



Residential Services Panel Agreement

Between

Ministry of Social Development

Disability Support Services

(the Purchasing Agency)

and

[Provider] (the Provider)

Services	Community Residential Services
Service Specification	Community Residential Support Service Specification
PU Code(s)	
Start Date	1 December 2025
End Date	30 November 2035
Renewal Periods	Two further terms of five years each from the End Date, being: 1 December 2035 to 30 November 2040 1 December 2040 to 30 November 2045
Contract number	
Provider number	
Insurance required	

Appointment to Residential Services Panel

The Purchasing Agency appoints the Provider to the Residential Services Panel to provide the Services set out on the cover page, and the Provider accepts that appointment, on the terms of this Panel Agreement.

Documents that form part of this Panel Agreement

The documents that form the Panel Agreement between the Purchasing Agency and the Provider are:

1. This Panel Agreement cover page and signing page
2. The Residential Services Panel Terms and Conditions
3. The Service Specification(s) referred to on the cover page
4. The relevant Funding Schedule
5. The relevant Reporting Schedule
6. The relevant Performance Management Schedule
7. Any variations or additional Schedules made in accordance with this Panel Agreement

Acceptance

By signing below, each party acknowledges and agrees that it has read and will be bound by this Panel Agreement.

For and on behalf of Ministry of Social Development	For and on behalf of [Provider]
(Signature)	(Signature)
Name	Name
Position	Position
Date	Date

Disability Support Services



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

Ministry of Social Development

Disability Support Services

(Purchasing Agency)

Residential Services Panel Agreement Terms and Conditions

Contents

1. INTRODUCTION.....	5
<i>PANEL ARRANGEMENTS.....</i>	<i>5</i>
2. APPOINTMENT TO THE PANEL.....	5
3. STATUS OF THESE TERMS AND CONDITIONS.....	5
4. EFFECT OF PANEL ARRANGEMENTS	6
NON-EXCLUSIVE ARRANGEMENT	6
APPOINTMENT OF ADDITIONAL PANEL MEMBERS	6
NO GUARANTEE OF SERVICES, FUNDING, OR OPPORTUNITIES	6
<i>TERM OF PANEL AGREEMENT</i>	<i>6</i>
5. TERM	6
6. RIGHT OF RENEWAL	6
<i>OUR RELATIONSHIP.....</i>	<i>6</i>
7. RELATIONSHIP PRINCIPLES	7
<i>THE SERVICES AND SERVICE OBLIGATIONS</i>	<i>7</i>
8. REFERRAL INTO THE SERVICES.....	7
9. DELIVERY OF THE SERVICES.....	7
10. SAFEGUARDING AND ABUSE PREVENTION.....	9
REQUIRED POLICIES AND PROCEDURES RELATING TO SAFEGUARDING	9
RESTRICTIVE PRACTICES (RESTRAINT AND SECLUSION)	9
RESPONDING TO, AND REVIEWING SAFEGUARDING CONCERNS	10
WORKING WITH EXTERNAL SAFEGUARDING SERVICES	10
CHILDREN'S ACT OBLIGATIONS.....	11
11. INCIDENT MANAGEMENT.....	11
ALL INCIDENTS.....	11
REPORTING CRITICAL INCIDENTS	11
REVIEWING A CRITICAL INCIDENT	11
12. QUALITY AND CONTINUOUS IMPROVEMENT	12
<i>FUNDING AND PAYMENTS</i>	<i>12</i>
13. FUNDING FOR THE SERVICES	12
14. EXTRAORDINARY COSTS.....	13
15. PAYMENT DURING TEMPORARY ABSENCES.....	13
ABSENCE DURING WEEKENDS/PUBLIC HOLIDAYS	13
ANNUAL (HOLIDAY) LEAVE	13
ABSENCE FOR HOSPITALISATION OR ASSESSMENT OR TREATMENT	13
ABSENCE FOR IMPRISONMENT	14
ABSENCE FROM THE SERVICE FOR OTHER REASONS.....	14
16. PAYMENT FOR DAYS OF ADMISSION, DISCHARGE OR TRANSFER	14
17. PAYMENT FOLLOWING DEATH.....	14
18. INVOICES AND PAYMENTS FOR SERVICES.....	15
19. CALCULATION OF PAYMENTS FOR PEOPLE	15
20. OVERPAYMENTS.....	15
21. TAXES	15

CONTRACT AND RISK MANAGEMENT	16
22. CONTRACT MANAGER	16
23. COOPERATION	16
24. GOVERNANCE AND ACCOUNTABILITY	16
25. RECORDS.....	16
CARE RECORDS.....	17
26. HEALTH AND SAFETY AND RISK MANAGEMENT	17
27. FINANCIAL MANAGEMENT AND TRANSPARENCY	18
ASSESSING PERFORMANCE AND COMPLIANCE	19
28. REGULAR COMMUNICATION AND MONITORING	19
29. ASSESSING PERFORMANCE AND PERFORMANCE MEASURES.....	19
30. REPORTING AND INFORMATION	19
31. AUDIT	20
TYPES OF AUDITS	20
NOTICE OF AUDITS	20
FREQUENCY AND TIMING OF AUDITS	20
ACCESS TO PREMISES, PERSONNEL AND RECORDS	21
COSTS OF AUDIT	21
OUTCOME OF AUDIT	21
RESOLVING DISPUTES AND MANAGING PERFORMANCE	21
32. RESOLVING DISPUTES.....	22
DISPUTE RESOLUTION PROCESS	22
PAYMENT DISPUTES	22
33. PERFORMANCE MANAGEMENT	22
34. IMPROVEMENT PLANS.....	22
35. SUSPENDING REFERRALS.....	23
36. SUSPENDING OR RECOVERING PAYMENTS	23
37. SUSPENDING THE SERVICES.....	23
38. OTHER REMEDIES TO ADDRESS PERFORMANCE ISSUES	24
APPOINTMENT OF AN ADVISOR	24
TEMPORARY MANAGER	24
39. EXTRAORDINARY EVENTS.....	25
PRIVACY, CONFIDENTIALITY AND INTELLECTUAL PROPERTY	25
40. PRIVACY OF PERSONAL INFORMATION	25
41. CONFIDENTIALITY	27
CONFIDENTIAL INFORMATION.....	27
CONFIDENTIALITY UNDERTAKING REQUIRED	27
42. INTELLECTUAL PROPERTY RIGHTS	28
ENDING THE PANEL AGREEMENT, WIND DOWN AND TRANSITION	28
43. NOTICE OF FUTURE INTENTIONS.....	28
44. TERMINATION	29
TERMINATION FOR CONVENIENCE.....	29
IMMEDIATE TERMINATION.....	29
TERMINATION FOLLOWING NOTICE PERIOD TO RECTIFY NON-COMPLIANCE.....	30

