

Third party contractor agreement

BACKGROUND

- 1 The Contractor acknowledges that the Consumer is entitled to receive the Services under a client agreement with Trilogy Care Pty Ltd ABN 44 604 915 200 (**Trilogy Care**), a registered provider under the *Aged Care Act 2024* (Cth) (**Aged Care Act**).
- 2 The Consumer has sourced, interviewed and has made the decision to engage the Contractor directly to deliver the Services to the Consumer on the terms of this Agreement.
- 3 This Agreement sets out the basis on which the Consumer will engage the Contractor to deliver the Services, and Trilogy Care will make payment on behalf of the Consumer from the Consumer's available government subsidies. The Contractor and Consumer acknowledge that, while Trilogy Care is not a party to this Agreement, the provisions which involve Trilogy Care are necessary to ensure that the Services are delivered in accordance with Trilogy Care's obligations to the Consumer and under the Aged Care Act.

AGREEMENT DETAILS

Contractor		
Name		
ABN		
Contact details	Mailing address	
	Phone	
	Email	

Consumer		
Name		
Contact details	Mailing address	
	Phone	
	Email	

Consumer Representative		
Name		
Contact details	Mailing address	
	Phone	
	Email	

Specifications	
Services	

Specifications	
Length and frequency of Services	
Location of Services	
Service Fees	
Travel/Transport	
Contractor Qualifications	
Engagement by Care Administrator and Coordinator	<input type="checkbox"/> No <input type="checkbox"/> Yes, provide details:

Additional Provisions
<input type="checkbox"/> Not applicable <input type="checkbox"/> Applicable

Executed for and on behalf of the Consumer by Trilogy Care as authorised agent of the Consumer, or executed by the Consumer or their relevant decision maker:

Name

Position

Signature

Date

Executed by an authorised person on behalf of the supplier:

Name

Position

Signature

Date

AGREEMENT TERMS

1 Support at Home Services

- 1.1 The Contractor must perform and supply the Services to the Consumer on a non-exclusive basis:
- 1.1.1 with due care and skill required of a competent professional service provider (experienced in carrying out services similar to the Contractor);
 - 1.1.2 in accordance with the terms of this Agreement, the Aged Care Act, all applicable laws, relevant standards, Statement of Rights, guidelines and funding agreements;
 - 1.1.3 in a manner that upholds the rights of the Consumer and aligns with the Consumer's care plan and support plan;
 - 1.1.4 in accordance with the Specifications set out in the Agreement Details; and
 - 1.1.5 in accordance with all reasonable directions and requirements of the Consumer.
- 1.2 The Contractor must maintain all appropriate licences, approvals and authorisations necessary to discharge the Contractor's obligations under this agreement, including the Qualifications.
- 1.3 The Contractor is solely responsible for procuring or acquiring and maintaining such premises, plant and equipment and other resources required to provide the Services and perform the Contractor's obligations under this Agreement.
- 1.4 The Contractor must at all times take reasonable steps to prevent damage being caused to the Consumer's home or property by the Contractor or the Contractor's personnel.

2 Variation

- 2.1 At any time, the Consumer may request additional Services or amendment to the Specifications of the existing Services. The Consumer and the Contractor must obtain Trilogy Care's approval to such variation, which will not be withheld where the Services comply with the Consumer's client agreement with Trilogy Care (including the support plan and care plan) (**Client Agreement**).
- 2.2 Any additional Services approved under clause 2.1 will be paid:
- 2.2.1 the Service Fees as set out in the request between the Consumer and Contractor; or
 - 2.2.2 if no Service Fees are agreed, the Contractor's then current standard prices, for each such additional unit.

