

Services Agreement

[Insert name of Organisation]

[Insert ACN / ABN]

[Insert name of Contractor]

[Insert ACN / ABN]

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Parties

[Insert name of Organisation] (ACN / ABN #) of [insert address] (Organisation)

[Insert name of Contractor] (ACN / ABN #) of [insert address] (Contractor)

- A. Organisation is a community organisation which provides support and assistance to Clients.
- B. Contractor carries on the business of providing the Services.
- C. Organisation wishes to engage Contractor to provide the Services from time to time to certain of its Clients.
- D. Contractor has agreed to provide the Services on the terms and conditions of this Agreement.

Agreement

1 DEFINITIONS

Words used in this Agreement are defined in Schedule 1.

2 TERM

- 2.1 This Agreement begins on the date that Organisation signs this Agreement and continues for a period of 12 months. This Agreement will automatically renew for further 12 month periods on an annual basis following the anniversary of this Agreement (**Review Date**), unless either party provides the other with at least 90 days notice in writing that it does not wish the Agreement to renew, in which case this Agreement will end on the next following Review Date.
- 2.2 The term of each Services Schedule commences on the date specified in the Services Schedule and continues until the expiry date specified in the Services Schedule, unless terminated earlier in accordance with the terms and conditions of this Agreement.

3 APPOINTMENT

- 3.1 Organisation appoints Contractor to perform the Services as an independent contractor and Contractor agrees to provide the Services on the terms and conditions of this Agreement and each Service Schedule executed by the parties.
- 3.2 Nothing in this Agreement:
 - (a) requires Organisation to obtain any Services from Contractor;

- (b) will prevent Organisation from obtaining any services, including services similar to the Services, from another person; or
- (c) constitutes any relationship of employer and employee, principal and agent or partnership between Organisation and Contractor (or Organisation and Contractor's employees and contractors).

4 SERVICES SCHEDULES

4.1 Request for Services

- (a) From time to time, Organisation may request Contractor to provide a tender or quote for providing Services for a Client. Organisation may request a tender or quote from the Contractor as well as a range of third parties. Such request by Organisation (or the response to such request by Contractor) does not oblige Organisation to engage Contractor to provide the Services for the Client.
- (b) Upon receipt of the tender or quote from Contractor, or if Organisation otherwise decides, Organisation may (but is not obliged to) request Contractor to provide the Services for the Client. The Services will be requested by Organisation preparing a Services Schedule which will set out the terms of the engagement. If Contractor agrees to supply the Services on the terms of the Services Schedule, Contractor must sign and return the Services Schedule to Organisation.
- (c) Contractor must not dispute, or seek to negotiate, the Fees stipulated in the Services Schedule in circumstances where the Fees reflect those stipulated in the tender or quote submitted to Organisation by Contractor.
- (d) If Contractor does not agree with the non-Fee related terms of the Services Schedule, the parties will negotiate in good faith any changes that Contractor reasonably requests.
- (e) If the terms of the Services Schedule are not agreed within 1 Business Day after Organisation's initial request, then the Services referred to in that Services Schedule will not be required by Organisation, and Organisation may obtain those services from another supplier.

4.2 Variation of Services Schedule

- (a) The parties acknowledge and agree that the stated requirements of a Client may change from time to time. If Contractor becomes aware that a Client's requirements have changed, Contractor will inform Organisation as soon as possible.
- (b) If Organisation requires a variation to the Services:
 - (i) Organisation will provide Contractor with an amended Services Schedule detailing the proposed variation (**Variation**); and

- (ii) Contractor must, within 1 Business Day after receipt of the Variation, advise Organisation whether or not it agrees to the Variation, such agreement not to be unreasonably withheld.
- (c) If Contractor agrees to the Variation, Contractor must:
 - (i) execute the Variation and return it to Organisation; and
 - (ii) provide the Services in accordance with the Variation and this Agreement.
- (d) If Contractor does not agree with the terms of the Variation, the parties will negotiate in good faith any changes that Contractor reasonably requests.
- (e) If the terms of the Variation are not agreed within 1 Business Day after Organisation's initial request, then the Services referred to in that Variation will not be required by Organisation, and Organisation may obtain those services from another supplier.

5 PROVISION OF SERVICES

5.1 Contractor must:

- (a) perform the Services with all due care and skill, in compliance with the terms and conditions of this Agreement, each Services Schedule and all applicable laws, regulations and industry standards;
- (b) provide the Services in a diligent, timely and efficient manner, and adhere to any timelines specified in a Services Schedule or otherwise agreed by the parties;
- (c) ensure that only those persons who are Contractor's employees or are otherwise approved in writing by Organisation provide the Services on behalf of Contractor;
- (d) ensure that it and its employees and contractors act at all times in a courteous, professional and co-operative manner whilst performing the Services;
- (e) act in a manner consistent with Organisation's Policies;
- (f) not do or allow anything to be done which will or may bring Organisation into disrepute or prejudice the good name of Organisation;
- (g) co-operate with Organisation's employees and contractors in relation to the provision of the Services;
- (h) observe, and ensure its employees and contractors observe, Organisation's reasonable directions and requirements relating to the provision of the Services;
- (i) provide Safe Work Method Statements to its employees for high risk activities, and

