

AGREEMENT FOR SERVICES

SCHEDULE 3 AND SCHEDULE 4

This document sets out the following schedules, each of which contains terms and conditions that apply to suppliers that provide Services to the DHB under the DHB's standard services agreement:

- Schedule 3 – Client Service and Quality Requirements (Version 1, 1 August 2016) (if applicable)
- Schedule 4 – General Terms (Version 1, 1 August 2016), including any appendices.

This document is to be read alongside the other documents that form part of each such supplier's agreement with HBDHB, being:

- Schedule 1 – Specific Terms
- Schedule 2.1 – Prices, Expenses and Disbursements, and Payment Terms
- Schedule 2.2 – Population Measures and Service Requirements
- Schedule 2.3 – Additional Reporting and Information
- Schedule 2.4 – Service Specifications

SCHEDULE 3

CLIENT SERVICE AND QUALITY REQUIREMENTS

1. **WHEN AND WHERE SERVICES ARE PROVIDED**

be provided to HBDHB as set out in Schedule 2.3);
- 1.1 **When and where services are provided:**

The Supplier must provide the Services to HBDHB's patients/Service users/clients on the days, at the times, and at the place(s) set out in item 11 of Schedule 1, or as HBDHB otherwise notifies to the Supplier.

 - (ii) Provide documentation as required by HBDHB prior to commencing on a HBDHB site (evidence of which must be provided to HBDHB as set out in Schedule 2.3); and
2. **QUALIFICATIONS, CREDENTIALING, AND TRAINING**
 - (f) meets any other requirements specified in item 20 of Schedule 1.
- 2.1 **Qualifications, credentialing and training:** The Supplier must ensure that each member of its Personnel who is registered health practitioner providing the Services:
 - (a) holds a current annual practising certificate (copies of which must be provided to HBDHB as set out in Schedule 2.3) and practices within his or her scope of practice and area of competence, and in accordance with the Law;
 - (b) is appropriately credentialed as required by HBDHB;
 - (c) have undertaken any orientation required by HBDHB, including as part of the credentialing process
 - (d) undertakes any health and safety training required by HBDHB from time-to-time;
 - (e) if required by HBDHB;
 - (i) has undertaken cardiopulmonary resuscitation training (evidence of which must
3. **SERVICE INFORMATION**
 - 3.1 **Service information:** If the Services are provided at a location other than HBDHB's premises, the Supplier must ensure that potential and current patients/Service users/clients, and referrers, have access to appropriately presented information in order for eligible persons to access the Services. This information must be presented in a manner appropriate to the communication needs of patients/Service users/clients, may be in the form of a brochure, and must include at least:
 - (a) a description of the Services;
 - (b) the location of the Services;
 - (c) the hours that the Services are available;
 - (d) how to access the Services (eg if a referral is required);
 - (e) the rights and responsibilities of patients/Service users/clients, including a copy of the Code of Health and Disability Services Consumer Rights and the Supplier's complaints procedure;

- (f) information about the availability of cultural support;
- (g) after-hours or emergency contact details if necessary or appropriate; and
- (h) any other important information in order for people to access the Services.

4. CLIENT/CONSUMER RIGHTS AND PRIVACY STATEMENT

4.1 **Informed consent:** The Supplier must provide the Services to a patient/Service user/client only after obtaining that person's consent in accordance with the Code of Health and Disability Services Consumer Rights.

4.2 **Compliance with Code of Health and Disability Services:** The Supplier must ensure that each patient/Service user/client receives the Services in a manner that complies with the Code of Health and Disability Services Consumer Rights, which include provisions relating to the:

- (a) right to be treated with respect for person, privacy and culture;
- (b) freedom from discrimination, coercion, harassment, and exploitation;
- (c) right to dignity and independence;
- (d) right to services of an appropriate standard including relevant legal, professional, and ethical standards;
- (e) right to effective communication;
- (f) right to be fully informed;
- (g) right to make an informed choice and give informed consent;
- (h) right to support person present;
- (i) right in respect of teaching or research;
- (j) right to complain.

4.3 **Knowledge of the Code of Health and Disability Services:** The Supplier must ensure that the Code of Health and Disability Services Consumer Rights available and known to its patient/Service user/client and visitors, and that the Supplier's Personnel are familiar with and observe their obligations under the Code.

4.4 **Privacy statement:** The Supplier must comply with the requirements in the Health Information Privacy Code 1994 in respect of all Health Information that it holds about patients/Service users/clients. To that end, the Supplier must include a privacy statement in its patient/Service user/client information forms (if any), which must be provided to a patient/Service user/client at the earliest opportunity. The privacy statement must include a statement of why information is collected, who information may be shared with and who has access to the information.

5. CULTURAL VALUES

5.1 **Cultural values:** The Supplier must deliver the Services in a culturally appropriate and competent manner, ensuring that the integrity of each patient's/Service user's/client's culture is acknowledged and respected. The Supplier must take into account the particular needs within the community serviced so that there are no barriers to access or communication, and that the Services are safe for all people. The Supplier must include significant local or service-specific ethnic and other cultural groups in assessing satisfaction with the Services.

6. CLIENT ADVOCATES

6.1 **Clinical advocates:** The Supplier must inform patients/Service users/clients and Personnel, in a manner appropriate to their communication needs, of their right to have an

advocate, including to support the resolution of any complaint. The Supplier must allow advocates reasonable access to facilities, patients/Service users/clients, Personnel, and information to enable them to carry out their role as an advocate. The Supplier must know of and be able to facilitate access to a Maori advocate for persons who require one.

7. CLIENT, FAMILY, WHANAU, AND REFERRER INPUT

7.1 **Provision of feedback:** If the Services are provided at a location other than HBDHB's premises, the Supplier must regularly offer patients/Service users/clients of the Services and their families and whanau, and referrers, the opportunity to provide feedback as a means of improving the outcomes for clients. The Supplier must reflect input from those persons into the maintenance and improvement of the quality of the Services, both for the individual client and across the Services as a whole. The Supplier must actively seek feedback from Maori by appropriate methods to improve organisation responsiveness to Maori. If requested by HBDHB, the Supplier must make available to HBDHB the results of such surveys.

8. COMPLAINTS

8.1 **Complaints:** If the Services are provided at a location other than HBDHB's premises, the Supplier must enable patients/Service users/clients, their families and whanau, and others to make complaints about the Supplier or the Services through a written and implemented procedure for the identification and management of complaints ("Complaints Procedure"). The Complaints Procedure must comply with the requirements of the Code of Health and Disability Services Consumer Rights, and the Supplier must ensure that:

- (a) the Complaints Procedure is made known to and easily understandable by patients/Service users/clients;
- (b) all parties have the right to be heard;
- (c) the person handling the complaint is impartial and acts fairly;
- (d) complaints are handled at the level appropriate to the complexity or gravity of the complaint;
- (e) any corrective action required following a complaint is undertaken;
- (f) the Complaints Procedure sets out the complaints bodies to whom complaints may be made and the process for doing so, and that clients are advised of their right to direct their complaint to the Health and Disability Commissioner and any other relevant complaints body, particularly in the event of a non-resolution of a complaint;
- (g) complaints are handled sensitively with due consideration of cultural or other values;
- (h) Maori patients/Service users/clients and their whanau will have access to a Maori advocate to support them during the complaints process;
- (i) patients/Service users/clients who complain, or on whose behalf families/whanau complain, continue to receive Services in accordance with this Agreement;
- (j) complaints are regularly monitored by the management of the Services and trends identified in order to improve Service delivery; and
- (k) the Complaints Procedure is consistent with any complaints policy that

HBDHB notifies to the Supplier from time to time.

- 8.2 **HBDHB complaints:** If the Services are provided at HBDHB's premises, the Supplier must take any steps necessary to ensure that patients/Service users/clients, their families and whanau, and others understand that they can complain about the Services to HBDHB.
- 8.3 **Complaints re Clinical Practice:** The Supplier must notify HBDHB, in accordance with clause 12.2 or 12.3 of Schedule 4, if the Supplier or any of its Key Persons or Personnel involved in the provision of Services become the subject of any complaint relating to its, his, her, or their clinical practice.

9. PERSONNEL REQUIREMENTS

- 9.1 **Continuing education:** The Supplier must ensure that its Personnel have access to continuing education to support maintenance of professional registration and enhancement of service delivery and clinical practice, and to ensure that practice is safe and reflects knowledge of recent developments in service delivery.
- 9.2 **Policies supporting continuing education:** The Supplier must have employment policies and practices that support professional career pathway development for Maori health workers, Maori service advisory positions, Maori change management positions, and the recruitment and retention of Maori Personnel at all levels of its organisation to reflect the patient/Service user/client population.
- 9.3 **Immunisation policy:** The Supplier must comply with, and ensure that its Personnel comply with, HBDHB's immunisation policy (PPMo86), including by providing an immunisation statement to HBDHB in relation to each of its Personnel, and ensuring that its

Personnel who have not received all immunisations required by the policy comply with the processes set out in the policy.

- 9.4 **Healthy Food and Drink Policy:** The Supplier must establish and implement a Healthy Food and Drink policy that aligns with the National Healthy Food and Drink Policy for Organisations. The policy must demonstrate the Suppliers commitment to provide an environment that supports and promotes healthy food and drink choices, and provides its Personnel, clients, customers and visitors with healthy food and drink options.