3 Personnel

- 3.1 The Contractor must engage sufficient and appropriately qualified and experienced personnel to provide the Services. The Contractor must ensure all its personnel involved in the provision of the Services comply with the requirements of this Agreement (to the extent relevant to their role), including ensuring that personnel:
- 3.1.1 have been subject to and cleared any applicable suitability and/or disclosable outcomes risk assessment and worker screening background check (including any required aged care worker screening) on terms which comply with all applicable laws;
 - 3.1.2 have suitable qualifications and training, including any training required under the Aged Care Act and applicable laws; and
 - 3.1.3 must be required to notify the Contractor of any change of circumstances that could impact their suitability to deliver the Services.

- 3.2 The Contractor must not allow personnel to continue providing any part of the Services if they no longer meet, or there are reasonable grounds to consider they no longer meet, the suitability requirements under clause 3.1.
- 3.3 The Contractor acknowledges that Trilogy Care will assist the Consumer to undertake personnel suitability checks for the purpose of ensuring that the Contractor and/or personnel are suitable to deliver the Services under the Aged Care Act, and that the Contractor must provide evidence to the Consumer and Trilogy Care of suitability before Services can be delivered.
- 3.4 The Contractor may subcontract the performance of any part of its obligations under these Agreement to persons appropriately skilled and qualified (including, where relevant, holding all required insurances and registrations) to provide the Services, subject to the subcontractor or delegate meeting the personnel suitability requirements under this Agreement.
- 3.5 Notwithstanding the supply of any Services by the Contractor's personnel, the Contractor remains ultimately responsible and liable for the delivery of the Services under this Agreement.
- 3.6 Where the Services are delivered at the Consumer's home, the Contractor must, and must ensure its personnel, use and complete any check-in or verification systems that Trilogy Care reasonably requires to ensure the Services are being delivered in accordance with the Aged Care Act and Client Agreement.
- 3.7 **Role of Consumer's Representative**
- 3.8 The Contractor acknowledges that it has been informed that the Services to be provided to the Consumer relate to those services to be provided pursuant to the Consumer's support plan and care plan managed by the Consumer's Representative.
- 3.9 The Contractor must ensure that the Consumer's Representative is permitted to have access to any account the Consumer has with the Contractor, including to provide oversight over the engagement between the Consumer and the Contractor.
- 3.10 The Contractor must permit the Consumer's Representative to attend any meetings or sessions between the Consumer and Contractor in relation to the supply of the Services.

4 Fees and invoices

- 4.1 All invoices must be issued within 30 days of providing Services and must be issued in accordance with the Specifications. The Contractor acknowledges that these payment terms are necessary to ensure that Commonwealth funding for the Services can be claimed by the Consumer or Consumer Representative. If the Contractor does not submit an invoice within the timeframe specified and Commonwealth funding cannot be claimed, the Contractor is not entitled to payment for the Services from the Consumer (to be paid by Trilogy Care from the Consumer's subsidies). All relevant fees and charges are to be clearly explained within this Agreement and invoices will at no time exceed the stated amount or lengths of services mutually agreed by the parties within.
- 4.2 All invoices relating to Service Fees shall be submitted as directed, and in the name of, the Consumer, with a copy of the invoice to be provided to the Consumer Representative at the same time if such a request is in place at the time of creating this Agreement.
- 4.3 All invoices relating to Service Fees must:
- 4.3.1 sufficiently detail the Services provided, including a separate line item and description for each service delivered, specify the date(s) that each Service was delivered (where this may be separate to the tax of the tax invoice) and any resulting amount due;
 - 4.3.2 attach any relevant verifying documentation; and
 - 4.3.3 be invoiced in accordance with GST Law.

- 4.4 Subject to clause 4.5, the Consumer or Trilogy Care shall arrange payment for all correctly recorded invoices for Services rendered, which have been approved by the Consumer within thirty (30) Days after receipt of the invoice for all undisputed amounts.
- 4.5 The Contractor acknowledges and agrees that the payment for the Services is subject to receipt of Commonwealth funding under the Aged Care Act for the Services provided by the Contractor.
- 4.6 Except as specified in this agreement, the Contractor must pay all fees, charges and costs incurred in the performance of the Contractor's obligations.

