



**NEW ZEALAND**  
GOVERNMENT PROCUREMENT

# Outcome Agreement

User Guide to the 2<sup>nd</sup> Edition

---



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

June 2016

New Zealand Government

New Zealand Government Procurement

PO Box 1473  
Wellington 6140  
New Zealand

[www.procurement.govt.nz](http://www.procurement.govt.nz)  
[procurement@mbie.govt.nz](mailto:procurement@mbie.govt.nz)

CROWN COPYRIGHT © 2016

# Contents

Introduction.....	2
Section from the OA: Parties .....	4
Section from the OA: Introduction.....	5
Section from the OA: Relationship between this OA and the FTC.....	5
Section from the Integrated OA: Where more than one Purchasing Agency is a party to this OA .....	7
Section from the OA: Term of this OA.....	8
Section from the OA: Services, outcome(s) and performance measures .....	9
Section from the OA: Contract Management.....	11
Section from the OA: Payment .....	15
Section from the OA: New IP .....	17
Section from the OA: Privacy of Personal information.....	18
Section from the OA: Relationship managers and contact details .....	20
Section from the OA: Additions or changes to the Framework Terms and Conditions .....	21
Section from the OA: Signatures.....	23

## Introduction

The Outcome Agreement (OA) is one of two legal documents that form part of the *Streamlined contracting with NGOs contracting Framework*. The other legal document is the Framework Terms and Conditions (FTC). Together, the OA and FTC document all the legal obligations between a government agency (that purchases services) and an NGO (who provides those services). Neither legal document can be used without the other.



The FTC creates a simple contract framework that can apply to a broad range of different contracting scenarios and is incorporated by reference into every OA between purchasing agencies and Providers. It is structured as a standard, web-based, set of general terms and conditions that:

- apply to all contracts;
- where purchasing agencies purchase services from NGO providers;
- using the streamlined contracting framework.

The FTC is not intended to be amended for individual engagements. Instead it adopts a default position in most areas, with flexibility so engagement specific details (which would not be standard across every contract government enters with an NGO provider) can be included in the OA. This ensures the contract is suitable for a wide variety of engagements.

This approach enables all purchasing agencies to use consistent standard terms and conditions, which should greatly benefit the provider community. It also avoids the need for physically signing the FTC. The OA is the only legal document signed by the Purchasing Agency and Provider.

The OA details:

- specific services being purchased
- community or population outcomes the services contribute to
- desired customer outcomes
- how performance will be measured
- price
- monitoring and reporting arrangements
- the term (length) of contract
- other terms either party must comply with
- any other engagement specific details necessary.

Please note that for the purposes of this guide:

- the word *customer* refers to any person using the NGO provider's service

- the term *Purchasing Agency* refers to a government agency that purchases services from a NGO Provider using an OA.

## Structure of this guide

This guide presents each section of the OA, followed by an explanation of that section under the heading **Commentary** that covers:

- key points to note, including any contract management tips;
- what to do in the OA.

Detailed advice on the content of the FTC is available in the *FTC User Guide to the 2<sup>nd</sup> Edition*.

## Government wide application

The *Streamlined Contracting with NGOs Contracting Framework* applies to all contracts where Purchasing Agencies buy services from NGO Providers.

The FTC requires Purchasing Agencies to:

- work in a more coordinated manner
- encourage collaboration and consistency in approach within business units inside a Purchasing Agency and also across different Purchasing Agencies.

This approach will reduce the duplication of contract management activity and the compliance burden that purchasing agencies place on NGO Providers.

## Drafting approach

There are a number of clauses in the FTC that would not be present in a standard bilateral (two-party) contract, but are still necessary for the FTC to:

- allow widespread use by Purchasing Agencies
- ensure that the major improvements in approach (that will reduce the compliance burden on NGOs) are followed.

The FTC reads as a bilateral contract between the Purchasing Agency and the Provider, which should make it easier for the Provider to read. There are two OA templates, namely:

Template	Application
OA (Bi-lateral)	To be used for a contract between a single Purchasing Agency and single Provider.
OA (Integrated)	To be used for a contract between multiple purchasing agencies and a single Provider.

For integrated contracts, the multi-Purchasing Agency implications are addressed in section 2 of the integrated OA template. The bilateral OA template has a different section 2.

Note: this guide uses the clause numbering from the Integrated Outcome Agreement but the discussion applies to the content of both versions.

## Section from the OA: Parties

### Parties

*[Insert name of Purchasing Agency, e.g. “The Sovereign in right of New Zealand acting by and through the Chief Executive of...”]* **(Purchasing Agency)**

*[Full legal name of NGO services provider, include any relevant registration numbers (e.g. charities or incorporated societies numbers) and address]* **(Provider)**

### Commentary

All contracts should accurately record the name of each party to the contract. This ensures that each party is easily identifiable. Getting this right is crucial to ensuring that each party has enforceable rights and obligations against the organisation they expect to deal with.

### What to do in the OA

You need to include the full legal name of each party to the OA and the Provider’s address.

