

SCHEDULE 1

Dated 4/11/ 2020

**OPEN SYNDICATED
AGREEMENT**

for telephone and video interpreting
services

Lead Agency

Ministry of Business, Innovation and
Employment

Service Provider

Intellicomms Pty Ltd

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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TERMS AND CONDITIONS

BACKGROUND

- A. The Lead Agency issued a Request for Proposal (RFP) on 14 June 2019, seeking proposals for the delivery of telephone interpreting services. The RFP sought an open syndicated arrangement under which any Eligible Agencies could enter into separate agreements with the successful respondent to procure services.
- B. In the RFP for telephone interpreting services, "interpreting through video conference" was stated as a potential inclusion in the scope of telephone interpreting services. Video Interpreting was deferred for further consideration in 2020.
- C. The Service Provider responded to the RFP and represented that it has the skills and resources necessary to provide the services described in the RFP.
- D. At the Lead Agency's request, the Service Provider provided a Proposal ("RFI: Video Interpreting Services for New Zealand Government Agencies", 21 August 2020) representing that it has the skills and resources necessary to add video interpreting to the services offered under this Agreement.
- E. In reliance on the Service Provider's representations in the Service Provider's Proposal referred to in paragraphs A and D, the Lead Agency has engaged the Service Provider to provide both telephone and video interpreting services under this Agreement.
- F. The structure of the syndicated arrangement is as follows:
 - a the Lead Agency and Service Provider enter into the Lead Agency Agreement by executing the Lead Agency Signature Form. The Lead Agency Agreement sets out the rights and obligations of the Lead Agency and the Service Provider to the extent such rights and obligations relate to the governance of the syndicated arrangement;
 - b the Lead Agency Agreement incorporates these Terms and Conditions and enables the Lead Agency to procure services; and
 - c Eligible Agencies may enter into a Participating Agency Agreement by executing a Participating Agency Signature Form. Following execution of a Participating Agency Agreement, the relevant Participating Agency may procure, and the Service Provider has agreed to provide, services in accordance with that Participating Agency Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

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

Additional Services means all other services agreed between the Lead Agency and the Provider from time to time;

Agency means the Lead Agency or Participating Agency, as applicable;

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

Agency Signature Form means the Lead Agency Signature Form or the Participating Agency Signature Form, as applicable;

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

Agency's Requirements means an Agency's requirements for the Documentation and Services as set out in that Agency's Signature Form;

Agreement means the Lead Agency Agreement or Participating Agency Agreement, as applicable;

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

Business Hours means between 9am and 5pm (New Zealand time) on Business Days;

Call means either a telephone or video call or assignment;

Charges means the Charges set out in Schedule 1;

Commencement Date means the commencement date of the Lead Agency Agreement or Participating Agency Agreement, set out in the Lead Agency Signature Form or Participating Agency Signature form, as applicable;

Confidential Information means the provisions of this Agreement and all other information of a confidential nature (reasonably determined) obtained by one party from the other party under or in connection with this Agreement and for the avoidance of doubt, includes personal information such as personal records relating to the Agency's clients and the content of Calls between interpreters and participants;

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

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

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

Dispute Manager means the person specified as such in the Agency Signature Form or any replacement person notified by the relevant party to the other in writing from time to time;

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

Eligible 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 Service;

- (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
- (e) the Reserve Bank of New Zealand;
- (f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
- (g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;
- (h) each local authority, as defined in section 5 of the Local Government Act 2002;
- (i) any other organisation, agency or collection of persons that does not fall within the above categories but which the Lead Agency and the Procurement Functional Lead determine should be treated as an eligible agency for the purposes of this Agreement;

Escalated Dispute Manager means the person specified as such in the Agency Signature Form or any replacement person notified by the relevant party to the other in writing from time to time;

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

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

Expiry Date means 30 September 2024;

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

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

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

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

GST Act means the Goods and Services Tax Act 1985;

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

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

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

Interpreter Development Fund means a fund for the development of New Zealand resident interpreters as described at clause 9 of the Lead Agency Terms and Conditions;

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

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

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

Lead Agency Agreement means the agreement between the Lead Agency and the Service Provider as defined in clause 1.3 of the Lead Agency Signature Form;

Lead Agency Signature Form means the form to be executed by the Lead Agency and the Service Provider to form the Lead Agency Agreement, using the form in Schedule 3;

Lead Agency Terms and Conditions means the additional terms that apply to the Lead Agency Agreement specified in Schedule 5;

OCR means the New Zealand Official Cash Rate;

OIA means the Official Information Act 1982;

Ordering Process means the process set out in clause 0, under which the Agency can request to receive Services from the Service Provider;

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

Participating Agency Agreement means the agreement between the Participating Agency and the Service Provider as defined in clause 1.3 of the Participating Agency Signature Form;

Participating Agency Signature Form means the form to be executed by an Eligible Agency and the Service Provider to form a Participating Agency Agreement, using the form in Schedule 4;

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

Platform means an application, browser or system which enables video interpreting Calls as proposed by the Service Provider and approved by the Lead Agency in accordance with clause 7 of Schedule 5;

Privacy Act means the Privacy Act 1993, and, once in force, the Privacy Act 2020;

Privacy Breach means in relation to personal information held by the Service Provider;

- (a) unauthorised or accidental access to, or disclosure, alteration, loss, destruction or retention (for longer than required) of, the personal information; or
- (b) an action that prevents the Service Provider from accessing the information on either a temporary or permanent basis; and
- (c) whether or not it:
 - (i) was caused by a person inside or outside the Service Provider;
 - (ii) is attributable in whole or in part to any action by the Services Provider; or
 - (iii) is ongoing.

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

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

Services means:

- (a) the services described in this Agreement, including the services described in Schedule 1;

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

Service Levels means the standards of service specified in this Agreement, including the service levels specified in Schedule 1;

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

Terms and Conditions means these terms and conditions; and

Third Party Materials means all software, databases, equipment, devices, infrastructure, documentation and other materials, including any Intellectual Property Rights, which are owned by a person other than the parties and used by the Service Provider in the supply of the Services and Documentation.

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

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

- (m) any obligation falling due for performance on or by a day other than a Business Day will be performed on or by the Business Day immediately following that day;
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done;
- (o) all amounts payable under this Agreement are expressed exclusive of GST and in New Zealand dollars. If GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable; and
- (p) if there is any conflict between the terms of this Agreement, the following order of precedence will apply, unless otherwise expressly specified:
 - (i) the terms of the body of these Terms and Conditions (clauses 1 to 21);
 - (ii) the Schedules; and
 - (iii) the Agency Signature Form.

2. GUARANTEE

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3. APPOINTMENT

- 3.1 **Appointment:** The Agency appoints the Service Provider, and the Service Provider agrees, to provide the Services to the Agency on the terms and conditions of this Agreement.
- 3.2 **Non-exclusive appointment:** The parties agree that:
 - (a) the Service Provider's appointment under this Agreement is non-exclusive;
 - (b) the Agency may appoint third parties to provide services similar to or the same as the Services at any time, or may provide them itself; and
 - (c) for the avoidance of doubt, the parties agree that this clause shall not be used by the Lead Agency to terminate or effectively or ostensibly terminate this Agreement.
- 3.3 **No minimum level of business:** The Agency does not guarantee any minimum level of business or revenue by entering into this Agreement.
- 3.4 **Reliance:** The Service Provider acknowledges that the Agency is relying on the Service Provider's specialist skills, knowledge, experience and expertise in entering into this Agreement.
- 3.5 **Separate agreements:** The Lead Agency Agreement and each Participating Agency Agreement are separate agreements.
- 3.6 **Participating Agency action:** Where a Participating Agency may, or is required to, provide any information, give a notification, make a request or take any action under its Participating Agency Agreement, either the Lead Agency or the Participating Agency may provide that information, give the notification, make the request or take that action.

3.7 **Reliance on notice:** Notwithstanding clause 3.6, the Service Provider is entitled to rely on the notification, request or action first received by the Service Provider in respect of a Participating Agency Agreement (whether that comes from the Lead Agency or the relevant Participating Agency). When the Service Provider receives such initial notification, request or action from either the Lead Agency or the relevant Participating Agency, the Service Provider is under no obligation to seek confirmation of agreement from the other respective party. To avoid doubt, the Service Provider will not be in breach of the Agreement by relying upon such initial notification, request or action and/or by acting upon it.

3.8 **Recovery on behalf:** Either the Lead Agency or the Participating Agency may enforce any obligation owed to a Participating Agency by the Service Provider under a Participating Agency Agreement, including by bringing an action against the Service Provider. Any recovery by the Lead Agency under a Participating Agency Agreement will be deemed to be on account of the right of the relevant Participating Agency and subject to the Service Provider's maximum liability to the Participating Agency under clause 16.1, provided that, if the Lead Agency takes any action against the Service Provider on behalf of more than one Participating Agency, the Service Provider's maximum liability to each Participating Agency and the Lead Agency, if applicable, will be as provided in clause 16.1 of the Terms and Conditions.

4. TERM

4.1 **Term:** This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, will continue in full force and effect until the Expiry Date.

4.2 **Renewal:** If the Lead Agency renews the Lead Agency Agreement in accordance with clause 14 of the Lead Agency Terms and Conditions, all Participating Agency Agreements in force at the effective date of such renewal shall renew for the same period as the Lead Agency Agreement unless the Lead Agency and the Service Provider agree otherwise. The Service Provider must notify each Participating Agency of renewal or expiry promptly following such renewal or expiry.

5. REQUESTS FOR SERVICES

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

5.2 **Consent to record Calls:** The Agency is responsible for obtaining consent to Call recordings from the Agency's clients as soon as the interpreter is engaged and where reasonably possible prior to the recording taking place. If consent is not provided, the Services are not to be provided.

