

[Name]  
Alliance Agreement

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**BETWEEN THE PARTIES ON PAGE 4**

28 May 2013

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## PARTIES

DATE

2013

THE PARTIES (each a Party) are:

## KEY INFORMATION

1. **Commencement Date:**
2. **Alliance Leadership Team Members:** (Chairperson)

## OUR AGREEMENT

In consideration of the mutual promises given and received by each of us in this Agreement, we agree that we will be bound by and perform this Agreement.

Our Agreement comprises the following parts:

**Part A: Our Commitment** - is a statement of our background, our commitment to a whole-of-system decision making process, our purpose, principles and commitment to success. We agree that the remainder of this Agreement will be interpreted in accordance with the statements made in Part A.

**Part B: How We Will Succeed** – is a statement of how we will work together, in particular, to achieve success by meeting and exceeding our Alliance Objectives in our Key Results Areas.

**Part C: How We Will Work Together** - details the processes that we have agreed to apply to how we will work together.

**Part D: Term of This Alliance** - details how long we expect to work together for and, if or when necessary, how we will wind up our Alliance.

**Part E: Other Terms** - includes a number of important but relatively standard clauses you would expect to find in most agreements of this nature.

**Schedules** - The scope of our Alliance Activities (Schedule 1), Definitions (Schedule 2), Operational provisions that set out some important operational matters (Schedule 3), and a deed of accession for when others join us in the Alliance (Schedule 4).

## PART A: OUR COMMITMENT

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Part A of this Agreement is a statement of our background, our commitment to a whole-of-system decision making process, our purpose, principles, values and commitment to success.

### 1. Scope of Our Alliance

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- 1.1 **Who We Are:** We, the Parties to this Alliance, are a consortium of the DHB and organisations that hold Service Provision Agreements to provide services falling within the scope of our Alliance Activities.
- 1.2 **Our Leaders:** We are led by our Alliance Leadership Team, made up of those clinical leaders, key managers and other experts, who can successfully lead our Alliance to achieve our Alliance Objectives.
- 1.3 **Our Purpose:** We have formed our Alliance to improve health outcomes for our populations, through:
- 1.3.1 transforming healthcare services and supporting clinical decision making and the shifting of activities closer to patients;
  - 1.3.2 making (and assisting the DHB to make) strategic health care decisions on a “whole-of-system” basis;
  - 1.3.3 providing leadership within our health community;
  - 1.3.4 assessing the needs of our populations;
  - 1.3.5 planning health services in our District, to make the best use of health resources;
  - 1.3.6 balancing a focus on the highest priority needs areas in our communities, while ensuring appropriate care across all our populations;
  - 1.3.7 establishing Service Alliances to advise on the development, delivery and monitoring of health services;
  - 1.3.8 monitoring services that fall within the scope of our Alliance Activities; and
  - 1.3.9 informing our populations and other stakeholders of our performance in achieving our objectives.
- 1.4 **Our Alliance Activities and Objectives:**
- 1.4.1 The scope of our Alliance is determined by our Alliance Activities. Our Alliance, in carrying out its Alliance Activities, may not be involved in all healthcare services in our District.
  - 1.4.2 Our Alliance also has specific Alliance Objectives that we expect to meet and exceed as part of our Alliance Activities.
  - 1.4.3 The scope of our Alliance, our Alliance Activities and our Alliance Objectives are set out in Schedule 1.
- 1.5 **Our Conduct:** We will conduct our Alliance Activities and achieve our Alliance Objectives, by acting consistently with our Alliance Principles.

## 1.6 What We Are Not:

- 1.6.1 Our Alliance does not provide healthcare services. We agree that the DHB may contract with providers, which may include the Parties and others, to provide those services.
- 1.6.2 We work collaboratively but are not collectively established as a legal entity, as set out in clause 25.

## 2. Overview of Decision Making

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- 2.1 **Allocation of Decision Making:** At the core of this Agreement is a decision-making process that makes clear which decisions remain with the DHB and the Government, and which decisions are devolved to us, the Parties.
- 2.2 **Clinician-Led Decision Making:** We recognise that clinicians, alongside others, are in the best position to make decisions about how to apply resources to specific services to achieve the best outcomes. These decisions will involve less specification and an emphasis on quality processes and transparency of information to assure accountability and best value for money. Our Alliance is a vehicle to achieve this.
- 2.3 **Decisions Made by Government:** The balancing side of the decision-making process is that it remains the role of the Government to determine the gross allocation of public funding, so as to achieve the best balance of outcomes for the population. Wherever possible this will involve discussion with clinicians, providers and/or the community through our Alliance but we recognise that in some cases these decisions may be taken centrally.
- 2.4 **Decisions Made by the DHB:** We recognise that the DHB has two roles:
  - 2.4.1 as a Party within our Alliance, and
  - 2.4.2 as the Government's agent, as the funder of health services in the District.
- 2.5 Our Alliance is intended, in part, to assist the DHB to fulfil its statutory objectives and functions as a funder of health services. The DHB will work within our Alliance to fulfil those obligations where it is appropriate and practicable to do so.
- 2.6 However, we acknowledge that the DHB's statutory and other obligations will require it to make some decisions, which may affect our Alliance, outside of our Alliance and this Agreement. Without limiting its ability to make those decisions, the DHB undertakes to make those decisions, insofar as is reasonably practicable, in good faith and having regard to our Alliance's Objectives. We agree that nothing in this Agreement limits the DHB's rights, powers, obligations or liabilities under any Law or other agreement referred to in clause 9.2.
- 2.7 **Decisions Made by Parties:** Equally, we recognise that Parties other than the DHB are subject to their own governance obligations. We also agree that nothing in this Agreement limits a Party's rights or obligations, necessary to comply with their governance obligations under any Law or other agreement.

## 3. Our Alliance Principles

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- 3.1 We will conduct ourselves and undertake our Alliance Activities in a manner consistent with our Alliance Principles and will take all reasonable steps to ensure that our employees, contractors and agents do likewise.
- 3.2 We agree that every part of this Agreement must be read in such a way as to be consistent with, and ensure the integrity of, our commitments to our Alliance Principles.

3.3 **Our Alliance Principles:** Our Alliance is founded on the following principles:

- 3.3.1 we will support clinical leadership and, in particular, clinically-led service development;
- 3.3.2 we will adopt a patient-centred, whole-of-system approach, and make decisions on a Best for System basis;
- 3.3.3 we will conduct ourselves with honesty and integrity, and develop a high degree of trust;
- 3.3.4 we will promote an environment of high quality, performance and accountability, and low bureaucracy;
- 3.3.5 we will strive to resolve disagreements co-operatively and, wherever possible, achieve consensus;
- 3.3.6 we will seek to make the best use of finite resources in planning and delivering health services to achieve improved health outcomes for our populations;
- 3.3.7 we will adopt and foster an open and transparent approach to sharing information;
- 3.3.8 we will monitor and report on our Alliance's achievements, including public reporting;
- 3.3.9 we will be collectively responsible for all decisions and outcomes of our Alliance;
- 3.3.10 we will operate as a unified team providing mutual support, appreciation and encouragement;
- 3.3.11 we will conduct ourselves in accordance with Best Practice;
- 3.3.12 we will support professional behaviour and leadership;
- 3.3.13 we will remain flexible and responsive to support an evolving health environment;
- 3.3.14 we will incorporate whanau ora approaches where appropriate;
- 3.3.15 we will develop, encourage and reward innovation and challenge our status quo;
- 3.3.16 we will actively support and build on our successes; and
- 3.3.17 we commit to fully exploring the collective sharing and management of the risks and benefits arising from our Alliance Activities. Where we cannot manage risk collectively, our principle is to allocate responsibility for each risk to those of us who can best manage it.

## **PART B: HOW WE WILL SUCCEED**

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Part B of this Agreement is a statement of how we will work together, in particular, to achieve success by meeting and exceeding our Alliance Objectives in our Key Results Areas.

