

Framework Terms and Conditions

Introduction

These Framework Terms and Conditions form part of the contract to allow one or more Purchasing Agencies to purchase outcome-focused services from the Provider.

These Framework Terms and Conditions will apply to all services the Provider agrees to provide under an Outcome Agreement and are incorporated by reference into every Outcome Agreement. Where more than one Purchasing Agency is a party to an Outcome Agreement these Framework Terms and Conditions will generally apply as between the Provider and the Purchasing Agency in respect of the Services provided by the Provider to that Purchasing Agency.

Purpose and context statement

The Purchasing Agency and Provider each agree that the purpose of providing the Services is to make a positive contribution to improving:

- the lives of whānau of any ethnicity and vulnerable persons living in New Zealand; and/or
- access to justice and reducing crime and its effects on the community.

Where relevant, Purchasing Agencies will take collective responsibility for providing a consistent and coordinated across-Government approach to engaging and working with the Provider.

Relationship Principles

The Purchasing Agency and Provider will work together to ensure that the Services are accessible and effective in contributing towards achieving the Outcome, and to that end agree to:

- act honestly and in good faith;
- communicate openly and in a timely manner;
- work in a collaborative and constructive manner - including towards the resolution of real or perceived problems and issues;
- recognise each other's responsibilities;
- encourage quality and innovation to achieve positive outcomes; and
- maximise the value for money to the Government in purchasing services that contribute towards achieving specified outcomes - including by ensuring appropriate flexibility so that services can be adapted (following discussion) to meet identified and agreed needs.

The Purchasing Agency and Provider acknowledge that these Framework Terms and Conditions reflect these principles in action.

These Framework Terms and Conditions use a number of defined terms and the corresponding definitions and interpretation section is in Schedule One.

1. Term

- 1.1 These Framework Terms and Conditions apply for the term of any Outcome Agreement signed by the Purchasing Agency and Provider.

2. Purchasing Agency

- 2.1 In these Framework Terms and Conditions a reference to "the Purchasing Agency" is to:
- (a) in relation to a bilateral Outcome Agreement, the Purchasing Agency that has entered into the Outcome Agreement; and
 - (b) in relation to an integrated Outcome Agreement, each individual Purchasing Agency that has entered into the Outcome Agreement.
- 2.2 The Purchasing Agency commits to act consistently with the provisions of:
- (a) these Framework Terms and Conditions;
 - (b) each Outcome Agreement it has signed; and
 - (c) each Outcome Agreement Management Plan.
- 2.3 Despite clause 2.2 and to avoid doubt:
- (a) no Outcome Agreement Management Plan will create legally binding obligations between the Purchasing Agency and Provider; and
 - (b) the obligations recorded in any Remedy Plan will be legally binding obligations between the Purchasing Agency and Provider.

3. Services

- 3.1 The Provider will provide the Services in accordance with these Framework Terms and Conditions and the Outcome Agreement and so as to contribute towards achieving each Outcome described in the Outcome Agreement.

4. Payment

- 4.1 Subject to clause 12 (Recovery, Reduction or Suspension of Payments), the Purchasing Agency will pay the Provider for the Services the amounts, and at the times, recorded in the Outcome Agreement.
- 4.2 At the times and frequency specified in the Outcome Agreement, the Provider (or its nominee) will issue an invoice to the Purchasing Agency for the Services provided (or to be provided) to that Purchasing Agency under the Outcome Agreement.

5. Contract management - communication, monitoring, reporting, audit and documentation

- 5.1 The Purchasing Agency will follow best practice contract management behaviours that reflect the nature and value of the Services and are focused on evaluating and enhancing the effectiveness of the Services to contribute towards achieving each Outcome described in the

Outcome Agreement.

5.2 ***Regular communication and monitoring***

- (a) The Purchasing Agency and the Provider will maintain regular contact with each other for the purpose of:
 - (i) monitoring the Provider's performance against its obligations under the Outcome Agreement;
 - (ii) encouraging the on-going review and assessment of the effectiveness of the Services;
 - (iii) providing mutual constructive feedback that will enhance the effectiveness of the Services; and
 - (iv) identifying early any issues and opportunities to do things better on the part of each party.
- (b) Any scheduled monitoring activity the Purchasing Agency wants to undertake will be specified in the Outcome Agreement.

