

## Sub-contracting agreement for Oral Health Services for Adolescents

Dated \_\_\_\_\_

### Between

[Insert full legal name], a provider of Oral Health Services for Adolescents to Te Whatu Ora Health New Zealand from a mobile dental clinic ("**Mobile Dental Provider**")

and

[Insert full legal name], also a provider of Oral Health Services for Adolescents to Te Whatu Ora Health New Zealand ("**Subcontractor**")

### Background

- A. The Mobile Dental Provider has entered into a combined dental agreement with Te Whatu Ora Health New Zealand ("**Te Whatu Ora**"), under which it provides Oral Health Services for Adolescents from premises that include one or more mobile unit ("**Combined Dental Agreement**").
- B. The Mobile Dental Provider is required, under the Combined Dental Agreement, to provide a package of dental services to Eligible Persons for Oral Health Services for Adolescents who are enrolled with them ("**Enrolled Adolescents**"), including at least one consultation per year, as well as various additional treatments and services (which could include follow-up consultations) as and when required. Those services are described in clauses E5.1 to E5.5 of the Combined Dental Agreement.
- C. As part of that, the Mobile Dental Provider is required to provide the full range of services and treatments required by its Enrolled Adolescents, either from its mobile unit or from its own fixed premises, and to ensure completion of treatment rates are maintained at a high level. This involves ensuring that its Enrolled Adolescents can easily obtain treatment and services within expected timeframes after examination. Additionally, Enrolled Adolescents who receive an examination or partial treatment from the Mobile Dental Provider must not be left requiring the services of another dental provider because of incomplete work, resulting in additional costs to Te Whatu Ora.
- D. However, there are some limited situations when the Mobile Dental Provider may be unable to complete services or treatment required by an Enrolled Adolescent. That could be because treatments or services required are complex and/or outside of the Mobile Dental Provider's practitioner's scope of practice, or in case of emergencies if follow-up care is urgently required during normal hours, but the Mobile Dental Provider's mobile unit is no longer at the Enrolled Adolescent's school.
- E. The Mobile Dental Provider may wish to sub-contract another provider who provides Oral Health Services for Adolescents under a Combined Dental Agreement, to provide those

services to the Mobile Dental Provider's Enrolled Adolescents in those limited circumstances, as and when required.

- F. The Subcontractor provides Oral Health Services for Adolescents under a Combined Dental Agreement and is willing and able to also provide services to the Mobile Dental Provider's Enrolled Adolescents. The parties agree that the travel required for the Enrolled Adolescents to get to the premises at which the Subcontractor will provide services is not a barrier for the completion of treatment.
- G. Accordingly, the parties have agreed to enter into this agreement, so that the Subcontractor can provide services for the Mobile Dental Provider's Enrolled Adolescents ("**Services**") on the terms set out in this agreement ("**Agreement**").

## **1. Term**

- 1.1 This Agreement starts on the date of this Agreement and continues until it is terminated in accordance with this Agreement or at law.

## **2. Application of the Combined Dental Agreement**

- 2.1 The parties agree that:

- (a) except to the extent that the context otherwise requires, the provisions of the Combined Dental Agreement apply to and form part of this Agreement, and that the Subcontractor must comply with those provisions when providing Services
- (b) any reference to the Combined Dental Agreement in this Agreement is a reference to the current version of the Combined Dental Agreement
- (c) any variation to a provision of the Combined Dental Agreement that applies to and/or forms part of this Agreement is deemed to be incorporated into this Agreement from the date the variation comes into effect, and accordingly all terms and clause references in this Agreement are deemed to be amended as necessary to give effect to the variation
- (d) unless the context requires otherwise, and unless the term is defined in this Agreement, terms that are used in this Agreement and defined in the Combined Dental Agreement have the meaning set out in the Combined Dental Agreement; and
- (e) any guidelines, policies, or other documents referred to in the Combined Dental Agreement also apply to and forms part of this Agreement (to the extent that the document gives rights to, or imposes obligations on, the Subcontractor).