### **4. Commitments**

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#### **4.1 Shared Decision Making:**

- 4.1.1 Each of us is fully committed to our Alliance and carrying out our Alliance Activities to achieve our Alliance Objectives. We acknowledge that this commitment is fundamental to our Alliance's success.
- 4.1.2 We will work as one team, in an innovative and open manner, to produce outstanding results.
- 4.1.3 We will work on an Open Book basis to help achieve the best results from our Alliance Activities, in accordance with clause 14.

#### **4.2 Shared Responsibility:**

- 4.2.1 We all take responsibility for our Alliance's success.
- 4.2.2 We all take responsibility for achieving consensus decisions within our Alliance.
- 4.2.3 We all take responsibility for addressing all potential disputes within our Alliance.
- 4.2.4 We will establish and maintain an environment within our Alliance that encourages open, honest and timely sharing of information.

#### **4.3 Shared Accountability:** We are all responsible collectively for identifying, managing and mitigating all risks associated with our Alliance Activities.

#### **4.4 Commitment to Good Faith:** We will, at all times:

- 4.4.1 act in good faith and be fair, honest and ethical in our dealings with each other;
- 4.4.2 make all decisions on a Best for System basis and, when making such decisions, will give predominate weight to the interests of our Alliance over our own self interest;
- 4.4.3 do everything that is reasonably necessary to enable each of us to undertake our Alliance Activities and perform our obligations under this Agreement;
- 4.4.4 not act in a manner that impedes or restricts each other's performance of our Alliance Activities and the performance of our obligations under this Agreement; and
- 4.4.5 do all things that are, or may reasonably be, expected of us so as to give effect to the spirit and intent of this Agreement and our Alliance.

#### **4.5 Commitment to Consultation:** We recognise that some of us may, in the course of undertaking our Alliance Activities and otherwise meeting our commitments under this Agreement, be required to consult with others who do not form part of our Alliance. We will provide those of us who are subject to such a requirement with a reasonable opportunity to do so in a prudent and timely manner.

- 4.6 **Commitment Where Multiple District Health Boards:** If there are two or more District Health Boards who are Parties to this Agreement, we agree that:
- 4.6.1 all references to the DHB in this Agreement will be to them collectively and together; and
  - 4.6.2 subject to clause 2.6 and clause 9, all rights, powers and discretions conferred on the DHB in this Agreement, may only be exercised by consensus agreement between them.

## 5. **Service Alliances & Working Groups**

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- 5.1 **Service Alliances:** Where our Alliance identifies a service within the scope of our Alliance Activities that requires transformational change, our Alliance Leadership Team may establish a Service Alliance to:
- 5.1.1 recommend how the service should be delivered within the scope of our Alliance;
  - 5.1.2 monitor and report on the performance of a service within the scope of our Alliance.
- 5.2 **Working Groups:** Clause 5.1 does not limit our Alliance Leadership Team's ability to establish any other Working Groups that it considers necessary to advise it on any aspect of our Alliance Activities.
- 5.3 **Scope and Conditions:** A Service Alliance or other Working Group will operate according to any directions, conditions or restrictions established by our Alliance Leadership Team. This may include a direction to work collaboratively with Other Alliances.

## 6. **Services Planning**

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- 6.1 Our Alliance Leadership Team will decide how our Alliance will carry out service planning for those services within the scope of our Alliance Activities.
- 6.2 Our Alliance Leadership Team may, at its discretion, consult, work with or seek recommendations from the Service Alliance Leadership Team or other appropriate party to assist with their decision making for our Alliance in relation to service planning for those services within the scope of our Alliance Activities.
- 6.3 Our Alliance Leadership Team may, as a result of service planning decisions made by our Alliance, recommend to the DHB the method and form of contracting for the delivery of the service on a Best Practice basis.
- 6.4 The DHB will implement our Alliance Leadership Team's decisions, subject only to its statutory requirements and its Reserved Powers, as set out in clause 2.6 and clause 9.
- 6.5 In implementing our Alliance Leadership Team's decision, the DHB may:
- 6.5.1 undertake a procurement process based on the specification for the activity, work or service recommended by our Alliance;
  - 6.5.2 enter into contracts with relevant providers, which may include Parties and/or others; and/or
  - 6.5.3 select from the Parties and other service providers those capable of providing the activity, work or service in accordance with the specification for the activity, work or service recommended by our Alliance.

## PART C: HOW WE WILL WORK TOGETHER

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Part C of this Agreement details the structures and rules that apply to how we will work together.

### 7. Leadership Structure

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#### 7.1 General Structure:

7.1.1 Our Alliance will be directed and lead by our Alliance Leadership Team.

7.1.2 The day-to-day affairs of our Alliance will be co-ordinated by our Alliance Support Team.

7.2 **Service Alliances:** Our Service Alliances will be led and directed by a Service Alliance Leadership Team, acting within a scope of authority delegated by our Alliance Leadership Team.

### 8. Alliance Leadership Team

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8.1 **Our Alliance Leadership Team:** We agree that we will have an Alliance Leadership Team whose primary function will be to lead us with respect to our Alliance Activities and our Alliance, in accordance with this Agreement.

8.2 Our Alliance Leadership Team will operate in accordance with this clause 8 and Schedule 3 – Operational Provisions.

8.3 **Duties of Our Alliance Leadership Team:** The duties of our Alliance Leadership Team include:

8.3.1 providing a vision, strategic leadership and direction for our Alliance;

8.3.2 providing clinical leadership within our District;

8.3.3 establishing principles and setting challenging objectives;

8.3.4 maintaining a coherent set of policies and procedures as necessary to undertake its duties;

8.3.5 agreeing with the DHB, in accordance with clause 6:

(a) our Key Results Areas and Alliance Objectives, including the systems and key performance indicators for assessing achievement of these;

(b) the work, activity and services to be provided to meet our Alliance Objectives within the Key Result Areas;

8.3.6 establishing Service Alliances and other Working Groups as necessary to oversee the development and delivery of services that fall within the scope of our Alliance Activities;

8.3.7 providing high level support and stakeholder interface;

8.3.8 monitoring and encouraging inter-Party relationships;

8.3.9 agreeing and adopting transparent governance and accountability structures for our Alliance; and

8.3.10 mentoring and championing our Alliance and its Parties as reasonably required.

8.4 **Consensus Decision-Making:** Unless all of us agree otherwise, every decision, determination and resolution of our Alliance Leadership Team must be made by consensus of those present, whether in person, by telephone or videoconference, or by proxy, at the relevant meeting, on a Best for System basis.

8.5 **Implementing Decisions:** We will implement all decisions and directions of our Alliance Leadership Team concerning our Alliance and this Agreement.

## 9. **DHB's Role**

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### 9.1 **The DHB's Position:**

9.1.1 We acknowledge all Parties may have obligations and accountabilities, as outlined in clause 2. However we also acknowledge that the DHB is required to comply with certain statutory and other obligations, and reserves certain matters as set out in this clause for determination by itself.

9.1.2 We agree that our Alliance Leadership Team may not make a final decision on any of the matters set out in clause 9.2 (**Reserved Powers**), which are reserved for determination by the DHB only. We agree that those Reserved Powers are limited to the express terms of this clause 9.2.

9.1.3 The DHB undertakes to exercise its Reserved Powers in good faith.

### 9.2 **Reserved Powers:**

9.2.1 The DHB has the Reserved Powers as follows:

- (a) confirming any decision or action of our Alliance where necessary to ensure compliance with those powers and responsibilities conferred on the DHB by:
  - (i) the New Zealand Public Health and Disability Act 2000, the Crown Entities Act 2004 and the Public Finance Act 1989 and any other Laws;
  - (ii) the Crown Funding Agreement; or
  - (iii) the Operational Policy Framework; or
  - (iv) any Crown Direction;
- (b) to direct a Government Variation to the terms of this Agreement, in accordance with clause 16.2;
- (c) to direct any suspension of our Alliance Activities, in accordance with clause 22.2, but only with the consent of the Director-General of Health;
- (d) the right to terminate this Agreement, in accordance with clause 23.1, but only with the consent of the Director-General of Health.

