

Standard Terms & Conditions

These terms and conditions relate to contracts between providers of services and any of the groups entities, including

- a. Pinnacle Incorporated
- b. Midlands Health Network Limited
- c. Midlands Regional Health Network Charitable Trust
- d. Pinnacle Ventures Limited and any of its subsidiaries

1. Interpretation

- 1.1 Unless the context otherwise demands, in any Agreement to which these terms apply:
 - a. a reference to a person includes any other entity or association recognised by law.
 - b. any reference to any of the parties includes that parties' executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both
 - c. a reference to a statute includes:
 - i. all regulations under that statute; and
 - ii. all amendments to that statute; and
 - iii. any statute substituting for it which incorporates any of its provisions
 - d. all periods of time or notice exclude the days on which they are given and include the days on which they expire
 - e. anything required to be done on a day which is not a Working Day may be done on the next Working Day
 - f. expressions set out in the Glossary below have the corresponding meanings
 - g. headings are for ease of reference only and do not affect the meaning of the Agreement
 - h. the singular includes the plural and vice versa and words importing a gender include other genders
 - i. the terms "including" and "includes" are deemed to be followed by the statement "without limitation" and any obligation not to do something includes an obligation not to suffer, permit or cause that thing to be done.
- 1.2 This Agreement sets out the entire agreement and understanding between us and supersedes all prior oral or written agreements or arrangements relating to its subject matter.

2. Glossary

<u>Expression</u>	<u>Meaning</u>
Act	The New Zealand Public Health & Disability Act 2000
Agreement	Any agreement or arrangement between both of us to which these Standard Terms apply. Agreement refers to both these Standard Terms and any other document incorporating them.
Audit	Audit includes (without limitation) audit, inspection, evaluation or review of: <ol style="list-style-type: none">a. quality;b. service delivery;c. performance requirements;

	<p>d. organisational quality standards;</p> <p>e. information standards;</p> <p>f. organisational reporting requirements; and</p> <p>g. compliance with any of your obligations in relation to the provision of the Services by you.</p>
Commencement Date	The date the Agreement comes into effect
Complaints Body	<p>Any organisation appointed:</p> <p>a. under the Agreement; or</p> <p>b. by both of us by mutual agreement; or</p> <p>c. by a Health Professional Authority; or</p> <p>d. by law</p> <p>to deal with complaints relating to the Services.</p>
Confidential Information	All information (including information about the Services or their subject matter) which is disclosed by us. Any information disclosed either before or during the course of the Agreement, by us to you or vice versa that is agreed by both of us as being confidential and which may not be disclosed (subject to any law to the contrary) but excluding the terms of the Agreement.
Conflict of Interest	<p>Conflict of Interest means that personal or business interests or obligations conflict with obligations under the Agreement. A Conflict of Interest may apply to either of the parties or to their service providers. It may be:</p> <p>a. actual: where the conflict currently exists</p> <p>b. potential: where the conflict is about to happen or could happen</p> <p>c. perceived: where other people may reasonably think that a person is compromised.</p> <p>A conflict of interest means the independence, objectivity or impartiality of a party or service provider can be questioned.</p>
Crown	The meaning given in the Act.
Eligible Person	<p>Any individual who:</p> <p>a. is in need of the Services; and</p> <p>b. meets the essential eligibility criteria and other criteria, terms and conditions which, in accordance with any direction given under Section 32 of the Act or continued by Section 112(1) of the Act, or any other direction from the Minister, must be satisfied before that individual may receive any Services purchased by us.</p> <p>The Ministry of Health will determine if any individual is an Eligible Person if there is any dispute. “Eligible People” has a corresponding meaning.</p>
End Date	The date the Agreement ends or is ended in accordance with this Agreement.

