

# Contracted Provider Agreement

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BETWEEN

[PHO]

("PHO")

AND

[Contracted Provider]

("Contracted Provider")

VERSION 3

By our respective authorised signatories signing below, we agree to comply with and be bound by the terms and conditions of this Agreement

**[insert name of PHO] by:**

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**Signature**

---

**Name**

---

**Position**

---

**Date**

**Witnessed by:**

---

**Signature**

---

**Name**

---

**Occupation**

---

**Residence**

---

**Date**

**[Contracted Provider name] by:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Position**

\_\_\_\_\_  
**Date**

**Witnessed by:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Occupation**

\_\_\_\_\_  
**Residence**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Position**

\_\_\_\_\_  
**Date**

**Witnessed by:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Occupation**

\_\_\_\_\_  
**Residence**

\_\_\_\_\_  
**Date**

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Agreement dated \_\_\_\_\_

## Background

- A. The PHO has entered an agreement with [insert name] DHB (the "**DHB**") to provide primary health care services to its Enrolled Population and other Eligible Persons (the "**PHO Services Agreement**"). The PHO and DHB are also parties to an Alliance Agreement that provides for certain health care services to be delivered in accordance with decisions made by the Alliance Leadership Team.
- B. Those agreements set the contractual foundation for a collaborative relationship between the PHO and the DHB to deliver health care services in accordance with the Government's current and future policy objectives, and to develop and strengthen the way in which health care services are funded and delivered. This partnership-based approach reflects the five themes of the New Zealand Health Strategy that guide the direction of health in New Zealand, and requires strong clinical leadership to succeed.
- C. The PHO wishes to partner with its Contracted Providers to deliver quality care to the community through this approach.
- D. Accordingly, the PHO and the Contracted Provider have agreed to enter into this agreement, so that the Contracted Provider can provide services for the PHO on the terms set out in this agreement ("**Agreement**").

## 1. Term

- 1.1 This Agreement [starts/started] on [insert date] and continues until it is terminated in accordance with this Agreement or at law.

## 2. Application of the PHO Services Agreement

### 2.1 The PHO Services Agreement: We agree that:

- (a) the provisions of the PHO Services Agreement that are expressed as applying to a Contracted Provider apply to and form part of this Agreement, and that you must comply with those obligations;
- (b) the PHO Services Agreement applies to and forms part of this Agreement in the manner set out in this Agreement; and
- (c) any reference to the PHO Services Agreement in this Agreement is a reference to the current version of the PHO Services Agreement, which is available from [insert address of website] or as otherwise advised by the PHO from time to time.

### 2.2 Definitions in the PHO Services Agreement: Unless the context requires otherwise, and unless the term is defined in this Agreement, terms that are used in this Agreement and defined in the PHO Services Agreement have the meaning set out in the PHO Services Agreement.

2.3 **Referenced Documents:** To avoid doubt, any Referenced Documents referred to in a provision of the PHO Services Agreement also applies to and forms part of this Agreement (to the extent that a Referenced Document gives rights to, or imposes obligations on, a Contracted Provider).

2.4 **Variations to the PHO Services Agreement:** We agree that:

- (a) contracted providers participate in determining variations to the PHO Services Agreement, including Referenced Documents, in the manner set out in the Referenced Document entitled "PHO Services Agreement Amendment Protocol";
- (b) any variation to a provision of the PHO Services Agreement that applies to and forms part of this Agreement is deemed to be incorporated into this Agreement from the date the variation to the PHO Services Agreement comes into effect, and accordingly all terms and clause references in this Agreement are deemed to be amended as necessary to give effect to the variation; and
- (c) the PHO will give the Contracted Provider as much notice as reasonably practicable of any variations made to this Agreement in accordance with paragraph (b).

