**Waitemata District Health Board**

[Waitemata DHB]

**AND**

[“The Contractor”]

**Contract for the Provision of Services**

**Contract** dated (enter date)

**Parties**

1. **Waitemata District Health Board (“Waitemata DHB”)**
2. **(“The Contractor”)**

## Background

1. Waitemata DHB wishes to contract with the Contractor to provide services to Waitemata DHB.
2. Waitemata DHB and the Contractor have thereby entered into this Contract to record the terms and conditions of this arrangement.

## Operative Provisions

1. **The Services**
   1. The Contractor shall provide various services to Waitemata DHB as set out in the attached Schedule A (**the Services**).
2. **Term of Contract**
   1. The term of this Contract is from x (date) to y (date) (“expiry date”) unless it is terminated earlier by Waitemata DHB or Contractor in accordance with paragraph 13 below.
3. **Contractor’s Duties to be governed by**
   1. The Contractor shall, during the continuance of the Contract:
      1. Diligently and faithfully serve Waitemata DHB and endeavour to protect the interests of Waitemata DHB, its employees and other contractors;
      2. Carry out and comply with the reasonable and lawful directions of Waitemata DHB and shall at all times be courteous and co-operative to/with Waitemata DHB, its patients, employees, other contractors and members of the public on Waitemata DHB premises;
      3. Not commit or omit any act that may jeopardise or otherwise adversely affect the reputation of Waitemata DHB.
      4. Comply at all times with all applicable statutes, regulations and statutory instruments.
      5. At all times when providing the Services hold all licences, certifications, registrations and authorisations required to lawfully provide the Services.
4. **Payment for Services**
   1. Payment for the services will be as stated in **Schedule B** plus any other amounts payable by Waitemata DHB in accordance with **Schedule B.**
   2. The Contractor will provide a GST invoice for the services on a monthly basis.
   3. All expenses incurred in providing the services are to be the responsibility of the Contractor, except for those expenses listed in **Schedule B** as being payable by Waitemata DHB.
5. **Relationship and Independence**
   1. The relationship between Waitemata DHB and the Contractor is intended to be and shall be for all purposes that of independent contractor and neither this Contract nor anything herein contained or implied shall constitute between them the relationship of employer/employee, principal/agent, a joint venture or partnership.
   2. For the avoidance of doubt, the parties acknowledge and agree that this Contract shall not operate as, or constitute an offer of, employment to the Contractor either during its currency or at expiry, for whatever reason.
   3. The Contractor shall not, otherwise than in accordance with this Contract, purport to be an agent of the Waitemata DHB for any purpose whatsoever or incur any debt or obligation in the name of Waitemata DHB whatsoever, nor carry out any other act or matter of thing which could lead to a claim being made against Waitemata DHB.
   4. The Contractor will be responsible for:
      1. The payment of taxation by the Contractor, under this Contract;
      2. The payment of any premiums required under the Accident Compensation Act 2001, or its successor legislation;
      3. Registering for GST purposes and to providing its GST number to Waitemata DHB;
      4. The payment of any fines for failure to comply with any statute or regulation; and
      5. Their own insurances.
   5. If Waitemata DHB is required to make any form of withholding payment to IRD directly on account of any amount payable to Contractor under this Agreement, Waitemata DHB will make such withholding payment to IRD for Contractor’s account and, subject to making such payment to IRD, will only be required to remit the net amount to Contractor under this Agreement.
6. **Commissions**
   1. The Contractor shall not demand, claim or accept any fee, gratuity, commission or benefit from any person other than Waitemata DHB in connection with the services provided under this Contract except with the prior written consent of Waitemata DHB.
7. **Confidentiality**
   1. Except in the proper performance of services, the Contractor shall not, either directly or indirectly, use or disclose any knowledge or information which may be acquired prior to or during the course of this Contract concerning the operation of Waitemata DHB, including knowledge and information about its employees, patients and systems.
   2. At all times the Contractor must not disclose to any person any passwords or any other information about Waitemata DHB’s computer system, without the specific written approval of Waitemata DHB and must adhere to Waitemata DHB’s directions or requests in relation to its computer system.
   3. The Contractor agrees to sign the Contractor Deed attached as Schedule C.
   4. For the avoidance of doubt, the obligations of confidentiality contained in clause 7.1 and 7.2 survive the termination of this Contract.
8. **Sub-Contracting or Assignment**
   1. It is agreed that the Contractor is to perform the services and that no other entity or person is to provide the services, except with the specific written agreement of Waitemata DHB.
   2. In particular, the Contractor shall not be entitled to assign or sub-contract to any other party the services without the prior written consent of Waitemata DHB.
9. **Health and Safety**
   1. The Contractor will consult, cooperate and coordinate with Waitemata DHB in relation to health and safety matters and observe all relevant health and safety requirements, including those of Waitemata DHB when on the Waitemata DHB’s site.
   2. The Contractor must take all steps necessary to ensure that no act or omission by it or its employees or sub-contractors:

