

## APPENDIX 4

### Draft services agreement

[Date]

[Address]

Dear [     ]

Pharmac agrees to contract with **[name of service provider]** for the supply of storage and distribution services on the terms set out in this letter and the attached General Terms and Schedules (together forming this “**Agreement**”).

#### Schedules

- Schedule 1 – Special Obligations
- Schedule 2 – Service Specification

#### Acceptance

To confirm your acceptance of this Agreement, please sign and return the attached copy of this Agreement to Pharmac via email to [XXX@pharmac.govt.nz](mailto:XXX@pharmac.govt.nz) by **[insert time]** pm on **[insert date]**.

Yours faithfully

Signed and agreed by:

**[Pharmac signatory]**

**[service provider signatory]**

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Name:

Position:

Date:

## GENERAL TERMS

### Definitions

In these General Terms unless the context otherwise requires:

**“Agreement”** means this agreement including all Schedules;

**“Alternative Pharmaceutical”** means additional stock of the Pharmaceutical or an alternative brand of Pharmaceutical that Pharmac, following such consultation as it considers necessary, considers to be an acceptable substitute for that Pharmaceutical.

**“Alternative Vaccine”** means additional stock of the Vaccine or an alternative brand of a Vaccine that Pharmac, following such consultation as it considers necessary considers to be an acceptable substitute for that Vaccine;

**“Authorised Agent”** means Pharmac’s agent who is supplied the Vaccine and/or Pharmaceutical from a pharmaceutical supplier, as notified to you by Pharmac from time to time;

**“Business Day”** means Monday to Friday, excluding public holidays;

**“Carrier”** means your carrier who carries a vaccine from your premises to an Immunisation Provider;

**“Code”** means the New Zealand Code of Good Manufacturing and Warehousing Practice for Manufacture and Distribution of Therapeutic Goods.

**“Cold Chain”** means the validated system of transporting and storing Vaccines within the safe temperature range of +2 degrees to +8 degrees Celsius (°C) in full compliance with the Cold Chain Standards;

**“Cold Chain Conditions”** means the storage of Vaccines in accordance with Cold Chain;

**“Cold Chain Standards”** means the “New Zealand Immunisation Advisory Centre (IMAC) National Guidelines for Vaccine Storage and Distribution 2017”, as amended from time to time, to the extent that they are applicable to the Vaccine;

**“Community Health Organisation”** means third parties as notified to you by Pharmac, for example but not limited to:

- (a) nicotine replacement therapy authorised providers, such as prison services, health service providers contracted by the Ministry of Health to provide smoking cessation services and Public Health Units; and

- (b) organisations Pharmac has agreed to provide funding for the bulk purchase of condoms for distribution within the community, such as the Burnett Foundation Aotearoa, the Aotearoa New Zealand Sex Workers' Collective, and Sexual Wellbeing Aotearoa.

**“Crown Direction”** means any Ministerial direction given to Pharmac under section 103 of the “Crown Entities Act 2004 or otherwise according to law

**“Health NZ Hospital”** means a hospital operated by Health NZ;

**“Health NZ”** (or **“Health New Zealand”**) means Health New Zealand | Te Whatu Ora, a Crown agent established under section 11 of the Pae Ora (Healthy Futures) Act 2022;

**“Force Majeure Event”** means an event that is beyond the reasonable control of the party immediately affected by the event. A Force Majeure Event does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care, including by managing such risk in any sub-contracting arrangements. Examples include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
- (d) contamination by radioactivity from nuclear substances or germ warfare or other hazardous properties,

and for the avoidance of doubt:

- (a) any failure on the part of a person in the relevant pharmaceutical supply chain; or
- (b) any act or omission by a related entity or sub-contractor of yours,

is not considered by Pharmac to constitute a Force Majeure Event;

**“Immunisation Provider”** means individuals or organisations licenced by Health NZ to administer vaccines;

**“National Cold Chain Audit”** means the audit conducted by the Authorised Agent to monitor the Cold Chain accreditation process and other existing or new Cold Chain management interventions;

**“Pae Ora Act”** means the Pae Ora (Healthy Futures) Act 2022;

**“Pharmac”** means the Pharmaceutical Management Agency as described in the Pae Ora Act ;

**“Pharmaceuticals”** means the pharmaceuticals currently described in Schedule 1 and as notified to you by Pharmac from time to time, and includes *[insert]*.

