



Collaborative Marketplace Agreement

Part 1 – General Terms

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1. Agreement to terms

- 1.1 Welcome to the New Zealand Government Marketplace (the **Marketplace**) operated by the Department of Internal Affairs (**DIA**) and the Ministry of Business, Innovation & Employment (**MBIE**) on behalf of the New Zealand Government (**we, our, us**). This Collaborative Marketplace Agreement (the **Marketplace Agreement**) applies to any provider that applies for membership in the Marketplace. When we use the terms **you** and **your**, we are referring to any such provider (whether an organisation or individual). Other terms with special meaning are defined in these General Terms (in particular, clause 24 below) and, where relevant, in the Channel Terms. Notes in blue boxes are for your convenience but are not part of this Marketplace Agreement.
- 1.2 The Marketplace has separate channels for the sale or promotion of different types of services and goods, such as software as a service, professional services, and so on (each a **Channel**).
- 1.3 Each Channel contains one or more Marketplace Catalogues. DIA administers some of the Marketplace Catalogues while MBIE administers others. You can find a list of the Channels, their Marketplace Catalogues, and who administers each Marketplace Catalogue, at marketplace.govt.nz.
- 1.4 The Marketplace Agreement is structured as follows:
- (a) Part 1 contains the "General Terms" that apply to your membership of the Marketplace; and
 - (b) Part 2 contains the "Channel Terms" for each Channel. Channel Terms include additional terms as between you and us relating to the given Channel and they prescribe the form of agreement between you and a Purchasing Agency. The different sets of Channel Terms can be found on marketplace.govt.nz. When you apply to have services or goods listed in a given Channel, you will answer some questions and be shown and asked to accept the applicable set of Channel Terms.
 - (c) We may add further Channels and Channel Terms to the Marketplace in the future.
- 1.5 A person making an application on behalf of an organisation represents to us that he or she is authorised to enter into this Marketplace Agreement on behalf of that organisation.
- 1.6 When you click to accept these terms you are forming a Marketplace Agreement with the New Zealand Government. DIA and MBIE may each enforce it. The Marketplace Agreement applies as follows:
- (a) prior to our granting you Member status, only the General Terms in Part 1 will apply;

The Marketplace Agreement applies to providers who wish to list goods or services in the Marketplace.

Both DIA and MBIE have roles to play under this Agreement because DIA provides the Marketplace and administers catalogues for which it is responsible and MBIE administers catalogues for which it is responsible.

The terms in Part 1 apply to all providers. The terms in Part 2 apply to providers offering goods or services in particular channels.

When you click to accept these terms, you're entering into an agreement with the New Zealand Government.

- (b) if we notify you that you have not been granted Member status for the Marketplace, this Marketplace Agreement terminates on the date of notification; and
- (c) if we notify you that you have been granted Member status, this Marketplace Agreement comprises the General Terms in Part 1 and the applicable Channel Terms in Part 2.

- 1.7 Once you have been granted Member status, you become a member of a panel of providers in relation to the Services you have been permitted to list in the Marketplace.
- 1.8 If, after becoming a Member of the Marketplace and being permitted to list particular Services in one Channel, you wish to list services or goods in another Channel, you will need to satisfy the membership requirements for that Channel and click to accept the applicable Channel Terms.
- 1.9 This Marketplace Agreement is the entire agreement between us and you in relation to the Marketplace and supersedes all agreements, arrangements, understandings or representations relating to the subject matter of this Marketplace Agreement.
- 1.10 The Marketplace Agreement prescribes the form of Agency Purchase Agreements but those Agency Purchase Agreements, once formed, are separate contracts between Purchasing Agencies and providers and are not part of this Marketplace Agreement.

The Agency Purchase Agreements between you and Purchasing Agencies are separate contracts and not part of this Marketplace Agreement.

2. Status of Marketplace Agreement

- 2.1 In relation to all Marketplace Catalogues that:
- (a) DIA administers, this Marketplace Agreement is a "Common Capability Contract"; and
 - (b) MBIE administers, this Marketplace Agreement is an "All-of-Government Contract",

The Marketplace Agreement operates in relation to all Marketplace Catalogues as either a Common Capability Contract or an All-of-Government Contract.

as those terms are defined in the Government Procurement Rules (available at www.procurement.govt.nz).

3. Membership

- 3.1 At the time you seek membership of the Marketplace, you must also seek membership of at least one Channel.
- 3.2 To become a Member of the Marketplace you must:
- (a) click to accept these General Terms;
 - (b) follow the applicable On-boarding Process and provide all the information we require and in a form that is satisfactory to us;
 - (c) make any declarations we require;

To sell your services through the Marketplace, you need to become a member and comply with certain requirements.

- (d) satisfy the membership requirements of clause 3.3 in relation to at least one Channel; and
- (e) receive a notification from us in writing that you have been granted Member status of the Marketplace and of at least one Channel.

3.3 To become a Member of a specific Channel you must:

- (a) click to accept the relevant Channel Terms for that Channel;
- (b) follow the applicable On-boarding Process for that Channel and provide all the information required and in a form that is satisfactory to us;
- (c) make any declarations required;
- (d) already be a Member of the Marketplace or, at the same time as you apply for and obtain membership in that Channel, also apply for and obtain Marketplace membership under clause 3.2; and
- (e) receive a notification from us in writing that you have been granted Member status for the specific Channel.

3.4 Membership of the Marketplace does not confer any exclusivity in relation to Eligible Agencies' selection of your Services and does not create any minimum purchasing or volume commitment on the part of any Eligible Agency.

There's no exclusivity and no minimum purchasing obligations.

