

TSMSA – Summary of Final Negotiated Position

Background

The National Ticketing Solution (**NTS**) Ticketing Solution Master Services Agreement (**TSMSA**) has been awarded to Cubic Transportation Systems New Zealand Limited (**Cubic**). The TSMSA describes the terms on which Cubic will provide the ticketing solution portion of the NTS, which includes a back-office system, equipment and related services (the **Ticketing Solution**). This memo provides a summary of the final negotiated position in respect of key commercial matters and compliance with participating stakeholder requirements.

Scope

This memo summarises the key commercial terms relating to the TSMSA.

It does not include any commercially sensitive information that would be prejudicial to either party to the TSMSA.

TSMSA

The TSMSA is between Waka Kotahi, New Zealand Transport Agency (the **Buyer**) and Cubic, as the ticketing solution provider (**TSP**). The parties who choose to take part in the NTS (e.g. New Zealand public transport authorities) are referred to in the TSMSA as **Participants**. The Buyer has signed the TSMSA as principal. The Participants are not individual signatories to the TSMSA but are entitled to receive the benefit of the TSMSA.

Term

The contract term is as set out in the Procurement Strategy and is for ten years from the commencement of operations for the later of ECan, GWRC and AT.

The term is able to be extended at the Buyer's discretion in three terms each of three years.

Guarantee

The TSP's parent company has provided a parent company guarantee for the full scope of the TSP obligations and indebtedness.

Objectives

The TSMSA sets out the overall objectives of the Ticketing Solution and the services to be provided to provide context to services provision by the TSP.

Principles

General engagement and operating principles have been incorporated into the TSMSA, largely as the original initial draft TSMSA contemplated.

i. TSP role

Sets out the TSP's role as prime contractor, systems integrator, and agent for the Buyer in the Buyer's dealings with certain financial service providers who also provide services to the Buyer under separate agreements as part of the NTS (each an **FSP**), at an overarching level.

ii. Product based approach

As the Ticketing Solution is a product provided by the TSP, the TSMSA sets out the Buyer's and TSP's obligations in respect of core product releases and adoption of changes to the core product.

Provision of the ticketing solution

There are a number of specific obligations of the TSP for the delivery of the Ticketing solution, notably obligations to ensure that the Ticketing Solution:

- a) satisfies the Buyer's requirements through the term;
- b) including equipment and services, is delivered to a standard that meets or exceeds the service levels;
- c) is provided in accordance with industry best practice – even if such best practice requires more stringent or additional standards than those in the TSMSA;
- d) complies with all policies and guidelines from the Buyer; and
- e) accepts and processes open loop payments for the term.

Buyer, TSP and Mutual responsibilities

Defines the specific responsibilities of each party to the other for the performance of obligations without causation of adverse effects on the other party.

Agent

The TSP can be contracted as the agent of the Buyer to manage the agreements and deliverables of the FSPs. This includes day-to-day management but excludes any relationship and commercial matters.

This enables the TSP to become the primary point of contact in relation to the NTS for the Buyer during the Term of the TSMSA.

Resourcing and Personnel

Sets out the requirements for the TSP's provision of resources and the processes for change or removal of resources and subcontractors.

Continuous Improvements

Sets out the requirements for the TSP to introduce improvements to the Ticketing Solution over the term of the agreement.

Significant Events

The TSMSA sets out a process for dealing with "significant events". Unless the Buyer requests otherwise, significant events will be managed by the TSP irrespective of cause. Significant events include a range of matters both within and outside the TSP's direct control. All security or PCI-DSS non-compliance events are deemed to be significant events, as are missed milestones (for any reason). The TSMSA also sets out the TSP's obligations to remedy any significant event, and specifies exceptions to the obligations, including an event due to force majeure or an event caused by a third party.

Commercial management

The TSMSA sets out the processes and procedures for general commercial management including, payments, invoicing, taxes, suspension and invoice disputes.

The charges for each anticipated statement of work are set out in the charges schedule subject to change through the change control procedure

Confidentiality and Intellectual Property

Provisions for confidentiality and intellectual property extend from the Buyer to the Participants, even though Participants are not signatories to the TSMSA. These provisions enable confidential information to be shared with Participants, but any breach would be treated as a breach by the Buyer, i.e. the Buyer

assumes the obligation of each Participant to comply with the same restrictions on use set out in the TSMSA that apply to the Buyer.

