

**Disability
Support Services**



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

**Ministry of Social Development
Disability Support Services
(Purchasing Agency)
Standard Terms and Conditions**

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Introduction

1. Introduction

- 1.1 These Standard Terms and Conditions form part of the agreement between the parties regarding the Purchasing Agency's purchase of outcome-focused services from the Provider.
- 1.2 These Standard Terms and Conditions will apply to all services the Provider agrees to provide under an Outcome Agreement and are incorporated by reference into every Outcome Agreement.

2. Purpose and context statement

- 2.1 The parties each agree that the purpose of providing the Services is to make a positive contribution to improving the lives of Disabled People and family/whānau of any ethnicity living in New Zealand.

Term

3. Term

- 3.1 Unless the Outcome Agreement is terminated before the end of the Term, these Standard Terms and Conditions apply for the Term of the Outcome Agreement.

4. Right of renewal

- 4.1 The Purchasing Agency may, at its sole discretion, extend the term of the Outcome Agreement for any Renewal Period provided for in that Outcome Agreement by providing notice in writing to the Provider before the expiry of the Term.

Our Relationship

5. Relationship Principles

- 5.1 The parties will work together to ensure that the Services:
 - (a) are accessible and effective; and
 - (b) contribute towards achieving the outcomes described in the Outcome Agreement.
- 5.2 Accordingly, the parties agree to:
 - (a) act honestly and in good faith;
 - (b) communicate openly and in a timely manner;
 - (c) work in a collaborative and constructive manner - including towards the resolution of real or perceived problems and issues;
 - (d) recognise each other's responsibilities;
 - (e) encourage quality and innovation to achieve positive outcomes; and

- (f) maximise the value for money to the Government in purchasing services to meet the outcomes described in the Outcome Agreement including by ensuring appropriate flexibility so that services can be adapted (following discussion) to meet identified and agreed needs.

5.3 The parties acknowledge that these Standard Terms and Conditions reflect these principles in action.

5.4 These Standard Terms and Conditions use a number of defined terms, and the corresponding definitions and interpretation section is in Schedule One.

The Services and Service Obligations

6. Referral into the Services

6.1 The Provider will provide Services to each Disabled Person:

- (a) who has been Referred to the Provider by an Authorised Support Coordination Agency following an assessment; and
- (b) for whom the Provider has accepted the Referral.

6.2 Unless otherwise agreed by the Purchasing Agency in writing, the Provider must notify the Authorised Support Coordination Agency in writing within 10 Business Days of receiving a Referral as to whether the Provider will accept or decline the Referral.

7. Delivery of the Services

7.1 The Provider will provide the Services:

- (a) to each Disabled Person, in accordance with:
 - (i) these Standard Terms and Conditions;
 - (ii) the requirements of the Outcome Agreement;
 - (iii) the Service Specifications as set out in the Outcome Agreement;
 - (iv) any Improvement Plan; and
 - (v) their Personal Plan.
- (b) in accordance with all applicable Laws, disability service standards, policies, guidance, and procedures notified to the Provider by the Purchasing Agency from time to time, including to the extent applicable to the Services:
 - (i) the Health and Disability Services (Safety) Act 2001;
 - (ii) the Ngā Paerewa Health and Disability Services Standards (NZS 8134:2021); and
 - (iii) the Health and Disability Commissioner (Code of Health and Disability Consumers' Rights) Regulations 1996;

- (c) in a way that is aligned with the United Nations Convention on the Rights of Persons with Disabilities, the Enabling Good Lives principles, and Te Tiriti o Waitangi;
- (d) with due care, skill and diligence, and to the appropriate professional standard or in accordance with good practice as would be expected from a leading provider of health and social services that benefit disabled people;
- (e) in a manner that –
 - (i) meets or exceeds any performance measures specified in the Outcome Agreement;
 - (ii) safeguards each Disabled Person from Abuse and Neglect;
 - (iii) does not require any Disabled Person to exit the Services except in accordance with the Service Specification;
 - (iv) is person-centred, inclusive, upholds and promotes the rights, autonomy, dignity, and preferences of each Disabled Person, and enables each Disabled Person (and to the extent consistent with their will and preference or any relevant court order, their family/whānau, guardian or advocate) to be actively involved in decisions about their care and life;
 - (v) is experienced positively by each Disabled Person (and, to the extent consistent with their will and preference or any relevant court order, their family/whānau, guardian or advocate);
 - (vi) is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups;
 - (vii) is appropriate for Disabled People; and
 - (viii) enables Disabled People (and, to the extent consistent with their will and preference, or any relevant court order, their family/whānau, guardian or advocate) to participate meaningfully in Service design, delivery, review and quality and safeguarding.

7.2 The Provider must take reasonable steps to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of the Services.

Accreditation, Certification, licences and compliance with Business Viability Standards

7.3 The Provider, and the Provider's Personnel must, throughout the Term of the Outcome Agreement, hold all accreditation, certifications, licences, registrations, statutory designations, and approvals required by Law or under the Outcome Agreement.

7.4 The Provider must meet and continue to meet the Business Viability Standards.

Personnel qualifications, training and requirements

7.5 The Provider must ensure that its Personnel:

- (a) have the necessary qualifications, skills, experience, Police Vetting, training and resources to safely and respectfully deliver the Services;
- (b) are trained in:
 - (i) recognising and responding to Abuse and Neglect;
 - (ii) human rights;
 - (iii) trauma-informed practice; and
 - (iv) cultural safety;
- (c) are supported to develop and maintain competence and undertake formal training and qualifications as they are developed; and
- (d) if required, participate in any relevant family/whānau discussions, interagency discussions, or court proceedings that relate to Abuse or Neglect.

7.6 The Provider must regularly review the performance and development of its Personnel.

Approved Personnel

7.7 If the Outcome Agreement specifies that the Services must be delivered by Approved Personnel, the Provider must:

- (a) use only those Approved Personnel to deliver the Services, or specified part of the Services (although the Provider must not use any Approved Personnel who have been suspended under clause 31.1);
- (b) not change the Approved Personnel without first obtaining the prior written consent of the Purchasing Agency (which will not be unreasonably withheld);
- (c) ensure appropriate cover for annual leave or other planned absences of Approved Personnel (prior written consent of the Purchasing Agency is not required for such cover); and
- (d) remain responsible for the acts and omissions of the Approved Personnel.

8. Safeguarding and abuse prevention

Required policies and procedures relating to safeguarding

- 8.1 The Provider must safeguard each Disabled Person and their family/whānau, guardians or advocates, staff, and visitors from Abuse and Neglect when providing the Services.
- 8.2 The Provider must develop, maintain and implement safeguarding and risk management policies and procedures that:
 - (a) comply with the Ngā Paerewa Health and Disability Safety Standards, and the Ministry of Health's Prevention and Management of Abuse Guidance (or any updated guidance on safeguarding and abuse prevention);
 - (b) include:
 - (i) preventing, detecting, and eliminating Abuse and Neglect;

- (ii) safe recruitment practices;
- (iii) mandatory reporting obligations on all Personnel who suspect actual or potential Abuse or Neglect, including immediate action, reporting, monitoring and corrective action; and
- (iv) access to advocacy and safeguarding pathways, which ensure that it is safe for each Disabled Person, their family/whānau, guardians or advocates, staff and others to disclose or report Abuse or Neglect without fear of retribution.

Restrictive practices (Restraint and Seclusion)

8.3 Unless specifically permitted to do so under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, the Provider must not use Seclusion on any Disabled Person.

8.4 The Provider must:

- (a) aim for a Restraint free environment, in which the dignity and mana of each Disabled Person is maintained;
- (b) ensure that Restraint is only ever used as a last resort and on an individualised basis (ie., if all suitable non-restrictive approaches have been tried and have not been able to prevent harm);
- (c) ensure that any use of Restraint complies with the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;
- (d) in the limited circumstances in which Restraint may be and is used by the Provider, the Provider must record in writing:
 - (i) the legal basis on which the Restraint took place, and why the Provider determined that it was necessary and proportionate to protect personal safety;
 - (ii) what the Disabled Person has consented to; and
 - (iii) the alternatives to Restraint that were tried in the relevant circumstances; and
- (e) regularly review the use of Restraint with the aim to eliminate its use.

Responding to, and reviewing safeguarding concerns

8.5 The Provider must take seriously and act on each disclosure or report of actual or suspected Abuse or Neglect.

8.6 The Provider must make every effort to identify, respond to, and address safeguarding concerns through internal processes in the first instance, in accordance with its safeguarding and risk management policies and procedures.

8.7 If the safeguarding concerns cannot be managed internally, or where it is not appropriate to do so, the Provider must refer the safeguarding concerns to an External Safeguarding Service for guidance and assistance.

- 8.8 When managing, reviewing and learning from a safeguarding concern, the Provider must ensure that the Disabled Person can make their own decisions and can express their will and preference in ways that work best for them.

