

# 2021 DATA USE POLICY



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2 August 2021

# OVERVIEW

This document outlines our agreed rules for safe and effective use of data from the Te Manawa Taki/Midland Trauma System Registry. It identifies:

- Use of data;
- Access to data;
- Data storage and security;
- Ethics processes and patient safety;
- Data security, confidentiality and unauthorised disclosure;
- Publication and authorship;
- Dispute resolution; and
- Legal Terms of Use.

It is expected that all data users understand and abide by the MTS Data Use Policy and Terms of Use.

The primary reference document for this policy is Waikato District Health Board Research Policy #0142. Every attempt has been made to ensure that this document is compliant with all existing policies of the Midland Hospitals, however it is the responsibility of researchers to understand policies referenced in this document as well as any local policies that pertain to research activities in specific DHBs.

Midland is now Te Manawa Taki (TMT). This is implied in reference to Midland DHBs and the use of terms TMT/Midland Trauma System (MTS), TMT/Midland Trauma Registry (MTR) and TMT/Midland Trauma Research Centre (MTRC).

This policy is authorised by the Chief Executive Officers of DHBs contributing to MTS and is referenced in the MOUs with other contributing organisations. For further reference documents see Appendix 1.

## INTRODUCTION

### Background

The TMT/Midland Trauma System (MTS) was established in 2010 and consists of a network of specialised clinical personnel based in each of the five TMT/Midland District Health Boards (DHBs) Lakes DHB; Taranaki DHB; Hauora Tairāwhiti DHB; Bay of Plenty DHB; Waikato DHB. Clinical personnel in the five districts are supported by a central hub group that administers the MTS and the TMT/Midland Trauma Registry (MTR).

### Our Vision

The health of our TMT/Midland communities will be improved by reducing the burden of trauma.

### Our Mission

The TMT/ Midland Trauma System will improve clinical trauma care, reduce the incidence of injury and enable safer, more efficient systems along the trauma journey.

### Our Values

Our work is guided by our beliefs and commitments to our values, namely:

- Patients first: The needs of patients guide our actions;
- Communication: Open, honest, helpful;
- Collaboration: Together we achieve more;
- Excellence: Quality care and information; and
- Forward looking: Integrity, diversity, creativity.

## Our Equity Statement

The TMT/Midland Trauma System (MTS) and its staff view variation in trauma incidence and access to care as inequities in healthcare. Our clinical and prevention programmes are focused on identifying and defining these inequities so they can be addressed and resolved by MTS and our partners that are responsible for healthcare delivery and injury prevention.

## Our Aims

The MTS has the following aims:

- Ensure that injured patients and their whānau receive equitable, highest quality trauma care;
- Develop and maintain an integrated regional trauma system infrastructure, including workforce and information systems;
- Support targeted injury prevention and awareness to address inequities and groups at risk;
- Inform evidenced-based change by focused trauma research and the Trauma Quality Improvement Program (TQIP); and
- Ensure the appropriate use of TMT/Midland trauma data.

The MTS has many functions related to trauma care in the region. One of these is to securely collect detailed trauma information on all patients admitted to TMT/Midland hospitals. This information is collected:

1. To support service provision and development;
2. To allow targeted research; and
3. To support quality improvement activities at the hospital, DHB, community and regional level by:
  - Providing data for clinical audit.
  - Providing clinical decision support.
  - Providing data for development of guidance documents and policies.
  - Enabling reporting of agreed key performance indicators.

## Our Governance

The MTS Operational Group reports to the MTS Strategic Group and includes all members of MTS and has functional links with many agencies and organisations dedicated to reducing the burden of trauma on our communities.

The MTS is governed by the MTS Strategic Group that has membership at multiple governance levels across the TMT/Midland DHBs.

## Our TMT/Midland Trauma Registry

The MTR has been operating continuously since 2012 and captures comprehensive patient data across all age groups and injury severities; this includes time and date stamping of transfer of patients to and between hospital facilities. This data set is unique in New Zealand as it captures both major and non-major injury information. While it is tempting to focus on major trauma patients as the most vulnerable group, non-major trauma makes up 92 percent of admitted trauma to TMT/Midland hospitals and is by far the greatest burden on our hospital system.

