

**This is a sample agreement for suppliers to have the opportunity to read the agreement to inform their decision making around becoming a supplier to Bayside City Council as a home care package provider.**

**Please do not fill in the form or sign it, if going ahead, a fully enabled electronic document for signing will be supplied.**

**SERVICE PROVIDER AGREEMENT**

**For the provision of services under a Home Care Package**

**AGREEMENT DETAILS**

|  |
| --- |
| **Approved Provider (We/Us)** |
| Name  | Bayside City Council Aged and Disability Services |
| ABN | 65 486 719 651 |
| Contact details | Mailing address | PO Box 27 Sandringham VIC 3191 |
| Phone | 03 9599 4374 |
| Email | baysidecontracts@bayside.vic.gov.au |
| Designated Personnel | Agreement Contact | Name | Joan Andrews |
| Position | Manager Community Services |
| Phone | 03 9599 4374 |
| Email | jandrews@bayside.vic.gov.au |
| Operational Contact | Name |  |
| Position |  |
| Phone |  |
| Email |  |

|  |
| --- |
| **Contractor (You)** |
| Name  |  |
| ABN |  |
| Contact details | Mailing address |  |
| Phone |  |
| Email |  |
| Designated Personnel | Agreement Contact | Name |  |
| Position |  |
| Phone |  |
| Email |  |
| Operational Contact | Name |  |
| Position |  |
| Phone |  |
| Email |  |

| **Specifications** |
| --- |
| Applicable Programme(s) | Home Care Packages  |
| Services | Personal care services and other personal assistance, nominated in an individual service request which may include:[ ]  Allied health (various) [ ]  In Home Care Worker[ ]  Massage Therapy [ ]  Nursing [ ]  Occupational Therapy [ ]  Physiotherapy [ ]  Podiatry [ ]  Speech Therapy[ ]  Other (insert details) ....................................................................... |
| Client(s) | You are engaged to provide the Services to Client(s) as directed, particulars being included in a service request. |
| Term | Start date | [ ] |
| End date |  [ ] |
| Service Fee (Inclusive of any GST) | [ ]  Supplied |
| Payment Arrangements | Payment Terms 30 days. Expenses will be reimbursed (if approved in accordance with this Agreement prior to them being incurred). |
| Key Performance Indicators and Measures | As specified in Part C. |

|  |
| --- |
| **Supporting Documentation** |
| Public/Product Liability $20M or more | [ ]  Supplied via Rapid Global |
| Work cover or Personal Injury Insurance if sole proprietor with GST registration under $75,000 | [ ]  Supplied via Rapid Global |
| Police Checks as per Clause 5 | [ ]  Supplied[ ]  Available to be sighted as required |
| Service Specific Accreditations and Registrations as per as per Clause 4.2, if applicable | [ ]  Allied Health/Health  | Register/List of AHPRA registration or equivalent | [ ]  Supplied[ ]  Available to be sighted as required |
| Professional Indemnity: $10 M or more | [ ]  Supplied |
| [ ]  Home Care Services: | Register/List of support worker qualifications  | [ ]  Supplied[ ]  Available to be sighted as required |
| Register List of Drivers’ licence (if transporting clients) | [ ]  Supplied[ ]  Available to be sighted as required |

| **Documentation forming our Agreement**  |
| --- |
| The following documents constitute the entire Agreement between the parties concerning the Services: * Agreement Details;
* Part A – Terms and Conditions;
* Part B – Key Performance Indicators and Measures;
 |

|  |
| --- |
| **Additional Provisions** |
| [ ]  Not applicable. |

|  |
| --- |
| **Execution** |
| **Executed** by **Bayside City Council Aged and Disability Services** by being signed by an authorised person:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | **Executed** by[ ] [ ]by being signed by authorised person(s):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

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**PART A**

**Terms and Conditions**

# **Provision of Services**

## If and when requested by us during the Term, you must perform and supply the Services specified by us to the Client(s) with due care and skill, in accordance with all applicable Laws, the Quality Standards, the Guidelines and Funding Agreements, relevant Australian Standards and industry best practice.

## You must at all times ensure the safety of your personnel, our personnel and our Clients. Without limitation, you must:

### provide the Services in a manner consistent with the obligations of approved providers under the Act including the Quality Standards, the Charter and applicable Guidelines and Funding Agreements;

### not exceed the maximum number of hours of Services (if any) specified in the Agreement Details or the request for Services;

### ensure the continuity of Services to Clients;

### satisfy the Service Standards;

### take all necessary steps to clarify and confirm our requirements for the Services and comply with our reasonable directions concerning the provision of the Services;

### structure the delivery of the Services on the principles of consumer directed care as set out in the Act and applicable Guidelines and Funding Agreements; and

### pay all fees, charges and costs incurred in the performance of your obligations under this Agreement, except as expressly stated otherwise in this Agreement.

# **Service requests**

## If Services are required, we will notify you of our requirements, including details of:

### the Client(s) to whom the Services are to be provided;

### the care manager (or equivalent) for each Client;

### the type, level and duration of Services required and tasks to be undertaken and any other care co-ordination requirements; and

### if required, the applicable Client care plan and service schedule.

## You must promptly notify us in writing if a Client purports to cancel, suspend or vary requested Services and not implement or act on those changes without our prior written approval.

## We may cancel requested Services at any time. In addition, all or part of the Services may be suspended by us or a Client. We will give you as much notice of a suspension or cancellation as is reasonably practicable in the circumstances, which will be of at least 12 hours’ notice (Monday to Friday), except:

### in the event of an emergency; or

### if a Client chooses to suspend or stop receiving care and support, including by reason of taking leave.

## Unless otherwise stated in the Agreement Details, travel requirements to any location at which the Services are to be provided will not be facilitated by us or allowed for as part of the payments due to you.

## We are not obliged to require a minimum volume or any particular volume of Services from you in respect of any period or the Term as a whole.

