

B16.3 Both of us must agree to the people we have appointed. You may not refuse where any or all of those people are suitably qualified and have no demonstrable conflict of interest, but your refusal may be based on some other good reason.

B16.4 Those people may take copies of any parts of the Records.

B17 Access for Audit

B17.1 You and your sub-contractors must co-operate with us fully and allow us or our authorised agents, access to:

- a) your premises,
- b) all premises where your Records are kept,
- c) service users and their families,
- d) staff, sub-contractors or other personnel used by you in providing the Services,

For the purposes of and during the course of carrying out any Audit.

B17.2 We will ensure that our exercise of access under this clause B17 will not unreasonably disrupt the provision of the Services to Service Users.

B17.3 Notice of Audit

- a) we will give you prior notice of any Audit as agreed in any Audit protocols.
- b) If we believe that delay will unnecessarily prejudice the interests of any person, we may give you notice of our intention to carry out an Audit within 24 hours.

B17.4 Times for Audit

- a) Subject to Clause B17.3b an Audit may be carried out at any time during working hours and at any other reasonable times.
- b) You must ensure that the people appointed by us to carry out the Audit have access, during the hours they are entitled to Audit.

B18 Audit Process

B18.1 Subject to clause B25, in carrying out any Audit we may:

- a) Access confidential information about any Service User; and
- b) Observe the provision or delivery of the Services; and
- c) Interview or follow up Service Users and/or their families; and
- d) Interview or follow up any staff, sub-contractors or other personnel used by you in providing the Services.

B19 **Financial Audit**

B19.1 Despite the other provisions in this section B14 (Quality Assurance) we may not inspect your accounting system or record of your costs of providing the Services.

- a) We may, however, appoint as set out in the Agreement, an independent auditor to Audit;
 - i. The correctness of the information you give us; and
 - ii. Your calculations of the cost of supplying the Services; and
 - iii. Your financial position; and
 - iv. the expenditure of the payments we make to you and whether those payments were expended only for the purpose of and in accordance with the terms of this Agreement.

- b) The auditor:
 - i. Must not disclose specific details of your financial position to us; but
 - ii. may advise us if he or she considers your financial position may prejudice your ability to carry out your obligations under the Agreement; and
 - iii. must advise us if any of the payments we made to you were expended other than for the purpose of, or otherwise than in accordance with the terms of this Agreement.

B19.2 We retain the right to Audit under this Section B14 (Quality Assurance) after the Agreement ends but only to the extent that it is relevant to the period during which the Agreement exists.

B20 **Insurance**

B20.1 You must immediately take out adequate comprehensive insurance throughout the term of the agreement covering your practice or business.

B20.2 You must make sure that all the insurance cover always remains in force for the term of the Agreement or so long thereafter as required for the purposes of the Agreement.

B21 **Indemnity**

B21.1 You must indemnify us against all claims, damages, penalties or losses (including costs) which we incur as the result of:

- a) Your failing to comply with your obligations in the Agreement; or
- b) Any act or omission by you or any person for whom you are responsible.

B22 **Complaints**

- B22.1 You must comply with any standards for the Health sector relating to complaints
- B22.2 If there is no such standard applicable to you, then you must implement a complaints procedure in accordance with the terms of the Agreement.

B23 **Complaints Body**

- B23.1 You must at all reasonable times co-operate with any Complaints Body and comply with its reasonable requirements.
- B23.2 We will advise a Complaints Body of any complaints we receive about you if we believe it is appropriate to do so.
- B23.3 We will give you reasonable assistance when we can in respect of any complaints made to the Privacy Commissioner which involve both of us.

B24 **Warranties**

- B24.1 You warrant to us that:
- a) All material information given to us by you or on your behalf is correct; and
 - b) You are not aware of anything which might prevent you from carrying out your obligations under the Agreement.
- B24.2
- a) The above warranties will be deemed to be repeated on a daily basis from the date of the Agreement and,
 - b) You must advise us immediately if at any time either of the warranties is untrue.

B25 **Limitation of our Rights**

- B25.1 Our rights and the rights of others to:
- a) Access confidential information about any Service User; and
 - b) Observe the provisions or delivery of the Services; and
 - c) Interview or follow up Service Users and/or their families,

Must be either authorised by statute or by a code of practice under the Privacy Act 1993 covering health information held by health agencies or by the informed consent of each Service User concerned. The consents will normally be in writing.