Regular reporting activity

- 5.3 The Provider will provide the information and reports recorded in the Outcome Agreement **(Regular Reports)** at the times and frequency specified in the Outcome Agreement.

Special Enquiry Rights

- 5.4 Without limiting clauses 5.2 and 5.5, if the Purchasing Agency, acting reasonably, believes that the Provider has breached the terms of the Outcome Agreement, the Purchasing Agency may, acting reasonably, require the Provider to:
- (a) provide information to the Purchasing Agency to establish whether a breach has occurred, and if so why it occurred; and/or
 - (b) submit to an audit or Accreditation Review to establish whether a breach is an isolated event or one of multiple breaches

(collectively referred to as **Special Enquiry Rights**).

Audit or Accreditation Review

- 5.5 The Purchasing Agency or its nominee may carry out an audit or Accreditation Review of the Provider and/or Services. The Purchasing Agency will specify in the Outcome Agreement any audit or Accreditation Review it intends to conduct.
- 5.6 The Purchasing Agency will not carry out an audit or Accreditation Review more often than once in any calendar year unless the audit or Accreditation Review is carried out as part of the Purchasing Agency's Special Enquiry Rights in accordance with clause 5.4.

Access to premises, Personnel and records

- 5.7 The Provider will provide the Purchasing Agency (or its nominee) with reasonable access to the Provider's premises, Personnel and records used in the performance of the Outcome Agreement to allow the exercise of any monitoring activities, Special Enquiry Rights, audit or Accreditation Review by the Purchasing Agency or enable the Purchasing Agency to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.

Principles of co-ordination and co-operation

- 5.8 The Purchasing Agency agrees that it will co-ordinate and co-operate with the Provider and each Other Purchasing Agency to try to ensure (to the extent reasonable and practicable in the circumstances) that:
- (a) the Purchasing Agency and each Other Purchasing Agency's requirements for Regular Reports can be aligned and satisfied at the same time or frequency and by a single report covering all relevant matters;
 - (b) it gives the Provider and each Other Purchasing Agency reasonable notice in advance of:
 - (i) exercising any Special Enquiry Rights, including providing details of the breach or suspected breach and what it wants from the Provider; or
 - (ii) performing any audit or Accreditation Review; and
 - (c) it provides to each Other Purchasing Agency any information or explanation arising out of its exercise of any Special Enquiry Rights or the entry into a Remedy Plan that any Other Purchasing Agency reasonably requests in connection with the circumstances giving rise to the Special Enquiry Rights or Remedy Plan.
- 5.9 To ensure that:
- (a) the Purchasing Agency and each Other Purchasing Agency are able to coordinate effectively to streamline their contract management activities; and
 - (b) potential Purchasing Agencies (whether or not they are parties to any existing Outcome Agreements with any provider) that are considering entering into an Outcome Agreement have access to information to allow them to make informed contracting decisions and consider the benefits of entering into an Outcome Agreement with the Provider or other potential providers

(together referred to as the **Interested Parties**), the Provider agrees that the Purchasing Agency may share information about the Outcome Agreement with the Interested Parties, including by publishing such information on a web based contracts register (or other similar tool) which is accessible by Interested Parties. The information which is intended to be shared under this clause 5.9 includes the name and address of the Provider, other identifying information of the Provider such as GST number or charities registration number, a description of the Services and contract value, and information relating to the Accreditation of

the Provider.

Relationship Manager

- 5.10 The Provider and each Purchasing Agency will appoint and keep a Relationship Manager for each Outcome Agreement. The appointing party may change its Relationship Manager at any time by giving written notice to any other party to that Outcome Agreement. The Relationship Managers for each Outcome Agreement will maintain regular contact in accordance with these Framework Terms and Conditions and the Outcome Agreement Management Plan (if any).