9.1.1 Causes a hazard or harm to any person on, in or about the Waitemata DHB’s facilities;

9.1.2 Is a breach of or causes the breach of any duty or obligation of the Waitemata DHB under any relevant statute or regulation; or

9.1.3 Does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings, or a prosecution under the Health and Safety at Work Act 2015 against the Waitemata DHB.

* 1. The Contactor must notify Waitemata DHB immediately it becomes aware that it is, or may be in, breach or is likely to be in breach of this clause.
  2. While on Waitemata DHB’s premises, the Contractor must observe Waitemata DHB’s policies and procedures including those relating to health and safety, privacy and security requirements and comply with Waitemata DHB’s code of conduct. Waitemata DHB will provide the Contractor with an Internet link to its policies and procedures. Waitemata DHB may deny the Contractor or any of its employees or subcontractors who do not comply with the requirements of this clause, access to Waitemata DHB sites.

1. **Insurance**
   1. The Contractor agrees to maintain professional liability insurance in the Contractor’s own name for the duration of this contract and for the period of twelve months after the termination of this contract.
   2. The Contactor will provide Waitemata DHB, if requested by Waitemata DHB, with a certificate of insurance that satisfies Waitemata DHB’s requirements.
   3. The Contractor will promptly provide any information requested by Waitemata DHB for the purposes of Waitemata DHB’s professional liability insurances.
2. **Conflict of Interest**
   1. The Contractor must avoid situations where they have a conflict of interest with Waitemata DHB. In particular, the Contractor must not enter into any arrangements or undertake any activities which would be reasonably likely to conflict with the interests of Waitemata DHB, without Waitemata DHB consent.
3. **Intellectual Property** 
   1. Unless agreed otherwise in writing, any property produced, created, discovered, conceived of or developed by the Contractor or any of the Contractor’s employees or subcontractors during his/her engagement in connection with, or in any way affecting the business of Waitemata DHB, shall be the sole and exclusive property of Waitemata DHB. Waitemata DHB shall be entitled to any copyright, intellectual property right or merchandising right arising from such property. The Contractor shall not disclose or otherwise use, other than in the reasonable delivery of the Services, any such property except with the consent of Waitemata DHB.
   2. Any discovery or invention made by the Contractor during the course of his/her engagement and relating to, or capable of being adapted to its use by, Waitemata DHB must be disclosed to Waitemata DHB.
   3. The Contractor shall not remove any of Waitemata DHB’s intellectual or other property (including copies) from the premises of Waitemata DHB except for normal business purposes or with the express consent of Waitemata DHB.
4. **Termination**
   1. Subject to clause 13.2 and 13.3 The Contract will expire on the expiry date. It is agreed that there is no obligation on either party to renew the Contract beyond the expiry date.
   2. This contract can be terminated by either party giving twenty (20) working days’ notice in writing to the other. The Contractor is still required to provide services during the notice period, unless Waitemata DHB elects otherwise.
   3. This Contract may be terminated immediately by either party by writing to the other if the other:
      1. Is in breach of any of the provisions of this Contract, jointly and severally;
      2. In any other way whatsoever brings the reputation of the terminating party into disrepute;
      3. Is placed into liquidation, struck off the Company register or otherwise ceases trading.
5. **Dispute Resolution** 
   1. Any dispute between the Parties hereto as to the construction of this Contract or to the rights, duties or liabilities of either party hereto, or any matter or thing connected with or arising out of this Contract shall be dealt with by:
      1. A discussion between the Parties with a view to a speedy resolution;
      2. If such a discussion does not resolve the matter, the parties agree to use informal dispute resolution techniques such as mediation or similar techniques as agreed upon;
      3. If there is no agreement reached at 14.1.2 then the matter shall be referred to an independent arbitrator agreed to by the parties provided that neither party shall withhold their consent unreasonably. If the Parties cannot agree, the arbitrator shall be a person nominated by the President of Auckland District Law Society. The decision of the arbitrator shall be final. Arbitration is to be conducted in accordance with the Arbitration Act 1996.
6. **Indemnity**
   1. The Contractor agrees to indemnify Waitemata DHB against loss, damage or expense incurred by Waitemata DHB as a result of the performance of the services under this Contract or breach of this Contract by the Contractor.
7. **Public Records Act 2005 Requirements**

