



Collaborative Marketplace Agreement

Part 2 – Channel Terms for Enterprise Software (ES Terms) (Eligible Pre-existing Agreement applies)

Channel Terms

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1. Introduction

1.1 These Channel Terms apply to the Enterprise Software Channel (the **ES 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 Enterprise Software and Associated Services when an Eligible Pre-existing Agreement applies.

1.2 These particular terms apply in relation to Enterprise Software and/or Associated Services for which there is an Eligible Pre-existing Agreement that governs the terms on which Eligible Agencies are to procure the Enterprise Software and/or Associated 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 software and associated services in the ES 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.

Agency Agreement means the affiliate agreement, subscription agreement, participating agency agreement or other agreement, as

applicable, that individual Eligible Agencies enter into to consume software and/or associated services pursuant to the terms of a Pre-existing Agreement;

Agency-Hosted Enterprise Software means Enterprise Software that is downloaded or otherwise obtained in digital form, with a view to it being hosted either by the customer (e.g., on-premise) or by an organisation other than the organisation that develops and maintains the Enterprise Software, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Associated Services means design, implementation, customisation, configuration, training, support, professional or managed services related to Enterprise Software, performed by you or your subcontractors, in relation to which you have an Eligible Pre-existing Agreement and have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

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

Enterprise Software:

- (a) means software that performs important business functions that are common to many if not most organisations and that usually (but not solely) are of an enterprise-wide nature, such as (but not limited to) order processing, accounting, payroll, human resources information management, and customer relationship management; and
- (b) for the purposes of these Channel Terms, may take the form of:
 - (i) Provider-Hosted Enterprise Software; or
 - (ii) Agency-Hosted Enterprise Software;

GETS means the Government Electronic Tenders Service;

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;

Provider-Hosted Enterprise Software means Enterprise Software that you develop, maintain, host and provide as a service (for example, as a public, hybrid or private cloud service), in relation to which you have an Eligible Pre-existing Agreement and have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel;

Services means the delivery or licensing of, or access to, Enterprise Software, and/or any Associated Services, in relation to which you have sought and obtained consent for Services Listings in the Marketplace pursuant to the On-boarding Process for the ES Channel; 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 enterprise software and/or associated services you would like to list in the Marketplace, you can list that software and those services in the Enterprise Software Channel within the Marketplace, subject to your compliance with the Collaborative Marketplace Agreement and, if applicable, clause 7 (Tier 1 Security Assurance and Risk Rating) below.
- 3.2 If you have or enter into an Eligible Pre-existing Agreement and we grant you Member status for the relevant Channel:
- (a) your Pre-existing Agreement will apply to the Enterprise Software and/or Associated 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 Channel Terms will prevail over your Pre-existing Agreement; and
 - (d) your Pre-existing Agreement will have:
 - (i) "Common Capability Contract" status in relation to the Enterprise Software and/or Associated Services (that is, the software and services that you are authorised to and do list in the Enterprise Software Channel within the Marketplace), if the relevant Marketplace Catalogue is administered by DIA; or
 - (ii) "All of Government Contract" status in relation to the services that you are authorised to and do list in the relevant Channel within the Marketplace, if the relevant Marketplace Catalogue is administered by MBIE.

Under the Government Procurement Rules, this enables Eligible Agencies to procure the Enterprise Software and/or Associated Services from you without having to undertake a full and open primary procurement process on GETS. They would only have to follow the applicable Ordering Process

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

using a secondary procurement process appropriate for the Enterprise Software and/or Associated Services being procured.

4. **Ordering Enterprise Software and/or Associated Services under Eligible Pre-existing Agreements and the agreement that applies**

- 4.1 The Ordering Process for Eligible Agencies' procurement of Enterprise Software and/or Associated Services under Eligible Pre-existing Agreements and the manner in which your charges are paid depend on the particular Pre-existing Agreement under which the Enterprise Software and/or Associated Services are being procured. 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 Enterprise Software and/or Associated Services will take the form of the Agency Agreement prescribed by the applicable Pre-existing Agreement.

Agencies purchase software and associated 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 Enterprise Software and/or Associated 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 software and/or services.
- 5.2 If DIA or MBIE is not charging or collecting an administration fee in relation to Enterprise Software and/or Associated Services procured under or in connection with an Eligible Pre-existing Agreement, the following provisions will apply in relation to the Enterprise Software and any Associated Services:
- (a) You agree to collect, through each invoice to each Purchasing Agency, a fee that is charged to Purchasing Agencies that contributes to the costs of providing and administering the Marketplace (the **Administration Fee**). You will have been informed of the applicable Administration Fees and how they are calculated during the On-boarding Process, and a table of the current Administration Fees and methods of calculation for each Marketplace Catalogue or category of Service can be found on marketplace.govt.nz.
 - (b) You will include the applicable Administration Fee in all invoices to each Purchasing Agency as a separate line item. The Administration Fee must not be bundled into your rates or other fees.
 - (c) We may adjust the Administration Fees and, if we do so, we will provide you with at least one month's written notice of the adjustment before it takes effect.

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

If you're not already paying or processing an administration fee under the Eligible Pre-existing Agreement, you agree to collect an Administration Fee from Purchasing Agencies which is then paid to us, as described here.

- (d) You will provide us with periodic statements that contain details of:
- (i) the amounts invoiced under Agency Purchase Agreements in the previous applicable period; and
 - (ii) the Administration Fees invoiced to Purchasing Agencies during that period,
- using the method and following the instructions we provide on marketplace.govt.nz. The instructions will specify the frequency and periods of reporting and the dates by which you must provide your reports to us.
- (e) Following receipt of your statement we will, reasonably promptly, examine the statement to identify any manifest error. If there is manifest error, we will inform you and you will remedy the error by re-issuing the statement within three Business Days of our written request.
- (f) We will:
- (i) if you agreed that we may direct debit a bank account you nominated during the Onboarding Process and for which you have given us a direct debit authority, debit the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable) from that bank account, and send you an invoice that records that you have paid the debited amount; or
 - (ii) if you did not agree that we may direct debit a bank account, render an invoice to you for an amount equal to the aggregate Administration Fees set out in the statement (or re-issued statement) plus GST (where applicable), in which case you will pay our invoice on or before the 20th day of the month following the date that invoice was received.
- (g) If you, of your own volition or following resolution of a dispute, reduce the quantum of an invoice previously rendered to a Purchasing Agency (including writing it off) following payment to us of the Administration Fee for that invoice, you may inform us of the reduction. If you do, you will provide us with such supporting evidence as we may reasonably request. If we are satisfied with the information you provide, we will credit the amount of the relevant Administration Fee to you when we issue the next invoice to you or debit the next period's Administration Fees from your nominated bank account and issue the next invoice to you (as applicable).

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

6.1 If:

- (a) an Eligible Pre-existing Agreement that covers your Enterprise Software and/or Associated Services is terminated or expires; and
- (b) you wish to maintain your Services Listings in the Marketplace for that Enterprise Software and/or those Associated Services,

you will need to follow the marketplace change procedure (as described on marketplace.govt.nz) and obtain our approval to the continuation of your Services Listings. This may involve a measure of 're-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 marketplace change procedure process at least 3 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 're on-board' if you want to maintain your Services Listings. It's best to do that before it comes to an end.

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 Enterprise Software and/or Associated Services 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 a Services Listing for particular Enterprise Software and/or Associated Services in this Channel, subject to your:

- (a) 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 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.