

## **AGREEMENT BETWEEN YOU AND US**

This is an agreement between you, being the person who applies your e-signature to this Agreement and us, being Massey University, a body corporate under the Massey University Act 1963, and the Education and Training Act 2020, of Palmerston North, New Zealand.

You must read and accept the following terms and conditions of this agreement before carrying out the service set out in detail below. These terms and conditions make up the entire agreement between you and us and supersedes all prior agreements, undertakings, representations and negotiations. The agreement will start on the date that you accept the terms and conditions and, subject to the termination section, will end on the day we no longer coordinate the Child Cancer Foundation Service.

## **SERVICES**

You agree to provide us with the service of providing counselling to clients for the Cancer Foundation Service. In consultation with you, we may amend the scope, nature or content of the service at any time which may affect the amount payable to you. If we require you to provide the service beyond the date that our contract ends with the Ministry of Health for the Cancer Foundation Service, this agreement may be extended, with the terms and conditions to be agreed upon by both of us. However, there is no expectation that a further agreement will be entered into once this Agreement ends.

You acknowledge that you are a contractor under this agreement and have had enough opportunity to obtain independent legal advice on the impact of being a contractor as opposed to an employee.

## **PERFORMANCE OF THE SERVICES & EQUIPMENT**

In supplying the service, you will exercise a level of care, diligence, skill and judgement which is expected of a registered health professional providing such a service. You will be liable to us in respect of any failure to exercise such care, diligence, skill and judgement and you will at your own cost make good any errors, omissions, defects or faults in the service of which we notify you in writing during or after the term of this agreement.

When performing the service, you will act to promote and protect our business, reputation and goodwill and will carry out and comply with all our reasonable and lawful directions which may vary from time to time.

If you fail to begin or complete the service and, as a result, we directly or indirectly incur any loss or damage, you will be liable for the proportion of the loss or damage which can be attributed to your failure. If completion of any part of the service is delayed by matters beyond the control of either of us, or if additional work requires the service to be varied, we will grant you a fair and reasonable extension. You agree to keep us fully informed of all matters relevant to the performance of the service and agree to promptly advise us of any problems or anticipated problems which may adversely affect your delivery of the service.

## **THE FEE**

The Child Cancer Foundation will pay you on receipt of your invoice at the rate of \$135 per hour for the service, plus GST if any. If your client DNAs or cancels within 24 hours of their appointment, you will be paid 50% of the hourly rate. You will be paid for a maximum of "did not attend appointments", or 2 in a row.

You will pay for all expenses that you incur in the performance of the service.

You agree that you are solely liable and responsible for all taxes, levies and duties imposed on you in respect of the fees received for the provision of the services and that you will file all necessary returns in respect of such taxes (including Goods and Services tax, and ACC levies) with the appropriate authorities. You agree that neither we nor the Child Cancer Foundation has any responsibility for your taxation obligations.

Due to your status as an independent consultant, you will not be entitled to any payments, fees, allowances or reimbursements and will not be entitled to any payments or benefits relating to sickness, superannuation, holidays, redundancy, or overtime.

## **CONFLICT OF INTEREST & CONFIDENTIALITY**

You are entitled to undertake other work during the term of this Agreement but will not enter into any contract or business arrangement or engage in any activity which may conflict with our interests without our written consent.

Neither you or we will, either during the term of this agreement or after, except as necessary to provide the service, disclose to any person or other organisation, or use in any unauthorised manner: any information which is confidential to us or you.

You will not disclose the nature or content of any of the terms of this Agreement, either during or after the term of this Agreement, except for the purposes of obtaining legal or financial advice. You will not advertise or publicise the existence of this Agreement (or any aspect of it) without our prior written consent and will not make any statements or representations to the media on behalf of us without our prior written approval.

#### **INTELLECTUAL PROPERTY & INVENTIONS**

You agree that all rights of ownership in course material produced for teaching and distribution to students will belong to us.

#### **HEALTH AND SAFETY AND REGISTRATION REQUIREMENTS**

You will always comply with the requirements of the Health and Safety at Work Act 2015 in relation to your work as a health professional, and in accordance with your regulatory body requirements and legal and ethical obligations.

