

## **1. Introduction**

1.1 This Agreement governs all instances of access and use of the System by the Supplier and its Users.

1.2 The Supplier agrees it will be deemed a Registered Supplier from the time the Super User Registers the Supplier and accesses the System using the relevant User ID and Password. Once it is a Registered Supplier, it will be bound by this Agreement in relation to all subsequent actions on the System by the Super User, and all its other Users.

1.3 All references in this Agreement to the 'Supplier', also include its Users, as relevant.

1.5 In the event of any conflict or inconsistency between this Agreement, Procurement Documentation, and Other Relevant Terms, the Other Relevant Terms and/or Procurement Documentation will take precedence to the extent of such conflict or inconsistency.

## **2. Access**

2.1. The Buyer grants the Supplier a non-exclusive, non-transferable right to access the System to:

2.1.1 view and respond to any Invitation and related documents; and

2.1.2 take part in related activities.

2.2. Subject to clause 2.3, the Buyer may immediately (temporarily or permanently), arrange for removal of the Supplier's (or any of its User's) access to all or part of the System, should the Buyer become aware or suspect, or the Supplier give notice to the Buyer, that any of the following has occurred:

2.2.1. An event that justifies immediate withdrawal of access to the System, or participation in any Procurement Opportunity; or

2.2.2. The Supplier commits a material breach of this Agreement, that is non-remediable, or the Supplier fails to remedy that breach within ten Working Days' notice from the Buyer.

2.3. Without prejudice to the Buyer's other rights, the Buyer reserves the right to arrange for suspension or removal of access temporarily or permanently, to all or any part of the System without notice, for any technical, legal, or other reason that necessitates such action in the Buyer's reasonable opinion.

## **3. Users**

3.1. Once access to the System is requested by the relevant Super User, each new User will be issued a unique User ID and Password prior to accessing the System.

3.2 The Supplier is solely responsible for authorising individuals to become Users on its behalf. The Buyer is not responsible for verifying such authority.

3.2 Prior to authorising use, the Supplier must ensure that its Users:

3.2.1 are aware of their obligations under this Agreement;

3.2.1 agree to not disclose their User ID or Password to any other person or entity;

and

3.2.2 notify the Supplier as soon as they become aware, or receive notice, that a User ID and Password has, or may have been, disclosed to an unauthorised person or entity outside their organisation or otherwise.

3.3 If the Supplier receives a notice under clause 3.2.2, it will immediately request that the Buyer organise permanent removal of the relevant User's access to the System. The User will only regain access to the System if a new User ID and Password are issued at the Buyer's sole discretion and on confirmation of authority from the Supplier.

#### **4. Content**

4.1 Data and information, including terms and conditions relating to particular Procurement Opportunities will be made available to Users on the System, including the Procurement Documentation.

4.2. Subject to clause 4.4, the Buyer shall send Invitations to Registered Suppliers through the System, in respect of particular Procurement Opportunities.

4.3 Subject to clause 4.4, Users may also log onto the System to check the status of current and new Procurement Opportunities, and to undertake activities related to Invitations and Procurement Opportunities.

4.4 It is up the Supplier to ensure that it remains up to date with all Invitations and Procurement Opportunities presented on the System. The Buyer does not provide any guarantee that all relevant Invitations will be sent to the Supplier, nor does it undertake to notify any Registered Supplier or User of any Invitation or Procurement Opportunity.

4.5 All material issued through the System in connection with a Procurement Opportunity shall remain the property of the Buyer, and be used by the Supplier solely for the purpose of responding to an Invitation and/or related activities (unless this position is varied in the relevant Procurement Documentation).

#### **5. Supplier's Obligations**

5.1. When accessing and using the System, the Supplier will, and will procure its Users will:

5.1.1 comply with this Agreement;

5.1.2 use all reasonable care and skill in performing its obligations under this Agreement;

5.1.3 in the case of the Supplier, be responsible for providing its Users with all equipment and software needed to access and use the System;

5.1.5 take all necessary steps to ensure the security of the System, not doing anything that causes the System to be at risk from viruses, unauthorised access or use, or other harmful things; and

5.1.6 use the System for lawful and proper purposes in compliance with all relevant laws, regulations and codes of practice in force in New Zealand.

5.2 In particular, the Supplier agrees that it will not, and will procure its Users do not:

5.2.1 manipulate any information supplied on the System in a manner that would lead to inaccurate, unlawful or misleading information being displayed or disseminated;

5.2.2 post, transmit or disseminate any information on or via the System which is or may be inaccurate, unlawful, misleading, harmful, obscene or defamatory;

5.2.3 not issue or distribute spam communications through the System;

5.2.3 use the System in a manner that causes or may cause an infringement of the rights of any other party; or

5.2.4. use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the Software or the System, including uploading or making available files containing corrupt data or viruses by whatever means.

