



Provider Agreement General Conditions

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means this agreement, including these Provider Agreement General Conditions and any Provider Agreement Details to which they relate.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

Claim means any claim, action, demand or proceeding whether arising in contract, tort, under statute or otherwise.

Commission means the relevant Commission specified in the Provider Agreement Details.

Confidential Information means this Agreement and all information which is disclosed to a party at any time in connection with this Agreement which is confidential in nature, and for the avoidance of doubt includes the terms of this Agreement.

GST means any tax, levy, charge or impost implemented under any relevant legislation concerning goods and services tax or value added tax.

Guarantor means the Guarantor specified in the Provider Agreement Details, if any.

Indemnified Loss means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any Claim relating to that fact, matter or circumstance (including any Claim based on the terms of this Agreement).

Initial Term means the Initial Term specified in the Provider Agreement Details.

Introduced Purchasers has the meaning given to that term in clause 3(a)(i).

IP Rights has the meaning given to that term in clause 6(a).

Personnel means a person's employees, contractors, agents, consultants or representatives (and in the case of the Principal, excludes the Provider).

Principal means the Principal specified in the Provider Agreement Details and its related bodies corporate.

Principal's Premises means any premises owned or operated by the Principal (for the avoidance of doubt including the Salter Point and Joseph Banks aged care facilities).

Provider means the Provider specified in the Provider Agreement Details.

Provider Agreement Details means any Provider Agreement Details which incorporate these Provider Agreement General Conditions.

Sale Agreement has the meaning given to that term in clause 3(a)(ii).

Sale Price has the meaning given to that term in clause 3(b).

Sales Commission Invoice has the meaning given to that term in clause 4.1(b).

Services has the meaning given to that term in the Provider Agreement Details.

Term means the Initial Term and any extensions in accordance with clause 8.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) the use of the word **includes** or **including** are not to be taken as forms of limitation;

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- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) references to clauses, schedules or annexures are to clauses, schedules or annexures of or to this Agreement;
- (f) references to a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (g) a reference to this Agreement or another document includes this Agreement as varied or replaced;
- (h) a reference to a person includes any other entity recognised by law and vice versa;
- (i) any reference to a party to this Agreement includes its executors, executors and trustees, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (j) a reference to **A\$, \$ or dollar** is to Australian currency; and
- (k) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward the Agreement or a relevant part of it.

2. Appointment of the Provider

- (a) The Principal appoints the Provider as a non-exclusive provider for the provision of the Services for the Initial Term subject to the terms and conditions contained in this Agreement.
- (b) For the avoidance of doubt:
 - (i) the Principal is not restricted from entering into any arrangements with any persons including customers, manufacturers and producers relating to the Services and/or variations to or derivatives of the Services, including arrangements in relation to the provision, production, design, development, manufacture and sale of any new goods and services (which may or may not compete with the Services); and
 - (ii) the Provider may provide, manufacture, purchase, promote, distribute, sell or act as agent for the sale of, any goods and services including any goods and services that are comparable, competitive or can be substituted with or for the Services, at any time during and after the Term.

3. Services pricing and introductions

- (a) The Provider must provide Services:
 - (i) to persons present at or resident at any of the Principal's Premises, or introduced (in any way) through or by the Principal, (**Introduced Purchasers**) at the times set out in the Provider Agreement Details; and
 - (ii) by agreement in writing between the Provider and the Introduced Purchaser, in any form required by the Principal (at the Principal's sole discretion), (in each case, a **Sale Agreement**).
- (b) The price for each Service to be purchased by an Introduced Purchaser from the Principal is as ultimately agreed between the Principal and the Introduced Purchaser (or the cash-equivalent market value of any non-cash consideration, if any) (**Sale Price**) including as may be set out in any Sale Agreement.
- (c) The Principal must promptly issue a confirmation of sale confirming the terms of any order of Services (including the Sale Price) from an Introduced Purchaser once a Sale Agreement has been confirmed as accepted, or signed, by or on behalf of the Principal (**Confirmation of Sale**).

4. Commissions

4.1 Services sales Commissions

- (a) The Principal is entitled to the Commission of the applicable percentage(s) of the Sale Price for each sale of any Services, as set out in the Provider Agreement Details (if and as applicable).