9.3 **Consultation:** Subject to any need for urgency, the DHB will first consult with our Alliance Leadership Team in respect of its proposed exercise of a Reserved Power.

9.4 **Exercise of Reserved Power:** A Reserved Power may be exercised by giving a written notice to our Alliance Leadership Team.

9.5 **Implementation:** If a decision is notified in respect of any Reserved Power we will implement that decision as if it were a decision of our Alliance Leadership Team.

- 9.6 **Communication by DHB:** If any decision, determination, approval or consent is made or given by the DHB under this Agreement to our Alliance, it will be communicated by the DHB's Chief Executive Officer.

## 10. **Service Alliance Leadership Team**

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- 10.1 **Service Alliance Leadership Teams:** We agree that our Alliance Leadership Team may appoint a leadership team (**Service Alliance Leadership Team**), whose primary function will be to direct and lead a Service Alliance and provide guidance and leadership to us with respect to those of our Alliance Activities that are within the scope of that Service Alliance (**Service Activities**), as determined by our Alliance Leadership Team.
- 10.2 **Duties of a Service Alliance Leadership Team:** The duties of a Service Alliance Leadership Team may include:
- 10.2.1 providing a vision, strategic leadership and direction for the Service Alliance;
  - 10.2.2 providing clinical leadership with regard to the Service Activities;
  - 10.2.3 recommending how services within the scope of the Service Activities should be delivered in the District; and
  - 10.2.4 monitoring and reporting on the performance of a service within the scope of the Service Activities;
- 10.3 **Consensus Decision-Making:** Unless all of us agree otherwise, every decision, determination and resolution of a Service Alliance Leadership Team must be made by consensus of those present (whether in person, by telephone or videoconference), or by proxy, at the relevant meeting on a Best for System basis.

## 11. **Conflicts of Interest**

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- 11.1 **Honesty and Integrity Paramount:** It is important that all of us and our representatives are open and honest with each other and advance the interests of our Alliance.
- 11.2 **Full Disclosure:** Each of us shall fully disclose any Conflict of Interest that we are aware of or may have in respect of any matter touching or concerning our Alliance or this Agreement.
- 11.3 **Declaration:** The members of our Alliance Leadership Teams will complete a Conflict of Interest declaration at the commencement of this Agreement and from time to time during the term of this Agreement.
- 11.4 **Managing Conflicts:**
- 11.4.1 We will proactively manage all Conflicts of Interest or potential Conflicts of Interest.
  - 11.4.2 Our Alliance Leadership Team must consider the disclosure of any Conflict of Interest reported to it and decide how the Conflict of Interest is to be handled by our Alliance.

## 12. **Treaty of Waitangi**

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The Treaty of Waitangi establishes the unique and special relationship between Iwi, Māori and the Crown. Parties with Treaty obligations will honour these when participating in Alliance Activities.

## 13. **Public Accountability**

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We agree that our Alliance Leadership Team will regularly publish our Alliance's performance against public accountability performance indicators, as set by our Alliance Leadership Team.

## 14. Access to Information on an Open Book basis and Confidentiality

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- 14.1 **Commitment:** One of our founding principles is that we will share all relevant information about our Alliance with each other and with others. To that end, we commit to full, honest and open disclosure to each other of all information and Documents that relate to us:
- 14.1.1 undertaking our Alliance Activities; and
  - 14.1.2 otherwise meeting our Alliance obligations and commitments.
- 14.2 **Open Book:** It is of paramount importance to all of us that this Agreement is administered in a transparent manner. Accordingly, we agree that our Alliance will be undertaken on a full, open and honest basis, including:
- 14.2.1 of any contracts held by Parties that are related to our Alliance Activities; and
  - 14.2.2 full and continuous access to health service activity data and the outcomes relating to our Alliance Activities.
- 14.3 For the avoidance of doubt, we acknowledge that we do not intend to share:
- 14.3.1 clinical information about an identifiable individual; or
  - 14.3.2 financial information about any Party or any other organisation providing services within the scope of our Alliance that does not relate to those services (such as information about other aspects of the organisation's business).
- 14.4 **Some Information Confidential:** We accept that some of the information that we share within our Alliance will be Confidential Information. We will not share or disclose Confidential Information to any person except with the agreement of our Alliance Leadership Team.
- 14.5 **Disclosure Consistent With the Official Information Act:** When deciding whether Confidential Information should be disclosed, our Alliance Leadership Team will have regard to whether the information should be disclosed if it were official information under the Official Information Act 1982.
- 14.6 **Rights and Obligations Not Affected:** For the avoidance of doubt, this clause 14 does not limit any Party's rights or obligations to use or disclose information as required by this Agreement or by Law.
- 14.7 **Consultation:**
- 14.7.1 If any of us is required by Law to issue any information (including any statement or report) that relates to our Alliance Activities:
    - (a) we will give the other Parties a reasonable opportunity to comment on that information before it is issued, and
    - (b) each Party who is, or whose affairs are, referred to, shall be entitled to approve that reference (provided always that this shall not prevent the Party from issuing the information in order to comply with the Law).
  - 14.7.2 We will consult our Alliance Leadership Team before issuing any information, publication, document or article or making any statement or presentation (other than to employees of the Parties) which may reflect adversely on our Alliance Activities, our Alliance or this Agreement.
- 14.8 **Retention of Documents:** Each Party will keep and store any Documents it holds for at least ten years (or longer if required by Law) after the termination of this Agreement.

14.9 **Continuing Effect:** The provisions of this clause 14 continue to bind us, notwithstanding the suspension, termination or expiration of this Agreement.

## 15. Intellectual Property

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15.1 **Purpose:** The purpose of this clause is to ensure that Intellectual Property Rights created from our Alliance Activities should be available for use throughout the health sector. However, Parties should retain ownership and control over their existing Intellectual Property Rights.

15.2 **Existing Rights:** We agree that each Party remains the owner of Intellectual Property Rights it owned or held at the date of this Alliance or developed independently by the Party after the date of this Alliance, but not from Alliance Activities. This clause applies to any improvement, adaptation, alteration or development of a Party's Intellectual Property Rights.

15.3 **Grant of Licence:** If a Party holds Intellectual Property Rights that may be of use in achieving our Alliance Objectives we will, in good faith, discuss the use of that Intellectual Property, including the granting of licences on appropriate terms to achieve our Alliance Objectives.

15.4 **New Rights:** Unless agreed otherwise, we agree that new Intellectual Property Rights created by us from performing our Alliance Activities vest immediately in the DHB as the Crown's agent. The DHB will grant to each Party a licence to use the new Intellectual Property Rights to perform our Alliance Activities. This licence by the DHB is non-exclusive and free of royalty. We accept that the DHB will also grant licences for new Intellectual Property Rights to Other Alliances, and may grant licences to other health providers and organisations.

## 16. Changing the Terms of our Agreement

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16.1 **Varying our Agreement:** Where we agree to vary any term of our Agreement:

16.1.1 Our Alliance Leadership Team shall follow the National Review Process in clause 2 of Schedule 3.

16.1.2 We will participate in and be bound by the National Review Process. We agree that we will be bound by and promptly execute any amendment to the terms of this Agreement that arises as a result of the National Review Process.

16.1.3 To avoid each Party having to execute such an amendment individually, for the purpose of executing the amendment and in consideration of the DHB entering into this Agreement with each of us, each Party irrevocably appoints the General Manager Planning & Funding as its attorney to execute any such variation.