Intellectual property rights are vested in the Party that owns the relevant pre-existing intellectual property. Warranties and indemnities are provided in respect to IP ownership. The Buyer benefits from licence-free improvements derived from other jurisdictions' investment in enhancements to the Ticketing Solution.

Data

The Buyer (and through the Buyer, the Participants) retains complete ownership and access rights in all Buyer and Participant data with unfettered access.

The TSP cannot restrict in any way the use of data by the Buyer (and Participants) for any data extracted from the system by any means at any time.

The TSP has specific obligations in respect of what it may and may not do with respect to the data.

Provisions are established with the transfer of data to the Buyer at any time and including on termination of the agreement.

Privacy

Specific provisions are included in accordance with New Zealand Privacy Act 2020 and other relevant legislation. Specific assurances are provided in respect of the treatment and management of personal information.

Security and PCI DSS

The TSP responsibilities in respect of establishing, maintaining and reporting on security matters are set out.

The obligations of the TSP in respect of attaining and maintaining the necessary PCI-DSS standards for the processing of payment industry standard payments are set out.

Protections

A range of protections exist in the TSMSA for the benefit of the Buyer.

i. Warranties

A range of standard commercial and legal warranties are provided.

In addition, specific warranties relating to the solution are provided in respect of:

- a) ongoing support for the Ticketing Solution;
- b) scalability to support a national solution;
- c) all deliverables and equipment are required to be fit for purpose, in the environment they are intended to be used and conform to the Buyer's specifications;
- d) the Ticketing Solution being capable of being integrated with related systems and interfaces (FSP, Participant, etc);
- e) the Buyer relying on the TSP's expertise and knowledge to deploy in the NTS environment;
- f) continued deployment through a product-based approach and backward compatibility; and
- g) provision of well-defined APIs for all integration requirements.

ii. Liabilities

A general limitation of liability clause is provided in respect of the Ticketing Solution. Certain exclusions apply to the limitation.

iii. Audit

The Buyer has audit rights in respect of the Ticketing Solution.

iv. Step in Rights

The Buyer has step-in rights in whole or in part for a breach or likely anticipated breach for any non-performance if, in the Buyer's opinion, the Buyer needs to act to prevent harm, damage or loss. Other causes include an action that could result in termination, force majeure or a significant event.

v. Parent Company Guarantee

A parent company guarantee holds the ultimate parent company to obligations under the agreement and assumes the same liability cap as the TSP.

vi. Change in control

Specific provisions exist in respect of any change of control of the TSP.

Dispute resolution

A structured and escalating dispute resolution process exists with limited timeframes for each stage of escalation. This includes a mediation process to be conducted through AMINZ. The dispute process must be exhausted prior to either party being able to commence litigation proceedings.

Termination

The Buyer has multiple termination rights.

The Buyer may terminate for cause through a range of unremedied material breach events and force majeure events.

The Buyer has termination for convenience rights.

Termination may be in full for the TSMSA and all SOWs, a specific SOW or a specific service (partial termination).

Schedules

Only some schedules are referenced.

Schedule 3 – Governance

Schedule 3 contains a comprehensive governance structure that establishes the governance regime from initial SOW commencement through to the on-going operation of the Ticketing Solution. The Schedule contains obligations for each of the TSP and the Buyer in terms of the establishment, participation and management of the governance structure.

Schedule 4 – Service Catalogue

The Service Catalogue defines the Buyer's requirements, the means by which the requirements will be delivered through the product and service descriptions, and a traceability matrix which links these concepts together.

Schedule 5 – Service Levels

Service levels are generally described in terms of business outcomes and are included in the service level schedule.

The schedule details the specific measures that will be used individually or in combination to measure and report against the business outcomes.

Schedule 7 – Charges

The charges for specified SOWs for each Participant are included with payment milestones.

The schedule includes charges for on-going operational services with the addition of each Participant throughout the term of the TSMSA.

Schedule 9 – Acceptance

The acceptance process assumes by default that the Buyer is responsible for conducting all acceptance processes.

There is an option for these to be delegated to the TSP on a case by case basis which would be set out in the relevant acceptance test plan.

ENDS