APPENDIX 4

Draft services agreement

[Date]

[Address]

Dear [ ]

PHARMAC agrees to contract with ***[name of service provider]*** for the supply of regional vaccine 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 Jeremy.price@pharmac.govt.nz by **[*insert time*]** pm on **[*insert date*]**.

Yours faithfully

[PHARMAC signatory]

Signed and agreed by:

[service provider signatory]

_____

Name:

Position:

Date:

GENERAL TERMS

Definitions

In these General Terms unless the context otherwise requires:

"Agreement" means this agreement including all Schedules;

"Alternative Vaccine" means additional stock of the Vaccine or an alternative brand of a Vaccine that PHARMAC, following such consultation as it considers necessary with PTAC and its sub-committees considers to be an acceptable substitute for that Vaccine;

"Authorised Agent" means PHARMAC's agent who is supplied the Vaccine 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;

"**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;

"Crown Direction" means any Ministerial direction given to PHARMAC under section 103 of the "Crown Entities Act 2004 or otherwise according to law

"DHB Hospital" means a DHB, including its hospital;

"District Health Board" (or **"DHB"**) has the same meaning as in the New Zealand Public Health and Disability Act 2000;

"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 the Ministry of Health 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;

"PHARMAC" means the Pharmaceutical Management Agency established under the New Zealand Public Health and Disability Act 2000;

"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

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 New Zealand Public Health and Disability Act 2000;

(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 1 July 2020 and shall expire on 30 June 2024 (inclusive) (the "Initial Period") unless otherwise:

(a) terminated in accordance with Clause 14; or

(b) extended for a one (1) year consecutive period at the option of PHARMAC, by providing six (6) months written notice to you prior to the expiry of the Initial Period, of PHARMAC's intention to extend, with the commencement of this extension to be at the expiry of the Initial Period.

3. **Vaccine Services**

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

4. **Vaccine Recall and Disengagement Services**

(a) In the event the Ministry of Health or any other authority recalls a Vaccine, you shall co-operate fully and comply with any instruction provided to you by PHARMAC. All costs related to vaccine 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 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 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 DHB district, any DHB 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 DHB Hospital(s) and 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 DHB district, any DHB Hospital 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 the 10th Business Day following 30 June 2021, 30 June 2022 ,30 June 2023 and 30 June 2024, and subject to the extension stated in Clause 2 (b) 30 June 2025, 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 20th day of the month following the month to which the invoice for the Services relates, or, if the 20th day of the month is not a Business Day, then on the next Business Day following the 20th 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, on a monthly basis in relation to the matters specified below:

(i) By distribution centre, the total Vaccine stock holding in packs (balance) for each Pharmacode;

(ii) Total number of Vaccine (packs) distributed to each DHB by Pharmacode;

(iii) Total number of Vaccine orders distributed to each DHB; and

By Immunisation Provider, the number of returned and destroyed Vaccine packs for each Pharmacode, together with the reasons the Vaccine packs have been returned and the original despatch details. The information to be provided in accordance with Clause 7 (a) above shall be provided within 10 Business Days of the end of the month relating to that information. PHARMAC will provide the Pharmacodes for each funded vaccine to allow you to complete the required reports above

(b) You will report to PHARMAC, in a form to be prescribed by PHARMAC on a six monthly basis, or upon request by PHARMAC, the number of Vaccine packs by Pharmacode distributed to each Immunisation Provider.

(c) You will report to the Ministry of Health or its nominated agent and PHARMAC in writing and otherwise in a form to be prescribed by PHARMAC, on a six monthly basis in relation to the matters specified below:

(i) monthly number of Data Loggers distributed in actual numbers and as a percentage of orders dispatched;

(ii) Historical monthly comparison over the previous 12 months; and

(iii) Number of Data Loggers returned out of spec including this number as a percentage of Data Loggers distributed nationally.

(d) You will provide Vaccine stock volume data to the Ministry of Health and the Authorised Agent on an ad-hoc basis if requested.

(e) You will report monthly, to the authorised agent responsible for conducting the National Cold Chain Audit (if National Cold Chain Audit is undertaken) with a list of Immunisation Providers that have been issued a National Cold Chain Audit Data Logger.

(f) You will reconcile all Vaccine insurance claims on a six monthly basis and provide details to PHARMAC.

(g) You will assist PHARMAC, the Ministry of Health and its nominated agent and the Authorised Agent with the distribution of information on Vaccines, Vaccine changes and funding changes.

