



**HEAD AGREEMENT AND STANDARD TERMS WHICH FORM
PART OF ALL SERVICE AGREEMENTS BETWEEN**

«PROVIDER_NAME»

AND

**THE CLINICAL TRAINING AGENCY, MINISTRY OF
HEALTH**

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«PROVIDER_NAME».**

HEAD AGREEMENT - THE TERMS WHICH RECORD THE OVERARCHING RELATIONSHIP BETWEEN «PROVIDER_NAME» AND THE CTA

BETWEEN

1. The «PROVIDER_NAME», acting by and through _____
«PROVIDER_NAME» and
2. **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through
the Clinical Training Agency, Ministry of Health (“**the CTA**” or “**the Crown**”).

BACKGROUND

- A. The CTA engages Training Services throughout New Zealand for the purpose of assisting Trainees to complete Training Programmes.
- B. The CTA wishes to enter into agreements with providers of Training Services, and seeks to streamline and standardise its contracting arrangements by entering into this Head Agreement to govern the standard terms of such arrangements.
- C. This Head Agreement for Training Services regulates and recounts the general terms and conditions on which the CTA and «PROVIDER_NAME» will enter into Service Agreements or renew Existing Service Agreements for the provision by «PROVIDER_NAME» of Training Services.

TERMS OF THE CONTRACTING FRAMEWORK AGREEMENT

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Definitions:** In this Head Agreement, including the Background, the Schedules and any Service Agreement:

“**Audit**” means a method of verifying, through inspection or investigation, «PROVIDER_NAME»’s compliance with the requirements of this Head Agreement, and any Service Agreement.

“**Charges**” means the charges payable by the Ministry to «PROVIDER_NAME» for the provision of the Services provided under a Service Agreement.

“**Confidential Information**” means information that relates to the business operations, business strategies, marketing plans and technologies which the Parties have agreed,

to be confidential or either commercially sensitive or not intended for disclosure to third Parties.

“**Eligible Trainees**” means Trainees who meet the eligibility requirements detailed in the relevant Specification for whom the «**PROVIDER_NAME**» has provided information to the CTA via the Report One Trainee Database.

“**Evaluation**” means the process which CTA undertakes to assess the effectiveness of a particular Training Programme.

“**Existing Agreement**” means any agreement between «**PROVIDER_NAME**» and the Ministry for the provision of Services by «**PROVIDER_NAME**» to the CTA, in force at time of the signing of this Head Agreement.

“**FTE**” means a full time equivalent employee, as per the current Ministry of Health definition, available from www.moh.govt.nz from time to time.

“**GST**” means Goods and Services Tax payable under the Goods and Services Tax Act 1985 at the rate prevailing from time to time, including any tax levied in substitution for that tax.

“**Head Agreement**” means this agreement.

“**Parties**” means the CTA and «**PROVIDER_NAME**».

“**PECT**” means Post Entry Clinical Training, which occurs after entry to a health profession, so that a Trainee is eligible to practise as a health practitioner under the Health Practitioners Competence Assurance Act 2003, and is clinically focussed with the Trainees spending at least 30 percent of total programme related hours in the direct delivery of health and disability services to service users.

“**Records**” means all records and information held by «**PROVIDER_NAME**» or on its behalf, in whatever form, including written and electronic forms, which is relevant to the provision of providing Services or compliance with this Head Agreement or a Service Agreement.

“**Report One Trainee Database**” means an electronic schedule of information about Trainees currently training in the Training Programmes purchased under each Service Agreement, updated by the «**PROVIDER_NAME**» and submitted to the CTA on a monthly basis.

“**Report Two Trainee Database**” means an electronic schedule submitted by the «**PROVIDER_NAME**» to the CTA at the conclusion of each calendar year or each Training Programme, whichever is the shorter period, which highlights any concerns and outcomes of the training.

“**Schedule**” means any schedule to this Head Agreement and for the avoidance of doubt includes Schedules 1 and 2 to this Head Agreement.

“**Service Agreement**” means an agreement entered into by «**PROVIDER_NAME**» and the CTA in accordance with this Head Agreement for the provision of Services. For the avoidance of doubt, this includes any Existing Agreement renewed by the Parties in accordance with clause 6 of this Head Agreement.

“**Services**” means the services the CTA purchases from «**PROVIDER_NAME**», and as more particularly described in a Service Agreement.

“**Signatory**” means in respect of either party, the person with the delegated authority to sign the Service Agreement for and on behalf of the CTA and «**PROVIDER_NAME**» respectively.

