



Ministry of Business, Innovation and Employment Agreement - Special Terms – 1 July 2021

1. SERVICES

By registering your services for one or more of the available RBP Funding schemes, on the Regional Business Partners website (**the Website**) you are agreeing to the following terms and conditions. Once your services are authorised by MBIE you will become an authorised party to accept RBP Funding Scheme Bookings (**Bookings**) from Regional Business Partners for eligible third party businesses (**Customers**) that can use the Bookings to access registered capability development services (**Services**).

The Services that the Service Provider will provide to Customers and MBIE are described in these Special Terms, and the Services will be governed by the terms in these Special Terms and the following MBIE General Terms (together, the **Agreement**).

To offer Services to Customers under this Agreement, the Service Provider must register on the Website. By registering on the Website, the Service Provider acknowledges that it has read and agrees with the Website's terms and conditions, as amended from time to time.

Once registered, the Service Provider will submit services for MBIE's confirmation. MBIE may refuse to confirm any such services submitted for any reason whatsoever.

The Bookings are scheduled for Customers by MBIE's Regional Business Partners and these Regional Business Partners are part of the Regional Business Partner Network Scheme. The Bookings will be assigned from specific RBP Funding Schemes for use against Services registered to specific service categories.

Each Booking entitles the Customer to the specified Services in that Booking and a discount off the cost of the Services of the amount specified for each specific RBP Funding Scheme, capped at up to a total maximum value specified on the Booking.

The Service Provider acknowledges that the Customer will be responsible for the costs not covered by the Booking. For the avoidance of doubt, MBIE will not be liable in any way for those costs and/or for the recovery of those costs.

Description of Services to Customers

The Customers may acquire Services as listed on the Booking from the Service Provider.

If the Service Provider wishes to add additional and/or new services to the Website, the Service Provider must log a request on the Website. Any such request shall be subject to MBIE's confirmation and MBIE may refuse to confirm any request for any reason whatsoever.

If the Service Provider wishes to remove any Service listed on the Website, it can do so on the Website or the Service Provider can log a request directly with MBIE, who will process the removal.

For the avoidance of doubt, a written variation is not required to change the services offered by the Service Provider under this Agreement, as the Website will manage the process.

Description of Services to MBIE

The Service Provider will provide MBIE with:

- (a) invoices that contain information on the Services provided to and attended by Customers, and
- (b) information in the form that meets MBIE's requirements (including any reasonable directions that MBIE may issue from time to time).

The Service Provider agrees that MBIE may immediately remove any Services or Service Provider listed on the Website by MBIE giving the Service Provider notice.

Where practicable, MBIE will discuss the removal of the Services with the Service Provider before issuing the notice.

MBIE's removal of any Services or Service Provider listed on the Website will not affect the validity of affected Bookings provided the Customer has already confirmed the relevant Booking, and the start date of the Booking has elapsed.

2. PAYMENTS

BOOKING AMOUNT

MBIE will pay the Service Provider for the Services provided to and attended by the Customer, up to the discount specified for the RBP Funding Scheme, and capped at the total maximum value specified in the Booking (the **Booking Amount**).

CONDITIONS FOR PAYMENT

MBIE will only pay the Service Provider the Booking Amount **after** the Service is provided to the Customer and when the Service has been paid for in full by the Customer (when required). In addition to the invoicing material provided by the Service Provider, MBIE may require additional proof from the Service Provider that the Service Provider provided the Service to the Customer, and MBIE may approach the Customer directly to validate any of the Service Provider's invoices.

NO DISBURSEMENTS OR OTHER COSTS

MBIE's payment obligations under this Agreement are limited to the Booking Amount (plus GST). For the avoidance of doubt, MBIE is not responsible to the Service Provider or any party for any costs incurred by the Service Provider, the Customer or eligible third party businesses.

