) or by an organisation other than the organisation that develops and maintains the Enterprise Software, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Associated Services means design, implementation, customisation, configuration, training, support, professional or managed services related to your Enterprise Software, performed by you or your subcontractors, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

DIA means the Department of Internal Affairs;

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

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

Enterprise Software:

- (a) means software that performs important business functions that are common to many if not most organisations and that usually (but not solely) are of an enterprise-wide nature, such as (but not limited to) order processing, accounting, payroll, human resources information management, and customer relationship management; and
- (b) for the purposes of these Channel Terms, may take the form of:
 - (i) Provider-Hosted Enterprise Software; or
 - (ii) Agency-Hosted Enterprise Software;

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

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

Order means an order for specified Enterprise Software, described in a Subscription Form (or attachment to it) or other documentation that forms part of your Provider Standard Terms but, to avoid doubt, does not include the contractual rights and obligations contained in such Provider Standard Terms;

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

Price means a price or fee you charge for licensing of or access to your Enterprise Software or for the provision of Associated Services;

Provider-Hosted Enterprise Software means Enterprise Software that you develop, maintain, host and provide as a service (for example, as a public, hybrid or private cloud service), in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Provider Standard Terms means the terms 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, that are incorporated into a Subscription Agreement (subject to its precedence provisions);

Services means the delivery or licensing of, or access to, Enterprise Software, and/or any Associated 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 ES Channel;

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

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

Subscription Agreement has the meaning in clause 4.1 below;

Subscription Form means the form that an Eligible Agency and you complete to create a Subscription Agreement, as set out in Annexure A; and

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

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

3. Ordering Enterprise Software and Associated Services

3.1 If an Eligible Agency decides to purchase licences or access to Enterprise Software and/or (if relevant) Associated Services, it will select the relevant software and/or service(s) and provider(s) and, where relevant:

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

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

3.2 To avoid doubt, an Eligible Agency may order Associated Services under its Subscription Agreement without ordering Enterprise Software, either at the same time or at all (for example, the Eligible Agency may wish to obtain design or requirement verification services before committing to procure the Enterprise Software or it may already have access or a licence to your Enterprise Software but wish to procure Associated Services).

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

Agencies can procure Associated Services alone if they wish.

4. **Agreements with Purchasing Agencies for Enterprise Software and Associated Services**

- 4.1 The contract that applies between you and a Purchasing Agency for the Purchasing Agency's consumption of your Enterprise Software and/or Associated Services shall be an agreement that comprises:
- (a) the Subscription Form (a template for which is in Annexure A to these ES Terms), including any Order documentation or form attached to it;
 - (b) the Core Enterprise Software Terms (in Annexure B to these ES Terms);
 - (c) any Extra Terms that apply to the category/ies of Services being procured (if any);
 - (d) your Provider Standard Terms applying on the Ordering Date, subject to and as modified by:
 - (i) the Core Enterprise Software Terms; and
 - (ii) any Extra Terms that apply (if any); and
 - (e) each Statement of Work (if any) once executed by both parties, using either:
 - (i) a template in the Schedule to the Core Enterprise Software Terms or otherwise available on marketplace.govt.nz; or
 - (ii) a template provided as part of your Provider Standard Terms (but only if the Purchasing Agency agrees to use that template).

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

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

- 4.2 The Provider Standard Terms are deemed to be amended by the Subscription Agreement where necessary to give effect to it, as further explained in the Subscription Form. Other than the Provider Standard Terms, no other standard conditions of sale, invoices, standard terms of use, standard form licences or similar apply to the Subscription Agreement.
- 4.3 The Subscription Agreement is formed when you and the Purchasing Agency fill out and sign (physically or electronically) a Subscription Form.
- 4.4 This clause 4 is intended to confer a benefit on and to be enforceable by all Purchasing Agencies that submit a Subscription Form to you for Enterprise Software and/or Associated Services (for which there is no Eligible Pre-existing Agreement).

5. Amending and supplementing the Core Enterprise Software Terms, any applicable Extra Terms and the Provider Standard Terms

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

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

6. Changes to Services Listings

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

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

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

6.2 When you're proposing to make changes to Enterprise Software or Associated Services as described in the relevant Marketplace Catalogue, you need to consider whether the changes will adversely affect:

If you're changing Enterprise Software or an Associated Service, you need to think about some security and related matters.

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

that you notified to us when applying for inclusion of the Enterprise Software and any Associated Services in the Marketplace and, if

applicable, obtaining the level of assurance for which the Enterprise Software and Associated Services are listed in the Marketplace Catalogue. If there will be an adverse effect:

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

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

6.4 Subject to clause 6.5, you may cease providing all or any part of your Enterprise Software or Associated Services if:

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

6.5 Except where agreed otherwise with a particular Purchasing Agency, you must give each Purchasing Agency:

- (a) at least 24 months' written notice of any intended cessation of:
 - (i) Enterprise Software that the Purchasing Agency has procured; and
 - (ii) Associated Services directly related to supporting ongoing use of the Enterprise Software that the Purchasing Agency has procured; and
- (b) at least 3 months' written notice of any intended cessation of other Associated Services that the Purchasing Agency is procuring.

7. Additional pricing terms

- 7.1 The parties acknowledge that the charges for your Enterprise Software and Associated Services may be determined in various ways, including on the basis of one or a combination of:
- (a) subscription or licensing fees;
 - (b) fixed pricing;
 - (c) Services Rates; or
 - (d) other context-dependent pricing mechanisms or formulae,
- in each case as agreed with a Purchasing Agency in a Subscription Form, Order or Statement of Work for particular Enterprise Software and/or Associated Services.
- 7.2 You agree to publish any standard Prices (such as subscription or licensing fees for Enterprise Software) and standard Services Rates (e.g., for Associated Services) you have for government in the relevant Marketplace Catalogue(s) but we acknowledge that fixed pricing and other pricing mechanisms and formulae may be context-dependent and therefore not capable of being published in the Marketplace Catalogues.
- 7.3 When you first add your Services Listings to the relevant Marketplace Catalogue, your standard Prices and Services Rates and the currency in which they are charged will be the prices and rates and currency notified to us during the On-boarding Process for the applicable Channel or otherwise agreed with us during that On-boarding Process. These initial Prices and Services Rates (and any Prices and Services Rates increased pursuant to clause 7.5) must be either:
- (a) the standard prices and rates you usually offer to equivalent New Zealand customers (or tiers of customers) for the Enterprise Software and Associated Services, taking into account where relevant the nature of the Enterprise Software and Associated Services, terms of supply, recoverability of your expenditure or investment, committed spend volumes and contractual periods; or
 - (b) reduced prices and rates for Eligible Agencies.
- 7.4 Where your charges for a Purchasing Agency's consumption of your Enterprise Software and/or Associated Services are based on set Prices (such as subscription or licensing fees for Enterprise 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 reduced prices or rates or some other more favourable pricing package for that Purchasing Agency, either in the Subscription Form, an Order, or a Statement of Work. For

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

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

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

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 you have agreed to reduced prices, rates or pricing packages for that Purchasing Agency.

- 7.5 You may only increase the Services Rates in your Services Listings once in any 12 month period.
- 7.6 To avoid doubt, no increase in your Prices or Services Rates will apply to any Order or Statement of Work entered into prior to the increase being reflected in your Services Listings in the relevant Marketplace Catalogue unless the Order or Statement of Work expressly accommodates such increases or the Purchasing Agency otherwise agrees.
- 7.7 Your charges for your Enterprise Software and Associated Services will be processed in accordance with clause 18 (Payment) of the Core Enterprise Software Terms in Annexure B.

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

8. Reporting

- 8.1 You agree to comply with our reasonable reporting requirements relating to your provision of Enterprise Software and Associated Services to Purchasing Agencies that we may describe from time to time on marketplace.govt.nz (if any).
- 8.2 If we change our reporting requirements we will notify you of the change, through a posting on marketplace.govt.nz and/or other electronic means, at least 15 days before the change is due to take effect.

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

9. Administration Fee

- 9.1 This clause 9 applies except to the extent (if any) that we have agreed with you that this clause 9 does not apply to you.
- 9.2 You agree to collect, through each invoice to each Purchasing Agency, a fee that is charged to Purchasing Agencies that contributes to the costs of providing and administering the Marketplace (the **Administration Fee**). You will have been informed of the applicable Administration Fees and how they are calculated during the On-boarding Process, and a table of the current Administration Fees and methods of calculation for each Marketplace Catalogue or category of Service can be found on marketplace.govt.nz.
- 9.3 You will include the applicable Administration Fee in all invoices to each Purchasing Agency as a separate line item. The Administration Fee must not be bundled into your rates or other fees.
- 9.4 We may adjust the Administration Fees and, if we do so, we will provide you with at least one month's written notice of the adjustment before it takes effect.

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

- 9.5 You will provide us with periodic statements that contain details of:
- (a) the amounts invoiced under Agency Purchase Agreements in the previous applicable period; and
 - (b) the Administration Fees invoiced to Purchasing Agencies during that period,

using the method and following the instructions we provide on marketplace.govt.nz. The instructions will specify the frequency and periods of reporting and the dates by which you must provide your reports to us.

- 9.6 Following receipt of your statement we will, reasonably promptly, examine the statement to identify any manifest error. If there is manifest error, we will inform you and you will remedy the error by re-issuing the statement within three Business Days of our written request.

- 9.7 We will:

- (a) if you agreed that we may direct debit a bank account you nominated during the Onboarding Process and for which you have given us a direct debit authority, debit the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable) from that bank account, and send you an invoice that records that you have paid the debited amount; or
- (b) if you did not agree that we may direct debit a bank account, render an invoice to you for an amount equal to the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable), in which case you will pay our invoice on or before the 20th day of the month following the date that invoice was received.

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

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

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

Under clause 9.5 of the Core Enterprise Software Terms, if you list the Subcontractors you use in your Services Listings, those Subcontractors are deemed to be approved when a Purchasing Agency enters into the applicable Subscription Form, Order or SOW. Given potential sensitivities about openly publishing such details, we will not make the subcontractor field publicly available.

11. Tier 1 Security Assurance and Risk Rating

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

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

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

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

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

12. Government Back-office Standards

12.1 In this clause 12:

If you provide Services to which NZ AOG Back-office Standards apply, now or in the future, these terms will apply.

Back-office Standards Terms means the terms by that or a substantially similar name available from or via the Marketplace website;

NZ AOG Back-office Designs means sets of end-to-end process flows that align with CPM models to support functional design and logic for enterprise resource planning or other software;

NZ AOG Common Process Model (CPM) means the set of technology-agnostic business process models developed by or on behalf of government agencies in line with international best practices and standards;

NZ AOG Back-office Standard means a set of steps, processes, attributes and/or requirements (together, **Elements**), that a kind of software solution or module of such solution needs to follow, have, or comply with, to meet government requirements for that kind of software solution or module, such Elements arising from the CPM and/or applicable NZ AOG Back-office Designs;

Pre-Publication SOC Requirement has the meaning in clause 12.2(a); and

Post-Publication SOC Requirement has the meaning in clause 12.3.

12.2 If:

- (a) the Service Listings you propose to have added to the Marketplace will be in a Marketplace Catalogue that requires, or the On-boarding Process for which requires, you to provide a Statement of Compliance in relation to Services in your Services Listings (**Pre-Publication SOC Requirement**); and
- (b) the Pre-Publication SOC Requirement exists when you are applying to be a member of the Marketplace or to have relevant Service Listings in the Enterprise Software Channel,

you will be required, as part of the application process, to agree to our Back-office Standards Terms.

12.3 If, after the date your Service Listings were approved and published in the Marketplace we add, to a Marketplace Catalogue or On-boarding Process, a requirement for you to provide a Statement of Compliance in relation to Services in your Services Listings (**Post-Publication SOC Requirement**), then:

- (a) our Back-office Standards Terms are deemed to apply to those Services; and
- (b) you must comply with them.

Subscription Agreement components

Annexure A: Subscription Form template	14
Annexure B: Core Enterprise Software Terms (and Statement of Work template)	23
Annexure C: Extra Terms (if any)	86

Annexure A: Subscription Form template

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



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 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

1.1 Content and formation

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

- (a) comprises:
 - (i) this Subscription Form, including any attached Order documentation or form;
 - (ii) the Core Enterprise Software Terms set out in Annexure B to the Channel Terms;
 - (iii) any Extra Terms that apply to the category/ies of Services being procured (if any);
 - (iv) 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

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).