- Ensure that the legal name is accurately recorded.
- If the Provider is a registered legal entity, its full legal name will be recorded on the relevant register (i.e. companies’ office, charities, or incorporated societies and trusts register – all of which are searchable online). The other obvious way to get this right is to ask the Provider to confirm that the OA correctly records the legal name and address, which could include asking the Provider to give some other forms of certification (e.g. an extract from its rules or other establishment documents).
- The full names of each Purchasing Agency can be checked:
  - with the internal legal team within that Purchasing Agency
  - in schedule 1 of the *State Sector Act 1988*, *Crown Entities Act 2004* or *New Zealand Public Health and Disability Act 2000* (for DHBs).

## Section from the OA: Introduction

### Introduction

- A The Framework Terms and Conditions (2<sup>nd</sup> edition) are part of this Outcome Agreement. The Framework Terms and Conditions are available at [www.procurement.govt.nz](http://www.procurement.govt.nz)
- B This Outcome Agreement describes the:
- (i) Outcome to be achieved;
  - (ii) Services that the Provider will provide to contribute towards achieving that Outcome; and
  - (iii) the performance measurement framework to assess the provision of the Services, and whether the Services have contributed towards achieving the Outcome.
- C The Purchasing Agency engages the Provider to provide the Services on the terms of this Outcome Agreement (including the Framework Terms and Conditions).

### Commentary

The introduction sets the scene and explains how the OA and FTC fit together to form a contract. It also provides an overview of some of the key features of the OA.

#### What to do in the OA

Nothing.

## Section from the OA: Relationship between this OA and the FTC

### 1 Relationship between this Outcome Agreement and the Framework Terms and Conditions

- 1.1 This Outcome Agreement is deemed to incorporate and be governed by the Framework Terms and Conditions (as added to or modified in accordance with clause 10).
- 1.2 Unless the context otherwise requires, all terms defined in the Framework Terms and Conditions have the same meaning in this Outcome Agreement.
- 1.3 The Introduction above forms part of this Outcome Agreement.

### Commentary

These clauses are included to:

- assist interpretation
- clarify which parts of the OA form part of the binding contract between the Purchasing Agency and Provider.

To avoid duplication, clause 1.2 makes it clear that the terms defined in the FTC have the same meaning when used in the OA. Every OA incorporates the FTC by referring to MBIE's website for New Zealand Government Procurement.

If new defined terms are required for the OA, they can either be:

- defined where they are first used in the OA
- added into Appendix 9 (see an example below).

*Definitions:* In this OA, unless the context otherwise requires:  
[New definition] means ...

If including a new definitions section, do not define terms already noted in the FTC as that will create confusion as to which defined term should prevail.

### **What to do in the OA**

Nothing.



## Section from the Integrated OA: Where more than one Purchasing Agency is a party to this OA

### Integrated OA only

#### **2 Where more than one Purchasing Agency is a party to this Outcome Agreement**

- 2.1 A reference in this Outcome Agreement to “the Purchasing Agency” means each individual Purchasing Agency that is a party to this Outcome Agreement.
- 2.2 Each Purchasing Agency may exercise Purchasing Agency rights (as they relate to that Purchasing Agency only) under this Outcome Agreement. A Purchasing Agency may not represent another Purchasing Agency without the other Purchasing Agency’s consent, and may only exercise rights, and is only required to do things, relating to itself and Services being provided to it. No Purchasing Agency is responsible for what another Purchasing Agency does, or fails to do, under this Outcome Agreement. For example:
- (a) any extension of the term of this Outcome Agreement is only binding on the Purchasing Agency that provides its written consent to that extension; and
  - (b) Services, payments or terms which refer to a particular Purchasing Agency only relate to that Purchasing Agency.
- 2.3 If a Purchasing Agency does, or requests the Provider to do, something which the Provider reasonably believes conflicts with what any Other Purchasing Agency requires or has requested, the Provider will advise each affected Purchasing Agency of that conflict and attempt to resolve it, but until the conflict is resolved, the Provider will be entitled to perform the Services as if the thing giving rise to the conflict had not happened.
- 2.4 The Framework Terms and Conditions set out the commitment Purchasing Agencies make around co-ordinating with the Provider and Other Purchasing Agencies to streamline communication, monitoring, reporting and audits to make the contract management of this Outcome Agreement as efficient and effective as is reasonably practicable.

### Commentary

This is the only area of the OA where there is any difference between the two OA templates (i.e. the integrated and bilateral versions).

Clauses 2.1 to 2.3 in the integrated OA are included to clarify what rights a single Purchasing Agency may exercise when multiple purchasing agencies are party to the same OA with a single Provider. These clauses are not relevant when the OA is between only one Purchasing Agency and a single Provider.

A Purchasing Agency can only exercise its own rights (i.e. ones that relate to services it is purchasing from the Provider). It cannot make decisions for or exercise rights belonging to, any other Purchasing Agency.

Clause 2.4 encourages purchasing agencies to consider whether the Provider has signed other OAs, when considering what reporting and auditing requirements are most appropriate to manage or mitigate risks identified through using the DST.

### What to do in the OA

Nothing.

