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Date

Miscellaneous Services Deed in relation to

Participant's full name

The Participant identified in Item 1 of Schedule 1

and

The Service Provider identified in Item 2 of Schedule 1

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Miscellaneous Services Deed

Dated

Parties

Name

Address

Short name **Participant**

Name

Address

Short name **Service Provider**

Background

- A. The **Participant** has a disability, meets the disability requirements and has a plan under the NDIS Act.

- B. The **Public Advocate** provides guardianship and advocacy services to people living with a disability in Victoria. The **Public Advocate** has been appointed by the Victorian Civil and Administrative Tribunal as a **Guardian** of the **Participant**, with powers and duties to make decisions concerning services to be provided to the **Participant**.

- C. The **Service Provider** has represented that it has the skills, expertise and experience necessary to provide the **Services** to the **Participant** as required by the **Participant's Plan**, in accordance with the terms and conditions of this Deed.

Agreed Terms

1. **Definitions and interpretation**

1.1 **Definitions**

In this Deed unless expressed or implied to the contrary:

Authority means a government or governmental, semi-governmental or judicial entity or authority.

Automatic Extension End Date means the date on which the Automatic Extension comes to an end.

Business Day means Monday to Friday excluding public holidays in Victoria

Consumer Affairs Victoria as set out in Chapter 6 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

Deed means this Deed between the **Participant** and the Service Provider and includes its Schedules and any documents incorporated by reference.

Disability Services Commissioner means the person appointed under section 14 of the *Disability Act 2006* (Vic).

Dispute means a dispute arising under or in connection with this Deed.

End Date means the date specified in item 6 of Schedule 1 or, where this agreement is automatically extended, the end date of the period for which the agreement is extended in the updated Schedule 2.

Guardian means the **Public Advocate** or his or her delegate.

Guardianship and Administration Act means the *Guardianship and Administration Act 2019* (Vic).

NDIS Act means the *National Disability Insurance Scheme Act 2013*.

Personnel means employees, agents, contractors or subcontractors including representatives.

Participant means the **Participant** specified in item 1 of Schedule 1.

Participant's Plan means the **Participant's** plan that is prepared in accordance with the NDIS Act and which starts and ends on the dates set out in items 3 and 4 of Schedule 1.

Public Advocate means the person appointed under Part 2 of the Guardianship and Administration Act.

Services means the services described in Schedule 2.

Service Provider means the person described in item 2 of Schedule 1.

Start Date means the date in Item 5 of Schedule 1.

Term means the term of this Deed, as determined under clause 2.

Interpretation

1.2

1.2.1 This Deed is to be construed in accordance with the laws of Victoria.

1.2.2 In this Deed, except where the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to:
 - (i) a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Deed all of which are deemed part of this Deed;
 - (ii) a person includes the legal personal representatives, successors and permitted assigns of that person;
 - (iii) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;

- (iv) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- (v) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (d) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed; and
- (e) where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

1.2.3 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

2. Term

2.1 Term of Deed

The Deed starts on the **Start Date** and continues for the period until the **End Date**.

2.2 Automatic Extension

Where the parties have agreed in Schedule 1, the period of this Deed is taken to have been automatically extended from the **End Date** for the same period and will continue to be automatically extended for a maximum of three periods (the original period plus two extensions) or until terminated in accordance with clause 6.

Where the Deed has been automatically extended, the **End Date** of the automatically extended Deed is known as the **Automatic Extension End Date**, and so on for all automatic extensions of the Deed.

3. Services

3.1 Acknowledgements

The parties acknowledge and agree:

- 3.1.1 the **Participant** is a person with a disability and, in providing the **Services**, the **Service Provider** will have regard to the human rights of the **Participant** as set out in the United Nations Convention on the Rights of Persons with Disabilities and the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- 3.1.2 the **Guardian** signs this Deed on behalf of the **Participant** pursuant to powers vested in the **Guardian** in accordance with the **Guardianship and Administration Act**;
- 3.1.3 the **Guardian** may exercise all of the rights and powers of the **Participant** on behalf of the **Participant** in accordance with the **Guardianship and Administration Act**;
- 3.1.4 this Deed includes expectations as to how the **Guardian** will act to exercise the **Participant's** rights in relation to the **Services**;
- 3.1.5 the rights, duties and responsibilities of the **Guardian** cease upon the cessation of the Public Advocate's appointment as **Guardian**; and
- 3.1.6 this Deed is otherwise unaffected by the cessation of the Public Advocate's appointment as **Guardian** unless the parties vary or terminate it in accordance with its terms.

3.2 Performance standards

The **Service Provider** must provide the **Services** to the **Participant** and in doing so, must perform the **Services**:

- 3.2.1 for the purposes of achieving the goals in, and in compliance with, the **Participant's Plan**;
- 3.2.2 in a courteous and respectful manner, with due skill, diligence, care and consistent with the highest professional and industry standards; and
- 3.2.3 in accordance with this Deed including all timeframes specified in Schedule 2, all applicable laws and any reasonable request of the **Guardian** from time to time.

3.3 The Guardian's responsibilities

The **Guardian** agrees to:

- 3.3.1 cooperate with the **Service Provider** in order for the **Service Provider** to provide the **Services** to meet the **Participant's** needs;
- 3.3.2 be courteous and respectful towards the **Service Provider's** Personnel at all times;
- 3.3.3 keep the **Service Provider** informed of any changes to the **Participant's** situation known to the **Guardian** that may impact on the provision of the **Services**; and
- 3.3.4 provide feedback as needed regarding the **Services** to the **Service Provider** from time to time.

3.4 Privacy

The **Service Provider** must:

- 3.4.1 collect, use, disclose and otherwise handle Personal Information (as that term is defined in the Privacy Act 1988 (Cth) and the *Privacy and Data Protection Act 2014* (Vic)) and health information (as that term is defined in the *Health Records Act 2001* (Vic)) collected by or on behalf of the **Service Provider** in connection with the **Services** or this Deed only for the purpose of performing its obligations under this Deed and only in compliance with the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic) and the *NDIS Act 2013*;
- 3.4.2 notify the **Participant** and **Guardian** in writing of any actual or suspected breach of its obligations under this clause 3.4; and
- 3.4.3 provide the **Participant** and **Guardian** with a copy of its privacy policies and procedures, within 30 days of the **Start Date** or such other date as agreed by the parties.

4. Insurance

- 4.1 The **Service Provider** warrants that, during the Term and for the period after the Term as specified in Item 7 of Schedule 1, it will maintain adequate levels of the insurance policies set out in Item 7 of Schedule 1.
- 4.2 On request, the **Service Provider** must provide the **Participant** with certificates of currency evidencing its compliance with this clause 4.

5. Complaints and Dispute resolution

5.1 The parties must attempt to resolve all complaints and disputes under this clause 5 before starting any court proceedings, other than court proceedings for interlocutory relief.

5.2 The **Service Provider** must inform the **Participant** of its complaints and dispute handling processes. The parties agree to use these processes to try to resolve any complaint or dispute.

5.3 If, following the processes in good faith, the parties have not resolved the complaint or dispute, the **Participant** may refer the complaint or dispute to the **NDIS Quality & Safeguards Commission, Consumer Affairs Victoria** or the **Disability Services Commissioner**, for determination or resolution.

5.4 Despite the existence of a complaint or dispute, the parties must continue to perform their obligations under this Deed.

6. Termination

6.1 Termination for convenience

The **Participant** may terminate this Deed at any time without cause and without needing to provide reasons by giving the **Service Provider** 30 days' notice.

6.2 Termination by the Participant

The **Participant** may terminate this Deed immediately by notice to the **Service Provider** if:

6.2.1 the **Service Provider** commits a breach of this Deed which, in the opinion of the **Participant**, cannot be remedied;

6.2.2 the **Service Provider** commits a breach of this Deed and the **Service Provider**:

(a) fails to commence action to remedy the breach within 1 Business Day after the **Participant** has served notice requiring it to do so; or

(b) having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event, within 5 Business Days of the **Participant's** notice.

6.3 Service Provider to confirm termination with Guardian

Where the **Service Provider** has received a notice to terminate from the **Participant**, the **Service Provider** must contact the **Guardian** and ensure that the **Guardian** is aware of the purported termination, prior to ceasing to provide the **Services** to the **Participant**.

6.4 Termination by the Service Provider

The **Service Provider** may terminate this Deed at any time by giving the **Participant** and **Guardian** 30 days' notice.

Effect of termination or expiry

6.5

Termination or expiry of this Deed will not affect:

6.5.1 any accrued rights or remedies of either party; or

6.5.2 the operation of clauses 3.4, 7 and this clause 6.5 or any other provision which, by its nature, are intended to survive termination or expiry of this Deed.