Documentation

- 5.11 Without limiting its other obligations under these Framework Terms and Conditions or any Outcome Agreement, the Provider must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible records in relation to the provision of the Services and each payment invoiced for under these Framework Terms and Conditions or any Outcome Agreement, to the standards required under the Public Records Act 2005 and, where applicable, the Purchasing Agency's retention and disposal requirements as notified to the Provider.

6. Information to Purchasing Agency

- 6.1 The Provider must provide written notice to the Purchasing Agency:
- (a) if the Provider proposes to change its legal structure;
 - (b) if any of the Provider's Personnel are being investigated for, have been charged with, or convicted of any criminal offence that, viewed objectively and reasonably, represents a material risk to the performance of the Services or the achievement of the Outcome(s) (including because it might damage the reputation of either the Provider or the Purchasing Agency were it to be publicly known);
 - (c) as soon as reasonably practicable of any problems, issues or incidents that arise in relation to the performance of the Outcome Agreement, including any problems or issues that will, or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under the Outcome Agreement,

and, after receipt of such a notice, the Purchasing Agency and the Provider will discuss what an appropriate response would be and implement any agreed actions.

7. Dispute resolution

- 7.1 If any party wishes to raise a dispute relating to the Outcome Agreement (including these Framework Terms and Conditions) (**Dispute**), it may do so by giving written notice to the other parties to the Outcome Agreement who are involved in that Dispute (**Disputing Parties**) detailing the nature of the dispute (**Dispute Notice**).
- 7.2 The Relationship Managers of the Disputing Parties will try to resolve the dispute in the first

instance.

- 7.3 If the Relationship Managers of the Disputing Parties cannot resolve the Dispute within 21 days of receiving the Dispute Notice, any Disputing Party may by written notice to all Disputing Parties refer the Dispute to mediation.
- 7.4 If a Dispute is referred to mediation, the mediation will be conducted:
- (a) by a single mediator agreed by the Disputing Parties, or if they cannot agree within 10 Business Days of referring the Dispute to mediation, appointed by the Chairperson of the Resolution Institute (or its successor entity); and
 - (b) on the terms of the Resolution Institute's Mediation Rules (available at www.resolution.institute).
- 7.5 Each Disputing Party will continue to perform its obligations under the Outcome Agreement as far as practical given the nature of the Dispute.
- 7.6 No Disputing Party may commence any court proceedings in respect of a Dispute unless it has first complied with clauses 7.1 to 7.4 (inclusive), unless those court proceedings are necessary to preserve its rights.

8. Privacy of personal information

- 8.1 To the extent that the Provider collects, uses, stores and/or discloses personal information related to the Outcome Agreement and Services, it will do so in accordance with:
- (a) the Privacy Act 2020 and any regulations issued under that Act;
 - (b) any Law that amends or overrides any of the Information Privacy Principles of the Privacy Act 2020 and that applies to the Purchasing Agency or Provider; and
 - (c) any Code of Practice or Approved Information Sharing Agreement (as defined in the Privacy Act 2020) that amends or overrides any of the Information Privacy Principles of the Privacy Act 2020 and that applies to the Purchasing Agency or Provider.
- 8.2 Subject to clause 8.1, the Purchasing Agency and Provider will record in the Outcome Agreement, or any service specification attached to or referenced in the Outcome Agreement, the details of any personal information that will be shared by the Purchasing Agency with the Provider in connection with the Services, the purpose(s) for sharing and using the information and any agreement on the management (including security) of the information.
- 8.3 Wherever a Provider supplies a privacy statement to clients in respect of the Services in accordance with Information Privacy Principle 3 of the Privacy Act 2020, the Provider will implement any reasonable directions made by the Purchasing Agency about the content of the privacy statement, including about the purpose(s) of collection and the disclosure of information.
- 8.4 Before making a direction under clause 8.3, the Purchasing Agency will consult with the Provider about the proposed content of the privacy statement, and consider any reasonable

issues or concerns raised by the Provider.