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

1.2 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):

- (a) **indemnities:** we shall not be under any obligation to indemnify or grant any guarantee to you or any other person or entity (and for this purpose “indemnify” includes any obligation in the nature of an indemnity);
- (b) **entire agreement:** the Subscription Agreement (as described in clause 1.1) constitutes the entire agreement between you and us, as further described in clause 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;
- (c) **control of claims:** any reference in your Provider Standard Terms to your having any form of control over the defence or settlement of any third party claim against us (in relation to which you have an obligation such as an indemnity vis-a-vis us) is subject to any applicable directions provided to the Purchasing Agency pursuant to the New Zealand Government's "[Cabinet Directions for the Conduct of Crown Legal Business 2016](#)" or their successor;
- (d) **no exclusive remedy:** any reference in your Provider Standard Terms to a remedy being the sole or exclusive remedy, including but not limited in relation to the remedying of defects, does not apply, unless the parties agree in this Subscription Form or an Order or a Statement of Work that it does apply;
- (e) **unilateral changes:** except as required by law, if you make a unilateral change to your Provider Standard Terms from the Commencement Date that is prejudicial to our or our Users' rights or interests, that change shall be unenforceable against us and our Users (this clause does not prevent you from amending your Provider Standard Terms for all or relevant groups of your customers or adapting and evolving your Services as you see fit and it doesn't require you to issue bespoke communications to purchasing agencies and

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.

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

- (f) **precedence of documents:** the precedence of documents comprising the Subscription Agreement is the precedence described in clause 1.3; and
- (g) **governing law and jurisdiction:**
 - (i) New Zealand law governs all matters relating to the Subscription Agreement and its formation, including interpretation of its terms and any disputes relating to them;
 - (ii) you agree to submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute regarding the Subscription Agreement or its formation and you agree that the New Zealand courts are an appropriate forum for such disputes and that you will not seek to argue to the contrary; and
 - (iii) you and any Purchasing Agency will be entitled to seek interim relief in any relevant jurisdiction.

1.3 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):

- (a) the Statement of Work (if any);
- (b) the Subscription Form, including any Order but excluding Provider Standard Terms referred to in, or attached to, the form or Order;
- (c) any Extra Terms that apply (if any);
- (d) the Core Enterprise Software Terms;
- (e) applicable Provider Standard Terms.

2. Interpretation

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

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

3. Provision of Enterprise Software and Associated Services

- 3.1 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.

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

4. Enterprise Software and/or Associated Services ordered at Commencement Date and applicable Provider Standard Terms

- 4.1 The:
- (a) Enterprise Software and/or Associated Services (if any) ordered by the Purchasing Agency as at the Commencement Date; and
 - (b) 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:
- (c) Schedule 1 (Order Details and Provider Standard Terms); and
 - (d) if relevant, one or more Statements of Work attached (or to be attached) to that Schedule.

5. Application of Subscription Agreement to various kinds of Enterprise Software and Associated Services

- 5.1 You and we acknowledge that:
- (a) 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
 - (b) 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.

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

6. Contract Managers

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

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

These are the parties' Contract Managers

7. Other key contacts (if any)

7.1 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:	

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.

8. Address for Notices

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

Purchasing Agency Address for Notices	Physical address:	
	Postal address:	
	Email:	
	Attention:	

These are the parties' addresses for notice

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

9. Security clearances and probity checks

9.1 You must, in accordance with clause 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):

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

[insert name of clearance or check]	[insert details of clearance or check]
[insert additional rows as required]	[insert additional rows as required] <i>[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]</i>

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

10.1 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.

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

10.2 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.

- (a) 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
- (b) in the case of existing Orders or Statements of Work, the change increases your costs or risks, and you inform us of this reasonably promptly; or

(c) we and you otherwise agree that the change will not apply.

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

11. Legislative compliance

11.1 *[If you are ordering Enterprise Software and need to specify that the Enterprise Software needs to be maintained and updated so that it is capable of enabling your agency to comply with specific laws, you can list those laws here, stating something like: “The laws referred to in clause 10.2(a)(i)(B) of the Core Enterprise Software Terms are as follows: [insert laws].” If you prefer, you can list such laws in an Order or Statement of Work instead. If the laws are already described in the relevant Services Listing on the Marketplace, then you don’t need to repeat them here. See clause 10.2 of the Core Enterprise Software Terms.]*

12. Other terms

12.1 *[If other terms are required and agreed, they can be inserted here. If there are no other terms, this clause 12 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.]*

The parties can record additional terms here if they wish.

Execution

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

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

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

(signature)

(signature)

Name:

Name:

Position:

Position:

Date:

Date:

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

1. Introduction

- 1.1. 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	<i>[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”.]</i>
Provider Standard Terms that apply (if any)	<i>[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.]</i>
Associated Services	
Associated Services ordered	<i>[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.]</i>
Provider Standard Terms that apply (if any)	<i>[Clearly identify / list by full name, any Provider Standard Terms that apply to the Associated Services being ordered (e.g., terms that apply to a standard Provider support plan). 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. Note that providers are <u>not</u> expected to, and should not, seek to apply their own standard services terms to the provision of bespoke or agency-specific services described in a Statement of Work (such as design or implementation services). The Core Enterprise Software Terms and associated Statement of Work template have been designed for that situation.]</i>

Annexure B: Core Enterprise Software Terms

Attached.



Enterprise Software

Core Enterprise Software Terms

Background

These are the Core Enterprise Software Terms referred to in clause 4 of the Channel Terms for Enterprise Software (Standard) and clause 1.1(a)(ii) of the Subscription Form for Enterprise Software. 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 Enterprise Software Terms. You can find a list of the categories of Services to which Extra Terms apply, together with the Extra Terms, at marketplace.govt.nz.

Contents

1.	Term	25
2.	Application of terms in Part 1 (General Terms) and Part 2 (Channel Terms)	26
3.	Orders and Statements of Work	27
4.	Governance	28
5.	Provision of Enterprise Software and Associated Services	29
6.	Cooperation with other suppliers	34
7.	Purchasing Agency assistance	34
8.	Personnel	35
9.	Subcontracting	35
10.	General responsibilities	36
11.	Records	38
12.	Value conversion rights for Enterprise Software	39
13.	Usage measurement	39
14.	Licence or access optimisation process	40
15.	Transfer of Enterprise Software upon Machinery of Government Changes	40
16.	Modifications to Enterprise Software	41
17.	Change Procedure for Associated Services	41
18.	Payment	42
19.	Warranties	44
20.	Intellectual Property Rights	45
21.	General confidentiality and security obligations	50
22.	Security obligations relating to Provider-Hosted Enterprise Software	53
23.	Liability	57
	Marketplace – Enterprise Software	24
	Core Enterprise Software Terms	

24.	General indemnities	59
25.	Insurance	59
26.	Performance issues	59
27.	Disputes	60
28.	Termination	61
29.	Disengagement	65
30.	General	66
31.	Definitions and interpretation	68
	Schedule: Statement of Work template	77

1. Term

1.1 The Subscription Agreement:

- (a) commences when both parties have signed (physically or electronically) the Subscription Form (the **Commencement Date**); and
- (b) unless terminated earlier under clause 28 (Termination), ends upon the later of (i), (ii) and (iii) below:
 - (i) 2 years after the Commencement Date or, if the parties elect to state a shorter initial duration in their first Order or Statement of Work, that shorter period (in either case, the **Initial Term**);
 - (ii) any period of extension under clause 1.2; and
 - (iii) the termination or expiry of all Orders and Statements of Work.

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

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

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

1.3 Each Order (if any) will:

- (a) commence on either:

An Order's term depends on the provisions on term in the relevant ordering documentation.

- (i) the Commencement Date; or
 - (ii) if another date is specified in the relevant ordering documentation, that other date; and
- (b) unless terminated in accordance with clause 28 (Termination), end on the expiry date (if any) specified in the relevant ordering documentation

(the **Order Term**).

1.4 Each Statement of Work will:

- (a) commence on the SOW Start Date specified in the Statement of Work; and
- (b) unless terminated in accordance with clause 28 (Termination), end on the SOW End Date specified in the Statement of Work,

(the **Statement of Work Term**).

1.5 An Order Term and a Statement of Work Term may be extended by written agreement between the parties, whether by way of variation to the Order or Statement of Work itself or an exchange of emails by the parties' authorised personnel.

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

2.1 You agree that the following clauses in Part 1 (General Terms) and Part 2 (Channel Terms for Enterprise Software (Standard)) of the Collaborative Marketplace Agreement are incorporated by reference into the Subscription Agreement:

- (a) 3.4 of Part 1 (no exclusivity or minimum purchasing requirement);
- (b) 3.11 of Part 1 (withdrawal, suspension or termination of your membership in the Marketplace does not affect existing Agency Purchase Agreements);
- (c) 4.8 of Part 1 (removal of Services Listing does not affect existing Agency Purchase Agreements);
- (d) 10 of Part 1 (Warranties);
- (e) 13 of Part 1 (Pricing and Administration Fee) and 7 of Part 2 (Additional pricing terms);
- (f) 15 of Part 1 (Confidentiality);
- (g) 17 of Part 1 (Purchasing Agency Data);
- (h) 18 of Part 1 (Personal information);
- (i) 21.1 and 21.4 of Part 1 (Amendments);

A SOW's term is as described in the SOW.

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

- (j) to the extent relevant to any of the clauses listed above, 24 of Part 1 (Defined terms and interpretation);
- (k) 5 of Part 2 (Amending and supplementing the Core Enterprise Software Terms, any applicable Extra Terms and the Provider Standard Terms); and
- (l) 6.4 and 6.5 of Part 2 (Changes to Services Listings).

3. Orders and Statements of Work

- 3.1 Your provision of particular Enterprise Software (licensing or access) and/or Associated Services to the Purchasing Agency needs to be agreed in one or more 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 Enterprise Software and/or Associated Services. The Purchasing Agency will provide sufficient details of the software or services it seeks to enable you to evaluate the request and provide a response in accordance with clause 3.3.
- 3.3 You agree to respond to the Purchasing Agency's requests under clause 3.2 within a reasonable time and, subject to clause 3.5, in each case to provide a succinct proposal containing:
 - (a) a description of the Enterprise Software and/or Associated Services you will provide and, if requested in relation to the Associated Services, curricula vitae for proposed Personnel;
 - (b) details of your charges for the Enterprise Software and/or Associated Services; and
 - (c) all other information reasonably requested by the Purchasing Agency relating to the Enterprise Software and/or Associated Services.
- 3.4 Your proposal may cross-refer to relevant Services Listings.
- 3.5 You may decline a request under clause 3.2 if you (acting reasonably and in good faith) consider that you will not have sufficient resources to provide the requested software or 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 Enterprise Software and/or Associated Services sought by the

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.

Purchasing Agency under clause 3.2, the parties will enter into an Order or Statement of Work for the Enterprise Software and/or Associated Services. Statements of Work will follow the general format of the template in the Schedule to these Core Enterprise Software Terms or otherwise available on marketplace.govt.nz, unless you and the Purchasing Agency agree to use another form of statement of work template in which case you may use that template.

- 3.8 The Purchasing Agency will not be obliged to pay any charges for the Enterprise Software and/or Associated Services and you will not be obliged to start providing the Enterprise Software and/or Associated Services until the Order or Statement of Work is signed (whether physically or electronically) or otherwise executed by both parties.
- 3.9 To avoid doubt, clause 3.7 does not prevent the parties from agreeing to adapt the form of statement of work in the Schedule to these Core Enterprise Software Terms or otherwise available on marketplace.govt.nz (for example, to accommodate the nature of the work or the Purchasing Agency's standard internal business requirements for statements of work).

4. Governance

4.1 Contract Managers

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

The parties' Contract Managers deal with day-to-day contract management issues. Other key contacts can be specified in the Subscription Form or an Order or SOW.

4.2 Other key contacts

Other key contacts (if any) relating to the provision of particular Enterprise Software and/or Associated 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. Provision of Enterprise Software and Associated Services

5.1 General

You will provide the Enterprise Software (licensing or access) and/or perform the Associated Services (as applicable):

- (a) from the date(s) specified in the relevant Order or Statement of Work;
- (b) in accordance with the terms of the Subscription Agreement, including so as to:
 - (i) meet any requirements and specifications set out 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;
 - (ii) meet any applicable representations in your Services Listings; and
 - (iii) achieve any Milestones by their corresponding Milestone Dates, and to meet any other timeframes, specified in the 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 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 Associated Services that involve the transition or migration of functions or services from the Purchasing Agency or an incumbent service provider to your Provider-Hosted Enterprise Software.
- (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, 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.