- (b) The Principal may, at any time after the date of any Confirmation of Sale or any Sale Agreement, send the Provider a taxation invoice (**Sales Commission Invoice**) for its Commission in accordance with clause 4.1(a).
- (c) The Provider must pay each Sales Commission Invoice, or such other amount as the Provider and the Principal agree in writing, within 14 days of the Sales Commission Invoice being issued to the Provider.
- (d) The Provider must, upon request, permit the Principal or its representatives to audit and examine (for the avoidance of doubt, including inspecting, copying and retaining) any books and records necessary for the verification of any amounts claimed (or not claimed) or services provided (or not provided) by the Provider, and of compliance with the Provider's representations, warranties, obligations, undertakings and requirements under, this Agreement.
- (e) The Provider must provide any information and assistance reasonably, and access to any relevant premises and Personnel, required by the Principal to enable and facilitate any audit and examination under clause 4.1(d).
- (f) The Provider acknowledges and agrees that the Commissions calculated in accordance with this Agreement are, and have been agreed between the parties to be, a genuine price, and will not constitute a penalty against the Provider. The Provider waives any right it may have against the Principal to claim that the Commission or the operation of this clause 4.1 is a penalty.

4.2 Method of payment

Payment of any amount due under this Agreement by the Provider must be made by the Provider to the Principal by electronic funds transfer to a bank account specified by the Principal to the Provider, and verbally verified with the Principal by the Provider, at least 3 Business Days before the due date for payment.

5. Services by the Provider

- (a) Subject to the Provider's remaining obligations pursuant to this Agreement, the Provider must comply with all written directions given by the Principal (at its discretion).
- (b) The Provider must exercise all reasonable diligence, best efforts and know-how in connection with the provision of any Services.
- (c) The Provider must ensure that the Services are fit for purpose and in line with industry best practice.
- (d) The Provider must comply with any special conditions set out in the Provider Agreement Details, if any.
- (e) The Provider must comply with all policies and procedures relating to any Principal's Premises that are provided or made available to the Provider in writing.
- (f) The Provider must comply with all governmental laws, regulations and practices with respect to the conduct of the Provider's business and in any way in connection with any of the Services and the Principal.
- (g) To the maximum extent permitted by law, the Provider must not make any representation or give any warranty relating to or in connection with the Services, except as specifically authorised by the Principal in writing.

6. Intellectual property rights

- (a) In this clause 6, **IP Rights** means all trade marks, copyrights, patents, registered designs and other industrial and intellectual rights, and includes but is not limited to unpatented production methods and technical and confidential information embodied in or used in connection with a party or communicated under this Agreement, whether registered or unregistered.
- (b) Each party acknowledges that the other party's pre-existing, or independently created, IP Rights are and remain the sole property of the other party.
- (c) Subject to clause 6(b), the Provider assigns all IP Rights created in the course of providing any Services to the Principal as and from their creation.

- (d) The Provider will immediately report to the Principal any apparent infringements of the Principal's IP Rights by third parties which come to the notice of the Provider.

7. Liability

- (a) To the maximum extent permitted by law, the parties agree that the Principal will not be liable for any costs or expenses of the Provider or for any act or omission of the Provider, its servants or agents.
- (b) To the maximum extent permitted by law, subject to clauses 7(a) and 7(c) but notwithstanding any other clause of this Agreement:
 - (i) no party will be liable for any loss of revenue, profit, product, production, business, goodwill, use or opportunity or the cost of obtaining or maintaining finance, or any other indirect or consequential loss and expenses, incurred by the other party either directly or indirectly including as a result of any breach of this Agreement; and
 - (ii) the Provider's maximum liability to the Principal, whether in contract, tort (including negligence), statute, warranty or otherwise in connection with this Agreement shall be limited to 100% of the total of all Sales Prices actually paid to the Provider.
- (c) Notwithstanding any other provision of this Agreement, the Provider must pay to the Principal on demand the amount of any Indemnified Loss suffered or incurred by the Principal and its Personnel arising out of or in connection with any and all of the following:
 - (i) any breach of this Agreement;
 - (ii) any illness, injury or death of any person, or any loss or destruction of or damage to any property; and
 - (iii) any negligent or reckless acts or omissions,to the extent caused or contributed to by any of the Provider and the Guarantor, and their Personnel.

