

**BAY OF PLENTY DISTRICT HEALTH BOARD  
TERMS OF TRADE FOR SERVICES**

**1. Provision of Services**

- 1.1 The Provider must provide Services in an enthusiastic, prompt, efficient, professional and ethical manner and in accordance with:
- a. the terms of this Agreement;
  - b. all relevant published Crown objectives and guidelines;
  - c. BOPDHB's Objectives and all relevant standards published or approved by BOPDHB; and
  - d. all relevant Law.
- 1.2 Other than as specifically set out in this Agreement and/or purchase order issued by BOPDHB, BOPDHB does not guarantee the Provider any specific volume of business under this Agreement. All estimates provided to the Provider by BOPDHB are estimates only, and the Provider confirms that these estimates will not be relied on in any circumstances.
- 1.3 In the event of an emergency or disaster affecting BOPDHB, the Provider will use its best endeavours to provide Services, as requested by BOPDHB.

**2. Purchase Order**

- 2.1 Where appropriate, BOPDHB will confirm orders for Services by issuing a purchase order with a Purchase Order Number recorded on it.

**3. Price**

- 3.1 BOPDHB will pay the Provider the Price plus GST (if any), for the provision of Services. For avoidance of doubt, the Price is exclusive of GST.
- 3.2 The Provider acknowledges that:
- a. the Provider's costs and expenses incurred in complying with the Provider's obligations under this Agreement are included in the Price; and
  - b. BOPDHB will not be required to pay any sums in respect of the Services other than the Price.

**4. Payment**

- 4.1 BOPDHB will pay the Provider by electronic funds transfer or such other method acceptable to BOPDHB by the end of the month following the month in which the Services are provided to BOPDHB.
- 4.2 All payments are subject to BOPDHB receiving a GST tax invoice complying with clause 5 of this Agreement. All invoices must be sent to BOPDHB (Accounts Section), Private Bag 12-024, Tauranga, New Zealand.
- 4.3 Failure by BOPDHB to dispute any invoice prior to payment will not prejudice BOPDHB's rights to subsequently dispute the correctness of such invoice.
- 4.4 BOPDHB will be entitled to deduct any withholding tax required to be deducted from payments BOPDHB is liable to make to the Provider under this Agreement and will forward that withholding tax to the New Zealand Inland Revenue Department as required by Law. The net amounts paid by BOPDHB to the Provider shall be complete and final discharge by BOPDHB of its obligations to make the relevant payments.
- 4.5 BOPDHB may withhold or deduct or set off the amount of any overpayment or any amount recoverable by BOPDHB from the Provider under this Agreement from any future payment.
- 4.6 Account enquiries can be made by post, by telephone 0064 7 579 8801 or by fax 0064 7 577 9195.

**5. Invoicing**

- 5.1 Each GST tax invoice must meet all legal requirements and must contain the following information:
- a. Provider's legal name;
  - b. Provider's GST number;
  - c. Provider's invoice number;
  - d. Contract Number and Purchase Order Number (if applicable);
  - e. description of Services provided to BOPDHB in accordance with this Agreement;
  - f. period Services provided;
  - g. dollar amount to be paid plus GST (if any);
  - h. date the invoice is due to be paid.

**6. Term**

- 6.1 The Term will start on the commencement date and will end in accordance with this Agreement.
- 6.2 Notwithstanding clause 6.1, if BOPDHB permits the Provider to provide Services after the expiration of the Term, such provision of Services shall be on a monthly basis terminable by one month's written notice and shall otherwise be upon and subject to the same terms and condition expressed or implied in this Agreement.

**7. Timing**

- 7.1 The Provider will provide Services to BOPDHB as specified in the Schedule, or if no details are specified in the Schedule, then with all reasonable speed and due diligence.

**8. Favourable Terms**

- 8.1 During the Term, the terms and conditions applicable to BOPDHB shall be no less favourable than the terms and conditions that the Provider may offer to any third party and the Provider shall offer to BOPDHB the opportunity to benefit from any such more favourable terms and conditions offered by the Provider to third parties.

