

SERVICES AGREEMENT

relating to

the supply Locum Medical and Dental Services

between

NZ Health Partnerships Limited

and

[Insert provider name]

to supply District Health Boards

Contract Reference Number:

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PART 1: THE PARTIES

1 Parties' Details

NZ Health Partnerships Limited ("NZ Health Partnerships")

Company number: 5729811

Level 2, Building 2, 660-670 Great South Road

Penrose, Auckland 1061

New Zealand

AND

[Insert full legal name of the Provider] ("Provider")

Company number: [insert Provider's company number]

[Insert address of the Provider's registered office]

2 Contract Managers

Details	NZ Health Partnerships	Provider
Name:		
Position:		
DDI:		
Email:		

3 Parties' Agreement

In signing this Agreement each Party acknowledges that it has read and agrees to be bound by it.			
For NZ Health Partnerships :		For Provider :	
_____		_____	
(signature)		(signature)	
Name:		Name:	
Position:		Position:	
Date:		Date:	

PART 2: DEFINITIONS & INTERPRETATION

4 Standard Definitions

In this Agreement, unless the context requires otherwise:

Agreement (or Contract) means this agreement between the Parties which sets out the basis (including Price) on which Locum Medical and Dental Services may be purchased by a Buyer, and includes the terms set out in clauses 1 to 46 of the Schedules and Annexures, as amended from time to time.

Annexure means an annexure to the Agreement.

Approved Entity means any public sector entity that a DHB has authorised to buy Services under this Agreement or that the parties have otherwise agreed may buy Services under this Agreement.

Assignment refers to the period of time that the DHB engages the services of a Contractor Locum under this Agreement to undertake resident medical officer duties as directed by the DHB;

Audit means an audit, investigation, or review, of;

- a) the performance and/or quality of any Services under this Agreement;
- b) the Provider's compliance with this Agreement;
- c) the Provider's Records; and
- d) any other matter that NZ Health Partnerships considers relates to the Provider's compliance with this Agreement;

Auditor means any one or more persons authorised by NZ Health Partnerships to conduct an Audit.

Booking Enquiry means a notification of requirements for a Locum as described in clause 5.1 of the specification.

Booking Response means a written response to a Booking Enquiry issued by the provider as contemplated in clause 5.2 of the Specification.

Business Continuity Plan (BCP) means a plan setting out how the Provider will make sure that it is able to continue to supply the Services when a disruption to any stage of the Provider's ordinary business operations occurs.

Business Day means any day that is not a Saturday or Sunday or a public holiday in New Zealand or, in relation to a Buyer, the relevant regional anniversary day.

Business Hours means the hours between 8am and 5pm on any Business Day.

Buyer means a DHB, Approved Entity, or NZ Health Partnerships.

Buyer Site means a site at which the Provider or the Provider's Personnel is performing the Services in accordance with this Agreement and a Confirmed Booking.

Candidate means;

- a) a person put forward by the Provider to fulfil any role described by the DHB in a Recruitment Services Order; or
- b) a person considered for, or who might want to apply for, the role described by the DHB in a Recruitment Services Order;

Category means in relation to a Medical Practitioner a defined specialty and level of professional competence as described in clause 2.1 of the Specification.

Claim means any claim, demand, action, cause of action, proceedings, judgment, order, relief, remedy, right, entitlement, damage, loss, compensation, reimbursement, cost, expense or liability incurred, suffered, brought, made or recovered of whatever nature, howsoever arising and whether presently ascertained, immediate, future or contingent or whether arising at law or in equity or whether of a contractual, proprietary or tortious nature (whether in negligence, other breach of duty, of a strict liability or otherwise).

Clinical Practice means the professional activity undertaken by the Medical Practitioners for the purpose of investigating patient symptoms and preventing and/or managing illness and injury, together with associated professional activities related to patient care.

Commencement Date means the date specified in Part 1 of this agreement or such other date as NZ Health Partnerships, in its discretion, approves.

Continuing Professional Development means involvement in clinical audit, peer review and continuing medical education, aimed at ensuring a doctor is competent to practise medicine.

Competencies means the aptitude, ability and professional suitability including clinical skills, knowledge and judgement together with communication skills, personal behaviour and professional ethics necessary to provide safe, high quality health care services.

Confidential Information means:

- (a) information that:
 - (i) is by its nature confidential;
 - (ii) is marked as “confidential”, “in confidence”, “restricted” or “commercial in confidence” or similar;
 - (iii) is given to a Party by the other Party, NZ Health Partnerships, a Buyer, a DHB, a Logistics Provider, or a third party, 'in confidence'; and
 - (iv) either Party knows, or ought to know, is confidential or is of a sensitive nature or commercially sensitive to either Party, NZ Health Partnerships, or a Buyer; and
- b) the terms of this Agreement

Conflict of Interest means any interest (financial, professional or personal) that directly or indirectly is, or has the potential to be, or may be perceived to be, in conflict with the Provider's responsibilities or obligations under this Agreement.

Confirmed Booking (or Confirmation) means an acceptance of a Booking Response issued by a Hiring Manager as contemplated in clause 5.4 of the Specification.

Consultant means a person who has been granted a specialist registration by the Medical Board of New Zealand and holds current registration as such with the MCNZ and for the purpose of the Specification also referred to as Category 4.

Contractor Locum means a Doctor who is upon the request of the DHB, contracted to provide resident medical officer services to the DHB on a temporary basis.

Contract Manager in respect of each Party means the person occupying the positions referred to in Part 1 of this Agreement, or as otherwise advised by a Party to the other Party from time to time.

Credentials means the formal qualifications, professional training, clinical experience, continuing professional development and training and experience in leadership, research, education, communication and teamwork that contribute to a Medical Practitioner's Competence, performance and professional suitability to provide safe, high quality health care services. A Medical Practitioner's history of, and current status with respect to, professional registration, disciplinary actions, Professional Indemnity Insurance and criminal records are also required as relevant to their credentials.

Credentialing means the formal process used to verify the qualifications, experience, and professional standing of Medical Practitioners for the purpose of forming a view about their Competence, performance and professional suitability to provide safe, high quality health care services within the specific Health Care Facility as approved by the Credentialing Committee of each DHB.

Credentialing Committee means the Credentialing and Scope of Clinical Practice Committee in each DHB.

Criminal Record History Report (or Criminal Check) means a document issued by the New Zealand Police or another recognised body or agency.

Crown Direction means any Ministerial direction given to DHBs under section 103 of the Crown Entities Act 2004.

Deliverable means any or all of the Products, Services, or items of Equipment, including related deliverables and Medical Devices, available to a DHB, Logistics Provider, Approved Entity, or NZ Health Partnerships, or to be supplied by the Supplier, under this Agreement.

Dental Practitioner means any dental practitioner who is registered under the Health Practitioners Competence Assurance Act 2003 and holds an annual practising certificate issued by the Dental Council in New Zealand and has no conditions, undertakings or limitations on their registration.

DCNZ means Dental Council of New Zealand.

DHB (or District Health Board) has the same meaning as in the New Zealand Public Health and Disability Act 2000.

DHB Employee means a Medical or Dental Practitioner currently on the payroll of any DHB.

Direct Contractor means a contractor that has a direct contractual relationship with a DHB.

Document means any embodiment of any text or image however recorded.

Existing Contract means an existing contract, agreement, or purchasing arrangement, between a Buyer and the Provider about any services or any existing medical or dental locum placement that are also Services under this Agreement.

Failure to Supply means the Provider's failure to supply a Deliverable under the terms of this Agreement, for whatever reason, including that supplying a defective Deliverable is a Failure to Supply.

Fee means the fees and allowances specified in Schedule 3.

Fixed Term means an engagement for a specified term or for the duration of a specified task.

Fixed Term Candidate means an employee of the DHB where, in respect of Locum Medical and Dental Services, genuine reasons based on reasonable grounds exist for a Candidate to be employed for a specified period of time or for a specified event/project(as set out in the Specification), and not for an indefinite period.

Force Majeure Event means an event that is beyond the reasonable control of the Party immediately affected by the event. A Force Majeure Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care, including by managing such risk in any sub-contracting arrangements. Examples include:

- (b) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- (c) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (d) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and
- (e) contamination by radioactivity from nuclear substances or germ warfare or other hazardous properties,

To avoid doubt, any act or omission by a related entity or sub-contractor of the Supplier, does not constitute a Force Majeure Event.

GST means goods and services tax under the Goods and Services Tax Act 1985.

Health and Safety Legislation means the Health and Safety at Work Act 2015.

Hiring Manager means an officer of the DHB with the responsibility for hiring Locum Medical or Dental Practitioners, as appropriate.

Initial Term means the initial period of this Agreement set out in Item 2 of Schedule 1.

Inland Revenue means the Inland Revenue Department of New Zealand.

Insolvency Administration means:

- a) an administrator is appointed to the Provider or action is taken to make such an appointment;
- b) the Provider resolves to be wound up;
- c) an application is made to a court for an order or an order is made that the Provider be wound up (whether on grounds of insolvency or otherwise);
- d) the Provider ceases to carry on business;
- e) a receiver or a receiver and manager of property of the Provider is appointed whether by a court or otherwise;
- f) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Provider or one of them is appointed, whether or not under an order;
- g) the Provider enters into a compromise or arrangement with its creditors or a class of them;
or
- h) the Provider is or states that it is unable to pay its debts when they fall due;

Intellectual Property Rights includes copyright and all rights conferred under statute, common law or equity in relation to trade marks, designs, inventions (including patents), 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 rights, interests, or licences in or to any of the foregoing.

ISO means the International Organization for Standardization, an international standard-setting body based in Geneva, Switzerland, composed of representatives from various national standards organisations. New Zealand's representative is Standards New Zealand, a business unit within MBIE;

ISO 9001 is an international standard setting out requirements for an organisation's quality management system. It is part of a family of standards published by ISO.

Key Performance Indicators (or KPIs) means the key performance indicators specified in Schedule 2, or as agreed in writing by the Parties from time to time.

Law means any statute, ordinance, regulation, by-law or other form of secondary or delegated legislation in force at the Commencement Date or which comes into force at any time during the Term;

Locum means a Medical or Dental Practitioner who performs Locum Medical and Dental Services at a DHB or Approved Entity Site.

Locum Medical and Dental Services means the professional activity undertaken by a Medical or Dental Practitioner in a casual or temporary capacity to ensure continuity of health, dental and medical or dental services in the absence of a medical or dental practitioner employed by a DHB, and in the context of a particular Locum Placement means services within the scope of the relevant Medical or Dental Practitioner's

scope of Clinical or Dental Practice as approved via the relevant DHB's Credentialing process as further described in the Specification.

Locum Placement means the deployment of a Locum at a DHB site or Approved Entity Site.

MCNZ means the Medical Council of New Zealand.

Medical Practitioner means any medical practitioner who is registered under the Health Practitioners Competence Assurance Act 2003 and holds an annual practising certificate issued by the Medical Council of New Zealand Te Kaunihera Rata o Aotearoa ('Medical Council of New Zealand') and has no conditions, undertakings or limitations on their registration.

MBIE means Ministry of Business, Innovation and Employment.

Non-Panel Arrangement means an arrangement for the provision of medical or dental locum services that will continue to operate independently of this Panel Agreement.

Notice means written notice delivered and received in accordance with clause 48.