Working with External Safeguarding Services

- 8.9 The Provider must inform each Disabled Person, in a manner appropriate to their communication needs, of their right to have access to available External Safeguarding Services and how the Disabled Person can access those External Safeguarding Services.
- 8.10 The Provider must ensure that External Safeguarding Services:
- (a) have reasonable access to their facilities and Personnel;
 - (b) can meet face to face with each Disabled Person, and ensure that they have a safe and private space to meet with the Disabled Person;
 - (c) have access to information about the safety and wellbeing of the Disabled Person, the contact information of the family/whānau, guardian or advocate of the Disabled Person and other information relevant to safeguarding the Disabled Person; and
 - (d) provide support to each Disabled Person to help them give their informed consent to their engagement with External Safeguarding Services, including supported decision-making as appropriate.
- 8.11 The Provider must:
- (a) work collaboratively with the Disabled Person, their External Safeguarding Services and other relevant people and organisations to address and resolve safeguarding issues of concern; and
 - (b) support each Disabled Person or their family/whānau, guardian or advocate to self-refer to an External Safeguarding Service, and must respond in a safe and timely manner to requests to connect Disabled People to External Safeguarding Services.

Children's Act obligations

- 8.12 If the Services are or may be provided to children, the Provider must:
- (a) adopt a child protection policy, and regularly review that policy in accordance with the Children's Act 2014;
 - (b) undertake safety checks of Children's Workers in accordance with the Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015; and
 - (c) meet any additional requirements specified in the Service Specification, policies, guidelines, or procedures to protect children and young people receiving the Services.

9. Incident Management

All Incidents

9.1 The Provider must have policies and processes in place to ensure that:

- (a) every Incident is:
 - (i) recorded
 - (ii) escalated, where appropriate;
 - (iii) reviewed; and
 - (iv) followed up; and
- (b) preventative measures are put in place to prevent further Incidents.
- (c) reported to the Purchasing Agency, as soon as practicable and, in accordance with specific critical incident reporting requirements, no later than 24 hours after the incident occurs or the Provider becomes aware of the incident

Reporting Critical Incidents

- 9.2 The Provider must report each Critical Incident to the Purchasing Agency and any other relevant authority in accordance with the Outcome Agreement or Service Specification, or in accordance with any other written direction given by the Purchasing Agency.
- 9.3 The Provider must have an effective Critical Incident management system in place to ensure the timely reporting, investigation, and follow-up of all Critical Incidents. This includes ensuring that each Critical Incident is reported internally in accordance with the Provider's relevant policies.

Reviewing a Critical Incident

- 9.4 Following a Critical Incident, the Provider must, in accordance with any guidance provided by the Purchasing Agency:
- (a) take action to ensure that all people involved are safe and that support is provided that meets the needs and preferences of the relevant Disabled Person
 - (b) undertake an analysis to understand the root cause of the Critical Incident, and any cluster of Critical Incidents;
 - (c) learn from the Critical Incident to improve its systems and practices to prevent other Critical Incidents and restore relationships; and
 - (d) review the Critical Incident to determine if it is a harm event that meets the Te Tāhū Hauora notification criteria, and if so, report the harm event to Te Tāhū Hauora.
- 9.5 Without limiting any of its rights, when a Critical Incident has been reported, the Purchasing Agency will seek to work with the Provider to help it meet its obligations under clause 9.4 above.
- 9.6 In addition to the above, if the Critical Incident is a death, the Provider must ensure that the internal review of the death:

- (a) is undertaken within 48 hours from the time of the death and Complete a Critical Incident Reporting Form if needed within 24 hours;
- (b) is culturally responsive and person-centred;
- (c) focuses on identifying issues with the quality of disability supports that may have contributed to the death, examining whether the supports were strengths-based, person-centred, and focused on enabling the Disabled Person to live a good life in their community; and
- (d) provides clarity to the family/whānau or guardian and identifies improvements to prevent similar incidents from occurring in the future, actively protecting the rights and interests of the Disabled Person and their family/whānau or guardian.

10. Quality and Continuous improvement

10.1 The Provider must maintain a Quality Management System that:

- (a) ensures the Provider is complying with Ngā Paerewa Health and Disability Services Standards;
- (b) supports continuous quality improvement that is informed by the experiences of Disabled People, and implements corrective actions in response to audit findings, complaints, incidents and stakeholder feedback; and
- (c) is regularly reviewed by the Provider.

10.2 If requested by the Purchasing Agency, the Provider must provide the Purchasing Agency with information regarding its Quality Management System.

10.3 Without limiting clause 10.1, the Provider must:

- (a) establish and maintain a clear, accessible, and culturally responsive complaints management system that enables Disabled People, family/whānau, guardians, advocates, staff, or members of the public to raise concerns or complaints about the Services provided;
- (b) ensure its complaint management process reflects the Code of Health and Disability Consumers' Rights; and
- (c) respond and resolve complaints as close to the source as possible, with appropriate escalation pathways in place as required if resolution cannot be reached.

Funding and Payments

11. Funding for the Services

Amount of Funding

11.1 Subject to clause 30 (Suspending or recovering payments), the Purchasing Agency will pay the Provider for the Services the amounts, and at the times, recorded in the Outcome Agreement.

Use of Funding

11.2 The Provider must ensure that it uses the Funding:

- (a) lawfully and responsibly; and
- (b) in a manner consistent with the appropriate use of public funds.

11.3 The Provider must only use the Funding to deliver the Services.

12. Extraordinary Costs

12.1 The Purchasing Agency may determine that, in extraordinary circumstances, it will pay the Provider an amount that is additional to the amount specified in the Outcome Agreement, in relation to the Services (Extraordinary Costs).

12.2 Before the Purchasing Agency pays the Provider funding for Extraordinary Costs, it will:

- (a) notify the Provider in writing of the amount of funding that it will pay for Extraordinary Costs;
- (b) specify in writing any conditions that, in addition to these Standard Terms and Conditions, attach to the funding for Extraordinary Costs; and
- (c) specify the date on which such funding for Extraordinary Costs will be paid.

12.3 If the Provider does not wish to accept the funding for Extraordinary Costs it must notify the Purchasing Agency in writing before the specified payment date.

12.4 If the Provider accepts funding for Extraordinary Costs, these Standard Terms and Conditions apply to that funding, and the Provider must comply with any conditions specified by the Purchasing Agency relating to that funding.

13. Taxable Supply Information

13.1 The Provider will follow the Purchasing Agency's reasonable instructions regarding the provision of Taxable Supply Information for the Services provided (or to be provided) to the Purchasing Agency under the Outcome Agreement.

13.2 Unless the Purchasing Agency agrees in writing otherwise, the Purchasing Agency is not required to pay any amount in respect of which Taxable Supply Information is submitted more than 6 months after the date that the Services were provided, or 6 months after the date that a request by the Purchasing Agency for Taxable Supply Information to be resubmitted has been made.

14. Overpayments

14.1 In the event that the Purchasing Agency overpays or may have overpaid the Provider for the Services, the party that becomes aware of the overpayment or possible overpayment must notify the other party without delay.

14.2 Any amount overpaid to the Provider is a debt due to the Purchasing Agency that:

- (a) is repayable on demand; and

- (b) may be set-off against all or any Funding, or any sum of money payable by the Purchasing Agency to the Provider.

14.3 Unless the Purchasing Agency advises the Provider in writing that an amount to be repaid will be set-off, the Provider must repay the Purchasing Agency within 20 Business Days of the date the Purchasing Agency notifies the Provider in writing of the amount repayable (or such other date as agreed in writing).

15. Taxes

15.1 Except for any GST or costs payable by the Purchasing Agency in respect of any Services supplied under the Outcome Agreement, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in respect of any Services supplied under the Outcome Agreement under any Law is to be paid by the Provider and not passed on to the Purchasing Agency.

Contract and Risk Management

16. Contract Manager

- 16.1 The parties will each appoint and keep a Contract Manager for each Outcome Agreement. Each party may change its Contract Manager at any time by giving written notice to the other party.
- 16.2 The Contract Managers will maintain regular contact.

17. Cooperation

- 17.1 The parties will work together, and will take all reasonable steps to work with other stakeholders who have a role or interest in the delivery of the Services (including Disabled People, their family/whānau, guardians and advocates, Authorised Support Coordination Agencies, government entities, regulators and the courts) to help ensure:
- (a) that the parties have, at all times during the Term, a quality overview of the strategic and tactical delivery of the Services;
 - (b) the effective management and oversight of the Services;
 - (c) that the Provider has the diversity and skills to provide professional, strategic, and accountable governance;
 - (d) robust, transparent and documented decision-making processes;
 - (e) compliance with the Law and the requirements of the Outcome Agreement;
 - (f) the integrity of the Services, by identifying and applying best practices;
 - (g) that the parties have an overview of investment and expenditure to ensure operational commitments are appropriately funded;
 - (h) risk management is considered and balanced; and
 - (i) appropriate escalation of decisions or issues.