**9. Access to Any BOPDHB Site**

- 9.1 If access to any BOPDHB Site is necessary for the provision of Services to BOPDHB in accordance with this Agreement, BOPDHB will allow the Provider access at reasonable times, as necessary for the provision of those Services.
- 9.2 The Provider will comply with BOPDHB's security, operational and site requirements where the Provider has access to any BOPDHB Site.
- 9.3 When required by BOPDHB, the Provider must complete a BOPDHB Site specific induction programme before providing Services to BOPDHB in accordance with this Agreement.

**10. Compliance Standards/Quality Assurance**

- 10.1 The Provider must during the Term have and comply with all relevant compliance standards and a quality assurance system.
- 10.2 The Provider must provide BOPDHB with details of relevant compliance standards and its quality assurance system, if BOPDHB requests them.

**11. Other Arrangements**

- 11.1 The Provider must not enter into any other contract or arrangement, that might prejudice the Provider's ability to meet its obligations under this Agreement, but subject to this, the Provider may provide services to others.
- 11.2 Nothing in this Agreement will prevent BOPDHB purchasing services similar to, or the same as, the Services from any other person.

**12. Confidential Information**

- 12.1 The Provider acknowledges that in the course of the performance of its obligations under this Agreement, or otherwise, the Provider may obtain access to, or become aware of Confidential Information which is, or may be of value to BOPDHB.
- 12.2 The Provider must not disclose, communicate to or place at the disposal of any other person, any Confidential Information in any form or by any means and the Provider must keep the Confidential Information in the strictest confidence, except in the following circumstances:
- a. the disclosure is required by Law in which case the Provider must notify BOPDHB of the requirement for the Confidential Information to be disclosed. If BOPDHB objects to this disclosure on the basis that it is not required by Law, the Provider must reconsider its decision;
  - b. the disclosure is to the Provider's Staff to the extent that he, she or it needs to know the Confidential Information in order to fulfil the Provider's obligations under this Agreement; or
  - c. BOPDHB consents in writing to the disclosure.
- 12.3 If BOPDHB authorises the Provider to disclose any Confidential Information to any person the Provider agrees, prior to such disclosure, to have such person execute an acknowledgement, to the effect that the Confidential Information is disclosed to that person in confidence.
- 12.4 The Provider agrees not to use, or modify the Confidential Information for its own benefit or the benefit of any other person.
- 12.5 To ensure the continued proprietary and confidential nature of the Confidential Information the Provider agrees to:
- a. initiate and maintain a system for the proper and secure custody of any Confidential Information within its custody or control; and
  - b. maintain complete and accurate records of the location of the Confidential Information within its custody or control (including all copies).
- 12.6 If BOPDHB so requests at any time, the Provider agrees to:
- a. immediately disclose and deliver to, or do all things necessary to procure the disclosure and delivery to BOPDHB or as BOPDHB may direct, all Confidential Information which is in a physical form including all copies of the Confidential Information whether those copies are in the same form as the original or capable of being recreated into such or other form by any method;
  - b. deliver any part of the Confidential Information which is stored by any means by which no original or copy is kept