Telephone interpreting services

5.3 **Ordering Process:** The Agency and Service Provider shall follow the following process for the ordering of telephone interpreting services by the Agency:

- (a) Agency personnel contact the Service Provider through the toll free 0800 telephone number for such Services.

- (b) Agency personnel are required to select their requirements through an automated contact centre IVR with options to speak with customer service or obtain a telephone interpreter on demand and can select:
- (i) Call type 1 for customer service - If Agency personnel request to speak to customer service, they are to provide the name of their Agency and pin (if known).
 - (ii) Call Type 2: for telephone interpreting - If Agency personnel require access to an on-demand telephone interpreter, they are to:
 - (A) Enter their pin number;
 - (B) Enter their contract code, cost code or employee code;
 - (C) Enter the reference number of the participant;
 - (D) Select the language they require from the list of available languages;
 - (E) Select gender preference for the Call;
 - (F) Alternatively, they can opt to speak with a customer service agent for assistance.
- (c) From the data points provided under clause 5.2(b), the Service Provider automatically validates the Agency (as the Agency eligible to receive such Services and to be invoiced for those Services) and upon automatic validation will provide the telephone interpreting Services.
- (d) In addition to the 0800 telephone number referred to in clause 5.3(a), Agency personnel may also access telephone interpreting services through an online booking system (IMS). If such Services are accessed through IMS, Agency personnel are required to provide their requirements for such Services that include those set out in clause 5.4(b).

Video interpreting services

5.4 **Ordering Process:** The Agency and Service Provider shall follow the following process for the ordering of the video interpreting services by the Agency:

- a) Agency personnel contact the Service Provider either through use of an online booking system (IMS) to put through a request for such Services or call the toll free 0800 telephone number to process a request for such Services.
- b) Agency personnel are required to provide their requirements for such Services that include:
 - i. The type of interpreting Service required;
 - ii. The preferred Supply Process of the Services (Workflow A or Workflow B)
 - iii. Their agency name and/or pin number;
 - iv. The name of the requestor;
 - v. The phone number of the requestor;
 - vi. The email address of the requestor;
 - vii. The language the Services are required for;
 - viii. The gender preference for the Services;
 - ix. The date the Service is required;
 - x. Time the Service is required;

- xi. The anticipated duration of request;
 - xii. The name of the client;
 - xiii. The email address of the client;
 - xiv. The mobile number of the client;
 - xv. Name of agency personnel conducting the Service;
 - xvi. The email address of agency personnel conducting the Service;
- c) Once the video interpreting Service has been requested and uploaded into the IMS, the Service Provider will allocate the Service Request to an appropriately skilled and qualified interpreter.
- d) The requestor of such Service will be notified that an interpreter has been allocated and is scheduled.
- 5.5 **Supply Process:** Depending on the delivery of the video interpreting services preferred and selected by the Agency, either one of the two supply scenarios will apply:
- a) **Workflow A:** The Service Provider will distribute a video conferencing link to all video call participants. This includes Agency personnel, the video interpreter conducting the Service and the Agency's client.
 - b) **Workflow B:** The Agency will send the Service Provider the video conferencing link to distribute to the video interpreter to join the video conference.
- 5.6 **Minimum Notice Period for the Services:** Requests for video interpreting Services must be submitted by the Agency with a minimum of three hours' notice.
- 5.7 **Cancellation Policy:** In the event that any requested video interpreting services are no longer required by the Agency, the Agency must use reasonable endeavours to provide a cancellation notice with a minimum of 24 hours' notice prior to the scheduled Service and, in any event, if such minimum notice is not provided, must pay a cancellation fee in accordance with Schedule 1.
- 5.8 **Data Collection for Reporting and Invoicing:** The Service Provider will use one or more of the following methods for invoicing and reporting purposes as is relevant for the Call type:
- a) data points collected under clause 5.4(b) will be used as the primary source of transaction validation.
 - b) data contained within the Platform.
 - c) IMS job completion records confirmed by the interpreter and/or Agency personnel.
6. **SERVICE PROVIDER'S OBLIGATIONS**
- 6.1 **Performance:** In providing the Services and Documentation and complying with its other obligations under this Agreement, the Service Provider must:
- (a) provide all personnel, processes and resources required to perform the Services and supply the Documentation;
 - (b) comply with all reasonable directions given by the Agency from time to time;
 - (c) comply with all Agency policies and procedures notified in writing to the Service Provider from time to time;

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

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

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

- (a) the Service Provider will immediately commence work to identify the cause of such failure;
- (b) allocate such resources as may be necessary to remedy the failure and any consequences of such failure as soon as practicable;
- (c) the Service Provider will implement relevant service improvement plans to ensure that the Services that have failed Service Levels are continuously improved; and
- (d) the Service Provider will pay to the Agency, within 14 days of receipt of an invoice, the rebate attributable to the Service Level failure. Details of those rebates and the methods of calculating and paying them are as described in Schedule 1.

- 6.4 **Conflict of interest:** The Service Provider must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must not enter into any agreement or arrangement that will, or is likely to:
- (a) prejudice the Service Provider's ability to meet its obligations under this Agreement; or
 - (b) create a conflict of interest for the Service Provider.
- 6.5 **Resolve conflict:** Without limiting clause 6.4, the Service Provider must:
- (a) immediately notify the Agency in writing if the Service Provider is, or is likely to be, conflicted in the performance of its obligations under this Agreement; and
 - (b) take all actions reasonably required by the Agency to resolve any such conflict.
- 6.6 **Remedies for failure:** If any of the Services and Documentation are not, in the Agency's reasonable opinion, provided in accordance with this Agreement, the Agency may, without limiting its other rights or remedies, take one or more of the following actions:
- (a) give the Service Provider a notice requiring the Service Provider to immediately remedy the deficiency at the Service Provider's cost;
 - (b) withhold any payment due to the Service Provider until the deficiency is remedied to the Agency's reasonable satisfaction; or
 - (c) if the Service Provider does not remedy the deficiency to the Agency's reasonable satisfaction within a reasonable period after the Agency giving notice under clause 6.6(a), deduct a reasonable amount from the payment due to the Service Provider related to this failure to reflect the deficiency.
- 6.7 **Health, safety and security:** Without limiting its other obligations under this Agreement, the Service Provider will:
- (a) consult, cooperate and coordinate with the Agency to the extent required by the Agency to ensure that the Agency and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement;
 - (b) perform its, and ensure that its Personnel perform their, obligations under this Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;
 - (c) comply with all reasonable directions of the Agency relating to health, safety, and security; and
 - (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Agency to the extent that it relates to, or affects, this Agreement.
- 6.8 **Agency Property:** If the Service Provider is required to have or has access to any Agency Property under or in connection with this Agreement, the Service Provider must:

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

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

7. PERSONNEL

7.1 Personnel: The Service Provider:

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

- (ii) is willing and does undergo training on compliance with the Privacy Act; and
 - (iii) executes a deed (in the form reasonably required by the Agency) agreeing to comply with terms, policies, procedures and directions for access as set by the Agency;
 - (e) must promptly, on the Agency's request obtain written consent from each Personnel to undergo the security and other clearance checks and such personal details of such Personnel to enable the security and other clearance checks to be carried out; and
 - (f) the Service Provider must immediately replace any Personnel who fails to meet the security and other clearance checks required by the Agency.
- 7.2 **Replacement of Personnel:** If the Agency considers (acting reasonably) that any of the Personnel are unsatisfactory or unsuitable then, without limiting any other rights of the Agency, the Agency may, by written notice, require the Service Provider to replace the relevant Personnel and the Service Provider will do so as soon as practicable at its own cost, but in any event no later than 5 Business Days, or as agreed with the Agency, after receipt by the Service Provider of the notice.
- 7.3 **Non-solicitation:** The Service Provider agrees not to actively solicit for employment any employee or individual contractor of the Agency who has been engaged by the Agency in connection with, or has been designated by the Agency to work in connection with, the Services or the Documentation without the consent of the Agency. This clause does not apply to the Service Provider soliciting to employ a pool of interpreters or prevent the Service Provider from employing any person who responds to a genuine public advertisement placed by the Service Provider.
8. **SUBCONTRACTORS**
- 8.1 The Service Provider must not subcontract any of its obligations under this Agreement to any other person without first obtaining the Lead Agency's written consent (such consent not to be unreasonably withheld), other than to a pool of individual interpreters who meet the standards required in clause 7.1(a).
- 8.2 The Service Provider must ensure that any interpreter to whom it subcontracts services do not further subcontract the provision of interpreting services to any other interpreters.
- 8.3 The Service Provider must:
- (a) ensure that an appropriate written agreement is in place between the Service Provider and the subcontractor that is consistent with the terms of this Agreement in all material respects (including the prohibition on further subcontracting in clause 8.2 above); and
 - (b) ensure that the agreement referred to in clause 8.3(a) acknowledges the benefit to each Agency for the purposes of the Contract and Commercial Law Act 2017 and is therefore enforceable by each Agency.

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

- (a) create a contractual relationship between the Agency and the subcontractor except as described in clause 8.3(b); or
- (b) relieve the Service Provider from liability for the performance of any obligations under this Agreement.

8.5 The Service Provider must obtain the Lead Agency's prior written consent to the replacement of any subcontractor, and clauses 8.3 and 4 will apply to all replacement subcontractors.

9. DOCUMENTATION AND RECORDS

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

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

9.3 **Content of Records:** Without limiting clause 9.2:

- (a) the Records created and maintained under clause 9.2 must, at a minimum, describe or specify:
 - (i) the nature and scope of the Services and Documentation provided under this Agreement;
 - (ii) the transactions that took place in the provision of all Services;
 - (iii) any personal information collected on behalf of the Agency necessary for the provision of Services;
 - (iv) the basis on which each invoice has been prepared and submitted to the Agency under this Agreement; and
 - (v) any other information reasonably required by the Agency from time to time; and
- (b) the Service Provider must ensure the Records created and maintained under clause 9.2 are:
 - (i) maintained in a form accessible by the Agency;
 - (ii) retained for the Term and 7 years after expiry or termination of this Agreement; and

- (iii) provided to the Agency in a form accessible by the Agency on termination or expiry of this Agreement and at any other time on the Agency's request.