- (a) The Supplier must:
- (i) adopt, as soon as practicable a policy, this may require prioritising aspects for implementation in the first year, and make a copy of the policy available on its website; and
 - (ii) ensure that its policy reflects any comments or feedback on the policy provided by HBDHB or any third party; and
 - (iii) comply with, and ensure its Personnel comply with, the policy, and provide HBDHB with evidence of that compliance if requested by HBDHB; and
 - (iv) review that policy a minimum once every 3 years.
- (b) The scope of the policy applies to all your Personnel and includes:
- (i) all food and drink provided by or able to be purchased from any retailer, caterer, vending machine, snack box or volunteer service on the organisation's

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| | premises for consumption by staff and visitors | (2) | gifts to staff from clients or customers |
| (ii) | any gifts, rewards and incentives offered to staff, guest speakers and/or formal visitors on behalf of the organisation if containing food and/or drinks | (3) | self-catered staff-shared meals, both on and off site (e.g., food brought for special occasions, off-site self-funded Christmas parties or similar celebrations) |
| (iii) | any fundraisers where food and drinks are sold or intended for consumption on the premises. Fundraisers associated with groups outside the organisation that do not meet this Policy should not be promoted on the premises or through the organisation's communications (e.g., chocolate fundraisers) and alternative healthy fundraising and catering ideas should be encouraged | (4) | gifts, rewards and incentives that are self-funded |
| | | (5) | alcohol-related recommendations (please refer to your organisation's position on alcohol). |
| (iv) | any external party that provides food or catering: | (6) | Inpatient meal services and Meals on Wheels different standards exist for inpatients and Meals on Wheels which reflect food and drink requirements in both health and illness and for various age groups; the majority of inpatients are admitted because they are unwell and therefore require food and drink that are appropriate at that time for their clinical care and treatment (If applicable) |
| | (1) on site at any of the organisation's facilities | | |
| | (2) off site where the organisation arranges and/or hosts a function for staff, visitors and/or the general public (e.g., conferences, training). | | |
| (v) | While the provision and consumption of healthy food and drink options is strongly encouraged, the Policy excludes: | (c) | The following supporting information can be found on the Ministry of Health website under publications: |
| | (1) food and drink brought to work by staff for their own consumption | (i) | Healthy Food and Drink Policy for Organisations |
| | | (ii) | Eating and Activity Guidelines |

- (iii) National Food and Drink Policy
(for District Health Boards)

(d) The following supporting resources can be found on HBDHB website:

- (i) Policy Template for Healthy Food and Drink Policy for Organisations
- (ii) Healthy Food and Drink Policy Checklist for Organisations
- (iii) Healthy Food and Drink Policy Power Point Presentation

10. CLINICAL MEETINGS

10.1 **Clinical Meetings:** The Supplier will ensure that its relevant Personnel meet as required with the relevant HBDHB clinical and other staff during the Term, in accordance with clause 5.4 of Schedule 4.

11. FACILITIES

11.1 **Facilities:** If the Services are provided at a location other than HBDHB's premises, the Supplier must:

- (a) provide the Services from safe, well-designed, well-equipped, hygienic, and well-maintained facilities;
- (b) support patients/Service users/clients accessing the Services by the physical design of its facilities;
- (c) make specific provision for patients/Service users/clients with a mobility, sensory, or communication disability available and known to clients; and
- (d) ensure that the Services available to deaf people through the provision of interpreters and devices to assist communication.

12. EQUIPMENT

12.1 **Equipment:** Except to the extent that the Supplier is using equipment supplied by HBDHB for providing the Services, the Supplier must ensure that it is providing the Services using safe, well-designed, hygienic, and well-maintained equipment that complies with any relevant standards, and is certified for use (if applicable).

12.2 **Responsibility for equipment:** The Supplier acknowledges and agrees that any equipment sold, loaned or gifted to the Supplier by HBDHB is the responsibility of the Supplier, and that all future costs associated with the equipment, including (without limitation) repairs, maintenance, modifications, adjustments, and service requirements are the Supplier's responsibility. That equipment includes the equipment listed in item 21 of Schedule 1 (if any). The Supplier also acknowledges and agrees that:

- (a) any equipment has electrical components should be checked and certified before use, which is the Supplier's responsibility; and
- (b) HBDHB accepts no responsibility for any equipment or the use of any equipment, including any repairs, maintenance, modifications, adjustments, and service requirements.

13. SAFETY

13.1 **Protection of Service Users:** The Supplier must protect patients/Service users/clients, visitors, and Personnel from exposure to avoidable/preventable risks and harm.

13.2 **Equipment is safe:** The Supplier must ensure that equipment used is safe and maintained and complies with any relevant safety or use standards.

- 13.3 **Protection from infection:** The Supplier must safeguard patients/Service users/clients, Personnel, and visitors from infection. In particular, the Supplier must:
- (a) if it is providing the Services from HBDHB's premises, comply with any relevant HBDHB policies; and
 - (b) if the Services are provided at a location other than HBDHB's premises, have written, implemented, and regularly reviewed environmental and hygiene management/infection control policies and procedures that minimise the likelihood of adverse health outcomes arising from infection for clients, Personnel, and visitors. These must meet any relevant profession-specific requirements, include definitions, and clearly outline the responsibilities of all Personnel, including immediate action, reporting, monitoring, corrective action, and training to meet those responsibilities.
- 13.4 **Premises safety:** The Supplier must safeguard patients/Service users/clients, Personnel, and visitors from intrusion and associated risks. In particular, the Supplier must:
- (a) if it is providing the Services from HBDHB's premises, comply with any relevant HBDHB policies; and
 - (b) if the Services are provided at a location other than HBDHB's premises, have written, implemented and reviewed policies and practices relating to security to ensure that buildings, equipment, and medicines are secure.
- 13.5 **Incidents, accidents and hazards:** The Supplier must safeguard patients/Service users/clients, Personnel, and visitors from untoward risk arising from avoidable incidents, accidents, and hazards. In particular, the Supplier must:
- (a) if it is providing the Services from HBDHB's premises, comply with any relevant HBDHB policies; and
 - (b) if the Services are provided at a location other than HBDHB's premises, have written, implemented, and reviewed incident, accident, and hazard management policies and procedures that assist in managing safety and risk (which are health and safety policies for the purposes of clause 2.4(m) of Schedule 4). These must include definitions of incidents and accidents and must clearly outline the responsibilities of all Personnel, including taking immediate action, reporting, monitoring, and corrective action to minimise incidents, accidents, and hazards, and improve safety; and debriefing and providing support to Personnel as necessary.
- 13.6 **Safeguard from abuse:** The Supplier must safeguard patients/Service users/clients, Personnel, and visitors from abuse, including physical, mental, emotional, financial, and sexual maltreatment or neglect. In particular, the Supplier must:
- (a) if it is providing the Services from HBDHB's premises, comply with any relevant HBDHB policies; and
 - (b) have written, implemented and reviewed policies and procedures on preventing, detecting, and removing abuse and neglect. Those policies and procedures must include definitions of abuse and neglect and must clearly outline the responsibilities of all Personnel who suspect actual or

potential abuse, including immediate action, monitoring, and corrective action. The procedure must include reference to the Supplier's Complaints Procedure; and

- (c) ensure that all relevant Personnel are able to participate in any family, interagency or court proceedings to address specific cases of abuse and neglect in relation to patients/Service users/clients.

13.6 **Health and Safety at Work Act:** The Supplier must comply with the Health and Safety at Work Act.

14. HBDHB'S OBLIGATIONS

14.1 **HBDHB obligations;** HBDHB will:

- (a) perform, and provide the Supplier with access to the results of, any clinical investigations reasonably necessary for the provision of the Services (including any routine blood and radiological or other relevant investigations);
- (b) if appropriate, inform each patient/Service user/client that the Services will be provided by the Supplier;
- (c) as soon as practicable, but always before the intended time of delivery of the Services, provide the Supplier with access to the relevant clinical notes for each patient/Service user/client in respect of whom the Services are to be provided;
- (d) provide the Supplier with appropriate clinical supervision; and
- (e) if the Services include the provisions of surgical services, provide the Supplier with access to a well-equipped and well-

resourced facility (having regard to the Services to be provided) for the provision of the Services.

15. CONSEQUENCES OF TERMINATION OR EXPIRY OF THIS AGREEMENT

- 15.1 **Termination:** The Parties agree that on and following termination or expiry of this Agreement for any reason, the Supplier's obligation to return or destroy HBDHB's property and Confidential Information in Supplier's possession or control is subject to the Supplier's right to retain any Health Information in a manner consistent with generally accepted clinical practice

SCHEDULE 4

GENERAL TERMS

- 1. TERM**
- 1.1 **Term:** This Agreement will commence on the Start Date, and will end on the End Date unless terminated earlier in accordance with this Agreement or otherwise at Law.
- 1.2 **Continuing performance:** The Parties agree that either Party continuing to perform its obligations under this Agreement following the End Date does not constitute an extension of the Term of this Agreement, or create any obligation on the other party to continue to perform its obligations under the Agreement.
- 2. APPOINTMENT AND SERVICES**
- 2.1 **Appointment:** HBDHB appoints the Supplier, and the Supplier agrees, to provide the Services (including the Deliverables) in accordance with this Agreement.
- 2.2 **Non-exclusive appointment:** The Supplier acknowledges and agrees that its appointment is not exclusive and HBDHB may itself provide, or appoint any other person to provide, services identical or similar to the Services.
- 2.3 **No minimum volumes:** HBDHB does not guarantee that it will purchase any minimum volume of Services under this Agreement.
- 2.4 **Supplier obligations:** Without limiting any of the Supplier's obligations set out in this Agreement, in providing all Services (including any Deliverables), the Supplier must:
- (a) act with high levels of care, skill, diligence, prudence and foresight and in accordance with Best Industry Practice, and maintain the highest level of professional standards of confidence, ethics, and conduct;
 - (b) ensure that the Services provided are reasonably fit for their intended purpose;
 - (c) regularly consult, confer, and update, HBDHB about the performance of the Services as appropriate or as reasonably required by HBDHB;
 - (d) deliver the Services so as to meet or exceed the Service Requirements in the timeframe indicated (if any);
 - (e) if the Services are client health services as set out in item 10 of Schedule 1, meet the client service and quality requirements set out in Schedule 3;
 - (f) comply with all reasonable timeframes, directions and other requirements of HBDHB in relation to the Services;
 - (g) identify and provide all Personnel, processes and resources required to provide the Services in accordance with this Agreement;
 - (h) not damage the reputation of HBDHB or the goodwill of its patients/Service users/clients, staff, suppliers, or stakeholders;
 - (i) not damage or adversely affect the business operations or assets of HBDHB;
 - (j) minimise any disruption to HBDHB's business and the activities of HBDHB's patients/Service users/clients, staff and any other suppliers of HBDHB;

