

**centralAlliance**

**Foundation Agreement**

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**A Summary**

- A1** MidCentral District Health Board (MDHB) and Whanganui District Health Board (WDHB) are responsible for providing and funding health and disability services to improve the health of their respective resident populations.
- A2** The parties envisage that developing a consistent, combined districts approach to health and disability service planning will result in health gains for their resident populations.
- A3** Whilst remaining autonomous DHBs, MDHB and WDHB wish to collaborate further with each other, and jointly with other DHBs, under this Agreement to develop an integrated approach to the common strategic and operational responsibilities of both parties.
- A4** This Agreement is subject to ratification by the Board of each party and any approval required by law.
- A5** On satisfaction of the conditions in clause A4, this Agreement will be deemed to have come into force (Commencement Date) and will continue until terminated in accordance with the Part L (Withdrawal).

For MidCentral District Health Board:

For Whanganui District Health Board:

Signature: *Murray*  
Chief Executive Officer  
Name: MURRAY GEORGIA  
Date: 20.7.09

Signature: *Julie A Patten*  
Chief Executive Officer  
Name: Julie Patten  
Date: 23/7/09

For  
MidCentral District Health Board  
Chairman:

For  
Whanganui District Health Board  
Chairman:

Signature: *Ian Wilson*  
Board Chairman  
Name: Ian Wilson  
Date: 20.7.09

Signature: *Kate Joblin*  
Board Chairman  
Name: Kate Joblin  
Date: 27.07.09

## **B Interpretation**

### **B1 Definitions applying to specific Parts**

B1.1. Any definitions of words or expressions that are defined only for the purposes of a particular Part of this Agreement are set out in that Part and prevail over any corresponding definition in the following clause.

### **B2 Definitions applying to all Parts**

B2.1. In all Parts of this Agreement, unless the context requires otherwise:

**Act** means the New Zealand Public Health and Disability Act 2000.

**Agreement** means this Agreement comprising Parts A to O.

**Board** means the Board of MDHB or the Board of WDHB, as the case may be.

**Business Day** means a day on which both MDHB's bank and WDHB's bank are open for business.

**CDEMT** means the Combined Districts Executive Management Team referred to in Part F (Combined Districts Executive Management Team).

**CDEG** means the Combined Districts Escalation Group referred to in Part E (Combined Districts Escalation Group).

**Commencement Date** Means the date on which Ministerial Consent is obtained.

**Confidential Information** means any information disclosed by either party to the other, either before or during the course of this Agreement, or arising out of the operation of this Agreement, that is agreed by parties as being confidential or that may reasonably be considered to be confidential taking into account all the circumstances but excludes the terms of this Agreement, unless agreed by both parties as being Confidential Information.

**Consult** **in relation to each other**, means to comply with the following process:

- a. each party must state its proposals and views to the other and carefully consider each response to them;
- b. each party must act in good faith and not predetermine any matter;
- c. each party must give the other adequate opportunity to

Consult any other interested party;

- d. the Consultation must take place within a reasonable time frame;
- e. the obligation of either party to Consult the other will be discharged if the other refuses or fails to participate in the Consultation in accordance with these requirements;

and **Consultation** has a corresponding meaning.

**Consult**

**in relation to third parties**, means to comply with the following process either with individual third parties on a one-to-one basis, or as a single process with such third parties collectively and/or with such representative organisations as may be appropriate, and includes a process whereby the Ministry conducts a Consultation on the parties' behalf:

- a. the parties must first agree with each other, via the CDEMT or otherwise, on the proposals requiring third party consultation;
- b. the parties may present any such proposal either as a joint proposal of the parties together or as common proposals of each party separately;
- c. the parties must state their proposals and views to relevant third parties and carefully consider each response to them;
- d. the parties must act in good faith and not predetermine any matter;
- e. the parties must give the third parties adequate opportunity themselves to consult any persons those third parties consider to be interested (such as members of a representative organisation);
- f. the parties shall allow a reasonable period of time for the Consultation to be undertaken and completed;
- g. in complying with above requirements, the parties shall take into account any refusal or failure to participate, or any unreasonable delay or obstruction, by any third party in the Consultation or attempted Consultation process,

and **Consultation** has a corresponding meaning.

