

Miscellaneous Services Deed in relation to

Participant's full name

and

Service Provider (Name of organisation)

Miscellaneous Services Deed

PARTIES

Participant

Name	Address
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Service Provider

Name of staff	Address
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Name of organisation	ABN
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BACKGROUND

- A. The **Participant** is a person with disability who is a participant in the **NDIS** and has a plan under the **NDIS Act** (the **Participant's Plan**) which includes a statement of participant supports.
- B. The **Public Advocate** has been appointed by the Victorian Civil and Administrative Tribunal as **Guardian** for the **Participant**, with powers and duties to make decisions in relation to services to be provided to the **Participant**.
- C. The **Service Provider** represents that it has the skills, expertise and experience necessary to provide the **Services** to the **Participant**, which will be funded through the **Participant's Plan**, in accordance with

the terms and conditions of this **Deed**.

D. The **Guardian** wishes to engage the **Service Provider** to provide the **Services** for the **Participant** under the **Participant's plan**, and the **Service Provider** has agreed to be so engaged.

E. This **Deed** sets out terms and conditions upon which the **Service Provider** will provide the **Services** to the **Participant**.

AGREED TERMS

1. Definitions and interpretation

1.1 Definitions

In this **Deed** unless expressed or implied to the contrary:

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, any **Deed Amendment Schedules** and any documents incorporated by reference.

Deed Amendment Schedule means a Deed Amendment Schedule made in accordance with clause 7.1.2 during the **Term** of the **Deed**.

Disability Services Commissioner means the person appointed to that role 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 2 of Schedule 1 or, where one or more **Deed Amendment Schedule** has been made, the 'Participant's Plan end date' specified in the most recent **Deed Amendment Schedule**.

Guardian means the person appointed as the **Participant's** guardian in a guardianship order made by the Victorian Civil and Administrative Tribunal, namely the **Public Advocate**, or the person to whom the **Public Advocate** has delegated his or her powers and duties in respect of that appointment.

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

Health Information has the same meaning as in the *Health Records Act 2001* (Vic).

NDIA means the National Disability Insurance Agency, established by section 117 of the **NDIS Act**.

NDIS means the National Disability Insurance Scheme, being the arrangements set out in Chapter 3 of the

NDIS Act.

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

NDIS Pricing Arrangements and Price Limits means the document of the **NDIA** that sets out the general pricing arrangements that apply to all supports in the **NDIS** and the specific arrangements that apply to individual supports.

NDIS Quality and Safeguards Commission means the Commission established by section 181A of the **NDIS Act**.

NDIS Support Catalogue means the document of the **NDIA** that provides information on the current price limits for each support item and indicates for each price-limited support item the claim types that can be used.

Personal Information means personal information within the definition in either the *Privacy Act 1988* (Cth) or the *Privacy and Data Protection Act 2014* (Vic).

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

Participant's Plan means the **Participant's** plan that is in effect under section 37 of the **NDIS Act** from time to time during the **Term** of the **Deed**.

Public Advocate means the person appointed as the Public Advocate, being the office continued in existence by section 10 of the *Guardianship and Administration Act 2019* (Vic).

Service Provider means the person or organisation engaged to provide **Services** to the **Participant** in accordance with this **Deed**.

Services means the services set out in Schedule 2 and, where one or more **Deed Amendment Schedules** have been made during the **Term** of the **Deed**, the services set out in those **Deed Amendment Schedules**.

Start Date means the date specified in item 1 of Schedule 1.

Support Coordinator means the person or organisation engaged to provide support coordination services to the **Participant**, which includes assisting the **Participant** to implement the **Participant's Plan**, building the **Participant's** capacity and connecting the **Participant** to **NDIS** service providers and community, mainstream and other government services.

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

1.2 Interpretation

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

This **Deed** commences on the **Start Date** or the date on which the **Service Provider** was engaged to provide the **Services**, whichever is later, and continues for the period until the **End Date**, unless terminated earlier in accordance with clause 6.

3. Acknowledgements, Warranties and Responsibilities

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 the **Participant's Guardian**;

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; and

3.1.7 a **Deed Amendment Schedule** must be made in accordance with clause 7.1.2 to continue the provision of **Services** (with or without variation) beyond the **Participant's Plan** end date specified in item 2 of Schedule 1.