## **3. Our obligations and how we will work together**

- 3.1 The parties agree to carry out the roles and responsibilities under this Agreement in a collaborative and co-operative way, and to exercise our rights in a reasonable manner.

3.2 The Subcontractor agrees to do everything reasonably practicable to ensure that the Mobile Dental Provider can and will provide services in accordance with, and meet its obligations under, its Combined Dental Agreement.

3.3 Both parties will continue to ensure that the travel required for the Enrolled Adolescents to get to the premises at which the Subcontractor will provide Services is not a barrier for the completion of treatment.

#### 4. Services provided by the Subcontractor

4.1 The Subcontractor will provide the following services to the Mobile Dental Provider's Enrolled Adolescents as "Services", as and when required by the Mobile Dental Provider (for example, by the Mobile Dental Provider referring one or more Enrolled Adolescents to the Subcontractor):

- (a) any Standard Oral Health Services for Adolescents described in clause E5.1 of the Combined Dental Agreement that the Mobile Dental Provider is unable to provide ("**Service Package Services**"), which could include:
    - (i) any consultations in addition to the annual consultation, including emergency consultations in normal hours
    - (ii) all necessary one surface restorations in posterior teeth (molars and premolars)
    - (iii) periapical X-rays
    - (iv) fissure sealants
    - (v) removal of supragingival calculus
    - (vi) other preventative treatments (eg, topical fluoride applications)
    - (vii) chair-side education on oral health care
  - (b) additional services for Enrolled Adolescents who have a high level of dental caries, whose treatment plan is approved by the Approving Dental Officer in accordance with clause E5.2 of the Combined Dental Agreement ("**High Caries Services**"); and
  - (c) any Additional Oral Health Services for Adolescents described in clauses E5.3 and E5.4 of the Combined Dental Agreement that the Mobile Dental Provider is unable to provide ("**Additional Services**").
- 4.2 The Subcontractor:
- (a) must provide the Services in accordance with the relevant provisions of the Combined Dental Agreement; and
  - (b) may only provide Services that it is able to provide under its Combined Dental Agreement.

## **5. Mobile Dental Provider Service obligations**

- 5.1 The Mobile Dental Provider must provide dental radiographs for any Enrolled Adolescents to whom the Subcontractor will be providing Services, if it is reasonably possible for the Mobile Dental Provider to do so. The Mobile Dental Provider must provide each radiograph to the Subcontractor as soon as reasonably possible after referral of an Enrolled Adolescent to the Subcontractor, and must be provided in a secure manner.
- 5.2 The Mobile Dental Provider will inform any Enrolled Adolescents that may need Services to be provided by the Subcontractor, including emergency services, about how and where to access those Services, including by making the information available on the Mobile Dental Provider's Internet site, and phone messaging service.

## **6. Enrolment of Enrolled Adolescents**

- 6.1 An Enrolled Adolescent that receives Services from the Subcontractor under this Agreement will remain enrolled with the Mobile Dental Provider.
- 6.2 Nothing in this Agreement prevents an Enrolled Adolescent from changing the dental provider with which they are enrolled.

## **7. Practitioners and Service providers**

- 7.1 The Subcontractor must ensure that it and/or each Practitioner or organisation it engages to provide Services has the qualifications, accreditation, experience, competency, and availability (as relevant) that is necessary to ensure that the Subcontractor provides the Services in accordance with this Agreement.
- 7.2 The Subcontractor must ensure that it and/or each Practitioner who provides Services holds an annual practising certificate and a current registration from the Dental Council.