Governmental Body	Includes any entity lawfully formed by, or in accordance with any direction of, the Crown or any Minister or officer of the Crown.
GST	Goods and Services Tax under the Goods and Services Tax Act 1985.
Health Professional Authority	Any authority or body that is empowered under and by virtue of any enactment of law, or the rules of any body or organisation, to exercise disciplinary powers in respect of any person who is involved in the supply of Health or Disability Services, or both.
Law	Includes: <ul style="list-style-type: none"> a. any legislation, decree, judgement, order or bylaw; and b. any rule, protocol, code of ethics or practice or conduct and other ethical or other standards, guidelines and c. requirements of any Health Professional Authority; and d. any relevant standards of the New Zealand Standards Association; and e. any future law, including any modification or re-enactment of existing legislation.
Minister	The Minister of Health.
Ministry or Ministry of Health	The Ministry of Health (by whatever name known) and any other successor department of state and include the Minister of Health and the Director-General of Health and any of his, her or their delegates.
DHB	District Health Board
Person	Includes a corporation, incorporated society or other body corporate, firm, government authority, partnership, trust, joint venture, association, state or agency of a state, department of Ministry of Government and a body or other organisation, in each case whether or not having a separate legal identity.
Population Served	Means communities or targeted populations, including Eligible People, for whom Services are or may be provided.
Records	Means without limitation: <ul style="list-style-type: none"> a. All relevant written and electronically stored material; and b. Includes all relevant records and information held by you and your employees, subcontractors, agents and advisers.
Services	Health services, or disability services or both as specified in the Agreement.
Service Users, client or patient	Users of any of the Services.
Intellectual Property Rights	All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law
New Intellectual Property Rights	Intellectual Property Rights developed after the date of this Agreement and incorporated into the Services

Pre-existing Intellectual Property Rights	Intellectual Property Rights developed before the date of this Agreement. It does not cover later modifications, adaptations or additions.
Working Day	Any day except Saturday, Sunday and any public holiday in the regions the parties are based.

3. Relative Priorities of the parts of this Agreement

- 3.1 In the event of any conflict between this part of the Agreement and any other part, this part will be subordinate.

4. Enforceability

- 4.1 If any provision in the Agreement is held to be illegal, unenforceable or invalid, the determination will not affect the remainder of the relevant document or the Agreement, which will remain in force.
- 4.2 If any provision in any part of the Agreement is held to be illegal, unenforceable or invalid, then we agree to take such steps or make such modifications to the provision or document as are necessary to ensure that it is made legal, enforceable or valid.
- 4.3 The above provisions with respect to illegality, unenforceability or invalidity are not to affect any rights validly to terminate this Agreement as a whole in accordance with the terms of this Agreement or otherwise.

5. Provision of Services

- 5.1 You must provide the Services and conduct your practice or business:
- a. in a prompt, efficient, professional and ethical manner, and
 - b. in accordance with all relevant published strategies issued under the Act; and
 - c. in accordance with all relevant Law; and
 - d. from the Commencement Date without interruption until the Agreement ends or is ended in accordance with its terms.
- 5.2 Nothing in the Agreement:
- a. gives you an exclusive right to provide the Services
 - b. provides any guarantee of any, or any volume of, referrals or service demand.

6. Payments

- 6.1 We will pay you in accordance with the terms of the Agreement.
- 6.2 If this Agreement requires the delivery of Services by volume, we may require that you repay us at the end of the term, at a reasonable rate for any undelivered volumes.
- 6.3 We may set off any amounts which you owe us against any payments due by us, arising from the Agreement or any other source, to you.
- 6.4 We may withhold any further payments or portions of payments, where you:

- a. have failed to meet any reporting requirements under the Agreement,
 - b. are found to be in breach at the end of an Audit or
 - c. your sub-contractors do not allow us access for audit or for any other purpose where that is a requirement under the Agreement.
- 6.5 In that case payments may be withheld from the date of non-compliance until such time compliance occurs.
- 6.6 You are responsible for all tax liabilities including the payment of income tax and Goods and Services Tax except to the extent that we are required to pay withholding tax (if any) which we may deduct from the payments under the Agreement. We may invoice you and you will pay us within 7 days of your receipt of our invoice for withholding tax where we are required to pay withholding tax but no deduction was made from your payments.