ENDING SOME, BUT NOT ALL, OF THE SERVICES	30
OBLIGATIONS AND RIGHTS FOLLOWING NOTICE OF TERMINATION OR EXPIRY	30
45. WIND DOWN AND TRANSITION	30
46. SURVIVAL	32
GENERAL TERMS	32
47. INDEMNITY	32
48. INSURANCE	32
49. VARIATIONS	32
50. SUBCONTRACTING	33
51. ASSIGNMENT	33
52. COMPLY WITH LAWS	34
53. ENTIRE AGREEMENT	34
54. ENFORCEABILITY	34
55. WAIVER	34
56. NOTICES	34
57. CONFLICT OF INTEREST	35
58. COSTS	35
59. PUBLICATION AND ENDORSEMENT	35
60. NO DEROGATORY REMARKS	35
61. COUNTERPARTS	35
62. GOVERNING LAW AND JURISDICTION	35
SCHEDULE ONE DEFINITIONS AND INTERPRETATION	36
1. DEFINITIONS	36
2. INTERPRETATION	40
SCHEDULE TWO – FUNDING SCHEDULE	41
1. BANDED RATE	41
2. EXCEPTIONAL RATE	41
3. INVOICING AND PAYMENTS	41
SCHEDULE THREE - REPORTING SCHEDULE	43
1. TYPES OF REPORTS	43
2. PERFORMANCE REPORT TEMPLATE	43
SCHEDULE FOUR – PERFORMANCE MANAGEMENT	46
1. PERFORMANCE MANAGEMENT FRAMEWORK	46
2. PERFORMANCE MEASURES	46

1. Introduction

- 1.1 The Purchasing Agency funds different types of residential support services, which offer disabled people who require a high level of support:
 - (a) a good quality of life; and
 - (b) a place to live in that feels like home, upholds personal dignity and independence, and respects privacy.
- 1.2 The Purchasing Agency has established a panel of providers (the **Panel**) to provide residential support services.
- 1.3 The Provider has:
 - (a) been assessed as meeting the Purchasing Agency's requirements to provide certain residential disability support services; and
 - (a) entered into a Residential Services Panel Agreement (**Panel Agreement**) with the Purchasing Agency to provide those residential disability services identified in that Panel Agreement (the **Services**).
- 1.4 These Residential Services Panel Agreement Terms and Conditions (**Residential Services Terms and Conditions**) set out the terms on which the Provider is appointed to the Panel and will provide the Services, and the Purchasing Agency's obligations as commissioner, funder, and steward of the Services.

Panel Arrangements

2. Appointment to the Panel

- 2.1 The Provider's appointment to the Panel means that, while the Panel Agreement is in force:
 - (a) the Provider will provide the Services to Disabled People in accordance with these Residential Services Terms and Conditions; and
 - (b) the Purchasing Agency will pay the Provider for providing the Services in accordance with these Residential Services Terms and Conditions.

3. Status of these Terms and Conditions

- 3.1 These Residential Services Terms and Conditions:
 - (a) form part of the Panel Agreement between the Purchasing Agency and the Provider; and
 - (b) apply to all Services that the Provider provides under the Panel Agreement.
- 3.2 Set out in their order of priority, the documents forming the Panel Agreement are:
 - (a) the cover page and signing page of the Panel Agreement;
 - (b) these Residential Services Terms and Conditions (excluding the Schedules);
 - (c) each relevant Service Specification;
 - (d) each relevant Funding Schedule;

- (e) each relevant Reporting Schedule;
- (f) each relevant Performance Management Schedule; and
- (g) any Information Management Schedule.

4. Effect of Panel arrangements

Non-exclusive arrangement

- 4.1 The Provider acknowledges and agrees that the appointment of the Provider to the Panel does not in any way:
- (a) limit the absolute discretion of the Purchasing Agency to procure any services, whether from Panel members or otherwise, or provide funding to any provider, in any manner that the Purchasing Agency thinks fit; or
 - (b) restrict the Purchasing Agency from obtaining, from any other party or parties (including but not limited to other members of the Panel), the Services, or services of a similar scope and nature to the Services.

Appointment of additional Panel members

- 4.2 The Provider acknowledges that the Purchasing Agency may, at any time, appoint additional members to the Panel, on criteria and following the process determined by the Purchasing Agency (which may change from time to time).

No guarantee of services, funding, or opportunities

- 4.3 The Provider acknowledges and agrees that the Provider's appointment to the Panel:
- (a) does not guarantee the Provider any level of work, number of referrals, or any specific total amount of funding; and
 - (b) creates no obligation on the Purchasing Agency to give the Provider opportunities to provide any other services that the Purchasing Agency may fund.

Term of Panel Agreement

5. Term

- 5.1 The Panel Agreement commences on the Start Date and ends on the End Date, unless the Panel Agreement is terminated before the End Date or renewed for a Renewal Period in accordance with clause 6 (Right of renewal) (if applicable).

6. Right of renewal

- 6.1 The Purchasing Agency may, at its sole discretion, extend the Term of the Panel Agreement for a Renewal Period by providing notice in writing to the Provider before the expiry of the Term.
- 6.2 To avoid doubt, the Term of the Panel Agreement includes any Renewal Period.

Our Relationship

7. Relationship Principles

- 7.1 The Purchasing Agency and the Provider will work together to ensure that the Services are:
- (a) accessible and effective; and
 - (b) contribute towards ensuring that Disabled People and their family/whānau are supported to achieve their good life outcomes.
- 7.2 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 that contribute towards achieving specified outcomes - including by ensuring appropriate flexibility so that services can be adapted (following discussion) to meet identified and agreed needs.
- 7.3 The Purchasing Agency and the Provider acknowledge that the Panel Agreement reflects these principles in action.
- 7.4 These Residential Services 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

8. Referral into the Services

- 8.1 The Provider will provide Services to Disabled People:
- (a) who have been Referred to the Provider by an Authorised Support Coordination Agency following an assessment; and
 - (b) for whom the Provider has accepted the Referral.
- 8.2 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.

9. Delivery of the Services

- 9.1 The Provider will provide the Services:
- (a) to each Disabled Person in accordance with:
 - (i) the requirements of the relevant Service Specification; and
 - (ii) the Personal Plan of the Disabled Person;

- (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:
 - (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 of 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 benefits Disabled People;
- (e) in a manner that:
 - (i) meets any specified Performance Measures;
 - (ii) safeguards Disabled People from Abuse and Neglect;
 - (iii) does not require any Disabled Person to exit Services except in accordance with the relevant Service Specification;
 - (iv) is person-centred, inclusive, upholds and promotes the rights, autonomy, dignity, and preferences of Disabled People, and enables Disabled People and their family/whānau to be actively involved in decisions about their care and life;
 - (v) is experienced positively by Disabled People and their family/whānau;
 - (vi) is culturally appropriate and safe for Māori, Pacific peoples, and other ethnic or indigenous groups;
 - (vii) is appropriate for disabled people; and
 - (viii) enables Disabled People and their family/whānau to participate meaningfully in Service design, delivery, review and quality and safeguarding.

9.2 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, licences and compliance with Business Viability Standards

9.3 The Provider, and the Provider's Personnel must, throughout the term of Panel Agreement, hold all accreditations, licences, registrations, statutory designations, approvals and certificates required by Law or under the Panel Agreement.

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

Personnel qualifications and training

9.5 The Provider must ensure that its Personnel:

- (a) have the necessary qualifications, skills, experience, 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;
- (d) if required, participate in any relevant family/whānau, interagency or court proceedings that relate to Abuse or Neglect.