**Crown**

has the meaning given in the Act.

**Crown Direction**

means any direction given to either party under Section 32 of Act or under Subpart 1 of Part 3 of the Crown Entities Act 2004.

<b>Crown Funding Agreement</b>	means an agreement between either party and the Minister under Section 10 of the Act.
<b>DAP</b>	means, for each party, its District Annual Plan.
<b>DSP</b>	means, for each party, its District Strategic Plan.
<b>Escalated</b>	has the meaning set out in Part K (Managing Differences).
<b>Government Body</b>	includes any entity lawfully formed by or in accordance with any direction of the Crown or any Minister or officer of the Crown.
<b>Investment Principle</b>	has the meaning set out in Part H (Investment Principle).
<b>Law</b>	includes; <ul style="list-style-type: none"> <li>a. any legislation, decree, judgement, order or by-law; and</li> <li>b. any rule, protocol, code of ethics or practice or conduct and other ethical or other standards or guidelines; and</li> <li>c. requirements of any Responsible Authority as defined in the Health Practitioners Competence Assurance Act 2003.</li> </ul>
<b>Minister</b>	means the Minister of Health
<b>Ministry</b>	means the Ministry of Health
<b>Relationship with Maori</b>	means the relationship understandings that both MDHB and WDHB have with Iwi in their respective districts
<b>Shared Services</b>	for the purposes of this alliance shared services is the manifestation of the commitment by MDHB and WDHB to collaborate to undertake mutually agreed clinical and non-clinical activities, in a manner which includes but is not limited to consolidating functions and eliminating duplication and diseconomy of scale for the benefit of both Parties and their respective populations.

### **B3 Interpretation**

#### **B3.1. In this Agreement:**

- a. a reference to a person includes a body corporate, firm, Government Body, partnership, trust, joint venture, association, or any other entity or association recognised by law and the reverse;
- b. words referring to the singular include the plural and the reverse;

- c. every thing expressed or implied in the Agreement which involves more than one person binds and benefits those people jointly and severally;
- d. a reference to a statute includes all regulations under that statute, all amendments to that statute, and any statute wholly or partly substituting for it;
- e. anything required by the Agreement to be done on a day which is not a Business Day may be done on the next Business Day;
- f. the words "including" and "for example" do not have any limiting effect

## **C Objectives and Scope**

### **C1 Purpose of this Part**

C1.1. This Part of the Agreement records the intended scope of the collaborative relationship contemplated by this Agreement.

### **C2 Objectives**

C2.1. The parties acknowledge their statutory obligation to actively investigate, facilitate, sponsor and develop co-operative and collaborative arrangements with each other, and other persons in the health and disability sector, to improve, promote and protect the health of people and to promote the inclusion and participation in society and independence of people with disabilities.<sup>1</sup>

C2.2. To give effect to that obligation, the parties wish to collaborate with each other:

- a. to develop a consistent, combined districts approach to health and disability service planning that will result in health gains for their resident populations; and
- b. whilst remaining autonomous DHBs, to develop an integrated approach to the common strategic and operational responsibilities of both parties.

C2.3. The common strategic responsibilities of the parties include the DHBs' objectives, strategies and standards published or approved by the Ministry from time to time, including the New Zealand Health Strategy and the New Zealand Disability Strategy.

C2.4. Nothing in this Agreement is intended to limit the manner in which the parties pursue their statutory objectives<sup>2</sup>, the objectives specified in each party's Statement of Intent<sup>3</sup> or the requirements of any Crown Direction.

C2.5. Each party warrants that its DSP and DAP authorise it to enter into the arrangements recorded in this Agreement.

### **C3 Scope**

**As from the commencement the parties collaborative effort under this Agreement shall focus on:**

C3.1. the development of shared services with a view to achieving across the combined districts alignment and economies of scale in business support functions including, but not limited to, procurement, finance, human resources and information systems, in such manner as the Boards of the parties may direct.