3.5 You must complete your Services Listings (for our approval) within 6 months of our notification to you that you have been granted Member status of the Marketplace and at least one Channel and one Marketplace Catalogue. If you do not, we may terminate your membership under clause 3.7(a)(i) for Material Breach (which, for the purposes of clause 3.8, will be deemed to be non-remediable).

3.6 You will remain a Member of the Marketplace, the applicable Channel(s) and Marketplace Catalogue(s), and this Marketplace Agreement will remain in force, until such time as either:

- (a) you withdraw your membership by giving us 3 months' prior notice by contacting us through the online 'Contact us' form referred to in clause 22.6 (your withdrawal will be effective at the end of that 3 month period);
- (b) you terminate your membership under clause 21.4; or
- (c) your membership otherwise terminates or expires in accordance with this Marketplace Agreement.

You can withdraw your own membership or we can terminate or suspend it for a range of reasons.

3.7 We may terminate your membership of the Marketplace, or any Channel or Marketplace Catalogue (in relation to some or all Services):

- (a) on written notice to you with immediate effect on the date of termination specified in that notice:
 - (i) if you have committed a Material Breach; or
 - (ii) if your continued membership or inclusion of particular Services is no longer appropriate given performance, financial or security issues that do or are likely to adversely affect Purchasing Agencies' consumption of your Services or your or any Purchasing Agency's reputation;
- (b) for convenience by giving you at least one month's notice; or
- (c) otherwise in accordance with this Marketplace Agreement.

3.8 In relation to termination under clause 3.7(a), if the Material Breach or the performance, financial or security issues (as applicable) are remediable, we will use reasonable endeavours to give you an opportunity to remedy the Material Breach or the performance, financial or security issues (as applicable) before terminating your membership.

3.9 We may also terminate your membership of the Marketplace, or any Channel or Marketplace Catalogue (in relation to some or all Services), on a reasonable period of written notice to you, if we close the Marketplace or that Channel or Marketplace Catalogue or decide to release a new version of the Marketplace or that Channel or Marketplace Catalogue under different terms.

3.10 We may also suspend your membership of the Marketplace or any Channel or Marketplace Catalogue, and/or any Services Listing, on notice if we have a termination right under clause 3.7(a) or (c) or if we otherwise have reasonable trust and confidence concerns, on the date specified in that notice and on the terms of that notice.

3.11 Withdrawal, suspension or termination of your membership of the Marketplace, a Channel, a Marketplace Catalogue and/or any Services Listing does not affect the validity of any Agency Purchase Agreement you have entered into with any Eligible Agency, unless stated otherwise in the applicable Channel Terms.

Withdrawal or termination of membership doesn't affect the validity of Agency Purchase Agreements.

3.12 Withdrawal, suspension or termination of your membership of the Marketplace will constitute the withdrawal, suspension or termination of your membership of all Channels and Marketplace Catalogues and you will not enter into any Agency Purchase Agreement after the effective date of your withdrawal, suspension or termination (until, in the case of a suspension, the suspension is lifted).

3.13 If you un-publish all Services Listings you have in a Marketplace Catalogue or Channel and do not replace them with at least one updated Services Listing within 3 months of the date on which you un-published the last of your previously published Services Listings, your membership of that Marketplace Catalogue or Channel (as

applicable) will expire. If you have no Services Listings in any other Marketplace Catalogue or Channel, your membership of the Marketplace will expire at the same time.

- 3.14 If your membership of the Marketplace or a Channel or Marketplace Catalogue is terminated or withdrawn and you subsequently apply to become a Member again, we may elect, in our absolute discretion, to decline your application.
- 3.15 To avoid doubt, clauses 3.5-3.9 do not limit any additional termination rights or limitations on termination (if any) contained in the Channel Terms for a given Channel for one or more particular Marketplace Catalogues.

4. Marketplace Catalogues and changes

- 4.1 From the date you become a Member of a Channel:
- (a) you will be entitled to add Services Listings to the relevant Marketplace Catalogue(s) for that Channel in relation to the Services for which you have been granted approval for listing;
 - (b) DIA, MBIE and any other Eligible Agency (or its authorised agent) that has registered for the Marketplace will be entitled to engage with you and seek to procure your Services in accordance with the applicable process for that Channel (or as we otherwise advise from time to time); and
 - (c) you will, in your interactions with Eligible Agencies, promote this Marketplace Agreement for your Services in preference to all other alternatives where:
 - (i) the Services will reasonably meet the Eligible Agency's requirements; and
 - (ii) doing so will not conflict with your sale of the same Services under a Pre-existing Agreement; and
 - (d) you will supply the Services to a Participating Agency on request in accordance with the terms of the relevant Agency Purchase Agreement.
- 4.2 You undertake, from the date you become a Member of any Channel, to enter and maintain your Services Listings in the relevant Marketplace Catalogue(s) for that Channel and, subject to any requirements set out in any applicable Channel Terms, to update them promptly if there are material changes to:
- (a) your Services; or
 - (b) your business, to the extent such changes materially affect your Services Listings.
- 4.3 Changes to your Services Listings must be within the scope of the existing Services Listings for which you were granted consent

When you become a Member, you can start adding Services Listings to the relevant Marketplace Catalogue(s) and Eligible Agencies can order your Services through the applicable Ordering Process.

Your Services are listed in the relevant Marketplace Catalogue(s). You need to keep your Services Listings up to date.

through the On-boarding Process for the applicable Channel and not be entirely new services or goods. If in doubt, please contact us.

4.4 If you wish to list entirely new services or goods for which you have not been granted approval for listing in any Channel in the Marketplace, you will need to follow the applicable On-boarding Process for those services or goods and obtain our consent.