INVOICING

The Service Provider will invoice MBIE on a monthly basis for Services that have been provided to Customer(s) in that month, and provide MBIE with any requested supporting documentation using MBIE's required format.

3. MBIE REPRESENTATIVE

CONTACT DETAILS

Telephone: 0800 287 467 / email: info@regionalbusinesspartners.co.nz

POSTAL ADDRESS

Ministry of Business, Innovation and Employment
15 Stout Street, Wellington
6011

4. OTHER TERMS

In addition to clause 4 of the General Terms, MBIE may terminate this Agreement at any time by giving the Service Provider at least 2 week's written notice.

Upon termination, the Service Provider must not accept or attempt to accept, any Bookings or provide any Services, and the Service Provider will promptly advise each eligible third party business to return to the relevant Regional Business Partner for advice.

MBIE will continue to make payment for Bookings completed where the Services have already been provided up to the date that this Agreement is terminated, provided the Customer's payment and attendance has been confirmed.

MBIE may revise these Special Terms from time to time and the most current version will always be on the Website. MBIE will notify the Service Provider of any revisions and these revisions will take effect two weeks after notice is given. By continuing to provide Services, the Service Provider agree to be bound by the revised Terms.

No Minimum Business

The Service Provider acknowledges that this Agreement does not guarantee the Service Provider any minimum level of business from MBIE or eligible third party businesses.

General Terms

MBIE's General Terms form part of this Agreement. By signing these Special Terms the Service Provider agrees to provide the Services on the basis of the General Terms and these Special Terms. In the event of a conflict between the Special Terms and the General Terms, these Special Terms will apply.

MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT - RBP FUNDING SCHEMES GENERAL TERMS

- 1. Provision of Services**
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- 1.1 The Service Provider will provide the Services:
- (a) in a competent, efficient and professional manner;
 - (b) in accordance with best industry practice; and
 - (c) in compliance with all applicable laws.
- 1.2 The Service Provider shall provide written reports in response to all reasonable requests by MBIE relating to any matter associated with the Services.
- 1.3 The principal contact for the Service Provider's personnel with regard to the Services is the person named as the Service Provider Contact Person in the Regional Business Partner Network Website (www.regionalbusinesspartners.co.nz) (the Website).
- 1.4 The MBIE representative who will liaise with the Service Provider's personnel is set out in section 3 of the Special Terms.
- 1.5 The Service Provider warrants and represents to MBIE that it, and any of its personnel or the personnel of its sub-contractors, are appropriately qualified to provide the Services. The Service Provider will, if required by MBIE, produce appropriate evidence of such qualifications and experience. Any personnel who are not, in the reasonable opinion of MBIE, suitably qualified or experienced to provide the Services must not be used by the Service Provider to provide the Services.
- 1.6 Where any personnel of the Service Provider, or any personnel of any sub-contractor of the Service Provider, commits or demonstrates, in the reasonable opinion of MBIE, any misconduct, incompetence or negligence in performing the Services, or does not perform the Services to MBIE's satisfaction, MBIE may direct the Service Provider to remove that person from performing the Services, and the Service Provider must ensure that person is immediately removed from performing the Services.
- 2. Payment**
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- 2.1 MBIE will pay the Booking Amount to the Service Provider in accordance with the Special Terms.
- 2.2 If the Service Provider breaches any provision of this Agreement, or fails to provide the Services to a reasonable standard, MBIE may, in its discretion, withhold payment of the Booking Amount or reduce the Booking Amount payable, while the breach or failure continues or is not remedied.
- 2.3 The exercise by MBIE of its right under clause 2.2 of these General Terms does not prevent MBIE from exercising its rights to terminate this Agreement under clause 4 of these General Terms.
- 2.4 Any invoice for payment provided by the Service Provider must, in addition to the requirements of the Special Terms, specify the amount payable, and reasonable detail of the Services delivered during the relevant period.
- 2.5 MBIE will pay each invoice for the Booking Amount rendered by the Service Provider by lodgement to a designated bank account held in the name of the Service Provider.
- 2.6 MBIE will pay each invoice on or before the 20th day of the month following receipt of that invoice from the Service Provider and in accordance with the Special Terms. MBIE may set off from any Booking Amount payment any amount then due from the Service Provider to MBIE.
- 2.7 Any payment due to be made on a day which is not a day on which registered banks are open for general banking in Wellington, will be made on the next day on which registered banks are open for general banking in Wellington.
- 2.8 MBIE will not be required to pay the Service Provider's invoices where the Service Provider has not provided MBIE with all documents and information required under this Agreement.
- 2.9 If any withholding taxes are payable in relation to the Services, MBIE may deduct the amount so payable in accordance with law.
- 3. Promotion and advertising**
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- 3.1 The Service Provider will not conduct any advertising campaigns or promotional activities that refer to MBIE's involvement with the Services without the prior written consent of MBIE.
- 3.2 Where requested by MBIE, the Service Provider will use its best endeavours to ensure that MBIE is promoted in all media reporting and other material related to the Services.
- 3.3 Unless otherwise authorised in writing by MBIE, the Service Provider does not have any rights to use the MBIE name, logo, or other trademarks or intellectual property in any manner.
- 3.4 Unless authorised in writing the Service Provider shall not make any public statement or comment on behalf of MBIE.
- 3.5 The Service Provider shall not at any time take any steps to bring the reputation or good standing of MBIE, its trademarks, New Zealand industry in general, or the Government of New Zealand into disrepute, and shall ensure that its permitted sub-contractors are not involved in any activity of this nature.