The MTR is a web-based application that utilizes Collector™ software as the portal for data entry. It now holds over 50,000 TMT/Midland trauma patient event journeys. This data provides an excellent platform for evidenced based system analysis and population-based studies that form the mainstay of our TQIP/MTRC activities. Continuous monitoring and performance feedback enables improvements to service delivery and patient outcomes.

## Our Privacy and Safety Principles that underpin the TMT/Midland Trauma System

Registry data is an extension of the clinical records of patients, and we have a shared responsibility to ensure that we handle it safely at all times. Data will only be available to persons or organisations that are authorised to receive patient information.

MTS operates within a “5 Safes” framework to ensure that data use is appropriate. This includes;

- Safe people;
- Safe projects;
- Safe settings;
- Safe data; and
- Safe output.

The MTR complies with relevant DHB policy related to research and data use and fulfils the National Health Information Security Framework (HISO 10029:2015) requirements meeting national standards for data privacy and security.

## Our Data Use Principles

The following principles of data responsibility have been endorsed by the TMT/Midland Trauma Strategic Group and Memorandum of Understanding with other contributing organisations:

- DHBs supply patient data to MTS.
- DHBs have access to all their own data.
- MTS is the guardian of that data and will ensure privacy, security and sovereignty of that data on behalf of the DHBs.
- DHBs can authorize anyone else to use their data through their usual audit, research, or quality improvement registration processes.
- DHBs must gain permission to use any other identifiable DHBs data.
- Data users must abide by general rules of data privacy and security.
- Data users must respect the ownership and sovereignty of the DHBs over their own data.
- In situations where there may be interference or duplication in data use, the DHB has priority.
- Data users must appropriately acknowledge the origin of the data in all authorized reports, publications or representations of that data.

## Our Trauma Quality Improvement Programme (TQIP)

Continuous measurement and performance feedback is important to raise awareness of service delivery gaps and opportunities to improve care for patients and whānau. In 2018 MTS formalised its TQIP programme to facilitate continuous monitoring and improvement of trauma clinical care and system efficiencies in the TMT/Midland region. TQIP uses agreed guidelines and measures to benchmark system and process performance around our patient first values. It utilises data directly from the MTR; information collected through clinical quality improvement processes and safety partners; and experience of care by patients and their whānau. The TQIP ensures issues are reported, actions are applied and that those actions are reviewed for resolution – often referred to as ‘loop closure’.

## Our TMT/Midland Trauma Research Centre (MTRC)

The MTRC is part of MTS and was established to translate data into meaningful information. The focus of the MTRC is to identify and monitor trauma issues which can then be addressed by the appropriate people in the wider team – whether the issues are clinical, systems infrastructure, injury awareness or prevention in nature. The MTRC provides a central focus point for researchers and funding bodies to initiate and complete quality research. The research centre can advise and support researchers to ensure that research output is well planned and appropriate to the ethos and direction of MTS.

If you have any queries, please contact us:

Midland Trauma System, Waikato Hospital

Email: [MTS@waikatodhb.health.nz](mailto:MTS@waikatodhb.health.nz)

Phone: (07) 839 8904 or (07) 839 8726 extension 98904

# DATA USE POLICY

## 1. Purpose

The purpose of this policy is to record a set of principles and obligations that researchers; all internal TMT/Midland DHB employees and external researchers, will adhere to when working with data as collected by DHBs; and when seeking to involve individuals recovering from trauma (and their whānau) who have been patients under the care of TMT/Midland DHBs.

## 2. Guardianship of data

All DHBs have open access to the data that they have supplied. In TMT/Midland DHBs this occurs via the local trauma service in each DHB. In situations where there may be interference or duplication in data use, the DHB of origin of the data has priority. The MTS provides guardianship for this information and has responsibility for its safe use; refer to Appendix 2, Legal Terms of Use.

## 3. Use of District Data

DHB personnel from each local trauma service collect patient and injury data from within their facilities therefore no authorisation is required for the return of this data back to that DHB in any format.

All trauma data will be returned to the DHB via the trauma service that collected and submitted the data. Internal TMT/Midland DHB employees are encouraged to discuss their proposals with their local MTS personnel prior to data requests being submitted. DHBs are encouraged to utilise MTS resources where available to enhance the efficient use of data for research purposes.