3.2 Service Provider warranties

The **Service Provider** warrants that:

3.2.1 it has the skills, expertise and experience necessary to provide the **Services** to the **Participant** in accordance with the terms and conditions of this **Deed**;

3.2.2 prior to entering the start date and end date of the **Participant's Plan** at items 1 and 2 of Schedule 1, it verified with the **Support Coordinator** the accuracy of those dates;

3.2.3 prior to entering the details of **Services** in Schedule 2, it confirmed with the **Support Coordinator** that there is sufficient funding available in the **Participant's Plan** for the total cost for all **Services** listed in Schedule 2;

3.2.4 it will only charge the **Participant** for the provision of **Services** listed in Schedule 2 or in any **Deed Amendment Schedule** made during the **Term** of the **Deed**; and

3.2.5 regardless of the hourly rate or unit price specified for any support item in Schedule 2 or in any **Deed Amendment Schedule** made during the **Term** of the **Deed**, it will charge the **Participant** in accordance with the **NDIS Pricing Arrangements and Price Limits** and not more than the current price limit for the relevant support item specified in the current **NDIS Support Catalogue** (as updated by the **NDIA** from time to time)

3.3 Service Provider's responsibilities

The **Service Provider** agrees to:

3.3.1 provide the **Participant** with information concerning the provision of the **Services** in formats

understood by the **Participant**;

3.3.2 consult the **Participant** about how the **Service Provider** will provide the **Services**;

3.3.3 keep the **Guardian** informed of any changes to the **Participant's** situation known to the **Service Provider** that may impact on the provision of the **Services** or the **Participant's** support needs;

3.3.4 treat the **Participant** and the **Guardian** with courtesy and respect at all times;

3.3.5 communicate openly and honestly with the **Participant** and the **Guardian** in a timely manner;

3.3.6 listen to the **Participant's** and the **Guardian's** feedback and work with them to resolve problems quickly; and

3.3.7 submit a **Deed Amendment Schedule** as required in accordance with clause 7.1.2.

3.4 Performance standards

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

3.4.1 for the purposes of achieving the goals in, and in compliance with, the **Participant's Plan**;

3.4.2 in a courteous and respectful manner, with due skill, diligence, care and consistent with the highest professional and industry standards; and

3.4.3 in accordance with this **Deed**, all applicable laws and any reasonable request of the **Guardian** from time to time.

3.5 Guardian's responsibilities

The **Guardian** agrees to:

3.5.1 cooperate with the **Service Provider** in order for the **Service Provider** to provide the **Services** to meet the **Participant's** needs;

3.5.2 be courteous and respectful towards the **Service Provider's Personnel** at all times;

3.5.3 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

3.5.4 provide feedback as needed regarding the **Services** to the **Service Provider** from time to time.

3.6 Privacy

The **Service Provider** must:

3.6.1 protect the **Participant's** privacy and collect, use, disclose and otherwise handle **Personal Information** and **Health Information** 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*;

3.6.2 notify the **Participant** and **Guardian** in writing of any actual or suspected breach of its obligations under clause 3.6.1; and

3.6.3 provide the **Participant** and **Guardian** with a copy of its privacy policies and procedures within 30 days of signing the **Deed** 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 4 of Schedule 1, it will maintain adequate levels of the insurance policies set out in item 4 of Schedule 1.

4.2 On request, the **Service Provider** must provide the **Participant** with certificates of currency evidencing its compliance with clause 4.1.

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; or

6.2.3 in the opinion of the **Guardian**, continuation of the **Services** would pose a risk to the **Participant's** safety or personal and social wellbeing.

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 Service Provider

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

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

This agreement will terminate where funding within the **Participant's Plan** for the **Services** agreed to under this **Deed** ceases or has been exhausted.

6.6 Effect of termination or expiry

Termination or expiry of this **Deed** will not affect:

6.6.1 any accrued rights or remedies of either party; or

6.6.2 the operation of clauses 3.6, 7 and this clause 6.6 or any other provision which, by its nature, is intended to survive termination or expiry of this **Deed**.

7. General

7.1 Amendment

7.1.1 During the **Term** of this **Deed** either party or the **Guardian** may amend the information contained in item 5 of Schedule 1 by advising the other party in writing of the updated information. Such amendments should be communicated within 7 days of the change.

7.1.2 If during the **Term** of the **Deed** the parties agree to:

- (a) the **Service Provider** continuing to provide services to the **Participant** beyond the Participant's Plan end date specified in item 2 of Schedule 1 or, if a **Deed Amendment Schedule** has previously been made, in the most recent **Deed Amendment Schedule**; and/or
- (b) alter the range and/or details of services specified in Schedule 2 or, if a **Deed Amendment Schedule** has previously been made, in the most recent **Deed Amendment Schedule**;

the **Service Provider** shall, after consulting with the **Support Coordinator**, provide the **Participant** with a **Deed Amendment Schedule** (in the standard form provided by the **Public Advocate**) reflecting the agreed amendments (including the new Participant's Plan dates, if applicable) within 10 **Business Days** of the agreement. There is no limit on the number of times a new **Deed Amendment Schedule** can be made during the **Term** of this **Deed**.

