

Terms and Conditions for Respite Care Providers

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BETWEEN

Wellways Australia Ltd (ABN 93 093 357 165) whose registered office is at 276 Heidelberg Road, Fairfield, Melbourne, Victoria 3078 ("**Wellways**")

and

The company set out in the Confirmation Form ("Supplier").

BACKGROUND

Wellways wishes to secure certain services from the Supplier from time to time.

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions.

- | | | |
|-----|----------------------------|---|
| (a) | Confirmation Form | Any form of writing or email that references these Terms and Conditions. |
| (b) | Document | includes any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form. |
| (c) | Input Material | all Documents, information and materials provided by Wellways relating to the Services including but not limited to computer programs, data, reports, specifications, and office building keys. |
| (d) | Price | the amount(s) set out in the price list the Supplier has previously provided to Wellways multiplied by the Supplier resources the Supplier has agreed it needs to perform the Services |
| (e) | Services | the services to be provided by the Supplier under this agreement as set out in the Confirmation Form. |
| (f) | Staff | employees, directors and officers of the Supplier but any individual is only Staff if providing Services. |
| (g) | Wellways' Equipment | any equipment, systems, cabling or facilities provided by Wellways and used directly or indirectly in the supply of the Services. |

1.2. Clause, schedule and paragraph headings do not affect the interpretation of this agreement.

1.3. The schedules form part of this agreement and have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

1.4. A reference to **writing** or **written** includes e-mail but not facsimile/telecopy.

1.5. Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and do not limit the sense of the words preceding them.

1.6. Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. APPLICATION OF THESE TERMS

2.1. Each Confirmation Form, once accepted by the Supplier in the manner Wellways specifies, is a legally binding agreement for the Supplier to supply the Services pursuant to these Terms and Conditions.

- 2.2. If Wellways sends Supplier a Confirmation Form and the Supplier commences the Services, it will be deemed to have agreed to form this contract on the terms of the Confirmation Form.
- 2.3. No terms or conditions endorsed on, delivered with, attached to, enclosed with, referred to, or contained in any Confirmation Form, quotation, confirmation or order, specification or other document form part of this Agreement merely by being referred to in this Agreement or a Confirmation Form.

3. COMMENCEMENT AND DURATION

- 3.1. The Services must be provided to Wellways from the date set out in the Confirmation Form.
- 3.2. The Services must continue to be supplied for the period set out in the Confirmation Form or, if no period is specified, until Wellways advises they are no longer required, subject to early termination in accordance with clause 9.

4. SUPPLIER'S RESPONSIBILITIES

- 4.1. The Supplier must provide the Services to Wellways and must allocate sufficient resources to the Services to enable it to comply with this obligation.
- 4.2. The Supplier must:
- (a) not (and it does not have the authority to) bind Wellways to any legal obligations; and
 - (b) co-operate with Wellways in all matters relating to the Services; and
 - (c) observe, and ensure that its Staff observe, all health and safety rules and regulations and any other reasonable security requirements that apply at Wellways' premises. Access to Wellways' premises will only be given to the extent necessary for the performance of the Services; and
 - (d) notify Wellways as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - (e) never, and must procure that its subcontractors never, engage in or use services that have any connection with modern slavery as defined in the *Modern Slavery Act 2018 (Cth)* and/or the *Modern Slavery Act 2018 (NSW)*, and inform Wellways immediately if it becomes aware of any potential breach of this clause; and
 - (f) keep and produce to Wellways on its reasonable request records of all things done in the course of providing the Services; and
 - (g) keep and maintain Wellways' Equipment in good condition and not dispose of or use Wellways' Equipment other than in accordance with Wellways' written instructions or authorisations; and
 - (h) before the date on which the Services are to start, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to:
 - (i) the Services; and
 - (ii) the use of all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement including computer programs, data, reports and specifications; and
 - (i) Data Sovereignty and Security
 - (i) procure that no participant "personal information" (as defined in the *Privacy Act 1988 (Cth)*), into which the Supplier comes and/or any of its subcontractors come into possession, ever leaves Australia; and

- (ii) provide and explain to Wellways the Supplier's data & cyber security governance, policies, and procedures that purport to ensure compliance with clause 4.2(i)(i):
 - upon request; and
 - if clause 4.2(i)(iii) is triggered; and
- (iii) notify Wellways immediately if:
 - the Supplier employs, or any of its subcontractors employ, any individual outside Australia; and/or
 - there is any breach of clause 4.2(i)(i) or the Supplier's own governance, policies, or procedures set out in clause 4.2(i)(ii).

4.3. The Supplier must not, until 12 (twelve) months after the termination of this agreement, directly or indirectly solicit, aid, induce or encourage any employee or agent of Wellways to leave Wellways' employ or retention. General advertising for personnel not specifically targeting any individual is not a breach of this clause.