“**Specification**” means a document that provides details of the minimum requirements that «**PROVIDER_NAME**» must fulfil, which are particular to each Training Programme.

“**Trainee**” means a person enrolled in a Clinical Training Agency funded programme.

“**Training Position**” means a designated position in the «**PROVIDER_NAME**» organisation to be filled by a Trainee.

“**Training Programme**” means an organised schedule of activity that may include academic and clinical experiences that are required to be completed by a Trainee to pass a relevant qualification.

“**Training Services**” means provision of a Training Programme and/or any services provided to assist a trainee to complete a programme or assist delivery or development of a programme.

“**Training Unit**” means a Trainee on a CTA funded Training Programme, who is participating to the extent that he or she will complete the Training Programme in the period stated in the relevant Specification. For example, a Trainee who will take two years to complete a one year Training Programme is a half (0.5) Training Unit.

“**Uncontrollable Event**” means an event which is beyond the reasonable control of the Party affected by the event, but does not include:

- (a) any risk or event which the Party claiming the Uncontrollable Event could have prevented or mitigated by taking reasonable care (including without limitation, a reasonable risk management process); or
- (b) a lack of funds for any reason.

“**Work**” means all the physical and intellectual outputs produced for the purposes of providing and completing the Services and for the avoidance of doubt includes, without limitation, all reports, papers, electronic documents, and recordings.

“**Working Day**” means a day, excluding Saturdays, Sundays, statutory public holidays.

1.2 Interpretation: In this Head Agreement including the Background and the Schedules, unless the context requires otherwise:

- (a) clause and other headings are for ease of reference only and are not to be deemed to form any part of the context, or to affect the interpretation, of this Head Agreement;
- (b) words importing the singular include the plural and vice versa, unless the context requires otherwise;
- (c) a reference to a Party to this Head Agreement includes that Party's permitted assigns and subcontractors;
- (d) references to a statute include references to regulations, orders or notices made under such statute or regulations and all amendments, replacements or other changes to them;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) "including" and similar words do not imply any limitation; and
- (g) unless stated otherwise, reference to dollars and \$ is reference to New Zealand currency.

2. TERMS OF PROVISION OF SERVICES

2.1 Where the Parties agree that «**PROVIDER_NAME**» will provide Services to the CTA, the description of Services, timing, payment and any other relevant specific details in relation to the Services will be recorded by the Parties in a Service Agreement specific to those Services, which may require compliance by the «**PROVIDER_NAME**» with a relevant Specification.

2.2 In addition to the terms recorded in any Service Agreement, the terms and conditions set out in the first schedule to this Head Agreement ("Schedule 1") shall apply to and be incorporated by reference into any such Service Agreement. Schedule 1 makes up Part One in any Service Agreement.

2.3 The terms and conditions set out in Schedule 1 apply to all Service Agreements, unless expressly stated otherwise in the particular Service Agreement.

2.4 If any conflict arises between Schedule 1 and a Service Agreement, Schedule 1 will take precedence unless the particular Service Agreement expressly states otherwise.

2.5 The terms used in any Service Agreement have the same meaning as the terms used in this Head Agreement, unless repugnant to or expressly stated otherwise in the particular Service Agreement.

2.6 The Parties shall do all things necessary to ensure that an accurate record of all Service Agreements is kept and maintained in the second schedule to this Head Agreement ("Schedule 2").

3. CONSIDERATION

3.1 In consideration of «**PROVIDER_NAME**» entering into this Head Agreement, the CTA shall pay the «**PROVIDER_NAME**» the sum of one dollar (\$1.00), including GST, receipt of which is hereby acknowledged.

4. TERM

4.1 This Head Agreement commences on the date it is executed by both Parties, and ends when:

- (a) it is terminated in accordance with this Head Agreement; or
- (b) a date for expiry is agreed to by the Parties in a variation to this Head Agreement in accordance with clause 7 of this Head Agreement; or
- (c) a Service Agreement is entered into prior to the termination of this Head Agreement which continues in its terms after the date of such or termination, in which case this Head Agreement shall continue to apply to any such Service Agreement but not otherwise.

5. NO EXPECTATION AND RIGHTS NOT LIMITED

5.1 Nothing in this Head Agreement shall create or be considered to create an expectation that the Parties will enter into any Service Agreement.

5.2 Nothing in this Head Agreement limits the CTA's right:

- (a) to choose to seek requests for tenders, requests for proposals or quotes for any services which CTA requires;
- (b) to contract with other providers for any services it may wish to purchase; and
- (c) to choose not to renegotiate or renew any Existing Agreement with «**PROVIDER_NAME**».