8.5 In relation to any personal information provided or made available by the Purchasing Agency to the Provider, or collected by the Provider, in relation to the Outcome Agreement, the Provider will:

- (a) ensure that the personal information is kept secure and protected by security safeguards that are reasonable in the circumstances to take against loss, access, use, modification or disclosure that is not authorised by the Outcome Agreement or any other misuse;
- (b) only use that personal information for the purposes set out in or authorised by the Outcome Agreement;
- (c) only transfer, disclose or allow access of that personal information outside of New Zealand with the Purchasing Agency's prior written consent;
- (d) provide all information and assistance reasonably required by the Purchasing Agency to comply with its obligations under the Privacy Act 2020;
- (e) if, during the term of the Outcome Agreement, any personal information in its or its Personnel's or subcontractor's possession or control is no longer required for the purpose for which it was collected:
 - (i) notify the Purchasing Agency of such; and
 - (ii) at the Purchasing Agency's option, securely dispose of or return that personal information to the Purchasing Agency, except to the extent that such information is stored in electronic backups which cannot reasonably be extracted or deleted; and
- (f) on termination or expiry of the Outcome Agreement, or on the Purchasing Agency's instructions, securely dispose of or return that personal information to the Purchasing Agency, except to the extent that such information is stored in electronic backups which cannot reasonably be extracted or deleted and on request will confirm in writing that it has done so.

8.6 If the Provider becomes aware of any Security Breach (as defined below) in relation to the Outcome Agreement, it will notify the Purchasing Agency as soon as possible of that Security Breach and:

- (a) promptly take such steps as are reasonably available to it to identify the person or persons involved in the Security Breach;
- (b) take reasonable steps to stop such Security Breach, to mitigate or contain the effects of the Security Breach, and to prevent its reoccurrence;
- (c) provide reasonable assistance to the Purchasing Agency in determining the extent of the Security Breach;
- (d) if the Purchasing Agency reasonably requests, assist the Purchasing Agency to

undertake its own investigation in relation to the Security Breach;

- (e) will, if the Purchasing Agency reasonably requests:
 - (iii) assist the Purchasing Agency to notify affected individuals in relation to the Security Breach; and
 - (iv) assist the Purchasing Agency to notify the New Zealand Privacy Commissioner in relation to the Security Breach,and the Provider acknowledges that it will not make any such notifications in relation to the relevant Security Breach without the Purchasing Agency's prior written approval (unless it is required to do so by applicable law); and
- (f) in such circumstances, the Purchasing Agency may require the Provider to immediately ensure that any person, third party supplier or subcontractor involved in causing the Security Breach is no longer engaged in providing the Services and that a suitably skilled, qualified and experienced replacement is engaged.

For the purposes of this clause 8.6, **Security Breach** means any:

- (a) unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, any personal information; and
- (b) any action that prevents either party from accessing the personal information on either a temporary or permanent basis (except disposal of that personal information in accordance with clause 8.5(e)),

whether or not:

- (c) caused by a person inside or outside of the Provider;
- (d) attributable in whole or in part to any action by the Provider; or
- (e) ongoing.

9. Confidentiality

9.1 **Confidential Information**

The Purchasing Agency and Provider each confirms that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other party's Confidential Information to any person or organisation other than:

- (a) to the extent that the disclosure or use is:
 - (i) necessary to perform its obligations, or to exercise its rights, under or in relation to the Outcome Agreement (for example, to give effect to clauses 5.8 and 5.9 (Principles of Co-ordination and Cooperation), 8 (Privacy of personal information) and 11.4(e) (Orderly Transition of Services) of these Framework Terms and Conditions); or

- (ii) is expressly authorised by the Outcome Agreement;
- (b) if the other party gives prior written approval to the use or disclosure;
- (c) if the use or disclosure is required by law (including under the Official Information Act 1982) or parliamentary convention; or
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties.