- at the relevant time but by use of any method, an original or copy may be recreated by creating and delivering a printed copy of such Confidential Information to BOPDHB or as BOPDHB may direct, and then destroying the means of recreation so as to prevent the future recreation of such Confidential Information;
- c. certify in writing to BOPDHB that the Provider has returned all forms of Confidential Information and that the Provider no longer has any part of the Confidential Information in its possession, custody or control; and
  - d. ensure that BOPDHB has access to the premises in which Confidential Information may be, or supposed to be, or has been kept from time to time.
- 12.7 The obligations under this clause survive the expiry or the termination of this Agreement for whatever reason.
- 13. Stop Involvement**
- 13.1 The Provider shall end the direct and indirect involvement with this Agreement of any person as requested by BOPDHB if, in BOPDHB's reasonable opinion, that person does not satisfy any of BOPDHB's security or operational requirements, or is not appropriate.
- 14. Instructions to Leave Any BOPDHB Site**
- 14.1 BOPDHB may, at its sole discretion, ask the Provider's Staff to leave any BOPDHB Site immediately if:
- a. there is an emergency;
  - b. BOPDHB believes the health or safety of any person is at risk; or
  - c. BOPDHB decides it is necessary in the circumstances.
- 14.2 If the Provider's Staff have been asked to leave any BOPDHB Site pursuant to clause 14.1, the Provider's Staff must:
- a. leave that BOPDHB Site immediately; and
  - b. not return to that BOPDHB Site or any other BOPDHB Site until authorised by the BOPDHB Contact Person.
- 15. Reports**
- 15.1 The Provider shall:
- a. complete and return within 10 working days, any reports required in accordance with:
    - i. this Agreement; and
    - ii. BOPDHB's reasonable instructions; and
  - b. send any report direct to the Crown in the manner BOPDHB specifies, if requested by BOPDHB.
- 16. Audit**
- 16.1 BOPDHB may from time to time audit the Provider's performance and compliance with this Agreement. For the purpose of any audit, BOPDHB may want:
- a. access to the Provider's premises;
  - b. access to all premises where records relating to the Services are kept; and
  - c. to interview the Provider's Staff or other people used by the Provider to provide Services to BOPDHB.
- 16.2 The Parties agree to act reasonably for the purpose of any audit.
- 16.3 The Provider shall co-operate with any person authorised by BOPDHB to carry out any audit.
- 16.4 BOPDHB's right to audit under this clause survives the expiry or the termination of this Agreement for whatever reason but only to the extent that it is relevant to the period during which this Agreement exists.
- 17. Insurance**
- 17.1 The Provider shall take out and maintain at its own cost, during the Term, the following insurances:
- a. Professional indemnity insurance for at least the minimum amount specified in the Schedule;
  - b. Public liability insurance for at least the minimum amount specified in the Schedule;
  - c. Other liability cover that may be specified in the Schedule.
- 17.2 The Provider will keep professional indemnity insurance cover in force for six (6) years after the end of the Term subject to such insurance being available to the Provider at a cost which is not prohibitive to the continuance of the Provider's business. If the Provider considers that the cost is prohibitive the Provider must provide reasonable evidence of this to BOPDHB and if BOPDHB disagrees the dispute must be dealt with under clause 29 (dispute resolution).
- 17.3 The Provider will require its insurer(s) to complete the attached standard insurance certificates for the insurances specified in the Schedule. The insurance certificates are to be provided to BOPDHB at the time of execution of this Agreement and thereafter on the anniversary date for any insurances that are required to be in place at that time.