### **3. Our obligations and how we will work together**

- 3.1 The PHO acknowledges that the PHO Services Agreement includes requirements relating to the PHO's relationship with Contracted Providers, such as having a high level of clinical leadership and engagement, and an advanced level of capability and capacity. The PHO will work with the Contracted Provider in a way that gives effect to those requirements.
- 3.2 The Contracted Provider agrees to do everything reasonably practicable to enable the PHO to perform its functions, achieve its outcomes, and otherwise meet its obligations under the PHO Services Agreement, including (but not limited to) its obligation to meet the Minimum Requirements.
- 3.3 We agree to carry out the roles and responsibilities under this Agreement in a collaborative and co-operative way, and to exercise our rights in a reasonable manner.

### **4. Services provided by the Contracted Provider**

- 4.1 The PHO subcontracts the Contracted Provider to provide the following services (the "**Services**"):
  - (a) the Nationally Consistent Services set out in Schedule 1, in accordance with the provisions of that Schedule; and
  - (b) any other Alliance or local services that may be set out in other schedules from time to time, in accordance with the provisions of those schedules.
- 4.2 The Contracted Provider must provide the Services in accordance with any policies of the PHO that relate to the Services that are advised by the PHO to the Contracted Provider, and any service delivery principles specified in the schedules of this Agreement.

## **5. Practitioners and Service providers**

- 5.1 The Contracted Provider must ensure that it and/or each Practitioner or organisation it engages to provide the Services has the qualifications, accreditation, experience, competency, and availability (as relevant) that is necessary to ensure that the Contracted Provider provides the Services in accordance with this Agreement.
- 5.2 The Contracted Provider must ensure that it and/or each Practitioner who provides the Services holds an annual practising certificate and a current registration from the appropriate New Zealand statutory body. *[Drafting note: This is a mandatory clause– see clause B.14(2)(a) of the PHO Services Agreement]*
- 5.3 The Contracted Provider will advise the PHO of the following information in respect of each Practitioner who provides the Services, and will advise the PHO of any changes to that information on a monthly basis:
- (a) the Practitioner Identification Number;
  - (b) name of Practitioner;
  - (c) Practitioner's health practitioner index number (if they have been assigned such a number);
  - (d) date joined;
  - (e) date left (if applicable); and
  - (f) locum flag (yes/no).
- 5.4 The Contracted Provider may subcontract the provision of some or all of the Services if:
- (a) it gets the PHO's prior written approval, which will not be unreasonably withheld; and
  - (b) the Contracted Provider ensures that every subcontract it enters into imposes all obligations on the subcontractor necessary to enable the Contracted Provider to meet its obligations under this Agreement.
- 5.5 The Contracted Provider acknowledges that it remains responsible for all Services that it subcontracts to a third party.

## **6. Children's Act 2014**

- 6.1 The Contracted Provider must comply with its obligations under the Children's Act 2014, including:
- (a) adopting a child protection policy (in respect of the provision of children's services within the meaning of section 15 of that Act) that complies with section 19 of that Act; and
  - (b) reviewing the policy within three years from the date of its adoption or most recent review, and at least every three years after that.
- 6.2 The Contracted Provider must, if requested to do so by either the PHO or the DHB, make a copy of its child protection policy available to either the PHO or the DHB.

- 6.3 The Contracted Provider must conduct, or cooperate with the PHO in relation to, worker safety checks as required by the Children's Act 2014.

## **7. Reporting requirements**

- 7.1 The Contracted Provider must take all reasonable steps to ensure that the PHO complies with the reporting requirements set out in the PHO Services Agreement that relate to the Services or claims for payment.

## **8. Location of Services**

- 8.1 The Contracted Provider must provide the Services in the locations set out below:

**[insert locations]**

*[Drafting note: This is an optional clause, which can be used if the PHO and Contracted Provider want to specify locations where the Services must be provided. The PHO Services Agreement enables DHBs to impose geographical limitations on the provision of Services (for example, there are restrictions on when Services can be provided from a practice located in a Secondary Geographical Area). If the PHO is subject to any geographical limitations under its PHO Services Agreement with the DHB, the PHO could apply those same limitations to the Contracted Provider by adding a new clause 8.2 that sets out those limitations.]*