## **8. Claims and payments for Service Package Services**

- 8.1 The parties agree that only the Mobile Dental Provider may claim, and be paid for, the provision of any Service Package Services to an Enrolled Adolescent under its Combined Dental Agreement. To avoid doubt, the Subcontractor must not claim, nor be paid:
  - (a) the payment for the package of Service Package Services described in clause F2 of the Combined Dental Agreement (COM1, COM2, and COM3)
  - (b) the payment for initial oral consultations for adolescents who are not able to access their regular health provider in an emergency during normal practice hours (CON3).
- 8.2 The parties agree:
  - (a) except as specified in this Agreement, or as the context otherwise requires, the provisions of the Mobile Dental Provider's Combined Dental Agreement will apply in respect of any claims made and payments received by the Mobile Dental Provider, and any amounts to be paid by the Mobile Dental Provider to the Subcontractor; and

- (b) the Subcontractor will do everything reasonably practicable to ensure that the Mobile Dental Provider is able to comply with its obligations under its Combined Dental Agreement in respect of claims and payments for services.
- 8.3 The Mobile Dental Provider will pay the Subcontractor for any Service Package Services that the Subcontractor provides. Subject to clause 8.4, the amount paid for any Service Package Service will be as specified in Schedule One (if applicable) or as agreed by the parties from time to time (which will, if possible, be prior to any Service Package Services being provided by the Subcontractor).
- 8.4 The parties agree that the total amount paid to the Subcontractor for providing one or more Services or treatments from the Service Package Services will not exceed the amount paid to the Mobile Dental Provider by Te Whatu Ora for the Service Package Services.
- 8.5 All amounts payable under this Agreement are exclusive of GST.
- 8.6 The Subcontractor must invoice the Mobile Dental Provider in respect of any Service Package Services it provides in a month by last day of the following month, and the Mobile Dental Provider will pay the Subcontractor's invoice within 20 Business Days of receipt of an invoice from the Subcontractor or, subject to the Mobile Dental Provider complying with clause 8.7, from the date on which the Mobile Dental Provider is paid by Te Whatu Ora for the Service Package Services (whichever comes later).
- 8.7 The Mobile Dental Provider will ensure that it submits its claims for Service Package Services provided in respect of Enrolled Adolescents to whom the Subcontractor has provided Services to Te Whatu Ora in a timely manner and in accordance with the requirements of its Combined Dental Agreement, so as not to delay payments to the Subcontractor.
- 8.8 Except as specified in this Agreement, or as the context otherwise requires, the provisions of the Mobile Dental Provider's Combined Dental Agreement will apply in respect of any claims made and payments received by the Mobile Dental Provider, and any amounts to be paid by the Mobile Dental Provider to the Subcontractor.
- 8.9 The Subcontractor must ensure that any Practitioners who provide any Service Package Services do not claim or receive payments for such Services from Te Whatu Ora.

## **9. Claims and payments for High Caries Services and Additional Services**

- 9.1 The parties agree that:
- (a) only the Subcontractor may claim, and be paid for, the provision of any High Caries Services or Additional Services to an Enrolled Adolescent under its Combined Dental Agreement with Te Whatu Ora, and to avoid doubt, the Mobile Dental Provider must not claim, nor be paid, for any such Services; and
- (b) the Mobile Dental Provider is not liable to pay the Subcontractor for those Services.

## **10. Charging for Services**

10.1 The Subcontractor may not charge Enrolled Adolescents for any Services unless expressly permitted by the Combined Dental Agreement.

## **11. Children's Act 2014**

11.1 Both parties will comply with their obligations under the Children's Act 2014, including by adopting a child protection policy that complies with section 19 of that Act, and reviewing the policy within three years from the date of its adoption or most recent review, and at least every three years after that.

11.2 In relation to the Services, the Subcontractor must conduct, or cooperate with, the Mobile Dental Provider and Te Whatu Ora in relation to worker safety checks as required by the Children's Act 2014.

## **12. Reporting requirements**

12.1 The Subcontractor must give the Mobile Dental Provider any information about the Subcontractor's provision of Services that the Mobile Dental Provider needs (acting reasonably) in order to comply with the reporting requirements set out in the Combined Dental Agreement that relate to the Services, including claims for payment.