- (j) ensure employees are trained and supervised in carrying out the Services;
 - (k) conduct the work strictly as described in the Services Schedule, Variation or as otherwise approved or directed by the Organisation. Such approval or direction will be provided verbally and confirmed by the Organisation in writing.
- 5.2 Contractor must comply with:
- (a) Organisation Policies; and
 - (b) to the extent that they do not conflict with the Organisation Policies or the other provisions of this Agreement, Contractor's standard policies and procedures that relate to the performance of the Services or Contractor's other obligations under this Agreement, and Contractor will provide copies of the same to Organisation.
- 5.3 Contractor must hold, continue to maintain in force and comply with all authorisations, licences, permissions, consents and powers necessary for it to carry on its business and to perform the Services. If Contractor ceases to hold any such authorisations, licences, permissions, consents or powers, it must immediately notify Organisation of the same.
- 5.4 Contractor must not represent itself to be an employee, partner or agent of Organisation or as otherwise having any authority to represent or bind Organisation unless authorised by Organisation to do so.
- 5.5 Organisation will be entitled to monitor and review the provision of Services at any time and in any manner as Organisation sees fit. Contractor will cooperate with Organisation when carrying out any such monitoring and review.
- 5.6 Contractor must notify Organisation in writing upon any change to its company, business or trading name.
- 5.7 Contractor must notify Organisation in writing upon any change to the personnel providing the Services (including the reasons for the change in personnel).
- 5.8 If required by Organisation, Contractor must provide Organisation with a completed statement in the form set out in Schedule 4 for the period in respect of which payment is claimed.

6 FEES & PAYMENT

6.1 Fees and expenses related to the Services

- (a) In consideration of the provision of the Services by Contractor, Organisation will pay Contractor the Fees set out in the Services Schedule.
- (b) If a Services Schedule provides that Organisation is to reimburse the Contractor for its reasonable out-of-pocket expenses related to provision of the Services, Organisation will reimburse those reasonable out-of-pocket expenses provided that Contractor has obtained Organisation's consent

before incurring the expense and Contractor is able to provide a receipt substantiating the expense in accordance with clause 6.2(a).

- (c) Contractor must notify Organisation of any proposed adjustments to the Fees at least 120 days before each Review Date. If Organisation does not accept the adjusted Fees, it may decide not to renew this Agreement and will notify Contractor in accordance with clause 2.1. If Organisation does accept the adjusted Fees, the new Fees will take effect on and from the next Review Date.

6.2 Invoices and payment

- (a) Contractor must submit an invoice for the Fees and approved expenses, together with timesheets which comply with the requirements of clause 6.2(e) (if applicable), receipts substantiating agreed out-of-pocket expenses and a statement of outstanding Contractor invoices (if applicable), at the end of each month or more frequently as required by Organisation.
- (b) An invoice for an amount which is subject to GST must be provided in accordance with the requirements of the GST Law.
- (c) Subject to clause 6.2(d), invoices are payable by Organisation within [30] days after receipt of an invoice which complies with the requirements of this clause 6.2. Payment will be by cheque and/or electronic transfer or by such other method as Organisation may from time to time determine.
- (d) The Organisation will not be liable for payment of an invoice for:
 - (i) Services that do not have adequate substantiation; or
 - (ii) Services provided more than 60 days prior to the issue of the invoice.

The Organisation will provide to the Contractor a list of the persons who have capacity and authority to substantiate service, or advise the Contractor in writing of other arrangements (eg client may have cognitive impairment and live alone and other methods of substantiation may be required)

- (e) For the purposes of clause 6.2(d), "adequate substantiation" means that:
 - (i) the Services have been recorded on a timesheet which records the type of Services provided and the times and dates during which the Services were provided; and
 - (ii) such timesheet has been approved, signed and dated by an Authorised Person as evidence of the satisfaction of the Client with regards to the Services performed,

or Organisation is satisfied by alternative means of the amount claimed on the invoice.

6.3 **Gratuitous Payments**

Neither Contractor nor any of its employees or contractors may accept any payment or other benefit from any person except Organisation as an inducement or reward for any service carried out under this Agreement.

6.4 **Contractor liability for employee entitlements**

Contractor acknowledges that it is responsible for all payments including remuneration, salary, wages and expenses to its employees and contractors and Contractor must indemnify Organisation and keep Organisation indemnified in respect of any claim made by such persons against Organisation for such payments.

7 **GST**

Terms used in this clause which are defined in the GST Law have the meanings given in that law.

7.1 **GST registration**

Contractor warrants to Organisation that it is registered for GST. Contractor must notify Organisation if it ceases to be registered for GST.

7.2 **GST payable**

- (a) Unless otherwise stated in a Services Schedule, amounts payable under this Agreement do not include GST.
- (b) If any payment made or other consideration given by a party (**Payer**) in connection with this Agreement does not include GST and is the consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must, at the same time as the consideration is given, pay to the Supplier an additional amount equal to the amount of the consideration multiplied by the rate of GST under the GST Law.

7.3 **Reimbursement of GST**

Any reference in this Agreement to a cost or expense to be reimbursed by one party to another (**Payee**) includes any GST payable in connection with a taxable supply to which that cost or expense relates, less the amount of any input tax credit that the Payee or, if the Payee is a member of a GST group, the representative member of the GST group is entitled to claim.

8 **ASSIGNMENT**

8.1 **Contractor's right to assign the Agreement**

Contractor must not assign or novate this Agreement or any other right or obligation under it to any other person without Organisation's prior written consent.