## Section from the OA: Term of this OA

### 3 Term of this Outcome Agreement

- 3.1 This Outcome Agreement will commence on *[insert date]* and end on *[insert date]* unless extended pursuant to clause 3.2 or terminated earlier in accordance with the Framework Terms and Conditions.
- 3.2 The Purchasing Agency may extend the term of this Outcome Agreement for up to *[insert number of possible extension rights]* further periods of *[insert length of each extension term]* by giving the Provider notice it wishes to extend the term at least *[insert notice period]* days before the date when the term would otherwise expire.

### Commentary

All contracts should be for an agreed period of time (referred to as the term), with a commencement and expiry date. If a Purchasing Agency wants the right to extend the term beyond an initial period, it should be clear about that up-front.

The commencement date is the date that the OA comes into effect. It can be different from the date the OA is signed. Services should not be delivered before the commencement date. The expiry date is the date that the OA will end, unless one party exercises its right to end the OA before its expiry date for any of the reasons described in either the FTC or OA.

Clause 3.2 (2.2 in the bilateral OA) also gives the Purchasing Agency the right to extend the term of the OA beyond the initial term, by including any further extensions of the term of the OA.

The cost to establish and provide the service (especially an on-going service) will be directly impacted by the term of the OA. Longer-term contracts have a longer period over which to recover establishment costs.

- Shorter term contracts:
  - can impact the experience of the person using the services (both customers in the community and the Purchasing Agency administering the contract), especially if there is Provider turnover as a result of frequent short term contracts
  - usually impact the way a Provider hires staff, which can increase the cost of providing the service.
- If the provision of services is being tendered, the cost of tendering (for both the Purchasing Agency and the Provider) and selecting the right Provider should be considered when deciding the term of the OA. If those costs are high, it points towards offering a longer term so that those costs:
  - are not incurred so frequently
  - can be absorbed over a longer period.

Before extending the term, the Purchasing Agency should ensure the Provider is happy to continue providing the services on the same terms during the extended term. We encourage each Purchasing Agency to engage with the Provider as early as possible to discuss:

- the potential extension of the term

- what parts of the OA (if any) need to be amended to accommodate the provision of services during the extended term.

### What to do in the OA

You need to include a commencement and expiry date in this clause. If you want to include a right to extend the term of the OA, you must detail the length of any extended term including:

- how many times you want to be able to extend the term
- how much notice the Purchasing Agency must give the Provider to extend the term.

Delete clause 3.2 (2.2 in the bilateral OA) if you do not want to include a right to extend the term.

## Section from the OA: Services, outcome(s) and performance measures

### 4 Services

- 4.1 The Provider will provide the Services described in Appendix 1.
- 4.2 In providing the Services, the Provider will meet or exceed any performance measures set out in Appendix 1. The performance measures will be used to determine whether the Provider has been successful in delivering each Service in accordance with this Outcome Agreement so as to contribute toward achieving the Outcome linked to each Service.
- 4.3 In providing the Services the Provider must follow the reasonable directions of the Purchasing Agency. Such directions must be consistent with the terms of this Outcome Agreement.

### Appendix 1 – Services, Outcomes to be achieved, and performance measures

<b>Outcome (Population)</b>	This Service is to contribute towards the Purchasing Agency’s purpose: <i>[Add in the Outcome relevant to this procurement]</i>	
<b>Indicator (population)</b>		
<b>Service name and description*</b>	<i>[Insert service description – Could be described in full or a reference could be made to a weblink or a further appendix with a detailed description]</i>	
<b>Client Group*</b>	<b>Contracted Volume</b>	<b>Performance Measures*</b>
[Describe clients, including age,		<i>[insert key reporting measures covering</i> <ul style="list-style-type: none"> <li>• <i>quantity,</i></li> </ul>

ethnicity, location or other factor as appropriate]		<ul style="list-style-type: none"> <li>• <i>quality,</i></li> <li>• <i>effect- is anyone better-off]</i></li> </ul>
---	--	---

## Commentary

All contracts should contain an accurate description of the services to be performed and how service performance will be measured. The template assumes that parties are using Results Based Accountability™ as the outcomes framework for the services. It is the approach most commonly used. This does not preclude parties from deciding to use another outcomes framework and adapting *Appendix 1* to suit.

Regardless of the choice of framework, the services being purchased should contribute to achieving a pre-agreed population outcome. The population outcome, service description and corresponding performance measures will vary from one engagement to another. These clauses and *Appendix 1* are therefore vital to the proper operation of the OA. *Appendix 1* should be as clear, accurate and detailed as possible. It will be the yardstick by which performance/success is measured and is critical to the payment regime. It is important to recall that the Provider is not accountable for the population outcome.

These clauses and *Appendix 1* relate to clause 3.1 of the FTC.

Further information about RBA and how to write performance measures using RBA methodology is available via [www.procurement.govt.nz](http://www.procurement.govt.nz) => search *results based accountability*

To have a meaningful contract, the Purchasing Agency needs to describe the services and the corresponding performance measures in enough detail so that the Provider has certainty regarding:

- what is expected
- how the Purchasing Agency will decide if the services meet their expectations.

*Contracted volume:* This can mean the number of:

- services provided (or to be provided)
- customers the Provider will see or directly assist
- full-time equivalent (FTE) if the contract is effectively purchasing a resource to undertake a particular activity.