## **13. Audit**

13.1 If Te Whatu Ora Audits the Mobile Dental Provider in accordance with the Combined Dental Agreement, the Subcontractor must co-operate with Te Whatu Ora for the purpose of conducting the Audit, and provide access to Te Whatu Ora and any Auditor in accordance with the Audit provisions of the Combined Dental Agreement.

## **14. Confidentiality and public statements**

14.1 The parties agree that neither party will disclose Confidential Information to any person except as set out in this Agreement and, for Confidential Information that is Health Information, except as required or permitted by the Health Information Privacy Code 2020 or Health Act 1956.

14.2 Either party may disclose Confidential Information:

- (a) to Te Whatu Ora if disclosure to Te Whatu Ora is permitted or required by this Agreement or either party's Combined Dental Agreement;
- (b) to those involved in the Provision of the Services, if necessary;
- (c) to our respective professional advisors and representative agents;
- (d) if disclosure is permitted or required under this Agreement or by law;
- (e) if the information is required to be disclosed to the Crown under a Crown Direction or an agreement between Te Whatu Ora and the Crown;

- (f) if the information is already in the public domain without being in breach of this clause;
- (g) if it is required to be disclosed by law; or
- (h) if the other party has consented in writing to such disclosure

14.3 Neither party may, during or after the term of this Agreement, either directly or indirectly criticise the other publicly in relation to this Agreement, without first fully discussing (or using reasonable endeavours to discuss) the matter of concern with the other in good faith and in a co-operative and constructive manner.

14.4 Nothing in clause 14.3 prevents either party from:

- (a) discussing any matters of concerns with its own employees, contractors, agents, personnel, or advisors; or
- (b) publicly commenting on public policy matters.

## 15. Notification of problems

15.1 Each party will advise the other promptly in writing of any changes, problems, significant risks, or significant issues (including suspected fraud, serious non-compliance with an obligation under this Agreement or either party's Combined Dental Agreement, and issues that could reasonably be considered to have high media or public interest), which materially reduce or affect, or are likely to materially reduce or affect:

- (a) the ability of either party to meet its obligations under this Agreement; or
- (b) the ability of either party to meet its obligations under its Combined Dental Agreement.

## 16. Dispute resolution

16.1 **Court or arbitration proceedings:** The parties agree not to commence any court or arbitration proceedings relating to any dispute arising out of this Agreement until both parties have complied with the requirements set out in this clause, unless either party considers that proceedings are necessary to preserve its rights.

16.2 **Resolution by agreement:** If a dispute arises under this Agreement:

- (a) the party claiming that a dispute exists must give notice to the other party of the nature of the dispute; and
- (b) each party will act in good faith and use our best endeavours to resolve the dispute by agreement.

16.3 **Mediation:** If the dispute is not settled by agreement within 20 Business Days of receipt of the notice of dispute, the parties may agree to participate in mediation, and the following provisions apply:

- (a) the mediation will be conducted under the Resolution Institute's standard mediation agreement;

- (b) if the parties do not agree on a mediator or the mediator's fees within five Business Days of receipt of the notice of mediation, the mediator will be appointed or the fees set by the chair of the Resolution Institute (or their nominee) at the request of either party; and
- (c) the parties will share the costs of the mediator's fees equally.

16.4 **Obligations continue:** The parties will each continue to comply with our obligations in this Agreement, unless agreed otherwise.

16.5 **Exceptions:** This clause does not apply to:

- (a) any disputes concerning whether or not any person is an Eligible Person;
- (b) a variation to or termination of the Combined Dental Agreement or this Agreement;
- (c) any matter that is subject to a current Audit process (but not including a dispute about an Audit report if the Audit has been completed) or which has been or is referred to a Complaints Body.