16.1.4 Nothing in clauses 16.1.1 to 16.1.3 limits our ability to amend, by agreement of us all, the following clauses:

- (a) Amending the list of our Alliance Leadership Team's members (listed in clause 2 of the Key Information) to give effect to a decision of the Alliance Leadership Team in accordance with clause 1.1.2 of Schedule 3;
- (b) adding Alliance Principles to clause 3.3;
- (c) adding commitments to clause 4;
- (d) adding information to be published by our Alliance under clause 13;
- (e) amending our Alliance Leadership Team's contact details in clause 26.1; or
- (f) Schedule 1.

## 16.2 **Government Variation:**

16.2.1 We agree that our Agreement may need to be varied so as to give effect to:

- (a) a Crown Direction or Letter of Expectation from the Minister of Health; or
- (b) a change to the New Zealand Public Health and Disability Act 2000, the Crown Entities Act 2004 and the Public Finance Act 1989 or any other Law or Statutory Requirement,

**(Government Variation).**

16.2.2 If the DHB reasonably considers that a Government Variation will be required, the DHB will follow the process for effecting a Government Variation set out in clause 4 of Schedule 3.

16.2.3 A Government Variation is not effective unless it:

- (a) is made in accordance with this clause 16; and
- (b) is agreed to by the Director-General of Health.

16.3 **Further Action Required From Us:** We agree that we will do all such things and execute all such documents as are reasonably necessary to give effect to any agreement reached or required by clause 16.

16.4 **Variation:** A variation in the terms of this Agreement will be effective only if it is in writing and signed by all of us.

## 17. **Disputes**

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17.1 **Resolving Disputes:** If a potential or actual Dispute has arisen we will work cooperatively so as to identify and resolve it to our mutual satisfaction, in accordance with our Alliance Principles.

17.2 **Dispute Resolution Procedure:** If we are unable to resolve a Dispute by agreement, we will acknowledge the Dispute, by giving notice of the dispute (**Dispute Notice**) to our Alliance Support Team, and resolve it in accordance with the disputes resolution procedure set out in clause 3 of Schedule 3.

## 18. **Limited Recourse**

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18.1 **Our Agreement:** We agree that:

18.1.1 the rights, obligations and liabilities set out in this Agreement will exclusively govern our rights and liabilities in relation to our Alliance Activities and our Alliance; and

18.1.2 we will have no other rights or remedies arising out of or in connection with our Alliance Activities and our Alliance, whether at Law or in equity, other than as set out in this Agreement.

18.2 **Limited Recourse:** We acknowledge that our Alliance depends on us working cooperatively and in good faith. To that end, we agree that, with the exception of an act or omission by one or more of us that amounts to a Wilful Default, we will not:

18.2.1 pursue recovery of any cost, loss, expense or damage arising out of or in connection with any act or omission by a Party in performing its Alliance Activities and our Alliance, or

18.2.2 initiate any arbitration or litigation as a result of any Dispute.

- 18.3 **Remedies at Law:** Any action by one of us in performing our Alliance Activities that:
- 18.3.1 amounts to a Wilful Default, will give rise to all available enforceable obligations, entitlements, rights and remedies at Law, common law or in equity; or
  - 18.3.2 does not amount to a Wilful Default, will not give rise to any enforceable obligations, entitlements, rights and remedies at Law, common law or in equity.
- 18.4 **Release of Liability:** We agree to release and hold harmless each other, or any member of a Leadership Team, from any effects, claims, actions or proceedings at Law, common law or in equity that we might have had but for clause 18.3 arising out of or in connection with any action in performing our Alliance Activities that does not amount to a Wilful Default.

## PART D: TERM OF THIS ALLIANCE

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Part D of this Agreement details how long we expect to work together for and, if or when necessary, how we will wind up our Alliance.

### 19. Term

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This Agreement commences upon the Commencement Date specified in the Key Information and continues in effect until the earlier of:

19.1 30 June 2013; or

19.2 the Completion Date.

### 20. Joining Our Alliance

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20.1 We agree that:

20.1.1 organisations holding a Service Provision Agreement within the scope of our Alliance will be entitled to become Parties to our Alliance.

20.1.2 an organisation referred to in clause 20.1.1 may join our Alliance by delivering to the DHB (for itself and as agent for all other Parties) a deed of accession in the form set out in Schedule 4, executed in favour of the Parties to this Agreement, by which the organisation agrees to observe and be bound by this Agreement as if it had been named as a Party to, and had executed, this Agreement as a Party listed on page 4 of this Agreement.

### 21. Leaving our Alliance

---

21.1 If a Party no longer holds a Service Provision Agreement, the Party will leave our Alliance.

21.2 A Party (other than the DHB, to which this clause will not apply) that wishes to leave our Alliance (**Departing Party**) must give notice to our Alliance Leadership Team and the other Parties of its intention to do so.

21.3 The Departing Party will be able to leave our Alliance, provided that it has agreed with our Alliance Leadership Team arrangements regarding the funding or delivery of services that are already contractually committed.

21.4 Pending agreement under clause 21.3 and the execution and delivery of any and all documents required to give effect to that agreement, the Departing Party will remain a Party of our Alliance and a party to this Agreement.

21.5 For the purposes of giving effect to this clause 21 and in consideration of the DHB entering into this Agreement with each of us, each Party (other than the Departing Party) irrevocably appoints the General Manager Planning & Funding to be its attorney to execute any such notices, deeds and agreements necessary to give effect to the withdrawal of the Departing Party.

### 22. Suspending Alliance Activities

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22.1 **Suspension by Our Alliance Leadership Team:** Our Alliance Leadership Team may suspend some or all of our Alliance Activities at any time.

22.2 **Suspension by the DHB:** The DHB may suspend some or all of our Alliance Activities, as a Reserved Power, if it determines that it is necessary to do so to prevent a breach of a Statutory Requirement.

- 22.3 **Recommendation:** We will recommence the performance of Alliance Activities only when directed to do so by our Alliance Leadership Team or the DHB, under clause 22.1 or clause 22.2 as the case may be.

## 23. Terminating Our Alliance

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- 23.1 **Termination by the DHB:** We agree that the DHB may, in exceptional circumstances, terminate this Agreement as a Reserved Power, but only with the consent of the Director General of Health.
- 23.2 If this Agreement is terminated, we will comply with our obligations under the termination provisions set out in Schedule 3.

## 24. Wilful Default

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- 24.1 **Wilful Default by Party:** Where a Party commits a Wilful Default (**Default**) our Alliance Leadership Team must promptly meet to consider the Default and seek to resolve the Default with the Party.
- 24.2 **Referring a Default to the DHB:** If our Alliance Leadership Team is unable to resolve a Default with a Party, they may refer the Default to the DHB to consider in accordance with clause 24.3, and may make recommendations to the DHB they consider appropriate.
- 24.3 **Resolution by DHB:**
- 24.3.1 If our Alliance Leadership Team refers a Default to the DHB, the DHB will consider the matter and any recommendations made in accordance with clause 24.2.
- 24.3.2 If the DHB determines that the Party has or is reasonably likely to have committed a Default, it may give written notice to that Party of the Default (**Default Notice**).
- 24.3.3 The Default Notice may include the DHB's intention to exercise its rights under clause 24.4, either immediately or after any period the DHB may specify, during which the Party may rectify the Default (**Default Notice Period**).
- 24.4 **Remedies:** If having received a Default Notice:
- 24.4.1 the Party has failed to remedy the Default within the Default Notice Period; or
- 24.4.2 no Default Notice Period has been specified,
- the DHB may, without prejudice to any other rights it may have, exercise one or more of the following rights:
- 24.4.3 waive the Default;
- 24.4.4 advise us of the Party's failure or inability to remedy the Default;
- 24.4.5 require the Party to accept assistance from other Parties to remedy the Default;
- 24.4.6 suspend the Party from further participation in some or all of our Alliance Activities, our Alliance and this Agreement, until the Default is remedied;
- 24.4.7 exclude the Party from further participation in our Alliance Activities, our Alliance and this Agreement, other than for the purpose of implementing and executing our Disengagement Plan where clause 5 of Schedule 3 applies; or
- 24.4.8 terminate the Party as a party to this Agreement.
- 24.5 We agree that this clause 24 is without prejudice to the DHB's right to contract separately with each and any of us (including the Party who committed the Wilful Default).