*Client group:* This section provides flexibility to describe one of the following:

- the target customer group (e.g. children under five years old)
- any eligibility criteria that needs to be met for a customer to be eligible to receive a service (e.g. a person diagnosed with a severe conduct disorder)
- a person referred to the service from the courts.

*RBA:* Performance measures for any service may incorporate RBA™ performance metrics including how much, how well and is anyone better off?

### Contract and relationship management tip

Think about whether or not the services and corresponding performance measures are achieving the desired customer outcomes and contributing to the desired population or community outcome. This should help focus the contract management activity (i.e. monitoring, reporting etc.). Since both the Purchasing Agency and Provider want to help customers achieve better personal outcomes, having this focus should also help develop the relationship between Purchasing Agency and Provider. The two parties can then:

- learn from each other about the best ways to improve customer outcomes

- tailor the service provision to best meet customers' needs.

## What to do in the OA

*Appendix 1* is intended to be flexible because the user can add additional columns to accurately and fully describe the services, performance measures or other important associated details as required. The user can change the table to suit whatever needs to be included (e.g. change the heading axis to populate rows rather than columns) and accommodate any preferences for how that information might best be presented.

Describe the outcome (population), services, contracted volume and corresponding performance measures in *Appendix 1*. Add any further rows or columns required. Since each OA can cater for multiple service lines, the user needs to ensure that each service has a contracted volume and corresponding performance measure (e.g. the customer outcomes).

- If the services and/or corresponding performance measure are already described in an online service specification, practice guideline or service manual then they do not need to be repeated in *Appendix 1*. Instead, provide a brief description of the service and follow that with the words: *as described in the* (insert service specification, practice guideline or service manual) *located at* (insert website details) *or "appended to this Outcome Agreement"* (if the document is not available online).
- If the service and/or corresponding performance measures are described in an online service specification, practice guideline or service manual – check that any reporting and monitoring requirements included in the OA, align with any monitoring or reporting obligations contained in the online material. If they do not align, managing performance under the OA will be more difficult because there will be uncertainty around what performance measure needs to be met. This also risks adding to rather than reducing, the compliance burden for Providers.
- Wherever possible, ensure that the selected performance measures will allow you to determine whether the services are:
  - achieving the desired customer outcomes
  - contributing to the population or community outcome being sought.

## Section from the OA: Contract Management

### 5 Contract management

- 5.1 The contract management arrangements for this Outcome Agreement (including monitoring, reporting and audit) are set out in Appendices 2 to 4.
- 5.2 The Provider and Purchasing Agency will comply with all applicable obligations under Appendices 2 to 4.

## Commentary on contract management

In this contract template there are three elements to contract management, monitoring, reporting and Audit/Accreditation Review. Each of these and the corresponding Appendix is addressed below.

Before completing these sections of the OA it is useful for the Purchasing Agency to complete the DST to identify and weigh the risks associated with purchasing the service from that Provider. Doing that assessment and sharing the results with the Provider, should help both parties agree on appropriate arrangements for contract management that:

- balance the need to responsibly manage contracted activity that is paid for with tax-payer’s money
- allow the Provider to perform the services without unnecessary disruption or the distraction of its limited resources.

The cost to establish and provide the service will be directly impacted by the amount of time the Provider needs to devote to contract management activities such as monitoring and reporting activities. The more time a Provider spends monitoring for the Purchasing Agency, the less time spent delivering services to the customers.

The Purchasing Agency should consider whether the proposed contract management activities reflect the nature and strategic importance of the relationship it wants to have with the Provider (recognising that not all relationships the Purchasing Agency has with its Providers will be the same).

### Appendix 2 – Monitoring by the Purchasing Agency

Service *	Monitoring activity *	Time and frequency of monitoring activity *

### Commentary on monitoring

Each OA should specify how often the Purchasing Agency intends to schedule monitoring activity.

The purpose of including this clause is to allow the Provider to plan for and ensure it has the right people available during monitoring visits. Since the nature, scope and frequency of monitoring activity will vary depending on a range of circumstances, this clause and *Appendix 2* are necessary to ensure the OA can specify fit-for purpose monitoring arrangements. This clause and *Appendix 2* relate to clause 5.2 of the FTC.

The nature, scope and frequency of monitoring activities are matters for each Purchasing Agency to determine. The Purchasing Agency should ensure that the proposed monitoring activity is appropriate for the type of service provided given:

- the vulnerability (or otherwise) of the customer
- the Provider’s experience (e.g. the length of time its team has successfully delivered the required service, together with the scale and sophistication of its operations).

Effective monitoring can be a great way to develop or further enhance working relationships. It affords both parties an opportunity to discuss progress. With the assistance of the RBA methodology and tools, it also allows the parties to frequently discuss whether the desired customer and population outcomes are being achieved or contributed to.

The Outcome Agreement Management Plan (OAMP) provides a simple and easy to use framework for discussing:

- whether desired customer outcomes are being achieved
- how those outcomes contribute towards achieving desired population/community outcomes.