Each DHB can authorise anyone to use their data through their own established registration and approval/ethics processes, but no DHB may use another DHBs data or provide it to a third party (external to the DHB) for the purpose of audit, research or quality improvement without the permission of that DHB.

## 4. Use of Regional Data

The collection and use of TMT/Midland regional data has been authorised by the MTS Strategic Group. The MTS Strategic Group has given the Director of MTS the authority to release regional data for specific projects.

Researchers who are DHB employees are encouraged to discuss their proposals with their local MTS personnel prior to data requests being submitted to the MTRC. Non-DHB researchers interested in using trauma data should consult the Researchers Guide for further information ([www.midlandtrauma.nz](http://www.midlandtrauma.nz))

Extraction of bulk data from MTS can potentially lead to duplication, confusion, and unnecessary vulnerability to MTS, hence will generally not be supported. MTS uses a project-based strategy for data use. This maintains the essential context and security of information for maximum benefit and lowest risk.

## 5. Use of Non-MTS Data

The collection use of non-MTS generated data is the responsibility of the submitting DHB. Once the data is in the MTR this Data Use Policy applies.

The use of major trauma data once submitted to the National Trauma Network for inclusion in the national major trauma registry is covered by a legal agreement between ACC and the TMT/Midland DHBs (Schedule A – Major Trauma Data Sharing Agreement).

## 6. Public Access to Data

The data is not accessible to the public.

## 7. Ethics Processes

All researchers undertaking an audit, research project or quality improvement activity must comply with the Privacy Act 2020, the Health Information Privacy Code and the New Zealand Public Health and Disability Act 2000. They must ensure that the National Ethical Standards for Health and Disability Research (NEAC Standards) are appropriately applied to all health and disability research, audit and quality improvement activities that use trauma data; and for any projects where contact will be made with patients at risk, in recovery following injury and any family/whānau.

Researchers must ensure that designated DHB research offices, Māori research governance groups and other bodies responsible for endorsement of research, audit and quality improvement activities are appropriately included.

## 8. Patient Safety and the Clinical Safety Net

Each DHB maintains operating information systems that collect and hold data about patients in the care of DHB employed clinicians, resulting in a clinical relationship and duty of care. Because of this DHBs must be included in work undertaken by external researchers involving contact with trauma patients in recovery and/or their whānau.

Trauma patients are considered a potentially vulnerable group, particularly those recovering from major trauma. All patient outcome and experience studies therefore need close and careful coordination to ensure this higher risk group, and their whānau, are not overburdened by studies. To avoid negative consequences, and ensure requirements are met, MTS and regional Research Offices will be consulted regarding all studies requiring trauma patient and/or whānau contact and will advise on the appropriateness of such work. The NEAC Standards outline appropriate responses of researchers to addressing the needs of patients and whānau.

Research, audit and quality improvement work involving patient contact must have adequate provision for immediate clinical support for patients and whānau, a “clinical safety net”, if any clinically significant issues arise during interview and other patient contact processes. These should be linked with DHB clinical services, designed in collaboration with MTS and readily available to patients and whānau in need.

Any researchers (internal and external) interested in contacting patients as part of their research, audit or quality improvement activities must contact the MTS Director in the first instance as early as possible.

## 9. Research and Quality Improvement Activities involving Māori

All studies should consider and include Māori research principles and approaches as appropriate. Designated Māori advisory groups should guide and authorise projects that may impact on the health and welfare of Māori and they may also advise on any developing data sovereignty issues. In accordance with the [Te Mana Raraunga: Principles of Māori Data Sovereignty](#),<sup>1</sup> it is crucial to frame interpretation of the data in a way that respects Māori communities, groups and individuals by avoiding stigmatising or blaming Māori for their health outcomes.

When Māori patients recovering from injury are included in any study, for example in patient reported outcome studies, the clinical safety net implemented should be Te Tiriti o Waitangi/Treaty of Waitangi and tikanga compliant. Any researchers working with Māori must be culturally competent and the study approach should accommodate for the views of the whānau collective and the impact the traumatic event has on the whānau.

## 10. Complaints Processes

A specific person or organisation must be defined and agreed before the commencement of a project that will be responsible for issue resolution when a patient or whānau member complaint is made. This person or organisation should work with the relevant DHB quality and patient safety complaints process and personnel. This applies to any complaint regarding research, audit or quality improvement activities to the media, Privacy Commission, the Health and Disability Commissioner, or via regional DHBs.

