



CARE ASSESS SUBCONTRACTOR AGREEMENT

CARE ASSESSMENT CONSULTANTS PTY LTD
(ABN 67 098 161 105)

and

«CONTNAME»
(ABN «CONTABN»)
TRADING AS
«TRADINGNAME»

THIS AGREEMENT

is made on the date set out in **Schedule A**.

PARTIES

1. **CARE ASSESSMENT CONSULTANTS PTY LTD ABN 67 098 161 105** of Level 2, 6 Bayfield Street Rosny Park TAS 7018 ("**Care Assess**"); and
2. **The Contractor** (as specified in **Schedule B**) ("**Your Organisation**").

BACKGROUND

1. Care Assess wishes to contract Your Organisation to provide the Services specified in this Agreement until the Termination Date on a subcontractor basis.
2. Your Organisation acknowledges that Care Assess has agreements with both the Tasmanian Government and the Commonwealth of Australia to provide the Services.
3. Your Organisation has agreed to be contracted to provide the Services on the terms and conditions of this Agreement and in accordance with the provisions in the Provider's Handbook.
4. Your Organisation has agreed that the respective roles and responsibilities set out in this Agreement for both Care Assess and Your Organisation are consistent with your respective policy and program objectives.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Agreement:

- 1.1 "**Applicable State**" means that State or Territory of Australia specified in **Schedule C**;
- 1.2 "**Client**" includes any Person or Organisation or Government Department (or Representative of any Person or Organisation or Government Department) to whom Care Assess provides and/or provided Programs and Services.
- 1.3 "**Commencement Date**" means that date specified in **Schedule D** as the date Your Organisation will begin providing the Services;
- 1.4 "**Company Contact**" is Care Assess contact person(s) under this Agreement specified in **SCHEDULE F** or any other person as notified by Care Assess from time to time;
- 1.5 "**Confidential Information**" means information and material (whether oral, in writing or electronic) relating to either party (and any entity connected with that party by an interest in a common economic enterprise, including (but not limited to) a Related Body Corporate), that is obtained under this Agreement by the other party and is not publicly available (other than by breach of this Agreement), including trade secrets; the Contract Fee; the terms and conditions of this Agreement; strategic, corporate and financial information; material and information relating to the methods of operation of the business; material and information relating to the Clients ; material and information relating to Suppliers; sales and pricing information; marketing and business plans; software and hardware; programming information and data; Intellectual Property; and other information which is by its nature confidential;

- 1.6 “**Contract Fee**” means the amount/s specified in **ATTACHMENT A** payable to Your Organisation for the provision of the Services, or such other amount/s that may be determined and agreed in writing between Care Assess and Your Organisation from time to time;
- 1.7 “**Expiry Date**” means that date specified in **SCHEDULE K**;
- 1.8 “**GST**” means the goods and services tax payable under the GST Legislation;
- 1.9 “**GST Legislation**” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related legislation passed by the Federal Government;
- 1.10 “**Person**” includes any natural person, company, partnership, association, trust, business, or other organisation or entity of any description;
- 1.11 “**Programs and Services**” means any goods, programs or services delivered, provided or supplied to or by Care Assess, including, but not limited to, those Programs supplied in relation to the Services;
- 1.12 “**Personnel of Care Assess**” means any employee, agent, director, officer, partner, contractor, adviser or consultant of Care Assess;
- 1.13 “**Related Body Corporate**” has the same meaning as it has in the *Corporations Act 2001 (Cth)*;
- 1.14 “**Services**” means the services specified in **SCHEDULE E** to be provided by Your Organisation, any additional or ancillary services to the services specified in **SCHEDULE E** and any other services agreed in writing between Care Assess and Your Organisation from time to time;
- 1.15 “**Superannuation**” means contributions made in accordance with the *Superannuation Guarantee (Administration) Act 1992*;
- 1.16 “**Supplier**” means any Person or Organisation or Government Department (or representative of any Person or Organisation or Government Department):
- (a) who supplied any Programs and Services to Care Assess and with whom Your Organisation had contact or dealings with under this Agreement; or
 - (b) who has entered into discussions or negotiations with Your Organisation on behalf of Care Assess, at either Your Organisation or Representative’s or a Person reporting to Your Organisation or Representatives own initiative or at the initiative of Care Assess, at any time during the twelve (12) months prior to the Expiry Date, with a view to supplying Programs and Services to Care Assess and who had not notified Care Assess prior to the Expiry Date that they did not wish to supply such Programs and Services.
- 1.17 “**Termination Date**” means the date of termination of this Agreement in accordance with its terms or as a result of the Agreement being terminated on such other terms as are mutually agreed between the parties; and is the date specified in **SCHEDULE K**.
- 1.18 “**Timetable**” means the times and deadlines for the provision of Services as specified in **SCHEDULE J**.

2. COMMENCEMENT, DURATION AND OPTION TO RENEW

2.1 Appointment

Care Assess appoints Your Organisation to provide the Services on the terms and conditions in this Agreement and Your Organisation accepts the appointment as a Contractor to Care Assess.

2.2 Commencement

This Agreement will start on the Commencement Date and will continue until the Termination Date.

2.3 **Option to renew**

Care Assess has the option to appoint Your Organisation (on the terms and conditions in this Agreement) for an additional period as specified by Care Assess in writing, and Your Organisation has the option to accept that appointment within the timeframe specified in Care Assess' offer. If the Agreement is extended in this way, the terms and conditions of this Agreement will continue to apply during the extended period until the new Termination Date.