Using the RBA framework, set out below, as part of regular monitoring discussions (especially when developing the action plan at the end of the discussion) will enhance a Purchasing Agency’s ability to know what activities make a positive difference to the customers.

## RBA - working together to understand performance and support continuous performance improvement

Who are our customers? (Customer group)
How can we measure if our customers are better off? (Customer outcome)
How can we measure if we are delivering the services well? (Quality measures)
How we are doing on the most important of these measures? (Baseline data and story)
Who are the partners that have a role to play in doing better? (Partners)
What works to do better, including no-cost and low cost ideas? (Common sense ideas and research where available)
What do we propose to do? (Action plan)

For more information on the OAMP, visit [www.procurement.govt.nz](http://www.procurement.govt.nz) => search *OAMP*.

### What to do in the OA

Describe the monitoring activity (e.g. proposed visits, teleconferences, Skype discussions, etc.), together with the timing and frequency of those activities. Since each OA can cater for multiple service lines, you need to ensure that the monitoring activity aligns with a particular service.

### Appendix 3 – Regular reporting by the Provider

Service *	Report name *	Details to be included in the report *	Time and frequency of reporting *

### Commentary on reporting

Each OA should specify how often the Provider is required to generate reports for the Purchasing Agency and the content of those reports. Since the form and content of reports a Purchasing Agency may request will vary, clause 5 and *Appendix 3* ensure the OA can describe the reporting requirements to suit the engagement. Clause 5 and *Appendix 3* relate to clause 5.3 of the FTC.

Each Purchasing Agency will need to determine the form, content and frequency of reports it requires in the OA. Before requesting information in a report, a Purchasing Agency should be able to explain why that information is required and what it will be used for. If a Purchasing Agency cannot explain why the information is required, it should not ask for it.

Some information is required to allow the Purchasing Agency to responsibly manage whether the services have been provided in accordance with the OA. Other information may be requested to help the Purchasing Agency gain a better picture of the sector and the people who use the services. This information can inform strategic decision-making (i.e. policy or legislative settings for the sector).

Purchasing agencies should consider what information the Provider already collects as part of its usual business activity. If there is overlap between what the Provider collects and what the Purchasing Agency wants, the Purchasing Agency should:

- try to use the Provider's information



- only ask for additional information where required to appropriately manage or mitigate an identified risk, or if there is a reason for collecting it.

Adding a reporting template to the OA is a good way to ensure that a Provider is aware of and can populate the template with the required information, before signing the OA.

Creating certainty of the form, content and frequency of reporting means a Provider can plan to deliver each report on time and to the required standard, something which can often be a pre-condition to receiving payment from the Purchasing Agency. Both parties should periodically:

- check that each report's content meets the required needs
- amend that content if necessary.

### What to do in the OA

Describe the information to be included in each report requested, including the timing and frequency when those reports must be submitted. Since each OA can cater for multiple service lines, each requested report must align with a particular service.

A number of purchasing agencies will want to ensure that their reporting includes some RBA performance measures (i.e. reporting on how much, how well and whether or not anyone is better off after using the services).

### Appendix 4 – Regular audits or Accreditation Reviews of the Provider

<b>Audit or Accreditation Review*</b>	<b>Time for conducting the audit or accreditation review*</b>
---------------------------------------	---

### Commentary on audit or Accreditation Reviews

Each OA should specify how often the Purchasing Agency intends to audit the Provider or review their accreditation status. The purpose of including this clause is to allow the Provider to plan for these activities and ensure it has the right people available during those processes. This clause 5 and *Appendix 4* relate to clause 5.5 of the FTC.

Each Purchasing Agency notes what audits or reviews (including approximate timing) it may utilise in the OA. Not all services will be subject to audit or review. That does not mean the Provider or the provision of services can never be audited. Clause 5.4 of the FTC still allows the Purchasing Agency (acting reasonably) to require further information or carry out an audit if it believes that Provider has breached the OA (referred to in the FTC as *special enquiry rights*).

If audits or accreditation reviews are planned the Purchasing Agency should aim to:

- maximise the value of carrying out that audit or review
- avoid duplicating that exercise as part of its regular reporting and monitoring activities, unless that separate monitoring and reporting is required to appropriately manage or mitigate an identified risk.



If a Purchasing Agency wants to include audits or Accreditation Reviews more frequently than once a year, it will need to include it as a change to the FTC in *Appendix 8*. This must be based on an assessment of the risks which are special to that OA and require more frequent audit or Accreditation Review.

Giving the Provider as much notice as possible before conducting a statutory audit or review, allows the Provider to plan for when its senior staff (who will likely have many demands on their time) need to be available.

### What to do in the OA

Describe the type of audit, or Accreditation Review, approximate timing and frequency when those audits or reviews may take place.

## Section from the OA: Payment

### 6 Payment

6.1 Subject to the Purchasing Agency’s rights under the Framework Terms and Conditions relating to the Recovery, Reduction or Suspension of Payments, the Purchasing Agency will pay the Provider for the Services the amounts, and at the times, specified in Appendix 5.