If the Associated 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

If you are required or represent that you will provide User Documentation, you must:

- (a) provide that User Documentation to the Purchasing Agency in either hard copy or electronic format at no charge; and
- (b) 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 operations of the relevant Enterprise Software;
 - (iii) is the most current and up-to-date version available; and
 - (iv) is in English.

5.4 Milestones

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

- (a) Except where a Milestone has indisputably been met by its corresponding Milestone Date (for example, where access has been granted to Provider-Hosted Enterprise Software or Agency-Hosted Enterprise Software has been delivered), 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 Order or Statement of Work, such notification not to be unreasonably withheld or delayed.
- (b) Without limiting the Purchasing Agency's other rights, but subject to clause 5.4(d), if you fail or are likely to fail to complete a Milestone by the relevant Milestone Date (a **Project Delay**):
 - (i) you will provide full written details of the Project Delay to the Purchasing Agency as soon as practicable;
 - (ii) you will take all steps reasonably available to you to avoid and minimise the effects of the Project Delay;
 - (iii) the parties will, if requested by the Purchasing Agency, meet to review in good faith the reasons for the Project Delay;
 - (iv) you will, if requested by the Purchasing Agency, promptly prepare a rectification plan setting out how you intend to complete the relevant Milestone, the relevant

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.

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(b)(iv), together with any reasonable modifications to it requested by the Purchasing Agency.
- (c) Subject to clause 5.4(d)(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.
- (d) Where a Project Delay is caused by the Purchasing Agency or a third party (excluding your own subcontractors):
 - (i) the Purchasing Agency will provide you with details of the Project Delay in writing, to the extent the Purchasing Agency has such details;
 - (ii) the parties will, if either party requests, meet to review in good faith the reasons for the Project Delay;
 - (iii) you will, if requested by the Purchasing Agency, cooperate with the Purchasing Agency in relation to the Project Delay and will use reasonable efforts to rectify the Project Delay and ensure future Milestone Dates are met;
 - (iv) you may raise a Change Request to obtain a reasonable extension of time and to recover reasonable costs incurred as a result of the Purchasing Agency's delay; and
 - (v) if, despite your compliance with sub-clauses (d)(i)-(iii), you do not complete the relevant Milestone by the relevant Milestone Date, you will not be liable for that failure to the extent the failure was caused by the Purchasing Agency or a third party.
- (e) Without limitation to the other provisions of this clause 5, where there is a Project Delay, each party will use reasonable endeavours to limit its effects.

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 where, under an Order or Statement of Work, you are responsible for specified Interfaces.
- (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 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 these Core Enterprise Software Terms or in applicable Services Listings, a Subscription Form, an Order or a Statement of Work, you will have sole responsibility for delivery of the Enterprise Software and/or Associated Services (as applicable).
- (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 Acceptance of Deliverables specified in Order or Statement of Work

- (a) Clauses 5.7(b)-(d) apply to the review or testing of Deliverables specified in an Order or Statement of Work for Associated Services unless:
 - (i) the parties have agreed upon an alternative approach to review or testing in the Order or Statement of Work; or
 - (ii) Extra Terms that apply to provision of the Deliverables contain a different approach to review or testing that is expressed as prevailing over this clause 5.7; or
 - (iii) the parties agree that this clause 5.7 will not apply.

- (b) The Purchasing Agency may, at its election, perform any review or testing it considers necessary to determine whether a Deliverable conforms to the requirements of the Subscription Agreement. The Purchasing Agency will have 10 Business Days from the date of supply of a Deliverable within which to perform such review or testing (the **Initial Test Period**). If a Deliverable does not conform to the requirements of the Subscription Agreement, the Purchasing Agency will deliver to you, on or before the expiration of the Initial Test Period, a written notice specifying each non-conformity in reasonable detail (a **Non-Conformity Notice**).
- (c) You will correct, at no additional cost to the Purchasing Agency, the non-conformities stated in the Non-Conformity Notice within a reasonable period of time. After you make the relevant corrected Deliverable available to the Buyer, the Buyer will have 10 Business Days to re-review or re-test the Deliverable (**Additional Test Period**). If any non-conformities remain, the process stated in this clause 5.7 will be repeated to the extent reasonably required by the Purchasing Agency.
- (d) The Purchasing Agency's failure to deliver a Non-Conformity Notice prior to the expiration of the applicable Initial Test Period or Additional Test Period does not limit any other rights that the Purchasing Agency may have under the Subscription Agreement.

5.8 Service Levels

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

You need to meet Service Levels you've agreed to in your Services Listings, Provider Standard Terms or an Order or Statement of Work and pay any Service Level Credits due (if any). Service Level Credits are not payable unless you have agreed they are.

5.9 Meetings and reporting

You will:

- (a) meet with the Purchasing Agency's nominated representatives as specified in 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 or relevant Orders or Statements of Work, with the content and at the intervals specified in your Services Listings 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.

6. Cooperation with other suppliers

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 the Enterprise Software and/or Associated Services to the Purchasing Agency, both proactively and when reasonably requested by the Purchasing Agency or Third Party Service Providers from time to time.

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

6.2 If any actions the Purchasing Agency requests you to take in accordance with clause 6.1 materially change the scope of the Services or materially increase your cost to provide the Services such change shall be agreed in accordance with the Change Procedure.

7. Purchasing Agency assistance

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 Enterprise Software and/or Associated 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 Enterprise Software and/or Associated Services; and
 - (ii) the Purchasing Agency's premises and systems, to the extent reasonably necessary to enable you to provide the Enterprise Software and/or Associated Services, subject to any applicable Purchasing Agency policies and security requirements;
- (c) co-operate with you in relation to your performance of the Services;

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 Enterprise Software 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.

- (d) use the Enterprise Software for lawful purposes only and in accordance with your reasonable operating instructions or advice;
- (e) not 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 You must ensure that all of your Personnel engaged in providing the Associated Services:

- (a) are suitably qualified and experienced;
- (b) have obtained all security clearances and passed all probity checks reasonably required by the Purchasing Agency (including, if required, a check for criminal convictions), as specified in a Subscription Form, Order or Statement of Work;
- (c) comply with the Purchasing Agency's health and safety policies when on its premises and with any other policies notified to you under clause 10.1(b) below;
- (d) do not represent in any way that they are employees of the Purchasing Agency; and
- (e) carry and display appropriate company identification when attending any Purchasing Agency Site.

8.2 The Purchasing Agency may require the immediate removal of any member of your Personnel from performance of your Associated 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.

9. Subcontracting

9.1 Subject to clauses 9.5 and 9.6, you must not use a Subcontractor to:

- (a) supply Enterprise Software; or
- (b) deliver all or part of the Associated Services,

without the Purchasing Agency's prior written approval (which the Purchasing Agency will not unreasonably withhold).

9.2 The Purchasing Agency may pre-approve the use of particular named Subcontractors in an Order or Statement of Work or it may approve the use of particular Subcontractors subsequently.

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

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

- 9.3 You are responsible for ensuring the capability and capacity of any approved Subcontractor to deliver the aspect of the Services being subcontracted. You also continue to be responsible for delivering the Services even if aspects of the Services are subcontracted.
- 9.4 You will, unless otherwise agreed in writing by the Purchasing Agency on a case by case basis, use reasonable efforts to include in any subcontract obligations on the Subcontractor that are consistent with your delivery obligations under this Agreement (to the extent relevant to the subcontracted Services) and clauses 21 (General confidentiality and security obligations) and 28.6 (Return of property).
- 9.5 Clause 9.1 does not apply in relation to Subcontractors clearly specified in your Services Listings when the Purchasing Agency is agreeing the terms of the relevant Order or Statement of Work with you, as long as the Services Listings state who the Subcontractors are (full legal names), where they are located, and whether they will have access to Purchasing Agency Data. If the Purchasing Agency elects to enter into the Order or Statement of Work, these Subcontractors will be deemed to be approved Subcontractors.
- 9.6 You do not need to obtain the Purchasing Agency's written approval to use:
- (a) in the provision of any of the Associated 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
 - (b) in the provision or maintenance of the Enterprise Software, any technical contractor involved in the development or maintenance of the Enterprise Software (such as a software developer or engineer, solutions architect, or software tester), regardless of where the contractor is based, when that contractor does not have access to Purchasing Agency Data.

10. General responsibilities

10.1 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 Enterprise Software or Associated Services that the Purchasing Agency procures;
- (b) comply with Purchasing Agency policies notified to you in writing that have a bearing on provision of the Associated Services (to the extent those policies are capable of applying to you and with the proviso that, if you are notified of a policy after entering into a relevant Order or Statement of Work and compliance materially increases your costs or materially

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.

affects an aspect of the Services then compliance is subject to agreement between the parties);

- (c) ensure that those of your Personnel involved in provision of the Associated Services comply with the policies mentioned above, obtain acknowledgements to this effect from those Personnel if required by the Purchasing Agency and provide copies of those acknowledgements to the Purchase Agency, and inform the Purchasing Agency promptly in writing if you become aware of a breach of any such policy;
- (d) comply with all applicable law relevant to provision of the Services;
- (e) use your best endeavours to avoid damaging or adversely affecting the Purchasing Agency's reputation, systems or infrastructure;
- (f) not insert or permit to be inserted any Disabling Code into the Purchasing Agency Environment; and
- (g) not engage in any activity that would give rise to a Conflict of Interest and notify the Purchasing Agency promptly in writing if you become aware of any Conflict of Interest.

10.2 Enterprise Software and legislative compliance

- (a) You also agree to maintain and update your Enterprise Software during the Term so that, subject to clause 10.2(b), the Enterprise Software is capable (without further customisation) of enabling the Purchasing Agency to comply at all times with:
 - (i) laws that are specified in:
 - (A) your Services Listing(s);
 - (B) the Subscription Form; or
 - (C) an Order or Statement of Work,as laws that the Enterprise Software enables purchasing agencies to comply with; and
 - (ii) laws that:
 - (A) are otherwise relevant to the functioning or configurability of the Enterprise Software; and
 - (B) you know, or ought to know given the nature of your Enterprise Software, the Purchasing Agency needs to comply with and will use your Enterprise Software to comply or help comply with(such as, where applicable in the circumstances, laws relating to payment of staff, calculation of holiday and

You need to maintain your Enterprise Software in a way that enables the Purchasing Agency to comply with applicable legislative obligations. What these are will depend on the context. In the payroll context, for example, applicable legislative obligations would include those under holidays legislation and relevant tax legislation.

other employee entitlements, tax, reporting, and/or records retention).

To avoid doubt, the parties may agree to modify this clause 10.2(a) in their Subscription Form or an Order or Statement of Work (for example, they may wish to disapply clause 10.2(a)(ii) so that all relevant laws must be specified in a Services Listing, Subscription Form, Order, or Statement of Work).

- (b) The Purchasing Agency accepts that:
- (i) clause 10.2(a) only applies if the Purchasing Agency is procuring licences or access to the Enterprise Software;
 - (ii) the Purchasing Agency may need to configure the Enterprise Software, and/or purchase licences for, or access to, one or more particular modules or component parts of your available Enterprise Software, in order to be able to comply with the kinds of legislative obligations referred to in clause 10.2(a); and
 - (iii) you are not responsible for the Purchasing Agency's non-compliance with legislative obligations caused by the Purchasing Agency's:
 - (A) use or submission of inaccurate or otherwise faulty data;
 - (B) improper configuration of the Enterprise Software;
 - (C) misunderstanding of applicable law; or
 - (D) interpretation of applicable law that differs from your interpretation of applicable law provided each party's interpretation is reasonable in the circumstances.
- (c) You must give the Purchasing Agency at least 24 months' written notice of any intention to stop maintaining and updating your Enterprise Software as required by clause 10.2(a).

11. Records

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

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

- 11.2 The Purchasing Agency may inspect:
- (a) any and all of the records required to be maintained under clause 11.1; and
 - (b) any other information relevant to your performance and compliance with the terms of the Subscription Agreement,
- on at least three Business Days' notice, and may take copies of such records and information.