NZ Health Partnerships means NZ Health Partnerships Limited, a wholly owned subsidiary of the 20 DHBs providing certain shared services to the DHBs.

NZPHD Act means the New Zealand Public Health and Disability Act 2000.

On Call means the Locum must be available at all times via phone and to attend the hospital when recalled to treat a patient for a potential life threatening emergency or provide routine non-urgent treatment.

Panel means the Panel of Providers formed by the Principal for the supply of Locum Medical Services.

Patient means person that is or has been a patient of a Buyer.

Parties means NZ Health Partnerships and the Provider and a "Party" means either of them;

Permanent means an Assignment where, in respect of a Booking System, a Candidate is employed by the DHB (and not by the Provider).

Personal Information has the meaning given in the Privacy Act 1993.

Personnel include employers, agents, officers and individual independent contractors.

Placement Type means any of the following placement types:

- a) Permanent
- b) Temporary; or
- c) Contractor

all of which can be for Part-Time, full-time or fixed term roles;

Professional Indemnity Insurance means insurance covering the Provider's liability for financial loss, bodily injury, or property damage, caused by the Provider's negligence or breach of duty arising from an act, error or omission in the performance of any Services.

Public Liability Insurance means insurance covering the Provider's liability to members of the public for bodily injury or property damage due to the Provider failing to take reasonable care while carrying out its business activities.

Provider means the Party named as the Provider in Part 1 of this Agreement.

Provider's Contract Manager means the person named in Part 1 of this Agreement.

Provider's Personnel means all officers, employees, agents, contractors, subcontractors or other persons employed or engaged by the Provider to perform (directly or indirectly) the Services in accordance with this Agreement, and includes the Locums.

Purchase Order means an order to buy Deliverables as described in clause 7.2;

Records means all information and data relating to this Agreement and the supply of the Services, including reports, invoices, letters, emails, notes of meetings, information about registration information, photographs and other media recordings in hard copy or electronic form.

Registrar means a medical officer whose position is, for the purposes of this Agreement designated by the Employer, as that of registrar, and who, before the appointment as registrar, has been employed either –

- a) As a house surgeon for two years; or
- b) As a house surgeon for one year and engaged for one year in other medical services as a medical practitioner.

Provided that the Employer may approve such other periods of service or employment undertaken by a Medical Officer since qualification where the experience is substantially equivalent to that specified in (a) and (b) above. In such a case the total period of service shall not be less than two years

Renewal Period means the period(s) set out in Item 6 of Part 4

Reports means the reports referred to in clause 20.

Resident Medical Officer (RMO) means a house surgeon, senior house officer, registrar or junior dental officer and shall include any medical officer registered with the Medical Council of New Zealand under the Health Practitioners Competence Assurance Act (or any act passed in substitution) except medical practitioners registered under the vocational scope of practice.

RFP (or Request for Proposal) means the procurement documentation for establishment of the proposed Locum Recruitment Agency panel of which the Specification is a part.

Senior Consultant means a Consultant who has at least four years' experience in that specialty since obtaining the specialist qualification; or has incrementally progressed as a Consultant to level 5; or has been appointed as such by the employing authority.

Senior House Officer means a medical officer whose position is, for the purpose of this Agreement designated by the Employer, as that of senior house officer, and who, before appointment as a senior house officer has been employed either –

- a) As a house surgeon for two years; or
- b) As a house surgeon for one year and engaged for one year in other medical services as a medical practitioner and who is not employed as a registrar.

Provided that the Employer may approve such periods of service of employment undertaken by a medical officer since qualification where the experience is substantially equivalent to that specified in (a) and (b) above. In such a case the total period of service shall not be less than two years.

Schedule means any schedule of this Agreement.

Services means Locum Medical and Dental Services as described in the Specification.

Specification means the specification contained in Schedule 2.

Temporary means an Assignment where, in respect of a Booking System, a Candidate is employed by the Provider (and not by the DHB).

Term means the Initial Term, and where the context permits, each and every Renewal Period and any other extension or holding over of this Agreement agreed to in writing by the Parties; and

Variation means a variation to this Agreement made in accordance with clause 42. Any expression defined in the Specification and not otherwise defined in this Agreement has the meaning given in the Specification.

5 Interpreting this Agreement

5.1 Interpretation

5.1.1 In this Agreement unless the context requires otherwise:

- a) the clause headings are for convenient reference only and they do not form part of this Agreement;
- b) a reference to a clause number is a reference to all its subclauses;
- c) a reference to the background, a clause, Schedule or Annexure is a reference to the background, a clause, Schedule or Annexure of this Agreement;
- d) a word in the singular includes the plural and vice versa;
- e) a word importing a gender includes any other gender;
- f) a reference to a person includes a partnership and a body corporate;
- g) a reference to a Party includes that Party's administrators, successors and permitted assigns;
- h) a statute includes that statute as amended from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time and legislation passed in substitution for that statute;
- i) a reference to dollars is a reference to New Zealand dollars unless given otherwise, and expressed exclusive of GST;
- j) if the Provider consists of two (2) or more persons, the Provider's rights and obligations under this Agreement benefit or bind them jointly and severally; and
- k) where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings

5.2 Order of Priority

5.2.1 Where there is any inconsistency or conflict between different parts of this Agreement, the following order of priority applies:

- (a) any Variations to this Agreement;
- (b) this Agreement;
- (c) the Schedules;
- (d) the Annexures
- (e) Purchase Orders.

5.2.2 If there is any conflict or inconsistency between information contained within the documents having the same level of priority, the information contained in more recent documents will prevail over information contained in earlier documents.

PART 4: HOW THIS AGREEMENT WORKS

6 Master Contract Period

Commencement Date	[Enter Commencement Date]
End Date	[Enter End Date]
Renewal Period	[Enter Renewal Period]

6.1 Term of Agreement

- 6.1.1 This Agreement starts on the Commencement Date and will, subject to clause 6.1.3 continue for the Initial Term unless terminated earlier in accordance with this agreement or at Law.
- 6.1.2 The Provider must not provide any Services to a Buyer until the Commencement Date.
- 6.1.3 The term may be extended for one or more Renewal Periods, at NZ Health Partnerships' sole discretion, if NZ Health Partnerships gives the Provider notice to that effect at least three months before the end of the Initial Term.
- 6.1.4 On termination of this Agreement, every Schedule is also terminated.
- 6.1.5 Despite termination or expiry of this Agreement, from time to time as NZ Health Partnerships sees fit.

6.2 Right to review

- 6.2.1 NZ Health Partnerships may review, and the Provider must co-operate with any such review of, this Agreement or any part of this Agreement, from time to time as NZ Health Partnerships sees fit.
- 6.2.2 Any changes to the Agreement resulting from a review, will take effect only if they are made in accordance with clause 42.

6.3 Joining the Panel

- 6.3.1 NZ Health Partnerships is establishing a Panel of Providers for Locum Medical and Dental Services (the "Panel").
- 6.3.2 Subject to this Agreement, the Provider is appointed to the Panel for the Term as a Provider of Locum Medical or Dental Services.
- 6.3.3 The Panel is an open panel and NZ Health Partnerships may add or remove members or disband the Panel at any time without reference to the members of the Panel.
- 6.3.4 The Provider shall remain on the Panel until the expiry or the termination of this Agreement or until NZ Health Partnerships notifies the Provider that the Panel is disbanded, or that the Provider is removed from the Panel, whichever shall first occur.
- 6.3.5 The Parties have entered into this Agreement on the understanding that NZ Health Partnerships' intention is for each Buyer to seek Locum Medical or Dental Services from members of the Panel as their usual practice.
- 6.3.6 Notwithstanding clause 6.3.4, the Provider acknowledges that nothing in this Agreement:
- a) confers upon the Provider or the Panel the exclusive right to supply Locum Medical and Dental Services to a Buyer;

- b) imposes any obligation on a Buyer to deal exclusively with the Provider, or Panel members, for Locum Medical and Dental Services;
- c) requires any Buyer to procure any minimum volume of Services from the Provider, or to pay any amount to the Provider other than the Fees; or
- d) prevents NZ Health Partnerships from adding new providers to the Panel at any time.

6.3.7 Notwithstanding clause 6.3.4, the Provider acknowledges that a Buyer will not breach this Agreement if it obtains Locum Medical and Dental Services, locum staff or other Services from a person other than the Provider.

6.3.8 The Provider acknowledges that no representation, warranty, guarantee or other statement, express or implied, was made or given to it by NZ Health Partnerships or officers of NZ Health Partnerships before entering into this Agreement as to:

- a) the value, volume or nature of Services the Provider may be required to supply to any Buyer under this Agreement; or
- b) any other benefits which the Provider might enjoy as a result of entering into this Agreement.

6.4 Entire Agreement and Termination of Pre-existing Agreements

6.4.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter.

6.4.2 This Agreement supersedes and extinguishes any prior agreement, understanding or representation of the Parties on the subject matter of this Agreement.

6.4.3 Any agreement or understanding between the Provider and any Buyer with respect to the provision or placement of Locum Medical and Dental Services is terminated on the Commencement Date and has no further effect whatsoever, save for any accrued to payment that has accrued before the Commencement Date.

6.4.4 No other terms or conditions, including any conditions of sale, invoices, or any other communication included in a Booking Response or an invoice, will be incorporated into this Agreement, even if at some later date the other party (including, in the case of NZ Health Partnerships, any Buyer) signs or purports to accept those terms and conditions or the terms of that communication.

6.4.5 For the avoidance of doubt and without limiting clauses 6.4.1 to 6.4.3:

- a) any communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is excluded from this Agreement; and
- b) any part of a Booking Enquiry, Booking Response or Booking Confirmation which describes the nature, scope, price or manner of delivery of Services will, subject to clause a) above, form part of this Agreement, but only to the extent that it does not conflict with any other part of this Agreement.

6.4.6 Upon the Commencement Date of this Agreement, the terms of this Agreement will supersede any Existing Contract between the Buyer and the Provider, to the extent that the Existing Contract relates to Locum Medical and Dental Services that are also Services under this Agreement.

6.5 Agreement Administration

- 6.5.1 The Parties appoint the persons named in Item 2 of part 1 as their respective Contract Managers. Each Contract Manager has authority to:
- (a) exercise all of the powers and functions of his or her Party under this Agreement other than the power to amend or extend this Agreement; and
 - (b) bind his or her Party in relation to any matter arising out of or in connection with this Agreement.
- 6.5.2 This Agreement may be amended or extended by agreement in writing between the Provider and NZ Health Partnerships' authorised representative.
- 6.5.3 A notice served on a Contract Manager is taken to be notice to that Contract Manager's Party.
- 6.5.4 Each Buyer will have a Hiring Manager or Hiring Managers who are authorised to request and confirm Bookings for provision of Locum Medical and Dental Services, and to manage and act on behalf of a Buyer in respect of Locums and Locum Medical and Dental Services under this Agreement. The NZ Health Partnerships Contract Manager will confirm if requested by the Provider the names and details of the Hiring Manager or Hiring Managers for a Buyer.