4.5 You must not upload or add any content to the Marketplace that is obscene, defamatory, threatening, invasive of privacy or that is otherwise harmful, objectionable or contrary to the intellectual property or other rights of others. This includes viruses, worms or any code of a destructive nature.

You must not add inappropriate content to the Marketplace.

4.6 You acknowledge and agree that, except for your non-public pricing, service level details and any other information that we indicate will only be visible to Participating Agencies, your Services Listings in the Marketplace Catalogues may be made publicly available via the Marketplace. Your non-public pricing and service level details are Confidential Information that can only be disclosed in accordance with clause 15.

Your Services Listings are likely to be made publicly available but your non-public pricing, service level details and other sensitive information will be kept confidential.

4.7 Except to the extent stated otherwise in applicable Channel Terms, you may remove an entire Services Listing from the relevant Marketplace Catalogue(s) by giving us 30 days' written notice of removal.

4.8 Removal of a Services Listing does not affect the validity and ongoing application of any Agency Purchase Agreement you have entered into with Eligible Agencies.

Removing a Services Listing does not affect your agreements with Eligible Agencies.

5. Access and login security

5.1 To enter and edit your details and Services Listings on the Marketplace, you need to log in with your username and password for the Marketplace. You are responsible for selecting a secret and strong password and for maintaining the security of your username and password.

You need a login to enter and edit your Services Listings. You need to take good care of it and not share it with others.

5.2 You must also provide your full name, a valid email address and any other information we request to complete the registration process and you must keep these details up to date. Fictitious entries are not permitted.

5.3 Usernames and passwords are personal to the members of your organisation to whom they are allocated. You are not permitted to share or allow them to be shared with others.

5.4 We may suspend or disable your username and password if we consider it necessary for security reasons or if you breach these terms.

6. Assurance

- 6.1 From time to time we may elect to seek assurance on or verify:
- (a) any statements you have made relating your Services or membership in the Marketplace, whether during an On-boarding Process or subsequently;
 - (b) the accuracy of your Services Listings and whether they continue to meet the applicable Qualification Criteria;
 - (c) any concerns that we or any Purchasing Agency may have in relation to your provision of Services to Purchasing Agencies;
 - (d) the proper calculation of the Administration Fee or data provided to calculate it, except in circumstances where the Marketplace calculates the Administration Fee automatically; and/or
 - (e) your compliance with this Marketplace Agreement, or Agency Purchase Agreements.
- 6.2 If we decide to do so, you must provide us promptly with any explanations, information and documentation, and any assistance, that we reasonably request. You will be responsible for your own costs in relation to these assurance processes.
- 6.3 Without limiting any other rights in this Marketplace Agreement, if you do not comply with this requirement or if we are not satisfied with the outcome of an assurance process, we may suspend or terminate:
- (a) your membership in the Marketplace or one or more Channels or Marketplace Catalogues; or
 - (b) one or more of your Services Listings in one or more Channels or Marketplace Catalogues.

We may undertake assurance processes from time to time. If we do, you'll need to help us out.

7. Relationship principles

- 7.1 You will, in your interactions with us and Participating Agencies, adopt a working approach that is collaborative, open, transparent, ethical and honest.

8. Conduct Requirements

- 8.1 In addition to your other obligations under this Marketplace Agreement and any Agency Purchase Agreement, you will adhere to the:
- (a) Conduct Requirements; and
 - (b) subject to clause 21.4, any other codes of conduct relevant to membership in the Marketplace (each an **Additional Code of Conduct**) notified to you by DIA or MBIE from time

You need to act in an open and ethical manner and comply with some conduct requirements.

to time at least 30 days before the Additional Code of Conduct is intended to come into effect for the purposes of this Marketplace Agreement.

9. Obligation to keep us informed

9.1 You will keep us and all relevant Purchasing Agencies informed, as early as practicable, of material matters that will, or are likely to, adversely affect the provision or quality of the Services or your ability to perform your obligations under this Marketplace Agreement or any Agency Purchase Agreement.

You need to keep us and Purchasing Agencies informed of matters that could adversely affect the Services.

10. Warranties

10.1 You warrant, represent and undertake to us and each Purchasing Agency that:

- (a) you have full power, capacity and authority to execute, deliver and perform your obligations under this Marketplace Agreement and any Agency Purchase Agreement;
- (b) you have, and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform your obligations under this Marketplace Agreement and any Agency Purchase Agreement;
- (c) this Marketplace Agreement constitutes your legal, valid and binding obligations and is enforceable in accordance with its terms;
- (d) you have not offered and will not offer any inducement to any Official in connection with:
 - (i) entering into this Marketplace Agreement;
 - (ii) entering into any Agency Purchase Agreement; or
 - (iii) entering into any Statement of Work under any Agency Purchase Agreement;
- (e) in joining the Marketplace, providing information through the On-boarding Process and establishing your Pricing, such decisions and prices were arrived at independently and without collusion;
- (f) where relevant, you have used and shall continue to use reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into the Marketplace and the systems you use to interact with the Marketplace and to provide your Services;
- (g) you own or have obtained valid licences for all Intellectual Property Rights that are necessary to perform your obligations under the Marketplace Agreement and any Agency Purchase Agreement and shall maintain the same in

You're telling us that you're able to enter into this agreement and agreements with agencies, you have the consents and permissions you need, you consider this Agreement to be valid and binding, you've not offered inducements to officials, there's no collusion, you take system security seriously, you have the IP rights you need to provide your Services, and the information you provide is accurate.

full force and effect for the duration of the Marketplace Agreement and all Agency Purchase Agreements;

- (h) the information you provide to us through the On-boarding Process is true, accurate, current and complete when provided; and
- (i) the information you provide to Eligible Agencies through your Services Listings is true, accurate, current and complete.