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

10. CHARGES AND PAYMENT

10.1 **Charges:** The Agency will pay the Charges and GST (if any) to the Service Provider in the consideration of the Services as set out in Schedule 1.

10.2 **No other amounts payable:** The Service Provider acknowledges that, except as expressly specified in this Agreement, no other payments or benefits will be payable or provided by the Agency to the Service Provider, including in relation to any of the Personnel.

10.3 Invoices:

- (a) The Service Provider will invoice the Agency for the Charges in respect of the Services monthly in arrears. An Agency may specify in the Agency Signature Form that the Service Provider is to provide separate invoices for particular Services, in which case the Agency shall notify the Service Provider at the time of ordering a Service, or as otherwise agreed by the Agency and Service Provider, to which invoice a Service is to be allocated.
- (b) Each invoice must:
 - (i) be a valid tax invoice for the purposes of the GST Act;
 - (ii) be sent directly to the Agency via email to the address specified in the Agency Signature Form;
 - (iii) be received by the Agency within 60 days of the end of the month to which the invoice relates; and
 - (iv) include all information reasonably required to enable the Agency to validate the claim for payment including:
 - (A) any purchase number or contract number applicable to the invoice;
 - (B) reference to this Agreement (under which the invoice is issued);
 - (C) the Charges for and description of each Service being invoiced;
 - (D) in respect of any Charges on a time and rate basis, the relevant times and rates on which the Charge is based; and

- (E) full details of any approved expenses incurred, together with copies of invoices for such items which have a value greater than \$1,000,

(Valid Tax Invoice).

- 10.4 **Date for payment:** Subject to clauses 10.5, 10.11 and 10.12, if the Agency receives a Valid Tax Invoice on or before the 5th Business Day of the month, the Agency will make payment in respect of that Valid Tax Invoice by the 20th day of that month. Any Valid Tax Invoice received after the 5th Business Day of the month will be paid on the 20th calendar day of the month following the month in which the Valid Tax Invoice was received by the Agency. The Agency will be under no obligation to pay an invoice received by the Agency more than 60 days after the end of the month to which the invoice relates.
- 10.5 **Interest:** If the Agency fails to pay any amount payable under the Valid Tax Invoice in accordance with clause 10.4, except to the extent the Agency disputes such invoice in accordance with clause 10.7, interest shall accrue on the undisputed amount for the period beginning on the due date for payment and ending on the date of actual payment of the Valid Tax Invoice at a rate equal to the then-current OCR for the Reserve Bank of New Zealand plus two percent (2%). Interest shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed, shall accrue from day to day, and shall be compounded daily.
- 10.6 **Service Provider payment obligations:** The Service Provider must pay any interpreter to whom it subcontracts any Services promptly and, in any event, within four weeks from the date on which the interpreter provides the Services. From 30 June 2021 this payment timeframe will decrease to within three weeks.
- 10.7 **Dispute over invoice:** If the Agency disputes in good faith the whole or any portion of any Valid Tax Invoice, the Agency will pay the portion of the Valid Tax Invoice that is not in dispute, but may withhold payment of the disputed portion until the dispute is resolved.
- 10.8 **Payment terms:** All sums due to the Service Provider under this Agreement:
- (a) are exclusive of any GST which, where applicable, will be payable by the Agency to the Service Provider in addition to the Charges stated; and
 - (b) will be paid to the credit of a bank account to be designated in writing by the Service Provider.
- 10.9 **Deductions:** The Charges are inclusive of all other taxation except GST. The Agency will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Service Provider and will not be required to gross-up or increase any such payments in respect of such amounts withheld.
- 10.10 **Expenses:**
- (a) The Service Provider is responsible for all expenses incurred by it under this Agreement, unless the Agency has given its prior written approval to reimbursement of such expenditure.
 - (b) If the Agency is to reimburse the Service Provider for any particular expenses incurred by the Service Provider:
 - (i) the expenses are to be charged by the Service Provider at cost;

- (ii) the Agency is under no obligation to pay for any expense item once the specified expense limit for that item is exceeded; and
 - (iii) the Service Provider must:
 - (A) produce receipts or other reasonable evidence of such expenses on request;
 - (B) provide a Valid Tax Invoice for the expenses; and
 - (C) follow all of the Agency's expense guidelines and policies notified to the Service Provider from time to time when incurring the expenses.
- 10.11 **Set off:** The Agency may set-off any refund or other amount owing to the Agency from the Service Provider against any amount payable by the Agency under this Agreement.
- 10.12 **Suspension of payment:** The Agency may suspend or withhold payment of Charges if the Service Provider is in breach of its obligations, until such time as any breaches are remedied.
- 10.13 **Acknowledgement of Interpreter Development Fund contribution:** The Agency and Service Provider acknowledge that the Charges include a contribution set by the Lead Agency to be applied to the Interpreter Development Fund.

11. CONFIDENTIAL INFORMATION

- 11.1 **Restrictions:** Except as permitted by this clause 11 or otherwise expressly permitted in this Agreement, each party must keep the other party's Confidential Information:
- (a) absolutely secret and confidential at all times and will not disclose that Confidential Information to any person or use that Confidential Information for any purpose other than the purpose of this Agreement (which, in the case of the Agency, will include obtaining the full benefit of the Agreement and all rights granted under it); and
 - (b) secure and ensure it has in place adequate security measures to safeguard the Confidential Information from access, loss, use, modification or disclosure by unauthorised persons.
- 11.2 **Exceptions:** A party may disclose Confidential Information:
- (a) to:
 - (i) its directors, employees or contractors who need to know such information for the purpose of this Agreement;
 - (ii) its professional advisers, auditors or bankers for a proper purpose; or
 - (iii) in the case of the Agency, the Lead Agency or another Participating Agency, Minister of the Crown, or any of the Agency's advisers (including relevant third parties),

provided that party ensures that each such person complies with the restrictions in this clause as if such person were a party to this Agreement;

- (b) if and to the extent disclosure is required by Law, the rules of any registered securities exchange on which the party's securities are listed, or any Minister of the Crown or parliamentary officer or body, provided that party gives the other party notice, to the extent permitted by the applicable Law, of the requirement as soon as practicable and consult in good faith with the other party before such disclosure is made;
- (c) if and to the extent the information:
 - (i) was known to the receiving party before the information was disclosed to it;
 - (ii) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving party;
 - (iii) is generally available to the public through no fault of the receiving party; or
 - (iv) is developed by the receiving party independently of the information disclosed by the disclosing party; or
- (d) if and to the extent required in connection with legal proceedings relating to this Agreement.

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

- (a) potential, threatened or actual misuse or unauthorised disclosure or use of Confidential Information by any person to whom the Service Provider makes any disclosure in accordance with clause 11.2; or
- (b) breach of the Service Provider's obligations under this clause 11,

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

11.4 **Announcements:** The Service Provider must not make any media release or other public announcement relating to the existence of this Agreement except as permitted by clause 11.2(b) or with the prior written consent of the Agency, such consent not to be unreasonably withheld.

12. PRIVACY

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

12.2 **Personal information:** The Service Provider will:

- (a) collect, safely store and retain any personal information of:
 - (i) Agency personnel; and
 - (ii) the Agency's clients on behalf of the Agency, for the periods specified in this Agreement or such longer periods as required;
- (b) inform clients, through the Service Provider's website, that personal information regarding clients is collected and held on behalf of the relevant Agency in order to deliver the Services;
- (c) provide any personal information to the Agency on whose behalf the personal information is held on request by that Agency. Such requests may be made, for example but not limited to:
 - (i) in the event of a dispute relating to the Services; or
 - (ii) in the event of a request made to the Agency for personal information, where the Agency is required to assess whether to release the personal information; for example, a request made under the OIA or Privacy Act; and
- (d) notify the Agency on whose behalf the personal information is held within two Business Days of receiving any request to release the personal information and, unless the Service Provider is required by law to release the personal information, provide the personal information to the Agency to allow the Agency to decide whether to release that information;
- (e) not make any personal information available to any Agency other than the Agency on whose behalf the personal information has been collected and is held, unless required by law.

12.3 Recordings and transcripts: The Service Provider will:

- (a) record Calls, and use these recordings for training and quality assurance purposes only;
- (b) inform callers through the IVR that Calls are recorded for training, quality assurance and dispute resolution purposes. It is the Agency's responsibility to obtain the clients' consent to Calls being recorded by the Service Provider as the Agency's agent in accordance with clause 5.2;
- (c) safely store recordings and transcripts for 24 months, after which they must be safely destroyed;
- (d) provide the recording or transcript to the Agency on whose behalf the recording or transcript is held on request by that Agency. Such requests may be made, for example but not limited to:
 - (i) in the event of a dispute relating to the Call; or
 - (ii) in the event of a request made to the Agency for the recording or transcript, where the Agency is required to assess whether to release the recording or transcript; for example a request made under the OIA or Privacy Act; and