- 24.6 **Notice of Exercise:** The DHB will give notice of the exercise of any of those rights under clause 24.4 to each Party contemporaneously with its exercise of those rights.
- 24.7 **Wilful Default by the DHB:** If the DHB is or is reasonably likely to commit a Wilful Default (**Default**) then our Alliance Leadership Team must promptly meet to consider the Default and seek to resolve the Default with the DHB.
- 24.8 **Referring a Default to the Parties:** If our Alliance Leadership Team is unable to resolve a Default with the DHB then they may refer the matter to the Parties (other than the DHB) to consider in accordance with clause 24.9.
- 24.9 **Resolution by Parties:**
- 24.9.1 If the Parties determine that the DHB has or is reasonably likely to have committed a Default, it may give written notice to the DHB of the Default (**Default Notice**);
- 24.9.2 The Default Notice may include the Parties' intention to exercise their rights under clause 24.10, either immediately or after any period they may specify, during which the DHB may rectify the Default (**Default Notice Period**).
- 24.10 **Remedies:** The Parties may, without prejudice to any other rights they may have, by notice in writing to the DHB elect to terminate our Alliance and cease performing their Alliance Activities, if:
- 24.10.1 the DHB has failed to remedy the Default within the Default Notice Period; or
- 24.10.2 no Default Notice Period has been specified.

## PART E: OTHER TERMS

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Part E of this Agreement contains important but relatively standard clauses that you would expect to find in most agreements of this nature.

### 25. Our Relationship

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- 25.1 **Authority:** We each represent and warrant to each other that we have full power to enter into and perform our obligations under this Agreement and this Agreement constitutes a legally valid and binding obligation upon us in accordance with its terms.
- 25.2 **No Reliance:** Each of us acknowledges and agrees that:
- 25.2.1 none of us have made any representations or other inducements, other than those incorporated into this Agreement, to induce us to enter into this Agreement;
  - 25.2.2 we did not enter into this Agreement in reliance upon any representation or other inducement, other than those incorporated into this Agreement; and
  - 25.2.3 we will not bring any claim against another Party for any misrepresentation or misleading conduct, unless the misrepresentation or misleading conduct amounts to an act of Wilful Default.
- 25.3 **Limits of Our Relationship:**
- 25.3.1 The formation of our Alliance pursuant to this Agreement does not create any partnership or joint venture, in each case whether expressed or implied, between us.
  - 25.3.2 To the extent that the formation of our Alliance pursuant to this Agreement creates a fiduciary relationship between us we agree that our relationship and the duties that we owe to each other will, to the extent permitted by Law, be limited to the express terms of this Agreement and no fiduciary duties will otherwise be implied from the terms of this Agreement.
  - 25.3.3 Except as expressly set out in this Agreement or otherwise agreed to by our Alliance Leadership Team, none of us have the right to enter into any commitment on behalf of our Alliance or to otherwise act as our collective agent.
  - 25.3.4 We recognise that each of us is an independent entity and, for the purposes of this Agreement, the employees or agents of one of us will not be considered to be employees or agents of another of us, unless otherwise deemed to be so by Law. We will each pay all costs associated with our own respective employees, contractors, consultants and agents.
- 25.4 **Obligations May Not be Assigned:** We agree that no Party may assign or novate any of their rights or obligations under this Agreement, other than where permitted by Law relating to the restructuring of a Party.
- 25.5 **Enforceability:** We agree that this Agreement creates enforceable rights between us despite the fact that certain matters remain to be determined by our Alliance Leadership Team in the future.

### 26. Notices

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- 26.1 **Address of Notices:**
- 26.1.1 Any notice or other communication to be given under our Agreement to our Alliance Leadership Team may be delivered by hand or sent by post or facsimile to the following address:

26.2 **Deemed Service:** All notices given in accordance with this clause 26 will be deemed to have been served:

26.2.1 if delivered by hand, at the time of delivery;

26.2.2 if posted, at the expiration of three Business Days after the envelope containing the same was delivered into the custody of the postal authorities; or

26.2.3 if delivered by facsimile or email, at the time of transmission.

26.3 If delivery by hand, facsimile or email occurs after 5.00pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00am on the next Business Day.

## 27. **Survival following Completion Date**

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We agree that clauses 14.5, 14.8, 14.9, 15, 18, 27 and 28; and clauses 5.3 and 5.4 of Schedule 3, shall survive completion of this Agreement.

## 28. **Order of Precedence**

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28.1 **Order of Precedence:** This Agreement consists of the following:

28.1.1 these terms and conditions; and

28.1.2 the Schedules in the order in which they appear,

and any ambiguity or discrepancy between these documents will be resolved and interpreted in descending order as listed above.

## 29. **Governing Law and Jurisdiction**

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We agree that this Agreement is to be governed by and construed in accordance with the Laws of New Zealand.

**Executed as an Agreement**

**Executed by**

in the presence of

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Executed by**

in the presence of

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Schedule 1 - Scope of our Alliance, Alliance Activities & Alliance Objectives**

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- 1 The scope of our Alliance is
- 2 We may review the scope of our Alliance at any time, by agreement of our Alliance Leadership Team, subject to any approvals required to meet governance or accountability requirements of Parties to our Agreement.
- 3 Our Alliance Activities, and funding arrangements are:

Activity	Funding	Organisation providing the Funding

- 4 We will review the Scope of our Alliance and our Alliance Activities annually in conjunction with the DHB's preparation of its District Annual Plan.
- 5 Our Alliance Objectives are:

Alliance Objective	Key Results Areas

## Schedule 2 - Definitions and Interpretation

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1 **Definitions:** In this Agreement, unless the context requires otherwise, the following defined terms will apply:

**Agreement** means this document, which we have entered into, and includes all schedules to it and any other document or annexure that is referenced in it (and which will be interpreted in the order of precedence set out at clause 28);

**Alliance** means this alliance, which we have agreed to participate in so as to deliver on the Government's health policy and objectives, pursuant to this Agreement;

**Alliance Activities** means all activities that we:

- (a) have agreed to deliver as part of our contribution to our Alliance, being detailed in Schedule 1;
- (b) must otherwise deliver in order to perform our obligations in good faith under this Agreement; and
- (c) may otherwise agree to deliver as part of our contribution to our Alliance,

during the term of this Agreement. For the avoidance of doubt, Alliance Activities excludes the provision of any health services.

**Alliance Leadership Team** means our leadership team established under clause 8;

**Alliance Objectives** means our objectives for each of our Key Result Areas, being set out in clause 5 of Schedule 1;

**Alliance Principles** means the principles set out in clause 3.3 on which we have agreed our Alliance will be conducted, being set out in our Agreement and as may be amended, varied or replaced by agreement between us from time to time;

**Alliance Purpose** means the purpose of our Alliance, being set out in clause 1.3;

**Alliance Support Team** means our management team established under clause 7.1;

**Best for System** means a decision that:

- (a) is consistent with, or an improvement upon our Alliance Principles;
- (b) is consistent with, or an improvement upon the usual methods and practices for the delivery of healthcare services;
- (c) is consistent with, or an improvement upon Best Practice;
- (d) is for the immediate and long term benefit of the patient or achieves the best outcome for our populations, as the case may be; and
- (e) results in a net benefit having considered the broader impacts of the decision, including the potential clinical and financial impact on other health services;

**Best Practice** means exercising the degree of skill, diligence, prudence, foresight and management that would reasonably be expected from a skilled and experienced person engaged in the same or similar activity under the same or similar circumstances;

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business in the District;

**Chief Executive Officer** means the DHB's Chief Executive Officer (or where there is more than one District Health Board comprising the DHB, the Chief Executive Officer agreed and nominated by them), or any person nominated in writing by him or her;

**Completion Date** means, where one of us terminates this Agreement in accordance with clause 5 of Schedule 3, the date that is specified in the Termination Notice; provided that (unless the DHB advises otherwise) all of our Alliance Activities required to be completed under our Disengagement Plan and the Termination Notice (if applicable) have been completed;

**Confidential Information** means any:

- (a) clinical information about an identifiable individual; or
- (b) financial information about any Party or any other organisation providing services within the scope of our Alliance.