3. OBLIGATIONS OF THE CONTRACTOR

3.1 **Provision of Personnel**

- (a) The Services under this Agreement must be provided by employed personnel of Your Organisation who have the required qualifications outlined in the attached documentation and who meet the other requirements outlined in the attached documentation listed in **SCHEDULE M**.
- (b) Your Organisation must provide, when requested, evidence of compliance applying to the duration of this Agreement, to demonstrate that Your Organisation has complied with your obligations under **subclause 3.1 (a)**.

3.2 **Provision of Services**

- (a) Your Organisation must not sub-contract the provision of the Services under this Agreement, or contract out the Services to contractors of Your Organisation.
- (b) The Services under this Agreement must be provided by employed personnel of Your Organisation.
- (c) You are free to accept or refuse the Services requested of you under this Agreement.
- (d) If Your Organisation is unable to perform the Services at any time, Your Organisation will advise Care Assess, within 1 working day of the situation arising.
- (e) If your Organisation agrees to provide any Services to Care Assess under this Agreement, you must provide the Services in accordance with this Agreement.
- (f) Your Organisation will ensure that it works the hours necessary to achieve the efficient and effective performance of the Services.
- (g) Your Organisation will provide the Services in accordance with the directions of Care Assess

3.3 **Standard of performance**

- (a) Your Organisation warrants that its personnel have and will utilise the necessary skills, experience and expertise to perform the Services in accordance with this Agreement.
- (b) Your Organisation will ensure that the Services are performed with due care, skill and diligence in a professional and ethical manner and to Care Assess' reasonable satisfaction.

3.4 **Instructions and compliance**

- (a) Your Organisation will liaise with and obtain instructions concerning the provision of the Services from the Company Contact.

- (b) Your Organisation will comply with all reasonable guidelines, requirements and instructions provided by Care Assess concerning the provision of the Services. However, it is Your Organisation's obligation to determine how the work is performed, and Your Organisation has full responsibility for the supervision and daily direction and control of employees of Your Organisation.
- (c) Your Organisation and employees of Your Organisation will comply with all applicable laws concerning the provision of the Services, including but not limited to laws relating to workplace health and safety, discrimination and harassment and privacy.
- (d) Your Organisation and employees of Your Organisation will in providing the Services comply with all policies and procedures issued and notified to Your Organisation by Care Assess in so far as applicable, including but not limited to, policies relating to workplace health and safety, discrimination and harassment, security, and privacy.
- (e) Your Organisation and employees of Your Organisation will comply with Care Assess' additional requirements of Your Organisation outlined in **SCHEDULE M**, which include attachments to this Agreement. The additional requirements of Your Organisation outlined in **SCHEDULE M** and attached to this Agreement do form part of this Agreement.

3.5 Responsibility for Your Personnel

- (a) Your Organisation acknowledges that it is responsible for ensuring the health, safety and welfare of any employees of Your Organisation while performing the Services, including providing all necessary training and safety equipment.
- (b) Your Organisation also acknowledges it is solely responsible for all remuneration, expenses, taxes, leave entitlements, superannuation, workers' compensation and other insurances in respect of any employees of Your Organisation.
- (c) Your employees will receive all payments and benefits in relation to the provision of the Services from Your Organisation

3.6 Provision of Equipment

- (a) Except for the equipment provided by Care Assess to Your Organisation,, as set out in **SCHEDULE G**, Your Organisation is responsible for the supply of all equipment necessary to provide the Services. Your Organisation is also required to ensure such equipment is suitable and maintained in good working order.

Additional obligations of the Contractor

- 3.7 The additional terms and conditions set out in **SCHEDULE M** will also apply to Your Organisation.

4. CONTRACT FEES

4.1 Payment of Contract Fees

- (a) Care Assess agrees to pay Your Organisation the Contract Fee according to the Fee Schedule provided in **Attachment A** ("Agreed hourly rates")
- (b) Care Assess will pay the Contract Fee to Your Organisation upon receipt of Your Organisation's invoice and satisfactory provision of the Services in the relevant period.

- (c) The Contract Fee is exclusive of GST.
- (d) Your Organisation must provide Care Assess a signed copy of the Contractor's declaration set out in **Attachment B** and any other Attachments required by Care Assess prior to the submission of the first invoice for Services.
- (e) Your Organisation must issue an invoice in proper form, being on Your Organisation's letterhead specifying the nature of the Services as described in **SCHEDULE E**, the number of hours worked and the date and time the Services were performed, and the names and addresses of each client for whom the Service was performed.
- (f) Your Organisation should invoice Care Assess within **14 days** of the date of Service, but in any case not later than 30 days after the date of the Services.
- (g) Care Assess will pay Your Organisation's invoice within **14 days** of receiving Your Organisation's invoices, in proper form.
- (h) You must apply to Care Assess in order to seek to increase the agreed hourly rates under this Agreement. If Care Assess approve your application, a Revised Fee Schedule must be attached as a revision to this Agreement before any increase in Fees is payable by Care Assess.
- (i) The Contract Fees specified in **Attachment A** of this Agreement for the Services is the total amount payable by Care Assess in respect of the Services. Neither Your Organisation nor employees are entitled to any other payment, remuneration or compensation from Care Assess.

5. TAXATION

5.1 Payment of GST

- (a) The fees, charges, taxes and expenses payable under this Agreement do not include GST.
- (b) If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "**GST Amount**").
- (c) The party making the supply must promptly provide a tax invoice or receipt, which is in an approved form for GST purposes, for any supply for which the party making the supply may recover GST.
- (d) If a party has incurred a cost on which GST is payable, that party may claim the cost plus GST, unless the party is entitled to an input tax credit in respect of such GST.
- (e) Any GST Amount must be paid at the same time and in the same manner as the consideration on which the GST Amount is calculated.