6. ENTERING INTO A SERVICE AGREEMENT

6.1 Subject to clause 5, the CTA and «**PROVIDER_NAME**» will enter into a Service Agreement in the following situations:

- (a) Where the Parties agree to enter into a new arrangement for the provision of Services,

- (b) Where the Parties renegotiate an Existing Agreement upon its expiry.
- (c) Where the Parties agree to renew an Existing Agreement.

6.2 Each Service Agreement entered into, renegotiated or renewed under subclause 6.1, above must:

- (a) be in writing;
- (b) specify that it is subject to and governed by this Head Agreement;
- (c) reference any relevant Specification, and if no Specification is available then the Service Agreement must specify without limitation the nature of the service required.
- (d) define Charges for the Services to be provided under the Service Agreement;
- (e) be managed by the designated representative of each Party that is named in the Service Agreement; and
- (f) be signed by the Signatory of each Party.

7. VARIATIONS

7.1 This Head Agreement may only be varied by written agreement of the Parties.

8. ADDRESSES FOR, AND METHODS OF, CORRESPONDENCE

8.1 For the purposes of this Head Agreement, the designated representatives, addresses and fax numbers for correspondence between the Parties are:

Name of Designated Representative _____

Position _____

«PROVIDER_NAME»
«PROVIDER_ADDRESS»
«PROVIDER_ADDRESS2»
«PROVIDER_CITY»
Phone: «PROVIDER_PHONE»
Fax: «PROVIDER_FAX»
E-mail address:

Tony Gibling
Manager
Clinical Training Agency
Ministry of Health
PO Box 3877
Christchurch
Phone: (03) 372 3063
Fax: (03) 372 3073
E-mail address: tony_gibling@moh.govt.nz

- 8.2** For the purposes of service of notice in writing under this Head Agreement, and all Service Agreements:
- (a) Where one Party sends the notice by facsimile to the facsimile number of the other Party provided for in clause 8.1, and the sending facsimile machine confirms the notice was sent successfully, the notice is deemed to have been received by the other Party on the day of that successful confirmation.
 - (b) Where one Party sends the notice to the other Party by registered post or by personal delivery to the address of the other Party provided for in clause 8.1, the notice is deemed to have been received by the other Party on the day that the delivery by registered post is confirmed, or the personal delivery occurred, as the case may be.
 - (c) Where one Party sends the notice to the other Party by electronic mail to the electronic mail address of the other Party provided for in clause 8.1, and the sending electronic mail system confirms the notice was delivered successfully by the electronic system, the notice is deemed to have been received by the other Party on the day of that successful confirmation.
- 8.3** Where either Party's designated representative is no longer responsible for the management and operation of this Head Agreement on behalf of a Party, that Party will notify the other Party, by notice in writing, of the name and title of the new person responsible for the management and operation of this Head Agreement.
- 8.4** Where the address, facsimile number or electronic mail address of a Party changes, that Party must, as soon as reasonably practicable, give to the other Party written notice of the change.

9. ASSIGNMENT, DELEGATION, OR TRANSFER

- 9.1** Except as provided for under any enactment, the obligations of the «PROVIDER_NAME» under this Head Agreement and all Service Agreements are personal to the «PROVIDER_NAME» and shall not be assigned, sub-contracted, delegated, or otherwise transferred without the prior approval in writing of the CTA. Any approval by the CTA may be subject to conditions.
- 9.2** Any assignment, sub-contract, delegation or other transfer of the obligations under this Head Agreement, or Service Agreement which has been validly consented to by the CTA does not operate to relieve the «PROVIDER_NAME» of its other obligations under this Agreement, unless the Parties otherwise agree in writing.

10. DISPUTES

- 10.1** Any dispute arising between the Parties concerning any matter relating to this Head Agreement or any Service Agreement (other than in respect of termination) must be

attempted to be resolved between the Parties, but if it is not resolved to the satisfaction of either Party within fourteen (14) days of written notice of the existence of the dispute by one Party to the other, then, unless both of the Parties agree otherwise, either of the Parties may (by written notice to the other) require that the dispute be submitted for mediation by a single mediator agreed by both of the Parties, or if both of the Parties cannot agree on a mediator within fourteen 14 days of the notice requiring submission for mediation, three mediators, one to be appointed by each Party and one to be appointed by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

- (a) the mediator will not be deemed to be acting as an expert or an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation; and
- (c) the cost of the mediation will be shared equally between both of the Parties (unless otherwise agreed in writing).