- (e) notify the Agency on whose behalf the recording or transcript is held within two Business Days of receiving any request to release the recording or transcript and, unless the Service Provider is required by law to release the recording or transcript, provide the recording or transcript to the Agency to allow the Agency to decide whether to release that information.
 - (f) except to the extent the Agency and the Service Provider agree otherwise in writing (with the prior written consent of the Lead Agency):
 - (i) make recordings and transcripts available to an Agency (in line with the above permission) only via the approved file transfer portal protected with a user ID/password control that only the Dispute Manager nominated by the Agency can access and download;
 - (ii) delete the recording or transcript from the federated sharepoint portal upon the earlier of:
 - (A) immediately following it being downloaded by the Agency; and
 - (B) 72 hours after being uploaded to the portal;
 - (g) not make recordings or transcripts available to any Agency other than the Agency on whose behalf the recording or transcript is held, unless required by law;
 - (h) not use for training purposes any recordings or transcripts that have been flagged by the Agency on whose behalf the recordings or transcripts are held as containing highly sensitive information; and
 - (i) not destroy any recordings or transcripts upon the request of an Agency without explicit permission from the Lead Agency and only in cases where consent was not granted or subsequently withdrawn, unless required by law.
- 12.4 **Privacy events:** The Service Provider must escalate any Privacy Breach, near miss, and/or complaint relating to this Agreement to the Agency as soon as it becomes aware of such event and will work together with the Agency to manage the consequences and implications of the Privacy Breach and implement reasonable procedures to prevent such Privacy Breaches or near misses in the future. The Service Provider must make all necessary Personnel available to the Agency to assist with the consequences and implications arising from the Privacy Breach.
- 12.5 **No limitation:** Nothing in this clause limits or restricts any rights granted to the Agency under this Agreement.
13. **WARRANTIES**
- 13.1 **Warranties:** The Service Provider warrants at all times that:
- (a) all information supplied by it to the Agency under this Agreement is true, complete and accurate, not misleading or deceptive and may be relied on by the Agency in entering into and continuing with this Agreement or any change to this Agreement;
 - (b) it has full corporate power and has obtained the required authority and authorisations to enter into and perform its obligations under this Agreement;

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

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

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

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

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

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

14. PERFORMANCE ISSUES

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

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

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

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

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

- (a) full details of the Performance Issue (including its cause(s), expected duration and impact on its obligations under this Agreement);
- (b) a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring (as applicable); and
- (c) success criteria to determine whether the Performance Issue has been rectified. To avoid doubt, the Lead Agency may require a Remedial Plan to remedy a Performance Issue affecting one or more Participating Agencies.

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

15. INTELLECTUAL PROPERTY RIGHTS

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

15.2 **Ownership of new IP:** Unless otherwise stated in Schedule 5, any new Intellectual Property which is created as a result of, or in connection with, the provision of the

Documentation or Services, or otherwise in connection with this Agreement, including all modifications, enhancements or derivative work, will be owned by the Service Provider.

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

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

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

15.4 **Licence to the Service Provider:** The Agency grants the Service Provider a non-exclusive, non-transferable licence to exercise, only for the Term and only to the extent necessary for the Service Provider to perform its obligations under this Agreement, any other Participating Agency Agreement or, in the case of the Lead Agency, the Lead Agency Agreement, all Intellectual Property Rights provided or owned by or on behalf of the Agency. The Service Provider may sublicense this licence only to those subcontractors that the Lead Agency has consented to in writing in accordance with clause 8.

15.5 **Know-how:** Nothing in this clause 15 restricts either party from using, in any way the party deems appropriate, the know-how, ideas and concepts it contributed, or were developed by it, during the performance of its obligations under this Agreement, provided that such use does not breach any of the other provisions of this Agreement.

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

(a) it has all requisite ownership rights and licences, clearances, consents and authorisations to fully perform its obligations under this Agreement (including granting the Agency a licence in accordance with clause 15.3; and

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

15.7 **Intellectual Property Rights indemnity:**

(a) The Service Provider indemnifies the Agency against all liability, losses, damages, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by the Agency as a result of any claim or threatened claim alleging that any of the Documentation, Services or any information, rights or materials supplied by the Service Provider under this Agreement, or the Agency's use or possession of any of them, infringes the Intellectual Property Rights of any person (**IP Claim**).

(b) Each party will promptly notify the other party in writing on becoming aware of any IP Claim.

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

15.8 **Agency remedies:** If any IP Claim prevents or threatens to prevent the supply or use of a Service or Documentation as contemplated by this Agreement then the Service Provider must promptly, at the request of and in consultation with the Agency, at the Service Provider's cost, and without prejudice to clauses 15.6 and 15.7:

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

provided that the Service Provider must ensure that the remedy does not materially affect the functionality or performance of the Service or Documentation or the Agency's use of it. Without prejudice to any right or remedy, the Agency may terminate this Agreement if the Service Provider is unable to remedy the IP Claim in accordance with this clause 15.8 within two months of the Agency's request.

16. LIABILITY AND INSURANCE

16.1 **Service Provider's liability:** Subject to clauses 16.3 and 16.4, the Service Provider's total aggregate liability under or in connection with this Agreement to the Agency, whether in contract or tort (including negligence) or otherwise, will not exceed the greater of:

- (a) three times the aggregate of the Charges paid and of the Charges payable under this Agreement; and
- (b) \$5,000,000.

16.2 **Agency's liability:** Subject to clauses 16.3 and 16.4, the Agency's total aggregate liability under or in connection with this Agreement to the Service Provide, whether in contract, or tort (including negligence) or otherwise, is limited to an amount equal to the Charges paid and the Charges payable under this Agreement.

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

16.4 **Exclusions:** Nothing in this clause 16 limits or excludes:

- (a) the Service Provider's obligations under this Agreement to pay any Service Level rebates;
- (b) the Service Provider's liability under clause 15 in relation to IP Claims;
- (c) the Service Provider's liability for deliberate breach or wilful default;
- (d) the Service Provider's liability for death or bodily injury of any person arising out of or related to any act or omission by the Service Provider in connection with this Agreement;
- (e) the Service Provider's liability for damage to the Agency's physical property; or
- (f) either party's liability for breach of clause 11 or clause 12.

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

16.6 **Agency default:** Where any Agency fails to perform its obligations, if any, under an Agreement (**Defaulting Agency**):

- (a) no other Agency will be liable to the Service Provider in respect of that failure;
- (b) the Service Provider may take action against the Defaulting Agency in accordance with, and subject to, clause 16 (Liability and Insurance), and recover from the Defaulting Agency any damages or other remedy to which the Service Provider may be entitled; and
- (c) the Service Provider will not sue any other Agency in respect of that failure.

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

(a) Professional indemnity: \$5 million;

(b) Public liability: \$5 million; and

(c) Property damage: \$10 million,
and on terms consistent with standard market terms for such policies and with an insurer of AA rated or better. The Service Provider will, on request at any time, provide the Agency with a certificate from the insurer or insurers confirming the existence and terms of such insurance.

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

- (a) any claims relating to this Agreement against the insurance policies referred to in clause 16.7; and
- (b) any material change to, cancellation or non-renewal of such policies.

17. DISPUTE RESOLUTION

17.1 **Dispute resolution process:** Subject to clause 17.6, a party may not commence any court proceedings relating to a dispute between the parties unless the party has complied with clauses 17.2 to 17.4.

17.2 **Dispute notice:** If there is a dispute, difference, controversy or disagreement between the Agency and the Service Provider arising out of or connection with this Agreement (including any disagreement regarding its existence, breach, termination, or interpretation) (a "dispute"), either party may give the other party notice of the nature and details of the dispute.

17.3 **Negotiation:** The parties will use their best endeavours to resolve the dispute. If the dispute is not resolved:

- (a) within five Business Days, the dispute will be escalated to the Agency's Dispute Manager and the Service Provider's Dispute Manager, and, in the case of a dispute involving a Participating Agency, notified to the Lead Agency; and
- (b) within a further five Business Days, the dispute will be escalated to the Agency's Escalated Dispute Manager and the Service Provider's Escalated Dispute Manager, and, in the case of a dispute involving a Participating Agency, notified to the Lead Agency.

17.4 **Mediation:** If the dispute is not resolved within 20 Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. If a party refers the dispute to mediation, they must notify the Lead Agency of the mediation promptly following such referral. The mediation will be in Wellington and conducted under the Resolution Institute standard mediation rules. If the parties do not agree on a mediator or the mediator's fees within 5 Business Days of receipt of the notice of mediation, the mediator will be appointed, or the fees set, by the chair of Resolution Institute (or his/her nominee) at the request of either party. The parties will bear the mediator's fees equally.

17.5 **Continued performance:** Regardless of any dispute, each party must continue to perform this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.

17.6 **Urgent relief:** Nothing in this clause 17 will preclude a party from seeking urgent interlocutory relief before a court.

18. FORCE MAJEURE

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

- (a) notifies the other party (**non-affected party**) as soon as practicable of the nature and expected duration of the Force Majeure Event and keeps the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;
- (b) uses reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement to the extent reasonably practicable; and
- (c) resumes full performance as soon as reasonably practicable.
- 18.2 **Corresponding obligations:** The non-affected party will be relieved of its corresponding obligations to the same extent the affected party is relieved of its obligations due to this clause 18.
- 18.3 **Third party services:** The non-affected party will be entitled to itself provide, or arrange for a third party to provide, the affected Services while the affected party is unable to provide them and for a reasonable period thereafter.
- 18.4 **Termination:** If the Force Majeure Event prevails for a continuous period of more than 20 Business Days, or for an aggregate of at least 30 Business Days in any six month period, the non-affected party may terminate this Agreement by giving 10 Business Days' notice to the affected party. On the expiry of the notice period, this Agreement will terminate. Neither party will have any liability to the other in respect of termination of this Agreement due to a Force Majeure Event, but such termination will be without prejudice to rights and liabilities which have accrued prior to termination.
19. **TERMINATION**
- 19.1 **Termination for cause:** Either party may terminate the Agreement immediately by notice to the other party if:
- (a) the other party commits a breach of the Agreement which cannot be remedied by that defaulting party or, if it can be remedied, the defaulting party fails to remedy that breach within 20 Business Days after receipt of notice requiring the breach to be remedied;
- (b) the other party commits two or more of the same or similar breaches of this Agreement (whether material or not and whether remedied or not) in any three month period and fails to remedy the breaches to the other party's satisfaction within 5 Business Days of receiving notice;
- (c) the other party ceases to carry on all or substantially all of its business or operations; or
- (d) the other party is subject to an Insolvency Event, provided that, if the Agency is the defaulting party, the Service Provider is not entitled to terminate the Agreement if the Agency agrees to remedy its breach and pay the direct and reasonable losses suffered by the Service Provider arising from that breach.
- 19.2 **Termination by the Agency:** The Agency may terminate the Agreement, by written notice to the Service Provider, at any time:

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

19.3 Other consequences of termination or expiry:

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

20. NOTICES

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

20.2 Receipt: A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;

- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
 - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

21. GENERAL

21.1 Amendments:

- (a) Neither the Service Provider nor the Participating Agency will, without the consent of the Lead Agency, permit any variation to the Terms and Conditions or Schedules. Any variation to the Terms and Conditions or Schedules purported to be executed without the consent of the Lead Agency is deemed to be null and void and to have no effect.
- (b) The Lead Agency and the Service Provider may vary the Terms and Conditions or Schedules from time to time. No amendment to this Agreement will be effective unless it is in writing and signed by the parties.
- (c) The Service Provider must provide written notice to all Participating Agencies of an amendment made by the Lead Agency and Service Provider in accordance with clause 21.1(b) and all such amendments will automatically apply to each Participating Agency Agreement, unless agreed otherwise between the Service Provider and the Lead Agency.