<sup>1</sup> Section 23(1)(b) of the Act

<sup>2</sup> See Section 22 of the Act

<sup>3</sup> As defined in Section of the Act

C3.2. the constructive collaboration that is taking place between the respective clinical teams, which may, in time, lead to the development of shared delivery of clinical services.

C3.3. Exploration of possibilities referred to in clauses C3.1 and C3.2 above shall involve developing specific proposals for Board consideration and engaging in Consultation if required.

#### **C4 DHB autonomy and independence**

C4.1. Acknowledging that each party will remain an autonomous DHB, legally and structurally independent of the other:

- a. The parties acknowledge that their relationship with each other under this Agreement will be collaborative but not joint.
- b. In performing their roles and functions under this Agreement, each party's representatives will remain responsible to and take direction from their respective Boards.
- c. The combined districts activities and shared services arrangements developed under this Agreement are named "centralAlliance" for convenience and reference purposes only; the "centralAlliance" is not a legal entity and is not intended to be a partnership or joint venture.
- d. Each party shall ensure that its Combined Districts Executive Management Team (CDEMT) appointees and other personnel involved in the performance of this Agreement do not hold themselves out as having authority to represent "centralAlliance", as opposed to the respective parties themselves, or otherwise to exercise authority independently of the parties themselves.

C4.2. Clause C4.1a is not intended to restrict the manner in which the parties implement any identified opportunities for achieving alignment and economies of scale in business support functions or clinical service delivery.

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## **D Principles of this Alliance**

### **D1 Purpose of this Part**

- D1.1. This Part of the Agreement is intended to assist with interpretation of this Agreement by recording the principles underlying the collaboration between the parties contemplated by this Agreement.

### **D2 Overarching Outcome**

- D2.1. The parties agree that the overarching outcome they are seeking to achieve is improved and equitable health outcomes for all communities of the combined districts.

### **D3 Principles of Engagement**

- D3.1. The following principles underpin the alliance between the parties. The parties shall endeavour to uphold these principles to the best of their ability in all actions and decisions.
- a. **Integrity:** the parties will, at all times, act with integrity.
  - b. **Health Planning:** health planning will be done on a combined districts needs' assessment basis. The design of the plan shall be cognisant of the combined districts and respective district priorities and differences.
  - c. **Service Provision:** service provision arrangements shall be as close to the community as is practical and sustainable (financial and clinical).
  - d. **Staff:** arrangements will endeavour to provide a pathway of career development and support for employees of both parties, and utilise their resident expertise.
  - e. **Open-Mindedness:** Both parties shall be open-minded to considering all options, a change in the status quo, and innovative new models of care.
  - f. **Evidence-Based:** arrangements shall be evidence-based, and evaluated.
  - g. **Viability; generally any arrangement between the two boards should be viable and sustainable.**
  - h. **Communication and Transparency:** Decision making shall be open and transparent, and regular communication shall occur with key stakeholders.
  - i. **Share Arrangements:** In the absence of agreement to an alternative share mechanism, respective PBF shares will be used.

- j. **Financial Arrangements:** arrangement should ensure cost neutrality to each DHB. Each DHB shall remain responsible for funding services for its district.

#### **D4 Regular Meetings**

- D4.1. Both parties acknowledge that regular meetings of their appointed representatives (held in person or by telephone) are likely to help develop and maintain the collaborative relationship contemplated by this Agreement. Both parties agree to make appropriate personnel available as reasonably required by either party to discuss matters arising from the operation of this Agreement.

#### **D5 Confidentiality**

- D5.1. To give effect to the objectives of this Agreement both parties agree there will be instances when it is desirable to share Confidential Information.
- D5.2. A party receiving any Confidential Information belonging to the other party disclosed for the purposes of centralAlliance:
  - a. shall not disclose any such information either externally or to any of its other employees; and
  - b. shall not use any such information except for the purposes of centralAlliance

except with the prior express consent of that other party.