## **9. Claims and payments for Services**

- 9.1 We agree that Part F (Claiming and payments) of the PHO Services Agreement applies to and forms part of this Agreement and, for that purpose:
- (a) the PHO and DHB are bound by the obligations in Part F on the basis that all references in Part F to the DHB are read as references to PHO, and all references to the PHO are read as references to the Contracted Provider (unless the context otherwise requires);
  - (b) the Contracted Provider will submit Claims for Services in accordance with Part F and as otherwise specified in this Agreement;
  - (c) the PHO will pay Claims for Services provided by the Contracted Provider in accordance with Part F and as otherwise specified in this Agreement, including provisions relating to payments for the Nationally Consistent Services set out in Schedule 1
- 9.2 The Contracted Provider must provide written notification to the PHO, within the timeframe and in the format required by the PHO, if the Contracted Provider:
- (a) opts into receiving any of the additional payments which a practice may decide to receive or forego, as described in clause F.3(2) and Schedule F1.1; or
  - (b) decides to cease receiving any such payments.

- 9.3 The Contracted Provider will do everything reasonably practicable to ensure that the PHO is able to comply with its obligations to the DHB that are set out in Part F, including its obligations in respect of enrolling Eligible Persons.
- 9.4 All amounts payable under this Agreement are exclusive of GST.
- 9.5 The PHO may recover, by way of set-off against any Payments due to the Contracted Provider, the reasonable costs of providing Services for any period that the Contracted Provider does not provide, either itself or by means of alternative arrangements, the Services. *[Drafting note: This is a mandatory clause – see clause B.14(2)(d) of the PHO Services Agreement]*

## **10. No Section 88 Notice claims**

- 10.1 The Contracted Provider must not, and must ensure that any Practitioners who provide the Services do not, claim under the Section 88 *Advice Notice to General Practitioners Concerning Patient Benefits and Other Subsidies* for any Services provided under this Agreement.

## **11. Charging Service Users for Services**

- 11.1 The Contracted Provider may charge Service Users for Services that it provides in accordance with the clause in Part F of the PHO Services Agreement that sets out the fees framework.

## **12. Audit**

- 12.1 The PHO or the DHB may Audit the Contracted Provider's compliance with the provisions of this Agreement, and the provisions relating to Audits set out in the PHO Services Agreement apply to any such Audits.
- 12.2 If the DHB Audits the PHO in accordance with the PHO Services Agreement, the Contracted Provider must co-operate with the DHB for the purpose of conducting the Audit, and provide access to the DHB or PHO and any Auditor in accordance with the Audit provisions of the of the PHO Services Agreement.
- 12.3 The Contracted Provider agrees that in respect of any claims for payments that it makes under this Agreement, section 22G(2) of the Health Act 1956 applies to the Contracted Provider as if the Contracted Provider was a provider under section 22G(1) of the Health Act 1956.

*[Drafting note: This clause is included because section 22G of the Health Act 1956 requires the PHO to make its records available for the purposes of verifying claims if requested by the Director-General of Health, or a chief executive of a District Health Board. This is a mandatory clause – see clause B.36 of the PHO Services Agreement]*

### **13. Confidentiality and public statements**

13.1 We agree that neither of us will disclose Confidential Information to any person except as set out in this Agreement and, for Confidential Information that is Health Information, the Health Information Privacy Code 1994.

13.2 Either of us may disclose Confidential Information:

- (a) to the DHB if disclosure to the DHB is permitted or required by this Agreement or the PHO Services Agreement;
- (b) to those involved in the Provision of the Services, if necessary;
- (c) to our respective professional advisors and representative agents;
- (d) if disclosure is permitted or required under this Agreement;
- (e) if the information is required to be disclosed to the Crown under a Crown Direction or Crown Funding Agreement;
- (f) if the information is already in the public domain without being in breach of this clause;
- (g) if it is required to be disclosed by law;
- (h) if the other party has consented in writing to such disclosure; or
- (i) to parties to the Alliance, for the purpose of enabling the Alliance to carry out the Alliance Activities, including monitoring Alliance Services.