PART 5: Buying

7 Buyers

- 7.1.1 The Provider acknowledges that the terms of this Agreement are intended to confer benefits on each Buyer pursuant to the Contract and Commercial Law Act 2017.
- 7.1.2 Despite clause 7.1, the Provider acknowledges that:
- a) NZ Health Partnerships Is Entitled To Exercise All Rights, Powers, Authorities, Discretions Or Remedies Conferred On NZ Health Partnerships (Or Any Buyer) By This Agreement Or Any Applicable Law As If NZ Health Partnerships Were The Sole Beneficiary Of The Promises Made And The Obligations Owed By The Provider Under This Agreement (Including Under Any Confirmed Booking)
 - b) where a Buyer may, or is required to, provide any information, give a notification, make a request or take any action, NZ Health Partnerships may provide that information, give the notification, make the request or take the action; and
 - c) NZ Health Partnerships may bring an action against the Provider to enforce any obligation owed to a Buyer by the provider.
- 7.1.3 If a Buyer fails to comply with any term of this Agreement (including without limitation, the obligation to pay the Fees) and the Provider seeks to take action in respect of that failure:
- a) the Provider must take that action against the buyer;
 - b) the Provider will not take action against NZ Health Partnerships or any other Buyer in respect of that failure; and
 - c) neither NZ Health Partnerships nor any other Buyer will be liable to the Provider in respect of that failure.
- 7.1.4 Each Buyer is responsible in relation to the Services to:

- a) observe all requirements applicable to it under this Agreement (including under any Confirmed Booking) in accordance with this Agreement;
- b) manage its operational relationship with the Provider, including in relation to each Service provided under a Confirmed Booking;
- c) provide adequate and timely instructions, disclosure of all relevant material and other information reasonably requested by the Provider to allow it to perform the Services under a Confirmed Booking;
- d) comply with the requirements of the Health and Safety at Work Act 2015 and all other applicable Laws and, in particular to provide a safe working environment for Locums;
- e) provide adequate instructions and supervision to each Locum to allow the suitably qualified and experienced Locum to perform the Services;
- f) notify each Locum of all current relevant policies and procedures of the Buyer that the Locum must comply with when performing the Services for the Buyer; and
- g) pay the Fees.

7.2 Booking Locum Medical Services and Service Provision

7.2.1 The Buyer may make enquiry, and may acquire Locum Medical and Dental Services from the Provider by way of the Booking Enquiry and Confirmation process set out in section 5 of the Specification. The Buyer's rights and obligations with respect to bookings and cancellation of bookings are as set out in section 5 of the Specification.

7.2.2 Each Confirmed Booking will be subject to the terms of this Agreement and must be performed by the Provider in accordance with this Agreement.

7.3 Acknowledgement

7.3.1 The Provider acknowledges that, before entering into this Agreement, it has:

- a) obtained, or had the opportunity to obtain, legal advice in relation to this Agreement;
- b) made such inquiries and examined such information as it considers necessary to satisfy itself of the following matters:
 - i. the nature, scope, extent and degree of difficulty of the tasks to be performed by it and the Locums under this Agreement; and
 - ii. its ability to provide suitably qualified Locums when required by a Buyer;
- c) carried out its own diligent investigations into all matters relating to the provision of Locum Medical and Dental Services, not relying on any representations made by NZ Health Partnerships or its agents, contractors or employees other than those set out in this Agreement; and
- d) fully informed itself in respect of its obligations under this Agreement; and
- e) it has entered into this Agreement in reliance on the Provider's own knowledge, skill and independent advice, and not in reliance on any representations made, or any information made available to the Provider, by NZ Health Partnerships or any Buyer.

PART 6: Provider Obligations

8 Provider's Warranties

8.1.1 The Provider warrants and represents to NZ Health Partnerships that:

- (a) the Clinical Practice component of the Locum Medical and Dental Services will be performed personally by the Locums;
- (b) the Locums are competent and suitably qualified in accordance with the requirements of the NZDA or Medical Council of New Zealand and experienced and appropriately insured to undertake the Locum Medical and Dental Services;
 - i. the Locum Medical and Dental Services will be performed to the highest professional standards;
 - ii. the administrative component of the Locum Medical and Dental Services will conform to the standards required in the Specification;
 - iii. a Locum will perform the Locum Medical and Dental Services in accordance with the instructions of the relevant Buyer;
 - iv. before entering into this Agreement it has disclosed to the Buyer all past, current and anticipated interests of the Provider and any known interests of proposed Locums which may conflict with or restrict the performance by the Provider of its obligations under this Agreement or the performance of Locum Medical and Dental Services by Locums; and
 - v. it will not, and it will ensure that Locums do not, during the Term engage in any activity or obtain any interest likely to conflict with or restrict the Locums in the performance of Locum Medical and Dental Services for the Buyer fairly and independently.

8.1.2 The Provider warrants that any of its "Personnel" involved in providing any Services are:

- i. competent, appropriately qualified and, if relevant, registered with or licensed by the appropriate statutory or professional body; and
- ii. adequately trained and supervised in the safe use of all machinery, tools, processes, substances, protective clothing and equipment that they may be required to use in relation to the supply of the Services.

8.2 Provider Responsibilities

8.2.1 In addition to its other obligations under this Agreement (including the performance of the Services), the Provider will:

- a) perform its obligations under this Agreement (including as to confidentiality):
 - i. in accordance with the Specification;
 - ii. professionally, carefully, skilfully and competently;
 - iii. in a timely and efficient manner;
 - iv. in accordance with the best practices current in the Provider's industry; and
 - v. in the interests of a Buyer without favour to any other person.

- b) respond promptly, accurately and adequately to any requests for information made by any Buyer in relation to the Services, including requests for advice;
- b) ensure that the Locums the Provider puts forward to a Buyer in response to a Booking Enquiry are, in the Provider's reasonable opinion, of honest character and integrity, and suitable and capable of performing the role described by the Buyer in the Booking Enquiry;
- c) ensure that its Locums engaged by a Buyer adhere to the Buyer's policies and procedures applicable to the Services;
- d) as soon as is practicable, notify NZ Health Partnerships and all other relevant Buyers of any material problems or issues that could affect the performance of its obligations under this Agreement, including any problems or issues that will, or are likely to, materially affect the provision or quality of the Services, or the ability of the Provider to perform its obligations under this Agreement;
- e) keep NZ Health Partnerships informed of all matters of which it ought reasonably to be made aware, and provide such information in relation to the provision of Services as may reasonably be required by NZ Health Partnerships or by any Buyer with respect to the provision of Services to that Buyer, including under any Confirmed Booking between the Provider and the Buyer;
- g) obtain, maintain and comply with any governmental, legal, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Agreement;
- h) comply with all Laws in so far as they relate to the provision of the Services at all times during the Term, including, without limitation, the information privacy principles under the Privacy Act 1993 and the Human Rights Act 1993;
- i) assess Buyers' ordering and use of the Services and identify, and provide Buyers with opportunities to realise, cost savings or cost efficiencies in their procurement of Services;
- j) without limiting any other provision of this Agreement, use its best endeavours to avoid damaging or adversely affecting the NZ Health Partnerships or any Buyer's reputation; and
- k) pay Locums on time and in accordance with its arrangement with them.

8.2.2 Additionally, the Provider must have requisite skills, expertise, qualifications, accreditations and experience as well as must maintain an in-depth knowledge of the medical or dental profession, health industry and customer service focus directed at the needs of the public sector.

8.3 Compliance with Laws and Policies

8.3.1 In the course of performing the Services and its obligations under this Agreement, the Provider must comply, and ensure that each Locum complies, with:

- a) the Laws in force New Zealand. Applicable Laws include, but are not limited to:
 - i. Health Information Privacy Code 1994;
 - ii. Official Information Act 1982;
 - iii. Privacy Act 1993;
 - iv. Health and Safety at Work Act 2015;
 - v. Children's Act 2014;
 - vi. Employment Relations Act 2000;
 - vii. Goods and Services Act 1985;

- viii. Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996;
 - ix. Health and Disability Services (Safety) Act 2001;
 - x. Medicines Act 1981;
 - xi. Medicines Regulations 1984;
 - xii. Health Practitioners Competence Assurance Act 2003;
 - xiii. Health Act 1956;
 - xiv. Misuse of Drugs Act 1975; and
 - xv. Human Rights Act 1993; and
- b) any relevant DHB or Ministry of Health policies, practices and procedures of which the Provider or the Locum (as applicable) has been notified.

- 8.3.2 The Provider will use its best endeavours to ensure that the Provider and each Locum in the course of performing Locum Medical and Dental Services and their obligations under this Agreement do not do anything (or omit to do anything) that would cause NZ Health Partnerships to contravene its obligations or responsibilities under:
- a) the Laws in force in New Zealand; and
 - b) any DHB or Ministry of Health, policies, practices and procedures of which the Provider or the Locum (as applicable) has been notified.

8.4 Financial Viability

- 8.4.1 The Provider must remain financially viable for the duration of the Agreement.
- 8.4.2 When required by NZ Health Partnerships, the Provider must provide evidence that clearly demonstrates the Provider's financial viability.
- 8.4.3 Without limiting the obligation of the Provider under clause 8.4.2, the Provider must provide to NZ Health Partnerships a copy of its annual report within 30 days of its issue.
- 8.4.4 Where the Provider does not produce an annual report, the Provider must provide to NZ Health Partnerships on request a copy of its:
- a) balance sheet;
 - b) profit and loss statement;
 - c) cash flow statement; and
 - d) notes to the accounts, including auditor's and director's statements.
- 8.4.5 The Provider must provide such other information as NZ Health Partnerships may reasonably request from time to time during the Term for the purpose of satisfying itself that the Provider has sufficient financial capacity to meet its obligations under this Agreement.

PART 6: General Terms

9 Locum Information

- 9.1.1 The Provider must provide to the Buyer the names (including former names), addresses, and dates of birth of the Provider's Locums or proposed Locums and such other information as the Buyer requires about the Locums and the Buyer may use such information as it sees fit for the purposes of this Agreement.
- 9.1.2 The Provider must ensure that the skill levels and competencies of each Locum comply with the Specification.
- 9.1.3 If a Locum will be authorised or required to use a Buyer's computer systems, the Provider must direct the Locum to use only those computer systems and programs:
- (a) which a Buyer specifically authorises for provision of the Services and only in a manner as directed by the Buyer from time to time; and
 - (b) to the extent of the training and competencies of the Locum.
- 9.1.4 If the Provider becomes aware of the unauthorised use by a Locum of a Buyer's computer systems or programs, the Provider must immediately notify the relevant Hiring Manager of that unauthorised use.
- 9.1.5 If in the reasonable opinion of the Buyer any Locum is:
- (a) guilty of misconduct;
 - (b) incompetent or negligent; or
 - (c) otherwise unsuitable,
- 9.1.6 a Buyer may give the Provider a notice requiring the Provider to cease to engage that Locum in connection with the performance of the Locum Medical and Dental Services (without liability on the part of the Buyer to the Provider or the Locum), in which event the Provider must immediately comply with that notice and, if required by the Buyer, provide a replacement acceptable to the Buyer.
- 9.1.7 The Buyer reserves the right to refuse any Locum entry to any DHB Site.
- 9.1.8 The Provider must ensure that all Locums are aware of the provisions of this Agreement which are relevant to the Locums and comply in full with those provisions.

10 Security

10.1 Photo Identification

- 10.1.1 A Locum must wear a photo identification badge at all times while working at any DHB Site and at other times as may be required under policies of the Buyer.

