

Dated

2021

## **OPEN SYNDICATED PANEL AGREEMENT**

for face to face interpreting services

### **Lead Agency**

Ministry of Business, Innovation and Employment

### **Service Provider**

**[Insert full legal name]**

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## PARTIES

- (1) **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the **CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT** (or his or her authorised delegate) (**Lead Agency**)
- (2) **[LEGAL NAME OF SERVICE PROVIDER]**, (company number **[insert company number]**) (**Service Provider**)

## BACKGROUND

- A. The Lead Agency issued a Request for Proposal (**RFP**) on 13 November 2020 seeking proposals for the delivery of face to face interpreting services. The RFP sought an open syndicated panel arrangement under which any Eligible Agencies could enter into separate agreements with the successful respondents to procure services.
- B. The Service Provider responded to the RFP and represented that it has the skills and resources necessary to provide the services described in the RFP.
- C. In reliance on the Service Provider's representations, the Lead Agency wishes to appoint the Service Provider to the Panel to provide the Services.
- D. The structure of the syndicated panel arrangement is as follows:
  - (i) the Lead Agency and Service Provider enter into this Lead Agency Agreement. The Lead Agency Agreement appoints the Service Provider to the Panel and sets out the rights and obligations of the Lead Agency and the Service Provider to the extent such rights and obligations relate to the governance of the syndicated panel arrangement; and
  - (ii) Eligible Agencies (including the Lead Agency) may enter into a Participating Agency Agreement by executing the Participating Agency Terms and Conditions. Following execution, the relevant Participating Agency may procure, and the Service Provider has agreed to provide, services in accordance with that Participating Agency Agreement.
- E. The Auckland District Health Board has been appointed as a Service Provider to the Panel, and as such is not eligible to purchase Services from the Panel (that is, the Auckland District Health Board is not an Eligible Agency). The Lead Agency has the right to terminate the Auckland District Health Board's appointment to the Panel, if, following the Government's announced healthcare reforms, the Auckland District Health Board is reconstituted into a new entity and that entity is an Eligible Agency.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

**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;

**Business Hours** means the hours between 9AM to 5PM on Business Days;

**Change Control** has the meaning given to that term in clause 8.4;

**Change Control Process** means the process set out in Annexure A to Schedule 5;

**Change of Control** means, in relation to a person (the **first person**), where a person acquires Control of the first person or where a person who Controls the first person ceases to do so;

**Charges** means the Charges set out in Schedule 1;

**Commencement Date** means 1 September 2021;

**Community Languages** means all Core Languages and any additional languages for which the Service Provider is able to provide Services;

**Confidential Information** means the provisions of this Lead Agency Agreement and all other information of a confidential nature (reasonably determined) obtained by one party from the other party under or in connection with this Lead Agency Agreement;

**Control** means, in relation to a person (the **first person**), the ability of another person (the **second person**) to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second 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 rights in a body corporate is deemed to constitute Control;

**Core Language** means any of the following languages: Mandarin, Spanish, Samoan, Arabic, Korean, Hindi, Cantonese, Tongan, Persian (Farsi), Punjabi, Dari, Burmese, Japanese, Vietnamese, Thai, Portuguese, Russian, Filipino (Tagalog), French, Cambodian (Khmer);

**Crown** means the Sovereign in right of New Zealand, including all:

- (a) ministers of the Crown;
- (b) government departments;
- (c) offices of Parliament;
- (d) Crown entities as defined in the Crown Entities Act 2004; and
- (e) state enterprises as defined in the State-Owned Enterprises Act 1986;

**Disengagement Services** means all services reasonably required by the Lead Agency to ensure a smooth and orderly end to this Lead Agency Agreement, which may include transition of the Services to the Lead Agency and one or more alternative service provider(s), including the services described in clause 22;

**Dispute Manager** means the people specified as such in Schedule 1;

**Documentation** means any document (including report) which the Service Provider must prepare or provide to the Lead Agency in accordance with this Lead Agency Agreement and any other documentation reasonably required by the Lead Agency to enable the Lead Agency to use and obtain the full intended benefit of the Services;

**Eligible Agency** means:

- (a) each Public Service department, as defined in section 5 of the Public Service Act 2020;
- (b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, 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, but excluding the Auckland District Health Board;
- (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;
- (i) any other organisation, agency or collection of persons that does not fall within the above categories but which the Lead Agency and the Procurement Functional

Lead determine should be treated as an eligible agency for the purposes of this Lead Agency Agreement;

**Escalated Dispute Manager** means the person specified in Schedule 1;

**Existing Material** means all documentation, software and other materials used or provided by a party under or in connection with this Lead Agency Agreement that are:

- (a) owned by, or licensed to, that party prior to the Commencement Date; or
- (b) developed independently from this Lead Agency Agreement by that party, and that are not developed, commissioned or created under or in connection with this Lead Agency Agreement;

**Expiry Date** means 31 August 2024;

**Force Majeure Event** means, in relation to either party (**Affected Party**), an event or circumstance which:

- (a) prevents the Affected Party from performing the whole or part of its obligations under this Lead Agency Agreement;
- (b) is beyond the reasonable control of the Affected Party (including acts of God, acts of public enemy, or declared or undeclared war or threat of war, a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party) and not arising from that Affected Party's fault or insolvency; and
- (c) could not have been avoided by the Affected Party taking reasonable precautions (including the Affected Party's exercise of business continuity or other practices in accordance with best practice in New Zealand, or taking reasonable precautions in respect of known events including COVID-19), or overcome by the Affected Party taking reasonable steps to remedy or mitigate the event or circumstance,

but will not include lock-outs, strikes or any other form of industrial dispute or any other form of delay caused by contractual or labour relations between the Service Provider and any of its employees, agents, subcontractors or suppliers, or inability to perform due to lack of funds;

**GST** means goods and services tax chargeable, or to which a person may be liable, under the GST Act at the rate prevailing from time to time, including any tax levied in substitution for that tax;

**GST Act** means the Goods and Services Tax Act 1985;

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on most or all of its business or operations;
- (b) an application is made or proceedings are issued for a court order and in either case not withdrawn, stayed or dismissed within 10 Business Days, or an order is made, or an effective resolution is passed, or any action of a similar nature is taken, for the dissolution or reorganisation of that party, except for the purpose of a solvent reconstruction, merger or voluntary liquidation previously approved in writing by the other party (such approval not to be unreasonably withheld);
- (c) that party has any of its assets subject to any form of seizure by a creditor;

- (d) that party makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors;
- (e) an encumbrancer, receiver, administrator, liquidator, trustee or statutory manager or similar insolvency administrator takes possession of, or is appointed in respect of, the whole or a substantial part of the assets or undertaking of that party;
- (f) that party becomes insolvent (or is deemed or presumed to be so under any applicable Law); or
- (g) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (f) above happens under the Law of any applicable jurisdiction in respect of that party;

**Intellectual Property Rights** means all industrial and intellectual property rights whether conferred under statute, common law or equity, including all copyright, rights in relation to inventions (including patents and patent applications), trade marks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other industrial and intellectual proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**IP Claim** has the meaning given to that term in clause 16.7(a);

**Language groups** means the groups of languages for which the Service Provider is appointed to provide the Services, which may, at the Commencement Date include:

- (a) Te Reo Māori;
- (b) Sign Language; and
- (c) Community Languages;

**Law** includes any rules of common law, statute, regulation, bylaw or other secondary legislation in force from time to time;

**Lead Agency** means the Ministry of Business, Innovation and Employment;

**Lead Agency Agreement** means the agreement between the Lead Agency and the Service Provider as defined in clause 1.3.

**Lead Agency Property** means equipment, tools or other property, including intangible property, owned or leased by the Lead Agency;

**Lead Agency Sites** means the sites specified by the Lead Agency from time to time at which the Service Provider will provide the Services;

**Location** means the regions in which the Service Provider is appointed to provide the Services;

**NAATI** means the Australian National Accreditation Authority for Translations and Interpreters;

**OIA** means the Official Information Act 1982;

**Panel** means the appointed panel of suppliers from which Participating Agencies may request certain services, as such panel may be amended from time to time;

**Panel Segment** has the meaning given at clause 3.8;

**Participating Agency** means an Eligible Agency that has entered into a Participating Agency Agreement;

**Participating Agency Agreement** means the agreement between the Participating Agency and the Service Provider as defined in clause 3.2 of the Participating Agency Terms and Conditions;

**Participating Agency Terms and Conditions** means the terms and conditions in Schedule 6 at the Commencement Date, and as amended from time to time in accordance with this Lead Agency Agreement;

**Participating Agency Requirements** means a Participating Agency's additional requirements, if any, for the Documentation and Services as agreed in writing by the Participating Agency and the Service Provider. This may include, for example, more comprehensive reporting, or specific procedures to be followed by the Service Provider or its Personnel. For the avoidance of doubt, Participating Agency Requirements are additional to (and must not be inconsistent with) the terms of this Lead Agency Agreement;

**Personal Information** has the meaning given in the Privacy Act 2020;

**Personnel** means any employee, agent or representative of the Service Provider, or of any subcontractor (of any tier) of the Service Provider, who provides any part of any Service;

**Procurement Process** means the procurement process through which the Lead Agency sought to procure the Services contemplated in this Lead Agency Agreement; and

**Proposal** means:

- (a) the Service Provider's proposal [insert title] dated [X] in response to the RFP; and
- (b) any other proposal submitted by the Service Provider as part of the Procurement Process, including in response to any other request for proposal for Services released by the Lead Agency, together with any written material provided to the Lead Agency by the Service Provider to supplement, explain or expand on that proposal;

**Records** means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech or data compiled, recorded or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer, or other electronic device or process;

**Requirements** means the requirements set out in Schedule 3;

**Services** means:

- (a) the services described in this Lead Agency Agreement, including the services described in the Service Catalogue;
- (b) all services reasonably incidental to, or required for the proper performance of, the services described in (a); and
- (c) all other services agreed in writing by the Lead Agency and the Service Provider from time to time;

**Service Catalogue** means the catalogue setting out the services to be provided by the Service Provider, including the Panel Segments to which the Service Provider is appointed.

The Service Catalogue at the Commencement Date is set out in Schedule 2 but may be amended from time to time in accordance with clause 3.7;

**Service Levels** means the standards of service specified in this Lead Agency Agreement, including the service levels specified in the Service Catalogue;

**Specialities** means the areas of speciality (if any) for which the Service Provider is appointed to provide Services, which may, at the Commencement Date include:

- (a) health; and
- (b) legal;

**Term** means the term of this Lead Agency Agreement as described in clause 4; and

1.2 **Interpretation:** In this Lead Agency Agreement, unless the context requires otherwise:

- (a) references to clauses and Schedules are to clauses of and schedules to this Lead Agency Agreement;
- (b) derivations of any defined word or term will have a corresponding meaning;
- (c) a gender includes each other gender;
- (d) the headings to clauses are inserted for convenience only and will be ignored in interpreting this Lead Agency Agreement;
- (e) the word including and other similar words do not imply any limitation;
- (f) a reference to a party includes its personal representatives, successors and permitted assigns;
- (g) a person includes any individual, company, corporation, firm, partnership, trust, unincorporated body of persons or Eligible Agency;
- (h) the plural includes the singular and vice versa;
- (i) a reference to a statute includes all regulations and other subordinate legislation made under that statute. A reference to any legislation (including subordinate legislation) includes that legislation as amended or replaced from time to time;
- (j) the contra proferentem rule will not apply in the interpretation of this Lead Agency Agreement;
- (k) a document (however described and including this Lead Agency Agreement) includes that document as amended or replaced from time to time;
- (l) an obligation not to unreasonably withhold agreement, consent or approval (or any similar obligation) includes an obligation not to unreasonably impose conditions on or delay such agreement, consent or approval (or other similar obligation);
- (m) any obligation falling due for performance on or by a day other than a Business Day will be performed on or by the Business Day immediately following that day;
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done; and



- (o) all amounts payable under this Lead Agency Agreement are expressed exclusive of GST and in New Zealand dollars. If GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable.

1.3 **Agreement:** The Lead Agency Agreement comprises the following documents in descending order of precedence:

- (a) this agreement;
- (b) Schedules 1 to 6; and
- (c) any Annexures to the Schedules.

## 2. GUARANTEE

2.1 **[Delete entire clause 2 if not relevant. Replace with "This clause is intentionally left blank"] Guarantee:** The Service Provider will provide the following documents on or before the date falling 5 Business Days from the Commencement Date of the Lead Agency Agreement:

- (a) a deed of guarantee in the form set out in Schedule 4 (or such other form agreed by the Lead Agency), duly executed by the person listed as the guarantor in Schedule 4 (**Guarantor**); and
- (b) a legal opinion by major law firms acceptable to the Lead Agency (acting reasonably) based in each country of incorporation of the Guarantor and New Zealand opining (subject to standard qualifications) that the deed of guarantee is enforceable on its terms against the Guarantor in such country of incorporation of the Guarantor.

2.2 **Condition:** Notwithstanding any other provision of this Lead Agency Agreement, receipt by the Lead Agency of the documents referred to in clause 2.1 is a condition precedent to the Service Provider's entitlement to any payment under this Lead Agency Agreement. This condition is for the benefit of the Lead Agency and the Lead Agency, as applicable, may waive this condition at its discretion by notice to the Service Provider. If this condition has not been fulfilled or waived within 20 Business Days of the date this Lead Agency Agreement is last signed by the parties, or such later date as may be agreed in writing by the Lead Agency and the Service Provider (as applicable), then without limiting the Lead Agency's other rights or remedies:

- (a) the Lead Agency may terminate this Lead Agency Agreement; and
- (b) the Service Provider will not be entitled to any compensation as a consequence of such termination.

## 3. APPOINTMENT

3.1 **Appointment:** The Lead Agency appoints the Service Provider, and the Service Provider agrees, to provide the Services on the terms and conditions of this Lead Agency Agreement.

3.2 **Common use:** This Lead Agency Agreement is an open syndicated agreement which includes common use provisions allowing Eligible Agencies to contract with the Service Provider.

3.3 **Promotion of the Services:** Subject to clauses 3.3(a) and 3.3(b), the Service Provider shall promote the Services and a Participating Agency Agreement to all Eligible Agencies and Participating Agencies in preference to all other alternatives for the purchase of services

identical or similar to the Services. If an Eligible Agency invites the Service Provider to offer to provide services identical or similar to the Services (including through a tender or other procurement process), the Service Provider will respond to that invitation by including an offer to provide Services under a Participating Agency Agreement as the preferred alternative and will promote the benefits of becoming a Participating Agency. The obligations in this clause 3.3 do not apply where:

- (a) an Eligible Agency or Participating Agency expressly notifies the Service Provider that it does not want to receive the Services under a Participating Agency Agreement, provided that where an Eligible Agency or Participating Agency so notifies the Service Provider, the Service Provider must promptly inform the Lead Agency; or
- (b) an Eligible Agency or Participating Agency undertakes a competitive procurement process and compliance by the Service Provider with clause 3.3 may result in the Service Provider being excluded from that procurement process for failure to comply with its mandatory terms.

3.4 **Panel membership:** The Service Provider acknowledges and agrees that it has been appointed as part of the Panel and that the Lead Agency may:

- (a) remove Panel members from the Panel; or
- (b) appoint one or more additional providers to the Panel.

3.5 **Removal from Panel:** Without limiting the Lead Agency's rights under clause 21, if the Lead Agency considers (acting reasonably) that the Service Provider is failing to achieve the conditions of the Service Provider's appointment, as set out in clause 3.6 below:

- (a) such failure shall be treated as a Performance Issue and the Lead Agency will issue a Performance Notice requiring the Service Provider to prepare a Remedial Plan in accordance with clause 15.2; and
- (b) if such failure is not rectified in accordance with the Remedial Plan under clause 15.4, the Lead Agency may remove the Service Provider from the Panel in respect of any or all Panel Segments by terminating this Lead Agency Agreement in whole or in part on not less than 5 Business Days' notice.

3.6 **Conditional appointment:** The Service Provider's continued appointment as the provider of Services and Deliverables is subject to:

- (a) the Service Provider not repeatedly failing to meet the Service Levels;
- (b) the Service Provider not suffering a material security breach or unauthorised use, access or loss of Personal Information; and
- (c) the Service Provider not breaching any provision of this Lead Agency Agreement,

as determined by the Lead Agency in its sole discretion.

3.7 **Service Catalogue:** The Service Provider is appointed to the Panel to provide Services set out in the Service Catalogue. The Lead Agency may make the Service Catalogue available to Eligible Agencies as it sees fit. The parties may amend the Service Catalogue from time to time by written agreement (including, to avoid doubt, an exchange of emails) and any such amendments shall take effect upon publication of the amended Service Catalogue. The version of the Service Catalogue so published shall replace Schedule 2.

3.8 **Panel segments:** The Lead Agency may segment the services to be provided by each Panel members at the Lead Agency's sole discretion. The Panel Segments to which the Service Provider is appointed are set out in the Service Catalogue. At the Commencement Date, the services are segmented as follows:

- (a) Location;
  - (b) Language groups; and
  - (c) Specialities,
- (each a **Panel Segment**).

3.9 **Changes to Panel Segments:** The Lead Agency may:

- (a) appoint the Service Provider to any Panel Segment by agreement between the Lead Agency and the Service Provider; and
- (b) remove the Service Provider from any Panel Segment, or change the Panel Segments (including, to avoid doubt, changing existing Panel Segments such as adding or removing languages or Locations, or adding or removing entire segments, such as removing Specialities), from time to time by providing the Service Provider at least 30 days' written notice, at the Lead Agency's sole discretion (acting reasonably, and provided that the Service Provider does not appoint the Service Provider to any new Panel Segment without the Service Provider's prior agreement). Changes to the Panel Segments shall take effect on the date published by the Lead Agency, provided that the Lead Agency must not publish any changes to Panel Segments until the relevant notice period has expired.

3.10 **Reliance:** The Service Provider acknowledges that the Lead Agency is relying on:

- (a) the Service Provider's specialist skills, knowledge, experience and expertise in entering into this Lead Agency Agreement; and
- (b) all statements, representations, proposals and commitments made or given by or on behalf of the Service Provider during the Procurement Process, including in the Proposal or in any written material provided to the Lead Agency regarding the Service Provider's or the Personnel's skills, experience and expertise and the functions, quality and performance of the Services.

3.11 **Proposal:** The Service Provider warrants and represents that the Proposal was when submitted, and is at the date of this Lead Agency Agreement, true, accurate and not misleading in any material respect (including by omission).

3.12 **Service Provider confirmation:** The Service Provider acknowledges that it had opportunity during the Procurement Process to assess and enquire into its ability to provide the services that are or might be required under this Lead Agency Agreement, and is satisfied that it has the capacity and is capable of providing the Services in accordance with the terms and conditions of this Lead Agency Agreement. The Service Provider, therefore, will not be excused from performance of the Services arising as a result of the Service Provider not having the capacity or capability to provide the Services.

3.13 **Non-exclusive appointment:** The parties agree that:

- (a) although the Lead Agency intends that this Lead Agency Agreement will provide the primary framework by which Eligible Agencies acquire Services, the Service Provider's appointment under this Lead Agency Agreement is non-exclusive;
- (b) the Lead Agency and any Participating Agency may appoint third parties to provide services similar (whether or not those third parties are a Panel member) to or the same as the Services at any time, or may provide them itself; and

- (c) from time to time the Lead Agency may add new members to the Panel.
- 3.14 **No minimum level of business:** The Lead Agency does not guarantee any minimum level of business or revenue by entering into this Lead Agency Agreement, or that any Eligible Agency will participate during the Term of this Lead Agency Agreement.
- 3.15 **Participating Agency Agreements:**
- (a) Each Eligible Agency shall be required to execute the Participating Agency Terms and Conditions in respect of all service providers on the Panel only once.
- (b) The Lead Agency:
- (i) will provide the Participating Agency Terms and Conditions to Eligible Agencies for execution; and
- (ii) following execution by an Eligible Agency, may publish a list of Participating Agencies.
- (c) Following execution of the Participating Agency Terms and Conditions, an Eligible Agency may submit an order for services to any service provider on the Panel in accordance with the Participating Agency Terms and Conditions.
- (d) Upon acceptance by the Service Provider of an order for Services from an Eligible Agency that has executed the Participating Agency Terms and Conditions, a binding Participating Agency Agreement will be formed between the Eligible Agency and the Service Provider. The Service Provider acknowledges that this clause 3.15 confers a benefit on, and is enforceable by, Eligible Agencies in accordance with Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.
- 3.16 **Acceptance prior to first order:** The Service Provider must only accept an order for Services from an Eligible Agency that has executed the Participating Agency Terms and Conditions. Prior to accepting the first order from an Eligible Agency, the Service Provider must confirm that such Eligible Agency has executed the Participating Agency Terms and Conditions. Confirmation may be achieved by:
- (a) checking the list of Participating Agencies that the Lead Agency may publish; or
- (b) obtaining written confirmation from the Lead Agency.
- If an Eligible Agency has not executed the Participating Agency Terms and Conditions, the Service Provider shall refer the relevant Eligible Agency to the Lead Agency to arrange execution. Following execution, the Service Provider may accept the order and commence providing Services to the Participating Agency.
- 3.17 **No variations:** The Service Provider will not permit, without the consent of the Lead Agency, any variation to the terms of the Participating Agency Agreement (although the Lead Agency acknowledges that the Participating Agency and the Service Provider may agree Participating Agency Requirements) and the Service Provider acknowledges and agrees that any variation to the terms of a Participating Agency Agreement purported to be executed without the consent of the Lead Agency is deemed to be null and void and to have no effect.
- 3.18 **Amendments:** Where the Lead Agency and the Service Provider execute an amendment of this Lead Agency Agreement and that amendment includes a variation to, or has the effect of amending, the Participating Agency Agreements, the amendment will automatically apply to vary Participating Agency Agreements already executed, unless:
- (a) specified otherwise by the Lead Agency in writing; or
- (b) the Lead Agency, each relevant Participating Agency and the Service Provider agree otherwise in writing.