**“Services”** means the services to be provided by you to Pharmac which are set out in Schedule 2;

**“Unit”** means a unit as defined in Section 247(1)(e) of the Contract and Commercial Law Act 2017; and

**“Vaccine”** means the vaccines currently described in Schedule 1 and as notified to you by Pharmac from time to time, in the form and strength set out in Schedule 1, which term for the avoidance of doubt includes vaccines or antigens.

### **INTERPRETATIONS:**

In this agreement reference to:

“We”, “us” and “our” means Pharmac and *[insert supplier name]* and including their legal successors.

“you” and “yours” means *[insert supplier name]* including its permitted subcontractors, agents, employees and assignees.

“both of us”, “each of us” and “either of us” and “neither of us” refers to Pharmac and *[insert supplier name]* and including their legal successors.

Terms given a defined meaning in this Agreement have that meaning where the context permits.

Words referring to singular includes the plural and the reverse.

Headings are used as a matter of convenience only and shall not affect the interpretation of this Agreement.

References to “include” and “including” mean by way of illustration not limitation.

References in this Agreement to parties, sections, clauses and schedules are references to parties, sections clauses and schedules respectively of this Agreement.

If there are any references to \$ or dollars in this Agreement they are references to New Zealand dollars and unless otherwise stated are exclusive of GST and must have GST added to the charge.

References to “Health NZ” encompass Health NZ Hospitals;

References to “Health NZ Hospitals” may reflect that certain operational matters can in practice occur at a local hospital level notwithstanding that Health NZ Hospitals are part of, and not separate legal entities from, Health NZ;

## 1. **Operating Policies and Procedures**

You acknowledge that:

- (i) Pharmac is required to pursue the objectives, carry out the functions, and otherwise comply with the statutory obligations, prescribed for Pharmac in the Pae Ora Act;
- (ii) Pharmac is subject to other statutory and public law obligations, which govern Pharmac’s decision-making processes;
- (iii) Pharmac has Operating Policies and Procedures (“OPPs”), which provide guidance on the way in which Pharmac carries out its statutory responsibilities in relation to the management of the Pharmaceutical Schedule;
- (iv) Pharmac’s OPPs may be amended or updated from time to time, following consultation with relevant groups;
- (v) the actions which Pharmac may take under its OPPs include (without limitation):
  - (A) listing new pharmaceuticals;
  - (B) changing guidelines or restrictions on the prescribing and dispensing of listed pharmaceuticals;
  - (C) changing the subsidy levels for pharmaceuticals as a result of Pharmac adopting one of the strategies set out in the OPPs or by any other means;
  - (D) amending the basis on which pharmaceuticals are classified into therapeutic groups and sub-groups;
  - (E) delisting pharmaceuticals, or delisting all or part of a therapeutic group or sub-group;
  - (F) changing the market dynamics for pharmaceuticals as a result of Pharmac adopting one of the strategies set out in the OPPs;
  - (G) any action taken by Pharmac pursuant to its OPPs may impact on the listing of a pharmaceutical;

- (H) Pharmac agrees not to apply, amend or update its OPPs in order to avoid any of Pharmac's obligations under this Agreement.

## 2. **Term**

This Agreement shall commence on [insert] and shall expire on [insert](inclusive) (the "Initial Period") unless otherwise:

- (a) terminated in accordance with Clause 14; or
- (b) extended for two one (1) year consecutive periods at the option of Pharmac, by providing six (6) months written notice to you of Pharmac's intention to extend it prior to the expiry of the Initial Period (or prior to the expiry of the first extension period as the case may be), with the commencement of this extension to be at the expiry of the Initial Period (or the expiry of the first extension period as the case may be).