8.2 Contractor's right to sub-contract the performance of Services

- (a) Contractor must not sub-contract the performance of all or any part of the Services without Organisation's prior written consent. Organisation retains absolute discretion in relation to granting consent and may impose such conditions as it sees fit before giving such consent.
- (b) If Contractor sub-contracts the performance of all or any part of the Services under this Agreement:
 - (i) Contractor will be Organisation's point of contact regarding such Services;
 - (ii) Contractor will procure that the approved sub-contractors comply with Contractor's obligations under this Agreement to the extent such Contractor obligations relate to the Services performed by the approved sub-contractors or are otherwise stated in this Agreement to apply to such approved sub-contractors (**Sub-Contractor Obligations**);
 - (iii) Contractor will be liable to Organisation for the acts and omissions of such approved sub-contractors, to the extent they breach the Sub-Contractor Obligations, as if they were the acts or omissions of Contractor;
 - (iv) such subcontracting will not relieve Contractor of its obligation to perform the Services;
 - (v) Contractor will enter into a written contract with each approved sub-contractor which will impose the Sub-Contractor Obligations on the approved sub-contractor and Contractor will enforce such Sub-Contractor Obligations at Organisation's request; and
 - (vi) an approved sub-contractor will not be entitled to further sub-contract the performance of the Services without Organisation's prior approval.
- (c) Organisation will have the right to direct Contractor to cease using and replace an approved sub-contractor, if:
 - (i) the approved sub-contractor materially breaches any of the Sub-Contractor Obligations;
 - (ii) Organisation has reasonable concerns about the approved sub-contractor, which Contractor is unable to resolve to Organisation's reasonable satisfaction; or
 - (iii) there has been a material misrepresentation by, or concerning, the approved sub-contractor.

8.3 Contractor's liability for the provision of the Services

Contractor remains fully responsible for the performance of all work provided under this Agreement and all costs and expenses incurred with respect to Contractor's employees, agents and contractors.

8.4 Employment of staff by the Contractor

- (a) Contractor must comply with this clause 8.4 when employing staff to assist in Contractor's provision of Services under this Agreement.
- (b) Before employing staff, Contractor must:
 - (i) check the employment and personal references of each candidate;
 - (ii) undertake a criminal background check and working with children check (if applicable) in respect of each candidate; and
 - (iii) ensure that the candidate is appropriately skilled and qualified to perform the Services.
- (c) Contractor will notify Organisation in writing of the names of its employees, their skills and qualifications, the Services each employee will provide on behalf of Contractor and confirm that the employee has appropriate references and has passed all background checks as required by clause 8.4(b).
- (d) Contractor agrees that where any background information obtained as a result of screening staff in accordance with clause 8.4(b) (**Background Information**) could potentially render an individual unsuitable for providing any part of the Services:
 - (i) if the individual is not yet working on the Services, Contractor will not allow them to do so unless otherwise agreed in writing by Organisation; and
 - (ii) if the individual has already commenced working on the Services, Contractor must immediately notify Organisation of the unsatisfactory aspects of the Background Information and Organisation may require Contractor to procure the immediate removal of such individual from the provision of the Services.
- (e) If required by Organisation to substantiate that the screening requirements contained in clause 8.4(b) have been completed, Contractor will disclose the Background Information to Organisation.
- (f) Contractor will at all times be liable to Organisation and indemnify and keep indemnified the Indemnified Parties for and against any loss, damage, costs, claims and expenses (including legal expenses) that may be suffered or incurred by the Indemnified Parties as a result of the notification to, or removal of, any individual from the provision of any part of the Services by reason of the individual's failure of any aspect of the screening requirements contained in clause 8.4(b).

8.5 Employer requirements

- (a) After a candidate has been employed, Contractor must:
 - (i) provide each employee with relevant Safe Work Method Statements and all the relevant training for the tasks they are to perform, including on-site training and supervision where necessary;

- (ii) ensure that each employee is aware of and complies with Organisation's Policies and other requirements as communicated to Contractor from time to time;
- (iii) where reasonably requested by Organisation, replace any employees who are incompatible with or unacceptable to a Client;
- (iv) provide each employee with all relevant materials, tools and protective clothing for the tasks they are to perform;
- (v) ensure annually that each employee is correctly licensed and, where applicable, insured for the tasks that they perform;
- (vi) pay employees in accordance with any relevant award, industrial agreement or other instrument applicable to the employee; and
- (vii) ensure that all incident, accident, and complaint reports relating to the Services are properly completed and a copy is promptly provided to Organisation.

8.6 Obligations of Contractor for employee misconduct

- (a) Any breach of this Agreement by an employee of Contractor will be deemed to be a breach by Contractor.
- (b) If an employee's act or omission constitutes a breach of this Agreement then without limiting its other rights and remedies at law or under this Agreement, Organisation may instruct Contractor to remove that employee from providing the Services.

9 WARRANTIES

9.1 Contractor warrants to Organisation that:

- (a) Contractor and its employees and contractors have the necessary skills and training to provide the Services;
- (b) Contractor has full capacity and all necessary licences, permits, approvals and consents to enter into and perform its obligations under this Agreement;
- (c) the Services will be provided with all due care and skill, and in a timely, diligent and efficient manner;
- (d) the Services will be provided in accordance with the Services Schedules;
- (e) the Contractor has undertaken all relevant character and criminal record checks of all employees and contractors engaged by Contractor and reasonably concluded that they are suitable personnel to provide the Services;
- (f) neither Contractor nor its personnel will in any way prejudice the reputation or image of Organisation or any activities undertaken by Organisation;

- (g) Contractor has obtained all necessary insurance which is required to cover any liabilities which may arise from the provision of the Services;
- (h) Contractor will comply with all applicable laws, rules, regulations, orders, by-laws and industry standards in providing the Services;
- (i) Contractor will comply with Organisation's Policies in providing the Services.