4. Termination and consequences of termination

- 4.1 This Agreement will commence on the date MBIE authorises the Service Provider's Services on the Website and will continue in force until it is terminated in accordance with its terms.
- 4.2 Either MBIE or Service Provider may in its absolute discretion terminate this Agreement and all rights and obligations hereunder by giving at least two weeks' notice in writing to the other party.
- 4.3 MBIE may in its absolute discretion terminate this Agreement and the engagement of the Service Provider immediately by notice in writing:
- (a) if the Service Provider breaches this Agreement and fails to remedy that breach within seven days of receiving written notice to do so;
 - (b) if the parties are unable to resolve a dispute after concluding the dispute resolution process in clause 9 of these General Terms;
 - (c) if the Service Provider or its personnel or sub-contractors directly or indirectly engages in conduct which in the opinion of MBIE is likely to negatively impact the reputation or image of MBIE, or business generally;
 - (d) if the Service Provider is unable to pay its liabilities when due or makes an assignment for the benefit of its creditors, or becomes bankrupt or insolvent, or goes into liquidation or has a receiver, receiver and manager, statutory manager, trustee, administrator or other similar official appointed in respect of the Service Provider's property or any part of it, or passes a resolution for winding up;
 - (e) if a warranty made by the Service Provider under this Agreement is not true and correct; or
 - (f) if the Service Provider provides any information to MBIE in accordance with this Agreement that is not true and correct in all material respects.
- 4.4 If this Agreement is terminated or expires, all rights and obligations of the parties shall terminate and no party is to have any claim against any other parties

arising under or in connection with this Agreement, other than in relation to:

- (a) any breach of clauses 6 and 8 of the General Terms;
- (b) any breach of this Agreement occurring before termination or expiry;
- (c) any indemnification claim under clause 9.4 or 10.3 of the General Terms; or
- (d) any other provision of this Agreement intended to continue after termination or expiry.

5. Intellectual property

- 5.1 Each party agrees that it retains ownership of any intellectual property rights owned by it at the commencement of this Agreement and all improvements or modifications made to them under this Agreement.
- 5.2 Each party agrees that any intellectual property rights in materials developed by them during the course of this Agreement will be owned by the party that developed those materials and the other party shall not have any claim over such intellectual property rights.