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

10. Safeguarding and abuse prevention

Required policies and procedures relating to safeguarding

- 10.1 The Provider must safeguard Disabled People and their family/whānau, guardians, advocates, staff, and visitors from Abuse and Neglect when providing the Service.
- 10.2 The Provider must 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;
 - (b) include, but are not limited to, the following:
 - (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 Disabled People, their family/whānau, staff and others to disclose or report Abuse or Neglect without fear of retribution.

Restrictive practices (Restraint and Seclusion)

- 10.3 The Provider must not use Seclusion on any Disabled Person.
- 10.4 The Provider must:
 - (a) aim for a Restraint-free environment, in which the dignity and mana of Disabled People are maintained;
 - (b) ensure that Restraint is only ever used as a last resort and in an individualised basis (ie., if all suitable non-restrictive approaches have been tried and have not been able to prevent harm);

- (c) in the limited circumstances in which Restraint 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
- (d) regularly review the use of Restraint with the aim to eliminate its use.

Responding to, and reviewing safeguarding concerns

- 10.5 The Provider must take seriously and act on each disclosure or report of actual or suspected Abuse or Neglect.
- 10.6 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.
- 10.7 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.
- 10.8 When managing, reviewing and learning from a safeguarding concern, the Provider must ensure that the Disabled Person, with their family/whānau/guardian/advocate, can make their own decisions and can express their will and preference in ways that work best for them.

Working with External Safeguarding Services

- 10.9 The Provider must inform each Disabled Person, in a manner appropriate to their communication needs, of their right to have access to External Safeguarding Services and how the Disabled Person can access those External Safeguarding Services.
- 10.10 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 on the safety and wellbeing of the Disabled Person, the contact information of the family/whānau/guardian/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 for External Safeguarding Services, including supported decision-making as appropriate.
- 10.11 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 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

10.12 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 relevant Service Specification, policies, guidelines, or procedures to protect children and young people receiving the Services.

11. Incident Management

All incidents

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

- (a) every incident is:
 - (i) reported in a timely manner;
 - (ii) escalated where appropriate;
 - (iii) reviewed; and
 - (iv) followed-up; and
- (b) preventative measures are put in place to prevent further incidents.

Reporting Critical Incidents

11.2 The Provider must report each Critical Incident to the Purchasing Agency and any other relevant authority in accordance with the Service Specification, or in accordance with any other written direction given by the Purchasing Agency.

11.3 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

11.4 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; and
- (c) learn from the Critical Incident to improve its systems and practices to prevent other Critical Incidents and restore relationships.

11.5 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 11.4 above.

11.6 In addition to the above, if the Critical Incident is a death, the Provider must ensure that the internal review of the death is culturally responsive and person-centred that:

- (a) honours the life of the Disabled Person who passed away, upholding their mana and respecting their rangatiratanga;
- (b) respects the wishes, cultural practices, and aspirations of their whānau, consistent with the principles of partnership and participation under Te Tiriti o Waitangi;
- (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 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.

12. Quality and Continuous improvement

12.1 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.

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

Funding and Payments

13. Funding for the Services

13.1 Subject to clause 37 (Suspending or recovering payments), for each Disabled Person the Purchasing Agency will pay the applicable amount for that Disabled Person as set out in the

Funding Schedule for the relevant Service (which will reflect the level of care that the person requires).

- 13.2 The Purchasing Agency may also pay Extraordinary Costs as set out in clause 14 (Extraordinary Costs).

14. Extraordinary Costs

- 14.1 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 relevant Funding Schedule.
- 14.2 If the Purchasing Agency determines that such Extraordinary Costs are payable, it will:
- (a) notify the Provider in writing of any funding for Extraordinary Costs; and
 - (b) specify in writing any conditions that attach to the funding for Extraordinary Costs.
- 14.3 If the Provider accepts funding for Extraordinary Costs, the Provider must comply with any conditions specified by the Purchasing Agency relating to that funding.

15. Payment during temporary absences

Absence during weekends/public holidays

- 15.1 If a Disabled Person is away from the Service during any weekend or public holiday then, provided that weekend or public holiday does not form part of any annual (holiday) leave in terms of clause 15.2 below, the Purchasing Agency will continue to make payments in full for that weekend or public holiday.

Annual (Holiday) leave

- 15.2 Subject to any exceptions agreed by an Authorised Support Coordination Agency, the Purchasing Agency will continue pay in full for a maximum of 28 days in any financial year where:
- (a) a Disabled Person is away from the Service on annual (holiday) leave; and
 - (b) the Disabled Person's bed is held for the Disabled Person during their absence and is not occupied by another person.

Absence for hospitalisation or assessment or treatment

- 15.3 If a Disabled Person is:
- (a) admitted to hospital;
 - (b) admitted to a Forensic Facility;
 - (c) temporarily transferred to a mental health respite service; or
 - (d) temporarily transferred to another facility or address as a condition of bail,
- 15.4 the Purchasing Agency will continue to make payments in full for up to 28 days from the date of their admission or temporary transfer provided that the Disabled Person's bed is held for the Disabled Person during their absence and is not occupied by another person. If a Disabled Person remains in hospital, a Forensic Facility, mental health respite service, or another facility or address after 28 days, but is likely to remain in hospital, a Forensic Facility, mental health respite service, or

another facility or address for less than 10 further weeks, during that further period the Purchasing Agency will pay the Provider 50 percent of the rate payable for the Disabled Person provided that the Disabled Person's bed is held for the Person during their absence and is not occupied by another person.

- 15.5 If a Disabled Person remains in hospital, a Forensic Facility, mental health respite service, or another facility or address after 13 weeks in total, the Purchasing Agency will cease payment to the Provider for that Disabled Person, unless the parties and the Authorised Support Coordination Agency reach an alternative agreement for continued payment.
- 15.6 Despite clauses 15.3 to 15.5, the parties may agree in writing to extend payments to up to 90 days if the Authorised Support Coordination Agency determines that ongoing support is required from the Provider both in the amount of contact or support maintained and keeping the Disabled Person's bed available for their return.

Absence for imprisonment

- 15.7 If a Disabled Person is imprisoned, the Purchasing Agency may continue to make payments in full for up to 28 days from the date the Disabled Person leaves the Provider's facility and enters prison provided that the Disabled Person's bed is held for the Disabled Person during their absence and is not occupied by another person.
- 15.8 Despite clause 15.7, the parties agree in writing to extend payments to up to 90 days if the Assessment Coordinator Agency determines that ongoing support is required from the Provider both in the amount of contact maintained and keeping the Disabled Person's bed available for their return.

Absence from the Service for other reasons

- 15.9 Where a Disabled Person has been absent from the Service for 28 consecutive days for reasons other than those specified in clauses 15.1 to 15.8 above, and the Provider has not been advised of any extenuating circumstances concerning the absence of the Disabled Person, the Purchasing Agency will continue to make payments for up to 28 days from the first day of the Disabled Person's absence, provided the Provider can satisfy the Purchasing Agency that it has made all reasonable efforts to establish the whereabouts of the Disabled Person, and the reasons for their absence during this period, and the Disabled Person's bed is held for the Disabled Person during their absence and is not occupied by another person.