10 INSURANCE

10.1 Contractor must maintain all relevant insurance

- (a) Contractor must procure and maintain the following insurance policies:
 - (i) a comprehensive policy of public liability insurance providing a minimum cover of \$10 million (or such other amount specified in Part B of the Services Schedule) in respect of its operations under this Agreement;
 - (ii) workers compensation insurance to the extent required by law; and
 - (iii) any other insurance of the type and level of cover specified in Part B of the Services Schedule.
- (b) Each policy must be maintained for the period specified in Part B of the Services Schedule or, if no period is there specified, for a period of 12 months after the later of the expiry or termination of this Agreement or the expiry of the last Services Schedule.

10.2 Contractor must provide proof of all relevant insurance

Contractor must provide Organisation with certificates of currency for the policies listed in Annexure B of the Services Schedule on or before the Review Date, or otherwise upon Organisation's reasonable request.

11 CLIENTS' PREMISES

- 11.1 Contractor must ensure that Contractor's employees and contractors attending Clients' premises comply with Organisation's Policies and such other requirements as notified by Organisation from time to time.
- 11.2 Whilst attending any Client premises, Contractor must keep the premises clean and in good repair and condition. Loss or damages must be reported to the Organisation immediately. The Contractor is liable for loss or damages, as reported by the Contractor, the client or otherwise identified by the Organisation, and must repair or replace damaged or lost property within a reasonable time frame.
- 11.3 Any loss or damage to Client's premises must be reported to Organisation immediately. Contractor will be liable for any and all loss or damage reported by Contractor, Client or otherwise identified by Organisation. Contractor must (at its

own cost and expense) repair or replace the damage or lost property within a reasonable time frame following a request by Organisation.

- 11.4 Contractor is responsible for the health, safety and welfare of its employees and contractors whilst performing the Services at a Client's premises.
- 11.5 Contractor must take all necessary precautions to prevent the occurrence of the death or injury to any person or damage to property in relation to the provision of the Services at a Client's premises.

12 REPORTS

If requested by Organisation, Contractor must provide written reports and other documentary evidence to Organisation relating to Contractor's compliance with any applicable legal requirements or the terms and conditions of this Agreement, in a form satisfactory to Organisation.

13 CONFIDENTIALITY

13.1 Confidentiality

- (a) Contractor acknowledges that, in performing its obligations under this Agreement, it may be provided with Confidential Information of Organisation, including in relation to Clients.
- (b) Contractor acknowledges that the improper disclosure or use Confidential Information will cause serious damage and loss to Organisation.
- (c) Contractor must keep the Confidential Information secret and confidential and must not disclose any part of the Confidential Information to any person other than to those of its employees or contractors who require access to the Confidential Information in order for Contractor to perform its obligations under this Agreement.

13.2 No use of Confidential Information

- (a) Contractor must not, and must ensure that its employees and contractors do not (both during the term of their employment or consultancy (as applicable) and thereafter), use the Confidential Information except in connection with Contractor's performance of its obligations under this Agreement.
- (b) Contractor is liable to Organisation for any misuse or unauthorised disclosure of the Confidential Information by its employees or contractors.

13.3 Period of obligations

Despite expiry or termination of this Agreement, Contractor's obligations under this clause 13 continue with respect to any part of the Confidential Information until that part passes into the public domain, other than directly or indirectly in connection with an act or default of Contractor or any of its employees or contractors.

13.4 Records

- (a) Contractor will maintain a complete audit trail of the financial and non-financial transactions resulting from this Agreement that relate to the Services (the **Records**).
- (b) The Records will be retained until the later of:
 - (i) seven (7) years after the date this Agreement terminates or expires;
 - (ii) the date upon which all pending matters relating to this Agreement, including disputes, are closed; and
 - (iii) the date upon which the information is no longer required to meet the requirements of law and Organisation Policies.
- (c) Before destroying or otherwise disposing of any Records in accordance with clause 13.4(b), Contractor will:
 - (i) provide Organisation with [60] days prior notice; and
 - (ii) if requested by Organisation, will deliver the Records to Organisation in a format reasonably specified by Organisation.

14 PRIVACY

14.1 Contractor's privacy obligations

- (a) Contractor must comply with all obligations (if any) imposed upon Contractor and upon Organisation in respect of Client Personal Information, by the *Privacy Act 1988* and the National Privacy Principles.
- (b) In supplying the Services, Contractor must:
 - (i) use Personal Information only for the purposes of performing its obligations under this Agreement;
 - (ii) restrict access to Personal Information to employees or contractors who need to access the Personal Information to fulfil Contractor's obligations under this Agreement;
 - (iii) not otherwise use, modify or disclose Personal Information except with the prior written consent of Organisation;
 - (iv) ensure that any Personal Information in its possession or control or to which it has access in connection with this Agreement is protected against loss and unauthorised access, use, modification and disclosure;
 - (v) comply with any direction, policy or guideline of Organisation which concerns the security, use or disclosure of Clients' Personal Information, provided that the direction, policy or guideline does not cause Contractor to breach any privacy law by which it is bound;

- (vi) notify Organisation immediately if it becomes aware of a breach of this clause 14; and
- (vii) ensure that any person who is authorised to have access to any Personal Information is made aware of Contractor's obligations in this clause 14.

14.2 The period of privacy obligations

The obligations in this clause 14 will survive the expiry or termination of this Agreement.