5.3 The Supplier agrees that its Users act as authorised agents for and on behalf of it when submitting any information through the System, including submitting any response to any Invitation, posting any comments, or uploading any material.

5.4 The Supplier shall be responsible for any unauthorised, false or fraudulent comment or response by a User, including a response to any Invitation.

## **6. Intellectual Property Rights**

6.1. All Intellectual Property Rights in the System, Software and material presented on the System are owned by, or licensed for use to, the Buyer.

6.2. The Supplier acknowledges and agrees that neither it, nor its Users, have any Intellectual Property Rights in the System, the Software, or material presented on the System. Accordingly it has no right to copy, adapt, modify or interfere with the System or the Software. It may only copy material on the System to the extent expressly authorised by, and allowed within, the System.

6.3. The System may include the Buyer's or BravoSolution's logo and/or trade mark. The Supplier acknowledges that it may not copy, use, or mask such logos and/or trademarks in the System or content derived from the System without the prior written consent of the Buyer and/or BravoSolution, as relevant.

## **7. Data Protection**

7.1. BravoSolution and the Buyer, will securely collect, hold and use personal information entered by Users when they access and use the System. The Supplier agrees, and will procure that each User agrees, to such data being collected, held, stored and used for

purposes related to the operation of the System, processing of Procurement Opportunities, and other related matters.

7.2 BravoSolution and the Buyer acknowledge the right of each User to access and have the ability to correct any personal information held about that person.

7.3 The Supplier and each User acknowledges that their personal information may be held securely by a third party contractor in a data centre outside New Zealand.

## **8. Limitation of Liability**

8.1. In no event shall the Buyer be liable to the Supplier or any User for any direct loss, indirect loss or damages incurred by the Supplier or a User in relation to the System, caused by:

8.1.1. a Force Majeure Event that affects the availability and/or performance of the System (including a breakdown or unavailability of the System due to Internet outages or related events);

8.1.2. a User who was not previously authorised by the Supplier accessing or undertaking activity on the System;

8.2.2. incorrect access or use of the System by Users; or

8.2.3. connectivity failures in respect of the equipment or connections used by the Users.

8.3. The Supplier acknowledges and accepts that:

8.3.1. the Buyer reserves the right to interrupt and/or suspend the availability of the System, and/or revoke or suspend access at any time in accordance with this Agreement without incurring any liability;

8.3.2. the Buyer provides the System on an "as is" and "as available" basis without any warranty of any kind;

8.3.3. the Buyer does not accept any responsibility or liability in relation to any information or links in the System that may refer Users to external sources outside the Buyer's reasonable control; and

8.3.4 the Buyer does not accept any responsibility or liability in relation to the performance or availability of any links that direct the Supplier to the System, where the Buyer is not responsible for those links.

8.4. The Supplier indemnifies the Buyer in full against all claims, demands, actions or proceedings (including legal and other professional advisers' fees) made by any third party arising out of or in relation to:

8.4.1 breach of any Intellectual Property Rights or third party rights in relation to the Supplier's use of the System; and/or

8.4.2 the Supplier's breach of its obligations under this Agreement.

8.5 The maximum aggregate liability of the Buyer in relation to this Agreement is limited to NZD\$100,000.

## **9. Rights of Third Parties**

9.1. This Agreement does not create any rights that are enforceable by anyone other than the Parties.

## **10. Amendments to Agreement**

10.1. Subject to Clause 10.2, the Supplier acknowledges that the Buyer reserves the right to vary or amend this Agreement by publication of a notification or message on the System, and/or through an email notice to the Supplier.

10.2. The Supplier's continued use of the System shall represent its unconditional acceptance of the amendments in their entirety.

## **11. General**

11.1. The waiver by either Party of any rights under this Agreement in respect of breach or otherwise, shall not prevent the subsequent enforcement of any rights by that Party, and shall not be deemed to be a waiver of any right to enforce against any subsequent breach of the Agreement.

11.2. If at any time any part of this Agreement is held to be, or becomes void, or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

11.3. Nothing contained in this Agreement shall be taken as constituting a contract, or an offer between the Buyer and any other party, or from the Buyer, as to the procurement of any goods, services or works, including any Procurement Opportunity.

11.4. The Buyer shall not be committed to any course of action solely as a result of:

11.4.1. issuing an Invitation or posting a Procurement Opportunity on the System;

11.4.2. receipt of a proposal from a Buyer, or any other communication through the System, in respect of an Invitation or Procurement Opportunity;

11.4.3. communicating with a Supplier in respect of an Invitation or Procurement Opportunity through the System; or

11.4.4. any other communication between the Buyer and any other party through, or related to, the System.