10.2 Subject to clauses 10.3 and 10.4, if the dispute is not settled by mediation in accordance with clause 10.1 within one month of the dispute being submitted for mediation, then either of the Parties may initiate proceedings in the District Court.

10.3 Neither Party must initiate any court proceedings during the dispute resolution process, unless proceedings are reasonably necessary for preserving the Party's rights.

10.4 Both Parties must continue to comply with their obligations in the Head Agreement and any Service Agreement(s) until the dispute is resolved provided that payment of Charges may be withheld to the extent that they are disputed.

11. UNCONTROLLABLE EVENTS

11.1 Where either Party is prevented from fulfilling all or any of the obligations under the Head Agreement or any Service Agreement by an Uncontrollable Event, the Party affected will not be in default under Head Agreement under the Service Agreement or this Head Agreement.

11.2 Where either Party is affected by an Uncontrollable Event, the Party affected must promptly give written notice to the other Party specifying the cause and extent of its inability to perform its specified obligations, and the likely duration and effect of the non-performance. The Party giving notice must take all reasonable steps to mitigate the impact of the Uncontrollable Event. Performance of any obligation affected by an Uncontrollable Event must be resumed as soon as is reasonably possible after the Uncontrollable Event ends or its impact is reduced.

11.3 The other Party may terminate the relevant Service Agreement(s) by written notice to the Party affected by such Uncontrollable Event if after twenty (20) Working Days from the commencement of the Uncontrollable Event the Party affected by the

Uncontrollable Event is unable to comply with its substantive obligations under the Service Agreement.

12. TERMINATION

12.1 The CTA may terminate this Head Agreement immediately upon written notice in the following circumstances:

- (a) «PROVIDER_NAME» directly or indirectly assigns, transfers or novates, or attempts to assign, transfer or novate, any obligation, liability or interest under this Head Agreement without the prior written consent of the CTA;
- (b) «PROVIDER_NAME» is, becomes, or is deemed to be, insolvent or bankrupt, makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors, or goes into receivership or has a receiver, trustee and/or manager (including a statutory manager) appointed in respect of all or any of its property, or if any similar or analogous event occurs;
- (c) any direct or indirect change of control (whether by change of legal or beneficial ownership of share capital (including an amalgamation), securities, name) occurs, either by a single event or series of events over any period of time; or

12.2 In the event of termination of this Head Agreement all Service Agreements entered into between CTA and «PROVIDER_NAME» will also immediately terminate in the event that the CTA gives written notice of termination.

AGREEMENT DATED THIS DAY OF 20

SIGNED by)

Print Name)

Being a person with the authority
to sign for and on behalf of
«PROVIDER_NAME»

On)

SIGNED by Tony Gibling, Manager,
Clinical Training Agency
on behalf of **the Ministry**)

On)

SCHEDULE 1

THE STANDARD TERMS WHICH FORM PART OF ALL SERVICE AGREEMENTS

1. APPLICATION OF SCHEDULE 1 TO SERVICE AGREEMENTS

1.1 In addition to the terms and conditions recorded in any Service Agreement, the terms and conditions set out in this Schedule 1 shall apply to and be incorporated by reference into any such Service Agreement, unless the particular Service Agreement expressly states otherwise. This Schedule 1 shall apply to and be incorporated by reference as Part One in any Service Agreement.

1.2 «PROVIDER_NAME» shall perform the services set out in this Service Agreement, including without limitation:

A Provision of Training Services

1.3 Provide Training Services to the CTA as agreed in this Service Agreement to assist Trainees to complete Training Programmes.

B Ensuring Trainee Eligibility

1.4 Ensure that Trainees who participate in Training Programmes and/or hold Training Positions for which «PROVIDER_NAME» intends to claim Charges payable are Eligible Trainees.

C Information and Reporting Requirements

1.5 Comply with the following information and reporting requirements:

(a) provide the CTA with any reports in accordance with any requirements set out in this Service Agreement and any applicable Specification;

(b) keep secure accurate records of its performance (including that of its employees, agents and advisors) in providing Services to the CTA and make those records available within 10 working days of request by CTA , or as requested as part of an Audit;

(c) comply with the requirements of the Report One Trainee Database, by recording the names, demographic data and programme information of Trainees, and submitting this information to the CTA on a monthly basis;

(d) comply with the requirements of the Report Two Trainee Database by submitting to the CTA at the end of the Training Programme or each calendar year, whichever is the shorter period, in the standard template format (as advised from time to time by the CTA), information from both the Trainees and the Trainers on the quality of the Training

Services including information relating to Trainee outcomes. The information for Report 2 will be collected by obtaining feedback from trainees and trainers in accordance with 3(c) of this Service Agreement.