9.2 **Confidentiality undertaking required**

- (a) If these Framework Terms and Conditions or the Outcome Agreement permit disclosure of any Confidential Information to any third party (including any auditor or reviewer appointed under clauses 5.4 or 5.5), the Provider and the Purchasing Agency (as applicable) may only disclose that Confidential Information to that third party if it first obtains a written confidentiality undertaking from that third party in terms substantially similar to those set out in this clause.
- (b) To avoid doubt, Personnel of the Purchasing Agency or Provider are not third parties for the purpose of clause 9.2(a). Each party may disclose Confidential Information to Personnel who need to know such information for the purposes of the Outcome Agreement, provided each party ensures that its Personnel:
 - (i) are aware of the confidentiality obligations in these Framework Terms and Conditions and the Outcome Agreement; and
 - (ii) do not disclose or use Confidential Information except as allowed by these Framework Terms and Conditions and the Outcome Agreement.

10. Intellectual Property Rights

- 10.1 The Purchasing Agency and Provider retain ownership of all Intellectual Property Rights they respectively owned before the commencement date of the Outcome Agreement.
- 10.2 Unless agreed otherwise in the Outcome Agreement, all new Intellectual Property Rights **(New IP)** created by the Provider while performing the Services will be owned by the Provider upon their creation.
- 10.3 The Provider and the Purchasing Agency may agree mutually acceptable use terms **(Agreed Uses)** for New IP and record these in the Outcome Agreement.
- 10.4 The owner of any New IP, whether the Provider or the Purchasing Agency, grants to the other party a perpetual, irrevocable, royalty-free and non-exclusive licence to use, copy, modify and distribute such New IP for any purpose connected with the performance of the Outcome Agreement and any Agreed Uses.
- 10.5 Each party to the Outcome Agreement warrants that any Intellectual Property Rights it provides under or in connection with the Outcome Agreement do not infringe the Intellectual Property Rights of any third party.

11. Termination

11.1 *Termination of an Outcome Agreement for convenience*

Unless specified otherwise in the Outcome Agreement, the Purchasing Agency or the Provider may terminate the Outcome Agreement by giving the other party at least 90 days prior written notice (or such other period agreed by the parties in writing).

11.2 *Termination of Outcome Agreement for breach*

- (a) Unless specified otherwise in the Outcome Agreement, the Purchasing Agency or the Provider may terminate the Outcome Agreement immediately by notice to the other party if:
 - (i) subject to clauses 11.2(b) and (c), the other party commits a breach of the Outcome Agreement and such breach is not remedied within 14 days (or such longer period agreed by the parties in writing) of receiving written notice of the breach; or
 - (ii) the other party ceases or threatens to cease to carry on most or all of its business operations, becomes insolvent or suffers any analogous event.
- (b) Instead of exercising its rights under clause 11.2(a)(i), the non-breaching party may request that the breaching party implement a Remedy Plan. However, if a Remedy Plan is not agreed by the parties by a date specified by the non-breaching party (acting reasonably), the non-breaching party may exercise its rights in accordance with clause 11.2(a)(i).
- (c) If the Provider and the Purchasing Agency enter into a Remedy Plan:
 - (i) both the Provider and Purchasing Agency (whichever is relevant) will perform the tasks specified for it under the Remedy Plan;
 - (ii) the non-breaching party will not exercise its rights under clause 11.2(a)(i) for the breach that is subject to the Remedy Plan; and
 - (iii) if the breaching party fails to remedy the breach in accordance with the Remedy Plan, the non-breaching party may terminate the Outcome Agreement immediately by notice to the other party, without having to enter a new Remedy Plan.

11.3 *Partial termination*

If the Purchasing Agency or the Provider has a right to terminate the Outcome Agreement under clause 11.1 or 11.2, it may elect to only terminate part of it (for example, if the termination is for breach, by terminating only those Services in respect of which the breach arose). The Outcome Agreement and these Framework Terms and Conditions continue to apply to the unterminated part of the Outcome Agreement with any necessary modification.