11.5. The Supplier accepts and acknowledges that:

11.5.1. while every care has been taken to ensure that the data and information contained on the System is valid, the Buyer shall not accept liability for the accuracy, adequacy or completeness of such information and data; and

11.5.2. that by issuing an Invitation the Buyer shall not be bound to accept any response, and it reserves the right to award a contract for some but not all of the requirements specified, or not to award any contract at all;

11.5.3. the Buyer shall not accept any liability for any costs or expenses incurred by a Supplier responding to an Invitation, or any other matter through the System;

11.5.4. due to the nature of computer systems and networks, the Buyer cannot guarantee absolute security of any material or data transmitted through, or stored on the System;

11.7. The Supplier acknowledges that the System will not allow its Users to view the identity of any other Suppliers participating in a Procurement Opportunity, or any other activity in the System.

## 12. Notices

12.1. All communications given under this User Agreement shall be in writing and shall be:

12.1.1. served on the Supplier, via e-mail, to the e-mail address notified by the first User on Registration, and/or through any messaging facility available on the System; and

12.1.2. served on the Buyer, via e-mail to purchasing@dia.govt.nz **and** through the messaging facility available on the System; and

12.1.3. in each case will be deemed to have been received by the recipient on the same Working Day as the sender sends the e-mail, unless a failed email notification is received by the sender.

## 13. Law and Jurisdiction

13.1. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of New Zealand and shall be subject to the nonexclusive jurisdiction of the Courts of New Zealand to which the parties irrevocably submit.

## 14. Interpretations

14.1. The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

14.2. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

14.3. The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

14.4. References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

14.5. All references in this Agreement to clauses are to the clauses of this Agreement, unless otherwise stated.

## 15. Definitions

**"Agreement"** means this Agreement between the Parties governing provision and use of the System.

**"BAFO"** means a best and final offer.

**"BravoSolution"** means BravoSolution APAC Pty Limited, and includes its affiliates, legal successors and permitted assigns.

**“Buyer”** means the Sovereign in right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs.

**“Force Majeure Event”** means any event affecting the performance by the Buyer of its obligations under this Agreement that arises from acts, events, omissions, happenings or non-happenings that are beyond the Buyer’s reasonable control including (but not limited to) government regulations, fire, flood, or any disaster, non-Buyer initiated termination of the Software licence, or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

**“Intellectual Property Right”** means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trade mark, service mark, domain name, know-how, utility model or, where relevant, any application for any such right, or other industrial or intellectual property right.

**“Invitation”** may include a ROI, RFI, BAFO, RFP, RFQ, or any other invitation to participate in a Procurement Opportunity posted on the System in any format, as extended by the Buyer from time to time.

**“Other Relevant Terms”** means all terms and/or instructions provided in the System (other than this Agreement) relating to access or use of the System.

**“Password”** means the unique password chosen by the User that is needed to log on to the System in conjunction with that User’s User ID.

**“Parties”** means the Supplier and Buyer.

**“Procurement Documentation”** is the terms and conditions, forms, and all other information provided on the System, or referred to in the System, as part of an Invitation.

**“Procurement Opportunity”** means the opportunity for a Supplier to present proposals for the supply of goods and/or services in response to an Invitation.

**“Registration”** means the process undertaken by the first User who accesses the System in relation to a particular Supplier before they successfully access the System.

**“Registered Supplier”** means a Supplier whose Users are authorised to access and use the System following Registration by the first User.

**“RFI”** means a request for information.

**“RFP”** means a request for proposals.

**“RFQ”** means a request for quotes.

**“ROI”** means a registration of interest.

**“Software”** means the software, documentation and other systems the Buyer is licensed to use by BravoSolution or other third parties, in order to operate the System.

**"Super User"** means the person who Registers a Supplier, and accesses the System on the Supplier's behalf for the first time.

**"Supplier"** means an organisation that has authorised a User or Users to access and use the System on its behalf as described in this Agreement.

**"System"** means the *Procure2Pay system* (or a valid link) using that User's unique User ID and Password.

**"User"** in its own right and in relation to a particular Supplier, means an individual with a current User ID and Password that is authorised by that Supplier to access and use the System on behalf of the Supplier, including the Super User where the context requires.

**"User ID"** means the unique electronic identifier assigned to a User, to be used by that User in conjunction with the relevant Password to access the System.

**"Working Day"** means 08:00-17:00 Monday to Friday in New Zealand, excluding national public holidays, and the period from 24 December to 5 January (both inclusive)