5.2 Registration and ABN

- (a) Each party warrants that at the time any supply is made under this Agreement on which GST is payable, that party is or will be registered under the GST Legislation.
- (b) Further, Your Organisation agrees to provide to Care Assess written evidence of registration and its Australian Business Number ("**ABN**"). Care Assess is

entitled to withhold such amounts necessary to be withheld in order for Care Assess to comply with its taxation obligations in respect of Your Organisation until Your Organisation provides its ABN.

6. NATURE OF RELATIONSHIP

- (a) The parties acknowledge and agree that Your Organisation provides the Services to Care Assess as a subcontractor to Care Assess. Nothing in this Agreement creates an employment, agency, joint venture or partnership relationship between Care Assess and Your Organisation or its employees and no party shall commit or incur any liability on the part of the other party, nor pledge or attempt to pledge its credit in any way whatsoever.
- (b) The parties acknowledge and agree that this Agreement is a '**contract for services**' (not a 'contract of service'); the relationship between the parties is expressly one of a 'principal and contractor'. Accordingly, the Contractor is not deemed to be a 'worker' for the purpose of the *Workers Rehabilitation & Compensation Act 1988 (the Act)*.
- (c) The parties further acknowledge that Your Organisation:
 - (i) will be contracted to perform specific tasks.
 - (ii) will be paid on a 'do and charge' basis of work delivered;
 - (iii) is responsible for all of the necessary materials and equipment to complete the work;
 - (iv) is free to delegate work to other employees of Your Organisation;
 - (v) has freedom in the way that you work;
 - (vi) does not provide services exclusively to Care Assess;
 - (vii) is free to accept or refuse work; and
 - (viii) is in a position to make a profit or loss.
- (d) The rights, duties, obligations and liabilities of the parties under this Agreement are several and not joint or collective. Each party will be individually responsible only for its obligations as specified in this Agreement.
- (e) A party must not act, represent or hold itself out as having authority to act as the agent or in any way bind or commit the other party to any obligation.

7. TERMINATION

7.1 Termination on notice

- (a) Subject to **clauses 7.2 and 7.3**, Care Assess or Your Organisation may terminate this Agreement at any time by giving one month's written notice of termination.
- (b) In the event of termination by Care Assess in accordance with **sub-clause (a)**, Care Assess may retain Your Organisation for all or part of the notice period. Care Assess may also direct Your Organisation not to perform the Services for the duration of the notice period.

7.2 Termination on default

- (a) Notwithstanding **clauses 7.1 and 7.3**, Care Assess may immediately terminate this Agreement by written notice to Your Organisation, if at any time:

- (i) Your Organisation commits a serious or persistent breach of any provision of this Agreement which is incapable of being remedied to Care Assess' reasonable satisfaction;
- (ii) Your Organisation fails to remedy, to Care Assess' reasonable satisfaction, a breach of any provision of this Agreement within five days of receiving a notice from Care Assess identifying the breach and requiring the breach to be remedied;
- (iii) Your Organisation becomes or in the reasonable opinion of Care Assess is in jeopardy of becoming subject to any form of insolvency administration;
- (iv) Your Organisation ceases business.

7.3 Termination on Termination Date

- (a) Subject to **clauses 7.1 and 7.2**, this Agreement will come to an end on the Termination Date or any revised Termination Date agreed in writing between the parties.

7.4 Payments on termination

- (a) If Care Assess terminates this Agreement under **clauses 7.1, 7.2 or 7.3**, Care Assess is not obliged to make any payments to Your Organisation, apart from any outstanding Contract Fees for work performed by Your Organisation up to the Termination Date.
- (b) In order for Your Organisation to be able to recover the payments noted in **sub-clause (a)** Your Organisation must issue an invoice in proper form in respect of the Contract Fees within five days of the Termination Date.

7.5 Return of property

- (a) Upon expiry or termination of this Agreement for any reason, Your Organisation must on request immediately return to Care Assess the following items obtained under this Agreement that are in its possession or control :
 - (i) a copy of all Confidential Information (as defined in this Agreement) of Care Assess; and
 - (ii) all intellectual property belonging to Care Assess as set out in clause 8.4 , including all documents, records, papers, reports, disks, data, and other material, including electronic storage devices such as hard drives and USB sticks.
 - (iii) For avoidance of doubt, any Client records (electronic or hard version) howsoever created by Your Organisation in the provision of the Services are the sole property of Your Organisation.

8. CONFIDENTIALITY

8.1 Disclosure of Confidential Information

- (a) A party must not, during this Agreement and at all times after the Termination Date, disclose to any third party any Confidential Information of the other party, either directly or indirectly, knowingly or inadvertently, except:
 - (i) if such disclosure is required in the course of providing the Services and the Person to whom the Confidential Information is disclosed warrants not to disclose the Confidential Information in accordance with **this clause**;

- (ii) with the prior written consent of the other party;
- (iii) if that part of the Confidential Information which is to be disclosed is available in the public domain (other than as a result of a breach by the other party of this Agreement); or
- (iv) if the disclosure is required by law.
- (v) if personal information belonging to a Client is released to the Client themselves or their legal guardian or representative, or with the written permission of the Client themselves to a person designated as a "person responsible" by the client themselves, such as a relevant health professionals or any family member.

8.2 Use of Confidential Information

- (a) Your Organisation must not, during this Agreement and at all times after the Termination Date, use, for its own benefit or the benefit of any third party, any Confidential Information relating to Care Assess, Care Assess employees or Clients without the prior written consent of Care Assess other than:
 - (i) in the proper provision of the Services during this Agreement;
 - (ii) as required or allowed by law.

For the avoidance of doubt, Care Assess acknowledges that nothing in this clause restricts the use by Your Organisation of information which is publicly available (other than as the result of the breach of this Agreement).

- (b) Notwithstanding any other clause, Your Organisation must provide Care Assess upon request with reasonable access to any Client related documents, records and other information for a period of up to 7 years after the Services have ended subject to relevant legislative requirements.