8. Term and termination

- (a) This Agreement continues in effect for the Initial Term and thereafter with automatic renewals for subsequent 12 month periods unless:
 - (i) this Agreement is terminated under the provisions of this clause 8; or
 - (ii) either party gives to the other party no less than 3 months written notice of its intention to terminate this Agreement, which notice must be given not less than 3 months before the expiration of the then-current Term or any renewal period (whichever is then in effect).
- (b) Termination of this Agreement does not affect any rights or liabilities which have accrued to either party before termination.

9. Insurance

- (a) The Provider must effect and maintain at all times during the Term and during performance of its obligations under this Agreement each of the following insurances:
 - (i) Professional Indemnity Insurance
Professional indemnity insurance covering claims made against the Provider and its Personnel for breach of professional duty by reason of an act, error or omission whenever committed in the provision of the Services with a limit of liability of not less than A\$20,000,000 or such other amount as may be specified in this Agreement in relation to Professional Indemnity Insurance, for any one occurrence, with run-off cover of at least 7 years.
 - (ii) Public Liability and Property Damage Insurance
Insurance in respect of any injury to or death of any person or any loss, damage or destruction to any property (including that of the Principal, and any items supplied by the Principal in relation to the Services) howsoever caused, in the joint names of the Principal and the Provider, which must be endorsed to indemnify the Principal against any related

liability. This insurance must provide cover to an amount not less than A\$20,000,000 in the aggregate.

(iii) Workers' Compensation / Employer's Liability Insurance

Where required, workers' compensation and employer's liability insurance covering all liabilities, whether arising under statute or common law, in relation to the death of, or injury to, or disease of, employees or any person deemed to be an employee of the Provider, in the joint names of the Principal and the Provider, which must be endorsed to indemnify the Principal against any liability which they may incur under any applicable workers' compensation statute or regulation in relation to the said employees.

(iv) Provider's Plant and Equipment

If the performance of this Agreement requires the Provider to use or provide for use plant and equipment, the Provider must maintain or require the owners of the plant and equipment to maintain insurance covering all loss of and damage to the plant and equipment, for its replacement value.

(v) Motor Vehicle / Automobile Third Party Liability Insurance

If the performance of this Agreement requires the Provider or its Personnel to use or provide for use of motor vehicles, the Provider must maintain or require the owners of the motor vehicles to maintain third party liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of the motor vehicles.

- (b) Before commencing the provision of any Services, and whenever requested in writing by the Principal, the Provider must promptly provide evidence satisfactory to the Principal that it has obtained the insurances that it is obliged to obtain pursuant to this Agreement.
- (c) In the event that the Provider fails to effect or maintain any of the insurances required pursuant to this Agreement, the Principal may, at its sole option and without being under any duty or obligation to do so, effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Provider.
- (d) The Provider must:
- (i) immediately notify the Principal in writing of any occurrence or accident which may give rise to a claim under the policies referred to in clause 9(a) or of any other matter or thing in respect of which notice should be given by the Provider in relation to those policies;
 - (ii) give all information and assistance as may be reasonably required by the Principal (including any relevant Statutory Declarations as to any related matters);
 - (iii) pay all excesses in relation to, and bear responsibility for any exclusions and conditions of, the policies referred to in clause 9(a); and
 - (iv) ensure that all monies to be received by the Provider in settlement of any claim under the insurances referred to in clause 9(a), are paid into and held in a bank account reasonably required by the Principal (including in the name of the Principal), from which and the balance of monies and any interest accrued thereon, if any, shall be retained by the Principal.

10. No poaching

- (a) During the Term and extending for a period of 12 months after the expiry of the Term, to the extent permitted by law, the Provider must not, without the Principal's prior written consent, directly or indirectly solicit, offer to employ, employ, hire as a contractor, agent or consultant, or otherwise procure services from any of the Principal's Personnel.
- (b) Clause 10(a) does not apply where the relevant Personnel is employed or contracted:
- (i) as a consequence of a bona fide advertising or recruitment campaign advertised publicly to a wide range of potential applicants; or
 - (ii) in response to an unsolicited approach made by the Personnel.