- (e) by submitting information to the CTA «PROVIDER_NAME» warrants that the information submitted is true and correct.

1.6 In requiring, supplying and otherwise dealing with information under this contract, both Parties must comply with all relevant legislation including the Health Act 1956, the Privacy Act 1993, and the Health Information Privacy Code 1994 or any code of practice issued under the Privacy Act 1993. In particular:

- (a) «PROVIDER_NAME» will do all such things as may be required under the Privacy Act 1993 to permit the collection and disclosure of the information which is required by the CTA under this Service Agreement. This includes (but is not limited to) notification to Trainees of the information to be disclosed by «PROVIDER_NAME» under this Service Agreement.

2. NATURE OF PROVISION OF SERVICES

2.1 «PROVIDER_NAME» agrees to provide the Services to the CTA in a prompt, efficient, and ethical manner and in accordance with:

- (a) the quality levels and within the time lines set out in this Service Agreement;
- (b) any applicable Specification, as detailed in Part 2 of this Service Agreement
- (c) accepted standards of skill, care and diligence normally practiced by providers of services of a similar nature to the Services, which includes maintaining accreditation with appropriate accreditation authorities; and
- (d) all relevant law, including the Privacy Act 1993, and the Health Information Privacy Code 1994.

3. QUALITY SPECIFICATION

3.1 In providing the Services, the «PROVIDER_NAME» must in addition to meeting any standards otherwise recorded in this Service Agreement:

- (a) meet any quality standards set out by the appropriate accrediting body;
- (b) create and maintain written policies and processes to ensure Eligible Trainees exhibit culturally appropriate practices;
- (c) create and maintain and submit to the CTA as and when the CTA reasonably requires, a quality improvement plan to monitor, evaluate and improve the quality of each Training Programme, which records how «PROVIDER_NAME» will:

- i. ensure that there is effective and appropriate stakeholder input into Training Programme delivery and review;
- ii. ensure that the selection of Eligible Trainees is open, systematic and fair;
- iii. ensure that feedback from Eligible Trainees and Trainers is incorporated into «PROVIDER_NAME» evaluation and improvement process;
- iv. collect and submit to the CTA evaluative feedback from Trainees and Trainers. This collection process must obtain information that allows completion of Report 2 required under clause 1.5(c) and 1.5(d) of this Service Agreement; and

4. INVOICING AND PAYMENTS

- 4.1 In consideration of «PROVIDER_NAME» providing the Services, the CTA shall pay to «PROVIDER_NAME» the Charges payable under and in accordance with this Service Agreement.
- 4.2 «PROVIDER_NAME» may only claim Charges payable for Training Positions held by Eligible Trainees. For the avoidance of doubt, the CTA is not responsible for funding Training Services for Trainees who are not Eligible Trainees.
- 4.3 If «PROVIDER_NAME» fails to provide all or part of the Services for which the CTA have paid under this Agreement or if, for any other reason, the CTA has overpaid «PROVIDER_NAME» for the Services, the CTA will notify «PROVIDER_NAME» of the overpayment and may deduct the overpayment from any subsequent charges payable to «PROVIDER_NAME» to recover that sum as a debt due and owing.
- 4.4 «PROVIDER_NAME» may only receive Charges for Training Services described in this Service Agreement from the CTA or the Tertiary Education Commission, or Ministry of Education or their equivalents. For the avoidance of doubt «PROVIDER_NAME», may not receive funding for Training Services described in this Service Agreement from both the CTA and the Tertiary Education Commission and/or the Ministry of Education and/or their equivalents.
- 4.5 The Charges payable to «PROVIDER_NAME» by the CTA include all expenses incurred by «PROVIDER_NAME» in providing the Services and «PROVIDER_NAME» agrees that it cannot make any further charge to the CTA for expenses.
- 4.6 The CTA and «PROVIDER_NAME» agree that Charges payable to «PROVIDER_NAME» by the CTA must be used exclusively for Services being purchased by the CTA under this Service Agreement.