DEALING WITH PROBLEMS

B26 **Notification of Problems**

B26.1 You must advise us promptly in writing:

- a) Of any:
 - i. changes,
 - ii. problems,
 - iii. significant risks,
 - iv. significant issues,

which materially reduce or affect your ability to provide the Services, or are most likely to do so, including those relating to:

- v. any premises used by you,
 - vi. any equipment you are using,
 - vii. your key personnel; or
- b) if you materially fail to comply with any of your obligations in the Agreement; or
 - c) of any serious complaints or disputes which directly or indirectly relate to the provision of the Services; or
 - d) of any issues concerning the Services that might have high media or public interest.

B26.2 We must discuss with each other possible ways of remedying the matters notified. Our discussion or attempted discussions will not however limit any of our rights under the Agreement.

B26.3 You must have in place realistic and reasonable risk management processes and contingency plans to enable you to continue to provide the Services on the occurrence of any of the matters in this clause B26.

B27 **Uncontrollable Events**

B27.1

- a) For the purposes of this Clause B27 (but subject to paragraph) an “uncontrollable event” is an event which is beyond the reasonable control of us (“the person claiming”), or an event as set out in Clause B31.4.
- b) An uncontrollable event does not include:
 - i. any risks or event which the person claiming could have prevented or overcome by taking reasonable care including having in place a realistic and reasonable risk management process; or

- ii. a lack of funds for any reason.

B27.2 The person claiming will not be in default under the terms of the Agreement if the default is caused by an uncontrollable event.

B27.3 The person claiming must:

- a) promptly give written notice to the other specifying:
 - i. the cause and extent of that person's inability to perform any of the person's obligations; and
 - ii. the likely duration of the non-performance;
- b) in the meantime take all reasonable steps to remedy or reduce the uncontrollable event.

B27.4 Neither of us is obliged to settle any strike, lock out or other industrial disturbance.

B27.5 Performance of any obligation affected by an uncontrollable event must be resumed as soon as reasonably possible after the uncontrollable event ends or its impact is reduced.

B27.6 If you are unable to provide the Services as the result of an uncontrollable event we may make alternative arrangements suitable to us for the supply of the Services during the period that you are unable to supply them after we consult with you.

B27.7 If either of us is unable to perform an obligation under the Agreement for 90 days because of an uncontrollable event, both of us must first Consult and decide to what extent if any the Agreement can be varied and to continue.

B27.8 If we cannot agree that the Agreement may continue, then either of us may cancel the Agreement after giving at least 14 days prior written notice.

B27.9 Clause B36.1 will apply to cancellation of the Agreement under this clause.

B28 We May Remedy Your Failure To Meet Your Obligations

B28.1 If you fail to carry out any of your obligations in the Agreement we may do so on your behalf at your expense and risk.

B28.2 We may do this without giving you notice where the circumstances reasonably require such action. Otherwise, we will give you 7 days notice in writing of our intention to act.

B28.3 All costs we incur in doing so, must be paid by you to us on demand or we may deduct them from moneys which we owe you.

B29 Public Statements, Issues and Advertising

B29.1

- a) Neither of us may directly or indirectly criticise the other publicly, without first fully discussing the matters of concern with the other.
- b) The discussion must be carried out in good faith and in a co-operative and constructive manner.
- c) Nothing in this clause prevents you from discussing any matters of concern with your people being your staff, subcontractors, agents or advisors.
- d) Nothing in this clause prevents you from discussing any matters of concern with our people being our staff, subcontractors, agents, advisers or persons to whom we are responsible.
- e) If we are unable to resolve any differences then those differences may be referred by either of us to the Dispute Resolution process set out in clause B30.

B29.2 You may use our name or logo only with our prior written consent.

B29.3 The provisions of this clause B29 will remain in force after the Agreement ends.

B30 Dispute resolution

B30.1 Each party shall, in good faith use all commercially reasonable endeavours to:

- a) resolve any dispute that arises between them in relation to this Agreement;
- b) minimise the impact of any dispute;
- c) ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage so as to minimise its effect on the parties.