7. Cost and Volume Shifting

- 7.1 You must not:
- a. act in such a way that increases cost to another provider
 - b. be party to any arrangement which results in our effectively having to pay more than once for the supply of the same Services or any component of them,
 - c. act in such a way that shifts volumes relating to Services being provided separately by you where such volumes have been specifically related to that Service.

8. Responsibility for Others

- 8.1 You will be responsible for all acts and omissions of your employees, agents and subcontractors even if they are done without your knowledge or approval.

9. Other Arrangements

- 9.1 You must not enter into any other contract or arrangement which might prejudice your ability to meet your obligations in the Agreement.
- 9.2 You may (subject to your obligations in the Agreement), agree to provide Services for any other person.

10. Subcontracting

- 10.1 You may not subcontract any of the Services or part of them without our prior written consent which may not be unreasonably withheld.
- 10.2 If we give consent you must comply with any reasonable conditions we impose as part of the consent.
- 10.3 All contractors and subcontractors delivering all or part of the Services must enter into a written contract with you so that:
- a. they are bound to deliver the same Services as you to the same standards and
 - b. the written contract allows us to enforce our rights in the Agreement directly against any of your contractors as well as, or instead of, you.

11. Transfer of your Rights and Obligations

- 11.1 You must not transfer any part of your rights or obligations under the Agreement without our prior written consent.

12. Information and Reports

- 12.1 You must comply with the information requirements set out in the Agreement.
- 12.2 You must keep and preserve Records and protect the security of them and make them available to us in accordance with our reasonable instructions.
- 12.3 You must take all due care to ensure that in the event of your ceasing to provide the Services, the Records are properly preserved and transferred to us.
- 12.4 You must keep proper business records and promptly complete a balance sheet, statement of income and expenditure and cash flows in accordance with accepted accountancy principles at the end of each financial year.
- 12.5 We may use any information concerning you:
- a. for our own purposes and
 - b. for any purposes required by any Minister of the Crown or any Governmental Body.
- 12.6 You must report to us in accordance with our reasonable instructions.
- 12.7 We may reasonably require you to send reports direct to any Minister of the Crown or any Governmental Body within a time reasonably fixed by us.

13. Appointment of Auditors

- 13.1 We may Audit or appoint people to Audit, on our behalf, in relation to any of the matters contained in the Agreement.
- 13.2 We will give you prior written notice of the people who will be undertaking an Audit.
- 13.3 Both of us must agree to the people undertaking the Audit. You may not refuse where any or all of those people are suitably qualified and have no demonstrable conflict of interest, but your refusal may be based on some other good reason.
- 13.4 Those people may take copies of any parts of the Records.

14. Access for Audit

- 14.1 You and your contractors and sub-contractors must co-operate with us fully and allow us, or our authorised agents, access to:
- a. your premises, information and records (including in relation to claims and payments);
 - b. all premises where your Records are kept;
 - c. Service Users and their families;

- d. staff, contractors and sub-contractors or other personnel used by you in providing the Services;

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

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

14.3 Notice of Audit

- a. We will give you at least 24 hours prior notice of any Audit.
- b. If we believe that notice or delay will unnecessarily prejudice the interests of any person, we may give you limited or no notice of our intention to carry out an Audit.

14.4 Times for Audit

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

15. Audit Process

- 15.1 Subject to clauses in the Agreement relating to information, in carrying out any Audit we may
 - a. Access confidential information about any Service User; and
 - b. Observe the provision or delivery of the Services; and
 - c. Interview or follow up Service Users and/or their families; and
 - d. Interview or follow up any staff, sub-contractors or other personnel used by you in providing the Services.
- 15.2 We retain the right to Audit after the Agreement ends but only to the extent that it is relevant to the period during which the Agreement exists.