## 3. **Services**

You are to provide the Services as set out in Schedule 2.

## 4. **Recall and Disengagement Services**

- (a) In the event the Ministry of Health or any other authority recalls a Vaccine or Pharmaceutical, you shall co-operate fully and comply with any instruction provided to you by Pharmac. All costs related to such recall shall be borne by Pharmac, except where such recall results from you breaching your obligations under this Agreement in which case the costs of recall will be borne by you.
- (b) Upon the expiry or termination of this Agreement you shall co-operate fully and comply with any instruction provided to you by Pharmac in respect of any disengagement services required. With the prior agreement of Pharmac all reasonable costs incurred by you for any disengagement services will be borne by Pharmac. You will arrange for any Vaccine or Pharmaceutical to be returned to Pharmac's agent as requested by Pharmac or the Authorised Agent through an agreed carrier. Risk and responsibility will cease once the Vaccine or Pharmaceutical has been loaded onto the carrier by you.

## 5. **Emergency and Disaster Supply Arrangements**

- (a) In the event of an emergency or disaster affecting you, any Community Health Organisation, any Health NZ Hospital, or an emergency or disaster on a national level, you will use your best endeavours to provide such quantities of the Vaccine as are required by any Health NZ Hospital(s) and/or Pharmaceutical as required by any Community Health Organisation, in accordance with your disaster recovery contingency plans.

- (b) In the event of an emergency or disaster affecting you Pharmac will not reimburse you for any reasonable additional costs resulting from an emergency and disaster supply arrangement.
- (c) In the event of an emergency or disaster affecting any Health NZ Hospital, Community Health Organisation or an emergency or disaster on a national level Pharmac will reimburse you for any reasonable additional costs resulting from an emergency and disaster supply arrangement.
- (d) In the event of a Vaccine stock shortage and Pharmac requires you to allocate Vaccine stock in an agreed manner which is variant to the Services as required under this Agreement, subject to the prior agreement of Pharmac, Pharmac will reimburse you for any additional costs incurred by you in complying with the new requirements.

## 6. Invoicing and Payments

- (a) The payments required to be made by Pharmac to you are set out in Clause 2 of Schedule 1 for the provision of the Services.
- (b) The cost structure of the budget for the Services is set out in Clause 3 of Schedule 1.
- (c) You are to provide a proforma invoice to Pharmac on **[insert date of invoice]** for the amounts specified in Clause 2 (a) of Schedule 1.
- (d) You are to invoice Pharmac, if applicable on or before **[insert]**, for any costs relating to additional delivery services specified in Clause 2 (b) of Schedule 1
- (e) Provided that the Services have been supplied in accordance with this Agreement, and Pharmac receives an invoice in accordance with paragraph (c) above, payment by Pharmac to you of the amount required to be paid by it is expected to occur:
  - (i) by electronic funds transfer or such other method of payment as is designated by Pharmac;
  - (ii) on the 20<sup>th</sup> day of the month following the month to which the invoice for the Services relates, or, if the 20<sup>th</sup> day of the month is not a Business Day, then on the next Business Day following the 20<sup>th</sup> of the month.
- (f) Pharmac's failure to dispute any invoice prior to payment does not prejudice Pharmac's right subsequently to dispute the correctness of such an invoice, nor its ability to recover any amount of overpayment from you.
- (g) Pharmac may withhold, deduct or set off the amount of any overpayment or any amount recoverable by it from you under this Agreement from any future amount owing to you.

## 7. Information and Reporting

- (a) You will report to Pharmac, in a form to be prescribed by Pharmac, in accordance with the reporting requirements set out in Schedule 2.