## If you are unable to fulfil a Service Request, you:

### must give us at least 24 hours’ notice; and

### acknowledge that we may engage an alternative supplier or staff member to provide the Services.

# **Satisfaction of Key Performance Indicators and Measures**

## You must achieve the Key Performance Indicators and Measures or, if none are specified, the Key Performance Indicators and Measures notified by us and agreed to for any 6 month period (or other period stipulated by us), which represent our minimum performance expectations.

## If in any review period you do not achieve the Key Performance Indicators and Measures, you must promptly submit a corrective action plan to us. Acceptance of a corrective action plan does not limit our rights under clauses 28 and 40.

# **Approvals**

## You must maintain all appropriate licences, approvals and authorisations necessary to discharge your obligations under this Agreement.

## On request, you must provide us with an up-to-date copy of any relevant certification, accreditation, licence or registration details which relate to the provision of the Services. If required under State or Federal workplace health and safety Laws or clause 1, you must provide us with all necessary health and safety endorsements, work statements, methods, systems and procedures.

## If any certification, accreditation, licence or registration necessary to provide the Services is withdrawn or modified at any time or any circumstances arise which may affect your capacity to hold or renew them (regardless of the reason), we may terminate this Agreement effective immediately.

# **Engagement of sufficient and suitable personnel**

## You must cause the Designated Personnel specified in the Agreement Details (if any) to be primarily responsible for the delivery and oversight of the Services and you may only replace the Designated Personnel with a person of similar qualifications, skill and experience who is approved by us in advance.

## You must engage sufficient and appropriately qualified and experienced personnel to provide the Services, as your employees, on terms which comply with every applicable Law and pay their entitlements as and when they are due. You must ensure that all of your personnel involved in the provision of the Services comply with the requirements of this Agreement.

## On entering into this Agreement, we rely on your representations and warranties that you will have at hand a sufficient number of suitably qualified and experienced personnel to perform the Services when required by us.

## You must ensure that all personnel performing the Services:

### are at least 18 years of age;

### have a right to work in Australia;

### are suitably skilled and qualified to provide safe, respectful and quality care and, if necessary, accredited and/or registered, for the Services and responsibilities assigned to them;

### have training or experience in relevant areas including those identified in the Agreement Details (education and training only being current if undertaken within the last 18 months or within any shorter period prescribed by Law);

### are contactable by phone during their work to support their safety and to aid in case of emergency;

### where applicable, are familiar with and capable of reading and applying relevant care plans of Clients;

### follow and implement the relevant care plan for each Client and any other care co-ordination requirements;

### are matched to meet the needs of Clients and allocated so as to maximise the continuity of care and effectiveness of care provided to each Client;

### only attend and remain with a Client for the purpose of providing the Services;

### deliver the Services in accordance with the Client’s care plan (where applicable);

### only assist with food preparation if they are trained in food preparation, have sufficient skill and knowledge to perform the Services and hold all necessary food safety and food handling certificates and qualifications;

### only administer medication if they are authorised to do so under applicable Laws (otherwise, personnel may only prompt, monitor and observe the administration of Clients’ medication where required), and;

#### Adhere to pharmaceutical guidelines and other relevant professional guidelines for assistance with medication, including guiding principles and qualification and other training requirements.

#### Adhere to any specified medications and medication regimes, including dosing regimens and strengths, included within the Client’s care plan by the administering health practitioner.

#### Ensure the medication are stored in an appropriate and safe setting, and where required, refrigerated.

#### Before leaving the Client, ensure the Client is able to self administer medication required outside the attendance. And, ensure the Client has an adequate supply of the relevant medication(s) that will last until the next scheduled attendance.

#### Defer to the Client’s health practitioner regarding questions of appropriateness or ongoing or modified treatment.

### in attending to a Client, comply with all applicable Laws and policies including any of our policies that we reasonably require (as notified to you in writing) and engage and interact with Clients in a kind and caring manner; and

### are regularly assessed by you, for the purposes of monitoring and reviewing their performance.

## You must ensure that:

### all of your personnel who attend Clients have been subject to and cleared under any applicable suitability assessment and background check within the 3 years before the individual provides the Services, including:

#### a security and national background check paid for by you, as prescribed by the Act, Guidelines and Funding Agreements and Service Standards (as applicable) which shows that they have no conviction for murder, sexual assault or other form of assault; and

#### any prescribed declaration stating they have no overseas conviction for murder, sexual assault or other form of assault which, on request, must be evidenced to our satisfaction; and

#### if required, any other checks required by the Guidelines and Funding Agreements or any other relevant funding agreement;

### none of the attending personnel has been convicted of theft, fraud, murder, sexual assault or any dishonesty offences or convicted and imprisoned for any other form of assault (in any country);

### none of the attending personnel has been convicted of any offence concerning modern slavery or human trafficking; and

### any checklist, confidentiality and privacy undertaking, certification of references and interview requirements and any other documentation prescribed in the Labour Hire Licensing Laws or the Labour Hire Procedures has been completed.

## For the purposes of compliance with this clause 5, on or before the date of this Agreement and at any other time requested by us, you must complete a statutory declaration in the form of Part E or in any other form reasonably required by us having regard to any change in Law. This in no way affects our rights under clauses 20 and 29.

## You must also ensure that Clients are not provided with the private telephone numbers or addresses of any personnel concerned with the provision of the Services.

## You must not allow volunteers to provide any part of the Services, unless otherwise approved by us in advance.

## On request, you must demonstrate to our satisfaction your ability to satisfy the requirements of this clause 5.

# **Presentation and conduct of personnel**

## You must comply with all of our reasonable directions concerning the presentation and identification of your personnel, while attending Clients or premises under our control (provided that such directions do not adversely impact on the ability of the personnel to act as, and represent themselves as your personnel).