- 4.7 If «PROVIDER_NAME» is liable for GST in respect of the Services «PROVIDER_NAME» must provide to the CTA a tax invoice clearly showing the following information before any payment will be made by the CTA under this Service Agreement, otherwise «PROVIDER_NAME» will be paid with GST deducted:
- (a) the words “tax invoice” in a prominent place;
 - (b) the name (or trade name) and GST number of «PROVIDER_NAME»;
 - (c) the name and address of the CTA;
 - (d) the date the invoice was issued;
 - (e) a description of the services supplied;
 - (f) the quantity or volume of the services supplied (if applicable); and
 - (g) the amount charged for the supply of services (GST exclusive), the GST content, and the total amount payable for the supply.
- 4.8 «PROVIDER_NAME» will be responsible for all its taxation liabilities, and the CTA will not be liable for any taxation on behalf of «PROVIDER_NAME».
- 4.9 If «PROVIDER_NAME» is not liable for GST because «PROVIDER_NAME» is not GST registered, «PROVIDER_NAME» must complete and provide the CTA with an IR330 Form for deduction of withholding tax before any payment will be made by the CTA.
- 4.10 An invoice will only be valid if the Schedule of Eligible Trainee Names to which the invoice relates is accepted by the CTA.
- 4.11 Invoices for the Charges must be submitted monthly.
- 4.12 For the purposes of calculating the actual number of Training Units per month, «PROVIDER_NAME» should count those Trainees who were receiving training from «PROVIDER_NAME» as at the 15th day of the service month.
- 4.13 Payment will be made to «PROVIDER_NAME» by the CTA within 21 days of receipt of a valid invoice from «PROVIDER_NAME» following completion of the Services to which the invoice relates where the CTA is satisfied that the Services, including submission of accurate and complete reports in accordance with the requirements of Report One Trainee Database and Report Two Trainee Database, have been provided and completed in accordance with this Service Agreement.
- 4.14 The CTA reserves the right to withhold Charges for Services that have not been provided and completed in accordance with this Service Agreement.
- 4.15 If any invoice or part of an invoice submitted by «PROVIDER_NAME» is disputed by the CTA:

- (a) the CTA must notify «PROVIDER_NAME» in writing of the reasons why such invoice or part thereof is disputed within 10 Working Days of receiving the invoice and must not delay payment of the remainder of the invoice;
- (b) if the Parties are unable to resolve the dispute within ten (10) Working Days after the CTA has notified «PROVIDER_NAME» in writing of the dispute, clause 18 of this Service Agreement will apply;
- (c) upon resolution of the dispute (whether by agreement or under clause 8 of this Service Agreement) the agreed amount must be paid by the CTA within ten (10) Working Days; and
- (d) while any invoice is under dispute, «PROVIDER_NAME» must continue to provide the Services.

4.16 For the avoidance of doubt, the fact that the CTA does not raise a dispute under subclause 4.15 in relation to an invoice does not affect the CTA's right to later raise concerns about the provision of Services relating to that invoice or any other invoice, and/or exercise any other rights it may have whether at contract, or general law.

4.17 Notwithstanding any provision in this Services Agreement or the Head Agreement, In accordance with Section 10 of the Public Finance Act 1989 (or any amended or substituted section which is of the same effect), both Parties acknowledge that Charges paid to «PROVIDER_NAME» by the CTA under this Service Agreement beyond the financial year in which this Service Agreement was signed by the Parties, are contingent upon the appropriation of adequate levels of funding for the Services under an Act of Parliament in that financial year. The CTA will notify «PROVIDER_NAME» in writing of the Charges not being available due to this occurrence as soon as is reasonably possible.

5. TERM

5.1 This Service Agreement shall apply for the term specified in Part 2 of this Service Agreement, unless terminated earlier in accordance with the Head Agreement or this Service Agreement.

6. TERMINATION FOR BREACH

6.1 If one Party defaults in the performance of any of its obligations under this Service Agreement and:

- (a) the default is capable of being remedied and, within fifteen (15) Working Days of notice being given by the non-defaulting Party specifying the default, the default is not remedied; or
- (b) the default is not capable of being remedied; then

the non-defaulting Party may by written notice, and at its sole discretion, immediately terminate, or temporarily suspend all or part of this Service Agreement.