10.2 Police Checks and Relevant or Criminal History Assessments

- 10.2.1 Without limiting the operation of any other clause of this Agreement, the Provider acknowledges that the Buyer's rights under this clause are fundamental to this Agreement.
- 10.2.2 The Provider must comply with the Specifications, and the Buyer's requirements, or any Ministry of Health policy, for each Locum at the cost of the Provider or the Locum, to:

- a) undergo a relevant/criminal history assessment and obtain the clearances required by the Buyer (for example, to work with children, vulnerable persons, in aged care and/or in disability services) from the DHB (or other authorised screening unit approved by the Buyer for the purposes of relevant/criminal history assessments and screenings);
 - b) give consent to the Buyer to read and retain copies of the relevant/criminal history assessment and clearance document for the purposes of this Agreement; and
 - c) provide any other information required by the Buyer to enable it to establish, in its sole discretion, that the Provider's Personnel is a suitable person to work at the DHB Site or to work in connection with the Services.
- 10.2.3 The Buyer may (but need not) conduct any investigations necessary to ascertain the matters referred to in clause 10.2.2
- 10.2.4 If the Buyer (in its sole discretion) forms the view that any Locum is not suitable to work at DHB Site or to provide the Locum Medical and Dental Services, the Buyer may (at its absolute discretion and without liability to the Provider or the relevant Locum) give notice to the Provider to cease to employ or engage the relevant Locum for the purpose of providing Locum Medical Services to the Buyer.
- 10.2.5 Upon the Buyer giving the Provider notice referred to in clause 10.2.4 requiring any one or more of the Locums to be withdrawn from providing the Locum Medical Services, the Provider must immediately comply with such notice.
- 10.2.6 The Provider must notify the Buyer and affected Buyers immediately if it becomes aware of any information that may affect the Buyer's approval of any Locum.
- 10.2.7 The Provider must ensure that all relevant Locums are aware of and where relevant comply with the provisions of this clause and the Specifications regarding relevant/criminal history checks and child, vulnerable persons and aged care safety matters at all times.
- 10.2.8 Nothing in this clause 10.2 relieves the Provider of any obligation with respect to the delivery of the Locum Medical and Dental Services.
- 10.2.9 The Provider must comply with this clause 10.2 in respect of any new Locum appointed by the Provider during the Term.

10.3 Alleged Sexual Assault Procedures

- 10.3.1 The Provider must:
- a) prior to providing the Locum Medical Services have:
 - i. developed best practice systems, policies and procedures ("**Procedures**") to ensure that any incidents of actual, alleged and suspected sexual abuse of patients or visitors within any DHB Site ("**Alleged Sexual Assault**") are responded to and reported appropriately by the Provider's Personnel; and
 - ii. set out the Procedures in a document clearly expressed;
 - b) if requested by the Buyer, make a copy of the document setting out the Procedures available for the Buyer to inspect;
 - c) develop and provide ongoing specific training and information to all the Locums outlining the process, the documentation required and the steps they must take to respond to and report any Alleged Sexual Assault appropriately and in accordance with the Procedures; and

- d) inform the Buyer in writing of any Alleged Sexual Assault of which any Locum become aware as soon as reasonably practicable (within 24 hours) of becoming aware of the Alleged Sexual Assault.

10.4 Children

10.4.1 Where the Provider is a provider of children's services as defined in section 15 the Children's Act 2014 (including where NZ Health Partnerships gives notice to the Provider that in the opinion of NZ Health Partnerships, the Provider is providing children's services), the Provider must:

- a) as soon as is practicable, adopt a child protection policy that complies with the requirements set out in section 19 of the Children's Act 2014;
- b) keep that child protection policy under review during the Term in accordance with, and at the frequency required by, section 17(d) of the Children's Act 2014;
- c) make a copy of its child protection policy available to NZ Health Partnerships and the Buyers, and provide any updated versions of such policy to NZ Health Partnerships and the Buyers during the Term as soon as the policy is updated in final form; and
- d) implement its child protection policy.

10.4.2 The Provider must:

- a) ensure that a safety check that complies with the requirements of section 31 of the Children's Act 2014 is carried out before proposing a Locum to provide Services in response to a Booking Enquiry; ensure that periodic safety checks are carried out in accordance with section 27 of the Children's Act 2014; and
- b) not employ or engage a person as a Locum who has been convicted of a specified offence as defined in section 23 of the Children's Act.

11 Sub-contracting of Locums

11.1.1 The Provider may enter into a contract with a Locum as subcontractor, instead of employing the Locum.

11.1.2 The Provider may not subcontract any other aspect of the Services.

11.1.3 The engagement of a Locum as a subcontractor by the Provider does not relieve the Provider of any of its liabilities or obligations under this Agreement and the Provider is liable to NZ Health Partnerships for the acts, defaults and neglects of any subcontractor Locum to the same extent that the Provider would be liable for the acts, defaults and neglects of a Locum employee.

11.2 Assignment and Sub-Contracting

11.2.1 Subject to clause 11 (Subcontracting of Locums), the Provider must not transfer, assign, novate or sub-contract any of its rights or obligations under this Agreement (either directly or due to a change of ownership or control) without NZ Health Partnerships' prior written consent (such consent not to be unreasonably withheld).

11.2.2 The Provider will provide NZ Health Partnerships with a minimum of 30 Business Days' prior Notice of the proposed effective date of the transfer, assignment, or sub-contracting. Any such consent may be given subject to such reasonable conditions as NZ Health Partnerships sees fit.

11.2.3 The Provider acknowledges that, even if NZ Health Partnerships consents to it sub-contracting any of its rights or obligations under this Agreement, such consent will not relieve the Provider from

any liability or obligation under the terms of this Agreement, and the Provider will continue to be responsible for the acts and omissions of its sub-contractor.

- 11.2.4 NZ Health Partnerships may assign, novate, or otherwise transfer, its rights or obligations in this Agreement, to any DHB or DHBs, or to any successor or other organisation providing shared services support to the DHBs, by giving the Provider 20 Business Days' Notice

12 Contract Management

- 12.1.1 The performance of the contract will be monitored on an ongoing basis by the Contract Manager. A contract management plan (CMP), including performance measures consistent with this RFP shall be required from each preferred Respondent and assessed by NZ Health Partnerships before a final Panel selection is made. The CMP is a live document and shall be updated by the Provider to incorporate changes to procedures and processes as agreed by the parties. The CMP shall also detail how the Provider(s) will assist DHB with the transition out of the Panel Agreement.
- 12.1.2 The Provider(s) will as a minimum be required to provide the following contract management activities for the term of the Agreement:
- a) Provide a Contract Manager with appropriate delegation to make decisions on behalf of the Provider and manage the delivery of the Services.
 - b) Attend contract management meetings once a month or at agreed intervals;
 - c) Provide contract reports in a format approved by NZ Health Partnerships.
- 12.1.3 Additional contract management activities will be developed upon award of the contract. Contract management meetings will be held between NZ Health Partnerships (Contract Manager) and Providers on an agreed schedule and as required by NZ Health Partnerships. The meetings will:
- a) review performance of the Provider;
 - b) review KPIs
 - c) review any compliance issues;
 - d) review any quality / safety issues;
 - e) include proposals by the Contract Manager or Provider that may provide benefits/savings;
 - f) monitor/address any risk management issues;
 - g) table/address any raised issues for resolution;
 - h) examine the achievement of KPIs;
 - i) discuss any proposed variations to the Agreement; and
 - j) any other issues associated with the delivery of Locum Medical Services.
- 12.1.4 Prior to the Contract Management meetings and/or as requested, the Provider will be required to provide (electronically) the report identified in clause 4.2 of the Specification, a report on any complaints received and the status of complaint response, and any other reports required under this Agreement.

12.2 Key Performance Indicators

- 12.2.1 Subject to this clause 12.2, the Provider must comply with the Key Performance Indicators.

12.2.2 The Parties acknowledge and agree that it may be necessary to change Key Performance Indicators during the Term and if changes to Key Performance Indicators are required, the Parties will negotiate in good faith with a view to reaching agreement on the amended Key Performance Indicators.

12.2.3 Any change to the Key Performance Indicators must be in writing and signed on behalf of each Party or by its Contract Manager.

12.3 Performance Reviews

12.3.1 NZ Health Partnerships will review the Provider's performance of its obligations under this Agreement from time to time during the Term.

12.3.2 The performance review referred to in clause 12.3.1 will take into account the following factors:

- a) NZ Health Partnerships' assessment of the Provider's performance of its obligations under Schedule 2;
- b) NZ Health Partnerships' assessment of the Provider's performance in relation to procedures for handling complaints made by DHBs;
- c) NZ Health Partnerships' assessment of the Provider's performance in relation to quality of Services provided by the Provider; and
- d) any other matter which NZ Health Partnerships considers (in its discretion) to be relevant to the performance by the Provider of its obligations under this Agreement.

12.3.3 If the Provider has not, in the reasonable opinion of NZ Health Partnerships, achieved substantial compliance within any matter referred to in clause 12.3.2, NZ Health Partnerships may notify the Provider of that breach in writing.

12.3.4 Upon receipt of a notice under clause 12.3.3:

- a) the Provider must take action to rectify the failure referred to in the notice within a reasonable time (where that failure is capable of rectification); and
- b) the Provider must advise NZ Health Partnerships within twenty (20) Business Days of receipt of the notice as to the action which the Provider will take to ensure that the Provider does not again fail to comply with that requirement.

12.3.5 If:

- a) the Provider does not within a reasonable time rectify the breach of the requirement referred to in the notice given under clause 12.3.3 (where the failure is capable of rectification); or
- b) the Provider does not within a reasonable time satisfy NZ Health Partnerships that the Provider will not again fail to comply with the requirement (as the case may be); or
- c) the Provider has persistently or repeatedly failed to comply with any requirement, then such inaction or failure will constitute a breach of this Agreement by the Provider and will give rise to a right on the part of NZ Health Partnerships to terminate this Agreement forthwith.

12.4 Audits

12.4.1 NZ Health Partnerships may, from time to time, either itself or through an Auditor, carry out Audits under this Agreement of any aspect of the Services provided by the Provider.

12.4.2 The Provider must co-operate fully, promptly answer questions from NZ Health Partnerships, or the Auditor, about the Provider's provision of the Services and compliance with the Agreement. This

includes allowing New Zealand Health Partnerships, or the Auditor, to interview any of the Provider's Personnel that were involved at any time during the Term, in providing the Services.