(h) You will maintain an accurate database of Immunisation Providers and Immunisation Provider addresses in accordance with Clause ***[Insert clause reference]*** of Schedule 2 and PHARMAC accepts that the Medical Council website may be used for this purpose.

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 supply and Cold Chain issues, 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 or anything relating to any premises or equipment used by you or your key personnel if you materially fail to comply with any of your obligations in this Agreement

(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 $6 million per any one occurrence. 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.

(b) 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.

(c) The payment of any excess relating to the insurance policies referred to in Clause 10 (a) shall be paid by you.

(d) 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**

(a) 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.

(b) 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.

(c) 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.

(d) Title in the Vaccine will remain with PHARMAC at all times.

(e) 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.

(f) 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 9 above you must notify PHARMAC in writing as soon as you have reasonable cause to believe that you will fail to distribute or store a Vaccine on the terms set out in, and in accordance with, this Agreement.

(b) You agree to indemnify PHARMAC if for any reason you fail to distribute or store a Vaccine on the terms set out in, and in accordance with, this Agreement (other than for reasons where PHARMAC reasonably considers it to be wholly outside your control). This indemnity covers the purchase value of an Alternative Vaccine.

(c) The indemnity set out in this Clause 12 for the purchase of an Alternative Vaccine shall be limited to $450,000 per failure to distribute or store a Vaccine 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:

(a) 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

(b) 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 19 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 Clause 2 and 3 of 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, the DHBs and their employees (if applicable). The parties acknowledge that it may be necessary or appropriate for PHARMAC to disclose Confidential Information:

(a) pursuant to the Official Information Act 1982; or

(b) 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:

(c) the information is publicly available without any cause attributable to the disclosing party; or

(d) 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:

(a) PHARMAC completing any consultation it considers necessary or appropriate (including consultation under its Operating Policies and Procedures); and

(b) 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

22. **Volume Change**

(a) PHARMAC will notify you prior to amending the Pharmaceutical Schedule where an amendment will result in a change to the volume of Vaccine supplied under this Agreement.

(b) 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.

(c) 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**

You must maintain all consents necessary to fulfil your obligations under this Agreement, including but not limited to having a valid medicines wholesalers licence and comply with the New Zealand Code of Good Manufacturing and Warehousing Practice for Manufacture and Distribution of Therapeutic Goods, Parts 4 and 5.

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:

(a) is the entire agreement between us regarding the terms on which the Services are supplied by you to PHARMAC; and

(b) 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**

(a) 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 DHB Hospitals and Ministry of Health and related persons.

(b) 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.

(c) 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 DHB 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

Special Obligations

1. Vaccines

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

2. Payments

(a) The following payment will be made to you by PHARMAC in accordance with Clause 6 (c) of the General Terms of this Agreement for all Services.

Service	Service Period	Monthly payment (excl GST)
1. Service Provision Fee	1 July 2020 until 30 June 2021	
	1 July 2021 until 30 June 2022	
	1 July 2022 until 30 June 2023	
	1 July 2023 until 30 June 2024	
2. National Cold Chain Audit Service Fee (if applicable)		

(b) The following payment per delivery will be made annually to you in accordance with Clause 6 (d) of the General Terms of this Agreement in the event that the total deliveries to Immunisation Providers exceed xxxxxxx deliveries

Service Period	Rate (excl GST) for each additional delivery above xxxxx annual deliveries
1 July 2020 until 30 June 2024	

3. Budget for the service

Service	Details of calculation	Price per annum (excl GST)

Schedule 2

Service Specification

[Please refer to Appendix 1 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 2020) excluding seasonal influenza vaccine and includes tuberculin PPD (Mantoux tests).

1. General

a. You will

i. provide the services in accordance with WHO/EPI (World Health Organisation/Expended Programme on Immunisation);

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 and all relevant law;

iii. maintain Vaccines under Cold Chain Conditions;

iv. work with PHARMAC and PHARMAC's Authorised Agent and other nominated parties involved with national vaccine management at PHARMAC's request;

v. 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;

vi. 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

vii comply with all auditing requirements of IMAC, the Ministry of Health or its nominated agent and in accordance with Clause 8 of the General Terms of this Agreement.

