



## Managed Services

### Extra Terms – Managed Services Channel – All Marketplace Catalogues

#### Background

Extra Terms are terms that apply by default to certain categories of Services when those Services are being procured under a Subscription Agreement. They apply in addition to the Core Services Terms. See further clause 4.1(c) of the Channel Terms for Consultancy and Professional Services and Managed Services (Standard) and clause 1.1(a)(iii) of the Subscription Form for Consultancy and Professional Services and Managed Services.

The Extra Terms set out below apply whenever a Purchasing Agency procures Services from any Marketplace Catalogue in the Managed Services Channel, regardless of when during the Term that may occur.

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## 1. Transition

- 1.1 Except to the extent otherwise agreed in a Subscription Form or Statement of Work, the provisions of this clause 1 apply if the Services the Purchasing Agency procures involve the transition or migration of functions or services from the Purchasing Agency or an incumbent service provider to you or an alternative service provider:
- (a) 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 Statement of Work;
  - (b) 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; and
  - (c) if you are transitioning or migrating functions or services from the Purchasing Agency or an incumbent service provider to yourself, upon which you will then provide Services, you will not start charging the Purchasing Agency for those Services (distinct from your transition charges) until the later of:
    - (i) the date when the transfer or migration is complete; and
    - (ii) the commencement date for those Services specified in the Statement of Work.

If the Services involve transition or migration, you need to try to facilitate a seamless migration of responsibility and, where relevant, the Purchasing Agency will try to get incumbent providers to assist you.

## 2. Cooperation with other suppliers

- 2.1 Except as stated otherwise in a Subscription Form or Statement of Work, you must where relevant:
- (a) work co-operatively and collaboratively with, and provide reasonable assistance to, Third Party Service Providers to the extent relevant to your provision of the Services to the Purchasing Agency, both proactively and when reasonably requested by the Purchasing Agency or Third Party Service Providers from time to time, provided that if any actions the Purchasing Agency requests you to take in accordance with this clause 2.1(a) 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; and
  - (b) manage the interface and integration of the services and deliverables provided by Third Party Service Providers with your Services and Infrastructure with a view to ensuring an efficient, cost effective and seamless overall delivery of

You need to work co-operatively and collaboratively with other service providers, and manage interfaces and integrations to the extent specified in a Statement of Work.

services to the Purchasing Agency, to the extent specified in the relevant Statement of Work.

### 3. Principal-agent arrangements

3.1 This clause 3 applies where:

- (a) your provision of Services to the Purchasing Agency involves procuring, managing, configuring or otherwise interacting with the services or deliverables of Third Party Service Providers (other than your approved Subcontractors); and
- (b) either the Purchasing Agency has or will have the primary contractual relationship with the Third Party Service Providers or you will be expected to contract with the Third Party Service Providers on the Purchasing Agency's behalf.

3.2 If this clause 3 applies, then:

- (a) the Purchasing Agency will include, in an Authorisations Schedule to the relevant Statement of Work, specific authorisation(s) for you to act as the Purchasing Agency's agent for the purposes of such procurement, management, configuration or interaction;
- (b) those authorisations will include:
  - (i) the scope of your authority to act as the Purchasing Agency's agent, including the respects in which and the specific purposes for which you may do so and, where relevant, any applicable financial or other limits;
  - (ii) the duration of your authority to act as the Purchasing Agency's agent;
  - (iii) if required by the Purchasing Agency, the level or tier of your Personnel, or specific named Personnel, who are permitted to carry out the authorised actions; and
  - (iv) if the authorisations are expressly contemplated by provisions in existing contracts the Purchasing Agency has with the Third Party Service Providers (**Existing Contracts**), identifying details of those Existing Contracts and relevant text of those provisions;
- (c) the parties will each sign the Authorisations Schedule; and
- (d) you are permitted provide the Third Party Service Providers with a copy of the signed Authorisations Schedule (but not the whole Statement of Work) as evidence of your authority to act on the Purchasing Agency's behalf (i.e., as its agent).

3.3 If a Third Party Service Provider with whom the Purchasing Agency has an Existing Contract has concerns about your role as the Purchasing Agency's agent or is not co-operating with you in your role as the Purchasing Agency's agent, you may seek reasonable

If you're to act as the Purchasing Agency's agent vis-à-vis other service providers, you'll need some authorisations. They need to be set out in an Authorisations Schedule to the relevant Statement of Work and you can show them to the relevant service providers as evidence of your authority to act.