B30.2 If either party has a dispute concerning any matter relating to this Agreement other than in respect of any variation or non –renewal of this Agreement that party must give written notice of the dispute to the other party setting out the details of the dispute ("Dispute Notice")

B30.3 Within 10 days of the date on which the Dispute Notice was received by the other party, senior representatives of the parties with the authority to settle the dispute will meet and use best endeavours to resolve the dispute.

B30.4 If the dispute is not resolved at that meeting then, unless both parties agree otherwise, either party may require (by giving written notice to the other party) that the dispute be submitted to mediation to be held in Wellington. The mediation shall be conducted by a single mediator who, unless otherwise agreed between the parties, shall be appointed by the President of the New Zealand Law Society. In the event of any such submission to mediation:

- a) the mediator will not be deemed to be acting as an expert or arbitrator.

- b) the mediator will determine the procedure and timetable for the mediation and both parties agree to adhere to the mediator's decisions on the operation of the mediation process.
- c) the cost of the mediation will be shared equally between the parties (unless otherwise agreed).
- d) the mediation will terminate 30 days after the appointment of the mediator unless both parties agree otherwise.

B30.5 No party may resort to legal proceedings, except for proceedings necessary for preserving the party's rights, unless it has taken all reasonable steps to comply with this clause 30.

B30.6 Unless the dispute renders it impossible to do so, the parties will continue performing their respective obligations under this Agreement while the dispute is being resolved, with the exception that payments may be withheld to the extent that they are disputed.

B30.7 Clause 30 will survive the expiration or earlier termination of this Agreement.

B31 Variations to the Agreement

B31.1 The Agreement may be varied by written agreement signed by both of us.

B31.2 Where the Agreement is for a term exceeding 1 year, we both agree that the Agreement shall be reviewed annually.

B31.3 Variation on requirement by Crown

- a) We may require you to vary the Agreement by written notice to you to comply with any requirement imposed on us by the Crown.
- b) We will give you as much notice of the requirement and details of the proposed change as possible, to the extent that we are able to do so.
- c) Both of us must Consult and decide to what extent if any the Agreement can be varied and the continue on that basis.
- d) If we cannot agree within 60 days, then either of us may cancel the Agreement after giving at least 30 days prior written notice.
- e) You must continue to comply with your obligations under the existing Agreement until any variation of it takes effect.

B31.4 The Agreement will be varied in the event of a disaster, local or national epidemic, emergency or war in accordance with our requirements but this clause is subject to clause B27.

B32 Our Liability

- B32.1 Except to the extent that we agree otherwise, we will not be liable to you for any claims, damages, penalties or losses (including costs) which you incur.

ENDING THE AGREEMENT

B33 Notice of Your Future Intentions

- B33.1 Before the end of the Agreement you must give a minimum of 3 months notice if:
- a) you do not wish to enter into a new agreement with us when the Agreement ends; or
 - b) you wish to enter into a new agreement with us when the Agreement ends but on materially different terms.

This clause does not mean we must enter into a contract with you when the Agreement ends.

- B33.2 You must discuss with us your intentions before giving any notice under clause B33.1.

- B33.3 We must give you a minimum of 3 months notice if we do not intend to renew the Agreement, except where Management of Change Protocols may apply.

B34 Your Default and our Right to End the Agreement

- B34.1 We may end the Agreement immediately by written notice to you on the occurrence of any of the following events:
- a) We have good reason to believe you are unable or will soon become unable to carry out all your material obligations under the Agreement.
 - i. We must, however, consult with you before ending the Agreement for this reason.
 - ii. If we believe the health or safety of any person or Population Served is at risk we may suspend your provision of the Services while we consult.
 - b) You have failed to carry out any of your obligations in the Agreement; and
 - i. the failure is material; and
 - ii. it cannot be remedied
 - c) if:
 - i. you are or adjudged bankrupt; or

- ii. you are more than one person, if any of you are adjudged bankrupt;
or
 - iii. you are any other entity and you are placed in receivership or liquidation, or a secured party in respect of your assets exercises any power or right which has a similar or like effect.
- d) You have failed to carry out any of your obligations in the Agreement and the failure can be remedied by you but you fail to do so within 30 days of your receiving written notice of the default from us.
- e) After 30 days from your receiving the notice, so long as the obligation still has not been met, we may instead of ending the Agreement;
- i. At any time vary or withdraw from coverage by this Agreement any of the Services in respect of which you have not met your obligation, either straight away or at any later date, and
 - ii. Cease payment for any of the services from the date of withdrawal.
- f) You have the same right and must follow the same procedure if we have not met any obligation and you wish to vary or withdraw any of the Services.
- g) Any dispute regarding the withdrawal or variation of any of the Services under this paragraph d) must be resolved under clause B30.
- B34.2 Nothing in clause B34.1 affects any other rights we may have against you in law of in equity.