Amendments may be made effective by publication to Participating Agencies as the Lead Agency sees fit, with both the Lead Agency and the Service Provider's consent.

- 3.19 **No inconsistent terms:** The Service Provider agrees that it will not, during the Term, seek to apply, or have an Affiliate agree to, any term or agreement inconsistent with this Lead Agency Agreement or the Participating Agency Agreement in relation to Services provided under a Participating Agency Agreement.
- 3.20 **Separate agreements:** The Lead Agency Agreement and each Participating Agency Agreement are separate agreements.
- 3.21 **Participating Agency action:** Where a Participating Agency may, or is required to, provide any information, give a notification, make a request or take any action under its Participating Agency Agreement, either the Lead Agency or the Participating Agency may provide that information, give the notification, make the request or take that action.
- 3.22 **Reliance on notice:** Notwithstanding clause 3.21, the Service Provider is entitled to rely on the notification, request or action first received by the Service Provider in respect of a Participating Agency Agreement (whether that comes from the Lead Agency or the relevant Participating Agency). When the Service Provider receives such initial notification, request or action from either the Lead Agency or the relevant Participating Agency, the Service Provider is under no obligation to seek confirmation of agreement from the other respective party. To avoid doubt, the Service Provider will not be in breach of the Participating Agency Agreement by relying upon such initial notification, request or action and/or by acting upon it.
- 3.23 **Recovery on behalf:** Either the Lead Agency or the Participating Agency may enforce any obligation owed to a Participating Agency by the Service Provider under a Participating Agency Agreement, including by bringing an action against the Service Provider. Any recovery by the Lead Agency under a Participating Agency Agreement will be deemed to be on account of the right of the relevant Participating Agency and subject to the Service Provider's maximum liability to the Participating Agency under clause 17.1.

#### 4. **TERM**

- 4.1 **Term:** This Lead Agency Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, will continue in full force and effect until the Expiry Date.
- 4.2 **Renewal:** The Lead Agency may extend the term of the Lead Agency Agreement for up to two periods of up to three years each by giving the Service provider notice in writing at least 60 Business Days before the Expiry Date, or the expiry of the relevant renewal period, as the case may be.
- 4.3 **Participating Agency Agreements:** If the Lead Agency renews the Lead Agency Agreement in accordance with clause 4.2, all Participating Agency Agreements in force at the effective date of such renewal shall renew for the same period as the Lead Agency Agreement unless the Lead Agency and the Service Provider agree otherwise. The Service Provider must notify each Participating Agency of renewal or expiry promptly following such renewal or expiry.

#### 5. **SERVICE PROVIDER'S OBLIGATIONS**

- 5.1 **Performance:** In providing the Services and Documentation and complying with its other obligations under this Lead Agency Agreement, the Service Provider must:

- (a) provide the Services in accordance with the Requirements;
- (b) provide all personnel, processes and resources required to perform the Services and supply the Documentation;
- (c) comply with all reasonable directions given by the Lead Agency from time to time;
- (d) comply with the Supplier Code of Integrity and Conduct issued by the Procurement Functional Leader (available at [www.procurement.govt.nz](http://www.procurement.govt.nz)) and all Lead Agency policies and procedures notified in writing to the Service Provider from time to time;
- (e) comply with all its obligations under Law and maintain all licences, approvals, consents and permits required in order to provide the Services and Documentation and otherwise to perform its other obligations under this Lead Agency Agreement;
- (f) provide the Documentation and Services in accordance with each Participating Agency Agreement and any applicable Participating Agency Requirements;
- (g) provide, at its own cost, all equipment, tools, materials and other resources necessary for the provision of the Services and Documentation;
- (h) take full responsibility for the performance of all tasks and activities necessary to provide the Services and Documentation in accordance with this Lead Agency Agreement, other than tasks or activities specifically identified as being out of scope;
- (i) work co-operatively and collaboratively in good faith with the Lead Agency and all other contractors and service providers to the Lead Agency to ensure the Services and all products and services related to them are delivered to the Lead Agency efficiently and seamlessly;
- (j) not damage or adversely affect the property, operations, reputation or goodwill of the Lead Agency;
- (k) promptly notify the Lead Agency in writing of:
  - (i) any breach of the Service Provider's obligations under this Lead Agency Agreement; and
  - (ii) any matter that may impact on the Service Provider's ability to perform its obligations in accordance with this Lead Agency Agreement; and
- (l) without limiting (a) to (k) above, exercise the degree of skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced operator in the same or similar circumstances, with reference to the highest international standards and practice for same or similar services.

5.2 **Service Levels:** Without limiting any of the Service Provider's other obligations under this Lead Agency Agreement, the Service Provider must provide the Services so as to meet or exceed the applicable Service Levels.

5.3 **Failure to meet Service Levels:** Without limiting the Lead Agency's other rights and remedies, if the provision of the Services do not meet the applicable Service Level:

- (a) the Service Provider will immediately commence work to identify the cause of such failure;

- (b) the Service Provider will allocate such resources as may be necessary to remedy the failure and any consequences of such failure as soon as practicable;
- (c) the Service Provider will implement relevant service improvement plans to ensure that the Services that have failed Service Levels are continuously improved; and

5.4 **Conflict of interest:** The Service Provider must maintain a high standard of honesty and integrity at all times in the performance of this Lead Agency Agreement and must not enter into any agreement or arrangement that will, or is likely to:

- (a) prejudice the Service Provider's ability to meet its obligations under this Lead Agency Agreement; or
- (b) create a conflict of interest for the Service Provider.

5.5 **Resolve conflict:** Without limiting clause 5.4, the Service Provider must:

- (a) immediately notify the Lead Agency in writing if the Service Provider is, or is likely to be, conflicted in the performance of its obligations under this Lead Agency Agreement; and
- (b) take all actions reasonably required by the Agency to resolve any such conflict.

5.6 **Remedies for failure:** If any of the Services and Documentation are not, in the Lead Agency's reasonable opinion, provided in accordance with this Lead Agency Agreement, the Lead Agency may, without limiting its other rights or remedies, take one or more of the following actions:

- (a) give the Service Provider a notice requiring the Service Provider to immediately remedy the deficiency at the Service Provider's cost;
- (b) withhold any payment due to the Service Provider until the deficiency is remedied to the Lead Agency's reasonable satisfaction; or
- (c) if the Service Provider does not remedy the deficiency to the Lead Agency's reasonable satisfaction within a reasonable period after the Lead Agency giving notice under clause 5.6(a), deduct a reasonable amount from the payment due to the Service Provider related to this failure to reflect the deficiency.

5.7 **Health, safety and security:** Without limiting its other obligations under this Lead Agency Agreement, the Service Provider will:

- (a) consult, cooperate and coordinate with the Lead Agency to the extent required by the Lead Agency to ensure that the Lead Agency and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Lead Agency Agreement;
- (b) perform its, and ensure that its Personnel perform their, obligations under this Lead Agency Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- (c) comply with all reasonable directions of the Lead Agency relating to health, safety, and security; and
- (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Lead Agency to the extent that it relates to, or affects, this Lead Agency Agreement.

5.8 **Lead Agency Property:** If the Service Provider is required to have or has access to any Lead Agency Property under or in connection with this Lead Agency Agreement, the Service Provider must:

- (a) first satisfy such security or other clearance requirements that the Lead Agency has prior to granting access to the relevant Lead Agency Property;
- (b) use the Lead Agency Property:
  - (i) for the sole purpose of complying with its obligations under this Lead Agency Agreement and for no other purpose; and
  - (ii) only to the extent necessary to comply with its obligations under this Lead Agency Agreement;
- (c) comply with all directions regarding the use of the Lead Agency Property given by the Lead Agency from time to time; and
- (d) return to the Lead Agency, or destroy or permanently delete from any media, as required by the Lead Agency, all relevant Lead Agency Property (including all access and security tokens and other means of accessing such Lead Agency Property) on the earlier of:
  - (i) completion of the Service relating to that Lead Agency Property;
  - (ii) receipt of the Agency's request for such Lead Agency Property to be returned, destroyed or deleted; and
  - (iii) termination or expiry of this Lead Agency Agreement.

5.9 **Lead Agency Sites:** The Lead Agency will provide the Service Provider with access to the Lead Agency Sites solely for the purpose of enabling, and to the extent necessary to enable, the Service Provider to comply with its obligations under this Lead Agency Agreement. The Service Provider must not use or access the Lead Agency Sites or any other premises of the Agency for any other purpose without the Lead Agency's prior written consent. The Service Provider will comply, and will ensure that all of its Personnel comply, with all of the Agency's health, safety, operational and security requirements while on-site at any of the Lead Agency's premises.

## 6. PERSONNEL

6.1 **Personnel:** The Service Provider:

- (a) must ensure the Services are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services to the standards required under this Lead Agency Agreement;
- (b) is responsible for all acts and omissions of the Personnel as if they were the acts or omissions of the Service Provider;
- (c) must ensure that all Personnel comply with the terms of this Lead Agency Agreement and with all of the Lead Agency's policies, procedures and reasonable directions;
- (d) must ensure that each Personnel who is to have, or has, access to any Lead Agency Sites or Lead Agency Property, if required by the Lead Agency:



- (i) is willing to and does undergo security and other clearance checks prior to commencing the provision of Services; and
  - (ii) executes a deed (in the form reasonably required by the Lead Agency) agreeing to comply with terms, policies, procedures and directions for access as set by the Lead Agency;
- (e) must promptly, on the Lead Agency's request, obtain written consent from each Personnel to undergo the security and other clearance checks and such personal details of such Personnel to enable the security and other clearance checks to be carried out; and
- (f) must immediately replace any Personnel who fail to meet the security and other clearance checks required by the Lead Agency.

6.2 **Replacement of Personnel:** If the Lead Agency considers (acting reasonably) that any of the Personnel are unsatisfactory or unsuitable then, without limiting any other rights of the Lead Agency, the Lead Agency may, by written notice, require the Service Provider to replace the relevant Personnel and the Service Provider will do so as soon as practicable at its own cost, but in any event no later than 5 Business Days, or as agreed with the Lead Agency, after receipt by the Service Provider of the notice.

6.3 **Good employer obligations:** The Service Provider shall at all times:

- (a) comply, and ensure that its subcontractors comply, with its obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, Parental Leave and Employment Protection Act 1987 and the Holidays Act 2003; and
- (b) notify the Lead Agency of any instances where the Service Provider or its subcontractors:
  - (i) are being investigated by the Labour Inspectorate;
  - (ii) are subject to a claim in the Employment Relations Authority or Employment Court; or
- (c) have breached any of the legislation referenced in clause 6.3(a).

6.4 **Non-solicitation:** The Service Provider agrees not to actively solicit for employment any employee or individual contractor of the Lead Agency who has been engaged by the Lead Agency in connection with, or has been designated by the Lead Agency to work in connection with, the Services or the Documentation. This clause does not prevent the Service Provider from employing any person who responds to a genuine public advertisement placed by the Service Provider.

## 7. SUBCONTRACTORS

7.1 **Prohibition:** The Service Provider must not subcontract any of its obligations under this Lead Agency Agreement to any other person without first obtaining the Lead Agency's written consent (such consent not to be unreasonably withheld) and complying with clause 7.2.

7.2 **Requirements for subcontract:** The Service Provider must:

- (a) ensure that an appropriate written agreement is in place between the Service Provider and the subcontractor that is consistent with the terms of this Lead Agency Agreement in all material respects; and

- (b) ensure that the agreement referred to in clause 7.2(a) acknowledges the benefit to each Lead Agency for the purposes of the Contract and Commercial Law Act 2017 and is therefore enforceable by each Lead Agency.

7.3 **Liability:** The Service Provider will remain liable to the Agency for all acts or omissions of each subcontractor as if they were the acts or omissions of the Service Provider. The entry by the Service Provider into an agreement with a subcontractor will not:

- (a) create a contractual relationship between the Lead Agency and the subcontractor except as described in clause 7.2(b); or
- (b) relieve the Service Provider from liability for the performance of any obligations under this Lead Agency Agreement.

7.4 **Replacement of subcontractors:** The Service Provider must obtain the Lead Agency's prior written consent to the replacement of any subcontractor, and clauses 7.2 and 7.3 will apply to all replacement subcontractors.

7.5 **Individual contractors:** The Service Provider will not be required to observe clauses 7.1 and 7.2 in respect of any individual who is providing services to the Service Provider as a contractor that might otherwise have been provided by a Service Provider employee, including any individual interpreter.

## 8. GOVERNANCE

8.1 **Governance:** The parties will comply with the governance and relationship management procedures set out under Schedule 5.

8.2 **Meetings:** The parties will meet together in the manner and at the frequency set out in Schedule 5 and as otherwise reasonably requested by the Lead Agency to:

- (a) monitor progress of the Service Provider in providing the Services;
- (b) review resource needs and detail timing for upcoming tasks;
- (c) as far as able, settle and agree any issues arising in the course of providing the Services, and review risks and agree risk management actions;
- (d) monitor compliance by each party of any other of their respective obligations under this Lead Agency Agreement; and
- (e) monitor the Change Control Process and, where appropriate, software release and management planning.

8.3 **Reporting:** The Service Provider must provide reports at the frequency and containing the detail set out in Schedule 5.

8.4 **Change Control Process:** If:

- (a) the Lead Agency requires any new services; or
- (b) either party proposes any change to the Services (including any changes to the nature or scope of the Services or to the timing of the delivery of the Services),

each a **Change Control**, the parties will comply with the Change Control Process in respect of each such Change Control.

## 9. AUDIT

9.1 **Audit:** The Lead Agency may at any time notify the Service Provider that the Lead Agency wishes to audit any or all of the Service Provider's:

- (a) provision of the Services and Documentation;
- (b) invoicing; and
- (c) compliance with the terms of this Lead Agency Agreement.

The Lead Agency or the auditor (as the case may be) may make copies of any records or other information acquired by it for the purposes of any audit.

9.2 **Notice of audit:** The Lead Agency will notify the Service Provider of the date on which the audit will commence, which must be at least two Business Days after receipt of a notice under clause 9.1. The Service Provider must give the Lead Agency or its nominee full access to inspect:

- (a) any premises at which or from which the Service Provider or any Service Provider provides the Services and Documentation;
- (b) any Service Provider Personnel; and
- (c) any systems, procedures, information, data, accounts, documents and records relevant to the provision of the Documentation and Services operated or held by or on behalf of the Service Provider or Service Provider Personnel,

on and from the date notified by the Lead Agency during the Service Provider's normal business hours for the purpose of conducting the audit. The Lead Agency will comply with the Service Provider's reasonable security and confidentiality requirements in conducting any audit under clause 9.1.

9.3 **Assistance:** The Service Provider will assist the Lead Agency in a timely manner with any audit conducted under clause 9.1 and will ensure its Personnel and subcontractors also assist the Lead Agency, including by making their relevant premises, personnel, systems, information, data, accounts, documents and records available to the Lead Agency or its nominee if requested.

9.4 **Costs:** The Lead Agency will meet its costs of any audit unless the audit discloses a breach of this Lead Agency Agreement (other than an inconsequential breach) or that the Service Provider has overcharged the Lead Agency or any Participating Agency on any invoice by 5% or more. In that case, the Service Provider will meet the Lead Agency's audit costs.

9.5 **Non-compliance:** Without limiting any of the Lead Agency's other rights or remedies, if any audit conducted under clause 9.1 discloses any failure to comply with this Lead Agency Agreement by the Service Provider, the Service Provider will promptly remedy the non-compliance to the Lead Agency's satisfaction. The Service Provider will refund any amounts overcharged by the Service Provider within five Business Days of completion of an audit and delivery of an audit report.

9.6 **Lead Agency may share audit results:** Despite anything to the contrary in clause 12 (Confidential Information) of this Lead Agency Agreement, the Lead Agency may share the results of any audit conducted under clause 9.1 with any Participating Agency.

## 10. DOCUMENTATION AND RECORDS

10.1 **Documentation:** The Service Provider will supply the Lead Agency with the Documentation in accordance with the requirements set out in this Lead Agency Agreement.

10.2 **Records:** Without limiting its other obligations under this Lead Agency Agreement or at Law, the Service Provider must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible Records relating to the provision of the Services and the Charges charged under this Lead Agency Agreement, to the standards required under the Public Records Act 2005 and where applicable, the Lead Agency's retention and disposal requirements.

10.3 **Content of Records:** Without limiting clause 10.2:

- (a) the Records created and maintained under clause 10.2 must, at a minimum, describe or specify:
  - (i) the nature and scope of the Services and Documentation provided under this Lead Agency Agreement;
  - (ii) the transactions that took place in the provision of all Services;
  - (iii) the basis on which each invoice has been prepared and submitted to the Lead Agency under this Lead Agency Agreement; and
  - (iv) any other information reasonably required by the Lead Agency from time to time; and
- (b) the Service Provider must ensure the Records created and maintained under clause 10.2 are:
  - (i) maintained in a form accessible by the Lead Agency;
  - (ii) retained for the Term and 7 years after expiry or termination of this Lead Agency Agreement; and
  - (iii) provided to the Lead Agency in a form accessible by the Lead Agency on termination or expiry of this Lead Agency Agreement and at any other time on the Lead Agency's request, and following such request the Records must be made available within a reasonable timeframe.

10.4 **OIA:** The Service Provider acknowledges that the Lead Agency is subject to the OIA. The Service Provider agrees to cooperate fully in providing the Lead Agency with any documents or other information that the Lead Agency is required to provide pursuant to a request made under the OIA, or pursuant to questions raised in Parliament or in any Select Committee concerning this Lead Agency Agreement.

## 11. CHARGES

11.1 **Charges:** Schedule 2 sets out the Charges for the Services (excluding GST).

11.2 **No other amounts payable:** The Service Provider acknowledges that it is not entitled to charge Participating Agencies under a Participating Agency Agreement any amount which is not determined in accordance with such Participating Agency Agreement.

## 12. CONFIDENTIAL INFORMATION

12.1 **Restrictions:** Except as permitted by this clause 12 or otherwise expressly permitted in this Lead Agency Agreement, each party must keep the other party's Confidential Information:

- (a) absolutely secret and confidential at all times and will not disclose that Confidential Information to any person or use that Confidential Information for any purpose other than the purpose of this Lead Agency Agreement (which, in the case of the Lead Agency, will include obtaining the full benefit of the Lead Agency Agreement and all rights granted under it); and
- (b) secure and ensure it has in place adequate security measures to safeguard the Confidential Information from access, loss, use, modification or disclosure by unauthorised persons.

12.2 **Exceptions:** A party may disclose Confidential Information:

- (a) to:
  - (i) its directors, employees or contractors who need to know such information for the purpose of this Lead Agency Agreement;
  - (ii) its professional advisers, auditors or bankers for a proper purpose; or
  - (iii) in the case of the Lead Agency, any Participating Agency, Minister of the Crown, or any of either the Lead Agency's or the Participating Agency's advisers (including relevant third parties),provided that party ensures that each such person complies with the restrictions in this clause as if such person were a party to this Lead Agency Agreement;
- (b) if and to the extent disclosure is required by Law, the rules of any registered securities exchange on which the party's securities are listed, or any Minister of the Crown or parliamentary officer or body, provided that party gives the other party notice, to the extent permitted by the applicable Law, of the requirement as soon as practicable and consult in good faith with the other party before such disclosure is made;
- (c) if and to the extent the information:
  - (i) was known to the receiving party before the information was disclosed to it;
  - (ii) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving party;
  - (iii) is generally available to the public through no fault of the receiving party; or
  - (iv) is developed by the receiving party independently of the information disclosed by the disclosing party; or
- (d) if and to the extent required in connection with legal proceedings relating to this Lead Agency Agreement.