## You must ensure that you and your personnel:

### do not attend Clients with friends, children or animals, unless expressly agreed to by us and the Client in writing, on a case-by-case basis; and

### do not smoke in the company or vicinity of Clients or in a Client’s home (irrespective of whether Clients are smokers); and

### do not consume alcohol or drugs or be suffering from the effects of alcohol or drugs, except if prescribed by registered medical practitioner and the drug does not in any way adversely affect or impair the Personnel in performing the Services; and

### do not enter or work in a client’s home unattended by the Client or their representative, unless expressly agreed to by us

## You must implement prudent policies and procedures pertaining to a Code of Conduct for personnel, acceptable to us. Personnel are not permitted to:

### Accept gifts or money (other than small tokens of appreciation valued at less than $20) from a Client or fail to disclose a Client’s intention to make such a gift; and

### Witness a Client’s personal documents such as a Will or Power of Attorney; and

### Act as an attorney for a Client; and

### Be named Executor or beneficiary of a Client’s Will.

# **Qualifications, ongoing training, education and training of personnel**

## You must ensure that each member of your personnel who provides personal care or respite care (including the care services listed under Part 1 of Schedule 3 of the *Quality of Care Principles 2014* (Cth)) has:

### a minimum of Certificate III in Aged Care/Home and Community Aged Care which complies with current industry standards; and

### a current and accredited first aid certification satisfactory to us.

## In addition, you must ensure that other personnel have current qualifications and/or training or experience in relevant areas (education and training only being current if undertaken within the last 18 months) including those specified in the Agreement Details (if any).

## On request, you must demonstrate to our satisfaction your ability to satisfy the requirements of this clause 7.

# **Exclusion of personnel**

## Irrespective of whether you are of the view that your personnel meet the requirements of this Agreement, we may direct you to immediately exclude specified personnel from attending Clients, whether on a temporary or permanent basis, without being required to give any reason for doing so.

# **Continuity of care**

## You must use your best endeavours to maximise the continuity and effectiveness of care provided to each Client and/or carer by providing specific personnel to perform the Services for each Client and/or carer and thereby minimising the number of personnel servicing each Client and/or carer.

# **Anti-Slavery Laws**

## You must:

### not use any form of forced, coerced, bonded or indentured labour; and

### do all things necessary to allow us to comply with the Anti-Slavery Laws, including undertaking assessments of your supply chains and providing reports to us on your supply chains and the outcomes of those assessments, in a form and manner required by us.

## You must promptly notify us in writing of any modern slavery or human trafficking investigation or findings concerning you or a supply chain concerning this Agreement.

## You must:

### provide appropriate training to your personnel to ensure awareness of and avoidance of modern slavery and human trafficking in supply chains and compliance with the Anti-Slavery Laws;

### ensure that any subcontractors under this Agreement provide training, undertake due diligence and maintain supply chain records to at least the same extent as you are obliged to under this Agreement; and

### comply with our anti-slavery policies and procedures (as notified).

# **Equipment and other resources**

## You are solely responsible for procuring or acquiring and maintaining such premises, plant and equipment and other resources required to provide the Services and perform your obligations under this Agreement. Without limitation, you must provide and maintain the equipment specified in the Agreement Details.

## All of your plant and equipment must be suitable for the purpose for which it is to be used, safe, comply with applicable Laws, be suitable for Clients, clean and maintained in good repair and your personnel must know how to safely operate that plant and equipment. You must maintain appropriate records evidencing the inspection and maintenance of your plant and equipment and the capability of your personnel to use your plant and equipment, including records of training.

## You must notify us in writing if any plant and equipment utilised by Clients (including plant and equipment supplied by us or a third party) needs to be repaired or replaced.

# **Transportation of Clients**

## If the provision of the Services involves the transportation of Clients, you must implement prudent and appropriate policies and procedures to ensure that:

### each driver holds a current driver’s licence, is medically fit to drive (including but not limited to being free from the effects of drugs and alcohol) and complies with an ensures occupants comply with applicable road and traffic Laws; and

### each vehicle is registered, roadworthy and covered by insurance covering risk of property damage to third parties.

# **Privacy, dignity and respect of Clients**

## You acknowledge that Clients have the right to confidentiality, privacy, dignity and respect, with the identity, culture and diversity of each Client to be valued. Without limitation, you must give effect to the Charter and respect the rights of Clients by ensuring that you or your personnel do not discuss or disclose any information gained about Clients in the course of providing Services with anyone who is not an officer or employee of you or us or a permitted sub-contractor and then only for the purposes of fulfilling your obligations under this Agreement.

## You and your personnel must not enter a Client’s home, room, living quarters and surrounding areas without the consent of the Client and must comply with any terms specified by a care manager or the Client with respect to such entry.

## You must only use personal information of Clients in accordance with our privacy policies and procedures, the Privacy Laws, and other applicable Laws and any relevant direction, guideline, determination or recommendation made by the Department of Health, the Australian Privacy Commissioner and any equivalent State or Territory body or agency to the extent that they are consistent with your obligations as set out in this clause. Without limitation, any personal information collected by you in connection with this Agreement, must be held in Australia and only used in accordance with applicable Laws.

# **Notifiable data breaches**

## If you become aware of any actual or suspected data breach affecting personal information relevant to this Agreement, you must:

### immediately report the circumstances of the data breach to us, take all necessary steps to prevent or contain the data breach and keep us updated in relation to all remedial action taken by you;

### to the extent that the data breach relates to personal information relevant to this Agreement, you must not report the data breach to affected individuals or to a Government Agency, except with our written consent or if otherwise required by Law. Unless we have notified you otherwise, we will be responsible for the notification of the data breach to affected individuals and to relevant government agencies;

### provide all necessary assistance to us in providing the notification; and

### promptly provide us with a copy of any notices issued to a government agency or affected individuals (subject to any obligation of confidence, in which case, information may be extracted from the notice provided to us).