## 8. **Audit**

- (a) Pharmac may, from time to time, review your records and any other information you hold that relates to this Agreement with regard to stock levels, registration information, and any supply and/or Cold Chain issues (if applicable), for the purposes of auditing your compliance with this Agreement. In these circumstances, Pharmac, in consultation with you, will determine the terms and manner of any such audit (including at Pharmac's sole discretion which party is accountable for the costs of the audit), which as a minimum, must include the following:
  - (i) the audit will be conducted by an auditor authorised by Pharmac;
  - (ii) you agree to co-operate fully with Pharmac and provide Pharmac and the auditor with all reasonable assistance to ensure that any audit conducted under this clause is fully and properly completed to Pharmac's satisfaction, including:
    - (A) allowing the auditor access to your premises, records and other information you hold that relates to this Agreement (including, without limitation, records that relate to stock levels, registration information and supply and Cold Chain issues) for the purposes of, and during the course of, conducting the audit; and
    - (B) answering promptly any questions from Pharmac or the auditor concerning any aspect of your compliance with this Agreement; and
  - (iii) Pharmac will give you ten (10) Business Days' notice of its intention to conduct an audit under this clause and will ensure that the conduct of any such audit, and access in terms of sub-paragraph (A) above, does not unreasonably disrupt your business operations.
- (b) Pharmac will notify you in writing if an audit under this clause reveals any non-compliance with this Agreement. You agree to remedy any non-compliance within thirty (30) Business Days of receiving such notice from Pharmac.
- (c) Pharmac may terminate the Agreement if you fail to remedy any area of non-compliance in accordance with paragraph (b) above.
- (d) In the event an audit is carried out as a result of any activity or inactivity of you and the audit reveals non-compliance with the Agreement, in Pharmac's sole opinion acting reasonably, you shall reimburse Pharmac for the costs of the audit.

## 9. **Notification**



- (a) You shall advise Pharmac immediately within one (1) Business Day:
  - (i) of anything which may or is likely to materially reduce or affect your ability to provide the Services, including but not limited to loss of Vaccine stock due to a Cold Chain failure, loss of Pharmaceutical stock or anything relating to any premises or equipment used by you or your key personnel;
  - (ii) of any serious complaints or disputes which directly or indirectly relate to the provision of the Services; and
  - (iii) of any issues concerning the Services that might have high media or public interest.

#### 10. **Insurance**

- (a) You shall arrange and maintain adequate insurance policies during the term of this Agreement which would be reasonably expected for all Services under this Agreement against all usual contingencies with a level of cover of up to NZD \$[insert] million per any one occurrence.
- (b) You must notify Pharmac of the level of each type of insurance held by you that is relevant to the Services as soon as practicable after entering into this Agreement. If requested, you will send a copy of the relevant policy renewals to Pharmac. Whether or not insurance policies exist shall not derogate from your potential liability under this Agreement.
- (c) You will do nothing to invalidate the insurance policies that you hold as required under paragraph (a) above or to prejudice your entitlement under those insurance policies.
- (d) The payment of any excess relating to the insurance policies referred to in Clause 10 (a) shall be paid by you.
- (e) For the avoidance of doubt, this Clause 10 survives for a period of 12 months after this Agreement ends, should it do so for any reason.

#### 11. **Risk and Title for Pharmaceuticals and Vaccines**

- (a) Risk in the Pharmaceuticals will pass to you upon delivery of the Pharmaceuticals to your designated premises as agreed by both parties. Title in the Pharmaceuticals will transfer to the Community Health Organisation upon delivery.
- (b) Risk in the Vaccines will pass to you upon delivery of the Vaccines to your designated premises as agreed by both parties and the signing of the consignment delivery note furnished with the Vaccines from the Authorised

Agent who has delivered the Vaccines to your premises and then only after the Vaccines have been quality inspected by you on unpacking to ensure the Vaccine is free of any damage relating to packing or out of specification data loggers ("Defective Vaccine"). For the avoidance of doubt an inspection shall be undertaken within 1 (one) Business Day of receipt of the Vaccine and otherwise the risk in the Vaccine shall have been passed to you.