- 17.4 If the Provider does not satisfy its obligations under this clause 17, BOPDHB has the right at any time to independently arrange the insurances on the Provider's behalf with the cost of those insurances being to the Provider's account.
- 17.5 The Provider must not do anything that might render the insurances referred to in this Agreement or any other insurances in the name of BOPDHB, void or voidable.
- 18. Intellectual Property**
- 18.1 Where:
- a. any licence or any other authorisation from any person is required as the result of any Services:
    - i. the Provider must inform BOPDHB of the requirements prior to the provision of Services. If BOPDHB is not prepared to accept those requirements, then BOPDHB may terminate this Agreement without any compensation to the Provider and the Provider shall refund any amount paid under this Agreement to BOPDHB; or
    - ii. the Provider will, within the Price, procure an irrevocable licence (on a non-exclusive and transferable basis) for BOPDHB to own, possess, use the result of any Services, unrestricted;
  - b. any new information (including any design, data, specification, know-how or any other form of intellectual property) is developed in respect of any Services provided specifically for BOPDHB, that information will belong to BOPDHB and the Provider shall keep that information confidential and secure and, on demand and free of charge, transfer every proprietary right in that information to BOPDHB or its nominee.
- 19. Subcontracting and Assignment**
- 19.1 The Provider shall not subcontract or assign the benefit or burden of any of its obligations under this Agreement without BOPDHB's prior written consent which may not be unreasonably withheld.
- 19.2 If BOPDHB consents to the Provider subcontracting or to an assignment pursuant to clause 19.1, the Provider must comply with any reasonable conditions BOPDHB imposes as part of that consent.
- 19.3 BOPDHB may transfer its rights under this Agreement by giving the Provider notice of this or as required by Law.
- 20. Warranties**
- 20.1 The Provider warrants to BOPDHB that:
- a. the person or persons signing this Agreement on its behalf are duly authorised to do so and bind the Provider to the terms of this Agreement;
  - b. the Provider is responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) are obtained in relation to the provision of Services;
  - c. all:
    - i. facts, information, representations and statements made or given to BOPDHB or its employees, agents, representatives or advisers by the Provider's Staff are true and accurate in all respects and there is no information or circumstance pertaining to the Services that has not been disclosed to BOPDHB; and
    - ii. information published in whatever form but not given directly to BOPDHB or its employees, agents, representatives or advisers by the Provider's Staff is true, complete and accurate.
  - d. it will carry out its obligations under this Agreement with reasonable care, skill and diligence and in accordance with best standards in the Provider's profession or industry;
  - e. all of the Provider's Staff associated with the provision of Services are:
    - i. competent;
    - ii. adequately trained and experienced;
    - iii. supervised, if appropriate; and
    - iv. appropriately qualified and are, where relevant, registered with or licensed by the appropriate statutory or professional body;
  - f. all Services that are the Provider's responsibility shall satisfy BOPDHB's requirements under this Agreement;
  - g. all Services comply in all respects with all relevant Law;
  - h. it will be responsible for all acts and omissions of the Provider's Staff even if they are done without the Provider's knowledge or approval;
    - i. clear title to anything provided to BOPDHB as part of the provision of Services will pass to BOPDHB when title passes;
    - j. the result of Services provided by the Provider will not infringe any proprietary or other intellectual property right or interest of any person; and