## If for the purposes of thePrivacy Laws, you determine that the nature or effect of a data breach is such that you are not obliged to notify individuals or a Government Agency of the breach, you must still advise us of the nature and extent of the data breach and the actions you intend to take in respect of the breach.

# **Emergency treatment**

## In an emergency situation involving Clients, you must ensure that your personnel initiate contact with appropriate medical and emergency services and advise the relevant care manager at the earliest opportunity (being within no more than 2 hours).

# **Prevention of neglect and abuse**

## You must implement prudent policies and procedures for preventing, identifying and responding to the neglect and abuse of Clients, acceptable to us.

# **Client feedback and complaints**

## Without limiting any general reporting and notification obligations under this Agreement, you must:

### ensure Clients are encouraged and supported to provide feedback and make complaints in connection with the Services;

### implement a feedback and grievance procedure acceptable to us and ensure that your personnel and Clients are aware of their rights and obligations under that procedure including their right to complain to the Aged Care Quality and Safety Commission; and

### deal with Client feedback fairly, promptly, confidentially, without retribution, to improve the quality of the Services.

## You must report any Client complaint to us and provide us with any information we reasonably require for the purposes of meeting our reporting or disclosure obligations in relation to complaints or investigations under the Act or the Guidelines and Funding Agreements.

## If requested by us, you must assist us and any regulatory authority (including the Department of Health or Aged Care Quality and Safety Commission) in the investigation of any Client complaint.

# **Open disclosure**

## You must implement prudent policies and procedures concerning open disclosure, which reflect and are consistent with our open disclosure policies and procedures and are otherwise acceptable to us.

# **Immunisation and infection control**

## You must comply with all applicable Laws and regulatory and public health directives regarding immunisations and infection control and screening procedures and our associated or supporting directions and procedures.

## Without limiting your obligations under clause 19.1,, you must:

### implement and keep up-to-date and enforce appropriate and prudent policies and procedures in relation to infection control; and

### ensure your personnel are aware of those policies and procedures have adequate training in infection control procedures, including training prescribed by Law, directed or provided by us or mandated or recommended by a regulatory or public health body.

## You must promptly notify us in writing of any of breaches of applicable Laws or directives or your or our policies and procedures or any third party investigation into your compliance with or concerning those Laws, directives or policies and procedures.

## On request, you must provide us with (and obtain all necessary authorisations for that purpose) any information reasonably required by us regarding the:

### immunisation of personnel, including particulars of personnel not immunised (who may be the subject of an exclusion notice under clause 8); and

### state and health and/or infection risk of personnel.

# **Business continuity**

## You must develop and implement and keep up-to-date an appropriate business continuity plan in relation to the Services, addressing any minimum requirements notified by us, and at our request, provide us with a copy of your then current plan and details of actions taken in relation to that plan and review that plan.

# **Registers, record-keeping and audits**

## You must maintain an up-to-date register of the qualifications, endorsements, registrations, certifications, accreditations, licenses, assessments and clearances of the personnel made available by you in connection with the provision of the Services, including a register of each police certificate and supporting declaration obtained for the purposes of clause 5.5.1.

## You must retain accurate and complete original records (such as receipts) which demonstrate your performance of, and compliance with this Agreement. You must ensure your financial reports are prepared in accordance with accounting standards, the Guidelines and Funding Agreements and any Service Standards.

## You must, at all reasonable times allow and facilitate access to all records, accounts, documents and papers relating to this Agreement and allow copies of these materials to be taken by the following:

### us, or persons authorised by us;

### the Department of Health or any other funding body;

### the Commonwealth Auditor-General (including his or her delegate); or

### an information officer appointed under the *Australian Information Commissioner Act 2010* (Cth) who is performing ‘privacy functions’ as defined in that Act.

## Without limiting the right of inspection under clause 21.3, we may from time to time elect to audit and/or engage a third party to audit your compliance with all or part of this Agreement, with the method of auditing being determined by us. You must promptly comply with our directions concerning the undertaking of a notified audit, including directions as to the scope and sample of information to be assessed.

## Where, pursuant to the terms of any of our funding agreements, we have received a request for access to a document created by you or a sub-contractor, or which is in your possession or that of your sub-contractor, which relates to the performance of this Agreement (and not to the entry into this Agreement), we may at any time by written notice require you to provide the document to us and you must, at no additional cost to us, promptly comply with the notice.

## You must include provisions in all of your sub-contracts that enable you to comply with your obligations under this Agreement and this clause 20.

## Records and materials created or maintained by you as incident of this Agreement must be maintained by you for the Term and for at least 7 years after the termination or expiry of this Agreement. If requested by us or the Commonwealth, you must provide us with any documents which you are required to keep under this Agreement.

## You acknowledge that giving false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995* (Cth).

# **Workplace health and safety**

## You must yourself, and must ensure that your personnel and any permitted sub-contractor, at all times identify and take all necessary precautions for the health and safety of all persons who may be affected by the performance of the Services (to the extent within their direct control).

## We make no warranties or covenants as to the safety or fitness of sites to be entered in connection with the Services and on entering sites you and all personnel you are responsible for must make their own assessment and exercise their own judgement.

## If we provide you with a risk assessment or behaviour support plan, you must assess the veracity and currency of that statement or plan, taking into account changing circumstances and environmental factors, and otherwise undertake an assessment of the risk associated with the Services and areas accessed in connection with the Services, so as to meet your obligations under workplace health and safety laws, regulations, and codes of practice.

## You must immediately notify us in writing of all incidents, injuries or risks to health and safety affecting or likely to affect any person at a site relevant to the Services.

## If you are required by any applicable workplace health and safety Law to give any notice of an accident occurring during the performance of the Services, you must, at the same time, or as soon thereafter as is possible in the circumstances, give a copy of the notice to us (subject to any obligation of confidence, in which case, confidential information may be redacted from the report provided to us).