16. Payment for days of admission, discharge or transfer

- 16.1 If a Disabled Person is admitted to, or is discharged or transferred from, the Service at any time on a particular day, the Purchasing Agency will make a payment to the Provider in respect of that Disabled Person for the full day on which that admission, discharge or transfer occurred.

17. Payment following death

- 17.1 If a Disabled Person dies at any time on a particular day, the Purchasing Agency will make payments for the full day on which the Disabled Person died and 5 further calendar days following

their death, provided that the bed of the deceased Disabled Person is not occupied by another person during that period.

18. Invoices and payments for Services

- 18.1 At the times and frequency specified in the relevant Funding Schedule, the Provider (or its nominee) will issue an invoice to the Purchasing Agency for the Services provided (or to be provided) under this Panel Agreement.
- 18.2 The Purchasing Agency will pay valid invoices at the times recorded in the relevant Funding Schedule.
- 18.3 Unless the Purchasing Agency agrees in writing otherwise, the Purchasing Agency is not required to pay an invoice submitted or resubmitted more than 6 months after the date that the Services were provided.

19. Calculation of payments for people

- 19.1 The Provider must ensure that each Disabled Person contributes the amount of any income support benefit (excluding personal allowance), for which the Disabled Person is eligible, towards the cost of their residential support, unless agreed otherwise with the Purchasing Agency.
- 19.2 If a Disabled Person is ineligible, or becomes ineligible, for any income support benefit, the Provider must notify the Purchasing Agency within 48 hours of identifying their ineligibility. The Purchasing Agency is not required to backdate any payments relating to a Disabled Person's income support benefit contribution more than 6 months after the date of that notification.

20. Overpayments

- 20.1 If, for any reason, the Purchasing Agency overpays or may have overpaid the Provider for the Services:
 - (a) if the Provider becomes aware of the overpayment or possible overpayment, the Provider must advise the Purchasing Agency as soon as it becomes aware of the overpayment; and
 - (b) if the Purchasing Agency becomes aware of the overpayment or possible overpayment, the Purchasing Agency will notify the Provider as soon as it becomes aware of the overpayment.
- 20.2 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.
- 20.3 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).

21. Taxes

- 21.1 Except for any GST or costs payable by the Purchasing Agency in respect of any Services provided under the Panel 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 Panel Agreement under any Law is to be paid by the Provider and not passed on to the Purchasing Agency

Contract and Risk Management

22. Contract Manager

- 22.1 The Provider and the Purchasing Agency will each appoint and keep a Contract Manager for the Panel Agreement. The appointing party may change its Contract Manager at any time by giving written notice to any other party. The Contract Managers will maintain regular contact.

23. Cooperation

- 23.1 The parties will work together and with other stakeholders who have a role or interest in the delivery of the Services (including Disabled People, family/whānau, Authorised Support Coordination Agencies, advocates, government entities, regulators and the courts) to provide active governance over the Services that ensures:
- (a) that the parties have, at all times during the Term, a quality overview of the strategic and tactical delivery of the Services;
 - (b) effective management and oversight of the Service;
 - (c) that the Provider has the diversity, and skills to provide professional, strategic, accountable governance;
 - (d) robust, transparent and documented decision-making processes;
 - (e) compliance with the Law and the requirements of the Panel 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.

24. Governance and Accountability

- 24.1 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 this Panel Agreement (ie., the provision of high-quality Services that are safe, and rights-based).
- 24.2 The Provider will ensure that its governance body is responsible for:
- (a) strategic leadership;
 - (a) oversight of the quality and safety of Service (as specified in this Panel Agreement); and
 - (b) compliance with relevant legislation, standards, policy, and this Panel Agreement.

25. Records

25.1 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, and any reasonable directions of the Purchasing Agency; and
 - (ii) for the term of the Panel Agreement and for a minimum of seven years after expiry, or for any longer period as required by Law or any general notice or instruction issued by Archives New Zealand;
- (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

25.2 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, the Provider carries out work on behalf of the Purchasing Agency as described in this Panel Agreement; and
- (b) warrants that it will protect its Care Records in accordance with the Temporary Care Records Protection Instruction.

26. Health and Safety and Risk Management

26.1 The Provider must:

- (a) consult, cooperate and coordinate with the Purchasing Agency to the extent required to ensure both parties comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Panel Agreement; and
- (b) without limiting clause 26.1(a):
 - (i) while performing the Service, 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 policies;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;

- (v) provide and maintain a healthy and safe work environment, safe equipment, and safe systems of work;
- (vi) 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 the extent that elimination is reasonably practicable, to minimise them;
- (vii) evaluate and prioritise those risks based on their potential severity, the effectiveness of any controls and the probability of occurrence;
- (viii) 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;
- (ix) minimise the adverse impact of internal emergencies, and external or environmental disasters on Disabled People, staff and visitors; and
- (x) work with the organisations who have responsibility for co-ordinating internal and external (environmental) disaster services;
- (c) comply with all reasonable directions of the Purchasing Agency relating to health, safety, and security;
- (d) report to the Purchasing Agency any:
 - (i) health, safety or risk matters specified in any applicable policies;
 - (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 Panel Agreement; and
 - (iii) Protective Security Incident as it relates to or affects the Panel Agreement.

27. Financial management and transparency

- 27.1 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.
- 27.2 The Provider must give the Purchasing Agency a copy of the Provider's annual unaudited financial statements. If requested by the Purchasing Agency, the Provider must give the Purchasing Agency the Provider's audited financial statements, and, if applicable, the auditor's report, prepared in accordance with international standards.
- 27.3 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.
- 27.4 The Provider must provide the requested information to the Purchasing Agency within 20 Business Days of receiving a request under this clause 27.3.

Assessing Performance and Compliance

28. Regular communication and monitoring

- 28.1 The Purchasing Agency and the Provider will maintain regular contact with each other for the purpose of:
- (a) monitoring the Provider's performance against its obligations under the Panel Agreement;
 - (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.

29. Assessing Performance and Performance Measures

- 29.1 The Purchasing Agency will regularly assess the Provider's compliance with this Panel Agreement in accordance with the framework specified in Schedule Four - Performance Management.
- 29.2 The Purchasing Agency will notify the Provider in writing of any changes in its assessment of the Provider's performance.
- 29.3 Although the Provider is required to comply with all of its obligations in the Panel 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) 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.

30. Reporting and information

- 30.1 The Provider will:
- (a) provide the reports specified in the relevant Reporting Schedule, at the times and frequency specified in the Reporting Schedule;
 - (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. For example, the Purchasing Agency may require the Provider to provide assurance to the Purchasing Agency that it is delivering the Services in accordance with this Panel Agreement;
 - (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 Commissioner, the Children and Young People's Commission, WorkSafe, Privacy

Commissioner, and health workforce regulatory bodies) any information that the regulator requires by Law or otherwise reasonably requests.

30.2 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 (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; and
- (d) any problems, issues or incidents arise in relation to the Panel 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 Panel Agreement.