- k. no form of inducement or reward has been or will be directly or indirectly provided to any of BOPDHB's employees, agents, representatives or advisers.
- 20.2 The warranties set out in this Agreement are additional to any other warranties and guarantees given by the Provider or implied by Law.
- 21. Warranty Claims**
- 21.1 If BOPDHB notifies the Provider in writing of a breach of warranty the Provider shall, at its expense, promptly remedy each claim to BOPDHB's satisfaction.
- 21.2 If the Provider fails to promptly remedy a warranty claim or if BOPDHB determines that an urgent or another situation so justifies, BOPDHB or a third party may remedy the breach and recover the cost of doing so from the Provider.
- 21.3 The Provider shall promptly, at its own cost, supply BOPDHB with a report describing the work carried out in the remediation or rectification of any warranty claim.
- 22. Third Party Warranties**
- 22.1 The Provider shall pass to BOPDHB, or if the Provider is unable to do so will hold for BOPDHB's benefit, all warranties provided by third parties in respect of any Services provided by a third party.
- 22.2 If the Provider is unable to pass a third party warranty to BOPDHB, the Provider will be responsible for making all or any warranty claims on any Services provided by third parties to BOPDHB at no cost to BOPDHB.
- 23. Indemnity**
- 23.1 The Provider shall fully protect and indemnify BOPDHB from and against any direct, indirect or consequential losses, liability, damages, actions, proceedings, claims, demands, costs and expenses (including legal and solicitor/client costs) incurred directly or indirectly in connection with or as a consequence of the Provider's failure to comply with its obligations under this Agreement or any act or omission by the Provider's Staff or any person for whom the Provider is responsible. This obligation continues after termination or expiry of this Agreement.
- 24. BOPDHB's Liability Limited**
- 24.1 Except to the extent of direct damage or loss to the Provider caused by a breach of this Agreement by BOPDHB and to the extent allowed by Law, BOPDHB has no liability (in contract, tort, or equity, including negligence) to the Provider or any other person in respect of this Agreement.
- 25. Health and Safety Law**
- 25.1 The Provider must promptly notify BOPDHB in writing once the Provider is aware that, in respect of any location at any BOPDHB Site that the Provider has access:
- any hazard may or does exist, or any situation may arise or has arisen where any person may not be safe or harm may result to any person;
  - any accident or serious harm to any person has occurred and what steps have been taken or are proposed; and
  - any improvement or prohibition notice is likely to be, or has been, issued.
- 25.2 The Provider must have and comply with:
- an appropriate health and safety plan;
  - the Health and Safety in Employment Act 1992; and
  - any BOPDHB Site rules.
- 26. Failure to Comply**
- 26.1 If:
- any warranty claim is not promptly dealt with by the Provider;
  - the Provider breaches or fails to properly or promptly provide any of the Provider's obligations under this Agreement and fails to properly or promptly remedy the situation to BOPDHB's satisfaction within 5 working days after notice from BOPDHB of the breach or failure;
  - the Provider is or becomes insolvent or bankrupt, goes into receivership or liquidation, or amalgamates with any other person(s);
  - any resolution is passed, or proceedings are commenced, for the Provider's amalgamation or liquidation;
  - the Provider directly or indirectly assigns or transfers, or attempts to assign or transfer, any of its benefits or burdens in this Agreement;
  - any direct or indirect change of control (whether by change of legal or beneficial ownership of shares, securities, possession of voting power or by contract, trust or otherwise) of the Provider occurs, whether by a single event or a series of events over any period of time after the date of this Agreement, without the prior written consent of BOPDHB; or
- a Force Majeure event continues for more than 10 consecutive working days or for an aggregate of more than 15 working days in any 12 month period;
- BOPDHB may:
- withhold any payment otherwise due to the Provider until the matter is resolved to BOPDHB's satisfaction;
  - suspend or terminate (in whole or in part) this Agreement immediately by written notice to the Provider;
  - have services performed by BOPDHB's own personnel or anyone else;
  - for any event under this clause 26, recover from the Provider:
    - amounts for any direct or indirect damage, loss or costs (including legal and solicitor/client costs) to BOPDHB due to the non-performance by the Provider;
    - any difference between the Price and the actual cost of purchase of alternative services, if the cost of the alternative services is higher than the Price;
    - all money paid by BOPDHB to the Provider for or on account of Services; and/or
  - deduct from or set-off against any amount BOPDHB may owe the Provider.
- 27. Notification of Problems**
- 27.1 The Provider must advise BOPDHB promptly in writing:
- of anything which may or is likely to materially reduce or affect the Provider's ability to provide Services including anything relating to any premises or equipment used by the Provider;
  - if the Provider materially fails to comply with any of its obligations in this Agreement;
  - of any serious complaints or disputes which directly or indirectly relate to the provision of Services; or
  - of any issues concerning Services that might have media or public interest.
- 27.2 The Provider must have in place realistic and reasonable risk management processes and contingency plans to enable it to continue to provide Services on the occurrence of any of the matters in clause 27.1 and must provide BOPDHB with details of those plans, if BOPDHB requests them.
- 28. Complaints**
- 28.1 The Provider must comply with any applicable standards for the health sector relating to complaints and comply with the requirements of any Complaints Body. If there is no applicable standard, then clause 29 (dispute resolution) applies.
- 29. Dispute Resolution**
- 29.1 If a Party has any dispute with the other Party in connection with this Agreement:
- that Party will promptly give full written particulars of the dispute to the other Party's contact person;
  - the Parties will promptly meet together and in good faith try and resolve the dispute.
- 29.2 The Parties must always act in good faith and cooperate with each other to promptly resolve any dispute.
- 29.3 If the dispute is not resolved within 30 working days of written particulars being given (or any longer period agreed to by the Parties) the dispute will be referred to arbitration.
- 29.4 a.
- The arbitration will be conducted by one arbitrator appointed by the Parties.
  - If the Parties cannot agree on an arbitrator within 15 working days the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
  - The arbitration will be conducted in accordance with the Rules in the Arbitration Act 1996.
- 29.5 Neither Party will unreasonably delay the dispute resolution procedures in this clause 29.
- 29.6 The Parties must continue to comply with their obligations under this Agreement during the dispute resolution process but disputed payments may be withheld to the extent that they are disputed.
- 29.7 This clause 29 does not apply to:
- any dispute arising in connection with any attempted renegotiation of this Agreement;
  - any dispute directly or indirectly arising from any matter which has been referred to a Complaints Body unless the Complaints Body directs otherwise; or
  - an application by a Party for urgent interlocutory relief.
- 30. Public Statements and Advertising**
- 30.1 The Parties must not during or after this Agreement has terminated or expired either directly or indirectly criticise the other publicly. Nothing in this clause prevents a Party from