- (k) co-operate with any other supplier of HBDHB, if the services provided by such other supplier interface with or relate to the Services;
- (l) comply with all applicable Laws and industry codes of practice, and obtain, maintain and comply with all Consents;
- (m) without limiting clause 4.1(d), comply with HBDHB's reasonable health and safety, emergency and security requirements notified to the Supplier from time to time, provide HBDHB with a copy of the Supplier's health and safety policies as described in Schedule 2.3, promptly notify HBDHB of any health and safety hazards or issues that arise in relation to the Services, and provide HBDHB with a summary of such hazards or issues as described in Schedule 2.3, provide information in the manner prescribed in Schedule 2.3;
- (n) without limiting clause 4.1(d), comply with HBDHB's policies notified to the Supplier from time to time;
- (o) promptly respond to any reasonable requests for information made by HBDHB in relation to the Services;
- (p) during the Term, only leave equipment at HBDHB's premises if it has been agreed with HBDHB in writing that this equipment will remain on HBDHB's premises but HBDHB assumes no responsibility for this equipment;
- (q) carry out the Services without damaging any HBDHB controlled or owned premises or property, and the Supplier will be responsible for and will be required to make good at its own cost any loss or damage to any HBDHB controlled or owned premises or property caused by, or to the extent contributed to by, the Supplier, its Personnel or any other person present on any HBDHB controlled or owned premises at the direction or invitation of the Supplier or its Personnel;
- (r) ensure that its Personnel do not engage in acts of Unauthorised Use;
- (s) have in place realistic and reasonable risk management processes and contingency plans that comply with ISO 31000:2009 (or any replacement standard), or an equivalent appropriate standard if agreed with HBDHB, and that are intended to enable the Supplier to continue to provide the Services in the case of an emergency event;
- (t) as reasonably requested by HBDHB, participate in the development of the district or regional Health Emergency Plan (the "Health Emergency Plan") co-ordinated by HBDHB and other relevant participants to ensure the Supplier's patients/Service users/clients (if any) and Personnel are provided for during a health emergency;
- (u) work with HBDHB to ensure the Health Emergency Plan is reviewed periodically to maintain currency;
- (v) in an emergency situation (as deemed by HBDHB) and if required by HBDHB, amend the scope of the Services (as appropriate). HBDHB will advise the Supplier of the change in the Services to be provided and any change in the Service Specifications. If the Supplier incurs additional costs in relation to the Services, HBDHB will negotiate with the Supplier about contributing to the Supplier costs if extraordinary funding

- is made available to HBDHB to manage the emergency;
- (w) develop and implement, to HBDHB's reasonable satisfaction, an appropriate smokefree policy that complies with all relevant Law, including (as reasonably appropriate) a commitment to:
- (i) compliance with the Smokefree Environments Act 1990, including (if reasonably practicable) 100% smokefree outdoor areas;
 - (ii) smokefree role modelling of Personnel when representing the Supplier;
 - (iii) providing relevant smokefree education and support to all Personnel;
 - (iv) screening all patients/Service users/clients in relation to smoking, and providing brief advice and an offer of smoking cessation support to patients/Service users/clients that are not smokefree;
 - (v) demonstrating evidence of the Supplier's commitment to sub clause (iv);
- (x) provide HBDHB with a copy of the Supplier's smokefree policy as described in Schedule 2.3;
- (y) not engage in any cost or volume shifting activity, which, for the purposes of this clause, includes activities whereby the Supplier gains a financial advantage or HBDHB or another DHB suffers a financial disadvantage as a result of the Supplier:
- (i) shifting part of all of a service that the Supplier has been contracted to provide (in the case of volume shifting) or a cost that is properly incurred by the Supplier under an arrangement between the Supplier and HBDHB (in the case of cost shifting) to another provider or service;
 - (ii) carrying out part or all of a service that another provider has been contracted to provide to HBDHB (in the case of volume shifting) or incurring a cost which is properly incurred by another provider under contracting arrangements with HBDHB (in the case of cost shifting);
 - (iii) switching the delivery of a service (in the case of volume shifting) or the incurring of a cost (in the case of cost shifting) from this Agreement to another agreement with HBDHB; or
 - (iv) reducing or diminishing in any way, in HBDHB's reasonable opinion, the current scope or quality of the Services;
- (z) ensure that, if required by HBDHB, up-to-date information about the Supplier is listed on the Ministry of Social Development's Family Services Directory (or any other equivalent directory that HBDHB notifies the Supplier of); and
- (aa) if directed to do so by HBDHB, modify information about the Services provided on any directory.

- 2.5 **Urgent postponement:** HBDHB may postpone any Service on 24 hours' notice to the Supplier and the Supplier will work with HBDHB to reschedule the postponed Service as soon as reasonably practicable.
- 2.6 **Benefit of better terms:** The Supplier agrees that if requested by any other District Health Board or Authority it will offer to that District Health Board, provider of primary health services or Authority the Services on terms and conditions no less advantageous (including pricing) than those set out under this Agreement.
- 2.7 **Market testing:** At any time before or after the End Date, HBDHB may test the market for the Services or similar services in any way it sees fit. The Supplier acknowledges that HBDHB has obligations under the Ministry of Business Innovation and Employment's Government Rules of Sourcing ("Rules"). This may include a requirement to regularly test the market. HBDHB will assess and determine, at its sole discretion, its obligations under the Rules, and whether to openly advertise for the Services or similar services. An indication of a date by when the market may be tested is provided in item 19 of Schedule 1 (if such a date is known at the time this Agreement is signed). HBDHB may, at its sole discretion, test the market before or after this date or choose not to test the market.
- 2.8 **Maori health priority:**
- (a) The Supplier acknowledges that Maori health is a specifically identified health gain priority area for HBDHB.
- (b) The Supplier must establish and implement a Maori Health policy that reflects the statement in sub clause (a), taking into account HBDHB's strategic direction for Maori health in terms of minimum requirements for Maori health based on the Treaty of Waitangi, Crown objectives for Maori health and specific requirements that the Supplier negotiates with HBDHB from time to time.
- (c) The Supplier must inform HBDHB (if requested by HBDHB) how it intends to implement its Maori health policy, including by specifying:
- (i) the services that the Supplier will deliver as explicit contributions to Maori health gain priorities; and
- (ii) how the benefits of those services will be measured; and
- (iii) how additional opportunities to further Maori health gains will be identified.
- (d) The Supplier must, if requested to do so by HBDHB, provide HBDHB with information about the ethnicity of the Supplier's Personnel, in the format required by HBDHB.
- 2.9 **Vulnerable Children Act 2014 ("VC Act"):** If the Services are children's services as that term is defined in section 15 of the VC Act ("Children's Services"), the Supplier must comply with its obligations under the VC Act, including that the Supplier must:
- (a) comply with the child protection policy requirements set out in clause 2.10; and
- (b) comply with the worker safety check requirements set out in clauses 2.11 and 2.12.
- 2.10 **Child protection policy:** If the Services are Children's Services, the Supplier must:
- (a) either:

- (i) adopt, as soon as practicable, a child protection policy that complies with section 19 of the VC Act, and make a copy of the policy available on its website; or
 - (ii) if required by HBDHB, adopt, as soon as practicable, HBDHB's child protection policy as the Supplier's policy (with any necessary modifications), and make a copy of the policy available on its website;
 - (b) ensure that its child protection policy sets out how the Supplier will comply with its obligations in respect of worker safety checks set out in the VC Act and clauses 2.11 and 2.12 of this Agreement;
 - (c) ensure that its child protection policy reflects any comments or feedback on the policy provided by HBDHB;
 - (d) comply with, and ensure its Personnel comply with, the child protection policy, and provide HBDHB with evidence of that compliance if requested by HBDHB; and
 - (e) review that policy within 3 years of its adoption, and at a minimum once every 3 years following that initial review.
- safety checks to HBDHB if requested by HBDHB;
 - (b) if, as a result of any safety check or for any other reason, the Supplier considers that a member of its Personnel who is a children's worker is not suitable to provide the Services (including as provided for in paragraph (e)), the Supplier must:
 - (i) to the extent permitted by Law, notify HBDHB, as soon as reasonably practicable, of the Supplier's concerns; and
 - (ii) subject to the Supplier's obligations under the VC Act, ensure that the children's worker does not provide the Services;
 - (c) the Supplier warrants that, as of the Start Date of this Agreement, none of its Personnel who are core workers (as defined in the VC Act) have been convicted of a specified offence (as defined in the VC Act); and
 - (d) to avoid doubt, if at any time the Supplier becomes aware that a core worker has been convicted of a specified offence, the Supplier must comply with its obligations under section 28 of the VC Act.