10.2 The warranties, representations and undertakings set out in clause 10.1 above will be deemed to be given by you continuously throughout the term of this Marketplace Agreement.

10.3 You will promptly notify us if at any time during the term of this Marketplace Agreement you breach any of the warranties, representations and undertakings in this clause 10.

11. Intellectual Property Rights

11.1 Except as stated in clause 11.2, we and/or our licensors own and will remain the owners of all Intellectual Property Rights in content on the Marketplace website.

11.2 You or your licensors own the Intellectual Property Rights in your Services Listings, any other content you may add to the Marketplace website and your Pre-existing and Independent Works.

11.3 Ownership of Intellectual Property Rights in Deliverables depends on the terms of the applicable Agency Purchase Agreement (including, where relevant, any Statements of Work under them).

11.4 If the applicable Agency Purchase Agreement does not confer ownership of particular Intellectual Property Rights on the Purchasing Agency, you or your licensors will remain or be the owners of those Intellectual Property Rights unless the law stipulates otherwise.

11.5 To the extent that you own the Intellectual Property Rights in content on the Marketplace website, you grant DIA, MBIE and each Participating Agency a non-exclusive and royalty-free licence to use, copy, store, amend (without materially affecting its accuracy or meaning), distribute and publish that content for any purpose relating to the Marketplace, Participating Agencies' consumption of your Services and our or Participating Agencies' record-keeping and archiving requirements and obligations. This licence is subject to the confidentiality obligations in clause 15.

11.6 Clause 11.5 is intended to benefit Participating Agencies and be enforceable by them under the Contract and Commercial Law Act 2017.

11.7 You may not use DIA's, MBIE's or a Participating Agency's legal names, logos, brands or images (including the New Zealand Coat of

We or our licensors own the IPR in content on the Marketplace website except your Services Listings and other content you may add. You own the IPR in that and you own the IPR in your pre-existing and independently developed works. Where relevant, ownership of IPR in deliverables depends on the terms of the Agency Purchase Agreements. You agree to license your content on the Marketplace website (e.g., your Services Listings) to us and Participating Agencies (this licence does not extend to your IP in your actual Services).

Arms or any other coat of arms or emblem used by DIA, MBIE or a Participating Agency), without DIA's, MBIE's or the Participating Agency's (as applicable) prior written consent (which may be given subject to conditions).

12. Marketplace Analytics

12.1 You:

- (a) acknowledge that the Marketplace collects information from Members and Participating Agencies and generates statistical and reporting information (**Marketplace Analytics**), such as the number of orders submitted for your Services or the aggregate spend across all Purchasing Agencies on your Services; and
- (b) subject to clauses 12.2 and 12.3, agree that we may use, share with Eligible Agencies and their Personnel and openly publish, these Marketplace Analytics.

The Marketplace generates analytics information. Subject to some limits to protect commercially sensitive information, we may share or publish that information.

12.2 Your non-public pricing and service level details are Confidential Information that can only be disclosed in accordance with clause 15. If we publish Marketplace Analytics, we will not publish pricing or service level details for your Services unless they are already publicly available or we have your consent.

We will respect the sensitive nature of certain analytics and reporting information.

12.3 In addition to our obligation in clause 12.2, we will use our reasonable endeavours not to publish Marketplace Analytics where our doing so would likely materially adversely affect your commercial position.

12.4 Clauses 12.2 and 12.3 do not limit our obligations under the Official Information Act 1982.

12.5 You agree that Purchasing Agencies may share with us any analytics and reporting information they may have in relation to your Services.

Purchasing Agencies may share analytics and reporting information with us.

13. Pricing and Administration Fee

13.1 The Prices or methods for determining Prices for your Services will be as listed or cross-referenced in the applicable Services Listing(s). Prices listed in the Services Listing(s) are GST-exclusive prices. If you are required by law to charge GST, GST will be added to those Prices when Purchasing Agencies are invoiced.

Pricing matters are set out in the Services Listings. We may charge an administration fee.

13.2 You acknowledge that DIA or MBIE (as applicable) may charge Purchasing Agencies a fee when they procure your Services through or via the Marketplace (**Administration Fee**). How this is done and how the fee is collected depends on the applicable Channel, as described on marketplace.govt.nz. If we are already charging or collecting an administration fee for the same Services under an Eligible Pre-existing Agreement, we will only collect one such fee.

14. Requesting information

- 14.1 A Participating Agency may contact you, either orally or in writing, about your providing Services to the Participating Agency before it decides whether to enter into an Agency Purchase Agreement.
- 14.2 Following such contact, you must provide such information reasonably requested by the Participating Agency at no cost to the Participating Agency.

If an agency makes a reasonable request for information to help it decide whether to purchase Services, you'll provide it.

15. Confidentiality

- 15.1 Except as expressly agreed otherwise in writing, each party will treat as confidential and not disclose to any third party or use for its own benefit (other than for the purposes of an applicable agreement or provision or consumption of the Services) any Confidential Information of another party. This clause 15.1 does not prevent a party from disclosing Confidential Information:

Confidential Information needs to be protected. Disclosure in specified circumstances is allowed.

- (a) that is or becomes publicly known through no conduct of the recipient;
- (b) that the recipient lawfully knew about before it was received;
- (c) that the recipient develops independently;
- (d) that the recipient must, by Law or any stock exchange listing rules, disclose;
- (e) that the recipient needs to disclose to Ministers of the Crown or Parliament (including any committee or office of Parliament); or
- (f) as expressly allowed by this Marketplace Agreement.