6.6

Termination as a consequence of changes to the Participant's NDIS Plan

This agreement will terminate where funding for the services agreed to under this Deed ceases in the **Participant's** plan

7. General

7.1 Amendment

Except as provided for in clause 7.1.1, this Deed may only be varied or replaced by a document executed by the parties.

7.1.1 Where this agreement is automatically extended as set out in clause 2 and Schedule 1, the **Service Provider** shall provide the **Participant** with an update of Schedule 2 within 14 days of the **Automatic Extension End Date**.

7.2 Entire understanding

This Deed contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Deed and have no effect.

7.3 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of the **Participant** or is within the discretion of the **Participant**, then consent or approval may be given, or the discretion exercised conditionally or unconditionally or withheld by the **Participant** in its absolute discretion unless express provision to the contrary is made.

7.4 Duty to cooperate

Each party must do everything reasonably necessary to give full effect to this agreement.

7.5 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Deed and other documents referred to in it, unless expressly stated otherwise.

7.6 Waiver and exercise of rights

A right relating to this Deed may only be waived by a written notice signed by the party waiving the right. A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

7.7 Rights and remedies

The rights and remedies conferred on a party by this Deed are in addition to all other rights and remedies of that party.

7.8 Assignment

The **Service Provider** must not assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the **Participant**.

7.9 No relationship

Nothing in this Deed will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Deed will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

7.10 Rule of construction

In the interpretation of this Deed, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Deed or any part of it.

7.11 Counterparts

This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

7.12 Notices

Any notices required to be served by any party to the other party must be in writing and may be via email.

7.13 Governing law and jurisdiction

This agreement is governed by the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of Victoria and courts entitled to hear appeals from those courts.

Signing Page

Executed by the parties as a Deed

SIGNED for and on behalf of
the **Participant** by the **Guardian**

Signature

Name of Guardian signing

This document was electronically signed in accordance with the COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020

SIGNED for and on behalf of

Name of Representative

Signature

Name of Organisation

Name of person signing

ABN

by an authorised representative

This document was electronically signed in accordance with the COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020

Schedule 1 Deed details

It is agreed that:

(Please select one of the following)

This Deed is to be automatically extended in accordance with clause 2.2 and clause 7.1.1

OR

This Deed will terminate on the **End Date** of service as indicated below.

Item	Description	Details
1.	Participant	
2.	Service Provider name ABN Address	
3.	NDIS Plan start date	
4.	NDIS Plan end/review date	
5.	Start date (of service)	
6.	End date (of service)	(The end date cannot be after the end date of the NDIS Plan)
7.	Insurance	Public liability Period to be maintained after Term: NA Professional indemnity Period to be maintained after Term: 7 years Workers compensation
8.	Notices	
	The Participant	Address: Email (if applicable):
		Guardian details: Name Email address Phone number 1300 309 337
	Service Provider	Address: Email: Representative name:

Schedule 2 Services

Provider Notifications:

GST

This is a supply of one or more reasonable and necessary supports specified in the Schedule of Services included, under section 33 (2) of the National Disability Insurance Scheme Act 2013 (NDIS Act) pursuant to the Participant's NDIS Plan currently in effect under section 37 of the NDIS Act.

Temporary Transformation Payment (TTP)

The Provider informs the Participant that they are compliant with the TTP terms set out in the NDIS Price Guide and therefore entitled to use the TTP support items (and price limits).

Please tick the relevant box below to indicate how the NDIS Plan is managed:

Managed by the **Participant**

Managed by the **Participant's** Nominee

Managed by the NDIA

Managed by a Registered Plan Management Provider

Service 1

Name of the support	Line item from price guide	List the price of the support	List when and where the support will be provided.
		No. of hours per session	
		Hourly rate \$	
		No. of hours X rate \$	
		Multiples in service period	
		Total for period \$	

**Schedule 2
Services (continued)**

Service 2

Name of the support	Line item from price guide	List the price of the support	List when and where the support will be provided.
		No. of hours per session	
		Hourly rate \$	
		No. of hours X rate \$	
		Multiples in service period	
		Total for period \$	

Service 3

Name of the support	Line item from price guide	List the price of the support	List when and where the support will be provided.
		No. of hours per session	
		Hourly rate \$	
		No. of hours X rate \$	
		Multiples in service period	
		Total for period \$	

If you are providing more than three services, please attach additional details in this format.