16. Insurance

- 16.1 You must immediately take out adequate comprehensive insurance throughout the term of the Agreement covering your practice or business.
- 16.2 You must ensure the insurance cover remains in force for the term of the Agreement or so long thereafter as required for the purposes of the Agreement.
- 16.3 You must provide us with documented evidence from your underwriter or broker that this insurance is in place on our request.

17. Indemnity

- 17.1 You indemnify us against all claims, damages, penalties or losses (including costs) which we incur as the result of:
 - a. Your failing to comply with your obligations in the Agreement; or
 - b. Any act or omission by you or any person for whom you are responsible.

18. Complaints Body

- 18.1 You must at all reasonable times co-operate with any Complaints Body and comply with its reasonable requirements.
- 18.2 We will advise a Complaints Body of any complaints we receive about you if we believe it is appropriate to do so.

19. Warranties

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

20. Standards and Legislation

- 20.1 You must comply with the Health and Disability Services Standards NZS 8134:2008 and any Standards that supersedes this Standard. You must comply with any other Standards and guidelines setting out best practice requirements to the extent that they apply or are relevant to your business and the Services.
- 20.2 You will meet the requirements of any legislation that is relevant for the Services you provide, including where necessary complying with the safety checking requirements or the requirements of a specified organisation under the Vulnerable Children Act 2014.

21. Māori Health Priority

- 21.1 You agree that Māori health is a specifically identified health gain priority area. You must therefore establish and implement a Māori health policy, or the equivalent, that reflects that fact. In developing this policy (or the equivalent), and without limitation, you must take into account our strategic direction, and that of the DHB in your area, for Māori health in terms of minimum requirements for Māori health based on the Treaty of Waitangi, Crown objectives for Māori health and specific requirements negotiated from time to time with us.
- 21.2 You must specify how you intend to implement this policy (or the equivalent). In particular, you will identify those services you will deliver as explicit contributions to Māori health gain priorities, how these services will be measured to ascertain what benefit is evident and other additional opportunities that may exist for furthering Māori health gain.

22. Quality Plan

- 22.1 You will have a written and implemented quality plan designed to improve outcomes for service users. This plan may be integrated into your business plan. The plan will outline a clear quality strategy and will identify the organisational arrangements to implement it. The plan will be of a

size and scope appropriate to the size of your service, and will at least include:

- a. an explicit quality philosophy
- b. clear quality objectives
- c. written and implemented systems for monitoring and auditing compliance with your contractual requirements
- d. designated organisational and staff responsibilities
- e. processes for and evidence of service user input.

23. Service Information

23.1 You must provide current and prospective service users, and referrers, with appropriately presented information that includes

- a. the services you offer
- b. the location of those services
- c. the hours the service is available
- d. how to access the service ,
- e. service user rights and responsibilities
- f. availability of cultural support,
- g. after hours or emergency contact if necessary or appropriate,

This information is presented in a manner appropriate to the communication needs of the intended recipients.

24. Emergency Management

24.1 You must have written, implemented and reviewed contingency management policies and procedures that minimise the adverse impact of internal emergencies and external or environmental disasters on service users, staff and visitors. The policies and procedures will include the processes for working with the organisation that have responsibility for coordinating internal and external (environmental) disaster services. These policies and procedures must be linked to your risk management processes.

24.2 You must have a health emergency plan that identifies your response to a worst case scenario pandemic event (40% of the population affected with 2% death rate). The plan must be consistent with the pandemic and emergency plans for the DHB in your region. When requested by us you will be involved in processes to ensure that emergency responses are integrated, coordinated and exercised.

25. Abuse, Neglect and Family Violence and Child Protection

25.1 You will safeguard service users, staff and visitors from abuse, including physical, mental, emotional, financial and sexual maltreatment or neglect. You must have written, implemented and reviewed policy and procedures relating to; the prevention, detection and removal of abuse, neglect and family violence; and child protection. These will include definitions of abuse, neglect and family violence and will clearly outline the responsibilities of all staff who suspect actual or potential abuse, neglect or family violence including immediate action, reporting, monitoring and corrective action.

