



Collaborative Marketplace Agreement

Part 2 – Channel Terms for Software as a Service (SaaS Terms) (Standard)

Channel Terms

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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**).

These are the channel terms for software as a service.

1.2 These particular terms apply in relation to Services for which there is *no* Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure Services in this Channel.

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

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:

The terms defined here have special meaning.

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;

Order means a request for Services;

Order Form means an ordering form on the Marketplace that Participating Agencies may need to complete to submit an Order for Services;

Ordering Date means the date on which a Purchasing Agency submits an Order;

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

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; and

Subscription Agreement means an Agency Purchase Agreement formed in accordance with these Channel Terms.

2.2 References in these Channel Terms to **software or software-related services** include, where relevant, licences for the deployment of software in cloud computing environments and professional services relating to the use of SaaS services, as long as they are capable of being listed in a subscription that a Participating Agency can procure through the Marketplace.

2.3 In a minority of cases we may consider that the nature, risk profile or value of some or all of your services warrants more detailed contractual terms than the terms in these Channel Terms and, for a Purchasing Agency, the applicable Subscription Agreement. In such cases we may elect, after discussion with you, to require you to enter into a different form of agreement (an **Alternative Common Capability Marketplace Agreement**) for the relevant services or licensing. In that event, you will not be able to list and provide the relevant services or licensing through the Marketplace until you have entered into an Alternative Common Capability Marketplace Agreement with us (entry into such an agreement remains your choice).

In a minority of cases we may need to ask you to enter into a more detailed agreement with us as a pre-requisite to your being able to list your services in the Marketplace.

3. Ordering SaaS Services

3.1 If an Eligible Agency decides to purchase SaaS Services, it will select the relevant service(s) and provider(s) and, where relevant, choose between them and submit an Order in accordance with the Ordering Process for SaaS Services (which is described on marketplace.govt.nz).

If an Eligible Agency wishes to procure SaaS Services, it does so through an Ordering Process that creates a Subscription Agreement between you and the relevant Eligible Agency. When that Subscription Agreement is formed, the Eligible Agency becomes a Purchasing Agency.

4. Agreements with Purchasing Agencies for SaaS Services

4.1 The contract that applies between you and a Purchasing Agency for the Purchasing Agency's consumption of your SaaS Services shall be an agreement that comprises:

(a) your Standard Terms applying on the Ordering Date; but

- (b) subject to and as modified by the terms specified in clause 5 below (the **Government Terms**).

We call this agreement a **Subscription Agreement**. If there is any inconsistency between the Government Terms and your Standard Terms, the Government Terms prevail.

- 4.2 The Subscription Agreement is formed upon the Purchasing Agency's submission of an Order Form to you for the relevant SaaS Services (and the Purchasing Agency will be aware of the terms of the Subscription Agreement).
- 4.3 This clause 4 is intended to confer a benefit on and to be enforceable by all Purchasing Agencies that submit an Order Form for SaaS Services (for which there is no Eligible Pre-existing Agreement).

5. Government Terms

- 5.1 Despite any provision to the contrary in your Standard Terms, you agree in relation to every Subscription Agreement that:
- (a) **indemnities:** no Purchasing Agency shall be under any obligation to indemnify or grant any guarantee to you or any other person or entity (and for this purpose "indemnify" includes any obligation in the nature of an indemnity);
- (b) **entire agreement:** a Purchasing Agency's Subscription Agreement constitutes the entire agreement between the Purchasing Agency and you;
- (c) **control of claims:** any reference in your Standard Terms to your having any form of control over the defence or settlement of any third party claim against the Purchasing Agency (in relation to which you have an obligation such as an indemnity vis-a-vis the Purchasing Agency) is subject to any applicable directions provided to the Purchasing Agency pursuant to the New Zealand Government's "[Cabinet Directions for the Conduct of Crown Legal Business 2016](#)" or their successor;
- (d) **unilateral changes:** except as required by law, if you make a unilateral change to your Standard Terms from the Ordering Date that is prejudicial to a Purchasing Agency's or its Users' rights or interests, that change shall be unenforceable against the Purchasing Agency and its Users (this clause does not prevent you from amending your Standard Terms for all of your customers or adapting and evolving your Services as you see fit and it doesn't require you to issue bespoke communications to Purchasing Agencies and their Users if you amend your Standard Terms for all of your customers; it only limits the enforceability of unilateral changes that are prejudicial to a Purchasing

These Government Terms modify the application of your Standard Terms.

The Cabinet Directions for the Conduct of Crown Legal Business apply to Ministers and government departments. Under the directions, the Attorney-General and Solicitor-General have specific roles and powers vis-à-vis departments in relation to litigation involving the Crown.

Agency's or its Users' rights or interests). This clause is intended to benefit Users and be enforceable by them under the Contract and Commercial Law Act 2017 and you agree not to assert in any communications or proceedings, whether in New Zealand or elsewhere, that Users are bound by such unilateral changes;

(e) **governing law and jurisdiction:**

- (i) New Zealand law governs all matters relating to the Government Terms of each Subscription Agreement and the formation of each Subscription Agreement, including interpretation of the Government Terms and any disputes relating to them;
- (ii) you agree to submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute regarding the Government Terms of each Subscription Agreement or the formation of the Subscription Agreement and you agree that the New Zealand courts are an appropriate forum for such disputes and that you will not seek to argue to the contrary;
- (iii) you and any Purchasing Agency will be entitled to seek interim relief in any relevant jurisdiction; and
- (iv) except as stated in this clause 5.1, the governing law and jurisdiction clauses in your Standard Terms continue to apply.