If the other service providers are not co-operating, you can ask the Purchasing Agency for help.

assistance from the Purchasing Agency in its role as principal and, if you do, the Purchasing Agency will use its reasonable endeavours to address the Third Party Service Provider's concerns or lack of co-operation (as applicable).

- 3.4 In all dealings with Third Party Service Providers as the Purchasing Agency's agent, you will act professionally, co-operatively and ethically and not act or fail to act in a manner that brings the Purchasing Agency into disrepute.
- 3.5 The Purchasing Agency may, by notice in writing to the Provider, revoke any authorisation referred to in this clause 3. If it does, the Provider:
- (a) will no longer act as the Purchasing Agency's agent in relation to the subject matter of the authorisation that has been revoked; and
  - (b) if relevant, will inform Third Party Service Providers in relation to whom it was authorised to act as the Purchasing Agency's agent that it is no longer authorised to do so.

#### **4. Purchasing Agency assistance**

- 4.1 The Purchasing Agency will:
- (a) provide to you, in a timely manner, all information, resources, approvals and authorisations, as you may reasonably request, to enable you to provide the Services;
  - (b) give you reasonable access to:
    - (i) the Purchasing Agency's Personnel, to liaise with your Personnel in relation to the Purchasing Agency's ongoing technical and operational requirements in relation to the Services; and
    - (ii) the Purchasing Agency's premises and systems, to the extent reasonably necessary to enable you to provide the Services, subject to any applicable Purchasing Agency policies and security requirements;
  - (c) co-operate with you in relation to your performance of the Services;
  - (d) use the Services for lawful purposes only and in accordance with your reasonable operating instructions or advice;
  - (e) not insert or permit to be inserted into any part of your Infrastructure any Disabling Code; and
  - (f) work collaboratively with you to facilitate your understanding and mitigation of the risks which exist in respect of the Purchasing Agency Environment.

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 5.4 of the Core Services Terms, specific responsibilities beyond these need to be set out in your Service Listings, the Subscription Form or the relevant Statement of Work.

## 5. Service Delivery Assets

### 5.1 Service Delivery Assets

In relation to any Service Delivery Asset used in performing the Services (and unless agreed otherwise in a Statement of Work or other document):

- (a) title to the Service Delivery Asset will remain with the owner at all times;
- (b) risk in the Service Delivery Asset will pass to a party if and when the party or its Personnel take possession or physical control of it, and will remain with that party until returned to the other party or (if different) the owner of the Service Delivery Asset; and
- (c) if a party has possession or physical control of another party's Service Delivery Asset, that party will:
  - (i) provide a safe and secure environment for it;
  - (ii) use it only for authorised purposes and in accordance with the other party's instructions and any stated limitations;
  - (iii) not make any modifications to it or dispose of, lease or encumber it in any way, without the other party's prior written consent; and
  - (iv) ensure that the other party's representatives have safe access to the Site (on the provision of reasonable notice) at which the Service Delivery Asset is located, so that the Service Delivery Asset can be inspected, maintained or replaced.

If one party is in possession of the other party's Service Delivery Assets, the party in possession needs to take care of them and only use them as authorised.

### 5.2 Condition of Service Delivery Assets

Where a party (the **possessing party**) has possession of the other party's Service Delivery Asset, the possessing party will:

- (a) promptly notify the other party if it becomes aware of any damage or unauthorised access to the Service Delivery Asset or if the Service Delivery Asset requires maintenance; and
- (b) on returning the Service Delivery Asset (if it is to be returned), ensure that the asset is in the same condition (fair wear and tear excepted) as it was in when it was provided to the possessing party.

If a Service Delivery Asset is damaged or subject to unauthorised access or needs maintaining, the party in possession of the asset needs to tell the other party, and assets need to be returned in the same sort of condition.

## 6. Interfaces

- 6.1 Without limiting your other obligations under the Subscription Agreement you will, in relation to all Interfaces for which you are responsible under a Statement of Work:

If under a Statement of Work you're responsible for interfaces, they need to be effectively implemented and maintained.

- (a) take all preventative and reactive steps reasonably practicable to ensure that those Interfaces are effectively implemented, operated and maintained;
- (b) take all necessary steps within your power to resolve any problems or incidents with those Interfaces; and
- (c) take all reasonable steps to ensure the Services are not compromised as a result of any of those Interfaces.

## 7. Business continuity

- 7.1 You will implement and maintain at all times adequate business continuity (including disaster recovery) arrangements in respect of your own business and the Services, in accordance with Good Industry Practice.

You need to have business continuity arrangements.