12.3 **Misuse or breach:** Without limiting clause 13.5, the Service Provider will notify the Lead Agency in writing immediately on becoming aware of any:

- (a) potential, threatened or actual misuse or unauthorised disclosure or use of Confidential Information by any person to whom the Service Provider makes any disclosure in accordance with clause 12.2; or

(b) breach of the Service Provider's obligations under this clause 12,

and will take all reasonable steps to mitigate the effects of such disclosure and fully co-operate with the Lead Agency in preventing or limiting such misuse, unauthorised disclosure or breach, at the cost of the Service Provider.

12.4 **Announcements:** The Service Provider must not make any media release or other public announcement relating to the existence of this Lead Agency Agreement except as permitted by clause 12.2(b) or with the prior written consent of the Lead Agency, such consent not to be unreasonably withheld.

### 13. PRIVACY

13.1 **Privacy:** The Service Provider will comply with the Lead Agency's Privacy Policy and standards, the Privacy Act 2020, any relevant code under such Acts and any reasonable direction provided by the Lead Agency to the Service Provider.

13.2 **Privacy assessment:** The Service Provider agrees that the Lead Agency may assess its privacy policy, programme and practice. The Service Provider will cooperate with any request for a privacy assessment or audit, including completing self-assessments on request.

13.3 **Privacy governance:** The Service Provider must:

- (a) appoint and maintain an appropriately skilled person as privacy officer for the term of this Lead Agency Agreement; and
- (b) have and maintain a privacy policy (including procedures for notifying the Lead Agency and the relevant Participating Agency if there is a privacy breach or any unauthorised access to or use of personal information).

13.4 **No recordings:** The Service Provider must not record the provision of any interpretation Services to a Participating Agency without first obtaining the Participating Agency's consent.

13.5 **Privacy Breaches:** Where Confidential Information includes Personal Information, the Service Provider acknowledges the importance of safeguarding that information in accordance with the Privacy Act 2020. If Confidential Information held by the Service Provider includes Personal Information, the Service Provider must:

- (a) where such Personal Information is used, accessed or disclosed in contravention of this Lead Agency Agreement or the Privacy Act 2020, notify any actual or perceived disclosure to the Lead Agency as soon as practicable;
- (b) take all reasonable steps within the Service Provider's control to mitigate and contain the disclosure;
- (c) assess the nature, extent and cause of disclosure, including type of information disclosed and scope of the parties to which it was disclosed if identifiable;
- (d) assist the Lead Agency to notify the Privacy Commissioner and affected individuals where the Lead Agency determines that notification should occur or is required by Law; and
- (e) take all reasonable steps within the Service Provider's control to prevent further disclosures occurring by the same or similar means.

13.6 **No limitation:** Nothing in this clause limits or restricts any rights granted to the Lead Agency under this Lead Agency Agreement.

## 14. WARRANTIES

14.1 **Warranties:** The Service Provider warrants at all times that:

- (a) all information supplied by it to the Lead Agency under this Lead Agency Agreement is true, complete and accurate, not misleading or deceptive and may be relied on by the Lead Agency in entering into and continuing with this Lead Agency Agreement or any change to this Lead Agency Agreement;
- (b) it has full corporate power and has obtained the required authority and authorisations to enter into and perform its obligations under this Lead Agency Agreement;
- (c) it will not during the term of this Lead Agency Agreement, engage in any activity that will or is likely to compromise its ability to perform its obligations under this Lead Agency Agreement fairly and independently;
- (d) the Services and Documentation:
  - (i) are provided in accordance with the requirements of this Lead Agency Agreement;
  - (ii) are free from defects; and
  - (iii) are fit for the purposes required by the Lead Agency;
- (e) all advice provided by the Service Provider in connection with the Services is provided to a high standard of skill, care and diligence, and to a level reflective of, and in accordance with, a high level of industry knowledge and competence; and
- (f) all Documentation provided by the Service Provider under or in connection with this Lead Agency Agreement will:
  - (i) contain sufficient information for the full and efficient operation of the relevant Services to which the Documentation relates in the manner contemplated by the Lead Agency;
  - (ii) correctly represent the attributes of the subject matter to which it relates;
  - (iii) provide proper and adequate instructions for its intended purpose; and
  - (iv) be written or delivered in language and at a level appropriate for the intended audience.

14.2 **Third party warranties:** The Service Provider will, without limiting any of the other warranties given under this Lead Agency Agreement, assign to the Lead Agency, or if it is unable to do so, hold for the sole benefit of the Lead Agency, all warranties and guarantees provided by third parties to the Service Provider in respect of the provision of any Services under this Lead Agency Agreement. Any warranties provided by third parties are in addition to, and will not displace, any warranties provided by the Service Provider, even when the benefit of those warranties is enjoyed by the Service Provider.

14.3 **Remedies for failure:** If the Service Provider breaches any warranty set out in clause 14.1, then, without limiting the Lead Agency's other rights or remedies:

- (a) the Service Provider must promptly remedy the breach at its cost on receipt of notice in writing from the Lead Agency requiring the breach to be remedied; and
- (b) if the Service Provider fails to remedy the breach within the time specified in the Lead Agency's notice given under clause 14.3(a), the Lead Agency may, without limiting its other rights and remedies, withhold any payment due to the Service Provider until the matter is resolved.

To avoid doubt, the Service Provider must continue to provide the Services under this Lead Agency Agreement notwithstanding the Lead Agency exercising of any of the remedies contemplated in this clause 14.3.

14.4 **Replacements:** The warranties and the other provisions of this Lead Agency Agreement apply equally to any re-performed Service.

## 15. PERFORMANCE ISSUES

15.1 **Performance issues:** The parties acknowledge that problems with provision of the Services may be caused by a variety of factors, including acts or omissions by third parties, not easily identified at the time a problem arises. Without limiting the parties' other obligations under this Lead Agency Agreement, the Service Provider will use all reasonable endeavours to promptly remedy any performance issues, without having to first allocate or apportion responsibility for the cause of the problem.

15.2 **Request for Remedial Plan:** Without limiting any right or remedy available to the Lead Agency, if at any time:

- (a) the Lead Agency reasonably considers that the Service Provider has breached, or will imminently breach, any of its obligations under this Lead Agency Agreement; or
- (b) the Service Provider has given the Lead Agency notice of a breach or likely breach of any of its obligations under this Lead Agency Agreement,

(in each case, a **Performance Issue**), which may include any breach of the warranties set out in clause 14.1, the Lead Agency may by notice to the Service Provider require the Service Provider to prepare a plan to remedy the Performance Issue (**Remedial Plan**).

15.3 **Preparation of Remedial Plan:** As soon as possible after receipt of a notice from the Lead Agency under clause 15.2 (and, in any event, within 5 days or such other period as the parties may agree in writing), the Service Provider will, in consultation with the Lead Agency, prepare and provide to the Lead Agency a proposed Remedial Plan setting out:

- (a) full details of the Performance Issue (including its cause(s), expected duration and impact on its obligations under this Lead Agency Agreement);
- (b) a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring (as applicable); and
- (c) success criteria to determine whether the Performance Issue has been rectified.

To avoid doubt, the Lead Agency may require a Remedial Plan to remedy a Performance Issue affecting one or more Participating Agencies.



15.4 **Implementation:** Once the parties have (acting reasonably) agreed the Remedial Plan, the Service Provider will implement its part in the Remedial Plan in accordance with that Remedial Plan.

## 16. INTELLECTUAL PROPERTY RIGHTS

16.1 **Ownership of existing IP:** Each party or its licensors retains ownership of all Intellectual Property Rights in Existing Material belonging to that party or its licensors.

16.2 **Ownership of new IP:** Unless otherwise agreed in writing, any new Intellectual Property which is created as a result of, or in connection with, the provision of the Documentation or Services, or otherwise in connection with this Lead Agency Agreement, including all modifications, enhancements or derivative work, will be owned by the Service Provider.

16.3 **Licence to the Lead Agency:** Unless otherwise stated, the Service Provider will grant the Lead Agency:

(a) A perpetual, non-exclusive, sub-licensable, transferable, fully paid and irrevocable licence to exercise for any purpose all Intellectual Property Rights in all Services and Documentation that are not owned by the Lead Agency or otherwise licensed to the Lead Agency under this Lead Agency Agreement. This licence includes the right to use, store, copy, maintain, repair and modify, as applicable, such Services and Documentation and to permit the Lead Agency's contractors to use the Services and Documentation, but does not include the right to commercialise (that is make a profit from) the Services and Documentation.

(b) A non-exclusive, sub-licensable and transferable licence to access, receive and utilise all Services and to make full use of any Service provided by the Service Provider for any purpose.

16.4 **Licence to the Service Provider:** The Lead Agency grants the Service Provider a non-exclusive, non-transferable licence to exercise, only for the Term and only to the extent necessary for the Service Provider to perform its obligations under this Lead Agency Agreement or any Participating Agency Agreement, all Intellectual Property Rights provided or owned by or on behalf of the Lead Agency. The Service Provider may sublicense this licence only to those subcontractors that the Lead Agency has consented to in writing in accordance with clause 7.

16.5 **Know-how:** Nothing in this clause 16 restricts either party from using, in any way the party deems appropriate, the know-how, ideas and concepts it contributed, or were developed by it, during the performance of its obligations under this Lead Agency Agreement, provided that such use does not breach any of the other provisions of this Lead Agency Agreement.

16.6 **Intellectual Property warranties:** The Service Provider warrants at all times that:

(a) it has all requisite ownership rights and licences, clearances, consents and authorisations to fully perform its obligations under this Lead Agency Agreement (including granting the Lead Agency a licence in accordance with clause 16.3; and

(b) the use by the Lead Agency of any Service or Documentation and Services will not breach any applicable Law or infringe or impair in any way the Intellectual Property Rights of any person (including any third party).

16.7 **Intellectual Property Rights indemnity:**

(a) The Service Provider indemnifies the Lead Agency against all liability, losses, damages, costs and expenses (including legal costs on a full indemnity basis)

suffered or incurred by the Lead Agency as a result of any claim or threatened claim alleging that any of the Documentation, Services or any information, rights or materials supplied by the Service Provider under this Lead Agency Agreement, or the Lead Agency's use or possession of any of them, infringes the Intellectual Property Rights of any person (**IP Claim**).

- (b) Each party will promptly notify the other party in writing on becoming aware of any IP Claim.
- (c) Unless otherwise required by the Lead Agency, the Service Provider will control the conduct of the defence of any IP Claim and all negotiations for its settlement or compromise, but in all cases will:
  - (i) consult with the Lead Agency and keep the Lead Agency fully informed of such matters;
  - (ii) obtain the Lead Agency's prior written approval to any proposed settlement or compromise; and
  - (iii) ensure that the Lead Agency's name and reputation are not adversely affected by any steps taken by or on behalf of the Service Provider.
- (d) If required by the Lead Agency, at the Agency's sole discretion, the Lead Agency or its appointed representative will control the conduct of the defence of any IP Claim and is entitled to obtain representation or advice as appropriate in relation to the IP Claim.

16.8 **Agency remedies:** If any IP Claim prevents or threatens to prevent the supply or use of a Service or Documentation as contemplated by this Lead Agency Agreement then the Service Provider must promptly, at the request of and in consultation with the Lead Agency, at the Service Provider's cost, and without prejudice to clauses 16.6 and 16.7:

- (a) obtain for the Lead Agency the right to continue the supply or use;
- (b) modify the Service or Documentation so it becomes non-infringing; or
- (c) replace the Documentation with another non-infringing item,

provided that the Service Provider must ensure that the remedy does not materially affect the functionality or performance of the Service or Documentation or the Lead Agency's use of it. Without prejudice to any right or remedy, the Lead Agency may terminate this Lead Agency Agreement if the Service Provider is unable to remedy the IP Claim in accordance with this clause 16.8 within two months of the Lead Agency's request.

## 17. LIABILITY AND INSURANCE

17.1 **Service Provider's liability:** Subject to clauses 17.2 and 17.3, a party's total aggregate liability under or in connection with this Lead Agency Agreement to the other party, whether in contract or tort (including negligence) or otherwise, will not exceed \$250,000.

17.2 **Indirect loss:** Neither party will be liable to the other under or in connection with this Lead Agency Agreement, whether in contract, tort (including negligence) or otherwise, for any indirect or consequential loss.

17.3 **Exclusions:** Nothing in this clause 17 limits or excludes:

- (a) the Service Provider's obligations under this Lead Agency Agreement to pay any Service Level rebates;
- (b) the Service Provider's liability under clause 16 in relation to IP Claims;
- (c) the Service Provider's liability for deliberate breach or wilful default;
- (d) the Service Provider's liability for death or bodily injury of any person arising out of or related to any act or omission by the Service Provider in connection with this Lead Agency Agreement;
- (e) the Service Provider's liability for damage to the Lead Agency's physical property; or
- (f) either party's liability for breach of clause 12 or clause 13.

17.4 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage it may suffer under this Lead Agency Agreement.

17.5 **Participating Agency default:** Where any Participating Agency fails to perform its obligations, if any, under a Participating Agency Agreement (**Defaulting Agency**):

- (a) neither the Lead Agency (nor any other Participating Agency) will be liable to the Service Provider in respect of that failure;
- (b) the Service Provider may take action against the Defaulting Agency in accordance with, and subject to, clause 17 (Liability and Insurance), and recover from the Defaulting Agency any damages or other remedy to which the Service Provider may be entitled; and
- (c) the Service Provider will not sue the Lead Agency or any other Participating Agency in respect of that failure.

17.6 **Insurance:** During the Term and for 3 years after termination or expiry of this Lead Agency Agreement, the Service Provider will maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Service Provider, and in particular will maintain coverage in respect of public liability, professional indemnity and property damage in the following amounts:

- (a) Professional indemnity: \$2 million;
- (b) Public liability: \$2 million; and
- (c) Property damage: \$2 million,

and on terms consistent with standard market terms for such policies and with an insurer of A- rated or better. The Service Provider will, on request at any time, provide the Lead Agency with a certificate from the insurer or insurers confirming the existence and terms of such insurance.

17.7 **Prompt information:** The Service Provider must promptly inform the Lead Agency of:

- (a) any claims relating to this Lead Agency Agreement against the insurance policies referred to in clause 17.6; and
- (b) any material change to, cancellation or non-renewal of such policies.

## 18. DISPUTE RESOLUTION

- 18.1 **Dispute resolution process:** Subject to clause 18.6, a party may not commence any court proceedings relating to a dispute between the parties unless the party has complied with clauses 18.2 to 18.4.
- 18.2 **Dispute notice:** If there is a dispute between the parties in relation to this Lead Agency Agreement, either party may give the other party notice of the nature and details of the dispute.
- 18.3 **Negotiation:** Each party will notify the other and the Lead Agency of a dispute on the day that the dispute arises. The parties will use their best efforts to resolve the dispute. If the dispute is not resolved:
- (a) within five Business Days, the dispute will be escalated to the Dispute Managers; and
  - (b) within a further five Business Days, the dispute will be escalated to the Escalated Dispute Managers.
- 18.4 **Mediation:** If the dispute is not resolved within 20 Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. If a party refers the dispute to mediation, they must notify the Lead Agency of the mediation promptly following such referral. The mediation will be in Wellington and conducted under the Resolution Institute standard mediation rules. If the parties do not agree on a mediator or the mediator's fees within 5 Business Days of receipt of the notice of mediation, the mediator will be appointed, or the fees set, by the chair of Resolution Institute (or his/her nominee) at the request of either party. The parties will bear the mediator's fees equally.
- 18.5 **Continued performance:** Regardless of any dispute, each party must continue to perform this Lead Agency Agreement to the extent practicable, but without prejudice to their respective rights and remedies.
- 18.6 **Urgent relief:** Nothing in this clause 18 will preclude a party from seeking urgent interlocutory relief before a court.

## 19. BUSINESS CONTINUITY

- 19.1 **Business continuity:** The Service Provider must:
- (a) implement and maintain at all times an up to date business continuity and disaster recovery plan (**BCP Plan**) in respect of the Service in accordance with industry best practice;
  - (b) provide the Lead Agency with a copy of the BCP Plan at the Commencement Date and on each annual anniversary of this Lead Agency Agreement;
  - (c) review, test and, if necessary to comply with subclause 19.1(a), update the BCP Plan at regular intervals not exceeding 12 months;
  - (d) include in the BCP Plan such changes as the Lead Agency or (in respect of that Participating Agency only) any Participating Agency considers reasonably necessary to ensure continuity of the provision of Services and Deliverables in the event of a disaster in accordance with the highest international standards and practice for business continuity;

- (e) promptly provide to the Lead Agency and/or a Participating Agency a copy of the then current BCP Plan if required by the Lead Agency or a Participating Agency from time to time; and
- (f) if requested by the Lead Agency or a Participating Agency, promptly provide the Lead Agency or that Participating Agency with a signed declaration confirming that, to the best of the Service Provider's knowledge after making all necessary and reasonable enquiries, the Service Provider has complied with this clause 19.1.

For the avoidance of doubt, nothing in this clause 19.1, including the provision of the BCP Plan to the Lead Agency or the inclusion of any changes requested by the Lead Agency, will relieve the Service Provider from any breach of its obligations, or of any warranty, under this Lead Agency Agreement.

19.2 **Lead Agency may share BCP Plan:** Despite anything to the contrary in clause 12 (Confidential Information), the Lead Agency may share the BCP Plan with any Participating Agency.

## 20. FORCE MAJEURE

20.1 **No breach:** A party (the **affected party**) will not be liable for any failure or delay in performance of any obligations under this Lead Agency Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that it:

- (a) notifies the other party (**non-affected party**) as soon as practicable of the nature and expected duration of the Force Majeure Event and keeps the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;
- (b) uses reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Lead Agency Agreement to the extent reasonably practicable; and
- (c) resumes full performance as soon as reasonably practicable.

20.2 **Corresponding obligations:** The non-affected party will be relieved of its corresponding obligations to the same extent the affected party is relieved of its obligations due to this clause 19.

20.3 **Third party services:** The non-affected party will be entitled to itself provide, or arrange for a third party to provide, the affected Services while the affected party is unable to provide them and for a reasonable period thereafter.

20.4 **Termination:** If the Force Majeure Event prevails for a continuous period of more than 20 Business Days, or for an aggregate of at least 30 Business Days in any six month period, the non-affected party may terminate this Lead Agency Agreement by giving 10 Business Days' notice to the affected party. On the expiry of the notice period, this Lead Agency Agreement will terminate. Neither party will have any liability to the other in respect of termination of this Lead Agency Agreement due to a Force Majeure Event, but such termination will be without prejudice to rights and liabilities which have accrued prior to termination.

## 21. TERMINATION

21.1 **Termination for cause:** Either party may terminate the Lead Agency Agreement immediately by notice to the other party if:

- (a) the other party commits a material breach of the Lead Agency Agreement which cannot be remedied by that defaulting party or, if it can be remedied, the defaulting party fails to remedy that breach within 20 Business Days after receipt of notice requiring the breach to be remedied;
- (b) the other party commits two or more of the same or similar breaches of this Lead Agency Agreement (whether material or not and whether remedied or not) in any three month period and fails to remedy the breaches to the other party's satisfaction within 5 Business Days of receiving notice;
- (c) the other party ceases to carry on all or substantially all of its business or operations; or
- (d) the other party is subject to an Insolvency Event,

provided that, if the Lead Agency is the defaulting party, the Service Provider is not entitled to terminate the Lead Agency Agreement if the Lead Agency agrees to remedy its breach and pay the direct and reasonable losses suffered by the Service Provider arising from that breach.

21.2 **Termination by the Lead Agency:** The Lead Agency may terminate the Lead Agency Agreement, by written notice to the Service Provider, at any time:

- (a) by giving at least 60 Business Days prior notice to the Service Provider;
- (b) if the Service Provider engages in conduct which, in the reasonable opinion of the Lead Agency, might injure the reputation or business of the Lead Agency;
- (c) if the Lead Agency reasonably considers that the Service Provider has acted fraudulently;
- (d) if the Service Provider undergoes a Change of Control without the Lead Agency's prior written approval; or
- (e) if, in the case of the Auckland District Health Board:
  - (i) by operation of statute the Auckland District Health Board is reconstituted into or within a new legal entity, or the functions and powers of the Auckland District Health Board are transferred to a new legal entity; and
  - (ii) such new legal entity is an Eligible Agency.