5 Insurances and indemnity

- 5.1 The Contractor must ensure that it and its personnel who provide the Services have in effect, and its own cost and expense, appropriate insurance for such amounts a prudent provider providing the Services would have in place, including, but not limited to:
- 5.1.1 public liability insurance;
 - 5.1.2 professional indemnity;
 - 5.1.3 workers' compensation insurance as required by law; and
 - 5.1.4 any other insurances notified to the Contractor.
- 5.2 On request, the Contractor must provide the Consumer with copies of the prescribed insurance policies and certificates of currency.
- 5.3 The Contractor must indemnify, keep indemnified and hold harmless the Consumer and their Support at Home Provider from and against all actions, liabilities, claims, losses, damages, penalties, demands, costs and expenses (including, without limitation, all legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from any negligent, reckless or illegal act or omission, breach of intellectual property rights or breach of this agreement by the Contractor or any person the Contractor is responsible for. The Contractor's obligation to indemnify the Consumer and their Support at Home Provider does not apply to the extent that any liability is directly caused by any negligent act or omission of the Consumer.

6 Incident management, complaints and record keeping

- 6.1 The Contractor must implement prudent policies and procedures in respect of incident management, complaints and feedback, whistleblower protection and preventing, identifying and responding to the neglect and abuse of consumers as required under the Aged Care Act.
- 6.2 The Contractor must assist Trilogy Care and any regulatory authority (including the Commonwealth Department of Health, Disability and Ageing or the Aged Care Quality and Safety Commission) in the investigation of any reportable incident or Consumer complaint.
- 6.3 The Contractor must maintain an up-to-date register of the qualifications, endorsements, registrations, certifications, accreditations, licenses, immunisations, assessments and clearances of the personnel in connection with the provision of the Services. The Contractor must maintain any other records it is, or would if it provided Services directly, be required to maintain under the Aged Care Act or applicable laws.
- 6.4 The Contractor must ensure that it keeps adequate records of the Services provided to the Consumer and for a period of seven (7) years thereafter and, if requested to do so, immediately provide copies of such records to the Consumer or the Consumer's Representative and of all correspondence or other material arising from or in connection with the provision of the Services.
- 6.5 The Contractor must obtain all necessary authorisations and consents to provide reports and information to Trilogy Care under this Agreement, including information concerning the Contractor's personnel, their suitability and their interactions with and observations on Consumers.

7 Workplace health and safety

- 7.1 The Contractor must at all times identify and take all necessary precautions for the health and safety of all persons who may be affected by the performance of the Services.
- 7.2 The Contractor must comply with the Aged Care Act and applicable laws regarding immunisation and infection control procedures.

8 Mandatory incident reporting and other reports

- 8.1 The Contractor must ensure that each of the Contractor's personnel completes and promptly supplies to Trilogy Care a written report concerning the Services provided to that Consumer, Consumer absences and any observations made and any recommendations for future action.
- 8.2 The Contractor must immediately notify Trilogy Care and the relevant care partner of:
 - 8.2.1 of any change or deterioration in the Consumer's condition;
 - 8.2.2 if the Consumer approaches it and seeks to obtain services similar to the Services directly through the Contractor;
 - 8.2.3 of any changes in a Consumer's funding or eligibility classification by a government agency or steps being taken by or on behalf of the Consumer to change their funding or eligibility classification;
 - 8.2.4 if the Contractor makes, or is required to make, a report under the Serious Incident Response Scheme;
 - 8.2.5 of any breaches or allegations of breaches of the Aged Care Act, Serious Incident Response Scheme, Aged Care Code of Conduct or the Aged Care Quality Standards against the Contractor or its Personnel;
 - 8.2.6 any non-compliance with this Agreement that is part of a systemic pattern of conduct; or
 - 8.2.7 where any of its personnel are no longer suitable to the deliver the Services under the Aged Care Act,

and provide Trilogy Care with any reasonable assistance it requires in relation to those matters, notifications or investigations.