- (c) In the event that you find any Defective Vaccine, you will inform the Authorised Agent of such defects to allow the Authorised Agent to lodge a potential claim against the Authorised Agent's carrier.
- (d) Risk in the Vaccines will pass from you to the Immunisation Provider when the Immunisation Provider has signed the delivery note furnished with the Vaccines from you.
- (e) Title in the Vaccine will remain with Pharmac at all times.
- (f) You will not be liable to Pharmac for any loss or damage on behalf of your Carrier in excess of \$[ ] per Unit of Vaccine (including GST). You will use all reasonable endeavours to recover the loss or damage from your Carrier.
- (g) In this Agreement:
  - (i) you are not the importer of the Vaccine and Pharmac will not hold you liable for any costs or liability arising of whatsoever nature in relation to being named as a consignee or any documentation associated with the importation of the vaccine;
  - (ii) Pharmac will not hold you liable for any costs, damages, injury, liability or claim as a result of any defect in the Vaccine which is not caused by you; and
  - (iii) Pharmac will not hold you liable for any service not performed by you which do not form part of the Services under this Agreement.

## 12. Indemnity

- (a) In addition to the obligations set out in Clause 7 above you must notify Pharmac in writing as soon as you have reasonable cause to believe that you will fail to provide the Services on the terms set out in, and in accordance with, this Agreement.
- (b) You agree to indemnify Pharmac if you fail to provide the Services due to:
  - (i) any unlawful act or omission connected with the actual or attempted performance of your obligations under this Agreement; or
  - (ii) any neglect or default connected with the actual or attempted performance of your obligations under this Agreement.

- (c) This indemnity covers the purchase value of an Alternative Vaccine or Alternative Pharmaceutical.
- (d) The indemnity set out in this Clause 12 for the purchase of an Alternative Vaccine shall be limited to **\$[insert]** per failure to distribute or store a Vaccine per event.

**13. Default Interest and Recovery Costs**

If payment of any amount required to be paid by Pharmac or you under this Agreement is not made by either party, in full, by the due date for payment of that amount as notified by either party in writing, then:

- (b) interest will accrue on such sum as remains unpaid at a rate per annum equal to the business base rate of ASB Bank Limited plus five percentage points, calculated and compounded on a daily basis, from the due date until such time as the sum due (including interest) is paid in full. This obligation to pay default interest is to arise without the need for a notice or demand from either party for such default interest; and
- (c) either party may take any action, including legal action, without first needing to implement the dispute resolution procedure contained in Clause 19 below, to recover any outstanding amount and the party who owes the outstanding payment agrees to pay the actual enforcement costs incurred in relation to that action.

**14. Termination**

- (a) Subject to Clause 17 either party may terminate this Agreement by providing thirty (30) Business Days written notice if either party shall materially default in the performance of its obligations under this Agreement and (if capable of remedy) shall fail to remedy within 30 (thirty) Business Days of receiving such written notice specifying such default and requiring such default to be remedied.
- (b) Termination pursuant to paragraph (a) above will not affect any rights or obligations of either party arising from this Agreement prior to such termination, nor will it derogate from any other legal right or remedy available to either party under this Agreement or otherwise in respect of such breach.
- (c) Either party may immediately terminate this Agreement at any time by written notice to the other if the business activities of the other party are ceased or suspended: in the event of liquidation or insolvency of the other party: in the appointment of a receiver or trustee of the property or any part thereof of the other party: in the event of the other party making an assignment for the benefit of creditors: or if the other party proposes or enters into any compromise or arrangement with its creditors or any of them.
- (d) For the avoidance of doubt, Clauses 10 (insurance), 12 (indemnity) and 15 (confidentiality) survive termination of this Agreement.