12. Value conversion rights for Enterprise Software

- 12.1 This clause 12 only applies where the Purchasing Agency has procured or proposes to procure Provider-Hosted Enterprise Software and/or Agency-Hosted Enterprise Software.
- 12.2 You will, within 14 days following written request by the Purchasing Agency's Contract Manager to your Contract Manager, provide the Purchasing Agency with information regarding any then-current customer-facing policies in effect (if any) with respect to on-premise/agency-hosted and/or cloud product conversions. To the extent that such policies are applicable to the Purchasing Agency and the Purchasing Agency complies with any eligibility requirements, the parties will discuss and seek to agree how such policies can be applied.

The Purchasing Agency can ask you to tell it about your current policies on agency-hosted and/or cloud product conversions.

13. Usage measurement

- 13.1 This clause 13 only applies where the Purchasing Agency is procuring Provider-Hosted Enterprise Software.
- 13.2 Where the Purchasing Agency's permitted use of and/or the Fees for Provider-Hosted Enterprise Software it procures (if any) are based on Usage Metrics (distinct from, for example, the Purchasing Agency having unlimited enterprise-wide access and consumption rights), you will, on request, provide information to the Purchasing Agency to assist it in:
- (a) understanding and complying with the Usage Metrics for the Provider-Hosted Enterprise Software it has procured; or
 - (b) understanding the Fees it has incurred or will incur.
- 13.3 You may do so by providing either:
- (a) a tool or mechanism (for example, within the Provider-Hosted Enterprise Software) allowing the Purchasing Agency to accurately determine actual use of the software and incurred or likely fees; or
 - (b) a report showing the Purchasing Agency's actual usage of the Provider-Hosted Enterprise Software and corresponding fees.

The Purchasing Agency can ask you to clarify how your Usage Metrics work and generate fees.

14. Licence or access optimisation process

- 14.1 This clause 14 only applies where the Purchasing Agency is procuring Agency-Hosted Enterprise Software and/or Provider-Hosted Enterprise Software.
- 14.2 The Purchasing Agency may elect, at no cost and at any time during the Term (but no more than once per calendar year), to engage you to undertake a licence and/or access optimisation process to ensure the Purchasing Agency is using the optimal licensing or access arrangement. This process will include, as applicable:
- (a) counting the Purchasing Agency's licences to your Agency-Hosted Enterprise Software and/or assessing its entitlements to access your Provider-Hosted Enterprise Software, at the time of the licence and/or access optimisation process;
 - (b) conducting at least one architectural and operational planning workshop with the Purchasing Agency to assess the Purchasing Agency's business needs and how the Purchasing Agency has designed its current deployment or use of the Enterprise Software;
 - (c) where feasible, providing the Purchasing Agency with a written recommendation to optimise its Enterprise Software usage, having regard to its business needs; and
 - (d) assisting the Purchasing Agency to remediate any Enterprise Software licensing or access rights non-compliance identified during the optimisation process (if any).

The Purchasing Agency can ask you to undertake a software licence and/or cloud access optimisation process.

15. Transfer of Enterprise Software upon Machinery of Government Changes

- 15.1 This clause 15 only applies where the Purchasing Agency is procuring Agency-Hosted Enterprise Software and/or Provider-Hosted Enterprise Software.
- 15.2 Despite anything to the contrary in the Provider Standard Terms, you agree that the Purchasing Agency is entitled to transfer a current subscription or licence to Enterprise Software to another Eligible Agency on the same terms and conditions as a consequence of a Machinery of Government Change. If the Purchasing Agency proposes to transfer a subscription or licence under this clause, it must inform you of its intention to do so by notice in writing at least 20 Business Days before doing so.
- 15.3 If you receive a notice under clause 15.1 you may, within 10 Business Days of receiving the notice, notify the Purchasing Agency of any proposed additional fees for any additional usage arising from the Machinery of Government Change, to the extent that such usage is greater than any limits on usage specified in the Purchasing Agency's Order or Statement of Work.

The Purchasing Agency can transfer a software licence or subscription due to a Machinery of Government Change.

- 15.4 You agree to negotiate with the Purchasing Agency and recipient Eligible Agency in good faith to vary or amend the applicable Order or Statement of Work, novate the Subscription Agreement and/or amend the recipient Eligible Agency's Subscription Agreement, as applicable and required, to:
- (a) adjust the fees as a result of the proposed transfer;
 - (b) address administrative and technical matters relating to the transfer; and/or
 - (c) comply with any specific requirements of the Eligible Agency to which the Enterprise Software subscription or licence is to be transferred due to the Machinery of Government Change.

16. Modifications to Enterprise Software

16.1 To avoid doubt, you may change your Enterprise Software at any time. If changes to the Enterprise Software that the Purchasing Agency is procuring diminish the functionality or interoperability of the Enterprise Software to the Purchasing Agency and/or diminish the security measures you use in providing the Enterprise Software or to protect Purchasing Agency Data, you will notify the Purchasing Agency of such changes and the effective date of such changes (**Change Effective Date**) at least 90 days prior to the Change Effective Date.

You can change your Enterprise Software but you need to tell the Purchasing Agency about diminished functionality or security and, where there is diminished functionality or security, the Purchasing Agency can terminate.

16.2 If the Purchasing Agency receives a notice referred to in clause 16.1, or if you fail to notify as required by clause 16.1 but the Purchasing Agency otherwise learns of a change that has any effect referred to in clause 16.1, the Purchasing Agency shall have the right to terminate, at its election:

- (a) its subscription or licence for the affected Enterprise Software; or
- (b) the relevant Order of Statement of Work; or
- (c) its Subscription Agreement,

by providing written notice to you up to 90 days from the Change Effective Date or the date it otherwise learns of the change (such termination to be effective on the date specified in the notice provided by the Purchasing Agency) and receive a refund of the Fees it has paid for such Enterprise Software for the remainder of the Enterprise Software term subsequent to such termination.

17. Change Procedure for Associated Services

17.1 Either party may request changes to the Associated Services (**Change Request**) by delivering a written change order request to the other party. If you receive a Change Request, you will determine the impact of the requested change(s) on (as applicable) costs, timeframes, technology systems and interfaces, if any, and provide the Purchasing Agency with a proposal for a change order (**Change**

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

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.

- 17.2 The Purchasing Agency will not be liable for any charges under the Change Order and you will not be obliged to perform the requested changes unless the applicable Change Order has been signed or otherwise authorised in writing (whether physically or electronically) by the parties.

18. Payment

18.1 Fees

- (a) The Purchasing Agency will pay you:
- (i) the Fees and GST (if any) in consideration of your provision of the Enterprise Software and/or Associated Services, in accordance with this clause 18 and the relevant Order or Statement of Work; and
 - (ii) the Administration Fee, if you are required by the Collaborative Marketplace Agreement to collect such fees to purchasing agencies and pay them periodically to DIA or MBIE, provided any such fee is clearly specified in your invoices.
- (b) Where Fees are charged on a time and materials basis they shall be charged at the Services Rates set out in the relevant Marketplace Catalogue, unless the parties agree otherwise in the relevant Order or Statement of Work (as applicable).
- (c) All Fees shall be in New Zealand dollars unless stated otherwise in the relevant Order or Statement of Work.
- (d) The only Fees payable to you are the Fees set out or cross-referred to in the 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.

18.2 Invoices

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

- (a) be a valid tax invoice for the purposes of the GST Act;
- (b) include any applicable Administration Fee as a separate line item;
- (c) be accompanied by such information reasonably requested by the Purchasing Agency from time to time to support the Enterprise Software and/or Associated Services being invoiced; and

- (d) comply with any other invoicing requirements set out in an Order or Statement of Work,

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

18.3 Date for Payment

Subject to clause 18.4 and the terms of the 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.

18.4 Dispute over invoice

If the Purchasing Agency disputes in good faith the whole or any portion of a Valid Tax Invoice, the Purchasing Agency will pay the portion of the Valid Tax Invoice that is not in dispute, but may withhold payment of the disputed portion until the dispute is resolved. The dispute will be resolved in accordance with clause 27.

18.5 Payment terms

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

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

18.6 Expenses

- (a) You are responsible for all expenses you incur in connection with the Subscription Agreement, unless otherwise expressly specified in the relevant Order or Statement of Work.
- (b) If 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.

18.7 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.

19. Warranties

19.1 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.

19.2 Your warranties

You warrant and represent that:

- (a) in offering your Services, listing them in the Marketplace and setting your prices, you have not infringed any applicable law (including the Commerce Act 1986 and Fair Trading Act 1986);
- (b) when supplied, the documentation and other information you provide to the Purchasing Agency is accurate and complete and suitable for the purpose for which it is provided; and
- (c) the Enterprise Software the Purchasing Agency procures, and all Software your organisation itself uses in performing your obligations under the Subscription Agreement, will (except as otherwise permitted by clause 2.1(I)) be currently supported.

19.3 Continuous application

The warranties and representations set out in clause 19.2, 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.

19.4 Notification

You will promptly notify the Purchasing Agency of any non-compliance with any of the warranties in this clause 19 or in any applicable Extra Terms.

19.5 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.

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

20. Intellectual Property Rights

20.1 Existing Material

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

20.2 Deliverables

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

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

The above sub-clauses are listed in descending order of priority so that, to the extent there is any conflict between any sub-clauses, sub-clause (a) will prevail over sub-clauses (b), (c) and (d), sub-clause (b) will prevail over sub-clauses (c) and (d) and sub-clause (c) will prevail over sub-clause (d). To avoid doubt:

- (e) the Purchasing Agency acknowledges that you or your licensor are the owner of, and retain all Intellectual Property Rights in, your Enterprise Software and any modifications or enhancements to it; and
- (f) unless agreed otherwise (including in an Order or Statement of Work), where this clause 20.2 does not confer ownership of New Intellectual Property Rights in Deliverables or arising from your provision of the Services on the Purchasing Agency,

Intellectual Property Rights are important and ensuring all bases are covered requires comprehensive drafting. In a nutshell, though, you own your existing IP and modifications to it, and the Purchasing Agency owns its existing IP. You own the new IP in software you develop for the Purchasing Agency (if any), and the Purchasing Agency owns new IP in other materials you develop specifically for it. Each party grants licences to the other, and you make an IP-related warranty and grant an IP indemnity (with some carve-outs to protect you in relation to Third Party Material and certain other things).

those New Intellectual Property Rights will be owned by you (or, if applicable, your subcontractor or licensor).

20.3 Further actions

If ownership of any Intellectual Property Rights described in clause 20.2 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.

20.4 Licences or access rights to Purchasing Agency in relation to Enterprise Software and User Documentation

- (a) The Purchasing Agency's licences to, or access rights to, Enterprise Software it procures under this Subscription Agreement, and any associated User Documentation, will be as specified in the applicable Order, Provider Standard Terms or Statement of Work.
- (b) The Purchasing Agency acknowledges that, except as amended by this Subscription Agreement, it must comply with the restrictions and other obligations in the Provider Standard Terms that apply to the Enterprise Software.

20.5 Licences to Purchasing Agency in relation to Associated Services Deliverables

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

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

in which you own or co-own the Intellectual Property Rights, you grant the Purchasing Agency, and contractors acting on its behalf, a non-exclusive, perpetual, irrevocable and royalty free licence to exercise for the Purchasing Agency's business purposes (excluding resale), those Intellectual Property Rights. To avoid doubt, the licence in this clause 20.5 does not apply to your Enterprise Software.

- (b) The licence in clause 20.5(a) survives termination or expiry of the Subscription Agreement for any reason.
- (c) Unless otherwise agreed in writing (including in an Order or Statement of Work):

- (i) to the extent that any Deliverable provided in the context of Associated Services incorporates or the use of any such Deliverable relies on the use of any Third Party Material (that is not Purchasing Agency Contributed Material), or any enhancement or modification to that Third Party Material the Intellectual Property Rights in which are not owned by you, you:
 - (A) must ensure that the Purchasing Agency and contractors acting on its behalf have, are granted or can be granted (either directly by the applicable third party owner or by a sub-licence from you) a licence to exercise the Intellectual Property Rights in such Third Party Material or such enhancement or modification; and
 - (B) will, subject to clause 20.5(d), notify the Purchasing Agency of the terms of any direct licence or sub-licence applicable to use of the Third Party Material or enhancement or modification to the Third Party Material before incorporating it into the Deliverable; and
- (ii) you must promptly notify the Purchasing Agency on becoming aware of any existing or potential claim that the receipt of a Service, any Deliverable, or the possession or use of any Deliverable, infringes any third party Intellectual Property Right or other right.
- (d) Clause 20.5(c)(i)(B) does not apply in relation to any direct licence or sub-licence applicable to use of the Third Party Material or enhancement or modification to the Third Party Material referred to in that clause where the relevant Services Listing specifies the direct licence or sub-licence and either contains the licence terms or indicates where they can be found.