9 Privacy and confidentiality

- 9.1 The Contractor must ensure that they comply with all applicable privacy laws and the Aged Care Act and must take all reasonable measures to ensure that the personal information of the Consumer provided to it is protected from misuse, loss, unauthorised access, or disclosure.
- 9.2 The Contractor consents to the disclosure of its identity to the Commonwealth of Australia by Trilogy Care where required under the Aged Care Act or applicable guidelines and funding agreements.

10 Suspension and termination

- 10.1 the Consumer may, in its sole discretion, without liability to the Contractor, suspend or otherwise terminate any of the Services by providing two weeks written notice to the Contractor.
- 10.2 The Consumer agrees to otherwise comply with any cancellation policy of the Contractor which has been previously notified to the Consumer within this agreement, except that the Consumer shall have no liability to the Contractor where it provides no less than twenty-four (24) hours' notice of cancellation of any of the Services scheduled to be provided.
- 10.3 The Contractor acknowledges and agrees that any notice under clause 10.1 or 10.2 may be given on behalf of the Consumer by the Consumer's Representative.

10.4 The Contractor acknowledges and agrees that at any time their fee structure requires review, that a new Agreement will be created for both parties to review and sign at which time this completed Agreement will be provided to Trilogy Care within 24 hours. Any invoices containing updated payment amounts will not be paid until a signed and completed Agreement is provided to Trilogy Care and the dates correspond with the new Agreement being signed by both parties.

11 Force Majeure

11.1 In this clause '**Force Majeure**' means any natural disaster, war, terrorist act, fire, explosion, flood, or act of God which is beyond the Contractor's reasonable control, not caused by an act or omission of the Contractor and could not have been overcome, prevented or avoided by the Contractor taking reasonable steps to minimise, avoid or mitigate the effect of the Force Majeure event.

11.2 If the Contractor is prevented, wholly or in part, from performing any of its obligations under this Agreement as a result of Force Majeure, the Contractor must immediately notify the Consumer and Trilogy Care of the Force Majeure, including details of the likely duration during which the Contractor will be unable to perform the Services. The Contractor must use all reasonable endeavours to overcome or minimize the impact of the Force Majeure and continue to perform its obligations under the Agreement.

12 General

12.1 The parties acknowledge and agree that the legal relationship between them is that of independent contractors and nothing in this Agreement may be deemed to constitute an employment relationship, a partnership, joint venture, agency or other legal relationship between the Consumer and the Contractor.

12.2 Except as otherwise provided in this agreement the Contractor has full control over working time, methods and decision making in relation to provision of the Services and is to work autonomously.

12.3 The Contractor must cause its personnel to comply with this agreement (to the extent relevant to their roles) and non-compliance by the Contractor's personnel will be a breach of this agreement by the Contractor, as if done or not done by the Contractor.

12.4 These terms and conditions are subject to any additional provisions in the Agreement Details or a service request. If there is an inconsistency between an additional provision and another provision of this agreement, the additional provision prevails.

12.5 Capitalised terms used in this agreement which are set out in the Agreement Details or bolded have the meaning set out in the Agreement Details or attributed to the bolded word.

12.6 If there is more than one Contractor, each covenant, undertaking, representation, warranty, indemnity or agreement made or given by a Contractor is given by and binds those parties jointly and severally.

12.7 Where this Agreement is signed by an authorised agent, the agent is not a party to the Agreement and has no liability in respect of the party for which it has signed as agent for.

12.8 A reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them.

12.9 This agreement applies to the exclusion of the Contractor's proposal or standard terms of trade (including invoices). All prior representations, warranties, arrangements, understandings and agreements concerning the subject matter of this agreement are superseded by this agreement.

12.10 This agreement must be interpreted in accordance with the laws of the State or Territory in which the Services are provided. The parties agree that the Courts of that state shall have jurisdiction to entertain any action in respect of, or arising out of, this agreement.