#### **D6 Māori Health**

- D6.1. The MOU between MDHB and Manawhenua Hauora and the MOU between WDHB and Hauora O Iwi establishes the unique and special relationship between local iwi, Māori and each DHB. As Crown entities, the parties recognise the principles of partnership, participation and protection which underpin their arrangements with their governance partners. These principles and the commitments outlined in the MOUs set out the basis on which the parties respond to Māori health issues within their respective districts.
- D6.2. Both parties:
  - a. will abide by the obligations set out in the previous subclause;
  - b. agree that Māori Health is a specifically identified health gain priority area.
- D6.3. In developing activities and shared service arrangements under this Agreement the parties shall :
  - a. take into account any requirements of their respective Māori Health Governance partners notified to them at any time during the term of the Agreement;
  - b. identify how the nature or method of undertaking the activities or delivering the shared services may contribute to Māori health gain priorities, how these services will be measured to ascertain what benefit

is evident and other additional opportunities that may exist for furthering Māori health gain.

- c. encourage iwi organisations from the combined districts to regard the centralAlliance as an opportunity to collaborate with each other to work with the parties to progress issues common to Maori across the districts.

D6.4. Nothing in this clause limits each party's separate responsibilities as a DHB to develop its Māori health policy and operational plans and for ensuring that the plans are adequately resourced within the current levels of funding.

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## **E Combined Districts Escalation Group**

### **E1 Purpose of this Part**

- E1.1. This Part of the Agreement records arrangements for facilitating the governance functions of the parties in relation to CDEMT activities, acknowledging that:
- a. "centralAlliance" is not a legal entity and is not intended to be a partnership or joint venture;
  - b. as an autonomous DHB, each party has its own separate governance structure;
  - c. CDEMT members are responsible to their respective employers and fulfil both combined districts and district roles.

### **E2 Combined Districts Escalation Group**

- E2.1. As from the Commencement Date, the centralAlliance Combined Districts Escalation Group (CDEG) shall comprise the Chairs of the Boards of MDHB and WDHB and the Chief Executive Officers of MDHB and WDHB. Other personnel are to be co-opted to the Combined Districts Escalation Group by the agreement of both parties.
- E2.2. The parties agree that an independent Chair of the CDEG will be appointed as soon as is reasonably practicable after the Commencement Date.
- E2.3. The parties' Boards may at any time appoint other persons to be members of the CDEG, in place of or in addition to the Board Chairs.

### **E3 Combined Districts Escalation Principle**

- E3.1. The role of the CDEG is to:
- a. act as a communication conduit between the parties' Boards and the CDEMT;
  - b. act in an advisory capacity to the CDEMT in relation to governance decisions of the parties' Boards pertaining to the performance of this Agreement;
  - c. act as the first point of Escalation in relation to any major issues or differences arising within the CDEMT;
  - d. act as the first point of Escalation regarding any perceived issues of conflict between the performance of the role of any CDEMT member in that capacity and the performance of that person's individual DHB role.
- E3.2. Nothing in this Part of the Agreement is intended to derogate from the governance functions of each party's Board. Unless otherwise resolved by either Board, the CDEG shall not have delegated authority from either Board.

**F Combined Districts Management and the Establishment of a Combined Districts Executive Management Team (CDEMT)**

**F1 Purpose of this Part**

- F1.1. This Part of the Agreement establishes that a commitment to Combined Districts Management (CDM) is an essential element of the centralAlliance.

**F2 Combined Districts Management**

The Chief Executive Officers of both parties acknowledge that critical for realising the potential of the centralAlliance will be the establishment of combined districts roles and /or responsibilities.. Early priority will be given to the introduction of a combined districts management structure.

- F2.1. The parties will agree on the position descriptions for combined districts roles and responsibilities as the positions are established. For avoiding doubt, no staff member with combined districts responsibilities shall have any delegated authority that is not within the power of the Chief Executive Officers of the parties to delegate.
- F2.2. The parties shall use their best endeavours to ensure that all decisions regarding combined districts responsibilities and functions ensure continuity of performance regardless of changes in personnel over time.

**F3 Establishment of a Combined Districts Executive Management Team**

- F3.1. The parties hereby agree that priority will be given to developing terms of reference for the establishment of the CDEMT.