#### Appendix 5 – Payment for Services

Service *	Payment date/milestone *	Payment amount *	Pre-conditions to receiving payment (if any)

### Commentary

This clause and *Appendix 5* relate to clauses 4.1 and 4.2 of the FTC. Each OA should specify how much the Provider will get paid for performing the services, when that payment will be made and whether the Provider needs to meet any pre-conditions before it will receive payment.

The OA should include the payment amount and frequency those payments will be made, together with any pre-conditions the Provider must satisfy before getting paid. This last part is critical to the Provider being entitled to submit its invoices and then get them paid on time, so that cash flow covers its regular operating costs (e.g. wages, rent and tax).

The best thing a Purchasing Agency can do to reduce the financial stress on a Provider, is to prioritise the processing of a Provider’s invoice. This approach could include a Purchasing Agency:

- reminding the Provider to issue the invoice (and report if relevant) if it is not promptly received after the invoice period ends
- promptly advising the Provider if any required reports are deficient and what information is required to correct them
- ensuring the person who needs to approve payment has done so and the invoice is in the payment system

- confirming with the finance team that payment has been made.

This is a relatively small thing for Purchasing Agency staff to do, but it will make a huge difference to the Provider and they will appreciate the Purchasing Agency's attention to this detail.

When considering payment arrangements a Purchasing Agency should consider:

- whether the time between payments might be a source of financial stress for the Provider
- making payment more frequently if necessary.

Paying more frequently can create its own challenges, especially if payment is sought before the desired results are achieved. Using the DST to assess the risks associated with purchasing the service (including paying in advance of results being achieved if that's a relevant consideration), should help both parties work through these challenges.

### **What to do in the OA**

Describe the payment amount, date or milestone and any pre-conditions the Provider must satisfy before getting paid. The pre-conditions might include the provision of a valid tax invoice with details such as GST number and contract number. If you require your invoice to be emailed to a specific address, include it here.

Where a report is also required to accompany the Provider's invoice before payment is made, this pre-condition should be noted in *Appendix 5* with details of the report's content included in *Appendix 3* (reporting).

Since each OA can cater for multiple service lines, so each payment must align to a particular service. Add additional lines to *Appendix 5* if there are more services.

## Section from the OA: New IP

### 7 New IP

- 7.1 If, contrary to the intellectual property clauses in the Framework Terms and Conditions, any New IP is to be owned by the Purchasing Agency that will be recorded in Appendix 6.
- 7.2 Any Agreed Uses of New IP are recorded in Appendix 6.

### Appendix 6: New Intellectual Property

Service	New IP *	Agreed Uses of the New IP *
[If despite what is stated in the FTC, new IP is to be owned by the Purchasing Agency record that here (see clause 10.2 of the FTC)]		

### Commentary

This clause is included because the standard position on ownership of New IP in the FTC (which says it belongs to the Provider with a range of rights provided to the Purchasing Agency under licence) will not be appropriate in every situation.

There may be situations when it is more appropriate for the Purchasing Agency to own any New IP and licence its use back to the Provider, or for it to be jointly owned. For example, a Purchasing Agency may engage a Provider to undertake research and want to share the results of that research with others in the sector free-of-charge. Anyone in the sector can use that research for any purpose. In that situation it may be more appropriate for:

- the New IP in that research to be owned by the Purchasing Agency rather than the Provider
- the Provider still having a licence to use that New IP.

Clause 7 and *Appendix 6* are necessary for recording examples like the one above. This clause and *Appendix 6* relate to clause 10 of the FTC.

Describe the New IP in sufficient detail so that the Purchasing Agency and Provider know:

- what New IP will not be owned by the Provider
- who owns that New IP.

Since New IP may relate to a particular service under the agreement, there is an optional field for including a description of that service.

Even though the Provider may own the New IP under the FTC, the Purchasing Agency always has a licence to use/modify/copy (hereafter referred to as *use*) that New IP for any purpose connected with performance of the OA and any other agreed uses. Those other agreed uses represent additional purposes for which the Purchasing Agency may use that New IP. The Provider and Purchasing Agency must agree on those uses.

If a Purchasing Agency wants to depart from the standard position in the FTC (i.e. the Purchasing Agency wants to own some or all New IP), it should be able to explain to the Provider why that is necessary.

If the Purchasing Agency ends up owning any New IP, it also grants the Provider a licence to use it for any purpose connected with performance of the OA and any agreed uses.

### **Contract and relationship management tip**

To get a better understanding of how the Provider is using any New IP and how the Purchasing Agency might want to use it itself, a Purchasing Agency should consider periodically discussing New IP as part of its contract management meetings.

### **What to do in the OA**

Record a description of the New IP and its owner in *Appendix 6*. Users may also want to highlight the link between the New IP and the service it relates to in *Appendix 6*, but that is not mandatory.

## **Section from the OA: Privacy of Personal information**

### **8 Privacy of personal information**

8.1 The details of any personal information that will be shared between the Purchasing Agency and the Provider, and any agreed approach to the management of such information, are recorded in Appendix 7.

### **Appendix 7 - Privacy of personal information**

*[Note: Insert any agreements about the sharing of client personal information; alternatively include a reference to any service specification where those agreements are set out.]*

### **Commentary**

This section concerns clause 8 of the FTC which relates to clients' personal information.