15. **Confidentiality**

The information stated in Schedule 1 of this Agreement (“Confidential Information”) is confidential between you and Pharmac, including each party’s employees, legal advisers, consultants and the Ministry of Health, Health NZ and their employees (if applicable). The parties acknowledge that it may be necessary or appropriate for Pharmac to disclose Confidential Information:

- (d) pursuant to the Official Information Act 1982; or
- (e) otherwise pursuant to Pharmac’s public law or any other legal obligations.

Pharmac may consult with you before deciding whether to disclose Confidential Information for the purposes described in paragraphs (a) or (b) above, in order to ascertain any objections, you may have to the disclosure of any of the Confidential Information. You acknowledge, however, that it is for Pharmac to decide, in its absolute discretion, whether it is necessary or appropriate to disclose information for any of the above purposes, provided that Pharmac shall act in good faith in disclosing any Confidential Information. Outside the circumstances described in paragraphs (a) and (b) above, Confidential Information must not be disclosed by either party (or by the party’s respective employees, legal advisers and other consultants) unless:

- (f) the information is publicly available without any cause attributable to the disclosing party; or
- (g) the other party has been reasonably informed prior to disclosure, and the disclosure is:
  - (i) for the purposes of this Agreement; or
  - (ii) required by law; or
  - (iii) in a form, and of content, agreed to by us.
- (e) When this agreement terminates both parties to this Agreement must return all of the Confidential Information in their possession and control as requested.

For the avoidance of doubt information released by Pharmac in accordance with paragraphs (a) or (b) above ceases to be “Confidential Information” and you agree that Pharmac may release that information again at any time in future without consulting with you or obtaining your prior agreement.

16. **Conflict of Interest**

In the event that any conflict of interest arises during the term of this Agreement, you shall notify Pharmac and Pharmac shall at its sole discretion determine whether that conflict has an effect on this Agreement.

17. **Consultation**

This Agreement is conditional on:

- (h) Pharmac completing any consultation it considers necessary or appropriate (including consultation under its Operating Policies and Procedures); and
- (i) in the event any such consultation takes place, approval of its terms by Pharmac's Board (or by its delegate acting under delegated authority pursuant to section 73 of the Crown Entities Act 2004, where applicable).

18. **Litigation Support**

If this Agreement or its terms:

- (a) give rise to proceedings being issued against Pharmac; or
  - (b) result in Pharmac being made a party to proceedings issued by a third party,
- you will give Pharmac all assistance it reasonably requires to gather evidence for the purpose of those proceedings. All reasonable costs incurred by you for this assistance will be borne by Pharmac, except in the circumstance where you are a party to those proceedings.

19. **Dispute Resolution**

If there is a dispute between the parties arising out of, or in connection with, this Agreement, neither party is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- (a) The party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (b) The parties will endeavour, in good faith, to resolve the dispute referred to in the notice by using informal dispute resolution techniques.
- (c) In the event the parties do not agree on a dispute resolution technique within 10 Business Days after the date notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR & IAMA (a body corporate incorporated in Australia, registered as an overseas company in New Zealand in accordance with Part 18 of the Companies Act 1993, trading as the Resolution Institute), and the Chair of LEADR & IAMA (or the Chair's nominee) will select the mediator and determine the mediator's remuneration.
- (d) A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.

- (e) Pending resolution of the dispute, this Agreement will remain in full effect without prejudicing our respective rights and remedies (including Pharmac's rights under Clause 1).
- (f) The costs of such mediation, other than each party's legal costs shall be borne equally by the parties and the parties shall be jointly and severally liable to the mediator in respect of the mediator's fees.

**20. Force Majeure**

- (a) Neither party will be liable to the other for any failure to perform its obligations under this Agreement during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event. The party subject to the Force Majeure Event must:
  - (i) notify the other party as soon as practicable after the Force Majeure Event occurs and to the extent it is able, provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of time likely to be required to overcome the Force Majeure Event and the steps the party subject to the Force Majeure Event will take to comply with Clauses 20(a) (ii) and 20(a) (iii);
  - (ii) use its best endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
  - (iii) use its best endeavours to perform its obligations under this Agreement as far as is practicable,

and Pharmac will not be required to pay the payments stated in Schedule 1 to the extent that you have failed to perform your obligations due to a Force Majeure Event.