**F4 CDEMT Chair**

- F4.1. Unless otherwise resolved by the Boards from time to time, the CDEMT shall be chaired by either the MDHB Chief Executive Officer or the WDHB Chief Executive Officer on no longer than an annually rotating basis. Initially for a period of six months the first CDEMT Chair, as from the Commencement Date, shall be the MDHB Chief Executive Officer.
- F4.2. The role of the CDEMT Chair shall be, in general terms, to lead the CDEMT's activities in pursuit of the objectives of this Agreement, to set the agenda for and chair CDEMT meetings, and to provide direction and oversight of the performance of CDEMT members' roles as defined in their combined districts position descriptions.
- F4.3. Each party's Board shall grant to the other party's Chief Executive Officer, as a contractor to that Board, such delegated authority as is necessary and appropriate in order for the that person to fulfil the role of CDEMT Chair. The terms of such delegation of authority shall be recorded in a Referenced Document.

**F5 Recognition of Dual Roles**

- F5.1. The parties acknowledge that:

- a. CDEMT members are employees of either MDHB or WDHB, as the case may be, but not both;
- b. CDEMT members will be made available to fulfil their respective CDEMT roles but are not employed by or seconded to centralAlliance;
- c. each CDEMT member will continue to fulfil his or her corresponding DHB role and functions for his or her DHB employer; and
- d. each CDEMT member will act as an officer of the other DHB to fulfil the CDEMT role in the course of his or her duties for the employing DHB.

F5.2. The parties shall procure that CDEMT members who have corresponding DHB roles and functions clearly distinguish between the two and make clear in their communications and other dealings with DHB employees and third parties the capacity in which they are acting in any instance.

F5.3. In respect of CDEMT members who were already employed by either DHB at the time of their appointment to their CDEMT roles, each party shall procure that the existing DHB position description of each CDEMT member is amended, with the agreement of the appointed person, to encompass his or her CDEMT role.

F5.4. Each party shall procure that its Chief Executive Officer grants to such CDEMT members as are employees of the other party, as contractors to the first party, such delegated authority as is necessary and appropriate in order for the those persons to fulfil their CDEMT roles. The terms of such delegation of authority shall be recorded in the Referenced Document: "*MidCentral DHB Delegation of Authority Policy*" and "*Whanganui DHB Delegation of Authority Policy*".

F5.5. Each party acknowledges that:

- a. the acts and omissions of any CDEMT member are the acts and omissions of that person as an employee of the employing DHB;
  - b. any liability that may arise from such acts or omissions as an CDEMT member is solely the liability of the employing DHB in the first instance; and
  - c. as between the parties, the risk of any such liability shall be managed in accordance with Part K (Managing Differences) and, to the extent that such liability arises from acts or omissions of the CEMT member acting in that capacity and not in his or her corresponding DHB role, shall ultimately be shared in accordance with the Investment Principle.
-

## **G Other Combined Districts Roles**

### **G1 Purpose of this Part**

G1.1. This Part of the Agreement provides for the creation of additional combined districts roles for centralAlliance.

### **G2 Other Combined Districts Roles**

G2.1. The parties recognise that to further the objectives of this Agreement it may be desirable for them to create regional roles for staff who are not CDEMT members.

G2.2. Each such role shall only be created by agreement between the parties including:

- a. agreement as to which of the parties will employ the staff member to fulfil the role;
- b. agreement on the position description for the new regional role
- c. agreement on what if any delegated authority it is necessary and appropriate for the new combined districts role to have from each party.

### **G3 Recognition of dual roles**

G3.1. Clause F5 shall apply with all necessary amendments to each combined districts role created under G2.2.

## **H Investment Principle**

### **H1 Purpose of this Part**

- H1.1. This Part of the Agreement records how centralAlliance costs, liabilities and financial benefits are to be shared between the parties.