2.11 Worker safety checks by Supplier:

Subject to clause 2.12, if the Supplier is an organisation that is a specified organisation as that term is defined in section 24 of the VC Act, the parties agree:

- (a) the Supplier must carry out periodic safety checks of its Personnel who are children's workers in accordance with the requirements set out in the VC Act and as the Supplier considers is appropriate, and provide copies of such

2.12 Worker safety checks by HBDHB: If the Supplier is a children's worker performing a regulated service for the purpose of section 24 of the VC Act, or if there is or may be a conflict of interest in the Supplier carrying out worker safety checks of its Personnel under clause 2.11:

- (a) the Supplier must co-operate with HBDHB or any third party to ensure that HBDHB can undertake periodic

- safety checks of the Supplier and/or its Personnel who are children's workers in accordance with the requirements set out in Part 3 of the VC Act or as HBDHB otherwise considers is appropriate;
- (b) if, as a result of any safety check, HBDHB considers that the Supplier is not suitable to provide the Services, the DHB may, subject to its obligations under the VC Act, terminate this Agreement;
- (c) the Supplier warrants that, as of the Start Date of this Agreement, neither it nor any of its Personnel who are core workers has not been convicted of a specified offence (as defined in the VC Act);
- (d) the Supplier must notify HBDHB if it, or any of its Personnel who are core workers, is charged with or convicted of a specified offence immediately on being charged or convicted of a specified offence; and
- (e) if at any time HBDHB becomes aware that the Supplier or any of its Personnel who are core workers has been convicted of a specified offence, HBDHB may, subject to its obligations under section 28 of the VC Act, terminate this Agreement.
- 2.13 The parties agree that nothing in clauses 2.9 to 2.12 limit HBDHB's rights under clause 4.4.
- 3. HBDHB'S OBLIGATIONS**
- 3.1 **HBDHB's obligations:** HBDHB will:
- (a) co-operate reasonably with the Supplier in relation to the Services;
- (b) promptly provide such access to any HBDHB controlled or owned premises and data as reasonably requested by the Supplier to carry out the Services; and
- (c) promptly respond to any reasonable requests for information made by the Supplier in relation to the Services.
- 3.2 **Treaty of Waitangi:** The Treaty of Waitangi establishes the unique and special relationship between iwi, Maori and the Crown. As a Crown entity HBDHB acknowledge that the Treaty of Waitangi principles of partnership, proactive protection of Maori health interests, cooperation and utmost good faith, to be implicit conditions of the nature in which the internal organisation of HBDHB responds to Maori Health issues.
- 4. PERSONNEL AND SUBCONTRACTING**
- 4.1 **Personnel requirements:** The Supplier will:
- (a) be responsible for all Personnel;
- (b) ensure that the number of Personnel is adequate to provide the Services;
- (c) ensure that all Personnel are suitably educated, trained, skilled, experienced and fully qualified for the Services they provide and (if applicable) hold the necessary Consents to provide the Services; and
- (d) ensure that all Personnel comply with:
- (i) all protocols, policies, codes of conduct and/or procedures (including any changes or updates to such protocols, policies, codes of conduct and/or procedures) specified by HBDHB from time to time (acting reasonably); and

- (ii) the Supplier's obligations under this Agreement.
- 4.2 **Key Persons:** The Supplier will ensure that each Key Person is available to perform the relevant functions assigned to him or her in accordance with this Agreement.
- 4.3 **Replacement of Key Person:** The Supplier:
- (a) will replace a Key Person if reasonably required by HBDHB, and will make any such replacement as soon as practicable, at its own cost, and with a person approved by HBDHB (acting reasonably);
- (b) may replace a Key Person if:
- (i) the proposed replacement person is suitably qualified and experienced to perform the responsibilities of the Key Person in relation to the Services, and has equivalent or better experience and skills as the person being replaced;
- (ii) the Supplier has given HBDHB at least 20 Business Days' notice of the proposed replacement person, such notice to include full details of the replacement for the Key Person (including an up-to-date curriculum vitae) for the replacement person;
- (iii) HBDHB has approved (acting reasonably) the replacement for the Key Person; and
- (iv) the Supplier bears all costs relating to replacing the Key Person and upskilling the replacement Key Person and any transition arrangements.
- 4.4 **Removal of Personnel:** If HBDHB reasonably considers that any member of the Supplier's Personnel:
- (a) does not meet, or has not complied with, the requirements set out in clause 4.1 or any other requirements in this Agreement; or
- (b) is otherwise unsatisfactory,
- then HBDHB may, by notice to the Supplier, require the Supplier to replace the relevant Personnel and the Supplier will do so as soon as practicable (but in any event no later than 20 Business Days after receipt by the Supplier of the relevant notice) and at its own cost.
- 4.5 **Non representation:** The Supplier will ensure that no Personnel represents him or herself as being an employee, representative or agent of HBDHB, unless he or she is expressly authorised to do so by this Agreement.
- 4.6 **Subcontracting:** The Supplier will not subcontract any third party to provide all or any part of the Services unless:
- (a) HBDHB has agreed to the Supplier using certain Subcontractor(s), and such Subcontractor(s) are specified at item 15 of Schedule 1; or
- (b) during the Term, the Subcontractor and the relevant subcontract are approved by HBDHB in writing (such approval not to be unreasonably withheld).
- 4.7 **Effect of subcontracting:** The entry by the Supplier into a subcontract will not relieve the Supplier from liability for the performance of any obligations under this Agreement. The Supplier is liable to HBDHB for the acts and omissions of each of its Subcontractors (including each Subcontractor's Personnel) as if they were acts or omissions of the Supplier.

- 4.8 **Removal of a Subcontractor:** If HBDHB reasonably considers the performance of any of the Services by a Subcontractor to be unacceptable or inadequate, HBDHB may, by notice to the Supplier, require the Supplier to, and the Supplier will, remove that Subcontractor from the performance of the relevant Services within 20 Business Days of receipt by the Supplier of the notice.
5. **RELATIONSHIP MANAGEMENT**
- 5.1 **Relationship principles:** The following principles will guide the Supplier and HBDHB in their relationship under this Agreement:
- (a) integrity – the Parties will act honestly and in good faith;
 - (b) good communication – the Parties will listen, talk and engage with each other openly and promptly, including via clear and timely written communication;
 - (c) enablement – the Parties will seek to enable one another to meet each Party's respective objectives and commitments to achieve positive outcomes for communities and consumers of health and disability services;
 - (d) trust and cooperation – the Parties will work in a cooperative and constructive manner, recognising each other's viewpoints and respecting each other's differences, and will use reasonable endeavours to work together to resolve any issues that may arise in relation to the Services;
 - (e) accountability – the Parties will recognise the accountabilities that each have to their respective and mutual clients and stakeholders;
- (f) innovation – the Parties will encourage new approaches and creative solutions to achieve positive outcomes for communities and consumers of health and disability services;
 - (g) quality improvement – the Parties will work cooperatively with each other to achieve quality health and disability services that result in positive outcomes for consumers of health and disability services.
- 5.2 **Contract Relationship Managers:** Each Party will appoint the person referred to in item 3 or item 4 of Schedule 1 (as applicable) as its relationship manager for the purposes of this Agreement ("Contract Relationship Manager") and that person will serve as the primary point of contact with the other Party relating to the Agreement.
- 5.3 **Replacements:** Each Party may, subject to clause 4.3, replace its Contract Relationship Manager from time to time, provided it gives the other Party at least 20 Business Days' notice of such replacement.
- 5.4 **Meetings and review:** The Supplier will, throughout the Term, attend and participate in meetings with HBDHB and undertake reviews with HBDHB relating to the Services as reasonably required by HBDHB in addition to any meetings set out in the Schedules to this Agreement (if applicable).
- 5.5 **Reports:**
- (a) The Supplier will provide reports detailing the information, and at the frequency, set out in item 13 of Schedule 1.
 - (b) The Supplier must, if requested to do so by HBDHB, provide HBDHB with:

- (i) the Supplier's annual financial statements or other documents as agreed by the Parties to prove the Supplier's liquidity, on the date specified by HBDHB, such statements or other documents to be either audited or unaudited as required by HBDHB and prepared in accordance with generally accepted accounting practice in New Zealand; and
- (ii) any other information that HBDHB reasonably requests about costs incurred by the Supplier's in relation to the provision of the Services.

5.6 **Failure to provide reports:** If the Supplier fails to provide reports as required by clause 5.5, HBDHB may, despite anything to the contrary in this Agreement, withhold some or all of any payments payable under this Agreement. HBDHB may withhold such payments from the date on which the Supplier was required to provide the report until the date on which the Supplier meets the reporting requirement to HBDHB's reasonable satisfaction.

5.7 **Reports provided to New Zealand government:** The Supplier must, if reasonably required to do so by HBDHB, send any of the reports described in clause 5.5 directly to any Minister of the Crown or any office of the New Zealand government.

6. CHANGES

6.1 Subject to clause 6.2, the Parties will comply with the change management process set out

in Appendix 1 in respect of either of the following situations (a "Change"):

- (a) HBDHB requires any new services that are not within the scope of this Agreement and decides, at its sole discretion, to enter into negotiations with the Supplier in respect of the services; or
- (b) either Party proposes any change to the Services (including any change to the nature or scope of the Services or to the timing of the delivery of the Services) and such change cannot be made using another process in this Agreement.

6.2 To avoid doubt, nothing in this Agreement requires HBDHB to contract with the Supplier in respect of any new services that HBDHB may require.

7. PRICE

7.1 **Price:** HBDHB will, if the Supplier meets the Service Requirements and complies with its obligations under this Agreement, pay the Supplier the Price(s) for the Services set out in Schedule 2.1. The Prices specified in Schedule 1 are exclusive of GST, but inclusive of all other Taxes.

7.2 **Price inclusive:** The Price(s) are the total amount payable by HBDHB for the provision of the Services and the Supplier's performance of its obligations under this Agreement. All costs relating to the provision of the Services and the Supplier's performance of its obligations under this Agreement are the sole responsibility and expense of the Supplier unless expressly stated in Schedule 2.1, and the Price(s) will be deemed to include everything necessary to ensure that the Services meet and conform to this Agreement, including:

- (a) items not expressly mentioned but reasonably necessary for the Services;
- (b) the cost of supply and delivery of the Services in accordance with this Agreement (including travel and accommodation unless specified otherwise at item 8 of Schedule 1 and in Schedule 2.1);
- (c) all licence fees for any Intellectual Property provided (including rights in and to software); and
- (d) unless otherwise specified in Schedule 2.1, all incidental and unforeseen costs, expenses, disbursements, and the like relating to providing the Services and otherwise discharging the Supplier's obligations under this Agreement.

7.3 The Supplier must not require any person, including any Service user, to pay any additional amounts for any Services provided under this Agreement (including co-payments), unless stated otherwise in this Agreement.

8. PAYMENT

8.1 The Supplier will provide invoices as set out in item 9 of Schedule 1 and Schedule 2.1, and HBDHB will pay for the Services as set out in item 9 of Schedule 1 and Schedule 2.1.

9. RECORDS

9.1 **Records:** The Supplier will keep (and will procure that any Subcontractor keeps) full, accurate and up-to-date records relating to the performance of the Services (including supporting documents for all amounts payable by HBDHB and documents setting out the Supplier's performance as against the Deliverables and Service Requirements).

9.2 **Retention of records:** The Supplier will at its own cost retain such records for at least 10 years after the End Date and for longer if required by Law. The Supplier acknowledges that the Public Records Act 2005 applies to records created in relation to performance of the Services.