16.1 Waitemata DHB is required to meet the requirements of the Public Records Act 2005 and retain records of all its operations. The Contractor will therefore maintain full records of the Services it provides to Waitemata DHB and on completion of the Services will provide a full copy of those records to Waitemata DHB.

1. **Variation**
   1. Any variation to this Contract will be in writing, and signed by both parties.
2. **Entire Agreement**
   1. This Contract, including the Schedules attached, replaces all previous written or oral agreements or understanding between the parties.
3. **Force Majeure**
   1. Neither Party shall be liable for any failure to perform or delay in performing its obligations under this Contract, where such failure or delay is caused by legislative or governmental prohibitions or restrictions, fire, flood, hostilities or other causes whatsoever beyond the Parties’ reasonable control.
   2. In the event that either Party is unable, due to circumstances beyond its reasonable control, to perform any of its obligations under this Contract, this Contract may be suspended at the option of either Party until circumstances have ceased to have effect. The parties undertake to give five (5) working days’ notice in writing of their intention to suspend their obligations under this Contract.
   3. In the event that the circumstances that gave rise to the suspension do not cease to have effect during the period of the notice, then the Contract shall terminate at the end of the notice period.
4. **Notices**
   1. All notices shall be in writing, and shall be deemed to have been sufficiently served or given by either party to the other by one or more of the following methods (without removing the ability to effect service by any other method):
      1. Personal delivery or service to the registered offices of Waitemata DHB or the address provided by the Contractor;
      2. Delivery or service by email to an authorised officer of the Contractor or Waitemata DHB;;
      3. The handing of a notice to an authorised officer of the Contractor or Waitemata DHB personally.
5. **Waiver**
   1. The failure by Waitemata DHB from time to time to require performance of any obligations of the Contractor under this Contract will not affect the right of Waitemata DHB to enforce any provisions of the Contract at a subsequent time.