18. Governance and Accountability

- 18.1 The Provider must maintain governance and leadership structures that ensure effective oversight, accountability, and strategic direction for the delivery of the Services in accordance with the Outcome Agreement, including the provision of high-quality Services that are safe, and rights-based.
- 18.2 The Provider understands that its governance body is responsible for:
- (a) strategic leadership;
 - (b) oversight of the quality and safety of the Services;
 - (c) accountable for financial oversight and ensuring financial viability of DSS-commissioned services, and
 - (d) ensuring the Provider complies with relevant Law, standards, policy, and the Outcome Agreement.

19. Records

19.1 The Provider must:

- (a) keep and maintain records:
 - (i) in accordance with prudent business practice, all applicable Laws, any general notice or instruction issued by Archives New Zealand (Archives Instruction) that is notified by the Purchasing Agency to the Provider, and any reasonable directions of the Purchasing Agency; and
 - (ii) for the Term of the Outcome Agreement and for a period after expiry in accordance with prudent business practice, all applicable Laws, and any Archives Instruction notified by the Purchasing Agency to the Provider;
- (b) ensure that its records clearly identify all relevant time, Personnel, and cost incurred in providing the Services; and
- (c) ensure that its records are easy to access and are kept safe by such security safeguards as are reasonable in the circumstances to take.

Care Records

19.2 The Purchasing Agency is a public office that creates, receives, and holds Care Records. The Provider:

- (a) acknowledges that, for the purposes of the Temporary Care Records Protection Instruction ([Temporary care records protection instruction](#)), the Provider carries out work on behalf of the Purchasing Agency as described in the Outcome Agreement;
- (b) warrants that it will protect its Care Records in accordance with the Temporary Care Records Protection Instruction; and the [DSS care recordkeeping guidance](#);
- (c) will provide the Purchasing Agency with copies of its Care Records upon written request of the Purchasing Agency.

20. Health and safety and risk management

20.1 The parties must consult, cooperate and coordinate with each other, to the extent required by Law, to ensure they each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Outcome Agreement.

20.2 Without limiting clause 20.1, the Provider must:

- (a) while performing the Services, comply with, and ensure that its Personnel comply with, all applicable health and safety Laws and any additional health and safety requirements specified in applicable Provider policies, and any other policies notified in writing by the Purchasing Agency;
- (b) ensure that its Personnel and relevant third parties are provided with a health and safety induction prior to entering any area where Services are performed;

- (c) ensure that its Personnel are provided with all necessary training and have, or are appropriately supervised by someone who has, the appropriate knowledge, training, and experience to perform the Services;
- (d) ensure that its Personnel take reasonable care for their own health and safety, and that they always conduct their interactions with others in a safe and professional manner;
- (e) provide and maintain a healthy and safe work environment, safe equipment, and safe systems of work;
- (f) continuously assess health and safety and financial sustainability risks arising from, or in connection with, the provision of Services and take all reasonably practicable steps to eliminate those risks, or to the extent that elimination is not reasonably practicable, to minimise them;
- (g) evaluate and prioritise those risks based on their potential severity, the effectiveness of any controls and the probability of occurrence;
- (h) develop, maintain and comply with its own health and safety plan for the performance of the Services, and provide a copy of the plan to Personnel involved in performing the Services and, upon request, to the Purchasing Agency;
- (i) minimise the adverse impact of internal emergencies, and external emergencies or environmental disasters on Disabled People, staff and visitors; and
- (j) work with the organisations who have responsibility for co-ordinating emergency response and disaster services;
- (k) comply with all reasonable directions of the Purchasing Agency relating to health, safety, and security; and
- (l) report to the Purchasing Agency any:
 - (i) health, safety or risk matters specified in any applicable Provider policies and any other policies notified in writing by the Purchasing Agency;
 - (ii) notifiable injury, illness, incident or event, or any notice issued under the Health and Safety at Work Act 2015 or any other health and safety Law as it relates to or affects the Outcome Agreement; and
 - (iii) Protective Security Incident as it relates to or affects the Outcome Agreement.

21. Financial management and transparency

21.1 The Provider must take a responsible and prudent approach to financial management, including in relation to managing its cashflow and paying money owed to its employees, contractors and Subcontractors.

21.2 Each year the Provider must give the Purchasing Agency a copy of the Provider's unaudited acquittal report within one month of the Provider's balance date.

- 21.3 On request, the Provider must give the Purchasing Agency a copy of the Provider's audited acquittal report and the auditor's report, prepared in accordance with applicable accounting standards, within 120 days of the Provider's balance date.
- 21.4 To enable the Purchasing Agency to understand the full range of costs of providing the Services, the Purchasing Agency may reasonably request in writing other financial information from the Provider relating to the provision of Services by the Provider or the Provider's use of the Funding.
- 21.5 The Provider must provide the requested information to the Purchasing Agency within 20 Business Days of receiving a request under clause 21.4.

Assessing Performance and Compliance

22. Regular communication and monitoring

- 22.1 The parties will maintain regular contact with each other for the purpose of:
- (a) monitoring the Provider's performance against its obligations under the Outcome Agreement including with reference to any Performance Management Framework;
 - (b) encouraging the on-going review and assessment of the effectiveness of the Services;
 - (c) providing mutual constructive feedback that will enhance the effectiveness of the Services; and
 - (d) identifying early any issues and opportunities to do things better on the part of each party.

23. Assessing Performance and Performance Measures

- 23.1 The Purchasing Agency will regularly assess the Provider's compliance with the Outcome Agreement in accordance with any Performance Management Framework.
- 23.2 The Purchasing Agency will notify the Provider in writing of any changes in its assessment of the Provider's performance.
- 23.3 Although the Provider is required to comply with all of its obligations in the Outcome Agreement, the Purchasing Agency may identify specific areas or measures that it will use to identify whether the Provider is meeting its contractual obligations. If the Purchasing Agency develops or amends any Performance Measures it will:
- (a) notify the Provider in writing of those Performance Measures, or changes to those Performance Measures; and
 - (b) engage with the Provider if the new or amended Performance Measure will require the Provider to take steps to implement the change or provide new reporting; and
 - (c) taking into account any feedback from the Provider, specify the date from which it will start measuring the Provider's performance against those Performance Measures (or amended Performance Measures), which must be no earlier than 2 months from the date of the notice.

24. Reporting and information

- 24.1 The Provider will:
- (a) provide the reports specified in the Outcome Agreement, at the times and frequency specified in the Outcome Agreement;
 - (b) provide information relating to the Services that the Purchasing Agency reasonably requests, in a format that is usable by the Purchasing Agency, and within a reasonable time of the request;
 - (c) co-operate with the Purchasing Agency to provide information promptly if the information is required by the Purchasing Agency to comply with an inquiry or its statutory, parliamentary, or other reporting obligations; and
 - (d) provide to any regulator (including the Office of the Ombudsman, the Health and Disability Commission, the Children and Young People's Commission, WorkSafe, the Privacy Commissioner, and health workforce regulatory bodies) any information that the regulator requires by Law or otherwise reasonably requests.
- 24.2 The Provider must provide written notice to the Purchasing Agency as soon as reasonably practicable if:
- (a) the Provider proposes to change its legal structure;
 - (b) any of the Provider's Personnel are being investigated for, have been charged with, or convicted of any criminal offence that, viewed objectively and reasonably, represents a material risk to the performance of the Services or the

achievement of the outcomes (including because it might damage the reputation of either the Provider or the Purchasing Agency were it to be publicly known);

- (c) it is being investigated by the Labour Inspectorate, or if the Provider has been found by the Labour Inspectorate, Employment Relations Authority, or the Employment Court to have breached the Law;
- (d) any problems, issues or incidents arise in relation to the Outcome Agreement, including any problems or issues that will or may affect the provision or quality of the Services or the ability of the Provider to perform its obligations under the Outcome Agreement.

24.3 The Provider will promptly take any actions reasonably required by the Purchasing Agency to mitigate any actual or potential risk arising from the matters referred to in clause 24.2.

25. Audit

Types of audits

25.1 The Purchasing Agency (or its nominee) may carry out the following audits:

- (a) Routine/Standard Audits;
- (b) Issues-Based Audit;
- (c) No notice Audit;
- (d) Tracer Audit.

Notice of audits

25.2 The Provider will be given at least 20 Business Days' notice before a Routine/Standard Audit is undertaken.

25.3 Unless clause 25.4 applies, the Purchasing Agency will give the Provider at least 10 Business Days' notice before undertaking an Issues-Based Audit or Tracer Audit.

25.4 The Purchasing Agency may carry out an audit with less than 10 Business Days' notice, or without notice, if the Purchasing Agency reasonably believes that:

- (a) notice or a delay is likely to prejudice the health, safety or wellbeing of any person; or
- (b) serious non-compliance with the Outcome Agreement has or may have occurred.

Frequency and timing of audits

25.5 The Purchasing Agency will not carry out each type of audit more often than once in any calendar year unless:

- (a) the audit is an Issues-Based Audit or No Notice Audit; or
- (b) the audit is authorised by Law.

25.6 To avoid doubt, nothing in clause 25 prevents any other agency from carrying out audits, reviews, or inspections, including under the Health and Disability Services (Safety) Act 2001.