B35 Our Default and your Right to End the Agreement

- B35.1 If we default on any payments which we are not entitled by the Agreement to withhold and we fail to remedy the default within 20 days of your giving us written notice of the default you may do any one of more of the following:
- a) Cancel the agreement,
 - b) Seek specific performance of the Agreement,
 - c) Seek damages from us,
 - d) Seek penalty interest.

B36 Effect of Ending the Agreement

- B36.1 Any cancellation of the Agreement will not affect:
- a) the rights or obligations of either of us which have arisen before the Agreements ends; or
 - b) the operation of any clauses in the Agreement which are expressed or implied to have effect after it ends.

GENERAL

B37 Confidentiality

B37.1

- a) Except to the extent that these Standard Conditions provide otherwise, neither of us may disclose any Confidential Information to any other person.
- b) Both of us acknowledge that the Agreement, but not any Confidential Information, may be published publicly by us through any media including electronically via the Internet.

B37.2 Neither of us will disclose to any third part information which will identify any natural person (as defined in the Privacy Act 1993);

- a) without that person's informed consent; or
- b) unless authorised by statute, or by a Code of Practice under the Privacy Act 1993 covering Health Information held by Health Agencies.

B37.3 Clause B37.1 does not apply:

- a) to terms or information which are or become generally available to the public except as the result of a breach of clause B37.1; or
- b) to information which either party is required by law to supply to any person but only to the extent that the law required; or
- c) to terms or information disclosed to the professional advisers of either of us or to those involved in a Service User's clinical or care management where disclosure is reasonably necessary for the management; or
- d) to information which you are required by the Agreement to disclose or forward to any person.

B37.4 Nothing in clause B37.1 will prevent us from disclosing any terms or information in accordance with any Funding Agreement, or by direction or requirement from the Minister under the Act.

B37.5 Each of us will ensure all Confidential Information is kept secure and is subject to appropriate security and user authorisation procedures and audits.

B38 Governing Law

B38.1 The Agreement is governed by New Zealand law.

B39 Contracts (Privity) Act 1982

B39.1 No other third party may enforce any of the provisions in the Agreement.

B40 Waiver

- B40.1 Any waiver by either of us must be in writing duly signed. Each waiver may be relied on for the specific purpose for which it is given.
- B40.2 A failure of either one of us to exercise, or a delay by either one of us in exercising, any right given to it under the Agreement, does not mean that the right has been waived.

B41 Entire Agreement

- B41.1 Each of us agree that the Agreement sets forth the entire agreement and understanding between both of us and supersedes all prior oral or written agreements or arrangements relating to its subject matter.

B42 Notices

- B42.1 Any notice must be in writing and may be served personally or sent by security or registered mail or by facsimile transmission. All notices are to have endorsed on them the contract reference number given to the Agreement.
- B42.2 Notices given:
- a) personally are served upon delivery;
 - b) by post (other than airmail) are served three days after posting;
 - c) by airmail are served two days after posting;
 - d) by facsimile are served upon receipt of the correct answer back or receipt code.
- B42.3 notice may be given by an authorised officer, employee or agent of the party giving the notice.
- B42.4 The address and facsimile number for each of us shall be as specified in the Agreement or such other address or number as is from time to time notified in writing to the other party.

B43 Relationship of Both of Us

- B43.1 Nothing in the Agreement constitutes a partnership or joint venture between both of us or makes you an employee, agent or trustee of ourselves.

B44 Signing the Agreement

- B44.1
- a) You must satisfy us that the Agreement has been properly signed by you and is a valid and enforceable agreement before we have any obligations to you under the Agreement.
 - b) We may however waive all or part of this provision with or without conditions by us.