20.6 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 Enterprise Software and/or Associated 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 provided in the context of Associated Services comprises or incorporates other material referred to in clause 20.2(d), the Intellectual Property Rights in which are owned by the Purchasing Agency, the Purchasing Agency grants you a non-exclusive, perpetual, irrevocable and royalty free licence to exercise those Intellectual Property Rights for your own business purposes.
- (b) You must not exercise the rights conferred by the licences in clause 20.6(a) in a manner that breaches clause 21 (General confidentiality and security obligations).

20.7 Title and risk

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

20.8 Warranty

- (a) You warrant that, subject to clause 20.8(b), the Purchasing Agency's and its Personnel's receipt or use of any Enterprise Software or Associated Services Deliverable in accordance with the Subscription Agreement or use or possession of any such Enterprise Software or Associated Services Deliverable (in accordance with any applicable restrictions on use or possession) will not infringe any Intellectual Property Rights of any person.
- (b) The warranty in clause 20.8(a) will not apply to any Intellectual Property Rights in any Third Party Material used in providing the Enterprise Software or Associated 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 by a Third Party Service Provider; or
 - (iii) the use or incorporation of the Third Party Material was agreed to in writing (including in any Order or Statement of Work), provided that the Provider meets its obligations under clause 20.5(c) in relation to that Third Party Material.
- (c) The parties may agree in an Order or Statement of Work to modify the application of clause 20.8(a) or (b) for Enterprise Software or Associated Services Deliverables covered by that Order or Statement of Work.

20.9 Intellectual Property Rights indemnity

- (a) You will fully indemnify and defend the Purchasing Agency against all Losses suffered or incurred by the Purchasing Agency as a result of any third party Intellectual Property Right infringement claim resulting from a breach of the warranty under clause 20.8(a) (**IP Claim**).
- (b) Each party will promptly notify the other party in writing upon becoming aware of any IP Claim.
- (c) Unless and to the extent otherwise required by a Purchasing Agency that is a department of the Crown (given the Cabinet Directions for the Conduct of Crown Legal Business), you will control the conduct of any IP Claim and all negotiations for its settlement or compromise but in all cases will:
 - (i) consult with the Purchasing Agency and keep it fully informed of such matters;
 - (ii) obtain the Purchasing Agency's prior written approval to any proposed settlement or compromise (such approval not to be unreasonably withheld or delayed); and
 - (iii) use all reasonable endeavours to ensure that the Purchasing Agency's name and business reputation are not adversely affected by any such steps taken.
- (d) The Purchasing Agency will co-operate with you in defending or settling any IP Claim under this clause 20.9 and will endeavour to make its employees available to give statements, information and evidence as you may reasonably request.
- (e) If any Enterprise Software or Associated Services 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 procured Enterprise Software or Associated Services Deliverables as a result of an IP Claim, you will, at your expense and without limiting the Purchasing Agency's other rights and remedies:
 - (i) replace or modify the Enterprise Software or Associated Services 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 Enterprise Software or Associated Services Deliverables on terms acceptable to the Purchasing Agency, and pay all fees for that licence.
- (f) The indemnity in clause 20.9(a) and the obligations in clause 20.9(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 Enterprise Software or Associated Services Deliverables that have not been made by you; or
- (iv) the combination, operation or use of the Enterprise Software or Associated Services Deliverables with any other software, equipment or other item that has not been specifically approved by you.

20.10 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. To avoid doubt, this clause does not apply to your Enterprise Software.

20.11 Know how

Nothing in the Subscription Agreement restricts the Purchasing Agency or you from using any general ideas, concepts, know-how or techniques which either party, individually or jointly, develops or discloses under the Subscription Agreement, except to the extent such use infringes the Intellectual Property Rights of the other party or any confidentiality obligations under clause 21.

21. General confidentiality and security obligations

21.1 Protection of Confidential Information, use of Purchasing Agency Data, and Personal Information

The protection of Confidential Information and the use of Purchasing Agency Data and Personal Information are addressed in clauses 15, 17 and 18 of Part 1 (General Terms) of the Collaborative Marketplace Agreement and those clauses are incorporated into the Subscription Agreement by clause 2.1 of these Core Enterprise Software Terms. The remainder of this clause 21 applies in addition to those clauses.

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

21.2 Purchasing Agency Data

- (a) You will:
- (i) not use any of the Purchasing Agency Data for your own purposes or for any other purposes different from those contemplated by the Subscription Agreement;
 - (ii) not, subject to sub-clause (b), permit any of the Purchasing Agency Data to be:
 - (A) transferred or stored outside of New Zealand, and any Additional Territory specified in an Order or Statement of Work; or
 - (B) processed or stored by Subcontractors, offshore cloud services or other Third Party Service Providers other than those specified in an Order or Statement of Work,unless:
 - (C) specific details of the relevant offshore territories, Subcontractors, offshore cloud services or other Third Party Service Providers (including where they would store and process Purchasing Agency Data) are contained in the relevant Services Listing(s); or
 - (D) authorised by the Purchasing Agency in writing in relation to specific named territories, Subcontractors, offshore cloud services or other Third Party Service Providers (as applicable); and
 - (iii) ensure that all Purchasing Agency Data (and any backup archives of Purchasing Agency Data) in your possession or control are kept secure and are managed and protected and only disclosed or otherwise dealt with in accordance with the Subscription Agreement.
- (b) To avoid doubt, clause 21.2(a)(ii) shall not, subject to any express restriction in an Order or Statement of Work, be read as preventing you from using telecommunications networks (which by their nature may involve international routing via the Internet) to communicate with or provide the Enterprise Software or Associated Services, as long as:
- (i) any transfer of the Purchasing Agency Data outside of the territories and cloud services permitted by clause 21.2(a)(ii) is only for Internet routing purposes; and
 - (ii) the Purchasing Agency Data is encrypted and not accessible by persons who are not authorised to access the data.

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

21.3 Security measures

Without limiting your other obligations under the Subscription Agreement (including any specific security requirements in an Order or Statement of Work), you will use all reasonable endeavours in accordance with Good Industry Practice to implement measures to:

- (a) secure the Services;
- (b) maintain the confidentiality, integrity and availability of the Purchasing Agency's Confidential Information; and
- (c) protect the Purchasing Agency's Confidential Information from unauthorised use or access.

You need to use all reasonable endeavours to implement appropriate security measures.

21.4 Security risk

If either party becomes aware or suspects that:

- (a) there is a material vulnerability in the Enterprise Software or Associated Services;
- (b) any unauthorised person has obtained access to the technology systems or any Confidential Information of the other party or the Purchasing Agency Data;
- (c) it (the **first party**) is responsible for a Privacy Breach involving Personal Information of the other party's staff, customers, clients or users that the other party has provided to the first party or that the first party has otherwise obtained through provision or receipt of the Enterprise Software or Associated Services;
- (d) any person has used any Confidential Information or Purchasing Agency Data for purposes not authorised or permitted by the Subscription Agreement; or
- (e) any other unauthorised access or other incident (including compromise or unauthorised exfiltration of Purchasing Agency Data) has occurred that threatens the security or integrity of the Enterprise Software or Associated Services or any Confidential Information or Purchasing Agency Data,

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

the following steps shall be taken, as applicable:

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

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

22. Security obligations relating to Provider-Hosted Enterprise Software

22.1 Security audits

- (a) This clause 22.1 applies:
 - (i) where the Purchasing Agency is procuring Provider-Hosted Enterprise Software; and
 - (ii) subject to any modifications agreed in the Subscription Form or an Order or Statement of Work.
- (b) Subject to clause 22.2 (Minimising duplication), the Purchasing Agency may, from time to time, itself or through an agent, notify you in writing that it wishes to conduct testing and/or requires information (the **Security Audit**) to determine:
 - (i) whether you have implemented the measures referred to in clause 21.3, in relation to the Provider-Hosted Enterprise Software; and/or
 - (ii) whether the Provider-Hosted Enterprise Software has the controls in the NZISM and wider PSR which you have:
 - (A) agreed in the Subscription Form or an Order or Statement of Work that the the Provider-Hosted Enterprise Software does or will have; or
 - (B) represented in your Services Listings that the Provider-Hosted Enterprise Software has; or
 - (C) represented in security-related collateral available to the Purchasing Agency in the Marketplace (such as, if applicable, in your answers to relevant questions in the cloud risk assessment tool available at digital.govt.nz) that the Provider-Hosted Enterprise Software has.
- (c) The Purchasing Agency may, under clause 22.1(b), conduct:
 - (i) an initial Security Audit prior to accepting use of the Provider-Hosted Enterprise Software; and
 - (ii) subsequent, updating Security Audits throughout the Term due to:
 - (A) changes to the Provider-Hosted Enterprise Software used by the Purchasing Agency;
 - (B) the identification of new threats to the security of the Provider-Hosted Enterprise Software;

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 to do this and it specifies what is to happen when a security audit reveals potential problems.

- (C) any reasonable need for ongoing certification of the Provider-Hosted Enterprise Software; and/or
 - (D) changes to the New Zealand Government's Protective Security Requirements (of which the New Zealand Information Security Manual is a part) that you have agreed to comply with.
- (d) If the Purchasing Agency uses an agent for a Security Audit, the agent must be approved by you (such approval not to be unreasonably withheld or delayed), with the agent to be under a duty of confidentiality.
- (e) A notice from the Purchasing Agency under clause 22.1(b) must include reasonable details as to:
 - (i) the intended scope of the audit;
 - (ii) the intended timing of the audit; and
 - (iii) whether the Purchasing Agency intends to conduct its own penetration testing,

and within 10 Business Days of providing the notice to you, the Purchasing Agency must consult with you on these matters and take your feedback into account (which you must provide within 5 Business Days of being consulted) before conducting the Security Audit.
- (f) Your roles and responsibilities for and in relation to a Security Audit include providing the Purchasing Agency in a timely manner with access to all reasonably required information, documentation, reports, tools and people to support the audit and associated activities, including tools and reports related to penetration and/or other testing.
- (g) If the Purchasing Agency proposes to penetration test Provider-Hosted Enterprise Software as part of a Security Audit, it will:
 - (i) do so at its own cost;
 - (ii) provide you with at least 5 Business Days' notice of the test; and
 - (iii) not seek to access or view data or information relating to your other customers if the testing reveals a vulnerability that enables access to such information.
- (h) The Purchasing Agency may at any time during a Security Audit (and on more than one occasion) document any defect, error or material vulnerability identified during the Security Audit (**Problem**) in a report to you (**Problem Report**) identifying the Problem and why it is thought to be a Problem.

- (i) If you have reasonable grounds to believe that Problems identified in a Problem Report are not in fact Problems, or that they pose no material risk to the Purchasing Agency, you will discuss those grounds with the Purchasing Agency as soon as possible. The Purchasing Agency will consider your position with an open mind and the parties will endeavour to agree on whether a reported Problem is in fact a Problem or poses any material risk.
- (j) If an identified Problem:
 - (i) impacts the security of your Provider-Hosted Enterprise Software or the confidentiality, integrity or availability of the Purchasing Agency's Confidential Information; and
 - (ii) is due to a breach by you of the Subscription Agreement, including:
 - (A) non-compliance with clause 21.3; or
 - (B) not having the controls referred to in clause 22.1(b)(ii),

you will correct the Problem reasonably promptly and at your cost (unless specified otherwise in a Subscription Form, Order or Statement of Work or otherwise agreed).
- (k) If an identified Problem does not fall within clause 22.1(j) and the Purchasing Agency would like you to correct it, the Purchasing Agency may make a Change Request in accordance with the Change Procedure (and for the purposes of this clause 22, "Change Request" includes a change to or affecting the Provider-Hosted Enterprise Software).
- (l) You acknowledge that the Purchasing Agency may not accredit the Provider-Hosted Enterprise Software, or withdraw accreditation, if an identified Problem is not corrected.
- (m) A Problem Report will remain outstanding until the Purchasing Agency confirms in writing that the Problem Report has been resolved by your:
 - (i) correction of the Problems set out in the Problem Report; and/or
 - (ii) explanations to the Purchasing Agency that are accepted by the Purchasing Agency as to why perceived Problems are not in fact Problems.
- (n) If:
 - (i) the Purchasing Agency has provided a Problem Report to you in relation to Problem(s) to which clause 22.1(j) applies and given you a reasonable period of time to

consider the stated Problem(s) and, where relevant, correct them;

- (ii) you have either not responded or not addressed the Problem(s) to the Purchasing Agency's reasonable satisfaction; and
- (iii) the Purchasing Agency has informed you of its intention to appoint an auditor under this clause and given you a reasonable opportunity to respond,

the Purchasing Agency may appoint an independent auditor to determine whether a Problem Report has been resolved. If the Purchasing Agency appoints an auditor and the auditor finds that the Problem Report has not been resolved, you will be responsible for meeting the auditor's reasonable costs and the Purchasing Agency may invoice you accordingly.