- (c) During the Term and extending for a period of 12 months after the expiry of the Term, to the extent permitted by law, the Provider must not, without the Principal's prior written consent, deal directly with or solicit the custom of the Principal's customers or suppliers, or their related bodies corporate.
- (d) Each party acknowledges and agrees that the covenants contained in this clause 10 are fair and reasonable in all respects, and are reasonably required by the Principal to protect its business.

11. Guarantee and indemnity

11.1 Guarantee

In consideration of the Principal entering into this Agreement with the Provider at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance of all present and future obligations and the payment of all present and future liabilities of the Provider under this Agreement and must on demand by the Principal perform such obligations or pay such liabilities in the manner specified in this Agreement if any Provider fails to do so on the due date.

11.2 Indemnity

As a separate and independent obligation from that contained in clause 11.1, the Guarantor must pay on demand to the Principal the amount of any Indemnified Loss suffered or incurred by the Principal arising out of or in connection with any failure of the Provider to perform any obligation or pay any liability under this Agreement on the due date.

11.3 Nature and preservation of liability

The Guarantor acknowledges and agrees that each of its obligations under this clause 11:

- (a) is a principal and continuing obligation and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the Guarantor under this clause 11; and
- (b) continues notwithstanding any amendment of this Agreement or any waiver, consent or notice given under this Agreement by any party to another.

11.4 Waiver of rights

The Guarantor must not exercise any right of indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of the Provider and irrevocably waives all of those rights of indemnity or subrogation it may have.

11.5 Restrictions on Guarantor's dealings

The Guarantor irrevocably appoints the Principal as its attorney to prove in the insolvency of the Provider for all money to which the Guarantor may be entitled from the Provider up to an amount which does not exceed the amount which may be payable by the Guarantor under this Agreement. The Guarantor acknowledges that the Principal may, subject to the terms of this Agreement, retain any money which the Principal may receive from any proof on account of the Guarantor's liability under this clause 11.

12. General

12.1 Legal effect

By signing this Agreement and returning it to the Principal within 7 days, the terms of this Agreement shall constitute a legally binding and enforceable contract between the Principal and the Provider. This Agreement is executed by the parties as a deed and is intended to be construed as such.

12.2 Confidentiality

- (a) Each party must maintain the confidentiality of and not disclose any trade secret, Confidential Information or commercially sensitive information related to the Services or the other party, other than when required by law or when the information falls into the public domain.
- (b) Each party must ensure that each of its Personnel maintains the confidentiality of and does not disclose any trade secret, Confidential Information or commercially sensitive information related to the Services or the other party, other than when required by law or when the information falls into the public domain.

- (c) Except as required by law or by this Agreement, each party must not make any public announcements or disclosures or place any advertisements in relation to this Agreement without the prior written consent of the other party (which must not be unreasonably withheld or delayed).

12.3 GST

If any payment made by one party to any other party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This clause 12.3 is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Agreement.

12.4 Assignment

The Provider must not sell, transfer, assign, lease, sub-lease, sub-contract, licence, encumber (in any way) or otherwise dispose of its rights, interests, obligations or liabilities under this Agreement without the prior written consent of the Principal.

12.5 Entire agreement

This Agreement constitutes the entire agreement between the parties as to its subject matter and accordingly this Agreement supersedes all earlier understandings or agreements between the parties as to its subject matter.

12.6 Further assurances

Each party shall do all other things reasonably necessary or reasonably required by the other party to give effect to the terms of this Agreement.

12.7 Amendment

This Agreement may be modified or amended only by written agreement of the parties.

12.8 Survival

Clauses 1, 6, 7, 8(b), 11 and 12 survive termination or expiry of this Agreement.

12.9 Counterparts

This Agreement may be executed in any number of counterparts (including by electronically transmitted copy) and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all counterparts together constitute the one and same agreement.

12.10 Governing law

This Agreement shall be governed by, and construed in accordance with, the laws of Western Australia and the parties hereby irrevocably:

- (a) submit to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.10(a).