11.4 *Consequences of termination or expiry of any Outcome Agreement*

If the Outcome Agreement (or any part of it) is terminated or expires in accordance with its terms:

- (a) such termination or expiry will not affect the rights of a party that accrued prior to the date of termination or expiry;
- (b) unless an alternative date for stopping the Services is agreed by the parties in accordance with clause 11.4(e), the Provider must stop performing the relevant Services from the date of termination or expiry of the Outcome Agreement;
- (c) subject to clause 12.1(a), the Purchasing Agency will pay the Provider for all Services provided up to and including the date the Outcome Agreement is terminated or expires;
- (d) the Provider will repay the Purchasing Agency that portion of funding already paid to the Provider for Services that will not be provided as a consequence of termination or expiry of the Outcome Agreement and clauses 12.2 and 12.3 will apply to any repayments under this clause 11.4(d); and
- (e) the Purchasing Agency and the Provider will discuss how to ensure that there is an orderly transition of the applicable Services and client records from the Provider to any replacement provider following termination or expiry of the Outcome Agreement, agree a plan and implement their respective obligations under that plan.

11.5 ***Where one, but not every. Purchasing Agency terminates an Outcome Agreement***

If more than one Purchasing Agency is a party to the Outcome Agreement:

- (a) the exercise of any rights to terminate by any (but not every) Purchasing Agency under clauses 11.1 or 11.2 (Exiting Purchasing Agency) does not affect or terminate the Outcome Agreement as it applies between the Provider and each remaining Purchasing Agency;
- (b) the Provider will continue to perform the Services for the remaining Purchasing Agency/ies; and
- (c) clause 11.4 applies to the termination of the Outcome Agreement as between the Provider and each Exiting Purchasing Agency.

11.6 ***Survival***

Clauses 5.4 (Special Enquiry Rights), 7 (Dispute Resolution), 8 (Privacy of personal information), 9 (Confidentiality), 10 (Intellectual Property), 11.4 (Termination), 12 (Recovery, Reduction or Suspension of Payments), 13 (Indemnity), 15 (General Terms) and Schedule One (Definitions and Interpretation) all survive termination or expiry of the Outcome Agreement.

12. Recovery, reduction or suspension of payments

- 12.1 Without limiting any other rights or remedies, if the Provider does not provide the Services in

accordance with the Outcome Agreement, including meeting any Service delivery targets or performance measures recorded in an Outcome Agreement, the Purchasing Agency may:

- (a) require the Provider to:
 - (i) repay a portion of funding already paid to the Provider; or
 - (ii) reduce the amount to be paid on subsequent payment dates; or
- (b) suspend or delay payment of a portion of the amount to be paid on subsequent payment dates until a Remedy Plan is agreed and its obligations are performed.

12.2 Any amount to be repaid, reduced, suspended or delayed pursuant to clause 12.1 or 11.4(d) will be determined by the Purchasing Agency acting reasonably and following a discussion with the Provider regarding the quality and quantity of Services that were provided or the circumstances relevant to the suspension or delay in payment.

12.3 Subject to clause 12.4, the Provider must repay the Purchasing Agency within 30 days of the date the Purchasing Agency provides written notice of the amount to be repaid to the Provider.

12.4 If the Provider disputes a repayment, it may withhold the disputed sum until the dispute is resolved in accordance with clause 7.

13. Indemnity

13.1 The Provider indemnifies the Purchasing Agency against all losses suffered or incurred by the Purchasing Agency as a result of any claim by a third party that:

- (a) the possession or use of any Intellectual Property Rights supplied or licensed by the Provider to the Purchasing Agency or used to provide the Services infringes a third party's Intellectual Property Rights; or
- (b) a third party's rights (including privacy rights) have been breached as a consequence of the Provider's breach of the Outcome Agreement, including these Framework Terms and Conditions.

13.2 The indemnity in clause 13.1 applies to the extent that any relevant loss was not caused by the Purchasing Agency's negligence, breach of the Outcome Agreement or willful misconduct.

14. Additions or changes to these Framework Terms and Conditions

14.1 The Purchasing Agency and the Provider may agree additional terms to apply to any Outcome Agreement, or to amend these Framework Terms and Conditions, as set out in the Outcome Agreement.

14.2 The Purchasing Agency and the Provider each acknowledge that:

- (a) any additional terms must be read and applied in a way which preserves the greatest degree of consistency and compliance with these Framework Terms and Conditions; and

- (b) before including an additional term that adds to, or an amendment that departs from, the arrangements described in these Framework Terms and Conditions, the Purchasing Agency and the Provider have both discussed and agreed that the addition or departure is necessary to address a matter that is both novel and specific to the Provider or the Services and which (for clearly identified reasons) is not otherwise adequately or appropriately provided for under the Framework Terms and Conditions.