22.2 Minimising duplication

(a) If:

- (i) the Purchasing Agency notifies you under clause 22.1(b) 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 6 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 security 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 22.2(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 22.1(b); and

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.

- (iii) if the Purchasing Agency still wishes to proceed with its own Security Audit under clause 22.1(b), it may do so but must use reasonable endeavours to limit the scope of the Security Audit by reference to the information already obtained from DIA or the other agency.

22.3 Code reviews and testing throughout the Term

If, at any time during the Term, you commission or undertake a code review or penetration, stress, vulnerability or other security testing of the Provider-Hosted Enterprise Software and those results reveal significant vulnerabilities or other problems that cannot or will not be resolved promptly, you will provide the Purchasing Agency promptly with written results of the review or testing together with an explanation of how you propose to rectify the vulnerabilities or problems.

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

22.4 Ongoing security assurance

You are responsible throughout the Term, both generally and when considering any change to any Provider-Hosted Enterprise Software, for undertaking your own security assurance activities to ensure, at all times:

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

- (a) all security-related provisions of this Agreement are and will continue to be met; and
- (b) the ongoing availability and security of your Provider-Hosted Enterprise Software and the security of the Purchasing Agency's Confidential Information that is in your possession or control.

The Purchasing Agency may, from time to time, request information from you regarding such assurance activities and, if it does so, you will provide the information promptly.

23. Liability

23.1 Purchasing Agency liability

Subject to clause 23.3 and unless agreed otherwise in a Subscription Form, Order or Statement of Work, the maximum aggregate liability of the Purchasing Agency to you for all Losses under or in connection with the Subscription Agreement or its formation (in addition to the Fees) is \$100,000.

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

23.2 Your liability

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

- (ii) any act or omission of the Purchasing Agency's other contractors or suppliers (excluding your Subcontractors) involved with the subject matter of the relevant Order(s) or Statement(s) of Work.
- (b) Subject to clause 23.3 and unless agreed otherwise in a Subscription Form, Order or Statement of Work, your total aggregate liability under or in connection with the Subscription Agreement in any 12 month period, whether in contract or tort (including negligence) or otherwise, is limited to an amount equal to the greater of:
- (i) \$500,000; or
 - (ii) two times the total amount of Fees paid to the Provider by the Purchasing Agency in the preceding 12 months.

23.3 Exclusions and expanded maximum liability

Unless agreed otherwise in a Subscription Form, Order or Statement of Work, clauses 23.1 and 23.2(b) will not apply to, and will not limit:

- (a) your liability for any claim made under clause 20.9 (Intellectual Property Rights Indemnity) or 24 (General indemnities); or
- (b) either party's liability for a breach of clause 21 (General confidentiality and security obligations), for which the maximum aggregate liability of either party for all Losses in relation to all claims in any 12 month period will be \$1,000,000.

23.4 Loss of profits and revenue and indirect loss

Subject to clauses 20.9 (Intellectual Property Rights Indemnity) and 24 (General indemnities) and the Purchasing Agency's obligation to pay Fees that are properly due, neither party will be liable under or in connection with the Subscription Agreement for any:

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

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

23.5 Source of liability

The limitations and exclusions of liability in this clause 23 will apply however liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.

23.6 Mitigation

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

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

23.7 Force Majeure Event

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

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

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

24. General indemnities

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

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

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

25. Insurance

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

You need to maintain insurance.

26. Performance issues

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

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

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

to remedy the Performance Issue (**Remedial Plan**) in accordance with clause 26.2.

- 26.2 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.
- 26.3 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.
- 26.4 Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 27.
- 26.5 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.

27. Disputes

- 27.1 Subject to clause 27.4, if a dispute arises in relation to the Subscription Agreement or its formation, the parties will attempt to resolve the dispute using the dispute resolution process set out below before pursuing any other remedies available at law or otherwise.
- 27.2 If either party receives notice of a dispute, the parties will work together in good faith to resolve the dispute via negotiation and will escalate the dispute to appropriate levels within their respective organisations.
- 27.3 If the dispute is not resolved under clause 27.2 within 20 Business Days of a party receiving a notice under that clause, then either party may, by written notice to the other party (**Mediation Notice**), require the dispute to be submitted to mediation in New Zealand in accordance with the provisions of the then-current Resolution Institute Agreement to Mediate (New Zealand Version) (**Mediation**). The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Business Days following the date of the delivery of the Mediation Notice, the Chair for the time being of the Resolution Institute will

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

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.

- 27.4 Nothing in this clause 27 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.
- 27.5 Subject to clause 27.4, a party to the dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 20 Business Days after commencement of the Mediation.
- 27.6 In the event of a dispute between the parties concerning the Subscription Agreement, you will continue to provide the Services unless the Purchasing Agency requires otherwise in writing.

28. Termination

28.1 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) clause 16.2 applies (Modifications to Enterprise Software);
- (d) 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;
- (e) you undergo a Change of Control and the Purchasing Agency believes on reasonable grounds that either, as a result of such change, you are unlikely to be able to perform your obligations under the Subscription Agreement, or the Change of Control raises significant security concerns for the Purchasing Agency, provided that before terminating under this clause 28.1(e) the Purchasing Agency must raise its concerns with you and give you a reasonable opportunity to address those concerns;
- (f) you cease or threaten to cease to carry on all or substantially all of your business or operations;

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

- (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.

28.2 Termination by Purchasing Agency for convenience

The Purchasing Agency may terminate:

- (a) an Order for convenience where and as expressly provided for in the Provider Standard Terms that apply to the Order or as the parties have otherwise agreed in terms applying to the Order;
- (b) a Statement of Work for convenience at any time by giving you at least 20 Business Days' written notice (or such other period of notice, if any, as may be specified in the Statement of Work); or
- (c) its Subscription Agreement for convenience at any time during which there is no current Order or Statement of Work, by giving you at least 20 Business Days' written notice.

28.3 Termination for Force Majeure

The Purchasing Agency may terminate its Subscription Agreement or any 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 Enterprise Software or Associated Services in accordance with the Subscription Agreement as a result of a Force Majeure Event for a continuous period of 20 Business Days.

28.4 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 18.4 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 Subscription Agreement or all or the material part of a relevant Order or Statement of Work if:
- (i) you are ceasing to provide a particular item of Enterprise Software or an Associated Service in reliance on clause 6.4 of Part 2 (Channel Terms for Enterprise Software (ES Terms) (Standard)) of the Collaborative Marketplace Agreement (which is incorporated into this Subscription Agreement by clause 2.1(l) of these Core Enterprise Software Terms); and
 - (ii) you are providing that particular item of Enterprise Software or that Associated Service to the Purchasing Agency under the relevant Order or Statement of Work,

provided you comply with the notice requirements of clause 6.5 of Part 2. To avoid doubt, this clause 28.4(b) only entitles you to terminate the Subscription Agreement, or all of an Order or Statement of Work, if the only item of Enterprise Software or the only Associated Service you are providing to the Purchasing Agency is the Service that you are ceasing to provide.

28.5 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 Provider-Hosted Enterprise Software through to the end of a paid-up period and any remaining licensed period for any Agency-Hosted Enterprise Software; and
 - (ii) the provisions of the Agreement which expressly, or by their nature, survive termination or expiry, including clauses 20 (Intellectual Property Rights), 21 General confidentiality and security obligations), 23 (Liability), 24 (General indemnities), 25 (Insurance), 27 (Disputes) and 28 (Termination).
- (b) If, prior to termination or expiry of the Subscription Agreement or the relevant Order or Statement of Work, the Purchasing

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

Agency was procuring Provider-Hosted Enterprise Software, the Purchasing Agency may, for a period of up to 30 days following the termination or expiry, require you to (and, if it does, you must):

- (i) permit the Purchasing Agency to access your Provider-Hosted Enterprise Software solely to the extent necessary for the Purchasing Agency to retrieve or export a copy of the Purchasing Agency Data;
 - (ii) within a reasonable time period and in a manner able to be independently verified, remove, delete, purge, overwrite or otherwise render inaccessible all Purchasing Agency Data from the hardware used to host the Provider-Hosted Enterprise Software, unless and to the extent applicable laws and regulations require further retention of such data; and
 - (iii) on request, give notice in writing to the Purchasing Agency that you have so destroyed the Purchasing Agency Data in accordance with clause 28.5(b)(ii).
- (c) If the Purchasing Agency terminates a Statement of Work for convenience under clause 28.2, you will be entitled to recover your reasonable fees for time spent providing Associated 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.

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

28.6 Return of property

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:

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

except to the extent that such property or Confidential Information:

- (c) is required to comply with any disengagement process;
- (d) is licensed under clause 20 (Intellectual Property Rights);
- (e) is required to be retained by the Public Records Act 2005 or any other law;

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

- (f) is required to be retained by a party to enable it to defend itself in a dispute; or
- (g) in your case, is required by law or regulation to be retained or is required to be retained for the purposes of your internal auditing policy.

28.7 Effect of termination provisions in Provider Standard Terms

- (a) This clause 28 does not limit any additional and materially different termination rights a party may have under Provider Standard Terms that apply to a particular Order or Statement of Work, but those termination rights (if any) do not apply to the Subscription Agreement as a whole.
- (b) If there is a termination right in Provider Standard Terms that is similar to a termination right in this clause 28, in that it covers the same kind of basis for termination (for example, material breach, force majeure, etc), the termination right in this clause 28 will apply to the exclusion of that termination right.

29. Disengagement

- 29.1 This clause 29 applies where the Purchasing Agency is procuring Provider-Hosted Enterprise Software and/or Associated Services relating to the Provider-Hosted Enterprise Software.
- 29.2 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 seeks disengagement services from you to assist in transitioning the relevant Services to itself or its nominated alternative service provider (the **Disengagement Services**).
- 29.3 The Notice of Disengagement will specify:
 - (a) the Disengagement Services the Purchasing Agency seeks; and
 - (b) the period of time for which the Purchasing Agency is likely to need those Disengagement Services (**Disengagement Period**).
- 29.4 You may only decline a request for Disengagement Services under clause 29.2 if you will not have sufficient resources (for example, time or appropriate personnel) to provide the requested Disengagement Services during the proposed Disengagement Period. If you seek to rely on this clause, you must:
 - (a) do so in good faith;
 - (b) provide a written explanation to the Purchasing Agency as to:
 - (i) why you do not have sufficient resources; and

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

- (ii) what lesser volume or scope of Disengagement Services you are able to provide; and
- (c) not be doing so for the purpose of avoiding the application of clause 29.6.

29.5 Subject to clause 29.6, and unless otherwise agreed, the Purchasing Agency will pay you for the Disengagement Services at the Services Rates applicable to the type of work being undertaken **(Disengagement Cost)**.

29.6 If the Purchasing Agency has terminated the Subscription Agreement or relevant Order or Statement of Work for cause under clause 28.1, the Disengagement Services will be provided without charge to the Purchasing Agency and no Disengagement Cost will be payable.

30. General

30.1 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 (consent not to be unreasonably withheld or delayed). This clause 30.1(b) does not limit either clause 15 (Transfer of Enterprise Software upon Machinery of Government Changes) or 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, governing law, electronic signatures and contract document counterparts, and further assurances.

30.2 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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 30.7(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 30.7(b)(i) is deemed received at the time of delivery;
 - (ii) clause 30.7(b)(ii) is deemed received upon actual receipt and acknowledgment by the recipient; and
 - (iii) clause 30.7(b)(iii) is deemed received 3 Business Days after (but exclusive of) the date of posting.

- (d) For the purposes of this clause 30.7 your and the Purchasing Agency's address details are set out in the Subscription Form.

30.8 Governing Law

The Subscription Agreement is governed by New Zealand law. Without limiting clause 27.4, the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Subscription Agreement and its formation.