**Conflict of Interest** in respect of any person means any actual or perceived conflict of interest that a person may have in respect of any matter or issue arising in respect of our Alliance;

**Control** has the meaning given to it at section 7 of the Companies Act 1993;

**Crown** means the Sovereign in right of New Zealand;

**Crown Funding Agreement** means the current Crown Funding Agreement between the Crown and the DHB, made under section 10 of the New Zealand Public Health and Disability Act 2000;

**Crown Direction** means any direction given by the Crown (including, but not limited to a direction given by the Minister of Health under section 32 of the New Zealand Public Health and Disability Act 2000);

**Default Notice** has the meaning given to that term in clause 24.3.2 or clause 24.9.1, as the case may be;

**Default Notice Period** has the meaning given to that term in clause 24.3.3 or clause 24.9.2, as the case may be;

**DHB** means:

- (a) District Health Board; and
- (b) District Health Board,

subject to clause 4.6, all of them collectively and together;

**Disengagement Period** means the period between termination of this Agreement and the Completion Date specified in clause 5.1.5 of Schedule 3;

**Disengagement Plan** means our plan for us to cease our Alliance Activities and disestablish our Alliance in an orderly way following the termination of this Agreement, as set out in clause 6 of Schedule 3;

**Dispute** means, in respect of any matter or issue, any real, perceived or anticipated argument, conflict, disagreement, dispute, or unresolved difference of opinion in respect of that matter or issue;

**Dispute Notice** has the meaning given to that term in clause 17.2;

**District** means either:

- (a) if the DHB is the only District Health Board Party to this Agreement, the region in which the DHB is authorised to act; or
- (b) if there are two or more District Health Boards who are Parties to this Agreement, the regions in which each of those District Health Boards are authorised to act;

**District Annual Plan** means the current district annual plan prepared by the DHB as required under section 39 of the New Zealand Public Health and Disability Act 2000;

**Documents** means all documents directly or indirectly relating to our Alliance Activities, our Alliance and this Agreement, including correspondence, plans, specifications, drawings, calculations, estimates, computations, data, databases, designs, equipment, commentary, reports, recommendations, manuals, records, accounts and receipts, in each case whether recorded in writing or in an electronically retrievable format;

**General Manager Planning & Funding** means the DHB's General Manager Planning & Funding (or where there is more than one District Health Board Party to this Agreement, the General Manager Planning & Funding agreed and nominated by them) or any person nominated in writing by him or her;

**Government Variation** has the meaning given to that term at clause 16.2;

**Insolvency Event**, means where a Party:

- (a) (other than the DHB) is not a natural person, and resolves by resolution of its members that it be wound up;
- (b) informs us or its creditors in writing that it is insolvent;
- (c) is presumed, as a matter of Law, to be insolvent;
- (d) has a mortgagee or holder of a security interest in any of its property take possession of that property;
- (e) has execution levied against it by creditors (which is not stayed within 15 Business Days);
- (f) makes application, is subject to an application (which is not stayed within 15 Business Days), or is subject to, dissolution, liquidation, provisional liquidation, administration, voluntary administration, bankruptcy, statutory management or any analogous provision;
- (g) is subject to the appointment of an administrator, voluntary administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, statutory manager or any other person (however described), whether in respect of the Party or in respect of any of its property; or
- (h) proposes to enter into, meets with any person with a view to entering into or enters into any composition, compromise, arrangement, scheme of arrangement, reconstruction, administration or assignment for the benefit of creditors or any procedure which is equivalent;

**Intellectual Property Rights** means any and all beneficial and legal ownership in and to intellectual and industrial protection rights throughout the world, both present and future, conferred by Law including (but without limitation) rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents and patentable inventions), trademarks, service marks, designs, formulae, know-how and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such right or renewals and extensions;

**Key Information** means the key information summary on page 4 of this Agreement, as amended from time to time by us;

**Key Results Areas** means those areas identified as such, as set out in clause 5 of Schedule 1;

**Leadership Team** means our Alliance Leadership Team or any Service Alliance Leadership Team;

**Law** means any legally binding law, legislation, statute, act, rule, order or regulation which is enacted, issued or promulgated by the Parliament of New Zealand, the Governor General of New Zealand or a Government agency;

**Minister** means any Minister of the Crown of New Zealand, including the Minister of Health;

**National Review Process** means the process established for the review and amendment of the terms of this Agreement pursuant to clause 2 of Schedule 3;

**Open Book** means our commitment to full, honest and open disclosure in accordance with clause 14;

**Operational Policy Framework** means the Operational Policy Framework published by the Ministry of Health from time to time;

**Other Alliance** means an alliance, other than our Alliance, established under an alliance agreement and recognised as an alliance by the Director General of Health;

**Parties** means each of the parties listed on page 4 of this Agreement and any party who has joined our Alliance by executing a deed of accession in accordance with clause 20.1.2, and **Party** means any one of us;

**Reserved Powers** means those powers to be exercised exclusively by the DHB and set out in clause 9.2 and **Reserved Power** means any one of them;

**Service Activities** means those activities defined in clause 10.1;

**Service Alliance** means a working group in relation to a particular service established pursuant to clause 5.1;

**Service Alliance Leadership Team** means a leadership team established pursuant to clause 10.1;

**Service Provision Agreement** means a contract between the DHB and a provider for the provision of services within the scope of our Alliance, that acknowledges that the DHB and the provider are also, or may become, Parties to this Agreement and is recognised by the DHB as a service provision agreement;

**Termination Date** means the date of a Termination Notice given by one of us to terminate this Agreement, in accordance with clause 5.1 of Schedule 3;

**Termination Notice** has the meaning given to that term in clause 5.1 of Schedule 3;

**Transitional Plan** means the plan for the transition of our current arrangements that fall within the scope of our Alliance Activities and our Alliance so as to bring them within the terms of this Agreement;

**We or us or our** means all the Parties;

**Wilful Default** means any one of the following:

- (a) a Party's actions that the DHB has reasonable grounds to believe place the health and safety of any person or population at risk;

- (b) an intentional, reckless or unconscionable act or omission by a Party where they knew or ought reasonably to have known that the action:
  - (i) was a fundamental breach of our Alliance Principles; and
  - (ii) would likely have harmful consequences to:
    - (A) our Alliance; and/or
    - (B) the health and safety of any person or population;
- (c) an intentional, reckless or unconscionable:
  - (i) failure by one of us to act in good faith;
  - (ii) act or omission by one of us that is a breach of Law;
  - (iii) act or omission by one of us that prevents another of us from performing its obligations under this Agreement or the Law;
- (d) an intentional repudiation of this Agreement by one of us;
- (e) where the Party is the subject of an Insolvency Event that our Alliance Leadership Team considers may affect our Alliance Activities;
- (f) a fraudulent action committed by one of us against another or all of us or our Alliance,

and for the avoidance of doubt, does not include any innocent or negligent act, omission, mistake or error of judgement by one of us acting in good faith.