<sup>1</sup><https://static1.squarespace.com/static/58e9b10f9de4bb8d1fb5ebbc/t/5bda208b4ae237cd89ee16e9/1541021836126/TMR+Ma%CC%84ori+Data+Sovereignty+Principles+Oct+2018.pdf> (Brief#1, October 2018)

## 11. Data Access Processes

For employees in each DHB data seeking to use their own data, this can be requested through your local trauma service colleagues. All staff undertaking research, clinical audit or quality improvement activities need to go through that DHB's registration and authorisation processes. Refer to each DHB's appropriate policies and the MTRC Researchers Guide for process descriptions.

For any DHB employee wanting to access TMT/Midland level data for comparative purposes with their own data should contact MTS staff ([MTS@waikatodhb.health.nz](mailto:MTS@waikatodhb.health.nz)) where data can be requested through a formal data request process. Requests will be prioritised and actioned through the MTS hub and MTRC.

For all external researcher's data can be requested through a formal request process. Requests will be prioritised and actioned through the MTS hub and MTRC. See the Researchers Guide alongside this policy for information on processes and other matters ([www.midlandtrauma.nz](http://www.midlandtrauma.nz)).

## 12. Data Security, Confidentiality, and Unauthorised Disclosure

The MTS database is held on a secure server at Waikato DHB. This system complies with the National Health Information Security Framework (HISO 10029:2015) and meets national standards for data privacy and security. As a rule, only de-identified data will be released unless appropriate ethics approval or oversight and DHB approval (as appropriate) has been obtained.

All internal and external researchers (the Principal Investigator in the case of multiple external researchers) will assume responsibility for the data received for the agreed audit, research or quality improvement initiative. All researchers will ensure that data is received only by its officers who are authorised to supply and/or receive that information.

Industry accepted practices will be employed, both technically and procedurally, to protect such data from unauthorised physical and electronic access. All copies of data must be kept secure and used only for authorised purposes. For DHB employee's, trauma data is only to be stored on secure DHB systems. For all researchers, identifiable data must never be sent to, from, or stored in personal email systems, including Gmail, Hotmail or other such systems or stored in unsanctioned cloud-based solutions such as Google forms or Dropbox that are external to DHB security. Data should be kept in accordance with NEAC requirements.

Only data that has been authorised for particular purposes should be used. Once the project for which that data has been extracted is complete, the data must be destroyed.

In the event the security, confidentiality or integrity of the data being shared is, or is reasonably believed to have been compromised, the MTS Director must be notified. Such notification is to occur within 2 working days of the event. Following this the MTS Director and researcher will investigate the disclosure, or suspected disclosure, in a manner satisfactory to the MTS Director. This may include having appropriate MTS or DHB personnel present during an investigation.

## 13. General Policy Relating to Publication

Research, audit and quality improvement activities utilising MTS data are generally expected to result in publications in scholarly journals, monographs, books, presentations (including at conferences) or other appropriate report formats.

It is expected that all researchers will keep the MTS informed of progress, content and timelines regarding publication. This will benefit the researchers by providing checks and balances regarding methodology, context, content, authorship, information security, and interpretation of analyses. Ongoing failure to submit work for publication by agreed dates may result in review of the agreed access to data.

If conditions for use of data have been breached MTS reserves the right to withdraw authorisation.

## 14. Authorship

In cases of MTS funded project reports the MTS will be the author for the project's primary publications. Subsequent reports and scientific papers submitted for publication will generally have authors listed by name. In these cases, the researcher who leads the work resulting in the submission of the work for publication will usually write the first draft of the manuscript and be the first author. All authors must meet the journals criteria for co-authorship. It is the responsibility of the first author and a project's Principal Investigator(s) to discuss authorship with all co-authors in the initial stages of a paper's preparation. Any disputes will be referred to the MTS Director for resolution.

Consistent with the requirements of academic journals it is expected that each author should have participated sufficiently in the work to take public responsibility for the content. Authorship credit should be based on substantial contributions to:

- a) Conception and design or analysis and interpretation of data; and to
- b) Drafting the article or revising it critically for important intellectual content; and on
- c) Final approval of the version to be published.