9.3 **Availability of records:** The Supplier will, promptly on request by HBDHB, provide to HBDHB copies of any such records reasonably requested by HBDHB.

10. PERFORMANCE REVIEW

10.1 **Performance review:** If desired by HBDHB or if requested to do so by the Supplier, HBDHB will through its nominated representative conduct a review of the performance of both Parties' obligations under this Agreement (a "**Performance Review**"), including a review of any one or more of the following matters:

- (a) the performance of the Supplier in relation to the Services, the Deliverables, and/or the Service Requirements;
- (b) the costs of maintaining the relationship between the Parties;
- (c) the performance of both Parties in relation to health and safety issues, including (if reasonably requested by either Party) a review of the health and safety policies of both Parties;
- (d) the performance of the Supplier in relation to any HBDHB policies notified to the Supplier;
- (e) the effectiveness of this Agreement in meeting the requirements of HBDHB; and

- (f) either Party's overall satisfaction with the relationship between the Parties.
- 10.2 During a Performance Review, the nominated representatives of the Parties will meet and discuss the matters under review at a review meeting, at which each Party may make a presentation to the other Party on the matters under review. Prior to the review meeting, each Party will provide the other Party with any information that it considers relevant to the review.
- 10.3 As part of a Performance Review, the Parties will consider whether to make any amendments to any of the matters detailed in this Agreement, which amendments (if any) will be made in accordance with clause 25.1. If the Parties cannot agree on such amendments within 10 Business Days of the review meeting under clause 10.2, this Agreement will continue in force unamended.
- 11. AUDITS**
- 11.1 **Audits:** The Supplier will allow, and will procure that its Subcontractors allow, HBDHB and any auditors of, or other advisers to, HBDHB to access any of the Supplier's premises, Personnel, clients or consumers of the Services and their families, and relevant records as may be reasonably required to verify that the Supplier is complying with its obligations under this Agreement.
- 11.2 **Minimise disruption:** HBDHB will use reasonable endeavours to ensure that the conduct of each audit under clause 11.1 does not unreasonably disrupt the Supplier or its business or delay the provision of the Services by the Supplier.
- 11.3 **Assistance:** The Supplier will promptly and efficiently give HBDHB (and its auditors and advisers) all co-operation, access and assistance reasonably required by HBDHB for the purposes of carrying out the audits under clause 11.1 and will procure that each of its Subcontractors does the same.
- 11.4 **Notice of audit:** HBDHB will provide at least 10 Business Days' notice before commencing an audit under clause 11.1, subject to clause 11.5.
- 11.5 HBDHB is not required to give notice of an audit performed in accordance with this clause if:
- (a) such an audit is conducted in respect of a suspected non-compliance of this Agreement by the Supplier; or
- (b) HBDHB reasonably believes that providing the Supplier with notice will unnecessarily prejudice the interests of the audit or Service users.
- 11.6 **Costs of audit:** The Parties will bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 11, unless the audit under clause 11.1 identifies any significant non-compliance with this Agreement by the Supplier, in which case and without prejudice to any other rights or remedies HBDHB has under this Agreement or otherwise at Law, the Supplier will reimburse HBDHB for all its reasonable costs incurred in the course of the audit.
- 11.7 **Financial audit:** HBDHB may appoint an auditor to audit:
- (a) the correctness of any financial information that the Supplier gives to HBDHB; and
- (b) the Supplier's financial position.
- 11.8 An auditor appointed under clause 11.7 may inform HBDHB if, as a result of an audit undertaken in accordance with clause 11.7, the auditor considers that:

- (a) the Supplier has supplied HBDHB with incorrect information; or
- (b) the Supplier's financial position may prejudice the Supplier's ability to carry out its obligations under this Agreement.
- 11.9 **Sharing of audit reports:** HBDHB may share audit reports with other funders of services provided by the Supplier.
- 12. NOTIFICATION OF PROBLEMS AND COMMUNICATION**
- 12.1 **Incident:** In the event of any incident, complaint or dispute involving a HBDHB patient/Service user/client ("**Incident**") arising out of, or in relation to the Services, each Party will, immediately on becoming aware of such Incident, advise the other Party of the Incident. Each Incident will be dealt with according to HBDHB's applicable policies and procedures as notified to the Supplier. The Supplier will fully co-operate with any investigation that HBDHB initiates in response to an Incident, and at HBDHB's request the Supplier will assist HBDHB in responding to, or managing, the Incident.
- 12.2 **Disciplinary Actions:** If the Supplier or any of the Supplier's Personnel has been, or becomes, subject to any investigation or disciplinary action (whether by the Health and Disability Commissioner, the Privacy Commissioner, or any other Authority) the Supplier will notify HBDHB immediately. On receipt of such notice HBDHB may, in HBDHB's absolute discretion and without limiting any other rights or remedies under this Agreement or otherwise at Law, terminate this Agreement immediately on written notice to the Supplier.
- 12.3 **Notification of problems:** The Supplier must immediately advise HBDHB of any issue with the Services that has caused or may, in the Supplier's reasonable opinion, be perceived negatively by members of the public or result in adverse media coverage. Following notification of such an issue, HBDHB may require the Supplier to:
- (a) undertake a review of the relevant issue;
- (b) identify and implement steps to prevent a re-occurrence of the issue; and
- (c) provide HBDHB with details of the review and its outcomes.
- 12.4 **Use of names and logos:** The Supplier may use HBDHB's name or logo only with HBDHB's prior written consent.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 **Ownership:** Unless otherwise agreed in writing between the Parties, the Supplier will not use any of HBDHB's Intellectual Property and the following ownership arrangements for Intellectual Property will apply:
- (a) all Intellectual Property of a Party or any of its licensors that is not developed, commissioned or created under or in connection with this Agreement ("**Existing Intellectual Property**"), but are used for the purposes of this Agreement, will be owned by that Party or the relevant licensor; and
- (b) all new Intellectual Property that is developed, commissioned or created under or in connection with this Agreement, including all Intellectual Property in modifications, adaptations and additions to the Existing Intellectual Property of a Party that is developed, commissioned or created under or in connection with this

Agreement, will be owned by HBDHB as such rights arise. To the extent such rights vest in the Supplier from time to time, the Supplier will notify HBDHB of the new Intellectual Property and will, on request by HBDHB, assign such rights to HBDHB or its nominee for nominal consideration.

13.2 **Licence:** Without limiting clause 13.1(b), if HBDHB does not own or is not otherwise licensed to use any Intellectual Property supplied to HBDHB under this Agreement, or used by the Supplier to provide, or HBDHB to receive, the Services (including the Deliverables), the Supplier grants or will procure at its cost the grant to HBDHB of a royalty free, non-exclusive, perpetual, transferable and irrevocable licence or sub-licence to use, copy and modify such Intellectual Property for HBDHB's business and operational purposes.

13.3 **Intellectual Property undertakings:** The Supplier will:

- (a) at the same time as delivering the Intellectual Property that is owned by or licensed to HBDHB under this Agreement, deliver to HBDHB all documents and instructions necessary to allow HBDHB to fully exercise its rights in that Intellectual Property;
- (b) not make any claim that is inconsistent with HBDHB's rights in its Intellectual Property; and
- (c) procure that all Personnel and Subcontractors waive all rights in, and claims to, all or any of HBDHB's Intellectual Property that such Personnel or Subcontractors may otherwise have or assert, including moral rights.

13.4 **Supplier warranty:** The Supplier warrants, undertakes and represents to HBDHB that neither the supply, receipt or use of the Services (including the Deliverables) nor HBDHB's possession or use as contemplated by this Agreement of any information or materials supplied under this Agreement will infringe the Intellectual Property rights of any third party.

13.5 **Licence to use:** HBDHB grants to the Supplier a royalty free, non-exclusive licence for the Term to use HBDHB's Intellectual Property (excluding any trade marks) solely to the extent necessary to perform the Services in accordance with this Agreement.

14. WARRANTIES

14.1 **Reciprocal warranties:** Each Party warrants, undertakes and represents to the other that:

- (a) it has obtained all authorisations and has done all things necessary in order to enter into this Agreement and to perform its obligations under this Agreement; and
- (b) it is not aware of anything which will, or might reasonably be expected to, prevent or inhibit that Party from performing all of its obligations under this Agreement, in the manner and at the times contemplated by this Agreement.

14.2 **Supplier warranties:** The Supplier warrants, undertakes and represents to HBDHB that:

- (a) all information provided by the Supplier to HBDHB under or in relation to this Agreement is true, accurate and not misleading in any

material respect (including by omission); and

- (b) it has the expertise, experience, resources, capacity and ability to perform and discharge its obligations under this Agreement in accordance with its terms and conditions,

and each such warranty will be deemed repeated continuously by the Supplier during the Term.

- 14.3 **Third Party Warranties:** To the extent the Supplier benefits from a warranty in relation to the Services under a subcontract, such warranties will be deemed to be repeated in this Agreement for the benefit of HBDHB and the Supplier will be liable to HBDHB for breach of such warranty and will be responsible for making all or any warranty claims against such third parties at no additional cost to HBDHB.

15. CONFLICTS OF INTEREST

- 15.1 During the Term the Supplier will not, without HBDHB's prior written consent, provide services to any other person, or be involved or interested in any activity or business, which conflicts or may conflict with the interests of HBDHB or interferes or may interfere with the Supplier's ability to perform the Services independently and in accordance with this Agreement.
- 15.2 The Supplier warrants, undertakes and represents to HBDHB that performance of its obligations under this Agreement will not give rise to a conflict of interest. The Supplier also warrants, undertakes and represents that such performance will not conflict with any obligation or duty owed to any third party, or with the interests of the Supplier or any associated person of the Supplier (including any other customer of the Supplier).

16. LIABILITY AND INDEMNITY

- 16.1 **General:** The Supplier indemnifies HBDHB, its officers, employees, agents and contractors against any direct, indirect or consequential losses (including, without limitation, loss of revenue, opportunity or profits or any other special or punitive losses), liability, damages, actions, proceedings, claims, demands, costs and expenses including (without limitation) solicitor and own client costs, incurred directly or indirectly in connection with or as a consequence of, any act or omission of the Supplier or any of its employees, contractors or agents in performing obligations under this Agreement.