- 12.4.3 The Provider must cooperate fully, provide all reasonable assistance and information (including, but not limited to, access to and copies of the Provider's records and financial records and accounts in respect of the Services) to assist NZ Health Partnerships, or the Auditor, in relation to any audit conducted under this clause 12.4.
- 12.4.4 Where an audit of the Services provides for recommendations or remedial action to improve the provision and/or delivery of the Services, NZ Health Partnerships and the Provider must meet as soon as practicable to discuss the audit and the recommendations and remedial action and agree on a process to implement the recommendations or remedial action.
- 12.4.5 The Provider must on reasonable notice by NZ Health Partnerships and during Business Hours, or such other agreed times, permit NZ Health Partnerships (or NZ Health Partnerships' officers and employees or such other persons authorised by NZ Health Partnerships) to:
- a) enter the premises and other places of business of the Provider;
 - b) have access to, and if required, make copies of any records, assets, equipment, documents (including all external auditors' reviews of the Services and any electronic data) in the Provider's possession or control; and/or
 - c) interview the Provider's Personnel,
- in relation to any complaint received in respect of the Services or in relation to any audit conducted under this Agreement or in relation to the Provider's operations.
- 12.4.6 If an audit conducted by NZ Health Partnerships, or the Auditor, finds that a material breach of this Agreement has occurred, the Provider must pay NZ Health Partnerships for the cost of the Audit.
- 12.4.7 If an audit conducted by NZ Health Partnerships, or the Auditor, shows that the Provider has overcharged NZ Health Partnerships in respect of the Services the Provider must immediately refund the amount overcharged to NZ Health Partnerships and if such overcharge or underpayment is a Material Error, the Provider must also pay NZ Health Partnerships' costs of and incidental to the audit.
- 12.4.8 In this clause, "Material Error" means an error with a value exceeding one thousand dollars (\$1,000) or five (5) per cent of the amount properly due over any three (3) month period (whichever is the greater).
- 12.4.9 In the exercise of its rights to audit under this clause 12.4. NZ Health Partnerships must minimise, so far as is practicable, any inconvenience or interruptions to the Provider's business or the provision by it of the Services.
- 12.4.10 The Provider must disclose the results of any internal audit conducted by the Provider of its own operations to the extent that it may be relevant to the Services provided by the Provider.
- 12.4.11 NZ Health Partnerships may exercise any of its rights under this clause 12.4 notwithstanding the termination or expiry of this Agreement.
- 12.4.12 If NZ Health Partnerships gives the Provider Notice of non-compliance:
- a) the Parties, acting reasonably, shall attempt to agree the actions that the Provider will take to remedy any such non-compliance; and
 - b) whether or not agreement is reached, the Provider will:
 - c) act promptly to remedy the non-compliance to NZ Health Partnerships' satisfaction; and
 - d) provide a report to NZ Health Partnerships on the actions the Provider has taken,

e) no later than ten Business Days following receipt of the Notice.

12.4.13 If an Audit identifies an overpayment or evidence of non or partial Service delivery, or non or partial compliance with Provider obligations, NZ Health Partnerships or the Buyer may obtain a full or partial repayment of any payments made for such obligations, either directly or by NZ Health Partnerships or the Buyer using its right to set off under clause 18.3.

13 Remedies

13.1.1 The rights and remedies provided under this Agreement are cumulative and not exclusive of any remedies provided by Law or under this Agreement, unless expressly stated in this Agreement.

14 Release

14.1.1 The Provider shall perform the Services at its risk in all things and the Provider hereby releases NZ Health Partnerships and its officers, employees, contractors and consultants to the full extent permitted by Law, from all Claims of every kind arising out of or in connection with any loss of life, personal injury or disability or loss or damage to property occurring as a result of the provision of the Services or in the course of the provision of the Services or otherwise in connection with this Agreement except to the extent that such loss of life, personal injury or disability or loss or damage to property is caused by any neglect, default or omission by NZ Health Partnerships.

14.1.2 This clause 14 will survive termination of this Agreement.

15 Indemnity

15.1.1 The Provider indemnifies and will keep indemnified NZ Health Partnerships from and against any and all costs, losses, damages, expenses (including legal expenses), liabilities or other outgoings of any kind whatsoever or howsoever arising suffered or incurred by NZ Health Partnerships and/or the Buyers arising out of or in respect of this Agreement in respect of:

- (a) any negligence, wrongful act or omission or breach of duty of or by the Provider or its Personnel;
- (b) any breach by the Provider of any of the provisions of this Agreement; or
- (c) any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.

15.1.2 The Provider's indemnity obligations under this Agreement will be reduced proportionately by the extent to which NZ Health Partnerships' act or omission contributed to such loss.

15.1.3 The Provider indemnifies and will keep indemnified NZ Health Partnerships from and against any claim by a Locum in the nature of entitlements arising from an employment relationship.

15.1.4 This clause 15 will survive termination of this Agreement.

16 Liability

16.1.1 NZ Health Partnerships is not liable for the acts, errors, and omissions, of any Buyer, in connection with this Agreement. No Buyer is liable to the Provider for the acts, errors, and omissions, of NZ Health Partnerships or any other Buyer, in connection with this Agreement.

- 16.1.2 The Provider agrees that liability for paying any invoice under this Agreement lies with the relevant Buyer, and is not joint with that of any other Buyer. The relevant Buyer is solely responsible for its obligations in relation to the Services supplied to that Buyer under this Agreement.
- 16.1.3 No Party will be liable to another Party in contract or tort for any loss of profit, business, reputation, contracts, revenues or anticipated savings, or for any special, indirect, or consequential, damage of any nature, which arises directly or indirectly from any default on the part of any Party.
- 16.1.4 Unlimited liability
- 16.1.5 Nothing in this Agreement will limit the Provider's liability:
- (a) for death or personal injury to any person
 - (b) for wilful default, fraud, or negligence
 - (c) in relation to clause 15 (indemnity); or
 - (d) a breach of clause 23 (confidentiality)

17 Fees

- 17.1.1 In consideration of the Provider agreeing to supply the Services, NZ Health Partnerships agrees to the payment of the Fees as set out in this clause 17 and Schedule 3.
- 17.1.2 The Fees:
- (a) include all government taxes, rates, duties, fees and charges other than GST; and
 - (b) are fixed for the Term.
- 17.1.3 The Provider confirms that the Fees are inclusive of all costs and expenses to the Provider in the Placement of Locums and performing all other Services under this Agreement.
- 17.1.4 Except as provided for in this Agreement, the Provider is liable to pay for duties, taxes and charges which are payable in respect of the Provider's Personnel for the performance of the Services.
- 17.1.5 Notwithstanding any other provision of this Agreement the Provider shall not be entitled to any remuneration or other payment from NZ Health Partnerships in respect of the provision of the Services other than the Fees.
- 17.1.6 Subject to Clause 17, the Fees for the Services are capped under this Agreement at the Fees in Schedule 3. The Provider shall not apply any premium or seek to claim any extra costs or expenses in connection with or related to those Fees for any special hours or days of work for any other reason.
- 17.1.7 The Provider must not offer any special terms and conditions for any Services to any Buyer outside of the terms and conditions of this Agreement without NZ Health Partnerships' prior written approval.
- 17.1.8 A Buyer may deduct any withholding tax required to be deducted from any payments and send that withholding tax to Inland Revenue. The net amounts paid after deduction of any withholding tax shall be a complete and final discharge of a Buyer's obligation to make the relevant payment and the Buyer shall not be under any liability to gross up or otherwise compensate the Provider for the amount of that withholding.
- 17.1.9 Despite the provisions contained in this clause 23, the Provider and NZ Health Partnerships may by Variation adjust the Fees for any Services. Any new Fees must be agreed in writing and will apply from the date agreed between the Parties.

18 Invoicing

18.1.1 The Provider must invoice the relevant Buyer in relation to any Confirmed Bookings in accordance with the Specification and Schedule 3 and any other requirements of the Buyer as notified to the Provider.

18.2 Invoicing Fees

18.2.1 The Fees:

- a) are exclusive of GST (unless otherwise expressed); and
- b) are payable by electronic funds transfer or such method of payment as is designated by the Buyer; and
- c) on the 20th day of the month following the month to which the invoice for the Services relates, or, if the 20th day of the month is not a Business day, then on the next Business Day following the 20th day of the month.

18.3 Set Off

18.3.1 The Fees charged under this Agreement are payable by the relevant Buyer.

18.3.2 If the Buyer or NZ Health Partnerships disputes a claim for payment, the Buyer must pay any undisputed portion. The dispute in relation to the disputed portion must be resolved in accordance with the dispute resolution procedure set out in clause 35.

18.3.3 The Buyer's failure to dispute any invoice before payment does not prejudice that Buyer's right to subsequently dispute the correctness of such an invoice, nor its ability to recover any amount of overpayment from the Provider.

18.3.4 The Buyer may withhold, deduct or set off the amount of any overpayment or any amount recoverable by that Buyer from the Provider under this Agreement (including for any non or partial Service delivery, or non or partial compliance with the Provider's obligations, but excluding disputed amounts) from any future amount owing to the Provider, or seek recovery of that amount as a debt due from the Provider.

18.4 Other Payment Terms

18.4.1 The Supplier must not withhold supply of Services under this Agreement to a Buyer on account of another Buyer not having paid as required under this Agreement.

18.4.2 NZ Health Partnerships is not liable for, and does not guarantee the payment of, any invoice under this Agreement for Services provided by the Provider to a Buyer.

19 Intellectual Property Rights

19.1.1 The Provider agrees not to use intellectual property claims to impede any Buyer's freedom to utilise the Deliverables or to impede NZ Health Partnerships from using any information given to it by the Provider under this Agreement.

19.1.2 Except as otherwise provided in this clause 25, the Buyer owns all Intellectual Property Rights in all things produced by or on behalf of the Provider or by and on behalf of Provider's Personnel in the course of performance of the Services.

19.1.3 The Provider must:

- a) disclose to NZ Health Partnerships all Intellectual Property Rights arising out of or in connection with the performance of the Services; and

- b) do anything necessary to vest in the Buyer the Intellectual Property Rights in all things produced by the Provider or Provider's Personnel.

19.1.4 The Buyer does not own:

- a) Intellectual Property Rights in the Provider's methodologies or other proprietary information in existence at or before the date of this Agreement or otherwise than in the course of performing the Services; or
- b) copyright in existing publications or other work produced by or on behalf of the Provider before or otherwise than in the course of performing the Services; or
- c) without limiting clauses a) and a) any right, title and interest (including all Intellectual Property Rights) in any software developed by or on behalf of the Provider, whether before or during the term of this Agreement (including any enhancements, developments or modifications to such software).

19.1.5 The Provider must ensure that in providing the Services, it does not infringe the Intellectual Property Rights of any person.

19.1.6 The Provider must keep NZ Health Partnerships and the Buyer indemnified against all costs expenses and liabilities whatsoever arising out of or in connection with any claim that the provision of the Services by the Provider infringes the Intellectual Property Rights of any person.

19.1.7 If the Provider wishes to submit any of the work produced by it under this Agreement for publication in journals, exhibitions or entry for awards the Provider must first obtain NZ Health Partnerships' written consent.

20 Reports

20.1.1 The Provider must provide reports to NZ Health Partnerships at the times, and which include the information, set out in Schedule 2.

20.1.2 All Reports provided to NZ Health Partnerships pursuant to this clause must be in the form (if any) prescribed in Schedule 2.

20.1.3 In addition to Schedule 2 reports, the Provider agrees to provide further reports and/or information about this Agreement as is reasonably required by NZ Health Partnerships for NZ Health Partnerships' contract monitoring, data analysis, reporting, and related purposes, including but not limited to reporting on the Bookings that the Provider has received from Buyers.

21 Records

21.1.1 The Provider must maintain and retain for the Term and for a period of seven (7) years after the expiry of the Term, full and proper Records of all Services provided under this Agreement.

21.1.2 Such Records will include all data used in the creation of invoices issued pursuant to this Agreement.

21.1.3 The Records must be kept and maintained in accordance with prudent business practice and all applicable laws.

21.1.4 The Provider will make sure that Records are securely managed and securely destroyed on the expiry of the period referred to in clause 21.1.1.

21.1.5 On reasonable notice being given, the Provider will make the records referred to in this clause 21 available to NZ Health Partnerships and allow the inspection and copying of such records.