You will ensure that you keep all registration requirements current for your professional practice for the duration of this Agreement. You will notify us promptly if there is any action brought against you in relation to your conduct obligations to your governing body. Failure to keep your registration or confirmed disciplinary action against you may result in termination of this Agreement.

#### **TERMINATION**

This agreement will be terminated if: the end date specified on the [insert]; or a date agreed in writing between both of us; or one of us receiving written notice from the other that the notifying party has become bankrupt, gone into receivership, statutory management or liquidation, the Child Cancer Foundation ceasing funding for this programme, your registration being revoked, lapsing, or you being subject to disciplinary action, or, has died; or the end of 14 days after either of us have provided the other party with written notice of termination.

A written notice of termination may be provided to you by us in the following cases: if you commit any breach of the terms and conditions of this agreement and fail to remedy the breach within 14 days' of us providing written notice to you requiring the breach to be remedied; if your conduct is considered by us to be detrimental to our reputation; if you are in breach of confidentiality whether on purpose or accident; or if your provision of services to our clients is not provided in a professional and timely manner.

A written notice of termination may be provided to us by you in the following cases: if we commit a serious breach of the terms and conditions of this agreement and fail to remedy the breach within 14 days' of you providing us with written notice requiring the breach to be remedied.

Irrespective to any other clause of this Agreement, we reserve the right to immediately terminate this Agreement, without notice, at any time for serious misconduct, or any substantial breach, substantial non-observance or substantial non-performance of any of the terms or conditions of this agreement. Termination of this Agreement will not remove or affect the obligations under this Agreement which by their nature are intended to survive termination.

#### **FORCE MAJEURE**

Neither of us will be liable for any act or omission that is due to any unforeseen cause clearly outside of the control of either of us. If you are unable to complete the Agreement due to needing to cease practice or in the case of an individual patient, you are no longer able to provide them with counselling, you will endeavour to provide continuity of support and ensure that your exit is conducted in an orderly fashion to minimise any adverse impact on us.

If either of us wish to rely on this clause, we must advise the other immediately of any circumstances, situation or act which could justify reliance on this clause and must perform the obligations to the extent we are able to do so notwithstanding the relevant unforeseen cause.

#### **DISPUTES**

If any dispute arises between both of us as to the meaning or application of any part of this agreement or any other matter touching or concerning this agreement, then both of us will attempt in good faith to amicably settle the dispute. If both of

us cannot amicably settle the dispute within 14 days of the dispute arising, either of us may refer the matter to mediation. If both of us agree to attend mediation both of us will agree on a mediator, or failing agreement, a mediator will be nominated on the application of either of us by the President of the New Zealand Law Society or his/her nominee. The mediator's fee and costs will be split evenly between both of us but both of us will otherwise bear our own costs relating to the mediation.

If either of us refuse to attend mediation within 21 days of referral of the dispute to mediation or the matter has not been resolved (either at all or within a reasonable timeframe then either party can terminate this agreement by written notice. Any termination period will take into account patient needs and seek to ensure an orderly wind up of counselling services.

#### NOTICES

We will give you notice by serving the notice on you or by sending it by post to the address provided to us by you in your application or to another address as you may advise for the purposes of notification from time to time. Any notice given will be deemed to be received at the time when it was delivered or within 48 hours from the time that it was posted.

You will give us notice by serving the notice on us or by sending it by post to [Psychology Clinic PN319, Private Bag 11222, Palmerston North 4222] or to another address as we may advise for the purposes of notification from time to time. Any notice given will be deemed to be received at the time when it was delivered or within 48 hours from the time that it was posted.

#### GENERAL CONDITIONS

This Agreement will be in accordance with the laws of New Zealand in all respects. The provisions of this Agreement are severable. If a court of competent jurisdiction holds any term of this agreement to be invalid or unenforceable, such finding shall not affect the remaining terms of this Agreement.

No modification, variation or waiver of this Agreement or any of the terms contained within in, will be effective or binding on either of us unless it has been agreed upon in writing by both of us. You will not assign, transfer or subcontract your rights or obligations under this Agreement without our prior written consent.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_