15 TERMINATION

15.1 Termination by Organisation

- (a) If Contractor:
 - (i) is in breach of any of its obligations under this Agreement and, if the breach is capable of remedy, does not rectify the breach after receiving 14 days notice in writing from Organisation to do so;
 - (ii) sells or otherwise disposes of substantially all of its business assets (or, if a company, more than 50% of its shares) to a third party or ceases to carry on all or a substantial part of its business;
 - (iii) is unable to pay all of its debts as and when they become due and payable or is deemed to be insolvent under any provision of the *Corporations Act* or any statute or any other law;
 - (iv) suffers any execution or other process is levied or enforced against its property;
 - (v) through its employees or contractors engages in any criminal, fraudulent or dishonest act or other misconduct in relation to Organisation, any Client, this Agreement or the Services; or
 - (vi) through its employees or contractors engages in any behaviour which is offensive, disruptive or is likely to bring Organisation into disrepute,

then in addition to any other remedies or rights Organisation may have at law or under this Agreement, Organisation may terminate this Agreement by giving written notice to Contractor of the termination, which will be effective immediately unless otherwise stated in the notice.

- (b) Contractor must notify Organisation in writing as soon as it becomes aware of any of the occurrences specified in clause 15.1(a).
- (c) Organisation may terminate this Agreement or any Services Schedule, at its discretion and without cause, at any time by giving Contractor 30 days written notice.

15.2 Liability of Organisation upon termination

- (a) If Organisation terminates this Agreement or any Services Schedule pursuant to clause 15.1(a), no further amounts are payable to Contractor even if they had already been invoiced and Organisation reserves the right to take such action against Contractor as it considers necessary or desirable to recover any loss or damage incurred by Organisation.
- (b) If Organisation terminates this Agreement or any Services Schedule pursuant to clause 15.1(b), Organisation will pay the Contractor all fees and approved expenses outstanding for Services provided up to the date this Agreement or the relevant Services Schedules (as the case may be) is terminated, but will not otherwise be liable to pay Contractor any amount that would have been payable if this Agreement or the relevant Services Schedule had continued.

15.3 Termination by Contractor

Contractor may terminate this Agreement by giving notice, effective immediately, if at any time Organisation fails to pay Contractor in accordance with this Agreement after receiving written notice from Contractor to remedy the breach within a further 30 day period.

15.4 Consequences of termination

- (a) Any termination of this Agreement, which is made in accordance with the provisions of this Agreement, will not prejudice the rights and liabilities of the parties which existed prior to termination in respect of this Agreement, unless otherwise provided in this Agreement.
- (b) If either party terminates this Agreement, all Services Schedules will automatically terminate unless otherwise agreed.
- (c) Upon the earlier of expiry or termination of this Agreement Contractor must immediately return to Organisation all Confidential Information, Personal Information (and all documents and things containing or embodying any part of them or any reproduction of all or any part of them) and any other item or thing which belongs to Organisation or a Client which is in the possession, custody or control of Contractor, its employees or contractors.

16 INDEMNITY

16.1 Subject to clause 16.2, Contractor indemnifies Organisation and its employees and contractors (**Indemnified Parties**), against any loss, damage, costs and expenses (including legal expenses) or liability reasonably suffered or incurred by the Indemnified Parties, directly or indirectly, in connection with:

- (a) any act or failure to act which constitutes a breach by Contractor of any provision of this Agreement;
 - (b) any injury to or death of persons or damage to property caused by Contractor, its employees or contractors in connection with this Agreement;
- and

- (c) any negligent or wilful act or omission of Contractor, its employees or contractors in connection with this Agreement.

16.2 Contractor's liability to indemnify the Indemnified Parties will be reduced proportionally to the extent that any of the Indemnified Parties' acts or omissions contributed to the loss or liability.

17 NOTICES

17.1 Any notice or other communication required to be given by this Agreement must be:

- (a) signed by the party giving it or by its authorised representative; and
- (b) delivered by hand or sent by registered post to the relevant address or fax number set out below:

- (i) if to Organisation:

Postal address: **[insert address]**

Fax number: **[insert number]**

- (ii) if to Contractor:

Postal address: **[insert address]**

Fax number: **[insert number]**

17.2 A party may change its address or fax number for the purpose of notices by giving notice of that change to the other party in accordance with the provisions of clause 17.1.

17.3 Notices are taken to be given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, on the third day after the date of posting; and
- (c) in the case of delivery by fax, at the time shown on a transmission report by the machine from which the fax was sent which indicates that the fax communication was sent at that time, in its entirety and without error to the fax number of the recipient.

18 COSTS

18.1 Except as specified in this Agreement, Contractor must supply, at its own cost, everything (including all materials, labour, equipment and consumables) necessary for the provision of the Services in accordance with this Agreement.

18.2 Each party must pay its own legal costs incurred in relation to the preparation, negotiation and completion of this Agreement.

19 INDEPENDENT LEGAL ADVICE

Contractor has obtained its own separate legal advice in relation to the preparation, negotiation and completion of this Agreement.

20 WAIVER AND CONSENT

- 20.1 A party does not waive a right or remedy under this Agreement or at law if it fails to exercise a right or remedy, only partially exercises a right or remedy or delays in exercising a right or remedy.
- 20.2 A party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to further exercise the same right or remedy or to exercise another right or remedy.
- 20.3 A waiver or consent is effective only if in writing and properly signed by or on behalf of the party to be bound.

21 INVALIDITY

Even if a part of this Agreement is for any reason invalid or unenforceable, the remaining portion remains in full effect as if each party had signed it without the invalid portion.

22 VARIATION

No provision of this Agreement or a right conferred by it can be varied except in writing signed by the parties.