25.2 You will ensure that relevant staff are able to participate in family, inter-agency or court proceedings to address specific cases of abuse, neglect and family violence where appropriate. These procedures will include reference to the Complaints Procedure.

- 25.3 Where you meet the requirements of a “specified organization” under the Vulnerable Children Act 2014 you must fulfil the obligations required under the Vulnerable Children Act 2014, including carrying out safety checks of children’s workers.

26. Smoke-free and Nutrition

- 26.1 You must have an implemented and fully operational:
- a. smoke-free policy or equivalent that applies to all your staff, patients, visitors, facilities and vehicles. This must require a smoke free environment on your premises and in your vehicles. The policy or equivalent must accord with the recommendations in the *New Zealand Smoking Cessation Guidelines* published by the Ministry of Health in 2007 and available on its website.
 - b. nutrition policy (or equivalent) that requires all catering and fundraising including the use of food dispensers, comply with the Ministry of Health *Food and Nutrition Guideline Statements*. These are available on the Ministry of Health website.

27. Appropriate Staff

- 27.1 The Services must be delivered by an appropriate number of staff with appropriate qualifications and experience including registration with a Health Professional Authority and holding a current practising certificate where relevant.
- 27.2 You must have processes in place to ensure that all staff and prospective staff are suitable and continue to be suitable for their positions or positions applied for to comply with all relevant legislation including the terms of the Vulnerable Children Act 2014. In all cases pre-engagement safety checks in accordance with the Vulnerable Children Act 2014 must include use of the police vetting service where this is available. Where it is not available, a request must be made to the Ministry of Justice for the person’s record of criminal convictions (subject to exceptions at law if any).
- 27.3 Your process must provide guidance to staff when making a decision about whether to engage, continue to engage or to place conditions on the engagement of a person with convictions, having been granted diversion, facing charges or subject to adverse Police comment.
- 27.4 You must notify us as soon as reasonably possible after you are informed, if any person delivering the Service (employee, contractor, volunteer or student in training) is convicted of an offence, granted diversion, facing charges, subject to adverse Police comment, is under investigation by a Health Professional Authority or the Health and Disability or Privacy Commissioners, or has their practicing certificate removed or conditions imposed on their practice.
- 27.5 You must provide us with copies of any complaints you receive from patients about the delivery of the Service along with any a summary of actions taken in response.

28. Notification of Problems

- 28.1 You must advise us promptly in writing:
- a. of any:
 - i. changes
 - ii. problems
 - iii. significant risks and

- iv. significant issues which materially reduce or affect your ability to provide the Services, or are likely to do so, including those relating to:
 - i. any premises used by you
 - ii. any equipment you are using
 - iii. your key personnel or
 - b. if you materially fail to comply with any of your obligations in the Agreement or
 - c. of any serious complaints or disputes which directly or indirectly relate to the provision of the Services or
 - d. of any issues concerning the Services that might have high media or public interest.
- 28.2 We must discuss with each other possible ways of remedying the matters notified. Our discussion or attempted discussions will not limit any of our rights under the Agreement.
- 28.3 You must have in place realistic and reasonable risk management processes and contingency plans to enable you to continue to provide the Services on the occurrence of any of the matters set out in this clause.

29. We May Remedy Your Failure to Meet Your Obligations

- 29.1 If you fail to carry out any of your obligations in the Agreement we may do so on your behalf at your expense and risk.
- 29.2 We may do this without giving you notice where the circumstances reasonably require such action. Otherwise, we will give you 7 days' notice in writing of our intention to act.
- 29.3 All costs we incur in doing so, must be paid by you to us on demand or we may deduct them from moneys which we owe you.