- 15.2 Your Confidential Information may also be disclosed as follows:

- (a) DIA and MBIE may disclose your Confidential Information in the Marketplace Catalogues in accordance with and subject to clause 4.6;
- (b) DIA and MBIE may disclose your Confidential Information to each other in connection with their operation of the Marketplace and administration of Marketplace Catalogues;
- (c) DIA and MBIE may disclose your Confidential Information to Participating Agencies, and to other Eligible Agencies in connection with promotion and uptake of the Marketplace as long as those Eligible Agencies are informed of its confidential nature and told they are not permitted to disclose it to others (except for their staff and professional advisers) without your consent, unless required by law to do so;
- (d) DIA, MBIE and each Purchasing Agency may disclose your Confidential Information to:

- (i) any Government Officer upon request; and
- (ii) any of their own staff or professional advisers in connection with the Marketplace Agreement or their Agency Purchase Agreements,

as long as the recipients are informed of its confidential nature and told they are not permitted to disclose it to others without your consent, unless required by law to do so; and

- (e) each Purchasing Agency may disclose your Confidential Information to DIA and MBIE in connection with DIA and MBIE's administration of the Marketplace and the Collaborative Marketplace Agreement.

15.3 You may disclose Confidential Information relating to our provision and operation of the Marketplace to staff, contractors or professional advisers who need to know it solely to perform obligations or advise on or exercise rights under the Marketplace Agreement or any relevant Agency Purchase Agreement (as long as they are made aware of its confidential nature and that they must not use or disclose it for other purposes).

16. Public disclosures

16.1 Subject to clause 15, all public disclosures by you relating to the Marketplace (except promotional or marketing material, any announcement intended solely for internal distribution, or any disclosure required by legal, accounting or regulatory requirements), will be co-ordinated with us, and must first be approved in writing by us, prior to release.

You need to co-ordinate certain kinds of public disclosures with us.

17. Purchasing Agency Data

17.1 You will only use Purchasing Agency Data in accordance with the terms of the Marketplace Agreement and the relevant Agency Purchase Agreement. You will use all reasonable endeavours to provide written notice, as soon as practicable, to the Purchasing Agency where:

You must not use Purchasing Agency Data for unauthorised purposes.

- (a) you become aware of any unauthorised access to, or use or disclosure of, any Purchasing Agency Data; or
- (b) any Purchasing Agency Data is required to be disclosed to any government agency or regulatory body in any jurisdiction, whether directly or through any entity that has control of you or your organisation, except to the extent that providing notice is not permitted under the law of that jurisdiction and you are bound by such law.

17.2 You acknowledge that the Purchasing Agency and/or its licensor(s) are and remain the owner(s) of the Intellectual Property Rights in the Purchasing Agency Data.

Purchasing Agencies own and will continue to own their data.

18. Personal Information

18.1 You agree that you will only use and disclose Users' Personal Information provided to you in connection with their use of your Services in accordance with your published privacy statements or policies, as applicable. You will also comply with the Privacy Act 1993 (NZ) or any successor privacy legislation in New Zealand when providing Services to Purchasing Agencies.

You need to respect Users' privacy.

19. Liability

19.1 Subject to clauses 19.2 and 19.3 below and unless a different limitation of liability is specified in an applicable set of Channel Terms, the maximum aggregate liability of each party to the Marketplace Agreement to the other for all Losses under or in connection with the Marketplace Agreement is \$100,000.

Our liability and your liability under the Marketplace Agreement is limited.

19.2 The limitations of liability referenced in clause 19.1 will not limit your liability:

- (a) under clause 19.3; or
- (b) for any fraudulent act or omission.

19.3 You will, subject to clauses 19.4 and 20.2, indemnify DIA and MBIE against all Losses suffered or incurred by DIA and/or MBIE as a result of any claim that the possession or use of any information or materials supplied by you or on your behalf to DIA or MBIE (including information uploaded onto the Marketplace) under this Marketplace Agreement infringes any third party rights (**IP claim**).

19.4 No party to the Marketplace Agreement will be liable to the other for any Indirect or Consequential Loss, or any loss of profits or revenue, arising under or in connection with the Marketplace Agreement or its formation (regardless of how liability arises). Each party to the Marketplace Agreement has a duty to the other parties to take reasonable steps to mitigate its Losses.

19.5 To avoid doubt, clause 19.4 will not preclude us from taking action to recover any unpaid Administration Fee.

19.6 The liability of parties to an Agency Purchase Agreement depends on the terms of the Agency Purchase Agreement.

20. IP Claims

20.1 In the event of an IP Claim:

- (a) DIA or MBIE will give you notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit you (at your cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (**Control of the IP Claim**);
- (b) if you have Control of the IP Claim:

You'll handle IP Claims to the extent permissible by Law and DIA or MBIE will provide reasonable assistance.

- (i) DIA or MBIE will provide all reasonable assistance to you (at your cost) in the handling of any negotiations and litigation; and
- (ii) you will keep DIA and MBIE informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of DIA or MBIE or any Participating Agency; and
- (c) you will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of DIA or MBIE (which will not be unreasonably withheld).

20.2 You will have no liability under clause 19.3 to the extent that any IP Claim arises from any:

- (a) modification by DIA or MBIE of any item of Intellectual Property supplied or licensed by you without your approval; or
- (b) use of that Intellectual Property by DIA or MBIE other than in accordance with this Marketplace Agreement.