23 ENTIRE AGREEMENT

This document and the Services Schedules constitute the entire agreement between the parties relating to the provision of the Services by Contractor.

24 COUNTERPARTS

If this Agreement is signed in counterparts then each is deemed an original and together they constitute one document.

25 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of its courts.

Signed as an Agreement on

2006

Signed for and on behalf of
ORGANISATION by its authorised
representative in the presence of:

Signature of witness

Signature of authorised representative

Print name

Print name

Address

Signed for and on behalf of
CONTRACTOR by its authorised
representative in the presence of:

Signature of witness

Signature of authorised representative

Print name

Print name

Address

DRAFT

Schedule 1

DEFINITIONS

The following words have these meanings in this Agreement:

Agreement means the terms and conditions contained in this document, the Services Schedules and any annexures.

Background Information has the meaning given to it in clause 8.4(d).

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.

Client means members of the community described as the "target population" in the *Home and Community Care Act 1985* (Cth).

Confidential Information means:

- (a) information disclosed by or on behalf of Organisation to Contractor or its employees, or of which Contractor or its employees become aware, during the term of this Agreement;
- (b) information acquired by Contractor or its employees in the course of performing Contractor's obligations under this Agreement;
- (c) information which is designated as confidential by Organisation from time to time; and
- (d) any other information which by its nature should reasonably be considered to be confidential information of Organisation,

whether or not marked as "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which Contractor can prove is in the public domain, or was known to Contractor at the time of disclosure, other than through a breach of this Agreement. Confidential Information will include any information which is held by Organisation under an obligation of confidentiality owed to another person, including Clients.

Fees means the fees for the Services as specified in a Services Schedule.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

National Privacy Principles means the National Privacy Principles set out in the *Privacy Act 1988* (Cth).

Payee has the meaning given to it in clause 7.3.

Payer has the meaning given to it in clause 7.2(b).

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Policies means any policies, procedures, guidelines or requirements of Organisation listed in Schedule 3, attached as Annexure A or otherwise made known to Contractor from time to time.

Records has the meaning given to it in clause 13.4(a).

Review Date has the meaning given to it in clause 2.1.

Services means the services to be provided by Contractor under this Agreement, as set out in a Services Schedule and in accordance with the specifications attached as Annexure B.

Services Schedule means a document substantially in the form of Schedule 3, including any document annexed to that Schedule, which is completed and signed by the parties.

Sub-Contractor Obligations has the meaning given to it in clause 8.2(b)(ii).

Supplier has the meaning given to it in clause 7.2(b).

Variation has the meaning given to it in clause 4.2(b)(i).

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Schedule 2

POLICIES AND PROCEDURES

In providing the Services, Contractor must comply with the following policies and procedures:

1. Policies and procedures

- (a) Organisation's policies, procedures and guidelines applicable to the Services are attached as Annexure A.
- (b) In addition, Contractor undertakes to:
 - (i) provide the Services in accordance occupational health and safety laws and regulations;
 - (ii) complete a "hazard identification checklist" (form of document attached as Annexure C) in relation to the premises where the Services are being carried out;
 - (iii) promptly notify Organisation of any accidents or significant incidents (e.g. marked changes in the Client's health, temporary absences from the residence) relating to the Client;
 - (iv) promptly notify Organisation any situations of suspected abuse of the Client;
 - (v) promptly notify Organisation of any complaint or feedback that indicates dissatisfaction of the Client or the Client's carer; and
 - (vi) promptly and actively participate in the resolution of complaints, negative feedback of any kind, or issues arising from incidents, accidents or injuries.

2. Instructions for Contractor's employees

Contractor must instruct an employee or contractor who is providing Services under the Service Schedule to:

- (a) arrive at the site at the scheduled time and be ready to provide the Services;
- (b) at all times behave in a professional manner;
- (c) provide the Services as specified in the Service Schedule or Variation, according to days, times, service type and according to any special instructions advised to Contractor by Organisation, or directly to him or her by Contractor;
- (d) at all times provide Services according to any training and instructions received;

- (e) not undertake any task that he or she has not been trained for, instructed in, or for which there is inadequate or no available supervision and support from Contractor;
- (f) not vary the work from the Service Schedule without first obtaining permission from Contractor, who will have first obtained permission from Organisation;
- (g) resolve questions or areas of risk or concern regarding the job as far as possible before beginning work for the Client;
- (h) before carrying out the work, understand who is the person responsible to substantiate his or her work, as advised to Contractor by Organisation, and ensure this is the person who substantiates his or her work, before leaving the premises on the day of service;
- (i) respect the dignity, privacy and right of choice of Client, his or her family and carers;
- (j) maintain confidentiality in regard to all business transactions of Organisation, Client and Client's family/carer at all times;
- (k) report all cancellations of Services or Variations to Services to Contractor at the earliest opportunity (and Contractor will make a record of this information);
- (l) schedule leave as far in advance as possible, so as to provide minimal disruption to Client and its family/carers;
- (m) notify the Client, its family/carers as early as possible if he or she is going to be late, and advise Contractor of the time of arrival; (and Contractor will make a record this information);
- (n) provide the Services as well as possible within the allocated time;
- (o) be open and honest in all communications;
- (p) give regular feed back to Contractor on matters concerning the Services provided, health and welfare of Client, its family/carers;
- (q) submit all records in a timely manner, and according to the standards required by the Organisation;
- (r) forward transaction histories in relation to budgeting and bill paying to Contractor;
- (s) dress in a professional manner, wear appropriate footwear and remain well-groomed;
- (t) not smoke at any time whilst providing the Services to Client and its family/carers;
- (u) not cut nails, insert eye drops, apply creams, or perform any procedure other than that set out in the Service Schedule. No special procedure is to be performed unless the employee or contractor is authorised, fully trained

and supervision and support is available from a qualified employee of Contractor.