31. Audit

Types of audits

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

- (a) Standards Audit;
- (b) Contract Audit;
- (c) Issues-Based Audit;
- (d) Tracer Audit;
- (e) Financial and Payment Verification Audit.

Notice of audits

31.2 The Provider will be given at least 20 Business Days' notice before a Standards Audit is undertaken.

31.3 Unless clause 31.4 applies, the Purchasing Agency will give the Provider at least 10 Business Days' notice before undertaking a Contract Audit, Issues-Based Audit, or Tracer Audit.

31.4 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) a serious breach of the Panel Agreement has or may have occurred.

Frequency and timing of audits

31.5 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
- (b) the audit is authorised by Law.

- 31.6 To avoid doubt, nothing in this clause prevents any other agency from carrying out audits, reviews, or inspections, including under the Health and Disability Services (Safety) Act 2001.
- 31.7 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

- 31.8 The Provider will provide the Purchasing Agency with reasonable access to the Provider's premises, Personnel and records used in the performance of the Panel 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.
- 31.9 If the Purchasing Agency so requires for the purposes of exercising an Audit, the Provider will facilitate access to the recipients of the Services and their family/whānau or guardians.
- 31.10 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

- 31.11 Unless clause 31.12 applies, each party is responsible for their own costs in relation to any Audit undertaken in accordance with this Panel Agreement.
- 31.12 If an Audit reveals overcharging, fraud, or a serious breach of the Panel Agreement, the Provider must reimburse the Purchasing Agency for its reasonable actual costs in carrying out the Audit.

Outcome of audit

- 31.13 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.
- 31.14 The Purchasing Agency may publish any final audit report, subject to any redactions required or authorised under Law.
- 31.15 If an Audit results in findings that the Provider has breached the Panel 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.
- 31.16 To the extent that an Audit results in recommendations for continuous improvement, the Provider and the Purchasing Agency will work together to implement those recommendations.

Resolving Disputes and Managing Performance

32. Resolving disputes

Dispute resolution process

- 32.1 If any party wishes to raise a dispute relating to the Panel Agreement (**Dispute**), it may do so by giving written notice to the other party detailing the nature of the dispute (**Dispute Notice**).
- 32.2 The Contract Managers will try to resolve the dispute in the first instance.
- 32.3 If the Contract Managers cannot resolve the Dispute within 21 days of receiving the Dispute Notice, either party may refer the Dispute to senior members of each party by giving them the Dispute Notice.
- 32.4 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.
- 32.5 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).
- 32.6 Each party will continue to perform its obligations under the Panel Agreement as far as practical given the nature of the Dispute.
- 32.7 Neither party may commence any court proceedings in respect of a Dispute unless it has first complied with clauses 32.1 to 32.6, unless those court proceedings are necessary to preserve its rights.

Payment disputes

- 32.8 If the Purchasing Agency disputes any part of a payment that has been invoiced by the Provider, the Purchasing Agency:
 - (a) will notify the Provider within 10 Business Days of the date of receipt of an invoice given by the Provider;
 - (b) will pay the portion of that invoice that is not in dispute; and
 - (c) may withhold payment of the disputed portion until the dispute is resolved.

33. Performance Management

- 33.1 The Purchasing Agency may undertake one or more of the actions/remedies outlined in clauses 34 (Improvement Plans) to 38 (Other remedies to address performance issues) at the same time.
- 33.2 To avoid doubt, seeking to resolve a dispute through the dispute process outlined in clause 32 (Resolving disputes) does not prohibit the Purchasing Agency from exercising any of its rights under this Panel Agreement during the dispute resolution process.

34. Improvement Plans

34.1 If the Purchasing Agency, acting reasonably, considers that the Provider is not meeting any of its obligations in this Panel 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.

34.2 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.

34.3 The Improvement Plan will be legally binding, and form part of this Panel Agreement. If the Provider fails to comply with the Improvement Plan, the Purchasing Agency may exercise any of its rights specified in this Panel Agreement.

35. Suspending Referrals

35.1 If the Purchasing Agency reasonably considers that the Provider is not meeting any of the obligations in this Panel 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.

36. Suspending or recovering payments

36.1 Without limiting any other rights under the Panel Agreement, if the Provider does not provide the Services in accordance with the Panel 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; and
- (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.

36.2 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.

37. Suspending the Services

37.1 The Purchasing Agency may direct the Provider to suspend all or any of the Services (**Suspension Notice**) if the believes on reasonable grounds that:

- (a) the Provider is not under the Panel Agreement; and
- (b) 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 Issue Based Audit is undertaken).

37.2 If the Provider receives a Suspension Notice, the Provider must:

- (a) enable the Purchasing Agency to enter the relevant facilities for the purpose of facilitating the departure of any Disabled Person from the Provider's facility, and help the Purchasing

Agency facilitate that departure, including communicating with the relevant Disabled Person and their family/whānau/guardian/advocate;

- (b) 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 Provider and the Purchasing Agency agree the Services specified in the Suspension Notice can begin again; or
 - (ii) subject to the wind down and transition provisions, permanently, if the Panel Agreement is terminated while the suspension is in force;
- (c) comply with any reasonable directions given by the Purchasing Agency to transfer (on a temporary basis) the suspended Services to another provider.

37.3 No Funding will be payable in relation to the suspended Services, during the period that the Services are suspended.

38. Other remedies to address performance issues

Appointment of an advisor

- 38.1 Without limiting any other rights in this Panel Agreement, if the Provider does not provide the Services in accordance with the Panel 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 Purchasing Agency and Provider; 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

- 38.2 Without limiting any other rights in this Panel Agreement, if the Provider does not provide some or all of the Services in accordance the Panel Agreement, and the Purchasing Agency considers that, due to a suspected or known health and safety risk to a Disabled Person, 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, 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.

38.3 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 38.2 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 38.2.

39. Extraordinary Events

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

39.2 Each notice described in clause 39.1 must state:

- (a) the nature of the circumstances giving rise to the Extraordinary Event;
- (b) the extent of that party's inability to perform under this Panel 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 Service continue to so to the extent possible.

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

39.4 If a party is unable to perform all or some of its obligations under the Panel Agreement for 20 Business Days or more due to an Extraordinary Event, the other party may terminate the Panel Agreement immediately by giving written notice to the other party.

Privacy, Confidentiality and Intellectual Property

40. Privacy of personal information

40.1 To the extent that the Provider collects, uses, stores and/or discloses personal information related to this Panel Agreement and Services, it will do so in accordance with:

- (a) the Privacy Act 2020 and any regulations issued under that Act;
- (b) any Law that amends or overrides any of the Information Privacy Principles;
- (c) any Code of Practice or Approved Information Sharing Agreement (as defined in the Privacy Act 2020) that amends or overrides any of the Information Privacy Principles of the Privacy Act 2020 and that applies to the Purchasing Agency or the Provider; and
- (d) any obligations that the Purchasing Agency will notify the Provider of in writing as an Information Management Schedule of this Panel Agreement in order for the Purchasing Agency to comply with the Standard for providing non-government third parties with access

to, or collection of, government-held personal information, which comes into effect on 1 July 2025.