13.3 Neither of us may, during or after the term of this Agreement, either directly or indirectly criticise the other publicly in relation to this Agreement, without first fully discussing (or using reasonable endeavours to discuss) the matter of concern with the other in good faith and in a co-operative and constructive manner.

13.4 Nothing in clause 13.3 prevents either of us from:

- (a) discussing any matters of concerns with our own employees, contractors, agents, personnel, or advisors; or
- (b) publicly commenting on public policy matters.

### **14. Notification of problems**

14.1 Each of us will advise the other promptly in writing of any changes, problems, significant risks, or significant issues (including suspected fraud, serious non-compliance with an obligation under this Agreement or the PHO Services Agreement, and issues that could reasonably be considered to have high media or public interest), which materially reduce or affect, or are likely to materially reduce or affect:

- (a) the ability of either of us to meet our respective obligations under this Agreement; or
- (b) the ability of the PHO to meet its obligations under the PHO Services Agreement.

## 15. Dispute resolution

15.1 **Court or arbitration proceedings:** We agree not to commence any court or arbitration proceedings relating to any dispute arising out of this Agreement until we have both complied with the requirements set out in this clause, unless either party considers that proceedings are necessary to preserve its rights.

15.2 **Resolution by agreement:** If a dispute arises under this Agreement:

- (a) the party claiming that a dispute exists must give notice to the other party of the nature of the dispute; and
- (b) we will each act in good faith and use our best endeavours to resolve the dispute by agreement.

15.3 **Mediation:** If the dispute is not settled by agreement within 20 Business Days of receipt of the notice of dispute, unless we agree otherwise in writing, we will participate in mediation, and the following provisions apply:

- (a) the mediation will be conducted under the Resolution Institute's standard mediation agreement;
- (b) if we do not agree on a mediator or the mediator's fees within five Business Days of receipt of the notice of mediation, the mediator will be appointed or the fees set by the chair of the Resolution Institute (or his or her nominee) at the request of either of us; and
- (c) we will share the costs of the mediator's fees equally.

15.4 **Arbitration:** If the dispute is not settled by agreement within 30 Business Days of the appointment of the mediator, unless we agree otherwise in writing, the dispute will be referred to arbitration, and the following provisions apply:

- (a) the arbitration will be conducted in by a single arbitrator under the Arbitration Act 1996; and
- (b) if we do not agree on an arbitrator within five Business Days of receipt of the notice of arbitration, the arbitrator will be appointed by the President of the New Zealand Law Society (or his or her nominee) at the request of either of us.

15.5 **Obligations continue:** We will each continue to comply with our obligations in this Agreement, unless we agree otherwise.

15.6 **Exceptions:** This clause does not apply to:

- (a) any disputes concerning whether or not any person is an Eligible Person, which will be determined by the Minister;
- (b) a variation of this Agreement in accordance with clause 2.4 or termination of this Agreement in accordance with clauses 16.1, 16.4(a), 16.4(b), or 16.4(e);

- (c) any matter that is subject to a current Audit process (but not including a dispute about an Audit report if the Audit has been completed) or which has been or is referred to a Complaints Body, unless the Complaints Body directs that the matter be resolved in accordance with this clause; or
- (d) any dispute as to whether a service is a General Medical Service, or whether any amount, and if so what amount, is payable by the DHB for a General Medical Service.

## **16. Termination**

- 16.1 If the PHO Services Agreement is terminated for any reason, we agree that this Agreement terminates on the same day as the expiry or termination of the PHO Services Agreement.
- 16.2 The PHO will give the Contracted Provider as much notice as reasonably practicable of the termination of this Agreement under clause 16.1.
- 16.3 Either of us may terminate this Agreement by giving the other six months' notice.