- (v) respect the cultural and religious practices of the Client, its family and carers, and not impose religious, political or ethical beliefs on Client;
- (w) not buy, sell or accept any goods or services to/from Client or its family/carer or associates;
- (x) not accept or solicit gifts of any kind from Client, its family or carer;
- (y) accept no lottery tickets from Client, nor give gifts of lottery tickets to Client;
- (z) not give gifts of food or other consumables to Client, its family/carers;
- (aa) to report offers of goods, services, gifts by Client, its family/carers or associates immediately to Contractor at the earliest opportunity;
- (bb) not undertake or permit any abuse or harassment of Client, its family/carers or associates;
- (cc) not give their own personal details to the Client including telephone, address or any other contact details;
- (dd) restrict conversations with Client to that which is light, pleasant and not such to cause Client and its family/carers worry or distress;
- (ee) not drink alcohol or take any other drug such that it impairs the ability to provide the Services or to drive a vehicle;
- (ff) not work for Client, its family/carers in a paid or unpaid capacity outside the provision of Services as required by the Agreement;
- (gg) not visit the Client, its family/carers outside of the hours required to provide the Services required by the Agreement;
- (hh) not provide services to Client while ill or physically or psychologically impaired;
- (ii) not become involved in resolving any social or financial issue for Client or its families or carers unless explicitly instructed to do so under the Service Schedule;
- (jj) not work in Client's home or on Client's property when Client is not at home;
- (kk) not provide services to Client that has any cognitive impairment, who is alone, unless authorised by the family/carers, Contractor or Organisation;
- (ll) not give advice to Client on any matter;
- (mm) not leave confidential material in Client's home or employee's or contractor's car for others to read;
- (nn) comply with all occupational health and safety laws;
- (oo) disclose to Organisation any loss of driving licence or other offences; and

- (pp) not take pets, family, friends or any other person to work with him or her during the period that the Services are being performed.

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Schedule 3

SERVICES SCHEDULE

This Services Schedule and any annexures attached to it are made in accordance with, and are subject to the terms and conditions of, the Services Agreement dated [insert date] between [insert Organisation name] (**Organisation**) and [insert name of Contractor] (**Contractor**). Contractor agrees to provide the Services set out in this Services Schedule in accordance with the Services Agreement. If the expected service needs or the care needs of the Client change, Contractor agrees to contact Organisation as soon as possible to review the situation and Organisation and Contractor will sign a Variation if appropriate.

Please confirm details, sign and fax back to: _____ [insert fax no.]

Attention: The information in this fax is privileged and confidential, intended only for use of the person nominated. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this fax in error, please telephone us immediately.

PART A: CONTRACTOR DETAILS

Contractor name: _____ ABN _____
Pty Ltd/Partnership/Sole Trader (*delete if not applicable*)

Telephone: _____ Fax: _____

Contact Persons 1: _____ 2: _____

Do you employ workers/subcontractors? Yes No

Postal Address: _____

Street Address: _____
if different from postal address

Area the Contractor services: _____

PART B: INSURANCE AND LICENCE REQUIREMENTS

Contractor must obtain and maintain the following insurances:

Public Liability*

Insurer:	Policy Number:
Expiry Date:	Amount:

Statutory Workers' Compensation* (if you have employees)

Insurer:	Policy Number:
Expiry Date:	Amount:

Personal Accident/Loss of income* (if self employed, sole trader or partnership)

Insurer:	Policy Number:
Expiry Date:	Amount:

Professional Indemnity* (if providing medical or paramedical services)

Insurer:	Policy Number:
Expiry Date:	Amount:

*Contractor must attach Certificates of Currency for these policies. An updated Certificate of Currency must be provided to Organisation on each Renewal Date.

Contractor must hold the following licences:

Department of Veteran Affairs DVA (if you are providing private nursing services)

Provider Number:
Qualifications of day
to day supervisor:

Building Qualifications

Type of Trade:
Licence Number:

PART C: CLIENT / SERVICES DETAILS

Client's name:

Client's phone no:

Carer's name:

Client's address:

Service request details (attach any specifications as Annexure B):

Hours/times Services are required:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
am							
pm							

Service type:

Cost \$

No.

Total \$

Service to commence on:

Service to continue until:

Review Date:

Signed by
Organisation:

Name of authorised representative:

Date:

Signed by
Contractor:

Name of authorised representative:

Date:

ANNEXURE A

POLICIES AND PROCEDURES

1. Additional Information for HACCC Agencies Brokering for Community Care Services
– January 2003

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ANNEXURE B

SERVICE SPECIFICATIONS

Detailed specifications for the Services are attached.

Types of Services

The following are examples only of the types of services which can be provided:

Comprehensive Assessment	Care coordination
Assistance with personal hygiene (bathing/showering/grooming)	Case management
Assistance with toileting	In home respite
Assistance with dressing or undressing	Group Outings
Assistance with mobility or transfers	Assistance with Laundry
Support due to sensory deficit	Domestic Assistance
Support with communication	Shopping and bill paying
The fitting of aids and appliances	Monitoring medication
Preparation of meals and refreshments	Arranging appointments
Monitoring special diets	Transport to appointments
Assistance with eating	Carer support
Leisure support & social activities	Assistance with budgeting
Home modifications eg for access and safety	Emergency call and response
Light gardening	Home Maintenance
Lawn maintenance	

SERVICE SPECIFICATION GUIDELINE

The following example provides Organisations with a guide on how to prepare a Service Specification for use for Contractors delivering Services to Clients. This is a guide only and Organisations would be expected to provide the necessary information in order that Contractors are able to understand what is expected of them in providing Services.