8.3 Notice of breach of Confidential Information

- (a) Your Organisation shall inform Care Assess of any proven breach of confidentiality.

8.4 Intellectual Property

- (a) All materials used by Your Organisation that are supplied by Care Assess will be deemed as Intellectual Property and at no time can Your Organisation claim any legal rights for use of such materials without the express written permission from Care Assess.
- (b) It is further deemed that during the period of this Agreement all material , relating to the Agreement produced by Your Organisation shall be the property of Your Organisation and shall be returned to Your Organisation upon termination of this Agreement upon its request.
- (c) Your Organisation acknowledges that materials supplied by Care Assess to Your Organisation in accordance with this Agreement, shall remain the sole property of Care Assess and all materials supplied by Care Assess during the period of this Agreement shall be returned to Care Assess upon termination of this Agreement in accordance with clause 7.5.

9. INSURANCES

9.1 Required insurances

- (a) Your Organisation must hold and keep current, at Your Organisation's own cost, with a level of coverage (amount) and duration of coverage specified by Care Assess, the following insurances:
- (i) Workers' compensation insurance as required by State or Territory legislation (see *Workers Rehabilitation & Compensation Act 1988, s.97. Obligation of employers to insure*) and/or personal accident insurance or income protection insurance if you are a sole trader and the single operator (without employees) of Your Organisation (see *Workers Rehabilitation & Compensation Act 1988, s.4B. Contractors, subsection (1)*).
 - (ii) Professional indemnity insurance in respect of Your Organisation, the Representative and any other employees of Your Organisation who are connected with the provision of the Services under this Agreement, if available on reasonable commercial terms for the Service Type/s or Activities to be delivered under this Agreement, with cover up to the amount and for the duration specified in **SCHEDULE H**;
 - (iii) Public liability insurance in respect of Your Organisation, the Representative and any other employees of Your Organisation who are connected with the provision of the Services under this Agreement, with cover up to the amount and for the duration as specified in **SCHEDULE I**; and
 - (iv) All other insurances which a prudent and professional organisation would hold if it were required to perform Your Organisation's obligations under this Agreement, with a level of coverage (amount) as is applicable, and for a duration of coverage as is applicable.

9.2 Evidence of insurances

Your Organisation must, on request, provide satisfactory evidence to Care Assess of the existence and currency of the insurance policies referred to in this clause. Such evidence includes, but is not limited to, a certificate of currency. If Your Organisation fails to provide such evidence, Care Assess may withhold payment of the Contract Fee until the evidence is provided.

10. WORKPLACE HEALTH AND SAFETY

- 10.1 Care Assess is responsible to take all reasonable care to advise Your Organisation of any potential Workplace Health & Safety issues that have been brought to the attention of Care Assess by our clients.
- 10.2 Your Organisation must ensure that Your Organisation is suitably qualified, appropriately trained and equipped for the provision of the services to Care Assess for our Clients.
- 10.3 Your Organisation is responsible for the provision and/or use of all resources required in providing the services contracted to Your Organisation under this Agreement.
- 10.4 Your Organisation is responsible for conducting any initial risk assessment of the workplace at which the Services are to be provided at Your Organisation's own cost.
- 10.5 Your Organisation must provide and maintain as far as is reasonably practicable a safe working environment, safe systems of work, and also provide and maintain in a safe condition (if applicable), or manage with safe a procedure the use of (if applicable), all equipment and substances used by any person employed or engaged by Your Organisation in the provision of the Services.

- 10.6 Your Organisation must ensure that Your Organisation takes all reasonable care and due diligence to assess and manage any potential Workplace Health & Safety issues regarding any services we contract to Your Organisation.
- 10.7 Any reasonable additional time required by Your Organisation in performing services on behalf of Care Assess to our clients under this Agreement, that is directly related to the ongoing assessment and management of Workplace Health & Safety issues encountered by Your Organisation during the provision of services, may be invoiced to Care Assess according to the agreed hourly rates, provided that Your Organisation seeks approval from the Company Contact regarding this additional expense prior to undertaking that work and provided that the Company Contact gives consent on behalf of Care Assess for that work.

11. INDEMNITY

- 11.1 Care Assess agrees to take all reasonable care to advise Your Organisation of any potential Workplace Health & Safety issues.
- 11.2 Your Organisation indemnifies Care Assess and keeps Care Assess indemnified against any loss, cost, expense or damage suffered or incurred by Care Assess arising directly or indirectly from or related to the provision of the Services, unless said injury or loss is directly attributable to some action or omission of Care Assess, including (but not limited to):
- (a) any breach or non-observance by Your Organisation or its employees of any provision of this Agreement or warranty given under this Agreement;
 - (b) any breach of any law or statute by Your Organisation or its employees; and
 - (c) any right or claim by any third party –
- save to the extent that such loss, cost, expense or damage arises from an action or omission of Care Assess or Persons for whom Care Assess is responsible.
- 11.3 Your Organisation agrees to absolve, along with Care Assess, the State and the Commonwealth from any liability for any injury or loss that may occur to any of Your Organisation's staff members in the course of providing Services on behalf of Care Assess, unless said injury or loss is directly attributable to some action or omission of Care Assess.