25.7 If the Purchasing Agency conducts an audit, it will be conducted during business hours unless the Purchasing Agency considers that a delay is likely to prejudice the health, safety or wellbeing of any person.

Access to premises, Personnel and records

25.8 The Provider will provide the Purchasing Agency with reasonable access to the Provider's premises, Personnel and records used in the performance of the Outcome Agreement to allow the exercise of any monitoring activities or audits by the Purchasing Agency or enable the Purchasing Agency to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.

25.9 If the Purchasing Agency so requires for the purposes of conducting an audit, the Provider will facilitate access to the recipients of the Services and their family/whānau, guardians or advocates.

25.10 If the Purchasing Agency conducts an audit, the Purchasing Agency will:

- (a) comply with the Provider's reasonable security requirements, and maintain confidentiality; and
- (b) use reasonable endeavours to minimise any disruption to the Provider's business during the audit.

Costs of audit

25.11 Unless clause 25.12 applies, each party is responsible for their own costs in relation to any audit undertaken in accordance with the Outcome Agreement.

25.12 If an audit reveals material overcharging (as determined by the Purchasing Agency), fraud, misappropriation of funding, or serious non-compliance with the Outcome Agreement, the Provider must reimburse the Purchasing Agency for its reasonable actual costs in carrying out the audit.

Outcome of audit

25.13 Following the completion of an audit, the Purchasing Agency will give the Provider a copy of any report or other document advising of the outcome of that audit, within a reasonable timeframe.

25.14 The Purchasing Agency may publish any final audit report, subject to any redactions required or authorised under Law.

25.15 If an audit results in findings that the Provider has breached the Outcome Agreement, or there are significant or systemic issues in the Provider's performance of the Services, the Purchasing Agency may require the Provider comply with an Improvement Plan to address the findings.

25.16 To the extent that an audit results in recommendations for continuous improvement, the parties will work together to implement those recommendations.

Resolving Disputes and Managing Performance

26. Resolving disputes

Dispute resolution process

- 26.1 If either party wishes to raise a dispute relating to the Outcome Agreement (**Dispute**), it may do so by giving written notice to the other party detailing the nature of the dispute (**Dispute Notice**).
- 26.2 The Contract Managers will try to resolve the dispute in the first instance.
- 26.3 If the Contract Managers cannot resolve the Dispute within 21 days of receipt of the Dispute Notice, either party may refer the Dispute to senior members of each party by giving them the Dispute Notice.
- 26.4 If the senior member of the parties cannot resolve the Dispute within 21 days of receiving the Dispute Notice, either party may by written notice to the other party refer the Dispute to mediation.
- 26.5 If a Dispute is referred to mediation, the mediation will be conducted:
- (a) by a single mediator agreed by the parties, or if they cannot agree within 10 Business Days of referring the Dispute to mediation, appointed by the Chairperson of the Resolution Institute (or its successor entity); and
 - (b) on the terms of the Resolution Institute's Mediation Rules (available at www.resolution.institute).
- 26.6 Each party will continue to perform its obligations under the Outcome Agreement as far as practical given the nature of the Dispute.
- 26.7 Neither party may commence any court proceedings in respect of a Dispute unless it has first complied with clauses 26.1 to 26.5, unless those court proceedings are necessary to preserve its rights.

Payment disputes

- 26.8 If the Purchasing Agency disputes Taxable Supply Information from the Provider, the Purchasing Agency:
- (a) will notify the Provider within 10 Business Days of the date of receipt of Taxable Supply Information from the Provider;
 - (b) may pay any portion of Funding that is not in dispute; and
 - (c) may withhold payment of the disputed portion until the dispute is resolved.

27. Performance Management

- 27.1 The Purchasing Agency may undertake one or more of the actions/remedies outlined in clauses 28 (Improvement Plans) to 33 (Other remedies to address performance issues) at the same time.
- 27.2 To avoid doubt, seeking to resolve a dispute through the dispute process outlined in clause 26 (Resolving disputes) does not prohibit the Purchasing Agency from

exercising any of its rights under the Outcome Agreement during the dispute resolution process.

28. Improvement Plans

- 28.1 If the Purchasing Agency, acting reasonably, considers that the Provider is not meeting any of its obligations in the Outcome Agreement, or the Provider's performance has been assessed by the Purchasing Agency as requiring improvement, the Purchasing Agency may require the Provider to comply with an Improvement Plan. While the Purchasing Agency will seek to agree the Improvement Plan with the Provider, the Provider's agreement is not required.
- 28.2 An Improvement Plan must identify:
- (a) the performance issue; and
 - (b) the actions that the Provider must take to address or resolve the performance issue to the satisfaction of the Purchasing Agency, and a timetable for such actions to be completed.
- 28.3 The Improvement Plan will be legally binding, and form part of the Outcome Agreement. If the Provider fails to comply with the Improvement Plan, the Purchasing Agency may exercise any of its rights under the Outcome Agreement in relation to that failure.

29. Suspending Referrals

- 29.1 If the Purchasing Agency reasonably considers that the Provider is not meeting any of the obligations in the Outcome Agreement, the Purchasing Agency may notify the Provider in writing:
- (a) that it is suspending Referrals to the Provider; and
 - (b) of the actions that the Provider must take in order for the suspension on Referrals to be removed.

30. Suspending or recovering payments

- 30.1 Without limiting any other rights under the Outcome Agreement or under any Law, if the Provider does not provide the Services or use the funding in accordance with the Outcome Agreement, the Purchasing Agency may:
- (a) require the Provider to repay a portion of Funding already paid to the Provider in relation to those Services or the Funding; and/or
 - (b) suspend or delay payment of a portion of the Funding to be paid on subsequent payment dates until the matter giving rise to suspension of Funding is resolved.
- 30.2 Any amount to be repaid, suspended, or delayed pursuant to this clause will be determined by the Purchasing Agency acting reasonably and following a discussion with the Provider.

31. Suspending Approved Personnel

- 31.1 This clause 31 applies if the Outcome Agreement specifies that the Services must be delivered by Approved Personnel.
- 31.2 The Purchasing Agency may give the Provider written notice that one or more Approved Personnel are suspended from providing all or any of the Services if, for any reason, the Purchasing Agency believes on reasonable grounds that it is not appropriate for the Approved Personnel to continue to be involved in delivering the Services (for example, while an Issues-Based Audit is undertaken) (**Approved Personnel Suspension Notice**).
- 31.3 If the Provider receives an Approved Personnel Suspension Notice, the Provider must stop the Approved Personnel from being involved in the delivery of any of the Services:
- (a) until the earlier of:
 - (i) the date specified in the Approved Personnel Suspension Notice; or
 - (ii) the date the Purchasing Agency agrees the Approved Personnel can continue to be involved in the delivery of the Services; or
 - (b) permanently, if the Purchasing Agency requires that the Approved Personnel no longer be involved in the delivery of the Services.

32. Suspending the Services

- 32.1 The Purchasing Agency may direct the Provider to suspend all or any of the Services (**Suspension Notice**) if the Purchasing Agency believes on reasonable grounds that, due to a suspected or known health and safety risk to one or more Disabled People, it is not appropriate for the Provider to continue to provide the Services or any of the Services (for example, while an Issues-Based Audit is undertaken).
- 32.2 If the Provider receives a Suspension Notice, the Provider must:
- (a) stop providing the Services specified in the Suspension Notice:
 - (i) until the earlier of the following:
 - (A) the date specified in the Suspension Notice; or
 - (B) the date the Purchasing Agency determines that the Services specified in the Suspension Notice can begin again; or
 - (ii) subject to clause 40.140 (Wind down and transition), permanently, if the Outcome Agreement is terminated while the suspension is in force;
 - (b) comply with any reasonable directions given by the Purchasing Agency to transfer (on a temporary basis) the suspended Services to another provider.
- 32.3 No Funding will be payable in relation to the suspended Services, during the period that the Services are suspended.

33. Other remedies to address performance issues

Appointment of an advisor

33.1 Without limiting any other rights in the Outcome Agreement, if the Provider does not provide the Services in accordance with the Outcome Agreement the Purchasing Agency may appoint an advisor for no longer than 3 months, or for a time agreed in writing, to assist the Provider to resolve any issues, in which case:

- (a) the advisor will monitor the Provider's performance and report back to the parties; and
- (b) the Provider must:
 - (i) allow the advisor access to the Provider's premises;
 - (ii) allow access to relevant information and documentation; and
 - (iii) ensure that the advisor can carry out their duties without disturbance or disruption.

Temporary manager

33.2 Without limiting any other rights in the Outcome Agreement, if the Provider does not provide some or all of the Services in accordance with the Outcome Agreement, and the Purchasing Agency considers that, due to a suspected or known health and safety risk to one or more Disabled People, it is not appropriate for the Provider to continue to provide some or all of the Services, the Purchasing Agency may appoint an appropriately qualified and experienced temporary manager to take over management of the provision of the identified Services on behalf of the Provider (**Temporary Manager**), in which case the Provider must:

- (a) allow the Temporary Manager access to the Provider's premises;
- (b) ensure that the Temporary Manager can carry out their duties without disturbance or disruption; and
- (c) comply with any direction or instruction given by the Temporary Manager.