21. Amendments

21.1 Subject to clause 21.5, we reserve the right to change this Marketplace Agreement (including its Channel Terms) at any time and, except as stated in this clause, will provide you with at least 30 days' notice of the change (or, if a security issue needs to be addressed quickly, a shorter period if we consider that appropriate) (the **Notice Period**), either by publishing it on the Marketplace or by email. If we make a change to correct a clear typographical or cross-referencing error, we may make the change immediately, without advance notice. You accept that a notice of change on the Marketplace will be deemed to be notice to you and that, subject to clause 21.4, the changes will be binding on you from the effective date stated in the notice.

We can change these terms without your consent but not in specified ways that could significantly affect your business.

21.2 Subject to clause 21.4, if we change a term that applies to Agency Purchase Agreements you have with Purchasing Agencies (for example, the change could amend or supplement a Government Term or a Core Services Term), you and each Purchasing Agency agree that it will apply automatically to the relevant Agency Purchase Agreements from the date that is 15 days after the effective date of the change stated in our notice (Purchasing Agencies' agreement is obtained through their Agency Participation Marketplace Terms with us and in some cases their Agency Purchase Agreements), unless:

Subject to some important exceptions, changes to terms that apply to Agency Purchase Agreements flow through to those Agreements automatically.

- (a) in the case of a specific Agency Purchase Agreement (including Statements of Work under such Agreement) the change is contrary to an amendment or supplement to the

terms that you and the Purchasing Agency have already agreed; or

- (b) in the case of existing Statements of Work, the change increases your costs or risks, and you inform the Purchasing Agency of this reasonably promptly; or
- (c) you and the Purchasing Agency otherwise agree that the change will not apply.

21.3 If you do not like a change we propose to make to the terms of this Marketplace Agreement, you may discuss the matter with us during the Notice Period.

21.4 If we:

- (a) change this Marketplace Agreement in accordance with clause 21.1; or
- (b) introduce an Additional Code of Conduct under clause 8.1(b); or
- (c) notify you of a new requirement in accordance with the Supplier Code of Conduct,

and you consider, acting reasonably, that the change or Additional Code of Conduct or new requirement (each a **Relevant Change**) has a material adverse effect on your commercial position you may, within 15 days of the effective date of the Relevant Change, elect to terminate your membership in the Marketplace by giving us 30 days' notice of termination. If you make an election in accordance with this clause 21.4:

- (d) you must notify us in writing of your election and why you consider the Relevant Change has a material adverse effect on your commercial position;
- (e) the Relevant Change will be deemed not to have applied to you from the effective date stated in our notice;
- (f) if the Relevant Change would have applied to Agency Purchase Agreements, the Relevant Change will not apply to those Agency Purchase Agreements (which will remain in place on their existing terms in accordance with clause 3.11); and
- (g) once the 30 day notice period you have given us expires, your Services Listings will no longer be available to Participating Agencies.

21.5 Clause 21.1 does not authorise us to make any unilateral change to:

- (a) your Prices or Services Listings;
- (b) the application of your Standard Terms (where, under any Channel Terms, those Standard Terms apply);

If you don't like a change we propose to make, you can talk to us about it. If it has a material adverse effect on your commercial position, you can terminate your membership and the change won't affect Agency Purchase Agreements.

- (c) ownership and licensing of your Intellectual Property Rights;
- (d) the limitations on your liability set out in this Marketplace Agreement;
- (e) where relevant, any Eligible Pre-existing Agreement or any Agency Purchase Agreement whose terms are prescribed by an Eligible Pre-existing Agreement; or
- (f) any Agency Purchase Agreement relating to Services for which we have expressly permitted the use of industry standard contracts.

22. General

- 22.1 New Zealand law governs all matters relating to this Marketplace Agreement, including its interpretation and any disputes in relation to it or its formation.
- 22.2 Without limiting clause 22.1 you agree to submit to the exclusive jurisdiction of the New Zealand courts in relation to any dispute regarding the Marketplace 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. We and you are entitled to seek interim relief in any relevant jurisdiction.
- 22.3 If there is any inconsistency between the terms of Part 1 (General Terms) of this Marketplace Agreement and any applicable Channel Terms in Part 2, the Channel Terms will prevail to the extent of the inconsistency.
- 22.4 If there is any inconsistency between the terms of different parts of an Agency Purchase Agreement, the order of precedence will be as stated in the applicable precedence or interpretation clause in the Agency Purchase Agreement.
- 22.5 Nothing expressed or implied in this Agreement will be deemed to constitute either party as the partner, agent or joint venturer of the other party.
- 22.6 Unless the context of a particular clause states otherwise, notices required by this Agreement are to be sent electronically, as follows:
- (a) notices to DIA and MBIE are to be sent via the online 'Contact us' form(s) on the Marketplace; and
 - (b) notices to you are to be sent to the contact email address we have on record for you, as provided during the On-boarding Process and as you may update from time to time within the Marketplace itself.
- 22.7 Notices sent in accordance with clause 22.6 will be deemed to have been received upon the sender's receipt of either an automated receipt message from the receiver's email system that confirms receipt or other acknowledgement of receipt by the recipient. Each

The Marketplace Agreement is governed by New Zealand law. The governing law of Agency Purchase Agreements depends on their terms.

If you need to notify us, you should do so via the 'Contact us' form on the Marketplace. Please select the correct Marketplace Catalogue in the subject field.

party must acknowledge receipt of an electronic communication when requested to do so by another party.