Conditions (a), (b) and (c) must all be met. Participation solely in the acquisition of funding, the collection of data or general supervision of the research does not justify authorship. Others contributing to the work should be recognised in the Acknowledgements.

## 15. Acknowledgements

Data users that have involved MTS data and personnel in projects must clearly acknowledge the origin of the data and contribution of MTS in all authorized reports, publications or representations of that data. They must use the MTS official logos on presented material. These can be supplied in digital form by MTS hub staff.

## 16. Dispute Resolution

A project's Principal Investigator(s) is responsible for ensuring the overall conduct of a project. In the first instance any project disputes should be referred to the Principal Investigator(s) and MTRC Research Manager for clarification and advice. In the event of an unresolved dispute the Principal Investigator(s) will consult with the MTS Director. The MTS Director will facilitate resolution of the dispute and will involve other members of the MTS and appropriate advisory groups in the process, as necessary. If this is not possible the MTS Director will take responsibility for the final decision and will document in detail the different perspectives in the dispute and the reasons for all related decisions.

- With regard to any dispute involving Māori specific issues the Māori co-investigators will inform and seek the advice of the Māori advisory group. This advice shall be forwarded to the Principal Investigator(s) and MTS chair who shall work conjointly with the Māori co-investigators to resolve the dispute.
- With regard to any dispute involving Pacific specific issues the Pacific co-investigators will inform and seek the advice of the Pacific advisory group. This advice shall be forwarded to the Principal Investigator(s) and MTS chair who shall work conjointly with the Pacific co-investigators to resolve the dispute.

# APPENDICES

## 17. Appendix 1 Reference Documents

Policy 0142 / Research WDHB, is the supportive document that is the basis for this Data Access Policy. (<https://intranet.sharepoint.waikato.health.govt.nz/site/pol/published/Research.pdf>)

Legislative Requirements – As stated in Policy 0142 / Research WDHB and available from:  
<http://www.legislation.govt.nz/>

Waikato DHB must comply with the following legislation:

- the New Zealand Public Health and Disability Act 2000 and the National Ethical Standards for Health and Disability Research. See [National Ethical Standards for Health and Disability Research and Quality Improvement | NZ National Ethics Advisory Committee](#)
- the Privacy Act 2020 and Health Information Privacy Code 2020. See [Office of the Privacy Commissioner | Health Information Privacy Code 2020](#)
- Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996
- Health Relevant Professional Regulations under the Health Practitioners Competence Assurance Act 2003;
- Human Rights Act 1993;
- the Health Act 1956;
- the Crown Entities Act 2004;
- the Official Information Act 1982; and
- any other relevant legislation.

## Associated Documents – As stated in Policy 0142 / Research WDHB

### Ministry of Health

- Health Research Council Guidelines (<http://www.hrc.govt.nz/search/node/guidelines>)
- Ministry of Health Guidelines for Research with Māori
- Consent in Child and Youth Health: Information for Practitioners
- Operational Standard for Ethics Committees (Ministry of Health) – Section 3 (“Matters requiring ethical review”) and Section 4 (“Matters for which ethical advice may be sought”)

### Waikato DHB

- Waikato DHB Intellectual Property policy
- Waikato DHB Clinical Trial Medicine Management protocol
- Waikato DHB Deed of Indemnity for Clinical Trials
- Waikato DHB Delegations of Authority Manual Schedule K
- Waikato DHB Informed Consent policy
- Waikato DHB Towards Māori Health Gain Framework
- Waikato DHB Tikanga Recommended Best Practice Guidelines-Cultural Competencies
- Waikato Health Trust Deed (<http://www.waikatodhb.health.nz/about-us/waikato-health-trust/>)

### Other

- The Principles of the Treaty of Waitangi
- Statement on Responsibilities in Clinical Research in Institutions (Medical Council of New Zealand) 1992.

## 18. Appendix 2 Legal Terms of Use

Data managed by the Midland Trauma System

The Terms of Use (“Terms”) is a legal agreement between you as the user of the Database and/or the Data.

(“You”, “Your”, “User”) and the WAIKATO DISTRICT HEALTH BOARD, a crown entity established by section 19 of the New Zealand Public Health and Disability Act 2000 of Pembroke Street, Hamilton (“Owner”). By accessing the Database, contributing to the Database, using Data, or otherwise using all or any portion of the Database the User agrees to be bound by the terms of these Terms.