### **H2 Investment Principle**

- H2.1. In this Agreement, "in accordance with the Investment Principle" in relation to any cost, liability or financial benefit means that, unless expressly agreed otherwise by the parties, each party shall meet a proportion of that cost, liability or benefit equal to that party's population-based funding revenue for the financial year in which the cost or liability is incurred or the financial benefit accrues as a ratio of both parties' collective population-based funding revenue for that financial year, as adjusted for inter-district flows and any other matters subsequently agreed by both parties.
- H2.2. For the avoidance of doubt the parties acknowledge that from time to time there maybe circumstances when the investment principle will be over-ridden by a greater imperative.

### **H3 Sharing of Costs**

- H3.1. The funding of operational expenditure incurred by the parties collaboratively or jointly pursuant to the operation of this Agreement shall be apportioned between the parties:
- a. as expressly agreed in relation to particular expenditure; or
  - b. subject to paragraph a, in accordance with Investment Principle.
- H3.2. The funding of the capital expenditure required for any activity undertaken by the parties collaboratively or jointly pursuant to the operation of this Agreement shall be apportioned between the parties:
- a. as expressly agreed in relation to particular expenditure; or
  - b. subject to paragraph a, in accordance with Investment Principle.

### **H4 Sharing of Liabilities**

- H4.1. Subject to clause H3, any financial liabilities to third parties incurred by either party as a direct result of acts or omissions of CDEMT members or other persons in the course of performance or attempted performance of their centralAlliance roles shall be apportioned between the parties in accordance with the Investment Principle, regardless which party incurs any particular liability in the first instance, unless otherwise agreed by the parties.

### **H5 Sharing of Financial Benefits**

Financial benefits flowing to either party, or to both parties, as a result of the implementation of regional initiatives pursuant to this Agreement shall be apportioned between the parties in accordance with the Investment Principle, regardless which

party derives the financial benefit in the first instance, unless otherwise agreed by the parties.

## **I Statutory and Other Advisory Committees**

### **I1 Purpose of this Part**

- I1.1. This Part of the Agreement records the manner in which the parties will align the activities of their respective statutory and other advisory committees.

### **I2 Objective**

- I2.1. The parties agree that the objective of developing a consistent, combined districts approach to health and disability service planning will be furthered, in part, by aligning the terms of reference, focus, membership, methodologies and procedures of their respective statutory and other advisory committees.

### **I3 Statutory Advisory Committees**

- I3.1. In the first instance the parties shall collaborate with a view to aligning the terms of reference, focus, methodologies and procedures of their respective Community and Public Health Advisory Committees (CPHAC) and Disability Support Advisory Committees (DSAC). In doing so, the parties shall take into account any differences in the health and disability service issues arising in each District.
- I3.2. The parties share the intent of aligning the terms of reference, focus, methodologies and procedures of their respective Hospital Advisory Committees (HAC) but recognise that the pace of this alignment may be slower than for the planning committees.
- I3.3. Any changes to the terms of reference, focus, methodologies and procedures of either party's statutory or other advisory committees (including CPHAC, DSAC and HAC) shall be subject to the approval of both parties' Boards.
- I3.4. The parties shall Consult with each other and stakeholders regarding the desirability and feasibility of establishing a single, combined districts CPHAC and/or a single, combined districts DSAC and/or a single, combined districts HAC.

## **J Managing Changes**

### **J1 Purpose of this Part**

- J1.1. This Part of the Agreement sets out how changes to the content or operation of this Agreement are to be initiated and managed.

### **J2 Review Meetings**

- J2.1. Either party may call a review meeting at any time to review any aspect of this Agreement or its operation.
- J2.2. The party calling the review meeting shall give the other party a minimum of 10 Business Days notice in writing requiring a review meeting to be held and giving written particulars of the matter or matters to be reviewed.
- J2.3. The meeting shall be held at a mutually convenient time that, subject to the reasonable availability of each party, is not more than 20 Business Days after notice requiring the review meeting is given.

### **J3 Review Procedure**

- J3.1. Where notice is given calling a review meeting, the parties shall:
- a. Consult with each other prior to the meeting, if practicable, about the matter or matters specified in the notice;
  - b. attend the review meeting, in person or by telephone;
  - c. determine what third party Consultation, if any, may be desirable or appropriate; and
  - d. use their best endeavours promptly to complete any such Consultation and resolve the matter (whether by agreeing that no change is required or by agreeing on the changes that are required or a process for determining the changes that are required).