- 40.2 Wherever a Provider supplies a privacy statement to Disabled People in respect of the Services in accordance with Information Privacy Principle 3 of the Privacy Act 2020, the Provider will implement any reasonable directions made by the Purchasing Agency about the content of the privacy statement, including the purpose(s) of collection and the disclosure of information.
- 40.3 Before making a direction under clause 40.2 above, 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.
- 40.4 In relation to any personal information provided or made available by the Purchasing Agency to the Provider in relation to the Panel Agreement, the Provider will:
- (a) ensure that the personal information is kept secure and protected by security safeguards that are reasonable in the circumstances to take against loss, access, use, modification or disclosure that is not authorised by the Panel Agreement or any other misuse;
 - (b) only use that personal information for the purposes set out in or authorised by the Panel Agreement;
 - (c) only transfer, disclose or allow access of that personal information outside of New Zealand with the Purchasing Agency's prior written consent;
 - (d) provide all information and assistance reasonably required by the Purchasing Agency to comply with its obligations under the Privacy Act 2020; and
 - (e) on termination or expiry of the Panel Agreement, or on the Purchasing Agency's instructions, securely dispose of or return that personal information to the Purchasing Agency, except to the extent that such information is stored in electronic backups which cannot reasonably be extracted or deleted.
- 40.5 If the Provider becomes aware of any Security Breach (as defined below) in relation to the Panel 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;

- (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.

For the purposes of this clause 40.5, **Security Breach** means any:

- (a) unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, any personal information; and
- (b) any action that prevents either party from accessing the personal information on either a temporary or permanent basis,

whether or not:

- (c) caused by a person inside or outside of the Provider;
- (d) attributable in whole or in part to any action by the Provider; or
- (e) ongoing.

41. Confidentiality

Confidential Information

41.1 The Purchasing Agency and the Provider each confirm that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it 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 Panel Agreement (for example, to give effect to clauses 40 (Privacy of personal information) and clause 45 (Wind Down and Transition)); or
 - (ii) is expressly authorised by the Panel 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.

Confidentiality undertaking required

41.2 If this Panel Agreement permits disclosure of any Confidential Information to any third party (including any auditor appointed under clause 31 (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.

- 41.3 To avoid doubt, Personnel of the Purchasing Agency or the Provider are not third parties for the purpose of clause 41.2. Each party may disclose Confidential Information to Personnel who need to know such information for the purposes of the Panel Agreement, provided each party ensures that its Personnel:
- (a) are aware of the confidentiality obligations in this Panel Agreement; and
 - (b) do not disclose or use Confidential Information except as allowed by this Panel Agreement.
- 41.4 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 41 as the other party reasonably requests.
- 41.5 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 that it 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.

42. Intellectual Property Rights

- 42.1 The Purchasing Agency and the Provider retain ownership of all Intellectual Property Rights they respectively owned before the Start Date.
- 42.2 Unless agreed otherwise by the parties, all new Intellectual Property Rights (**New IP**) created by the Provider while performing the Services will be owned by the Purchasing Agency upon their creation.
- 42.3 The owner of any New IP, whether the Provider or the Purchasing Agency, grants to the other party a perpetual, irrevocable, royalty-free and non-exclusive licence to use, copy, modify and distribute such New IP for any purpose connected with the performance of the Panel Agreement and any other uses agreed in writing by the parties.
- 42.4 Each party to the Panel Agreement warrants that any Intellectual Property Rights it provides under or in connection with the Panel Agreement will not infringe the Intellectual Property Rights of any third party.

Ending the Panel Agreement, Wind down and Transition

43. Notice of future intentions

- 43.1 Before the End Date, the Provider must give the Purchasing Agency a minimum of 3 months' notice if:

- (a) the Provider does not wish to enter into a new agreement with the Purchasing Agency when the Panel Agreement ends; or
- (b) the Provider wishes to enter into a new agreement with the Purchasing Agency when the Agreement ends but on materially different terms.

44. Termination

Termination for convenience

44.1 Either party may, without incurring any liability to the other party for damages or compensation, at any time, by giving no less than 6 months' notice:

- (a) terminate the Panel Agreement; or
- (b) terminate some but not all of the Services.

Immediate termination

44.2 In addition to the mutual right to terminate due to the effects of an Extraordinary Event in clause 38 (Extraordinary Events), the Purchasing Agency may immediately terminate the Panel 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 Panel 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, Neglect, ill treatment, or deprivation; or
 - (B) it is not possible or practicable to rectify the non-compliance;
- (b) the Purchasing Agency becomes aware that the Provider or its 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 is revoked or relinquished (if applicable); 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 that is misleading or inaccurate in any material respect.

Termination following notice period to rectify non-compliance

- 44.3 Without limiting any other rights specified in these terms and conditions, if a party is not complying with its obligations under this Panel Agreement (Defaulting Party), the non-Defaulting Party may give a default notice to the Defaulting Party.
- 44.4 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.
- 44.5 Any period allowed to remedy the non-compliance must be reasonable given the nature of the non-compliance.
- 44.6 The non-Defaulting Party may terminate the Panel 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

- 44.7 If either party is entitled to terminate the Panel Agreement:
- (a) that party may elect to only terminate one or more Services in the Panel 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 Panel Agreement, will remain in effect.

Obligations and rights following notice of termination or expiry

- 44.8 If the Provider gives or receives a notice of termination, the Provider must:
- (a) comply with any conditions specified by the Purchasing Agency is the Purchasing Agency has given the that notice; and
 - (b) comply with the wind down and transition requirements in clause 45 (Wind down and transition).
- 44.9 Termination or expiry of the Panel Agreement does not affect any rights of a party that:
- (a) arose prior to the End Date, or the date the Panel Agreement is terminated; or
 - (b) relate to any non-compliance of the Panel Agreement that arose prior to the End Date or the date the Panel Agreement is terminated.

45. Wind down and transition

45.1 The parties acknowledge that the purpose of the wind down and transition period is to ensure continuity of service for any people affected by the cessation of the Services.

45.2 The wind down and transition will commence:

- (a) on the date that a party gives notice of termination; or
- (b) on a date that is three months before the End Date, unless the Purchasing Agency has indicated that it will extend or enter into a new agreement with the Provider for the Services.

45.3 The wind down and transition period will be three months unless otherwise agreed in writing.

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

- (a) only provide the Services that the Purchasing Agency advises the Provider in writing are to be delivered during the wind down and transition period;
- (b) 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 an 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:
 - (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 Panel 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 contracts and Subcontractors whose services will no longer be required by the Provider as a direct result of termination or expiry of the Panel Agreement and contractual costs associated with that period;
 - (iv) details of any pre-existing financial commitments incurred in accordance with the Panel Agreement;
 - (v) an account of any information held by the Provider that belongs to the Purchasing Agency and a plan for the return of that information;
 - (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 Records that the Purchasing Agency specifies;
 - (ii) securely destroy all Confidential Information belonging to the Purchasing Agency.

45.5 During the wind down and transition period, the Purchasing Agency will pay the Provider for:

- (a) any Services specified by the Purchasing Agency under clause 45.4(a) that the Provider has delivered in accordance with this Panel Agreement; and

- (b) any Extraordinary Costs that the Purchasing Agency is liable to pay in accordance with clause 14 (Extraordinary Costs) that are incurred by the Provider and the Purchasing Agency has agreed to pay before the end of the wind down and transition period.

