

## **BROKERAGE AGREEMENT**

This **agreement** is made the                      day of

### **BETWEEN**

**Alzheimer's Association of Queensland Inc. trading as Dementia and Aged Care Services**

ABN **74 688 640 790** of 47 Tyron Street, Upper Mount Gravatt, Queensland (**AAQ**)

### **AND**

Company:

ABN:

Email:

The Alzheimer's Association of Queensland Inc. trading as Dementia and Aged Care Services provides home and community care services to aged care consumers.

AAQ and the Contractor have agreed that the Contractor will provide the Services to or on behalf of AAQ in accordance with the terms and conditions of this Agreement.

### **IT IS AGREED**

#### **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement words and phrases used have the meanings as set out in the Schedule.

#### **2 TERM AND APPOINTMENT**

2.1 The rights and obligations of the parties under this Agreement will commence on the Commencement Date and continue until the Termination Date, subject to the terms of this Agreement.

2.2 The Contractor is an independent contractor appointed on a non-exclusive basis to provide the Services in accordance with this Agreement. This Agreement does not create a relationship of employer and employee, principal and agent, or partnership between AAQ and the Contractor or any of its Personnel.

2.3 The Contractor and AAQ acknowledges that each party does not have authority to bind the other party by contract or otherwise.

#### **3 SERVICES**

3.1 Unless otherwise agreed, AAQ will only pay for Services which are requested and duly authorised by AAQ in accordance with this Agreement.

3.2 AAQ will notify the Contractor in writing (by either facsimile or email):

(a) that the Contractor is required to provide Services to a Consumer;

- (b) of the nature and extent of the Services required to be provided to the Consumer;
- (c) of the amount of the Service Fees that AAQ has agreed with the Contractor for the Services; and
- (d) of the Consumer's address and contact details.

### 3.3 Variation and cancellation of Services

- (a) AAQ may alter or discontinue the provision of Services by the Contractor to a Consumer at any time by providing written notice to the Contractor, and the Contractor must promptly comply with any directions issued by AAQ.
- (b) AAQ will pay the relevant proportion of Service Fees for any part of the Services performed prior to the cancellation or variation.

## 4 **ROLE OF SERVICE COORDINATOR**

- 4.1 A Service Coordinator will be appointed by AAQ, as detailed in Annexure 1. Any appointment or change in Service Coordinator will be notified to the Contractor in writing.
- 4.2 The Service Coordinator will be the Contractor's point of contact for the Services.

## 5 **CONTRACTOR RESPONSIBILITIES**

### 5.1 Service standards

The Contractor agrees that:

- (a) it will provide the Services to Consumers in a diligent, timely and efficient manner with all due care and in accordance with generally accepted care practices;
- (b) it will meet the Training and Other Requirements set out in Annexure 1;
- (c) it will implement effective infection control policies and provide infection control training to its Personnel and comply with any public health orders;
- (d) it will contact AAQ with any feedback, changes, reports or any other information regarding the Consumer;
- (e) it will supply to AAQ or nominated party as directed by AAQ, copies of all documentation, reports and notes in relation to such visits;
- (f) it will act in a professional, polite, courteous, helpful, and cooperative manner towards AAQ and its Personnel and Consumers;
- (g) it will notify AAQ prior to each visit if it considers that the Services Fee notified under clause 3.2(c) will be insufficient for the purposes of the

- (h) provision of Services and of the amount that the Contractor deems to be appropriate;
- (i) it will comply with any procedures or directions given by AAQ in relation to the provision of Services;
- (j) it will comply with all applicable State and Commonwealth legislation, regulatory requirements, approved codes of practice professional standards and any ministerial directions and notices in providing the Services;
- (k) it will meet the Police Check Requirements set out in Annexure 2 ;
- (l) it will maintain all licenses, drivers licence and professional registrations required for the provision of the Services throughout the Term;
- (m) it will give AAQ:
  - (i) on request a copy of the Police Certificate for any of its Personnel;
  - (ii) on an annual basis and prior to expiry a Police Certificate Compliance Declaration; copy of Work Cover insurance and certificates of currency of insurances;
- (n) it will ensure that any vehicle used by the Contractor and its Personnel for the purposes of transporting a Consumer is fit for purpose, has a current road worthy and vehicle registration and that the Personnel is appropriately licenced to drive the vehicle;
- (o) the Services will be provided to Consumers by Personnel of the Contractor and the Contractor will not, subject to clause 14.3, subcontract the provision of the Services to any other person or entities;
- (p) it will make every effort to provide consistency of regular Personnel for individual Consumers with as little disruption as possible caused when regular Personnel take leave, for example the Contractor will ensure that replacement Personnel are briefed regarding a Consumer's condition and care requirements;
- (q) it will permit AAQ to observe the provision of Services by Personnel of the Contractor as and when requested by AAQ;
- (r) it will ensure that Consumers are not provided with private telephone numbers or addresses of any Personnel; and
- (s) it will ensure that its Personnel complies with the service standards and a breach of the service standards by its Personnel is deemed a breach of the service standards by the Contractor.

## 5.2 Consumer's condition and incidents

The Contractor will immediately notify the Service Coordinator of:

- (a) any adverse change in the health or wellbeing of a Consumer or concern that the Contractor becomes aware of;
- (b) any incident or event that occurs in the provision of Services that may adversely affect the health, safety or welfare of a Consumer; and
- (c) any incident where the Contractor is unable to contact a Consumer by telephone or where the Consumer is not present for a visit where there has been prior confirmation of the scheduled visit and/or call to the Consumer.