33.3 If the Purchasing Agency appoints a temporary manager, the Provider:

- (a) will be liable for the reasonable costs of the temporary manager managing the provision of the relevant Services; and
- (b) must indemnify the Purchasing Agency for all claims, damages, penalties or losses including reasonable costs (but excluding indirect or consequential losses) arising under clause 33.2 from actions taken by the Purchasing Agency, including actions taken by the Temporary Manager, except arising from the negligence or fraud of the Temporary Manager or the Purchasing Agency or from actions taken by the Temporary Manager for purposes other than the purpose of remedying the issue referred to in clause 33.2.

34. Extraordinary Events

34.1 A party who wishes to suspend its obligations due to an Extraordinary Event must notify the other party as soon as reasonably possible.

34.2 Each notice described in clause 34.1 must include:

- (a) the nature of the circumstances giving rise to the Extraordinary Event;
- (b) the extent of that party's inability to perform under the Outcome Agreement;
- (c) the likely duration of that non-performance; and
- (d) what steps are being taken to minimise the impact of the Extraordinary Event on the performance of the Services, and to ensure that those who are receiving the Services continue to do so to the extent possible.

34.3 Neither party is liable to the other for any failure to perform its obligations under the Outcome Agreement to the extent the failure is due to an Extraordinary Event.

34.4 If a party is unable to perform all or some of its obligations under the Outcome Agreement for 20 Business Days or more due to an Extraordinary Event, the other party may terminate the Outcome Agreement immediately by giving written notice to the affected party. The Purchasing Agency may make alternative arrangements for the Services to be provided during the abovementioned 20 Business Days.

Privacy, confidentiality, and intellectual property

35. Privacy of Personal Information and Health Information

35.1 To the extent that the Provider collects, uses, stores and/or discloses Personal Information and Health Information related to the Outcome Agreement and Services, it will do so in accordance with:

- (a) the Privacy Act 2020, the Health Information Privacy Code 2020 and any other regulations or codes issued under that Act;
- (b) any Law that amends or overrides all or part of the Privacy Act 2020 and any other regulations or codes issues under that Act and that applies to the Purchasing Agency or the Provider;
- (c) any Code of Practice or Approved Information Sharing Agreement (as defined in the Privacy Act 2020) that amends or overrides the Privacy Act 2020 any other regulations or codes issued under that Act that applies to the Purchasing Agency or the Provider.

35.2 Subject to clause 35.1, the parties will record in the Outcome Agreement the details of any Personal Information and Health Information that will be shared in connection with the Services, the purpose(s) and legal authority for sharing and using the information, and any agreement on the transfer and management of the information (including security and storage).

35.3 Wherever a Provider supplies a privacy statement to Disabled People in respect of the Services in accordance with the Privacy Act 2020, the Provider will implement any reasonable directions made by the Purchasing Agency about the content of the privacy statement, including about the purpose(s) of collection and the disclosure of information.

35.4 Before making a direction under clause 35.3, the Purchasing Agency will consult with the Provider about the proposed content of the privacy statement, and consider any reasonable issues or concerns raised by the Provider.

35.5 Without limiting clause 35.1, the Provider will take all reasonable steps to:

- (a) protect the Personal Information and Health Information it collects, stores, uses, and discloses, including by:
 - (i) having documented privacy, information management and security policies, processes, and controls in place that are designed to protect the security of Personal Information and Health Information;
 - (ii) ensuring Personal Information and Health Information is only accessed by appropriate Personnel who need to use the information for the purpose for which it was collected, and regularly reviewing its access permissions; and
 - (iii) ensuring that any Personal Information and Health Information that is sent electronically is sent in a secure manner and is either password protected or provided using a system that has been approved by the Purchasing Agency; and
- (b) ensure that all relevant Personnel:
 - (i) are aware of the character and sensitivity of any Personal Information and Health Information the Provider holds;
 - (ii) are suitable to access and use that Personal Information and Health Information in accordance with the Provider's access controls, with such suitability assessment to include either regular Police Vetting or Ministry of Justice criminal record checks as appropriate; and
 - (iii) know when and how to report a privacy breach, a cyber security incident, or conflict of interest that could affect the security, integrity or availability of Personal Information and Health Information.

35.6 The Provider must, upon request by the Purchasing Agency:

- (a) provide written confirmation of its compliance with:
 - (i) relevant information sharing and privacy Laws, and
 - (ii) with the requirements of the Outcome Agreement as it relates to information sharing and privacy; and
- (b) make its privacy, information management and security policies, processes, and controls available to the Purchasing Agency.

35.7 The Provider must comply with:

- (a) the MSD Information Security Policy;
- (b) any MSD information security standards notified to the Provider; and
- (c) any minimum cyber security requirements specified by the Purchasing Agency.

If there is a conflict between the Provider's policies and the Purchasing Agency's information security requirements, the Purchasing Agency's requirements will apply.

- 35.8 The Provider must maintain complete and accurate records of its information handling practices, including consents, data flows, access logs, and security controls.
- 35.9 In relation to any Personal Information and Health Information provided to, or made available by, the Purchasing Agency to the Provider in relation to the Outcome Agreement, the Provider will on termination or expiry of the Outcome Agreement, or on the Purchasing Agency's instructions, securely dispose of or return that Personal Information and Health Information to the Purchasing Agency, except to the extent that such information is stored in electronic backups which cannot reasonably be extracted or deleted.
- 35.10 If the Provider becomes aware of any Security Breach (as defined below) in relation to the Outcome Agreement, it will notify the Purchasing Agency as soon as possible of that Security Breach and:
- (a) promptly take such steps as are reasonably available to it to identify the person or persons involved in the Security Breach;
 - (b) take reasonable steps to stop such Security Breach, to mitigate or contain the effects of the Security Breach, and to prevent its reoccurrence;
 - (c) provide reasonable assistance to the Purchasing Agency in determining the extent of the Security Breach;
 - (d) if the Purchasing Agency reasonably requests, assist the Purchasing Agency to undertake its own investigation in relation to the Security Breach;
 - (e) will, if the Purchasing Agency reasonably requests:
 - (i) assist the Purchasing Agency to notify affected individuals in relation to the Security Breach; and
 - (ii) assist the Purchasing Agency to notify the New Zealand Privacy Commissioner in relation to the Security Breach,
 and the Provider acknowledges that it will not make any such notifications in relation to the relevant Security Breach without the Purchasing Agency's prior written approval (unless it is required to do so by applicable law); and
 - (f) in such circumstances, the Purchasing Agency may require the Provider to immediately ensure that any person, third party supplier or Subcontractor involved in causing the Security Breach is no longer engaged in providing the Services and that a suitably skilled, qualified and experienced replacement is engaged.
- 35.11 For the purposes of clause 35.10, **Security Breach** means any:
- (a) unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, any Personal Information and Health Information; and

- (b) any action that prevents either party from accessing the Personal Information and Health Information on either a temporary or permanent basis,

whether or not the breach is:

- (c) caused by the Provider's Personnel or agent or a third party;
- (d) attributable in whole or in part to any action by the Provider; or
- (e) ongoing.

36. Confidentiality

Confidential Information

36.1 The parties each confirm that they have adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that they will not use or disclose the other party's Confidential Information to any person or organisation other than:

- (a) to the extent that the disclosure or use is:
 - (i) necessary to perform its obligations, or to exercise its rights, under or in relation to the Outcome Agreement (for example, receive the benefit of the Services and to give effect to clauses 35 (Privacy of Personal Information and Health Information), 37 (Intellectual Property Rights) and 40 (Wind down and transition) of these Standard Terms and Conditions); or
 - (ii) is expressly authorised by the Outcome Agreement;
- (b) if the other party gives prior written approval to the use or disclosure;
- (c) if the use or disclosure is required by Law (including under the Official Information Act 1982) or parliamentary convention; or
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties.

36.2 The parties acknowledge that the following information is not Confidential Information and nothing in the Outcome Agreement prevents either party from publishing or disclosing any of the following information (subject to removal of any Personal Information or Health Information):

- (a) these Standard Terms and Conditions and the terms of the Outcome Agreement;
- (b) any final audit report;
- (c) the nature and quantity of the Services provided; and
- (d) payments made under the Outcome Agreement.

Confidentiality undertaking required

36.3 If the Outcome Agreement permits disclosure of any Confidential Information to any third party (including any auditor appointed under clause 25 (Audits)), the Provider and the Purchasing Agency (as applicable) may only disclose that Confidential

Information to that third party if it first obtains a written confidentiality undertaking from that third party in terms substantially similar to those set out in this clause 36.

- 36.4 To avoid doubt, Personnel of the Purchasing Agency or Provider are not third parties for the purpose of clause 36.3. Each party may disclose Confidential Information to Personnel who need to know such information for the purposes of the Outcome Agreement, provided each party ensures that its Personnel:
- (a) are aware of the confidentiality obligations in the Outcome Agreement; and
 - (b) do not disclose or use Confidential Information except as allowed by the Outcome Agreement.
- 36.5 Each party must notify the other party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information, and comply with any reasonable direction of the other party in relation to any suspected or actual breach of the obligations in this clause 36 as the other party reasonably requests.
- 36.6 The parties acknowledge that the Purchasing Agency retains ownership of its Confidential Information when it's processed, transmitted or stored by the Provider, who agrees they will not:
- (a) share it with any permitted Subcontractor or third party unless the Purchasing Agency's consent is provided;
 - (b) use it for any purpose other than the delivery of the Services; or
 - (c) process, transmit or store the information at offshore locations unless the Purchasing Agency's consent is provided.

37. Intellectual Property Rights

- 37.1 Each party or its licensors retains ownership of all Intellectual Property Rights in Existing IP belonging to that party or its licensors, including enhancements, modifications or adaptations to such Existing IP.
- 37.2 The Provider grants to the Purchasing Agency a perpetual, irrevocable, royalty-free and non-exclusive and sub-licensable licence to use, copy, modify and distribute the Provider's (or its licensor's) Existing IP for any purpose (including to avoid doubt making available that Existing IP to other public sector agencies) to the extent that Existing IP forms part of:
- (a) any Service provided to the Purchasing Agency; or
 - (b) any New IP.
- 37.3 Unless agreed otherwise in the Outcome Agreement, and subject to clause 37.1, all new Intellectual Property Rights:
- (a) developed, created or commissioned under or in connection with the Outcome Agreement (including, by way of example and without limitation, documentation, specifications, and reports); and

- (b) any other Intellectual Property Rights that are agreed in writing to be New IP for the purposes of the Outcome Agreement,
- (**New IP**), will immediately and directly vest with the Purchasing Agency upon their creation.

- 37.4 The Purchasing Agency grants to the Provider a royalty-free and non-exclusive licence to use, copy, modify and distribute any New IP for the Term of the Outcome Agreement for any purpose connected with the performance of the Outcome Agreement and any other uses agreed in writing by the parties from time to time.
- 37.5 The Purchasing Agency acknowledges that, if the Provider would like to own any specific New IP for an identified purpose, then the Provider can raise that issue with the Purchasing Agency, and the Purchasing Agency may agree in writing for the Provider to own that New IP.
- 37.6 Each party to the Outcome Agreement warrants that any Intellectual Property Rights it provides under or in connection with the Outcome Agreement do not infringe the Intellectual Property Rights of any third party.

Ending the Outcome Agreement, Wind down and Transition

38. Notice of future intentions

- 38.1 Before the end of the Term of the Outcome Agreement, the Provider must give the Purchasing Agency a minimum of 6 months' notice if:
- (a) the Provider does not wish to enter a new Outcome Agreement for the provision of the Services with the Purchasing Agency when the Outcome Agreement ends; or
 - (b) the Provider wishes to enter into a new agreement with the Purchasing Agency when the Outcome Agreement ends but on materially different terms.

39. Termination

Termination for convenience

- 39.1 The Provider may, without incurring any liability to the Purchasing Agency for damages or compensation, at any time, by giving no less than 6 months' notice terminate the Outcome Agreement or terminate some but not all of the Services.
- 39.2 The Purchasing Agency may, without incurring any liability to the Provider for damages or compensation, at any time, by giving no less than 3 months' notice terminate the Outcome Agreement or terminate some but not all the Services.

Immediate termination

- 39.3 In addition to the mutual right to terminate due to the effects of an Extraordinary Event in clause 34, the Purchasing Agency may immediately terminate the Outcome Agreement, by giving written notice to the Provider, if:
- (a) the Purchasing Agency reasonably considers that:

- (i) the Provider is not complying with its obligations under the Outcome Agreement; and
- (ii) one of the following apply:
 - (A) the non-compliance results in, or is likely to have resulted in, a person suffering harm, Abuse or Neglect; or
 - (B) it is not possible or practicable to rectify the non-compliance;
- (b) the Purchasing Agency becomes aware that the Provider (including any Approved Personnel) has been charged with, or convicted of, an offence listed in Schedule 2 of the Children's Act 2014, or convicted of any dishonesty offence relating to any claim for payment from any party (including the Purchasing Agency);
- (c) the Provider's certification, licence, registration, statutory designation, or approval (as applicable) is revoked or relinquished; or
- (d) the Provider:
 - (i) becomes bankrupt or insolvent;
 - (ii) has an administrator, receiver, liquidator, statutory manager, or mortgagee's or chargee's agent appointed;
 - (iii) becomes subject to any form of external administration;
 - (iv) ceases for any reason to continue in business;
 - (v) does something or fails to do something that, in the reasonable opinion of the Purchasing Agency, results in damage to the reputation or business of the Purchasing Agency or the reputation or business of the Crown (including, for example, the misuse of Funding);
 - (vi) has a Conflict of Interest that in the opinion of the Purchasing Agency is so material as to impact adversely on the delivery of the Services, the Purchasing Agency, or the Crown; or
 - (vii) provides information to the Purchasing Agency or any auditor or reviewer appointed by the Purchasing Agency that is misleading or inaccurate in any material respect.

Termination following notice period to rectify non-compliance

39.4 Without limiting any other rights specified in these Standard Terms and Conditions, if a party is not complying with its obligations under the Outcome Agreement (**Defaulting Party**), the non-Defaulting Party may give a default notice to the Defaulting Party.

39.5 A default notice must specify:

- (a) the nature of the non-compliance; and
- (b) the time and date by which the non-compliance must be remedied.

39.6 Any period allowed to remedy the non-compliance must be reasonable given the nature of the non-compliance.

39.7 The non-Defaulting Party may terminate the Outcome Agreement immediately by giving a further notice to the Defaulting Party if the Defaulting Party does not remedy the non-compliance as required by the default notice.

Ending some, but not all, of the Services

39.8 If either party is entitled to terminate the Outcome Agreement:

- (a) that party may elect to only terminate one or more Services in the Outcome Agreement, in which case the party will provide notice of termination to the other party that sets out the Service(s) to be terminated and the date of termination; and
- (b) the terminated Services will terminate on that date and the remainder of the Outcome Agreement, will remain in effect.

Obligations and rights following notice of termination or expiry

39.9 If the Provider gives or receives a notice of termination, the Provider must:

- (a) comply with any conditions specified by the Purchasing Agency if the Purchasing Agency has given the notice; and
- (b) comply with the wind down and transition requirements in clause 40 (Wind down and transition).

39.10 Termination or expiry of the Outcome Agreement does not affect any rights of a party that:

- (a) arose prior to the date of termination or expiry; or
- (b) relate to any non-compliance with the Outcome Agreement that arose prior to the date of termination or expiry.

40. Wind down and transition

40.1 The parties acknowledge that the purpose of the wind down and transition period is to ensure the safe and appropriate continuation of service for Disabled People affected by the cessation of the Services.

40.2 The wind down and transition will commence on a date specified by the Purchasing Agency or, if no date is specified:

- (a) on the date that a party gives notice of termination; or
- (b) on a date that is 6 months before the Outcome Agreement is due to expire, unless the Purchasing Agency has indicated that it will extend or enter into a new Outcome Agreement with the Provider for the Services in the Outcome Agreement.

40.3 The wind down and transition period will be 6 months unless otherwise agreed in writing.

40.4 During the wind down and transition period, the Provider must:

- (a) only provide the Services that the Purchasing Agency advises the Provider are to be delivered during the wind down and transition period;
- (b) collaboratively work with the Authorised Support Coordination Agency to prepare a transition plan for each Disabled Person, and implement each plan;
- (c) give all reasonable assistance and cooperation necessary to facilitate the safe and orderly handover of the Services to the Purchasing Agency or any person or organisation that the Purchasing Agency advises;
- (d) if requested in writing by the Purchasing Agency, give to the Purchasing Agency by the dates specified by the Purchasing Agency, the following information in an organisational transition plan:
 - (i) the number of Personnel who will need to be redeployed or who may become redundant as a direct result of termination or expiry of the Outcome Agreement (if any);
 - (ii) the anticipated timeframe of any necessary redeployment or restructure and any continuing direct employee costs and On-costs expected to be incurred during that timeframe that cannot reasonably be met through immediate redeployment;
 - (iii) notice periods required for any individual contractors and Subcontractors whose services will no longer be required by the Provider as a direct result of termination or expiry of the Outcome Agreement and contractual costs associated with that period;
 - (iv) details of any pre-existing financial commitments incurred in accordance with the Outcome Agreement;
 - (v) an account of any information and property held by the Provider that belongs to the Purchasing Agency and a plan for the return of that information and property;
 - (vi) any other information that the Purchasing Agency reasonably requests; and
- (e) if requested by the Purchasing Agency in writing:
 - (i) give the Purchasing Agency any copies of Records (including Care Records and personal plans) that the Purchasing Agency specifies; and
 - (ii) securely destroy any Confidential Information belonging to the Purchasing Agency (provided that the destruction of that Confidential Information is not prohibited by the Law).