## 8. Additional warranties

- 8.1 In addition to the warranties in the Core Services Terms, you warrant and represent that:

- (a) any Software you supply under the Subscription Agreement (including Software embedded in or forming an integral part of any hardware you supply) will comply with the Subscription Agreement (including any specific requirements for the Software in the relevant Statement of Work), be currently supported by the Software licensor and properly installed (where you are responsible for installing it), and be free of all known or reasonably detectable Disabling Code at the time of installation;
- (b) all Equipment you supply that is, or is to be, owned by the Purchasing Agency or its nominee will, on the date of installation:
  - (i) conform to the manufacturer's specifications and any product description for the Equipment;
  - (ii) meet all requirements for the Equipment set out in the relevant Statement of Work;
  - (iii) be free from defects in materials and workmanship;
  - (iv) to the extent that such Equipment is purchased by the Purchasing Agency, be:
    - (A) free from any encumbrance (including by lien or security interest);
    - (B) new and unused at the time of delivery (unless otherwise agreed); and
    - (C) if you are required by the relevant Statement of Work to install the Equipment, installed properly at the relevant locations;

You warrant that Software is compliant and properly installed, that Equipment meets the standards it needs to, that materials you use in providing the services are properly maintained, and fit for their intended purpose as stated in Statements of Work, and that you won't purchase or license things in the Purchasing Agency's name without consent.

- (c) all materials, equipment and facilities you use in providing the Services will be properly maintained in accordance with Good Industry Practice and all applicable manufacturer instructions;
- (d) the Services, the Provider Infrastructure and the Equipment will be fit for their intended purposes as expressly set out in the relevant Statement(s) of Work; and
- (e) except as expressly authorised by a Statement of Work or otherwise by the Purchasing Agency in writing, you will not purchase or license any Software, Equipment or other items from a third party in the Purchasing Agency's name without first providing all applicable agreement or licensing terms to the Purchasing Agency and obtaining the Purchasing Agency's consent.

## 9. Security

### 9.1 Security measures

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

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

- (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.

### 9.2 Technical risk register

If requested by the Purchasing Agency in a Statement of Work, you will:

- (a) maintain and keep current a technical risk register (the **Risk Register**) that identifies:
  - (i) risks to the security and availability of the Services; and
  - (ii) for each risk:
    - (A) the nature and underlying cause of the risk;
    - (B) the impact of the risk should it materialise; and
    - (C) the controls in place to mitigate the risk; and
- (b) provide a copy of the Risk Register to the Purchasing Agency promptly upon being requested to do so.

If the Purchasing Agency asks you to maintain a technical risk register, you'll need to do so and provide a copy to the agency on request.

### 9.3 Security audits

- (a) This clause 9.3 applies:
  - (i) if your Services include your utilisation of, or the provision of, information and communication technology systems that hold or process the Purchasing Agency's Confidential Information (e.g., cloud management tools, service aggregation tools, service desk tools, etc) (**ICT Systems**); and
  - (ii) subject to any modifications agreed in the Subscription Form or a Statement of Work.
- (b) Subject to clause 9.4 (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 9.1; and/or
  - (ii) whether one or more of the ICT Systems has the controls in the NZISM and wider PSR that are applicable to the nature of the ICT System and the kind of Purchasing Agency Confidential Information it holds which:
    - (A) you have agreed in the Subscription Form or a Statement of Work that the ICT System(s) do or will have; or
    - (B) have represented in your Services Listings that the ICT System(s) have; or
    - (C) have 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](https://digital.govt.nz)) that the ICT System(s) have.
- (c) The Purchasing Agency may, under clause 9.3(b), conduct:
  - (i) an initial Security Audit prior to accepting use of the ICT System(s) for the Services it has contracted to purchase; and
  - (ii) subsequent, updating Security Audits throughout the Term due to:
    - (A) changes to the ICT System(s) used to provide Services to the Purchasing Agency, including updates to or the release of new versions of

The Government's Protective Security Requirements contain certification and accreditation rules that mandated agencies need to comply with and other agencies should comply with. This clause contains processes that help agencies obtain the information and assistance they need to do this and it specifies what is to happen when a security audit reveals potential problems.



relevant programming languages, scripts, technologies or technology approaches;

