

ECH INC – SUPPLIER TERMS AND CONDITIONS AGREEMENT

1 DEFINITIONS

- 1.1 **Aged Care Act** means the Aged Care Act 1997 (Cth) and all Principles made thereunder.
- 1.2 **Aged Care Code of Conduct** describes the behaviours expected of all workers providing care or services to people receiving aged care in Australia. It applies to all aged care workers employed or otherwise engaged (including on a voluntary basis by ECH) or by a supplier, contractor or subcontractor of ECH, to provide care or other services to its clients and residents.
- 1.3 **Australian Privacy Principles (APPs)** are the cornerstone of the privacy protection framework in the Privacy Act 1988. They apply to any organisation or agency the Privacy Act covers.
- 1.4 **ECH** means ECH Inc.
- 1.5 **ECH Community Member** means any resident residing in independent living units provided by ECH, and any client of community, health and care services and community therapy services provided by ECH, and any other person to whom ECH owes a common law duty of care or a contractual obligation of a similar kind.
- 1.6 **Goods** means the goods (if any) to be supplied to ECH.
- 1.7 **Home Care Package (HCP)** provides Government funded services that will help ECH Community Members remain at home for as long as possible, as well as providing choice and flexibility in the way that the care and support is provided.
- 1.8 **Modern Slavery Act 2018 (Cth)** has the same meaning as it has in the Modern Slavery Act 2018 (Cth).
- 1.9 **Services** means the services (if any) to be provided to ECH.
- 1.10 **Serious Incident Response Scheme (SIRS)** requires the mandatory reporting of incidents within specified timeframes. Priority 1 incidents are required to be reported within 24 hours of the provider becoming aware of the incident, and Priority 2 incidents must be reported within 30 calendar days (ECH will determine the priority of the incident upon notification by your business to our Member Connect Team on 1300 275 324).

- 1.11 **Supplier** means an organisation that has been engaged for delivery of goods, services and/or meals under these terms and conditions.

2 SUPPLY OF GOODS

- 2.1 The Supplier must:
- sell unencumbered Goods in the quantity and of a quality as requested by ECH; and
 - deliver the Goods in accordance with the delivery instructions set out by ECH including, without limitation, delivering the Goods by the delivery date and to the specified location and comply with any other ECH reasonable delivery instructions.
- 2.2 Risk in the Goods passes to ECH when the Goods are delivered and ownership of the Goods passes to ECH on acceptance of the Goods.
- 2.3 ECH may perform tests on the Goods to determine whether to accept the Goods and if the Goods fail such testing, ECH may elect to:
- have the Supplier provide (and install if applicable) replacement Goods within a reasonable time; or
 - remove the Goods if required.
- 2.4 The Supplier warrants that the Goods:
- are new (unless otherwise specified) and conform with any description applied and any sample provided by the Supplier;
 - are free from defects in materials, manufacture and workmanship;
 - conform to any legally applicable standards;
 - are installed correctly (if the Supplier is responsible for installation); and
 - are of merchantable quality and fit for purpose.

3 SUPPLY OF SERVICES

- 3.1 The Supplier must supply the Services in accordance with the request by ECH and any relevant Legislation.
- 3.2 If the Services include any reports, data or other materials required to be delivered in the performance of the Services, then title in such materials will vest in ECH on their acceptance by ECH.
- 3.3 If in ECH's reasonable opinion, the Supplier has failed to satisfactorily perform the Services, ECH may elect to:

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- (a) have the Supplier provide replacement Services within such reasonable time as ECH may determine.
- 3.4 The Supplier warrants that the Services:
- will be provided with due care and skill and in accordance with current industry standards;
 - will be performed in a manner to achieve the purpose for which the Services are required; and
 - conform to any legally applicable standards.
- 3.5 The Supplier must not engage a subcontractor without the prior written approval of ECH and ECH may request such information about the proposed subcontractor that ECH considers appropriate and grant approval on such conditions as ECH considers reasonably appropriate.
- #### 4 SUPPLIER OF MEALS
- 4.1 A Home Care Package (HCP) can be used to pay for the preparation and delivery of meals only.
- 4.2 The Supplier shall invoice for those in receipt of an HCP separately;
- ECH for the meal preparation and delivery;
 - ECH Community Member for the purchase of raw food cost;
 - Invoices shall include the ECH Community Member name and date of Service for meal preparation and delivery of meals only.
- #### 5 PRICE, GST & PAYMENT
- 5.1 **Price** means the price payable for the Goods and Services as agreed.
- The Price includes all charges and the costs payable to the point of delivery and of compliance by the Supplier with the Supplier's obligations (including the costs of all material and equipment for the delivery of the Services).
 - The Price is exclusive of GST and ECH agrees to pay GST in addition to the Price if the supply of Goods and Services constitutes a Taxable Supply.
 - The Supplier represents it is registered under the A New Tax System (Australian Business Number) Act 1999 (Cth) and the ABN is the Supplier's ABN and it is registered under the GST Law.
- (d) The Supplier is entitled to invoice ECH for payment in respect of Goods and Services only when the Goods and Services have been provided by the Supplier and accepted by ECH.
- The Supplier will provide ECH with monthly invoices for the amount claimed by the Contractor in relation to the Services to the date of each such invoice, or to any other date as agreed between the parties.
 - ECH does not have to pay a Supplier's invoice unless the invoice is properly rendered. An invoice is properly rendered if it is:
 - for Goods and Services for which the Supplier is entitled to invoice under these Terms and Conditions;
 - for the correct Price for the Goods and Services; and
 - a valid Tax Invoice in accordance with GST Law.
 - Notice of a requested increase to the fees must be provided in writing to pcontracts@ech.asn.au. ECH will at its sole discretion determine if the request will be approved or not and will notify the contractor in writing accordingly. Requests should include detailed reasoning for the increase, including any legislative changes to award rates.
- 5.2 **GST, Taxable Supply and Tax Invoice** have the meanings attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Law).
- 5.3 **Payment** will be made within 14 business days on approval of a valid tax invoice.
- ECH will not accept responsibility for Payment of invoices received more than 60 days after the Service has been provided.
- #### 6 STATUTORY DECLARATION
- It is a requirement for all Suppliers, their employees and subcontractors that work on ECH sites and/or are likely to have unsupervised contact with ECH care recipients or clients must provide a current Statutory Declaration for Police Clearances that is satisfactory to ECH requirements (valid for 3 years from Issue Date) under the Aged Care Act.