30. Public Statements, Issues and Advertising

- 30.1 Neither of us may directly or indirectly criticise the other publicly, without first fully discussing the matters of concern with the other.
 - a. The discussion must be carried out in good faith and in a co-operative and constructive manner.
 - b. Nothing in this clause prevents you from discussing any matters of concern with your staff, contractors, subcontractors, agents or advisors.
 - c. Nothing in this clause prevents us from discussing any matters of concern with our staff, contractors, subcontractors, agents, advisers or persons to whom we are responsible.

If we are unable to resolve any differences then those differences may be referred by either of us to the Dispute Resolution process set out in the Agreement.

- 30.2 You may use our name or logo only with our prior written consent.
- 30.3 The provisions of this clause remain in force after the Agreement ends.

31. Dispute Resolution

- 31.1 If either of us has any dispute with the other in connection with the Agreement, then:

- a. both of us will use our best endeavours to settle the dispute or difference by agreement between us
- b. both of us must act in good faith and co-operate with each other to resolve any dispute
- c. if the dispute or difference is not settled by agreement between us within 30 days then, unless both of us agree otherwise, the matter will be referred to mediation.
- d. both of us will agree to a mediator, or failing agreement, a mediator will be nominated on the application of either of us to the President of the New Zealand Law Society or his/her nominee
- e. neither of us will initiate any litigation during the dispute resolution process outlined above, unless proceedings are necessary for preserving the party's rights.
- f. both of us will continue to comply with all our obligations in this Agreement until the dispute is resolved but payments may be withheld to the extent that they are disputed.

31.2 This clause does not apply to any dispute:

- a. concerning any renegotiation of any part of this Agreement
- b. as to whether or not any person is an Eligible Person
- c. directly or indirectly arising from any matter which has been referred to a Complaints Body unless the Complaints Body directs the matter to be resolved in accordance with this clause.

32. Variations to the Agreement

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

32.2 We may vary the Agreement by written notice to you:

- a. to comply with any requirement, service or funding change imposed on us by a DHB or the Crown; or
- b. in the event of a war, civil, environmental or health emergency as reasonably defined by us.

32.3 If we vary the Agreement in accordance with sub-clause a) and b) above, and you do not agree with the variation, you may terminate this Agreement in accordance with its terms. You must continue to comply with your obligations under the Agreement until any variation or termination takes effect.

33. Our Liability

33.1 Except to the extent that we agree otherwise, we are not liable to you for any claims, damages, penalties or losses (including costs) which you incur.

34. Notice of Your Future Intentions

34.1 Before the end of the Agreement you must give a minimum of 3 months' notice if:

- a. you do not wish to enter into a new agreement with us when the Agreement ends; or
- b. you wish to enter into a new agreement with us when the Agreement ends but on materially different terms.

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

34.2 You must discuss with us your intentions before giving the notice set out in this clause.

35. Our Right to End the Agreement

35.1 We may end the Agreement immediately by written notice to you on the occurrence of any of the following events:

- a. We have good reason to believe you are unable or will soon become unable to carry out all your material obligations under the Agreement. We will make reasonable efforts to consult with you before giving notice to end the Agreement. If we believe the health or safety of any person or Population Served is at risk we may suspend your provision of the Services while we consult.
- b. You have failed to carry out any of your obligations in the Agreement and the failure is material and cannot be remedied.
- c. You are adjudged bankrupt or, if you are more than one person, any of you are adjudged bankrupt.
- d. If you are a company or other corporate entity and you are placed in receivership or liquidation.
- e. You have failed to carry out any of your obligations in the Agreement and the failure can be remedied by you but you fail to do so within 30 days of your receiving written notice of the default from us. After 30 days from your receiving the notice, so long as the obligation still has not been met, we may instead of ending the Agreement:

- i. at any time vary or withdraw from coverage by the Agreement any of the Services in respect of which you have not met your obligation, either straight away or at any later date, and
- ii. cease payment for any of the services from the date of withdrawal.

You have the same right and must follow the same procedure if we have not met any obligation and you wish to vary or withdraw any of the Services. Any dispute regarding the withdrawal or variation of any of the Services under this paragraph must be resolved in accordance with the dispute resolution provisions in the Agreement.