This clause affirms the importance of rights to privacy. It also recognises that the carefully managed sharing of client information can assist with the delivery of better public services, to the right clients, at the right time.

The new clause does not specify that information must be shared or what information must be shared. It does not override the laws relating to privacy and the sharing of personal information. The clause recognises that agencies may be subject to legislative provisions and regulatory instruments that override the Privacy Act.

### **Information Sharing**

Clause 8.2 of the FTC requires the Purchasing Agency and Provider to agree on what client information will be shared, with this being recorded in *Appendix 7* of the OA. In determining what information will be shared, the parties need to consider:

- 1 What client information will be shared, and for what specific purposes. The parties may choose to adopt a 'system level' perspective - one that recognises that clients often have complex needs that are being addressed by multiple agencies, and that the sharing of information and coordination of services across these agencies can deliver better outcomes than isolated responses. When adopting a 'system level' perspective of the client you may identify purposes for sharing information that extend beyond the narrow purpose that underpins the service supplied by the Provider, and beyond the specific need that triggers the Provider's contact with the client.
- 2 The legal authority for the information sharing, which could include:
  - a) a *duty of disclosure* arising from a principal-agent relationship. The level of control the Purchasing Agency exercises over a Provider is the primary basis for establishing whether the Purchasing Agency is in a legal relationship with an 'agent' or an 'independent contractor'. Where the Purchasing Agency exercises specific control and supervision over how the Provider performs their work it is likely to be in the nature of an agency relationship. Where the Provider is contracted to perform a statutory function under the delegated authority of an officer of the Purchasing Agency, then it is likely to be serving as an agent. An agency relationship places an obligation on the Provider to supply the Purchasing Agency any client information they collect, hold or use in performing work under the authority of the Purchasing Agency (consistent with section 3 of the Privacy Act). Where the Purchasing Agency is indifferent or exercises little influence over how a contractor goes about delivering their outputs it is likely to be in the nature of an independent contractor relationship, and a duty of disclosure doesn't apply unless specified in the contract. You may need to discuss this with your legal team.
  - b) *client consent* - if the information to be shared is health information, historic information, or information otherwise subject to statutory restrictions over its use, the parties will normally need to secure the client's consent to authorise the sharing. When these circumstances don't apply, the parties may nevertheless choose to adopt client consent-based sharing arrangements whenever the benefits of doing so outweigh any detriments to client safety and wellbeing, service utilisation, and service outcomes,
  - c) *exceptions to the Information Privacy Principles* in the Privacy Act, such as the "maintenance of the law" and "serious threat" exceptions to *Information Privacy Principle 11*,
  - d) a *privacy statement* used with clients, which explicitly codifies the purposes and parties to the information sharing and, in doing so, legitimises it without recourse to any other legal authority (*Note: privacy statements cannot, in isolation, provide the legal authority for sharing health information, historic information, or information otherwise subject to statutory restrictions over its use*),
- 3 The security and storage arrangements for client information that is shared.

### Privacy Statements

Clause 8.3 of the FTC states the Purchasing Agency may draft a privacy statement, or specific clauses of a privacy statement, for the Provider to use with their clients. The Purchasing Agency must consult with the Provider before making a direction that the Provider use the privacy statement or clauses.

A privacy statement is a requirement of *Information Privacy Principle 3* of the Privacy Act, and ensures clients are aware of:

- the fact that information about them is being collected
- the purpose for which the information is being collected
- who will receive the information
- whether they have to provide the information, and what will happen if they don't
- how they can access the information held about them, and correct it if it's wrong

The introduction of clause 8.3 recognises that privacy statements are a valid tool to legitimise information sharing between agencies, so long as the sharing is explicitly codified in the statement. The adoption of a common privacy statement is particularly important whenever agencies are participating in multi-agency programmes or endeavours, such as place-based initiatives.

It is not reasonable to use Clause 8.3 to require the Provider to share client information with the Purchasing Agency, in the absence of an agreement to do so under Clause 8.2.

### **What to do in the OA**

Record in *Appendix 7* of the OA the details of any agreements made on the sharing of client information. Because this will vary from agreement to agreement this has been left as free text for clauses to be inserted.

## **Section from the OA: Relationship managers and contact details**

### **9 Relationship Managers and contact details**

9.1 Each party's initial postal address, physical address, email address, phone number and Relationship Manager details is set out below:

**Purchasing Agency:**

Relationship Manager:

Postal address:

Physical address:

Email address:

Phone number:

**Provider:**

Relationship Manager:

Postal address:

Physical address:

Email address:

Phone number:

## Commentary

Each OA must specify the contact details for the Purchasing Agency, the Provider and their respective relationship managers. This information is important because any notices that need to be served under the OA or FTC (i.e. notice of breach of the OA, or notice from the Provider that it's changing its legal structure) will need to be sent to one of these addresses.

- It is preferable to name an individual as the relationship manager and ensure the email address is regularly checked, so that any sent notices are promptly acted on.
- If the relationship manager is delegated by reference to a job title, the agency should ensure that each party at least:
  - notifies the name of the person holding that role
  - keeps that information up-to-date during the term of the OA.