- 16.2 **Tax:** Without limiting anything in clause 16.1, the Supplier indemnifies HBDHB, its officers, employees, agents and contractors from and against any liability, direct losses, damages, actions, proceedings, claims, demands, costs and expenses including (without limitation) solicitor and own client costs, incurred directly or in connection with the deduction or payment of Tax in connection with payments made by HBDHB to the Supplier under this Agreement, including the costs of collection of such Tax and any other incidental costs, expenses, penalties or claims. HBDHB is entitled to offset any such claim from any payments to the Supplier in the event that HBDHB is assessed for any such Tax.

- 16.3 **Preservation of rights:** Nothing in this Agreement (including clauses 16.1 and 16.2) limits HBDHB's rights against the Supplier at common law, equity, or under statute including the provisions of the Contractual Remedies Act 1979.

- 16.4 **Contracts (Privity) Act:** Clauses 16.1 and 16.2 are intended to confer a benefit on each of the persons described in those clauses and to create an obligation enforceable by each of

- those persons as if it were Party to this Agreement.
- 16.5 **Failure by HBDHB:** The indemnity referred to in clause 16.1 will not apply to the extent that the Supplier's performance has been prevented by:
- (a) a failure on HBDHB's part to perform a material obligation under this Agreement; or
 - (b) a Force Majeure Event.
- 16.6 **Exclusion:** HBDHB will not be liable to the Supplier for:
- (a) any claims, damages (including damage to goodwill), penalties or losses (including costs, loss of profit, loss of revenue and loss of business opportunity); or
 - (b) any indirect, consequential or special loss or damage.
- 17. INSURANCE**
- 17.1 **Supplier's insurance:** The Supplier must effect and maintain:
- (a) professional indemnity insurance for an amount of not less than the amount set out in item 17 of Schedule 1 in respect of any single claim in any insurance year arising from a breach of professional duty by the Supplier whether owed in contract, tort or otherwise, or by reason of any act or omission by the Supplier;
 - (b) public liability insurance with a minimum cover of the amount set out in item 17 of Schedule 1 in respect of any single claim in any insurance year; and
 - (c) any other insurances set out in item 17 of Schedule 1.
- 17.2 **Duration of insurance:** The Supplier must effect and maintain:
- (a) the professional indemnity cover required by this Agreement for 3 years after the End Date; and
 - (b) the public liability cover required by this Agreement for 1 year after the End Date.
- 17.3 **Acceptable terms:** The Supplier must ensure that all insurance required by clause 17.1 is on terms and conditions and with insurers reasonably acceptable to HBDHB, and that all public liability insurance provides cover for the vicarious liability of HBDHB.
- 17.4 **Insurance certificate:** The Supplier will provide certificates of insurance from its insurers confirming the Supplier has effected the insurances required under clauses 17.1 and 17.2.
- 17.5 **Void Insurances:** The Supplier will not do anything or omit to do anything that causes or may cause any of the insurance policies required under clauses 17.1 and 17.2 to be void or voided.
- 17.6 **Failure to effect and maintain:** If the Supplier fails to effect and maintain the insurances required under clauses 17.1 and 17.2, HBDHB may procure these insurances and recover any related premiums and any directly associated costs from the Supplier as a debt due and owing or set-off the premiums and costs from any amount it owes the Supplier under this Agreement or otherwise.
- 17.7 **Subcontractors:** The Supplier will ensure that if any subcontractors are approved under this Agreement they have insurance in place which is acceptable to HBDHB (acting reasonably).

18. CONFIDENTIALITY

18.1 Restrictions: Except as permitted by this clause 18 or otherwise expressly permitted in this Agreement, each Party will keep the other Party's Confidential Information confidential and will not disclose such Confidential Information to any person or use such Confidential Information for any purpose other than for the purposes of this Agreement. In fulfilling its obligations under this clause 18.1 each Party will comply with the Privacy Act 1993 and the Health Information Privacy Code 1994 (as applicable), and use the same degree of care to avoid disclosure as it uses to protect its own confidential information.

18.2 Exceptions: Notwithstanding clause 18.1, either Party may disclose any Confidential Information:

- (a) to:
- (i) its directors, employees or contractors who need to know such information for the purposes of this Agreement;
 - (ii) its professional advisers, auditors or bankers for a proper purpose,

provided that Party ensures that each such person to whom it discloses Confidential Information complies with the restrictions in this clause as if such person were a Party to this Agreement;

- (b) if and to the extent disclosure is required by Law (including but not limited to the Official Information Act 1982) or the rules of any registered securities exchange on which the Party's securities are listed, or any Authority, Minister of the Crown or Parliamentary

Officer or body, provided that Party gives the other Party notice of the requirement as soon as practicable before such disclosure is made (other than if it is prohibited from doing so as a matter of Law); or

- (c) if and to the extent the information:
- (i) was known to the receiving Party before the information was disclosed to it;
 - (ii) is disclosed to the receiving Party on a non-confidential basis by a third party who has the right to make such disclosure; or
 - (iii) is generally available to the public through no fault of the receiving Party; or
 - (iv) is developed by the receiving Party independently of the information disclosed by the disclosing Party.

18.3 Announcements:

- (a) Neither Party will make any media release nor other public announcement relating to the existence, provisions, nor performance of this Agreement except as permitted by clause 18.2(b) or with the prior written consent of the other Party.
- (b) Neither Party may, during or after the term of this Agreement, either directly or indirectly criticise the other publicly in relation to this Agreement, without first fully discussing (or using reasonable endeavours to discuss) the matters of concern with the other in good faith and in a co-operative and constructive manner.

19. DELAYED AND NON-COMPLIANT SERVICES

19.1 **Notice of delay or failure:** If the Supplier fails, or reasonably believes it is unlikely, to provide a Service (including any Deliverable) by the Delivery Time or it reasonably believes a Service or Deliverable is defective, it will immediately notify HBDHB.

19.2 Without limiting any other right or remedy HBDHB may have under this Agreement or otherwise at Law, if any of the Services or Deliverables are:

- (a) not provided in by the specified Delivery Time; and/or
- (b) defective in HBDHB's reasonable opinion,

(both a "**Non-Compliant Service**"), HBDHB may require the Supplier to perform, re-perform or rectify the Non-Compliant Service at the Supplier's own cost and in accordance with the requirements of this Agreement, and clauses 19.3 to 19.4 will apply.

19.3 **Notice to perform:** If under clause 19.2 HBDHB requires the Supplier to perform, re-perform or rectify the Non-Compliant Service it must notify the Supplier of this as soon as reasonably practicable and (acting reasonably) specify a date for the performance, re-performance or rectification of the Non-Compliant Service ("**Revised Target Date**").

19.4 **Use of alternative supplier:** If the Supplier fails to perform, re-perform or rectify a Non-Compliant Service before the Revised Target Date, HBDHB may engage an alternate supplier (at the Supplier's cost) to perform, re-perform or rectify the Non-Compliant Service or may perform, re-perform or rectify the Non-Compliant Service itself

19.5 **No obligation to pay for Non-Compliant Services:** HBDHB will have no obligation to pay for Non-Compliant Services that are not re-performed or rectified in accordance with clause 19.2 and 19.3 and, if and to the extent HBDHB has paid for any such Non-Compliant Services, HBDHB will be entitled to set-off such amounts against future payments due and owing under this Agreement or any other agreement between the Supplier and HBDHB.

20. SUSPENSION AND TERMINATION

20.1 **Suspension for breach:** Without limiting any other rights or remedies HBDHB may have under this Agreement or otherwise at all, In the event of any breach of any term of this Agreement by the Supplier, HBDHB may direct the Supplier to suspend performance of all or any part of this Agreement. HBDHB may at any time, following any such suspension , direct the Supplier to resume performance of its obligations under this Agreement and the Supplier will promptly comply with that direction.

20.2 **Termination for cause:** Without limiting any other rights of termination set out in this Agreement, either Party may terminate this Agreement immediately by notice to the other Party if the other Party:

- (a) commits a material breach of this Agreement which is not capable of remedy;
- (b) commits a material breach of this Agreement that is capable of remedy, and fails to remedy that breach within 10 Business Days after receipt of notice by that Party requiring the breach to be remedied; or
- (c) is subject to an Insolvency Event.

- 20.3 **Termination by HBDHB:** Without limiting any other of HBDHB's rights set out in this Agreement, HBDHB may terminate this Agreement immediately by notice to the Supplier if:
- (a) the Supplier assigns or transfers any of its rights or obligations under this Agreement in breach of clause 4.6 or clause 25.2; or
 - (b) the Supplier commits 3 breaches of any term of this Agreement within any 3 month period.
- 20.4 **Termination for convenience:** HBDHB may, despite anything else set out in this Agreement, terminate this Agreement at any time by giving the Supplier written notice of at least the period set out in item 18 of Schedule 1.
- 20.5 **Consequences of termination:** On and following termination or expiry of this Agreement for any reason:
- (a) the termination or expiry will be without prejudice to either Party's rights and remedies in respect of any breach by either Party of this Agreement, if the breach occurred before the termination or expiry of this Agreement;
 - (b) the Supplier will immediately cease using HBDHB's Intellectual Property and will promptly return or (to the extent required by HBDHB) destroy all HBDHB's property and Confidential Information in the Supplier's possession or control (if required by HBDHB to do so), and certify that it has done so;
 - (c) the provisions of clause 21 will apply; and
- (d) HBDHB will, in the case of termination under clause 20.4, pay for the Services provided in accordance with this Agreement up to the date of termination, but will not be required to make any other payment.
- 21. TRANSITION SERVICES/EXIT**
- 21.1 **Transition services:** On the termination or expiry of all or any part of this Agreement for any reason, the Supplier will, at the request of HBDHB, assist in the orderly transition of the provision of the terminated Services to HBDHB or its nominated alternative Supplier in accordance with this clause 21 (the "**Transition Services**").
- 21.2 **Term of Transition Services:** The Supplier will provide Transition Services for as long as reasonably required by HBDHB after the End Date.
- 21.3 **Included services:** HBDHB will notify the Supplier of the Transition Services required. At HBDHB's option, the Transition Services may include any or all of the following:
- (a) continued performance of the Services to the extent required by HBDHB;
 - (b) promptly assisting HBDHB to prepare a transition plan specifying the tasks to be performed by each Party to enable the orderly transition of the provision of the Services and the timeframes for the performance of such tasks;
 - (c) co-operating with HBDHB or an alternative supplier as necessary for an orderly transition; and
 - (d) providing reasonable assistance for HBDHB to acquire rights to access and use third party software, facilities, equipment, documentation and other