### **J4 Escalation**

- J4.1. If the parties do not promptly resolve the matter, or promptly agree on a process for resolving the matter, the matter shall be Escalated in accordance with Part K (Managing Differences).

### **J5 Changes to this Agreement**

- J5.1. This Agreement shall be amended to comply with any applicable Crown Direction, as soon as is reasonably practicable after such Crown Direction is given. Any difference between the parties as to the nature of the changes required to this Agreement to comply with such Crown Direction shall be resolved under Part K (Managing Differences).

- J5.2. This Agreement may be amended as agreed between the parties following the review procedure set out in this Part.
- J5.3. To be effectual, any amendment to this Agreement must be signed by the Chief Executive Officers and the Chairs of the Boards of both parties.
- J5.4. An amendment to this Agreement shall take effect:
- a. on the date specified in writing in the Amendment Agreement; or
  - b. where the amendment is agreed between the parties but is subject to the satisfaction of any condition, or Ministerial approval, or any third party consent, on the date the last of any such conditions, approvals or consents is satisfied or granted.
- J5.5. In the interests of clarity, wherever reasonably practicable:
- a. an amendment to any specific Part of this Agreement shall be made by way of replacing the entire existing Part with the entire amended Part of this Agreement
- J5.6. The parties shall procure that any amendment to this Agreement is communicated in writing to:
- a. all CDEMT members; and
  - b. all individual DHB officers and other stakeholder representatives who the CDEG considers might reasonably be affected by the amendment.
-

## **K Managing Differences**

### **K1 Purpose of this Part**

K1.1. This Part of the Agreement records how differences arising between the parties relating to this Agreement are to be managed.

K1.2. A "difference" includes:

- a. any difference of opinion within the CDEMT as to the objectives and scope of this Agreement or any other matter relating to interpretation of this Agreement;
- b. any difference of opinion within the CDEMT as to the scope and limits of CDEMT activities;
- c. any perceived conflict between a CDEMT member's CDEMT role and individual DHB role;
- d. any difference of opinion within the CDEMT as to any proposed changes to this Agreement.
- e. where the parties cannot resolve a matter or cannot agree a process for resolving a matter arising out of a review of any aspect of this Agreement or its operation.

### **K2 CDEG as first escalation point**

K2.1. If any difference is not resolved within a reasonable time, the Chief Executive Officer of either party may resolve to escalate the matter for consideration by the CDEG in the first instance.

### **K3 Further escalation to the Boards**

K3.1. The CDEG shall promptly consider the matter and determine whether or not it should be escalated immediately to the Boards.

K3.2. If it does not resolve to escalate the matter immediately to the Boards, the CDEG shall use its best endeavours promptly to resolve the difference in such manner as it thinks fit, by unanimous agreement.

K3.3. In the absence of unanimous agreement within the CDEG, any member of the CDEG may (but is not obliged to) escalate the matter for consideration by the Boards.

### **K4 No binding dispute resolution procedure**

K4.1. If a difference remains unresolved following escalation to, and due consideration by, the Boards, it shall be assumed that that collaborative relationship contemplated by this Agreement is not reasonably possible in relation to that particular matter. Each Board shall then make its own decision as to how the matter is to be dealt with by that Board.

## **L Withdrawal**

### **L1 Purpose of this Part**

- L1.1. This Part of the Agreement sets out the requirements for either party to withdraw from the collaborative relationship established under this Agreement.

### **L2 Withdrawal by Crown Direction**

- L2.1. Either party may withdraw from the collaborative relationship established under this Agreement, either entirely or in respect of any specified activity or shared service arrangement initiated under this Agreement, if required to do so by Crown Direction. In any such case, the withdrawal shall be effected in accordance with the terms of such Crown Direction.
- L2.2. Unless specified otherwise in the relevant Crown Direction or as agreed by the parties, the withdrawing party shall give not less than 12 months written notice of withdrawal, clearly specifying the activities and/or shared service arrangements to which the notice relates.