The Owner has custodianship of all data in the registry system on behalf of organisations that submit data to the registry system. Use of non-Waikato DHB data is authorised by the MOUs with contributing DHBs. For TMT/Midland DHB data this is the responsibility of the MTS Strategic Group.

The Owner reserves the right to amend the terms of these Terms at any time on 30 days written notice to the User (“Notice”). The User’s subsequent access to, or use of, the Databases and Data will constitute an acceptance of the amendments in the Notice.

### 1. DEFINITIONS

- 1.1 “Approved Purposes” means:
- (a) for Users who are using Data pursuant to a MTS Approval, the purpose set out in Your MTS Approval;
  - (b) for Users who are MTS Members any purpose approved by the Owner and consistent with the MTS Data Access Policy; or
  - (c) for Users who are Authorised Hub Members, any purpose approved by the Owner.
  - (d) purposes that will not be actually or potentially harmful to the MTS, its contributing organisations or the communities they represent.
- 1.2 “MTS” means the group of individuals referred to as the Midland Trauma System.
- 1.3 “MTS Member” means a member of the MTS.
- 1.4 “Authorised Hub Member” means a person authorised by the Owner to access and make Contributions to the Database and includes members of the MTS hub group at Waikato Hospital who are employed for the purpose of managing Data.
- 1.5 “Health Information” has the meaning prescribed to it under the Health Information Privacy Code 2020.
- 1.6 “Data” means any data produced or collected by MTS including all data stored in the Database.
- 1.7 “Database” means the trauma registry database or TQUAL database and any associated software used to collect and analyse trauma centre data or its successor.
- 1.8 “Data Request” means a request for access to certain Data made by a User in accordance with the MTS Data Access Policy.
- 1.9 “MTS Approval” means a Data Request which has been approved by the Midland Trauma System in accordance with the MTS Data Access Policy including any special conditions or restrictions accompanying that approval.
- 1.10 “MTS Data Use Policy” means the Midland Trauma System Data Use Policy Statement for Investigators or its successor.
- 1.11 “Contribution” means any contribution by a User to the Database including but not limited to the contribution of data, customised software, enhancements including the combination of streams of data and interpretive information.
- 1.12 “Term” means the period during which You are authorised by the Owner to make Contributions and/or use Data, subject to early termination in accordance with clause 8.

- 1.13 “Intellectual Property Rights” means all copyright, patents, design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, database rights, rights to confidentiality, intellectual and industrial property rights and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration in all parts of the world.

## 2. LICENCE

- 2.1 Limited Licence to Use Data: Subject to Your compliance with these Terms and these Terms’ restrictions, the Owner grants to You a limited, non-exclusive, non-transferable licence (without the right to sub-licence) to use Data for the Approved Purpose.
- 2.2 Limited Licence to Make Contribution: If You are an Authorised Hub Member the Owner grants to You a limited, non-exclusive, non-transferable licence (without the right to sub-licence) to use the Database and the Data to make Contributions to the Database provided that such Contributions:
- (a) are authorised by the Owner;
  - (b) are made in accordance with the conditions in these Terms and these Terms’ restrictions; and
  - (c) are consistent with any guidance given, or policy documents issued, by the Owner including the Owner’s rules around privacy and security, and the MTS Memoranda of Understanding signed by the contributing District Health Boards. Any variation from the Owner’s regular data management processes must be authorised by Clinical Director of MTS.
- 2.3 Licence to Contributions: By making a Contribution You grant:
- (a) the Owner a perpetual, irrevocable, nonexclusive, royalty-free, sub-licensable, transferable, world-wide right to copy, display, publish, prepare derivative works from, distribute and use
  - (b) all Contributions made by You (or any person or entity acting on Your behalf) to the Database including without limitation making such contributions available to others for use consistent with these Terms; and
  - (c) other users of the Database and/or Data the perpetual, irrevocable, royalty-free right to access and use all Contributions made by You (or any person or entity acting on Your behalf).
- 2.4 Warranty for Contributions: By making a Contribution, you represent and warrant to the Owner that:
- (a) You possess all rights, permissions and authority necessary to make such Contributions for use by the Owner and other users of the Database and/or Data consistent with these Terms;
  - (b) the use of such Contributions by the Owner and other users of the Database and/or Data as contemplated by these Terms will not infringe upon or otherwise violate the rights (including, without limitation, the privacy rights) of any third party; and
  - (c) such Contributions are, to the best of Your knowledge, complete and accurate and not obscene, libellous or otherwise in contravention of law.
- 2.5 Restrictions: You will not copy or use the Database or Data or make any Contributions except as expressly permitted by these Terms and the MTS Approval where applicable. You will not transfer, sublicense, rent, lease or lend the Database or Data, or use the Database or Data for third party training, commercial time-sharing or service bureau use. You will not Yourself, and will not allow any third party, directly or indirectly to modify, reverse engineer, adapt, sublicense, translate, sell, disassemble or decompile any portion of the Database or the Data nor make any products derived from them, except to the extent expressly permitted by applicable New Zealand law. You will comply with any additional restrictions set out in the MTS Approval where applicable or any other restrictions communicated to Users by MTS Members or the Owner.
- 2.6 Ownership: The Owner retains all right, title and interest in and to all Intellectual Property