12. DISPUTE RESOLUTION

- 12.1 **Dispute resolution procedure**
- (a) If there is any dispute between the parties concerning this Agreement, then the parties must attempt to resolve any such dispute by the dispute resolution procedure set out herein before resorting to alternative avenues, including litigation provided that nothing herein shall preclude a party from seeking urgent interlocutory relief from a court.
 - (b) The dispute resolution procedure is as follows:
 - 1. if a party believes that a dispute has arisen, it must serve a dispute notice on the other party;
 - 2. the dispute notice must state that a dispute has arisen and identify in sufficient detail what the dispute is;
 - 3. the dispute notice must be provided to the other party's chief executive officer (or his nominee) following receipt of which the respective chief executive officers (or nominees) of the parties shall meet within a period of three days to seek to resolve the dispute;

4. failing resolution by the parties' respective chief executive officers (or their nominees) the parties may jointly request the appointment of a mediator and failing agreement within seven (7) days of service of the dispute notice, either party may apply to the President of the Tasmanian Law Society to appoint a mediator;
 5. once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
 6. if the dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- (c) The mediator may fix the charges for the mediation which must be paid equally by the parties.
 - (d) If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.
 - (e) The mediation is confidential and statements made by the mediator or the parties as well as discussions between the participants to the mediation before, after or during the mediation cannot be used in any legal proceedings.
 - (f) It shall be a term of the engagement of the mediator that the parties release the mediator from any Court proceedings relating to the dispute or the mediation.
 - (g) The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

12.2 Other proceedings

- (a) Nothing in this Agreement will prejudice the right of a party to institute proceedings to enforce payment due under this Agreement or to seek urgent injunctive or declaratory relief in respect of a dispute or any matter arising under this Agreement.

13. NON SOLICITATION OF EMPLOYEES AND CONTRACTORS AND SUPPLIERS

- 13.1 Your Organisation must not, during this Agreement and at all times after the Termination Date,
 - (a) canvass, solicit or entice away (or attempt to do any of the foregoing) any Personnel of Care Assess to terminate or to not renew or maintain or alter, any business relationship, contract or arrangement with Care Assess, or disclose any Confidential Information;
 - (b) induce or encourage any Supplier (or attempt to do any of the foregoing), to terminate or to not renew or maintain or alter, any business relationship, contract or arrangement with Care Assess or disclose any Confidential Information.
- 13.2 Care Assess acknowledges that nothing in **this clause** restricts Your Organisation from employing or contracting any person or organisation who is employed by or contracted to Care Assess when that person or organisation has responded to a publically advertised employment position or request for tender from Your Organisation.

14. SURVIVAL OF OBLIGATIONS

Clauses Error! Reference source not found., 7.4, 7.5, 8, 11, 12 and this **clause 14** shall survive termination of this Agreement.

15. WARRANTIES

- 15.1 Your Organisation warrants and agrees that:
- (a) prior to entering into this Agreement, Your Organisation was given a reasonable opportunity to obtain any advice (legal or otherwise) about this Agreement and the obligations and restraints contained in it;
 - (b) Your Organisation has had sufficient time to consider the terms of this Agreement, its implications and the advice given to them in respect of it;
 - (c) Your Organisation understands this Agreement and agree that its terms are fair and reasonable in the circumstances;
 - (d) Your Organisation has entered into this Agreement voluntarily of its own freewill without duress, coercion, undue influence or pressure from either Care Assess or any other Person of Care Assess;
 - (e) Care Assess is relying upon these warranties in executing this Agreement.

16. GENERAL PROVISIONS

- 16.1 Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.
- 16.2 If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

17. GOOD FAITH

- 17.1 Each of the parties agrees to act in good faith towards one another and to use their best endeavours to comply with the spirit and intention of this Agreement.

18. AUTHORITY

- 18.1 The parties warrant and represent to each other that each of them has full power and authority to enter into and to perform this Agreement and the entering into and performance of this Agreement does not contravene any contractual, legal or other obligations of them whatsoever. This Agreement constitutes a legal, valid and binding obligation on the parties enforceable in accordance with its terms.

19. CONTRACTOR'S RISK

- 19.1 Your Organisation is responsible for its own staff and carries out the Services at its own risk.

20. GOVERNING LAW

- 20.1 This Agreement shall be construed in accordance with and be governed by the laws of the State of Tasmania and the parties agree to submit themselves to the non-exclusive jurisdiction of the courts of that State and any courts that may hear appeals from that State, in connection with this Agreement.

21. NOTICES AND COMMUNICATIONS

21.1 Method of Giving Notices

A notice, consent, approval or other communication (each a "notice") under this Agreement must be in writing, signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail;
- (c) sent by facsimile; or
- (d) sent electronically by email,
- (e) to that party's address

21.2 Time of Receipt

A notice given to a party in accordance with this clause is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the day of actual delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission, if that report states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day; and
- (d) if sent electronically by email and confirmation is received from the relevant internet service provider that the transmission was successfully received in full and without error, on the day of transmission if the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day.

21.3 Address for Notices

For the purpose of this clause, a party ("the sender") may take the address, facsimile number and email address of another party ("the recipient") to be:

- (a) the address and numbers set out in this Agreement; or
- (b) the last address or numbers notified by the recipient to the sender.

22. SEVERANCE

- 22.1 If any provision of this Agreement shall be invalid and unenforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.

23. FURTHER ASSURANCE

- 23.1 Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

24. WAIVER

- 24.1 No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party therefrom, shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by the parties, and then such

variation, modification, waiver or consent shall be effective only to the extent to which it may be made or given.

- 24.2 No failure, delay, relaxation or indulgence on the part of any party in exercising any power or rights conferred upon such party in terms of this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other or future exercise thereof, or the exercise of any other power or right under this Agreement.

25. ASSIGNMENT

- 25.1 Neither party may assign any of their rights, benefits or obligations under this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.

26. CONSENT

- 26.1 Where this Agreement provides that any particular transaction or matter requires the consent, approval or agreement of any party that consent, approval or agreement may be given subject to such terms and conditions as that party may impose and any breach of such terms and conditions by any person will be deemed to be a breach of the terms of this Agreement.