## 17. Termination

17.1 If either party's Combined Dental Agreement is terminated for any reason, this Agreement terminates on the same day as the expiry or termination of the Combined Dental Agreement.

17.2 Each party will give the other party as much notice as reasonably practicable if its Combined Dental Agreement is to expire or is terminated.

17.3 Either party may terminate this Agreement by giving the other three months' notice.

17.4 The Mobile Dental Provider may terminate this Agreement immediately by notice to the Subcontractor if:

- (a) the Mobile Dental Provider is required to terminate this Agreement by Te Whatu Ora in accordance with the provisions of the Combined Dental Agreement;
- (b) the Subcontractor has failed to perform a material obligation set out in this Agreement;
- (c) the Subcontractor has claimed, and/or been paid, a payment in breach of this Agreement;
- (d) the Subcontractor has failed to perform an obligation in this Agreement other than an obligation described in paragraph (b) or (c), and the failure is incapable of being rectified, or, if it is capable of being rectified, is not rectified within 20 Business Days of the Mobile Dental Provider giving the Subcontractor notice of the failure; or
- (e) an Insolvency Event occurs.

17.5 The Subcontractor may terminate this Agreement immediately by notice to the Mobile Dental Provider if:



- (a) the Mobile Dental Provider has failed to perform a material obligation set out in this Agreement;
- (b) the Mobile Dental Provider has failed to perform an obligation in this Agreement that is not a material obligation, and the failure is incapable of being rectified, or, if it is capable of being rectified, is not rectified within 20 Business Days of the Subcontractor giving the Mobile Dental Provider notice of the failure; or
- (c) an Insolvency Event occurs.

## **18. Withholding payments**

18.1 In addition to its rights under clause 17, the Mobile Dental Provider may withhold payments or portions of payments due under this Agreement as follows:

- (a) if the Subcontractor is found to be in breach of this Agreement at the end of an Audit (of either the Mobile Dental Provider or the Subcontractor), the Mobile Dental Provider may withhold payments due to the Subcontractor, up to the value of the breach, as is reasonable in the circumstances; and
- (b) if the Mobile Dental Provider has made a payment to the Subcontractor that the Subcontractor was not entitled to under this Agreement, the Mobile Dental Provider may withhold payments due to the Subcontractor, up to the value of the payment.

18.2 If Te Whatu Ora withholds payment from the Mobile Dental Provider in relation to Service Package Services provided by the Subcontractor due to an act or omission of the Subcontractor in relation to those Services, the Mobile Dental Provider may withhold those payments from the Subcontractor.

## **19. Consequences of termination**

19.1 The termination of all or part of this Agreement will not prejudice:

- (a) any other rights or remedies that either party may have against the other arising out of any breach of this Agreement that occurred before expiry or termination; or
- (b) the operation of any clauses of this Agreement that are expressed or implied to have effect after expiry or termination.

19.2 On the expiry or termination of this Agreement, each party will return to the other all information, documents, and software that belong to the other and relate to the Services (unless the owner has agreed otherwise), except that the Mobile Dental Provider may retain such information for audits undertaken in accordance with this Agreement or the Combined Dental Agreement.

## **20. Uncontrollable Events**

20.1 Neither party will be in default under this Agreement if the default is caused by an Uncontrollable Event.

20.2 If either party is affected by an Uncontrollable Event, the party affected must:

- (a) notify the other party of:
  - (i) the nature of the circumstances giving rise to the Uncontrollable Event;
  - (ii) the extent of the affected party's inability to perform; and
  - (iii) the likely duration of that non-performance;
- (b) take all reasonable steps to remedy, or reduce the impact of, the Uncontrollable Event; and
- (c) perform the obligation affected by the Uncontrollable Event as soon as possible.

20.3 The Mobile Dental Provider may, after consulting with the Subcontractor, make alternative arrangements for the provision of the Services during the period in which the Subcontractor Provider is unable to provide them as a result of an Uncontrollable Event (and for such reasonable time afterwards as may be necessary to secure an alternative provider at the time the alternative arrangement is entered into).