40.5 During the wind down and transition period, the Purchasing Agency will pay the Provider for any Services specified by the Purchasing Agency under clause 40.4(a) that the Provider has delivered, in accordance with the Outcome Agreement.

41. Survival

41.1 The clauses that, by their nature, should remain in force on expiry or termination of the Outcome Agreement do so. This includes clauses 19 (Records), 25 (Audit), 35

(Privacy of Personal Information and Health Information), 36 (Confidentiality), 37 (Intellectual Property Rights), 40 (Wind down and transition), 42 (Indemnity) and clause 43 (Insurance).

General terms

42. Indemnity

42.1 The Provider indemnifies the Purchasing Agency against all losses suffered or incurred by the Purchasing Agency as a result of any claim by a third party that:

- (a) the possession or use of any Intellectual Property Rights supplied or licensed by the Provider to the Purchasing Agency or used to provide the Services infringes a third party's Intellectual Property Rights; or
- (b) a third party's rights (including privacy rights) have been breached as a consequence of the Provider's non-compliance with the Outcome Agreement.

42.2 The indemnity in clause 42.1 applies to the extent that any relevant loss was not caused by the Purchasing Agency's negligence, non-compliance with the Outcome Agreement or wilful misconduct.

43. Insurance

43.1 The Provider must hold and maintain a policy or policies of insurance to cover its risks of business, including any risks associated with the provision of the Services, other than exclusions notified to the Purchasing Agency in accordance with clause 43.2.

43.2 If the Provider is unable to obtain insurance in relation to certain risks associated with the provision of the Services, the Provider must notify the Purchasing Agency and follow the reasonable instructions of the Purchasing Agency to manage those risks.

43.3 The Provider must:

- (a) hold and maintain the insurance cover specified in the Outcome Agreement for the Term of the Outcome Agreement and for a period of 3 years after the expiry or termination of the Outcome Agreement; and
- (b) provide a certificate confirming the nature of the insurance cover and proving that each policy is current, within 10 Business Days of any request from the Purchasing Agency.

44. Additions or changes to these Standard Terms and Conditions

44.1 The parties may agree additional terms to apply to the Outcome Agreement, or to amend these Standard Terms and Conditions, as set out in the Outcome Agreement.

45. Variations

- 45.1 Unless clause 45.2 applies, any change to the Outcome Agreement must be recorded in writing and signed by both parties, and each party is responsible for ensuring that the signatories or authors have delegated authority to approve the Variation.
- 45.2 The Purchasing Agency may give the Provider notice that, from the date specified in the notice, the Outcome Agreement is varied to do any one or more of the following:
- (a) increase any amounts payable under the Outcome Agreement;
 - (b) amend a Service Specification or reporting requirements, provided that the extent of the change is reasonable and the Purchasing Agency informs the Provider of the changes and allows the Provider a reasonable period of time to give effect to those changes;
 - (c) update administrative information about the Purchasing Agency;
 - (d) amend any other part of the Outcome Agreement if the amendment is not material to the Provider's provision of the Services;
 - (e) give effect to a change of Law.

46. Subcontracting

- 46.1 The Provider must not subcontract the performance of any of the Services without first obtaining the prior written consent of the Purchasing Agency, such consent not to be unreasonably withheld. The Provider is responsible for the acts and omissions of any Subcontractor.
- 46.2 If the Purchasing Agency approves a Subcontracting arrangement, the Provider must ensure that:
- (a) each Subcontractor has the expertise, capability and capacity to deliver the Services being subcontracted, in accordance with the Outcome Agreement;
 - (b) each Subcontractor is fully aware of and complies with the Provider's obligations under the Outcome Agreement;
 - (c) any contract that the Provider enters into with a Subcontractor to provide the Services is on terms that are consistent with the Outcome Agreement, including –
 - (i) if the Subcontractor is to deliver Services that would require the Subcontractor to hold a relevant certification, licence, registration, statutory designation, authority or approval, the Provider must ensure that the Subcontractor has and maintains the relevant level of certification, licence, registration, statutory designation, authority or approval for the service that it delivers,
 - (ii) the Provider must not engage a Subcontractor to provide services as a Children's Worker unless and until the necessary Police Vetting and children's worker safety checks have been undertaken in accordance with Part 3 of the Children's Act 2014 and the Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015 and any additional or supplementary requirements specified in the Service Specification, and

- (iii) the Provider must not engage a Subcontractor to provide services in relation to the care and safety of other vulnerable persons unless and until the Subcontractor (or relevant Subcontractor's Personnel) have been assessed as suitable to be employed or engaged (including as a volunteer) in that particular role, including through Police Vetting.

47. Assignment and novation

- 47.1 The Provider must obtain the Purchasing Agency's prior written approval (not to be unreasonably withheld) to transfer all or any part of its rights and obligations under the Outcome Agreement to a third party. For the purposes of this clause, a transfer includes any change in the legal or beneficial ownership interests in the transferring party that results in a change in its effective control. In seeking the Purchasing Agency's approval, the Provider must:
- (a) notify the Purchasing Agency, at least 60 Business Days before the date of the proposed transfer;
 - (b) provide any information reasonably requested by the Purchasing Agency; and
 - (c) satisfy the Purchasing Agency that the proposed transferee is suitable as a provider of the Services.
- 47.2 The Purchasing Agency will endeavour to advise the Provider of its decision concerning the Provider's request within 30 Business Days of receiving the Provider's application and any information reasonably requested by the Purchasing Agency. If the Purchasing Agency approves the transfer, the Provider must comply with any reasonable conditions the Purchasing Agency may impose as part of its approval.

48. Comply with Laws

- 48.1 The parties will each comply with all Laws applicable to them and their activities and not cause the other to breach any Law that relates to the provision of Services under the Outcome Agreement.

49. Entire agreement

- 49.1 The Outcome Agreement incorporates these Standard Terms and Conditions and when read together with any other document specified in the Outcome Agreement (e.g. a Service Specification) they record the entire agreement between the parties in relation to the supply of Services under the Outcome Agreement and supersede all previous oral or written agreements, arrangements, understandings and representations concerning the same subject matter.
- 49.2 A reference to an Outcome Agreement includes a reference to these Standard Terms and Conditions and any other document specified in that Outcome Agreement.

50. Enforceability

50.1 If any clause of an Outcome Agreement is held to be illegal, invalid or unenforceable, it will be removed from the Outcome Agreement without affecting any other clause.

51. Waiver

51.1 A failure or delay by either party to exercise or enforce any right under the Outcome Agreement will not operate as a waiver of that right, unless such waiver is recorded in writing and sent to the relevant party by the party waiving that right.

52. Notices

52.1 Each notice or other communication under the Outcome Agreement will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable), marked for the attention of the Contract Manager.

52.2 A notice or other communication will be deemed to be received:

- (a) in the case of a letter sent to the addressee's postal address, on the fifth Business Day after posting;
- (b) in the case of personal delivery, on receipt; and
- (c) in the case of email at the time the email leaves the communications system of the sender, provided that the sender:
 - (i) does not receive any error message relating to the sending of the email at the time of the sending; and
 - (ii) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),
 on the day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt) on the next Business Day after the date of dispatch.

53. Conflict of interest

53.1 The Provider must advise the Purchasing Agency of whether and whenever it has any actual, potential or perceived Conflict of Interest in connection with the provision of the Services specified in the Outcome Agreement and follow the directions of the Purchasing Agency if the Purchasing Agency notifies the Provider that it has determined that the Provider has an actual, potential or perceived Conflict of Interest.

54. Costs

54.1 The parties will each bear their own costs in respect of preparing, negotiating, agreeing and entering into the Outcome Agreement.

55. Publication and endorsement

55.1 The Provider must obtain the prior written approval of the Purchasing Agency before making reference to the Purchasing Agency, the Funding, or the Outcome Agreement

in its publications, public statements, promotional material or promotional activities. The Provider must not use the Purchasing Agency's branding or logo without consent.

55.2 For the avoidance of doubt, nothing in these Standard Terms and Conditions affects the application of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

56. Counterparts

56.1 An Outcome Agreement may be executed in any number of counterparts, each of which is to be deemed an original, but all of which together are to constitute a single instrument. A party may enter into an Outcome Agreement by executing any counterpart.

57. Governing law and jurisdiction

57.1 The Outcome Agreement will be governed and interpreted in accordance with the laws of New Zealand. The New Zealand courts have exclusive jurisdiction.

Schedule One: Definitions and Interpretation

1. Definitions

In these Standard Terms and Conditions, and in the Outcome Agreement, unless the context otherwise requires:

Abuse means physical abuse or assault, psychological or emotional abuse, financial abuse, and sexual abuse or assault.

Approved Personnel means a person who is engaged by the Provider to deliver the Services and is identified in the Outcome Agreement.

Authorised Support Coordination Agency means an entity or group authorised by the Purchasing Agency to allocate support (a NASC or an EGL Site).