5.2 You also agree that, despite any provisions to the contrary in your Standard Terms, the following clauses apply in relation to each Subscription Agreement:

- (a) 3.4 of the General Terms (no exclusivity or minimum purchasing requirement);
- (b) 3.11 of the General Terms (withdrawal, suspension or termination does not affect existing Agency Purchase Agreements);
- (c) 4.8 of the General Terms (removal of Services Listing does not affect existing Agency Purchase Agreements);
- (d) 10 of the General Terms (Warranties);
- (e) 13 of the General Terms (Pricing and Administration Fee) and clause 7 of these Channel Terms (Additional pricing terms);
- (f) 15 of the General Terms (Confidentiality);
- (g) 17 of the General Terms (Purchasing Agency Data);

- (h) 18 of the General Terms (Personal information);
- (i) 21 of the General Terms (Amendments); and
- (j) 24 of the General Terms (Defined terms and interpretation).

5.3 You must:

- (a) name your Standard Terms and your published privacy statements or policies and provide URL(s) to them in the applicable Marketplace Catalogue and upload them to that Marketplace Catalogue; and
- (b) update these names, URLs and uploads in that Marketplace Catalogue if you amend your Standard Terms or your published privacy statements or policies.

You need to add details of your Standard Terms and privacy policies to the Marketplace and keep them up to date.

5.4 You may only amend the terms of the Subscription Agreement for a *particular* Purchasing Agency:

- (a) if you and the particular Purchasing Agency agree to the amendments outside of the Marketplace Ordering Process (the Ordering Process for SaaS Services is standardised and does not accommodate ad hoc amendments); and
- (b) the amendment is not a Prohibited Amendment (defined below).

You and a particular Purchasing Agency may agree to amend the default terms of a Subscription Agreement in certain respects.

This clause 5.4 does not limit clause 5.1(d) of these SaaS Terms.

5.5 For the purposes of clause 5.4, amendments that seek to:

- (a) increase the Price for your SaaS Services for a particular Purchasing Agency (unless you are doing so for all or the majority of your customers either worldwide or within a particular country pursuant to a right in your Standard Terms); or
- (b) make changes that are prejudicial to a Purchasing Agency's rights or interests or otherwise detract from the protections, safeguards or entitlements of the Government Terms,

are **Prohibited Amendments** unless you obtain DIA's prior written consent.

6. Additional provisions relating to service changes

6.1 When you are proposing to make changes to a SaaS Service, you need to consider whether the changes will adversely affect:

- (a) the security or other controls;
- (b) your compliance with any standards (e.g., coding standards); and/or

If you're changing a SaaS Service, you need to think about some security and related matters.

- (c) the ongoing validity of any certifications you have for the SaaS Service,

that you notified to DIA when applying for inclusion of the SaaS Service in the Marketplace and obtaining the level of assurance for which the SaaS Service is listed in the applicable Marketplace Catalogue. If there will be an adverse effect:

- (d) you must inform DIA of the adverse effect with sufficient information to enable DIA to understand the potential risk and impact; and
- (e) you must follow DIA's reasonable directions to address the adverse impact; if you do not, we may elect to downgrade the assurance level for the affected SaaS Service (if greater than the base level) or require you to withdraw the SaaS Service from the Marketplace.

7. Additional pricing terms

7.1 The initial Prices for your SaaS Services and the currency in which they are charged will be the pricing and currency notified to us during the On-boarding Process for this Channel or otherwise agreed with us during that On-boarding Process. These initial Prices (and any Prices increased pursuant to clause 7.2) must be either:

- (a) the prices you usually apply to equivalent New Zealand customers (or tiers of customers) for those SaaS Services, taking into account where relevant the nature of the Services, terms of supply, recoverability of your expenditure or investment, committed spend volumes and contractual periods; or
- (b) reduced prices for Eligible Agencies.

7.2 Subject to clause 7.1, you may alter the Prices for your SaaS Services at any time and, if you do, you must update your Services Listings promptly to show the altered Prices.

You can alter your pricing at any time.

7.3 If you propose to increase the Price for a SaaS Service, you must give DIA and Purchasing Agencies at least 30 days' prior notice of the increase.

7.4 Pricing for a Purchasing Agency's consumption of your SaaS Services must be based on the Prices stated in the relevant Services Listings at the time the Purchasing Agency executes an Order Form for the SaaS Services. If you alter your pricing in accordance with clause 7.2, the altered pricing will apply to each Purchasing Agency's consumption of the relevant SaaS Services from the next applicable billing cycle.

Services Listing Pricing applies to a Purchasing Agency's consumption of your SaaS Services.

7.5 Your charges for your SaaS Services will be processed through the Marketplace, as described in more detail on marketplace.govt.nz.

8. Obligation to keep us informed

- 8.1 You may meet your obligation in clause 9 of the General Terms in Part 1 of the Marketplace Agreement (Obligation to keep us informed) either directly or, if you customarily issue information of a kind referred to in that clause to customers in the form of service status updates on your website or other platform, through such updates.

You can meet your obligation to keep us informed through online service status updates.



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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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**).

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

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;

The terms defined here have special meaning.

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.

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;
 - (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.

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.

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.

Agencies purchase services in accordance with the processes and paperwork prescribed by the 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.

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

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 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.

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.