**Working Groups** means working groups established under clause 5.2;

- 2 **Construction of certain references:** In this Agreement, unless the context otherwise requires, any reference to:

an **action** includes an omission;

a **clause, schedule** or **annexure** is a reference to a clause, schedule or annexure to or of this Agreement;

a **day** means a calendar day;

an **event** includes any act, omission, transaction or other occurrence;

a **person** includes a Party, natural person, the estate of an individual, a company, a corporation, a body corporate, an authority, an association, a joint venture (whether incorporated or unincorporated), a partnership, a trust or a government agency;

**rights** includes any rights, authorities, discretions, remedies or powers; and

**year** means a calendar year.

- 3 **Parties:** A reference to one of us includes each of the parties to this Agreement and each of that Party's administrators, successors and permitted assigns, including persons taking by way of novation.

- 4 **Consortium:**

4.1.1 The Parties, as a consortium, have agreed to act through the Alliance Leadership Team.

- 4.1.2 No Party may bind another unless the Alliance Leadership Team has agreed to be bound by a decision of that Party.
- 4.1.3 For the purposes of this Agreement each Party agrees to be bound by the terms of this Agreement.
- 5 **Statutes:** A reference to a statute or statutory provision includes a statutory amendment, modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it from time to time.
- 6 **General Interpretation:** In this Agreement, unless the context indicates a contrary intention, the following interpretive conventions will apply:
- 6.1.1 a reference to a document (including this Agreement) is to that document as amended, varied, modified, novated, ratified or replaced from time to time;
- 6.1.2 a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes the other gender;
- 6.1.3 if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 6.1.4 the use of the word **includes** in any form is not a word of limitation.
- 7 **Performance of this Agreement:** If a day on which any act, matter or thing is to be done under this Agreement is not a Business Day, it may be done on the next Business Day.
- 8 **Headings:** Headings and the index are to be ignored in construing this Agreement

## Schedule 3 - Operational Provisions

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### 1. Alliance Leadership Team

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#### 1.1 Membership of Our Alliance Leadership Team:

1.1.1 At the date of this Agreement the appointed members of our Alliance Leadership Team are set out in the Key Information on page 4 of our Agreement.

1.1.2 Our Alliance Leadership Team may, by agreement, add or remove a member from our Alliance Leadership Team.

1.1.3 We confirm that each Alliance Leadership Team member may not appoint any alternate to attend our Alliance Leadership Team, but may nominate another member to act by proxy in relation to any decision to be made by the Alliance Leadership Team.

1.2 **Involvement:** We agree that the members' continuous involvement in and attendance at our Alliance Leadership Team meetings is critical to our Alliance's success.

1.3 **Decision Making:** When making a decision, determination or resolution, our Alliance Leadership Team (together and individually) must:

1.3.1 have regard to its duties, specified at clause 8.3 of this Agreement;

1.3.2 have regard to this Agreement;

1.3.3 consider the matter before them in good faith and use their best endeavours to facilitate a consensus decision;

1.3.4 not prevent a consensus decision being made for trivial or frivolous reasons;

1.3.5 use all relevant information in a timely fashion; and

1.3.6 actively seek and facilitate a consensus decision, determination or resolution.

1.4 **Reporting:** Our Alliance Leadership Team will provide monthly and annual reports to the Parties about its performance.

### 2 National Review Process

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2.1 **Request for Change:** Our Alliance, an Other Alliance or the Ministry of Health may request a change to this Agreement at any time, by giving notice to the Ministry of Health (**Review Notice**).

2.2 **Review Notice:** A Review Notice must include:

2.2.1 a draft of the proposed change; and

2.2.2 the reasons the change is being requested.

2.3 **Distribution of Notices:** The Ministry of Health will promptly forward a copy of the Review Notice to our Alliance Leadership Team and the alliance leadership team of each Other Alliance.

2.4 **Meetings:** The National Review Group will promptly meet to consider the Review Notice and decide whether to agree to the proposed change.

2.5 **Representation:** The National Review Group will consist of:

- 2.5.1 up to seven alliance representatives, who will be collectively appointed by our Alliance and all Other Alliances;
  - 2.5.2 one representative from the Ministry of Health;
  - 2.5.3 up to three representatives collectively appointed by all the District Health Boards who are either a member of our Alliance or of any Other Alliance to represent those District Health Boards in their funding capacity; and
  - 2.5.4 an independent chair, appointed by the Ministry of Health.
- 2.6 **Decisions to be by Consensus:** A decision to amend a term must be a consensus decision of all Representatives and the Chair.
- 2.7 **Quorum:** A quorum for a National Review Group meeting requires at least:
- 2.7.1 50 per cent of the alliance representatives;
  - 2.7.2 the Ministry of Health representative;
  - 2.7.3 the District Health Board representative; and
  - 2.7.4 the Chair,
- to be present in person, by telephone or videoconference.
- 2.8 **Determination of Procedure:** Other than as set out in this clause 2, the National Review Group will determine its own procedure at the beginning of each meeting.
- 2.9 **Observers:**
- 2.9.1 Any Party to our Alliance or any Other Alliance may appoint one or more observers to attend a National Review Group meeting as a non-voting guest.
  - 2.9.2 Observers may participate in the National Review Group's discussions only with the agreement of all representatives and the chair.
- 2.10 **Costs:**
- 2.10.1 The costs incurred by our Alliance representative to attend National Review Group meetings will be met by the DHB.
  - 2.10.2 The costs incurred by any observer to attend a National Review Group meeting will be met the Party who appointed the observer.
  - 2.10.3 All other costs of the National Review Group will be met by the Ministry of Health.

### 3 Disputes Procedure

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- 3.1 **Role of our Alliance Support Team:** Immediately following the giving of a Dispute Notice, we will, if the Dispute concerns a matter that:
- 3.1.1 falls within the duties of our Alliance Support Team; or
  - 3.1.2 is otherwise an operations matter relating to our Alliance Activities,
- and clause 3.2 of this Schedule does not apply, refer the Dispute to our Alliance Support Team for discussion and resolution. Our Alliance Support Team will meet and attempt to resolve the Dispute within seven days of the Dispute Notice being given.

### 3.2 **Role of Our Alliance Leadership Team:**

- 3.2.1 Our Alliance Leadership Team will seek to resolve any Dispute referred to it on a Best for System basis so as to reach a consensus resolution, if
- (a) the Dispute cannot be addressed by our Alliance Support Team in accordance with clause 3.1, then immediately following the giving of a Dispute Notice, or
  - (b) our Alliance Support Team cannot resolve any Dispute within seven days of the Dispute Notice having been given; or
  - (c) our Alliance Leadership Team determines that it should resolve the Dispute.
- 3.2.2 If our Alliance Leadership Team reaches a decision that resolves, or otherwise concludes a Dispute, it will advise us of its decision by written notice. Any decision of our Alliance Leadership Team will be final and binding on us.
- 3.2.3 If our Alliance Leadership Team cannot resolve a Dispute, it may use whatever process that it sees fit to attempt to resolve the Dispute, including that it may select an independent facilitator to assist with resolving the Dispute.
- 3.2.4 The independent facilitator will:
- (a) be provided with any information he or she requests about the Dispute;
  - (b) assist our Alliance Leadership Team to work towards a consensus decision in respect of the Dispute;
  - (c) regulate his or her own procedure and, subject to the terms of this Agreement, the procedure of our Alliance Leadership Team at such discussions;
  - (d) determine the number of facilitated discussions, provided that there will be not less than three and not more than six facilitated discussions, which must take place within 15 Business Days of the independent facilitator being appointed; and
  - (e) have its costs and disbursements met by the DHB.
- 3.2.5 If the independent facilitator cannot resolve the Dispute, the Dispute must be considered afresh in accordance with this clause and only after such further consideration again fails to resolve the Dispute, our Alliance Leadership Team may decide to:
- (a) terminate our Alliance in accordance with clause 5 of this Schedule; or
  - (b) agree that the Dispute need not be resolved.