### **L3 Withdrawal for Illegality**

- L3.1. Either party may withdraw from any activity or shared service arrangement initiated under this Agreement if it considers on reasonable grounds (which shall include written legal advice from appropriately experienced legal advisers) if:
- a. the other party has failed to obtain, maintain or comply with any clearance, authorisation, consent or other regulatory approval required from any Government Body of competent jurisdiction or any applicable Law to engage in the activity or shared service arrangement;
  - b. the activity or shared service arrangement, or any material part of this Agreement that relates to it, is held by a Government Body of competent jurisdiction to be illegal or invalid and it is not reasonably practicable to modify the activity or shared service arrangement, or the relevant part of this Agreement, to render it legal or valid.

### **L4 Withdrawal on notice**

- L4.1. Either party may withdraw from any activity or shared service arrangement, after first Consulting with the other party regarding its reasons for the proposed withdrawal (including any appropriate Escalation process), by giving written notice to the other party clearly specifying the activities or shared service arrangements to which the notice relates.
- L4.2. In any such case, the period of notice shall be reasonably sufficient to facilitate an orderly transition, which causes as little disruption to the provision of those activities or services as possible, to equivalent activities or service arrangements undertaken by the parties independently, after taking into account:

- a. any relevant commitments made in either party's Statement of Intent, DSP or DAP;
- b. any relevant contractual commitments of either party to third parties;
- c. any other matters raised by the other party in Consultation, including relevant logistical and practical requirements; and
- d. relevant requirements of law.

**L5 Termination of the Agreement**

- L5.1. Without limiting the previous clauses, either party may, after first Consulting with the other party, give written notice at any time terminating this Agreement as from expiry of the 12 month DAP period commencing after the date notice of termination is given.
- L5.2. Subject to clause L5.3, the minimum period of notice for termination of this Agreement may be varied by Agreement by the parties.
- L5.3. This Agreement may be terminated by agreement between the parties at any time if it is being superseded by a new agreement of a similar nature either between MDHB and WDHB or between MDHB, WDHB and any other DHB or DHBs.

**L6 Acknowledgement regarding effects on arrangements with third parties**

- L6.1. The parties acknowledge that contractual or other arrangements entered into by either party with third parties as a result of collaborative activities undertaken pursuant to this Agreement are the separate and independent obligations of each party and will continue in force, in accordance with the terms of such contractual or other arrangements, notwithstanding the termination of this Agreement.
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## **M General**

### **M1 Purpose of this Part**

- M1.1. This Part sets out general terms applying to all activities undertaken by the parties under this Agreement.

### **M2 Public Statements**

- M2.1. Neither party may directly or indirectly criticise the other publicly regarding the operation of this Agreement, without first fully discussing the matters of concern with the other. The discussion must be carried out in good faith and in a co-operative and constructive manner.
- M2.2. Nothing in this clause prevents either party from discussing any matters of concern with its staff, subcontractors, agents, advisers or persons for whom that party is responsible.

### **M3 Contracts (Privity) Act 1982**

- M3.1. Except where this Agreement expressly provides otherwise, this Agreement is not intended to confer any benefit on any third party. No third party may enforce any of the provisions of this Agreement.

### **M4 Waiver**

- M4.1. Any waiver by either party must be in writing duly signed. Each waiver may only be relied on for the specific purpose for which it is given.
- M4.2. A failure of either party to exercise, or a delay by either party in exercising, any right given to it under this Agreement, does not mean that the right has been waived.

### **M5 Entire Agreement**

- M5.1. This Agreement sets forth the entire agreement and understanding between the parties and supersedes all prior oral or written agreements or arrangements relating to its subject matter, other than any relevant provisions of the parties' Statements of Intent, DSPs or DAPs.

### **M6 Enforceability of the Agreement**

- M6.1. If any provision in the Agreement is held by a court or tribunal of competent jurisdiction to be illegal or invalid and unenforceable:
- a. the remainder of the Agreement will remain in force;
  - b. the parties shall take such steps or make such modifications to the provision as are necessary to ensure that it is made legal or valid and enforceable;

- c. subject to paragraph b, that provision will be deemed severed from the Agreement.