*[Drafting note: This clause allows either party to terminate this Agreement for any reason on 6 months' notice. If a contracted provider wants to leave a PHO ("PHO A") and join another PHO ("PHO B"), this clause deals only with the contracted provider leaving PHO A. This clause does not give the Contracted Provider the right to join PHO B. That must be agreed with PHO B, and notice must be given to the DHB.]*

- 16.4 The PHO may terminate this Agreement immediately by notice to the Contracted Provider if:
  - (a) the PHO is required to terminate this Agreement by the DHB in accordance with the provisions of the PHO Services Agreement;
  - (b) the Contracted Provider has failed to perform a material obligation set out in this Agreement;
  - (c) the Contracted Provider has claimed, and been paid, a payment in breach of this Agreement;
  - (d) the Contracted Provider has failed to perform an obligation in this Agreement other than an obligation described in paragraph (b) or (c), and the failure is incapable of being rectified, or, if it is capable of being rectified, is not rectified within 20 Business Days of the PHO giving the Contracted Provider notice of the failure; or
  - (e) an Insolvency Event occurs.
- 16.5 The Contracted Provider may terminate this Agreement immediately by notice to the PHO if:
  - (a) the PHO has failed to perform a material obligation set out in this Agreement;
  - (b) the PHO has failed to perform an obligation in this Agreement that is not a material obligation, and the failure is incapable of being rectified, or, if it is capable of being

rectified, is not rectified within 20 Business Days of the Contracted Provider giving the PHO notice of the failure; or

- (c) an Insolvency Event occurs.

## **17. Alternatives to termination**

17.1 If the PHO has the right to terminate this Agreement under clauses 16.4(b) to (d), instead of terminating this Agreement, the PHO may do one or more of the following:

- (a) if the Contracted Provider has not met its obligations under this Agreement, vary or withdraw from coverage by this Agreement any of the Services and cease payment for any such Services from the date of variation or withdrawal;
- (b) require the Contracted Provider to terminate any subcontract the Contracted Provider has if the subcontractor has failed to perform a material obligation in relation to the subcontract or has claimed a payment in breach of the subcontract;
- (c) require the Contracted Provider to recover any payments to a subcontractor that have been made in breach of the subcontract; or
- (d) withhold payments from the Contracted Provider in accordance with clause 18.1.

## **18. Withholding payments**

18.1 In addition to its rights under clause 17, the PHO may withhold payments or portions of payments due under this Agreement as follows:

- (a) if the Contracted Provider is found to be in breach of this Agreement at the end of an Audit, the PHO may withhold payments due to the Contracted Provider, up to the value of the breach, as is reasonable in the circumstances; and
- (b) if the PHO has made a payment to a Contracted Provider that the Contracted Provider claimed in breach of this Agreement, the PHO may withhold payments due to the Contracted Provider, up to the value of the payment that the PHO made to the Contracted Provider.

18.2 If the DHB withholds payment from the PHO due to a breach of this Agreement by the Contracted Provider, the PHO may withhold those payments from the Contracted Provider.

18.3 Clause 18.4 applies if:

- (a) the PHO and the DHB are in a dispute under the PHO Services Agreement; and
- (b) the DHB withholds payments from the PHO in accordance with the PHO Services Agreement, or as agreed by the DHB and PHO; and
- (c) the PHO is not required, in accordance with the PHO Services Agreement, to provide the Services to which those payments relate.

18.4 The PHO may withhold those payments from the Contracted Provider, in which case the Contracted Provider is not obliged to provide the Services in respect of which payment has been withheld.

18.5 The PHO's obligation to comply with Part F and pay Claims in accordance with clause 9.1 applies subject to this clause 18.

## **19. Alternative arrangements on failure to deliver Services**

19.1 If the Contracted Provider does not provide Services it must provide under this Agreement, in addition to its rights under clauses 16 to 18, the PHO may take whatever action is reasonably necessary to make alternative arrangements for the provision of those Services.

19.2 The PHO may act under clause 19.1 without giving the Contracted Provider notice if the circumstances reasonably require such action. In any other circumstance, the PHO will give the Contracted Provider at least seven Business Days' notice of the PHO's intention to make alternative arrangements for the provision of those Services under this Agreement.

19.3 If the PHO gives the Contracted Provider notice requiring the Contracted Provider to pay the PHO's costs, the Contracted Provider must pay or reimburse the PHO for its reasonable costs provided that if the PHO has ceased payments under clause 18, the maximum amount the Contracted Provider must pay or reimburse the PHO is 10% of the payments ceased.