- (b) If the party affected by the Force Majeure Event is you, and the Services have been delayed by more than 30 (thirty) Business Days, Pharmac may terminate the Agreement by notice to you at no cost to Pharmac, but any accrued rights and entitlements shall remain.

**21. Notices**

Any notice under this Agreement may be made by email or letter to the addresses advised by one party to the other. Notices are served upon delivery.

Address of insert suppliers name

Street Address:

Postal Address

Email address:

### Address of Pharmac

Street Address: Level 9. 40 Mercer Street, Wellington

Postal Address: PO Box 10-254, Wellington 6143

Email Address: [contractmanagement@pharmac.govt.nz](mailto:contractmanagement@pharmac.govt.nz)

#### 22. **Volume Change**

- (c) Pharmac will notify you prior to amending the Pharmaceutical Schedule where an amendment will result in a change to the volume of Vaccine or Pharmaceuticals supplied under this Agreement.
- (d) Notwithstanding Clause **[Insert clause reference]** of Schedule 1, Pharmac will notify you in the event community pharmacists are authorised to be Immunisation Providers which may result in a change of the volume of deliveries of Vaccines.
- (e) In the event you are notified under Clause 22 (a) or (b) the parties will enter into good faith negotiations in order to review the costs stated in **[Insert clause reference]** of Schedule 1.

#### 23. **Consents/Compliance**

You must maintain all consents necessary to fulfil your obligations under this Agreement, including but not limited to having a valid medicines wholesalers licence (if applicable) and being able to comply with the requirements of the Code.

#### 24. **Relationship of the Parties**

Nothing in this Agreement creates a partnership, agency or joint venture of any kind between the parties, nor makes one party the agent of the other. Neither party has the authority to bind the other nor create any liability or obligation of the other in any way.

#### 25. **Intellectual Property Rights**

All intellectual property rights of both of us remain the property of each party. Both parties will agree in writing as required to provide a license to use any of each other's intellectual property rights for the purpose of performing any obligations as required under this Agreement. Neither of us shall at any time assert any rights of any nature in respect of the intellectual property rights of the other party.

#### 26. **No Derogation**

The express provision of a remedy for, or consequence of, failure to comply with any term of this Agreement does not derogate from any other legal right or remedy available to Pharmac under this Agreement or otherwise in respect of such breach.

27. **No Waiver**

A failure or delay by either party to exercise any right arising under this Agreement is not a waiver of that right, and a waiver of a breach of this Agreement is not a waiver of any other breach.

28. **Agreement Prevails**

Where any of your terms of supply, whether recorded on your invoices or in credit arrangements entered into or elsewhere, conflict with or detract from any of the terms of this Agreement, the terms of this Agreement will prevail and will apply to the exclusion of any of your terms or documentation.

29. **Entire Agreement**

This Agreement:

- (f) is the entire agreement between us regarding the terms on which the Services are supplied by you to Pharmac; and
- (g) supersedes and extinguishes all prior agreements and understandings between us regarding the Services whether written, oral or both relating to such matters

30. **Contracts Privity**

- (h) For the purposes of the Contract and Commercial Law Act 2017, we both acknowledge that your obligations in this Agreement constitute promises which confer or are intended to confer a benefit on Health NZ Hospitals and the Ministry of Health and related persons.
- (i) Except as expressly provided in paragraph (a) above, the parties do not intend to create rights in, or grant remedies to, any third party as a beneficiary to this Agreement, and all of the provisions of this Agreement shall be for the sole and exclusive benefit of the parties.
- (j) For the avoidance of doubt, you acknowledge that Pharmac may pursue damages or any other claim (including injunctive or other such relief) under this Agreement on its own account in respect of any form of loss or damage incurred by Pharmac and/or Health NZ Hospitals or the Ministry of Health.