**Executed**

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| --- | --- |
| Signed for and on behalf of  **Waitemata District Health Board**  by  as its authorised representative: |  |
|  |  |

|  |  |
| --- | --- |
| Signed for and on behalf of  **The Contractor**  as its authorised representative: |  |

**Services to be provided**

**Key Provisions**

|  |  |
| --- | --- |
| **Start Date** |  |
| **Expiry Date** |  |
| **Payment:** |  |
|  |  |
| **Location:** |  |
| **Equipment:** |  |
| **Expenses paid for by Waitemata DHB:** |  |
| **Contractor’s GST Number:**  **Address for Contractor:** |  |
|  |  |
| **Address for Waitemata DHB:** |  |
|  |  |

**Confidentiality Deed**

**CONFIDENTIAL – The Confidentiality Deed**

1. **The Parties**

This Deed is between Waitemata District Health Board (**Waitemata DHB**) and

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*(name and/or name of company)* (**the contractor**)

**AGREEMENT**

1. The contractor has or may be given access to personal, clinical or business information by virtue of his/her/its presence on Waitemata DHB premises. The contractor agrees that any and all information emanating in any way from Waitemata DHB or observed or obtained by the contractor during his/her presence on Waitemata DHB premises or in meeting his/her contractual obligations, is confidential and proprietary information (**Confidential Information**). Confidential Information includes, but is not limited to, information relating to:
   1. past, present or future patients or clients;
   2. past, present or future employees; and
   3. business matters, including but not limited to:

(a) trade secrets, confidential operations, processes or dealings; and

(b) any information concerning the organisation, business, finances, transactions or affairs of Waitemata DHB, its services or its institutions.

1. The contractor will not, unless specifically authorised in writing by Waitemata DHB:

3.1 duplicate, use or disclose any Confidential Information to any person, corporate entity, firm or organisation other than the Parties to this deed or if applicable and where necessary to his/her/its principals, or

3.2 (if within his/her/its power to prevent it) permit any unauthorised person to duplicate, use or disclose any Confidential Information to any person, corporate entity, firm or organisation other than the Parties to this deed or if applicable and where necessary to his/her/its principals.

1. At the request of Waitemata DHB, at any time, the contractor will promptly deliver to Waitemata DHB all Confidential Information disclosed to the contractor in writing or recorded for or by the contractor without retaining any copies, or (at Waitemata DHB’s election) destroy that Confidential Information as Waitemata DHB may direct. Waitemata DHB may require reasonable evidence from the contractor that the contractor has complied with this clause including a certificate to that effect signed by the contractor.

5. The obligations of confidence in this deed do not apply to Confidential Information:

5.1 which is in the public domain or comes into the public domain otherwise than by breach of this deed;

5.2 which can be shown by the contractor to have been independently developed by the contractor, or by people other than Waitemata DHB employees or contractors, without access to the Confidential Information; or

5.3 if and when it must be disclosed as required by law, provided that the contractor complies with clause 7 of this deed.

6 Where Confidential Information must be disclosed as required by law:

6.1 the contractor must notify Waitemata DHB of the Confidential Information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) before disclosing the information, and must provide Waitemata DHB with all assistance reasonably required by Waitemata DHB to oppose the disclosure; and

6.2 the contractor will take all reasonable action to avoid and limit such disclosure.

7. The contractor agrees that:

7.1 the contractor bears the onus of showing his/her/its entitlement to a claimed exemption to this deed beyond a reasonable doubt;

7.2 the contractor does not own or acquire any intellectual property rights in Waitemata DHB’s Confidential Information;

7.3 Waitemata DHB is not liable to the contractor for any loss or damage the contractor incurs in using the Waitemata DHB Confidential Information;

7.4 any failure by Waitemata DHB to exercise any of its rights or remedies does not limit Waitemata DHB’s rights to exercise that or any other right or remedy;

7.5 any waiver of these terms must be in writing and signed by Waitemata DHB;

7.6 these obligations of confidentiality will survive the terms of the contractor’s engagement at any Waitemata DHB site or any other contractual obligations; and

7.7 the obligations of confidentiality imposed by this deed are in addition to obligations of confidentiality imposed by law.

**EXECUTION**

**The contractor has read, understood and agreed to be bound by the above provisions.**

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(Signature) (Date)

**WITNESSED BY:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Full Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Occupation)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Address)