## 5.3 Contractor Personnel management

- (a) The Contractor will ensure that its Personnel:
  - (i) do not access a Consumer's home or service site without prior consent of the Service Coordinator and the Consumer;
  - (ii) are suitably qualified, skilled and experienced. The level of qualifications, skills and experience may be specified by AAQ from time to time and at its discretion, but in any event must be no less than is necessary to satisfy minimum legislative or regulative requirements;
  - (iii) will notify the Service Coordinator if they are experiencing any symptoms that may be related to any communicable illness or disease, including but not limited to virus, cold, influenza, COVID-19 or any other potentially communicable illness;
  - (iv) do not access a consumer's home or provide services for a consumer if they have an infectious illness including but not limited to virus, cold, influenza, COVID-19, or any other potentially communicable illness;
  - (v) comply with public health orders, directives, and recommendations in keeping with state and Commonwealth requirements including reporting requirements for communicable diseases;
  - (vi) understand and follow infection control processes e.g. use of personal protective equipment (PPE), hand-washing and physical distancing;
  - (vii) make detailed notes in relation to the provision of the Services to the Consumer and the Consumer's episode of care and provide this information to the Service Coordinator when requested or routinely as agreed;
  - (viii) complete any other documentation requested by AAQ to be completed and provide such documentation to AAQ following the conclusion of a Consumer's appointment or episode of care; and

- (ix) provide to AAQ at its request, any information requested in relation to its Personnel's attendance on any Consumer including notes and any other documentation relating to the provision of Service.
- (b) The Contractor agrees that AAQ may at its absolute discretion direct that any of the Contractor's Personnel not provide Services, either to a specific Consumer, or to any Consumer, and that the Contractor will comply with any such direction.

#### 5.4 After hours

In case of after-hours emergency:

- (a) relating to Services in Queensland, the Contractor is required to call 1800 639 331 to report any urgent concerns or events or to request authorisation of extra hours of Services should the necessity arise;
- (b) relating to Services in New South Wales the Contractor is required to call 1800 DACS NSW (1800 3227 679) to report any urgent concerns or events or to request authorisation of extra hours of Services should the necessity arise; and
- (c) the Contractor's after-hours Personnel must use its best endeavours to maintain communication (including responding to calls from AAQ) until any emergency issue has been resolved.

#### 5.5 **Work Health and Safety**

- (a) Without limiting the Contractor's obligations under this Agreement, the Contractor must ensure that the Services are delivered in accordance with relevant WHS Legislation.
- (b) The Contractor must effect and maintain a documented WHS policy, with a copy to be provided to AAQ upon request and ensure that its Personnel are aware of the terms of this policy.
- (c) The Contractor is responsible for:
  - (i) notifying AAQ immediately of any Notifiable Incidents, and complying with all obligations under WHS Legislation in relation to Notifiable Incidents;
  - (ii) identifying and assessing any WHS risks or potential WHS risk relating to the Services;
  - (iii) notifying the Service Coordinator of the identified risk, in which event the Service Coordinator may conduct their own assessment and provide recommendations to address the risk;
  - (iv) ensuring that its Personnel:

- (A) report any potentially hazardous situations or safety concerns at the Consumer's home to their supervisor who must report them to the Service Coordinator;
  - (B) report any safety incidents and near misses (being an occurrence that might have led to an injury or illness) to their supervisor who must report them to the Service Coordinator;
  - (C) comply with best practice safety precautions, such as commonly accepted infection control and hygiene procedures;
  - (D) do not use any equipment which appears to be unsafe and report such equipment to their supervisor who must report them to the Service Coordinator;
  - (E) do not smoke while performing the Services;
  - (F) have a blood alcohol level of zero and are not affected by any illicit drugs while performing the Services;
- (v) reporting to AAQ any Notifiable Incidents, hazardous situations, safety concerns, accidents, or incidents, near misses or other WHS matter relevant to the Services and the Contractor's Personnel.
  - (vi) providing all the equipment (including personal protective equipment) necessary to perform the Services and maintaining the equipment to ensure that the equipment is fit for purpose.

## 5.6 Reportable Incidents

- (a) The Contractor must report any Reportable Incident to AAQ on the date it occurs, or on the following Business Day if the Reportable Incident occurred outside of Business Hours. Reportable Incidents include any improper conduct in relation to a Consumer, AAQ, the Contractor, Personnel or otherwise in relation to the Services.
- (b) AAQ will inform the Contractor of any allegations of improper conduct which involve the Contractor or its Personnel, including where such allegations are received from a third party.
- (c) Where there has been a Reportable Incident, AAQ may take all necessary action in relation to a Reportable Incident, to ensure the immediate safety and welfare of the Consumer. The Contractor agrees to cooperate, and ensure that its Personnel cooperate, with such necessary action.

## 5.7 SIRS Incidents

- (a) SIRS reportable incidents are those that occur in connection with the provision of care and services and are suspected, alleged, or have caused harm to a consumer.

