

Kirimana pūtea | Funding contracts

A presentation for members
of Platform Trust
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Presenters



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Horopaki | Context

- **Current operating climate:** Government funders are increasingly focused on aligning funding for health services with stringent performance requirements and government health and social sector priorities. This has led to a more rigorous evaluation of service delivery and outcomes.
- **Funding risks:** Providers face risks of funding reductions or clawback for not achieving specified outcomes, failing to provide adequate reporting, or delivering services that do not align with government priorities.
- **Contractual compliance:** It is crucial for providers to carefully review their service contracts to understand the following to help mitigate risks and ensure continued funding:
 - performance metrics
 - reporting obligations
 - compliance requirements

Te kaupapa o tenei wāhanga | Purpose of this session

For providers under health
services contracts with
Government funders to foster
greater understanding and
proactive risk management

Rārangi take | What is covered



Key clauses to be aware of

Funders' right to introduce changes

Performance failures

Funders' right to require repayment (claw back)



Performance standards

Clarity and measure of standards

Monitoring & evaluation

Continuous improvement



Compliance and reporting

Compliance systems

Reporting

Clarity of performance



Proactive management

Risks related to compliance and service delivery

Mitigation strategies

Contingency plans

What we will not be covering:

- Process to initiate formal proceedings, to cancellation of contract or claim for damages / losses or under an indemnity
- Common law rights, obligations or remedies
- Formal dispute resolution processes
- Renegotiating contractual terms
- Third party rights, statutory remedies or regulatory compliance

For detailed information about your specific contract or to explore formal options, you should obtain legal advice

Key clauses

Funders' right to introduce changes

Type of clause	
– Funder's right to vary the contract to comply with any requirement imposed by the Crown	Can be very broadly drafted, and may not have a notice requirement.
– Funder's right to terminate the contract due to lack of funding from National Commissioning	May be very broadly drafted, but often funder is required to give notice.
– Right to undertake contract review	Funder may have the right to corrective measures (e.g. to alter performance, KPI structures etc connected to fees).
– Any other general right of the funder to unilaterally introduce changes for any reason	Check your special terms.

There may be a **consultation process** to be followed with the provider before a variation becomes effective, but “consultation” does not necessarily mean that the provider’s feedback must be taken into account

Key clauses

Performance failures

Type of clause	
– (General) Funder's right to terminate, vary or withdraw from coverage of services where the provider has failed to meet its obligations	Usually the provider has the opportunity to remedy the default within a specified period
– (Specific) Contract specifies a particular outcome (e.g. reduced funding) where the provider has failed to meet a specific obligation	Depends on your contract, e.g: <ul style="list-style-type: none">– failure to deliver specified service hours– failure to produce satisfactory reports (timeliness/quality)
– Funder's right to withhold payment of invoices, where the provider has failed to meet its obligations	

Key clauses

Funders' right to require repayment (clawback)

Type of clause	
<ul style="list-style-type: none">– Where there has been a breach by the provider	<p>Can be broadly drafted. Examples:</p> <ul style="list-style-type: none">– failure to deliver services– failure to submit satisfactory/timely reports <p>The funder may have the ability to determine the amount to be repaid.</p>
<ul style="list-style-type: none">– If funding has not been applied as required	<p>Financial reports or audit reveal underspend or funding utilised otherwise than to deliver the specified services.</p>

Performance standards

Clarity and measure of standards

- Be clear of the service level requirements & align your service delivery processes.
- If the contract has been 'rolled over' for several terms, check if there has been any change over time in the service level expectations that are not recorded in the contract.

Monitoring & evaluation

- Be aware of how performance is tracked.
- Document all agreements with the funder and keep a clear record of agreed service levels.

Continuous improvement

- Identify opportunity for continuous improvement to help maintain high performance & identify issues early.

Compliance and reporting

Compliance systems

- Do you have robust internal systems to track compliance?
- Internal review mechanisms should be scheduled to help identify issues promptly (before they become performance issues).

Reporting

- Establish a clear reporting schedule to ensure that your reports are timely and accurate. This should be integrated into the delivery team's workflow.

Clarity of performance

- Do you have clarity as to your performance?
- Identify opportunities to seek regular feedback from the funder to avoid surprises.

Proactive management



Risks related to compliance & service delivery

- Understand your risks related to contract compliance and service delivery.

Mitigation strategies

- What are your mitigation strategies to address potential risks?

Contingency plans

- What contingency plans do you have to manage unforeseen challenges and ensure continuity of service?
- What is your 'burn rate'?



Ngā mihi mahana

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