20.4 If either party is unable to perform an obligation under this Agreement for 20 Business Days or more because of an Uncontrollable Event, the parties must try to agree to what extent, if any, the obligation in question can be varied or continued to be performed by the affected party.

20.5 If the parties do not reach an agreement under clause 20.4 within two months after receipt of the notice under subclause 20.2(a), either party may terminate this Agreement by giving the other at least 20 Business Days' notice.

## **21. Transfer and assignment of rights and obligations**

21.1 Neither party may assign nor transfer our rights and obligations under this Agreement without the written consent of the other party, which will not be unreasonably withheld.

## **22. Variations to this Agreement**

22.1 The parties may vary this Agreement by agreement in writing, provided that any variation is not inconsistent with the Combined Dental Agreement.

## **23. Notices**

23.1 Each notice or other communication under this Agreement must be in writing and may be made by facsimile, email, personal delivery, courier, or post at the facsimile number or address, and marked for the attention of the person or office holder (if any), designated for the relevant purpose by the addressee from time to time by notice to the other party.

23.2 Any change to a party's contact details must be notified to the other party at least 10 Business Days before the change comes into effect.

23.3 A notice is not effective until the addressee receives it.

23.4 A notice is deemed to be received (provided that the addresser is not aware of any failure in the communication) in the case of:

- (a) facsimile or email, on the Business Day on which it is sent or, if sent after 5pm in the place of receipt or on a non-Business Day, on the next Business Day;
- (b) personal delivery or courier, when it is delivered;
- (c) post, on the third Business Day after posting.

23.5 All periods of time for notice exclude the days on which the notice is given and include the days on which the period expires.

**24. Contracts and Commercial Law Act**

24.1 The parties agree that all obligations of the Subcontractor set out in this Agreement confer a benefit on Te Whatu Ora, and Te Whatu Ora may, in accordance with the Contracts and Commercial Law Act 2017, enforce those obligations directly against the Subcontractor.

**25. Miscellaneous terms**

25.1 **Entire Agreement:** This Agreement, including the Combined Dental Agreement, constitutes the entire agreement and understanding between the parties, and replaces all prior agreements and understandings between the parties in relation to the provision of the Services.

25.2 **Relationship of parties:** The Subcontractor is an independent contractor to the Mobile Dental Provider, and not an employee or agent.

25.3 **Severability:** If any provision of this Agreement is found or held to be illegal, invalid, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in force.

25.4 **Waiver:** The parties agree that either party may, by notice, waive a specific right conferred under this Agreement, and any delay or failure to exercise a right does not constitute a waiver of that right.

**SIGNED** by \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Signature

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

**[OPTIONAL: DELETE IF FEES ARE NOT SPECIFIED IN THIS SCHEDULE]**

**Schedule One – Fees for Service Package Services**

- 1 In accordance with clause 8.3 of this Agreement, but subject to clause 8.4 (see below) the parties agree that the Mobile Dental Provider will pay the following amounts to the Subcontractor for Service Package Services provided under this Agreement:

[\$[Insert amount]] for consultations, including examination and diagnosis, prophylaxis, advice on dental care and any special tests and bitewing radiographs considered necessary. This includes both regular consultations as necessary and any necessary emergency consultations in normal hours

[\$[Insert amount]] for all necessary one surface restorations in posterior teeth (molars and premolars)

[\$[Insert amount]] for periapical X-rays where required

[\$[Insert amount]] for fissure sealants where required

[\$[Insert amount]] for removal of supragingival calculus

[\$[Insert amount]] for other preventive treatments (eg, topical fluoride applications) where required

- 2 As set out in clause 8.4 of this Agreement, the total amount paid by the Mobile Dental Provider to the Subcontractor will not exceed the amount paid to the Mobile Dental Provider by Te Whatu Ora for the Service Package Services.