- (b) SIRS incidents are one of the following eight types of reportable incidents for home services:
  - i. Unreasonable use of force
  - ii. Unlawful sexual contact or inappropriate sexual conduct
  - iii. Psychological or emotional abuse
  - iv. Unexpected death
  - v. Stealing or financial coercion
  - vi. Neglect
  - vii. Inappropriate use of restrictive practices or
  - viii. Missing consumers
- (c) The contractor must report any SIRS Incident to AAQ immediately as you become aware or when the incident/allegation occurs.
- (a) AAQ will inform the Contractor of any allegations of improper conduct which involve the Contractor or its Personnel, including where such allegations are received from a third party.
- (b) Where there has been a SIRS Reportable Incident, AAQ may take all necessary action in relation to a SIRS Incident, to ensure the immediate safety and welfare of the Consumer. The Contractor agrees to cooperate, and ensure that its Personnel cooperate, with such necessary action.

## 5.8 **EMERGENCIES**

The contractor must:

- (a) Develop, regularly maintain, implement, and follow written procedures for responding to Emergencies involving a Consumer; and
- (b) Provide copies of its procedures, and evidence of how such procedures are followed, to AAQ upon request.

## 6 **PAYMENT AND INVOICING**

- 6.1 Subject to this clause 6, in consideration of the Contractor providing the Services in accordance with this Agreement, AAQ will pay the Contractor the Service Fees.
- 6.2 The Contractor acknowledges that the Service Fees include all costs and expenses of the Contractor associated with delivering the Services including travel expenses, consumable costs, documentation expenses and other disbursements.

- 6.3 The Contractor must electronically provide a valid tax invoice to AAQ in accordance with 6.9 for the Services within 14 days after the end of each month in which the Services are provided.
- 6.4 Subject to clause 6.3 and 6.5, AAQ shall pay the Services Fees invoiced by the Contractor within 20 Business Days of receiving the invoice.
- 6.5 If AAQ disputes an invoice, it will notify the Contractor within 5 Business Days of receipt of that invoice, in which case, the parties will negotiate in good faith to resolve the dispute for a further 5 Business Days. After that time, and failing agreement between the parties, clause 14.5 shall apply.
- 6.6 AAQ will not be held liable for any amounts invoiced that are in excess of the Services Fee agreed under clause 3.2(c) and have not been notified to AAQ in accordance with clause 5.1(g) and agreed to by AAQ.
- 6.7 In the event of a missed appointment due to a no show of the Consumer where the Contract demonstrates that the appointment has been confirmed with the Consumer, AAQ will pay the Contractor the Services Fee.
- 6.8 AAQ may reduce any payment due to the Contractor under this Agreement by any amount which the Contractor owes to AAQ.

6.9 **Issue of Invoice**

- (a) The Contractor must issue invoices as follows:
- (i) be addressed to AAQ's address for notice listed at Annexure 1;
  - (ii) specify the date(s) on which the Services were provided, the type of Service, duration, and Service Fees for those Services;
  - (iii) the name of the Consumer;
  - (iv) identify GST separately; and
  - (v) (where applicable) include the purchase order number being the unique reference number allocated by AAQ in the relevant service request.
- (b) AAQ reserves the right to request proof of delivery of the Services performed whether or not invoiced, at the Contractor's cost.
- (c) The Contractor acknowledges that AAQ is not liable to pay for services performed during the financial year for invoices not received within three weeks after the end of that financial year.

**7 CONTRACTOR WARRANTIES**

- 7.1 The Contractor represents and warrants that it and its Personnel, in providing the Services:
- (a) have the qualifications, accreditations, and experience that it has held itself out as having to AAQ prior to entry into this Agreement or at any time during the Term;



- (b) are engaged on conditions no less favourable than rates provided for by any relevant state award or industrial instrument applying to its staff as at the date of this Agreement, as amended from time to time by an industrial tribunal;
- (c) will exercise reasonable care, diligence, and skill;
- (d) will ensure the Services are fit for the purpose required by AAQ;
- (e) will act in good faith; and
- (f) will not breach or cause the Contractor to breach this Agreement.

7.2 The Contractor acknowledges that AAQ has executed this Agreement in reliance on the warranties in this clause.

## **8 REPORTS, MONITORING AND AUDITS**

8.1 The Service Coordinator may contact or visit a Consumer at any time in order to inquire into, monitor and assess the delivery of Services and the Consumer's satisfaction with those Services.

8.2 AAQ may at its discretion put in place arrangements so that Contractor and its Personnel do not have unsupervised access to Consumers. The Contractor agrees to comply, and ensure that its Personnel comply with, such arrangements.

8.3 AAQ may take other steps reasonably necessary to periodically audit the Contractor's compliance with this Agreement. The Contractor agrees to cooperate, and ensure that its Personnel cooperate, with such processes.

8.4 AAQ may request from the Contractor at its absolute discretion vaccination records (including influenza vaccination records) for any member of the Contractor's personnel and the Contractor must comply with this request and produce all vaccination records (including influenza vaccination records) within seven (7) days of the request.

## **9 DEFAULT AND TERMINATION**

9.1 A party may terminate this Agreement without cause by giving 30 days written notice to the other party.

9.2 In addition to any other right of termination expressly provided for in this Agreement, AAQ may terminate this Agreement immediately by notice in writing if any of the following occur:

- (a) the Contractor breaches a Material Term of this Agreement;
- (b) the Contractor fails to remedy a breach of any other term of this Agreement within 10 Business Days of being asked to do so by AAQ;
- (c) the Contractor is in breach of any warranty in clause 7;
- (d) the conduct of the Contractor or its Personnel damages or adversely affects or is likely to damage or adversely affect:

- (i) a Consumer;
  - (ii) the relationship between AAQ and any of its Consumers; or
  - (iii) AAQ, including its business or reputation.
- (e) The Contractor fails to meet the Aged Care Quality Standards.
- 9.3 AAQ must act reasonably in terminating pursuant to clause 9.2(e).
- 9.4 This Agreement may be terminated immediately by either party by notice in writing to the other party if the other party suffers an Insolvency Event.
- 9.5 On termination of this Agreement nothing operates to discharge any party from its obligations arising under or in connection with this Agreement prior to the date of termination or expiry, or expressly provided by this Agreement to survive following termination of this Agreement, or which by their nature should continue to operate after termination.