21.3 **Consequences of termination:** Upon receipt of a notice of termination by either party to the Lead Agency Agreement the Service Provider:

- (a) shall not enter into any new Participating Agency Agreements; and
- (b) will provide any Disengagement Services in accordance with clause 22. Where this applies, the term of this Lead Agency Agreement will be extended to such time as the Service Provider completes performance of the services and obligations.

21.4 **Partial termination:**

- (a) Where the Agency has the right to terminate this Lead Agency Agreement, it may at its discretion and to the extent practicable instead of terminating this Lead Agency Agreement in full, terminate any affected Service in whole or in part. From the relevant termination date, no Charges are payable for the terminated Services.

- (b) Without limiting any other rights or remedies the Agency may have, if at any time the Agency considers that any aspect of the partial termination is not proceeding to its satisfaction, it may by notice to the Service Provider, convert the partial termination to a full termination.
- (c) If the Lead Agency elects to terminate in part, any variations to the Charges will be agreed via the Change Control Process.

21.5 **Other consequences of termination or expiry:**

- (a) **Termination of Lead Agency Agreement:** All Participating Agency Agreements shall terminate on the effective date of termination of the Lead Agency Agreement.
- (b) **Termination of Participating Agency Agreement:** Termination of a Participating Agency Agreement shall not terminate the Lead Agency Agreement or any other Participating Agency Agreement.
- (c) **Termination with prejudice:** Any termination or expiry of this Lead Agency Agreement is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have accrued before termination or expiry or limit either party's rights to recover damages from the other party under this Lead Agency Agreement or pursue any additional or alternative remedies provided by Law.
- (d) **Consequences:** On termination or expiry of this Lead Agency Agreement for any reason:
  - (i) the Service Provider must refund to the Lead Agency all amounts paid by the Lead Agency for Services not provided;
  - (ii) the Service Provider must return to the Lead Agency all the Lead Agency Property and other property that the Lead Agency has provided to the Service Provider under or in connection with this Lead Agency Agreement; and
  - (iii) the Service Provider must, on receipt of a written request from the Lead Agency and at the Lead Agency's option, return, destroy, and permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Service Provider or any Personnel or subcontractor and on request confirm in writing that it has done this.

**22. DISENGAGEMENT SERVICES**

22.1 **Commencement:** Commencing at any time before or from the expiry or termination of all or any part of the Lead Agency Agreement for any reason, the Service Provider will, at the request of the Lead Agency, provide the Disengagement Services required by the Lead Agency to the Lead Agency and its nominated alternative service provider(s).

22.2 **Duration:** The Service Provider will provide the Disengagement Services for up to six months from the date of expiry or termination of the Lead Agency Agreement or any part of it as required by the Lead Agency.

22.3 **Disengagement Services:**

- (a) The Service Provider will provide the Lead Agency, within 10 days of the Commencement Date, with a draft plan detailing the Disengagement Services that are likely to be required by the Lead Agency to end this Lead Agency Agreement in a smooth and orderly manner (**Disengagement Plan**). The Service Provider must ensure that the Disengagement Plan is approved by the Lead Agency within a month of the Commencement Date, and if required to obtain such approval, incorporate such changes as required by the Lead Agency. The Service Provider must maintain and keep the Disengagement Plan up to date, and provide an updated copy to the Lead Agency at least once every three months.
- (b) The Lead Agency may, at any time and from time to time (including on expiry or termination of this Lead Agency Agreement), notify the Service Provider of the Disengagement Services required, which, at the Lead Agency's option, may include any of the following:
- (i) continued performance of the Services to the extent required by the Lead Agency. The relevant terms of this Lead Agency Agreement and the relevant Participating Agency Agreements continue to apply to the performance of the Services in accordance with this paragraph;
  - (ii) promptly assisting the Lead Agency to prepare a disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and the timeframes for the performance of such tasks, and implementing its role in the disengagement plan within the required timeframes;
  - (iii) delivery to the Lead Agency any Documentation or other materials relating to the Services as they exist as at the date of termination;
  - (iv) answering questions and providing information requested by the Lead Agency and its nominated alternative supplier(s);
  - (v) returning to the Lead Agency intellectual property and other intangible property of the Lead Agency; and
  - (vi) migrating software, data and the performance of Services to the Lead Agency or an alternative supplier, in such manner and format reasonably specifically or required by the Lead Agency.

22.4 **Charges:** Subject to clause 22.5, the Lead Agency will continue to pay the Charges in respect of any Services provided by the Service Provider in accordance with clause 22.3(b)(i). For all other Disengagement Services the Lead Agency will pay the Service Provider for the Disengagement Services at reasonable rates to be agreed in writing between the parties. If the parties cannot reach agreement on such rates, the dispute will be resolved by the parties in accordance with clause 18 (Dispute Resolution). If required by the Lead Agency, the Service Provider will provide the Disengagement Services pending the resolution of the dispute.

22.5 **No Charges:** If the Lead Agency has terminated the Lead Agency Agreement for breach of the Lead Agency Agreement, any Disengagement Services required by the Lead Agency under clause 22.3(b)(ii) to 22.3(b)(vii) will be provided without charge.

22.6 **Minimise the Charges:** The Service Provider must do all things practical to minimise the Charges payable by the Lead Agency during the period in which the Service Provider is providing the Disengagement Services.



22.7 **Other rights and remedies:** Nothing in this clause limits the Service Provider's or the Lead Agency's rights to recover damages from the other party under this Lead Agency Agreement or to pursue any additional or alternative rights or remedies provided by Law.

## 23. NOTICES

23.1 **Notices:** Each notice or other communication given under this Lead Agency Agreement (each a **notice**) will be in writing and delivered personally or sent by post or email to the address of the relevant party set out in Schedule 1 or to any other address from time to time designated for that purpose by at least five Business Days' prior notice to the other party.

23.2 **Receipt:** A notice under this Lead Agency Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
  - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
  - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

## 24. GENERAL

24.1 **Amendments:**

- (a) The Service Provider will not, without the consent of the Lead Agency, permit any variation to a Participating Agency Agreement. Any variation to a Participating Agency Agreement purported to be executed without the consent of the Lead Agency is deemed to be null and void and to have no effect.
- (b) The Lead Agency and the Service Provider may vary the Lead Agency Agreement or a Participating Agency Agreement from time to time. No amendment to this Lead Agency Agreement will be effective unless it is in writing and signed by the parties.
- (c) The Service Provider must provide written notice to all Participating Agencies of an amendment made by the Lead Agency and Service Provider in accordance with clause 24.1(b) and all such amendments will automatically apply to each Participating Agency Agreement, unless agreed otherwise between the Service Provider and the Lead Agency.

24.2 **Assignment:** The Service Provider may not assign, transfer, novate, subcontract, charge, pledge or otherwise encumber this Lead Agency Agreement or any of its rights or obligations under this Lead Agency Agreement without the prior written consent of the Lead Agency. The Lead Agency may assign or novate the Lead Agency Agreement to any other Eligible Agency and must provide the Service Provider with prompt notice of such assignment. For

the purposes of this clause, a Change of Control of a party will be deemed an assignment by that party.

24.3 **Costs:**

- (a) The parties will each bear their own costs and expenses incurred in the negotiation, preparation and implementation of this Lead Agency Agreement.
- (b) A party who has an obligation to do anything under this Lead Agency Agreement will perform that obligation at its own cost, unless expressly stated otherwise in this Lead Agency Agreement.

24.4 **Entire agreement:** This Lead Agency Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties relating to the matters dealt with in this Lead Agency Agreement.

24.5 **Further assurances:** Each party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Lead Agency Agreement.

24.6 **No agency:** This Lead Agency Agreement does not create any relationship between the parties of principal and agent, partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another party, except as expressly provided for in this Lead Agency Agreement.

24.7 **Privity:** Subject to clause 3.23 of this Lead Agency Agreement, a person who is not a party will not have any rights under or in connection with this Lead Agency Agreement by virtue of the Contract and Commercial Law Act 2017, unless expressly stated otherwise in this Lead Agency Agreement.

24.8 **Remedies cumulative:** The rights and remedies provided in this Lead Agency Agreement are cumulative and not exclusive of any rights or remedies provided by this Lead Agency Agreement or Law.

24.9 **Severance:** If any provision of this Lead Agency Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision will be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Lead Agency Agreement. Such change will not affect the legality, validity and enforceability of the other provisions of this Lead Agency Agreement.

24.10 **Survival:** Following termination or expiry of this Lead Agency Agreement, clauses 10 (Documentation and Records), 11 (Charges and Payment), 12 (Confidential Information), 13 (Privacy), 14 (Warranties), 17 (Liability and insurance), 16 (Intellectual Property Rights), 18 (Dispute Resolution), 21.3 (Consequences of termination), 22 (Disengagement Services) and 24 (General), together with other provisions that are by their nature intended to survive, will remain in full force and effect.

24.11 **Waiver:** No waiver of a right or remedy under this Lead Agency Agreement or at Law (a **right**) will be effective unless the waiver is in writing and signed by that party. No delay or omission by a party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right will restrict the further exercise of that or any other right.

24.12 **Governing law and jurisdiction:** This Lead Agency Agreement is governed by New Zealand Law. Subject to clause 18, the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.

24.13 **Counterparts:** This Lead Agency Agreement may be executed in any number of counterparts (including scanned PDF counterpart), each of which will be deemed an original, but all of which together will constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

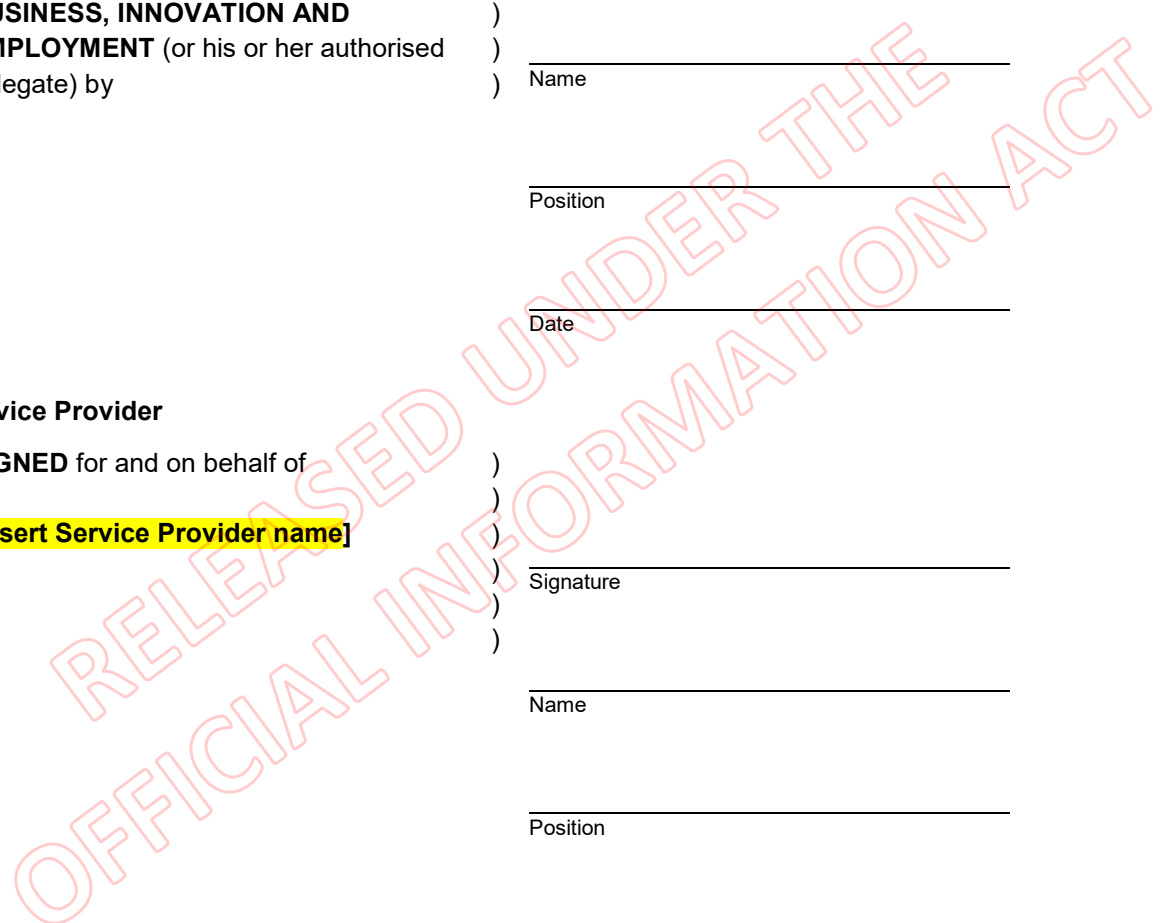
**EXECUTED** as an agreement

**Lead Agency**

**SIGNED** for and on behalf of )  
)  
**THE SOVEREIGN IN RIGHT OF NEW** )  
**ZEALAND** acting by and through the ) Signature \_\_\_\_\_  
Chief Executive of the **MINISTRY OF** )  
**BUSINESS, INNOVATION AND** )  
**EMPLOYMENT** (or his or her authorised )  
delegate) by ) Name \_\_\_\_\_  
  
\_\_\_\_\_  
Position  
  
\_\_\_\_\_  
Date

**Service Provider**

**SIGNED** for and on behalf of )  
)  
**[insert Service Provider name]** )  
) Signature \_\_\_\_\_  
)  
)  
  
\_\_\_\_\_  
Name  
  
\_\_\_\_\_  
Position  
  
\_\_\_\_\_  
Date



# Out of Scope

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**SCHEDULE 2  
SERVICE CATALOGUE**

**1. SERVICES**

1.1 **Services:** The Services that the Service Provider will provide to the Participating Agency include:

- (a) Face-to-face interpreting (in person and on location) services, including consecutive and to the extent offered by the Service Provider; simultaneous; chuchotage; or conference interpreting services.
- (b) Sight translation (e.g. oral translation of written documents) services performed as part of face-to-face interpreting engagements.
- (c) Interpreting personnel for video interpreting, to the extent required to maintain continuity with face-to-face interpreting services. For the avoidance of doubt, the provision of video equipment and software platforms is not included in the scope of Services. The Service Provider acknowledges that the Lead Agency's preferred method for the provision of standalone video interpreting services to Eligible Agencies is the separately established New Zealand Government Video Interpreting Service.
- (d) Managing customer relationships (e.g. coordinating and managing the booking and order system, call centre, invoicing and reporting).
- (e) Managing interpreter availability (e.g. coordinating and managing the booking and order system).

1.2 **Panel Segments:** The Service Provider must provide the Services in respect of the languages, Locations and Specialties set out below:

Language groups	Insert [Community Languages] and/or [Te Reo] and/or [Sign language]
<b>Location</b>	<b>Assigned?</b>
Northland	Insert [Yes] or [No] and define Specialties
Waitemata	
Auckland	
Counties Manukau	
Waikato	
Lakes	
Bay of Plenty	
Tairāwhiti	
Hawke's Bay	
Taranaki	
Whanganui	
MidCentral	
Wairarapa	
Hutt Valley	
Capital and Coast	
Nelson Marlborough	
West Coast	
Canterbury	
South Canterbury	
Southern	

1.3 **Service Levels:** The Service Provider will meet or exceed the following Service Levels:

Description	Service Level
<p><b>Response time:</b> the number of orders within the specified notice period which are accepted (or rejected) within the target service level response timeframe as a percentage of all orders within that notice period.</p> <p><u>"Notice period"</u> means the period of time between the Participating Agency making an order to the Service Provider and the Participating Agency's requested booking start time.</p> <p><u>"Accepted"</u> means that the Service Provider has confirmed that an interpreter is available and has confirmed acceptance of the order to the Participating Agency.</p> <p>"Rejected" means that the Service Provider has no interpreter available and has notified rejection of the order to the Participating Agency.</p>	<p>Orders with a notice period of <u>more than 8 but less than 48 Business Hours</u>: 90% accepted (or rejected) within a response time of <u>4 Business Hours</u>.</p> <p>Orders with a notice period of more than 48 Business Hours but <u>less than 5 Business Days</u>: 90% accepted (or rejected) within a response time of <u>8 Business Hours</u>.</p> <p>Orders with notice period <u>more than 5 Business Days</u>: 90% accepted (or rejected) within a response time of <u>24 Business Hours</u>.</p>
<p><b>Acceptance:</b> Orders accepted as a percentage of orders requested within the reporting period set out in paragraph 2.1, for orders where more than 8 Business Hours' notice was given to the Service Provider.</p>	<p>87% or more</p>
<p><b>Acceptance (Core):</b> Orders accepted as a percentage of orders requested within the reporting period set out in paragraph 2.1, for orders where more than 8 Business Hours' notice was given to the Service Provider, for Core Language orders.</p>	<p>92% or more</p>
<p><b>Fulfilment:</b> Orders fulfilled as a percentage of orders accepted by the Service Provider (excluding orders subsequently cancelled by the Participating Agency) within the reporting period set out in paragraph 2.1.</p>	<p>97% or more</p>
<p><b>NAATI:</b> Orders fulfilled by an interpreter certified under the NAATI certification system, as a percentage of total orders fulfilled within the reporting period set out in paragraph 2.1, for Community Language orders.</p> <p>Note that "Recognised Status" is part of the NAATI certification system. Prior to 1 July 2024, overall uptake and progress towards NAATI certification among the New Zealand-based interpreting community will be taken into account in determining how any failure to meet this service level should be addressed.</p>	<p>To 30 June 2022: 5% or more</p> <p>1 July 2022 to 30 June 2023: 30% or more</p> <p>1 July 2023 to 30 June 2024: 60% or more</p> <p>1 July 2024 onwards: 100%</p>

1.4 A Participating Agency and a Service Provider may agree to higher (but not lower) targets for the above Service Levels, to apply only to that Participating Agency.

## 2. REPORTING

2.1 If requested by such Participating Agency in accordance with the Participating Agency Terms and Conditions, the Service Provider will supply the following reports to a Participating Agency:

- (a) A monthly report showing, for each order requested by the Participating Agency: language; location; Speciality; fulfilled or rejected/not fulfilled; reason for non-fulfilment (if relevant); hours charged during Business Hours; hours charged during non-Business Hours; qualification level of interpreter, dollars charged (excluding GST).
- (b) Performance against the Service Levels, for orders made by the Participating Agency (at the frequency and with the scope determined by Schedule 5 clause 2.3, and only if the number of engagements for the Participating Agency permits the required calculations in whole numbers).

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**3. CHARGES**

3.1 **Charges:** The Service Provider is to invoice the Charges in accordance with the table below:

<b>Booking fees</b>	<b>Amount</b>	<b>Unit</b>	<b>Conditions</b>
[to insert]			
<b>Interpreting rates</b>	<b>Amount</b>	<b>Unit</b>	<b>Conditions</b>
[to insert]			
<b>Extra fees and charges</b>	<b>Amount</b>	<b>Unit</b>	<b>Conditions</b>
[to insert]			
<b>Cancellations</b>	<b>Amount</b>	<b>Unit</b>	<b>Conditions</b>
[to insert]			

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### **SCHEDULE 3 REQUIREMENTS**

#### **1. Changes to Requirements**

1.1 The parties understand that standards for interpreters may be under development by the Lead Agency, industry organisations, academic institutions and advocacy groups. If new standards are issued, the Lead Agency may choose to issue a variation to the Panel to make those standards a Requirement under this Agreement. In the event that the Service Provider did not agree to such a variation, the Lead Agency may decide to terminate this Agreement under clause 21.2.

#### **2. Overarching requirement**

2.1 The Service Provider must assign the most appropriate interpreter it has available for each order, taking into account: the language (including any Community Language), Location, area of Speciality, qualification status (including the level of an interpreter's NAATI certification), availability and cost.

#### **3. Community Languages**

3.1 From 1 July 2024 in the Community Languages group:

- (a) All interpreters must be certified under the NAATI Certification System.
- (b) Provision of Services by personnel not certified under the NAATI certification system (such as language aids, navigators and bilingual staff) is not permitted under this Agreement.

#### **4. Te Reo**

- (a) If a Participating Agency requests that an interpreter for a specific order hold a current certificate of competency from Te Taura Whiri i te Reo Māori, the Māori Language Commission (in accordance with the Māori Language Act 2016), the Service Provider must ensure the interpreter holds such a certificate of competency.