21.2 **Assignment:** Subject to clause 15 of the Lead Agency Terms and Conditions, no party may assign, transfer, novate, subcontract, charge, pledge or otherwise encumber this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party. For the purposes of this clause, a Change of Control of a party will be deemed an assignment by that party.

21.3 Costs:

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

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

- 21.5 **Further assurances:** Each party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.
- 21.6 **No agency:** This Agreement does not create any relationship between the parties of principal and agent, partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another party, except as expressly provided for in this Agreement.
- 21.7 **Privity:** Subject to clause 3.8 of these Terms and Conditions and clause 5.5 of the Lead Agency Terms and Conditions, a person who is not a party will not have any rights under or in connection with this Agreement by virtue of the Contract and Commercial Law Act 2017, unless expressly stated otherwise in this Agreement.
- 21.8 **Remedies cumulative:** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by this Agreement or Law.
- 21.9 **Severance:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision will be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Agreement. Such change will not affect the legality, validity and enforceability of the other provisions of this Agreement.
- 21.10 **Survival:** Following termination or expiry of this Agreement, this clause 21.10 and clauses 9 (Documentation, Records and Audit), 10 (Charges and Payment), 11 (Confidential Information), 13 (Warranties), 15 (Intellectual Property Rights), 16 (Liability and insurance), 17 (Dispute Resolution), 19.3 (Consequences of termination) and 21 (General), together with other provisions that are by their nature intended to survive, will remain in full force and effect.
- 21.11 **Waiver:** No waiver of a right or remedy under this Agreement or at Law (a **right**) will be effective unless the waiver is in writing and signed by that party. No delay or omission by a party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right will restrict the further exercise of that or any other right.
- 21.12 **Governing law and jurisdiction:** This Agreement is governed by New Zealand Law. Subject to clause 17, the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.
- 21.13 **Counterparts:** This Agreement may be executed in any number of counterparts (including scanned PDF counterpart), each of which will be deemed an original, but all of which together will constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

SCHEDULE 1
SERVICES, CHARGES AND SERVICE LEVELS

1. SERVICES

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

- (a) Provision and operation of:
 - (i) an online booking system (IMS) through which the Services can be requested;
 - (ii) a toll free 0800 telephone number through which the Services can be accessed by an Agency; a toll free 0800 telephone number through which an Agency can acquire general customer service support, and make complaints relating to the Services; and
 - (iii) a local New Zealand number for an Agency's overseas representatives to access the Services.
- (b) Connect each validated Call (see clause 5.2) to an interpreter competent in the requested language and meeting any other requirements specified by the Agency.
- (c) Interpreters to provide appropriate, accurate and efficient interpreting services. Interpreters provide spoken communications that convey in another language the content and intentions of statements by the participants. A two-way communication is required for the interpreting to be effective and interpreters are to assist the participants to interpret the content objectively and correctly.
- (d) Interpreters will manage Calls efficiently so as to not unnecessarily prolong Call times.
- (e) Interpreters will provide consecutive interpreting services unless another style (eg. simultaneous, whispered interpreting (known as chuchotage), and sight translations) is requested. Consecutive interpreting involves the speaker and interpreter taking turns in short bursts of dialogue.
- (f) The interpreting is to be provided by telephone unless another method such as video is requested. During the Call, the interpreter will be at a different location from the other participants who are together, or all participants (including the interpreter) may be at separate locations.
- (g) Provision of sight translations of short documents such as consent forms.
- (h) Provision of transcription services of Call recordings upon request.
- (i) Interpreters are to transfer information backwards and forwards between the participants. Interpreters are not advocates for any participant. As part of maintaining their professional practice and observing role boundaries, interpreters should not:
 - (i) make comments outside of the dialogue to any participant (except for cultural clarification of language which is referred to below);
 - (ii) explain the meaning of questions or comments to any participant. If a participant is confused about questions or the Agency personnel don't understand responses, interpreters should accurately convey this to the participant;
 - (iii) provide emotional support to participants;
 - (iv) express an opinion about the truth of any statements made;

- (v) provide advice about how to answer questions;
- (vi) fill out forms for participants – the interpreter’s role is to inform the participant what the form says (sight translation);
- (vii) interpret for their own relatives or friends, even if they are qualified interpreters, as this is a conflict of interest; and
- (viii) discontinue interpreting because they consider a participant to have sufficient English.

1.2 **Required languages:** The Service Provider must provide the Services in respect of the following languages:

Core languages

Mandarin	Hindi	Vietnamese
Samoan	Burmese/Myanmar	Cambodian/Khmer
Arabic	Punjabi	Tamil
Spanish	Farsi/Persian	Portuguese
Korean	Amharic/Ethiopian	French
Other Chinese Dialects	Japanese	Filipino/Tagalog
Cantonese	Thai	Russian
Tongan	Dari	Nepalese

Non-core languages

Akan	Danish	Karen
Albanian	Dhivehi	Kasem
Arabic – Lebanese	Dinka	Kashmiri
Armenian	Dutch	Kayah (alt Karenni)
Assamese	Dzongkha (Bhutan)	Kazakh
Assyrian	Edo	Kibreab
Azerbaijani	Efik	Kikuyu
Balinese	Estonian	Kinyarwanda
Bana	Ethiopian (Amharic)	Kirghiz
Bangla (Bengali)	Ewe	Kiribati
Banjar	Fanti	Kirundi (alt Rundi/Urundi)
Bari	Fijian	Kisi
Bashkir	Fijian Hindi	Kiswahili
Basque	Finnish	Kogi
Bassa	Flemish	Kpelle
Batak	French Canadian	Krio
Belarusian	Fulani	Kriol
Bemba	Futunan	Kru
Betawi	Ga	Kurdish
Bislama	Gaelic	Kurdish – Feyli
Bodo	Galician (Gallego)	Kurdish – Sorani
Borana	Georgian	Kurdish - Kurmanji
Bosnian	German	Kurdish - Zazaki
Bulgarian	Ghanaian Pidgin English	Kyrgyz

Catalan	Gilbertese (Kiribati)	Lao
Cebuano	Greek	Latvian
Chaldean	Guarani	Lazi
Chamorro	Gujarati	Lezgi
Chavacano	Hainanese	Lingala
Cheque	Hakha Chin	Lithuanian
Cherokee	Hakka	Lozi
Chichewa (Nyanja)	Harari	Luganda
Chin	Hausa	Luhya
Chin (Falam)	Hawaiian	Lunda
Chin (Hakha/Hakka)	Hazaragi	Luo
Chin (Khumi)	Hebrew	Luvale
Chin (Mara)	Hmong	Macedonian
Chin (Mizo)	Hungarian	Madi
Chin (Zomi)	Icelandic	Madura
Chin (Zotung)	Igbo	Makassar
Chin Hmar	Indonesian	Malay
Chin Kuki	Inuktitut	Malayalam
Chin Matu	Italian	Maltese
Chin Zo	Jarai	Mamprusi
Chuukeese (Turkese)	Javanese	Mandinka
Cook Island Maori	Juba Arabic	Maori
Creole	Kachin	Marathi
Creole (Haiti)	Kakawa	Marshallese
Croatian	Kamba	Mende
Czech	Kannada	Mien
Dagbani	Kaonde	Moldavian
Dan	Karakalpak	Mon
Mongolian	Setswana	Tigre
Nauruan	S'gaw Karen	Tigrinya
Navajo	Shan	Tikopian
Ndebele (Northern)	Shona	Tok Pisin
Ndebele (Southern)	Sidaama	Tokelauan
Nigerian Pidgin English	Sikaiana	Tooro
Niuean	Sindhi	Torres Strait Creole
Nkole	Sinhalese	Tshivenda
Nogai	Slovak	Tsonga
Norwegian	Slovene	Turkish
Nsenga	Solomon Island Pidgin	Turkmen
Nuer	Somali	Tuvalu
Nzema	Soninke	Twi
Odia	Sudanese Arabic	Ukrainian
Oromo	Sunda	Urdu
Pashto (Pushto)	Swahili (alt Ki-Swahili)	Uzbek
PNG Pidgin (Tok Pisin)	Swedish	Vai
Pokot	Swiss German	Walmajarri
Polish	Syriac	Warlpiri
Quechua	Syrian / Arabic	Welsh

Rajastani	Tagalog	Wik Mungkan
Rohingya	Taiwanese	Wolof
Romanian	Tajik	Wu Shanghainese
Romany	Tatar	Xhosa
Runyakitira	Telugu	Yakut
Sanskrit	Temne	Yawi
Serbian	Teocheow	Yiddish
Sesotho (Northern)	Tetum	Yoruba
Sesotho (Southern)	Tibetan	Zulu

* At the discretion of the Lead Agency, Te Reo Māori may be removed from the list of languages upon written notice from the Lead Agency to the Service Provider.