27. FORCE MAJEURE

- 27.1 Neither party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first party's reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike and riots and either party may terminate the Agreement if such an event occurs and continues for a period of 30 days or more.

28. NO WARRANTY BY CARE ASSESS

- 28.1 Care Assess does not warrant, represent or in any way guarantee the amount of Services which will be required under this agreement.

29. COMPETITION

- 29.1 Notwithstanding anything contained in this Agreement to the contrary, nothing prevents the parties from competing against each other or joining with other third parties concerning anything covered in this Agreement, or any other similar contract.

30. SUSPENSION OF PAYMENT

- 30.1 If under clause 38.3 Care Assess chooses to suspend payment of any fees due under the Agreement because of a breach of this Agreement, such suspension of payments may be continued until the default is rectified or the instruction, direction or determination is carried out.

31. REPAYMENT OF FEES

- 31.1 Your Organisation is required to repay Fees to Care Assess in any of the circumstances set out below:
- (a) Care Assess has overpaid Fees to Your Organisation;
 - (b) Care Assess has paid Your Organisation Fees for an activity or part of an activity which has not been delivered in accordance with this Agreement or

- the applicable Service, including because the Service has been terminated or reduced in scope;
- (c) Care Assess has paid Your Organisation Fees that Your Organisation has incorrectly claimed;

32. SUBCONTRACTING

- 32.1 The parties agree that any obligations or rights that arise under this Agreement are not to be subcontracted or assigned by a party to any other party without the written agreement of Care Assess.

33. AMENDMENT AND VARIATION

- 33.1 This Agreement may only be amended or varied or supplemented by an Agreement in writing signed by the parties.
- 33.2 All variations to this Agreement, if agreed in writing by both parties, may be attached to this Agreement to vary any section or clause of this agreement.
- 33.3 Care Assess has the right to terminate this agreement if any variation requested by Care Assess cannot be agreed to by Your Organisation, subject to the notice requirements of **clause 7.1 (a)** of this Agreement.

34. AUTHORITY OF REPRESENTATIVES

- 34.1 The parties acknowledge that for the purposes of ensuring that the requirements of this Agreement are met, that each party may act by their duly appointed representative, and that all authorised actions taken by those representatives are binding on the respective parties. The authorised representative is that representative of a party that is notified to the other party from time to time in writing.

35. REVIEW OF AGREEMENT

- 35.1 Each party agrees to ensure that reviews are carried out, at such times that are agreed to by the parties in relation to their respective obligations under the Agreement.
- 35.2 Your Organisation agrees to provide evidence of compliance to all sections of this agreement as required by Care Assess during review.

36. DOCUMENTATION AND COUNTERPARTS

- 36.1 This Agreement may reference any other agreed documentation or other agreed documentation may be referenced to this Agreement. Any and all Schedules and Attachments to this Agreement and provided with this Agreement, do form part of this Agreement.
- 36.2 This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all such counterparts together shall be deemed to constitute one and the same instrument

37. PERMITS AND APPROVALS

- 37.1 Each party is to, at their own expense, obtain all necessary approvals, permits, authorisations and licences that are required in order to meet their respective obligations under the Agreement.

38. BREACH OF AGREEMENT

- 38.1 Your Organisation will have breached this Agreement if Your Organisation defaults in

the performance or observance of any condition, stipulation, obligation or other term contained in this Agreement, or refuses or neglects to carry out any instruction or determination which Care Assess is empowered to give or make under this Agreement; or by any action or default of action causes the agreement between Care Assess and the Commonwealth of Australia to come into breach

38.2 If there has been a breach of this Agreement by Your Organisation, Care Assess may require Your Organisation by written notice, to provide written reasons why the powers contained within this **clause** should not be exercised.

38.3 If within the period of time set out in the notice from Care Assess, Your Organisation fails or refuses to provide adequate, satisfactory, or reasonable written reason to Care Assess as to the failure, default, refusal or neglect, Care Assess may: suspend payment of any payments due under this Agreement in accordance with clause 30.1; and/or, terminate this Agreement in accordance with clause 7.1(a).

39. ENTIRE AGREEMENT

39.1 Save for and except for the oral and written directions referred to in this Agreement, this Agreement constitutes the sole and entire Agreement and understanding between the parties and there are no other oral undertakings, warranties, representations, guarantees or other terms, conditions.

SIGNED AS AN AGREEMENT:

SIGNED for an on behalf of **CARE ASSESSMENT CONSULTANTS PTY LTD (ABN 67 098 161 105)** by its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Print Name of Witness

Print Name of Authorised
Representative

Date Signed

SIGNED for an on behalf of «**CONTNAME**» (ABN «**CONTABN**») trading as «**TRADINGNAME**» by authority of its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Print Name of Witness

Print Name of Authorised
Representative

Date Signed

SCHEDULES

- SCHEDULE A -** Date of Agreement: «**AGREEDATE**»
- SCHEDULE B -** Party details:
Contractor: «**CONTNAME**» (ABN «**CONTABN**») trading as «**TRADINGNAME**» of «**CONTADDRESS**».
Representative: «**REPNAME**»
- SCHEDULE C -** Applicable State or Territory: Tasmania
- SCHEDULE D -** Commencement Date: «**COMMDATE**»
- SCHEDULE E -** Description of Services:

Domestic assistance

Domestic assistance helps clients with domestic tasks, including:

- household cleaning
- dish washing
- clothes washing and ironing
- bed making
- bill paying for the entitled person (unaccompanied)
- shopping for the entitled person (unaccompanied)
- cleaning internal windows
- assistance with eating and some meal preparation – not complete cooking of meals

Personal care

Personal care provides assistance with daily self-care tasks in order to help a client maintain appropriate standards of hygiene and grooming, including:

- bathing / showering;
- toileting;
- dressing / grooming;
- assistance with eating;
- moving about the house;
- reinforcement / encouragement with mobility and passive exercises.