#### **5. Sign Language**

- 5.1 The Service Provider must comply with the New Zealand Sign Language Act 2006.
- 5.2 If a Participating Agency specifies that an order falls into the Legal area of Speciality, the Service Provider must assign a competent interpreter.

#### **6. Feedback**

6.1 After each order is fulfilled, the Service Provider will seek feedback from the Participating Agency. Feedback will be sought in a consistent format to enable reporting of trends to the Lead Agency.

#### **7. Remuneration**

7.1 The Service Provider will appropriately remunerate all interpreters engaged, whether under a contract of service or contract for services, to provide the Services, taking into account typical remuneration rates in the interpreting market at the relevant time. The Service Provider acknowledges that the prevailing remuneration rate in the market may change over time and that it may need to adjust any rates to reflect such changes.

**SCHEDULE 4  
PARENT COMPANY GUARANTEE**

[If not relevant: leave schedule number and title; insert "This Schedule is Intentionally left blank"]

This **Deed of Guarantee** is made

- between** (1) [insert guarantor details] (Guarantor)  
**and** (2) **The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry)**

**Introduction**

- A. The Service Provider is a subsidiary of the Guarantor.  
B. The Ministry has engaged the Service Provider to provide services on the terms of the Lead Agency Agreement (**Agreement**) under the Open Syndicated Panel Agreement for face to face interpreting services dated on or about the date of this deed.  
C. It is a condition of the Agreement that the Guarantor enters into this deed.

**It is declared**

**1. Interpretation**

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**1.1 Definitions**

- (a) Terms used in the Agreement have the same meaning when used in this deed (including the Introduction) and this deed will be interpreted in accordance with clause 1.1 of the Agreement unless the context otherwise requires.
- (b) In addition, unless the context otherwise requires:
- an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that document as amended, assigned, novated or substituted from time to time;
- costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;
- dissolution** of a person includes the bankruptcy of that person or, where that person is a company, its liquidation, administration, deed of company arrangement, creditors' compromise, scheme of arrangement or removal from the register, and also includes any equivalent or analogous procedure under the law of any relevant jurisdiction;
- Guaranteed Obligations** means all of the Service Provider's performance obligations and payment obligations under the Agreement and all Participating Agency Agreements;
- indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment of repayment of money, whether present or future, actual or contingent;
- a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);
- security** includes a guarantee or indemnity, a security interest, any interest in land of a security nature, a lien or a pledge;

a **subsidiary** of a person includes a subsidiary as defined in section 5 of the New Zealand Companies Act 1993;

**tax** includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government, governmental agency or authority, together with any interests, penalty, charge, fee or other amount imposed or made on, or in relation to, any of the foregoing.

## 2. **Guarantee and indemnity**

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### 2.1 **Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Ministry and to each Participating Agency due performance and payment by the Service Provider of the Guaranteed Obligations subject to the terms of the Agreement or the relevant Participating Agency Agreement, as applicable.

### 2.2 **Payment**

The Guarantor undertakes to the Ministry and to each Participating Agency that if, for any reason, the Service Provider does not pay when due any indebtedness under the Agreement or a Participating Agency Agreement, it will pay the relevant amount to the Ministry or the relevant Participating Agency, as applicable, immediately on demand (whether or not demand for payment has been made on the Service Provider, Guarantor or any other person).

### 2.3 **Unenforceability of Guaranteed Obligations**

As a separate and continuing undertaking, and subject to the terms of the Agreement or Participating Agency Agreement, as applicable, the Guarantor unconditionally and irrevocably undertakes to the Ministry and to each Participating Agency that, should the Guaranteed Obligations not be enforceable against or recoverable from the Service Provider for any reason, including a provision of the Agreement or the relevant Participating Agency Agreement, or an obligation of the Service Provider to pay any indebtedness or do anything, being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to the Ministry or the relevant Participating Agency and whether or not that reason is:

- (a) a defect in or lack of powers of the Service Provider or the irregular exercise of those powers; or
- (b) a defect in or lack of authority by a person purporting to act on behalf of the Service Provider; or
- (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of the Service Provider; or
- (d) a liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Service Provider (or the commencement of steps to effect the same),

it will, as a sole and independent obligation, pay to the Ministry or the relevant Participating Agency on demand any amount that would otherwise have been recoverable from the Service Provider (on a full indemnity basis).

- 2.4 **No prejudice:** The Ministry's and each Participating Agency's rights under this deed are without prejudice and in addition to any other right to which the Ministry or the Participating Agency is at any time entitled (whether under this deed or by law, contract or otherwise), and

may be exercised by the Ministry or the Participating Agency without prior notice to the Guarantor, the Service Provider or any other person.

### **3. Nature of guarantee and indemnity obligations**

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#### **3.1 Liability as sole principal obligor**

As between the Guarantor and the Ministry and each Participating Agency (but without affecting the rights or obligations of the Service Provider) the Guarantor is liable under this deed in relation to the Guaranteed Obligations as a sole and principal obligor and not merely as a surety.

#### **3.2 No discharge**

The Guarantor is not discharged, nor are its obligations under this deed affected, by:

- (a) any time, indulgence, waiver or consent at any time given to the Service Provider, the Guarantor or another person;
- (b) anything done or omitted to be done by the Ministry or a Participating Agency in the exercise or non-exercise of its right and powers;
- (c) an amendment (however fundamental) to, or replacement of, the Agreement or a Participating Agency Agreement (whether or not that amendment increases the liability of the Service Provider or the Guarantor);
- (d) the Service Provider or the Guarantor or other person being incompetent to enter the Agreement or a Participating Agency Agreement, or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provisions of this deed, the Agreement or a Participating Agency Agreement;
- (e) any release, discharge, compromise, or other arrangement given to or made with the Service Provider, the Guarantor or any other person;
- (f) any clause in the Agreement or a Participating Agency Agreement or any other security, guarantee, indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part);
- (g) the dissolution of the Service Provider, any change in the status, function, control or ownership of the Service Provider, or any consolidation, merger or conveyance of the Service Provider; or
- (h) any other circumstance which might otherwise constitute a legal or equitable discharge of or a defence to a surety, and the Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against the Service Provider.

The Ministry and each Participating Agency are not liable to the Guarantor in respect of any of these matters, even though the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

#### **3.3 Continuing guarantee**

This deed and each of the Guarantor's obligations under this deed:

- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else;
- (b) is in addition to, and not to be merged in, any other document; and
- (c) is to remain in full force and effect until the date of expiry of the two year period following the effective date of expiry or termination of the Agreement and each Participating Agency Agreement, as applicable.

#### 4. **No competition**

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The Guarantor will not, without the written consent of the Ministry:

- (a) take, accept or hold a security interest from the Service Provider, or from another person, in relation to the Guaranteed Obligations;
- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, indebtedness of the Service Provider to the Guarantor in relation to the Guaranteed Obligations; or
- (c) claim, prove or accept payment in composition by, or a liquidation of, the Service Provider in relation to the Guaranteed Obligations,

and, until such time as the Guaranteed Obligations have been fully satisfied, the Guarantor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of the Guarantor's obligations under this deed. If, notwithstanding this clause, the Guarantor holds or receives any such security interest, money or property, the Guarantor is to pay or transfer it to the Ministry or the relevant Participating Agency immediately and, pending that payment or transfer, will hold it on trust for the Ministry or the relevant Participating Agency.

#### 5. **Representations**

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The Guarantor represents that:

- (a) it is duly incorporated, has full power and authority to enter into and comply with its obligations under this deed and has taken all corporate and other action and obtained all consents and other authorisations needed to enable it to do so;
- (b) its obligations under this deed are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;
- (c) all information provided by it to the Ministry in connection with this deed was true in all material respects as at the date when that information was provided and remains so at the date of this deed; and
- (d) there are no facts or circumstances that have not been disclosed to the Ministry that would make that information untrue or misleading in any material respect.

Each of these representations will be deemed to be repeated continuously so long as this deed remains in effect by reference to the facts and circumstances then existing.

#### 6. **Undertakings**

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The Guarantor undertakes that it will:

- (a) ensure that the Service Provider has sufficient resources and funding to enable it to perform all of the Guaranteed Obligations;
- (b) do all things necessary to maintain its corporate existence;
- (c) maintain in full effect all consents and authorisations required to enable it to comply with its obligations under this deed;
- (d) ensure that all information provided to the Ministry or a Participating Agency in connection with this deed after the date of this deed is true in all material respects as at the date that information is provided; and

- (e) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect.

## 7. Indemnity

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### 7.1 General indemnity

Subject to any mandatory Law, the Guarantor will indemnify the Ministry and each Participating Agency against:

- (a) all claims, liabilities, damages, losses and payments; and
- (b) all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by the Ministry or the relevant Participating Agency as a result (whether direct or indirect) of a breach by the Service Provider of any Guaranteed Obligation, by payment by the Guarantor to the Ministry or the relevant Participating Agency on demand of the amount and in the currency that the Ministry or Participating Agency certifies is required to compensate it for that cost.

### 7.2 Indemnity irrevocable

The above indemnity is unconditional, irrevocable and is not to be discharged or impaired by any act, omission, matter or thing that might discharge or impair it but for this clause.

## 8. Payments

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### 8.1 Payments to be free and clear

Each payment by the Guarantor to the Ministry or a Participating Agency under this deed is to be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by Law) without any deduction or withholding for or on account of tax or on another account, whether by way of set-off, counterclaim or otherwise.

**8.2 Cleared funds:** Any payment received by the Ministry or a Participating Agency will not satisfy the Guarantor's obligation to pay such amount until it is cleared and immediately available to the Ministry or the Participating Agency.

### 8.3 Reinstatement

If a payment made by the Guarantor to the Ministry or a Participating Agency pursuant to this deed is avoided by Law:

- (a) that payment will be deemed not to have discharged or affected the relevant obligation of the Guarantor; and
- (b) the Ministry or the Participating Agency, as applicable, and the Guarantor will be deemed to be restored to the position in which each would have been if that payment had not been made.

## 9. General provisions

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### 9.1 Assignment

- (a) This deed is binding upon and endures for the benefit of the Guarantor, the Ministry and each Participating Agency and their respective successors and permitted assignees or transferees. The Guarantor acknowledges that this deed confers a benefit on, and is

enforceable by, Participating Agencies in accordance with Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

- (b) The Ministry and each Participating Agency may assign or transfer any of their rights or obligations under this deed without the consent of the Guarantor. Each assignee or transferee is to have the same rights against the Guarantor under this deed as if named in this deed as the Ministry.
- (c) The Guarantor may not assign or transfer any of its rights or obligations under this deed without the prior written consent of the Ministry.

## 9.2 Confidentiality

The Ministry and each Participating Agency may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this deed are contemplated, this deed and any other information about the Guarantor or the Service Provider whether or not that information was obtained in confidence and whether or not that information is publicly available.

## 9.3 Notices

- (a) Each notice or other communication under this deed is to be made in writing and delivered personally or sent by post or email to the address of the relevant party set out below, or from time to time designated for that purpose by at least five Business Days' prior notice to the other party, marked for the attention of the relevant person or office holder (if any).
- (b) The initial postal address, personal delivery, email address and relevant person or office holder of each party is set out below (this contact information may be amended by written notice to the other party):

### Guarantor

Addressee for notices: [insert]  
Postal address: [insert]  
Physical address: [insert]  
Email address: [insert]

### Ministry

Addressee for notices: Fiona Whiteridge  
Postal address: PO Box 1473, Wellington, New Zealand 6140  
Physical address: 15 Stout Street, Wellington, New Zealand 6140  
Email address: Fiona.Whiteridge@mbie.govt.nz  
Copied to: Adam Wood, Manager Legal Services (Commercial)  
Postal address: PO Box 1473, Wellington, New Zealand 6140  
Physical address: 15 Stout Street, Wellington, New Zealand 6140  
Email address: WgtnLegal@mbie.govt.nz

- (c) A notice under this deed is deemed to be received if:
  - (i) **Delivery:** delivered personally, when delivered;
  - (ii) **Post:** posted, 5 Business Days after posting or, in the case of international post, on the 7 Business Days after posting; and
  - (iii) **Email:** sent by email:
    - (A) if sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or

(B) if subclause (A) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

**9.4 Exercise of rights and waivers**

Time is of the essence in respect of all dates and times for compliance by the Guarantor with the Guarantor's obligations under this deed. However, no failure to exercise, and no delay in exercising, a right of the Ministry or a Participating Agency under this deed will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Ministry or a Participating Agency of its rights under this deed is effective unless it is in writing signed by the Ministry or the relevant Participating Agency.

**9.5 Remedies cumulative**

The rights of the Ministry and each Participating Agency under this deed are cumulative and not exclusive of any rights provided by Law.

**9.6 Partial invalidity**

The illegality, invalidity or unenforceability of a provision of this deed under any Law will not affect the legality, validity or enforceability of that provision under another Law or the legality, validity or enforceability of another provision.

**9.7 Delivery**

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by the Guarantor immediately on the earlier of:

- (a) physical delivery of an original of this deed, executed by the Guarantor, into the custody of the Ministry or the Ministry's solicitors; or
- (b) transmission by the Guarantor or its solicitors (or any other person authorised in writing by the Guarantor) of a photocopied or scanned copy of an original of this deed, executed by the Guarantor, to the Ministry or the Ministry's solicitors.

**9.8 Amendments**

No amendment to this deed is effective unless it is in writing and signed by an authorised representative of the Guarantor and the Ministry. Amendments may be entered into by the Guarantor and the Ministry without the consent of a Participating Agency.

**9.9 Governing law**

This deed is governed by and is to be construed in accordance with New Zealand Law. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this deed.

Execution:

**Signed** as a deed

**SIGNED** by [full name of Guarantor]

by

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\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**SCHEDULE 5  
GOVERNANCE AND REPORTING**

This Schedule sets out:

- A. the governance structures;
- B. relationship management procedures; and
- C. the reports that the Service Provider must provide.

**1. GOVERNANCE STRUCTURES**

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- 1.1 **Appoint Representative:** The Service Provider and the Lead Agency will appoint and maintain during the Term a suitably qualified and experienced person as relationship manager (**Representative**). The Service Provider may have more than one Representative. The Lead Agency may appoint one or more representatives from Participating Agencies, permit such representatives to attend governance meetings and share information with such representatives.
- 1.2 **Primary point of contact:** The Service Provider's Representative(s) will serve as the primary point of contact with the Lead Agency's Representative, and will have overall responsibility for managing and co-ordinating the performance of the Service Provider's obligations under this Lead Agency Agreement.
- 1.3 **Role of Service Provider's Representative:** The functions and duties of each Service Provider's Representative include:
  - (b) ensuring that the Services and Deliverables are provided to the standards required and the Service Provider's other obligations are performed in accordance with the terms of the Lead Agency Agreement;
  - (c) managing reports and other information flows required under this Lead Agency Agreement;
  - (d) ensuring that monitoring procedures for the Service Levels are in place, are robust and are adhered to;
  - (e) liaising with the Lead Agency's Representative and other Lead Agency personnel, both formally and informally, to facilitate the performance of the Service Provider's obligations in accordance with the terms of the Lead Agency Agreement; and
  - (f) managing any dispute or potential dispute in accordance with the escalation procedure set out in the Lead Agency Agreement.
- 1.4 **Lead Representative:** Where a Service Provider has more than one Representative, it shall designate one as the Lead Representative and shall advise the Lead Agency of whom it has so designated.

**2. RELATIONSHIP MANAGEMENT**

**2.1 Procedures:**

- (a) Any issues or disputes must be managed by the Participating Agency and the Service Provider in the first instance.
- (b) If unable to be resolved, the issue is to be notified to the Lead Agency's Representative.
- (c) If unable to be resolved, the issue is to be escalated in accordance with clause 18.3.

- (d) Regular meetings will occur at approximately 3-monthly intervals, unless agreed otherwise by the Representative and the Service Provider's Representative.
- (e) Regular meetings will focus on key issues arising from monthly reports, and any issues and their resolution.

2.2 **Ad hoc meetings:** Either party may, by two Business Days' written notice to the other party, convene a meeting (in person or by teleconference) to discuss one or more Service Level defaults or any urgent or material issue relating to the performance of the Service Provider's obligations under the Lead Agency Agreement. For each such meeting:

- (a) the agenda will be prepared by the party giving notice of the meeting, and sent with that notice;
- (b) the Lead Agency may invite any Eligible Agency or Participating Agency to attend (in person or by teleconference), provided the Lead Agency gives the Service Provider reasonable notice of any such attendance prior to the meeting;
- (c) the Lead Representative is to participate; and
- (d) the Lead Agency will record the minutes (and will send a copy of those minutes to the Service Provider promptly following the meeting, for the Service Provider's review).

2.3 **Reporting:** The Service Provider will provide the following reports (or a reduced scope of reports if agreed in writing by the Lead Agency), monthly (or at a lesser frequency if agreed in writing by the Lead Agency):

- (a) Order data - for each order requested by any Participating Agency:
  - (i) the name of the Participating Agency;
  - (ii) language;
  - (iii) location;
  - (iv) notice period (time difference between request and requested order date and time);
  - (v) response time (time difference between request, confirmation or rejection);
  - (vi) fulfilled, rejected by the Service Provider, cancelled by Participating Agency or not fulfilled;
  - (vii) hours charged during Business Hours;
  - (viii) hours charged during non- Business Hours;
  - (ix) certification/qualification level of interpreter (including Speciality if relevant); and
  - (x) the dollars charged (excluding GST).
- (b) Performance against the Service Levels aggregated across all Participating Agencies.
- (c) Commentary or reports on interpreters' professional development, e.g. progress towards obtaining a NAATI certification.
- (d) For interpreters certified under the NAATI certification system, for each month in the reporting period:
  - (i) the lowest hourly remuneration paid to any such interpreter; and
  - (ii) if data is available, the average remuneration paid to these interpreters.

- (e) Commentary or reports on resourcing of interpreters, including the number of interpreters for each language in the Service Provider's pool, and commentary on issues such as whether languages have grown or reduced in capacity or capability and efforts to recruit or source languages that have insufficient resourcing.
- (f) A summary of feedback received from Participating Agencies, including (where permitted) a list of each complaint received.
- (g) A summary of feedback received from the Service Provider's pool of interpreters.