7.1.3 A **Deed Amendment Schedule** which includes the addition or removal of services (when compared to those services specified in Schedule 2 or, if a **Deed Amendment Schedule** has previously been made, in the most recent **Deed Amendment Schedule**) is taken to be made only after it has been signed by the **Guardian**. If a **Deed Amendment Schedule** does not include the addition or removal of services, the **Deed Amendment Schedule** is taken to be made after the **Support Coordinator** completes the appended Support Coordinator's Notation unless the **Guardian** informs the **Service Provider** in writing within 5 **Business Days** of the Support Coordinator's Notation that it does not agree to the **Deed Amendment Schedule**, in which case the **Deed Amendment Schedule** is taken not to have been made and is of no effect.

7.1.4 A **Deed Amendment Schedule** replaces Schedule 2 and any earlier **Deed Amendment Schedules** in respect of services to be provided to the **Participant** by the **Service Provider** within the Participant's Plan start and end dates specified in that **Deed Amendment Schedule**, and must specify all services to be provided within that period.

7.1.5 Except as provided for in clause 7.1.1 or clause 7.1.2, this **Deed** may only be varied or replaced by a document executed by the parties.

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 (see item 5 in Schedule 1).

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.

SCHEDULE 1

Deed details

Untitled

Item 1 Participant's Plan start date

Item 2 Participant's Plan end/review date

Item 3 Please tick the relevant boxes below to indicate how the NDIS Plan is managed:

Item 4 Public liability - Period to be maintained after Term: NA

Professional indemnity - Period to be maintained after Term: 7 Years

Workers compensation

Notices

Item 5 The Participant Address

Participant Email (if applicable)

Guardian details Name

Guardian Email

Phone number
1300 309 337

Service Provider Address

Service Provider Email (Signed Deeds will be returned to this email address)

Phone number

Support Name
Coordinator

Phone number

Organisation Name

Address

Support Coordinator Email

SCHEDULE 2

Schedule of Miscellaneous Services

*Note: This Schedule may be replaced by a **Deed Amendment Schedule** made under clause 7.1.2 during the **Term of the Deed***

Provider Notifications:

GST Exempt

Yes

This is a supply of one or more reasonable and necessary supports specified in the statement of participant supports under section 33 (2) of the NDIS Act, set out in the Participant's NDIS Plan currently in effect under section 37 of the NDIS Act.

**Temporary Transformation
Payment (TTP)**

N/A

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).

*Note: All services to be provided during this Participant's Plan period must be listed below and **quote for the entire Plan period***

Services

Item 1		
Support Item Number	Support Item Name	
Number of hours/units	Hourly rate / unit price	Total (\$)
		0.00
		TOTAL FOR ALL ITEMS
		\$0.00

SIGNING PAGE

Executed by the parties as a Deed

SIGNED for and on behalf of the **Service Provider** (This must be signed by the **Service Provider NOT the Support Coordinator**)

Signature

Name of Service Provider signing

Date
20/10/2022

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 the **Participant** by **Signature**
the **Guardian**

Name of Guardian signing

Date of execution

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

The following Support Coordinator's Notation can only be completed by the Support Coordinator.

If you are the Provider and have already completed and signed the Deed, please submit it now **(do not fill out the Support Coordinator's Notation)**. The Deed will automatically be forwarded to the Support Coordinator for them to complete this Notation.

Support Coordinator's Notation

Note: This page is for the Support Coordinator only

*If you are the Provider and have already completed and signed the Deed, please press 'submit' now **(do not fill out the 'Support Coordinator's Comments' or 'Support Coordinator's Confirmation' below)**. The Deed will then be automatically forwarded to the Support Coordinator for their review and then to the Guardian for signing.*

Support Coordinator:

If you identified any errors or issues with the details in the Schedules, please note them in the 'Support Coordinator's Comments' field below and press 'submit'. Your comments will then be automatically forwarded to the Provider for them to address. Once the Provider has amended the deed, the updated version will be sent to you for your review.

Otherwise, if there are no errors or issues, please complete the 'Support Coordinator's Confirmation' below, sign and press 'submit'.

Support Coordinator's Comments (optional)

Support Coordinator's Confirmation

Signature

Name of Support Coordinator signing

Date