# **Reporting Client absences, observations and concerns**

## You must promptly notify us by telephone within 2 hours or by 10.00am the following day if after hours, with subsequent written confirmation within the next working day of:

### any change in a Client’s health or care needs, including any deterioration or change of a Client’s mental health, cognitive or physical function, capacity or condition;

### a Client being absent during a prescribed attendance;

### an emergency situation with a Client warranting third party assistance or intervention;

### any accident, injury or near misses involving Clients or personnel;

### any damage or destruction to the homes, rooms and living quarters of a Client and surrounding areas, caused or contributed to by the acts or omissions of you and/or your personnel (excluding fair wear and tear);

### personnel forming a reasonable belief that a Client has been or is at risk of being neglected or abused or holding significant concerns for the wellbeing of a Client for any other reason; and

### material complaints made by Clients or third parties in connection with the conduct or the provision of the Services by your personnel.

## You must use reasonable endeavours to verify whether a Client is genuinely absent (allowances to be made for temporary unavailability, such as a Client being outside) or unable to answer or respond by reason of a significant adverse event such as a fall or stroke.

## If you are able to evidence the nominated attendance, the unavailability of a Client at the nominated time and you having given notice under clause 23.1, you will still be entitled to the applicable minimum fee for the attendance.

## Subject to notice being given under clause 23.1, if the assessment of an emergency is reasonable and appropriate and the care manager authorises additional time, we will make an additional payment, for the additional amount of time spent (in 0.5 hour increments), at the same hourly rate, applied for any part hour intervals.

## Damage or destruction to the property of the type referred to in clause 23.1.5 must be made good by you.

# **Other reports**

## If requested, you must complete and supply us with a written report concerning any aspect of the performance of the Services specified by us from time to time. You must also provide us with the reports specified in the Agreement Details (if any).

## You must immediately notify us of:

### any mandatory notification or report or notifiable event to a Government Agency any applicable Law concerning the Services or your personnel;

### any voluntary notification or report to a Government Agency under any applicable Law concerning the Services or personnel who are, or have been, involved in the Services;

### any personnel providing the Services being the subject of a safety, suitability or exclusion notification or under investigation pursuant to any applicable Law; and

### adverse findings against you or your personnel which could reasonably be expected to tarnish, harm or diminish community confidence in us, the Services, our standing or our reputation,

and provide us with a report on the outcome of notification or investigation and the actions you intend to or must take in respect of the notification or investigation.

## Reports are to be in a form and manner as directed by us from time to time.

# **Damage to property by Clients**

## We are not liable or responsible for any loss, damage or destruction to your property or that of your personnel caused or contributed to by the acts and omissions of Clients.

# **No conflicts**

## On entering into this Agreement, you warrant that there are no interests or relationships of your, your officers or the Designated Personnel which may or do give rise to a conflict of interest concerning the requirements of this Agreement.

## During the Term, you must:

### not enter into any arrangement which competes or conflicts with this Agreement, unless the arrangement is expressly approved by us in writing for the purposes of this clause;

### immediately notify us in writing of any actual or perceived conflicts of interest;

### develop and implement policies concerning conflicts of interest to our satisfaction.

# **Non-solicitation**

You must not use any information provided to you pursuant to this Agreement, including Client lists or names, for the purposes of soliciting, canvassing, approaching or accepting any approach from any Client with a view to providing services directly to that Client (or through another approved provider) rather than through us.

# **Performance monitoring**

## For each 6 month period during the Term and on the termination or expiry of this Agreement or any shorter period specified by us for the measurement of a Key Performance Indicator or Measures, you must provide us with:

### statistical and other relevant information directed by us concerning the Key Performance Indicators and Measures;

### any supporting documentation required to explain, where applicable, the reasons why any of the minimum performance requirements have not been met; and

### any improvement plans or remedial action you intend to take having regard to your performance under this Agreement.

## At the conclusion of a review under this clause 28, we may direct additional or substitute Key Performance Indicators and Measures and corresponding measures to apply until the next review. Any such additional or substitute Key Performance Indicators and Measures are deemed to form part of this Agreement.

# **Compliance certification**

## If requested by us, you must complete and satisfy any compliance certification notified by us, including certification of your insurance and your ability to satisfy the requirement to engage suitably qualified personnel who have cleared all applicable suitability assessments and background checks.

## Certification may include (without limitation), the provision of a supporting statutory declaration from an authorised officer of you, attesting to your compliance and ongoing compliance with the requirements of this Agreement, in a form directed by us.

# **Insurances**

## You must maintain the insurance specified in the Agreement Details or as reasonably required by us from time to time (noting our interests where required), as well as workers compensation insurance and any other mandatory insurance prescribed for you to be licenced or registered to provide the Services, with an insurer authorised to carry on non-life insurance business and endorsed by the Australian Prudential Regulation Authority, on usual terms and conditions (as determined by us). You must ensure that any authorised sub-contractors have the same minimum insurances.

## Any permitted insurance policies that provide cover on a ‘claims made’ basis must be maintained for no less than six years after the completion of the Services.

## You must provide us with copies of the prescribed insurance policies and certificates of currency on or before any Services are provided and on request.

## You must not do or permit to be done any act or omission in or around a site relevant to the Services which may result in any insurances in relation to a site being rendered void or which may result in an increase to the rate of premium of any of our insurance policies or those of a third party.

## We are not responsible for any damage caused to a vehicle owned by or supplied by you and if an insurance claim is made in respect of damage, any excess must be met by the insured party.