## **10 INSURANCE**

- 10.1 The Contractor must, at its own cost, effect and maintain, or cause to be maintained, insurance relevant to its obligations under this Agreement, as specified in Annexure 1. If requested, the Contractor must provide evidence of the insurance to satisfaction of AAQ.
- 10.2 The Contractor will indemnify AAQ for any deficiencies in the coverage or policy limits of the insurance policies effected and maintained by its Personnel, and for any workers compensation claim involving the Contractor or its Personnel.

## **11 RESTRAINT AND NON-SOLICITATION**

- 11.1 During the term of this Agreement and in the Restraint Area for the Restraint Period after the termination of this Agreement (for whatever reason) the Contractor must not without AAQ's prior written consent in any capacity, independently or in conjunction with any other person, business or entity, either directly or indirectly:
- (a) provide services, except on AAQ's behalf, to any Consumer, if those services are the same or similar to the services the Contractor provides under this Agreement;
  - (b) solicit, canvass, or entice away from AAQ, or accept any approach from, any Consumer with whom you worked or had dealings in the last 12 months of the term of this Agreement;
  - (c) employ or solicit the services of, or offer employment to, any employee of AAQ (or any Related Entity) with whom you worked or had dealings in the last 12 months of the term of this Agreement; or
  - (d) encourage or otherwise assist any person to do any of the acts referred to in this clause.

- 11.2 You agree that subclause 11.1 will take effect as if each of the restrictions referred to in them are separate restrictions with respect to the Restraint Area, Restraint Period and nature of the conduct prescribed. If any of those restrictions or any part of them are held to be void, voidable or unenforceable for any reason then you agree that the offending clause, subclause or part will be severed, and the remainder of the clause will continue to apply to the maximum possible extent in terms of the Restraint Period, Restraint Area and nature of the conduct prescribed.

## 12 INDEMNITY

- 12.1 The Contractor releases and indemnifies AAQ and its Personnel (**those indemnified**) against any Loss which those indemnified suffer, sustain, or incur in connection with:
- (a) any act, error, or omission by the Contractor or its Personnel whether negligent, wilful, or otherwise; and
  - (b) any claim made by or on behalf of a Consumer or by a third party in relation to or arising out of performance of the Services.
- 12.2 The indemnity in clause 12.1 will be reduced to the extent that any negligent or unlawful act or omission of AAQ or its Personnel caused the Loss.
- 12.3 AAQ will not be liable to the Contractor or any of its Personnel for any Loss sustained by any person except to the extent such Loss is directly caused by AAQ and naturally flows in the normal course of events from the occurrence of the event giving rise to liability for such Loss.
- 12.4 AAQ is not liable to the Contractor or any of its Personnel in contract, in tort (including negligence), in equity, by operation of statute or otherwise for any kind of Excluded Loss incurred or suffered by the Contractor or its Personnel.
- 12.5 This clause will survive expiration or termination of this Agreement.

## 13 GOODS AND SERVICES TAX

- 13.1 If GST is imposed on any supply made by a party (**Supplier**) to another party (**Recipient**), to the extent that any consideration payable or to be provided by the Recipient for the supply is exclusive of GST.
- 13.2 The Recipient must pay to the Supplier, in addition to that GST exclusive consideration, the amount of the GST payable in relation to that supply in exchange for a valid tax invoice.

## 14 GENERAL

### 14.1 Records

- (a) The Contractor must create and maintain complete and accurate records relating to the performance of its obligations under this Agreements (Records) in a format acceptable to AAQ.

- (b) The Contractor will retain the Records for at least the Term and, for 7 years after the Term in accordance with any applicable laws and regulations pertaining to the storage requirements for medical records.
- (c) The Contractor agrees to make the Records available to AAQ for inspection and copying as requested by AAQ from time to time for the purposes of:
  - (i) AAQ verifying the Services were provided as invoiced by the Contract and in accordance with this Agreement; and
  - (ii) enabling AAQ to respond to any compliant, claim or litigation by a Consumer.

#### 14.2 **Confidential Information**

- (a) The Contractor agrees to keep all of the Confidential Information strictly confidential and may only use the Confidential Information for the purpose of providing Services to a Consumer in accordance with this Agreement.
- (b) The Contractor must not disclose to any third party any Confidential Information obtained during the course of provision of the Services unless the disclosure is:
  - (i) permitted by law; or
  - (ii) with the written consent of AAQ.
- (c) Immediately after the termination of this Agreement (for whatever reason), the Contractor must return all Confidential Information, including any copies or extracts to AAQ. Or if requested by AAQ, the Contractor must destroy all Confidential Information and provide AAQ with written confirmation of such destruction.

#### 14.3 **Subcontracting**

- (a) The Contractor must not subcontract its obligations under this Agreement without the prior written consent of AAQ.
- (b) The Contractor must request the consent of AAQ by completing the request form as set out in Annexure 3 and providing the request form to AAQ.
- (c) AAQ may conditionally or unconditionally, in its absolute discretion, give or withhold any consent under clause 14.3(a).
- (d) If AAQ gives its consent under clause 14.3(a) then the Service Coordinator must sign the request form and return it to the Contractor.
- (e) AAQ's consent to any subcontract does not relieve the Contractor from any liability or obligation under this Agreement.

#### 14.4 Notices

- (a) A notice must be in writing and signed by or on behalf of the sender, addressed to the recipient and:
- (i) delivered by personal service;
  - (ii) sent by pre-paid mail; or
  - (iii) transmitted by facsimile or email,
- to the recipient's address for notice set out in this Agreement.
- (b) A notice given to a person in accordance with this clause is treated as having been given and received:
- (i) if delivered in person, on the day of delivery if delivered before 5pm on a Business Day, otherwise on the next Business Day;
  - (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting;
  - (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting;
  - (iv) if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission, on that day if the report states that transmission was completed before 5pm on a Business Day, otherwise on the next Business Day; and
  - (v) if transmitted by email before 5pm on a Business Day, on the day of transmission (otherwise, if sent after 5pm, on the next Business Day), provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.
- (c) A party may change its address for notice by giving notice of that change to each other party.

#### 14.5 Dispute Resolution

- (a) All disputes between the parties must be referred in writing to a representative appointed by each party who shall attempt to resolve the dispute.
- (b) If the dispute is not settled within 10 Business Days of the receipt by each representative of notification of a dispute pursuant to clause 14.5(a), it must be referred to a Senior Executive of the parties who must negotiate reasonably and in good faith and attempt to resolve the dispute.

- (c) If the Senior Executive fails to resolve the dispute within 5 Business Days, the parties agree to refer the dispute to a mediator to be mutually agreed, or in default of agreement of agreement within 5 Business Days of either party requesting the other to agree, a mediator to be appointed by the President of the Law Society of Queensland.
- (d) If mediation pursuant to clause 14.5(c) fails to resolve the dispute, each party is free to commence legal proceedings to resolve the dispute.
- (e) Nothing in this clause 14.5 is to be interpreted as preventing either party from obtaining interlocutory relief from an appropriate court if it is reasonably necessary to do so to protect the interests of that party.

#### 14.6 **Privacy**

- (a) The Contractor acknowledges and undertakes that it and its Personnel will:
  - (i) observe the Privacy Laws in respect of all Personal Information that is collected or otherwise dealt with by it in the course of providing the Service;
  - (ii) promptly follow any reasonable direction of AAQ in relation to the treatment of Personal Information held by the Contractor;
  - (iii) only use and disclose Personal Information that is collected or otherwise dealt with by it for the purpose of providing the Service and not for any other purpose; and
  - (iv) ensure that all Personal Information is secure and take all reasonable steps to protect Personal Information held by it from misuse or loss or any unauthorised access, modification, or disclosure.

#### 14.7 **Governing law**

This Agreement is governed by and is to be construed in accordance with the law applicable in the relevant State or Territory where AAQ has its registered office.

#### 14.8 **Amendment**

This Agreement may only be varied in writing signed by both parties.

#### 14.9 **Entire agreement**

This Agreement, together with its annexure and schedule, is the entire agreement of the Parties on the subject matter. All representations, communications, and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

14.10 **Severance**

If any provision of this Agreement is prohibited, invalid, or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or enforceability without invalidating the remaining provisions of this Agreement.

14.11 **Waiver**

No waiver by either party of any breach or default by the other party is effective unless reduced to writing and signed by that party, and any such waiver does not constitute a waiver of any other continuing breach or default under this contract.

14.12 **Authority to execute agreement**

Each party warrants, undertakes and represents to the other party that it has the necessary power and authority to execute, deliver and perform this Agreement and to become bound by it and (where applicable) that all corporate action has been taken to authority the execution of this Agreement.

**Executed as an agreement**

**Signed** on behalf of:  
Dementia and Aged Care Services

ABN **74 688 640 790** by its duly  
authorised officer in the presence  
of:

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised officer  
(block letters)

\_\_\_\_\_  
Full name of witness (block letters)

\_\_\_\_\_  
Position of authorised officer (block  
letters)

**CONTRACTOR**

SIGNED by \_\_\_\_\_

For and on behalf of

\_\_\_\_\_  
in the presence of:

\_\_\_\_\_  
(name of witness)

\_\_\_\_\_  
(address of witness)

\_\_\_\_\_  
(Contractor's signature)

\_\_\_\_\_  
(signature of witness)

OR

**CONTRACTOR**

EXECUTED by

\_\_\_\_\_  
in accordance with section 127  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
(Director's signature)

\_\_\_\_\_  
(Director/Secretary signature)



## **SCHEDULE – DEFINITIONS AND INTERPRETATION**

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### **Definitions**

<b>Aged Care Quality Standards</b>	means the Aged Care Quality Standards in the <i>Quality of Care Principles 2014</i> (Cth).
<b>Agreement</b>	means the agreement recorded in this document including in the schedule and the annexures.
<b>Applicable Laws</b>	means all laws, legislation, regulations, principles, government issued guidelines, industry standards and codes of practice that apply to the provision of the Services.
<b>Approved Provider</b>	means an entity that has been approved under the Act to provide Home Care.
<b>Business Day</b>	means any day other than Saturdays, Sundays and public holidays in the relevant State or Territory where AAQ has its registered office.
<b>Business Hours</b>	means 9am to 5pm on a Business Day.
<b>Care Plan</b>	means a program of direct and indirect care Services and activities developed by a Service Coordinator to meet the current needs of the Consumer.
<b>Commencement Date</b>	means the commencement date detailed in Annexure 1.
<b>Confidential Information</b>	<p>means all oral or written information, data, knowledge, experience, and other information relating to AAQ or a related body corporate of AAQ or the Service (and any information, materials or analysis derived from, containing or reflecting such information), whether of a financial, technical, scientific, technological, marketing, sales or legal nature and whether disclosed or acquired directly or indirectly before or after the date of this Agreement. Confidential Information includes:</p> <ul style="list-style-type: none"> <li>(a) all Personal Information;</li> <li>(b) all information, including contact and address information, relating to a Consumer that AAQ has provided to the Contractor;</li> <li>(c) all feedback, changes, reports, notes or any other documentation made by the Contractor or its Personnel in the course of providing Services to a Consumer; and</li> <li>(d) all information made available by or on behalf of AAQ which by its nature is confidential or the Contractor knows, or ought to know, is confidential.</li> </ul>

**Consumer** means an individual who is receiving services from AAQ for which AAQ is engaging the Contractor's Services.

**Excluded Loss** means any:

- (a) loss of business opportunity;
- (b) loss of revenue;
- (c) loss of profit or anticipated profit;
- (d) loss of goodwill or loss arising from reputational damage;
- (e) loss arising from business interruption;

directly or indirectly flowing from the occurrence of the event giving rise to liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this Agreement; and

- (f) loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this Agreement.

**GST** has the meaning given to that term in the GST Law and includes any amounts imposed as additional tax, penalty tax, fine, interest or other charge payable in respect of GST.

**Insolvency Event** means:

in relation to a natural person:

- (a) death;
- (b) ceasing to be of full legal capacity or otherwise becoming incapable of managing his or her own affairs;
- (c) a party commits an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth);
- (d) becoming incapable of being able to pay his or her debts when due;

in relation to a corporation:

- (e) failing to comply with a statutory demand;
- (f) a party becoming an externally administered body corporate within the meaning of the *Corporations Act 2001* (Cth);

- (g) any step being taken for the winding up or dissolution of a party;
- (h) entering into a compromise or arrangement with its creditors or being unable to pay its debts with due;
- (i) a meeting of directors of a party considers a resolution that an administrator of that party should be appointed;
- (j) a party being insolvent within the meaning of the *Corporations Act 2001* (Cth) or being taken or presumed to be insolvent; or
- (k) distress, attachment, or other execution being levied or enforced over any of the party's property.

**Loss** means all loss, liability, damage, claims, injury (including disease or illness), death, expense (including legal expenses) or cost.

**Material Term** means a term, the breach of which is reasonably likely to result in material loss or damage of a financial nature or to the reputation or goodwill of AAQ, including without limitation, terms contained in clauses 3, 5.1, 5.3, 5.6, 7, 10, 13 and 14.3.

**Notifiable Incident** means an incident that is notifiable to the relevant statutory authority for work health and safety under the WHS Legislation.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Personnel** means directors, officers, employees, agents or sub-agents, contractors, or subcontractors of a party.

**Privacy Laws** means any of the following relating to the collection, use, disclosure, security, and provision of access to personal information:

- (a) laws;
- (b) regulations;
- (c) approved privacy code or principles; and
- (d) directions, notices and the like issued in accordance with any Applicable Law.

**Reportable Incident** means:

- (a) any circumstances, fact, claim, dispute, or issues in relation to the Services delivered by the Contractor which will, or may, give rise to any legal claim;

- (b) any critical incident involving a Consumer or Personnel;
- (c) any issue or incident relating to medication;
- (d) any incident of improper conduct;
- (e) any industrial dispute, or potential dispute;
- (f) any failure to comply with Applicable Laws;
- (g) any breach of a Policy or Procedure;
- (h) any breach of the terms of this Agreement; and
- (i) any entitlement of the Contractor to make any claim under any insurance policy.

**SIRS Incidents** means:

- (a) an incident in connection with the provision of care and services
- (b) have caused harm to a consumer, and
- (c) are one of the eight types of reportable incidents for home services:
  - i. Unreasonable use of force
  - ii. Unlawful sexual contact or inappropriate sexual conduct
  - iii. Psychological or emotional abuse
  - iv. Unexpected death
  - v. Stealing or financial coercion
  - vi. Neglect
  - vii. Inappropriate use of restrictive practices or
  - viii. Missing consumers

**Restraint Area** means:

- (a) Australia; or, if a court considers this to be unreasonable
- (b) New South Wales and Queensland; or, if a court considers this to be unreasonable
- (c) The following Aged Care Planning Regions:
  - (i) in Queensland:
    - A. Brisbane South;
    - B. Brisbane North;
    - C. South Coast;
  - (ii) in New South Wales:

- A. Central Coast;
  - B. Southern Highlands;
  - C. New England; or if a court considers this to be unreasonable
- (d) the following local government areas:
- (i) in Queensland:
    - A. Brisbane City;
    - B. Redland City;
    - C. Logan City;
    - D. Ipswich City;
    - E. Scenic Rim Regional;
    - F. Gold Coast City;
  - (ii) in New South Wales:
    - A. Tweed Shire.
    - B. Byron Shire;
    - C. Central Coast Council;
    - D. Goulburn Mulwaree Council;
    - E. Bega Valley Shire Council;
    - F. Queanbeyan-Palerang Regional Council;
    - G. Eurobodalla Shire Council;
    - H. Tamworth Regional Council;
    - I. Armidale Regional Council;
    - J. Glen Innes Severn Council;
    - K. Inverall Shire Council;
    - L. Tenterfield Shire Council;
    - M. Walcha Shire Council;
    - N. Wingecarribee Shire Council;
    - O. Hilltops Council;
    - P. Snowy Monaro Regional Council;
    - Q. Upper Lachlan Shire Council; and
    - R. Yass Valley Council.

**Restraint Period**

means:

- (a) Twenty four months; or, if a court considers this to be unreasonable
- (b) twelve months; or, if a court considers this to be unreasonable
- (c) nine months; or, if a court considers this to be unreasonable
- (d) six months; or, if a court considers this to be unreasonable
- (e) three months;

following the Termination Date.

**Senior Executive**

means, at any time:

in relation to an individual:

- (a) the individual;

in relation to a corporation:

- (b) the senior executive officers of the corporation which will include, without limitation, the chief executive officer, chief operating officer, managing director, chief financial officer, chief marketing officer and such other officers of the corporation as the board of the corporation shall determine from time to time.

**Services**

means the services detailed in Annexure 1.

**Service Coordinator**

Service Coordinator as named in Annexure 1 is the person nominated as the point of contact and authorised to act on behalf of AAQ in relation to operationalisation and management of this Agreement.

**Service Fees**

means the service fees set out in Annexure 1.

**Termination Date**

means the termination date specified in Annexure 1.

**Training and Other Requirements**

Means the training and other requirements set out in Annexure 1.

**WHS**

means work, health, and safety.

**WHS Legislation**

means any of the following relating to work health and safety, dangerous goods, or electrical safety:

- (e) laws;

- (f) codes of practice, Australian Standards, and compliance codes; and
- (g) directions, notices and the like issued in accordance with any Applicable Law.

## **Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) Headings are for ease of reference only and do not affect the meaning of this Agreement and do not form part of the clause.
- (h) The singular includes the plural and vice versa and words importing a gender include other genders.
- (i) Words used in this Agreement and defined in the dictionary will have the meaning set out in the dictionary. Other grammatical forms of defined words or expressions have corresponding meanings.
- (j) A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures attached to this Agreement.
- (k) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time.
- (l) A reference to '\$', '\$A', 'dollar' or 'A\$' is a reference to Australian currency.
- (m) A reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory, or other place where that obligation is to be performed.
- (n) A reference to a party includes its executors, administrators, successors and permitted assigns and if more than one, includes those persons jointly and each of them severally, their respective executors administrators and assigns.
- (o) Words and expressions importing natural persons include partnerships, bodies corporate, associations (whether incorporated or not), firms, joint ventures, trusts, authorities, governments and governmental, semi-governmental and local authorities and agencies.
- (p) Words such as 'includes' or 'including' will not be construed as words of limitation.
- (q) A reference to any legislative or legislative provision includes any regulation or other delegated legislation or instruments made or issued under it and any consolidations, amendments, re-enactments or replacements of it and them;
- (r) If the day on which:
  - (i) anything, other than a payment, is to be done is not a Business Day, that thing will be done on the preceding Business Day;

- (ii) a payment is to be made is not a Business Day it will be made on the next Business Day but if the next Business Day falls in the next calendar month it will be made on the preceding Business Day; and
- (iii) if an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5pm on that day, it will be deemed to have been done on the following day.



**Annexure 1– Service details**

<b>PARTY DETAILS</b>		
<b>Contact details:</b>	Dementia and Aged Care Services  ABN <b>74 688 640 790</b>  Service Coordinator Name:  Address:     Phone:  Email:	<b>Contractor:</b>  Primary Contact:  Legal Name:  Trading Name:  Is the third party an approved provider? No Yes – enter Approved Provider NAPS ID Approved Provider NAPS ID:  ABN:  CAN/IAN:  Address:   Phone: Fax: Email:
<b>Parties Address for Notices:</b>	Dementia and Aged Care Services  Service Coordinator Name:  Address:    Phone:  Email:	<b>Contractor:</b>  Primary Contact:  Company:  Address:   Phone: Fax: Email:

**TERM**

**Commencement Date:**

**Termination Date:**

**SERVICES**

**Services:** The Contractor must provide the following Services:

Type of Service		Frequency of Service		
	Nursing		Ongoing	
			Periodic	
	Personal Care		Ongoing	
			Periodic	
	Assistance with Self Administration of Medication		Ongoing	
			Periodic	
	Meals		Ongoing	
			Periodic	
	Podiatry		Ongoing	
			Periodic	
	Occupational Therapy		Ongoing	
			Periodic	
	Exercise Physiology		Ongoing	
			Periodic	
	Domestic		Ongoing	
			Periodic	
	Box Spring Clean or Declutter		Ongoing	
			Periodic	
	Gardening		Ongoing	
			Periodic	

<b>Services</b>	Transport	Ongoing	
		Periodic	
	Home Maintenance & Repairs	Ongoing	
		Periodic	
	Physiotherapy	Ongoing	
		Periodic	
	Dietetics	Ongoing	
		Periodic	
	Speech Pathology	Ongoing	
		Periodic	
	Psychology	Ongoing	
		Periodic	
	Other services (please list):	Ongoing	
		Periodic	
	Other services (please list):	Ongoing	
		Periodic	
	Other services (please list):	Ongoing	
		Periodic	
	Other services (please list):	Ongoing	
		Periodic	
Other services (please list):	Ongoing		
	Periodic		
Other services (please list):	Ongoing		
	Periodic		
<b>Geographical area of services:</b>			
<b>SERVICE FEES</b>			
<b>Service Fees:</b>	<b>Service Fees:</b> As set out in the Attached Current Pricing List (Schedule of Fees) as amended from time to time.		



<b>INSURANCE</b>																															
<b>Insurance Requirements:</b>	<p>The Contractor is required to attach a certificate of currency of the following insurance policies:</p> <p>Public Liability Policy – min \$10 Million for any one occurrence</p> <p>Professional Indemnity Policy – min \$10 Million for any one occurrence</p> <p>WorkCover Certificate of Currency</p> <p>Medical Indemnity for service providing Medical, Paramedical or Nursing Services (if AAQ requires this insurance policy)</p>																														
<b>OCCUPATIONAL HEALTH AND SAFETY</b>																															
<p><b>Please complete the following information if you are a new provider for AAQ:</b></p>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 5px;"><b>OH&amp;S Policy and Management</b></th> <th style="text-align: center; padding: 5px;"><b>Yes</b></th> <th style="text-align: center; padding: 5px;"><b>No</b></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Does the Contractor have a written health and safety policy?</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">Does the Contractor have a written OH&amp;S Management System Manual or Plan? <i>If yes, please provide a copy of the contents page</i></td> <td></td> <td></td> </tr> <tr> <td colspan="3" style="padding: 5px;"><b>Safe Work Practices and Procedures</b></td> </tr> <tr> <td style="padding: 5px;">Does the Contractor have specified safety instructions for staff?</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">Is there a documented incident investigations procedure?</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">Is there a risk minimisation procedure for e.g. manual handling?</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">Does the Contractor have a hazards reporting procedure?</td> <td></td> <td></td> </tr> <tr> <td colspan="3" style="padding: 5px;"><b>OH&amp;S Training</b></td> </tr> <tr> <td style="padding: 5px;">Does the Contractor maintain records of all training and induction undertaking by staff?</td> <td></td> <td></td> </tr> </tbody> </table>	<b>OH&amp;S Policy and Management</b>	<b>Yes</b>	<b>No</b>	Does the Contractor have a written health and safety policy?			Does the Contractor have a written OH&S Management System Manual or Plan? <i>If yes, please provide a copy of the contents page</i>			<b>Safe Work Practices and Procedures</b>			Does the Contractor have specified safety instructions for staff?			Is there a documented incident investigations procedure?			Is there a risk minimisation procedure for e.g. manual handling?			Does the Contractor have a hazards reporting procedure?			<b>OH&amp;S Training</b>			Does the Contractor maintain records of all training and induction undertaking by staff?		
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## **Annexure 2 Police check requirements**

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An **Acceptable National Police Certificate** means a national police certificate that does not record that the person has been:

- convicted of theft, fraud, murder or sexual assault; or
- convicted of and sentenced to imprisonment for any other form of assault.

1. The Contractor must:

- (a) ensure that all its Personnel engaged in the provision of the Services have an Acceptable National Police Certificate not more than 3 years old;
- (b) ensure that all its Personnel engaged in the provision of the Services to a Child has undergone acceptable child-related employment screening;
- (c) provide a copy of the Acceptable National Police Certificate and evidence of acceptable child-related employment screening (where appropriate);
- (d) notify AAQ of any issues which are identified through any checks, which could reasonably be considered to affect the person's suitability to provide the Services; and
- (e) provide all assistance AAQ reasonably requires to comply with its obligations under Applicable Laws with respect to criminal history checks.

2. The Contractor will ensure that it retains a police certificate registration number in respect of each member of Personnel and must provide AAQ with an organisational policy on employee national police checks.

3. The Contractor will undertake the police checks at its own expense.

4. If a member of Personnel has been at any time since they turned 16, a citizen or permanent resident of a country other than Australia, the Personnel must make a statutory declaration stating that the person has never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

5. If a national police certificate in respect of Personnel records any criminal history, the Contractor agrees not to allow the Personnel to provide Services until AAQ has been given the opportunity to consider whether the Personnel is a suitable person having regard to the criminal history.

6. AAQ may request that Personnel not provide Services under this Agreement on the basis that there is no current police certificate or having regard to any criminal history disclosed by the police certificate. Such request will be reasonable.

7. The Contractor must not retain volunteers to provide Services under this Agreement.

**Annexure 3 – Request to subcontract pursuant to clause 14.3**

1. The Contractor must use this form to request consent from AAQ to subcontract a part of the Service under this Agreement.
2. Consent to any subcontract does not relieve the Contractor from any liability or obligation under this Agreement.

DETAILS	
<b>Contractor:</b>	
<b>Reason for subcontract:</b>	
<b>Proposed subcontractor:</b>	
TERM	
<b>Term of subcontract period:</b>	to
<b>Estimate of total hours to be subcontracted (if known):</b>	
<b>Estimate of total amount of Service Fees to be subcontracted (if known):</b>	
CONSENT	
<b>AAQ's consent</b> (the consent must be signed by the Service Coordinator for it to be valid)	<input type="checkbox"/> AAQ consents to the request <input type="checkbox"/> AAQ does not consent to the request
	Service Coordinator Name:
	Address:
	Phone:
	Fax:
	Email:
	Date:
	<b>Signature:</b>