4.4. Insurance

- (a) The Supplier must effect and maintain the following insurance with an insurance company or companies authorised under the *Insurance Act 1973 (Cth)*:
 - (i) Workers' compensation and employment liability insurance to cover at a minimum the amount that may be imposed by law including in respect of all claims and liabilities arising under any statute or at common law in relation to the death of or injury to any Staff or other person whom the Supplier employs or engages to perform Services.
 - (ii) Public and product liability insurance with a minimum cover of \$1,000,000 per claim.
 - (iii) Professional indemnity insurance with a minimum cover of \$1,000,000 per claim.
 - (iv) Any other insurances that a reasonable and prudent person engaged in the relevant industry would effect and maintain.
- (b) The Supplier must:
 - (i) produce to Wellways on execution of this agreement and upon request copies of all certificates of insurance currency confirming that each of the required policies is current; and
 - (ii) notify Wellways immediately if any insurance policy in clause 4.4(a) above lapses.

5. **CHARGES AND PAYMENT**

- 5.1. The Supplier may invoice Wellways fortnightly in arrears for the Price that is then payable.
- 5.2. The price is all-inclusive, including all the Supplier's costs, and excludes GST unless otherwise stated in the Price. The Supplier's invoices must be tax invoices. For the avoidance of doubt, no other amount is payable by Wellways to the Supplier for the provision of the Services.
- 5.3. Wellways will pay each invoice properly due, issued and submitted to it by the Supplier, within 14 (fourteen) days of Wellways receiving that invoice.
- 5.4. The Supplier must maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as Wellways approves. The Supplier must allow Wellways to inspect such records at all reasonable times on request.
- 5.5. Without prejudice to any other right or remedy it may have, Wellways reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by Wellways to the Supplier under this agreement.

6. QUALITY OF SERVICES

- 6.1. The Supplier represents that it is, and its Staff are, fully qualified and able to provide the Services. The Wellways entered into this agreement based on that representation. This representation induced Wellways to enter into this Agreement.
- 6.2. The Supplier must:
- (a) use its, and procure that its Staff use their, best endeavours in performing the Services with best care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - (b) conform with all descriptions and specifications provided to Wellways by the Supplier; and
 - (c) ensure that the Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform Wellways as soon as it becomes aware of any changes in that legislation.
- 6.3. Wellways' rights under this agreement are in addition to the statutory terms implied in favour of Wellways by statute.
- 6.4. The provisions of this clause 6 survive any performance, acceptance or payment pursuant to this agreement and extend to any substituted or remedial services provided by the Supplier.

7. INDEMNITY

- 7.1. For the purposes of this clause 7, "**Liabilities**" means any and all direct, indirect, special and/or consequential:
- (a) claims, losses, proceedings, liabilities, damages, costs and/or expenses (including legal expenses); and
 - (b) loss of profits, loss of business, depletion of goodwill and similar losses.
- 7.2. Other than to the extent contributed to by the actions or omissions of Wellways, the Supplier fully indemnifies Wellways against all Liabilities incurred or suffered by Wellways arising out of:
- (a) any breach of this agreement by the Supplier (including any breach of warranties contained in this agreement);
 - (b) any allegation or claim against Wellways that the receipt of the Services, any products of the Services or any other materials provided by or on behalf of Supplier under this agreement (**affected items**), or the use of the affected items in accordance with the terms of this agreement, infringes any third party's rights (including intellectual property rights) or breaches any law;
 - (c) any claim against Wellways caused by or in connection with:
 - (i) the provision of the Services by the Supplier; or
 - (ii) any act or omission of the Supplier;
 - (d) any personal injury (including death) or property damage caused by the Supplier; and
 - (e) any claim or assertion by a Supplier employee or by any regulatory authority that any employee of the Supplier is an employee of Wellways, including any claim in respect of breach of contract, breach of general protections, unlawful discrimination, wrongful dismissal, notice of termination, payment of wages, redundancy pay, superannuation, employment related costs, income tax, payroll tax and leave entitlements or other statutory benefits.
- 7.3. Wellways' right to be indemnified under this clause 7 is in addition to, and not exclusive of, any other right, power or remedy provided by law.
- 7.4. The provisions of this clause 7 survive termination of this agreement.