# **Indemnity**

## You must indemnify, keep indemnified and hold harmless us, and our officers and staff, from and against all actions, liabilities, claims, losses, damages, penalties, demands, costs and expenses (including, without limitation, all legal costs on a full indemnity basis) in connection with:

### any injury or death of your personnel or any injury or death of or to another person caused or contributed to either directly or indirectly by you or any person you are responsible for (including personnel and sub-contractors) in connection with the delivery of the Services;

### any negligent act or omission, breach of Law, breach of Intellectual Property Rights or breach of this Agreement in the performance or purported performance of your obligations under this Agreement;

### any dispute or claim by a Client against you or your personnel or between you and a Client; or

### any provision of any employment, workplace health and safety, superannuation or taxation, Law which:

#### deems you or any employees or agents of you, or any employees or agents of any sub-contractor to you, to be our employees or workers; or

#### otherwise makes us, or any of our employees, sub-contractors or agents, in any way responsible for, or liable to pay any moneys to or in respect of, such persons.

## Your obligation to indemnify us under clauses 31.1.1 to 31.1.3 shall not apply to the extent that any liability is caused by any negligent act or omission of us.

## Your indemnity of us under this clause extends to any acts or omissions of your agents, employees, assigns and sub-contractors.

## We declare that the benefit of each indemnity under this Agreement, in favour of our officers and personnel is held by us in trust for our officers and personnel, to be exercised by us on their behalf and/or to be exercised by them, even if no claim is made by or against us.

## The effecting of insurances by you under this Agreement does not affect or limit your obligations under this or any other clause of this Agreement.

# **Intellectual Property Rights**

## You warrant that the supply of the Services, and any use of them by us or any other person for any intended purpose, will not infringe the moral rights or Intellectual Property Rights of any other person or persons not party to this Agreement.

## You must obtain all necessary copyright and other intellectual property permissions before using Third Party IP as part of the Services.

## All Intellectual Property Rights in material, systems and processes developed by or for us in connection with this Agreement exclusively vest in and are owned by us.

## Where the Services require the use of any Intellectual Property Rights referred to under clause 32.3, you are granted a non-exclusive, royalty-free licence (including the right to sub-licence to permitted sub-contractors) to use the intellectual property to the extent necessary to enable you to perform the Services during the Term.

# **Funding acknowledgment**

## You and your sub-contractors must acknowledge any funding we receive in connection with all or part of the Services in the form and manner prescribed in the Guidelines and Funding Agreements, which may include:

### incorporating in written materials related to this Agreement, the statement ‘Funded by the Australian Government Department of Health’ (or similar statements); and

### acknowledging funding in any public statements you make in connection with this Agreement or the Services.

# **Acknowledgement of status as Commonwealth service provider**

## You acknowledge that you and any sub-contractors you engage may be considered a “Commonwealth service provider” for the purposes of the *Ombudsman Act 1976* (Cth) and that you may be subject to investigation by the ombudsman under that Act.

# **Payment and invoicing**

## Any claim for payment or reimbursement for you under this Agreement must be in the form of a valid tax invoice (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)). You may only make a claim for payment if you have complied with this Agreement and you are not in default of this Agreement.

## You must submit an invoice within 30 days of providing Services to a Client under this Agreement failing which the invoice may not be accepted.

## Authorised Reimbursable Expenses incurred by you during the Term will be paid or reimbursed subject to your evidencing the Reimbursable Expenses incurred to our satisfaction.

## Unless otherwise expressly stated, you are not entitled to claim expenses from us, including travel related costs and expenses. Nor are you entitled to claim payment for stand-by-time of personnel or seek an adjustment on account of external impacts on travel to nominated locations or impacts created by requirements notified under this Agreement.

## We have no liability to you beyond the amount we are permitted by Law to distribute to you from the Client’s package funds or other government funding that we receive or hold on behalf of the Client. You acknowledge that the timing of funds by the government for a Client may result in payments to you being delayed and that no additional charges, including interest, are payable by reason of such delays.

## We may review all invoices to ascertain whether charges and the like accord with the requirements of this Agreement and payment will be made, in the manner prescribed in the Agreement Details or in the absence of a specified manner, within 21 days after the end of the calendar month or receipt of the verified and valid tax invoice for the claimed fee or charge. We may deduct any amount you owe us from the amount payable, as well as any amount we reasonably determine is required to pay or account for any superannuation guarantee contribution and/or workers compensation premium we have paid or will pay by reason of you being considered a sole trader or a worker or any equivalent for the purposes of the *Fair Work Act 2009* (Cth), the *Superannuation Guarantee (Administration) Act 1992* (Cth) or any other applicable Law.

## All fees and prices specified by you must include applicable goods and services tax with the goods and services tax component identified and an amount equal to any superannuation contribution and/or workers compensation premium paid or payable by us if you are a sole trader or deemed worker. You must pay all other taxes payable in connection with the supply of the Services (which must be paid by the due date).

## Any payment made by us is not evidence of the Services having been satisfactorily carried out in accordance with the Agreement, but payment on account only.

## We may immediately withhold payment for any Services to you that have not yet been performed, or that have not been performed to the reasonable satisfaction of us, if:

### you become insolvent or bankrupt;

### a receiver and manager, administrator or liquidator is appointed with respect to you;

### you enter into a scheme of arrangement with creditors; or

### you are otherwise unable to pay your debts as and when they fall due.

# **Service Term and Service Fee review**

## A contract for the purchase of services by Bayside City Council from the contractor will be formed when Council places a Service Request (aka Purchase Order) and Contractor accepts that Service Request, comprising:

#### These terms and conditions;

#### The Service Request; and

#### Any documentation issued in connection with this Agreement or a Service Request.

If the Contractor continues to provide the Services after the end of the Service Term with Council’s consent, then the Contractor provides the Services from that date on a monthly basis, on the terms and conditions of this Agreement. During any month-to-month service period either Party may terminate this Agreement by giving the other Party one months’ written notice.

## If the Term is for a period of 12 months or more, the Service Fee may be reviewed annually at the request of either party with a view to ensuring that that the cost per hour of service is consistent with the actual cost of service provision. If a new Service Fee is agreed in writing, this Agreement will be taken to be varied accordingly on and with effect from the date the new Service Fee is agreed or any other date agreed in writing by the parties.