35.2 Nothing in this clause affects any other rights we may have against you in law or equity.

35.3 We may terminate this Agreement by providing you with 30 days written notice if there is any change to our obligations to, and the funding we receive from, a DHB or the Crown in relation to the subject matter of this Agreement.

35.4 If you are a general health practice aligned with Midlands Regional Health Network Charitable Trust (MRHNCT) (having your enrolled patients enrolled with MRHNCT), the Agreement is conditional on that continued alignment. If you change your alignment to another Primary Health Organisation (PHO) (whereby your enrolled patients are enrolled with another PHO) the Agreement will come to an end at the same time as your change of alignment takes effect.

36. Your Right to End the Agreement

36.1 If we default on any payments which we are not entitled by the Agreement to withhold and we fail to remedy the default within 20 days of your giving us written notice of the default you may do any one or more of this following:

- a. cancel the agreement
- b. seek specific performance of the Agreement
- c. seek damages from us.

37. Effect of Ending the Agreement

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

38. Confidentiality

- 38.1 Except to the extent that the Agreement provides otherwise, neither of us may disclose any Confidential Information to any other person. Both of us acknowledge that the Agreement, but not any Confidential Information, may be published publicly by us through any media including electronically via the Internet.
- 38.2 Neither of us will disclose to any third party information which will identify any natural person (as defined in the Privacy Act 1993) unless authorised by statute, or by a Code of Practice under the Privacy Act 1993 including the Health Information Privacy Code.
- 38.3. Paragraph 1 of this clause does not apply
- a. to terms or information which are, or become, generally available to the public except as the result of a breach of that paragraph or
 - b. to information which either party is required by law to supply to any person but only to the extent that the law required or
 - c. to terms or information disclosed to the professional advisers of either of us or to those involved in a Service User's clinical or care management where disclosure is reasonably necessary for the management or
 - d. to information which you are required by the Agreement to disclose or forward to any person.
- 38.4 Paragraph 1 of this clause does not prevent us from disclosing any terms or information in accordance with any contract we are in with a DHB or Governmental Body, or by direction or requirement from the Minister under the Act.
- 38.5 Each of us will ensure all Confidential Information is kept secure and is subject to appropriate security and user authorisation procedures and audits.

39. Governing Law

- 39.1 The Agreement is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction to hear any matters relating to it.
- 39.2 The parties agree that all your obligations set out in this Agreement confer a benefit on the DHB in your region or regions, and the DHB in each case may, in accordance with the Contract and Commercial Act 2017, Part 2, Subpart 1, enforce those obligations directly against you. No other third party may enforce any of the provisions in the Agreement.

40. Waiver

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

41. Notices

- 41.1 Any notice must be in writing and may be served personally or sent by email, tracked (signed on receipt) mail or by facsimile transmission. All notices are to have endorsed on them the contract reference number of the Agreement.
- 41.2 Notices given:
 - a. personally are served upon delivery
 - b. by post are served three working days after posting
 - c. by facsimile are served upon receipt of the correct answer back or receipt code
 - d. by email on receipt of an electronic notification of successful delivery.
- 41.3 A notice may be given by an authorised officer, employee or agent of the party giving the notice.
- 41.4 The address and facsimile number for each of us shall be as specified in the Agreement or such other address or number as is from time to time notified in writing to the other party.

42. Intellectual Property

- 42.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 42.2 New Intellectual Property Rights in or related to the Service or its outcomes become our property when they are created.
- 42.3 You grant to us a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in or related to the Service or its outcomes that are not owned by us. This licence includes the right to use, copy, modify and distribute the Service in part or whole; and anything related to, and the outcomes of the Service.
- 42.4 You warrant that you are legally entitled to do the things stated in this clause with the Intellectual Property Rights in or related to the Service or its outcomes.
- 42.5 You warrant that Pre-existing and New Intellectual Property Rights provided by you and incorporated in the Service, and anything related to Service and its outcomes, do not infringe the Intellectual Property Rights of any third party.
- 42.6 You indemnify us in respect of any expenses, damage or liability incurred by us in connection with any third party claim that the delivery of the Service, or anything related to the Service or its outcomes, to us or our use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Agreement.