19.4 If the Contracted Provider fails to pay any such amount required under clause 19.3, the PHO may set-off the amount owing to the Contracted Provider against any amount that the PHO owes the Contracted Provider at any time by way of payment for the Services, in accordance with this Agreement.

## **20. Consequences of termination**

20.1 The termination of all or part of this Agreement will not prejudice:

- (a) any other rights or remedies that either of us may have against the other arising out of any breach of this Agreement that occurred before expiry or termination; or
- (b) the operation of any clauses of this Agreement that are expressed or implied to have effect after expiry or termination.

20.2 On the expiry or termination of this Agreement, each of us will return to the other all information, documents, and software that belong to the other and relate to the Services Provided under this Agreement (unless the owner has agreed that the other party may continue to use the documents, information, or software), except that the PHO may retain such information for audits undertaken in accordance with this Agreement or the PHO Services Agreement.

## **21. Uncontrollable Events**

21.1 Neither of us will be in default under this Agreement if the default is caused by an Uncontrollable Event.

21.2 If either of us is affected by an Uncontrollable Event, the party affected must:

- (a) notify the other party of:
  - (i) the nature of the circumstances giving rise to the Uncontrollable Event;
  - (ii) the extent of the affected party's inability to perform; and
  - (iii) the likely duration of that non-performance;
- (b) take all reasonable steps to remedy, or reduce the impact of, the Uncontrollable Event; and
- (c) perform the obligation affected by the Uncontrollable Event as soon as possible.

21.3 The PHO may, after consulting with the Contracted Provider, make alternative arrangements for the provision of the Services during the period in which the Contracted Provider is unable to provide them as a result of an Uncontrollable Event (and for such reasonable time afterwards as may be necessary to secure an alternative provider at the time the alternative arrangement is entered into).

21.4 If either of us is unable to perform an obligation under this Agreement for 20 Business Days or more because of an Uncontrollable Event, we must try to agree to what extent, if any, the obligation in question can be varied or continued to be performed by the affected party.

21.5 If we do not reach an agreement under clause 21.4 within two months after receipt of the notice under subclause 21.2(a), either of us may terminate the relevant Service or this Agreement by giving the other at least 20 Business Days' notice.

## **22. Transfer and assignment of rights and obligations**

22.1 Neither of us may assign nor transfer our rights and obligations under this Agreement without the written consent of the other party, which will not be unreasonably withheld.

## **23. Insurance**

23.1 The Contracted Provider must have insurance to an appropriate and reasonable extent, to cover its business and assets against risks associated with the performance of and compliance with its obligations under this Agreement.

23.2 The Contracted Provider must maintain such insurance through the duration of this Agreement and for as long afterwards as is prudent to provide for circumstances that may arise in relation to this Agreement after its termination.

23.3 The PHO and its Auditor may request, and the Contracted Provider must promptly provide any information concerning the insurance maintained in accordance with this clause.

## **24. Indemnity**

24.1 Each party (the "**indemnifying party**") indemnifies the other party (the "**indemnified party**") against any claim, liability, loss or expense, including without limitation, damages, legal fees, costs, and disbursements ("**Loss**"), brought or threatened against or incurred by the indemnified party, arising from the indemnifying party's failure to perform or comply

with its obligations under this Agreement, except to the extent that the Loss was caused by an act or omission of the indemnified party.

## **25. Variations to this Agreement**

- 25.1 We may vary this Agreement by agreement in writing, provided that any variation is not inconsistent with the PHO Services Agreement.