6.2 The CTA may, at any time, immediately terminate this Service Agreement by giving written notice to «PROVIDER_NAME», if:

- (a) «PROVIDER_NAME» directly or indirectly assigns, transfers or novates, or attempts to assign, transfer or novate, any obligation, liability or interest under this Service Agreement without the prior written consent of the CTA;
- (b) the CTA becomes aware of a breach by the «PROVIDER_NAME» of a Specification, such that the CTA considers that there is a real risk of harm to any person;
- (c) the CTA becomes aware that «PROVIDER_NAME» is receiving funding for Training Services described in this Service Agreement from the Tertiary Education Commission, or Ministry of Education or their equivalents;

6.3 This entire clause survives expiry of the Head Agreement and this Service Agreement.

7. EFFECT OF TERMINATION

7.1 Within fourteen 14 days of termination for breach the CTA will pay to «PROVIDER_NAME» a sum that represents the unpaid proportion of the Services to the extent that such services have been provided by «PROVIDER_NAME», to the satisfaction of the CTA, up to and including the date of termination (not including payments already invoiced and made prior to termination).

7.2 The expiry or termination of the Head Agreement or this Service Agreement does not affect any accrued rights or remedies of either Party.

8. INSURANCE

8.1 «PROVIDER_NAME» must maintain at all times, for the purposes of the Agreement, effective insurance sufficient to cover any legal liabilities or expenses of the CTA resulting from the acts or omissions of «PROVIDER_NAME» or of its employees, agents, assignees or sub-contractors where the CTA has not authorised those acts or omissions. This does not mean that the insurance must cover legal liabilities or expenses caused to the CTA by the actions or omissions of the CTA or its servants or agents, as they will be the responsibility of the CTA. Where there is joint responsibility, each Party will cover their own proportion of the liability according to the degree of the responsibility involved.

8.2 This entire clause will survive expiry or termination of the Head Agreement and this Service Agreement.

9. EACH PARTY NOT AN AGENT OR REPRESENTATIVE OF THE OTHER

- 9.1 Each Party is not and must not state, indicate, or otherwise purport to be an agent or representative of the other Party, or cause any other person to believe that it is an agent or representative of the other Party, unless and only to the extent that such action is required to provide the Services.

10. INTELLECTUAL PROPERTY

- 10.1 Work produced by «PROVIDER_NAME» in providing and completing the Services will be the property of the Crown, and «PROVIDER_NAME» acknowledges that the Crown owns the copyright in such Work as Crown Copyright. However, where «PROVIDER_NAME», in providing the Services, uses any copyright in anything produced by «PROVIDER_NAME» outside the scope of the Services, this clause shall not operate to deprive «PROVIDER_NAME» of those rights.
- 10.2 «PROVIDER_NAME» must, immediately after the expiry or termination of this Service Agreement return all Work to the CTA.
- 10.3 This entire clause will survive expiry or termination of this Agreement.

11. CONFLICTS OF INTEREST, ISSUES AND RISKS

- 11.1 If either Party becomes aware of any significant risks or significant issues or problems which materially reduce or affect (or are likely to reduce or affect) its ability to meet its obligations under this Service Agreement, or can reasonably be considered to have high media or public interest, it must notify the other Party of the risks, issues, or problems as soon as practicable.
- 11.2 If either Party notifies the other Party in accordance with clause 11.1 above, both Parties must discuss with each other possible options to address the risks, issues, or problems notified, which may include without limitation the option of varying this Service Agreement.
- 11.3 If «PROVIDER_NAME» becomes aware that it has or may have a conflict of interest in its performance of any Services, it must notify the CTA immediately.
- 11.4 This clause does not limit any rights «PROVIDER_NAME» or the CTA may have at contract, or general law.

12. ADVERTISING, PUBLISHING & PRESENTING INFORMATION

- 12.1 Except as required by law, neither Party may publicly use the name or logo of the other Party without the written consent of the other Party, and then only in accordance with the instructions of the other Party.

12.2 Where «PROVIDER_NAME» seeks to publish and or present information which is produced by it in providing and completing the Services, «PROVIDER_NAME» must first consult and obtain the CTA's agreement to publishing or presenting that information which may be given on such conditions as the CTA requires, for example the CTA may require any published or presented information to appropriately acknowledge the CTA.

13. Audit Requirements

13.1 «PROVIDER_NAME» and its permitted subcontractors must allow CTA (which shall include its authorised agents for the purposes of this clause), access on ten (10) Working Day's written notice (or, if the CTA notifies «PROVIDER_NAME» that the situation is urgent, 24 hours written notice) to:

- (a) its premises, and premises where Services are performed or Records are kept;
- (b) all Records relating to provision of Services under this agreement;
- (c) staff, subcontractors or other people used by «PROVIDER_NAME» in providing the Services; and
- (d) trainees on Clinical Training Agency funded programmes;

13.2 «PROVIDER_NAME» and its permitted subcontractors must allow CTA to interview any relevant staff, subcontractors or other people involved in supplying the Services for the purpose of carrying out an Audit of «PROVIDER_NAME»'s performance and compliance with the Head Agreement and this Service Agreement (including compliance with clause 4.6 of this Service Agreement).