22.8 If a party sends a notice by email and does not obtain an automated receipt message or acknowledgement of receipt, that party may notify the other party by:

- (a) post, in which case the notice will be deemed to have been received on the fifth Business Day after the day of posting if sent from and to addresses within New Zealand or the tenth Business Day after the day of posting if sent from or to another country; or
- (b) personal delivery, in which case the notice will be deemed to have been received on receipt.

22.9 Notices:

- (a) sent by post:
 - (i) to us, are to be sent to our postal address specified on the 'Contact us' page on the Marketplace;
 - (ii) to you, are to be sent to the postal address we have on record for you as provided during the On-boarding Process and as you may update from time to time within the Marketplace itself;
- (b) that are personally delivered:
 - (i) to us, are to be delivered to our physical address specified on the 'Contact us' page on the Marketplace;
 - (ii) to you, are to be delivered to the physical address we have on record for you as provided during the On-boarding Process and as you may update from time to time within the Marketplace itself.

23. Assignment and replacement

23.1 Subject to clause 23.2, neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Marketplace Agreement without first obtaining the other party's consent (which will not be unreasonably withheld or delayed).

23.2 The Crown may replace the public service department holding administrative responsibility under this Marketplace Agreement, a Channel or a Marketplace Catalogue by notice to you and, from the date specified in such notice, the specified replacement public service department will have administrative responsibility for the purposes of, and may exercise all rights under, this Marketplace Agreement.

Assignments, novations and transfers generally require the other party's consent but the Crown can replace an administering department on notice.

24. Defined terms and interpretation

24.1 In this Marketplace Agreement, unless the context requires otherwise:

The terms defined here have special meaning.

Administration Fee has the meaning in clause 13.2;

Agency Participation Marketplace Terms means the terms that an Eligible Agency (other than DIA and MBIE) must agree to with us (DIA and MBIE) if it wishes to register for and consume Services from or via the Marketplace, available at marketplace.govt.nz or any successor URL;

Agency Purchase Agreement means any agreement between you and an Eligible Agency formed in accordance with the applicable Channel Terms for a Channel of the Marketplace and, depending on the applicable Channel, may include (without limitation) a subscription agreement, participating agency agreement, services agreement or sale and purchase agreement as the case may be;

Alternative Common Capability Marketplace Agreement has the meaning in clause 2.3 of the Channel Terms for Software as a Service (SaaS Terms) (Standard);

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

Channel means a channel for the sale or promotion of different types of goods and services, such as software as a service, professional services, and so on, as described in clause 1.2;

Channel Terms means the terms set out in Part 2 of this Marketplace Agreement that apply to specific Channels (including, where relevant, any applicable Extra Terms);

Conduct Requirements means:

- (a) ethical and corporate social responsibility standards, codes or practice that would reasonably be expected to be followed and/or applied by a prudent and experienced provider of services that are the same as or similar to the Services in New Zealand having regard to market practice at the relevant time; and
- (b) the Supplier Code of Conduct available at www.procurement.govt.nz;

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;

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

Core Services Term means a term in the Core Services Terms which are the general terms that apply to a Purchasing Agency's procurement of services within the Consultancy and Professional Services Channel and the Managed Services Channel where there is no Eligible Pre-existing Agreement that applies to the procurement of those services and we have not permitted industry standard contract templates to be used;

Deliverable means a tangible output comprising part of or resulting from the Services, to be delivered by the provider to the Purchasing Agency, as specified in an Agency Purchase Agreement or a Statement of Work under such agreement;

DIA means the Department of Internal Affairs;

Eligible Agency means:

- (a) each Public Service department and departmental agency, as defined in section 27A of the State Sector Act 1988;
- (b) the New Zealand Defence Force, the New Zealand Police, the Parliamentary Counsel Office, the Clerk of the House of Representatives and the Parliamentary Service;
- (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
- (e) the Reserve Bank of New Zealand;
- (f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
- (g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;
- (h) each local authority, as defined in section 5 of the Local Government Act 2002; and
- (i) any other organisation, agency or collection of persons that does not fall within the above categories but which DIA and MBIE determine should be treated as an eligible agency,

unless, in relation to particular Services covered by an Eligible Pre-existing Agreement or an Alternative Common Capability

Marketplace Agreement, a different definition applies, in which case that different definition will apply to consumption through the Marketplace of those particular Services;

Eligible Pre-existing Agreement means a Pre-existing Agreement that covers services that we allow to be listed in the Marketplace but on the basis that the terms of the Pre-existing Agreement will apply to Participating Agencies' procurement of those services;

Extra Terms means additional terms, set out or cross-referred to in a set of Channel Terms, that apply by default to certain Marketplace Catalogues within the Channel (usually when there is no Eligible Pre-existing Agreement for those services);

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

- (a) earthquake, tsunami, volcanic eruption, fire, storm, flooding or other natural disaster;
- (b) an act of public enemy, or declared or undeclared war or threat of war;
- (c) nuclear, chemical or biological contamination; 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:

- (e) that is constituted by the Affected Party's insolvency (or the insolvency of a subcontractor) or lack of funds;
- (f) that could have been substantially prevented, avoided, overcome or mitigated by the Affected Party's exercise of business continuity or other reasonable business practices; or
- (g) that is constituted or caused by any act or omission of Personnel or a subcontractor, unless and to the extent that the Personnel or subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event;

GETS means the Government Electronic Tenders Service at <http://gets.govt.nz>;

Government Officer means any governmental or statutory person, body or agency that has a role, function or duty in relation to the protection and/or security of official information or personal information, including the Government Chief Digital Officer, the Government Chief Privacy Officer, the Privacy Commissioner, the

Government Communications Security Bureau and the New Zealand National Cyber Security Centre;