- (B) the identification of new threats to the security of the ICT System(s) used to provide Services to the Purchasing Agency;
  - (C) any reasonable need for ongoing certification of the Services; 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 9.3(b) must include reasonable details as to:
- (i) the intended scope of the audit, including the ICT systems to be audited;
  - (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) The Purchasing Agency acknowledges that, if an ICT System belongs to one of your third-party suppliers, the Security Audit of that ICT System may need to be subject to processes or limitations mandated by that third-party supplier. You will be responsible for informing any such third-party supplier of the Security Audit and communicating any such processes or limitations to the Purchasing Agency promptly.
- (g) 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.
- (h) If the Purchasing Agency proposes to penetration test an ICT System 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.
- (i) 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.
  - (j) 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.
  - (k) If an identified Problem:
    - (i) impacts the security of your Services 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 9.1; or
      - (B) not having the controls referred to in clause 9.3(b)(ii),

you will correct the Problem reasonably promptly and at your cost (unless specified otherwise in a Statement of Work or otherwise agreed).
  - (l) If an identified Problem does not fall within clause 9.3(k) and the Purchasing Agency would like you to correct it, the Purchasing Agency may make a Change Request in accordance with the Change Procedure in the Core Services Terms.
  - (m) You acknowledge that the Purchasing Agency may not accredit the ICT System(s), or withdraw accreditation, if an identified Problem is not corrected.
  - (n) 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.
- (o) If:
- (i) the Purchasing Agency has provided a Problem Report to you in relation to Problem(s) to which clause 9.3(k) 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.

#### 9.4 Minimising duplication

- (a) If:
- (i) the Purchasing Agency notifies you under clause 9.3(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.

If another agency has already undertaken a security audit recently, you may ask the Purchasing Agency to consider information relating to that security audit before proceeding with its own Security Audit.

- (b) If you exercise the rights in clause 9.4(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 9.3(b); and
  - (iii) if the Purchasing Agency still wishes to proceed with its own Security Audit under clause 9.3(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.

#### 9.5 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 ICT System(s) 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.

#### 9.6 Ongoing security assurance

You are responsible throughout the Term, both generally and when considering any change to any ICT System, for undertaking your own security assurance activities to ensure, at all times:

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

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

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.

### 10. Disengagement

- 10.1 The Purchasing Agency may, at any time prior to termination or expiry of the Subscription Agreement or a particular 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**).

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

- 10.2 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**).
- 10.3 You may only decline a request for Disengagement Services under clause 10.1 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
    - (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 10.5.
- 10.4 Subject to clause 10.5, 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**).
- 10.5 If the Purchasing Agency has terminated the Subscription Agreement or relevant Statement of Work for cause under clause 20.1 of the Core Services Terms, the Disengagement Services will be provided without charge to the Purchasing Agency and no Disengagement Cost will be payable.

## 11. Interpretation and definitions

- 11.1 When terms defined in the Core Services Terms are used in these Extra Terms, they have the meanings given to them in the Core Services Terms.
- 11.2 In these Extra Terms, the following terms have the following meanings and references to clauses are to clauses in these Extra Terms, unless the context requires otherwise:

**Equipment** means any and all tangible assets (including hardware, equipment, cables, fibre and other items, materials or devices) purchased by, or otherwise supplied to, the Purchasing Agency under the Subscription Agreement;

**ICT Systems** has the meaning in clause 9.3(a);

The terms defined here have special meaning. They are in addition to terms defined in the Core Services Terms.

**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);

**NZISM** means the New Zealand Information Security Manual, available at <https://protectivesecurity.govt.nz/>;

**Provider Assets** means all of the tangible and intangible assets (including Software, Equipment, hardware, facilities, equipment, documentation, capacity, cables, fibre or other items, materials or devices) owned by or leased or licensed to the Provider by a third party that the Provider makes available to the Purchasing Agency in the context of providing the Services to the Purchasing Agency;

**PSR** means the Government's Protective Security Requirements (of which the NZISM is a part), at <https://protectivesecurity.govt.nz/>;

**Purchasing Agency Assets** means all of the tangible and intangible assets (including Software, Equipment, hardware, facilities, equipment, documentation, capacity, cables, fibre or other items, materials or devices) owned by or leased or licensed to the Purchasing Agency by a third party and used by or for its benefit to receive the Services; and

**Service Delivery Asset** means a Provider Asset or Purchasing Agency Asset, as applicable.

## Published version history

Version number	Date	Comment (if any)
2	6 November 2020	<ul style="list-style-type: none"><li>• Amendment to clause 9.1 (deletion of “appropriate”)</li><li>• Clarifying amendment to clause 9.3(a)(i)</li><li>• New clause 9.4 (Minimising duplication)</li><li>• Amendments to clause 10 (Disengagement) to make it more balanced</li></ul>