22 Documents

- 22.1.1 Any Documents prepared by a Locum in the course of performing Locum Medical and Dental Services, shall be owned by the Buyer for whom those Services are performed.
- 22.1.2 Upon termination of this Agreement and at any other time upon demand by the Buyer, the Provider must deliver to the Buyer all Documents provided by or originating from the Buyer and all Documents produced by the a Locum in the course of performing any Locum Medical and Dental Services for that Buyer.
- 22.1.3 Clause 22 excludes any Documents for which ownership by the Buyer under clause 22.1.1 or delivery to the NZ Health Partnerships or the Buyer under clause 22.1.1 is inconsistent with the Provider's rights in relation to the relevant Documents under clause 25 (Intellectual Property Rights) or clause 23 (Confidentiality).

23 Confidentiality

- 23.1.1 Each Party and each Buyer must have adequate security measures in place to protect any Party's or any Buyer's Confidential Information from unauthorised access or use by third parties.
- 23.1.2 If the Buyer or NZ Health Partnerships discloses Confidential Information to the Provider, the following conditions apply:
- a) the Provider must not disclose Confidential Information to any person without first obtaining the written consent of the Buyer or NZ Health Partnerships;
 - b) the Provider must only use the Confidential Information for the purpose of performing Services under this Agreement and in accordance with any conditions of use notified to the Provider by the Buyer or NZ Health Partnerships in writing;
 - c) the Provider may disclose Confidential Information to a Locum or Provider Personnel:
 - i. only to the extent that this is necessary for the purpose of performing the Locum Medical Services; and
 - ii. if the Provider has informed the Locum or Provider Personnel of the confidential nature of the Confidential Information and has required the Locum to treat it confidentially;
- 23.1.3 The Buyer or NZ Health Partnerships may at any time deny access to the Provider or require the Provider to deny access to the Confidential Information to a Locum or Provider Personnel and to retrieve from that person the Confidential Information; and
- 23.1.4 The Provider must take all reasonable steps to ensure that the confidentiality of the Confidential Information is preserved.
- 23.1.5 There will be no breach of the obligations of the Provider under this Agreement if the Confidential Information is legally required to be disclosed or permitted to be disclosed by this Agreement.
- 23.1.6 The Provider must notify NZ Health Partnerships immediately it becomes aware of any unauthorised disclosure of any of the Confidential Information.
- 23.1.7 If the Provider or the Provider's Personnel are or anticipate being legally compelled to disclose the Confidential Information, the following conditions apply:
- a) the Provider must immediately notify NZ Health Partnerships;
 - b) the Provider must, at NZ Health Partnerships' direction and expense, assist and take such steps as will permit NZ Health Partnerships to oppose or restrict that disclosure including, but without being limited to, allowing NZ Health Partnerships to direct the conduct by the Provider or Provider's Personnel of defensive legal action opposing the application for order of

disclosure, and allowing NZ Health Partnerships to conduct such defensive legal action on behalf of the Provider or the Provider's Personnel, provided that NZ Health Partnerships will be responsible for any costs arising from such legal action; and

- c) the Provider must take all lawful measures available to oppose or restrict that disclosure, and (to the extent practicable) make disclosure on terms which will preserve the confidentiality of the Confidential Information to the maximum extent possible.

23.1.8 Subject to clause 32, NZ Health Partnerships must not disclose Confidential Information which has been entrusted to it by the Provider without the consent of the Provider, unless it is a disclosure:

- a) to a DHB. Each DHB is entitled to a copy of this Agreement including all Schedules, which NZ Health Partnerships will provide. NZ Health Partnerships will also provide DHBs with any other information about the Agreement, which NZ Health Partnerships in its sole discretion considers necessary, whether it is Confidential Information or not;
- b) such use or disclosure is:
 - i. necessary for the provision of the Services, or
 - ii. considered by NZ Health Partnerships at its sole discretion, to be necessary for achieving the purposes of NZ Health Partnerships' programmes and services, which are for the benefit of all DHBs, or
 - iii. requested by Ministers, the Ministry of Health; or
 - iv. reasonable for it to make for the purpose of performing its own obligations under this Agreement or monitoring the performance of the Provider; or
 - v. required by Law (including under the Official Information Act 1982); or
 - vi. for the purposes of prosecuting or defending any legal proceedings; or
 - vii. to the Commerce Commission if NZ Health Partnerships reasonably suspects, or is notified by the Commerce Commission that it reasonably suspects, that there is any unlawful collusion or anti-competitive conduct in connection with the supply of the Services under this Agreement; or
 - viii. where the information is already publically available without any cause attributable to the disclosing Party or the Buyer; or
 - ix. the other Party has been reasonably informed before disclosure, and such disclosure is in a form, agreed by the Parties.
- c) Each Party will make sure that its employees, contractors, agents and representatives who have knowledge of this Agreement or any Confidential Information are aware of the confidentiality obligations in this Agreement and do not use or disclose any of the other Party's Confidential Information except as allowed by this Agreement.

24 Information Privacy

24.1.1 As a result of its activities under this Agreement, the Provider and its Personnel may have access to health or other personal information about Patients. The Provider (including the Provider's Personnel) will exercise due care and skill in the handling and storage of any health or other personal information (whether in clinical records, documents, hard or soft copy). The Provider must, and must ensure that all Provider Personnel, manage all health or other personal information in accordance with the provisions of the Health Information Privacy Code 1994 and the Privacy Act 1993.

24.1.2 The Provider must, and must ensure the Provider's Personnel, respect the privacy of Patients at all times and at no time discuss or in any way disclose any information about the condition, medical or dental history of any past or present Patient or otherwise disclose any matter relating to a Patient that the Provider or the Provider's Personnel becomes aware of at any time during the Term except where required to do so to perform the Services under this Agreement.

24.2 Publicity

24.2.1 The Provider must not make or permit to be made a public announcement or media release about any aspect of this Agreement unless NZ Health Partnerships first gives the Provider its written consent.

24.2.2 Neither Party will use the other Party's name or branding in advertising its business or activities without the prior written consent of that other Party, and will meet all reasonable terms and conditions upon which such permission may be given.

24.3 Official Information Act

24.3.1 The Provider acknowledges that:

- (a) NZ Health Partnerships and each Buyer is subject to the Official Information Act 1982, and that pursuant to a request made under that Act, NZ Health Partnerships or a Buyer may disclose information relating to or arising out of this Agreement to the requestor; and
- (b) in accordance with section 2(5) of the Official Information Act 1982, all information it holds in its capacity as a Provider for NZ Health Partnerships or a Buyer is held by NZ Health Partnerships for the purposes of that Act.

24.3.2 The Provider shall immediately refer to NZ Health Partnerships any request made by a person for information about the Services or this Agreement, regardless of whether or not the request to the Provider is stated to be made under the Official Information Act 1982.

24.3.3 The Provider shall provide assistance and information to NZ Health Partnerships or a Buyer upon request in order to:

- (a) fulfil NZ Health Partnerships' or a Buyer's responsibilities under any legislation relevant to the Services or this Agreement;
- (b) enable NZ Health Partnerships and each Buyer to comply with any other statutory obligations or internal business obligations insofar as they relate to the Services or this Agreement.

24.3.4 The Provider shall not charge or otherwise make a claim on NZ Health Partnerships or a Buyer for assistance and/or information provided by it under this clause.

25 Conflict of Interest

25.1.1 The Provider must disclose to NZ Health Partnerships in writing, all actual, potential and perceived Conflicts of Interest that exist, arise or may arise (either for the Provider or the Provider's Personnel) in the course of providing the Services as soon as practical after it becomes aware of that conflict.

25.1.2 In the event that the Provider becomes aware that it does, or any of the Provider's Personnel do, have or will have a Conflict of Interest or potential Conflict of Interest, the Provider shall immediately inform NZ Health Partnerships, in writing, with full details of that Conflict of Interest or potential Conflict of Interest.

- 25.1.3 The Provider shall immediately comply with all reasonable directions of NZ Health Partnerships requiring it to resolve or otherwise deal with any Conflict of Interest or potential Conflict of Interest.
- 25.1.4 The provisions of this clause will operate without prejudice to any other rights which NZ Health Partnerships may have arising out, or in respect of, the existence of any Conflict of Interest or potential Conflict of Interest.
- 25.1.5 If the Provider identifies a Conflict of Interest the Provider will co-operate with NZ Health Partnerships and will meet any conditions or restrictions imposed by NZ Health Partnerships to manage, mitigate or eliminate any such actual, potential, or perceived, Conflicts of Interest.

26 Force Majeure

- 26.1.1 Force Majeure means an event or circumstance which prevents a Party from complying with any of its obligations under this Agreement and which that Party:
- a) did not cause;
 - b) cannot control or influence; and
 - c) cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of Services from another source and work around plans.
- 26.1.2 The affected Party must notify the other Party if the Force Majeure is preventing it from complying with any of its obligations as soon as it becomes aware of the Force Majeure.
- 26.1.3 The affected Party's rights and obligations will be suspended to the extent and for so long as the performance of the affected Party's rights and obligations are prevented or delayed by the Force Majeure.
- 26.1.4 The affected Party must keep the other Party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause 33.
- 26.1.5 The affected Party must recommence performance of its obligation as soon as possible without delay after the Force Majeure has ceased to exist.

27 Insurance

- 27.1.1 The Provider must effect and maintain in force, at a minimum, at its own expense during the Term:
- a) Public Liability Insurance in the name of the Provider (or with the Provider named under a corporate group blanket policy of insurance, if relevant) for not less than the amount specified for Public Liability Insurance in Item 6 of Schedule 2 for any one event;
 - b) Professional Indemnity Insurance in the name of the Provider and with cover for all Providers' Personnel for not less than the amount specified for Professional Indemnity Insurance in Item 6 of Schedule 2 for any one event and in the aggregate in any one policy period.
- 27.1.2 The Provider must ensure that each Locum has in force at all relevant times, at no expense to the Buyer, the following:
- a) Public Liability Insurance in the name of the Locum for not less than the amount specified for Locum Public Liability Insurance in Item 6 of Schedule 2 for any one event; and
 - b) Professional Indemnity Insurance in the name of the Locum for not less than the amount specified for Locum Professional Indemnity Insurance in Item 6 of Schedule 2 for any one event and in the aggregate in any one policy period.

- 27.1.3 The insurance to be maintained by the Provider and Locums pursuant to this clause 27 must:
- a) have adequate extensions and scope to cover the risks involved in the provision of the Services;
 - b) be with insurers satisfactory to the Buyer, approval for which will not be unreasonably withheld; and
 - c) in respect of the Professional Indemnity Insurance referred to in clauses 27.1.1 and 27.1.2, be maintained for the Term and for seven years following the expiry of the Term.
- 27.1.4 Before:
- a) the Commencement Date;
 - b) execution of the Agreement by NZ Health Partnerships;
 - c) commencing the Placement of Locums for the performance of Services under this Agreement;
- whichever is earlier, the Provider shall provide NZ Health Partnerships with copies of policies and certificates of currency for the insurances required under clause 27.1.1, such copies to be certified by the Provider as true and correct.
- 27.1.5 Whenever the insurances required under clauses 27.1.1 are renewed, the Provider shall provide NZ Health Partnerships with current copies of certificates of currency for the insurances required under clauses 27.1.1, such copies to be certified by the Provider as true and correct.
- 27.1.6 The Provider shall, on demand, provide NZ Health Partnerships with current copies of policies and certificates of currency for the insurances required under clause 27.1.1, such copies to be certified by the Provider as true and correct.
- 27.1.7 The Provider shall, on demand, provide NZ Health Partnerships with written information regarding what is and what is not covered by the policies described in this clause 27.1.1.
- 27.1.8 NZ Health Partnerships in specifying levels of insurance in this Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.
- 27.1.9 The Provider acknowledges and agrees that it is the Provider's responsibility to assess and consider the risks and scope of insurances required under this Agreement or for the Placement of Locums for the performance of Services.
- 27.1.10 The Provider must promptly provide to NZ Health Partnerships comprehensive details of all claims or incidents that may become claims under any policy of insurance under this clause 27 for the Services under this Agreement.
- 27.1.11 The Provider will do nothing to invalidate the insurance policies that it holds as required under this Agreement or to prejudice its entitlement under those insurance policies. Whether or not insurance policies exist shall not derogate from the Provider's potential liability under this Agreement.