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1.3 **Service Levels:** The Service Provider will meet or exceed the following Service Levels. Note that all Service Levels are measured on a monthly basis unless otherwise specified:

Service Levels for telephone assignments

Metric	Definition	Service Level Target	Metric
Core Call handling Service Levels These Service Levels are indicators of appropriate Call handling.			
SLT01	Average interpreter connection time	Average time for the client to be connected to an interpreter from the moment the Call is answered.	60 seconds or less
SLT02	Average interpreter connection time by language	Same as SL01, but applied to each language separately.	120 seconds or less
SLT03	Service availability	Based on Service availability being 24 hours, 7 days a week	99.5 % minimum availability
SLT04	Fill rate	Proportion of Calls successfully connected to an interpreter	Core languages: 98% or more Non-core languages: 90% or more

The following Service Levels, SL05, SL06 and SL07 only apply for the benefit of the Lead Agency:

Interpreter Service Levels			
These Service Levels are indicators for appropriateness of the interpreters taking Calls. The intention is to focus attention on New Zealand resident interpreters but to supplement this capability with NAAATI certified interpreters in Australia and beyond.			
SLT05	NZ interpreters Call handling	Proportion of Calls that are serviced by New Zealand resident interpreters.	<ul style="list-style-type: none"> > = 25% all Calls by 01/10/19 > = 50% all Calls by 01/01/20 > = 70 % all Calls by 01/04/20 > = 80 % all Calls by 01/10/20
SLT06	NAAATI Certification	To apply until 31/12/23 - For any Calls taken by non-NZ resident interpreters - proportion of Calls serviced by a NAAATI interpreter To apply from 01/01/24 - Proportion of Calls serviced by a NAAATI interpreter	<ul style="list-style-type: none"> • Core languages: > =95% (NAAATI Certified) • Non-core languages: > = 50% (NAAATI Certified) • Non-core languages > = 90% (NAAATI Provisional/Recognised/Certified) • Core languages: > =95% (NAAATI Certified) • Non-core languages: > = 50% (NAAATI Certified) • Non-core languages > = 90% (NAAATI Certified)

SLT07	Number of interpreters for targeted languages	Number of interpreters for targeted languages to form part of the Service Provider's pool of interpreters at all times. Note this list of targeted languages may change from time to time as new communities settle in New Zealand and any change to the targeted languages or numbers of interpreters for a targeted language is to be agreed between the Service Provider and Lead Agency in writing.	Provisional/Recognised/Certified) 30% additional coverage over and above actual demand for the following languages: Samoan Tongan Cook Island Māori Tuvaluan Tokelauan Niuean Fijian Bislama
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Service Levels for video assignments

Metric	Definition	Service Level Target	Metric
Core Call handling Service Levels These Service Levels are indicators of appropriate Call handling.			
SLV01	Average interpreter connection time	Average time for the client to be connected to a video interpreter from the specified meeting time	180seconds or less*
SLV02	Service Request	Number of requests actioned within one hour of receipt	100%
SLV03	Service availability	Based on Service within Business Hours Based on Service availability outside Business Hours	95% minimum availability* 85% minimum availability*
SLV04	Fill rate	Proportion of Calls successfully connected to an interpreter	Core languages: 98% or more* Non-core languages: 90% or more*

* Subject to the nominated video conferencing technology being available.

The following Service Levels, SLV05, SLV06 and SVL07 only apply for the benefit of the Lead Agency.

Interpreter Service Levels	
These Service Levels are indicators for appropriateness of the interpreters taking Calls. The intention is to focus attention on New Zealand resident interpreters but to supplement this capability with NAATI certified interpreters in Australia and beyond.	
SLV05	NZ interpreters Call handling Proportion of Calls that are serviced by New Zealand resident interpreters.

> = 30% all Calls by 01/02/21
 > = 50% all Calls by 01/05/21
 > = 70 % all Calls by 01/08/21

SLV06	NAATI Certification	<p>To apply until 31/12/23 - For any Calls taken by non-NZ resident interpreters - proportion of Calls serviced by a NAATI interpreter</p> <p>To apply from 01/01/24 - Proportion of Calls serviced by a NAATI interpreter</p>	<p>> = 80 % all Calls by 01/11/21</p> <ul style="list-style-type: none"> Core languages: > =95% (NAATI Certified) Non-core languages: > = 50% (NAATI Certified) Non-core languages > = 90% (NAATI Provisional/Recognised/Certified) Core languages: > =95% (NAATI Certified) Non-core languages: > = 50% (NAATI Certified) Non-core languages > = 90% (NAATI Provisional/Recognised/Certified)
SLV07	Number of interpreters for targeted languages	<p>Number of interpreters for targeted languages to form part of the Service Provider's pool of interpreters at all times.</p> <p>Note this list of targeted languages may change from time to time as new communities settle in New Zealand and any change to the targeted languages or numbers of interpreters for a targeted language is to be agreed between the Service Provider and Lead Agency in writing.</p>	<p>30% additional coverage over and above actual demand for the following languages:</p> <p>Samoa Tongan Cook Island Māori Tuvaluan Tokelauan Niuean Fijian Bislama</p>

1.4 **Service Level rebates:** In addition to any other rights or remedies the Agency may have under this Agreement or at Law, the Service Provider agrees to pay the following rebates in relation to its failure to meet or exceed the Service Levels:

- (a) Where the Service Provider fails to meet SLT01, SLT02, SLT04, SLV01, SLV02 or SLV 04 in any month, a service credit will be calculated against the language where the Service Level was not met and applied to the Agency in the following month's invoice (calculated on the Charges for the month in which the Service Level failure occurred). The service credit is to be calculated based on the GST exclusive value for the Service Level not met.

(b) Where the Service Provider fails to meet SLT03 or SLV03, then a service credit may be requested in accordance with the following table:

Service unavailability per month	service credit (% off monthly invoice)
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(Hours)	s 9(2)(b)(ii)
Up to 1 hour	
Between 1 and 3 hours	
Between 3 and 5 hours	
over 5 hours	

2. DOCUMENTATION

2.1 The Service Provider will supply the following Documentation to the Agency:

- (a) Marketing material relating to the Services being offered to the Agency, including welcome and on-boarding packs; and
- (b) And in the case of the Lead Agency, interpreter training materials.

3. CHARGES

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

s 9(2)(b)(ii)

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s 9(2)(b)(ii)

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**SCHEDULE 2
PARENT COMPANY GUARANTEE**

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SCHEDULE 5
LEAD AGENCY TERMS AND CONDITIONS

1. ADDITIONAL TERMS AND CONDITIONS

In addition to the Terms and Conditions, the terms and conditions in this Schedule apply to the Lead Agency Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** Capitalised terms in this Schedule have the meaning given to them in the Terms and Conditions. In addition, the following terms have the following meanings:

Additional Charges means any charges for Additional Services;

Additional Services means any services agreed in writing in addition to the Services in Schedule 1;

Change Control has the meaning given to that term in clause 12.4;

Change Control Process means the process set out in Annexure B;

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

Disengagement Services means all services reasonably required by the Lead Agency to ensure a smooth and orderly end to this Agreement, which may include transition of the Services to the Lead Agency and one or more alternative service provider(s), including the services described in clause 15.3;

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

Proposal means:

- (a) the Service Provider's proposal titled Ezispeak Response to the Ministry of Business, Innovation and Employment's Telephone Interpreting Services RFP dated 19th July 2019 in response to the RFP;
- (b) the Service Provider's Proposal ("RFI: Video Interpreting Services for New Zealand Government Agencies", 21 August 2020) provided in August 2020 to add video interpreting to the Services offered under this Agreement; and
- (c) any other proposal submitted by the Service Provider as part of the Procurement Process, including in response to any other request for proposal for Services released by the Lead Agency, together with any written material provided to the Lead Agency by the Service Provider to supplement, explain or expand on that proposal; and

Requirements means the requirements and specifications for the Additional Services agreed in writing by the parties, including any quality standards.

3. PROCUREMENT PROCESS

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

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

the Personnel's skills, experience and expertise and the functions, quality and performance of the Services.

- 3.2 **Proposal:** The Service Provider warrants and represents that the Proposal was when submitted, and is at the date of this Agreement, true, accurate and not misleading in any material respect (including by omission).
- 3.3 **Service Provider confirmation:** The Service Provider acknowledges that it had opportunity during the Procurement Process to assess and enquire into its ability to provide the services that are or might be required under this Agreement, and is satisfied that it has the capacity and is capable of providing the Services in accordance with the terms and conditions of this Agreement. The Service Provider, therefore, will not be excused from performance of the Services arising as a result of the Service Provider not having the capacity or capability to provide the Services.

4. SYNDICATED PROCUREMENT

- 4.1 **Common use:** This Agreement is an Open Syndicated Agreement which includes common use provisions allowing Eligible Agencies to contract with the Supplier for the remainder of the Term of the Lead Agency Agreement.
- 4.2 **No minimum commitment:** No guarantee is given that any Eligible Agency will participate during the Term of this Agreement.
- 4.3 **Promotion of the Services:** Subject to clauses 4.3(a) and 4.3(b), the Service Provider shall promote the Services and a Participating Agency Agreement to all Eligible Agencies and Participating Agencies in preference to all other alternatives for the purchase of services identical or similar to the Services. If an Eligible Agency invites the Service Provider to offer to provide services identical or similar to the Services (including through a tender or other procurement process), the Service Provider will respond to that invitation by including an offer to provide Services under a Participating Agency Agreement as the preferred alternative and will promote the benefits of becoming a Participating Agency. The obligations in this clause 4.3 do not apply where:
- (a) an Eligible Agency or Participating Agency expressly notifies the Service Provider that it does not want to receive the Services under a Participating Agency Agreement, provided that where an Eligible Agency or Participating Agency so notifies the Service Provider, the Service Provider must promptly inform the Lead Agency; or
 - (b) an Eligible Agency or Participating Agency undertakes a competitive procurement process and compliance by the Service Provider with clause 4.3 may result in the Service Provider being excluded from that procurement process for failure to comply with its mandatory terms.
- 4.4 **Cap on number of agreements:** At the Commencement Date there is no cap on the number of Eligible Agencies than may enter into a Participating Agency Agreement. However, at any time during the Term of the Lead Agency Agreement the Lead Agency may, in consultation with the Procurement Functional Lead (New Zealand Government Procurement and Property or its successor) cap the number of Participating Agency Agreements by giving written notice of the cap to the Service Provider. Following the Service Provider's receipt of such notice, the Service Provider shall not enter into any new Participating Agency Agreements in excess of the cap notified by the Lead Agency.