Guidelines

1. General Requirements:
 - (a) Timeframe – defined and with wind-down strategies in place
 - (b) Recognition of the needs of service users and special needs groups
 - (c) Available resources – both funding and any other source
 - (d) Compliance with standards and guidelines
 - (e) Quality framework
 - (f) Collection of data
 - (g) Compliance with legislation

- (h) Description of service required
- (i) Capacity to implement
- 3. Detailed description of Service
- 4. Objectives of Service
- 5. Service activities
- 6. Step-by-step processes
- 7. Target group
- 8. Funding and funding period
- 9. Risks
- 10. Evaluation methods and feedback

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ANNEXURE C

HAZARD IDENTIFICATION CHECKLIST

1. What to look for in Equipment

- (a) Does it comply with Australian Standards?
- (b) Does it have adequate installation standards?
- (c) Has it been installed correctly?
- (d) Have staff and volunteers been correctly trained in use of equipment?
- (e) Does equipment present slip/fall hazards?
- (f) Is equipment free of damage e.g. splinters, loose parts etc?
- (g) Does it have specific maintenance requirements?

11. Equipment Supervision

- (a) Has training been provided and rules for use of equipment been explained?
- (b) Have all supervisors been trained in 'first aid' procedures?

12. What to look for Outside

- (a) Are grounds free of sharp objects (e.g. broken glass, metal, splinters etc)?
- (b) Do they present any trip or 'fall in' hazards (e.g. No open drains etc)?
- (c) Are they kept free of objects (general equipment etc)?
- (d) Are areas such as stairs and ramps maintained as 'anti-slip'?
- (e) Are they adequately lit and clearly visible at all times?

13. What to look for Inside

(a) Housekeeping

- (i) Are there procedures to ensure that accidental spills or leakages are immediately cleaned up?
- (ii) Are premises free of sharp objects (e.g. broken glass, metal, splinters, etc.)?
- (iii) Are premises free of tripping hazards (e.g. torn carpets, cabinets in thoroughfares, etc)?
- (iv) Are aisles and hallways clear and unobstructed?

- (v) Do stairs have 'anti-slip' features where required and are they maintained?
- (vi) Is food preparation/serving area clean? Does it have 'anti-slip' features?
- (vii) Is it free of electrical cords of any kind?

(b) **Furniture**

- (i) Is it stable to use and free of sharp edges?
- (ii) Can any items present a danger through falling over?
- (iii) Can any items be moved to a less safe position without authorisation?
- (iv) Is furniture made from materials which will not burn easily?
- (v) Is it painted/covered in materials which are non-toxic and which will not chip/flake or tear, presenting a risk of being swallowed?

(c) **Electrical Equipment**

- (i) Are items in use governed by an approved Earth Leakage Circuit Breaker/life safety cut-out switch, installed by a qualified electrical contractor?
- (ii) Are all electrical switchboards enclosed in non-combustible materials and kept out of combustible storage spaces?
- (iii) Are switchboards regularly tested/checked by an approved electrical contractor?
- (iv) Is electric comfort heating fixed (preferred) or are there portable units in use (not preferred)?

(d) **Fire Safety**

- (i) Is the emergency number for fire prominently displayed near each phone?
- (ii) Are fire extinguishers:
 - (A) secured in place?
 - (B) easily accessible and in designated areas?
 - (C) in a condition suitable for immediate use?
 - (D) of a type appropriate to the conditions and exposures?

(e) **Emergency Egress**

- (i) Are evacuation procedures in place and known to all staff and volunteers?
- (ii) Are emergency evacuation and fire drills regularly practised?
- (iii) Are exit points unobstructed, are stairs free and clear of tripping hazards, and are handrails secure?
- (iv) Can all exit doors be opened from the inside with one hand and without a key?
- (v) Is emergency lighting working, and tested regularly?

(f) **Money and Valuables**

- (i) Are valuable items (cash, mobile phones, credit cards) kept in a locked/secure area when not in use?
- (ii) Is there documentation regarding who has access to keys, cash, secure areas etc.

(g) **Maintenance**

Do qualified personnel carry out the cleaning and maintenance of:

- (i) heating systems?
- (ii) air-conditioning systems?
- (iii) electrical systems, including fuses etc?
- (iv) cooking equipment, including hoods, ducts, etc?
- (v) computer systems?

(h) **Electrical Equipment**

- (i) Portable equipment and leads tested and tagged
- (ii) No broken plugs, sockets or switches
- (iii) Safety plugs for unused power points to prevent access by children
- (iv) No double adapters or piggy back adapters
- (v) No temporary leads on floor
- (vi) No frayed or damaged leads
- (vii) No strained leads

- (viii) An approved earth leakage circuit breaker/safety switch installed and tested by a qualified electrical contractor
- (ix) An adequate electricity surge protector
- (x) Lightning protection
- (xi) Electrical switchboards enclosed in non combustible construction and kept free of combustible storage material
- (xii) No portable electric heaters in use, should all be fixed clear of combustible material
- (xiii) External power line access secure and free from obstructions (eg. trees)

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Schedule 4

SUBCONTRACTOR STATEMENT

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