2. Vaccine storage and stock maintenance

You will:

a) store Vaccines under Cold Chain Conditions;

b) store funded vaccine stock in accordance with the cold chain between the temperature of 2 degrees Celsius and 8 degrees Celsius;

c) ensure that cold room infrastructure has capacity for 6 weeks' stock of funded vaccines and additional capacity for vaccines that may be approved for funding in the future; provide appropriate security for funded vaccine stocks;

d) have a stock prevention programme in place to ensure that all the funded vaccine stock power supply is alarmed, monitored and facilities are managed to mitigate against vaccine loss;

e) storage will be managed to minimise stock losses, to ensure that the oldest stock is issued before later deliveries and in conditions that meet all appropriate standards relevant to the storage of vaccines;

f) log all breaches of cold chain process; and

g) have a warehouse management system that must accurately show the location of funded vaccine held, interfaces with freight management system to allow full tracking of deliveries, shows all funded vaccines issued (including batch number and expiry date) to each immunisation provider and DHB hospitals, shows all funded vaccine returns and the reasons for the return.

3. Vaccine Distribution

You will:

a) maintain an accurate database of licenced Immunisation Providers and addresses in accordance with Clause 7 (i) of the General Terms;

b) provide an online purchase order system for Immunisation Providers to order funded Vaccines;

c) provide an up to date order form available for download from your company website;

d) dispatch funded vaccines to immunisation providers, DHB hospitals, schools and to any other party that PHARMAC requests within 24 hours of receiving a purchase order;

e) dispatch all purchase orders within two hours of packing a purchase order;

f) acknowledge receipt of all orders;

g) ensure that all funded Vaccines are maintained between 2 degrees and 8 degrees Celsius at all times during the distribution process;

h) monitor funded Vaccine transportation method at a rate of not less than 5% of deliveries;

i) place a temperature monitoring device (data logger) capable of recording the temperature throughout the transportation phases for an individual vaccine; and

j) obtain a signature or courier ticket statement on receipt by the Immunisation Provider, of each funded Vaccine delivery to an Immunisation Provider or DHB Hospital.

k) In the event of a national outbreak track and trace volumes of funded vaccines delivered to all Immunisation Providers

4. National Cold Chain Audit (if required)

a) you will collaborate with PHARMAC and IMAC in the event of a National Cold Chain Audit;

b) Provide any services requested by PHARMAC or IMAC in connection with any National Cold Chain Audit; and

c) Subject to the prior approval of PHARMAC be paid a fee by PHARMAC for any services in connection to a National Cold Chain Audit

d) You understand and accept that PHARMAC, acting on behalf of the Ministry of Health and/or IMAC (as applicable), may need to vary the National Cold Chain Audit requirements in the future in order to meet the objective in Schedule 2, Clause 4 of this Agreement, and you agree to cooperate and negotiate any potential changes to the process that affect you in good faith

5. Vaccine Returns

You will:

a) accept the return of expired or damaged funded Vaccines from Immunisation Providers or DHB Hospitals;

b) log where the funded Vaccines have been returned from and the reason for the return where provided;

c) assign returned or recalled funded Vaccines to the reject section of the warehouse, labelled and quarantined;

d) destroy returned or recalled funded Vaccines in accordance with the Resource Management Act 1991; and

e) report details of any destroyed stock to PHARMAC at month end.

6. Reporting

You will:

a) Provide monthly reports to PHARMAC on a specified day each month which include:

i. total stock value (balance);
ii. stock summary (distribution data by DHB, number of deliveries per month by DHB);
iii. by distribution centre, doses ordered by and supplied to immunisation providers by funded vaccine;
iv. by immunisation provider, the number of returned and destroyed funded vaccines, the reasons why they are returned and the original despatch details; and
v. any other ad hoc reports as reasonably requested by PHARMAC from time to time

b) provide six monthly reports to the Ministry of Health or its agent monitoring national cold chain compliance:

i. monthly numbers of data loggers distributed in actual numbers and as a percentage of orders dispatched;
ii. historic monthly comparison over previous 12 months; and
iii. data loggers returned out of spec.

c) reconcile all funded vaccine insurance claims on a six-month basis and provide details to PHARMAC; and

d) assist PHARMAC and the Ministry of Health with distribution of information on funded vaccines, funded vaccine changes and schedule changes.

7. Insurance

You will:

a) arrange and maintain insurance policies for all vaccine stock held on behalf of PHARMAC at the distribution centre(s) of $6 million, equivalent to the cost of the vaccine to PHARMAC;

b) if requested, send a copy of the relevant policy renewals to PHARMAC. Whether or not insurance policies exist shall not derogate from your potential liability;

c) 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; and reimburse PHARMAC for any claim against the policy for funded vaccine loss or any rebate you may receive for no claims where PHARMAC has paid the premium for the policy.

8. 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: