

# Terms and Conditions

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

In this agreement:

- (a) **"Agreement"** means this document and all schedules and other attachments to it;
- (b) **"Commencement Date"** means the commencement date specified at Item 6 of the Reference Schedule;
- (c) **"Confidential Information"** means confidential information of a Party including without limitation any information regarding this Agreement, any trade secret or process, any information relating to the business or affairs, customers, clients, or Personnel of a Party, any sales, marketing, business plans, processes, policies or records of a Party, or any other information which the other Party knows, or ought to know, is confidential.
- (d) **"Consequential Loss"** means and includes, but is not limited to, consequential, special, indirect liability, loss, damage, cost or expense, including, without limitation, any loss of profit, loss of revenue, loss or corruption of data, loss of any anticipated or expected revenue or profits, economic loss of any kind and loss of goodwill;
- (e) **"Deliverables"** means any documents and other things listed under the heading "Deliverables" in Schedule 1.
- (f) **"Fees"** means the amount(s) stated in the Reference Schedule (as adjusted from time to time in accordance with this Agreement);
- (g) **"Force Majeure"** means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party, including:
  - (i) An act of God, peril of the sea, accident of navigation, war (declared or undeclared), sabotage, riot, blockade, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lighting, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the Party concerned), epidemic, quarantine, radiation or radioactive contamination;
  - (ii) action or inaction of a government or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order;
  - (iii) breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material;
- (h) **"GST"** means a goods and services tax, or similar value added tax levied or imposed under the GST Act or otherwise on a supply of services;
- (i) **"GST Act"** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (j) **"Intellectual Property Rights"** means any and all, current and future, intellectual and industrial, property rights and interests, including any:
  - a. patents, trademarks, service marks, rights in designs, trade names, copyrights, topography rights, utility models, eligible layout rights, inventions, discoveries, trade secrets, Confidential Information, know-how, software and improvements, and any applications, or rights to apply, for registration of any of them;
  - b. rights under licences and consents in relation to any of them; and
  - c. other forms of protection of a similar nature or having equivalent or similar effect to any of them, in Australia and in the world, whether registered or unregistered, for the duration of the rights and interests.
- (k) **"Loss"** means loss, liability, claim, costs or expenses (including legal expenses) actual or contingent, but excludes Consequential Loss;
- (l) **"Party"** means a party to this Agreement;
- (m) **"Personnel"** means, in relation to a Party, the Party's officers, employees, contractors, agents and/or other representatives;
- (n) **"Police Check"** means a National Criminal History Record Check in respect of which a National Police Certificate is produced within the meaning of those terms as used in the Australian Aged Care legislation, in particular the Accountability Principles and the Records Principles;
- (o) **"Renewal Option"** means the renewal option period/s specified in Item 6 of the Reference Schedule;
- (p) **"Renewal Option Period"** means the period for which a Renewal Option/s is exercised in accordance with Item 6 of the Reference Schedule;
- (q) **"Services"** means the work or services the Service Provider is required to perform under this Agreement including all Service Levels and Deliverables as further described in Schedule 1;
- (r) **"Sites"** means the services owned and/or operated by the Service Recipient who are subscribing to the Services provided by the Service Provider;
- (s) **"Software"** means any program or data file relating to the Services provided to the Service Recipient by the Service Provider for the performances of the Services;
- (t) **"Term"** means the Initial Term specified in Item 6 of the Reference Schedule together with any Renewal Option Period exercised under this Agreement;
- (u) **"Third Party Software"** means freeware or open source software or software that is owned by third parties.

### 1.2 Interpretation

- (a) Reference to statutes, regulations or by-laws shall extend to all statutes, regulations or by-laws amending, consolidating, or replacing them.
- (b) All Schedules and Annexures referred to in this Agreement form part of and should be read with this Agreement, unless a contrary intention appears, in which case the terms of this Agreement take precedence.

## 2. COMMENCEMENT AND TERM

This Agreement will start on the Commencement Date and will continue in force for the Term unless terminated earlier in accordance with this Agreement. The Term includes any Renewal Option Periods exercised in accordance with the procedure set out in Item 6 of the Reference Schedule.

## 3. RELATIONSHIP OF THE PARTIES

Each Party acknowledges that:

- (a) The Service Provider is an independent contractor and nothing in this Agreement renders or deems the Service Provider or any of its Personnel to be an employee, agent or partner of the Service Recipient; and

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- (b) except as otherwise provided in the Agreement, the Service Provider retains full responsibility and liability for the acts and omissions of:
  - (i) the Service Provider; and
  - (ii) the Service Provider's Personnel,

with respect to the provision of the Services under this Agreement.

## 4. SERVICES

### 4.1 Provision of Services

- (a) The Service Provider agrees to and shall provide the Services at the Sites in a proper and professional manner and in accordance with all relevant policies and procedures of and provided by the Service Recipient as updated from time to time. During the Term, the Service Provider hereby grants to the Service Recipient a non-exclusive, non-transferable right for the Service Recipient and its authorised users to use any Software as a component part of the Services. The Service Provider shall provide all necessary support for the Software and shall use reasonable endeavours to identify any faults or errors of the Software and repair the same in accordance with the Service Levels set out in Schedule 2. The Service Provider is responsible for maintaining the licensing for the Third-Party Software it uses in order to deliver the Service.
- (b) The Service Provider must ensure that the provision of the Services at all times complies with the conditions of this Agreement, the requirements of any governmental agency and any applicable laws, legislation and regulations.
- (c) The Service Provider must ensure that its Personnel comply with all of the Service Recipient's policies and procedures relating to (without limitation) risk management, security, quality management, occupational health and safety, and any related statutory regulations. The Service Recipient may amend its policies and procedures from time to time and the Service Provider agrees to ensure that its Personnel familiarise themselves and comply with any amendments or variations as notified by the Service Recipient. This includes policies relating to modern slavery prevention, ethical labour practices, and worker welfare.
- (d) The Service Provider must comply with all reasonable directions of the Service Recipient Personnel relating to the provision of the Services at the Sites including with respect to access to the Sites. The Service Provider shall implement multi-factor authentication, encryption protocols, and threat detection systems in line with current Australian cybersecurity standards.
- (e) The Service Provider must provide for the flexible roll in of Services to new Sites or roll out of Services from Sites as and when notified in writing by the Service Recipient.
- (f) The Service Provider must keep full written records for a minimum of seven (7) years from the completion of the Services of all Services provided to the Service Recipient at the Sites and must produce copies of such records to the Service Recipient on provision of written request by.
- (g) At the Service Recipient's reasonable request, the Parties shall meet during the Term at agreed times and dates (and in the absence of agreement as nominated by the Service Recipient to review the performance of

the Service Provider against any agreed service levels and any other agreed measurements and to review any new performance criteria and initiatives.

- (h) In the event that the Parties agree that the Service Provider shall provide additional services then such additional services shall for the purposes of this Agreement form part of the Services provided that such additional services are agreed both in terms of scope and cost in writing signed by both parties prior to being provided.
- (i) Any enhancements, upgrades or improvements developed during the Term to the Software shall be installed to such Software and form part of the Services provided that such enhancements or upgrades improve or enhance the performance of the Services. The Service Provider shall provide the Service Recipient with a minimum of 10 business days written notice of any enhancements, upgrades, improvements, or additions. The Service Provider retains the right to charge additional fees for newly developed products or services.
- (j) The Service Recipient shall advise the Service Provider of any changes to user access, Site characteristics or any other details that may have a material impact on the program.
- (k) The Service Recipient shall communicate any fixes or changes required or desired to the Service Provider's program/s.

### 4.2 Police Checks

- (a) If the Service Provider is required to provide Services at any Site which is an operational residential care facility for the aged, the Service Provider must obtain for any of its Personnel required to work at the Site a current Police Check in an acceptable form and must not permit any of its Personnel who are precluded by the Police Check from working or providing services to an aged care facility to be so engaged for the purposes of this Agreement. The cost of obtaining a Police Check is the responsibility of the Service Provider.
- (b) The requirement of sub-clause (a) of this clause will not apply if:
  - (i) there is to be no actual or reasonable likelihood of direct contact by the Service Provider with and/or access to aged care residents at the Sites and the working area for provision of the Services permits total segregation of the Service Provider from the residents; or
  - (ii) a Personnel who does not hold a current acceptable Police Check, when attending any part of the Site that may afford direct contact with and/or access to residents, is always supervised by a person who holds a current acceptable Police Check and is authorised by the Service Recipient to undertake appropriate supervision of the relevant Personnel.
- (c) The Service Provider must keep written records in relation to the matters described in this clause 4.2 and the Service Recipient may, by written notice, request access to and/or obtain copies of such records at no additional cost. The Service Provider must comply with a notice given under this clause within seven (7) days of receiving the notice.
- (d) Notwithstanding clause 8, if the Service Provider is unable or unwilling to produce written records which

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satisfy the requirements of this clause 4.2, the Service Recipient may immediately terminate this Agreement.

## 4.3 Security, OH&S, Accreditation and Environmental Impact

- (a) The Service Provider must use reasonable endeavours to organise and arrange the provision of the Services so as to cause minimum inconvenience and disruption to the Service Recipient and any other occupier or visitor to any of the Sites.
- (b) The Service Provider must:
  - (i) comply with all the Service Recipient security arrangements, requirements and restrictions for all service providers and their personnel engaged in providing Services at the Sites including with respect to access to the Sites;
  - (ii) comply with prudent and responsible occupational health and safety policies and standards at all times, including any specifically directed by the Service Recipient in relation to this Agreement.
- (c) The Service Recipient may deny access to the Sites to the Service Provider's Personnel who do not comply with the security or occupational health and safety procedures advised by the Service Recipient.
- (d) The Service Provider agrees to support the quality and accreditation programs of the Service Recipient at each Site as reasonably requested.
- (e) The Service Provider must ensure that the Services supplied do not impact on any natural or physical environment surrounding the Site. The Service Provider acknowledges that it must have in place policies and procedures in relation to spills or contamination and must notify the Service Recipient as soon as it becomes aware of the occurrence of any event relating to the supply of Services that has or may lead to contamination or pollution of water, land, air, noise, aesthetics or any other environmental impact on the Site.

## 5. FEES AND INVOICES

### 5.1 Fees

In consideration of the Service Provider providing the Services, the Service Recipient will pay the Service Provider the Fees. Subject to clause 5.5, no additional charges or fees are payable by the Service Recipient to the Service Provider unless agreed in writing prior to being incurred.

### 5.2 Fees are inclusive

Except as expressly set out in the Agreement, the Fees include all costs and expenses relating to the Services and Service Provider's performance of its obligations under this agreement, and, except as expressly agreed between the Parties, the Service Recipient is not required to pay:

- (i) any incidental expenses that the Service Provider incurs in providing the Services including but not limited to travel and lodging, document reproduction, shipping, desktop and office equipment costs required by the Service Provider or its Personnel; or
- (ii) any amount for Services provided or costs incurred by Service Provider, prior to entry into this Agreement.

### 5.3 Annual Fee Review

Thirty (30) days prior to the end of the Initial Period or any Renewal Period the Service Provider may submit a revised schedule of Fees for the following 12-month period.

## 5.4 Invoices & Payment

- (a) The Service Provider shall invoice the Service Recipient at the Commencement Date. Any additional charges or fees payable for additional services as agreed in writing pursuant to clause 4.1(h) and 5.1 shall be invoiced separately upon the terms agreed in writing.
- (b) All invoices must be provided in taxable form and contain information required by the Service Recipient from time to time, including but not limited to a breakdown of Services supplied in the period to which the invoice relates.
- (c) Invoices must show separate costing for materials, labour and delivery (if applicable).
- (d) All invoices must comply with the GST Act.
- (e) Subject to clause 5.4(f), the Service Recipient will pay all correctly rendered invoices within the payment period and by the payment method set out in Item 8 of the Reference Schedule.
- (f) Notwithstanding any other provisions of this Agreement, if the Service Recipient disputes the amount of the Service Provider's invoice or if the Services have not been performed satisfactorily, the Service Recipient is not obliged to pay the disputed invoice until the dispute has been resolved with the Service Provider in accordance with clause 7 (Disputes).

## 5.5 GST

- (a) Except where this Agreement specifies otherwise, an amount payable by a Party under this agreement in respect of a taxable supply by the other party does not include GST.
- (b) Subject to clause 5.5(c), the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.
- (c) A Party is not obliged, under clause 5.5(b), to pay an amount for GST in respect of a taxable supply to it, until provided with a valid tax invoice for the supply.

## 6. INDEMNITY AND WARRANTIES

**6.1** The Service Provider indemnifies the Service Recipient against any Loss that the Service Recipient may suffer or incur, directly or indirectly, as a result of:

- (a) any negligent act or omission or wilful misconduct of the Service Provider or its Personnel; or
- (b) any allegation, assertion or claim that the Services or Software infringe on the Intellectual Property Rights of any third party,

except to the extent that the Loss was caused or contributed to by the negligence or contractual breach of the Service Recipient or its Personnel.

**6.2** The Service Provider agrees and acknowledges that the consumer guarantees provided under Division 1 of Part 3-2 of the *Australian Consumer Law* will form part of this Agreement as if the Service Recipient was a consumer within the meaning of the *Australian Consumer Law*.

**6.3** The Service Provider represents and warrants that it has the power to enter into and perform its obligations under this Agreement, that it has all necessary licences, permits and consents to enter into and comply with its obligations under this Agreement, and that the provision of the Services by the Service Provider will not be in breach of any obligation owed to any third party nor will it infringe the intellectual property rights of any third party nor will it be in breach of any privacy laws. The Service Provider further warrants that it has in

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place compliance policies covering data protection, modern slavery, cybersecurity and ethical sourcing.

- 6.3** The Service Provider acknowledges that the Service Recipient enters into this Agreement in reliance on the representations, warranties and promises made by the Service Provider in this Agreement.

## 7. DISPUTE RESOLUTION

- (a) The Service Recipient and the Service Provider agree to co-operate and to meet and conduct in good faith such discussions and negotiations as may be necessary or desirable to resolve any dispute which arises between them in connection with this Agreement.
- (b) If a dispute arises out of or in connection with this Agreement and the parties do not resolve it in accordance with sub-clause (a), the dispute must be dealt with as follows:
  - (i) a Party asserting a dispute will give the other Party a written notice identifying and providing details of the dispute ("**Notice of Dispute**");
  - (ii) within 7 days after receiving the Notice of Dispute, the Parties must confer at least once to resolve the dispute or to agree on the appropriate method of doing so, including by agreement to refer the matter to persons who have authority to intervene and direct some form of resolution;
  - (iii) if the dispute is not resolved or if a method of resolution is not reached within 10 days of the conference in 7(b)(ii) above, the dispute must be referred to mediation administered by the Australian Disputes Centre ("**ADC**") and to be conducted in accordance with ADC Mediation Guidelines; and
  - (iv) lastly, if there is no resolution of the matter, whether by mediation or otherwise, then either Party may commence legal proceedings.
- (c) Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Service Recipient not to do so) continue to perform the Services.
- (d) This clause does not preclude either party from commencing legal proceedings for urgent interlocutory relief.

## 8. TERMINATION

- (a) This Agreement may not be terminated by the Service Recipient without cause.
- (b) This Agreement may be terminated by the Service Recipient immediately by written notice to the Service Provider:
  - (i) if the Service Provider commits a material breach of this Agreement and does not remedy the breach within 5 days of written notice of the breach;
  - (ii) if a material change in the direct or indirect beneficial ownership or control of the Service Provider occurs that, in the reasonable opinion of the Service Recipient, will affect the Service Provider's ability to perform its obligations under the Agreement;
  - (iii) If the Service Provider assigns its rights under, or sub-contracts the whole or part of this Agreement without the prior written consent of the Service Recipient;
  - (iv) If the Service Provider becomes insolvent, bankrupt, enters into an arrangement with its creditors, has a receiver, manager, administrator,

liquidator or similar appointed to any of its assets or undertakings, or if the Service Recipient suspects on reasonable grounds that the Service Provider is insolvent; or

- (v) If a Force Majeure event occurs and subsists for more than 14 days in accordance with clause 10 or
- (vi) If the Service Provider breaches any Privacy Law or fails to comply with any of the Service Recipient's security, OH&S, accreditation and environmental policies and requirements.

## 9. CONSEQUENCES OF TERMINATION

- (a) Upon termination of this agreement, the Service Provider reserves the right to charge for the following:
  - (i) To provide the Service Recipient with all assistance and information which the Service Recipient considers necessary or desirable to enable continuity of service; and
  - (ii) To return all the Service Recipient property and deliver up to the Service Recipient (and not retain any copies or extracts of) any of the Service Recipient's Confidential Information in the possession or control of the Service Provider.
- (b) For the avoidance of doubt, nothing in this clause 9 affects or limits:
  - (i) any cause of action, for breach of this agreement or otherwise which accrued to the Service Recipient prior to any termination; or
  - (j) any other rights and remedies available to the Service Recipient.

## 10. FORCE MAJEURE

- (a) A Party will not be liable for any failure or delay in the performance of its obligations under this agreement to the extent that such failure or delay is caused, directly or indirectly, by a Force Majeure event, provided:
  - (i) such failure or delay could not have been prevented by reasonable precautions, or could not have reasonably been circumvented by the non-performing Party by means of alternate sources, workarounds or other means; and
  - (ii) the non-performing Party otherwise complies with its obligations under this clause.
- (b) If a Party's performance of its obligations is affected by a Force Majeure event, it must:
  - (i) promptly advise the other Party of the details of the Force Majeure event and the likely effect on that non-performing Party's ability to perform its obligations under this agreement; and
  - (ii) take all steps reasonably necessary to recommence performance and minimise delay caused by the Force Majeure event, including by means of alternate sources, workarounds or other means.
- (c) If the delay caused by the Force Majeure event extends for more than 14 days, the Service Recipient has the right to terminate this Agreement with immediate effect.

## 10A DATA PROVISIONS

- 10A.1** The Service Provider shall ensure that the Service Recipient may use, access and have available to export all and any of its data (including any data provided by residents of a Site, or their relatives) hosted by the Software or other service provided by the Service Provider under this Agreement ("the Service Recipient Data");



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**10A.2** At the end of each date of the Term, at the end of the Term or on termination of this Agreement, if earlier, the Service Provider shall ensure that the Service Recipient receives a complete copy in readable form and in a format reasonably requested by the Service Recipient of all the Service Recipient Data;

**10A.3** The Service Provider warrants that all the Service Recipient Data shall be hosted in Australia and that all data shall be subject to the laws of Australia including but not limited to, the privacy laws of Australia.

**10A.4** All the Service Recipient services are issued a de-identified number to ensure confidentiality. The Site name will not appear on any documentation or reports except for tiered summary management reports which are only available to authorised staff with nominated access. Access to the Software program is to be nominated and regularly reviewed by the Service Recipient. This is to be communicated directly to the Service Provider who then make the appropriate system changes.

**10A.5** User passwords are not stored in the Service Provider system. Registered program users can modify their own passwords while service/ organisation Management can control who has access to the program from the top-level.

**10A.6** The Service Recipient Data is stored in a secure and confidential manner on offsite and cloud-based servers and all data is routinely backed up every 15 minutes.

**10A.7** The Service Recipient Data shared between Sites is only given with the permission and consent of the Service Recipient users.

**10A.8** Subject to prior written approval from the Service Recipient the Service Provider may periodically provide broad data and information for research, peak bodies, government bodies, marketing, and training. Organisational or individual Site data will never be identified separately, and all data will be de-identified prior to being disclosed.

**10A.9** The Service Provider will provide all assistance reasonably requested by the Service Recipient to enable the Service Recipient to comply with its obligations under the Privacy Act 1988 *Cth* (the Privacy Act). The Service Provider will not undertake any act or omission in relation to the Service Recipient Data which would be a breach of the Privacy Act if such action or omission was done by the Service Recipient.

**10A.10** The Service Provider will immediately notify the Service Recipient of any unauthorised use or disclosure of any the Service Recipient Data as soon as the Service Provider becomes aware of such. The Service Provider shall also investigate the breach, mitigate any harm, and report on findings within 72 hours.

## 11. INSURANCE

### 11.1 Insurance Requirements

(a) The Service Provider warrants that it has taken out or will take out prior to commencement of provision of the Services, and will maintain for the period specified in clause 11.1 (b) and 11.1 (c) as applicable, the following appropriate types and amounts of insurance to cover the Service Provider's obligations under this Agreement, including those which survive its expiration or earlier termination:

- (i) public and/or professional indemnity liability insurance and cyber insurance for the amounts specified in Item 10 of the Reference Schedule for each occurrence, and unlimited in the aggregate

for any one period of cover;

- (ii) statutory workers compensation insurance for all of the Service Provider's Personnel (as applicable);
- (iii) property insurance coverage for tools and equipment brought onto and/or used at the Sites by the Service Provider in an amount equal to the replacement cost of all such tools and equipment; and

(b) If the Service Provider takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Service Provider must maintain the policy during the term of this Agreement, and a policy in like terms for 2 years after the expiry or earlier termination of this Agreement.

(c) If the Service Provider takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Service Provider must maintain the policy during the term of this Agreement.

(d) This clause 11 survives the expiration or earlier termination of this Agreement.

## 11.2 Evidence of Insurance

The Service Provider must provide evidence of the terms, currency and renewal of the insurances referred to above to the Service Recipient on request.

## 12. CONFIDENTIAL INFORMATION

(a) Each Party agrees to keep confidential and not to use or disclose, other than as permitted by this Agreement, any Confidential Information provided to or obtained by a Party, whether such occurred prior to, on, or after entry into this Agreement.

(b) The obligation of confidence under clause 12(a) does not apply to Confidential Information that is:

- (i) required to be disclosed by law, provided that prior to disclosure written notice is given to the owner of the Confidential Information and that the owner is given reasonable opportunity, to the extent capable in the circumstances, to oppose the disclosure by lawful means;
- (ii) in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
- (iii) already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence.

## 13. ASSIGNMENT

The Service Provider will not subcontract, transfer or assign its interest under this Agreement except with the written consent of the Service Recipient.

## 14. GOVERNING LAW AND JURISDICTION

This Agreement is governed by and is to be construed in accordance with the laws in force in Queensland. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

## 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties regarding its subject matter.

## 16. VARIATION

This Agreement may not be varied except in writing and signed by each Party to this Agreement.

## 17. CUMULATIVE RIGHTS

The rights, powers, authorities, discretions and remedies

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arising out of or under this Agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of either Party.

## **18. NOTICES**

### **18.1 How Given**

Notices (other than day to day communications) must be in writing and either:

- (a) sent to the other Party's address set out on the Reference Schedule unless this address has been varied and notification of this change of address has been provided to the other Party in writing; or
- (b) if to the Service Provider, to the Service Provider's Contact Person listed at Item 4 of the Reference

Schedule by email or to the address listed at Item 3 of the Reference Schedule; or

- (c) if to the Service Recipient, to the Service Recipient Contact person listed at Item 5 of the Reference Schedule by email.

## **19. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument. Ongoing use of the system denotes acceptance of these Terms and Conditions.

## **END OF TERMS AND CONDITIONS**

## Schedule 1 – Services

A. The services provided by the Service Provider work across all operating systems, are mobile native and shall support current (within 2 years) versions of browsers such as Google Chrome, Windows Edge Browser and (unless otherwise agreed in writing by the parties); use encrypted communication (such as http\*s\*) and shall include the following products and services:

B. The Service Provider will provide:

1. Access to the Service Providers database of audits, surveys and quality indicators.
2. The capability for the Service Recipient to make further customisations to these tools, or upload their own, where the Service Provider will map and configure external benchmarking. This may attract additional customisation fees.
3. An online platform to allow service personnel to survey and assess their service, staff and consumers against quality standards and accepted better practices. Completion can be tracked at an individual level and data is instantly submitted for processing.
4. Real-time reporting featuring live comparative data contributed by similar care services.
5. A tiered summary reporting structure fitting's management hierarchy.
6. Unlimited access for the Service Recipient to configure as many of the Service Recipient personnel with access to the online platform as required.
7. Access to an integrated software for continuous improvement planning. Reporting flags can be pushed to and collaboratively actioned and reported on within each home's Plan for Continuous Improvement (PCI) Manager.
8. Tools, reporting, data quality changes and support for participation in the National Aged Care Quality Indicator Program (if relevant for residential aged care service providers).

C. Service Provider will provide training and support including:

1. Unlimited access for all Service Recipient personnel to online training sessions. These sessions can also be customised for the Service Recipient. Sessions will also be recorded for unlimited ongoing access.
2. Instructional videos and written guides.
3. Help desk access as per Schedule 2.

D. The Service Provider adheres to the Australian Privacy Principles and ensures the integrity of the data by using safeguards and systems to ensure data accuracy and protection.

### **DELIVERABLES**

The following content will be made available to each Site through the Service Provider's online data collection and reporting platform.

The Service Provider will provide to the Service Recipient the following:

#### **Audits, Surveys and Quality Indicators**

- The complete (non-customised) versions of all the audits, surveys and quality indicators within the Service Provider's database as per the Quality Schedule and Quality Indicator definitions.

## Service-level Reporting

The following monthly reports are available in real-time, in both PDF and Microsoft Word format, as soon as the scheduled tools are completed.

Report name	Report Description
<b>Audit report</b>	This report provides overall, part and question level results for each audit scheduled for and completed by the service in that month. Services observed results are flagged as improving on, worsening, or staying the same as their previous result and are flagged as being higher or lower than the community benchmark at that time. Notes and explanatory comments provided by service personnel are listed alongside the notes as are detailed recommendations to address any observations flagged as potential risk.
<b>Survey report</b>	This report provides overall and question level results for any survey scheduled for and completed by the service in that month or quarter. Observed and expected (benchmark) results are compared using percentages (bar graphs) and sentiment scores. The survey report also presents net promotor scores and lists all comments provided by participants.
<b>Quality Indicator Report</b>	This report first flags the statistical significance (6 sigma) of variation between a service's observed and expected (benchmark) result along with which quartile their result corresponds with in performance tables. Process control charts then allow services to monitor and trend results over the preceding 12 months; comparing against both your historical performance and external benchmark while flagging special cause variation and emerging trends. Also available to export online in Microsoft Excel format.

## Summary Management Reporting

The Service Recipient management may nominate to the Service Provider if and how their services are to be grouped (e.g. Regionally) within a tiered reporting system. Results from service-level reports then instantly flow up into the following summary management reports at each group and tier.

Report name	Report Description
<b>Group audit summary report</b>	This report provides consolidated overall, part and question level results for each audit scheduled for and completed by each service within the organisationally nominated group that month. Consolidated observed results are flagged as improving on, worsening or staying the same as the same group's previous result and are flagged as being higher or lower than the community benchmark at that time. Also available to export online in Microsoft Excel format.
<b>Detailed group audit report</b>	This report provides consolidated overall, part and question level results for each audit scheduled for and completed by each service within the organisationally nominated group that month. The report then drills down by question to display service-level results and flagging whether they have improved, worsened or stayed the same since last time and if they are higher or lower than the community benchmark at that time.
<b>Group survey report</b>	This report provides consolidated overall and question level results for any survey scheduled for and completed by the services within the organisationally nominated group in that month or quarter. Observed and expected (benchmark) results are compared using percentages (bar graphs) and sentiment scores. The survey report also presents net promotor scores and lists all comments provided by participants.
<b>Core clinical indicator group report</b>	This report aggregates clinical indicator data (e.g. resident falls, observed and unobserved, with and without injury) into key areas (all falls) for management analysis. The report flags the statistical significance (6 sigma)



	of variation between each service within the organisationally nominated groups observed and expected (benchmark) result in performance tables. High and low flags feature as summary bar counts. Process control charts then allow services to monitor and trend results over the preceding 12 months; comparing against both the group's historical performance and external benchmark while flagging special cause variation and emerging trends.
<b>Group quality indicator Report</b>	This report first provides a question-by-question breakdown of all services within the organisationally nominated group and flags the statistical significance (6 sigma) of variation between all observed and expected (benchmark) result in performance tables. Process control charts then monitor and trend consolidated results over the preceding 12 months; comparing against both the group's historical performance and external benchmark while flagging special cause variation and emerging trends.

### **Customising Audit Schedules, Tools and/or Reporting**

All above mentioned schedules, audit tools and reports can be customised or re-developed in line with the Service Recipient's custom needs on request.

Such works may incur additional customisation charges. Work of this nature requires a formal quote to be provided to the Service Recipient following their request. The quote must be approved prior to the Service Provider proceeding.

## **Schedule 2 – Service Level Agreement (SLA)**

The Service Provider will provide the support services (“Support Services”) to the Service Recipient as follows:

### **1.0 Definitions**

Subject to the terms of clause 5 and for the purposes of the performance of the Support Services the definitions are as follows:

#### **1.1 Helpdesk Hours**

Helpdesk Hours are the hours in which the Service Provider is able to accept the Service Recipient’s calls for support enquiries and to log a fault.

#### **1.2 Core Business Hours (CBH)**

Are the normal operational hours of the Service Provider being at a minimum 8.00am to 5:00pm AEST Monday to Friday except national public holidays and one scheduled break over the Christmas period provided such scheduled period is notified in writing 14 days prior to commencing.

#### **1.3 Telephone Response Time**

Telephone Response Time is the time taken to answer the Service Recipient’s call at the Service Provider helpdesk, whether the Service Recipient is raising a fault, checking a bill or the Service Recipient has a general enquiry about the Services.

#### **1.4 Fault Response Time**

Fault Response Time is the time taken by the Service Provider to call the contact person nominated by the Service Recipient once a fault has been reported by the Service Recipient or detected by the Service Provider.

#### **1.5 Fault Coverage Hours**

Fault Coverage Hours are the hours in which the Service Provider will work to resolve a fault with the Service Recipient’s Service.

#### **1.6 Perceived Faults**

Perceived faults are faults which are reported to the helpdesk, but are determined by the Service Provider, acting reasonably, not to be the fault of the service – i.e. non-Service Provider related issues such as the Service Recipient’s infrastructure failure or the host providers (Telstra, Microsoft, Amazon, etc.) failures with the internet access.

#### **1.7 Availability**

Target Availability is the expected-up time of the Service.

#### **1.8 Downtime Hours**

Downtime Hours are the total number of hours within a month that a Priority 1 remains unresolved or that a Priority 2 where 50% of the Service Recipient’s Sites, residents or other survey users remains unresolved. Downtime Hours are calculated from the time when the fault is logged at the Service Provider’s Helpdesk until the Service Recipient is notified by email or by telephone that the fault has been rectified.

Downtime Hours exclude any planned downtime in accordance with point 3.1 below, and all perceived faults.

## **1.9 Fault Detection Method**

Fault Detection Methods are either:

### **1.9.1 Proactive**

Services are proactively fault managed. The Service Provider may automatically detect some faults and begin working on them before the Service Recipient calls to report the fault. For such faults, the Service Provider may contact the Service Recipient to determine whether the fault is valid. Verification of the fault with the Service Recipient will be recorded as the time the fault is logged.

### **1.9.2 Reactive**

The Service Recipient should report all faults with the Service Provider's Helpdesk. During the Service Provider's CBH's faults may be logged by phone, or via our Helpdesk email. Outside of CBH faults may be logged via the Service Provider's Helpdesk email service. The fault will be recorded only when a Service Provider Technical Support person verifies the existence of the fault and the start time for a verified fault will be from when the fault is reported by the Service Recipient.

## **1.10 Time to Detect/Respond**

Time to Detect/Respond is the time period from when a fault has been detected by the Service Provider until the fault is logged on the Service Provider's fault ticketing system and contact has been made with the Service Recipient. For clarity this fault can be detected by the Service Provider prior to the Service Recipient reporting the fault. The Service Provider shall contact the Service Recipient within 1 core business hour of receiving the fault notification to verify the fault. Where a fault has been notified out of the Service Provider's core business hours the Service Recipient will be contacted within one core business hour the next business day.

## **1.11 Fault Resolution Time**

Fault Resolution Time is the resolution time for the Service.

## **1.12 Outage**

An Outage is defined as an interruption to the Service caused by communications infrastructure &/or network hardware failure which is outside of the Service Provider's reasonable control.

Examples of these occurrences may include an interruption to the electricity supply, or a break in the communications line outside of the Service Provider's control, whereby Service Provider relies on the communications carrier responsible, to rectify the interruption.

## **1.13 Force Majeure Event**

Force Majeure Event means any event beyond the control of the relevant party.

## **2.0 Availability**

The Service is available for operation 7 days a week and 24 hours a day.

### 3.0 Downtime

#### 3.1 Planned Downtime

The Service Provider may have planned downtime of up to 4 hours per month, unless otherwise pre-arranged or pre-scheduled with the Service Recipient.

Where possible downtime will not be planned within CBH's and a minimum of 3 days' notice, will be provided to the Service Recipient.

Planned downtime with less than 3 days' notice to the Service Recipient will be classified as Unplanned Downtime.

#### 3.2 Unplanned Downtime

Unplanned downtime is to be kept to less than 6 hours per month in total, with any single downtime event to be less than 3 hours in total.

### 4.0 Support

#### 4.1 Support Times

<b>Helpdesk Hours &amp; Core Business Hours</b>	1300 760 209 8:00am – 5:00pm AEST, Mon – Fri Except National Public Holidays.
<b>Telephone Response Time</b>	Within CBH of receipt of fault notification
<b>Fault Resolution Time</b>	Priority 1 = < 4 hours / Priority 2 = < 16 hours during CBH
<b>Communication updates</b>	Priority 1 = every 30 minutes Priority 2 = every 4 hours During CBH's
<b>Fault Coverage Hours</b>	Core Business Hours

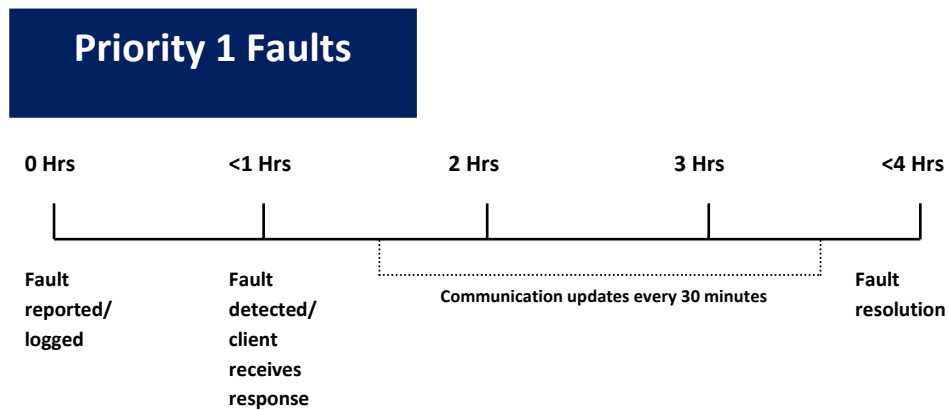
#### 4.2 Response & Resolution Times

Priorities are categorised as:

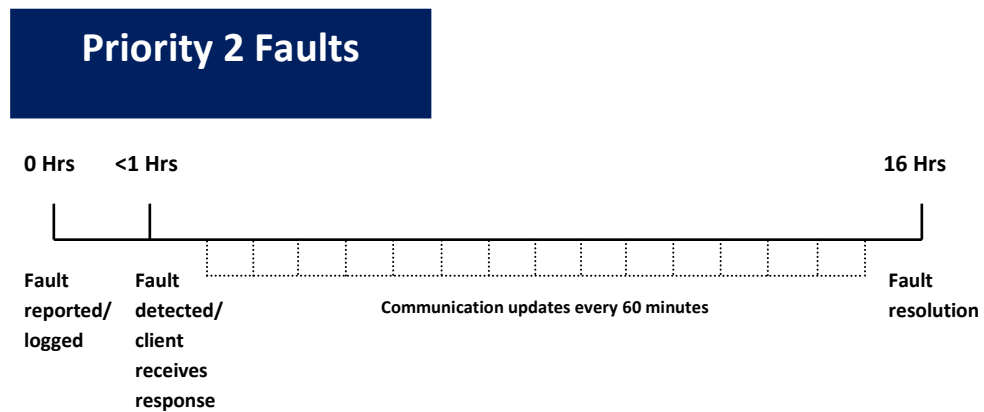
- Priority 1: The Service is not running or not accessible and the Service is not usable for all the Service Recipient's users.
- Priority 2: The Service works with limited functionality or the Service is available to a limited number of users.

<b>Fault</b>	<b>Telephone Response</b>	<b>Fault Resolution Time</b>	<b>Communication Updates</b>
Problem Priority 1	Within 1 hour	Within 4 hours	Every 30 minutes
Problem Priority 2	Within 1 hour	Within 16 hours	Every 4 hours

#### 4.2.1 Priority 1 Response & Resolution



#### 4.2.2 Priority 2 Response & Resolution



Note: all hours listed above in Figure 4.2.1 & .2.2 are Core Business Hours

### 5.0 Variations to Service Levels

Variations to this SLA shall be provided in writing and are subject to acceptance by both parties.

### 6.0 Fault Reporting

To log a fault with the Helpdesk the Service Recipient is required to call the Service Provider Helpdesk number on Freecall **1300 760 209**

To avoid any delay in resolving a fault the Service Recipient must log faults with the Helpdesk.

To ensure the Service Provider can log a fault the Service Recipient shall quote the following information when contacting the Helpdesk:

- The affected Service (i.e. Service Provider access system)
- A description of the fault
- Any access passwords or package details that pertain to the fault
- Where possible provide evidence of the fault including screen shots of errors etc.
- The make and model of the hardware being used
- The version of software being used
- The name, phone number and email address of the person in the Service Recipient's organisation responsible for the Service who will accept the response call.



## **7.0 Outage Notification**

The Service Provider aims to provide at least 3 days notification of any scheduled Outage whereby the Outage may affect the Service Recipient's Service. Where practical a scheduled Outage will occur between 6pm and 6am AEST.

All Outages by nature are outside the control of the Service Provider and are therefore excluded from the Response & Resolution Times.

## **8.0 Exclusions and Liability**

The Service Provider will not accept liability under this SLA, in connection with any failure or deficiency of the Service Provider service or application availability to the extent such is caused by or associated with:

- a) The Service Provider and the Service Recipient will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- b) Domain name system (DNS) and domain name registration problems outside of the control of the Service Provider;
- c) Issues with POP or other user computer settings (to the extent such do not comply with any directions or approvals provided by the Service Provider);
- d) The Service Recipient's negative acts or omissions (or acts or omissions of others engaged or authorised by the Service Recipient), including, without limitation, custom scripting or coding (i.e., PHP, Python, CGI, Perl, HTML, ASP, etc...), any negligence, willful misconduct, or misuse of the Services, save to the extent such acts or omissions comply with any directions, instructions or materials provided or made available by the Service Provider;
- e) Problems elsewhere on the internet that prohibit you from viewing your application. The Service Provider is not responsible for browser, DNS, or other caching that might make it appear your application is unavailable even though others can still access your information. This guarantee covers areas the Service Provider controls such as the integrity of our code and application.

## **9.0 Client Responsibility**

The Service Recipient is responsible for all day-to-day activity originating from the Service and the Service Recipient is responsible for securing their administrator passwords.

# **1 13. ADDITIONAL COMPLIANCE PROVISIONS**

## **1.1 13.1 WHISTLEBLOWER PROTECTION**

The Service Provider must implement and maintain a whistleblower policy compliant with the Corporations Act 2001 (Cth), which allows for anonymous and protected reporting of misconduct, including but not limited to fraud, exploitation, and modern slavery.

## **1.2 13.2 ESG AND ETHICAL SOURCING**

The Service Provider warrants that it has adopted policies and procedures for responsible environmental, social, and governance (ESG) practices. This includes sourcing goods and services from suppliers who comply with anti-slavery, anti-child labour, and fair wage standards.

## **1.3 13.3 DATA SOVEREIGNTY**

All the Service Recipient Data must remain hosted within Australia at all times and must not be transferred or accessible from outside of Australia without the prior written consent of the Service Recipient.

## **1.4 13.4 CYBERSECURITY ASSURANCE**

The Service Provider shall maintain current Australian cyber security certification or equivalent

assurance (e.g., ISO 27001, ACSC Essential Eight) and undergo annual security reviews or penetration testing. Results must be made available to the Service Recipient upon request.