# **GST**

## If we are required to reimburse you for amounts paid or costs incurred, the amount we are required to pay is to be reduced by the value of any input tax credit that you are entitled to claim in respect of the cost or expense.

# **Sub-contracting or assignment**

## You must not sub-contract or assign the whole or any portion of your obligations under this Agreement, except with our prior written consent. For the purpose of this clause, an assignment of this Agreement includes any change in the effective control of the Contractor from that as at the commencement of the Term.

## If we give our consent, we may impose any conditions we consider appropriate, and you must comply with them.

## Sub-contracting does not relieve you of your obligations under this Agreement and no sub-contractor will be entitled to seek or require payment from us.

## You will be responsible for the acts and omissions of any sub-contractor, or any of the sub-contractor's personnel, as if they were your acts or omissions.

## You must ensure that any sub-contracts entered into by you for the purposes of this Agreement are consistent with the obligations binding on you under this Agreement.

# **Confidentiality**

## You must keep the terms of this Agreement and any of our confidential information strictly confidential, except as required by Law, and only use confidential information for the purposes of providing the Services. You must not publicise or promote that you have provided the Services to us and on request, you must return or destroy (as directed by us) any confidential information of ours within your possession or control.

## On request, you must provide us with and ensure personnel directed by us, provide us with a written confidentiality undertaking in a form and manner prescribed in the Guidelines and Funding Agreements.

## You hereby expressly consent to the disclosure of your identity to the Commonwealth of Australia.

# **Termination by us**

## We may terminate this Agreement at any time on giving no less than 21 days’ written notice to you, in which case, we must pay for the Services prior to the date of termination.

## We may terminate this Agreement with immediate effect, by way of written notice to you, if:

### you breach a provision of this Agreement and fail to remedy the breach within 7 days of receiving a written notice from us specifying the breach and the action required to remedy it;

### you breach a provision of this Agreement that is incapable of remedy;

### you are unable to provide the Services or a supply would be prejudicial to us (as we determine);

### you are subject to an Insolvency Event and the ‘safe harbour’ provisions under Part 5.7B, Division 3 do not apply because you have failed to comply with either of subsections 588GA(4) or (5) of the *Corporations Act 2001* (Cth);

### you cease trading or there is a change in your management, oversight or control;

### you materially alter the nature or scope of your business or activities;

### you do not meet the Key Performance Indicators and Measures for any review period;

### you do not meet any targets identified in a corrective action plan concerning the Key Performance Indicators or Measures;

### the parties are unable to agree on any matter to be agreed for the continuation of this Agreement; or

### any other event occurs entitling us to terminate this Agreement.

# **Termination by you**

## You may terminate this Agreement at any time by giving no less than 21 days’ written notice to us, in which case, we must pay for the Services prior to the date of termination.

## You may terminate this Agreement with immediate effect, by way of written notice to us, if:

### we breach a provision of this Agreement and fail to remedy the breach within 7 days of receiving written notice from you specifying the breach and the action required to remedy it;

### we are subject to an Insolvency Event;

### the parties are unable to agree on any matter to be agreed for the continuation of this Agreement; or

### any other event occurs entitling you to terminate this Agreement.

# **Events on termination**

## On termination or expiry of this Agreement, you must promptly:

### return all of our property within your possession or control, including our confidential information; and

### provide us with any outstanding invoices, reports and deliverables, as well as any reports and deliverables which are partially complete.

## The termination of this Agreement will not in any way prejudice or affect the rights, duties or obligations of the parties which may have arisen prior to the date of termination.

## The provisions of this Agreement dealing with record-keeping, confidentiality and privacy, insurance, indemnities, intellectual property and consequences of termination survive the end of this Agreement and may be enforced at any time.

# **Dispute resolution and obligation to perform duties despite dispute**

## If requested by us, you agree to co-operate with us and assist, at your own cost, with the resolution of any disputes relating to the subject matter of this Agreement, which may arise between us (the Approved Provider) and a third party. Such co-operation and assistance may include (but not be restricted to) participation in dispute resolution processes.

## Whether or not a dispute exists, each party must continue to perform its obligations under this Agreement.

# **Relationship of the parties**

## The parties acknowledge and agree that the legal relationship between them is that of independent contracting parties, and that none of your personnel will for any purpose be regarded as an officer, employee, partner or agent of us.

# **Government not liable**

## Although the Commonwealth has provided funding toward the Services, this Agreement and other material we provided to you does not necessarily represent the views or policies of the Commonwealth.

## You must ensure that all materials and written statements concerning this Agreement or the Services incorporate the following disclaimer and/or any other disclaimer prescribed under the Guidelines and Funding Agreements: *“Although funding for the services has been provided by the Australian Government, the material contained herein does not necessarily represent the views or policies of the Australian Government*.”

# **General**

## This Agreement is subject to any additional provisions in the Agreement Details. If there is an inconsistency between an additional provision and another provision of this Agreement, the additional provision prevails.

## You must cause your personnel to comply with this Agreement (to the extent relevant to their roles) and non-compliance by your personnel will be a breach of this Agreement by you, as if done or not done by you.

## If you enter into this Agreement as a trustee, you are liable personally and as trustee.

## If a conflict exists between this Agreement and your proposal or standard terms of trade (including invoices), then this Agreement will prevail. All prior representations, warranties, arrangements, understandings and agreements concerning the subject matter of this agreement are superseded by this Agreement.

## No rule of contract interpretation must be applied in the interpretation of this Agreement to the disadvantage of one party on the basis that it prepared or put forward this Agreement or any document comprising part of this Agreement.

## A reference to a statute, code or other Law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them.

## A reference to a funding agreement includes any guidelines and other instruments referred to in that agreement and includes any amendments to or replacements of it.