- discussing any matters of concern with their respective employees, agents, representatives, advisers or subcontractors.
- 30.2 The Provider must not use BOPDHB's name or logo in advertising its business or activities without our prior written consent and the Provider must comply with all terms and conditions upon which such consent is given.
31. **Termination**
- 31.1 This Agreement continues until ended:
- by expiry of the Term;
  - by agreement between the Parties; or
  - in accordance with this Agreement.
- 31.2 Any termination of this Agreement will be without prejudice to the rights of a Party arising prior to termination.
- 31.3 Nothing in this clause 31 affects the operation of any clauses in this Agreement which are expressed or implied to have effect after its termination.
32. **Obligations on Termination**
- 32.1 On the termination of this Agreement, the Provider shall:
- take all reasonable steps to keep BOPDHB aware of any matters that come to its attention which require BOPDHB to act to protect BOPDHB's interests;
  - at BOPDHB's request, immediately return to BOPDHB, at no charge to BOPDHB, all property, files, manuals, Confidential Information or other property and/or information in the Provider's possession or control belonging to BOPDHB. If necessary, property must be secured and stored in a weatherproof store;
  - transfer to BOPDHB all licences or authorisations relating to this Agreement as are held by the Provider and are transferable to BOPDHB;
  - provide to BOPDHB copies of such of the Provider's records relating to this Agreement as will enable BOPDHB to determine accurate details of the outputs achieved by the Provider in the performance of its obligations under this Agreement;
  - forward all claims for payment (if any) to BOPDHB within 10 working days of the termination; and
  - at BOPDHB's request, continue to perform its obligations under this Agreement until all obligations under this Agreement existing as at the date of termination for which the Provider remain liable, have been completed. If the Provider does not complete these obligations within 10 working days after the date of termination or such longer period as BOPDHB agrees in writing, BOPDHB may complete the outstanding obligations and any costs incurred will be recoverable from the Provider.
33. **Failure to Remove Property**
- 33.1 If any of the Provider's property is not removed from any BOPDHB Site when required by BOPDHB, BOPDHB may, at the Provider's risk and cost, and without any recourse to BOPDHB:
- remove it to any other location;
  - store it at any location and charge a reasonable amount plus GST for that storage until it is removed to BOPDHB's satisfaction; or
  - dispose of it, apply the proceeds towards the storage, disposal and removal costs, and forward the balance (if any) to the Provider.
34. **Force Majeure**
- 34.1 Neither Party will be liable to the other for any delays or non-performance of contractual obligations under this Agreement caused by a Force Majeure event provided each Party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event.
35. **Special Conditions Prevail**
- 35.1 Where there is any conflict in the interpretation or application of any special terms and conditions of this Agreement with the general terms and conditions of this Agreement then the relevant special terms and conditions of this Agreement (if any) shall prevail.
- 35.2 If any other terms and conditions are to apply or prevail they must be agreed to in writing by BOPDHB.
36. **Agreement Paramount**
- 36.1 Notwithstanding any terms of the Provider entered into including terms of trade and invoices, this Agreement will be paramount and will apply to the exclusion of any of the Provider's documentation, even if at some later date BOPDHB signs or otherwise purports to accept the terms of that documentation other than in the manner outlined in this Agreement.
37. **Notices**
- 37.1 a. Any notice or other communication ("notices") given under this Agreement must be in writing.
- It may be served personally or sent to any of the relevant Party's communication points listed in the Schedule.
  - Each Party will notify the other in writing of any changes.
- 37.2 Notices are deemed served at the following times:
- when given personally, upon delivery;
  - when sent by post (other than airmail) or document exchange, 3 working days after posting;
  - when sent airmail outside New Zealand, 5 working days after posting;
  - when sent by facsimile or email upon receipt of the correct answerback or receipt acknowledgement.
- 37.3 Any notice that has been served on a day other than a working day is deemed to be served on the first working day after that day.
- 37.4 a. Notice may be given personally to the Provider's Contact Person, a director, employee or agent of the Provider at the Provider's address or to a person who appears to be in charge at the time of delivery or according to section 387 to section 390 of the Companies Act 1993.
- If the Provider is a natural person, partnership or association, the notice may be given to that person or the Provider's Contact Person, any partner or responsible person. If they refuse to accept the notice, it may be brought to their attention and left in a place accessible to them.
  - Any notice served personally on the BOPDHB must be given personally to the BOPDHB Contact Person or BOPDHB's Chief Executive Officer.
38. **Variations To This Agreement**
- 38.1 The terms of this Agreement may be varied by written agreement, signed the Parties.
- 38.2 If BOPDHB is required to vary the terms of this Agreement to give effect to its obligations under its funding agreement with the Crown, or any directive issued to it by the Crown, then BOPDHB will give the Provider written notice of such variation ("Variation Notice") and of the date on which such variation is to take effect ("the Variation Date").
- 38.3 Where possible the Variation Date will be at least 20 working days after the date of the Variation Notice and BOPDHB will consult with the Provider to reach agreement on the variations set out in the Variation Notice.
- 38.4 If the Variation Notice is, in the Provider's opinion onerous and the Parties cannot agree, the Provider may, within 30 working days of the date of the Variation Notice give BOPDHB written notice of termination of this Agreement ("Termination Notice"). Such termination will take effect on the later of:
- the date 10 working days from the date the Termination Notice is served on BOPDHB; and
  - the Variation Date.
- 38.5 If the Provider fails to provide BOPDHB with a Termination Notice within 30 working days of the date of the Variation Notice, then the Provider will be deemed to be bound by the contents of the Variation Notice from the Variation Date and unless otherwise specified in the Variation Notice, the terms of this Agreement will be deemed to have been varied in accordance with the Variation Notice.
39. **Costs**
- 39.1 The Parties will bear their own costs of negotiating, preparing and executing this Agreement.
40. **No Action by Third Parties**
- 40.1 This Agreement is not intended to confer legally enforceable benefits on any person who is not a Party to it and no third party may enforce any of the provisions in this Agreement.
41. **No Waiver**
- 41.1 a. If a Party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.
- The single or partial exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy or its further exercise.
  - The rights and remedies provided in this Agreement are cumulative. They do not exclude any rights or remedies provided by Law.
  - Any waiver or consent given by a Party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.
42. **Relationship**
- 42.1 The Provider acknowledges that it is an independent contractor to BOPDHB and nothing in this Agreement may be