43. Relationship of Both of Us

- 43.1 Nothing in the Agreement constitutes a partnership or joint venture between both of us, makes you an employee, agent or trustee of ourselves or gives rise to fiduciary duties.

44. Conflict of interest

- 44.1 You warrant that you have no Conflict of Interest with regard to the performance of the Agreement and you will use your best endeavours to ensure that no Conflict of Interest concerning the Services arises during the performance of the Agreement.
- 44.2 You must declare to us the existence or any likely, potential, actual or perception of a, Conflict of Interest as soon as possible, preferably before they arise.
- 44.3 If there is, or is likely to be, a Conflict of Interest concerning the Services, the parties will discuss the matter and we may:
 - a. require you to continue to deliver the Services and implement the strategy we require to manage (or avoid) the Conflict of Interest;
 - b. require you to arrange for an appropriate sub-contractor, approved by us, to deliver any Services that are subject to any such Conflicts of Interest. The terms under which the sub-contractor is engaged must be no less onerous than those contained in the Agreement.
- 44.4 If we consider that the Conflict of Interest cannot be managed appropriately and subcontracting is not, in our opinion, appropriate given the nature of the Conflict of Interest, we may terminate the Agreement immediately by giving you notice.

45. Health and Safety at Work Act

- 45.1 You will at all times comply with your obligations under the Health and Safety at Work Act 2015 ('HSWA') and its associated regulations and amendments.
- 45.2 You agree that you shall, at all times, comply with Pinnacle Inc.'s health and safety policies and procedures as notified to you from time to time. This includes complying, as far as it is reasonably able, with reasonable and lawful instructions relating to health and safety given to you so that Pinnacle Inc. can comply with its obligations under HSWA and its associated regulations.
- 45.3 Pinnacle Inc. shall be entitled to undertake health and safety audits of your works and health and safety documentation, at times which are to be decided at Pinnacle Inc.'s sole discretion.
- 45.4 You agree to take all reasonably practicable steps to ensure risks to health and safety are eliminated, if the risk cannot be eliminated then minimised, and you shall have due regard to any risks that may arise in performing your obligations under this Agreement.
- 45.5 You must:
 - a. upon the request at any time of Pinnacle Inc., submit to, and fully co-operate with, any safety process reasonably required by Pinnacle Inc. and provide all documentation relating to your own safety policies and procedures.
 - b. notify Pinnacle Inc. immediately in the event of any incident involving workers, agents and representatives of the Contractor occurring in the performance of this Agreement where that incident causes any personal injury or damage to property which could reasonably be expected to give rise to personal injury;
 - c. assess all reasonably foreseeable risks to health and safety that may affect Pinnacle Inc. or any third party arising out of or in any way connected with the performance of this Agreement, and provide a copy of such assessments to Pinnacle Inc. upon request, and promptly take all reasonably practicable steps to eliminate or minimise such risks and must notify and co-operate with Pinnacle Inc. accordingly;

- d. fully co-operate with Pinnacle Inc. and any other parties as necessary to ensure that all reasonably foreseeable risks to health and safety are eliminated or minimised; and
- e. take all reasonably practicable steps to ensure that no act or omission is a breach of any of your duties or obligations under the HSWA and associated regulations or any safety requirements as may reasonably be required by Pinnacle Inc
- f. ensure that all your employees, agents and representatives associated with provision of the obligations under this Agreement are adequately trained and supervised in the safe use of all and any surgical equipment, medical diagnostic equipment, administering medications or other substances, medical screening equipment, operating a defibrillator or ventilator, decontamination processes, physiotherapy and gymnasium equipment, other medical tools, processes, substances, protective clothing and any other medical equipment, which may be required to be used in relation to this Agreement.