15. General terms

- 15.1 **Relationship of Purchasing Agencies:** In relation to the Outcome Agreement, the Purchasing Agency is only responsible for its own contracted obligations, and will not be responsible for any obligations identified in the Outcome Agreement as being owed by any Other Purchasing Agency that is also party to the Outcome Agreement.
- 15.2 **Variation process:** The Outcome Agreement may be varied with the written agreement of the Purchasing Agency and the Provider. If Other Purchasing Agencies are also parties to the Outcome Agreement, and the proposed variation only relates to Services being provided to one Purchasing Agency, then only the written agreement of that Purchasing Agency and the Provider is required to make that variation.
- 15.3 **No subcontracting without consent:** The Provider may not subcontract the performance of any of the Services without first obtaining the prior written consent of the Purchasing Agency, such consent not to be unreasonably withheld. The Provider is responsible for the acts and omissions of any subcontractor. If Other Purchasing Agencies are also party to the Outcome Agreement and subcontracting of performance of a Service by the Provider only affects one Purchasing Agency then only the prior written consent of that Purchasing Agency is required under this clause 15.3. Where the Purchasing Agency consents to any such subcontracting, the Provider must ensure that an appropriate written agreement is in place between the Provider and the subcontractor that is consistent with the terms of this Agreement (including any payment terms (in all material respects)).
- 15.4 **Assignment:** The Provider may not assign, novate or transfer its rights or obligations under the Outcome Agreement without first obtaining the permission of the Purchasing Agency and such permission will not be unreasonably withheld.
- 15.5 **Comply with Laws:** The Purchasing Agency and the Provider will comply with all Laws applicable to them and their activities and not cause the other to breach any Law that relate to the provision of Services under the Outcome Agreement.
- 15.6 **Entire agreement:** The Outcome Agreement incorporates these Framework Terms and Conditions and read together they record the entire agreement between the Provider and Purchasing Agency in relation to the supply of Services under the Outcome Agreement and supersede all previous oral or written agreements, arrangements, understandings and representations concerning the same subject matter.
- 15.7 **Enforceability:** If any clause of the Outcome Agreement (including any of these Framework Terms and Conditions) is held to be illegal, invalid or unenforceable, it will be removed from

the Outcome Agreement without affecting any other clause.

15.8 **Waiver:** The failure or delay by the Purchasing Agency or the Provider to exercise or enforce any right under the Outcome Agreement (including any of these Framework Terms and Conditions) will not operate as a waiver of that right, unless such waiver is recorded in writing and sent to the relevant party by the party waiving that right.

15.9 **Notices:**

(a) Each notice or other communication under the Outcome Agreement (including any of these Framework Terms and Conditions) will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable), marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.

(b) A notice or other communication will be deemed to be received:

(i) in the case of a letter sent to the addressee's postal address, on the fifth Business Day after posting;

(ii) in the case of personal delivery, on receipt; and

(iii) in the case of email at the time the email leaves the communications system of the sender, provided that the sender:

(A) does not receive any error message relating to the sending of the email at the time of the sending; and

(B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),

on the day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt) on the next Business Day after the date of dispatch.

15.10 **Conflict of interest:** The Provider must advise the Purchasing Agency of whether and whenever it has any actual, potential or perceived Conflict of Interest in connection with the provision of the Services specified in the Outcome Agreement, and follow the directions of the Purchasing Agency if the Purchasing Agency notifies the Provider that it has determined that the Provider has an actual, potential or perceived Conflict of Interest.

15.11 **Governing law and jurisdiction:** The Outcome Agreement and these Framework Terms and Conditions will be governed and interpreted in accordance with the laws of New Zealand. The New Zealand courts have exclusive jurisdiction.