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003), observed in the location at which the Services are provided or in Wellington, New Zealand.

Business Viability Standards means the standards that have been approved by the Purchasing Agency to confirm the Provider's capability and capacity to deliver the Services. The standards are available at

<https://www.disabilitysupport.govt.nz/assets/Providers/Business-Viability-Standards-August-2025.pdf>

Care Records has the meaning given by Archives New Zealand, available at:

<https://www.archives.govt.nz/manage-information/the-care-records-definition/read-the-care-records-definition>

Children's Worker has the meaning given in section 23(1) of the Children's Act 2014.

Confidential Information means information, including data and Personal Information and Health Information, that:

- (a) is by its nature confidential;
- (b) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- (c) is provided by either party or a third party 'in confidence';
- (d) either party knows or ought to know is confidential; or
- (e) is of a sensitive nature or commercially sensitive to either party,

and includes Personal Information and Health Information.

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel, Subcontractors, or any other person with whom the Provider has a relationship arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Purchasing Agency under the Outcome Agreement;
- (b) the interests of the Purchasing Agency in relation to the Outcome Agreement or otherwise in respect of the provision of Services to the Purchasing Agency; or

- (c) otherwise impairs or might appear to impair the ability of the Provider or Personnel or Subcontractors to diligently and independently provide the Services to the Purchasing Agency under the Outcome Agreement.

Contract Manager means the contract manager appointed by each party and named as a contract manager in the Outcome Agreement, or notified to the other party in writing from time to time.

Critical Incident has the meaning given in the Purchasing Agency's Critical Incident Reporting Guidelines, available at <https://www.disabilitysupport.govt.nz/providers/reporting-of-critical-incidents-and-deaths>, as updated from time to time.

Disabled Person means a person:

- (a) whom an Authorised Support Coordination Agency has assessed as being eligible for and requiring the Services;
- (b) for whom the Provider has received a Referral from an Authorised Support Coordination Agency relating to that person; and
- (c) for whom the Provider has accepted that Referral.

And Disabled People has a corresponding meaning.

EGL Site means a group within the Purchasing Agency responsible for facilitating access to disability support using the Enabling Good Lives approach.

Existing IP means all Intellectual Property Rights (including to avoid doubt documentation and other materials) used or provided by a party under or in connection with the Outcome Agreement that are:

owned by, or licensed to, that party prior to the commencement of the Outcome Agreement; or

licensed to or developed independently from the Outcome Agreement by that party, and that are not developed, commissioned or created under or in connection with the Outcome Agreement.

External Safeguarding Service includes Disability Abuse Prevention and Response (DAPAR), family violence and sexual violence services, Police, supported decision making, and other safeguarding pathways, including access to advocacy and peer-support services.

Extraordinary Costs has the meaning set out in clause 12 (Extraordinary Costs).

Extraordinary Event means an event that is beyond the reasonable control of the party immediately affected by the event. An Extraordinary Event does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care.

Funding means the amount payable by the Purchasing Agency to the Provider for Services, as specified in the Outcome Agreement.

Health Information has the meaning given to that term in the Health Information Privacy Code.

Improvement Plan means a document that describes a performance issue that the Purchasing Agency requires the Provider to address, the actions that the Provider must take, and a timetable for such actions to be completed, as described in clause 28.

Incident means an event in which:

- (a) a person is harmed; or
- (b) there is a “near miss” of harm.

Intellectual Property Rights includes copyright and all present and future intellectual property rights as may exist anywhere in the world, whether conferred by statute, at common law or in equity, and whether or not registered or capable of registration, in relation to inventions (including patents), trademarks, designs, rights in databases and any proprietary business methodology together with all rights, interest or licence in or to any of the foregoing.

Issues-Based Audit means an enquiry, investigation or audit commissioned by the Purchasing Agency on an as-needed basis with a specific terms of reference to focus on specific areas of the Service.

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, policy, rule or standard to which a party is bound; and
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party’s assets, resources or business, in any jurisdiction that is applicable to the Outcome Agreement.

NASC means a needs assessment service coordination organisation appointed by the Purchasing Agency to provide Needs Assessment services.

Needs Assessment means the process to determine a person's disability support needs, such processes to be determined by the Purchasing Agency from time to time.

Neglect means inadequate care, failure to provide access to medical care, supervisory neglect, reckless disregard of a person, or failure to protect from harm or Abuse.

No Notice Audit means an audit to assess a serious concern that requires immediate investigation.

On-costs means the actual and reasonable costs associated with an on-going employment relationship that are imposed on the Provider (as an employer) by Law, and which are mandatory for the Provider to pay (as an employer) under Law in respect of an employee. The On-costs calculation includes the expected cost of paying employee superannuation contributions (including KiwiSaver), unplanned leave and ACC payments.

Outcome Agreement means a document of that name signed by the parties and describing the Services and Funding, and includes Variations to the document.

Performance Management Framework means a framework notified to the Provider and used by the Purchasing Agency to assess the Provider's performance of the Services and achievement of Outcomes.

Performance Measures means the measures that the Purchasing Agency will use to monitor the performance of the Provider and key service areas, as described in the Outcome Agreement.

Personal Information has the meaning given to that term in the Privacy Act.

Personal Plan means the plan that outlines care and support provided to the Disabled Person and their goals and objectives.

Personnel means all individuals engaged by either party in relation to the Outcome Agreement or the delivery of Services. Examples include: the owner of a business, its directors, trustees of a charitable trust, employees and individual contractors, Subcontractors, agents, external consultants, co-opted or seconded staff and volunteers. Personnel includes Approved Personnel.

Police Vetting means the process of requesting and receiving a Police vet provided by the Police Vetting Service and considering the resulting report as part of a risk assessment to assess an individual's suitability for a particular role, including any safety check and risk assessment required by the Children's Act 2014 and Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015.

Privacy Act means the Privacy Act 2020 and includes any codes or regulations issued under that Act.

Privacy Breach has the meaning given to that term in the Privacy Act.

Protective Security Incident means a security incident that is:

- (a) a breach of protective security policy or procedures;
- (b) an approach from anybody seeking unauthorised access to officials or official information; or
- (c) any other event that harms, or may harm, the security of the Purchasing Agency and/or the Purchasing Agency's Confidential Information.

Provider means the organisation named as the provider in the Outcome Agreement.

Quality Management System means the network of integrated systems, frameworks, and practices that together form a comprehensive picture of the Provider's quality of the Service.

Records means all information and data necessary for the management of the Outcome Agreement and the delivery of Services. Records include reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Referral means a referral to the Provider from an Authorised Support Coordination Agency that outlines that a person has been assessed as eligible for and needing the Services and seeking confirmation from the Provider to deliver those Services.

Renewal Period means each renewal period (if any) specified in the Outcome Agreement.

Restraint means the use of any intervention by a Provider that limits a Disabled Person's normal freedom of movement. Where restraint is consented to by a third party it is always restraint. It includes a single restraint event, or where restraint is used as a planned, regular intervention and is identified in the Disabled Person's personal plan.

Routine/Standard Audit means an audit to assess compliance with the Outcome Agreement.

Seclusion means a type of restraint where a person is placed alone in a room or area, at any time and for any duration, from which they cannot freely exit.

Services means, for an Outcome Agreement, each of the services the Provider will provide to contribute towards achieving each outcome as described in the Outcome Agreement.

Service Specification means the documentation identified in the Outcome Agreement that describes the expectations, roles and responsibilities of the parties in relation to specific categories of Services.

Subcontract means to enter into a contract with a person, business, company or organisation for the purpose of that person, business, company or organisation delivering or performing part of the Provider's obligations under the Outcome Agreement and Subcontractor and Subcontracting have a corresponding meaning.

Taxable Supply Information has the meaning given in the Goods and Services Tax Act 1985.

Temporary Care Records Protection Instruction means the instruction issued by the Chief Archivist under section 20 of the Public Records Act 2005 to protect public office Care Records, as updated from time to time. The Temporary Care Records Protection Instruction relates to existing and yet to be created Care Records and protects them from alteration, destruction, sale or discharge.

Temporary Manager has the meaning set out in clause 33.2

Term means the term described in the Outcome Agreement and includes any Renewal Period.

Tracer Audit means an audit that follows the 'journey'/interaction of a Disabled Person or group of Disabled People with the Service.

Variation means a change to any aspect of an Outcome Agreement that complies with clause 45 (Variations).

2. Interpretation

Unless the context otherwise requires:

- (a) a reference to a "party" or the "parties" are to a party or both parties to the Outcome Agreement and includes that party's respective successors in title and permitted assigns (and, where the context so permits, its respective Personnel, Subcontractors and representatives);
- (b) the word "including" and other similar words do not imply any limitation;
- (c) a reference to documentation (including these Standard Terms and Conditions) or Law includes a reference to that document or Law as varied, supplemented, novated or substituted from time to time;
- (d) headings are not to be used for interpretation;
- (e) the singular includes the plural and vice versa; and
- (f) words starting with capital letters are defined terms.