Home maintenance

Home maintenance is assistance to keep a client's home in a safe and habitable condition, including:

- minor home and yard maintenance and repair such as
 - replacing light bulbs and tap washers
 - installing batteries in smoke/security alarms
 - gutter / window / fan cleaning

- clearing of debris following natural disasters
- collection / cutting of firewood in rural and remote areas
- safety-related garden maintenance includes:
 - pruning, lawn mowing or weeding
 - one-off yard clean ups and removal of rubbish

Social support

Social support assists a client to participate in community life through meeting their need for social contact and accompaniment. Activities include:

- visiting services;
- telephone based monitoring services; and
- assisting the person with shopping and other related activities.

Nursing care

Nursing care is the clinical care provided by a registered or enrolled nurse. This care is directed to treatment and monitoring of medically diagnosed clinical conditions. The care can include recording client observations. Nursing care can be delivered in the client's home, or in a clinic or other location. Nursing care must be provided by a Registered Nurse or an Enrolled Nurse.

SCHEDULE F -

Company Contact:

Jane Smith (Operations Manager)

- Email jane.smith@careassess.com.au
- Phone 03 62447700

SCHEDULE G-

Your Organisation is responsible for the supply of all equipment necessary in the provision of the Services, except for any equipment provided by Care Assess to Your Organisation.

Your Organisation is also required to ensure such equipment is suitable and maintained in good working order.

Equipment Provided by Care Assess: Nil

SCHEDULE H -

Level of professional indemnity insurance required:
Not less than ten million dollars (\$10,000,000) on a per claim basis.

Duration of professional indemnity insurance required:
If the policy is an occurrence policy, the policy is required to be maintained from the Agreement Commencement Date until the Agreement Termination Date. If the policy is a claims made policy, the policy is required to be maintained from the Agreement Commencement Date to seven years after the Agreement Termination Date.

SCHEDULE I - Level of public liability insurance required:
Not less than ten million dollars (\$10,000,000) on a per claim basis.

Duration of public liability insurance required:
If the policy is an occurrence policy, the policy is required to be maintained from the Agreement Commencement Date until the Agreement Termination Date. If the policy is a claims made policy, the policy is required to be maintained from the Agreement Commencement Date to seven years after the Agreement Termination Date.

SCHEDULE J - Timetable: The times and deadlines for the provision of Services are specified in the attached documentation listed in **SCHEDULE M**.

SCHEDULE K - Termination Date: 30 June 2015

SCHEDULE L - Not applicable

SCHEDULE M - Additional requirements of this agreement

A) ADDITIONAL REQUIREMENTS OF ALL "CONTRACTORS"

- Your Organisation is required to comply with the requirements set out in Care Assess' Service Provider Induction and Procedures Manual, the "*Provider's Manual*" (**ATTACHMENT C**), which may be revised and updated from time to time, and will be provided to Your Organisation.
- Your Organisation is required to comply with the requirements provided and set out in Care Assess' care-provider policies and procedures document, the "*Service Handbook*" (**ATTACHMENT D**), which may be revised and updated from time to time, and will be provided to Your Organisation.

B) ADDITIONAL REQUIREMENTS OF YOUR ORGANISATION AS A "SUBCONTRACTOR"

Set out below are additional terms and conditions, which are a condition for compliance within our Commonwealth Funding Agreements of Contractors, because

the Contractor is deemed to be a “subcontractors” under Care Assess’ Aged Care Funding Agreement with the Commonwealth Government.

This **SCHEDULE M** references **ATTACHMENT E – TERMS AND CONDITIONS FOR AGED CARE FUNDING MARCH 2012** (“Care Assess’ Aged Care Funding Agreement”)

1. WORKING PURSUANT TO THE HACC PROGRAM

- 1.1. Care Assess may subcontract part of our obligations under Care Assess’ Aged Care Funding Agreement, subject to the requirements set out in those agreements.
- 1.2. Care Assess must provide prior written notice to the Commonwealth of the name and details of Your Organisation (as a Primary Subcontractor) and this subcontract.

2. REQUIREMENTS FOR SUBCONTRACTING PURSUANT TO THE HACC PROGRAM

- 2.1. Care Assess remains entirely responsible for Your Organisation and for all work Your Organisation performs, even if the Commonwealth has been notified of Your Organisation as a Primary Subcontractor.
- 2.2. Care Assess is required to ensure that:
 - 2.2.1. This subcontract is consistent with Care Assess’ obligations under Care Assess’ Aged Care Funding Agreement;
 - 2.2.2. This subcontract does not conflict with or affects the Commonwealth’s rights or interests under our Aged Care Funding Agreement;
 - 2.2.3. This subcontract requires Your Organisation to acknowledge that Your Organisation may be considered a ‘Commonwealth service provider’ for the purposes of the Ombudsman Act 1976 (Cth) and subject to investigation by the Ombudsman under that Act.
 - 2.2.4. All subcontracts contain provisions which are Equivalent to the following clauses of Care Assess’ Aged Care Funding Agreement (which means that this subcontract must allow the Commonwealth to exercise equivalent rights in relation to Your Organisation as the rights it can exercise in relation to Care Assess under the following clauses, and require Your Organisation to comply with obligations which are equivalent to Care Assess’ obligations under the following clauses) provided in **ATTACHMENT E**: Responsibilities; Warranties; Laws and policies; Records of income and expenditure and other records; Acknowledging the Funding; Police checks; Your Personnel; Specified Personnel and replacement of Your Personnel; Subcontracting; Performance management; Intellectual Property; Privacy; Confidential information; Freedom of information; Access to premises and records; Indemnity; Insurance; Conflict of interest; Notification of incidents and issues; Terminating this Agreement; and Certain clauses survive after this Agreement ends.