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**ANNEXURE A**  
**CHANGE CONTROL PROCESS**

1. **Request for Change Control:** The party that wants to initiate a Change Control will describe the details of the proposed Change Control in a notice to the other party (**Change Control Request**).
2. **Impact Report:** The Service Provider will, at its cost and within a reasonable period of time from its receipt or delivery of the Change Control Request (but in any event not more than 20 Business Days), prepare, and give by notice, an impact report (**Impact Report**) detailing an explanation of the proposed Change Control, including how the proposed Change Control is to be implemented and, to the extent relevant, detailing:
  - (a) the feasibility of the proposed Change Control;
  - (b) the likely time required to implement the Change Control;
  - (c) the effect of the proposed Change Control on the ability of the Service Provider to meet its obligations under the Lead Agency Agreement;
  - (d) any cost implication for either party in relation to the proposed Change Control;
  - (e) any consequential material impacts of the proposed Change Control;
  - (f) where appropriate, suggested acceptance testing procedures and acceptance criteria for the proposed Change Control; and
  - (g) all other information which is likely to be material to the Lead Agency.
3. **Notify:** The Lead Agency will, within a reasonable period of time from receipt of the relevant Impact Report, notify the Service Provider of its decision in respect of a Change Control Request including whether it:
  - (a) accepts the Change Control Request;
  - (b) wishes to renegotiate any aspect of the Change Control Request;
  - (c) withdraws the Change Control Request, if initiated by the Lead Agency; or
  - (d) does not accept the Change Control Request, if initiated by the Service Provider.
4. **Pricing:** The following pricing principles will apply in respect of any Change Control:
  - (a) the Service Provider will only charge for a Change Control to the extent the Change Control cannot reasonably be considered already within the scope of the Lead Agency Agreement (including within the scope of any Services or Additional Services);
  - (b) if the Change Control is a reduction in the scope of the Lead Agency Agreement or should otherwise result in a reduction of the Charges, then the parties will use genuine efforts to agree a reasonable reduction in the Charges to reflect the impact of the Change Control (for example, a pro-rata reduction in the Charges commensurate with the reduction in the scope of the Lead Agency Agreement). If the parties cannot reach an agreement on the appropriate reduction of the Charges, then the dispute resolution process set out in the Lead Agency Agreement will apply;
  - (c) if there is an increased cost impact of the Change Control then the parties will use genuine efforts to agree a reasonable price for the Change Control (taking into account the nature and extent of the Change Control) in accordance with the rest of this paragraph 4;
  - (d) the pricing for any Change Control will be:
    - (i) reasonable;
    - (ii) competitive; and
    - (iii) no higher than the lowest of:

- A. pricing the Service Provider offers its most preferred New Zealand customers for products or services the same or similar to the products or services proposed to be provided to the Lead Agency as part of the Change Control;
  - B. the price at which the Lead Agency would be able to procure similar products or services from another service provider;
  - C. any agreed rates for Services; and
- (e) if requested by the Lead Agency, the Service Provider will obtain and provide a certificate from an auditor confirming that any pricing of a Change Control complies with the requirements of this paragraph 4.
- 5. Not unreasonably refuse Change Control:** The Service Provider will not unreasonably refuse (directly or indirectly) any Change Control submitted by the Lead Agency. **Unreasonably refusing** a Change Control includes:
- (a) demanding unreasonable Charges for the Change Control;
  - (b) imposing unreasonable conditions for undertaking the Change Control; or
  - (c) refusing to include the Change Control under the Lead Agency Agreement despite the subject matter of the Change Control being reasonably related to or connected with the Services.
- 6. Agreement required:** The Service Provider will not undertake any Change Control unless the Lead Agency and the Service Provider agree the details of the Change Control in writing in accordance with this Annexure A (which agreement will not be unreasonably withheld). Any agreed Change Control will be formalised by the parties as an express variation to the Lead Agency Agreement.
- 7. Amendments required by Law:** If there is a change in any Law affecting the operation of the Lead Agency Agreement or impacting on the benefit and burdens to the Lead Agency arising from the Lead Agency Agreement, the Lead Agency may, on notice, require the Service Provider to amend the Lead Agency Agreement so as to preserve the benefit and manage the burden to the Lead Agency under the Lead Agency Agreement, provided that:
- (a) subject to paragraph 4(d) above, the Service Provider may revise the Charges to reasonably reflect the extent to which such amendments impact on the cost to the Service Provider of delivering the Services; and
  - (b) if any proposed increases to the Charges under paragraph 4(d) are unacceptable to Lead Agency (in its sole discretion), the Lead Agency may terminate the Lead Agency Agreement in whole or in part on not less than 90 Business Days' written notice.
- 8. No obligation:** The Lead Agency will not be bound to accept or pay for any unauthorised Change Control or any unauthorised amendments to the Lead Agency Agreement or the scope of the Services carried out by the Service Provider.
- 9. Truncated process:** Where:
- (a) the Change Control requested is relatively minor (in terms of cost and impact) and is fairly routine; or
  - (b) if agreed by the parties (agreement not to be unreasonably withheld),
- a truncated Change Control Process (acceptable to the Lead Agency) may be adopted to deal with any particular Change Control Request.

**SCHEDULE 6  
PARTICIPATING AGENCY TERMS AND CONDITIONS**

**PARTICIPATING AGENCY TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions:** In this Participating Agency Agreement, unless the context requires otherwise:

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

**Business Hours** means the hours between 9AM to 5PM on Business Days;

**Charges** means the charges set out in the Service Catalogue;

**Commencement Date** has the meaning given at clause 4.1;

**Confidential Information** means the provisions of this Participating Agency Agreement and all other information of a confidential nature (reasonably determined) obtained by one party from the other party under or in connection with this Participating Agency Agreement;

**Control** means, in relation to a person (the **first person**), the ability of another person (the **second person**) to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second 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 rights in a body corporate is deemed to constitute Control;

**Core Language** means any of the following languages: Mandarin, Spanish, Samoan, Arabic, Korean, Hindi, Cantonese, Tongan, Persian (Farsi), Punjabi, Dari, Burmese, Japanese, Vietnamese, Thai, Portuguese, Russian, Filipino (Tagalog), French, Cambodian (Khmer);

**Crown** means the Sovereign in right of New Zealand, including all:

- (a) ministers of the Crown;
- (b) government departments;
- (c) offices of Parliament;
- (d) Crown entities as defined in the Crown Entities Act 2004; and
- (e) state enterprises as defined in the State-Owned Enterprises Act 1986;

**Disengagement Services** means all services reasonably required by the Participating Agency to ensure a smooth and orderly end to this Participating Agency Agreement, which may include transition of the Services to the Participating Agency and one or more alternative service provider(s), including the services described in clause 20.3;

**Documentation** means any document (including reports) which the Service Provider must prepare or provide to the Participating Agency in accordance with this Participating Agency Agreement and any other documentation reasonably required by the Participating Agency to enable the Participating Agency to use and obtain the full intended benefit of the Services;

**Eligible Agency** means:

- (a) each Public Service department, as defined in section 5 of the Public Service Act 2020;
- (b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, 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, but excluding the Auckland District Health Board;
- (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;
- (i) any other organisation, agency or collection of persons that does not fall within the above categories but which the Lead Agency and the Procurement Functional Lead determines should be treated as an eligible agency for the purposes of this Participating Agency Agreement;

**Existing Material** means all documentation, software and other materials used or provided by a party under or in connection with this Participating Agency Agreement that are:

- (a) owned by, or licensed to, that party prior to the Commencement Date; or
- (b) developed independently from this Participating Agency Agreement by that party, and that are not developed, commissioned or created under or in connection with this Participating Agency Agreement;

**Expiry Date** means 31 August 2024;

**Force Majeure Event** means, in relation to either party (**Affected Party**), an event or circumstance which:

- (a) prevents the Affected Party from performing the whole or part of its obligations under this Participating Agency Agreement;
- (b) is beyond the reasonable control of the Affected Party (including acts of God, acts of public enemy, or declared or undeclared war or threat of war, a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party) and not arising from that Affected Party's fault or insolvency; and
- (c) could not have been avoided by the Affected Party taking reasonable precautions (including the Affected Party's exercise of business continuity or other practices in accordance with best practice in New Zealand, or taking reasonable precautions in respect of known events including COVID-19), or

overcome by the Affected Party taking reasonable steps to remedy or mitigate the event or circumstance,

but will not include lock-outs, strikes or any other form of industrial dispute or any other form of delay caused by contractual or labour relations between the Service Provider and any of its employees, agents, subcontractors or suppliers, or inability to perform due to lack of funds;

**GST** means goods and services tax chargeable, or to which a person may be liable, under the GST Act at the rate prevailing from time to time, including any tax levied in substitution for that tax;

**GST Act** means the Goods and Services Tax Act 1985;

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on most or all of its business or operations;
- (b) an application is made or proceedings are issued for a court order and in either case not withdrawn, stayed or dismissed within 10 Business Days, or an order is made, or an effective resolution is passed, or any action of a similar nature is taken, for the dissolution or reorganisation of that party, except for the purpose of a solvent reconstruction, merger or voluntary liquidation previously approved in writing by the other party (such approval not to be unreasonably withheld);
- (c) that party has any of its assets subject to any form of seizure by a creditor;
- (d) that party makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors;
- (e) an encumbrancer, receiver, administrator, liquidator, trustee or statutory manager or similar insolvency administrator takes possession of, or is appointed in respect of, the whole or a substantial part of the assets or undertaking of that party;
- (f) that party becomes insolvent (or is deemed or presumed to be so under any applicable Law); or
- (g) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (f) above happens under the Law of any applicable jurisdiction in respect of that party;

**Intellectual Property Rights** means all industrial and intellectual property rights whether conferred under statute, common law or equity, including all copyright, rights in relation to inventions (including patents and patent applications), trade marks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other industrial and intellectual proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**IP Claim** has the meaning given to that term in clause 15.7(a);

**Law** includes any rules of common law, statute, regulation, bylaw or other secondary legislation in force from time to time;

**Lead Agency** means the Ministry of Business, Innovation and Employment;

**Lead Agency Agreement** means the agreement between the Lead Agency and the Service Provider;

**NAATI** means the Australian National Accreditation Authority for Translations and Interpreters;

**OIA** means the Official Information Act 1982;

**Ordering Process** means the process set out in clause 5.2, under which the Participating Agency can request to receive Services from the Service Provider;

**Panel** means the appointed panel of suppliers from which Participating Agencies may request certain services or deliverables, as such panel may be amended from time to time;

**Participating Agency** means an Eligible Agency that has entered into a Participating Agency Agreement;

**Participating Agency Agreement** means the agreement between the Participating Agency and the Service Provider as defined in clause 3.2;

**Participating Agency Property** means equipment, tools or other property, including intangible property, owned or leased by the Participating Agency;

**Participating Agency Sites** means the sites specified by the Participating Agency from time to time at which the Service Provider will provide the Services;

**Participating Agency Requirements** means a Participating Agency's additional requirements, if any, for the Documentation and Services as agreed in writing by the Participating Agency and the Service Provider. This may include, for example, more comprehensive reporting, or specific procedures to be followed by the Service Provider or its Personnel;

**Personal Information** has the meaning given in the Privacy Act 2020;

**Personnel** means any employee, agent or representative of the Service Provider, or of any subcontractor (of any tier) of the Service Provider, who provides any part of any Service;

**Records** means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech or data compiled, recorded or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer, or other electronic device or process;

**Services** means:

- (a) the services described in this Participating Agency Agreement, including the services described in the Service Catalogue; and
- (b) all services reasonably incidental to, or required for the proper performance of, the services described in (a); and
- (c) all other services agreed in the Participating Agency Requirements from time to time;

**Service Catalogue** means the catalogue setting out the Services to be provided by the Service Provider, including the Panel segments to which the Service Provider is



appointed, as published by the Lead Agency from time to time;

**Service Levels** means the standards of service specified in this Participating Agency Agreement, including the service levels specified in the Service Catalogue;

**Service Provider** means a supplier on the Panel to which the Participating Agency has submitted an order, and such order has been accepted by the relevant supplier, forming a Participating Agency Agreement in accordance with clause 3.1;

**Term** means the term of this Participating Agency Agreement as described in clause 4;

**Terms and Conditions** means these terms and conditions; and

**Interpretation:** In this Participating Agency Agreement, unless the context requires otherwise:

- (a) references to clauses are to clauses of this Participating Agency Agreement;
- (b) derivations of any defined word or term will have a corresponding meaning;
- (c) the headings to clauses are inserted for convenience only and will be ignored in interpreting this Participating Agency Agreement;
- (d) the word including and other similar words do not imply any limitation;
- (e) a reference to a party includes its personal representatives, successors and permitted assigns;
- (f) a person includes any individual, company, corporation, firm, partnership, trust, unincorporated body of persons or Eligible Agency;
- (g) a reference to a statute includes all regulations and other subordinate legislation made under that statute. A reference to any legislation (including subordinate legislation) includes that legislation as amended or replaced from time to time;
- (h) the contra proferentem rule will not apply in the interpretation of this Participating Agency Agreement;
- (i) a document (however described and including this Participating Agency Agreement) includes that document as amended or replaced from time to time;
- (j) an obligation not to unreasonably withhold agreement, consent or approval (or any similar obligation) includes an obligation not to unreasonably impose conditions on or delay such agreement, consent or approval (or other similar obligation);
- (k) any obligation falling due for performance on or by a day other than a Business Day will be performed on or by the Business Day immediately following that day; and
- (l) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

## 2. GUARANTEE

2.1 **Guarantee:** If requested by the Participating Agency, and the Service Provider has provided a

guarantee under the Lead Agency Agreement, the Service Provider will provide the following documents on or before the date falling 5 Business Days from the Participating Agency's request:

- (a) a deed of guarantee in the form set out in Schedule 4 of the Lead Agency Agreement (or such other form agreed by the Lead Agency), duly executed by the person listed as the guarantor in the Lead Agency Agreement (**Guarantor**); and
- (b) a legal opinion by major law firms acceptable to the Lead Agency (acting reasonably) based in each country of incorporation of the Guarantor and New Zealand opining (subject to standard qualifications) that the deed of guarantee is enforceable on its terms against the Guarantor in such country of incorporation of the Guarantor.

2.2 **Condition:** Notwithstanding any other provision of this Participating Agency Agreement, receipt by the Lead Agency of the documents referred to in clause 2.1 is a condition precedent to the Service Provider's entitlement to any payment under this Participating Agency Agreement. This condition is for the benefit of the Lead Agency and each Participating Agency, and the Lead Agency or Participating Agency, as applicable, may waive this condition at its discretion by notice to the Service Provider. If this condition has not been fulfilled or waived within 20 Business Days of the date this Participating Agency Agreement is last signed by the parties, or such later date as may be agreed in writing by the Lead Agency and the Service Provider or the Participating Agency and the Service Provider (as applicable), then without limiting the Lead Agency's or Participating Agency's other rights or remedies:

- (a) the Lead Agency or Participating Agency may terminate this Participating Agency Agreement; and
- (b) the Service Provider will not be entitled to any compensation as a consequence of such termination.

## 3. APPOINTMENT

3.1 **Appointment:** An Eligible Agency must execute these Terms and Conditions in respect of all service providers on the Panel only once. Following execution of these Terms and Conditions:

- (a) the Lead Agency may publish the Eligible Agency's name in a list of Participating Agencies; and
- (b) the Eligible Agency may submit an order for Services to any service provider on the Panel.

Upon the relevant service provider's acceptance of the order, a Participating Agency Agreement is formed between the Eligible Agency and the Service Provider and the Service Provider agrees to provide the Services to the Participating Agency on the terms and conditions of this Participating Agency Agreement.

- 3.2 **Agreement:** The Participating Agency Agreement comprises the following documents in descending order of precedence:
- (a) these Terms and Conditions;
  - (b) the Participating Agency Requirements, if any;
  - (c) the Service Catalogue; and
  - (d) each order for Services made in accordance with clause 5.
- 3.3 **Non-exclusive appointment:** The parties agree that:
- (a) although the parties acknowledge that the Panel is intended to provide the primary framework through which Participating Agencies will acquire Services, the Service Provider's appointment under this Participating Agency Agreement is non-exclusive; and
  - (b) the Participating Agency may appoint third parties to provide services similar to or the same as the Services at any time (whether or not those third parties are Panel members) or may provide them itself.
- 3.4 **No minimum level of business:** The Participating Agency does not guarantee any minimum level of business or revenue by entering into this Participating Agency Agreement.
- 3.5 **Reliance:** The Service Provider acknowledges that the Participating Agency is relying on the Service Provider's specialist skills, knowledge, experience and expertise in entering into this Participating Agency Agreement.
- 3.6 **Separate agreements:** The Lead Agency Agreement and each Participating Agency Agreement are separate agreements.
- 3.7 **Participating Agency action:** Where a Participating Agency may, or is required to, provide any information, give a notification, make a request or take any action under its Participating Agency Agreement, either the Lead Agency or the Participating Agency may provide that information, give the notification, make the request or take that action.
- 3.8 **Reliance on notice:** Notwithstanding clause 3.7, the Service Provider is entitled to rely on the notification, request or action first received by the Service Provider in respect of a Participating Agency Agreement (whether that comes from the Lead Agency or the relevant Participating Agency). When the Service Provider receives such initial notification, request or action from either the Lead Agency or the relevant Participating Agency, the Service Provider is under no obligation to seek confirmation of agreement from the other respective party. To avoid doubt, the Service Provider will not be in breach of the Participating Agency Agreement by relying upon such initial notification, request or action and/or by acting upon it.
- 3.9 **Recovery on behalf:** Either the Lead Agency or the Participating Agency may enforce any obligation owed to a Participating Agency by the Service Provider under a Participating Agency

Agreement, including by bringing an action against the Service Provider. Any recovery by the Lead Agency under a Participating Agency Agreement will be deemed to be on account of the right of the relevant Participating Agency and subject to the Service Provider's maximum liability to the Participating Agency under clause 16.1.

#### 4. TERM

4.1 **Term:** This Participating Agency Agreement commences on the date the Service Provider accepts the Participating Agency's first order in accordance with clause 3.1 (**Commencement Date**) and, unless terminated earlier in accordance with its terms, will continue in full force and effect until the Expiry Date.

4.2 **Renewal:** If the Lead Agency renews the Lead Agency Agreement, all Participating Agency Agreements in force at the effective date of such renewal shall renew for the same period as the Lead Agency Agreement unless the Lead Agency and the Service Provider agree otherwise. The Service Provider must notify each Participating Agency of renewal or expiry promptly following such renewal or expiry.

#### 5. REQUESTS FOR SERVICES

5.1 **Participating Agency request:** From time to time the Participating Agency may, in accordance with the Ordering Process, request Services from the Service Provider.

5.2 **Ordering Process:** The Participating Agency will (acting reasonably) specify the manner in which orders for Services may be placed (eg by telephone, email or using a particular ordering system). The Service Provider will promptly confirm all orders to the Participating Agency in writing.

5.3 **Participating Agency Requirements:** The Participating Agency and the Service Provider may agree specific additional Participating Agency Requirements that will apply to a particular order, or to all future orders between the Participating Agency and the Service Provider. This may be done as part of the Ordering Process, or separately. Participating Agency Requirements must not be inconsistent with the terms of the Lead Agency Agreement.

5.4 **Reporting on Services:**

(a) If requested by the Participating Agency, the Service Provider shall supply the reports set out in the Service Catalogue to the Participating Agency.

(b) If the Participating Agency requires additional or different reports, the Participating Agency and the Service Provider may agree such reports as Participating Agency Requirements (such agreement not to be unreasonably withheld by the Service Provider).

#### 6. SERVICE PROVIDER'S OBLIGATIONS

6.1 **Performance:** In providing the Services and Documentation and complying with its other obligations under this Participating Agency Agreement, the Service Provider must:

- (a) provide all personnel, processes and resources required to perform the Services and supply the Documentation;
- (b) comply with all reasonable directions given by the Participating Agency from time to time;
- (c) comply with the Supplier Code of Integrity and Conduct issued by the Procurement Functional Lead (available at [www.procurement.govt.nz](http://www.procurement.govt.nz)) and all Participating Agency policies and procedures notified in writing to the Service Provider from time to time;
- (d) comply with all its obligations under Law and maintain all licences, approvals, consents and permits required in order to provide the Services and Documentation and otherwise to perform its other obligations under this Participating Agency Agreement;
- (e) provide the Documentation and Services in accordance with the Participating Agency Requirements;
- (f) provide, at its own cost, all equipment, tools, materials and other resources necessary for the provision of the Services and Documentation;
- (g) take full responsibility for the performance of all tasks and activities necessary to provide the Services and Documentation in accordance with this Participating Agency Agreement, other than tasks or activities specifically identified as being out of scope;
- (h) work co-operatively and collaboratively in good faith with the Participating Agency and all other contractors and service providers to the Participating Agency to ensure the Services and all products and services related to them are delivered to the Participating Agency efficiently and seamlessly;
- (i) not damage or adversely affect the property, operations, reputation or goodwill of the Participating Agency;
- (j) promptly notify the Participating Agency in writing of:
- (i) any breach of the Service Provider's obligations under this Participating Agency Agreement; and
- (ii) any matter that may impact on the Service Provider's ability to perform its obligations in accordance with this Participating Agency Agreement; and
- (k) without limiting (a) to (j) above, exercise the degree of skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced operator in the same or similar circumstances, with reference to the highest international standards and practice for same or similar services.
- 6.2 **Service Levels:** Without limiting any of the Service Provider's other obligations under this Participating Agency Agreement, the Service Provider must provide the Services so as to meet or exceed the applicable Service Levels.
- 6.3 **Failure to meet Service Levels:** Without limiting the Participating Agency's other rights and remedies, if the provision of the Services do not meet an applicable Service Level:
- (a) the Service Provider will immediately commence work to identify the cause of such failure;
- (b) the Service Provider will allocate such resources as may be necessary to remedy the failure and any consequences of such failure as soon as practicable;
- (c) the Service Provider will implement relevant service improvement plans to ensure that the Services that have failed Service Levels are continuously improved; and
- (d) the Service Provider will pay to the Participating Agency, within 14 days of receipt of an invoice, the rebate attributable to the Service Level failure. Details of those rebates and the methods of calculating and paying them are as described in the Service Catalogue.
- 6.4 **Conflict of interest:** The Service Provider must maintain a high standard of honesty and integrity at all times in the performance of this Participating Agency Agreement and must not enter into any agreement or arrangement that will, or is likely to:
- (a) prejudice the Service Provider's ability to meet its obligations under this Participating Agency Agreement; or
- (b) create a conflict of interest for the Service Provider.
- 6.5 **Resolve conflict:** Without limiting clause 6.4, the Service Provider must:
- (a) immediately notify the Participating Agency in writing if the Service Provider is, or is likely to be, conflicted in the performance of its obligations under this Participating Agency Agreement; and
- (b) take all actions reasonably required by the Participating Agency to resolve any such conflict.
- 6.6 **Remedies for failure:** If any of the Services and Documentation are not, in the Participating Agency's reasonable opinion, provided in accordance with this Participating Agency Agreement, the Participating Agency may, without limiting its other rights or remedies, take one or more of the following actions:
- (a) give the Service Provider a notice requiring the Service Provider to immediately remedy the deficiency at the Service Provider's cost;
- (b) withhold any payment due to the Service Provider until the deficiency is remedied to the Participating Agency's reasonable satisfaction; or

- (c) if the Service Provider does not remedy the deficiency to the Participating Agency's reasonable satisfaction within a reasonable period after the Participating Agency giving notice under clause 6.6(a), deduct a reasonable amount from the payment due to the Service Provider related to this failure to reflect the deficiency.