13.3 CTA may take copies of any parts of the Records for the purpose of carrying out an Audit. If no photocopier is readily available at the facility where the «PROVIDER_NAME»'s records are kept, CTA may remove the relevant records from the facility for the purpose of copying, and will use its best endeavours to return the records within 24 hours or a timeframe agreed between the Parties.

13.4 In exercising its rights under this clause 13 the CTA will use all reasonable endeavours to minimise any disruption or inconvenience that may be caused to «PROVIDER_NAME» and its staff and subcontractors.

13.5 The CTA's right to Audit under this clause 13 continues after the end of the Service Agreement to which the Audit relates, but only to the extent that it is relevant to the period during which the Service Agreement was in force.

14. EVALUATION REQUIREMENTS

14.1 «PROVIDER_NAME» must reasonably assist and co-operate with anyone funded by the Ministry to perform an Evaluation of the Services during the term of the relevant

Service Agreement. This includes, but is not limited to, providing access to Training Programme information, including information about current and past trainees who have attended the Training Programme.

15. CORRECTION OF ERRORS

15.1 The «PROVIDER_NAME» must, at its own cost and risk, rectify any errors, omissions, defects, or faults in the provision of the Services that are notified in writing to the «PROVIDER_NAME» by the CTA at any time up to six months after termination of this Service Agreement whether for breach or expiry or otherwise. The «PROVIDER_NAME» must carry out the remedial work required forthwith and in so doing will avoid any unnecessary inconvenience to the CTA.

15.2 This entire clause will survive expiry or termination of this Service Agreement.

16. ADDRESSES FOR, AND METHODS OF, CORRESPONDENCE

16.1 For the purpose of each Service Agreement, the designated representatives, addresses and fax numbers for correspondence between the parties will be recorded in Part 2 of this Service Agreement.

16.2 For the purposes of service of notice in writing under each Service Agreement, the terms and conditions set out in clauses 8.2, 8.3 and 8.4 of the Head Agreement shall apply to and be incorporated by reference into this Service Agreement.

17. ASSIGNMENT

17.1 The terms and conditions set out in clauses 9.1 and 9.2 of the Head Agreement, which relate to assignment, sub-contract, delegation or other transfer of obligations, shall apply to and be incorporated by reference into this Service Agreement.

18. DISPUTE

18.1 The terms and conditions set out in clauses 10.1, 10.2, 10.3 and 10.4 of the Head Agreement, which relate to disputes, shall apply to and be incorporated by reference into this Service Agreement.

19. UNCONTROLLABLE EVENTS

19.1 The terms and conditions set out in clauses 11.1, 11.2 and 11.3 of the Head Agreement which relate to Uncontrollable Events shall apply to and be incorporated by reference to this Service Agreement.

20. ENTIRE AGREEMENT

20.1 This Service Agreement and the Head Agreement comprise the entire agreement between the Parties and supersedes all prior oral and written representations, understandings, arrangements, or agreements.

21. GENERAL MISCELLANEOUS TERMS

21.1 **Variation:** This Service Agreement may be varied by further agreement in writing by the Parties.

21.2 **No Waiver:** Any failure or delay on the part of either Party to exercise any right or remedy under this Service Agreement is not a waiver of such right or remedy. Any single or partial exercise of any right or remedy under this Service Agreement will not prevent the further exercise of that right or remedy or the exercise of another right or remedy. A waiver by either Party of any breach of any provision of this Service Agreement will not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.

21.3 **Severance:** If any provision contained in this Service Agreement is held invalid, unenforceable or illegal for any reason, it will be severable, and will be deemed deleted from this Service Agreement and will not affect the validity or enforceability of other provisions in the Head Agreement, or this Service Agreement.

21.4 **Costs:** Each Party shall bear its own legal and other costs and expenses incurred in connection with the preparation, negotiation and execution of this Service Agreement.

21.5 **Further action:** Each Party agrees to execute, acknowledge and deliver such further instruments, make all applications and do all further similar acts, as may be necessary or appropriate to carry out the purposes of this Service Agreement.

21.6 **Governing law:** The formation, validity, construction and performance of this Service Agreement shall be governed by and construed in accordance with the law of New Zealand and shall be subject to the non-exclusive jurisdiction of the New Zealand courts to which the Parties hereby submit.