## What to do in the OA

Complete each line of the contact details section for both the Purchasing Agency and Provider.

## Section from the OA: Additions or changes to the Framework Terms and Conditions

### 10 Changes or additions to the Framework Terms and Conditions

- 10.1 The Provider and Purchasing Agency agree to amend the Framework Terms and Conditions as set out in Appendix 8 and 9.
- 10.2 Except as set out in Appendix 8 and 9, the Framework Terms and Conditions remain in full force and effect in relation to this Outcome Agreement.

### Appendix 8 – Changes to the Framework Terms and Conditions

*[Note: This is optional. This Appendix should only be used if the Purchasing Agency and the Provider have both discussed and agreed that the addition or departure from the Framework Terms and Conditions 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.*

*Where applicable, include the consequences of breaching the new or amended terms (e.g. the parties will agree a Remedy Plan or some other consequence as applicable).*

### Appendix 9 – Additional terms to the Framework Terms and Conditions

*[Include here any service specific clauses which are not covered by the Framework Terms and Conditions. In particular consider where relevant: clauses covering the Vulnerable Children's Act (the obligations to have child safety policies), and clauses on Health and Safety obligations.]*

## Commentary – changes to the FTC

You must be able to explain why the proposed further term is necessary and in particular, describe why the matter is both novel and specific to the Provider or the services (i.e. the risk is not adequately covered by the FTC).

MBIE expects this clause to be used relatively rarely.

## Commentary – additional terms to the FTC

This clause is intended to allow a Purchasing Agency and Provider to agree any further terms that are specific and additional to those in the FTC, where this is necessary for clearly identified reasons.

If the Purchasing Agency and Provider want to include any further terms in *Appendix 9*, they must be able to clearly explain why the additional clause is necessary. In most cases that will be:

- to more appropriately manage or mitigate an identified and clearly articulated risk
- to address a matter that is both novel and specific to the Provider or services, which is not adequately covered by the FTC.

Check whether the further term is consistent with the FTC. Go back to the relationship principles in the FTC to ensure that the new term is consistent with that approach.

Whenever a further term is included in an OA, consider whether there should be a corresponding consequence if that further term is not complied with. The FTC provides a range of standard consequences if an obligation is not complied with including:

- agreeing a remedy plan with actions necessary to fix the breach
- exercising any of the other remedies in the FTC, particularly section 11 (termination) or section 12 (recovery, reduction or suspension of payment).

If those consequences are not suitable agree (up-front) a different consequence to match any further terms.

## What to do in the OA

For any terms which imposed obligations on either party use *Appendix 9*, to describe:

- each obligation
- the last date for complying with each obligation (if relevant)
- specify any additional terms which:
  - must be satisfied or complied with before the services are provided
  - and/or requires on-going compliance during the term
- any consequences specific and additional to those described in the FTC) that may apply if the additional term is not met or complied with.



## Section from the OA: Signatures

### Signed as an agreement

for and on behalf of Purchasing Agency 1 as follows:

\_\_\_\_\_  
Signed by *[insert name and title of signatory]* Date \_\_\_\_\_

### Signed as an agreement

for and on behalf of the Purchasing Agency 2 as follows:

\_\_\_\_\_  
Signed by *[insert name and title of signatory]* Date \_\_\_\_\_

### Signed as an agreement

for and on behalf of the Provider as follows:

\_\_\_\_\_  
Signed by *[insert name and title of signatory]* Date \_\_\_\_\_

## Commentary

The Provider and every Purchasing Agency that is party to the OA, must sign it. Each party that signs the OA is agreeing to be bound by it and by the FTC.

Recording the title of the signatory helps ensure that only the person with authority to sign contracts for that entity, actually signs the OA. Unless you know or have reason to suspect otherwise, you can assume that the person signing the OA on behalf of the relevant party has the appropriate authority to do so. You can ask for proof that the person signing has both:

- the appropriate level of financial delegation that covers the value of the OA
- a current valid delegation that has been properly granted.

If there is any doubt or concern, individual enquiries can be made. This could include checking if the Provider is a registered legal entity or searching the relevant register (companies, charities, incorporated societies etc.). The Provider's constitution or founding document (i.e. trust deed) may also assist.

Record the name and title of the signatory for each party in the OA, together with the date each party signed it.

You do not always need to have the signatures witnessed on an OA. However, if this is a requirement for your organisation then you can replace the signing clause with a clause like the one given in the following table.

**Example: Signature clause with provision for witnesses:**

For and on behalf of the <b>Purchasing Agency</b>	For and on behalf of the <b>Provider</b>
<hr/> Signature Name: Position: Date:	<hr/> Signature Name: Position: Date:
<hr/> Signature of witness Name: Occupation: Address:	<hr/> Signature of witness Name: Occupation: Address:

If you are about to enter into an integrated OA (i.e. one between multiple purchasing agencies and a single Provider), it may be useful to add a counterparts clause to avoid needing lots of parties to sign a single document. Below is a counterpart clause that you may wish to include as a further term.

*Counterparts:* This Outcome Agreement may be signed in two or more counterparts, each of which will be deemed an original, and of which together are deemed to constitute a single signed Outcome Agreement.