6. Confidential Information

6.1 Permission to release Confidential Information

Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:

- (a) to the extent that use or disclosure is necessary for the purposes of providing the Services;
- (b) if the other Party gives prior written approval to the use or disclosure;
- (c) if the use or disclosure is required by law (including under the Official Information Act 1982) or parliamentary convention; or
- (d) if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

6.2 Obligation to inform staff

Each Party will ensure that their Personnel:

- (a) are aware of the confidentiality obligations in this Agreement; and
- (b) do not use or disclose any of the other Party's Confidential Information except as allowed by this Agreement.

7. Governance and compliance

7.1 The Service Provider will establish internal policies and procedures to ensure its directors, trustees, managers and employees will act at all times consistently with best management practices and practices of corporate governance, including (but not limited to) practices as to:

- (a) completion and retention of records and accounts;
- (b) identifying, disclosing and preventing possible conflicts of interest;
- (c) honestly, properly and ethically using the Service Provider's information, assets and property; and
- (d) complying with all applicable laws and regulations.

- 7.2 The Service Provider must ensure that:
- (a) it provides and maintains a safe working environment;
 - (b) it complies with all applicable New Zealand legislation including (without limitation) the Health and Safety at Work Act 2015 and all regulations, standards and codes;
 - (c) the people performing the Services are competent in health and safety matters and that they, at all times, identify and exercise all necessary precautions for the health and safety of all persons; and
 - (d) it performs appropriate health, safety and environmental risk assessments and implements any necessary preventative controls prior to providing the Services.

8. Disclosure

- 8.1 The Service Provider acknowledges that it may be necessary or appropriate for MBIE to disclose confidential information concerning the Service Provider, the Services (or part thereof), or this Agreement (or part thereof):
- (a) pursuant to the Official Information Act 1982; or
 - (b) in publicly notifying any approval by MBIE's chief executive of this Agreement; or
 - (c) otherwise pursuant to public law or other legal obligations
- 8.2 MBIE may consult with the Service Provider before deciding to disclose the information for the purposes described in paragraphs (a) to (c) of clause 8.1 of the General Terms, in order to ascertain any objections the Service Provider may have to the disclosure of any of the information. The Service Provider acknowledges, however, that it is for MBIE to decide, in its absolute discretion, whether it is necessary or appropriate to disclose the information for any of the purposes outlined in clause 8.1. MBIE will act in good faith in disclosing any of the information.
- 8.3 The Service Provider must notify any third party who supplies information to the Service Provider for the purpose of assisting the Service Provider to carry out the Services, that it may be necessary or appropriate for MBIE to disclose the information for the purposes described in paragraphs (a) to (c) of clause 8.1 of the General Terms.

9. Resolving Disputes

9.1 Steps to resolving disputes

The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under or in connection with this Agreement. The following process will apply to disputes:

- (a) a Party must notify the other if it considers a matter is in dispute.
- (b) the Service Provider contact person and the MBIE representative will attempt to resolve the dispute through direct negotiation.
- (c) if the Service Provider contact person and the MBIE representative have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers, or equivalent, for resolution.
- (d) if the senior managers, or equivalent, have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation under clause 9.2 or some other form of alternative dispute resolution.

9.2 If a dispute is referred to mediation under this clause 9.2, the mediation will be conducted:

- (a) by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Chair of the Resolution Institute;
- (b) on the terms of the Resolution Institute standard Mediation Agreement (New Zealand version); and
- (c) at a fee to be agreed by the Parties, or if they cannot agree, at a fee determined by the Chair of the Resolution Institute.

9.3 Each Party will pay its own costs of mediation under clause 9.2.

9.4 Obligations during a dispute

If there is a dispute, each Party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.

9.5 Taking court action

Each Party agrees not to start any court action in relation to a dispute until they have complied with the process described in clause 9.1, unless court action is necessary to preserve a Party's rights.