- construed to make a Party a partner, servant, agent, employer or employee of the other.
- 42.2 No Party has any authority to bind the other or act on the other Party's behalf except to the extent expressly provided in this Agreement.
43. **Counterpart**
- 43.1 This Agreement may be executed in counterparts, which, when executed, will constitute and be read as one document.
44. **Severance**
- 44.1 Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of a Party are materially and adversely affected.
45. **Further Assurance**
- 45.1 Each Party agrees to execute any further documents and do any further acts within its powers as may be reasonably necessary from time to time to give effect to the terms and intentions of this Agreement.
46. **Governing Law**
- 46.1 This Agreement will be governed by and construed in accordance with the laws of New Zealand and the Parties submit to the jurisdiction of the courts of New Zealand.
47. **Definitions and Interpretation**
- Definitions**
- 47.1 In this Agreement the following expressions have the stated meaning.
- a. "Act" means the New Zealand Public Health and Disability Act 2000.
  - b. "Agreement" means this Agreement signed by the Parties and comprising each Schedule, as amended from time to time.
  - c. "BOPDHB Contact Person" means the BOPDHB Contact Person recorded in Schedule or such other BOPDHB Contact Person as notified to the Provider in writing by BOPDHB from time to time.
  - d. "BOPDHB's Objectives" include:
    - i. the objectives specified in BOPDHB's statement of intent (as defined in the Act); and
    - ii. to meet the Crown's objectives notified to BOPDHB under the Act from time to time.
  - e. "BOPDHB Site" means the Tauranga Hospital campus, Whakatane Hospital campus, any sites leased or rented by BOPDHB and any other sites where goods, products, equipment or material owned or leased by BOPDHB may be situated from time to time.
  - f. "Complaints Body" means any organisation appointed to deal with complaints relating to the Services.
  - g. "Confidential Information" means all information about the current or future interests, methods or affairs of BOPDHB. It includes:
    - i. technical matters;
    - ii. research and development information;
    - iii. notes, products, know-how, trade secrets, data;
    - iv. specifications, processes, formulae;
    - v. planning procedures, techniques or information;
    - vi. accounting procedures or financial information;
    - vii. the possible function or application of the above items;
    - viii. any improvements to the above items;
    - ix. any recommendation, test or report on the above items by any of BOPDHB's employees, agents, representatives or advisers.