7 INSURANCE

- 7.1 Unless otherwise agreed by the parties, the Supplier must hold relevant insurances such as Public Liability (minimum \$20M any one occurrence and \$20M in the aggregate), Professional Indemnity if providing professional services (minimum \$5M any one occurrence and \$10M in the aggregate) and Workers Compensation as required.
- 7.2 The insurance must be with an insurer satisfactory to ECH, and the Supplier must provide a copy of the certificate(s) of insurance for such policies if required by ECH.

8 NO UNLAWFUL OR IMPROPER CONDUCT

The Supplier must not conduct itself in a manner that is unlawful, nor may it invite, directly or indirectly, any of ECH's officers, employees or agents to behave unethically, to prefer private interests over ECH's interests or to otherwise contravene the *Retirement Villages Act 1987* and *Aged Care Act 1997*.

9 MODERN SLAVERY

- 9.1 The Supplier shall ensure that it and its subcontractors (and to the extent practicable, its other suppliers and business partners) will comply with all applicable laws, statutes and regulations in force from time to time, including but not limited to the *Modern Slavery Act*.
- 9.2 The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.
- 9.3 If at any time the Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Agreement, the Provider must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

10 COMPLAINTS, FEEDBACK AND INCIDENT REPORTING

Any complaints, general feedback or incidents that are required to be reported to ECH should be referred to the ECH Member Connect Team on 1300 275 324. Incidents that are required to be reported can be located at the [SIRS website](#).

11 AGED CARE CODE OF CONDUCT

The Code of Conduct applies at all times, including outside work hours and when providing care and services away from the premises of ECH. Breaches of the Code of Conduct may result in immediate termination of services, and or enforcement or compliance action against both the involved Contractor and ECH. Further information is located at the [Aged Care Code of Conduct](#) website.

12 INFORMATION SECURITY

- 12.1 The Supplier must implement and maintain appropriate information security measures to protect the confidentiality, integrity, and availability of ECH's Confidential Information and Personal Information (collectively, "Information"). These measures must be at least as stringent as the Supplier's own information security measures and consistent with the Australian Privacy Principles (APPs) and other applicable Australian laws and regulations.
- 12.2 Without limiting the generality of the foregoing, the Supplier should meet the following measures:
- (a) Implement and maintain a written information security policy and procedures.
 - (b) Conduct regular security risk assessments and implement appropriate controls to mitigate identified risks.
 - (c) Use appropriate technical security measures, such as encryption, access controls, and firewalls.
 - (d) Train and educate staff on information security best practices.
 - (e) Incident response procedures in place in the event of a security breach.
- 12.3 The Supplier must notify ECH as soon as practicable of any actual or suspected security breach involving ECH's Information.
- 12.4 ECH has the right to audit the Supplier's information security measures at any time upon reasonable notice.
- 12.5 If the Supplier fails to comply with its obligations under this clause, ECH may terminate the agreement without notice.

13 INDEMNITY

The Supplier indemnifies ECH and must keep ECH indemnified against all:

- 13.1 costs of any nature arising out of or in connection with any claim that the Goods or Services provided by the Supplier infringe the intellectual property rights of any third party; and
- 13.2 damages, losses and costs of any nature arising out of or in connection with any breach of obligation or warranty under these Terms and Conditions or any negligence of the part of the Supplier.

14 DEFAULT AND TERMINATION

- 14.1 ECH may terminate the agreement without notice to the Supplier.
- 14.2 Termination of this agreement by ECH will not prejudice any other rights or remedies which ECH has against the Supplier.

15 GENERAL

- 15.1 These Terms and Conditions sets out the entire agreement between the parties with respect to the supply of Goods and Services EXCEPT if a separate agreement exists between the parties in which case the terms and conditions of such agreement will apply.
- 15.2 The provider must complete all registration requirements in Rapid Global and all staff and subcontractors must complete the annual Rapid Global induction, including adherence to all requirements set out in the [ECH Contractor Orientation and Onboarding Handbook](#). Where attending an ECH site (corporate, client or resident), the contractor must hold a copy of their induction certificate and present upon request.
- 15.3 The laws in force in South Australia and the courts of South Australia have exclusive jurisdiction in respect of disputes arising from it.
- 15.4 **By accepting ECH purchase orders, the Supplier acknowledges the above Terms and Conditions have been read and agreed to.**