46. Survival

- 46.1 The clauses that, by their nature, should remain in force on expiry or termination of this Panel Agreement do so.

General terms

47. Indemnity

- 47.1 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 of this Panel Agreement.
- 47.2 The indemnity in clause 47.1 applies to the extent that any relevant loss was not caused by the Purchasing Agency's negligence, breach of this Panel Agreement or wilful misconduct.

48. Insurance

- 48.1 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 48.1.
- 48.2 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.
- 48.3 The Provider must:
 - (a) hold and maintain the insurance cover specified in this Panel Agreement for the term of the Panel Agreement and for a period of 3 years after the End Date or termination of the Panel Agreement;
 - (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.

49. Variations

- 49.1 Unless clauses 49.2 to 49.3 apply, any change to the Panel Agreement must be recorded in writing and signed by both parties, or agreed through an exchange of emails, where the signatories or authors have delegated authority to approve the Variation.
- 49.2 The Purchasing Agency may give the Provider notice that, from the date specified in the notice, these Residential Services Terms and Conditions, and any other documents that form part of the Panel Agreement, are varied to do any one or more of the following:

- (a) increase any amounts payable under this Panel Agreement, in which case the Purchasing Agency will amend the relevant Funding Schedule accordingly;
- (b) a Reporting Schedule or Information Management Schedule provided that the extent of the change is reasonable and that 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 this Panel Agreement (including the Service Specification), if the amendment is not material to the Provider's provision of the Services; or
- (e) give effect to a change of Law.

49.3 The Purchasing Agency may make any other change to these Residential Services Terms and Conditions, and any other documents that form part of the Panel Agreement, provided that the Purchasing Agency:

- (a) gives the Provider at least 3 months' notice of the change; and
- (b) before making the change, the Purchasing Agency gives notice to the Provider of the proposed change, and consults the Provider on the proposed change.

49.4 If the Purchasing Agency varies these Residential Services Terms and Conditions, and any other documents that form part of the Panel Agreement, in accordance with clause 49.3, and it is no longer viable for the Provider to provide the relevant Services, the Provider may terminate the Panel Agreement by giving 3 months' notice to the Purchasing Agency.

50. Subcontracting

50.1 The Provider may 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.

50.2 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 this Panel Agreement;
- (b) each Subcontractor is fully aware of and complies with the Provider's obligations under this Panel Agreement, including any applicable Service Specifications;
- (c) any contract that the Provider enters into with a Subcontractor to provide the Services is on terms that are consistent with the Panel Agreement, including the Provider must not engage a Subcontractor to provide services as a Children's Worker unless and until the necessary 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 Specifications.

51. Assignment

51.1 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 Panel Agreement to a third party. In seeking the Purchasing Agency's approval, the Provider must:

- (a) notify the Purchasing Agency, not less than 30 Business Days before the date of the proposed transfer providing any information reasonably requested by the Purchasing Agency and forwarding it to the Contract Manager; and
- (b) satisfy the Purchasing Agency that the proposed transferee is suitable as a provider of the Services.

51.2 The Purchasing Agency will endeavour to advise the Provider of its decision concerning the Provider's request within 20 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.

52. Comply with Laws

52.1 The Purchasing Agency and the Provider will comply with all Laws applicable to them and their activities and not cause the other to breach any Law that relate to the provision of Services.

53. Entire agreement

53.1 The Panel Agreement incorporates these Residential Services Terms and Conditions and relevant Service Specification, and when read together they record the entire agreement between the Provider and the Purchasing Agency in relation to the supply of Services and supersede all previous oral or written agreements, arrangements, understandings and representations concerning the same subject matter.

54. Enforceability

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

55. Waiver

55.1 The failure or delay by the Purchasing Agency or the Provider to exercise or enforce any right under the Panel 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.

56. Notices

56.1 Each notice or other communication under the Panel 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 person or office holder (if any) from time to time designated for that purpose by the addressee.

56.2 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.

57. Conflict of interest

- 57.1 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, 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.

58. Costs

- 58.1 The parties will each bear their own costs in respect of preparing, negotiating, agreeing and entering into this Panel Agreement.

59. Publication and endorsement

- 59.1 The Provider must obtain the prior written approval of the Purchasing Agency before making reference to the Purchasing Agency, the Funding, or Panel 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.

60. No derogatory remarks

- 60.1 Neither party may directly or indirectly criticise the other publicly, without first discussing the matters of concern with the other in good faith and in a co-operative and constructive manner. Nothing in this clause prevents either party from discussing any matters of concern with its respective staff, subcontractors, agents, advisors or persons to whom that party is responsible.

61. Counterparts

- 61.1 The Panel 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 the Panel Agreement by executing any counterpart.

62. Governing law and jurisdiction

- 62.1 This Panel 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 Residential Services Terms and Conditions, the Residential Services Panel Agreement, and all Schedules that form part of that Agreement unless the context otherwise requires:

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

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

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/Business-Viability-Standards1-v2.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, 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 (as defined in the Privacy Act).

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 Panel Agreement;
- (b) the interests of the Purchasing Agency in relation to the Panel 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 Panel Agreement.

Contract Audit means an audit to assess compliance with the Panel Agreement.

Contract Manager means the contract manager appointed by each party and named as a contract manager in the Panel 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>.

Disabled Person means a tāngata whaikaha / tāngata whaikaha Māori:

- (a) whom an Authorised Support Coordination Agency has assessed as 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.

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

End Date means the date that the Panel Agreement is due to end, as specified in the Panel 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 14 (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.

Financial and Payment Verification Audit means an audit to verify financial information and payments, or to confirm that appropriate information management, privacy and cyber security practices are being followed, and assess compliance with the Business Viability Standards.

Forensic Facility means a facility or secure facility as defined in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Funding means the amount payable by the Purchasing Agency to the Provider for Services as described in clause 13 (Funding for the Services).

Funding Schedule means the Schedule attached as Schedule Two of this Panel Agreement, or a schedule of prices for a Service that is notified in writing to the Provider, which may be updated from time to time by the Purchasing Agency.

Issue 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.

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.

Law means:

- (d) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (e) the common law and the law of equity as applicable to the parties from time to time;
- (f) any binding court order, judgment or decree;
- (g) any applicable industry code of practice or conduct, policy, rule or standard to which a party is bound; and
- (h) 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 Panel Agreement.

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

Needs Assessment means the process to determine a person's residential care needs, and the level of care required for that person, 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, failure to protect from harm or abuse.

New IP has the meaning given in clause 42.2 (Intellectual Property).

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.

Panel Agreement means the Residential Services Panel Agreement.

Performance Measures means the measures that the Purchasing Agency will use to monitor the performance of the Provider and key service areas, which will be notified to the Provider from time to time.

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 the Panel Agreement or the delivery of Services. Examples include: the owner of a business, its directors, trustees of a charitable trust, employees and individual contractors (including care staff), Subcontractors, agents, external consultants, co-opted or seconded staff and voluntary caregivers.

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

Privacy Breach is defined 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 Agent's Confidential Information.