Confidential Information can be oral, written or recorded in any form, whether physical or electronic. Confidential Information remains so even if it has been translated, altered or partially copied, compiled or recompiled.
  - h. "Contract Number" means the number recorded on the cover sheet of this Agreement.
  - i. "Crown" means Her Majesty the Queen in right of New Zealand and includes all Ministers of the Crown and all departments.
  - j. "Force Majeure event" means any event or cause reasonably beyond a Party's control including action superimposed by the Crown after the date of this Agreement, acts of God, fire, earthquake, storm, flood, landslide, explosion, communication line failure, power failure, sabotage, civil disturbance, insurrection, epidemic, national emergency or act of war but does not include:
    - i. financial management difficulties or other like difficulties;
    - ii. labour disputes or industrial action on the Provider's part or inability on the Provider's part to obtain supplies or materials due to disputes with its third party suppliers where the Provider has not taken reasonable steps to ensure continuity of provision of Services; or
- iii. any risk or event, including those listed above, the effects of which the Party affected could have prevented or overcome by taking reasonable care.
- k. "GST" means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985.
  - l. "Health Professional Authority" means any authority or body that is empowered by any statute or the rules of any body or organisation, to exercise disciplinary powers in respect of any person who is involved in the supply of health and disability services.
  - m. "Law" includes:
    - i. common law, principles of equity, and laws made by Parliament, and a reference to laws made by Parliament of any legislation includes regulations, codes and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them;
    - ii. any rule, protocol, code of ethics, practice or conduct, ethical standard or other standard, guidelines and requirements of any authority, statutory or professional body or Health Professional Authority; and
    - iii. any future law.
  - n. "Parties" means both BOPDHB and the Provider and "Party" means either one of them.
  - o. "Price" means the price (exclusive of GST) for the Services specified in the Schedule.
  - p. "Provider's Staff" means the Provider, its employees, consultants, agents, representatives and subcontractors.
  - q. "Public Holiday" means a day listed as a holiday in section 44 of the Holidays Act 2003.
  - r. "Purchase Order Number" means the number recorded on the purchase order issued by BOPDHB when requesting the provision of Services.
  - s. "Renewal Date" means the date specified in the Schedule.
  - t. "Review Dates" means the dates specified in the Schedule.
  - u. "Schedule" means, in respect of this Agreement, each Schedule that is part of this Agreement.
  - v. "Services" include the services described in the Schedule together with any associated works and services, intellectual property and anything else required to provide the Services to BOPDHB or required to satisfy BOPDHB's requirements under this Agreement.
  - w. "Term" means the term of this Agreement as specified in the Schedule and includes any renewed period.
  - x. "working day" means a day (beginning at 9 am and ending at 5 pm) other than a Saturday or Sunday or Public Holiday observed in the Bay of Plenty, New Zealand.
- Interpretation**
- 47.2 In this Agreement:
- a. terms given a defined meaning in this Agreement have that meaning where the context permits;
  - b. words referring to the singular include the plural and the reverse;
  - c. any reference to any of the Parties includes that Party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
  - d. everything expressed or implied in this Agreement which involves more than one person binds and benefits those people jointly and severally;
  - e. clause headings are for reference purposes only;
  - f. a reference to a person includes any other entity or association recognised by law and the reverse;
  - g. all reference to dollar and "\$" are references to New Zealand dollars unless otherwise stated;
  - h. references to a time of day are references to New Zealand time;
  - i. all periods of time or notice exclude the days on which they are given and include the days on which they expire;
  - j. "including" and similar words do not imply any limitation;
  - k. time is of the essence.