6.7 **Health, safety and security:** Without limiting its other obligations under this Participating Agency Agreement, the Service Provider will:

- (a) consult, cooperate and coordinate with the Participating Agency to the extent required by the Participating Agency to ensure that the Participating Agency and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Participating Agency Agreement;
- (b) perform its, and ensure that its Personnel perform their, obligations under this Participating Agency Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- (c) comply with all reasonable directions of the Participating Agency relating to health, safety, and security; and
- (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Participating Agency to the extent that it relates to, or affects, this Participating Agency Agreement.

6.8 **Participating Agency Property:** If the Service Provider is required to have or has access to any Participating Agency Property under or in connection with this Participating Agency Agreement, the Service Provider must:

- (a) first satisfy such security or other clearance requirements that the Participating Agency has prior to granting access to the relevant Participating Agency Property;
- (b) use the Participating Agency Property:
  - (i) for the sole purpose of complying with its obligations under this Participating Agency Agreement and for no other purpose; and
  - (ii) only to the extent necessary to comply with its obligations under this Participating Agency Agreement;
- (c) comply with all directions regarding the use of the Participating Agency Property given by the Participating Agency from time to time; and
- (d) return to the Participating Agency, or destroy or permanently delete from any media, as required by the Participating Agency, all relevant Participating Agency Property (including all access and security

tokens and other means of accessing such Agency Property) on the earlier of:

- (i) completion of the Service relating to that Participating Agency Property;
- (ii) receipt of the Participating Agency's request for such Participating Agency Property to be returned, destroyed or deleted; and
- (iii) termination or expiry of this Participating Agency Agreement.

6.9 **Participating Agency Sites:** The Participating Agency will provide the Service Provider with access to the Participating Agency Sites solely for the purpose of enabling, and to the extent necessary to enable, the Service Provider to comply with its obligations under this Participating Agency Agreement. The Service Provider must not use or access the Participating Agency Sites or any other premises of the Participating Agency for any other purpose without the Participating Agency's prior written consent. The Service Provider will comply, and will ensure that all of its Personnel comply, with all of the Participating Agency's health, safety, operational and security requirements while on-site at any of the Participating Agency's premises.

## 7. PERSONNEL

7.1 **Personnel:** The Service Provider:

- (a) must ensure the Services are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services to the standards required under this Participating Agency Agreement;
- (b) is responsible for all acts and omissions of the Personnel as if they were the acts or omissions of the Service Provider;
- (c) must ensure that all Personnel comply with the terms of this Participating Agency Agreement and with all of the Participating Agency's policies, procedures and reasonable directions;
- (d) must ensure that each Personnel who is to have, or has, access to any Participating Agency Sites or Participating Agency Property, if required by the Participating Agency:
  - (i) is willing to and does undergo security and other clearance checks prior to commencing the provision of Services; and
  - (ii) executes a deed (in the form reasonably required by the Participating Agency) agreeing to comply with terms, policies, procedures and directions for access as set by the Participating Agency;
- (e) must promptly, on the Participating Agency's request, obtain written consent from each Personnel to undergo the

- security and other clearance checks and such personal details of such Personnel to enable the security and other clearance checks to be carried out; and
- (f) must immediately replace any Personnel who fails to meet the security and other clearance checks required by the Participating Agency.
- 7.2 **Replacement of Personnel:** If the Participating Agency considers (acting reasonably) that any of the Personnel are unsatisfactory or unsuitable then, without limiting any other rights of the Participating Agency, the Participating Agency may, by written notice, require the Service Provider to replace the relevant Personnel and the Service Provider will do so as soon as practicable at its own cost, but in any event no later than 5 Business Days, or as agreed with the Participating Agency, after receipt by the Service Provider of the notice.
- 7.3 **Good employer obligations:** The Service Provider shall at all times:
- (a) comply, and ensure that its subcontractors comply, with its obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, Parental Leave and Employment Protection Act 1987 and the Holidays Act 2003; and
- (b) notify the Participating Agency of any instances where the Service Provider or its subcontractors:
- (i) are being investigated by the Labour Inspectorate;
- (ii) are subject to a claim in the Employment Relations Authority or Employment Court; or
- (iii) have breached any of the legislation referenced in clause 7.3(a).
- 7.4 **Non-solicitation:** The Service Provider agrees not to actively solicit for employment any employee or individual contractor of the Participating Agency who has been engaged by the Participating Agency in connection with, or has been designated by the Participating Agency to work in connection with, the Services or the Documentation. This clause does not prevent the Service Provider from employing any person who responds to a genuine public advertisement placed by the Service Provider.
- 8. SUBCONTRACTORS**
- 8.1 The Service Provider must not subcontract any of its obligations under this Participating Agency Agreement to any other person, except to an individual interpreter, without first obtaining the Lead Agency's written consent in accordance with the Lead Agency Agreement.
- 8.2 The Service Provider must:
- (a) ensure that an appropriate written agreement is in place between the Service Provider and the subcontractor that is consistent with the terms of this Participating Agency Agreement in all material respects; and
- (b) ensure that the agreement referred to in clause 8.2(a) acknowledges the benefit to each Agency for the purposes of the Contract and Commercial Law Act 2017 and is therefore enforceable by each Agency.
- 8.3 The Service Provider will remain liable to the Participating Agency for all acts or omissions of each subcontractor as if they were the acts or omissions of the Service Provider. The entry by the Service Provider into an agreement with a subcontractor will not:
- (a) create a contractual relationship between the Participating Agency and the subcontractor except as described in clause 8.2(b); or
- (b) relieve the Service Provider from liability for the performance of any obligations under this Participating Agency Agreement.
- 8.4 The Service Provider must obtain the Lead Agency's prior written consent to the replacement of any subcontractor, and clauses 8.2 and 8.3 will apply to all replacement subcontractors.
- 8.5 The Service Provider will not be required to observe clauses 8.1 and 8.2 in respect of any individual who is providing services to the Service Provider as a contractor that might otherwise have been provided by a Service Provider employee, including an individual interpreter.
- 9. DOCUMENTATION AND RECORDS**
- 9.1 **Documentation:** The Service Provider will supply the Participating Agency with the Documentation in accordance with the requirements set out in this Participating Agency Agreement.
- 9.2 **Records:** Without limiting its other obligations under this Participating Agency Agreement or at Law, the Service Provider must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible Records relating to the provision of the Services and the Charges charged under this Participating Agency Agreement, to the standards required under the Public Records Act 2005 and where applicable, the Participating Agency's retention and disposal requirements.
- 9.3 **Content of Records:** Without limiting clause 9.2:
- (a) the Records created and maintained under clause 9.2 must, at a minimum, describe or specify:
- (i) the nature and scope of the Services and Documentation provided under this Participating Agency Agreement;
- (ii) the transactions that took place in the provision of all Services;
- (iii) the basis on which each invoice has been prepared and submitted to the Participating Agency under

- this Participating Agency Agreement; and
- (iv) any other information reasonably required by the Participating Agency from time to time; and
- (b) the Service Provider must ensure the Records created and maintained under clause 9.2 are:
- (i) maintained in a form accessible by the Participating Agency;
- (ii) retained for the Term and 7 years after expiry or termination of this Participating Agency Agreement; and
- (iii) provided to the Participating Agency in a form accessible by the Participating Agency on termination or expiry of this Participating Agency Agreement and at any other time on the Participating Agency's request.
- 9.4 **OIA:** The Service Provider acknowledges that the Participating Agency is subject to the OIA. The Service Provider agrees to cooperate fully in providing the Participating Agency with any documents or other information that the Participating Agency is required to provide pursuant to a request made under the OIA, or pursuant to questions raised in Parliament or in any Select Committee concerning this Participating Agency Agreement.
- 10. CHARGES AND PAYMENT**
- 10.1 **Charges:** The Participating Agency will pay the Charges and GST (if any) to the Service Provider in the consideration of the Services as set out in the Service Catalogue.
- 10.2 **No other amounts payable:** The Service Provider acknowledges that, except as expressly specified in this Participating Agency Agreement, no other payments or benefits will be payable or provided by the Participating Agency to the Service Provider, including in relation to any of the Personnel, and all Charges must be calculated in accordance with the Service Catalogue.
- 10.3 **Invoices:**
- (a) The Service Provider will invoice the Participating Agency for the Charges in respect of the Services monthly in arrears. The Participating Agency may require that the Service Provider is to provide separate invoices for particular Services, in which case the Participating Agency shall notify the Service Provider at the time of ordering a Service, or as otherwise agreed by the Participating Agency and Service Provider, to which invoice a Service is to be allocated.
- (b) Each invoice must:
- (i) be a valid tax invoice for the purposes of the GST Act;
- (ii) be sent directly to the Participating Agency via email to the address specified by the Participating Agency from time to time;
- (iii) be received by the Participating Agency within 60 days of the end of the month to which the invoice relates; and
- (iv) include all information reasonably required to enable the Participating Agency to validate the claim for payment including:
- (A) any purchase number or contract number applicable to the invoice;
- (B) reference to this Participating Agency Agreement (under which the invoice is issued);
- (C) the Charges for and description of each Service being invoiced;
- (D) in respect of any Charges on a time and rate basis, the relevant times and rates on which the Charge is based; and
- (E) full details of any approved expenses incurred, together with copies of invoices for such items which have a value greater than \$1,000,
- (Valid Tax Invoice).**
- 10.4 **Date for payment:** Subject to clause 10.5 and clause 10.9 and 10.10, if the Participating Agency receives a Valid Tax Invoice on or before the 5<sup>th</sup> Business Day of the month, the Participating Agency will make payment in respect of that Valid Tax Invoice by the 20<sup>th</sup> day of that month. Any Valid Tax Invoice received after the 5<sup>th</sup> Business Day of the month will be paid on the 20<sup>th</sup> calendar day of the month following the month in which the Valid Tax Invoice was received by the Participating Agency. The Participating Agency will be under no obligation to pay an invoice received by the Participating Agency more than 60 days after the end of the month to which the invoice relates.
- 10.5 **Dispute over invoice:** If the Participating Agency disputes in good faith the whole or any portion of any Valid Tax Invoice, the Participating 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.
- 10.6 **Payment terms:** All sums due to the Service Provider under this Participating Agency Agreement:
- (a) are in New Zealand Dollars and are exclusive of any GST which, where applicable, will be payable by the Participating Agency to the Service Provider in addition to the Charges stated; and
- (b) will be paid to the credit of a bank account to be designated in writing by the Service Provider.
- 10.7 **Deductions:** The Charges are inclusive of all other taxation except GST. The Participating Agency will be entitled to deduct any withholding tax required to be withheld by law from payments

made to the Service Provider and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

10.8 **Expenses:**

- (a) The Service Provider is responsible for all expenses incurred by it under this Participating Agency Agreement, unless the Participating Agency has given its prior written approval to reimbursement of such expenditure.
- (b) If the Participating Agency is to reimburse the Service Provider for any particular expenses incurred by the Service Provider:
  - (i) the expenses are to be charged by the Service Provider at cost;
  - (ii) the Participating Agency is under no obligation to pay for any expense item once the specified expense limit for that item is exceeded; and
  - (iii) the Service Provider must:
    - (A) produce receipts or other reasonable evidence of such expenses on request;
    - (B) provide a Valid Tax Invoice for the expenses; and
    - (C) follow all of the Participating Agency's expense guidelines and policies notified to the Service Provider from time to time when incurring the expenses.

10.9 **Set off:** The Participating Agency may set-off any refund or other amount owing to the Participating Agency from the Service Provider against any amount payable by the Participating Agency under this Participating Agency Agreement.

10.10 **Suspension of payment:** The Participating Agency may suspend or withhold payment of Charges if the Service Provider is in breach of its obligations, until such time as any breaches are remedied.

11. **CONFIDENTIAL INFORMATION**

11.1 **Restrictions:** Except as permitted by this clause 11 or otherwise expressly permitted in this Participating Agency Agreement, each party must keep the other party's Confidential Information:

- (a) absolutely secret and confidential at all times and will not disclose that Confidential Information to any person or use that Confidential Information for any purpose other than the purpose of this Participating Agency Agreement (which, in the case of the Participating Agency, will include obtaining the full benefit of the Participating Agency Agreement and all rights granted under it); and
- (b) secure and ensure it has in place adequate security measures to safeguard the Confidential Information from access,

loss, use, modification or disclosure by unauthorised persons.

11.2 **Exceptions:** A party may disclose Confidential Information:

- (a) to:
  - (i) its directors, employees or contractors who need to know such information for the purpose of this Participating Agency Agreement;
  - (ii) its professional advisers, auditors or bankers for a proper purpose; or
  - (iii) in the case of the Participating Agency, the Lead Agency or another Participating Agency, Minister of the Crown, or any of the Participating Agency's advisers (including relevant third parties),  
provided that party ensures that each such person complies with the restrictions in this clause as if such person were a party to this Participating Agency Agreement;
- (b) if and to the extent disclosure is required by Law, the rules of any registered securities exchange on which the party's securities are listed, or any Minister of the Crown or parliamentary officer or body, provided that party gives the other party notice, to the extent permitted by the applicable Law, of the requirement as soon as practicable and consult in good faith with the other party before such disclosure is made;
- (c) if and to the extent the information:
  - (i) was known to the receiving party before the information was disclosed to it;
  - (ii) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving party;
  - (iii) is generally available to the public through no fault of the receiving party; or
  - (iv) is developed by the receiving party independently of the information disclosed by the disclosing party; or
- (d) if and to the extent required in connection with legal proceedings relating to this Participating Agency Agreement.

11.3 **Misuse or breach:** The Service Provider will notify the Participating Agency in writing immediately on becoming aware of any:

- (a) potential, threatened or actual misuse or unauthorised disclosure or use of Confidential Information by any person to whom the Service Provider makes any

- disclosure in accordance with clause 11.2; or
- (b) breach of the Service Provider's obligations under this clause 11,
- and will take all reasonable steps to mitigate the effects of such disclosure and fully co-operate with the Participating Agency in preventing or limiting such misuse, unauthorised disclosure or breach, at the cost of the Service Provider.
- 11.4 **Announcements:** The Service Provider must not make any media release or other public announcement relating to the existence of this Participating Agency Agreement except as permitted by clause 11.2(b) or with the prior written consent of the Participating Agency, such consent not to be unreasonably withheld.
- 12. PRIVACY**
- 12.1 **Privacy:** The Service Provider will comply with the Participating Agency's privacy policy and standards or Privacy Act 2020, any relevant code under that Act and any reasonable direction provided by the Participating Agency to the Service Provider.
- 12.2 **Privacy governance:** The Service Provider must:
- (a) appoint and maintain an appropriately skilled person as privacy officer for the term of this Participating Agency Agreement; and
- (b) have and maintain a privacy policy (including procedures for notifying the Participating Agency and the relevant Participating Agency if there is a privacy breach or any unauthorised access to or use of personal information).
- 12.3 **No recordings:** The Service Provider must not record the provision of any interpretation Services to the Participating Agency without first obtaining the Participating Agency's consent.
- 12.4 **Privacy Breaches:** Where Confidential Information includes Personal Information, the Service Provider acknowledges the importance of safeguarding that information in accordance with the Privacy Act 2020. If Confidential Information held by the Service Provider includes Personal Information, the Service Provider must:
- (a) where such Personal Information is used, accessed or disclosed in contravention of this Participating Agency Agreement or the Privacy Act 2020, notify any actual or perceived disclosure to the Participating Agency as soon as practicable;
- (b) take all reasonable steps within the Service Provider's control to mitigate and contain the disclosure;
- (c) assess the nature, extent and cause of disclosure, including type of information disclosed and scope of the parties to which it was disclosed if identifiable;
- (d) assist the Participating Agency to notify the Privacy Commissioner and affected individuals where the Participating Agency determines that notification should occur or is required by Law; and
- (e) take all reasonable steps within the Service Provider's control to prevent further disclosures occurring by the same or similar means.
- 12.5 **No limitation:** Nothing in this clause limits or restricts any rights granted to the Participating Agency under this Participating Agency Agreement.
- 13. WARRANTIES**
- 13.1 **Warranties:** The Service Provider warrants at all times that:
- (a) all information supplied by it to the Participating Agency under this Participating Agency Agreement is true, complete and accurate, not misleading or deceptive and may be relied on by the Participating Agency in entering into and continuing with this Participating Agency Agreement or any change to this Participating Agency Agreement;
- (b) it has full corporate power and has obtained the required authority and authorisations to enter into and perform its obligations under this Participating Agency Agreement;
- (c) it will not during the term of this Participating Agency Agreement, engage in any activity that will or is likely to compromise its ability to perform its obligations under this Participating Agency Agreement fairly and independently;
- (d) the Services and Documentation:
- (i) are provided in accordance with the requirements of this Participating Agency Agreement;
- (ii) are free from defects; and
- (iii) are fit for the purposes required by the Participating Agency;
- (e) all advice provided by the Service Provider in connection with the Services is provided to a high standard of skill, care and diligence, and to a level reflective of, and in accordance with, a high level of industry knowledge and competence; and
- (f) all Documentation provided by the Service Provider under or in connection with this Participating Agency Agreement will:
- (i) contain sufficient information for the full and efficient operation of the relevant Services to which the Documentation relates in the manner contemplated by the Participating Agency;
- (ii) correctly represent the attributes of the subject matter to which it relates;
- (iii) provide proper and adequate instructions for its intended purpose; and



- (iv) be written or delivered in language and at a level appropriate for the intended audience.

13.2 **Third party warranties:** The Service Provider will, without limiting any of the other warranties given under this Participating Agency Agreement, assign to the Participating Agency, or if it is unable to do so, hold for the sole benefit of the Participating Agency, all warranties and guarantees provided by third parties to the Service Provider in respect of the provision of any Services under this Participating Agency Agreement. Any warranties provided by third parties are in addition to, and will not displace, any warranties provided by the Service Provider, even when the benefit of those warranties is enjoyed by the Service Provider.

13.3 **Remedies for failure:** If the Service Provider breaches any warranty set out in clause 13.1, then, without limiting the Participating Agency's other rights or remedies:

- (a) the Service Provider must promptly remedy the breach at its cost on receipt of notice in writing from the Participating Agency requiring the breach to be remedied; and
- (b) if the Service Provider fails to remedy the breach within the time specified in the Participating Agency's notice given under clause 13.3(a), the Participating Agency may, without limiting its other rights and remedies, withhold any payment due to the Service Provider until the matter is resolved.

To avoid doubt, the Service Provider must continue to provide the Services under this Participating Agency Agreement notwithstanding the Participating Agency exercising of any of the remedies contemplated in this clause 13.3.

13.4 **Replacements:** The warranties and the other provisions of this Participating Agency Agreement apply equally to any re-performed Service.

## 14. PERFORMANCE ISSUES

14.1 **Performance issues:** The parties acknowledge that problems with provision of the Services may be caused by a variety of factors, including acts or omissions by third parties, not easily identified at the time a problem arises. Without limiting the parties' other obligations under this Participating Agency Agreement, the Service Provider will use all reasonable endeavours to promptly remedy any performance issues, without having to first allocate or apportion responsibility for the cause of the problem.

14.2 **Request for Remedial Plan:** Without limiting any right or remedy available to the Participating Agency, if at any time:

- (a) the Participating Agency reasonably considers that the Service Provider has breached, or will imminently breach, any of its obligations under this Participating Agency Agreement; or
- (b) the Service Provider has given the Participating Agency notice of a breach or

likely breach of any of its obligations under this Participating Agency Agreement,

(in each case, a **Performance Issue**), which may include any breach of the warranties set out in clause 13.1, the Participating Agency may by notice to the Service Provider require the Service Provider to prepare a plan to remedy the Performance Issue (**Remedial Plan**).