## 4 **Government Variations**

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- 4.1 If the DHB reasonably considers that a Government Variation will be required, in accordance with clause 16.2 of our Agreement, the DHB will give notice of the Government Variation to the other Parties. This notice must:
- 4.1.1 be given as soon as is possible in the circumstances; and
  - 4.1.2 include:
    - (a) an overview of the Government Variation and its effect on this Agreement; and
    - (b) details of why the DHB considers the Government Variation to be reasonably necessary; and

- (c) a draft document varying this Agreement incorporating the Government Variation (**Variation Document**); and
  - (d) details of the consultation process to be undertaken by the DHB in accordance with:
    - (i) clause 4.5;
    - (ii) clause 9.3; or
    - (iii) clause 4.6.1 of this Schedule; and
  - (e) the date on or before which the Variation Document must be executed by all of us (**Variation Date**) and delivered to the DHB.
- 4.2 The DHB agrees that the Variation Document will give effect to the Government Variation in a manner that endeavours to minimise any adverse impact to the other Parties.
- 4.3 The DHB will, unless it is precluded from doing so by any Law, consult with our Alliance Leadership Team on the Government Variation and the terms of the Variation Document.
- 4.4 If a Government Variation is required, which a reasonable person would consider has the potential to result in significantly increased costs or reduced revenue for a Party (other than the DHB), then the DHB will consult with our Alliance Leadership Team and that Party on the options available to prevent or minimise the adverse impact of the Government Variation.
- 4.5 While the DHB will use its best endeavours to minimise any adverse impact of the Government Variation, we acknowledge that the DHB will not be liable for any loss, damages or costs suffered or incurred by Parties unless it expressly agrees otherwise.
- 4.6 The DHB will, unless it is precluded from doing so by any Law:
- 4.6.1 give our Alliance Leadership Team a reasonable period of time to comment on the Variation Document, and
  - 4.6.2 consider our Alliance Leadership Team's comments; and
  - 4.6.3 seek to agree any amendments to the Variation Document with our Alliance Leadership Team.
- 4.7 If our Alliance Leadership Team agrees on the Variation Document, we agree that we will all promptly execute and deliver the same to the DHB on or before the Variation Date.
- 4.8 If our Alliance Leadership Team is unable to agree on the Variation Document and/or one or more of us fail to execute and deliver the Variation Document to the DHB on or before the Variation Date then the Variation Document will be in the form:
- 4.8.1 agreed to by our Alliance Leadership Team and the DHB; or
  - 4.8.2 if no agreement was reached by our Alliance Leadership Team and DHB, determined by the DHB,
- and notified by the DHB to the Parties on the Business Day immediately following the Variation Date.
- 4.9 For the purpose of executing the Variation Document and in consideration of the DHB entering into this Agreement with each of us, each Party irrevocably appoints the General Manager Planning and Funding to be its attorney to execute such Variation Document.

## 5 Termination

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### 5.1 **Termination Notice:** We agree that:

- 5.1.1 the DHB, in accordance with clause 23.1 of this Agreement;
- 5.1.2 a Party (other than the DHB), in accordance with clause 24.10; or
- 5.1.3 our Alliance Leadership Team, in accordance with clause 3.2.5 of Schedule 3,

may terminate this Agreement by delivering a notice of termination to the Parties (**Termination Notice**). The Termination Notice must:

- 5.1.4 specify that the DHB, the Party other than the DHB, or our Alliance Leadership Team (as the case may be) is terminating this Agreement in accordance with this clause 5; and
- 5.1.5 specify a Completion Date (and thus the length of the Disengagement Period). The Completion Date must be at least six months after the date of the Termination Notice.

### 5.2 **Action:** When we receive a Termination Notice, we will:

- 5.2.1 implement and execute our Disengagement Plan;
- 5.2.2 promptly, as and when required by the DHB, deliver to the DHB all Documents and any other information prepared by, or on behalf of, the DHB under this Agreement;
- 5.2.3 execute any and all documents, including appropriate confidentiality requirements, licences and releases, requested by the DHB or our Alliance Leadership Team, to deal with any matter arising from or in connection with the termination and completion of this Agreement;
- 5.2.4 protect and return property in our possession, power or control in which the DHB has, or may acquire, an interest;
- 5.2.5 terminate, assign, transfer or novate to the DHB, without payment, any other agreements or any interests in any arrangements entered into by a Party for the performance of any part of our Alliance Activities and our Alliance; and
- 5.2.6 subject to clause 5.3 of this Schedule, cease performing our Alliance Activities, so that our Alliance Activities and this Agreement ends on the Completion Date.

### 5.3 The DHB will, in its absolute discretion, determine how any remaining Alliance Activities or any activities that were Alliance Activities before the termination will be performed, and each Party:

- 5.3.1 waives any objection to any such determination; and
- 5.3.2 releases the DHB from any claim, action, demand or damages, at Law or in equity, arising out of or in connection with any such determination which it would otherwise have had.

### 5.4 **Use of Documents:** Each Party acknowledges and agrees that, in the event of termination, the DHB may use any Documents or information prepared by or on behalf of a Party for the purposes of, or arising out of or in connection with, our Alliance Activities, our Alliance and this Agreement for any purpose, but only on the basis that the DHB accepts the risk of using those Documents or information.

## 6 Disengagement Plan

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- 6.1 **Preparing Our Disengagement Plan:** Our Alliance Leadership Team will develop our Disengagement Plan within six months of the date of this Agreement.
- 6.2 **Our Disengagement Plan:** Our Disengagement Plan is our plan for how we will cease our Alliance Activities and disestablish our Alliance in an orderly way following the termination of this Agreement. It will include such matters as are necessary to minimise the disruption to the provision of health services in our District from the termination of our Alliance.
- 6.3 **Operation of our Disengagement Plan:** During our Disengagement Period we will:
- 6.3.1 continue to perform the work under this Agreement and will be entitled to perform our Alliance Activities in accordance with this Agreement and our Disengagement Plan; and
  - 6.3.2 assist our Alliance Support Team to implement our Disengagement Plan and its decisions and directions concerning the completion of our Alliance Activities.

## Schedule 4 - Accession Deed

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### PARTIES

#### (New Party)

The persons named in the First Schedule to this Deed (**Continuing Parties**)

### BACKGROUND

- A The Continuing Parties are a consortium of the DHB and organisations that hold Service Provision Agreements to provide services falling within the scope of their Alliance Activities.
- B The Continuing Parties are parties to an Alliance Agreement dated 2010 (**Alliance Agreement**).
- C The New Party, having the same goals and aspirations as the Continuing Parties, wishes to join them as a Party to the Alliance Agreement.
- D In accordance with the Alliance Agreement, this Deed is required to be executed in connection with the New Party's accession to the Alliance Agreement.

### NOW THIS DEED RECORDS

1. The New Party covenants with the Continuing Parties and the Continuing Parties covenant with the New Party, to observe and perform and be bound by all the terms and conditions of the Alliance Agreement (except to the extent that any such terms and conditions have been fully performed prior to the date of this Deed or are incapable of applying to the New Party) to the intent and effect that the New Party shall with effect from the date of this Deed be deemed to be a party to the Alliance Agreement as Continuing Party with the benefit of, but subject to, all the terms and conditions of the Alliance Agreement.
2. The notice details of the New Party are set out in the Second Schedule to this Deed.
3. This Deed shall be read with the Alliance Agreement, which shall accordingly be construed as one instrument.
4. This Deed shall be governed by and construed in accordance with New Zealand law.
5. This Deed may be executed in any number of counterparts (including copies, PDF and facsimile copies) each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## Signatures

**Executed by**

in the presence of

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Director/Authorised Signatory

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Director/Authorised Signatory

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Witness signature

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Full name

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Occupation

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Address

**Executed by**

in the presence of

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Director/Authorised Signatory/Attorney

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Director/Authorised Signatory

---

Witness signature

---

Full name

---

Occupation

---

Address

**First Schedule**

**Name and Address of Continuing Parties**

**Second Schedule**

**Notice Details of New Party**