Government Terms means the terms specified in clause 5 of the Channel Terms for Software as a Service;

GST means goods and services tax payable under the Goods and Services Tax Act 1985 at the rate prevailing from time to time;

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;

Insolvency Event means, in relation to a provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to DIA or MBIE prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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 and know-how, rights in relation to designs, rights in relation to trade marks, business names and domain names;

IP Claim has the meaning in clause 19.3;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;

- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, policy, rule or standard by which a party is bound; or
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Marketplace Agreement and any Agency Purchase Agreement;

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

Marketplace means the New Zealand Government Marketplace at marketplace.govt.nz or any successor URL;

Marketplace Agreement has the meaning in clause 1.1 and to avoid any doubt includes the General Terms in Part 1 and the applicable Channel Terms in Part 2;

Marketplace Analytics has the meaning in clause 12.1(a);

Marketplace Catalogues means the catalogues of Services available for consumption by Eligible Agencies;

Material Breach means:

- (a) any material breach, repeated breaches, or a series of minor breaches by you of the terms of this Marketplace Agreement or one or more Agency Purchase Agreements;
- (b) the occurrence of any event, other than a Force Majeure Event, having a material effect on your ability to perform your obligations under this Marketplace Agreement or one or more Agency Purchase Agreements; or
- (c) any of the following (irrespective of materiality):
 - (i) the occurrence of an Insolvency Event in relation to you or the likely occurrence of an Insolvency Event;
 - (ii) any representation or warranty made by you in terms of this Marketplace Agreement or any Agency Purchase Agreement being found to be untrue or incorrect;
 - (iii) you undergo:

- (A) a Change of Control that you are reasonably able to notify us of before it occurs but you fail to do so; or
 - (B) a Change of Control and we believe on reasonable grounds that either, as a result of such change, you are unlikely to be able to perform your obligations under this Marketplace Agreement or Agency Purchase Agreements, or the Change in Control raises significant security or reputational concerns for us or Purchasing Agencies;
- (iv) any failure by you to comply with Law; or
 - (v) any failure by you to comply with or observe the Conduct Requirements such that DIA or MBIE considers it no longer has trust and confidence in your having a relationship with government under this Marketplace Agreement;

MBIE means the Ministry of Business, Innovation & Employment, a department of the New Zealand Government;

Member means, in relation to the Marketplace or any Channel or Marketplace Catalogue (as applicable), a provider to whom we have granted member status for the Marketplace or that Channel or Marketplace Catalogue in accordance with this Marketplace Agreement;

Official means any member of staff of DIA, MBIE or an Eligible Agency, whether under a contract of employment or a contract for services;

On-boarding Process means the steps referred to in clause 3 (Membership), and any applicable Channel Terms in relation to membership of any Channel, as may be described in more detail or supplemented from time to time on the Marketplace and/or a standing notice of procurement on GETS;

Order means a request for Services;

Ordering Process means the applicable process described on the Marketplace through which Eligible Agencies submit Orders for Services;

Participating Agency means an Eligible Agency that has registered for the Marketplace, DIA or MBIE;

Personal Information means information about an identifiable individual;

Personnel means employees of or contractors to an Eligible Agency or a provider (as applicable);

Pre-existing Agreement means a current and separate software framework agreement, cloud framework agreement, common capability agreement, all-of-government agreement or other collaborative agreement that a provider either has with the New Zealand Government or is required to enter into with the New Zealand Government if it wishes to join an existing open panel of providers to which such a collaborative agreement applies;

Pre-existing and Independent Works means:

- (a) works existing prior to your entry into the Marketplace Agreement or any Agency Purchase Agreement; and
- (b) works developed or acquired outside of the Marketplace Agreement and any Agency Purchase Agreement,

in each case including enhancements or modifications to them;

Price means the price(s) payable for Services as specified or cross-referred to in the Services Listing(s), and **Pricing** has a corresponding meaning;

Purchasing Agency means an Eligible Agency that submits an Order to a Member;

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 Marketplace Agreement or an Agency Purchase Agreement;

Qualification Criteria means any minimum mandatory requirements set out in the standing notice of procurement for the Marketplace on GETS and/or on the Marketplace itself;

Services means the services or goods in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process;

Services Listings means entries in the Marketplace Catalogues for particular Services available for purchase, subscription or consumption by Eligible Agencies;

Standard Terms means the provider's standard terms of service for its services, regardless of the name given to them;

Statement of Work means a statement of work or any other kind of order for Services, the form of which may be prescribed by the applicable Agency Purchase Agreement;

Supplier Code of Conduct means the code of conduct by that name available at www.procurement.govt.nz; and

User means an individual that uses a Service on behalf of, in the course of employment or other work for, or to receive a service from, a Purchasing Agency.

24.2 In this Marketplace Agreement, unless the context requires otherwise:

- (a) references to the singular include the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) references to a party is a party to this Marketplace Agreement, being as the context requires, DIA, MBIE or you;
- (d) references to a person include an individual, firm, company, agency, government, corporation or unincorporated body of persons;
- (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 “such as” (or similar words) are used, they are deemed to be followed by the words “without limitation”;
- (g) where relevant, references to “services” or “Services” include goods that we have permitted to be listed in the Marketplace;
- (h) references to “in writing” and “written” include by electronic means; and
- (i) unless expressly stated otherwise, a reference within these General Terms to any clause is a reference to a clause within these General Terms and a reference within any Channel Terms is a reference to a clause in those Channel Terms.

These rules apply to the interpretation of the agreement.

Published version history

Version number	Date	Comment (if any)
2	23 August 2019	Amended for release of new Channels