- resources used by the Supplier to provide the Services.
- 21.4 **Fee:**
- (a) HBDHB will pay the Supplier for the Transition Services at rates to be agreed in writing between the Parties, such rates to be based on the Price of the Services that were provided during the Term of this Agreement.
- (b) If the Parties cannot reach agreement on such fees within a reasonable time, the dispute will be resolved under clause 23. If required by HBDHB, the Supplier will provide the Transition Services pending resolution of the dispute.
- 22. FORCE MAJEURE**
- 22.1 **No breach:** Except as set out in clause 22.2, a Party (the "**Affected Party**") will not be liable for any failure or delay in performance of any obligations under this Agreement to the extent such failure or delay is due to a Force Majeure Event, provided that the Affected Party:
- (a) promptly notifies the other Party of the nature and extent of the Force Majeure Event;
- (b) uses reasonable endeavours to mitigate the effect of the Force Majeure Event and carries out its obligations under this Agreement to the extent reasonably practicable; and
- (c) resumes full performance as soon as reasonably practicable.
- 22.2 **Exclusions:** Clause 22.1 will not relieve an Affected Party of liability for any failure or delay in performance of any obligations under this Agreement to the extent that such failure or delay is due to:
- (a) that Party's lack of funds for any reason; or
- (b) the failure of a contractor or supplier of that Party, except to the extent such failure is itself caused by a Force Majeure Event and the contractor or supplier would meet the requirements for relief under this clause 22 if this clause 22 applied to such failure.
- 22.3 **Corresponding obligations:** The other Party will be relieved of its corresponding obligations to the same extent the Affected Party is relieved of its obligations due to this clause 22.
- 22.4 **No requirement to settle:** Nothing in this clause 22 will be construed to require any Party to settle a lock-out, strike or other industrial dispute by acceding against its judgement to demands made to it.
- 22.5 **Termination:** If the Force Majeure Event prevails for a continuous period of more than 6 months:
- (a) either Party may terminate this Agreement by giving 10 Business Days' notice to the other Party;
- (b) on the expiry of the notice period referred to in clause 22.5(a), this Agreement will terminate; and
- (c) neither Party will have any liability to the other in respect of any termination of this Agreement under clause 22.5(b), but such termination will be without prejudice to rights and liabilities which have accrued prior to termination.
- 23. DISPUTE RESOLUTION**
- 23.1 **Dispute resolution process to apply:** Subject to clause 23.8, no Party may commence any proceedings relating to any

- dispute between the Parties unless that Party has taken all reasonable steps to comply with this clause 23.
- 23.2 **Dispute notice:** If there is a dispute between the Parties in relation to this Agreement, either Party may give the other Party (the "**second Party**") notice of the nature and details of the dispute.
- 23.3 **Negotiation:** Within 10 Business Days of receipt of the notice of dispute by the second Party, senior managers of the Parties will meet to endeavour to resolve the dispute.
- 23.4 **Settlement:** Both Parties must use reasonable endeavours to attempt to settle a dispute.
- 23.5 **Mediation:** If the dispute is not resolved within 20 Business Days of receipt of the notice of dispute by the second Party, either Party may by notice to the other Party refer the dispute to mediation, and the following will apply:
- (a) The mediation will be conducted in Napier or Hastings under the LEADR New Zealand Incorporated ("**LEADR**") standard mediation agreement.
 - (b) If the Parties do not agree on a mediator or the mediator's fees within 5 Business Days of receipt of the notice of mediation, the mediator will be appointed or the fees set by the chair of LEADR (or his/her nominee) at the request of either Party.
 - (c) The Parties will bear the mediator's fees equally.
- 23.6 **Continued performance:** While any dispute remains unresolved each Party will continue to perform this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.
- 23.7 **Urgent relief:** Nothing in this clause 23 will preclude a Party from seeking urgent interlocutory relief before a court.
- 23.8 **Dispute resolution process does not apply:** The dispute resolution process set out in clauses 23.1 to 23.7 does not apply to any dispute concerning:
- (a) the re-negotiation of any part of this Agreement;
 - (b) a decision as to whether a person is an "eligible person" under a Health and Disability Services Eligibility Direction;
 - (c) HBDHB's decision to withhold a payment in accordance with the provisions of this Agreement; or
 - (d) HBDHB's decision to terminate this Agreement for convenience in accordance with clause 20.4.
- 23.9 **Confidentiality:** The fact of a dispute between the Parties, and any information relating to such a dispute, must be treated as Confidential Information for the purposes of this Agreement.
- 24. NOTICES**
- 24.1 **Writing:** Each notice, demand, consent or other communication expressly contemplated under this Agreement (each a "**notice**") will be in writing and delivered personally or sent by post or email to the relevant party's Contract Relationship Manager.
- 24.2 **Addresses:** Each notice will be sent to the relevant Party's relationship manager, and to the address of the relevant Party, set out in item 1 or item 2 (as applicable) of Schedule 1 or, as relevant, to any other address from time to time designated for that purpose by the relevant Party and notified to the other Party

- at least 5 Business Days prior to the sending of a notice.
- 24.3 **Receipt:** A notice under this Agreement is deemed to be received if:
- (a) **Delivery:** delivered personally, when delivered;
 - (b) **Post:** posted, 3 Business Days after the date of posting;
 - (c) **Email:** sent by email, when actually received in readable form by the recipient,
- provided that any notice received after 5 pm on a Business Day or on a non-Business Day will be deemed to have been received on the next Business Day.
25. **GENERAL**
- 25.1 **Amendments and Ministerial Directions:** Without limiting clause 6, no amendment to this Agreement will be effective unless it is in writing and signed by the Parties. HBDHB may at any time vary the terms and conditions of this Agreement to give effect to a lawful direction given by the Minister of Health. HBDHB will provide the Supplier with as much written notice as practical of the variation required to give effect to the applicable direction.
- 25.2 **Assignment:** The Supplier will not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of HBDHB. HBDHB may, in its sole discretion, withhold such consent. For the purposes of this clause 25.2, a Change of Control of the Supplier will be deemed an assignment by the Supplier.
- 25.3 **Costs:** The Parties will each bear their own costs and expenses incurred in the negotiation,
- preparation and implementation of this Agreement.
- 25.4 **Damages:** Without prejudice to any other rights or remedies that HBDHB may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, HBDHB will be entitled, without proof of special damages, to remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.
- 25.5 **Entire agreement and Agreement to apply:** This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the Parties, relating to the matters dealt with in this Agreement and no other terms and conditions will apply in relation to the matters dealt with in this Agreement including the Supplier's purchase terms and conditions or any purchase order issued by HBDHB.
- 25.6 **Further assurances:** Each Party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.
- 25.7 **Privity:** A person who is not a Party will not have any rights under or in connection with this Agreement by virtue of the Contracts (Privity) Act 1982 except under clauses 16.1 and 16.2 which confer a benefit on, and are intended to be enforceable by those person named in those clauses.
- 25.8 **Relationship of Parties:** The Supplier is an independent contractor and nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture

between the Parties, constitute any Party the agent or employee of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

- 25.9 **Remedies cumulative:** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by this Agreement or Law.
- 25.10 **Severance:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision will be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, be deemed severed from this Agreement. Neither such change will affect the legality, validity and enforceability of the other provisions of this Agreement. This clause 25.10 will have no effect if such change(s) would so alter the bargain between the Parties that it would be unreasonable for the Agreement to stand.
- 25.11 **Taxes:** The Supplier is solely responsible for payment of all Taxes which may be payable in respect of any payments or benefits provided to the Supplier by HBDHB under this Agreement and HBDHB will not make any deductions on account of Tax or any other imposition unless it is required to do by law.
- 25.12 **Survival:** Following expiry or termination of this Agreement, clauses 13 (*Intellectual Property*), 16 (*Liability and indemnity*), 18 (*Confidentiality*), 20 (*Suspension and Termination*), 21 (*Transition services*), 23 (*Dispute resolution*) and 25.12 (*Survival*) together with other provisions that are by their nature intended to survive, will remain in effect.
- 25.13 **Waiver:** No waiver of a right or remedy under this Agreement or at Law (a "**right**") will be effective unless the waiver is in writing and signed by that Party. No delay or omission by a Party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right will restrict the further exercise of that or any other right.
- 25.14 **Set off:** HBDHB may at any time or times, with or without notice to the Supplier, set-off any of the Supplier's liability to HBDHB against any of HBDHB liability to the Supplier, whether any such liability is present or future, liquidated or unliquidated, under this Agreement or not. Any exercise by HBDHB of HBDHB rights under this clause will be without prejudice to any other rights or remedies available to HBDHB under this Agreement or otherwise.
- 25.15 **Governing Law and jurisdiction:** This Agreement is governed by New Zealand Law and the Parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.
- 25.16 **Counterparts:** This Agreement may be executed in any number of counterparts (including any scanned PDF counterpart), each of which will be deemed an original, but all of which together will constitute the same instrument. No counterpart will be effective until each Party has executed at least one counterpart.
- 26. DEFINITIONS AND INTERPRETATION**
- 26.1 **Definitions:** In this Agreement, unless the context requires otherwise:
- "**Agreement**" means this agreement and includes the schedules and appendices to it, and any variations to this Agreement;

"Authority" includes:

- (a) any state or government;
- (b) any government, local government, semi-government, judicial, statutory or regulatory entity;
- (c) any authority, body or agency charged with the administration of any Law including without limitation Pharmac and MedSafe; and
- (d) any regulatory authority whether established under the Health Practitioners Competence Assurance Act 2003 or otherwise;