Schedule One: Definitions and Interpretation

Definitions: In these Framework Terms and Conditions, and in the Outcome Agreement, unless the context otherwise requires:

Accreditation means accreditation under the Social Sector Accreditation Standards developed by the Ministry of Social Development;

Accreditation Review means any regular review of the Provider's Accreditation if the Provider is Accredited;

Agreed Uses has the meaning given in clause 10.3;

Business Day means any day of the year other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
- (b) the 24th day of December in any year and the 5th of January in the following year, and all the days in between those two dates; and
- (c) the day observed as the anniversary of Wellington, New Zealand and the province where the Provider's head office is located;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- (c) is provided by either party or a third party 'in confidence';
- (d) either party knows or ought to know is confidential; or
- (e) is of a sensitive nature or commercially sensitive to either party,

and includes personal information (as defined in the Privacy Act 2020);

Conflict of interest means any matter, circumstance, interest or activity of the Provider, its Personnel, subcontractors, or any other person with whom the Provider has a relationship arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or subcontractors to the Purchasing Agency under the Outcome Agreement; or
- (b) the interests of the Purchasing Agency in relation to the Outcome Agreement or otherwise in respect to the provision of Services to the Purchasing Agency;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its

Personnel or subcontractors) to diligently and independently provide the Services to the Purchasing Agency under the Outcome Agreement;

Framework Terms and Conditions means these terms and conditions;

Intellectual Property Rights includes copyright and all present and future intellectual property rights as may exist anywhere in the world, whether conferred by statute, at common law or in equity, and whether or not registered or capable of registration, in relation to inventions (including patents), trademarks, designs, rights in databases and any proprietary business methodology;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, convention, policy or standard enforceable by law; and
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

In any jurisdiction that is applicable to an Outcome Agreement;

New IP has the meaning given in clause 10.2;

Other Purchasing Agency means, in relation to an Outcome Agreement, each Purchasing Agency that is also a party to that, or any other. Outcome Agreement with the Provider;

Outcome means each outcome described in the Outcome Agreement;

Outcome Agreement means an Outcome Agreement signed by one or more Purchasing Agencies and the Provider detailing the Services;

Outcome Agreement Management Plan means, if applicable for the Outcome Agreement, the contract management plan relating to how the Purchasing Agency, and any Other Purchasing Agencies and the Provider will work together under the Outcome Agreement;

Personnel means all individuals engaged by a party in relation to an Outcome Agreement and includes a party's (and a subcontractor's) employees, individual contractors, volunteers, representatives, agents and, in respect of a Purchasing Agency, includes an auditor or reviewer appointed under clauses 5.4 or 5.5;

Provider means the non-government organisation named as the provider in an Outcome Agreement;

Purchasing Agency means:

- (a) each Public Service department, as defined in section 27 of the State Sector Act 1988;
- (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 Corporation;
- (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
- (e) each local authority, as defined in section 5 of the Local Government Act 2002, that is a party to an Outcome Agreement;

Relationship Manager means the relationship manager appointed by each party and named as a relationship manager in an Outcome Agreement;

Remedy Plan means a written plan that may be entered into by the Provider and the Purchasing Agency to address any non-performance issues, such Remedy Plan will identify:

- (a) the non-performance issue;
- (b) how and why the non-performance issue arose; and
- (c) what action the Provider or the Purchasing Agency (whichever is relevant) must take to address or resolve the non-performance issue to the satisfaction of the other, and a timetable for such actions to be completed;

Services means, for an Outcome Agreement, each of the services the Provider will perform to contribute towards achieving each Outcome as described in the Outcome Agreement.

Interpretation: Unless the context otherwise requires:

- (a) a reference to a "party" or the "parties" are to a party or all parties to the Outcome Agreement and includes that party's respective successors in title and permitted assigns (and, where the context so permits, its respective Personnel, Subcontractors and representatives);
- (b) the word "including" and other similar words do not imply any limitation;
- (c) a reference to documentation (including these Framework Terms and Conditions) includes a reference to that document as varied, supplemented, novated or substituted from time to time;
- (d) headings are not to be used for interpretation;
- (e) the Introduction, Purpose & Context Statement and Relationship Principles form part of these Framework Terms and Conditions; and

- (f) the singular includes the plural and vice versa.