3. PROVISIONS BY WHICH THE CONTRACTOR AGREES TO BE BOUND

- 3.1. Your organisation expressly agrees that when entering into this sub-contract, that the following terms and conditions contained in **ATTACHMENT E** apply to and form part of this Agreement in the same manner as if your organisation was a party to the Agreement contained in **ATTACHMENT E** or alternative were incorporated within the main body of this sub-contract as terms and conditions as between your organisation and Care Assess.
- 3.2. Your organisation expressly agrees not to do or permit to be done anything that would result in Care Assess breaching their agreement with the Commonwealth pursuant to **ATTACHMENT E** and without limiting the foregoing, provisions in the manner referred to in Clause 3.1 above:
- (a) Responsibilities (ATTACHMENT E clause 4);
 - (b) Warranties (ATTACHMENT E clause 5);
 - (c) Laws and policies (ATTACHMENT E clause 6);
 - (d) Records of income and expenditure and other records (ATTACHMENT E clause 9);
 - (e) Acknowledging the Funding (ATTACHMENT E clause 14);
 - (f) Police checks (ATTACHMENT E clause 19);
 - (g) Your Personnel (ATTACHMENT E clause 20);
 - (h) Specified Personnel and replacement of Your Personnel (ATTACHMENT E clause 21);
 - (i) Subcontracting (ATTACHMENT E clause 22);
 - (j) Performance management (ATTACHMENT E clause 24);
 - (k) Intellectual Property (ATTACHMENT E clause 25);
 - (l) Privacy (ATTACHMENT E clause 26);
 - (m) Confidential information (ATTACHMENT E clause 27);
 - (n) Freedom of information (ATTACHMENT E clause 28);
 - (o) Access to premises and records (ATTACHMENT E clause 29);
 - (p) Indemnity (ATTACHMENT E clause 32);
 - (q) Conflict of interest (ATTACHMENT E clause 34);
 - (r) Notification of incidents and issues (ATTACHMENT E clause 35);
 - (s) Suspending funding, terminating this Agreement or reducing the scope of this Agreement (ATTACHMENT E clause 37);
 - (t) Repayment of Funding (ATTACHMENT E clause 38); and
 - (u) Certain clauses survive after this Agreement ends (ATTACHMENT E clause 49).

4. ADDITIONAL WARRANTIES

Your Organisation represents and expressly warrants to the Care Assess that:

- 4.1. In entering into this Subcontract, Your Organisation acknowledges that Your Organisation may be considered a 'Commonwealth service provider' for the purposes of the Ombudsman Act 1976 (Cth) and subject to investigation by the Ombudsman under that Act, and Your Organisation acknowledges that the Commonwealth will not be responsible for the cost of any such investigation by the Ombudsman;

- 4.2. In entering into this subcontract, Your Organisation will allow the Commonwealth to exercise equivalent rights in relation to Your Organisation as the rights it can exercise in relation to Care Assess under the provisions contained in **clause 3** above.
- 4.3. In entering into this subcontract, Your Organisation will not do anything to conflict or affect the Commonwealth's rights or interests under Care Assess' Aged Care Funding Agreement (**ATTACHMENT E**).
- 4.4. Your Organisation acknowledges that Care Assess is relying on the warranties and representations Your Organisation has provided in this Warranty in entering into this Agreement and each Service.
- 4.5. Your Organisation is required to notify Care Assess as soon as practicable if any of the warranties and representations Your Organisation has provided in this Warranty cease to be true.

5. ADDRESSING COMPLAINTS

- 5.1. Care Assess is required to implement and maintain for the Agreement Period a process for receiving and addressing complaints from Clients and their representatives in connection with the Service, including complaints concerning Your Organisation.
- 5.2. Your Organisation agrees to comply with any request made of Your Organisation by Care Assess in our process for receiving and addressing complaints concerning Your Organisation from Clients and their representatives in connection with the Service.
- 5.3. Your Organisation agrees to not cease providing goods or services under the Service, refuse a person access to an activity under the Service, or otherwise take recrimination against any person because they have made a complaint. This does not prevent Your Organisation from taking any action which is or may be necessary to prevent harm to any person

ATTACHMENTS

ATTACHMENT A – Fee schedule

ATTACHMENT B - Your Organisation's Contractor's Declaration

In submitting each and every invoice in this matter, Your Organisation declares that:

- Your Organisation has paid all remuneration payable to its employees in respect of the work.
- Your Organisation has paid all insurance premiums required by this Agreement which are payable in respect of the work.
- Your Organisation is willing and able to show Care Assess the current Certificate of Currency in respect of all insurances required by this Agreement if Care Assess requests to see it.
- Your Organisation has paid all of its payroll tax payable in relation to its employees in respect of the work.
- Your Organisation indemnifies Care Assess and keeps Care Assess indemnified (on a full indemnity basis) against any loss, cost, expense or damage suffered or incurred by Care Assess arising directly or indirectly from any statement made by Your Organisation in this invoice being false.
- Your Organisation warrants that subject to subclauses 7.1 and 7.2 this declaration will remain true and current until the Termination Date of the contract.

In this declaration, "the work" means work done in connection with the Services to which this invoice relates.

SIGNED for and on behalf of «**CONTNAME**» by its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Print Name of Witness

Print Name of Authorised
Representative

Date Signed

ATTACHMENT C – PROVIDER'S MANUAL

ATTACHMENT D – SERVICE HANDBOOK

ATTACHMENT E – TERMS AND CONDITIONS FOR AGED CARE FUNDING MARCH 2012 (“Care Assess’ Aged Care Funding Agreement”)