28 Dispute Resolution

- 28.1.1 Except in a case of genuine urgency where a Party seeks immediate interlocutory relief or an interim remedy, neither Party may take legal proceedings in respect of any dispute in relation to this Agreement unless the Party has first complied with this clause.

- 28.1.2 In the event of a dispute, and failing its resolution by the Parties using their best endeavours and acting in good faith, a Party may issue to the other Party's Contract Manager a written notice of dispute ("**Dispute Notice**"), describing the issue in dispute and requiring that the process in this clause 28 be followed.
- 28.1.3 Each Party must record in sufficient detail the nature and scope of the dispute, and the issues raised by it, in writing and submit the record to the other Party.
- 28.1.4 The Parties must meet and attempt to resolve the dispute in good faith as soon as practicable through direct negotiation.
- 28.1.5 If there is a dispute between the Provider and a Buyer other than NZ Health Partnerships, NZ Health Partnerships may require that the Provider and the Buyer attempt to resolve the dispute without NZ Health Partnerships' involvement.

28.2 Escalation

- 28.2.1 If the Parties are unable to resolve the dispute within ten (10) Business Days of the Dispute Notice, then unless they agree to an extension of that time, each of them must prepare a written record of the attempts to settle the dispute and refer that record to their respective executive negotiators ("**Executive Negotiators**") within a further twenty (20) Business Days to be dealt with.
- 28.2.2 If the "**Executive Negotiators**" have not resolved the dispute within the time period specified, then the Parties will refer the dispute to mediation.
- 28.2.3 Notwithstanding the existence of a dispute each Party must continue to perform its obligations under this Agreement until the dispute is resolved, except that payments may be withheld if they are the subject of the dispute.
- 28.2.4 This clause 28 survives any expiry or termination of this Agreement.

28.3 Mediation

- 28.3.1 If a dispute is not resolved under clause 35, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- 28.3.2 The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Rules and at a fee to be agreed by the parties.
- 28.3.3 If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of the Resolution Institute (or his or her nominee).
- 28.3.4 Each party will pay its own costs of mediation.

28.4 Urgent Relief

- 28.4.1 Nothing in this clause 28 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand Court

29 TERMINATION

29.1 Termination immediately on Notice

- 29.1.1 NZ Health Partnerships may immediately, by Notice to the Provider, terminate all or part of this Agreement, and NZ Health Partnerships or a Buyer may immediately, by Notice to the Provider, terminate a Confirmed Booking if:

- (a) the Provider is insolvent or unable to pay its debts as they fall due, enters into any compromise or arrangement with its creditors, is wound up, or has a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property;
 - (b) the Provider breaches this Agreement, and:
 - (i) the breach is not capable of being remedied; or
 - (ii) if the breach is capable of being remedied, the Provider fails to remedy the breach within ten Business Days of NZ Health Partnerships or, where applicable, the Buyer giving Notice to the Provider of such breach;
- 29.1.2 the Provider has been required on more than three number of occasions to cease using a Locum in accordance with clause 9 (Locum Information);
- 29.1.3 the Provider fails to meet any one KPI at least 3 times in any 12 month period or in three (3) consecutive months;
- 29.1.4 the Provider shows, by words or conduct, that it does not intend to perform some, all, or any of its future obligations under this Agreement;
- 29.1.5 termination is required as a result of a decision of a regulatory authority which is binding on DHBs; or
- 29.1.6 any representation or warranty made or given by the Provider to NZ Health Partnerships or a Buyer is proved to be false, misleading, deceptive, incomplete or inaccurate in any material respect when it was made, or the Provider has committed fraud; or
- 29.1.7 the Provider has a Conflict of Interest that, in NZ Health Partnerships' or a Buyer's opinion, is so material as to impact adversely on the supply of the Services to NZ Health Partnerships or that Buyer under this Agreement.

29.2 Termination for Change in Control

NZ Health Partnerships may terminate this Agreement on five (5) Business Days' notice in writing to the Provider if the Provider is the subject of a takeover by or merger with another company or there is a change of either the legal or beneficial shareholding or the effective control of the ownership or management of the Provider unless the Provider sought NZ Health Partnerships approval and NZ Health Partnerships gave its approval in writing before the change, with such approval by NZ Health Partnerships not to be unreasonably withheld.

29.3 Other Confirmed Bookings not affected

Subject to clause 29 the termination or expiry of a Confirmed Booking does not affect the continuation of any other Confirmed Booking.

29.4 Termination without Cause

- 29.4.1 NZ Health Partnerships may terminate this Agreement for any reason and without cause on at least six months' Notice to the Provider.
- 29.4.2 The Provider may terminate this Agreement for any reason and without cause on at least six months' Notice to NZ Health Partnerships.
- 29.4.3 NZ Health Partnerships and any relevant Buyer may give reasonable directions to the Provider in relation to the performance of the Services up to the date of termination of the Agreement.

29.5 Consequences of Termination or Expiry

- 29.5.1 Termination of this Agreement does not affect any accrued right or liability of either Party nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after the termination.
- 29.5.2 On termination of this Agreement or any Confirmed Booking, or on expiry of this Agreement or any Confirmed Booking, the Provider must:
- a) subject to clause 29 stop performing the Services;
 - b) meet any reasonable conditions in any Notice of termination given by NZ Health Partnerships or a Buyer;
 - c) immediately do everything possible to reduce its costs, losses and expenses arising from termination of this Agreement or a Confirmed Booking;
 - d) if requested by NZ Health Partnerships or a Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to NZ Health Partnerships or the Buyer that is in the Provider's possession, and provide written confirmation that this has occurred; and
 - e) arrange for an orderly cessation of work by any Locum in accordance with any written advice from NZ Health Partnerships or a Buyer; and
 - f) promptly submit all outstanding invoices for payment for Services completed under this Agreement or in relation to the Confirmed Booking.

29.6 Transition of Services Post Termination Notice

- 29.6.1 If requested by NZ Health Partnerships, the Provider will provide all reasonable assistance to assist in the transfer of Services provided under this Agreement to NZ Health Partnerships or its nominated alternative service provider in accordance with the Specification.
- 29.6.2 NZ Health Partnerships may request that the Provider provides additional help that is not otherwise set out in the Specification (not to be unreasonably withheld by the Provider) to support any replacement Provider to supply the relevant Services. Such support to be provided by the Provider at a reasonable fee agreed between the Parties based on the Fees in this Agreement, and over a reasonable period of time as agreed by NZ Health Partnerships.

30 Probity

30.1 Crown entities

- 30.1.1 The Provider acknowledges that NZ Health Partnerships and each DHB is a Crown entity under the Crown Entities Act 2004. The Provider must, in its dealings with NZ Health Partnerships and DHBs, and their advisors, employees, and agents, always act in a manner consistent with the highest standards of probity and must comply with any probity guidelines advised by NZ Health Partnerships from time to time.

30.2 Policies to be provided on request:

- 30.2.1 The Provider will:
- a) adhere to all requirements of Buyers' probity and any other policy documents about sponsorship, gifts, hospitality, inducements or similar, such as declaration, authorisation and

probity register requirements. Each Buyer will provide the Provider with a copy of its relevant policy documents on request; and

- b) on request, provide NZ Health Partnerships or any Buyer with evidence that the above policy requirements have been complied with.

31 Performance of Services at Buyer Sites

31.1 Policies

In performing the Provider's obligations under this Agreement the Provider must comply with any Buyer policies that have been notified to the Provider by the Buyer.

31.2 Health and safety

31.2.1 When providing the Services at a Buyer's site (Buyer Site), the Provider must and must ensure that the Provider's Personnel:

- i. comply with this Agreement and all reasonable directions of the Buyer in relation to access and use of Buyer Sites;
- ii. comply with the Buyer's policies and procedures including those about health and safety, fire and emergency and security requirements. The Buyer will provide notices of, copies of, or links to, such policies and procedures as appropriate;
- iii. comply with all Health and Safety Legislation;
- iv. take all reasonable steps to keep each Buyer Site in an orderly state and in such a condition as to avoid nuisance, disruption and danger to persons and damage to property;
- v. ensure that its Locums wear an identification card approved by that Buyer, visibly affixed to their clothing at all times while on the Buyer's site;
- vi. ensure that the Provider's Personnel behave and speak in a manner suitable to the environment;
- vii. ensure that the Provider's Personnel maintain high standards of personal hygiene while at any Buyer Site;
- viii. provide the Services in a proper, safe and efficient manner causing minimum disruption to any person lawfully at a Buyer Site, acknowledging that Buyer Sites are used by Buyer staff, Patients, visitors, visiting clinicians and others; and
- ix. except in relation to supply of the Services, not carry out any business or trading activity at any Buyer Site and no advertisement, sign or notice of any description will be displayed by the Provider or the Provider's Personnel at any Buyer Site without the prior written approval from the relevant Buyer.

31.3 Requirement to consult

Where the Provider and Buyers, or NZ Health Partnerships, have duties in relation to the same matter imposed by the Health and Safety Legislation, the Provider must consult, coordinate and cooperate with Buyers, and NZ Health Partnerships, to ensure compliance with those duties.

31.4 Notifiable Events

The Provider must inform NZ Health Partnerships and the relevant Buyer of any Notifiable Event (as defined in the Health and Safety at Work Act 2015) that occurs in connection with the Provider carrying out its obligations under this Agreement.

31.5 Notification of breach

31.5.1 The Provider must tell NZ Health Partnerships and the relevant Buyer immediately if the Provider becomes aware that it or the Provider's Personnel are, or may be, in breach, or are likely to be in breach, of the requirements of clause 31.

31.5.2 The Buyer may deny access to any Buyer site to the Provider and any of the Provider's Personnel who do not meet the requirements of clause 31.

32 Market Dynamics

32.1 Market Dynamic Triggers

NZ Health Partnerships wishes to remain responsive to changing market dynamics and innovations, to ensure that the DHBs continue to receive the best Services for the best Fees.

32.2 Right to go to market

32.2.1 NZ Health Partnerships may, in its sole discretion, go to market or take such action to remain responsive as described in clause 12, if any significant market dynamics triggers occur, for example (without limitation):

- a) new to market technology becomes available;
- b) NZ Health Partnerships' benchmarking (or some other evidence) indicates that, in relation to this Agreement, the Provider is non-competitive;
- c) there is a significant change in the market e.g. there are new market entrants; or
- d) there is a significant change in clinical practice or clinical need.