31. **No Reliance**



You acknowledge that you have entered into this Agreement in reliance on your own knowledge, skill and independent advice, and not in reliance on any representations made, or any information made available to you, by Pharmac.

32. **Amendments**

Amendments to this Agreement are only effective if in writing and signed by both of us.

33. **Assignment**

You will not permit this Agreement or any part of this Agreement, to be transferred, assigned or sub-contracted (either directly or due to a change of ownership or control) without Pharmac's prior written consent (such consent not to be unreasonably withheld). Any such consent may be given subject to such reasonable conditions as Pharmac sees fit but no such consent will relieve you from any liability or obligation under the terms of the Agreement, and you will continue to be responsible for the acts, defaults and neglects of your transferee, assignee, employees, agents or sub-contractors.

34. **Further Assurances**

We both agree to execute any further documents and do any further acts within our power as may be reasonably necessary from time to time to give effect to the terms and conditions of this Agreement.

35. **Governing Law and Jurisdiction**

This Agreement is governed by New Zealand law. We each submit to the exclusive jurisdiction of the New Zealand courts.

## Schedule 1

### 1. Vaccines/Pharmaceuticals

Vaccine	Proprietary name (manufacturer) of currently supplied vaccine	No of doses per pack

Pharmaceutical Type	Description	Pharmacode	Brand	Price per pack	No of units per pack	Weight (kg)	L (mm)	W (mm)	H (mm)
NRT									
Condoms									

### 2. Payments

- (a) The following payment will be made to you by Pharmac in accordance with Clause 6 of the General Terms of this Agreement for all Services upon receipt of an invoice each month.
- (b) The price structure will be calculated as follows: [insert pricing for Pharmaceuticals and/or Vaccines]

### 3. Budget for the service

Service	Details of calculation	Price per annum (excl GST)
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DRAFT

## Schedule 2

### Service Specification

**[Please refer to Appendix 1, 2 or 3 of the RFP for the proposed Service Specification]**

Reference to 'funded vaccines' in this section includes all vaccines listed in Section I and Section H of the Pharmaceutical Schedule (from 1 July 2024) excluding seasonal influenza vaccine and includes tuberculin PPD (Mantoux tests).

#### 1. General conditions applicable to all Services

- a. You will
  - i. provide the Services in accordance with WHO/EPI (World Health Organisation/Expanded Programme on Immunisation) (as applicable);
  - ii. provide the Services in accordance with all relevant published Crown objectives, standards published or approved by Ministry of Health or its agent(s), including the National Guidelines for Vaccine Storage and Distribution 2017, the Code and all relevant law;
  - iii. work with Pharmac and Pharmac's Authorised Agent and other nominated parties involved with national vaccine management at Pharmac's request;
  - iv. maintain your hours of service and operation as follows:
    1. Telephone enquiries **xxxx** until **xxxx** each Business day;
    2. You will supply an afterhours contact centre which will be available on 24 hours a day, 7 days a week basis; and
    3. an out of hours message recording service for enquiries which will be responded to the next business day;
  - v. comply with all standard operating procedures agreed between you Pharmac and the Ministry of Health or its nominated agent in order to provide the Services; and
  - vi. comply with all auditing requirements of IMAC, Health NZ, the Ministry of Health or its nominated agent and in accordance with Clause 8 of the General Terms of this Agreement.

**2. [insert summary of Services, Storage and Stock Maintenance, Distribution, Returns and Reporting sections from the RFP according to the relevant Pharmaceutical/Vaccine]**

### 3. Key Account Manager

You will appoint a key account manager who will be responsible for the Services provided for under this Agreement and all correspondence will be conducted between Pharmac and your key account manager.

(name of service provider) Key Account Manager

Mobile:

Direct Dial:

Email:

DRAFT