## A failure or delay in exercise, or partial exercise, of a right under this Agreement does not result in a waiver of that right and a party is not entitled to rely on a delay in the exercise or non‑exercise of a right under this Agreement as constituting a waiver of that right.

## This Agreement is governed by and interpreted in accordance with the Laws of the State or Territory in which the Services are provided. The parties agree that the Courts of that State shall have jurisdiction to entertain any action in respect of, or arising out of, this Agreement. To verify governing jurisdiction.

# **Definitions**

In this Agreement, unless inconsistent with the context:

## **Act** means the *Aged Care Act 1997* (Cth) and (if applicable) the *Aged Care (Transitional Provisions) Act 1997* (Cth) and any principles made under those Acts;

## **Agreement** means this document and includes the cover page(s), the Agreement Details and the Parts and any policies provided to you under this Agreement;

## **Agreement Details** means the details in the tables at the start of this Agreement;

## **Anti-Slavery Laws** means any anti-slavery or anti-human exploitation Laws applicable to this Agreement, us or you;

## **Approved Provider** means the organisation as specified in the Agreement Details and **we**, **our** and **us** have a corresponding meaning;

## **Charter** means, as applicable, the *Charter of Aged Care Rights* under the Act;

## **CHSP Guidelines and Manual** means the Commonwealth Home Support Programme Manual and the Commonwealth Home Support Programme Guidelinespublished by the Commonwealth, Department of Health including any annexures, associated guidelines, variations and successors to these;

## **Client(s)** means a recipient of home care as nominated in the Agreement Details or in a service request form;

## **Contractor** means the person or organisation as specified in the Agreement Details and **you** and **your** have a corresponding meaning, which includes where the context permits, your personnel;

## **Designated Personnel** means the personnel you have specified will provide the Services or be primarily responsible for the oversight of the Services, as set out in the Agreement Details or any replacement personnel acceptable to us;

## **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world;

## **Guidelines and Funding Agreements** include, any of the following, insofar as these apply to the Services you are providing:

### the Commonwealth Standard Grant Agreement including annexures or schedules;

### the Commonwealth Simple Grant Agreement including annexures or schedules;

### the HCP Manual;

### the CHSP Guidelines and Manual;

### the STRC Manual; and

### any other applicable funding conditions (as notified to you in writing);

## **HCP Manual** means the *Home Care Packages Program Operational Manual* published by the Australian Government, Department of Health including any annexures, associated guidelines, variations and successors to this;

## **Home Care** has the meaning given under the Act;

## **Insolvency Event** means:

### the Contractor becomes insolvent or bankrupt, or a receiver and manager, administrator or liquidator is appointed with respect to the Contractor;

### the Contractor enters into a scheme of arrangement with creditors;

### the Contractor is taken to have failed to comply with a statutory demand, stops or suspends or threatens to stop or suspend the payment of all, or a class of its debts or the conduct of all, or a substantial part, of its business;

### the Contractor has a controller appointed to any of its assets or proposes a reorganisation, moratorium or deed of company arrangement; or

### the Contractor is otherwise unable to pay the Contractor’s debts as and when they fall due;

## **Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

## **Key Performance Indicators and Measures** means the performance measures in clause 28 and as at the date of this Agreement are set out in Part C;

## **Labour Hire Licensing Laws** means any labour hire licensing Laws relevant to the engagement or provision of labour by you, including any relevant direction, guideline, determination or recommendation made by a labour hire authority under those Laws;

## **Labour Hire Procedures** means labour hire service procedures or guidelines issued by a department or any other government authority, relevant to the Services and any consolidation, reconstitution, amendment, re-enactment or replacement of them;

## **Law** includes, without limitation, any law, statute, regulation, local law and code of practice;

## **Part** means a section of this Agreement with the heading Part;

## **Privacy Laws** means the *Privacy Act 1988* (Cth) and any other applicable state laws regarding the collection or handling of personal or health information or records, including any principles made under those laws, including, without limitation, the Australian Privacy Principles;

## **Quality Standards** means the standards set out in the Act for the delivery of home care, including any amendments to those standards from time to time;

## **Reimbursable Expenses** means any costs incurred by you other than for the provision of Services which we agree to pay for;

## **Service Fee** means the fee we will pay you for providing the Services to the Client as set out in the Agreement Details (as applicable);

## **Service Standards** means the standards you must meet on delivering the Services to the Client(s) under the Act and any other applicable Laws, any guidelines and procedures concerning the Services under applicable Laws, and any other minimum standards specified set out in Part B;

## **Services** means the care provided to the Client(s) by you as specified in the Agreement Details and any service request;

## **Specifications** means the summary of information about the terms on which you will provide the Services, as set out in the Agreement Details;

## **STRC** means Short-Term Restorative Care which is provided in a home care setting as set out in the Act;

## **STRC Manual** means the *Short-Term Restorative Care Programme Manual* published by the Australian Government, Department of Health including any annexures, associated guidelines, variations and successors to this;

## **Third Party IP** means any moral rights, or Intellectual Property Rights of a person other than the parties to this Agreement that is embodied in the Services (if any); and

## **Term** means the time between the start date and the end date during which you will provide the Services, as specified in the Agreement Details.

**PART B**

**Key Performance Indicators and Measures**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Key Performance Indicator**  | **Measurement** | **Standard** | **Assessment Period** |
|  | Provision of Personnel  | Supply of personnel  | All personnel meet the requirements of this Agreement  | Annually |
|  | Client Attendances  | Attendance | 90% of services occur as rosteredClient or relevant party is consulted regarding shift changes | Annually |
|  | Service provision | Service provided | Services provided adhere to the service requests | Annually |
|  | Reporting Client absences, concerns and emergency treatment | Provision of well being reports | All client well being concerns are reported | Annually |
|  | Insurance | Provision of certificates of currency | All required insurance policies maintained | Annually  |
|  | Number of Client Complaints | Number of client complaints | Substantiated complaints are less than 5%  | Annually |