Rights in the Database and Data, and any derivative works thereof. You acknowledge that You do not acquire any Intellectual Property Rights, express or implied, in the Database and Data beyond the limited license set forth in these Terms.

- 2.7 Intellectual Property Infringement: If You become aware of any infringement or suspected infringement by any third party of any Intellectual Property Rights in the Database or Data, You must immediately notify the Owner and must, at the request of the Owner, take such action as the Owner may reasonably deem appropriate to protect its Intellectual Property Rights. If You become aware of any actual or potential claim which may be made against the Owner or You, alleging that the Database or Data infringes any third party's Intellectual Property Rights, You must immediately notify the Owner of that claim, and do all reasonable things or take any necessary action, at the request of the Owner, to defend that claim.
- 2.8 No Support: The Owner has no obligation to provide support, maintenance, upgrades, modifications or new releases ("Upgrades") for the Database or Data under these Terms. However, if Upgrades are provided by the Owner, the use of such Upgrades is governed by these Terms and is subject to the licence and restrictions in this clause 2, unless different terms accompany the relevant Upgrades in which case those terms will apply.
- 2.9 The Owner may, on request, agree to provide you with written analysis or advice (whether for payment or not) in relation to the Data or Database ("**Advisory Outputs**"). You acknowledge that the Owner retains ownership of all Intellectual Property Rights in the Advisory Outputs. You may only use, or disclose to any third party, the Advisory Outputs for the Approved Purposes. Any new Intellectual Property Rights developed by You arising out of your use of the Advisory Outputs ("**New IP**") shall be jointly owned by the Owner and You on its creation. You shall do all things necessary to vest joint rights, title and interests in the New IP in the Owner. You warrant that you shall not infringe the Intellectual Property Rights of any third party in the development of the New IP. This clause is subject to any provision in any separate written agreement between You and the Owner. For the purpose of this clause, "Approved Purposes" does not include clause 1.1(d).

### 3. WARRANTY DISCLAIMER

- 3.1 THE DATABASE AND DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. THE OWNER DOES NOT WARRANT THAT THE DATABASE OR DATA WILL MEET USER'S REQUIREMENTS OR THAT THE DATABASE OR DATA WILL BE ACCURATE, COMPLETE, UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE DATABASE AND DATA INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

### 4. INDEMNITY

- 4.1 Indemnity: You indemnify, defend and hold harmless the Owner in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:
- (a) any breach of these Terms by You;
  - (b) Your negligent acts or omissions; or
  - (c) Your use of the Database or the Data, including any third party claims made in connection with, or arising out of, Your use of the Database or the Data.

### 5. LIMITATION OF LIABILITY

- 5.1 IN NO EVENT SHALL OWNER BE LIABLE CONCERNING THE SUBJECT MATTER OF THESE TERMS, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT,

NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL OR (D) AGGREGATE DAMAGES EVEN IF OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THESE TERMS AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN. BF\50845259\6 | Page 3

## 6. DAMAGES AND REMEDIES FOR BREACH

6.1 You agree that any breach of these Terms' restrictions would cause the Owner irreparable harm for which money damages alone would be inadequate. In addition to damages and any other remedies to which the Owner may be entitled, You agree that the Owner may seek injunctive relief to prevent the actual, threatened or continued breach of these Terms.