9.6 Each Party submits to the exclusive jurisdiction of the courts of New Zealand in relation to any dispute or difference arising out of or in connection with this Agreement, or any question about its existence, breach, termination or invalidity.

10. General

10.1 No partnership

This Agreement shall not be deemed to constitute either party as the partner of the other or, the agent or legal representative of the other. Neither party shall have any authority to act or assume any obligation or liability on behalf of the other.

10.2 Warranty

- (a) The Service Provider warrants to MBIE that it does not have any conflicts of interest in relation to the provision of the Services. Where a conflict of interest has arisen or is likely to arise in future, the Service Provider must inform MBIE immediately in writing of the conflict of interest and may not, without MBIE's prior written consent (which will not be unreasonably withheld), act in the matter.
- (b) The Service Provider warrants to MBIE that it is duly authorised to enter into and perform its obligations under this Agreement.
- (c) The Service Provider warrants to MBIE that it will carry out the Services and the Service Provider's obligations under this Agreement in accordance with all applicable rules and laws (statutory or otherwise).
- (d) The Service Provider warrants to MBIE that the supply of the Services will not infringe any patent, design, trademark, copyright or any other intellectual property right of a third party or result in MBIE being liable for the payment of any royalties or other fees.

10.3 Indemnity

The Service Provider will at all times indemnify MBIE and MBIE's officers, servants and agents from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever awarded against, incurred or suffered by them directly arising out of or resulting from:

- (a) the non-performance or breach by the Service Provider of any of its obligations under this Agreement; or
- (b) any claims or threatened claims concerning the Services,

except to the extent that such liability, losses, damages, costs and expenses arise solely as a result of the negligent or wrongful act or omission of MBIE or its employees, agents or sub-contractors.

10.4 Assignment

This Agreement is personal to the Service Provider and cannot be assigned, novated or otherwise transferred to any third party by the Service Provider and any attempts by the Service Provider to assign the rights, duties or obligations hereunder shall be of no effect. This Agreement will be binding on and have effect for the benefit of the parties and their respective successors.

10.5 Entire agreement

This Agreement (including the Special Terms) is the entire agreement between the parties and supersedes all previous agreements and communications, whether verbal or written, between the parties.

10.6 Revisions to this Agreement

MBIE may revise these General Terms from time to time and the most current version will always be on the Website. MBIE will notify the Service Provider of any revisions and these revisions will take effect two weeks after notice is given. By continuing to provide Services, the Service Provider agrees to be bound by the revised Terms.

10.7 Non-waiver

Neither waiver by MBIE or failure of MBIE to insist in any one or more instances upon the strict performance of any of the terms of this Agreement by the Service Provider shall be deemed or construed as affecting MBIE future rights in respect of that right or obligation.

10.8 Notices

- (a) Each notice or other communication under this Agreement must be in writing, and made by personal delivery, post or by email. The initial postal address and email address and relevant person or office holder of each party is set out under the Special Terms.
- (b) No communication is to be effective until received. A communication is to be deemed to be received by the addressee:
 - (i) in the case of an email, the following working day;
 - (ii) in the case of personal delivery, when delivered; and
 - (iii) in the case of a letter, four working days after posting.

10.9 Governing law and jurisdiction

This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

10.10 Partial invalidity

If any provision of this Agreement is held illegal, invalid, void or unenforceable, this Agreement will remain in full force apart from that provision.

10.11 Limitation of Liability

The maximum liability of MBIE to the Service Provider arising out of any and all claims under this Agreement will not in any circumstances exceed the amount of the Booking Amount paid by MBIE to the Service Provider.

10.12 Insurance

The Service Provider must take out and maintain professional indemnity insurance cover in the amount of \$1 million or more during the term of this Agreement, and for a period of three years after this Agreement expires or is terminated. Within two weeks of a request from MBIE, Service Provider must provide evidence of its current indemnity insurance reasonably satisfactory to MBIE.