Provider means the organisation named as the provider in the Panel 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 Panel Agreement and the delivery of Services. Records include, but are not limited to, 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 needing the Services and seeking confirmation from the Provider to deliver those Services.

Renewal Period means each renewal period set out on the cover page of the Panel Agreement.

Reporting Schedule means [the schedule setting out the reports that the Provider must provide to the Purchasing Agency]

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 Personal Plan.

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 the residential disability services the Provider will provide under the Panel Agreement.

Service Specification means the documentation identified in the Panel Agreement that describes the expectations, roles and responsibilities of the Purchasing Agency and the Provider in relation to specific categories of Services.

Standards Audit means an audit to assess compliance with the Ngā Paerewa Health and Disability Safety standards, and other applicable standards.

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 this Panel Agreement.

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. 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.

Term means the term of the Panel Agreement described in clause 5 (Term).

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

Variation means a change to any aspect of the Panel Agreement that complies with clause 49 (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 Panel 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 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; and
- (e) the singular includes the plural and vice versa.

SCHEDULE TWO – FUNDING SCHEDULE

1. Banded Rate

- 1.1 If an Authorised Support Coordination Agency has allocated a Disabled Person a Banded Rate in accordance with the Purchasing Agency's policies and procedures, the Purchasing Agency will pay the Provider the allocated Banded Rate for providing Services to the Disabled Person.
- 1.2 The Banded Rates are set out in the table below.

Region	Level	Price
Northern	1	
	2	
	3	
	4	
	5	
	6	
Midland	1	
	2	
	3	
	4	
Central	1	
	2	
	3	
	4	
	5	
	6	
Southern	1	
	2	
	3	
	4	
	5	
	6	

- 1.3 The Provider acknowledges that, at the Purchasing Agency's absolute discretion, the Purchasing Agency may, by written notice to the Provider, increase the Banded Rates specified in the table above.

2. Exceptional Rate

- 2.1 If an Authorised Support Coordination Agency has allocated a Disabled Person an Exceptional Rate in accordance with the Purchasing Agency's policies and procedures, the Purchasing Agency will pay the Provider the allocated Exceptional Rate for providing Services to the Disabled Person.

3. Invoicing and Payments

- 3.1 The Provider must invoice the Purchasing Agency at the dates specified by the Purchasing Agency.
- 3.2 Each invoice must include a copy of the completed Residential Comments Sheet relating to the prior month. That sheet must include the following:
- (a) Provider ID

- (b) Facility ID
- (c) Service Period date range
- (d) Funder
- (e) New entries (both private paying clients and subsidised Disabled People)
- (f) Discharges
- (g) Dates of Death
- (h) Transfer between service levels
- (i) Changes in contributions from Disabled Person
- (j) Temporary absences
- (k) Any issue/errors found within previous Payment Notifications.

3.3 The Purchasing Agency will issue a Payment Notification based on the submission of a correct Residential Comments Sheet.

3.4 The Purchasing Agency will pay the Provider for the Services it provides each month if the Purchasing Agency receives the Residential Comments Sheet by:

- (a) the 5th day of the month if payment date is on the 15th day of the month; or
- (b) the 10th day of the month if payment date is on the 20th day of the month.

3.5 If the Purchasing Agency does not receive the Residential Comments Sheet from the Provider by the timeframes specified above, then the Purchasing Agency will pay the Provider on the next scheduled payment day, provided it has received the Residential Comments Sheet in time.

SCHEDULE THREE - REPORTING SCHEDULE

1. Types of reports

- 1.1 The Provider must provide the following reports on or before the timeframes specified in the table below:

Type of report	Content of Report	Frequency of report
Performance Report	See template below	Every 6 months unless specified otherwise by the Purchasing Agency
Unaudited financial		Within 1 month from the Provider's balance date.

2. Performance Report template

- 2.1 The Provider must use the following template:

Performance Report

Contract number:

Date completed:

Name of person completing form:

	Measures and Narrative	A) Total number	B) Percentage
1	Total number of Disabled People receiving Services from the Provider under this Panel Agreement on the day of this form being completed	A:	Note: No response needed in shaded areas
2	Total number of new Disabled People who have entered the Service during the reporting period	A:	
3	A) Total number of Personal Plans completed within three months of a new Disabled Person entering the Service during this reporting period B) Percentage of Personal Plans completed within three months compared to the total number of new Disabled People entering the Service during the reporting period	A:	B:
4.	A) Number of Personal Plans reviewed and signed off in the past 12 months	A:	B:

	B) Percentage of Personal Plans reviewed and signed off in the past 12 months compared to the total of all Disabled People receiving Services under this Panel Agreement		
	<i>If the percentage for question 4 is not 100% please provide a narrative describing the reasons for the variance. – (Note boxes will enlarge as you type)</i>		
5.	Percentage of total number of Disabled People with home agreements which have been reviewed and signed off in the past 12 months		B:
	<i>If the percentage for question 5 is not 100% please provide a narrative describing the reasons for the variance:</i>		
6.	Percentage of total number of Disabled People receiving Services under this Panel Agreement who are active participants in their community.		B:
	<i>Please comment on the percentage in question 6, giving examples of how they are participating and what the organisation is doing to increase participation</i>		
7	A) Total number of staff employed by the Provider who are in front line roles directly delivering Services to Disabled People B) Percentage of this total who have achieved at least Level 2 qualifications or above	A:	B:
	<i>Please comment on increase or decrease in this percentage since the last reporting period.</i>		
8	Percentage of staff turnover during the reporting period		B:
	<i>Please comment on staff turnover in this reporting period</i>		
9	A) Number of complaints received in this reporting period B) Percentage of these complaints resolved	A:	B:
	<i>Please comment on trends and issues appearing in complaints and any changes your Service has made as a result of resolution of the complaints</i>		
10	A) Total number of Disabled People receiving Services under this Panel Agreement identifying as Māori	A:	B:

	B) Percentage of Disabled People identifying as Māori who receive Services under this Panel Agreement, who are involved with their whānau, hapu and/or iwi		
	<i>Please comment on how your organisation supports a culturally responsive environment:</i>		
11.	Please provide comment about how your organisation is providing the Services in a manner that is aligned with the principles of Enabling Good Lives		

SCHEDULE FOUR – PERFORMANCE MANAGEMENT

1. Performance Management Framework

1.1 The Purchasing Agency will use the following framework to assess the performance of the Provider:

- (a) Red – at significant risk. If the Provider's performance is assessed as Red, the Purchasing Agency will use the mechanisms in this Panel Agreement to address the identified risk (such as suspending the Services), or terminate the Panel Agreement.
- (b) Amber – at minor to moderate risk. If the Provider's performance is assessed as Amber, the Purchasing Agency may require additional reporting from the Provider, or use some of the mechanisms in this Panel Agreement (such as requiring an Improvement Plan) to address the identified risk or help improve the performance of the Provider.
- (c) Green – performing. If the Provider's performance is assessed as Green, the Purchasing Agency will undertake its standard monitoring of the Provider.

2. Performance Measures

2.1 The Purchasing Agency may notify the Provider of Performance Measures against which it will assess the Provider's performance against.