## **26. Notices**

- 26.1 Each notice or other communication under this Agreement must be in writing and may be made by facsimile, email, personal delivery, courier, or post at the facsimile number or address, and marked for the attention of the person or office holder (if any), designated for the relevant purpose by the addressee from time to time by notice to the other party.
- 26.2 Any change to a party's contact details must be notified to the other party at least 10 Business Days before the change comes into effect.
- 26.3 A notice is not effective until the addressee receives it.
- 26.4 A notice is deemed to be received (provided that the addresser is not aware of any failure in the communication) in the case of:
- (a) facsimile or email, on the Business Day on which it is sent or, if sent after 5pm in the place of receipt or on a non-Business Day, on the next Business Day;
  - (b) personal delivery or courier, when it is delivered;
  - (c) post, on the third Business Day after posting.
- 26.5 All periods of time for notice exclude the days on which the notice is given and include the days on which the period expires.

## **27. Contracts and Commercial Law Act**

- 27.1 We agree that all obligations of the Contracted Provider set out in this Agreement confer a benefit on the DHB, and the DHB may, in accordance with the Contracts and Commercial Law Act 2017, enforce those obligations directly against the Contracted Provider. [*Drafting note - This is a mandatory clause – see clause B.14(2)(c) of the PHO Services Agreement*]

## **28. Miscellaneous terms**

- 28.1 **Entire Agreement:** This Agreement, including the PHO Services Agreement and any Referenced Documents that apply to and form part of this Agreement, constitutes the entire agreement and understanding between us, and replaces all prior agreements and understandings between us in relation to the provision of the Services.
- 28.2 **Relationship of parties:** We agree that the Contracted Provider is an independent contractor to the PHO, and not an employee or agent.

28.3 **Severability:** If any provision of this Agreement is found or held to be illegal, invalid, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in force.

28.4 **Waiver:** We agree that either of us may, by notice, waive a specific right conferred under this Agreement, and any delay or failure to exercise a right does not constitute a waiver of that right.

## **SCHEDULE 1 – NATIONALLY CONSISTENT SERVICES**

### **1. Nationally Consistent Services subcontracted to the Contracted Provider**

- 1.1 The Contracted Provider must provide the following services to the PHO's Enrolled Population and other Eligible Persons, in accordance with the specified part and schedule of the PHO Services Agreement:
- (a) First Level Services and Urgent Care Services in accordance with Part C and Schedule C1, and clause 3 of this Schedule
  - (b) General Medical Services in accordance with Part C and Schedule C2
  - (c) Immunisation Services in accordance with Part C and Schedule C3
  - (d) Substance Addiction – Medical Examinations in accordance with Part C and Schedule C4
  - (e) Special Support Services for Former Sawmill Workers Exposed to PCP in accordance with Part C and Schedule C5
  - (f) Health Support Services for Dioxin-Exposed People in accordance with Part C and Schedule C6.

### **2. Payments for Nationally Consistent Services**

- 2.1 The PHO will pay the Contracted Provider:
- (a) capitation payments and associated payments that the PHO receives from the DHB under Schedule F1.1 of the PHO Services Agreement for First Level Services including Urgent Care Services provided by the Contracted Provider to its Enrolled Population;
  - (b) the fees for services that the PHO receives from the DHB under Schedules F1.2 and F1.3 of the PHO Services Agreement for General Medical Services and Immunisation Services provided by the Contracted Provider;
  - (c) the fees for medical examinations and certificates that the PHO receives from the DHB under Schedule F1.4 of the PHO Services Agreement for Substance Addiction – Medical Examination Services provided by the Contracted Provider; and
  - (d) the fee that the PHO receives from the DHB under Schedules F1.5 and F1.6 of the PHO Services Agreement for Special Support Services for Former Sawmill Workers Exposed to PCP and Health Support Services for Dioxin-Exposed People provided by the Contracted Provider.
- 2.2 The PHO will pay the capitation payments for First Level Services including Urgent Care Services that are referred to in clause 2.1(a) to the Contracted Provider no later than 2 Business Days after receiving the payments from the DHB.

### **3. Provision of Urgent Care Services**

- 3.1 If the Contracted Provider is unable to provide Urgent Care Services, we will work together to develop and put in place alternative arrangements for the continued provision of Urgent Care Services.
- 3.2 If we do not agree on alternative arrangements, clause 6 of Schedule C1 of the PHO Services Agreement applies to any non-provision of Urgent Care Services.