## 7. CONFIDENTIALITY

7.1 Scope: The term "Confidential Information" means all Data (including patient information), trade secrets, know-how, software and other financial, business or technical information of the Owner that is disclosed by or for the Owner in relation to these Terms, but not including any information the User can demonstrate is (a) rightfully furnished to it without restriction by a third party without breach of any obligation to the Owner, (b) generally available to the public without breach of these Terms or (c) independently developed by it without reliance on such information. The Database and Data are Owner's Confidential Information.

7.2 Confidentiality: Except for the specific rights granted by these Terms, the User shall not possess, use or disclose any Confidential Information without the Owner's prior written consent, and shall use reasonable care to protect the Confidential Information. The User shall be responsible for any breach of confidentiality by its agents.

7.3 Patient Information: Without limiting clauses 7.1 and 7.2 the User acknowledges that all Data that is Health Information must be managed consistently with the Health Information Privacy Code 1994 and any relevant ethics committee approval.

## 8. TERMINATION

8.1 These Terms are effective until the expiry of the Term or earlier termination. The Owner may terminate these Terms at any time upon Your breach of any provision. If these Terms are terminated, Your licence to use the Database and the Data will immediately terminate and You must stop using the Database and Data and permanently delete the Data from the equipment where it resides, and destroy all copies of the Data in Your possession, confirming to the Owner in writing that You have done so. Clauses 2.3, 2.4, 2.5, 2.6, 2.7, 3, 4, 5, 6, 7 and 9 will continue in effect after these Terms' termination. Any termination of these Terms is without prejudice to any right, action or remedy which has accrued, or which may accrue in favour of the Owner.

## 9. GENERAL TERMS

9.1 Law: These Terms and all matters arising out of are governed by the laws of New Zealand, and the parties irrevocably consent to the exclusive jurisdiction and venue in the courts of New Zealand.

9.2 Independent Contractors: The parties shall be independent contractors under these Terms, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint ventures or partners for any purpose.

9.3 Severability: If any provision of these Terms is held to be illegal, invalid or otherwise unenforceable for any reason, then where such provision can be read down as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and in any other case, such provision must be severed from

these Terms in which event the remaining provisions will continue in full force and effect as if the severed provision had not been included.

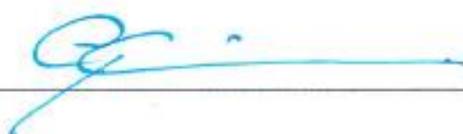
9.4 No Waiver: If the Owner fails to insist that You perform any of Your obligations under these Terms, or if the Owner does not enforce its rights against You, or if it delays in doing so, that will not mean that the Owner has waived its rights against You and will not mean that You do not have to comply with those obligations. If the Owner does waive a default by You, it will only do so in writing. The waiver by the Owner of any default or breach of these Terms by You will not waive any other or subsequent default or breach.

9.5 No Assignment: You must not assign, sell, transfer, delegate or otherwise dispose of these Terms or any rights or obligations under it, whether voluntarily or involuntarily, by operation of law or otherwise, without the Owner's prior written consent. Any purported assignment, transfer or delegation by You will not be effective.

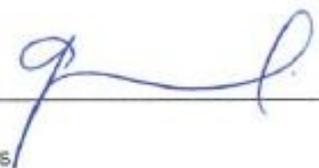
9.6 Precedence: In the event that there is any conflict between these Terms and an MTS Approval, or any ambiguity, these Terms will take precedence over the MTS Approval to the extent of the conflict or ambiguity.

9.7 Entire Agreement: These Terms constitute the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, whether written or oral, concerning its subject matter. You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of the Owner which is not set out in these Terms. These Terms may not be modified or amended without the Owner's prior and express written consent, and no other act, document, usage or custom will be deemed to amend or modify these Terms.

This document has been reviewed and authorised by the following people:

Signature:  Date: 4/8/21

Hon Associate Professor Grant Christey  
TMT/Midland Trauma System Director and Head of Department – Trauma, Waikato DHB

Signature:  Date: 3/8/21

Rosemary Clements,  
Chief Executive, Taranaki DHB  
Regional Chief Executive Sponsor of TMT/Midland Trauma Service