

Health Hawke's Bay Limited
Standard Terms and Conditions

These are the standard terms and conditions which are applicable and form part of all contractual relationships between Health Hawke's Bay Limited ("Health Hawke's Bay") and any person or entity contracting with Health Hawke's Bay for the provision of services and/or goods ("the Provider").

In the event that these terms and/or conditions conflict with the terms and conditions of any written agreement between Health Hawke's Bay and the Provider ("Specific Agreement"), then the terms of the Specific Agreement shall prevail and the conflicting term or condition in these terms and conditions shall be of no force or effect.

1. Term ("Term")

- 1.1 Where there is a term in a Specific Agreement, the term shall be as defined in the Specific Agreement.
- 1.2 In the absence of a defined term in a Specific Agreement or in the absence of a Specific Agreement, the term shall commence on the date of the parties entering into a contractual relationship and shall terminate in accordance with these terms.

2. Supply of Services and/or Goods

- 2.1 The Provider will:
 - (a) Perform the services; and/or
 - (b) Supply the goods,as agreed between the parties, either in the Specific Agreement or as otherwise agreed between the parties ("the Supply").

3. Contract Price and Payment Schedule

- 3.1 Health Hawke's Bay will pay the Provider for provision of the Supply ("the Contract Price"):
 - (a) In accordance with the Specific Agreement; or
 - (b) In the absence of a Specific Agreement, Health Hawke's Bay will pay the Provider the price agreed between the parties for the Supply; or
 - (c) Where there is no agreement, Health Hawke's Bay will pay the Provider a reasonable sum for the Supply.
- 3.2 The Contract Price shall be paid in accordance with the Specific Agreement, or in the absence of a Specific Agreement or a payment provision in a Specific Agreement:
 - (a) The Provider shall render an invoice to Health Hawke's Bay for the Supply, at the end of each calendar month; and
 - (b) Health Hawke's Bay shall pay such invoice by the 20th of the month following.

4. Target Population and Objectives and Outcomes

- 4.1 The Provider will provide the Supply primarily to any Target Population:
- (a) Defined in a Specific Agreement; and/or
 - (b) As shall be reasonably necessary to meet their obligations of the Supply.

5. Information and Reporting Requirements

- 5.1 The Provider will comply with the information and reporting requirements:
- (a) Outlined in a Specific Agreement; and/or
 - (b) As shall be reasonably necessary to meet their obligations of the Supply.

6. Confidentiality

- 6.1 The Provider agrees that during the Term and after the end of the Term, the Provider will not divulge any information concerning the business, financial matters, transactions or affairs of Health Hawke's Bay to any person other than in the proper course of the Supply. This paragraph 6 shall survive termination of the contractual relationship between the parties.

7. Health Information Privacy Code

- 7.1 Health Hawke's Bay and the Provider acknowledge and agree that they have joint and several responsibilities under the Health Information Privacy Code 1994 and will do all such things as reasonably necessary to comply with the Health Information Privacy Code 1994 and/or any legislation or regulations enacted in substitution or in support thereof.
- 7.2 Where the Provider is obtaining, collecting, storing, using and/or disclosing health information of third parties, the Provider undertakes that it will at all times do all things necessary to comply with the requirements of the Health Information Privacy Code 1994.
- 7.3 Where the Provider provides health or personal information to Health Hawke's Bay during the Supply, it is deemed that the Provider has undertaken to Health Hawke's Bay (in each instance of disclosure) that such health or personal information has been obtained and disclosed in accordance with all applicable statutory and/or regulatory requirements applicable to that health or personal information.
- 7.4 A breach of this term shall be deemed a material and serious breach of the contractual relationship between the parties.
- 7.5 This paragraph 7 shall survive termination of the contractual relationship between the parties.

8. **Te Tiriti o Waitangi**

- 8.1 Te Tiriti o Waitangi (The Treaty of Waitangi) establishes the unique and special relationships between Iwi, Māori and the Crown. Health Hawke's Bay considers the Treaty of Waitangi principles of partnership, proactive protection of Māori interest, co-operation and utmost good faith, to be implicit conditions of the nature in which the internal organisation of Health Hawke's Bay response to Māori health issues.
- 8.2 Health Hawke's Bay's strategic vision is Whanau Ora Hapori Ora (Healthy Families, Healthy Communities). Health Hawke's Bay is obligated and committed to deliver equitable health outcomes for Māori by prioritising available funding to target health services and support to Māori.
- 8.3 The Provider acknowledges and agrees that by entering into contractual relations with Health Hawke's Bay, they are acknowledging and are committed to upholding Te Tiriti O Waitangi during the Term and in providing the Supply.

9. **Māori Health**

- 9.1 During the Term and in providing the Supply, the Provider undertakes, acknowledges and agrees that, where Maori Health is a specifically identified health focus area, they shall:
- (a) Develop, implement and adhere to a Māori Health Policy ("Māori Health Policy") in consultation with Health Hawke's Bay. In developing a Māori Health Policy, the Provider must take into account Health Hawke's Bay's strategic direction for Māori health in terms of minimum requirements for Māori health based on the Treaty of Waitangi, Crown objectives for Māori health and specific requirements negotiated from time to time with Health Hawke's Bay.
 - (b) Demonstrate how the Māori Health Policy has been implemented. In particular, the Provider shall identify which services they are to deliver that explicitly relate to Māori health, and how the Provider will measure the effectiveness of these services.
 - (c) Liaise with Health Hawke's Bay to ensure that the Māori Health Policy remains current and to ensure there is adequate resources within funding levels.

10. **Provider's Warranties**

- 10.1 During the Term, the Provider warrants and continues to warrant that:
- (a) The individuals delivering the Supply on behalf of the Provider will have and will maintain all qualifications required for the delivery and/or performance of the Supply;
 - (b) The individuals delivering the Supply on behalf of the Provider will hold any practicing certificate/s (and will be registered with the appropriate New Zealand statutory body) required for the delivery and/or the performance of the Supply;
 - (c) The individuals delivering the Supply on behalf of the Provider have the necessary experience, competency and availability to deliver the Supply; and
 - (d) The Provider will immediately advise Health Hawke's Bay of any circumstances that may impact upon compliance with paragraphs (a) to (c) above.

11. **Health and Safety**

11.1 The Provider must ensure, so far as is reasonably practicable:

- (a) The health and safety of the Provider and those workers whose activities are influenced or directed by the Provider during the Supply; and
- (b) That the health and safety of other persons (including workers and clients of Health Hawke's Bay) is not put at risk during the performance of the Supply.

11.2 The Provider will:

- (a) Comply with all safety or environmental instructions, procedures or policies of Health Hawke's Bay; and
- (b) Consult, co-operate, and co-ordinate with Health Hawke's Bay with regard to health and safety matters.

11.3 The Provider will comply with all of the following requirements with respect to health and safety:

- (a) Relevant legislation, regulations, and codes of practice; and
- (b) Requirements specified by Health Hawke's Bay in the form of its own health and safety policy, procedures, or instructions.

12. **Default and Termination**

12.1 If the Provider:

- (a) Is in breach of the Specific Agreement;
- (b) By its acts or omissions, places at risk or causes damage to, any person or property and/or reputation of Health Hawke's Bay;
- (c) Is in breach of the laws of New Zealand, including a statute, bylaw, regulation or code of practice;
- (d) Becomes insolvent, bankrupt or enters into any composition with creditors or (if a company) has any receiver or liquidator appointed, or enters into an amalgamation or agrees to enter into an amalgamation proposal;
- (e) Fails or refuses to comply with the written policies or reasonable directives of Health Hawke's Bay; or
- (f) Fails to disclose any matter that may have materially influenced the decision of Health Hawke's Bay to enter into the Specific Agreement and/or a contractual relationship with the Provider,

then Health Hawke's Bay may immediately terminate its contractual relationship with the Provider by giving notice in writing to the Provider. Such termination shall be without prejudice to the right of Health Hawke's Bay to recover from the Provider damages for breach of contract or to any other right or remedy of Health Hawke's Bay under the Specific Agreement and/or contractual relationship between the parties.

12.2 Either party may terminate the contractual relationship between the parties:

- (a) In accordance with the Specific Agreement; or

- (b) In the absence of a Specific Agreement, in accordance with any agreed terms between the parties; and
 - (c) Where there is no Specific Agreement or agreed terms between the parties, by giving thirty (30) days' notice in writing to the other party.
- 12.3 Any termination of the contractual relationship will be without prejudice to the rights of either party arising prior to termination.
- 12.3 Nothing in this paragraph 12 affects the operation of these terms which are expressed or implied to have effect after termination.

13. Dispute Resolution

- 13.1 If either party has any dispute arising out of their contractual relationship:
- (a) That party will promptly give full written particulars of the dispute to the other; and
 - (b) The parties will promptly meet together and in good faith try and resolve the dispute.
- 13.2 If the dispute is not resolved within seven (7) days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 13.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.
- 13.4 The mediation will be conducted by a Institute of Arbitrators & Mediators (or a successor thereof) panel mediator chosen by the parties or, if they cannot agree, chosen by the President of the New Zealand Law Society or the President's nominee.
- 13.5 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator.
- 13.6 The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.
- 13.7 The arbitration will be conducted in accordance with the Arbitration Act 1996.
- 13.8 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 13.9 The procedures and timeframes for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 13.10 The parties must continue to comply with their contractual obligations during the dispute resolution process, subject to Health Hawke's Bay shall be entitled to withhold any disputed payment, to the extent of the dispute, until the dispute is resolved.

14. Nature of Agreement

- 14.1 The parties agree that their relationship is that of principal and independent contractor, or supplier and customer, as the case may be.
- 14.2 The Provider is entirely responsible for all taxation, accident compensation levies, public liability insurance, employment obligations with its staff, contractual obligations with its contractors, and all expenses relating to the Provider's business, including but

not limited to, all obligations and expenses incurred by the Provider arising from the Supply.

15. Notice and Indemnity

- 15.1 Health Hawke's Bay may from time to time give the Provider written notice of any errors or defects in the Supply ("Notice").
- 15.2 The Provider must immediately remedy any defects or errors referred to in a Notice at the Provider's expense, and in doing so, must avoid causing unnecessary inconvenience to Health Hawke's Bay.
- 15.3 The Provider will indemnify Health Hawke's Bay against all damage and losses (including costs) incurred by Health Hawke's Bay as a result of:
 - (a) The Provider failing to comply with the Provider's contractual obligations; or
 - (b) Any negligent or malicious act or omission on the part of the Provider or the Provider's employees, contractors and/or invitees.
- 15.4 This paragraph 15 shall survive termination of the contractual relationship between the parties.

16. Vulnerable Children Act 2014

- 16.1 The parties acknowledge that they have responsibilities to ensure compliance with the requirements of the Vulnerable Children Act 2014.
- 16.2 The Provider:
 - (a) Confirms that the Provider understands the obligations of both Health Hawke's Bay and the Provider pursuant to the terms of the Vulnerable Children Act 2014;
 - (b) Confirms that the Provider is compliant with the requirements of the Vulnerable Children Act 2014;
 - (c) Confirms that the Provider will do all things necessary to ensure ongoing compliance with the Vulnerable Children Act 2014 during the Term;
 - (d) Consents to Health Hawke's Bay undertaking all steps it deems reasonably necessary to ensure compliance with its obligations under the Vulnerable Children Act 2014; and
 - (e) Undertakes to immediately advise Health Hawke's Bay of any circumstances that may affect Health Hawke's Bay's or the Provider's compliance with the requirements of the Vulnerable Children Act 2014.

17. Intellectual Property

- 17.1 Any and all inventions, discoveries, developments, innovations or work produced through the Supply, shall be the exclusive property of Health Hawke's Bay and the Provider assigns all rights, title and interests in the same to Health Hawke's Bay.

18. Notices

- 18.1 Any notice or other communication given by either party must be in writing.
- 18.2 Any notice may be served personally, sent to the relevant party's registered office or sent by facsimile or email. Either party may vary its mailing address or other communication point details, in which event the party will promptly notify the other in writing of any changes.
- 18.3 Notices are deemed served at the following times:
- (a) When given personally, on delivery;
 - (b) When sent by post (other than airmail) or document exchange, three (3) business days after posting;
 - (c) When sent by airmail outside New Zealand, five (5) business days after posting; and
 - (d) When sent by facsimile or email, on receipt of the correct answerback or receipt code.
- 18.4 Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first business day after that day.

19. Severance

- 19.1 Any illegality, unenforceability or invalidity of any of these terms and conditions will not affect the rest of these terms and conditions which will remain in full force and effect, unless the commercial interests of either party are materially and adversely affected by such illegality, unenforceability or invalidity.

20. No Assignment

- 20.1 The Provider may not assign its rights under its contractual relationship with Health Hawke's Bay without the prior consent of Health Hawke's Bay, to be given in Health Hawke's Bay sole discretion.

21. Modification or Amendment

- 21.1 Subject to the following paragraph 21.2, no amendment, change or modification of any written contractual term will be valid unless agreed in writing and signed by both parties.
- 21.2 The Provider acknowledges that Health Hawke's Bay may amend these terms and conditions at any time, by:
- (a) Posting the amended Standard Terms & Conditions on their website; and
 - (b) Notifying the Provider by email that the Standard Terms & Conditions have been amended.
- 21.3 Where the Provider considers that any amendment to Health Hawke's Bay's Standard Terms & Conditions (pursuant to paragraph 21.2) amounts to an amendment of a material term of the contractual relationship:

- (a) The Provider must raise an objection with Health Hawke's Bay within fourteen (14) days of the date of the email pursuant to paragraph 21.2(b); and
 - (b) The parties will enter into negotiations with a view to resolving the objection.
- 21.4 If the parties cannot resolve the objection pursuant to paragraph 21.3(b) within fourteen (14) days:
 - (a) The objection will be determined pursuant to the dispute resolution process set out in paragraph 13; and
 - (b) The form of the Standard Terms & Conditions that were current prior to the amendment pursuant to paragraph 21.2 shall be applicable to the contractual relationship until the objection is resolved pursuant to paragraph 21.4(a).
- 21.5 If the Provider does not advise Health Hawke's Bay of any objection to the amended Standard Terms & Conditions within fourteen (14) days of receipt of the email pursuant to paragraph 21.2(b), the Provider shall be deemed to have accepted the amended Standard Terms & Conditions and the amended Standard Terms & Conditions shall be applicable to the contractual relationship between the parties from fourteen (14) days after receipt of the email pursuant to paragraph 21.2(b).

22. **Counterparts**

- 22.1 The parties agree that any written contractual documentation may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A facsimile copy of such written contractual documentation, or a PDF scanned copy of written contractual documentation attached to an email transmission, showing a representation of a signature of any party will be deemed to be an original counterpart.

23. **Jurisdiction**

- 23.1 The parties acknowledge that the contractual relationship between them is governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

24. **Entire Agreement**

- 24.1 Any written agreements between the parties record the entire arrangements between the parties and supersede all previous arrangements, whether written, oral, or both.