5. BECOMING A PARTICIPATING AGENCY

- 5.1 **Request for services:** At any time during the Term of the Lead Agency Agreement, an Eligible Agency may request that the Service Provider provide enters into a Participating Agency

Agreement. Upon such request, the Service Provider will promptly notify the Lead Agency in writing of such receipt and ask the Lead Agency for confirmation that the Eligible Agency is authorised to become a Participating Agency.

- 5.2 **Lead Agency approval:** The Service Provider will not execute a Participating Agency Agreement with an Eligible Agency unless and until the Lead Agency has given the Service Provider written authorisation for such Eligible Agency to become a Participating Agency.
- 5.3 **Entry into agreement:** Following the Lead Agency's confirmation that the Eligible Agency is authorised to become a Participating Agency, the Service Provider shall provide the Eligible Agency a Participating Agency Agreement (including the Terms and Conditions, Participating Agency Signature Form, all Schedules and any amendments that have been executed). If the Eligible Agency wishes to procure services, the Service Provider shall arrange for execution of a Participating Agency Agreement and shall execute the Eligible Agency's completed Participating Agency Agreement within five Business Days of receipt from the Eligible Agency.
- 5.4 **Participating Agencies:** An Eligible Agency will become a Participating Agency on execution of a Participating Agency Agreement by both parties.
- 5.5 **Privity:** The Service Provider acknowledges that clause 3 confers a benefit on, and is enforceable by, Eligible Agencies in accordance with Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

6. SERVICE PROVIDER'S OBLIGATIONS

- 6.1 **Participating Agency Agreements:** The Service Provider will comply with its obligations under each Participating Agency Agreement.
- 6.2 **Additional Services:** From time to time the Lead Agency and the Service Provider may agree in writing for the Service Provider to provide the Lead Agency Additional Services. The Service Provider shall as applicable, design, build, customise, install and implement any Additional Services in accordance with the Requirements, and otherwise on the terms of this Agreement.

7. USE OF PLATFORMS

- 7.1 **Platform approval:** The Lead Agency must approve in writing the use of any Platform that facilitates the delivery of the Services before this Platform may be used by the Service Provider and any Agency.
- 7.2 **Removal of Platform approval:** The Lead Agency reserves the right to revoke its approval of a Platform approved under clause 7.1 of Schedule 5 if it has concerns regarding the use of the Platform (including, for example, where it becomes aware of any security concerns regarding the Platform). The Service Provider must promptly cease using a Platform if it receives written notice from the Lead Agency revoking approval of a Platform.

8. PRINCIPLES

- 8.1 The Lead Agency and the Service Provider agree that the following principles apply:
- (a) Eligible Agencies becoming Participating Agencies – In support of clause 4.3, the Service Provider will identify and engage with all appropriate Eligible Agencies (including those not currently purchasing services from the incumbent interpreting service) advising them of the Services available to them and encouraging them to become Participating Agencies.
 - (b) Encourage participation and use of the Services – The Lead Agency and Service Provider commit to working with the Eligible Agencies to grow participation including:
 - (i) encouraging Eligible Agencies to become Participating Agencies; and

- (ii) encouraging Participating Agencies to use the Services to the exclusion of other potential arrangements for the same Services.
- (c) NAATI certification for New Zealand resident interpreters – The Service Provider will encourage and support (including via the Interpreter Development Fund) the development of New Zealand resident interpreters with a goal of significantly increasing the numbers of New Zealand resident interpreters holding NAATI certification.
- (d) Increased access to the Australian Market – The Service Provider will encourage, support and enable (where possible and appropriate), New Zealand resident interpreters' access to the Australian market.
- (e) Prompt payments to interpreters – The Service Provider commits to remunerating interpreters promptly and frequently and in any event within four weeks from service provision. From 30 June 2021 this payment timeframe will decrease to within three weeks.

9. INTELLECTUAL PROPERTY TO BE OWNED BY LEAD AGENCY

- 9.1 Notwithstanding clause 15.2 of the Terms and Conditions, the following Intellectual Property will be owned by the Lead Agency and is licensed to the Service Provider under clause 15.4 of the Terms and Conditions:
- (a) the telephone number through which the Services are accessed and managed, (irrespective of the provision of the telephone numbers by the Service Provider as part of the Services); and
 - (b) any branding for the Services (which shall be applied to the Services at the direction of the Lead Agency) and as may be developed by the Lead Agency and advised to the Service Provider from time to time.

10. INTERPRETER DEVELOPMENT FUND

- 10.1 The Service Provider agrees to assist the Lead Agency to establish and manage the Interpreter Development Fund.
- 10.2 The purpose of the Interpreter Development Fund is to assist the development and quality of New Zealand resident interpreters including by:
- (a) funding training either in part or in whole;
 - (b) providing an incentive to further study and gain qualifications; or
- in order to assist the interpreters to achieve or maintain NAATI certification.
- 10.3 Contributions to the Interpreter Development Fund will be collected as a component of the total Charges and shall be \$0.10 per minute as at the date of the Lead Agency Agreement. Any change to the Interpreter Development Fund contribution must be agreed in writing between the Lead Agency and the Service Provider.
- 10.4 The Service Provider will hold all contributions to the Interpreter Development Fund in a separate account for that purpose or any other purposes agreed between the Lead Agency and Service Provider.
- 10.5 The Service Provider will apply the Interpreter Development Fund in accordance with the written directions of the Lead Agency (in consultation with the Service Provider) including any

direction to rebate the Agencies their contributions or transfer the Interpreter Development Fund to the Lead Agency or its nominee.

10.6 The Service Provider will report to the Lead Agency on the Interpreter Development Fund as set out in clause 2.3(f) of Annexure A.

11. BUSINESS CONTINUITY

11.1 **Business continuity:** The Service Provider must:

- (a) implement and maintain at all times an up to date business continuity and disaster recovery plan (**BCP Plan**) in respect of the Service in accordance with industry best practice;
- (b) provide the Lead Agency with a copy of the BCP Plan at the Commencement Date and on each annual anniversary of this Agreement;
- (c) review, test and, if necessary to comply with subclause (a), update the BCP Plan at regular intervals not exceeding 12 months;
- (d) include in the BCP Plan such changes as the Lead Agency considers reasonably necessary to ensure continuity of the provision of Services and Deliverables in the event of a disaster in accordance with the highest international standards and practice for business continuity;
- (e) promptly provide to the Lead Agency a copy of the then current BCP Plan when required by the Lead Agency from time to time; and
- (f) if requested by the Lead Agency, promptly provide the Lead Agency with a signed declaration confirming that, to the best of the Service Provider's knowledge after making all necessary and reasonable enquiries, the Service Provider has complied with this clause 11.1.

For the avoidance of doubt, nothing in this clause 10, including the provision of the BCP Plan to the Lead Agency or the inclusion of any changes requested by the Lead Agency, will relieve the Service Provider from any breach of its obligations, or of any warranty, under this Agreement.

11.2 **Lead Agency may share BCP Plan:** Despite anything to the contrary in clause 11 (Confidential Information) of the Terms and Conditions, the Lead Agency may share the BCP Plan with any Participating Agency.

12. GOVERNANCE AND REPORTING

12.1 **Governance:** The parties will comply with the governance and relationship management procedures set out under Annexure A.

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

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

monitor the Change Control Process and, where appropriate, software release and management planning.

12.3 **Reporting:** The Service Provider must provide reports at the frequency and containing the detail set out in Annexure A.

12.4 **Change Control Process:** If:

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

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

13. **PRIVACY ASSESSMENT AND AUDIT**

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

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

- (a) provision of the Services and Documentation;
- (b) invoicing;
- (c) compliance with the terms of this Agreement; and
- (d) financial position and financial statements.

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

13.3 **Notice of audit:** The Lead Agency will notify the Service Provider of the date on which the audit will commence, which must be at least two Business Days after receipt of a notice under clause 13. The Service Provider must give the Lead Agency or its nominee full access to inspect:

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

on and from the date notified by the Lead Agency during the Service Provider's normal business hours for the purpose of conducting the audit. The Lead Agency will comply with the Service Provider's reasonable security and confidentiality requirements in conducting any audit under this clause 13.3.

13.4 **Assistance:** The Service Provider will assist the Lead Agency in a timely manner with any audit conducted under clause 13.3 and will ensure its Personnel and subcontractors also assist the Lead Agency, including by making their relevant premises, personnel, systems, information, data, accounts, documents and records available to the Lead Agency or its nominee if requested.

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

- 13.6 **Non-compliance:** Without limiting any of the Lead Agency's other rights or remedies, if any audit conducted under clause 13.3 discloses any failure to comply with this Agreement by the Service Provider, the Service Provider will promptly remedy the non-compliance to the Lead Agency's satisfaction. The Service Provider will refund any amounts overcharged by the Service Provider within five Business Days of completion of an audit and delivery of an audit report.
- 13.7 **Lead Agency may share audit results:** Despite anything to the contrary in clause 11 (Confidential Information) of the Terms and Conditions, the Lead Agency may share the results of any audit conducted under clause 13.3 with any Participating Agency.