14.3 **Preparation of Remedial Plan:** As soon as possible after receipt of a notice from the Participating Agency under clause 14.2 (and, in any event, within 5 days or such other period as the parties may agree in writing), the Service Provider will, in consultation with the Participating Agency, prepare and provide to the Participating Agency a proposed Remedial Plan setting out:

- (a) full details of the Performance Issue (including its cause(s), expected duration and impact on its obligations under this Participating Agency Agreement);
- (b) a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring (as applicable); and
- (c) success criteria to determine whether the Performance Issue has been rectified.

To avoid doubt, the Lead Agency may require a Remedial Plan to remedy a Performance Issue affecting one or more Participating Agencies.

14.4 **Implementation:** Once the parties have (acting reasonably) agreed the Remedial Plan, the Service Provider will implement its part in the Remedial Plan in accordance with that Remedial Plan.

## 15. INTELLECTUAL PROPERTY RIGHTS

15.1 **Ownership of existing IP:** Each party or its licensors retains ownership of all Intellectual Property Rights in Existing Material belonging to that party or its licensors.

15.2 **Ownership of new IP:** Any new Intellectual Property which is created as a result of, or in connection with, the provision of the Documentation or Services, or otherwise in connection with this Participating Agency Agreement, including all modifications, enhancements or derivative work, will be owned by the Service Provider.

15.3 **Licence to the Participating Agency:** Unless otherwise stated, the Service Provider will grant the Participating Agency:

- (a) A perpetual, non-exclusive, sub-licensable, transferable, fully paid and irrevocable licence to exercise for any purpose all Intellectual Property Rights in all Services and Documentation that are not owned by the Participating Agency or otherwise licensed to the Participating Agency under this Participating Agency Agreement. This licence includes the right to use, store, copy, maintain, repair and modify, as applicable, such Services and Documentation and to permit the

- Participating Agency's contractors to use the Services and Documentation, but does not include the right to commercialise (that is make a profit from) the Services and Documentation.
- (b) A non-exclusive, sub-licensable and transferable licence to access, receive and utilise all Services and to make full use of any Service provided by the Service Provider for any purpose.
- 15.4 **Licence to the Service Provider:** The Participating Agency grants the Service Provider a non-exclusive, non-transferable licence to exercise, only for the Term and only to the extent necessary for the Service Provider to perform its obligations under this Participating Agency Agreement or the Lead Agency Agreement, all Intellectual Property Rights provided or owned by or on behalf of the Participating Agency. The Service Provider may sublicense this licence only to those subcontractors that the Lead Agency has consented to in writing in accordance with clause 8.
- 15.5 **Know-how:** Nothing in this clause 15 restricts either party from using, in any way the party deems appropriate, the know-how, ideas and concepts it contributed, or were developed by it, during the performance of its obligations under this Participating Agency Agreement, provided that such use does not breach any of the other provisions of this Participating Agency Agreement.
- 15.6 **Intellectual Property warranties:** The Service Provider warrants at all times that:
- (a) it has all requisite ownership rights and licences, clearances, consents and authorisations to fully perform its obligations under this Participating Agency Agreement (including granting the Participating Agency a licence in accordance with clause 15.3; and
- (b) the use by the Participating Agency of any Service or Documentation and Services will not breach any applicable Law or infringe or impair in any way the Intellectual Property Rights of any person (including any third party).
- 15.7 **Intellectual Property Rights indemnity:**
- (a) The Service Provider indemnifies the Participating Agency against all liability, losses, damages, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by the Participating Agency as a result of any claim or threatened claim alleging that any of the Documentation, Services or any information, rights or materials supplied by the Service Provider under this Participating Agency Agreement, or the Participating Agency's use or possession of any of them, infringes the Intellectual Property Rights of any person (**IP Claim**).
- (b) Each party will promptly notify the other party in writing on becoming aware of any IP Claim.
- (c) Unless otherwise required by the Participating Agency, the Service Provider will control the conduct of the defence of any IP Claim and all negotiations for its settlement or compromise, but in all cases will:
- (i) consult with the Participating Agency and keep the Participating Agency fully informed of such matters;
- (ii) obtain the Participating Agency's prior written approval to any proposed settlement or compromise; and
- (iii) ensure that the Participating Agency's name and reputation are not adversely affected by any steps taken by or on behalf of the Service Provider.
- (d) If required by the Participating Agency, at the Participating Agency's sole discretion, the Participating Agency or its appointed representative will control the conduct of the defence of any IP Claim and is entitled to obtain representation or advice as appropriate in relation to the IP Claim.
- 15.8 **Participating Agency remedies:** If any IP Claim prevents or threatens to prevent the supply or use of a Service or Documentation as contemplated by this Participating Agency Agreement then the Service Provider must promptly, at the request of and in consultation with the Participating Agency, at the Service Provider's cost, and without prejudice to clauses 15.6 and 15.7:
- (a) obtain for the Participating Agency the right to continue the supply or use;
- (b) modify the Service or Documentation so it becomes non-infringing; or
- (c) replace the Documentation with another non-infringing item,
- provided that the Service Provider must ensure that the remedy does not materially affect the functionality or performance of the Service or Documentation or the Participating Agency's use of it. Without prejudice to any right or remedy, the Participating Agency may terminate this Participating Agency Agreement if the Service Provider is unable to remedy the IP Claim in accordance with this clause 15.8 within two months of the Participating Agency's request.
- 16. LIABILITY AND INSURANCE**
- 16.1 **Service Provider's liability:** Subject to clauses 16.3 and 16.4, the Service Provider's total aggregate liability under or in connection with this Participating Agency Agreement to the Participating Agency, whether in contract or tort (including negligence) or otherwise, will not exceed the greater of:
- (a) three times the aggregate of the Charges paid and of the Charges payable under this Participating Agency Agreement; and
- (b) \$250,000.

- 16.2 **Participating Agency's liability:** Subject to clauses 16.3 and 16.4, the Participating Agency's total aggregate liability under or in connection with this Participating Agency Agreement to the Service Provider, whether in contract, or tort (including negligence) or otherwise, is limited to an amount equal to the Charges paid and the Charges payable under this Participating Agency Agreement.
- 16.3 **Indirect loss:** Neither party will be liable to the other under or in connection with this Participating Agency Agreement, whether in contract, tort (including negligence) or otherwise, for any indirect or consequential loss.
- 16.4 **Exclusions:** Nothing in this clause 16 limits or excludes:
- (a) the Service Provider's obligations under this Participating Agency Agreement to pay any Service Level rebates;
  - (b) the Service Provider's liability under clause 15 in relation to IP Claims;
  - (c) the Service Provider's liability for deliberate breach or wilful default;
  - (d) the Service Provider's liability for death or bodily injury of any person arising out of or related to any act or omission by the Service Provider in connection with this Participating Agency Agreement;
  - (e) the Service Provider's liability for damage to the Participating Agency's physical property; or
  - (f) either party's liability for breach of clause 11 or clause 12.
- 16.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage it may suffer under this Participating Agency Agreement.
- 16.6 **Participating Agency default:** Where any Participating Agency fails to perform its obligations, if any, under a Participating Agency Agreement (**Defaulting Agency**):
- (a) neither the Lead Agency (nor any other Participating Agency) will be liable to the Service Provider in respect of that failure;
  - (b) the Service Provider may take action against the Defaulting Agency in accordance with, and subject to, clause 16 (Liability and Insurance), and recover from the Defaulting Agency any damages or other remedy to which the Service Provider may be entitled; and
  - (c) the Service Provider will not sue the Lead Agency or any other Participating Agency in respect of that failure.
- 16.7 **Insurance:** During the Term and for 3 years after termination or expiry of this Participating Agency Agreement, the Service Provider will maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Service Provider, and in particular will maintain coverage in respect of public liability, professional indemnity and property damage in the following amounts:
- (a) Professional indemnity: \$2 million;
  - (b) Public liability: \$2 million; and
  - (c) Property damage: \$2 million,
- and on terms consistent with standard market terms for such policies and with an insurer of A-rated or better. The Service Provider will, on request at any time, provide the Participating Agency with a certificate from the insurer or insurers confirming the existence and terms of such insurance.
- 16.8 **Prompt information:** The Service Provider must promptly inform the Participating Agency of:
- (a) any claims relating to this Participating Agency Agreement against the insurance policies referred to in clause 16.7; and
  - (b) any material change to, cancellation or non-renewal of such policies.
- 17. DISPUTE RESOLUTION**
- 17.1 **Dispute resolution process:** Subject to clause 17.6, a party may not commence any court proceedings relating to a dispute between the parties unless the party has complied with clauses 17.2 to 17.4.
- 17.2 **Dispute notice:** If there is a dispute between the parties in relation to this Participating Agency Agreement, either party may give the other party notice of the nature and details of the dispute.
- 17.3 **Negotiation:** Each party will notify the other and the Lead Agency of a dispute on the day that the dispute arises. The parties will use their best efforts to resolve the dispute. If the dispute is not resolved within five Business Days, the dispute will be escalated to the parties' respective senior managers and notified to the Lead Agency.
- 17.4 **Mediation:** If the dispute is not resolved within 20 Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. If a party refers the dispute to mediation, they must notify the Lead Agency of the mediation promptly following such referral. The mediation will be in Wellington and conducted under the Resolution Institute standard mediation rules. If the parties do not agree on a mediator or the mediator's fees within 5 Business Days of receipt of the notice of mediation, the mediator will be appointed, or the fees set, by the chair of Resolution Institute (or his/her nominee) at the request of either party. The parties will bear the mediator's fees equally.
- 17.5 **Continued performance:** Regardless of any dispute, each party must continue to perform this Participating Agency Agreement to the extent practicable, but without prejudice to their respective rights and remedies.
- 17.6 **Urgent relief:** Nothing in this clause 17 will preclude a party from seeking urgent interlocutory relief before a court.
- 18. FORCE MAJEURE**
- 18.1 **No breach:** A party (the **affected party**) will not be liable for any failure or delay in performance of any obligations under this Participating Agency

Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that it:

- (a) notifies the other party (**non-affected party**) as soon as practicable of the nature and expected duration of the Force Majeure Event and keeps the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;
- (b) uses reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Participating Agency Agreement to the extent reasonably practicable; and
- (c) resumes full performance as soon as reasonably practicable.

18.2 **Corresponding obligations:** The non-affected party will be relieved of its corresponding obligations to the same extent the affected party is relieved of its obligations due to this clause 18.

18.3 **Third party services:** The non-affected party will be entitled to itself provide, or arrange for a third party to provide, the affected Services while the affected party is unable to provide them and for a reasonable period thereafter.

18.4 **Termination:** If the Force Majeure Event prevails for a continuous period of more than 20 Business Days, or for an aggregate of at least 30 Business Days in any six month period, the non-affected party may terminate this Participating Agency Agreement by giving 10 Business Days' notice to the affected party. On the expiry of the notice period, this Participating Agency Agreement will terminate. Neither party will have any liability to the other in respect of termination of this Participating Agency Agreement due to a Force Majeure Event, but such termination will be without prejudice to rights and liabilities which have accrued prior to termination.

## 19. TERMINATION

19.1 **Termination for cause:** Either party may terminate the Participating Agency Agreement immediately by notice to the other party if:

- (a) the other party commits a breach of the Participating Agency Agreement which cannot be remedied by that defaulting party or, if it can be remedied, the defaulting party fails to remedy that breach within 20 Business Days after receipt of notice requiring the breach to be remedied;
- (b) the other party commits two or more of the same or similar breaches of this Participating Agency Agreement (whether material or not and whether remedied or not) in any three month period and fails to remedy the breaches to the other party's satisfaction within 5 Business Days of receiving notice;
- (c) the other party ceases to carry on all or substantially all of its business or operations; or

- (d) the other party is subject to an Insolvency Event,

provided that, if the Participating Agency is the defaulting party, the Service Provider is not entitled to terminate the Participating Agency Agreement if the Participating Agency agrees to remedy its breach and pay the direct and reasonable losses suffered by the Service Provider arising from that breach.

19.2 **Termination by the Participating Agency:** The Participating Agency may terminate the Participating Agency Agreement, by written notice to the Service Provider, at any time:

- (a) by giving at least 60 Business Days prior notice to the Service Provider;
- (b) if the Service Provider engages in conduct which, in the reasonable opinion of the Participating Agency, might injure the reputation or business of the Participating Agency;
- (c) if the Participating Agency reasonably considers that the Service Provider has acted fraudulently; or
- (d) if the Service Provider undergoes a change of Control without the Participating Agency's prior written approval.

19.3 **Other consequences of termination or expiry:**

- (a) **Termination of Lead Agency Agreement:** All Participating Agency Agreements shall terminate on the effective date of termination of the Lead Agency Agreement.
- (b) **Termination of Participating Agency Agreement:** Termination of a Participating Agency Agreement shall not terminate the Lead Agency Agreement or any other Participating Agency Agreement.
- (c) **Termination with prejudice:** Any termination or expiry of this Participating Agency Agreement is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have accrued before termination or expiry or limit either party's rights to recover damages from the other party under this Participating Agency Agreement or pursue any additional or alternative remedies provided by Law.
- (d) **Consequences:** On termination or expiry of this Participating Agency Agreement for any reason:
  - (i) the Service Provider must refund to the Participating Agency all amounts paid by the Participating Agency for Services not provided;
  - (ii) the Service Provider must return to the Participating Agency all the Participating Agency Property and other property that the Participating Agency has provided to the Service Provider under or in

connection with this Participating Agency Agreement; and

- (iii) the Service Provider must, on receipt of a written request from the Participating Agency and at the Participating Agency's option, return, destroy, and permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Service Provider or any Personnel or subcontractor and on request confirm in writing that it has done this.

disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and the timeframes for the performance of such tasks, and implementing its role in the disengagement plan within the required timeframes;

- (iii) delivery to the Participating Agency any Documentation or other materials relating to the Services as they exist as at the date of termination;
- (iv) answering questions and providing information requested by the Participating Agency and its nominated alternative supplier(s); and
- (v) returning to the Participating Agency intellectual property and other intangible property of the Participating Agency.

## 20. DISENGAGEMENT SERVICES

20.1 **Commencement:** Commencing at any time before or from the expiry or termination of all or any part of the Participating Agency Agreement for any reason, the Service Provider will, at the request of the Participating Agency, provide the Disengagement Services required by the Participating Agency to the Participating Agency and its nominated alternative service provider(s).

20.2 **Duration:** The Service Provider will provide the Disengagement Services for up to 3 months from the date of expiry or termination of the Participating Agency Agreement or any part of it as required by the Participating Agency.

### 20.3 Disengagement Services:

- (a) If requested by the Participating Agency, the Service Provider will provide the Participating Agency, within 20 Business Days of the request, with a draft plan detailing the Disengagement Services that are likely to be required by the Participating Agency to end this Participating Agency Agreement in a smooth and orderly manner (**Disengagement Plan**). The Service Provider must ensure that the Disengagement Plan is approved by the Participating Agency within a month of the Commencement Date, and if required to obtain such approval, incorporate such changes as required by the Participating Agency.
- (b) The Participating Agency may, at any time and from time to time (including on expiry or termination of this Participating Agency Agreement), notify the Service Provider of the Disengagement Services required, which, at the Participating Agency's option, may include any of the following:
  - (i) continued performance of the Services to the extent required by the Participating Agency. The relevant terms of this Participating Agency Agreement and the relevant Participating Agency Agreements continue to apply to the performance of the Services in accordance with this paragraph;
  - (ii) promptly assisting the Participating Agency to prepare a

20.4 **Charges:** Subject to clause 20.5, the Participating Agency will continue to pay the Charges in respect of any Services provided by the Service Provider in accordance with clause 20.3(b)(i). For all other Disengagement Services the Participating Agency will pay the Service Provider for the Disengagement Services at reasonable rates to be agreed in writing between the parties. If the parties cannot reach agreement on such rates, the dispute will be resolved by the parties in accordance with clause 17 (Dispute Resolution). If required by the Participating Agency, the Service Provider will provide the Disengagement Services pending the resolution of the dispute.

20.5 **No Charges:** If the Participating Agency has terminated the Participating Agency Agreement for breach of the Participating Agency Agreement, any Disengagement Services required by the Participating Agency under clause 20.3(b)(ii) to 20.3(b)(vi) will be provided without charge.

20.6 **Minimise the Charges:** The Service Provider must do all things practical to minimise the Charges payable by the Participating Agency during the period in which the Service Provider is providing the Disengagement Services.

20.7 **Other rights and remedies:** Nothing in this clause limits the Service Provider's or the Participating Agency's rights to recover damages from the other party under this Participating Agency Agreement or to pursue any additional or alternative rights or remedies provided by Law.

## 21. NOTICES

21.1 **Notices:** Each notice or other communication given under this Participating Agency Agreement (each a **notice**) will be in writing and delivered personally or sent by post or email to any address from time to time designated for that purpose by at least five Business Days' prior notice to the other party.

21.2 **Receipt:** A notice under this Participating Agency Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
  - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
  - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

## 22. GENERAL

### 22.1 Amendments:

- (a) Neither the Service Provider nor the Participating Agency will, without the consent of the Lead Agency, permit any variation to the Terms and Conditions. Any variation to the Terms and Conditions purported to be executed without the consent of the Lead Agency is deemed to be null and void and to have no effect. No amendment to this Participating Agency Agreement will be effective unless it has the Lead Agency's consent and is in writing and signed by the parties.
- (b) The Lead Agency and the Service Provider may vary the Terms and Conditions or Service Catalogue from time to time.
- (c) The Service Provider or Lead Agency must provide written notice to all Participating Agencies of an amendment made by the Lead Agency and Service Provider in accordance with clause 22.1(b) and all such amendments will automatically apply to each Participating Agency Agreement, unless agreed otherwise between the Service Provider and the Lead Agency. Notification may also be made via a website or online portal established by the Lead Agency.

22.2 **Assignment:** No party may assign, transfer, novate, subcontract, charge, pledge or otherwise encumber this Participating Agency Agreement or any of its rights or obligations under this Participating Agency Agreement without the prior written consent of the other party. For the purposes of this clause, a change of Control of a party will be deemed an assignment by that party.

### 22.3 Costs:

- (a) The parties will each bear their own costs and expenses incurred in the negotiation, preparation and implementation of this Participating Agency Agreement.

A party who has an obligation to do anything under this Participating Agency Agreement will perform that obligation at its own cost, unless expressly stated otherwise in this Participating Agency Agreement.

22.4 **Entire agreement:** This Participating Agency Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties relating to the matters dealt with in this Participating Agency Agreement.

22.5 **Further assurances:** Each party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Participating Agency Agreement.

22.6 **No agency:** This Participating Agency Agreement does not create any relationship between the parties of principal and agent, partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another party, except as expressly provided for in this Participating Agency Agreement.

22.7 **Privity:** Subject to clause 3.9 and clause 3.24 of the Lead Agency Agreement, a person who is not a party will not have any rights under or in connection with this Participating Agency Agreement by virtue of the Contract and Commercial Law Act 2017, unless expressly stated otherwise in this Participating Agency Agreement.

22.8 **Remedies cumulative:** The rights and remedies provided in this Participating Agency Agreement are cumulative and not exclusive of any rights or remedies provided by this Participating Agency Agreement or Law.

22.9 **Severance:** If any provision of this Participating Agency Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision will be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Participating Agency Agreement. Such change will not affect the legality, validity and enforceability of the other provisions of this Participating Agency Agreement.

22.10 **Survival:** Following termination or expiry of this Participating Agency Agreement, this clause 22.10 and clauses 9 (Documentation and Records), 10 (Charges and Payment), 11 (Confidential Information), 13 (Warranties), 16 (Liability and insurance), 15 (Intellectual Property Rights), 17 (Dispute Resolution), 19.3 (Consequences of termination) and 22 (General), together with other provisions that are by their nature intended to survive, will remain in full force and effect.

22.11 **Waiver:** No waiver of a right or remedy under this Participating Agency Agreement or at Law (a

**right)** will be effective unless the waiver is in writing and signed by that party. No delay or omission by a party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right will restrict the further exercise of that or any other right.

22.12 **Governing law and jurisdiction:** This Participating Agency Agreement is governed by New Zealand Law. Subject to clause 17, the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.

22.13 **Counterparts:** This Participating Agency Agreement may be executed in any number of counterparts (including scanned PDF counterparts), each of which will be deemed an original, but all of which together will constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

**Execution**

[insert full legal name of Participating Agency], being an Eligible Agency, agrees to these Participating Agency Terms and Conditions.

**SIGNED** by [insert full legal name of Participating Agency] by its duly authorised signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date