8. CONFIDENTIALITY AND WELLWAYS' EQUIPMENT

- 8.1. The Supplier must in respect of all Input Material and all technical or commercial know-how, specifications, inventions, processes or initiatives and any other confidential information concerning Wellways' business or its products that the Supplier may obtain:
- (a) keep in strict confidence, including but not limited to restricting disclosure of such confidential material to its employees, and ensuring that those employees are subject to obligations of confidentiality corresponding to those that bind the Supplier; and
 - (b) only use it in respect of the Services.
- 8.2. All Input Materials, Wellways' Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by Wellways to the Supplier will, at all times, be and remain the exclusive property of Wellways, but must be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to Wellways, and must not be disposed of or used other than in accordance with Wellways' written instructions or authorisation.
- 8.3. This clause does not apply to information that is:
- (a) in or enters into the public domain other than by reason of breach of any obligation of confidentiality;
 - (b) subsequently disclosed lawfully to the Supplier by a third party other than pursuant to this agreement and is free of any restriction as to its use or disclosure; or
 - (c) already in the possession of the Supplier prior to the Supplier's receipt of it from Wellways; or
 - (d) developed by the Supplier without direct or indirect access to, or use or knowledge of, the information disclosed to it by Wellways.
- 8.4. The Supplier may disclose any information covered by this clause to the extent disclosure is compelled by law, by the rules or other requirements of any government department or agency or other relevant requirement or by any order of a court of competent jurisdiction provided that, to the extent it is permitted to do so, it immediately informs Wellways of the disclosure and takes into account Wellways' reasonable requests of Supplier in relation to the content of such disclosure.
- 8.5. This clause 8 survives termination of this agreement, however arising.

9. TERMINATION

- 9.1. If the Supplier considers that Wellways is not or may not be complying with any of Wellways' obligations under this agreement:
- (a) that does not give rise to a right of termination, or any other remedy other than set out in clause 9.1(b) below; and
 - (b) to the extent that it restricts or precludes performance of the Services by the Supplier, the Supplier will not be liable for any failure to provide Services, provided that the Supplier, promptly after Wellways' actual or potential non-compliance has come to its attention, has notified details to Wellways in writing.
- 9.2. Wellways may terminate this agreement immediately on giving notice to the Supplier if:
- (a) the Supplier is affected by clause 15 for a continuous period of more than 14 (fourteen) days; or
 - (b) the Supplier breaches any of clauses 3, 4.1, 4.2, 6.1, 6.2 and/or 8 in any way; or
 - (c) the Supplier commits a material breach of any of the terms of this agreement and fails to remedy that breach within 30 calendar days of being notified in writing of the breach; or
 - (d) any insurance policy in clause 4.4(a) above lapses, or the Supplier breaches clause 4.4(b), and the Supplier does not remedy either breach within 2 (two) weeks; or

- (e) there is a change of control of the Supplier; or
- (f) Insolvency-like events
 - (i) an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Supplier; or
 - (ii) an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or a liquidator, or documents are filed with a court of competent jurisdiction for the appointment of an administrator or liquidator of the Supplier; or
 - (iii) a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession of or sells the Supplier's assets; or
 - (iv) the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - (v) the Supplier ceases, or threatens to cease, to trade; or
 - (vi) the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

9.3. On termination of this agreement for any reason the Supplier must immediately deliver to Wellways all Wellways' Equipment, all Input Material, and all copies of information and data provided by Wellways to the Supplier for the purposes of this agreement. The Supplier must certify to Wellways that it has not retained any copies of Input Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 8; and

9.4. Termination of this agreement, however it arises, will not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

10. VARIATION

No variation of this agreement will be valid unless it is in writing and signed by or on behalf of each of the parties.

11. ASSIGNMENT AND/OR SUBCONTRACTING

11.1. The Supplier must not assign, transfer, charge, create a trust over, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement. Any purported assignment in breach of this clause will confer no rights upon the purported assignee.

11.2. Wellways may at any time assign, transfer, charge, create a trust over, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

12. NOTICES

Notice given under this agreement must be by email and, if addressed to Wellways, to:

12.1. if the notice relates to a potential dispute between the Supplier and Wellways, or the interpretation of this contract – "contractnotices@wellways.org"; and

12.2. in any other case – the email address Wellways notifies the Supplier from time to time.

13. SEVERABILITY

If any term, part or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable as being contrary to applicable law or public policy, in whole or in part, such

term, part or provision must to the extent reasonably possible be construed in a manner so as to be enforceable. The remainder of this agreement must remain in full force and effect and in no way be affected, impaired or invalidated, except by reason thereof the fundamental nature of this agreement is thereby frustrated.

14. WHOLE AGREEMENT

This Agreement constitutes the entire Agreement between the Supplier and Wellways as to the subject matter hereof and supersedes all previous communications, representations and agreements, whether written or oral, and Wellways hereby acknowledges that (other than as set out in clause 6.2(b) above) no reliance is placed on any representation made but not embodied in this agreement.

15. FORCE MAJEURE

Neither party will be liable for (and this Agreement will not be frustrated by) any failure, hindrance or delay in complying with the terms of this Agreement if that directly or indirectly results from events beyond its reasonable control. The party so prevented must resume its obligations under this agreement as soon as is reasonably possible after the cessation of the circumstances that triggered this clause.

16. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter, must be governed by, and construed in accordance with, the law of Victoria. The courts of Melbourne have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.