14. TERM AND TERMINATION

- 14.1 **Renewal:** The Lead Agency may extend the term of the Lead Agency Agreement for up to two periods of up to two years each by giving the Service provider notice in writing at least 60 Business Days before the Expiry Date, or the expiry of the relevant renewal period, as the case may be.
- 14.2 **Effect of renewal:** If the Lead Agency renews the Lead Agency Agreement in accordance with clause 14.1, all Participating Agency Agreements in force at the effective date of such renewal shall also renew for the same period as the Lead Agency Agreement, unless the Lead Agency and the Service Provide agree otherwise.
- 14.3 **Consequences of termination:** Upon receipt of a notice of termination by either party to the Lead Agency Agreement the Service Provider:
- (a) shall not enter into any new Participating Agency Agreements; and
 - (b) will provide any Disengagement Services in accordance with clause 15. Where this applies, the term of this Agreement will be extended to such time as the Service Provider completes performance of the services and obligations.
- 14.4 **Partial termination:**
- (a) Where the Agency has the right to terminate this Agreement, it may at its discretion and to the extent practicable instead of terminating this Agreement in full, terminate any affected Service in whole or in part. From the relevant termination date, no Charges are payable for the terminated Services.
 - (b) Without limiting any other rights or remedies the Agency may have, if at any time the Agency considers that any aspect of the partial termination is not proceeding to its satisfaction, it may by notice to the Service Provider, convert the partial termination to a full termination.
 - (c) If the Lead Agency elects to terminate in part, any variations to the Charges will be agreed via the Change Control Process.

15. DISENGAGEMENT SERVICES

- 15.1 **Commencement:** Commencing at any time before or from the expiry or termination of all or any part of the Lead Agency Agreement for any reason, the Service Provider will, at the request of the Lead Agency, provide the Disengagement Services required by the Lead Agency to the Lead Agency and its nominated alternative service provider(s).
- 15.2 **Duration:** The Service Provider will provide the Disengagement Services for up to 12 months from the date of expiry or termination of the Agreement or any part of it as required by the Lead Agency.

15.3 Disengagement Services:

- (a) The Service Provider will provide the Lead Agency, within 10 days of the Commencement Date, with a draft plan detailing the Disengagement Services that are likely to be required by the Lead Agency to end this Agreement in a smooth and orderly manner (**Disengagement Plan**). The Service Provider must ensure that the Disengagement Plan is approved by the Lead Agency within a month of the Commencement Date, and if required to obtain such approval, incorporate such changes as required by the Lead Agency. The Service Provider must maintain and keep the Disengagement Plan up to date, and provide an updated copy to the Lead Agency at least once every six months.
- (b) The Lead Agency may, at any time and from time to time (including on expiry or termination of this Agreement), notify the Service Provider of the Disengagement Services required, which, at the Lead Agency's option, may include any of the following:
- (i) continued performance of the Services to the extent required by the Lead Agency. The relevant terms of this Agreement and the relevant Participating Agency Agreements continue to apply to the performance of the Services in accordance with this paragraph;
 - (ii) promptly assisting the Lead Agency to prepare a disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and the timeframes for the performance of such tasks, and implementing its role in the disengagement plan within the required timeframes;
 - (iii) delivery to the Lead Agency of any Documentation or other materials (including marketing collateral and branding) relating to the Services as they exist as at the date of termination;
 - (iv) transferring to the Lead Agency or its nominee or dealing with the Interpreter Development Fund, as directed by the Lead Agency;
 - (v) transferring any telephone numbers that access and manage the Services to the Lead Agency or its nominee;
 - (vi) answering questions and providing information requested by the Lead Agency and its nominated alternative supplier(s);
 - (vii) providing reasonable assistance for the Lead Agency to acquire rights to access and use software, facilities, equipment, documentation and other resources used by the Service Provider to provide the Services;
 - (viii) arranging or procuring the secondment of suitably qualified personnel as may be required by the Lead Agency;
 - (ix) transferring, relocating or disposing of tangible property owned by the Lead Agency from the Service Provider's sites to locations designated by the Lead Agency;
 - (x) returning to the Lead Agency intellectual property and other intangible property of the Lead Agency;
 - (xi) migrating software, data and the performance of Services to the Lead Agency or an alternative supplier, in such manner and format reasonably specifically or required by the Lead Agency;
 - (xii) decommissioning services; and
 - (xiii) training reasonably required by the Lead Agency.

- 15.4 **Charges:** Subject to clause 15.5, the Lead Agency will continue to pay the Charges in respect of any Services provided by the Service Provider in accordance with clause 15.3(b)(i). For all other Disengagement Services the Lead Agency will pay the Service Provider for the Disengagement Services at reasonable rates to be agreed in writing between the parties. If the parties cannot reach agreement on such rates, the dispute will be resolved by the parties in accordance with clause 17 (Dispute Resolution) of the Terms and Conditions. If required by the Lead Agency, the Service Provider will provide the Disengagement Services pending the resolution of the dispute.
- 15.5 **No Charges:** If the Lead Agency has terminated the Agreement for breach of the Agreement, any Disengagement Services required by the Lead Agency under clause 15.3(b)(ii) to (xiii) will be provided without charge.
- 15.6 **Minimise the Charges:** The Service Provider must do all things practical to minimise the Charges payable by the Lead Agency during the period in which the Service Provider is providing the Disengagement Services.
- 15.7 **Other rights and remedies:** Nothing in this clause limits the Service Provider's or the Lead Agency's rights to recover damages from the other party under this Agreement or to pursue any additional or alternative rights or remedies provided by law.

16. **GENERAL**

The Lead Agency may assign or novate the Lead Agency Agreement to any other Eligible Agency and must provide the Service Provider with prompt notice of such assignment.

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OFFICIAL INFORMATION ACT

ANNEXURE A GOVERNANCE AND REPORTING

This Annexure sets out:

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

1. GOVERNANCE STRUCTURES

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

2. RELATIONSHIP MANAGEMENT

- 2.1 **Relationship meetings:** The Lead Agency and Service Provider agree to attend quarterly relationship meetings between the Representatives of the Lead Agency and the Service Provider to discuss and review the operation of the Agreement. The Lead Agency is to provide five Business Day's written notice to the Service Provider and convene the meeting (in person or by teleconference). For such meeting:

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

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

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

2.3 **Reporting:** The Service Provider will provide the following monthly reports:

- (a) Key Call statistics and metrics, e.g. average Call duration, average wait times, number of disconnects or failed connections, and repeated Calls.
- (b) Languages requested and supplied, including instances where languages were requested but not available, and use of each language over a period of time (e.g. month, quarter, year), and identification of trends.
- (c) Eligible Agency ranking (with corresponding Call numbers);
- (d) Eligible Agency language ranking (with corresponding Call numbers);
- (e) Reporting on staff/personnel's professional development, e.g. progress towards NAATI certification.
- (f) Reporting on staffing/resourcing, such as whether languages have grown or reduced in capacity or capability and efforts to recruit or source languages that have insufficient resourcing.
- (g) Service level reporting.
- (h) Reporting on the Interpreter Development Fund including contributions, current level and applications of the Interpreter Development Fund within the current reporting period and including any additional information reasonably required by the Lead Agency in relation to the Interpreter Development Fund.
- (i) Eligible Agency participation onboarding and feedback.
- (j) Interpreter onboarding.
- (k) Provision of customisable reporting to suit the needs of Participating Agencies, including showing their information as well as aggregated information from all Participating Agencies.

**ANNEXURE B
CHANGE CONTROL PROCESS**

1. **Request for Change Control:** The party that wants to initiate a Change Control will describe the details of the proposed Change Control in a notice to the other party (**Change Control Request**).
2. **Impact Report:** The Service Provider will, at its cost and within a reasonable period of time from its receipt or delivery of the Change Control Request (but in any event not more than 20 Business Days), prepare, and give by notice, an impact report (**Impact Report**) detailing an explanation of the proposed Change Control, including how the proposed Change Control is to be implemented and, to the extent relevant, detailing:
 - (a) the feasibility of the proposed Change Control;
 - (b) the likely time required to implement the Change Control;
 - (c) the effect of the proposed Change Control on the ability of the Service Provider to meet its obligations under the Agreement;
 - (d) any cost implication for either party in relation to the proposed Change Control;
 - (e) any consequential material impacts of the proposed Change Control;
 - (f) where appropriate, suggested acceptance testing procedures and acceptance criteria for the proposed Change Control; and
 - (g) all other information which is likely to be material to the Lead Agency.
3. **Notify:** The Lead Agency will, within a reasonable period of time from receipt of the relevant Impact Report, notify the Service Provider of its decision in respect of a Change Control Request including whether it:
 - (a) accepts the Change Control Request;
 - (b) wishes to renegotiate any aspect of the Change Control Request;
 - (c) withdraws the Change Control Request, if initiated by the Lead Agency; or
 - (d) does not accept the Change Control Request, if initiated by the Service Provider.
4. **Pricing:** The following pricing principles will apply in respect of any Change Control:
 - (a) the Service Provider will only charge for a Change Control to the extent the Change Control cannot reasonably be considered already within the scope of the Agreement (including within the scope of any Services or Additional Services);
 - (b) if the Change Control is a reduction in the scope of the Agreement or should otherwise result in a reduction of the Charges, then the parties will use genuine efforts to agree a reasonable reduction in the Charges to reflect the impact of the Change Control (for example, a pro-rata reduction in the Charges commensurate with the reduction in the scope of the Agreement). If the parties cannot reach an agreement on the appropriate reduction of the Charges, then the dispute resolution process set out in the Terms and Conditions will apply;
 - (c) if there is an increased cost impact of the Change Control then the parties will use genuine efforts to agree a reasonable price for the Change Control (taking into account the nature and extent of the Change Control) in accordance with the rest of this paragraph 4;
 - (d) the pricing for any Change Control will be:
 - (i) reasonable;

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