"Best Industry Practice" means the best practice or standard (in terms of quality, productivity, effectiveness and performance) adopted by providers in New Zealand of services the same as or similar to the Services;

"Business Day" means any day other than a Saturday, a Sunday, a public holiday (as defined in the Holidays Act 2003) in Hawke's Bay, and any day in the period 25 December to 2 January (inclusive);

"Change" has the meaning given in clause 6.1;

"Change of Control" means, in relation to a person (the "first person"), that a person has acquired Control of the first person, or that a person who Controls the first person ceases to do so;

"Confidential Information" means this Agreement and any information disclosed by one Party to the other and includes information relating to the business operations or finances of the disclosing Party and any Personal Information and, in the case of HBDHB, Health Information relating to HBDHB's patients/Service users/clients (whether past or current);

"Consents" means all permissions, consents, approvals, certificates, permits, licences (including, to avoid doubt, licences of intellectual property), agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision and receipt of the Services;

"Contract Relationship Manager" has the meaning given to that term in clause 5.2;

"Control" means, in relation to a person (the "first person"), the ability of a person (the "second person") to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting shares of a person is deemed to constitute Control;

"Deliverables" means a tangible output resulting from the delivery of the Services, such as a document, a piece of equipment, goods, information, or data stored by any means, and includes the reports and information described in Schedule 2.3 and any deliverables described in the Service Specifications in Schedule 2.4;

"Delivery Time" means, for the Deliverables described in Schedule 2.3, the date by which each Deliverable is due, and for any Deliverables described in the Service Specifications in Schedule 2.4, the date by which each Deliverable is due;

"End Date" means the date on which this Agreement will expire as set out in item 7 of Schedule 1

"Force Majeure Event" means an event, if the event itself and the consequences of the

event are beyond the reasonable control of the affected Party, which may include:

- (e) an earthquake, epidemic, fire, flood, riot, terrorism, war or volcanic activity;
or
- (f) lock-outs, strikes or other industrial disputes which do not relate solely to that Party's workforce.

"GST" means goods and services tax chargeable, or to which a person may be liable, under the GST Act;

"GST Act" means the Goods and Services Tax Act 1985;

"Health Information" has the meaning given to that term in the Health Information Privacy Code, a code of practice issued by the Privacy Commissioner under the Privacy Act 1993;

"Insolvency Event" means, in relation to a Party, if that Party:

- (a) suspends or ceases to conduct its principal business or threatens to do so;
- (b) becomes or is presumed to be insolvent;
- (c) makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors;
- (d) has any of its assets subject to any form of seizure or execution;
- (e) has a receiver, liquidator, administrator, statutory manager or any similar insolvency administrator appointed;
- (f) is removed from the Register of Companies; or
- (g) suffers any analogous event.

"Intellectual Property" includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

"Key Person" means any Personnel named in item 5 of Schedule 1 and the Contract Relationship Manager (or such other replacement persons as may be appointed in accordance with clause 4.3);

"Law" includes any rules of common law, statute, regulation, order in council, by-law, ordinance or other subordinate or secondary legislation in force from time to time;

"Non-Compliant Service" has the meaning given to that term in clause 19.2.

"Party" means a party to this Agreement including its personal representatives, successors and permitted assigns;

"Personal Information" has the meaning given to that term in the Privacy Act 1993;

"Personnel" means the Supplier's and each Subcontractor's personnel (including the Supplier's and each subcontractor's employees and contractors) used to provide any Services;

"Price" means the price(s) for the Services and for meeting the Service Requirements set out in item 8 of Schedule 1 and Schedule 2.1;

"Service Requirements" means the requirements set out in Schedule 2.2;

"Service Specifications" means the service specifications set out in Schedule 2.4

"**Services**" means the services to be provided by the Supplier under this Agreement, including those described in item 10 of Schedule 1 and the Service Specifications (including any Deliverables);

"**Start Date**" means the date specified at item 6 of Schedule 1;

"**Subcontractor**" means any person being a subcontractor of any tier engaged for the purpose of assisting the Supplier to perform any of the Services;

"**Tax**" means all forms of taxation and statutory duties, imposts, contributions, levies, tariffs, rates, dues, withholdings or liabilities wherever chargeable and whether of New Zealand or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto;

"**Term**" means the period from the Start Date to the End Date;

"**Transition Services**" has the meaning given to it at clause 21.1 of this Schedule;

"**Unauthorised Use**" means any use of HBDHB's IT and telecommunications systems that is:

- (a) not authorised by HBDHB or contemplated in the description of the Services in Schedule 1;
- (b) other than in accordance with HBDHB's IT policies and procedures notified to the Supplier from time to time; or
- (c) involves the use or disclosure of HBDHB's Confidential Information or Intellectual Property other than in accordance with the provisions of clauses 13 and 18;

"**VC Act**" means Vulnerable Children Act 2014

26.2 **Interpretation:** In this Agreement, unless the context requires otherwise:

- (a) references to **clauses** are to clauses of Schedules 2.1 to 2.4, Schedule 3, and Schedule 4 and references to items are to items of Schedule 1 of this Agreement;
- (b) references to **schedules** are to schedules of this Agreement;
- (c) **derivations** of any defined word or term will have a corresponding meaning;
- (d) a **gender** includes each other gender;
- (e) the **headings** to clauses are inserted for convenience only and do not affect interpretation of this Agreement;
- (f) the word **including** and other similar words do not imply any limitation;
- (g) a **person** includes any individual, company, corporation, firm, club, partnership, joint venture, association of persons (incorporated or not), trust or Authority (in each case, whether or not having separate legal personality);
- (h) the **plural** includes the **singular** and vice versa; and
- (i) a reference to a **statute** includes all regulations and other subordinate legislation made under that statute. A reference to a statute, regulation or other subordinate legislation, or to a provision of any statute, regulation or other subordinate legislation, includes that statute, regulation or other subordinate legislation or provision as amended, re-enacted or replaced from time to time.

- (j) any **obligation falling due** for performance on or by a day other than a Business Day will be performed on or by the Business Day immediately following that day;
- (k) an **obligation not to do something** includes an obligation not to allow or cause that thing to be done;

26.3 **Precedence:** This Agreement comprises all those documents described under the heading Agreement. If there is any conflict between these documents, or any ambiguity, the documents will have the following descending order of precedence:

- (a) Schedule 1;
- (b) Schedules 2.1 to 2.4;
- (c) Schedule 3; and
- (d) Schedule 4.

APPENDIX 1

CHANGE MANAGEMENT PROCESS

(Refer clause 6 of Schedule 4)

1. **Change Request:** The Party that wants to initiate a Change will describe the details of the Change in a notice to the other Party ("**Change Request**").
2. **Impact Report:** The Supplier will, at its cost and within a reasonable period of time from receipt or delivery of the Change Request (but in any event within 20 Business Days), prepare, and give by notice, an impact report ("**Impact Report**") detailing an explanation of the Change, including how the Change is to be implemented and, to the extent relevant, detailing:
 - (i) the feasibility of the Change;
 - (ii) the likely time required to implement the Change;
 - (iii) the effect of the Change on the ability of the Supplier to meet its obligations under this Agreement;
 - (iv) any cost implication for either Party in relation to the Change;
 - (v) any consequential material impacts of the Change; and
 - (vi) all other information which is likely to be material to HBDHB.
3. **Notify:** HBDHB will, within a reasonable period of time from receipt of the relevant Impact Report, notify the Supplier of its decision in respect of a Change Request including whether it:
 - (a) accepts the Change Request based on the detail contained in the Impact Report;
 - (b) wishes to renegotiate any aspect of the Change Request;
 - (c) withdraws the Change Request, if initiated by HBDHB; or
 - (d) does not accept the Change Request, if initiated by the Supplier.
4. **Pricing:** The following pricing principles will apply in respect of any Change:
 - (a) the Supplier will only charge HBDHB for a Change to the extent the Change cannot reasonably be considered already within the scope of the Services or this Agreement;
 - (b) if the Change is a reduction in the scope of the Services or this Agreement or should otherwise result in a reduction of the Price, then the Parties will use genuine efforts to agree a reasonable reduction in the Price (for example, a pro-rata reduction in the Price commensurate with the reduction in the scope of the Services or this Agreement);
 - (c) if there is an increased cost impact of the Change then the Parties will use genuine efforts to agree a reasonable price for the Change (taking into account the nature and extent of the Change) in accordance with the rest of this paragraph 4;
 - (d) the pricing for any Change will be:
 - (i) reasonable;

- (ii) competitive;
 - (iii) no higher than pricing the Supplier offers its most preferred customers for products or services the same or similar to the products or services proposed to be provided to HBDHB as part of the Change; and
 - (iv) no higher than the price at which HBDHB would be able to procure similar products or services from another Supplier; and
 - (e) if requested by HBDHB, the Supplier will obtain and provide a certificate from an appropriately qualified and experienced auditor confirming that any pricing of a Change complies with the requirements of this paragraph 4.
5. **Not unreasonably refuse Change:** The Supplier will not unreasonably refuse (directly or indirectly) any Change submitted by HBDHB. "Unreasonably refusing" a Change includes:
- (a) demanding unreasonable prices for the Change;
 - (b) imposing unreasonable conditions for undertaking the Change; or
 - (c) refusing to include the Change under this Agreement despite the subject matter of the Change being reasonably related to or connected with the Services.
6. **Agreement required:** The Supplier will not undertake any Change unless HBDHB and the Supplier agree the details of the Change in writing in accordance with this Appendix 1 (which agreement, in the case of the Supplier, will not be unreasonably withheld). Any agreed Change will be formalised by the Parties as an express amendment to this Agreement.
7. **No obligation:** HBDHB will not be bound to accept or pay for any unauthorised amendments to this Agreement or the scope of the Services carried out by the Supplier.
8. **Truncated Process:** The Parties may agree to adopt a truncated or different change management process than that set out in this Appendix 1 to deal with a Change Request if the Change requested is relatively minor (in terms of cost and impact) and is fairly routine.