30.9 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.

30.10 Further assurances

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

31. Definitions and interpretation

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

These terms have the particular meanings given to them.

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

Agency-Hosted Enterprise Software means Enterprise Software that is downloaded or otherwise obtained in digital form, with a view to it being hosted either by the customer (e.g., on-premise) or by an organisation other than the organisation that develops and maintains the Enterprise Software, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Associated Services means design, implementation, customisation, configuration, training, support or managed services related to Enterprise Software, performed by you or your subcontractors, in relation to which you have sought and obtained

consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Associated Services Deliverable means a Deliverable you provide to the Purchasing Agency in the context of your provision of Associated Services;

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

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

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

Change Order has the meaning in clause 17.1;

Change Procedure means the procedure for changes specified in clause 17 (including as extended in the context of cooperation with suppliers by clause 6.2 and in the context of security audits by clause 22.1(k));

Change Request has the meaning in clause 17.1 (including as extended in the context of cooperation with suppliers by clause 6.2 and in the context of security audits by clause 22.1(k));

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

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

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

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

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

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

Developed Software means the Software developed, created or commissioned by you under or in connection with the Subscription Agreement specifically for and at the request of the Purchasing Agency, as specified in an Order or Statement of Work, but does not include your Enterprise 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;

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

Enterprise Software:

- (a) means software that performs important business functions that are common to many if not most organisations and that usually (but not solely) are of an enterprise-wide nature, such as (but not limited to) order processing, accounting, payroll, human resources information management, and customer relationship management; and
- (b) for the purposes of these Channel Terms, may take the form of:
 - (i) Provider-Hosted Enterprise Software; or
 - (ii) Agency-Hosted Enterprise Software;

ES Channel means the Enterprise Software Channel;

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 ES Channel, and form part of a Subscription Agreement when a Purchasing Agency procures these categories of Services;

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

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

- (a) 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 any event or circumstance, or any failure to comply with any term of the Subscription Agreement arising from such event or circumstance, that is constituted by the insolvency of either party or lack of funds or that could have been avoided by the Affected Party's exercise of business continuity or other reasonable business practices;

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

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

GST Act means the Goods and Services Tax Act 1985;

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

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

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

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

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);

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

Machinery of Government Change means a change resulting from:

- (a) the allocation or transfer of functions and/or powers between Eligible Agencies; or
- (b) the establishment, amalgamation, disestablishment or re-organisation of one or more Eligible Agencies;

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

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

MBIE means the Ministry of Business, Innovation & Employment;

Milestone means a milestone set out in an Order or Statement of Work;

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;

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://protectivesecurity.govt.nz>;

Order means an order for specified Enterprise Software, described in a Subscription Form (or attachment to it) or other order documentation that forms part of your Provider Standard Terms but, to avoid doubt, does not include the contractual rights and obligations contained in such Provider Standard Terms;

Personal Information means information about an identifiable individual;

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

Privacy Breach means, in relation to Personal Information a party holds (physically or electronically and whether in its own right or on behalf of the other party) or processes:

- (a) unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, the Personal Information; or
- (b) an action not contemplated by this Agreement that prevents the party, or the other party on whose behalf it is held or processed, from accessing the information for a significant period of time when otherwise it would be able to access the information;

Provider-Hosted Enterprise Software means Enterprise Software that you develop, maintain, host and provide as a service (for example, as a public, hybrid or private cloud service), in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Provider Standard Terms means the terms referred to in clause 4 of the Subscription Form that are described in Schedule 1 to the Subscription Form and, if relevant, the provider terms referred to in one or more Orders or Statements of Work;

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 Contributed Material means Existing Material that the Purchasing Agency provides to you for inclusion in a Deliverable;

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

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

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

Purchasing Agency Environment means a Purchasing Agency's:

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

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

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

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

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

Services means the delivery or licensing of, or access to, Enterprise Software, and/or any Associated 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 ES Channel;

Services Listings means entries in the Marketplace Catalogues for particular Enterprise Software and/or Associated Services available for purchase, licensing, subscription or consumption by Eligible Agencies;

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

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

Software means:

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

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

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 Enterprise Software Terms;

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

Subscription Agreement means the agreement under which the Purchasing Agency is able to purchase Services listed in the ES Channel of the Marketplace, comprising a Subscription Form, these Core Enterprise Software Terms, any Extra Terms that apply, any applicable Provider Standard Terms, 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 for Enterprise Software;

Term has the meaning described in clause 1;

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

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

Usage Metric means the usage parameters for determining the permitted access and use of, and/or the fees for the use of, the applicable Provider-Hosted Enterprise Software, as described 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 the Enterprise Software, that you provide to the Purchasing Agency, and that may include release notes, specifications, user guides, and deployment and configuration manuals.

31.2 The Background section of these Core Enterprise Software Terms forms part of the Terms and has legal effect.

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

(a) references to the singular include the plural and vice versa;

- (b) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (e) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;
- (f) wherever the words "includes" or "including" or "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 1.3 of the Subscription Form will apply.

Schedule: Statement of Work template

Introduction

A Statement of Work template is attached. It has been designed to interface with the Core Enterprise Software Terms.

Drafting notes

- The attached template is intended to provide a helpful starting point for Purchasing Agencies and Providers but may need amending to suit the particular circumstances.
- As noted in clause 3.9 of the Core Enterprise Software Terms, the parties may agree to adapt the form of the provided template (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 template has 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 Enterprise Soft Terms and includes a paragraph that draws the Purchasing Agency's attention to the requirement to pay any applicable Administration Fee.



Statement of Work (General) – Enterprise Software

Introduction

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

Parties and Subscription Agreement / Statement of Work details

Provider:	[insert full name of Provider and, if a company, the company number or NZ business number] (Provider, you, your)	
Purchasing Agency:	[Insert full Purchasing Agency name and, if a company, the company number or NZ business number] (Purchasing Agency, we, us)	
SOW for:	[insert short description]	
SOW #:	[insert number]	
Under Subscription Agreement dated:	[insert date]	
Initial Term of Subscription Agreement <small>(Ref: Clause 1.1(b) Core Enterprise Software Terms)</small>	[Under clause 1.1(b) of the Core Enterprise Software Terms, Subscription Agreements have an initial term of 2 years, unless the parties agree to a shorter initial term in their first Order or SOW. Parties may wish to agree to a shorter initial term where an agency is clear that it is only seeking a contained set of Associated Services (for example, design services or requirement verification services) in a single SOW that will last less than 2 years. They may want the whole Subscription Agreement to end at the end of the SOW (subject to extension under clause 1.2 of the Core Enterprise Software Terms). If so, the parties can enter in an initial term here that is less than 2 years. If not, this row can be deleted.]	
SOW Start Date <small>(Ref: Clause 1.4 Core Enterprise Software Terms)</small>	[Insert commencement date of work under SOW]	
SOW End Date <small>(Ref: Clause 1.4 Core Enterprise Software Terms)</small>	[Insert end date of work under SOW]	
Key contacts <small>(Ref: Clause 4.2 Core Enterprise Software Terms)</small>	The parties' Contract Managers are specified in the Subscription Form and their roles are listed in clause 4.1 of the Core Enterprise Software Terms. Other key contacts for this SOW (if any) are as stated below.	
	Contact(s)	Role(s)

	Purchasing Agency		
	Provider		

Service description and related matters

1.	<p>Transition to Provider-Hosted Enterprise Software</p> <p>(Ref: Clause 5.2 Core Enterprise Software Terms)</p>	<p>[Clause 5.2 of the Core Enterprise Software Terms contains obligations that apply where the Purchasing Agency is purchasing Associated Services that involve the transition or migration of functions or services from the Purchasing Agency or an incumbent provider to the Provider’s Provider-Hosted Enterprise Software. If such services are being provided, indicate that 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 Enterprise Software Terms are required, they can be entered here as well. If there are no transition services, enter “Not applicable”, or delete this row.]</p>	
2.	<p>Services</p> <p>(Ref: Clauses 3 and 5 Core Enterprise Software Terms)</p>	<p>The Provider will provide the following Services to the Purchasing Agency and in accordance with the following timeframes.</p> <p>(Specific Milestones/Deliverables and Milestone Dates (if any) are specified in the next row below.)</p>	
		<p>Service</p> <p>(Attach a more detailed Service description and statement of requirements if required)</p>	<p>Timeframe</p>
		<p>[For example, you may wish to insert details, either in this table or an attached document, of the various phases of work that may be required to (for example):</p> <ul style="list-style-type: none"> • verify that the requirements your agency has can be met by the Enterprise Software you are procuring or thinking of procuring; • design or assess the architecture, implementation and/or rollout of the Enterprise Software you wish to procure; • implement and configure the Enterprise Software; • migrate data and processes from an existing state to the Enterprise Software; • test the implementation of the Enterprise Software; • deal with business change management requirements as your agency transitions from using one system to the new system; • maintain and support your agency’s use of the Enterprise Software on an ongoing basis (including how incidents and problems will be addressed). <p>Your Services description will likely depend on the kind of Enterprise Software the SOW relates to and the scope of this particular SOW. For example, you might have a SOW dealing only with requirements verification or design, with subsequent work depending on satisfactory outcomes under that SOW (and you may choose not to make a binding Order for the Enterprise Software until that is done).]</p>	

3.	Deliverables, Milestones, and Milestone Dates (if any) (Ref: Clause 5.4 Core Enterprise Software Terms)	Deliverable / Milestone [Insert relevant Deliverables / Milestones and their due dates. Remember to include documentary deliverables where relevant. If they are relevant, consider whether you need to specify the level of expected detail, e.g., if you're contracting for a design document, does it need to be a detailed design (and in what respects) or a high level design?]	Milestone Date						
4.	Liquidated damages (Ref: Clause 5.4(c) Core Enterprise Software Terms)	<p>[Complete the drafting below if liquidated damages will be payable upon a failure to meet one or more Milestones. If no liquidated damages will be payable, this row can be deleted]</p> <p>If you fail to meet [a Milestone] or [insert details of particular Milestones] specified above by [its / their] corresponding Milestone Date[s] then, except to the extent that such failure has been caused by us or our Personnel or a failure in equipment (software or hardware) for which you are not responsible or a Force Majeure Event:</p> <p>(a) we may withhold payment of Fees for the relevant Services until the Milestone is achieved; and</p> <p>(b) you shall pay \$[] in liquidated damages for each [day / week / month] that the completion of the Milestone is delayed, provided that the maximum liquidated damages payable shall not exceed []% of the Fees paid and payable under this SOW.</p> <p>You accept that the liquidated damages referred to above reflect our legitimate interests in performance and are not a penalty, and you will not seek to argue otherwise in any dispute or proceedings.</p> <p>Your obligation to pay these liquidated damages is without limitation to any other remedy we may have under or in relation to the Subscription Agreement.</p> <p>Provided you have complied with clause 5.4(d) (Project Delay caused by us or a third party) of the Core Enterprise Software Terms, you will not be liable to pay liquidated damages where a Milestone Date has not been met due to a Project Delay caused by us or a third party (excluding your subcontractors).</p>							
5.	Interfaces (Ref: Clause 5.5 Core Enterprise Software Terms)	[If the Provider is to be responsible for implementing, operating and maintaining Interfaces (as defined in clause 31 of the Core Enterprise Software 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 Enterprise Software Terms, the differences need to be stated here too. If Interfaces are not relevant, this row can be deleted. If they are relevant, you may also wish to discuss them in more detail in your Services description.]							
6.	Service Levels (if any) (Ref: Clause 5.8 Core Enterprise Software Terms)	<p>[Choose one option, insert relevant details and delete remainder.]</p> <p>You will meet or exceed the Service Levels specified in the Services Listings for the Services in the relevant Marketplace Catalogue.</p> <p>or</p> <p>You will meet or exceed the following Service Levels:</p> <p>[insert details of Service Levels; make sure they're specific and measurable]</p> <table border="1" data-bbox="459 1883 1453 2029"> <thead> <tr> <th data-bbox="459 1883 842 1933">Name of Service Level</th> <th data-bbox="842 1883 1453 1933">Details of Service Level</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 1933 842 1982"></td> <td data-bbox="842 1933 1453 1982"></td> </tr> <tr> <td data-bbox="459 1982 842 2029"></td> <td data-bbox="842 1982 1453 2029"></td> </tr> </tbody> </table>		Name of Service Level	Details of Service Level				
Name of Service Level	Details of Service Level								

