



Collaborative Marketplace Agreement

Part 2 – Channel Terms for Software as a Service (SaaS Terms) (Eligible Pre-existing Agreement applies)

Channel Terms

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These are the channel terms for software as a service where there is an Eligible Pre-existing Agreement.

1. **Introduction**
- 1.1 These Channel Terms apply to the Software as a Service Channel (**SaaS Channel**). This Channel is part of the New Zealand Government Marketplace as described in, and is subject to, the terms of the Collaborative Marketplace Agreement (the **Marketplace Agreement**).
- 1.2 These particular terms apply in relation to Services for which there is an Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure Services.
- 1.3 When we use the terms **you** and **your**, we are referring to any provider that applies to be a Member of and list services in this Channel.
2. **Definitions**

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- 2.1 These Channel Terms incorporate all definitions included in the General Terms in Part 1 of the Marketplace Agreement. In addition, for the purposes of these Channel Terms:

Agency Agreement means the affiliate agreement, subscription agreement, participating agency agreement or other agreement, as applicable, that individual Eligible Agencies enter into to consume services pursuant to the terms of a Pre-existing Agreement;

Eligible Pre-existing Agreement means a Pre-existing Agreement that covers services that we allow to be listed in the Marketplace but on the basis that the terms of the Pre-existing Agreement will apply to Participating Agencies' procurement of those services;

Government Procurement Rules means the Government's rules of procurement available at procurement.govt.nz;

Pre-existing Agreement has the meaning in clause 24 of the General Terms; **and**

Software as a Service (or SaaS Services) means the software or software-related services (including cloud licensing or other related services) in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for this Channel or the Marketplace Change Procedure, as applicable; **and**

Tier 1 Security Assurance and Risk Rating means the highest level of security assurance that a provider can obtain for a Services Listing in the Marketplace.

3. Application of Eligible Pre-existing Agreements

- 3.1 If you are already, or will become (when joining a pre-existing open panel), a party to an Eligible Pre-existing Agreement that covers the SaaS Services you would like to list in the Marketplace, you can list those services in the SaaS Channel within the Marketplace. To avoid doubt, listing services available under an Eligible Pre-existing Agreement in the Marketplace does not have the effect of terminating or superceding your Pre-existing Agreement. You will have entered into a Marketplace Agreement with us that regulates your participation in the Marketplace but your Pre-existing Agreement remains in force in accordance with its terms.
- 3.2 If you have or enter into an Eligible Pre-existing Agreement and we grant you Member status for this Channel:
- (a) your Pre-existing Agreement will apply to the services it covers;
 - (b) if there is any inconsistency between the terms of your Pre-existing Agreement and the applicable terms in Part 1 of this Marketplace Agreement, your Pre-existing Agreement will prevail to the extent of the inconsistency;

The terms defined here have special meaning.

To list services that are or will be available under a Pre-existing Agreement in the Marketplace, we need to have said that the Pre-existing Agreement is Eligible. You can find out by checking marketplace.govt.nz. If it is, you'll need to follow the On-boarding Process but the requirements are less than usual.

- (c) applicable SaaS Terms will prevail over your Pre-existing Agreement; and
- (d) your Pre-existing Agreement will have “Common Capability Contract” status in relation to the services that you are authorised to and do list in this Channel within the Marketplace. Under the Government Procurement Rules, this enables Eligible Agencies to purchase those services from you without having to undertake a full open procurement process on GETS. They would only have to follow the applicable Ordering Process using a secondary procurement process appropriate for the service being procured.

4. Ordering Services under Eligible Pre-existing Agreements and the agreement that applies

- 4.1 The Ordering Process for Eligible Agencies' purchase of SaaS Services under Eligible Pre-existing Agreements and the manner in which your charges are paid depend on the particular Eligible Pre-existing Agreement under which the SaaS Services are being purchased. This may entail completion of the paperwork required by the applicable Agreement. Details can be found on marketplace.govt.nz.
- 4.2 The agreement that applies between you and an Eligible Agency that orders Services will take the form of the Agency Agreement prescribed by the applicable Eligible Pre-existing Agreement.

5. Administration Fee

- 5.1 If DIA or MBIE is charging or collecting an administration fee in relation to Services procured under or in connection with an Eligible Pre-existing Agreement, that Agreement will govern the fee and its collection and there will be no separate Administration Fee under the Marketplace Agreement for the same Services.

6. Effect of termination or expiry of Eligible Pre-existing Agreement

- 6.1 If:
 - (a) an Eligible Pre-existing Agreement that covers your SaaS Services is terminated or expires; and
 - (b) you wish to maintain your Services Listings in the Marketplace for those SaaS Services,

you will need to obtain our approval to the continuation of your Services Listings. This will involve some on-boarding and you will need to agree to the Channel Terms that apply when there is no Eligible Pre-existing Agreement. To avoid any lapse of your Services Listings following the termination or expiry of your Pre-existing

Agencies purchase services in accordance with the processes and paperwork prescribed by the Eligible Pre-existing Agreement.

We won't charge an extra administration fee if you're already collecting and paying one under the Eligible Pre-existing Agreement.

Keep an eye on the term of your Eligible Pre-existing Agreement because, when it comes to an end, you'll need to on-board again if you want to maintain your Services Listings. It's best to do that before it comes to an end.

Agreement, you are encouraged to commence the On-boarding Process at least three months before the date of termination or expiry of your Pre-existing Agreement.

7. Tier 1 Security Assurance and Risk Rating

7.1 If you wish to apply for a Tier 1 Security Assurance and Risk Rating for a SaaS Service for which you already have a Services Listing or for which you are seeking a Services Listing, you will be required, as part of the application process, to agree to our Tier 1 Security Assurance Terms.

7.2 We reserve the right to make your membership of this Channel, or your ability to add or maintain a Services Listing for a particular SaaS Service in this Channel, subject to your:

(a) first applying for and obtaining a Tier 1 Security Assurance and Risk Rating; or

(b) applying for and obtaining a Tier 1 Security Assurance and Risk Rating within a specified period after your Services Listing is added to the Marketplace with a lower rating.

We may exercise this right if, given the nature or risk profile of one or more of your SaaS Services, we consider it necessary or desirable to do so. If we do, you will be required, as part of the application process, to agree to our Tier 1 Security Assurance Terms.

If you apply for a Tier 1 Security Assurance and Risk Rating or we require you to do so, you will be required to agree to our Tier 1 Security Assurance Terms.