32.2.2 The Provider must keep NZ Health Partnerships informed of any international trends and studies that are relevant to or relate in any way to any Deliverables by supplying NZ Health Partnerships with relevant information about those international trends and studies, including by providing journal or other published articles.

32.2.3 The Provider agrees to cooperate with any reasonable request from NZ Health Partnerships in relation to this clause.

33 Non-Solicitation

33.1.1 The Buyer agrees that it shall not during the Term directly or indirectly recruit, solicit, approach, or induce or attempt to induce any employee of the Provider to terminate his or her employment with the Provider. If the Buyer wishes to employ any Locum on a Permanent basis, clause 8 schedule 2 applies.

33.1.2 The Provider agrees that it shall not during the Term directly or indirectly recruit, solicit, approach, or induce or attempt to induce any employee of the Buyer to terminate his or her employment with the Buyer. This clause 46.2 does not prevent the Provider from:

- a) advertising employment or contracting positions on behalf of its clients;

- b) interacting with an employee of that Buyer where that employee is actively seeking employment and initiates contact with the Buyer; or
- c) interacting with an employee where the employee of that Buyer promotes themselves as interested or available for approaches regarding employment opportunities on online forums, social media or talent search databases or is referred by another person.

33.2 Conversation from temporary or Contractor to Permanent Employees

Subject to clause 8 schedule 2, where a Buyer wishes to employ a Locum on a Permanent, Fixed Term, or Direct Contractor basis (New Placement), and the Locum agrees to such employment, the Fees payable to the Provider for that New Placement shall reduce by the applicable percentage specified in Schedule 3.

33.3 Candidate ownership as between the Provider and the Buyer

- 33.3.1 A Buyer will not be obliged to pay the Fees that would otherwise be payable to the Provider (including under clause 8) where the Provider puts forward a Locum for a Booking Enquiry and the Locum is “owned” by the Buyer (as defined in clause 8.1 b).
- 33.3.2 A Locum is “owned” by a Buyer if any of the following criteria apply:
 - (a) the Locum has submitted his/her curriculum vitae (CV) to that Buyer independently of the Provider within the 12 months preceding the Provider introducing the Locum to that Buyer. In this event, the Buyer will notify the Provider, within 5 Business Days of the Provider’s introduction, that the Buyer “owns” that Locum; and
 - (b) a Locum engaged on a Temporary or Direct Contractor basis with the Buyer has submitted its CV to the Buyer independently of the Provider for a placement that is different to his/her current Confirmed Booking.
- 33.3.3 For the purposes of clause 48.2 b), but subject to clause 46.1, a Locum will not be treated as having submitted its CV to a Buyer “independently of the Provider” if:
 - a) the Locum responded to an internal advertisement of a Buyer (i.e. the vacancy was not openly advertised) while engaged with the Buyer on a Temporary or Contractor basis; or
 - b) the Locum’s CV was given to the Buyer for Booking Enquiry by the Provider and a Buyer retains that Locum’s CV for a different role (e.g. the Hiring Manager within the Buyer’s organisation passes the CV on to another manager within the Buyer’s organisation for a role that is different to the Booking Enquiry for which the Locum’s CV was originally submitted).
- 33.3.4 To avoid doubt, if the criteria set out in clause 48.2 b) do not apply, the Locum is “owned” by the Provider.

33.4 Employment of Former Locums

The Buyer will have no liability to the Provider arising from the employment by a Buyer of any person who is or was formerly a Locum under this Agreement, and the Provider has no entitlement to claim a commission or compensation in relation to that circumstance (unless otherwise explicitly provided in another contract between the Provider and a Buyer).

34 Agreement Variation

- 34.1.1 NZ Health Partnerships may at any time give written notice to the Provider proposing a variation to this Agreement, other than the Fees (“Agreement Variation Proposal”).
- 34.1.2 The Provider must respond within twenty (20) Business Days upon receipt of the Agreement Variation Proposal.
- 34.1.3 If the Provider receives an Agreement Variation Proposal and does not agree to the proposed variation, then the Parties must negotiate in good faith.
- 34.1.4 If Provider receives an Agreement Variation Proposal and accepts a variation by written notice, the terms and conditions of this Agreement will, subject to clause 6.5.1(b), be varied as agreed.

35 Crown directions and Legislative changes

- 35.1.1 If Provider receives an Agreement Variation Proposal and accepts a variation by written notice, the terms and conditions of this Agreement will, subject to clause 6.5.1(b), be varied as agreed.
- 35.1.2 NZ Health Partnerships may terminate or vary this Agreement, at any time, if the termination, variation, or imposition of restrictions, is required to give effect to a Crown Direction or any legislative change.
- 35.1.3 If a Crown Direction is issued to DHBs, NZ Health Partnerships, or there is a legislative change that requires a change to be made to this Agreement (including any Supply Schedule), to give effect to that direction or change:
 - a) NZ Health Partnerships will give the Provider as much notice as practicable of the Crown Direction or legislative change, and of any changes to this Agreement that are required to give effect to that direction or legislative change;
 - b) NZ Health Partnerships may consult with the Provider, at NZ Health Partnerships’ option, on any actions which can be implemented to give effect to that direction or legislative change; and
 - c) this Agreement will be deemed to be varied so as to give effect to the Crown Direction, or the applicable legislative change, from the date when such direction or legislative change takes effect (or earlier if agreed by the Parties).

36 Relationship between the Parties

- 36.1.1 The Parties acknowledge and agree that:
 - a) nothing in this Agreement constitutes any fiduciary relationship between the Parties and a Buyer or any relationship of employer and employee, principal and agent, joint venture or partnership, between the Parties and a Buyer; and
 - b) neither Party, or a Buyer, has any authority to bind the other Party, or a Buyer, in any manner whatsoever.
- 36.1.2 The Provider agrees that NZ Health Partnerships and a Buyer has no obligation to the Provider’s Personnel other than those provided for in this Agreement.
- 36.1.3 The Provider must pay all remuneration claims and other entitlements payable to the Provider’s Personnel (including, without limitation, in relation to payments such as wages, holiday, retirement gratuities, redundancy, ACC, superannuation contributions, continuing education, and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to its business or the engagement of the Provider’s Personnel). NZ Health Partnerships and a Buyer is not required to pay or contribute to payment of the same.

- 36.1.4 The Provider is responsible for payment of professional indemnity insurance in respect of the Provider's Personnel. NZ Health Partnerships and a Buyer are not required to pay or contribute to payment of such insurance.
- 36.1.5 The Provider is an independent Provider and nothing contained or implied in this Agreement will create a legal relationship in the nature of a partnership, joint venture, agency, or employment, with NZ Health Partnerships or any Buyer.
- 36.1.6 The Provider acknowledges and agrees that the Provider's Personnel are employed and/or contracted to the Provider and those Personnel have no employment relationship with NZ Health Partnerships or any Buyer.

37 Survival

Any obligation imposed by this Agreement in relation to survival, documents, reports, records, intellectual property rights, indemnity, liability, insurance, audit, resolution of disputes and publicity (or any other provision that is expressly or by implication intended to come into or continue in force on or after expiry or earlier termination) survive the expiry or termination of this Agreement and in relation to confidentiality, continue to apply unless the disclosing Party notifies the other in writing of the other's release from those obligations.

38 Costs

Each Party will bear that Party's own legal or other costs of and incidental to the negotiation, preparation and execution of this Agreement.

39 Counterparts

- 39.1.1 This Agreement may be executed in any number of counterparts each of which is taken to be an original.
- 39.1.2 All of those counterparts taken together constitute one instrument.
- 39.1.3 Where counterparts are signed on different dates, the date of execution is the later of the two dates.
- 39.1.4 Where counterparts are signed, the document being signed can be the original document or a scanned and/or emailed copy.

40 Giving effect to this Agreement

Each Party agrees to execute any further documents and do any further acts within its power as may be reasonably necessary from time to time to give effect to the terms and intentions of this Agreement.

41 Waiver

- 41.1.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the Party waiving its rights.
- 41.1.2 A waiver by a Party in respect of a breach of a provision of this Agreement by the other Party is not a waiver in respect of any other breach of that or any other provision.
- 41.1.3 The failure of a Party to enforce at any time any of the provisions of this Agreement must not be interpreted as a waiver of such

41.1.4 A failure or delay by either Party to exercise any right arising under this Agreement is not a waiver of that right, and a waiver of a breach of this Agreement is not a waiver of any other breach provision.

42 Variations

42.1.1 A Variation to this Agreement will not be effective unless it is in writing and signed by the Parties.

42.1.2 Confirmed Bookings confirmed before any Variation becomes effective will be fulfilled on the terms and conditions that applied before the Variation became effective, including as to Fees.

43 Time of the Essence

43.1.1 Time is of the essence in respect of any time, date, or period specified either in this Agreement or in any notice served under this Agreement.

43.1.2 Time will be of the essence in relation to the Provider's performance of its obligations under this Agreement.

44 Consent

44.1.1 Where the Provider requires the consent or approval of NZ Health Partnerships under this Agreement:

- a) NZ Health Partnerships may in its absolute discretion give or withhold consent or approval (subject to any provision in this Agreement to the contrary);
- b) if giving consent or approval NZ Health Partnerships may impose any conditions on that consent or approval that NZ Health Partnerships considers appropriate (subject to any provision in this Agreement to the contrary); and
- c) NZ Health Partnerships' consent or approval will not be effective unless it is in writing and signed by NZ Health Partnerships or NZ Health Partnerships' Contract Manager.

45 Risk and Cost of Performing Obligations

Subject to this Agreement, whenever a Party is obliged or required under this Agreement to do or effect any act, matter or thing, then the doing of any such act, matter or thing will, unless this Agreement otherwise provides, be at the sole risk and expense of that Party.

46 No Derogation

The express provision of a remedy for, or consequence of, breach of any term of this Agreement does not derogate from any other legal right or remedy available to NZ Health Partnerships under this Agreement or otherwise for such breach.

47 Invalidity

If any part of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement will be deemed to be amended by the addition or deletion of wording necessary to remove the invalid, unenforceable or illegal part, but otherwise to retain the provisions of this Agreement to the maximum extent permissible under New Zealand law.

48 Notices

- 48.1.1 A notice, approval, direction, consent, offer, demand or other communication in connection with this Agreement must be:
- (a) in writing;
 - (b) signed by an authorised representative of the relevant Party; and
 - (c) given to the recipient Party:
 - (i) by hand delivery;
 - (ii) by prepaid mail sent to that party; or
 - (iii) by email transmission to that party.
- 48.1.2 For the purposes of delivery of notices:
- (a) mail must be sent to the address of the recipient Party set out in Item 7 of Schedule 1;
 - (b) email messages must be sent to the recipient's email address and marked for the attention of the person specified in Item 7 of Schedule 1.
- 48.1.3 A Party may change any of its details for notices from time to time by giving five (5) Business Days written notice to the other Party.
- 48.1.4 A notice given to a person in accordance with this clause is treated as having been given and received:
- (a) on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the sixth Business Day after posting;
 - (c) if transmitted by email before 5.00 pm on a Business Day and the sender receives a message-opened response, otherwise on the next Business Day, subject always to the sender receiving a message-opened response.

49 Governing law

This Agreement is governed by, and is to be construed under, the laws of New Zealand. Each Party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.