		<div style="border: 1px solid black; width: 100%; height: 20px; margin-bottom: 5px;"></div> <p>or</p> <p>There are no Service Levels beyond what is already stated in the Subscription Agreement.</p>								
7.	<p>Service Level Credits (if any)</p> <p>(Ref: Clause 5.8 Core Enterprise Software Terms)</p>	<p>[Choose one option, insert relevant details and delete remainder. The drafting is only an example and may need to be amended to suit your circumstances.]</p> <p>The Service Level Credits that are payable to us upon a Service Level Default are as specified in your Services Listings.</p> <p>or</p> <p>If you fail in a given month to meet the Service Levels referred to or specified above (a Service Level Default), we shall become entitled to the credits (Service Level Credits) specified in the table below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Service Level</th> <th style="width: 60%;">Service Level Credits for Service Level Defaults</th> </tr> </thead> <tbody> <tr> <td></td> <td>An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td></td> <td>An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> <tr> <td></td> <td>An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.</td> </tr> </tbody> </table> <p>If a Service Level Default occurs for which Service Level Credits are payable, you will credit the applicable Service Level Credits against the Fees under this SOW that are next due to be paid.</p> <p>Service Level Credits are agreed to reflect the reduced value of the relevant Services affected by the Service Level Default(s) and are acknowledged to be neither liquidated damages nor our sole and exclusive remedy in respect of Service Level Defaults or the consequences of such defaults.</p> <p>In no event will the amount of all Service Level Credits credited against the Fees in each calendar month exceed, in total, [XX]% of the Fees payable in that month.</p> <p>or</p> <p>There are no Service Level Credits.</p>	Service Level	Service Level Credits for Service Level Defaults		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.		An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.
Service Level	Service Level Credits for Service Level Defaults									
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	An amount equal to [XX]% of the monthly Fees payable under this SOW, per Service Level Default.									
8.	<p>Purchasing Agency responsibilities</p> <p>(Ref: Clause 5.6(a)(i) Core Enterprise Software Terms)</p>	<p>[If the Purchasing Agency is to have any specific responsibilities in relation to provision of the Services, beyond what may already be specified in the relevant Services Listings in the Marketplace or in the Subscription Form, state them here. If there are none, you can delete this row.]</p>								
9.	<p>Acceptance of Deliverables</p> <p>(Ref: Clause 5.7 Core Enterprise Software Terms)</p>	<p>[A default approach to acceptance of Deliverables is specified in clause 5.7 of the Core Enterprise Software 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.]</p>								
10.	<p>Security clearances and probity checks</p>	<p>[If Provider Personnel are required to obtain security clearances or if the Provider is required to undertake probity checks for Personnel engaged in providing the Associated Services, specify those clearances or checks here]</p>								

	(Ref: Clause 8.1(b) Core Enterprise Software Terms)					
11.	Pre-approved Subcontractors (Ref: Clause 9.2 Core Enterprise Software Terms)	<p>[If the Purchasing Agency pre-approves the Provider's use of particular Subcontractors, state the names and the roles they are authorised to perform below. If there are none, this row can be deleted.]</p> <p>We authorise you to subcontract parts of the Services as described below:</p> <table border="1"> <thead> <tr> <th>Full name of Subcontractor</th> <th>Role(s) Subcontractor is authorised to perform</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table>	Full name of Subcontractor	Role(s) Subcontractor is authorised to perform		
Full name of Subcontractor	Role(s) Subcontractor is authorised to perform					
12.	Purchasing Agency policies (Ref: Clause 10.1(b) Core Enterprise Software Terms)	[Insert the names of any Purchasing Agency policies that the Provider must comply with. Be sure to provide copies to the Provider. If there are none, this row can be deleted.]				
13.	Fees (Ref: Clause 18.1 Core Enterprise Software Terms)	<p>The Provider's Fees will be calculated as follows (all Fees are in NZD unless expressly stated otherwise):</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>Fixed fee</p> <p>A fixed Fee of \$[] excluding GST.</p> <p>or</p> <p>Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with your Services Rates set out in your Service Listings (as at the date of this SOW) in the Marketplace Catalogue, as [stated/summarised] below:</p> <p>[Reproduce elements of those Services Rates here, by reference to the relevant Services Listings, if required.]</p> <p>or</p> <p>Discounted Services Rates</p> <p>Time-based Fees[, up to a total maximum of \$[] excluding GST], in accordance with the discounted Services Rates (i.e., lower than the standard Services Rates in the relevant Services Listings in the Marketplace Catalogue), as stated below:</p> <p>[insert details of discounted Services Rates]</p> <p>or</p> <p>Daily fee rate</p> <p>For each day worked a daily fee rate of \$[] excluding GST[, up to a total maximum of \$[] excluding GST]. One day's work is defined as 8 hours. If you work less than a full day the Fee shall be calculated based on the time worked at the agreed daily fee rate i.e. (daily fee rate ÷ 8) x hours worked. If you work more than 8 hours in a given day, the specified daily rate will still apply, i.e., you are not entitled to charge more for the additional time spent.</p> <p>or</p> <p>[Some other pricing/fees mechanism]</p> <p>[insert details as required]</p>				

14.	Invoicing (Ref: Clause 18.2 Core Enterprise Software Terms)	<p>[Choose one option for invoicing, insert relevant wording and delete remainder. Make sure all Fees are captured. Also, if relevant, make sure you are clear on when invoicing commences.]</p> <p>You will invoice the Fees at the end of each month (or shortly thereafter) for Services and Deliverables provided during that month in accordance with the Subscription Agreement.</p> <p>or</p> <p>You will invoice the Fees on completion of the Services and supply of the Deliverables described in this SOW, in accordance with the Subscription Agreement.</p> <p>or [for fixed Fees]</p> <p>You will invoice the Fees in instalments on the dates set out below, subject to completion of the relevant Milestones, in accordance with the Subscription Agreement:</p> <table border="1" data-bbox="443 689 1466 882"> <thead> <tr> <th data-bbox="443 689 810 779">Deliverable / Milestone</th> <th data-bbox="810 689 1166 779">Due date</th> <th data-bbox="1166 689 1466 779">Amount due (excl GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="443 779 810 831"></td> <td data-bbox="810 779 1166 831"></td> <td data-bbox="1166 779 1466 831"></td> </tr> <tr> <td data-bbox="443 831 810 882"></td> <td data-bbox="810 831 1166 882"></td> <td data-bbox="1166 831 1466 882"></td> </tr> </tbody> </table> <p>In addition to the matters set out in clause 18.2 of the Core Enterprise Software Terms, each invoice must contain [insert any specific requirements, such as responsibility codes or purchase order numbers] and be sent by email to [insert email address]</p>	Deliverable / Milestone	Due date	Amount due (excl GST)						
Deliverable / Milestone	Due date	Amount due (excl GST)									
15.	Expenses (Ref: Clause 18.6 Core Enterprise Software Terms)	<p>[Delete this entire row if not applicable]</p> <p>You are entitled to reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:</p> <ul style="list-style-type: none"> • we have given our prior written consent to you incurring the expenses; and • the expenses are charged at cost. 									
16.	Administration Fee (Ref: Clause 18.1(a)(ii) Core Enterprise Software Terms and clause 9 Channel Terms. Do not delete this row.)	<p>The parties acknowledge that you may be required, under clause 18.1(a)(ii) of the Core Enterprise Software Terms and clause 9 of the Channel Terms for Enterprise Software, to collect an Administration Fee, calculated as per the Administration Fees table on marketplace.govt.nz. If you are required to collect this Administration Fee, you must add the fee as a separate line item to your invoices for the Services provided under this SOW.</p>									
17.	Intellectual Property Rights (Ref: Clause 20 Core Enterprise Software Terms)	<p>[If the parties agree to change the default ownership and licensing provisions in clauses 20.2 and 20.4-20.6 of the Core Enterprise Software Terms, those changes should be recorded here.]</p> <p>[If the parties wish to amend any other aspect of the default provisions of clause 20 of the Core Enterprise Software Terms, that should be specified here.]</p> <p>[If no such changes are required, this row can be deleted.]</p>									
18.	Purchasing Agency Data (Ref: Clause 21.2 Core Enterprise Software Terms)	<p>[Clause 21.2 contemplates that a Purchasing Agency may agree to the Provider transferring or storing Purchasing Agency Data in 'Additional Territories' when specified in a SOW, or agree to Purchasing Agency Data being processed or stored by Subcontractors, offshore cloud services or other Third Party Service Providers. If that is the case for this SOW, enter relevant details below. This isn't required if specific details are already contained in the Provider's Service Listings. If not relevant, this row can be deleted.]</p>									

		<p>You may transfer Purchasing Agency Data to and store it in the Additional Territories named below, and Purchasing Agency Data may be processed or stored by the Subcontractors, offshore cloud services or other Third Party Service Providers named below:</p> <table border="1"> <tr> <td>Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored</td> <td></td> </tr> <tr> <td>Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers</td> <td></td> </tr> </table>	Additional Territories to which Purchasing Agency Data may be transferred or in which it may be stored		Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers			
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Purchasing Agency Data may be processed or stored by these Subcontractors, offshore cloud services or other Third Party Service Providers								
19.	<p>Security (Ref: Clauses 5.1, 21 and 22.1(b)(ii) Core Enterprise Software Terms)</p>	<p>[If specific security requirements are needed for this SOW, or if changes to existing requirements are needed, they can be stated here (if not already addressed in the Services description in row 2 and any associated statement of requirements). The drafting that follows can be used to the extent required. If there are no specific security requirements beyond what's already in clauses 21 and 22 of the Core Enterprise Software Terms, and no changes to those requirements are needed, this row can be deleted]</p> <p>You will ensure that the Provider-Hosted Enterprise Software or other ICT systems specified below comply with the standards and controls specified below:</p> <table border="1"> <thead> <tr> <th>Name of Provider-Hosted Enterprise Software or other ICT system</th> <th>NZISM / PSR standards and controls with which it must comply</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table> <p>]</p>	Name of Provider-Hosted Enterprise Software or other ICT system	NZISM / PSR standards and controls with which it must comply				
Name of Provider-Hosted Enterprise Software or other ICT system	NZISM / PSR standards and controls with which it must comply							
20.	<p>Liability (Ref: Clause 23 Core Enterprise Software Terms)</p>	<p>[If there are to be any agreed changes to the default liability provisions in clause 23 of the Core Enterprise Software Terms for this SOW that have not already been covered off in the Subscription Form, then the changes should be recorded here. Otherwise, delete this row.]</p>						
21.	<p>Insurance (Ref: Clause 25 Core Enterprise Software Terms)</p>	<p>[Under clause 25 of the Core Enterprise Software Terms, the Provider needs to maintain adequate insurance. If specific insurance requirements are needed beyond this general obligation, the requirements should be stated here. If not, this row can be deleted.]</p>						
22.	<p>Meetings (Ref: Clause 5.9(a) Core Enterprise Software Terms)</p>	<p>[If there are any particular meeting requirements, specify them here. Otherwise delete this row.]</p> <p>Your designated representatives will attend the following meetings at the following times:</p> <table border="1"> <thead> <tr> <th>Meeting details</th> <th>Designated representatives of the Provider required to attend</th> <th>Frequency/Date</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Meeting details	Designated representatives of the Provider required to attend	Frequency/Date			
Meeting details	Designated representatives of the Provider required to attend	Frequency/Date						
23.	<p>Reports (Ref: Clause 5.9(b) Core Enterprise Software Terms)</p>	<p>[If there are any particular reporting requirements (e.g., monthly status reports), specify them here. Otherwise delete this row.]</p> <p>You will provide us with the following reports at the following times, by emailing them to our Contract Manager:</p>						

		Report details	Frequency/date
24.	Other governance requirements <small>(Ref: Clause 4.2 Core Enterprise Software Terms)</small>	[Contract Managers are identified in the Subscription Form, other key contacts (if any) are identified earlier in this SOW, and meeting and reporting requirements (if any) are as specified in the two rows above. If additional governance arrangements are required, they can be set out here. If not, delete this row.]	
25.	Amendments to Core Enterprise Software Terms, and any Provider Standard Terms (if any), and any additional terms	[Insert any other amendments or additional terms that are to apply to the SOW.]	

Execution

Signed as part of the Subscription Agreement

Signed by the [insert name of Purchasing Agency] by

Signed by the [insert name of the Provider] by

Signature

Signature

Name

Name

Position

Position

Date

Date

Annexure C: Extra Terms (if any)

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